

## MEETING MINUTES

### MILPITAS PLANNING COMMISSION Milpitas City Hall, Council Chambers 455 E. Calaveras Blvd., Milpitas, CA

Wednesday, March 26, 2014

- I. PLEDGE OF ALLEGIANCE**      **Chair Mandal** called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.
- II. ROLL CALL/ SEATING OF ALTERNATE**      **Commissioners**  
**Present:**      Chair Sudhir Mandal, Vice Chair Larry Ciardella, Commissioners Gurdev Sandhu, Rajeev Madnawat, Garry Barbadillo and Alternate Member Hon Lien  
Commissioner Morris was absent at Roll Call and arrived at 7:05 P.M.  
**Absent:**      John Luk  
**Staff:**      Steven McHarris, Johnny Phan, Sheldon Ah Sing, Scott Ruhland
- III. PUBLIC FORUM**      **Chair Mandal** invited members of the audience to address the Commission and there were no speakers.
- IV. APPROVAL OF MEETING MINUTES**      **Chair Mandal** called for approval of the March 12, 2014 meeting minutes of the Planning Commission.  
**Motion** to approve Planning Commission meeting minutes, as submitted  
Motion/Second:      Commissioner Sandhu/Vice Chair Ciardella  
AYES:      6  
NOES:      0  
ABSTAIN:      1      Chair Mandal
- V. ANNOUNCEMENTS**      No announcements
- VI. CONFLICT OF INTEREST**      **Assistant City Attorney Johnny Phan** asked if any member of the Commission had any personal or financial conflict of interest related to any of the items on the agenda.  
  
There were no reported conflicts.
- VII. APPROVAL OF AGENDA**      **Chair Mandal** asked if staff or Commissioners had changes to the agenda.  
**Motion** to approve the March 26, 2014 agenda as submitted.  
Motion/Second:      Commissioner Sandhu/Vice Chair Ciardella  
AYES:      7  
NOES:      0
- VIII. CONSENT CALENDAR**

**No Items**

**IX. PUBLIC HEARING**

**IX-1 STARBUCKS USE PERMIT – 1333 S. Park Victoria** – A request for a Conditional Use Permit and Minor Site Development Permit to convert a former Wienerschnitzel restaurant into a Starbucks with drive-through and outdoor patio. This project is exempt from further CEQA review pursuant to Section 15301 (Existing Facilities).

Senior Planner Scott Ruhland gave a short presentation and description of the project.

Chair Mandal asked if recycled water would be used for the landscaping and Senior Planner Ruhland answered that if it is available they will use it but that he does not believe there is recycled water at this location.

Commissioner Morris asked about the parking, and Senior Planner Ruhland stated that they are not adding any spaces nor taking any away and that they meet the parking requirements.

The applicant, Lisa Sunderland for SCM Solutions, and Design Manager Alexis Cook, were present and stated that all new stores are LEED Certified in energy compliance and green building standards. Ms. Cook stated that they plan to landscape with a combination of drought tolerant plants to minimize their water use.

Chair Mandal opened the public hearing.

**Motion** to close the public hearing.

Motion/Second: Commissioner Sandhu/Vice Chair Ciardella

AYES: 7

NOES: 0

**Motion** to adopt Resolution No. 14-014 approving Conditional Use Permit No. UP14-0001 and Minor Site Development Permit No. MS14-0002 for a restaurant conversion into a Starbucks with drive-through, outdoor patio based on findings and subject to the conditions of approval.

Motion/Second: Commissioner Madnawat/Commissioner Barbadillo

AYES: 7

NOES: 0

**IX-2 TRANSIT AREA SPECIFIC PLAN AMENDMENT – ST14-0001** – A City-initiated request to consider a specific plan amendment to modify language within the Transit Area Specific Plan for “density averaging”. This project is exempt from further CEQA review pursuant to Section 15061(b)(3) in that CEQA only applies to projects that have the potential for causing a significant effect on the environment.

Planning and Neighborhood Services Director Steven McHarris gave a brief explanation and summary of this item, and stated that excessive requests for lower density townhome development is causing Policy 3.8 to be misinterpreted with potential pending development projects.

Senior Planner Sheldon Ah Sing gave a PowerPoint presentation on the project.

Commissioner Madnawat stated that the higher density property could be built first, and he does

not believe the land will not be built, but that it will eventually come to fruition. He said that he does not see a benefit to removing this flexibility.

Director McHarris explained that the item before the Planning Commission is to address a new trend that the City did not anticipate a few years ago, but certainly has become an issue in the last year. He said the market demand is strong for a lower density product and wherever it can be achieved it will go. Staff is not proposing that the development community cannot apply for land use changes but if the developers really believe that townhomes are appropriate they should ask for a plan amendment, not through the density transfer policy.

Commissioner Morris asked if there is a threat of coming up short on the number of homes in the TASP area and Director McHarris answered that there are several issues including the BART obligation to reach a certain unit count. For example, residents that are buying in these neighborhoods pay for the maintenance through a community facilities district. Those fees could fall short making it difficult to fund the infrastructure maintenance for the area. Residents will see increased fees, the overall taxpayer in the city will need to pick up the tab or the maintenance will fall short.

Director McHarris said that in the recent past, there was not a problem of minimum density, in fact it looked like it was going to exceed the minimum. However, the markets have turned to a low density product which is highly profitable because they are easy to build with fast turn around and more builders can do this than the larger projects. He added that the higher density the building, the less chance of it being built as it is more difficult to construct and finance buildings at the higher TASP densities.

Chair Mandal asked if staff checked with surrounding cities to see how they handle the situation and Director McHarris answered that he has met with brokers who do business in other parts of the county and North San Jose and they experience the same challenge.

Commissioner Madnawat asked if it would be sufficient to amend Policy 3.8 stating that if you borrow density then the higher density project has to be built first. Senior Planner Ah Sing said this would help achieve the visions and the goals of the plan.

Commissioner Madnawat said that he would prefer to defer the item until the next meeting and take more time to understand the subject and hear other viewpoints.

Planning Director Steven McHarris said that he has had various meetings with developers on this subject and staff has requested a commitment for development phasing that assures the TASP density. He added that the response from the development community is that it is not feasible and they will not make this commitment.

Commissioner Barbadillo asked for confirmation of his understanding that this is a request to remove Policy 3.8 of the TASP so that staff can monitor on a case by case basis, with a presentation to the Planning Commission, those projects that would involve density transfers, and Planning Director McHarris said that is a good way to characterize the request to remove the policy. He added that it does not remove the City's discretion for flexibility in the plan or in considering land use amendments, as done with the Pace and Harmony projects, but it should not use policy 3.8 to do so, which is causing disruption and unintended consequences.

Chair Mandal asked if there are any projects in the works that will be impacted by the Planning Commission making a decision this week. Senior Planner Ah Sing said there is one project in the process and Director McHarris added that the project application is incomplete and that it is staff's opinion that the proposed project could not move forward with Policy 3.8 alone and the project requires a General Plan amendment and a Zoning Map amendment as well.

Commissioner Barbadillo left the meeting at 8:00 P.M.

Vice Chair Ciardella opened the public hearing and there were multiple speakers, listed below:

James Sullivan, President of Sullivan Land Development Company. He discussed one of his projects and his experience with density averaging, which allowed him to build a high density project, and believes it is a good thing to mix the density as they would not have been able to build without acquiring units.

Stephen Schott, Vice President and Co-owner of Citations Homes, said his company has been a stakeholder in the TASP for quite some time, involved in all of the TASP meetings, public hearings, and stakeholders meetings. He suggested that this item go back to the stakeholders in a study session with builders and developers to come up with some ideas to help the City solve the problem of townhomes being built and not high density. He suggested coming up with a formula of making the fee structure higher on townhomes and less on condos and apartments, and perhaps structure it on a square footage basis and adjust the fees. He believes a study session can be helpful as there are a lot of smart developers and smart people in the city and it would be helpful to all put their heads together to make it work.

Evan Knapp, Principal of Integral Communities, urged the commissioners to table this manner to study it further, saying that they would be eliminating their ability to diversify their product lines along a wide acreage of property. He said it is true that townhomes are easier to build than high density but the assertion that when they build townhomes they are going to be walking away from high density is false. He said that if one looks at areas like Dublin that attracted BART, they did a thoughtful and well placed job of diversifying their housing with a blend of housing and product types.

Hans VanLigten, attorney for Integral Communities, said he helped with some of the materials brought to staff that may have resulted in this matter coming to the commission. He said the fundamental problem that his client has is that what staff is proposing is excising policy in some places, saying that there is still discretion to approve projects with density averaging and there is still flexibility when in fact it is being removed, and doing it with very little public discussion and very little thought going into it. He said the ramifications of the change, whether that will mean, which is their suspicion, that it will shut down the pipeline of projects where sometimes people will have to reengineer what they were planning to do after investing hundreds of millions of dollars in the area, is going to affect the city. He said that their letter directed to the commission explains some of their concerns, including the fact that density averaging has been a tool that the Planning Commission and City Council have endorsed. He said they are confused by the notion that there is some surprise at how the specific plan is written and how it operates since the commission has had the opportunity to review these proposals, comment upon them and make recommendations, and they have been sent on to the City Council. He said this is not a surprise, nobody has changed the text, the text is the way it was adopted after hundreds of thousands of dollars of city expense and effort to write it the way the city intended it to be written, so they would fundamentally dispute the notion that there are unexpected consequences. He said the consequence was to have a flexible planning document in the city to encourage development within certain parameters and that is what the city has been able to do. He believes this proposal is inconsistent with that by taking away one of the tools completely and it isn't even modifying it if there is a problem with how it is being interpreted. He also mentioned that they raised in their letter CEQA concerns because they believe this is a significant modification to the plan and it deserves at least as much analysis as any other specific plan amendment and he asks that the matter be considered appropriately under CEQA before any action is taken because this will interfere with any physical development of the site because density averaging was an essential element of the specific plan.

Gerry DeYoung of Ruth and Going, spoke on behalf of Arcadia Development Company. He said he wanted to lend a voice to Mr. Knapp's letter which he said was very thorough and they completely agree with all of the issues described in the letter. He understands there are a lot of nuances to specific plans and he is not sure if removing Policy 3.8 is ultimately helpful to the city as he believes that each project should be viewed on its own merit. He agreed with Mr. Schott that it is a good idea to meet with the development community as they may have a lot of good ideas and find opportunities to work with staff to come up with a different solution that both parties can agree to.

Dave Gibbons of Southside Industrial Park said they counted on this option of using density sharing when planning an upcoming project and he urged the Planning Commission not to take away this tool away which he believes is essential to developing a successful project. He asked the commissioners to have a study session with the developers or deny the proposal.

Corbett Wright of CW Land Consultants Inc. said he is working with several land owners in the TASP. He said the average unit size is decreasing and they were looking at bringing density to projects to make them more feasible as for-rent projects because the for-sale projects are not currently feasible. From a landowners perspective, eliminating the Policy would slow down the process and he would like to see staff rethink this in that it would inhibit their ability to bring something to market soon.

**Motion** to close the public hearing.

Motion/Second: Commissioner Sandhu/Vice Chair Ciardella

AYES: 6

NOES: 0

Vice Chair Ciardella said he liked Mr. Schott's idea that the developers meet with staff and possibly a couple of commissioners to see if there can be a better solution.

Commissioner Madnawat said that since the item is not urgent, he would like to study the information further, suggested that staff consider a financial incentive or penalty to encourage the developers, and motioned to continue the item.

**Motion** to continue this item to the next meeting.

Motion/Second: Commissioner Madnawat/Commissioner Morris

AYES: 6

NOES: 0

## **X. NEW BUSINESS**

**X-1 CAPITAL IMPROVEMENT PROGRAM (CIP) CONFORMITY FINDING:** A City-initiated request to consider a General Plan conformity finding for the proposed 2014-19 CIP Annual Report. This project is exempt from further CEQA review pursuant to Section 15061(b)(3) in that CEQA only applies to projects that have the potential for causing a significant effect on the environment.

PW Director/City Engineer Jeff Moneda gave a PowerPoint presentation and was assisted by Associate Civil Engineer Michael Boitnott.

Vice Chair Ciardella said that a few years ago the streets in his neighborhood were resurfaced and that there are now cracks in the street. Associate Civil Engineer Boitnott stated that the process was possibly a slurry seal, which is a seal coat to extend the wear life or seal the road, and it is normal within 3-5 years to see cracking coming back.

**Motion** to adopt Resolution No. 14-013 recommending the City Council find the 2014-2019 Capital Improvement Program in conformance with the General Plan.

Motion/Second: Commissioner Madnawat/Vice Chair Ciardella

AYES: 6

NOES: 0

**XI. ADJOURNMENT** The meeting was adjourned at 9:05 PM to the next meeting of April 9, 2014.

**Motion** to adjourn to the next meeting.

Motion/Second: Commissioners Madnawat/Vice Chair Ciardella

AYES: 6

NOES: 0

ABSENT: 2

*Meeting Minutes submitted by  
Planning Secretary Elia Escobar*