CITY OF MORGAN HILL

COMMUNITY DEVELOPMENT DEPARTMENT

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PLANNING COMMISSION MEETING MINUTES

REGULAR MEETING **JUNE 28, 2011**

PRESENT: Moniz, Mueller, Tanda, Koepp-Baker, Dommer, McKay

ABSENT: Benich

LATE: None

STAFF: City Attorney (CA) Wan, Senior Planner (SP) Linder, and Development Services Technician (DST) Bassett

Chair Moniz called the meeting to order at 7:01 p.m., inviting all present to join in reciting the pledge of allegiance to the U.S. flag.

DECLARATION OF POSTING OF AGENDA

Development Services Technician Bassett certified that the meeting's agenda was duly noticed and posted in accordance with Government Code Section 54954.2.

OPPORTUNITY FOR PUBLIC COMMENT

Chair Moniz opened, and then closed, the floor to public comment for matters not appearing on the agenda as none were in attendance indicating a wish to address such matters.

MINUTES:

May 24, 2011 **COMMISSIONERS MUELLER AND KOEPP-BAKER MOTIONED TO APPROVE THE MAY 24, 2011 MINUTES WITH THE FOLLOWING REVISIONS:**

Page 6, Paragraph 1: The impetus for this request was that the bank said that this only looked like a ~~six~~ **sixty** unit project.

Page 7, Paragraph 13: Moniz: First, **I don't think any** ~~no~~ bank considers a tentative map as creating a legal lot. And second, it is up to the due diligence of the lending institution to find the answers that they need.

THE MOTION PASSED (5-0-1-1) WITH THE FOLLOWING VOTE: AYES: UNANIMOUS; NOES: NONE; ABSTAIN: MCKAY; ABSENT: BENICH.

June 14, 2011

COMMISSIONERS MUELLER AND KOEPP-BAKERMOTIONED TO APPROVE THE JUNE 14, 2011 MINUTES WITH THE FOLLOWING REVISIONS:

Pg 1: ~~Development Services Technician Bassett~~ **Planning Manager Rowe** certified that the meeting's agenda was duly noticed and posted in accordance with Government Code Section 54954.2.

THE MOTION PASSED (6-0-0-1) WITH THE FOLLOWING VOTE: AYES: UNANIMOUS; NOES: NONE; ABSTAIN: NONE; ABSENT: BENICH

ORDERS OF THE DAY

No changes.

OTHER BUSINESS:

1) ZA-11-09: CITY OF MH – RDCS CRITERIA:

A request to amend Chapter 18.78 of the Morgan Hill Municipal Code, amending the evaluation standards and criteria for proposed residential developments as set forth in Sections 18.78.200 through 18.78.410 of the Municipal Code.

Linder presented her staff report.

Moniz: Commissioners Mueller and Benich, you were on the committee. Is everything as you discussed?

Mueller: Yes, the changes in the Build It Green area were driven by the CalGreen Code that was adopted by the state and which makes things mandatory that are in the Build It Green checklist. It makes the Tier 1 and Tier 2 alternatives optional.

Koepp-Baker: What does dual zone forced air heating mean?

Linder: I do not know.

Dick Oliver: It is difficult to have two zones on one heater and it is not usually done. Normally we would have two heating units for two zones.

Koepp-Baker: So the language should be changed to state two units, two thermostats.

McKay: I see that under the Natural and Environmental category quite a bit of language has been taken out, for example, the protection of trees. Is that because it has become obsolete?

Linder: Part of our municipal code requires the preservation of significant trees, so

basically, we were rewarding points for meeting code. So it was recommended to be eliminated.

Dommer: Under Layout and Orientation, pg 5, has it been determined for seniors that a third car space is desirable?

Linder: This is not particular to senior units. Though a senior project could employ tandem parking, it is for all units.

Tanda: What do "visitablity" and "adaptability" standards mean?

Linder: Visitability refers to ground floor accommodations. It makes the first floor of the home handicap accessible. Adaptability means the home can be accommodated later on with lower counter tops, wider doorways, grab bars, etc. That would be throughout the house. So it allows for future conversion.

Tanda: Regarding the senior housing, I'm wondering if the specificity of the criteria is too much and that it might be a disservice to a project. How did the committee come up with the numbers?

Linder: 25 seemed to be a number where homeowner associations become more viable over time. And we felt that was an important component to a senior project.

Mueller: We asked the builders how we might better qualify a senior project.

Linder: We used the term "average" 9,000 square feet. That's not an absolute. One could have smaller or bigger. But we didn't want them so big that senior housing would be on acre lots. We felt average would give some design leeway. We tried to keep it with seniors in mind and to distinguish senior projects from other open market projects. It was a collaborative effort.

Tanda: I have a concern that this will make it difficult for projects to qualify for senior housing. Also, what does the table regarding market rate on page 8 mean?

Linder: The first column is for points. The second column is for low or median income BMRs. That's the commitment being made. The percentages and prices represent the percentage of the county median income. They're not related to the number of BMRs being set aside.

Tanda: How do we come up with the percentages for the county median income?

Linder: I'm not sure. They probably come from HUD.

Tanda: I thought the subcommittee came up with the percentages.

Linder: No, the only thing the subcommittee is suggesting is changing the BMR commitment percentage from 10 percent to 8 percent.

Tanda: How did we come up with the list and point values for Quality of Construction?

Linder: It was a collaborative effort between staff and builders and it was meant to pinpoint items that homebuyers would want and that would add to the quality of the home. We tried to make the points match the cost of the item and we tried to create a large enough list that would give the builder options.

Tanda: Under Safety and Security, I'm surprised we are awarding a point for a fireproof safe bolted to the floor.

Linder: It was meant to be something that would provide some security for personal items to the homeowner in case of fire or intrusion.

Koepp-Baker: Under Quality of Construction, it talks about sound attenuating insulation in interior walls but then discourages sound walls on the exterior of a project.

Linder: They would be able to get points for it and it would serve as mitigation to help meet indoor noise levels.

Moniz opened and closed the floor to public comment.

Mueller: I'm still concerned about not moving forward with detached sidewalks. It we could put some points in here that would encourage builders to consider doing detached sidewalks that would be helpful.

Moniz: I agree with that. I remember talking about it a year ago, and that street standards were going to go back to Commission for consideration but nothing seems to have been done.

Linder: We just want to make sure that we don't award points for something that is in violation of our municipal code. Should we update those standards in the future, those new standards would apply.

Moniz: Could you deviate from the code for a planned development?

Linder: We could look at that as part of a PD.

Moniz opened the public hearing.

Dick Oliver of Dividend Homes appeared: A simple solution would be to offer it as part of Measure C and then see if developers want to commit to it?

Mueller: Public Works would have to sign off before we could proceed. Part of the problem of doing it is that certain neighborhoods have driveway aprons that cause the sidewalk to go up and down and then people don't use the sidewalk in those areas. Maybe we could put it in Safety and Security or Lot Layout.

Moniz: How many points would you want to award?

Mueller: Possibly two.

Linder: So we could award two points for the inclusion of detached sidewalks for both public and private streets and Engineering would specify the width.

Tanda: Would it be better to be in the Livability category?

Moniz: Wherever it can go.

Linder: The best place would be wherever there is the least amount of point spread, so we could add it to Safety and Security.

COMMISSIONERS MUELLER AND MCKAY MOTIONED TO APPROVE THE RESOLUTION WITH THE ADDITION OF 2 POINTS FOR DETACHED SIDEWALKS, WITH DUAL ZONE DEFINED AS TWO UNITS, WITH THE NUMBER OF VISITABILITY UNITS CHANGED TO 20 PERCENT INSTEAD OF 45 PERCENT, AND WITH THE DISCRETION FOR PLANNING COMMISSION TO WAIVE OR ALLOW VARIATION FROM THE DEFINITION FOR MULTI-FAMILY PROJECTS

Tanda: I can support the motion with the exception of the restrictive requirements for senior housing. This definition seems to be geared toward single family housing, not rental or multi-family. Why can't we keep it more general by having it meet government code section of 51.2?

Linder: Because that only requires the buyer to be 55 years of age or over. That's not enough.

Mueller: We spent a significant amount of time with the development community in defining what we thought were the minimum requirements for a project to be classified in the senior category. If we don't like it in a year, we can change it.

Tanda: Are we moving into an area that may not be legal by defining senior housing ourselves?

Wan: Probably not, because we have powers under the RDCS.

McKay: Is there language we could compare to other jurisdictions?

Linder: No, because no one else has RDCS. The closest we could come would be municipal code definitions and that's not what this is.

Koepp-Baker: So this is trying to create a design standard?

Linder: No, it is defining what we're looking for in projects that want to compete under the senior setaside category.

Koepp-Baker: I agree with Wayne. It seems restrictive.

Linder: If you didn't meet these criteria, it doesn't preclude you from competing in a different category. One thing an applicant could do is appeal a staff decision if a

project is close but doesn't meet all items.

Moniz: Do we need to act on this tonight?

Linder: The builders need to know now, because they're preparing their preliminary Measure C applications right now. This has to get approved by City Council before the competition and they only have one meeting in July.

Mueller: Could we soften the language to say that the Planning Commission has the discretion to make exceptions?

Wan: That just opens the door for future problems. When you make an exception for somebody you have to make it for everybody.

Mueller: We could revisit this in another year.

Tanda: I don't like that. This seems biased against multi-family projects.

Mueller: Not all senior projects are for-sale projects, so those wouldn't even have to compete.

Linder: Assisted living or congregate care does not compete in RDCS. Those are exempt units.

Wan: If you're only concerned about lot sizes precluding multi-family, you could add some language that says "with the exclusion of multi-family," or say that for a multi-family project the Planning Commission has the discretion to waive certain criteria.

Tanda: I would prefer to hold off making the decision about the senior family definition because I'm concerned that we may preclude some quality projects with the specificity of these requirements for both single family and multi-family. Could we just vote on the rest of the items?

Linder: We moved this up because of the urgency to get it before City Council.

Mueller: There's not enough time to meet the notification requirements for Council if we don't decide tonight, because they only meet once in July. These requirements were all established with direction from the development community.

THE MOTION PASSED (6-0-0-1) WITH THE FOLLOWING VOTE: AYES: UNANIMOUS; NOES: NONE; ABSTAIN: NONE; ABSENT: BENICH

Moniz called for a break at 8:26 and reconvened at 8:34

2) <u>AMENDMENT TENTATIVE MAP POLICY:</u>

A request to amend City Council policy CP 06-04 "Tentative Subdivision Map Approval." The specific request is to eliminate the on-going project requirement, approved master plan requirement and eliminate the two year tentative map expiration for projects seeking tentative map approval for projects that are not fully

allocated.

Wan presented his staff report.

Dommer: If a developer agrees to waive a vesting tentative map, would that be legal?

Wan: In my opinion it would be legal because under the government code there are provisions that say a developer can enter into a development agreement that would make it a matter of contract as to how development would proceed. You would have to carefully call out in the development agreement all the things you reserve the right to change because you can't change conditions once a map is approved.

Tanda: If a developer has a vesting tentative map, but only has partial allocations, would they then be able to somehow get out of competing in the RDCS process?

Wan: Under the current system that's not a problem, because we don't allow a vesting tentative map. But that's why in the development agreement they would have to agree to still being subject to the RDCS for future allotments.

Linder: They would have the option of still getting ongoing setasides, if they meet those criteria. Or they can re-compete if they wish to get more than the setaside amount.

Mueller: For clarification, if a project only takes ongoing allocations, they are locked into the provisions of their development agreement that were in effect at the last time a project competed.

Moniz opened the floor to public comment.

Dick Oliver of Dividend Homes appeared: 1) To clarify, a tentative map is never recorded; it is only filed. 2) The Development Agreement locks in what a developer has to do. The infrastructure is required to be put in first and the development agreement ensures that a developer will be able to finish development. 3) I don't think the city has to worry about changing the policy about what fees might change. If fees change, we're always required to pay the most current fees. So a new fee structure wouldn't be necessary. The Development Agreement is where you should really focus in on what you want us to do. But it is to our advantage as the development community to have the ability to get a tentative map. For instance, I was told that I have to file a new tentative map for Mission Ranch.

Linder: I thought you had one for the rest of the project.

Oliver: I thought so too, but I was told I don't. So we have been working on one with MH Engineering for the last two months.

Dommer: This all has to do with the timing of commitment. So how important is the scope of the tentative map at the beginning of the project in relation to your ability to fund the project?

Oliver: At first it wasn't very big. But it has become very important because it is so hard to get financing now.

Moniz: If you have to choose options A, B, C or D from attorney Wan's proposal, which would it B.

Oliver: I'd like to think about it a little bit more, but I think probably B.

Chris Borello of San Sebastian project appeared: We feel that our project has been a partnership with the city. I like the city attorney's proposal B, with the elimination of subsection c and also d.

Mueller: If we look at the development process, the three things that typically come to the Planning Commission with the first filing are a PUD overlay with a precise development plan, a development agreement approval, and the tentative map for all the units that you have allocations for. That's what is currently filed. This includes all the construction documents.

Moniz: What was the intent of subsection b? To submit the construction drawings, the improvement plans, the grading plans, or to submit the planning applications?

Wan: It could be all of those things.

McKay: What is the exact difference between a tentative map and a vesting tentative map?

Wan: Some cities will allow the same level of detail between a tentative map and a vesting tentative map. Others want more detail on the vesting tentative map.

Oliver: The concept of the vesting map means that if you fulfill all of those conditions on the map, the city has to give you the right to proceed with a final map. One of the conditions would be having allocations, but it would also include having the streets and sewer laid out in detail. Getting the vested tentative map early would make it so that the design of the project is pretty well fixed. Banks like to see that.

Tanda: If you had a vesting tentative map would you still have to compete in Measure C?

Oliver: Yes, because it would be one of the conditions placed on the vesting tentative map. If I had my preference I would choose item B minus subsection d regarding a new fee structure, because we already have to pay all current fees so that item is unnecessary.

Mike Fletcher of San Sebastian appeared: We have been through many months of changes to this project already. When we went to get financing it became apparent that it would be much more difficult than it has been in the past and that a tentative map would aid in getting that financing. We will be bringing the lots and sewer layout, storm drain crossings, roadway sections, grading pad elevations, etc., at the same time, so that way the city sees exactly what they're getting. That's for all 244

lots. And there is major infrastructure at the beginning that benefits future phases. To get financing, that's what the banks want to see. We're prepared to put language into the development agreement saying that we will not get a vested tentative map. We're not trying to sidestep requirements or fees. Getting the tentative map at the beginning would also be important just to save on staff time. I would recommend adopting items B and D together and omitting subsection c and d from item B.

Dommer: Your infrastructure would be phased along with the homes as they're being built?

Fletcher: As much as possible, but a lot of infrastructure goes in up front that benefits the entire project. For instance, we would have already had to put in detention basins, Cochrane roadway improvements, a large drive feature, gates and a gatehouse, and major landscaping.

Moniz closed the public comment.

Koepp-Baker: I don't have a problem. I think we can move forward with this.

Mueller: We need to have some ability to show that the project is going to move forward before we allow a tentative map because of the language that was put in place by the voters. But to approve a tentative map without even turning any dirt, to me that's stretching the language dramatically. I'm willing to look at less than 50 percent or entertain a development agreement that says if you meet certain requirements you can move forward. But I have a problem extending a tentative map out that far. I also think we need to look at the fees. Mission Ranch hasn't competed since 2004. Since that time, 28 quarterly reports and all the tracking that goes along with them have occurred. So I think in these economic times, we need to be careful when looking at the fees.

Tanda: I would be comfortable with adopting item B and omitting subsection c.

Dommer: I think a combination of B and C would be good. This meets the intent of the vote because you can't pull a permit without an allocation. And I feel comfortable omitting subsection c from item B because you can't commence construction without approval. With the change of the economy and funding being so hard to get, this works.

McKay: I agree with Commissioner Dommer.

Koepp-Baker: Based on Jim Rowe's comments from last meeting, allowing a tentative map for the entire project seems to be a reasonable interpretation of the RDCS language.

Wan: There is nothing like RDCS anywhere in the state. We could look at a strict interpretation, or we could be more flexible. A reasonable interpretation could be that a non-vesting tentative map does constitute approval of a building permit.

Mueller: I think we need to make a motion and then see this come back with the exact wording that's going to go to City Council to show why we're doing this. It

could come back in two weeks.

Koepp-Baker: Are we under a time limitation?

Linder: The EIR for the Borello application isn't complete, so it won't slow the project down at this point.

Koepp-Baker: Could you come back with a combination of items B and C, based on tonight's discussion?

Wan: Yes, we could come back with language as to why this was done so that we have it on record.

COMMISSIONERS DOMMER AND TANDA MOTIONED TO REFER AGENDA ITEM 2 BACK TO STAFF TO COMBINE ITEMS B AND C FOR MORE SPECIFIC WORDING AND SCHEDULE IT FOR RECONSIDERATION ON JULY 12

THE MOTION PASSED (6-0-0-1) WITH THE FOLLOWING VOTE: AYES: UNANIMOUS; NOES: NONE; ABSTAIN: NONE; ABSENT: BENICH.

ANNOUNCEMENTS / COMMISSIONER IDENTIFIED ISSUES

Moniz: I will not be at the July 12 meeting.

Linder: RDCS setasides were approved. BMR reduction was approved.

CITY COUNCIL REPORTS

None.

ADJOURNMENT

Noting that there was no further business for the Planning Commission at this meeting, Chair Moniz adjourned the meeting at 10:00 p.m.

MINUTES RECORDED AND TRANSCRIBED BY:

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ELIZABETH BASSETT, Development Services Technician

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