



# Carson City Planning Division

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## MEMORANDUM

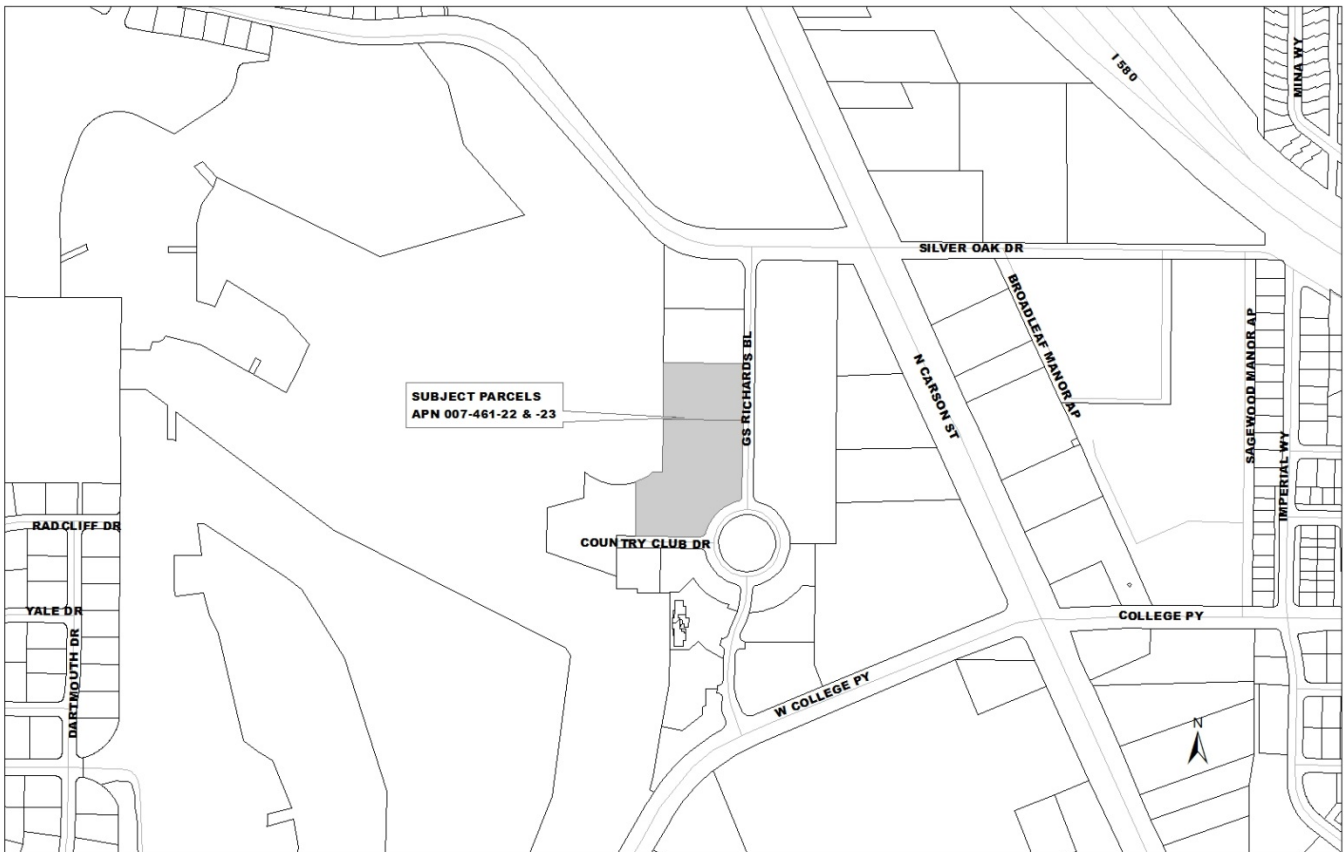
Board of Supervisors Meeting of December 17, 2015

**TO:** Board of Supervisors

**FROM:** Susan Dorr Pansky, AICP  
Planning Manager

**DATE:** December 7, 2015

**SUBJECT:** MISC-15-156 – Appeal of the Planning Commission’s approval of a request from Jeff Frame (property owners: Mark Turner and Sean Richards) for a Special Use Permit to allow multi-family apartments in a Retail Commercial (RC) zoning district on property zoned Retail Commercial-Planned Unit Development (RC-PUD), located on GS Richards Boulevard and Country Club Drive, APNs 007-461-22 and 007-461-23. (SUP-15-077)



## **DISCUSSION**

On September 30, 2015, the Planning Commission reviewed a request from Jeff Frame for a Special Use Permit to allow for the construction of a 90-unit multi-family apartment complex on two parcels located at the northwest corner of GS Richards Boulevard and Country Club Drive. The proposed project is located in a Retail Commercial (RC) zoning district within the Silver Oak Planned Unit Development (PUD).

Per Carson City Municipal Code (CCMC) Section 18.04.130 – Retail Commercial, multi-family dwellings are a conditional use allowed in the RC zoning district with the approval of a Special Use Permit. Upon extensive research of the original approval of the Silver Oak PUD, as well as subsequent development agreements, PUD modifications and Special Use Permit approvals within the Silver Oak Development, staff found nothing indicating that any conditional uses in the Retail Commercial zoning district within Silver Oak were limited or prohibited as a part of the PUD approval. (Refer to the District Attorney’s memo included with this item for more detailed analysis of the process under which the application was submitted and reviewed.)

Prior to the Planning Commission meeting, several letters both opposed to and in support of the project were received and were provided to the Planning Commission either with the staff report or as late material. In addition, members of the public who are adjacent property owners, representatives of property owners in the vicinity and general members of the public testified at the Planning Commission meeting both in favor of and against the project. After extensive testimony by the applicant and members of the public, the Planning Commission voted to approve the Special Use Permit by a vote of 5 ayes and 2 nays based on the findings contained in the staff report to the Planning Commission.

On October 9, 2015, the Planning Division received an appeal from two adjacent property owners, Mr. and Mrs. Richard and Brenda Wipfli, and Mr. and Mrs. Robert and Pamela Bauter (appellants). The appellants also included, as Attachment A, a letter that staff assumes is from Steve Hartman, an original party to the Silver Oak PUD approval, although only the initials “SDH” are provided. The appellants’ grounds for appeal are listed below with responses from staff for each item.

From appellants’ letter:

1. *APNs 007-461-22 and 007-461-23 are located within the Silver Oak Commercial Village that is zoned for retail and commercial use in accordance with the PUD (RC-PUD). Within this zone commercial and retail is allowed. There may be a mix of residential but not the sole singular use of multi-family. Multi-family apartment complexes were never contemplated, discussed, envisioned or allowed.*

Staff agrees that the two subject parcels are located within the area identified as the Silver Oak Commercial Village on the Silver Oak PUD Tentative Map and that the zoning of this area is Retail Commercial – Planned Unit Development (RC-PUD). However, the developers of the Silver Oak PUD placed no restrictions on the RC zoning within the PUD as a part of the original approval process, nor with subsequent Development Agreements and PUD modifications. In fact, “all of the uses accessory to and customarily incidental to” the RC zoning district are expressly permitted within the Silver Oak Development Agreement. As a result, all uses within the RC zoning district, both allowed by right and conditional, may be considered within the Silver Oak PUD. Residential uses, including multi-family dwellings, are a conditional use in the RC zoning

district. A multi-family apartment complex may never have been envisioned, but because the RC zoning district was not restricted through the PUD process, it is not prohibited.

2. *If changes of land use within the planned development are desired there is a process in place with the use of amendments to the PUD. We brought this major fact to the planning department and Planning Commission but the decisions were made to disregard the PUD in place and grant a special use permit. This action sets a precedent within our development that could allow for similar projects not compatible with the PUD throughout the Village.*

Multi-family dwellings are allowed as a conditional use with the approval of a Special Use Permit in the RC zoning district as described in staff's response above. Because the proposed use is a conditional use within the RC zoning district, it does not constitute a change in land use. There is precedence within the Silver Oak PUD of granting Special Use Permits for conditional uses allowed in the underlying zoning district, including residential uses in the RC zoning district as was approved in 2003 for the appellants' two residential dwelling units.

The Silver Oak PUD approvals and Development Agreements are silent on residential uses in the RC zoning district, and do not discuss mixed-uses or density restrictions within the RC zoning district. CCMC does not restrict residential uses in the RC zoning district to mixed-use buildings with only a few residential units. There is no density restriction for residential in a commercial zoning district outlined in CCMC, provided that required height, setback parking and open space requirements are met.

As a result, staff looks to the Carson City Master Plan for guidance on density. The land use designation for this area is Mixed-Use Commercial, which encourages up to 25 percent higher density residential within the Mixed-Use Commercial areas. The Mixed-Use Commercial area that the subject properties are located in consists of approximately 160 acres. Of that 160 acres 25 percent, or approximately 40 acres, may be considered for higher density residential. To date, 6.25 acres, or four percent of the Mixed-Use Commercial area is occupied by high density residential uses. The additional of the proposed project would bring the total percentage of high density residential uses to 6.5 percent.

3. *The integrity of the PUD should be maintained and not disregarded by the Planning Department and Planning Commission. Significant changes within the PUD have an avenue to allow for change. The property owners can initiate an action and amend the current PUD.*

Please refer to the memo prepared by the Carson City District Attorney for discussion related to this item.

4. *Secondly, we are appealing the proposed project itself. It is of high density. Discussion during the meeting alluded to the fact that this proposed density was in fact comparable to an apartment complex recently built or under construction in Reno. Carson City is not Reno.*

There is no density restriction for residential in a commercial zoning district outlined in CCMC, provided that required height, setback parking and open space requirements are met. As discussed in Item 2 above, the proposed project is located in a Mixed-Use

Commercial area, which encourages up to 25 percent of the area as higher density residential. The density range for High Density Residential is 8-36 dwelling units per acre and Carson City's Multi-Family Apartment (MFA) zoning district allows up to 36 units per acre. The proposed project's density is approximately 22 dwelling units per acre.

5. *We also protested against the design of this proposed project. It is not compatible in design to the existing buildings in the area. We adjacent property owners feel we have invested heavily with much success in creating an area that is visually appealing and in keeping with the open space that was originally considered in the Planned Development. The existing development within Silver Oak has been of a compatible nature and this project is a substantial departure from that vision.*

In the report to the Planning Commission, staff discusses adjacent property owners' concerns regarding the proposed architecture. Staff noted that there was nothing in the Silver Oak PUD approvals or Development Agreements placing specific design restrictions on the proposed multi-family project. There is a set of Design Guidelines for Silver Oak that is used by their Architectural Review Committee (ARC) to approve the architecture of the single-family residential lots within the Silver Oak Community Association, but the City does not have approval or denial authority as it relates to those Design Guidelines. The only requirement that the City has related to the Design Guidelines and the ARC is to ensure that the ARC has reviewed and approved any plans submitted to the City for approval. To staff's knowledge, the properties within the RC zoning district are not a part of the Silver Oak Community Association and are not subject to ARC approval.

Staff did state that there is a provision in the Carson City Development Standards related to site design that gave the Planning Commission the means to require modification to the proposed architecture if they felt that the architecture was truly not compatible with the surrounding existing buildings. This section of the Development Standards is as follows:

*Development Standards, Section 1.1.1 – The architectural style, massing and proportion of a building should be compatible with and complement its surroundings and environmental characteristics of the community.*

The Planning Commission was aware of this section of the Development Standards that allowed them to make modifications to the architecture, but chose to approve the project as it was presented. From a CCMC standpoint, staff and the Planning Commission found that the project met applicable Development Standards for architecture design.

Staff would like to note, however, that upon examination of the Silver Oak Commercial Village Covenants, Conditions and Restrictions (CC&Rs) provided as late material to the Planning Commission, staff discovered under Article 1, Section 1.3 – Architectural Compatibility on Page 4, a clause that states the following:

*The exterior architectural mass and design for structures of the Exhibit "A" property must receive the prior written approval of SILVER OAK. Subsequent owner/developers should contact representatives of SILVER OAK early in their development plans to ensure that little time and monies are expended on incompatible designs.*

*The project design theme discourages the use of spanish, mediterranean and southwestern design in any of the commercial elements of The Project. Mass and scale are important considerations in larger structures and project preference is to emphasize classical french country, craftsman, english country and similar design themes. Absent compelling design characteristics, plans for highrise (in excess of three floors above finished grade) design is discouraged.*

While the City is not a party to these CC&Rs, staff offers that if the Board of Supervisors chooses to do so, it could add a condition of approval requiring that the applicant obtain Silver Oak approval for its architecture prior to submitting for a Building Permit. This would be consistent with the current requirement for ARC approval in the single-family residential area. If the Board were to pursue this option, staff would suggest requesting clarification from the property owner for the proposed project, Mark Turner, regarding the specifics of this type of approval requirement, as he is also the current president of Silver Oak Development Company. Given that the Commercial Village is not a part of the Silver Oak Community Association, if a separate association does not exist for the Commercial Village, would Mr. Turner be essentially asking himself for approval of the architecture of the proposed project? If that were the case, staff is unsure whether such an additional condition would be beneficial.

From Attachment A:

6. *The operative document that governs the development within the area of the subject property is the Silver Oak PUD, as amended. The Development Agreement for the Silver Oak PUD, as amended, is specific that all the matters submitted as part of the application for the PUD, and its amendments are also part of the Silver Oak PUD. It is not the Carson City Master plan but the Silver Oak PUD and its Design Guidelines, CC&Rs and related submittals showing everything from streetscapes to acceptable architectural styles.*

Staff agrees that the operative document that governs development within this area is the Silver Oak PUD, as amended, and that the guidelines within that approval do supersede the Carson City Master Plan as it relates to land use. However, where the Silver Oak PUD is silent on these issues the Carson City Master Plan remains the operative document. In staff's extensive research of the project and approval history for the Silver Oak PUD, nothing has been found indicating that a multi-family project would be prohibited within the RC zoning district of the PUD.

7. *There never was a discussion of apartments as a component land use in Silver Oak—period. There was always a discussion of “mixed uses” in the Commercial Village but the land use categories at that time did not contain a mixed use district. The concept of having retail, commercial and residential uses in the same structure was considered and as this Board knows from its activities in downtown Carson City it is that mix of different land uses that can bring vibrancy to commercial areas with residential and retail uses. It is inappropriate and not in accord with the Silver Oak PUD to entirely supplant the RC-PUD land use category with a conditional use that is in essence a spot rezoning of a parcel within an existing PUD. Can a residential use be a part of the land uses for that category? I believe that it absolutely can, but it cannot be the ONLY land use in that otherwise RC-PUD land use designation.*

Staff can find nothing in the record for the Silver Oak PUD approval indicating discussions related to apartments or mixed uses and believes the record is clear that the Silver Oak PUD approvals and Development Agreements did not contemplate restrictions to any of the uses allowed in the zoning districts within the PUD, conditional or otherwise. As discussed in the Planning Commission staff report, the Silver Oak Development Agreement adopted as Ordinance No. 1994-1, Bill No. 167, Section 1 – Project Characteristics states the following:

*The PROJECT (Silver Oak) is a planned unit development project within the SF12000-PUD, RC-PUD, TC-PUD, RO-PUD, NB-PUD, zoning designations together with all of the uses accessory to and customarily incidental to the above-referenced zones.*

In addition, the Silver Oak Commercial Village CC&Rs provided as late material to the Planning Commission state the following under Article 1, Section 1.1 – Permitted Land Uses:

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

If the Silver Oak PUD approvals and subsequent Development Agreements restricted multi-family uses in the RC zoning district, staff would agree that allowing the proposed project would be inappropriate. Because there was no restriction placed on the RC zoning district, it was appropriate for the Planning Commission to consider the project through a Special Use Permit as allowed by the underlying zoning.

8. *The Silver Oak PUD has voluminous information and detail as to its general design guidelines and the character of the nearly 700 acre “community”. If there truly is a good reason to change it then it must be done through an Amendment to the PUD and not through spot rezoning in the guise of Special Use Permits. That violates the intent of planning, as a general premise in any community and specifically as approved, existing PUD with the detail that was provided through all of the prior amendments to the Silver Oak PUD and the Development Agreement. If the Applicant believes that they have the better mousetrap they must proceed through the appropriate Amendment process to provide them the flexibility to serve the market they envision.*

Please refer to the memo prepared by the Carson City District Attorney for discussion related to this item.

9. *The Applicant provided no evidence that the proposed development would “further or be in keeping and not contrary to the goals” of the Silver Oak PUD – which is the operative “masterplan” for the property in question. To do so would have required the Applicant to relate to the Design Guidelines and the CC&Rs which are applicable to the property and which were a part of the original and subsequent approvals of the Silver Oak PUD and Development Agreement. Other than the unsupported statements of Mr. Turner, there is no question that the proposed apartment buildings will be anything other than an “eye sore” in the “vicinity and general neighborhood”.*

Please refer to Item 6 above for discussion related to the Silver Oak PUD approval versus the Carson City Master Plan. Staff also notes that even with the existence of the Silver Oak PUD, the applicant would be required to address this finding as a part of the normal Special Use Permit process. The Planning Commission found that the proposed project was in keeping with and not contrary to the goals of the Carson City Master Plan.

10. *The decision approving the original Silver Oak PUD specifically provides at Condition 14 that “all development shall be in accord with the planned unit development application.” The proposed project is not in accord with the original project submittal or any subsequent amendments. No “stand alone” apartments were ever considered anywhere within the PUD and are not part of the planned unit development application.*

Staff agrees that all development within the Silver Oak PUD shall be in accord with the planned unit development application as outlined in original Condition of Approval 14 and again notes that while “stand alone” apartments may not have ever been considered, they were also not expressly restricted or prohibited as a part of the PUD.

11. *The Design Guidelines which were a part of the PUD application provided in Section 1.1 that the architectural character to be followed is French Country, English Cottage, Craftsman and Prairie style with allowed interpretation of those styles. I think we can all agree that the caricature of the proposed apartment building is in no way reflective of those styles or any interpretation of those styles.*

Please refer to staff's response under Item 5 above.

12. *In Ordinance 1995-5, Bill No. 105 approved by the Board of Supervisors in February of 1995, the Board reiterated that the “permitted uses of the land, the density or intensity of the land use and the maximum height and size of any proposed buildings are provided for in the approved Silver Oak PUD map, the conditions of the Map and the Development Agreement.*

Staff agrees with this statement but again notes that the permitted uses of the land, density or intensity of the land use and maximum height, and size of any proposed buildings provided for with the approved Silver Oak PUD map, conditions of the Map and Development Agreement do not restrict or prohibit the proposed multi-family project. The proposed project complies with these standards for the RC-PUD zoning district.

13. *The Board of Supervisors in making the 2<sup>nd</sup> Addendum to the Development Agreement incorporated the 2<sup>nd</sup> Addendum and the Original Development Agreement specifically citing the SF12000-PUD, RC-PUD, TC-PUD, RO-PUD and NB-PUD zoning designations with accessory uses customarily incidental thereto. At that time it went on to provide for the limitation to 1181 single family units, later increased by an Amendment to the PUD and the Development Agreement to a total of 1205.*

Staff also agrees with this statement but notes that the number of units cited in this statement and in the Development Agreement references is specifically related to single family units, not multi-family that may be contemplated as a conditional use in the RC-PUD zoning district. The proposed multi-family units are part of the permitted density within the RC-PUD zoning district.

14. *The 1998 Amended PUD provided that the Design Guidelines and standards included in the application “assure a quality development, creates a community theme any integrate the proposed overall development approach with the new Master plan for community wide elements, residential areas, commercial/office areas, drainage and open space and parks and landscape easements.” The proposed project is in direct conflict with these earlier approvals.*

The 1998 Amended PUD application does make the statement outlined in this item. However, the design guidelines in that application again do not restrict the allowed uses in any of the zoning districts within the PUD.

15. *In December of 1993 Silver Oak executed an acknowledgment of conditions for the Planned Unit Development that provided the conditions of approval in addition to the project application and related studies, design guidelines, CC&Rs and the conditions agreed to at the public hearing approving the Silver Oak Project. Those conditions included reference to the development matrix as to the unit type and maximum allowable density which were related to the standards of development for both residential cluster areas and standards residential development areas. Stipulations for the Residential/Office-PUD and adjacent properties was for “unified looking” structures.*

The development matrix identified under this item specifically addresses the single family residential lots identified on the tentative map and makes reference to the commercial areas by acreage only with no specific discussion related to conditional uses within those areas. There is a stipulation by the applicant in that approval that the Residential/Office-PUD and adjacent Retail Commercial properties will be developed with unified-looking structures. However, staff questions whether this was enforced beyond the Residential/Office properties along Nye Lane as it could be argued that all the Retail Commercial properties to the north are not necessarily “unified looking.”

16. *The requirement for the Project Applicant to give consideration to adapting the project to existing improvements in the vicinity is nowhere to be found in this application or the approval. The proposal is devoid of any effort to create the intended mixed use of RC land uses within the context of the PUD which again is the operative planning document in this part of Carson City.*

There is nothing in the Silver Oak PUD approvals or Development Agreements that discusses the intent of mixed-uses in the RC zoning district. The question about adapting the project to existing improvements is listed within the City’s Special Use Permit application and is specifically related public improvements.

17. *While the proposed Project Application attempts to skirt multiple issues within the CC&Rs and the PUD – the “Master Plan” in response to Question 1 is the Silver Oak PUD, as amended – not the City Master Plan. The land use category is RC-PUD as set forth in the approval – all land use designations are followed with the note of PUD for a reason. The PUD designation for land uses is what ties the SILVER OAK 650+/- acres together as an integrated plan with commonality other than just connecting streets and paths. Contrary to the statements of Mr. Frame the SILVER OAK PUD does not provide for multifamily housing in other than the designated Cluster Areas throughout the PUD.*

Please see staff’s response under Item 6 related to the Silver Oak PUD versus the Carson City Master Plan. Staff agrees that the PUD designation behind the RC zoning



district does mean that the additional restrictions through the PUD process apply. However, no additional land use restrictions were placed on this RC zoning district. Staff agrees that the Silver Oak PUD did not automatically provide for the multi-family residential use but since it didn't restrict the use either, staff must follow CCMC and the Carson City Master Plan.

18. *The response of the Applicant to Question 2 relating to multifamily housing is in error since multifamily was never intended for the project except in the cluster areas as an "ancillary use" thereto in those land use areas such as RC-PUD where there was a predominant use of Retail or Commercial with ancillary residential – not an abandonment of the underlying land use designation and a spot re-zoning to a special use permit use. To do this makes a mockery of the PUD process and the premises upon which approvals were granted originally.*

Staff stated in the report to the Planning Commission that it did not agree with the applicant that multi-family was always intended for this area, but further stated that it was also not prohibited.

19. *Would a retail office, commercial project with 10 or 20 residential units fit the PUD designation – clearly it would as long as the overall project density issue is resolved. However, to have an allowed conditional use be the only use within a zone designated RC-PUD violates the terms and requirements of the Silver Oak PUD. If the Applicant believes that the proposed project is that compelling they must go through an amendment to the planned unit development approval and get the changes that they require through that process not through a backdoor attempt to rezone a portion of the project.*

Staff does not agree that a retail office, commercial project with 10 or 20 residential units automatically fits within the Silver Oak PUD because there is nothing in the approval indicating as such. Staff also does not agree that the terms and requirements of the PUD specify that a commercial use is required on every lot in the Commercial Village and that residential as the only use on a lot is prohibited. As with the currently proposed Special Use Permit for a residential use in the RC zoning district and the appellants' 2003 Special Use Permit for a residential use in the RC zoning district, any residential use in the Commercial Village would need to obtain a Special Use Permit because the PUD does not identify those uses as specifically allowed.

Further, staff submits that if the lower density mixed-use residential/office/retail that the appellants state is allowed in this RC-PUD zoning district were specified in the Silver Oak PUD approvals and Development Agreements, the appellants' themselves would not have been required to go through the Special Use Permit process to obtain approval for their two residential units. Their use would have been allowed outright.

20. *The Board must consider that if this application is allowed that endorsement will be equally applicable to every other property in the Silver Oak Commercial Village, without regard to density or architectural design. Perhaps if you visualize what that would look like you will agree that the project as presented is neither appropriate nor allowed and does not satisfy the requirements of a conditional use in a RC-PUD land use district.*

Staff does not agree with this statement. Absent specific guidance in the Silver Oak PUD, the Planning Commission and Board of Supervisors can look to the Carson City

Master Plan that encourages up to 25 percent higher density residential for this Mixed-Use Commercial area. Any and each subsequent application for development within the PUD will be considered on its own merits.

Staff recommends that the Board of Supervisors uphold the Planning Commission's approval of the Special Use Permit with the additional conditions required as a result of the original public testimony.

If you have any questions, please contact Susan Dorr Pansky at 283-7076 or [spansky@carson.org](mailto:spansky@carson.org). Thank you.