

PLANNING COMMISSION MINUTES OF NOVEMBER 10, 2008

2008-0482 - Determine the Enforceability of CC&Rs (conditions, covenants & restrictions) for Violations to City Code and Project Approvals – Study Issue to determine the various issues associated with residential common interest developments (i.e., townhomes, condominiums, or detached single-family homes with common areas); how these issues can be better addressed; and the level of involvement the City could undertake in the enforcement of CC&Rs. RZ (*Continued from October 13, 2008*)

Rosemarie Zulueta, Assistant Planner, presented the staff report. She said that staff recommendations include providing educational resources to homeowners associations (HOA) members, to provide specific provisions in the conditions of approval (COAs) which address common issues, and to better articulate the COAs so they can be better enforced by the HOAs.

Chair Rowe commented to staff about several areas of the report that she felt needed to be reworded. The pages she referred to were: page 5, regarding the “roof of a condominium” commenting to staff that the wording should be more general; page 9, regarding the ARC (architectural review committee) and felt this wording needed to be more general; and page 12, regarding Berding and Weil asking whether this should be a more general statement like law associations affiliated with HOAs. **Trudi Ryan**, Planning Officer, said that the Commission can provide recommendation to make the changes. Comm. Rowe referred to page 14 and 15 regarding alternatives confirming with staff that Alternative A would require an ordinance and C, D, and E would not.

Chair Rowe opened the public hearing.

Brandon Stevens, a Sunnyvale resident, said he does not support the City getting involved in the enforceability of CC&Rs. He said other cities do not enforce the CC&Rs, it is a drain to City time and resources, and it is a risk and liability to the City. He said the other concept presented in the staff report is training programs for HOAs. He said with the current economic situation, tax revenues will be down, and taking on new services that the City will have to pay for does not seem like a good idea at this time.

Comm. McKenna discussed with Mr. Stevens the staff recommendation, clarifying that the staff recommendation was not to be involved in the CC&R enforcement.

Chair Rowe discussed with staff that the recommendation is to encourage that existing HOAs register with the City and to require that future HOAs register so the City can communicate with the HOAs. Chair Rowe said she wanted to emphasize that even if the Commission directed an ordinance be written that the enforcement of CC&Rs would be in the hands of the HOAs and the City would not enforce the CC&Rs. Ms. Ryan said that possibly Mr. Stevens may have noticed some the fiscal impact comments in the

report which are not commenting on the staff recommendation solely, but include other alternatives that the Council may consider that are not necessarily recommended by staff.

Jim Griffith, a Sunnyvale resident, said that he thinks the study misses the point in some areas. He commented that when the City approves a development the City has a big picture idea of what the development should be which does not necessarily get passed on to the HOA. Mr. Griffith discussed parking in newer developments and said his understanding is that the current City policy is that any new development should be able to meet its own parking needs through on-site parking. He said in the Danbury Place development the CC&Rs give the HOA the flexibility to set the resident versus guest parking percentages. He said by the time the HOA was formed the developer recommended a 100% guest parking policy which is what they did. He said the result is parking problems as any resident that cannot park on-site is forced to park off-site. He said the HOA had no idea what the City's intent was. He said he thinks that the City needs to spend time in developing the CC&Rs so the City's intent is clear. He said in general he supports staff's recommendation. He said he thinks what staff is proposing is good, that he is a little concerned about the parking plan requirement, and does not think the City should get involved with the enforcement of CC&Rs. He said preparing an ordinance for the whole City when the problems are more regional does not seem like a good idea. He said one way he thinks the City could do a better job along with the development of CC&Rs, is to provide a letter of transmittal developed by the Community Development Department that indicates certain issues to be considered when setting HOA rules.

Arthur Schwartz, a Sunnyvale resident and single-family homeowner spoke about CC&Rs related to single-family homes. Mr. Schwartz said he lives in an Eichler home and discussed the architectural controls the Eichlers specified with the intent of the controls to be continuous into the future. He asked that the Commission recommend some sort of registration system for single-family developments such as the Fairbrae tracts, to register the information on the CC&Rs so a homeowner can find out what their rights are, not expecting the City to enforce anything, but to be a source of information.

Gary Swierski, a Sunnyvale resident, referred to page 15 of the report item C.3, which says, "Direct HOAs and homeowners to mediation services (e.g., Project Sentinel)" and commented that Project Sentinel is not qualified to mediate disputes in HOAs. He said that he thinks the City should work with builders, developers and attorneys to write future bylaws and CC&Rs in layman's terms so they are easier to understand. He asked if all the City is recommending be done are what is listed as the staff recommendation, why were 230 hours spent on the Study Issue report? He commented that in his housing area the HOA enforces the CC&Rs and that some of the calls referred to in Attachment C were people being lazy and not contacting the HOA, but the City.

Connie Portele, a Sunnyvale resident, said that unless there is a high volume of complaints, that she thinks government should not go where it does not need to be, especially with single-family CC&Rs.

Chair Rowe closed the public hearing.

Comm. Klein asked if staff knows how many residents with an HOA have been referred to Project Sentinel for mediation regarding CC&Rs. Ms. Ryan said there have not been a lot. She said staff usually recommends that a resident first meet with their HOA as this is the HOA's role. Ms. Ryan said if there are disagreements then staff might refer residents to Project Sentinel.

Vice Chair Chang discussed with staff, developer guidelines and HOA boards and enforceability. Ms. Ryan said that what is being addressed is whether the City can compel the HOAs to enforce their CC&Rs. **Kathryn Berry**, Senior Assistant City Attorney, said one of the conditions of approval is that a drafted declaration of the CC&Rs be submitted to the City for review by the Office of the City Attorney and by the Director of Community Development. She said one thing being required is that the COAs be attached as an exhibit to the CC&RS so homeowners are aware of the COAs. She said the City is imposing COAs on the HOA to address certain things and not as an avenue for the City to get involved. Vice Chair Chang said that a member of the public said the HOA changed the parking requirements for unassigned parking spaces at Danbury Place to guest use only. Ms. Ryan said, specifically on that issue, staff has completed a study and recently adopted ordinances that modify how we will handle parking. She said recent code change would include how unassigned spaces would be used. Vice Chair Chang confirmed with staff that there is a new code requirement requiring multi-family development plans to provide a parking management plan.

Comm. McKenna commented that this study is not about single-family homes.

Chair Rowe asked staff about Project Sentinel understanding how CIDs (Common Interest Developments) work, and asked if possibly the report should omit the specific name and replace it with mediation services. Ms. Ryan said that currently the City contracts with Project Sentinel primarily for tenant landlord disputes and also other housing related disputes including HOAs. She said Project Sentinel provides this service to the City and is available to residents at no charge. She said residents can use other mediation services at their own expense.

Comm. McKenna moved for the staff recommendation to recommend the City Council adopt Alternative C.1-5, D.1-3 and E to develop tools for HOA education assistance and to include specific COAs to address common issues in CIDs. **Comm. Travis** seconded the motion.

Comm. McKenna said that the only thing she might want to change is **Alternative C.3**, to direct HOAs and homeowners to appropriate mediation services and not put in a specific service. She said staff could let them know that Project Sentinel is free, or they could go their own way and pick someone else to do mediation. **The seconder accepted the Friendly Amendment.** Comm. McKenna and Ms. Ryan discussed wording for the Friendly Amendment with staff suggesting that the wording could be to **“recommend that the HOA and resident may want to use mediation services”**.

Comm. Sulser said he has mixed feelings about this Study Issue. He said members of the public have expressed concern about the City enforcing CC&Rs. He said what the Commission is recommending tonight is reasonable and he can support the motion. He said largely this recommendation is for educational programs and assistance for HOAs and that this is about as far as he is willing to go regarding this subject.

Comm. McKenna said she thinks the staff recommendation is a good one. She said what she likes about it is the recommendation includes the issues that come up most often in dealing with HOAs. She said staff is recommending that there be specific COAs for CIDs to address common complaints with which the City has become involved including, parking, trash bin replacement and storage, and air conditioning units. She said staff is saying that with any new developments that COAs will outline these areas specifically. She said she thinks that is the most important part of this Study, in addition to developing tools for education and assistance while not getting involved in day-to-day operations or in overseeing the rules or regulations.

Vice Chair Chang said he would be supporting the motion. He said the current motion will address the educational portion and the City would have a program to get more information and direct homeowners back to their HOAs.

ACTION: Comm. McKenna made a motion on 2008-0482 to recommend to City Council to adopt Alternative C.1-5, D.1-3 and E to develop tools for HOA education assistance and to include specific COAs to address common issues in CIDs with a modification to Alternative C.3 that the wording be changed to “Recommend HOAs and Homeowners use mediation services”. Comm. Travis seconded. Motion carried unanimously, 7-0.

APPEAL OPTIONS: This recommendation will be forwarded to City Council for consideration at the December 16, 2008 City Council meeting.