

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.

Steve Lynch, Senior Planner, presented the staff report. He explained that this is the third of three related reports tonight that will be presented regarding this development. He said that there are several interrelated applications and that there would be several motions to consider: the Statements of Overriding Considerations; a General Plan Amendment; a Rezone; and a Special Development Permit and Vesting Tentative Map. Mr. Lynch encouraged the Commission to stay focused on the fundamental issue, which is the conversion of this site from Industrial to a Residential use. He said staff's fundamental concern is the site that the applicant has chosen. He said that staff could not make the findings and is recommending denial of the General Plan Amendment, Rezoning, Special Development Permit (SDP), and the Vesting Tentative Tract Map.

Comm. Klein asked staff to talk about the feasibility of underground parking for this project and what staff's opinion is on this issue. Mr. Lynch said that the applicant has submitted information that indicates that underground parking is not possible because of a high water table. Mr. Lynch said that if the applicant says that constructing underground parking would be very expensive due to water that he believes them as they are not the first applicant to have said this. Mr. Lynch said that there is something to be said for underground parking as well as a podium-style development where the units are on top of the parking which reduces lot coverage.

Hanson Hom, Director of Community Development, said that staff recently had a discussion with the applicant regarding the underground parking issue. He said they discussed Community Values to promote open space and underground parking. He said he thinks the applicant may discuss information this evening that might prove to be an exception finding for coverage, and might help better explain why underground parking at this specific site might pose a significant constraint.

Comm. Sulser confirmed with staff that the main concern is the compatibility of this use with the surrounding area. He discussed this site and surrounding area with staff and possible other uses in the area that could affect the Industrial uses including Places of Assembly (POAs). Ms. Ryan described the area, known as the Woods, and explained some of the surrounding uses including some nearby residential.

Comm. McKenna said she agrees that building underground parking in an area that has a high water table is not a very good idea. She asked what does staff need to know to verify that the water table is high and that the parking garage should not go low. Mr. Hom said perhaps if an engineering feasibility analysis were submitted to Planning staff before hand that staff could discuss it with the engineering staff. Mr. Hom added that other projects in town do have water table issues and it is expensive to underground parking when you have water table issues. Comm. McKenna and staff further discussed what the Commission would need to do tonight to deal with this particular issue. Staff suggested they listen to the testimony, if they make an exception, state the finding that led to the exception. He said that the Commission does have some flexibility in judgment by the Commission. Comm. McKenna said if new information was presented tonight that she would not feel comfortable making a decision regarding this issue without staff having the opportunity to review the new information. Mr. Hom said that the Commission could refer the matter for further staff analysis.

Chair Rowe asked staff if there is any problem with liquefaction in this area. **John Schwartz**, David J. Powers and Associates (Environmental Consultants) said that there was some liquefaction and expansion at this site, but nothing that could not be dealt with by standard practices. Chair Rowe said she recalls the review of the ITR (Industrial to Residential) areas and asked of the identified ITR areas if there were any sites that would take a project of this size. Mr. Lynch said there are some enormous sites out near Duane Avenue.

Chair Rowe opened public hearing.

Aaron Yakligian, Director of Development with Trumark Companies, presented the timeline, history, and information about the project, also referred to as Luminaire, through a DVD (Digital Video Disc) presentation and a PowerPoint presentation. He said this is a cutting edge development in one of the most appropriate locations in west Sunnyvale. He said they have responded to the most recent comments from the fourth Study Session in September by including additional rounded windows and architectural elements, enhanced parking garage details, line of site concerns, and revised the colors, heights, and massing. He said the project team is present this evening to answer any questions. He addressed land issues and said that this is the area where the applicant has fundamental differences with staff on the appropriateness of the project location. He addressed the aspects of the land use and their justification for the requested change from the existing use. He said the proposed land use makes sense, the existing buildings are vacant and have been vacant for years so the existing use is clearly not working. He addressed a need for retail in this area, housing goals, and demand from local employers for quality rental units. He said in 2006 they presented plans to City Council for this site for a mixed use development near employment, transportation, recreation, and existing residential. He said this site has no immediate neighbors to impact. He said the EIR studied the impacts and found the impacts were less than significant. He said this development would not compete with the nearby Industrial uses, but would complement them by providing housing and retail opportunities for employers. He said based on this information they received the Silicon Valley Leadership Group's endorsement. He said staff pointed out this location is not one of the original ITR sites, adding that there has been no action on 70% of the ITR sites. He said that this project is ready to go today, and an opportunity that is irresponsible to ignore. He discusses the General Plan goals and how this project addresses those. He discussed further benefits of the project including, the design, 338 apartment homes, 16,000 square feet of neighborhood serving retail, and over 13,000 square feet of live/work space. He noted residents can park on the same level they live on, and there are over three acres of useable open space. He said Luminaire will be a green development built to LEED (Leadership in Energy and Environmental Design) and Build-it-Green standards. He said this development will benefit BMR (Below Market Rate) housing in Sunnyvale by adding 46 units to the BMR units. He said this new development would generate new fees for the community, including approximately \$3 million towards parks and \$2 million for schools. He said they have worked closely with the Sunnyvale Historical Society to develop a unique on-site amenity that will educate residents and point them towards the newly opened museum. He said Luminaire will provide exciting new live/work opportunities. He said he is proud of the endorsements that Luminaire has gained from a diverse group of supporters

including Moffett Park Business and Transportation Association, Bay Area Council, Greenbelt Alliance, Sunnyvale Community Services, and the Santa Clara County Housing Action Coalition. He said they are excited about Luminaire and said that this is a purposeful land use. He said tonight he is requesting that the Commission recommend approval of the Luminaire applications as proposed and as presented in Alternative 3, on page 32 of the staff report.

Comm. Sulser asked Mr. Yakligian about the 14 housing units that have a problem with diesel particulate matter (DPM) and asked why they did not put another use in this area that would not have had the problem. Mr. Yakligian explained that their research shows the best location for the live/work units is on Lawrence Station Road and Lawrence Expressway at Elko. Comm. Sulser further discussed this issue with the applicant.

Comm. Klein asked the applicant to comment about the underground parking. Mr. Yakligian said that it is a shame that he is having to reproduce a report that is in the package. He said there is geotechnical information in the EIR from ENGEO that clearly states challenges with underground parking including, dewatering and groundwater. Mr. Yakligian said that this site is in the flood zone and it makes no sense to put underground parking in a flood zone. He submitted a page from the EIR that discusses the issues with the groundwater and some of the engineering concerns. He said that this information has been in the public record for nearly 2 years. Comm. Klein asked the applicant to comment about how they are achieving LEED standards and what the applicant is doing regarding green building. Mr. Yakligian said they have been working with staff, worked through checklists with green consultants (LEED and Build It Green) and are proposing specific features for the development. He said they are working to design this project to a LEED silver level or to 70 points for Build It Green.

Chair Rowe further discussed green building with the applicant with the applicant stated that when the actual construction begins they would use the most appropriate green certification that there is. Mr. Yakligian presented a document to the Commission which is their specific requests regarding modifications to the conditions and the findings. Comm. Rowe asked the applicant if the proposal includes a new lighted cross walk to the east side of Lawrence Station Road as suggested by the Traffic Division. Mr. Yakligian said that the lighted crosswalk was originally proposed with a park, and after review with staff, it was determined that the park and the lighted crosswalk are not the best approach at this time. He said that would no longer be the best place to cross the street. Chair Rowe said originally these units were to be sold and now the proposal is for them to be rentals. Mr. Yakligian said they reviewed their

needs and the market and felt like rentals were the better choice. He said they are doing a condo map with this application as well, so the units could be converted to homeowner units at a later time. Chair Rowe asked about how the applicant plans to protect the live/work units from becoming residential. Mr. Yakligian said there would be an on-site manager and there would be a lease restriction that the commercial space needs to remain commercial space.

Nancy Tivol, Director of Sunnyvale Community Services, spoke in support of the development. She said that she does not think anything is needed more in Sunnyvale than affordable rental housing and the problem is that no one wants it in their neighborhood. She said what appealed to her about this particular project is that it creates its own neighborhood and no one to argue against it. She said it is difficult to find a site like this one that can provide quality affordable housing with high density and no opposition from the community.

Jeanine Stanek and Johan Koning with the Sunnyvale Historical Society spoke in support of this idea of the History Walk portion of this project. Ms. Stanek said that they appreciate the efforts of Trumark to help the Historical Society tell the Sunnyvale story. Ms. Stanek said that Trumark came to the Historical Society and presented the idea of the History Walk. She said it is in an area that does not often get to hear the Sunnyvale story, as it is located away from the new Heritage Park Museum. She said that she appreciates the creative efforts of the History Walk. Mr. Koning said the history of Sunnyvale is very important to himself and others.

Matt Regan, Director of Housing and Sustainable Development for the Bay Area Council. He described the work the Bay Area Council does. He said they regularly poll their members and one of the top issues facing many employers is finding sufficient housing stock for their employees. He said they formed a committee and housing endorsement program with the intent of promoting the right kind of infill in urban development and protecting industrial land. He said the committee whole-heartedly endorsed this project. He spoke about the land use portion of the project. He provided statistics regarding green house gases and traffic, job nexus of Sunnyvale jobs held by Sunnyvale residents. He said, regarding the DPM that he would encourage the Commission to “think globally and act locally” as particulates move around. He said this is a good site, not a perfect site. He said staff seems to be focused on preserving industrial land, and their members feel finding housing for those who work in industrial land is more important.

Comm. McKenna asked Mr. Regan about job statistics in Sunnyvale. Mr. Regan said he thinks there are about 90,000 jobs in Sunnyvale and about 18% of those jobs are held by Sunnyvale residents. He said his information comes from the sponsor's packet.

Larry Alba, a long time Sunnyvale resident, commented that over the past five years Sunnyvale has grown a lot. He said he is worried about the water and sewer capacity being able to meet the demands of new high density developments. He said he has tried to get information about the potential affects of high density development and has not had much luck in getting the information. He said the project looks nice, but he thinks it is too big and may impact the water and sewer situation of Sunnyvale. He said he opposes the project as he thinks it is too big and thinks that Sunnyvale needs to slow down a little bit for the sake of the infrastructure.

Chair Rowe commented that it is her understanding that when the developer would have to take care of the new piping to meet the needs of the development.

Shiloh Ballard with the Silicon Valley Leadership Group said that a lot of what she was going to say has been covered by Nancy Tivol and Matt Regan. She said they also survey their members and the members have said that the top impediment to doing business in Silicon Valley is housing availability and affordability. She said they are careful about endorsing conversions from industrial to other uses as they are concerned about new uses affecting existing businesses. She said when this developer came to their group for an endorsement they made the developer jump through hoops to assure that this conversion would be a good action. She said ultimately the Silicon Valley Leadership Group concluded this is a developmental proposal that they support.

Steve Rayhawk, a Sunnyvale resident, said he was walking by this site recently and commented that as an alternative use that he might suggest an educational project that is looking for a site. He said this area may have some historical value from the computer industry standpoint, has a welcoming feel, and said he could imagine it would be a good site for educational purposes. He questioned an earlier statement by the applicant regarding the length of time the site has been vacant and asked when the site went from being rental property versus redevelopment.

Ms. Ryan commented on material submitted tonight by Mr. Yakligian from the ENGEO study. She referred to the technical appendix which has the entire ENGEO report. She said essentially the report was prepared to provide direction for construction of a project which has living levels over one level of

subterranean and one ground level parking. Ms. Ryan said the design of the project has changed as the project evolved. Ms. Ryan said this particular report was to help provide direction on how to construct the site based on the original design. She said she did not want the Commission to think that the information provided was giving the level of detail on feasibility or cost of underground parking. She said she is saying this now so the applicant would know what the staff analysis is.

Mr. Yakligian commented that the site has been vacant since 2001 and the leasing sign is still there. He said regarding the shallow groundwater study, they looked at the study and that it is for future construction. He said when they reviewed the study they found there were constraints. He said this site has a lot of benefits and features with the development as proposed. He said they are asking that the Commission recommend Alternative 3 on page 32 of the report and that the SDP and Vesting Tentative Map be approved with modified findings and conditions. He said they would like condition 2.B be removed and confirmed that condition 1.B.2 remain. He said regarding the live/work area, that to allow the proposal to go forward as planned, they would like 75% of the live/work area applied toward the Commercial requirement.

Chair Rowe closed the public hearing.

Comm. Hungerford discussed with staff the process that was gone through to determine ITR areas for the City. He asked if the Woods area was one of the areas considered and why this area was rejected for ITR. Ms. Ryan said that before the ITR study there was the Futures study. She said the Woods neighborhood was one of nine areas reviewed and was ultimately dropped from the category. Ms. Ryan said the 1993 Futures study determined which sites to select to rezone for ITR designation. Ms. Ryan said it was determined that the neighborhood should be preserved for industrial and service type uses.

Comm. Klein asked staff about the conditions that the applicant referred to and staff's comment about the removal of 2.B and 1.B.2. Mr. Lynch said 1.B.2 is a mistake. Comm. Klein asked if staff could talk about BMRs. Mr. Hom discussed the BMR situation in the City confirming that soon the City will be losing a fair number of BMR units, or at-risk units. Mr. Lynch commented about the ITR units, and said the majority have been ownership units versus rental units. Ms. Ryan commented about the applicant's suggestion to change to 75% percentage of square feet from the live/work units that would be applied to commercial. She advised that the Commission has already passed a motion that the 50% amount be applied to Commercial and if the Commission wants to change it to 75% staff

would suggest this be a modification to the previous recommendation on the Mixed Use Combining District.

Comm. Klein asked staff about very high density versus high density residential. Mr. Lynch said that staff is supporting the R-5 residential if the site is approved for residential.

Consideration of Statements of Overriding Consideration

Comm. McKenna moved for Alternative 2 to introduce a Resolution to adopt the Statements of Overriding Consideration for air quality impacts associated with the effects of diesel particulate matter on future project residents and related to the project's contribution to cumulative regional air quality impacts as shown in Attachment K. Vice Chair Chang seconded the motion.

Comm. McKenna said she thinks the Commission questions of both staff and applicant have dealt with the concerns of air quality impacts and the affects of diesel particulate matter.

Vice Chair Chang said the EIR addresses the particulates and the mitigation and said he would support the motion.

Comm. Klein asked staff if the Commission is to make recommendations to Council for which mitigations should be entertained. Ms. Caruso said there were three mitigations and she restated those. Ms. Caruso said if the Commission is making the Statements of Overriding Consideration then the mitigation measure to not rent out the units does not need to be considered. Comm. Klein said that the making of this motion says that the filtration system is adequate. Ms. Caruso said that the Commission would be saying that the filtration system helps, but it does not mitigate the problem.

Comm. Hungerford said he is not going to be supporting the motion as he is uncomfortable with the Statements of Overriding Considerations. He said the Bay Area Quality Management Districts standard is a standard that applies uniformly to permits and other authorizations to emit air pollutants and he is not comfortable waiving it or finding it unimportant in this situation as we are talking about excess cancer rates for people in these units.

Comm. Klein said he would not be supporting the motion as staff was saying the effects of diesel particulate matter is outside of the information presented to us today.

Comm. Sulser said he would not be supporting the motion. He said he can make the findings for the Statements of Overriding Consideration for regional air quality, but not for the diesel particulate matter issue.

Chair Rowe said she also has a problem with the diesel particulate matter so she will be opposing this motion.

ACTION: Comm. McKenna made a motion on 2008-0712 to recommend to City Council to introduce a Resolution to adopt the Statements of Overriding Consideration for air quality impacts associated with the effects of diesel particulate matter on future project residents and related to the project's contribution to regional air quality impacts as shown in Attachment K. Vice Chair Chang seconded. Motion failed 3-4, with Chair Rowe, Comm. Hungerford, Comm. Klein and Comm. Sulser dissenting.

Ms. Caruso said that as an alternative to the motion that just failed the Commission could consider approving the project with the mitigation not to rent the affected units and with that mitigation the Statements of Overriding Consideration are not needed except for Regional Air Quality, but not for the diesel particulate matter.

Chair Rowe asked if that would mean not renting the units forever or just the suggested five years. Ms. Caruso said for at least five years and the units would have to be evaluated to see if the standards can be met.

Comm. Hungerford referred to page 99 of the Draft EIR and confirmed there are nine units on the ground floor and five units on the second floor.

Comm. McKenna asked if this is the same standard for 70 years being outside that we are worried about. Ms. Caruso said yes that is the correct standard.

Ms. Ryan said that the Commission does not need to make Statements of Overriding Consideration if the direction is to not approve any of the subsequent changes in land use and development, but if there is an inclination to approve the change in land use and the development proposal the Commission would need to make a recommendation for Statements of Overriding Consideration for the cumulative air quality and need to adopt the mitigation measure to not occupy the fourteen units.

Comm. Hungerford moved that the Commission recommend to City Council to adopt as a mitigation measure to not occupy the fourteen units in question for five years, and to adopt Statements of Overriding Consideration for the cumulative regional air quality impacts. Comm. Klein seconded the motion.

Chair Rowe asked staff the reason why we would be waiting for five years. Ms. Caruso said that the DPM levels are projected to fall during that time.

Comm. McKenna said she will be voting against the motion as it does not make sense. She said she has a hard time with the standard of 70 years and having to be outside and having 14 units not occupied. She said this just does not make sense.

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.*

Ms. Ryan said the next action to consider is the General Plan Amendment.

Comm. McKenna made a motion to recommend to City Council to change the land use designation for Industrial to very High Density Residential. She said it makes more sense to go to the high density residential for this particular location. **Comm. Klein seconded the motion.**

Comm. McKenna said she understands the issues that staff raised in the report and their recommendation however she thinks that the location of this site with transit, location to jobs, on the edge of the Woods, is relatively self-contained and she thinks that this would be a good land use there.

Comm. Klein said he would be supporting the motion. He said definitely there are issues regarding the continued loss of Industrial zones in the City. He said this is on the edge of the zone, has set idle for many years and is near residential. He said there are issues with this location, including infrastructure, and services provided to the new residential. He said there are ongoing issues in Sunnyvale to provide support to this area of the City. He said he agrees that the loss of Industrial Class B is difficult. He said this will provide rental units and BMR units.

Comm. Sulser said he thinks this is an appropriate rezone. He wants to differentiate this from some of the ITR districts. He said this residential is on the edge of the Industrial park. He said the second point is the mixed use nature of this project relates more to the surrounding industrial than in the ITR case. He said the live/work units on the side potentially do have commercial or live/work next to the industrial. He said this project is better than some of the past ITR projects.

Comm. Hungerford said he was set to vote with the staff recommendation. He said he thinks good planning is taking a look at land uses in the City and dispassionately looking at where different land uses make sense, given existing uses, support services, given the transportation looking at all the variables. He said they have done that and come up with the ITR zones. He said this was not one of the places that was deemed appropriate to transition to residential, but he was impressed with those who endorse the project and by the comments of the Commissioners. He said, like Comm. McKenna said, this is a relatively self contained area, and it is on the edge of the Woods. He said what tipped the balance for him is the consideration of the live/work units. He said for those reasons it makes it more palatable and considering the various factors he would be supporting the motion.

Chair Rowe said that this is a difficult decision to her. She said this is what she thinks of when she thinks of an exciting project. She said she agrees with Nancy Tivol when she said that this is a community unto itself. Chair Rowe said if you affect one you will affect another. She said she has a unique situation on this Commission as a Commissioner who would be speaking with a forked tongue because for years before she would holler when anyone gave away the Industrial Land. She said she was ready to say no to this project and now she said both arguments are strong so she thinks this contained unit could sort of serve as a transitional area between the industrial areas, the commercial areas, and the housing areas. She discussed her reasoning.

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

Rezone

Comm. Klein moved 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 the motion.

Comm. Klein said this is the rezoning of the site as earlier created this evening. He said he thinks this is appropriate and, as staff said, they prefer the high density residential and office/mixed use to a lower density.

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.

SDP and Vesting Tentative Map

Comm. Hungerford moved to approve the Special Development Permit to allow development of 338 condominium units and 16,000 square feet of commercial space. Comm. Klein seconded the motion and offered a friendly amendment clarifying several conditions of approval and discussed condition 1.B.2 and condition 2.B. with Comm. Hungerford. The Commissioners and staff further discussed the lot coverage the pros and cons of the percentage of lot coverage. Ms. Ryan said that 40% is a considerable decrease in the coverage as the design is near 50% and going to 40% would require necessary redesign. She said if the Council were to accept the recommendation to reduce the lot coverage to 40% there would need to be some redesign. Comm. Hungerford said we are hitting the applicant already with the removal of the 14 units. Mr. Hom said the likely impact would be the loss of some units to free up some open space on the site. Comm. Klein and Comm. Hungerford further discussed the lot coverage. Comm. Hungerford said he is inclined to allow the 51.7% because he has seen what the project looks like at this percentage. He said that the alternative would be to remove some of the units next to the freeway that have air quality issues. Comm. Klein said he is concerned that with the newly created Mixed Use district there are quite a number of deviations from it. A compromise to cut the lot coverage to 50% was suggested. Comm. McKenna said she has a problem with compromising on the number as you have no idea what that number is and there is no basis in fact for why a certain number is selected. She said to her you either go 40% or 51.7% and picking in the middle is arbitrary. She suggested going with the 40% or 51.7% and said she would like to go with the 51.7% since it is a high density project.

Comm. Sulser said he was going to suggest 50%, but that now feels very arbitrary.

Comm. Travis said he cannot imagine how to justify the 1.7% decrease as it seems negligible and arbitrary to get to 50% just because it is a round number.

Vice Chair Chang said he is in favor of the 51.7%.

Comm. Hungerford and Comm. Klein agreed that the motion would include a modification to omit condition 2.B, the 40% lot coverage.

Comm. Travis asked staff about the issue of the 75% non residential live/work and would it be appropriate to discuss this now as it is not in the motion. Ms. Ryan said the motion could be tabled to consider the issue and that the Commission cannot make that as a deviation as part of the Special Development Permit. Comm. Travis asked why they cannot breakout on a per project basis raising that percentage. Ms. Ryan said the Special Development Permit provisions give some flexibility on certain zoning standards, i.e. parking, lot coverage, bulk FAR (Floor Area Ratio), and open space, but for other zoning provisions, i.e. number of BMR units, general use, it does not afford the opportunity to have a deviation through the SDP. Ms. Ryan said some items can be considered through the Variance process, but that is not before the Commission this evening. Comm. Travis discussed the live/work units with Ms. Ryan. He said he is concerned as everyone on the Commission has expressed admiration for the live/work units, and he gets a feeling from the applicant's presentation that by reducing this by 25% it will adversely affect the number of the those units that can be placed on-site. They further discussed and restated that the applicant has requested that the live work units have a threshold of 75%. Mr. Hom said perhaps another option that might allow a little more flexibility is to amend the Mixed Use District adopted to allow flexibility on the exception to minimum commercial space so if amended, then when the Commission recommends approval of this project a condition can be included that allows the minimum 75% or whatever the project proposes if that is the wish of the Commission. He said he would suggest that. Ms. Ryan said procedurally the Commission would have to have another motion to reconsider the other motion regarding the Mixed Use. Ms. Ryan said the Commission cannot do that without dropping the current motion, or take an action on this motion and go back and reconsider the other.

Comm. Klein commented that he thinks the 10% Commercial requirement is fine and we are trying to make a big exception for the live/work units that we do not know how they are going to be used in Sunnyvale. He said he understands staff's reasoning and this developer says that they can make them work and that they will make sure they are monitored and rented out properly. However the next developer down the line might not do the same. He said he thinks the 10% Commercial is adequate.

Comm. McKenna said she thought when she read the report that the amount of commercial space went anywhere from 3% to 15% so she did not see anything magic in 10%. She asked if she read this incorrectly. Mr. Lynch said there was a portion of the report that addressed how staff arrived at the

minimum of 10% figure and briefly explained staff's research. She said she would agree with Comm. Klein that if our goal is a minimum of 10% that the Commercial is adequate. Comm. McKenna further discussed this with staff. She said if we go with 50% of the live/work units towards the commercial, then the developer would have to expand the commercial.

Comm. Travis said he does not have a problem with the 10%, but does have a problem with the arbitrary numbers and would like flexibility on this to look at projects on an individual basis for future projects.

Comm. McKenna discussed the percentages of the live/work issue.

Mr. Hom said the calculation of the live/work unit has a portion of square footage that is residential and portion that is commercial. He said what we are saying is the commercial portion would only count 50% of the square footage to be counted towards commercial credit. He said there are two reasons why only 50% would count towards it, one, the difficulty of enforcement making sure the units have a commercial use, and second that live/work space may not be the same level of commercial space as desired. He said staff felt these reasons make this area not the same as retail store fronts.

Comm. Klein said the commercial use could become more office which is not retail and that is why he feels it is adequate.

Ms. Ryan said that the 10% can be retail or office. Mr. Hom said if the Commission wants to maintain the 10% for this project, they have two options. He said they can increase the amount of actual retail space or increase the number of live/work units.

Vice Chair Chang he said he thinks there is confusion because this if the first time we have had live/work units in Sunnyvale and we are trying to define them. He said he thinks this kind of project has worked before and he agrees with Comm. Travis that there needs to be some flexibility as the Commission will see more of these types of projects in the future. He asked if there could be language that 50% needs to be retail and 50% office space. Mr. Lynch said that could be requested, but the enforceability would fall back on the City. He said he does not see this being a problem with this project, but could be with future projects. Vice Chair Chang confirmed with staff that for this project the Property Management Company on site will be responsible for enforcement.

Comm. Hungerford said the report indicates that 50% allowance is consistent with the new Mixed Use Districts standards and asked if that means that the 50% figure came from other comparable Cities or locations. Mr. Lynch said there really is no baseline available for the Mixed Use

Districts. He said this is staff's best attempt and staff is saying that we want to give some credit for live/work units, but we do not want a full live/work credit.

After discussion the maker and seconder of the motion decided to stay with the staff recommendation and keep the 10% requirement and counting 50% of the live/work units square footage toward the commercial requirement.

Comm. Travis said he would be supporting the motion and that 51.7% coverage is the right number. He said this will be a great addition to this area. He said he would prefer to see the live/work units.

Comm. Hungerford said that parts of this project are complicated, that the package is good, and recommends a vote in favor of the project.

Ms. Ryan asked if the motion was to include the Vesting Tentative Map. **The maker and the seconder agree they were including the Vesting Tentative Map with modified conditions.**

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). 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.