

**PLANNING COMMISSION MINUTES OF JUNE 28, 2010**

**2010-7048 - O'Brien Homes/Sunnyvale Associates LLC and TRE B of A v WL Homes:** Architectural and landscaping modifications for a previously approved project. Previous project included 242 condominium townhomes and a tentative map, as a specific project component of the Duane ITR General Plan Amendment and EIR Study for a site located at **920 - 962 East Duane Avenue** (APN: 205-55-001 through 040). SL

*This item was considered as the first public hearing item on the agenda instead of the second.*

**Trudi Ryan**, Planning Officer, explained there are two property owners related to this application and one of the property owners has requested a continuance of this item to the July 12, 2010 meeting. Ms. Ryan said staff recommends the continuance of the project as it is important that both property owners be a party to the application. Ms. Ryan said the other property owner believes the Commission should be able to move forward with the application this evening.

**Comm. Rowe** moved to continue the item to July 12, 2010, and then withdrew the motion for further discussion.

**Comm. Klein** confirmed with staff that the public hearing needed to be opened as there could be members of the public or the applicant that wanted to comment on the continuance.

**Chair Chang** opened the public hearing.

**Reneé McDonnell**, with Sunnyvale Associates, representing the co-applicant, objected to the continuance and said Sunnyvale Associates would like to present the plans tonight, as they look forward to the opportunity to have the project considered. She acknowledged the request for continuance put the Commission and staff in a difficult position with the co-applicants not in agreement. She said she thinks the continuance request delays the project, is not based on legitimate issues, and that the receiver has a separate agenda. She said if the City allows the continuance with unspecified objections that the continuance is causing Sunnyvale Associates significant and further damage. She asked that the City ask the receiver to provide their objections in writing to staff to see if there is any substance to the objections. She asked if the receiver's consent is not provided or the receiver does not provide valid objection, that the City have the Planning Commission consider the project over the receiver's objection as the continuance denies the ability to proceed.

**Comm. McKenna** discussed with staff whether the Planning Commission could ask the receiver about the specific issues, and if the Commission continues this item to July 12, 2010, if the Commission could make sure there were no further delays. **Kathryn Berry**, Senior Assistant City Attorney, explained this is one integrated project and two property owners and City code requires that applications be submitted with the signature of all owners. Ms. Berry said the receiver/owner has said a variety of things over time from possibly withdrawing their consent, requesting a continuance, to removing the objections. Ms. Berry said granting a continuance is in the purview of the Commission and can be granted if it is not detrimental to the public interest as distinguished from private interest. She said the City received a letter from the lawyer with Bank of America, the receiver, indicating more time is needed to review the report. Ms. Berry said asking the receiver for specific objections would be appropriate and if another continuance is requested it would be up to the Commission whether to grant it. Comm. McKenna said she would like a stronger message be communicated that as long as the issues raised have been addressed, that it may be more difficult to obtain another continuance. Ms. Berry said some of the private issues related to this project are out of the hands of the City, however she is optimistic as the party requesting the continuance said they would need only need the two weeks.

**Comm. Rowe** discussed with staff the receiver's reasons for asking for a continuance with Ms. Ryan explaining that there is a combination of specified and unspecified items of concern.

**Comm. Hungerford** discussed with staff the relationship between the two owners.

**Comm. Rowe** confirmed with staff what could be requested in the motion including requiring the receiver to address their concerns in writing.

**Chair Chang closed the public hearing.**

**Comm. Rowe moved to grant the continuance to July 12, 2010, asking the owner requesting the continuance be at the meeting to make their presentation, and that his objections be provided to staff in writing. Comm. Sulser seconded the motion.**

**Comm. Rowe** said this is an example of why public hearings are important as valid points were brought up by the speaker that needed to be considered.

**Vice Chair Travis** said he would be supporting the continuance, however he is not happy about it. He said he understands objections from the co-owner need to be addressed, however he doubts the Commission would see anything new.

**ACTION:** Comm. Rowe made a motion on 2010-7048 to continue this item to the July 12, 2010 Planning Commission meeting as requested by one of the two property owners, asking the owner requesting the continuance be at the meeting to make his presentation, and that his objections be provided to staff in writing. Comm. Sulser seconded. Motion carried 7-0.

**APPEAL OPTIONS:** This action serves a legal notification of the continuance of this item to the July 12, 2010 Planning Commission meeting.