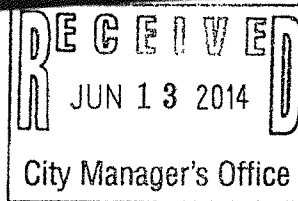


JIM GRIFFITH

MAYOR, CITY OF SUNNYVALE

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June 13, 2014

Deanna Santana, City Manager
 Hanson Hom, Director of Community Development
 Sunnyvale City Council

This letter represents my formal appeal of the Planning Commission's decisions regarding File #2013-8029, the S&S Construction, LLC/Louis Mariani Trustee application for 523 E. Homestead Road. In reviewing both hearings of the Planning Commission, it is clear that a majority of the Commissioners failed in their responsibility to interpret and apply existing city policy and the General Plan to this application, and I request that this item be brought to the City Council for a more careful examination of its merits. In my four years on Council, I have never before appealed a decision of the Planning Commission, but the Commission's actions regarding this particular application drive me to intercede.

The history of this application demonstrates that staff worked closely with the applicant to support the applicant's rights and address the real concerns of the surrounding neighborhood regarding traffic, aesthetics, and neighborhood character. The reduction of units from eleven to seven, the widening of the driveway to support on-site trash pickups, and the increase in on-site parking spaces were all included in the project to directly address neighbors' concerns. These changes dramatically improved the project's compatibility with the neighborhood, and indeed they resulted in those residents nearest the property to change their advocacy from opposition to cautious support, as expressed by Dr. Arthur Low at the Planning Commission Hearing of June 9, 2014. I note that Dr. Low is the most immediate neighbor to the property in question and the resident most affected by the proposed development. The initial motions by Commissioner Klein on both 5/28 and 6/9 demonstrated proper consideration for the applicant's interests, the neighborhood's concerns, and staff's efforts to balance all interests and policies. And Commissioner Klein's additional amendments only improved the project and increased the pursuit of the city's goals and the neighborhood's protection.

Despite all of this, the Planning Commission voted on June 9th to ignore all of these concerns. And in an egregious case of designing from the dais, the Planning Commission instead voted to support an 8-unit proposal, something that was never discussed by staff or the applicant, something for which the applicant was never given any opportunity to address with the Planning Commission, and something for which no designs currently exist. There was no basis in reality for believing that such a project is possible with the same number of parking spaces, driveway width, and other concessions to protect the neighborhood from the project's impacts. Staff liaison Trudi Ryan expressed these concerns, stating "really it's a different project, and I think the applicant deserves a decision on what's before you". Unfortunately, the Commission ignored this carefully-worded staff guidance.

Instead, a completely different project was proposed, for the stated goal of pursuing an additional \$500k of affordable housing funding for the city, something that multiple Commissioners stated in their comments. Such a decision is well beyond the purview of the Planning Commission. Such big-picture policy decisions are exclusively the purview of the City Council, and they have no place in a Planning Commission's review of the specifics of an application and its impacts on the surrounding neighborhood. Commissioner Klein correctly observed, "in the past, the Council has basically allowed this policy from the general plan to basically be waived in order to fit better into the community". The Planning Commission failed in their duties when they chose to ignore that statement, and they sacrificed the good of the neighborhood and the rights of the property owner in fixating on a big-picture policy decision that was not within their immediate purview.

In vigorously defending the letter of Policy HE-4.3, the Commission instead approved a motion that decreased the project's support of four other important policies:

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- **Policy LT-2.1** Recognize that the City is composed of residential, industrial and commercial neighborhoods, each with its own individual character; and allow change consistent with reinforcing positive neighborhood values.

The resulting change to the project introduces more density and more units in a single-family neighborhood, against the expressed wishes of the neighbors.

- **Policy LT-4.2** Require new development to be compatible with the neighborhood, adjacent land uses, and the transportation system.

As the resulting project introduces an additional unit without a substantial increase in building footprints, it would maintain the same likely number of occupants, but increase traffic by increasing the number of driver-age occupants on site. Such a change to the project does not serve the neighborhood's best interests.

- **Policy LT-4.4** Preserve and enhance the high quality character of residential neighborhoods.

As per LT-2.1, the change decreases the project's support of this goal as compared to the submitted application.

- **Policy CC-1.3** Preserve and enhance the high quality character of residential neighborhoods.

As per LT-2.1, the change decreases the project's support of this goal as compared to the submitted application.

Worse, the statement in defense of HE-4.3 ignored clear direction from staff in the list of Findings and Goals that "It is the City's standard practice to allow a minor change from the minimum density to be approved by the Planning Commission". There was no reason to claim a lack of authority in this regard, given a clear statement from staff to the contrary. The Planning Commission indeed had the ability to deviate from the minimum requirement in a small way. It is clear that Commissioners' personal agendas overrode their much greater responsibility to the specifics of this application and the surrounding neighborhood, and doing so was a failure in their responsibility to consider all of the City's goals and policies.

The nature of the city's goals and policies is such that for any project that reaches the Planning Commission, it is possible to identify several goals that are met by the project, and at least one goal that the project arguably fails to meet. A Commissioner who is determined to find a reason to reject a project can always find such a reason. And a Commissioner focused on one particular policy to the exclusion of all others (HE-4.3 in this case) is failing in his or her responsibility to judge the totality of a project. Neither approach to project review serves the purpose of the Planning Commission or the advancement of the City's goals.

Beyond the concerns about proper interpretation of goals and policies, I offer these additional observations about the Planning Commission's comments and conduct regarding this issue.

- Chair Melton stated "overriding mission from [his] vantage point is a motion where four people can press the 'yes' button". This statement represents a significant failure of the Commission. The overriding mission of the Planning Commission, at all times, should be to support and defend the City's goals and policies. A successful motion that fails to properly interpret and enforce city policy does not serve the City's interests. In comparison, failure to achieve a majority in pursuit of the City's goals is always a good outcome, even if it results in eventual adjudication by the City Council. If additional training is required to impress this upon the Commission's members, I urge staff to pursue this.

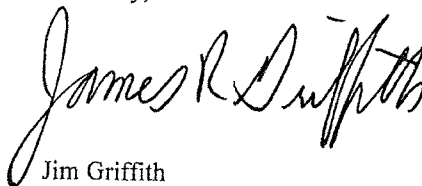
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- In dogmatically defending HE-4.3, several Commissioners took the position that staff was asking them to approve a project for which the Planning Commission lacked authority. This happened despite the aforementioned comment in the project's findings that the Planning Commission did indeed have such discretion. It should have been immediately obvious that staff would never ask the Planning Commission to vote to exceed its authority. Before discarding this application in its entirety, Commissioners should have simply asked staff if they were actually empowered to take the recommended action. One simple question before voting against the initial motion might have saved a lot of wasted effort. Unfortunately, the question was never asked.
- The eagerness of the Commission to ignore and even contradict the subject matter expertise of both the City's Planning Department staff and the Planning Commission's most experienced member is highly disturbing, particularly coming from commissioners with barely a couple of months of experience. The City Council values dissent, and we expect Commissioners to exert their own judgment on all matters before the Commission at all times. However sound judgment should always include a healthy respect for voices of extensive experience, as well as the recommendations of subject matter experts such as Planning staff, and great care should be exercised in completely rejecting that experience. In this matter, such care was lacking.
- The decision by Chair Melton to continue this item from May 28th to a date certain in an attempt to break a 3-3 tie without first verifying that the seventh Commissioner would be in attendance on that date was a serious mistake. It caused the Planning Commission to waste the time of the applicant, the public, staff, and the Planning Commission itself. Worse, it denied the Commission the input and extensive experience of that seventh Commissioner, something that was badly needed on this issue. It is likely that his input as a highly experienced Commissioner would have bolstered the pointed comments of Commissioner Klein, statements that attempted but ultimately failed to steer the Commission in a responsible direction. "Date certain" is always a risky proposition. I hope that this was simply a lack of experience on the part of the Chair, and that this is a mistake that will not be repeated in the future.

It is clear that the failure of the Planning Commission to consider this application on its merits and adjudicate it within the limits of the Commission's authority requires the City Council to step in. Accordingly, I am appealing this project to the City Council so that it can properly review the project and decide its fate. I urge my colleagues to consider the original application, and specifically the initial motions made by Commissioner Klein as being the proper resolution of this application.

Sincerely,



Jim Griffith
Mayor, City of Sunnyvale