

DATE ISSUED: May 11, 2005 REPORT NO. 05-106

ATTENTION: Honorable Mayor and City Council  
Docket of May 17, 2005

SUBJECT: Southgate Condominium Conversion project No. 32312, Council District 8.  
Appeal of Process 4 Planning Commission Decision

REFERENCE: Planning Commission Report No. PC-04-0154 dated September 30, 2004.  
  
City of San Diego memorandum to the Planning Commission dated  
December 9, 2004.  
  
City of San Diego memorandum to the Planning Commission dated  
February 3, 2005

OWNER/  
APPLICANT: Ralph Bwy (Attachment 9)

#### SUMMARY

Issues - Should the City Council deny the appeal and uphold the Planning Commission's February 3, 2005 decision to approve an application for a Tentative Map to convert 188 apartments to condominiums?

Staff Recommendation: Staff recommends that the City Council deny the appeal and uphold the decision of the Planning Commission to approve the Southgate Condominium Conversion Project with conditions (Attachment 6).

Community Planning Group Recommendation – On July 14, 2004, the Otay Mesa-Nestor Community Planning Board voted 8-6-0 to recommend approval of the project with no conditions (Attachment 8).

Environmental Review - The project is exempt from the California Environmental Quality Act (CEQA) pursuant to Article 19, 15301(k), Existing Facilities.

Fiscal Impact Statement - All costs associated with the processing of this application are paid for by a deposit account maintained by the applicant.

Code Enforcement Impact - None with this action.

Housing Impact Statement - The proposed project is the conversion of 188 existing apartment units to condominiums. There would be a loss of 188 rental units and a gain of 188 for-sale units. This condominium conversion project is required to comply with the Inclusionary Affordable Housing Regulations which are conditions of the proposed Tentative Map (Attachment 6). The project includes the designation of ten percent of the apartments as affordable units and implementation of relocation assistance to the tenants in accordance with the City's Inclusionary Affordable Housing Regulations.

Water Quality Impact Statement – Not applicable.

## **BACKGROUND**

This item is an appeal of the Planning Commission's February 3, 2005 decision to approve the Southgate Condominium Conversion, a Tentative Map to convert 188 existing apartment units to condominiums units. This item was originally heard by the Planning Commission on September 30, 2004, continued to December 9, 2004 and continued again to the February 3, 2005 public hearing. During public testimony, numerous citizens spoke in opposition to the project citing issues including the lack and loss of affordable rental units in the area; that the conversion could potentially create a decrease in the number of students at a nearby school; that condominium conversions in general were impacting the housing stock in the City of San Diego; and, concerns about the distribution and clarity of the required public notices. In addition, public testimony raised concerns related to how condominium conversions throughout the City of San Diego are potentially impacting the Residential Element of the Progress Guide and General Plan. The Planning Commission approved the item 4-1-0 with no additional conditions. Subsequent to the February 3, 2005 hearing, two appeals were filed against the project.

### Project Description

The site is currently developed with 188 residential units (94 one-bedrooms, 93 two-bedrooms and one three bedroom) located in twelve (12) detached buildings. The development was designed and constructed for condominium or for sale units in 1978 in conformance with required codes at the time.

The 12.9-acre site is located at 850 Beyer Way in the RM-1-1 zone within the Otay Mesa-Nestor Community Planning area. The surrounding area is developed with a variety of mixed uses including single-family dwellings to the west and south, commercial uses to the north, mixed commercial establishments, multi-family units and the Howard Pence Elementary School to the east. The Otay Mesa-Nestor Community Plan land use designation for the site is residential (Attachment 2).

There is an existing pool and green belt area within the perimeter and between the twelve structures. The owner plans to convert the apartments to condominiums in six phases over a

period of 24 months in order to minimize tenant displacement. In addition, the units will be upgraded to include the following improvements: stacked, interior washer/dryer hook-ups, new kitchens and bathrooms, natural maple wood cabinetry, new kitchen appliances, plumbing fixtures, lighting fixtures, heating, flooring and carpet. The acoustical ceilings will be removed and each unit will be painted. The exterior trim will also be painted and the landscaping upgraded.

## DISCUSSION

### Appeal

As noted above, two appeals were filed on the project (Attachments 7). Issues identified in the appeal addressed potential impacts of condominium conversions to the City of San Diego, concerns regarding noticing requirements, and policy issues related to condominium conversions. Staff has prepared a response to each of these items in the following sections. Due to the length of some of the comments in the appeals, staff has summarized what we ascertain to be the key point(s) identified in the appeals followed by staff's response. The items are discussed in the order provided by each appellant.

The issues below respond to an appeal filed by Nora E. Sanchez.

1. Appellant issue:

*"The Notices to the Tenants from the City and the owner were not proper or clear."*

Staff Response:

City staff and the City Attorney have determined that the public notices met all legal requirements of the State Map Act and the Land Development Code (Attachment 24).

2. Appellant issue:

*"There is already a housing crisis and these conversions will increase the problem and the housing crisis."*

Staff Response:

The project complies with all affordable housing regulations as required by the City's Inclusionary Affordable Housing Regulations. The project proposes to convert 188 apartments to condominiums. There will be no loss or gain in dwelling units.

The issues below respond to an appeal filed by Arlene L. Shire based on City-wide significance.

1. Appellant issue:

*"The City's Housing Element was not in substantial compliance with requirement of statute that program conserve and improve conditions of existing affordable housing stock, particularly its affordable rental stock and conserve existing affordable apartment rental stock."*

Staff Response:

State Housing Law does not require a City to preserve rental stock versus for-sale stock.

The State Housing Law calls for efforts to preserve affordable housing stock but it does not specify whether that stock should be owned versus rented. The City's Housing Element of the Progress Guide and General Plan identifies goals for increasing for-sale opportunities for first-time homebuyers.

1a. Appellant issue:

*“Within the coastal zone, a conversion or demolition of existing residential dwelling units occupied by persons or families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, shall not be authorized unless provisions have been made for the replacement of these dwelling units for persons and families of low or moderate income.”*

Staff Response:

The proposed condominium conversion is not within the City's Coastal Overlay Zone and is not subject to the requirement for replacement of dwelling units.

1b. Appellant issue:

*“Government Code 65583 Historical and Statutory Notes Sections 1 and 3 of Stats. 1986, C. 1383, Provide: Section 1. The legislature finds and declares that there exists in the State of California a severe crisis caused by the lack of any available shelter for a significant segment of California's homeless population.”*

Staff Response:

The City Council has declared that a city-wide housing crisis exists in the City of San Diego. Currently, there is no moratorium for condominium conversions.

2. Appellant issue:

*“Increasing shortage of affordable rentals available to lower-income families, seniors, disabled and active duty military throughout San Diego.”*

Staff Response:

Staff is aware of the housing crisis and the project is in compliance with all Inclusionary Affordable Housing Regulations. Currently, there is no policy that requires the retention of rental units.

3. Appellant issue:

*“The current conversion of numerous affordable apartments into condominiums throughout San Diego.”*

Staff Response:

Staff is aware of the housing crisis and the project is in compliance with all Inclusionary Affordable Housing Regulations. Currently, there is no policy that requires the retention of rental units.

4. Appellant issue:

*“The San Diego Planning Commission cited current the number of conversions taking place, the number of affordable apartments still available or built, and the number of tenants being displaced.”*

Staff Response:

During deliberation at the Planning Commission hearings, the Commissioners expressed concerns regarding the number of conversions taking place, the decreasing number of affordable rental units currently available, and the number of tenants being displaced. As a result of their concerns about the potential impacts of condominium conversions in general, a joint workshop with the Planning Commission and the Land Use and Housing City Council Committee was conducted on March 9, 2005. The workshop included discussion of these and other condominium conversion issues. A future workshop is scheduled for May 26, 2005 to discuss potential changes to condominium conversion regulations.

5. Appellant issue:

*“The impact of tenant displacement on the education of numerous low-income children who are forced to move and change schools due to condo conversions.”*

Staff Response:

Currently there are no regulations or policies that regulate condominium conversions based on potential impact of the displacing of school children.

6. Appellant issue:

*“Various statements made by the Planning Commission at the February 3, 2005 meeting indicated the tremendous need to address the issue of affordable rentals in the City.”*

Staff Response:

During deliberation at the Planning Commission hearings, the Commissioners expressed concerns regarding the number of conversions taking place, the decreasing number of affordable rental units currently available, and the number of tenants being displaced. As a result of their concerns about the potential impacts of condominium conversions in general, a joint workshop with the Planning Commission and the Land Use and Housing City Council Committee was conducted on March 9, 2005. The workshop included discussion of these and other condominium conversion issues. A future workshop is scheduled for May 26, 2005 to discuss potential changes to condominium conversion regulations.

7. Appellant issue:

*“The Southgate tenants were not noticed by the City for the Planning Commission meetings on September 30, 2004 December 9, 2004, and February 3, 2005.”*

Staff Response:

All tenants in the Southgate Village apartments were mailed a Notice of Public Hearing for the September 30, 2004 Planning Commission hearing. The subsequent December 9, 2004 and the February 3, 2005 hearings were continued to a date certain therefore these

hearings were not required to be re-noticed.

8. Appellant issue:

*“Government code 66452.3 requires the local agency to serve each tenant at least three days before any hearing or action on the tentative map a copy of any report or recommendation by the staff.”*

Staff Response:

Staff has determined that in all instances, all tenants of the Southgate Village Apartments received a copy of the reports.

The issues below respond to an appeal filed by Arlene L. Shire base on factual issues

1. Appellant issue:

*“The representative of the project stated that the purchase of the converted condominiums was “affordable” to the current tenants.”*

Staff Response:

According to the project’s representative, the converted units will be “affordable” as compared to the cost of newly constructed condominiums.

2. Appellant issue:

*“The representative for the project stated that there are plenty of apartments available in the same area for the current Southgate tenants to move to in the general location.”*

Staff Response:

According to the project’s representative, there is no rental housing crisis in this area of the City. The project’s representative conducted an area survey on April 19, 2005 which identified multiple buildings with vacancies within a five mile radius of the Southgate Village apartments.

3. Appellant issue:

*“The representative of the project stated that all new tenants knew and were told there was a possibility of a condo conversion and that they signed a letter stating the fact.”*

Staff Response:

According to the project’s representative, all tenants, prior to renting, were informed of the condominium conversion. Staff has copies of signed forms acknowledging that all of the existing residents received all of the required notices when the conversion process began. Many signed these acknowledgments before a rental agreement was entered into. All prospective residents have been advised of the proposed conversion and were required to sign four letters acknowledging the notice before signing a rental agreement.

4. Appellant issue:

*“The representative of the project stated that he and the owner met with Tenants Union, San Diego ACORN, and provided information regarding relocation assistance and purchasing incentives. It is suspected that the incentives influenced the Planning*

*Commissions vote.”*

Staff Response:

The owner and the representative were requested by the Planning Commission to meet with existing tenants and the tenants union, Association of Community Organization Reform Now (ACORN), for a dialog covering first-time buyers programs and relocation assistance. At the meeting held by ACORN on January 18, 2005, the representative of the project confirms that the tenants’ organization ACORN did not respond to his presentation regarding the owners offer for relocations assistance and first time buyer programs.

5. Appellant issue:

*“Is the city required to authenticate the noticing practices of the Community Planning Groups?”*

Staff Response:

Under the Ralph M. Brown act, commonly referred to as the Open Meeting law, community planning committees are not legislative bodies. They are solely advisory to the decision makers such as the Planning Commission and the City Council. As such, there is no legal requirement that they comport with the requirements of the Ralph M. Brown Act.

Recognized community planning committees are subject to Council Policy 600-24, “Standard Operating Procedures and Responsibilities of Recognized Community Planning Committees”, which states, “...the committee shall establish written policies in their bylaws to govern the following topic: Procedure for conducting committee business and noticing regular meetings.” This document does not contain specific noticing requirements for recognized community planning committees. Noticing procedures are established by each community planning group. The chair of the Otay Mesa-Nestor Community Planning Committee has stated that they utilize the Planning Department’s community list to notify citizens in their community. The community list included several public schools in the area as well as the school district’s main office.

5a. Appellant issue:

*“Discussion raised at the February 3, 2005 Planning Commission Hearing included statements by the Commissioners that they must approve condo conversions because of the City Council Policy.”*

Staff Response:

The Planning Commission must approve a Tentative Map for Condominium Conversion if it is determined that it meets the requirements of the State Map Act, the Land Development Code, and if all findings for tentative maps can be made.

5b. Appellant issue:

*“If City Council Policy requires approval of condo conversion and displacement of the hundreds of people and children out on the street – then why isn’t the City Council Policy requiring that those families and people who are affected be noticed by the planning committee and the City Council Policy be complied with?”*

Staff Response:

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5c. Appellant issue:

*“Are City Council Policies protecting poverty stricken and low- income tenants of apartments under condo conversion to be voided while City Council Policies protecting wealthy landowners are expanded and teeth put in them to comply.”*

Staff Response:

City Council policies are created to guide the various functions of the city and, where necessary, to establish procedures by which functions are performed. Regulatory policies established by the City Council are adopted by ordinance and included in the Land Development Code.

5d. Appellant issue:

*“This conversion should be denied because of the failure to give due process to the tenants of Southgate by the Otay Mesa-Nestor Planning Committee.”*

Staff Response:

Under the Ralph M. Brown act, commonly referred to as the Open Meeting law, community planning committees are not legislative bodies. They are solely advisory to the decision makers such as the Planning Commission and the City Council. As such, there is no legal requirement that they comport with the requirements of the Ralph M. Brown Act.



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## **CONCLUSION**

A “Tentative Map for a Condominium Conversion” is a Process Four, Planning Commission decision per Land Development Code Section 125.0430. A Tentative Map for a Condominium Conversion may be approved if the decision maker finds that the proposed division of land complies with the requirements of the Subdivision Map Act and the Land Development Code. Staff have reviewed the proposed condominium conversion and found it to be in conformance with the applicable sections of the San Diego Municipal Code regulating Tentative Maps. Staff recommends that the City Council deny the appeal and approve Tentative Map No. 27671 as proposed.

## **ALTERNATIVES**

1. Deny the appeal and Approve Tentative Map No. 106415 with modifications.
2. Uphold the appeal and deny Tentative Map No. 106415, if the findings required to approve the project cannot be affirmed.

Respectfully submitted,

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Gary W. Halbert  
Development Services Director

Approved: Patricia T. Frazier  
Deputy City Manager

WJZ

Note: Attachments 1-6, 9-20, and 24-26 are available in electronic format. A complete copy for

review is available in the Office of the City Clerk.

Attachments:

1. [Aerial Photograph](#)
2. [Otay Mesa-Nestor Land Use Map](#)
3. [Project Location Map](#)
4. [Project Data Sheet](#)
5. [Tentative Map](#)
6. [Tentative Map Resolution and Conditions](#)
7. Copy of Appeals
8. July 14, 2004 Otay Mesa-Nestor Community Planning Board vote
9. [Ownership Disclosure Form](#)
10. [Project Chronology](#)
11. [Notice of Application](#)
12. [Notice of Public Hearing \(Planning Commission\)](#)
13. [Notice of Intent to Convert – 60 day notice](#)
14. [Notice of Intent to Convert for Prospective Tenants](#)
15. [180-Day Notice of Intent to Convert prior to termination of tendency](#)
16. [10-Day Notice of Application for Public Report](#)
17. [Notice of \(90-Day\) Exclusive Right to purchase](#)
18. [Planning Commission minutes from September 30, 2004 hearing](#)
19. [Planning Commission minutes from December 9, 2004 hearing](#)
20. [Planning Commission minutes from February 3, 2005 hearing](#)
21. City Attorney memorandum dated January 21, 2005
22. Applicant response to appeal (April 22, 2005)
23. City Attorney's response for Community Planning Groups noticing persons affected by a  
Development Project
24. [Condominium Conversion Process Flow Chart](#)
25. [Attachment Reference Table \(This table provides a cross reference numbering system in  
alpha-numeric order of all previously assigned attachments from all reports and  
memorandums associated with the Southgate Condominium Conversion project\)](#)
26. [Southgate Notice Requirement Table](#)