



**APPROVED MINUTES
SUNNYVALE PLANNING COMMISSION
July 9, 2012
456 W. Olive Avenue, Sunnyvale, CA 94086**

**SPECIAL START TIME
7:15 PM - Study Session – West Conference Room**

- 1. **File #:** 2012-7112
Location: City-wide
Proposed Project: Telecommunication Update and Facilities in the Public Right-of-Way (Study Issue)
Staff Contact: Andrew Miner, 408-730-7707
aminer@ci.sunnyvale.ca.us
Notes: (35 minutes)

- 2. **Public Comment** on Study Session Agenda Items (5 minutes)

- 3. **Comments** from the Chair (5 minutes)

- 4. **Adjourn Study Session**

8:00 PM - Public Hearing – Council Chambers

The Planning Commission met in regular session with Chair Hendricks presiding.

CALL TO ORDER/SALUTE TO THE FLAG

ROLL CALL

Members Present: Chair Glenn Hendricks; Vice Chair Gustav Larsson; Commissioner Bo Chang; Commissioner Maria Dohadwala; Commissioner Arcadi Kolchak; Commissioner Russell W. Melton; and Commissioner Brandon Sulser.

Staff Present: Trudi Ryan, Planning Officer; Kathryn Berry, Senior Assistant City Attorney; Suzanne Ise, Housing Officer; Ernie DeFrenchi, Affordable Housing Manager; Recording Secretary, Debbie Gorman.

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 of June 25, 2012.

ACTION: Vice Chair Larsson moved to approve the consent calendar with modifications. Comm. Kolchak seconded. Motion carried, 5-0, with Comm. Dohadwala and Comm. Melton abstaining.

PUBLIC HEARINGS/GENERAL BUSINESS

2. **File #:** 2012-7463
Location: City-wide
Proposed Project: Modifications to the Zoning Code Related to Chapter 19.66, Pertaining to the Below Market Rate Housing Program Requirements for New For-Sale Residential Projects.
Staff Contact: Ernie DeFrenchi, 408-730-2784
edefrenchi@ci.sunnyvale.ca.us
Notes: *This item is scheduled to be considered by City Council on July 31, 2012.*

Trudi Ryan, Planning Officer, introduced **Suzanne Ise**, Housing Officer and **Ernie DeFrenchi**, Affordable Housing Manager. Ms. Ise introduced **Darin Smith** with Economic & Planning Systems (EPS), and said he is present to answer any questions on the Nexus Study Draft (Attachment A). Ms. Ise presented the staff report providing corrections to two ordinance chapter numbers referenced in the report.

Vice Chair Larsson asked staff about the Palmer lawsuit that affected Below Market Rate (BMR) rental programs. Ms. Ise discussed the Palmer decision. Ms. Ise said the proposed new ordinance chapter would separate rental requirements from ownership requirements. Ms. Ise discussed what the City could do in the future to create affordable rental units. **Kathryn Berry**, Senior Assistant City Attorney, added further comment about the Palmer decision and the effects on cities. Vice Chair Larsson commented about policy tension between programs, rental and ownership, and asked staff about prioritizing. Ms. Ise confirmed that there is policy debate about prioritizing one over the other. Ms. Ise said the Nexus Study identifies the greatest need in the very low-income group where it is easier to provide rentals rather than ownership to those with very low income. Ms. Ryan added that whatever action the City takes, there is interest and advocacy groups at the state level for possible legislation to allow cities to have inclusionary zoning for rentals. Vice Chair Larsson asked about housing for special needs groups. Ms. Ise explained that the BMR program is not usually used to meet housing for special needs groups and explained various housing funded programs for elderly, disabled and other groups.

Comm. Chang said that currently 12.5% of the number of for-sale units are required to be BMR and asked staff to discuss the in-lieu fees program and how it would affect numbers. Ms. Ise discussed the in-lieu fee program in detail.

Comm. Melton discussed with staff the BMR program and how to prevent owners from flipping properties. Comm. Melton asked about the Nexus Study, the maximum in-lieu fee, and whether the fee in Sunnyvale has ever been too much for a developer to bear. Ms. Ise said in the history of the program developers for only two projects have ever opted to pay the in-lieu fee. Ms. Ise noted that if the fees were set too high, builders would avoid building in the community. Comm. Melton and staff discussed the quality standards on new BMR units.

Comm. Sulser commented about the menu of options and expressed concern about Option C regarding alternative housing types and his concern about stigmatizing the BMR owner. Ms. Ise discussed that there would be standards to meet for the outside of the units and that the

alternative housing types would be analyzed and discussed with the applicant. She said the Planning Commission would be given the analysis and be able to see the implementations.

Chair Hendricks commented that included with report are notes from the study session clarifying for the public that these are notes and not approved minutes. Chair Hendricks asked staff to discuss the funding for BMR units. Ms. Ryan and Mr. Smith with EPS confirmed that the standard response is that the money comes out of the price of the land. Mr. Smith and staff discussed other factors affecting land values explaining that the developer still needs to make their return threshold to make the project work. Chair Hendricks discussed with staff in-lieu fees, the new language in the ordinance, and how the in-lieu fees are used. Staff discussed how current in-lieu fees would be used with the emphasis on production of units. Chair Hendricks discussed with staff details in calculations of the fees and that the Nexus Study indicates that the City is currently not asking enough for in lieu fees. Chair Hendricks discussed with staff alternative housing types and why the BMR units may be different from non-BMR units.

Vice Chair Larsson discussed with staff the proposed requirement for the BMR units to be at least a minimum of 75% of the average sized market units. Vice Chair Larsson discussed with staff alternative options in the ordinance. Vice Chair Larsson asked about the different commissions that would be reviewing the proposals with staff discussing different documents used in making decisions about projects. Ms. Ryan acknowledged the proposed requirements would be another policy to balance with the housing element and the Consolidated General Plan. Vice Chair Larsson had staff comment about outreach meetings staff held with various groups.

Comm. Melton asked staff about the Nexus Study and the inferring that 34% of properties should be BMR units. He asked whether staff thinks this would deter developers from building in Sunnyvale. Ms. Isé said yes, and Mr. Smith discussed that 34% level could be a breaking point and would be very onerous. Comm. Melton discussed with staff the concept of transfer of credits.

Comm. Dohadwala said she likes the idea of the many options for staff to come up with a good solution for affordable housing. She expressed concern about applicants spending a lot of time on a project and then having to make changes far along in the process with alternatives being proposed by staff or the Planning Commission. Ms. Isé explained the project review process and that staff would be providing the applicant guidance and feedback from the start and along the way so the applicant does not spend a lot of time redesigning. Comm. Dohadwala discussed with staff the different purviews of the Housing and Human Services Commission vs. the Planning Commission.

Chair Hendricks opened the public hearing and there were no speakers. Chair Hendricks closed the public hearing.

Vice Chair Larsson discussed with staff the 7% in-lieu fee, the BMR rental price, and the problem of the BMRs being unaffordable for the targeted group. Ms. Isé discussed market rate rents and the percentage of income needed to rent.

Chair Hendricks asked staff if there are more issues that should be considered or changed related to this ordinance. Ms. Isé discussed items that might be studied or changed in the future and commented about issues that the legislature may consider.

Vice Chair Larsson discussed with staff the gap between 12.5% and 34% and whether the in lieu fees would allow additional units to be built to get closer to the 34%.

Comm. Melton confirmed with staff that the Planning Commission would be providing a recommendation on the ordinances to Council.

Vice Chair Larsson moved for Alternative 1 to recommend to City Council to adopt the Ordinance provided in Attachment B to: modify the zoning code related to Below Market Rate Housing Requirements; update the density bonus provisions; and move the density bonus and single room occupancy subsections from Chapter 19.66 to Chapters 19.18 and 19.68, respectively. Comm. Sulser seconded the motion. Ms. Ryan confirmed that the previously mentioned corrections regarding chapter numbers do not have to be included in the motion. Ms. Berry confirmed the errors mentioned for correction are in the report, not the ordinance.

Vice Chair Larsson said a lot of work and thought have gone into this study and probably only a portion of what is in this ordinance has been touched. He said the draft ordinance pulls together many things that need to happen including clarifications, certainty for developers and flexibility for staff. He said there is a tremendous need for affordable housing and this provides many options. He said the Nexus Study was very helpful and compelling yet he had a few questions; however, he does not think he needs to mess with staff's work.

Comm. Sulser said he is excited about moving forward on this. He said the Palmer decision knocked a hole in our affordable housing program and he thinks the greater flexibility will potentially give more people a chance for affordable housing.

Comm. Melton said he would be supporting the motion. He said he echoes Vice Chair Larsson's comments and agrees this was quite an effort from staff. He said he is a believer of market forces, yet this serves well for affordable housing and will benefit all of Sunnyvale.

Comm. Dohadwala said she would be supporting the motion. She said likes having options for the staff and developers to explore and meeting the needs of our citizens.

Comm. Kolchak said he would be supporting the motion and that he said he agrees with Comm. Melton's comments serving societal need. He said he is happy to see this going forward.

Comm. Chang said he would be supporting the motion. He said he likes the clarifications, the flexibility for developers, and the ability to maintain or increase the number of units. He said the fees would be put to good use for affordable housing for residents of Sunnyvale.

Chair Hendricks said he supports this motion enthusiastically. He commented about the 75% minimum number, saying he is worried that developers would build only to the minimum

number. He said the City would need to communicate that we want higher than 75%, not just the minimum. He said also, maybe the Council could look at the in-lieu fee and the rental piece. He said he likes the changes.

ACTION: Vice Chair Larsson made a motion on 2012-7463 to recommend to City Council to adopt the Ordinance provided in Attachment B to: modify the zoning code related to Below Market Rate Housing Requirements; update the density bonus provisions; and move the density bonus and single room occupancy subsections from Chapter 19.66 to Chapters 19.18 and 19.68, respectively. Comm. Sulser seconded. Motion carried, 7-0.

APPEAL OPTIONS: This recommendation will be forwarded to City Council for consideration at their July 31, 2012 meeting.

Vice Chair Larsson said he would like to make an additional policy recommendation to Council regarding encouraging collection of in-lieu fees over ownership BMR unit. He said the Nexus Study provides compelling evidence that the greatest need is at the lowest income levels, which are best served by rental housing and best brought about by in lieu fees. Staff said this could be discussed.

Comm. Sulser said he agrees and would be supportive of this endeavor.

Chair Hendricks asked staff for procedural direction with staff discussing options and other city's efforts and experiences related to Vice Chair Larsson's recommendation. Staff and the Commission discussed various options of how this recommendation or statement could be expressed to Council.

Ms. Berry said looking at the agenda and the alternatives, that one of the alternatives can include modifications and the Council could be asked to consider these modifications as long as the modification fit within the agenda item and in context of the ordinance, one of the policy items is in-lieu fees. Ms. Berry said the first motion stands.

Vice Chair Larsson moved to recommend City Council consider language that prioritizes collection of an in-lieu fee over providing BMR ownership units within the context of this topic. Comm. Sulser seconded the motion.

Vice Chair Larsson said that the Nexus Study shows a need for the low-income segments of the community and the in lieu fee is the best way to address this need. He said other communities have considered this and he thinks it is appropriate for Council to consider this modification.

Chair Hendricks said he would be supporting the motion and he would like to see Council discuss this.

Comm. Melton said he appreciates Vice Chair Larsson's recommendation, however he would not be supporting the motion as he is a believer of market forces and that this is a great program allowing developers to either build a unit or pay and in-lieu fee. He said to further

consider the recommendation he would want more study and with an abundance of caution he cannot support the motion.

Comm. Chang confirmed with the maker of the motion that the Commission would just be sending a message to Council to look at the in-lieu fee. He confirmed with Vice Chair Larsson that this recommendation is not to change the mechanism, but to express a preference on a project and that the Council considers that the stated policy would be to prefer collection of the in-lieu fees.

Comm. Dohadwala said she would not be supporting the motion as she thinks the menu of options allows staff to look at projects and see what is most appropriate for the project. She said she does not feel the recommendation is required.

Ms. Ryan said this information would be provided to the Council in the staff report.

ACTION: Vice Chair Larsson made a motion on 2012-7463 to recommend City Council consider language that prioritizes collection of an in-lieu fee over providing BMR ownership units within the context of this topic. Comm. Sulser seconded. Motion carried 5-2, with Comm. Dohadwala and Comm. Melton dissenting.

APPEAL OPTIONS: This recommendation will be forwarded to City Council for consideration at their July 31, 2012 meeting.

3. **Standing Item: Potential Study Issues**

Chair Hendricks suggested a study issue to consider whether new development of taller buildings should be required to include in the architecture and design, accommodations for wireless telecommunication facilities so future cell equipment does not visually look like an add-on. Ms. Ryan said staff would write up a summary and let the Commission take action on the item at a future meeting.

4. **Election of Chair**

Chair Hendricks opened the floor for nominations for Chair of the Planning Commission.

Comm. Kolchak nominated Vice Chair Larsson to be the Planning Commission Chair. Comm. Melton seconded the motion. Staff said a nomination does not need a second.

Vice Chair Larsson accepted the nomination and said he would be honored to be the Chair.

ACTION: Comm. Kolchak nominated Vice Chair Larsson to be the Planning Commission Chair for the 2012-2013 year. Motion carried 7-0.

5. **Election of Vice Chair**

Chair Hendricks opened the floor for nominations for Vice Chair of the Planning Commission.

Vice Chair Larsson nominated Comm. Dohadwala to be the Planning Commission Vice Chair.

Comm. Dohadwala accepted the nomination and said she would be honored.

ACTION: Vice Chair Larsson nominated Comm. Dohadwala to be the Planning Commission Vice Chair for the 2012-2013 year. Motion carried, 7-0.

6. **Selection of Seats**

Ms. Ryan explained the seating selection process and said the seniority of the Commissioners is: Comm. Sulser, Comm. Chang; Comm. Dohadwala, Comm. Hendricks, Comm. Larsson, Comm. Kolchak and Comm. Melton.

The commissioners selected their seats for the 2012-2013 year. The results of the selection resulted in the following seating arrangement (numbered from left to right facing the dais): Comm. Hendricks, seat one; Comm. Kolchak, seat two; Comm. Sulser, seat three; Chair Larsson, seat four; Vice Chair Dohadwala, seat five; Comm. Chang, seat six; and Comm. Melton, seat seven.

Ms. Ryan said the new seating arrangement would begin at the July 23, 2012 Planning Commission meeting.

NON-AGENDA ITEMS AND COMMENTS

- COMMISSIONERS ORAL COMMENTS

Vice Chair Larsson thanked Chair Hendricks for his service this year. Chair Hendricks said it has been fun and an honor.

- STAFF ORAL COMMENTS

City Council Meeting Report

Other Staff Oral Report –

Ms. Ryan congratulated Vice Chair Larsson and Comm. Dohadwala on being elected to serve as Chair and Vice Chair, respectively, this year. She thanked Chair Hendricks for his service.

INFORMATION ONLY ITEMS

Kathryn Berry, Senior Assistant City Attorney, discussed a law suit filed against the City of Sunnyvale regarding park in-lieu fees. She said she would keep the Planning Commission informed on the status of this item.

ADJOURNMENT

With no further business, the Commission meeting adjourned 10:10 p.m.

Respectfully submitted,

Trudi Ryan
Planning Officer