

Cupertino, CA 95014
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**APPROVED MINUTES OF THE REGULAR MEETING OF
THE HOUSING COMMISSION HELD ON August 11, 2016**

ROLL CALL

Commission Members present: Harvey Barnett, Chairperson
Nina Daruwalla, Commissioner
Rajeev Raman, Vice Chair
Sue Bose, Commissioner (arrived late)

Commission Members absent: Shirley Chu, Commissioner

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

APPROVAL OF MINUTES:

1. June 23, 2016

Minutes of the June 23, 2016 Housing Commission meeting were approved as written

ORAL COMMUNICATION:

None

POSTPONEMENTS/REMOVAL FROM CALENDAR:

None

WRITTEN COMMUNICATIONS:

None

CONSENT CALENDAR:

None

PUBLIC HEARING:

2. 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

*Continued from the June 23, 2016 meeting
Tentative City Council hearing date September 6, 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 reminded the Commission of the discussion from the last meeting. Ms. Sandstrom raised a few questions regarding how other cities calculated income. The results of that research is to be presented today. Elizabeth Klueck, Attorney,

Goldfarb & Lipman, LLP, directed the Commissioners to information from the agenda packet. The income calculations used are in line with the way other cities and agencies do their calculations. Income from the previous year is used to project into the upcoming year. This methodology comes from Federal Law and Statutes and the Home Technical Guide.

Income from each pay period was multiplied by 24 pay periods each for a total of \$96,012.80.

Bonuses included as income (per 24 CFR 5.609b of the BMR Manual).

Bonuses totaled \$7635.34.

Total annual income of \$103,648.14.

Even if the amount of bonuses for the last 3 years had been averaged, Ms. Sandstrom's income would still have exceeded the moderate income level limit (102,050.00) for a two bedroom unit. Christine Nguyen of West Valley Community Services pointed out that the calculations are by 26 and not 24. Barbara Kautz confirmed, but said that the income amount was the same. She also mentioned that from the last meeting, the City was criticized for calculating "anticipated" income, but said that all cities do that. The only way to feel comfortable with forecasting upcoming wages was to look a past wages. However, she suggested that with variable income types (bonuses and commissions) that another methodology could be devised or if someone could demonstrate a significant reduction in pay this year from the past year (loss of job, demotion, etc.) allowances should be made for those situations. Commissioner Daruwalla commented that the statements an applicant makes as part of an application should be considered too. Ms. Sandstrom indicated her bonus this year was a onetime thing. Commissioner Raman pointed out that an applicant might also not disclose an upcoming income increase. Commissioner Bose asked if the sale of stock was always counted as income. Elizabeth Klueck replied that it was. Chair Barnett reminded the Commissioners that they needed to make a recommendation based upon what the rules are today and not on proposed changes to the BMT manual. Barbara Kautz concluded the presentation by stating that the City followed established policies and practices in calculating Ms. Sandstrom's income and that her income was determined to be over the limit.

The appellant, Kimberly Sandstrom, addressed the Commissioners with a presentation. She provided a brief summary of dates of her appeal starting in February and continuing through to the meeting today and it is still not finished. She expressed dismay in how long the process has taken to come to the same, original conclusion. She wanted to go over what she thought should be counted as her income, she wanted answers to the questions she posed to the Commissioners at the last meeting and about the conflict of interest as that was now included as part of her appeal – it wasn't at first because she didn't know it existed, but once she did, she feels that it is also part of her appeal.

She doesn't feel that the inclusion of the stock she sold in 2015 be added to her estimated 2016 income. If she were to sell stock today she would have a net loss due to the reduction in the stock's value. She has documentation showing that her expected amounts of bonus income in 2016 will be well below what she received in 2015. She stated that it is not reasonable to include onetime earnings from 2015 as anticipated income for 2016. She cannot count on bonuses as wages as she has no control about how much, if any, she will receive. By making the adjustments based on the documentation she provided, she would be under the income limit.

She wanted to know if the Housing Commission had received answers to her questions posed last time regarding current and present staff members of the City and of West Valley Community Services in BMR units. Barbara Kautz said that these questions were passed along to the persons conducting the investigation into the conflict of interest and that those answers would be forthcoming once the investigation concluded. She quoted a passage from Prohibition on Self Dealing (Section 10.90). Which outlines conflict of interest policy by/for public officials. Barbara Kautz stated that this Section is

normally applied to City Council members and other Governing Officers such that they may not enter into a contract that financially benefits them. As an example, if a City Council member is an architect, he cannot be awarded a contract for architectural services even if he recuses himself from voting on the project. She said that the investigation was actively looking into the conflict of interest question which includes potential violations to Section 10.90. The Commissioners reiterated that they would like to review the results of the investigation once it is completed and before it is presented to the City Council so that they can be prepared and participate at the Council meeting.

Commissioner Bose asked if Barbara knew how long it took to find the next applicant and get them approved. She seemed to feel that it all happened very fast. Barbara Kautz did agree that it happened fast, but she had not been involved in any of those discussions. She stated that the Council did agree to amend the appeal process to make it more streamlined. An appeal would be heard by the Manager of WVCS and then by the City Council. Not as a way to bypass the Housing Commission, but to try to get an appeal heard and resolved within 60 days.

Ms. Sandstrom continued with her presentation, but was asked by Chair Barnett to discontinue her discussion about the purchaser of the unit of which she had been deemed ineligible for. The purchaser was a former WVCS employee so Ms. Sandstrom wanted to demonstrate her argument that a conflict of interest did exist. Chair Barnett asked her to confine her presentation to the matter before them today – the income eligibility. Commissioner Raman said that there are two factors in the appeal, the income calculation and the conflict of interest. The Housing Commission could make a recommendation regarding the income calculations but could not make a recommendation about whether or not a conflict of interest occurred. Ms. Sandstrom was encouraged to give her research information to Goldfarb & Lipman, LLP, so it could be reviewed as part of their investigation into those claims. Barbara Kautz clarified that the City Attorney's office would be making the determination regarding the conflict of interest and that the City Council would be making the determination regarding the income eligibility. Ms. Sandstrom then read from the City's Commissioner's Handbook as it relates to the obligations of the Housing Commissioners. She asked Housing Commissioners to reject Staff's finding that her income was over the limit threshold for a two bedroom unit, she wanted them to ask the City Council to reverse what she felt was an illegal sale of the unit and she asked that the Commissioners work to make the process better for herself and everyone in the program.

Commissioner Daruwalla asked again to have a chance to review the investigative report. Commissioner Bose stated that she didn't think that the Housing Commission had the authority to un-do a sale.

Chair Barnett opened the item for Public Comments.

A resident, James Elgrin, pointed out that the HUD guidelines call for exceptions when documents have been presented to show that current income status/circumstances has changed. He felt that WVCS should have made allowances and further that the person making the initial determination, was in conflict.

Chair Barnett closed the item for Public Comments.

Barbara Kautz said that as part of reviewing Ms Sandstrom's appeal, her application and documentation were reviewed and allowances were made for the change in her income status. She explained to the Commissioners that her firm received this information in February and they had to make assumptions based on the flexible economy and variable nature of bonuses, especially ones tied to stock performance.

MOTION: Commissioner Raman moved to recommend that the City Council deny the appeal and affirm the determination that Ms. Sandstrom did not meet the income eligibility requirements to purchase a BMR unit

SECOND: Commissioner Bose

ABSENT: none

ABSTAIN: none

VOTE: 3-1-0 (Daruwalla, no)

PUBLIC MEETING:

None

STAFF AND COMMISSION REPORTS:

None

OLD 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. 16-04, recommending that that the City Council adopt the proposed amendments to the Policy and Procedures Manual.

Tentative City Council hearing date September 6, 2016.

Barbara Kautz addressed the Commission regarding the third area for suggested changes - income calculations, Section 2.4.1. On August 2nd, the City Council approved recommendations to the BMR Manual for section 2.2, Conflict of Interest and Section 5, the Appeal Process. Staff's recommendation is to revise the way applicant income is calculated and other changes to the eligibility list. Currently new applications are received every year in October, reviewed in December and wait lists created in January. Persons already on the wait list must also reapply every year to ensure that they still meet all the requirements. Staff proposes that new persons on the wait list be placed at the bottom, so that people already there, won't lose their place. Staff is also recommending that persons who work in any public agency receive one additional preference point. And Staff is recommending that the City or WVCS make changes to the way the program is marketed to the public. Other changes have not been suggested because they may violate various other Fair Housing Laws such as preferences based on age, head of household or longevity in the Community. Staff is proposing that the income calculation methodology be clarified and be calculated using the Home Technical Guide. The Technical Guide is very clear and has examples. This clarification also calls for consistency with the documentation to be used for determining income. Everyone will need to submit the same types of income verification documentation, which is not currently the practice. Commissioner Raman suggested that in instances where there is a projected decrease in income and the applicant is seeking an exception, the applicant must show that this decrease is for the whole year. Chair Barnett suggest that the preference points be changed to give 2 points to City and public school employees since it has become very hard to recruit and retain these workers due to the high cost of housing in the area.

Chair Barnett opened the item for Public Comments.

No comments were received. Chair Barnett closed the item for Public Comments.

MOTION: Chair Barnett moved to approve Resolution No. 16-04 with the addition of requiring proof of a projected decrease in income be year long

SECOND: Commissioner Raman

ABSENT: none

ABSTAIN: none

VOTE: 3-0-1 (Bose Daruwalla absent)

NEW BUSINESS:

None

ADJOURNMENT:

- The meeting was adjourned to next regular Housing Commission meeting on September 8, 2016, 9:00 a.m.

Respectfully submitted:

/s/Beth Ebben

Beth Ebben

Administrative Assistant