
December 1, 2015

VIA E-MAIL

Mayor Robert Crowell
Carson City Board of Supervisors
City Hall / 201 N. Carson Street, Suite 2
Carson City, NV 89701

Re: Support for SUP 15-077 – Multi-Family Special Use Permit
APNs 007-461-22 and -23

Dear Mayor and the Board of Supervisors:

This firm represents property owners, Mark Turner and Sean Richards (together, the “Applicant”), who is proposing to construct a 90-unit multi-family apartment complex (the “Project”) on two vacant parcels within the Silver Oak Planned Unit Development. The Planning Commission agreed with Planning Division staff’s findings and recommendation, and granted the Applicant a special use permit on September 30, 2015.

An appeal of the Planning Commission’s approval of SUP 15-077 was filed. As described in this letter, the Carson City Board of Supervisors should uphold the Planning Commission’s decision.

I. Standard of Review

Nevada Revised Statutes (“NRS”) 278.315, entitled “Special Exceptions,” provides the statutory authority for the Carson City Planning Commission to approve special use permits under certain circumstances. A planning commission has discretionary authority to grant a special use permit; if a discretionary act is supported by substantial evidence, there is no abuse of discretion.¹ Substantial evidence is evidence which “a reasonable mind might accept as

¹ *Enterprise Citizens v. Clark Co. Comm’rs*, 112 Nev. 649,653, 918 P.2d 305, 308 (1996).

adequate to support a conclusion.”² “Without an abuse of discretion, the grant . . . of a special use permit shall not be disturbed.”³

Here, the Applicant has more than fulfilled its burden to provide “substantial evidence” that all applicable findings are satisfied. Because the Planning Commission did not abuse its discretion in approving SUP 15-77, this Board should not disturb its decision and accordingly uphold the Planning Commission’s approval.

II. Staff Report

The Staff Report for the Planning Commission Meeting of September 30, 2015 (“Staff Report”) recommended approval of the Project. Staff correctly relied upon both municipal code and its custom of granting special use permits to authorize multi-family dwellings within a Retail Commercial zoning district. Staff Report 5-6. Moreover, the Staff Report accurately explained that the “purpose of a PUD is to allow flexibility within the boundary of the plan,” and described previous occurrences of special use permits granted within Silver Oak PUD. *Id.* at 6. In evaluating the Project “on its merits based on the underlying zoning district and applicable review standards,” Staff determined that the PUD did not limit the uses allowed in the Retail Commercial zoning district, and properly found that the Project “meets the applicable development standards required.” *Id.*

III. Findings and Considerations

In the Staff Report, Staff articulated their findings pursuant to Carson City Municipal Code Section 18.02.080.⁴ See Staff Report 13-15. Nevertheless, the appeal has three criticisms

² *Whitemaine v. Aniskovich*, 124 Nev. 302, 308, 183 P.3d 137, 141 (2008).

³ *City Council, Reno v. Travelers Hotel*, 100 Nev. 436, 440, 683 P.2d 960, 962 (1984).

⁴ Carson City Municipal Code Section 18.02.080. entitled Special use permit (conditional uses), requires that the

[f]indings from a preponderance of evidence must indicate that the proposed use:

- a. Will be consistent with the objectives of the Master Plan elements;
- b. Will not be detrimental to the use, peaceful enjoyment, economic value, or development of surrounding properties or the general neighborhood; and is compatible with and preserves the character and integrity of adjacent development and neighborhoods or includes improvements or modifications either on-site or within the public right-of-way to mitigate

of the Planning Commission’s decision: 1) the grant of the special use permit disregards the PUD as any changes of land use, they argue, must proceed through a PUD amendment; 2) the Project’s density; and 3) the Project’s aesthetics. However, because the Staff Report provides substantial evidence to grant a special use permit and specifically considers each of these areas, the approval should be upheld.

A. Special Use Permit and the Silver Oak PUD

The Project is located within the Retail Commercial zoning district within the Silver Oak PUD. Carson City Municipal Code Section 18.04.130(3) provides that special use permits are required for conditional uses in the Retail Commercial zoning district, which include multi-family dwellings. Here, the Planning Commission staff correctly determined that the appropriate mechanism for such a multi-family apartment project in the Retail Commercial zoning district within the Silver Oak Planned Unit Development (PUD) is a Special Use Permit.

Those appealing the Planning Commission’s decision argue that the Silver Oak PUD essentially forbids residential uses in the Retail Commercial portion of the project. Tellingly, the appeal lacks any citation to the Silver Oak PUD. Indeed, Article 1.1 of Silver Oak’s Declaration of Reciprocal Easements, Covenants, Conditions and Restrictions submitted to you with a letter from Stephen Hartman dated September 25, 2015, states:

The allowable land uses for the Exhibit “A” property shall be as set forth in the Carson City Municipal Code as modified by the Silver Oak Development Agreement. While subsequent deed restrictions may exclude certain uses otherwise available by law,

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- c. development related to adverse impacts such as noise, vibrations, fumes, odors, dust, glare or physical activity;
 - c. Will have little or no detrimental effect on vehicular or pedestrian traffic;
 - d. Will not overburden existing public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public improvements;
 - e. Meets the definition and specific standards set forth elsewhere in this Title for such particular use and meets the purpose statement of that district;
 - f. Will not be detrimental to the public health, safety, convenience and welfare; and
 - g. Will not result in material damage or prejudice to other property in the vicinity, as a result of proposed mitigation measures.

it is not the intent of this Declaration to exclude any uses allowable pursuant to current Carson City ordinance.

(Emphasis added.)

Consequently, Staff noted that the PUD does not “preclude uses customarily allowed with a Special Use Permit in any of the associated zoning districts.” Staff Report 5. Moreover, the Staff Report cites to numerous special use permits previously authorized within the Silver Oak community that “were not allowed by right in their applicable zoning districts, but were allowed as conditional uses with a Special Use Permit.”⁵ *Id.*

B. Density

Those appealing the Planning Commission’s decision also complained of the Project’s “high density,” but provided no citations to the Silver Oak PUD or a part of Carson City Municipal Code that prohibits the Project’s proposed density. Critically, under Carson City Municipal Code Chapter 18.04, there is no maximum residential density within nonresidential zoning districts. Subsequently, Staff concluded that the Project did not exceed the maximum density range for this land use category. See Staff Report, Appendix C: Carson City Master Plan Interim Mixed-Use Evaluation Criteria, 81.

As a reference, “the High Density Residential designation on the Master Plan allows up to 36 dwelling units per acre.” Staff Report at 10. This project’s proposed residential density is approximately 22 dwelling units per acre, which is 14 dwelling units less than the High Density Residential designation.

Finally, the Applicants provided a traffic study of the Project. See Silver Oak Apartments Traffic Study, Staff Report at 42-76. The study indicated that the number of trips would increase by 599 average trips per day. *Id.* at 44. However, the Staff Report correctly highlighted that this increase “is not higher than the traffic that would be generated for traditional retail uses that would also be allowed by right.” *Id.* at 8.

C. Aesthetics

Finally, those appealing the Planning Commission’s decision also complained of the design, claiming that the Project was not “compatible in design to the existing buildings in the

⁵ Moreover, “zoning restrictions must be balanced against the right of a property owner to develop his property to his own economic advantage.” *Clark Cnty. Bd. of Comm'rs v. Taggart Const. Co.*, 96 Nev. 732, 736, 615 P.2d 965, 968 (1980) (Further noting that “[i]t is for this reason that zoning plans, no matter how sophisticated they may be, generally contain . . . some procedures for granting variances, amendments, special use permits, or exemptions for specific uses of specific parcels of property.”).

area.” However, Staff specifically considered the design of the Project pursuant to Carson City Development Standards, Section 1.1.1. Staff Report 6-7. Section 1.1.1 provides the “architectural style, massing and proportion of a building should be compatible with and complement its surroundings and environmental characteristics of the community.” The Applicant’s architect, Jeff Frame, designed many of the adjacent properties and was specifically engaged to ensure this project was compatible with the area.

Moreover, the Silver Oak PUD has Design Guidelines, but these guidelines only apply to homes within the Silver Oak community. *See, e.g.,* Silver Oak Community Association Design Guidelines, Section 1.1. These guidelines do not apply to commercial buildings. Thus, because Staff appropriately considered the Project’s design compatibility, the argument that the Planning Commission did not consider the compatibility of the building’s design is without merit.

Finally, the Applicant has made numerous attempts to understand what it can do to mitigate the concerns of the neighbors, including, at the Applicant’s expense, creating another design scheme for the project. Despite these repeated attempts to find a compromise with those opposed, the opposition continues to distribute false information and refuses to work with the Applicant in good faith. Attached as Exhibit “A” is the Applicant’s update on these efforts.

IV. Conclusion

For the reasons stated in this letter, the Applicant met its burden of providing substantial evidence that the Project meets all applicable findings. The Planning Commission did not abuse its discretion when it approved the Planning Commission Staff’s recommendation to approve the Project. Accordingly, the appeal should be denied and this Board should uphold the Planning Commission’s decision.

Very truly yours,



Garrett D. Gordon
LEWIS ROCA ROTHGERBER LLP

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EXHIBIT "A"**Applicant's Update on Neighborhood Outreach**

1. Subsequent to the SUP hearing the SUP was challenged by the Appellant Wipfli, et al. ("Appellant"). Appellant wrote and it appears hand delivered letters to nearly 600 households within the Silver Oak Community Association, the "Silver Oak Association," (adjacent to the commercial zone, however, Appellant does not reside within the boundaries of the Silver Oak Association and does not pay dues to Silver Oak Association) disparaging the project and encouraging the reader to sign a "form letter" opposing the project and mail to the Carson City Planning Department and Carson City Board of Supervisors. Appellant did not seek permission from the Silver Oak Association (Board or Management Company) to distribute literature within the boundaries of the Silver Oak Association. Several complaints were received by the Management Company regarding this unsanctioned activity within the boundaries of the Silver Oak Association. This literature was packaged and formatted in a way where some thought it was generated and distributed by the Silver Oak Association.
2. The information contained in the letter from the Appellant was inaccurate and was written with the intent to instill fear about the project within the reader, even though the nearest member of the Silver Oak Association lives .5 miles from the proposed site. The vast majority of the recipients of this letter cannot see the site from their residences. Literature was delivered to households that were as far away as 1.7 miles (taken from Google Maps) from the site. Many of the recipients live closer to existing multi-family projects than the site of this project, but may not know it. The average household who wrote in a letter in opposition lives OVER one mile from the proposed site. To better understand how far this is distance-wise, it is .8 miles from the Governor's Mansion to the Orsmy House and .4 miles from the Governor's Mansion to the Nevada State Museum. To our knowledge approximately 50 form letters opposing the project were mailed in as of this date, representing less than a 10% response rate to the Appellant's efforts.
3. In response to this, Applicant has made several efforts to educate the members of the Silver Oak Association about the project, including one on one meetings with neighbors, holding an open house informational meeting with neighbors at the Silver Oak Golf Course Clubhouse, and has scheduled another open house meeting for December 9th from 9:00 to 5:00 at the Silver Oak Golf Course. The purpose of these meetings is to create an opportunity for those who want to know more about the project to get their questions answered in an accurate manner at their convenience.

4. During the door-to-door outreach conducted by Robert McFadden, we found that many of those who sent in the “form-letters” of opposition did not know exactly where the site was and once informed about the actual location were much less or no longer concerned. We also learned through this outreach activity that many of these households were placed under the impression that this project might be a “low-income” housing project, which is a falsehood. We were not able to make contact with everyone who sent in an opposition letter, but several of those who we were able to reach actually sent in a letter retracting their opposition after we spoke with them and addressed their concerns with real facts. Many of the people we spoke to wanted to know why they were not informed about this project by Carson City. We explained how the public noticing process worked for matters such as this, and that they lived well outside of the noticing radius prescribed by law. Some of the people we talked to remained opposed to the project after we visited with them. The main complaint about the project from this small group of people was that they thought it was architecturally unappealing. When asked what they would rather see in its place the most common answer was to “leave it as open space”. We have kept records of the dates, times, and locations of these conversations should they be needed.
5. We also spoke with many residents who liked the project and believed that it was a welcome addition to the north end of Carson City. They liked the design, the location, as well as the potential tax revenue it could generate for the City of Carson. They told us that this project and others like it could help to revive the commercial area of North Carson City which has been struggling since the beginning of the recession. We also heard overwhelming support for quality housing options that are currently not available for professionals who live in Reno and work in Carson City. Some of these people have sent in letters of support for the project to the Carson City Planning Department.
6. While in the course of my normal work on a construction site within Silver Oak, I happened to run into Appellant Wipfli who was (well outside of the notification radius for this project) distributing biased and incomplete information regarding the project in an effort to garner support to rescind the SUP. We engaged in a 30 minute conversation about the project, where he indicated that he did not like the appearance or the density of the proposed development. I listened and then explained to him that although we could not reduce the density without destroying the economic feasibility of the project, I would be more than willing to schedule a meeting at his convenience with him, myself, and the project architect, Jeff Frame, to revise the exteriors of the buildings to make them more attractive to him and his fellow Appellants. To this date, Mr. Wipfli has not availed himself of my offer to sit down together to revise the exterior elevations of the building. During this

conversation he did NOT make any suggestions for improving the existing designs, however he did say that he did not like the color of the initial rendering. Because of this comment, I took it upon myself, and at my expense, to have the architect offer another color scheme for the existing design which has been completed and is available for viewing.

7. In addition to talking with members of the Silver Oak Community Association and other North Carson businesses, we met with the CEO of Carson Tahoe Regional Health, Mr. Ed Epperson, at the Carson Tahoe Regional Medical Center on November 23, 2015, to discuss the proposed development which is close to his facility. Mr. Epperson was supportive of the project and informed us that in the past, Carson Tahoe Regional Health has rented local apartments for consultants, auditors, and other out-of-town service providers who are in Carson City on a short term basis to perform work for the hospital. We expressly sought Mr. Epperson's permission to use his comments in this narrative. Additionally, we received many other comments from others in the business community, both nearby and further away from the proposed site, who indicated that there is a real housing shortage in Carson City and believe this project will be an important step in the right direction to keep up with demand for quality housing.