

DATE ISSUED: January 28, 2004 REPORT NO. 04-010

ATTENTION: Honorable Mayor and City Council Docket of February 3, 2004

SUBJECT: Southgate Tentative Map for a Condominium Conversion Project No. 10995, Council District 8. Appeal of Process 4, Planning Commission Approval

REFERENCE: Planning Commission Report No. P-03-340 dated November 6, 2003

OWNER/
APPLICANT: Ralph Bwy (Attachment 5)

SUMMARY

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

City Manager's Recommendations - Staff recommends that the City Council deny the appeal of the Planning Commission action and uphold the approval of the Southgate Village project by taking the following actions:

1. DENY the appeal and uphold the Planning Commission's decision to approve the project with conditions (Attachment 4); and
2. APPROVE Tentative Map No. 27671

Planning Commission Recommendation - On November 6, 2003, the Planning Commission voted 6-0-0 to unanimously approve the project.

Community Planning Group Recommendation - On August 13, 2003 the Otay Mesa-Nestor Planning Committee voted 7-2-2 to recommend approval of the project.

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

Fiscal Impact - All costs associated with the processing of this application are paid for by the applicant.

Code Enforcement Impact – None with this action.

Housing Affordability Impact - The proposed project is the conversion of an existing apartment building from a rental product to an ownership product. The action will not create new housing units or delete housing units, and therefore, will not have an impact on housing availability. Condominium conversions are exempt from the Inclusionary Housing Ordinance

BACKGROUND

PROJECT DESCRIPTION

The developed 12.9-acre site is located at 850 Beyer Way in the RM-1-1 Zone of the Otay Mesa-Nestor Community Plan. The surrounding area is developed with a variety of mixed uses including low density detached single family dwellings to the west and south, commercial uses comprised of retail establishments to the north, mixed commercial establishments, multi-family attached dwellings units and Howard Pence Elementary School to the east. The Otay Mesa-Nestor Community Plan designates the site for residential uses at a density of low to medium (10 - 15 du/ac) (Attachment 1).

The site is currently developed with an apartment complex consisting of 12 separate buildings in which 94 of the units are one-bedroom apartments, 93 are two-bedroom apartments, and one is a three-bedroom apartment. These existing buildings were designed and constructed for condominiums in 1978 and were in conformance with the development codes at that time.

The Subdivision Board on November 11, 1981, approved Tentative Map 01-300-01 for 188 condominiums. However, because of high interest rates and poor market conditions for condominiums in the early 1980's, the owner decided to rent out the units on a monthly basis and postponed finalizing the Tentative Map. Tentative Map 01-300-01 expired on November 11, 1984 (Attachment 8).

The project proposes to convert the existing 188 apartments to 188 condominiums. The project is consistent with the residential land use designation and low to medium density in effect for the site (Attachment 1). There are no zoning or non-conforming land use issues, or code violations associated with the property, and the existing development complies fully with the current requirements of the RM-1-1 Zone.

The project consists of one and two-bedroom dwelling units and one three-bedroom unit each

having one enclosed and one uncovered parking space and balcony. There is an existing pool and green belt area with grass and an array of ornamental trees. The owner of the development plans on gradually phasing the apartments to condominiums in six phases over a period of 24 months in order to minimize tenant displacement. In addition, the owner plans on completely refurbishing each unit to include, but not limited to, the following improvements: stacked, interior washer/dryer hook-ups, all new kitchens and baths, natural maple wood cabinetry, all 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. According to the owner, these refurbishing costs will exceed \$5.0 million dollars.

COMMUNITY GROUP VOTE

On June 11, 2003 the Otay Mesa-Nestor Community Planning Board voted 8-7-0 to recommend denial of the Southgate Village Map Waiver (Project No. 6394), due to concerns of losing affordable apartments in the area (Attachment 6).

After the June 11, 2003 community planning group vote, City staff discovered that the property owner had failed to notify tenants 60 days prior to the application of a Map Waiver to convert the apartments to condominiums as required by the Subdivision Map Act. The property owner sent a Tenant Notification Letter to the tenants of the apartments on May 1, 2003, less than 60 days from the date of application. In order to make the 60 days notification requirement, the applicant was asked to submit a new application (Project 10995) on or after July 29, 2003. A new application was received on August 12, 2003. Based upon the May 1, 2003 Tenant Notification Letter the noticing requirement has been complied with. The proposed condominium conversion was now identified as Project No. 10995 (Attachment 9).

On August 13, 2003, the Otay Mesa-Nestor Planning Committee voted 7-2-2 to recommend approval of the new application (same project scope with a new number, Project 10995 - see Attachment 7). Subsequent to the planning groups vote, a resident of the apartments contacted City staff questioning whether the Otay Mesa-Nestor Planning Committee could vote because the Notice of Application was distributed after their August 13, 2003 vote. The Municipal Code (Section 112.0301) does not address the sequencing or timing of community planning group actions (Attachment 10) however, in response to the resident's concern, the Otay Mesa-Nestor Community Planning Group scheduled Project 10995 on their September 10, 2003 agenda to determine if they should reconsider their August 13, 2003 vote. The Otay Mesa-Nestor Planning Committee voted not to reconsider the August 13, 2003 vote.

DISCUSSION

APPEAL

The item was heard by the Planning Commission on November 6, 2003. During public

testimony, several speaker slips opposed to the project were filed, however a total three citizens testified in opposition to the project. In summary, issues raised addressed the lack of affordable rental units in the area and the potential decrease in the number of students at a nearby school. After public testimony, the Planning Commission found that the project could be supported and approved the proposal unanimously by a vote of 6 - 0. Subsequent to the hearing, Mr. Arlene Shire filed an appeal (Attachment 11). The appeal issues relate primarily to the actions taken by the Otay Mesa-Nesa Planning Committee on this project, and the lack of affordable housing in the area. Each appeal issue is identified below, along with staff's response:

1. “Agenda notice not posted in local schools as report by committee chair to Planning Commission (nor sent to sent to school district)”

Staff Response:

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 committee. The chair of the Otay Mesa-Nestor Community Planning Committee has stated that they utilize the Planning Departments 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.

2. “Possible irregularities in voting by advisory committee (Otay Mesa-Nestor Planning Committee. 6/11/03 – project 6394 denied; 8/13/03 – project 6394 approved. Application of 8/20/03 had different project number than on the agenda, also changed on “minutes of 8/13/03 meeting (project 10995)”

Staff Response:

On June 11, 2003 the Otay Mesa-Nestor Community Planning Board voted 8-7-0 to recommend denial of the Southgate Village Map Waiver (Project No. 6394), due to concerns of losing affordable apartments in the area.

After the June 11, 2003 community planning group vote, City staff discovered that the property owner had failed to notify tenants 60 days prior to the application of a Map Waiver to convert the apartments to condominiums as required by the Subdivision Map Act. The property owner sent a Tenant Notification Letter to the tenants of the apartments on May 1, 2003, less than 60 days from the date of application. In order to make the 60 days notification requirement, the applicant was asked to submit a new application (Project 10995) on or after July 29, 2003. A new application was received on August 12, 2003. Based upon the May 1, 2003 Tenant Notification Letter the noticing requirement has been complied with. The proposed condominium conversion was now identified as Project No. 10995 (Attachment 9).

On August 13, 2003, the planning group voted 7-2-2 to recommend approval of the new application (same project scope with a new number, Project 10995) based on additional information regarding the price of each unit.

The Planning Department has indicated that actions taken by the group are not inconsistent with Council Policy 600-24

3. “Cost of rentals and shortage of low-cost rentals available. Local school district losing 350 children a year due to increased cost of housing in area.”

Staff Response:

The City of San Diego's Inclusionary Housing Ordinance currently requires all home builders of two or more units to either set aside 10 percent of their units as affordable, or to pay an affordable housing in-lieu fee. Although the City's Inclusionary Housing Ordinance currently exempts condominium conversions, the Land Use and Housing Committee has directed the City Manager to revise the ordinance so that it does apply to all condominium conversions. On April 25, 2003 the Planning Commission voted unanimously to apply the ordinance to condominium conversions, and on September 17, 2003, the Land Use and Housing Committee recommended the same. City Council action is expected early this year.

4. “Possible violation of Ralph M. Brown act by advisory committee (Otay Mesa-Nestor Planning Committee). No notice given to the tenants prior to 2nd meeting on 8/13/03. Only notice posted was in community service office locked at night.”

Staff Response:

Community Planning Committees are not subject to the Brown Act. See response to issue No. 1 above.

CONCLUSION

A “Tentative Map for a Condominium Conversion” is a Process Four, Planning Commission decision per San Diego Municipal Code Section 125.0430. A Tentative Map for 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 San Diego Municipal 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 approval of Tentative Map for a Condominium Conversion No. 27671 as

proposed.

ALTERNATIVE

1. Uphold the Planning Commission's decision and approve the project with modifications.
2. Approve the appeal and deny the project.

Respectfully submitted,

Tina P. Christiansen, AIA
Development Services Department

Approved: P. Lamont Ewell
Assistant City Manager

wjz/WJZ

CHRISTIANSEN/WJZ: MED

Note: The attachments are not available in electronic format. A copy is available for review in the Office of the City Clerk.

Attachments:

1. Community Plan Land Use Map
2. Project Location Map
3. Tentative Map
4. Draft Map Conditions and Subdivision Resolution
5. Ownership Disclosure Statement
6. June 11, 2003 Otay Mesa-Nestor Community Planning Board vote
7. August 13, 2003 Otay Mesa-Nestor Community Planning Board vote
8. Tentative Map 01-300-1
9. Tenant Notice Letter sample
10. San Diego Municipal Code Section 112.0301
11. Appeal from Arlen Shire
12. November 7, 2003 letter from Arlen Shire
13. Council Policy 600-24
14. Project Chronology

The project before the City Council is an appeal of the Planning Commission's decision to approve a Tentative Map for a Condominium Conversion. The project was approved by the Planning Commission on November 6, 2003 and was appealed by Arlen L. Shire on November 17, 2003.