

COUNTY OF PLACER
Community Development/Resource Agency

Michael J. Johnson, AICP
Agency Director

PLANNING

MEMORANDUM

DATE: August 10, 2010
TO: Honorable Board of Supervisors
FROM: Michael Johnson, Agency Director
SUBJECT: **APPEAL – PLANNING COMMISSION'S APPROVAL OF A CONDITIONAL USE PERMIT MODIFICATION – "MINER'S RIDGE FAMILY APARTMENTS" (PCPM 2010 0046)**

ACTION REQUESTED

The Board of Supervisors is being asked to consider an appeal by Mario Ferranti and William Prior of certain conditions and an appeal by Dale Smith of the Planning Commission's decision to approve a modification of a Conditional Use Permit to allow a 64-unit apartment in place of a 64-lot townhome development. This item was originally scheduled to be considered by the Board at its June 22, 2010 hearing and was continued at the request of both appellants.

LOCATION/SITE CHARACTERISTICS

The Miner's Ridge Family Apartments project is located approximately 700 feet east of the Lincoln Way/Silver Bend Way intersection, behind the Raley's shopping center, in the Bowman area (Exhibits C and D). The site is comprised of six separate parcels, with a total area of ±6.19 acres that are located south of Silver Bend Way and east of the Raley's shopping center in the Bowman area (Exhibit B). The property is situated within the boundaries of the Auburn/Bowman Community Plan area and the Plan's land use designation for the site is Medium Density Residential (5-10 dwelling units per acre). The zoning on the property is RM-DL-10 (Residential Multi-family, combining Density Limitation of 10 dwelling units per acre). The project site is within the North Auburn Redevelopment Project Area and is subject to the Inclusionary Housing Ordinance for the provision of affordable housing units.

The property is irregularly shaped with terrain that generally slopes from north to south. There are two topographic benches on the site – the northern bench is approximately 4.8 acres in size and the southern bench is approximately 1.3 acres. These features are separated by a slope that exceeds 15 percent. The property is currently undeveloped, but it had been used as a pear orchard prior to 1950, as a staging/disposal site for the construction of Interstate 80 in the 1950's and, most recently, as a temporary construction yard associated with the PCWA RAW Water Pipeline Project. There are several large piles of rocks and fill dirt, along with construction debris that has been dumped. Most of the site can be characterized by annual grassland with a small oak woodland component along the eastern and southern areas of the property.

There are two private access easements on the site which are shown in Exhibit E: a 50-foot private road and PUE easement that traverses the southern portion of the property, between the eastern boundary at the Prior property and the western boundary at the Rothrock property; and a 25-foot

private road and PUE easement (half of a 50-foot road and PUE easement) that runs along the western property line and abuts the Rosene and Rothrock properties, from north to south.

BACKGROUND

On January 10, 2002, the Planning Commission approved a Conditional Use Permit (CUP-2768) for the Silver Bend Apartments, a 72-unit complex with a community/recreation building and swimming pool. The approval was appealed to the Board of Supervisors and, on March 12, 2002, the Board denied the appeal, approved the entitlement and adopted the Mitigated Negative Declaration. Residents Against Inconsistent Development (RAID) challenged the Board's action in Superior Court, asserting that the Mitigated Negative Declaration was inadequate specific to impacts to biological resources and to deferred mitigation. The Court found that there was a fair argument that environmental effects were not adequately mitigated.

RAID, the County and that project applicant (the Affordable Housing Development Corporation, or AHDC) engaged subsequently entered into the "Agreement to Settle Litigation Regarding Silver Bend Project" ("Settlement Agreement"). As part of the Settlement Agreement, RAID agreed not to challenge the County's approval of a modified, "ownership" version of the project while AHDC, as the property owner, agreed not to apply for a government-subsidized low income project beyond that required by the Inclusionary Housing Ordinance. This restriction expired on March 31, 2008.

On April 14, 2005, the Planning Commission approved a two-year extension of time for the Silver Bend project. In March 2006, the Board adopted a Subsequent Mitigated Negative Declaration and approved the Tentative Map and Conditional Use Permit (PSUB 2005 1024) for the Ridge View Villas, a 64-lot Planned Residential townhome development on the site which included a density bonus to allow for the total of 64 units on the site. *No project was constructed on the site but under SB 1185 and AB 333, the entitlements were extended by a total of three years giving a new expiration date of January 23, 2012.

The Placer County Redevelopment Agency acquired the property in 2008 and in May 2009, the Agency solicited proposals to develop the site. The Agency selected USA Properties Fund and, on November 17, 2009, the Redevelopment Agency Board authorized the Exclusive Negotiating Rights Agreement between the Agency and USA Properties Fund. The USA Properties Fund submitted the application to modify the Conditional Use Permit to allow a 64-unit apartment in place of a 64-lot townhome development.

ACTION OF PLANNING COMMISSION

Staff presented the Conditional Use Permit modification to the Planning Commission on May 13, 2010. At that hearing, the Commission considered the requested change in entitlement, reports from the Development Review Committee staff and comments from the applicant and the public.

The Commission heard testimony from neighboring property owners regarding the easements on the project site. Mr. Rosene, one of the adjacent property owners on the west side of the project, wanted to ensure that his use of the full 50-foot easement would not be impaired. Mr. Ferrante and Mr. Prior, owners of an adjacent property southeast of the site, stated their concerns related to accessing their 50-foot easement across the southern portion of the site and wanting to ensure they would have access to the 25-foot easement along the west side of the project site in order to provide for the future development of their property and surrounding properties to the east. The Commission also heard testimony from Dr. Dale Smith that focused on past site uses, including the potential for toxic soils that may have resulted from these uses and fill materials.

In order to assure adjoining property owners that access along their recorded easements would not be impaired, the Commission agreed, with the concurrence of the applicant, to add the following as a new condition to address these concerns:

19. Prior to approval of Improvement Plans, the Applicant shall work with County staff and adjacent landowners (including but not limited to Prior and Rosene) and provide access

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rights through the project site from the adjacent properties to Silver Bend Way, which may include the delivery of an IOD by the Applicant to the County.

The Commission considered the information provided by staff, the applicant and the public and voted 6-0 (Commissioner Moss – absent) to approve an Addendum to the Mitigated Negative Declaration (Exhibit B), finding that the modification would not represent a substantial change to the project that was previously approved and that there was no new information that would require major changes to the previously approved environmental document and to approve a modification of the Conditional Use Permit for the Miner's Ridge Family Apartments, with the inclusion of the new condition, to allow for a 64-unit apartment development in place of the 64-lot Ridge View Villas townhome development that was approved by the Board of Supervisors in March 2006. The Commission approved the density bonus to allow for the total number of units to be 64 and a minor boundary line adjustment to consolidate the parcels.

LETTERS OF APPEAL

On May 21, 2010, Mario Ferrante and William Prior filed an appeal (Exhibit F) limited to the following two issues:

1. Condition 19. Mr. Ferrante and Mr. Prior do not like the wording of the condition, specifically "...which may include the delivery of an IOD [Irrevocable Offer of Dedication]..." The appellants believe that the condition does not provide a guarantee of access that they seek and that only an IOD would provide this assurance. Mr. Ferrante and Mr. Prior are requesting that the word "may" be replaced with the word "shall".
2. Perimeter fencing. The site plans show that sections of the proposed perimeter fencing are located within the 25-foot easement on the western side of the project site and within the 50-foot easement that runs across the southern portion of the site and there are concerns that this fencing could impede movement within the easements on the site.

A second appeal (Exhibit G), filed by Dr. Dale Smith on May 24, 2010, presents several issues, including:

1. The use of an Amendment to an approved Mitigated Negative Declaration was not the appropriate form of CEQA review. The appellant states that the change in use (from townhomes to apartments) could result in potentially significant impacts that were not previously addressed.
2. Existing soil contamination on the site was not identified or considered with this application and that staff failed to identify or consider new evidence concerning this contamination.
3. The proposed project represents a breach in the settlement agreement (described in the Background section) in that the agreement required townhomes to be constructed on the site.
4. The proposed project is within an area of extreme fire hazard and that Silver Bend Way should be constructed to a minimum standard of 20 feet in width, with two feet of shoulders and a 15-foot utility easement.

The Smith appeal also included a discussion of the conduct of the public hearing, citing potential violations of the Brown Act and Bagley-Keene Act. While Dr. Smith may not have had the opportunity to speak at the Planning Commission to the extent he might have desired, staff is not aware of any factual basis for any violation of the Brown Act.

RESPONSE TO APPEAL LETTERS

Ferrante/Prior

1. Mr. Ferrante and Mr. Prior own ±15 acres of undeveloped land adjacent to the southeastern portion of the project site. Their testimony to the Commission focused on an eventual connection between their property and Silver Bend Way and their concerns included: access to and across their non-exclusive 50-foot easement appurtenant to their property that crosses the southern portion of the project site; access along the 25-foot easement on the west side of the project site; and access for the surrounding undeveloped properties to the east that would presumably cross the Ferrante/Prior property to connect to Silver Bend Way. The key issues for Mr. Ferrante and Mr. Prior are: the assurance that they have access to Silver Bend Way across the project site; that the project driveway is constructed to their right-of-way; that the driveway meets County standards; and that it is designed to facilitate growth for undeveloped parcels east of the site. Mr. Ferrante and Mr. Prior believe that an IOD is the proper instrument to guarantee their access.

Staff does not agree with the conclusion reached by the appellants. After consultation with County Counsel, and based upon the verbal and written commitment provided by the project applicant, staff is confident that the outcome derived by the appellants regarding secured access to their property is in fact achieved, and that no additional modification to the conditions of approval are required.

In the week following the Commission hearing, Mr. Ferrante, Mr. Prior and Mr. Rosene met with staff to discuss and get a better understanding of Condition 19. Staff reviewed the plans that showed the proposed driveway improvements for the Miner's Ridge project and the locations of the private 50-foot and 25-foot easements. Regarding the future development of the Ferrante/Prior property and, eventually, other undeveloped properties to the east, staff verified that the two 12-foot travel lanes within the 25-foot easement that are proposed for the project would provide adequate capacity to serve development on the Ferrante/Prior property.

2. The only required fencing for the project is a six-foot fence along the southern boundary that will be installed for safety purposes (Condition 28). The fencing and landscaping that are proposed along the western and eastern boundaries have been included in the development plans primarily for aesthetic purposes. Condition 3 requires Design Review approval prior to the approval of Improvement Plans and any proposed fencing will be subject to the review and approval of the Design Review Committee during this process. Additionally, staff has committed that no fencing will be permitted that blocks access from the Ferrante/Prior property to the road easement area.

Smith

1. In his correspondence, Dr. Smith states that allowing for a 64-unit apartment development in place of a 64-lot townhouse development represents a change in use that is "capable of causing potentially significant impacts not previously addressed". The Planning Commission reviewed the application materials submitted for the proposed project, including researching the entitlement history for the site, and determined that, based upon the information available, the project would not result in any impacts that were not identified in the Mitigated Negative Declaration that was approved for the Ridge View Villas project and that it would not result in any increase in the level of significance of the impacts that were addressed in that document. Additionally, the Planning Commission concluded there was no appreciable difference between a 64-unit townhouse project and a 64-unit apartment project.

Based upon that fact, the Planning Commission determined that the Addendum to the previously approved Mitigate Negative Declaration represented the appropriate environmental document review for the modified project. (See Exhibit B)

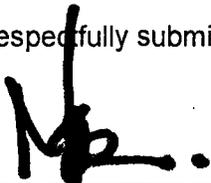
2. There has been no significant change to either the site or the site soils since the Board approved the Mitigated Negative Declaration for the Ridge View Villas project in March 2006 and any requirement for soils testing and remediation that applied to the townhome project in 2006 will apply to the proposed apartment project as well. Placer County is aware that additional sampling of the site is required, and Conditions 48 through 53 address this testing and possible clean-up of the site that may be required. No development of the site will be permitted without these conditions being satisfied.
3. The Settlement Agreement was executed by RAID in conjunction with the approval of the Ridge View Villas project, and any restrictions imposed on the property owner by that agreement expired on March 31, 2008. The Settlement Agreement does not prevent this applicant from requesting this modification to the existing entitlements for this property.
4. CalFire has reviewed the development plans for the site and has endorsed the improvements for fire infrastructure and fire flow, roadways (Conditions 21 through 24) and structural setbacks (Condition 63). A minimum paved width of 24 feet of pavement will be constructed off-site by the applicant (per Condition 23), from the existing improved section of Silver Bend Way to the project and 25 feet of pavement will be constructed on site for the apartment project, where CalFire requires a minimum of paved clear width.

RECOMMENDATION

As detailed in this report, staff could find no merit in any of the appeal issues raised by the appellants. The Planning Commission's approval of the project was consistent with state law, and mitigation measures are included with the project to reduce all identified impacts to less than significant levels. Staff recommends that the Board of Supervisors uphold the action by the planning Commission as follows:

1. Deny the appeals of Mario Ferrante and William Prior on the basis set forth in the staff report,
2. Deny the appeal of Dr. Dale Smith on the basis set forth in the staff report, and
3. Approve Addendum and the Conditional Use Permit modification for the Miner's Ridge Family Apartments (PCPM 2010 0046) and adopt the same Findings and Conditions of Approval of the Planning Commission, which are set forth in Exhibit A as the Board's Findings and Conditions in this matter.

Respectfully submitted,



MICHAEL J. JOHNSON, AICP
Community Development Resource Agency Director

EXHIBITS:

- Exhibit A – Findings and Conditions adopted by the Planning Commission
- Exhibit B – Addendum and Mitigated Negative Declaration
- Exhibit C – Vicinity map
- Exhibit D – Site Plan
- Exhibit E – Easements
- Exhibit F – Appeal Application (Ferrante/Prior)
- Exhibit G – Appeal Application (Smith)
- Exhibit H – Planning Commission staff report

cc: Michael J Johnson - Agency Director
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Cathy Donovan - Redevelopment Agency
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Subject/chrono files