

Cupertino, CA 95014
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**APPROVED MINUTES OF THE SPECIAL MEETING OF
THE HOUSING COMMISSION HELD ON June 23, 2016**

ROLL CALL

Commission Members present: Harvey Barnett, Chairperson
Nina Daruwalla, Commissioner
Sue Bose, Commissioner

Commission Members absent: Rajeev Raman, Vice Chair
Shirley Chu, Commissioner

Staff present: Gian Martire, Associate Planner
Benjamin Fu, Assistant Director of Community Development
Barbara Kautz, Attorney, Goldfarb & Lipman, LLP
Elizabeth Klueck, Attorney, Goldfarb & Lipman, LLP

APPROVAL OF MINUTES:

May 12, 2016

Minutes of the May 12, 2016 Housing Commission meeting were approved as written

ORAL COMMUNICATION:

Rebecca Burn from the Housing Voices Coalition addressed the Commission regarding the affordable housing needs for developmentally disabled adults. She asked that the Housing Commission consider setting aside 50 Very-Low Income BMR units to be available to those citizens.

POSTPONEMENTS/REMOVAL FROM CALENDAR:

None

WRITTEN COMMUNICATIONS:

None

CONSENT CALENDAR:

None

PUBLIC HEARING:

1. Subject: Appeal of Kimberly Sandstrom regarding eligibility to purchase a BMR Unit
Recommended Action: Hear the appeal and move to recommend to the City Council that it affirm the determination that Kimberly Sandstrom was ineligible to purchase a BMR home because her income exceeds the established income limit

Tentative City Council hearing date August 2, 2016.

Barbara Kautz, Goldfarb & Lipman, explained that they had been asked to serve as "staff" to the Commission on this matter in the absence of the City's Housing Planner. She briefed the Commission on the agenda item. Ms. Sandstrom had reached the top of the eligibility list for a BMR Unit and when the income calculation was done, it was determined that her income exceeded the limit by around \$1600.00.

She then filed several appeals of that determination to West Valley Community Services and then to the Housing Commission. The Housing Commission will make a recommendation to the City Council. Ms. Sandstrom's assertion is that a bonus she received should not be added to her income. Ms. Sandstrom has presented that her bonus is a variable amount and the one she anticipates this year will be much lower than last year's. It was a small overage amount and it is disappointing, but after a review of the eligibility documents and the current regulations and the appeal paperwork from West Valley Community Services, Staff is making the recommendation that the Housing Commission ask the City Council to affirm the decision to deny eligibility because her income exceeded the maximum limit.

Commissioner Daruwalla stated that she felt that the bonus shouldn't been counted. There was a couple of days between issued paychecks and the bonus is not a regular payment. The decision makers at West Valley Community Services should try to be very careful in these situations, as their decisions are literally affecting someone's life.

Barabra Kautz, stated that they too felt that way, but that in looking at the regulations more closely, the issue is what total income was received last year. An applicant's tax form should be the decider not the paystubs. They will be requesting changes to the BMR Manual to better define total income.

Commissioner Bose asked if Ms. Sandstrom was still on the eligibility list. Christine Nguyen, from West Valley Community Services (WVCS) stated that she was still on the list, but there was no way to tell how long it would be before another unit became available. Ms. Sandstrom also explained that once the new applications are received, a random draw is done which determines the place an applicant is on the list. So she may be first one the list right now but in November, she could be last.

Ms. Kimberly Sandstrom, the appellant, addressed the Commission. She provided a slide show presentation to better illuminate the details of her appeal. There are three main reasons for her appeal; 1) The program provides disparate treatment for older workers. She feels that older workers who still fall below the income level should be awarded some additional eligible points in that that they may make a little more, but have less career years left for earning; 2) There is a conflict of interest. WVCS shouldn't be able to determine eligibility and grant approvals to its own employees. She was denied the unit and then a member of Staff at WVCS was approved and bought the unit. And further, due process was not afforded as the unit was sold before the conclusion of her appeal; 3) There are problems with the BMR Manual. As stated by City Staff, gray areas exist concerning the definition of total income and the approval authority within WVCS. She would like to have a second meeting so that Staff will have a chance to compare other cities programs and other State and Federal requirements so that Standard Operating Procedures and be adopted to make Cupertino's program in-line with others.

Chair Barnett opened the item to Public Comments:

There were no comments from the public. The Public Comment period was closed.

Barbara Kautz stated that the sale of the unit to a WVCS staff person was a concern and asked for a copy of Ms. Sandstrom's slide presentation. They will be conducting an investigation into the sale transaction. She informed Chair Barnett that their investigation may not be completed by the next hearing date. Josh Selo from WVCS stated that they work in partnership with the City so City Staff did know that the next person on the list was a WVCS staff member. Christine Nguyen from WVCS said that they always work very closely with the City when administering the BMR program. Chair Barnett asked Barbara Kautz for clarification on the availability of a recommendation by the next meeting. She said the on the discussion points regarding changes to the policies, they could be ready, but wanted to make sure the sale transaction was fully legal. Elizabeth Klueck addressed the Commission regarding the methodology behind calculating income. She said Cupertino's program calculates income by the same statutes as other Below Market Rate Housing programs. Prior income statements (W2s, paystubs, etc.) are used to make a determination of anticipated income for the upcoming year. Commissioner Daruwalla asked why, if Ms. Sandstrom explained that her income level had changed, that wasn't taken into consideration. Barbara

Kautz explained that in February it would be very hard to make the assumption that there would be no bonus issued since there had been bonuses issued in the prior years.

Chair Barnett said that the Commission would take all the information received today into consideration, review with Staff and bring this item back for a recommendation at the meeting of July 14, 2016.

PUBLIC MEETING:

2. Subject: Request for Funding by Charities Housing Development Corporation to assist in the development of affordable senior housing at 19160 Stevens Creek Boulevard
Recommended Action: review the proposed funding request and adopt resolution No. 16-04, recommending that the City Council reserve \$3,672,000 from the City's Affordable Housing Fund to assist in the development of affordable senior housing at 19160 Stevens Creek Boulevard.

Tentative City Council hearing date July 5, 2016.

Barbara Kautz let the Commission know that the City had received a request for a loan from the Charities Housing Corporation (CHC) for 3.7 million to build low and very low senior income housing units at 19160 Stevens Creek Boulevard. The City approved that loan request. The item in the agenda is just to ensure that the City's loan, as promised, is placed in reserve until the project has received all of the Planning Department approvals. The property is currently being purchased, with the sale expected to close shortly. CHC has other funding sources to draw upon until they are ready to execute the loan agreement with the City. Cathy Robinson from CHC addressed the Commission. She stated that the CHC will be proposing to build a small, 19 unit, senior housing development on the property. She didn't have all the details, but they are wanting to design a project that meets all the current General Plan requirements with our any variances or other exceptions so that the project can be approved, built and occupied quickly. They were also requesting that some minor changes be made to the loan disbursements requirements because the 2 year caveat to have construction finished is a very short timeline. They will do their best to meet the deadlines, but would like more time written into the contract. CHC would also like the default clause emended such that if the project didn't move forward, the City would take ownership of the land and forgive its own \$1 million loan and the \$1 million permanent loan. The attorneys involved have agreed that this change in the clause would be agreeable. Chair Barnett opened the item to Public Comments:

A resident spoke in favor of senior housing on the site, but wondered what square footage the units would be and how many parking spaces would there be. She wanted to make sure the project was the right size for the very small lot.

Chair Barnett closed the Public Comments period.

Staff member Fu explained that the item on the agenda is just for funding assurances. A development application has not been submitted.

Chair Barnett asked for a motion from the Commission to approve the request per the draft resolution.

MOTION: Commissioner Daruwalla moved to approve Resolution No. 16-04

SECOND: Commissioner Bose

ABSENT: none

ABSTAIN: none

VOTE: 3-0-0

STAFF AND COMMISSION REPORTS:

None

OLD BUSINESS:

None

NEW BUSINESS:

3. Subject: Proposed Amendments to Policy and Procedures Manual for Administering Deed-Restricted Affordable Housing Units
Recommended Action: review the proposed amendments and adopt resolution No. 16-03, recommending that the City Council adopt the proposed amendments to the Policy and Procedures Manual.

Tentative City Council hearing date August 2, 2016.

Barbara Kautz addressed the Commission on the three areas suggested for change in the Manual. The first recommendation concerned how income is calculated. In light of the previous item, she suggested that the Commission wait on discussions of this change. The second recommended action is to change Section 2.2, the Conflict of Interest Regulations. Staff recommends that this section be clarified and expanded to include exclusions for consultants and anyone else who has decision or policy making authority who work on the Housing Programs. These persons would be ineligible to apply for a BMR unit. This recommended change is in keeping with the State and Federal Conflict of Interest policies. The third recommendation is to Section 5, the Appeal Process. Staff recommends that this section be amended to reflect that an appeal must be heard and a decision rendered within the 90 days that the City has to sell the unit. This would streamline the appeal to be heard by WVCS and then to a separate, outside (unbiased) Hearing officer. This Hearing Officer would be the final deciding authority. The unit in question could not be sold until after the appeal had been decided.

Chair Barnett opened the item to Public Comments: There were no comments. The Public Comment period was closed.

Staff requested that the Commission make a recommendation that the City Council approve changes to Section 2.2 and Section 5 of the Policy and Procedures Manual.

MOTION: Commissioner Barnett moved to approve Resolution No. 16-03 with the minor typographical and wording changes as suggested by Commissioner Bose

SECOND: Commissioner Daruwalla

ABSENT: none

ABSTAIN: none

VOTE: 3-0-0

ADJOURNMENT:

- The meeting was adjourned to next regular Housing Commission meeting on July 14, 2016, 9:00 a.m.

Respectfully submitted:

_____/s/Beth Ebben
Beth Ebben
Administrative Assistant