

## Excerpt of the Draft Minutes from October 20, 2011 Planning Commission Meeting

### **Item 7: Public Hearing**

- a. PLN2009-00006;** Planned Development and Condominium [Vesting Tentative Tract] Map; General Plan Map Amendment from Office to High Density Residential; rezone from P(AU)-Professional with Assembly Use Overlay to RM-1800(PD)-Residential Multi-Family with Planned Development Overlay; Development Agreement (DA); and an Initial Study, a Mitigated Negative Declaration and a Mitigation Monitoring Reporting Program; to build a new residential development consisting of 66 rental apartment units: 17 one-bedroom apartments, 48 two-bedroom apartments and one manager's unit in a Recreation Building with other site amenities at 2450 Washington Avenue.

The project comprises seven apartment buildings with five units per building; five apartment buildings with six units; a Recreation building with manager's unit; and private roads, landscaping, surface and attached parking for 135 parking spaces. (Assessor's Parcel Numbers 77D-1410-25 and 77-556-104; W.M. Mathews, Inc. (Applicant and Property Owner); P-Professional Zoning District) (Barros).

**Senior Planner Barros** presented the staff report via (PowerPoint presentation). She indicated that the Planning Commission has twice discussed proposals for the subject property in work sessions, and after tonight's public hearing, the current proposal is tentatively scheduled to go to the City Council in November 2011. She said that following up on input from those work sessions, staff and the applicant have worked out a number of planning issues as well as legal matters, including a new Development Agreement (DA).

The project site, once occupied by a Singer-Friden office building, now contains a medical office building of approximately 43,000 square feet and encompasses nearly three acres adjacent to the Sandpiper condominiums on the north and other residential properties on the east. Although some former Singer-Friden parcels left a legacy of soil contamination on proximate land, Senior Planner Barros explained, this parcel was never contaminated. The owner proposes tearing down the existing medical office building on the site and replacing it with a complex of 66 units.

As Senior Planner Barros explained, the proposed design has evolved considerably from the one the Planning Commission first reviewed, particularly in terms of building massing and architectural detail, including more complex roof lines. The original design included only six buildings; split now into 12 buildings with *paseos* between them. A total of 135 parking spaces, in attached garages and open stalls, meet requirements for parking, Senior Planner Barros said. The extensively landscaped community building fronting Washington Avenue would be the site's primary architectural feature. As for open space, she said that the proposal exceeds by approximately double the amount of open space required of a multi-family project. In the emails about the project that the City received, neighbors raised questions about traffic and inclusionary housing. As regards traffic, Senior Planner Barros said, the analysis by the City's traffic engineers indicates that a 43,000-square-foot office building would produce more traffic than a 66-unit residential development. The rate of occupancy is not something staff can consider, she added, noting that the analysis is based on the capacity of the built environment, whether offices or apartments. In terms of inclusionary housing, Senior Planner Barros stated that recent case law prohibits California cities from requiring inclusionary housing on residential rental units.

Turning to the General Plan land-use map and zoning map, Senior Planner Barros indicated that the proposed residential multi-family designation is compatible with those along the east side of Washington Avenue. The condominium map the developer proposes as part of his estate planning would allow his

family to own the separate buildings in the complex and serve as landlords to the tenants in their respective buildings. Buildings with this type of ownership, Senior Planner Barros explained, are "air space" units, meaning they own the building but not the land beneath it. The common area would include the community building and its amenities, the pool, spa, roads and landscaping. The development would thus have a property owners' association (POA) rather than a homeowners' association (HOA).

Senior Planner Barros said that staff has reviewed the covenants, conditions and restrictions (CC&Rs) that the applicant's legal team created, which cover maintenance of the buildings, the architectural style and the use of the common areas. She said that staff will continue to review the CC&Rs, and that the CC&Rs were not an subject to a vote by Planning Commission.

She added that a major change in the project that has emerged over the past year is the inclusion of the proposed DA. It originated when the applicant realized that the Zoning Code authorizes a planned development for only a year before it would be necessary to return to the Planning Commission for any extensions. Given the economy, the developer decided that was too short a timeframe. The DA that resulted, after months of negotiation, sets a 10-year term for this project, plus a five-year extension to be approved by the Planning Commission . Rather than being vested at today's fee rates, development fees (such as park improvements) would escalate in accordance with the appropriate inflationary indices. The proposed DA also states that the complex wouldn't be split into any additional ownership units beyond the original twelve. In response to Commissioner Rennie, Assistant City Attorney Pio Roda said that the provisions would no longer apply once the development agreement expires.

In terms of the project's Mitigated Negative Declaration, Senior Planner Barros said that essentially all the mitigations in the review and in the Initial Study are standards that apply to most projects. An example, she said, is having noise from BART trains mitigated with proper window insulation.

Senior Planner Barros said that in addition to the Planning Commission, the City Council's Housing & Business Development Subcommittee also reviewed the project.

In concluding her presentation, Senior Planner Barros said that staff has prepared a resolution regarding the project at 2450 Washington Avenue for the Planning Commission to consider forwarding to the City Council. The resolution recommends :

- adoption of the Mitigated Negative Declaration;
- approval of the General Plan land use map amendment from Office to High Density Residential;
- approve Zoning Ordinance amendment from Professional District with Assembly Use Overlay P(AU) to RM-1800(PD) Residential Multi-Family (Planned Development Overlay District);
- approve Planned Development subject to conditions of approval;
- approve Vesting Tentative Map; and
- recommend approval of Development Agreement

In response to several questions from **Commissioner Crow**, Senior Planner Barros said that:

- The Commissioners' packets included minutes from only one Planning Commission work session on the subject property on May 20, 2010 because the project changed substantially since the first work session on January 14, 2010.
- The proposed project seeks exceptions from two standards: the previously mentioned 7-foot setback in front, whereas the standard is 15 feet, and 85 covered parking spaces rather than 114 spaces. However, she noted that the 48.5-foot setback on the north side far exceeds the 6-foot minimum standard and the 50 open parking spaces exceeds that standard by 29 stalls.

- The school district impact fee is currently \$3.54 per square foot. Song Chin-Bendib, Assistant Superintendent for the San Leandro Unified School District, indicated to staff that she estimated that the project would generate 26 students, but that she was doubtful that it would reach that number, due to the apartment unit sizes in the proposal. Community Development Director Sims said that California sets the maximum fee that jurisdictions can charge.

**Commissioner Crow** said that he would be interested in seeing the CC&Rs, particularly as they address usage of the community building. He would like to know its capacity limit, whether insurance is required for tenants to use it, and who is allowed to use it. Senior Planner Barros said that rights to use the space extend only to the building owners and tenants, but that the applicant could respond more completely.

In response to another **Commissioner Crow** question, Planning & Housing Manager Liao said that the units in the proposed development aren't reflected in Sustainable Communities Strategy numbers, nor is the location within any of San Leandro's designated Priority Development Areas (PDAs). However, he added, once the units are built, they'll be added to the City's accomplishments toward its Regional Housing Needs Assessment (RHNA) targets.

**Commissioner Crow** also noted that although developers typically do landscaping last in a project, one of the Recommended Conditions of Approval states that paving and planting shall be done as soon as possible. Senior Planner Barros said that contractors are asked to pave and plant immediately to minimize fugitive dust from the site, but the timing is discretionary.

**Commissioner Fitzsimons** observed that in terms of publishing notifications about meetings, the *Hayward Daily Review* isn't a ubiquitous paper in San Leandro. In the future, he asked if the City could consider using the *San Leandro Times* as well.

In response to **Commissioner Fitzsimons'** inquiry about Recommend Conditions of Approval V-E, Senior Planner Barros explained that the credit for the existing 43,200 square feet of office space offsets the Development Fee for Street Improvements (DFSI), eliminating the applicant's requirement to pay that fee because at capacity, the proposed residential development would create fewer vehicle trips than the office building at capacity.

**Commissioner Fitzsimons** referred to Section 2.10 of the Development Agreement regarding any condo conversion activity “during the term of this agreement”. Assistant City Attorney Pio Roda responded that any subsequent proposal for a conversion to a condominium would have to come back to the Planning Commission for approval.

When **Commissioner Fitzsimons** asked whether it would be appropriate to do a condominium map that included unit, rather than building, subdivisions, Senior Planner Barros said that's not what the developer wants and it's not something the City can impose. Commissioner Fitzsimons pointed out that since this is an estate-planning mechanism, the buildings would go to as many as 12 family members. At some point, he added, any of the individual owners may want or need to liquidate the investment, thus potentially bringing in multiple non-family owners over time. Senior Planner Barros replied that POA bylaws and the CC&Rs would govern the interrelationship among owners.

Indicating his doubts about whether CC&Rs would address an individual owner's ability to sell a building or convert it into condominiums, and noting that part of the Planning Commission's role is to make recommendations to the City Council that take into account how projects are likely to affect the City's future, **Commissioner Fitzsimons** again asked if it wouldn't make sense now to approve a condominium map for 66 units rather than 12. Community Development Director Sims suggested that the developer might be able to answer that question. He also noted that staff has discussed the condominium conversion issue and agreed that San Leandro's ordinance affecting condominium conversions is very strong.

In response to questions from **Commissioner Rennie**, Senior Planner Barros said that:

- If conversion to condominiums comes about eventually, regulations regarding inclusionary [ownership] housing would apply.
- The fence on the north side of the project would be installed in front of the Sandpiper's well-established fence and vegetation screen.

**Commissioner Rennie** also reiterated a concern about security raised during a previous work session: the possibility of intrusion from the back of the project, where it abuts Trailer Haven. Because it could be a particular issue with tenants who cannot enter their units from their garage, he suggested installing conduit for closed-circuit video equipment to send surveillance videos to the community building. If this were done prior to construction, he said the developer could avoid the expense and disruption of having to tear up a street to install it after the fact. Another concern that Commissioner Rennie expressed pertains to the carriage house. Inasmuch as they would be built above three or four garages, he asked whether sound attenuation materials would be used between the floor of those units and the garages below to muffle the sounds. Senior Planner Barros said that she would defer those questions to the developer.

Because **Commissioner Rennie** believes that the maintenance of the front of the project will be a critical element in attracting further development in the area, he said he'd like to see emphasis placed on maintenance in the conditions.

**Commissioner Rennie** said that he didn't see anything identified on the site plan for stormwater retention. Senior Planner Barros said that the tentative map packet covers the stormwater issue, and the City's Engineering Department has reviewed it. The project would use a mechanical means to handle stormwater rather than bioswales. Mechanical or subterranean, Commissioner Rennie said, he'd like to know more about it.

**Chair Collier** commented on the Sandpiper development's fence. She said that concrete-block fencing goes almost halfway back from Washington Avenue, where it changes to ivy-covered chain-link fencing. In previous sessions, she said she raised concerns about wooden fencing because it requires so much maintenance and deteriorates with ivy breaking the wood apart. Chair Collier suggested that it would be better to invest from the start in set-in-place panels or a stucco or concrete-block wall.

In reviewing the Vesting Tentative Map, **Chair Collier** said that she noticed on the last page that traffic would proceed on the right side only. Senior Planner Barros indicated that the route she described applies to fire trucks only, and that normal traffic would follow the regular traffic pattern.

**Matt Brooks**, who lives at 4725 Thornton Avenue, Fremont and is the property owner, said he is happy to be back in San Leandro. His company has operations in five western states, he said, and although it typically serves as a developer for investors, the San Leandro project would fulfill a personal purpose. Because the medical office building on the site is 50 years old, he said, it will have to be replaced over the next 10 to 15 years because it's become functionally obsolete, not only physically but in terms of its residential environment.

He agreed with Commissioner Fitzsimons' observations that in 15 years, the family ownership of the 12 buildings that he's planning now could change to include non-family members, but if anyone wanted to convert to condominium ownership, they would have to come back to the City for approval first not to mention it would be impractical.

Mr. Brooks said that his intention is to build and maintain a quality environment. He indicated that since his company oversees approximately 5,000 residential rental units in Alameda County alone, they understand the business. He said that they have strict requirements that seem to work, including insurance for tenants in their residences and their use of the common facilities.

The development will proceed gradually over a long period of time, Mr. Brooks explained, given the economic conditions and the fact that the company must comply with existing leases with current tenants of the medical office building.

**Commissioner Crow**, referring to the nearby Principled Academy, suggested that since the start of the construction may coincide with the times that parents would bring their children to school in the morning, it would be good to let the school know what would be happening. He said that he's spoken with school principal Kristina Seher, who expressed willingness to make accommodations. Indicating that he wants the complex to be a good neighbor, Mr. Brooks replied, "It's we that have to make the accommodations, not her." He also said that his company has built many projects, both single- and multi-family, right across from elementary and middle schools, so his team is pretty adept in those situations.

In terms of the CC&Rs, **Commissioner Crow** reiterated his concern about events in the community building, particularly considering its proximity to the school. Mr. Brooks said that his company has never had a problem with its community buildings. Typically, he explained, the POA would make the rules governing use of the community building, and then assign the responsibility for enforcement over to the manager. With rare exception, he added, the community building is for residents' use. They must show proof of insurance, pay a cleaning deposit and often a rental fee. He also indicated that exceptions might be made for community groups that are looking for a room to hold an event; in those instances, the group isn't charged a fee, but insurance is required.

As for the community building's capacity, he said it's only about 20x10 feet, and would accommodate 20 to 30 people. The rental agreement would specify the time of use, and parties would be monitored to ensure noise doesn't become a problem.

Given the soft economy, **Commissioner Reed** asked whether there's a timetable for moving forward with the project. Mr. Brooks said that he doesn't have a very good outlook on the economy right now, and realistically expects it to be more like 10 years than two years. The current market wouldn't support this project, he said. In keeping with that effort, he called attention to the architectural detail and variety that create visual interest while using a long-lasting, easy-to-maintain type of construction to minimize deterioration.

In response to another question from **Commissioner Reed**, Mr. Brooks said that when the existing office building is demolished, it would be done all at once because it's of steel-frame construction, which would be without asbestos.

Planning consultant **Richard Frisbee** commended Senior Planner Barros on her comprehensive report. Following up on Mr. Brooks' comment about the quality environment the project wants to create for tenants, he pointed out that it's unusual to find six different floor plans in a relatively small project. Along with the uniqueness of having variety in the units, he said, is the fact that most tenants will have direct access from their garages to their living quarters; which is not only convenient but makes for a more desirable place to live from a security standpoint. Other tenant-friendly features include laundry facilities in each unit and ground-floor entrances to most of them so tenants don't have to climb stairs to get to their front doors.

In terms of the site plan, Mr. Frisbee said that they've managed to achieve good density without cramming the site, and he considers the plan better than the one they presented in January 2010. He credited the Planning Commissioners' comments and the subsequent effort his team put into the design with turning it into a very good project.

Speaking to concerns Planning Commissioners raised tonight, Mr. Frisbee said:

- The project team would give strong attention to ensuring noise control in terms of the units located above garages of multiple tenants, and the architect would employ an acoustical engineer to help in this regard.
- According to the project engineer, the onsite drainage would meet California Regional Water Quality Control Board recommendations for the San Francisco Bay Region.

- In terms of security of units near the rear of the project, the ground-floor entrances that face the space adjacent to Trailer Haven are separated from the back fence by a lighted and adequate clearance rather than a dark, narrow corridor.

In response to a follow-up question from **Commissioner Crow**, who recalled bad personal apartment experiences with sewage backup, Mr. Frisbee said that he doesn't anticipate any such problems because the project is so highly engineered and the standards so stringent. He also indicated that there would be cleanouts distributed around the site.

**Commissioner Crow** also inquired about one of the building and safety services conditions in the Recommended Conditions of Approval regarding incorporation of a range of water conservation measures to substantially reduce average per capita daily use. He asked what some of the water-conserving equipment, measures and devices employed would be. Mr. Frisbee deferred this question to the project architect. **Dan Hale**, project architect, noted that water conservation measures represent an ever-evolving part of the development world, so what's being done today (including installation of low-flow faucets and toilets, Energy Star dishwashers, washing machines and dryers, and meeting aggressive CALGreen requirements in terms of landscaping) will further evolve by the time the project's construction documents come together.

**Commissioner Rennie**, noting the extensive amount of hard surface in the plans, particularly at the hammerhead turnarounds at the end of the streets between the buildings, asked whether there's an opportunity to do a street treatment other than plain pavement. Mr. Frisbee said that although these turnarounds were included in the plans at the request of the City's engineering staff, some decorative pavement could soften the effect.

**Chair Collier** opened the public hearing.

**Al Weinberger**, who resides at 43 Cornwall Way and is the HOA President for the Sandpiper condominiums, said that the presentations have answered many of his questions. He noted that traffic on East 14th Street has increased since the opening of the 51-unit Estabrook Senior Housing project at the corner of East 14th and Estabrook Streets. Sandpiper residents have a difficult time turning north on East 14th Street, so they exit the complex at the Washington Avenue gate instead. Supposing that just one-third of Sandpiper residents leave that way for work, he said, that could mean 75 to 80 cars going onto Washington Avenue at the same time students are arriving at Principled Academy. Putting up 65 additional residential units next door to the Sandpiper, with the only exit on Washington Avenue, would exacerbate the problem, he said. Commissioner Crow indicated that the Commissioners' packets included an engineering department study indicating a less-than-significant impact in terms of traffic, and as Senior Planner Barros pointed out, the residential development might even mean a reduction in traffic. Mr. Weinberger said that he's pleased about the proposed development, noting that he looks forward to having good neighbors.

### **Motion to close public hearing**

**Dlugosh/Crow: 7 Aye, 0 No**

Returning to the issue of the impact of sound carrying between garages and the living areas above them, **Commissioner Rennie** suggested that the condition of approval be modified to include noise attenuation for carriage house units.

**Commissioner Crow** also asked that a copy of the CC&Rs be provided for the City Council to review. **Chair Collier** pointed out that CC&Rs are generally developed at a later point in the process. **Commissioner Dlugosh** said that they'd be part of the construction package, so he'd object to that requirement. **Assistant City Attorney Pio Roda** said that the draft CC&Rs that the developer submitted as an example could be forwarded to the Council if the Planning Commission so moves.

**Commissioner Rennie** asked whether the developer and the Sandpiper people could get together to agree on a common fence rather than having separate fencing on each property. **Commissioner Crow** agreed that a single fence made sense and would be more aesthetically pleasing than two fences. **Commissioner Dlugosh** disagreed, pointing out that we don't know how the Sandpiper property is owned, or how difficult it might be to try to negotiate a common fence that would satisfy all those involved. **Commissioners Reed** said that he also believes it's up to the individual property owners to work it out if they want to.

**Commissioner Fitzsimons** said that he commends the developer and architect for coming up with an architecturally distinct project that he would want to live in. Commissioner Fitzsimons said that the extra care put into this project reflects the fact that the developer's proposal is part of his estate planning. He also said he regretted hearing Mr. Brooks' pessimism about the timetable, but at the same time he understands the economic reality.

**Vice Chair Abero** also commended the applicant for doing an excellent job of incorporating many of the Planning Commission's prior comments so effectively.

**Motion to Forward Resolution to City Council,  
Amended to Include Noise Attenuation as a Recommended Condition of Approval**

**Fitzsimons/Abero: 7 Aye, 0 No**