

**MINUTES  
PLANNING COMMISSION REGULAR MEETING  
NOVEMBER 3, 2009**

**1.0 CALL TO ORDER**

The Regular Meeting of the Planning Commission of the City of Highland was called to order at 6:00p.m. by Chairman Haller in the Donahue Council Chambers, 27215 Base Line, Highland, California.

Present: Commissioners Randall Hamerly, Trang Huynh, Milton Sparks, Michael Stoffel, and Michael Willhite, Vice Chairman John Gamboa and Chairman Richard Haller

Absent: None

Staff Present: John Jaquess, Community Development Director  
Lawrence Mainez, City Planner  
Sean Kelleher, Assistant Planner  
Linda McKeough, Administrative Assistant III

**2.0 COMMUNITY INPUT**

There was none.

**3.0 CONSENT CALENDAR**

**3.1 Minutes from the October 6, 2009, Planning Commission Regular Meeting.**

**A Motion** was made by Commissioner Hamerly and seconded by Commissioner Trang to approve the Minutes of October 6, 2009, as submitted.

Motion carried on a 6 – 0 vote with the abstention of Vice Chairman Gamboa.

11-03-09.PC

## 4.0 PUBLIC HEARINGS

- 4.1 A Conditional Use Permit Application (CUP-008-002) to adopt a Planned Development Document and a Tentative Tract Map Application (TTM-008-002) consistent with the Planned Development Document to subdivide a 22.92 gross acres parcel of land into 133 detached single-family residential lots with various community amenities. The proposed Project is located on the southeast corner of Greenspot Road and Orange Street. (APN: 1201-401-01.) Representative: Hal Woods, Centerstone Communities, Inc.(Denied by the Planning Commission on October 20, 2009.)

Chairman Haller introduced the Item and called for Staff's presentation.

Vice Chairman Gamboa explained he has a conflict of interest on this Item since he resides within five hundred feet (500') of the proposed Project.

(Note: Vice Chairman Gamboa left the Dais and left the Council Chambers at 6:03p.m.).

Staff distributed a color copy of the proposed Resolution 09-023 to the Commission. Assistant Planner Kelleher then gave the presentation from the Staff Report and explained the distributed Amended Resolution is different from the one that was in the Commission's Packet and is the result of the City's legal Counsel review for clarification of the Commission's direction to Staff. Assistant Planner Kelleher then concluded his presentation.

Chairman Haller asked if the Commission had any questions of Staff.

A question was asked by a Commissioner on Page 31 of the Staff Report regarding the High Density Designation for the Project.

Discussion ensued between the Commission and Staff regarding High and Low Densities, General Plan Goals, along with the clustering design for the Project.

The following are comments made by the Commission: 1) one of the Commissioner's desire to have a Lower Density since the Project allows 6 du/ac, the intensity would be a clustered Development instead of small substandard Lots and would be a higher intensity use in pockets of the Development, but not spread over a higher intensity spread throughout the Project; 2) spread over a higher intensity use of clustering and spread throughout the Project and then would have more open space; 3) would lower the perceived density when one would be going through the Project with a higher intensity of use in areas of the Development, but not a Higher Density.

11-03-09.PC

There being no further discussion or questions of Staff, Chairman Haller then asked if there was anyone in the audience who would like to speak on the item. Hearing none, he then closed the Public Hearing and opened the floor for discussion amongst the Commissioners.

The following are comments made by the Commission regarding the revised distributed Resolution: 1) likes the direction that it is going with more emphasis to the design issues and density and on the Development and providing a greater benefit with the flexibility of design, rather than seeing how many lots could be placed on a piece of land; 2) the new revised verbiage is better rather than the old Findings; 3) also reflects some of the land use and safety issues other than just the Gun Club. Staff asked the Commission if it is the Commission's intent to delete references of Higher Density and replace with Higher Intensity and the Commission concurred and Staff provided an example on Page 31 the second Paragraph from the bottom of the Page of the Staff Report.

The following are comments made by the Commission: 1) using the areas within the Tract in order to create Higher Density clusters / higher number of dwelling units per acre and not increasing the overall Density of the Project; 2) would be an issue if it was read as Higher Density of dwelling units per acre, and spread over the entire Tract.

Staff responded that makes the Amendments clearer using the Intensity and Mr. Geoff Ward, who is an Attorney from and on behalf of the City Attorney's Office, addressed the Commission. He stated the Commission approve with the Amendments (of replacing Higher Density with Higher Intensity verbiage) and understands that those Amendments would be revised in that Section or any other relevant Section. Staff was trying to capture what the Commission's intent with the clustering design in certain areas. He then recommended the Commission revise Staff's proposed recommendation.

It was noted the Commission's direction would be that Staff would go through the Resolution and revise the verbiage deleting references from Higher Density in dwelling units per acre for the overall Project to Higher Intensity / Intensities in the proposed Resolution 09-023.

**A Motion** was made by Commissioner Hamerly and seconded by Commissioner Huynh to Adopt Resolution 09-023, as amended, Denying Conditional Use Permit (CUP-008-002) and its associated Planned Development Document; and; Deny Tentative Tract Map (TTM-008-002), subject to the recommended Findings of Fact.

Motion carried on a 6 – 0 vote with the abstention of Vice Chairman Gamboa.

11-03-09.PC

(Note: Vice Chairman Gamboa returned to the Dais at 6:12p.m.)

4.2 MCA-009-004 - The City of Highland Municipal Code is being Amended to add Chapter 16.80 prohibiting the establishment and operation of Medical Marijuana Dispensaries in all Zoning Districts within the City of Highland. The location is City-Wide.

Chairman Haller introduced the Item and called for Staff's presentation.

Staff distributed a letter from Ms. Ilinanoa Suliafu, dated November 2, 2009, to the Commission and then Assistant Planner Kelleher gave the presentation from the Staff Report and then concluded his presentation.

Chairman Haller asked if the Commission had any questions of Staff.

A comment was made by a Commissioner that No. 2 on Page 3 of the Staff Report regarding the California Police Chiefs Association extensive report was not provided to the Commission. Staff responded and apologized that the report was not included in the Commission's Agenda Packet. It was noted that a copy is in the Project file.

Chairman Haller asked if the Commission had any further questions of Staff.

Discussion ensued between the Commission and Staff regarding the Land Use and Zoning would consist of amending the Land Uses and Municipal Code. Staff added the Attorney from the City Attorney's Office is here to answer any questions the Commission may have in addressing issues in the Municipal Code.

A question was asked by a Commissioner if there was more teeth in the Land Use with a CUP Application or are there more legal issues rather than Land Use issues. Staff responded that different Cities have taken different approaches and there is no right / wrong answer. The City Attorney felt the Zoning Code makes it enforceable by Code Enforcement and the City Attorney, as opposed to the District Attorney. The Commissioner then stated it would be more of a local control through the Land Use process as opposed as to going into the legal aspects that it might go all the way up to State level and Staff responded that is correct.

Chairman Haller asked if the Commission had any questions of Staff. Hearing none, he then opened the Public Hearing and called from the Speaker Slips for Mr. Paul Charot.

11-03-09.PC

Mr. Paul Charot, 12223 Highland Avenue, Suites 106 – 305, Rancho Cucamonga, California, who represents a coalition for a drug free California, addressed the Commission. He commended the Commission for its action and the local coalition represents Riverside and San Bernardino Counties and has 150 volunteers consists of teachers, fire fighters, police, local people, etc. whose goals are to keep the youth off of drugs. He explained some information with the Local and Statewide standpoint and as of today, there are 202 California Cities that have banned or have created a moratorium on Marijuana Dispensaries and only 34 Cities have an Ordinance in allowing them and is a 6:1 ratio and explained how Highland is on the right side of the issue. He stated about there may be organizations / people who will be targeting Highland pushing for the Marijuana Dispensaries in that they are orchestrated, they communicate on the Web and may show up in force and the coalition tracks them. He is concerned with youth, and how many youth are entered into drug rehab for Marijuana more than any other drug combined. Mr. Charot stated he has also worked at the White House for six (6) years in the Drug Czar's Office and there is a 8:1 ratio that people are driving while on drugs other than DUIs. He is also concerned about crime issues. He is also a Member of the California Police Chiefs Medical Marijuana Task Force. With the Dispensaries force, in Los Angeles, there are 1,000 marijuana shops on their streets, more than they have Starbucks, McDonalds or 7/11 Stores combined. If you give the pro-drug lobby an inch, they will take a mile. So with being up front, you shut the door and they will leave you alone and will go to another town that has yet to put a resistance to this fight. Mr. Charot said with a \$10,000 investment, the people can make up to \$1 million/ year with the Marijuana Dispensaries. You can pick up the Inland Empire Weekly Magazine and can find pot ads located in the back and would not be surprised if there were Medical Marijuana delivery services. He further explained a San Diego District Attorney Study recently came out in that there are 98% of people smoking pot have a Medical Marijuana ID Card if for no other reason, just to get high. Even if you are unable to restrict the physicians from providing the ID Cards, and you are providing a message with the Red Ribbons. In closing, Mr. Charot said the City solution is to adopt the proposed verbiage and that Marijuana Dispensaries / Businesses will abide with State, Federal and Local laws. He then distributed a list to the Planning Commission as a resource regarding who are listed with Ordinances that have banned, placed a moratorium on or other of the Dispensaries and cited the Riverside and Palm Springs Ordinances and Highland is in the majority. Mr. Charot further indicated that he is running for State Assembly and, if elected will be representing a portion of this District, and will put protecting youth and working with colleagues like the Commission at the top of his agenda. He then thanked the Commission.

Chairman Haller asked if anyone else would like to speak on the Item. Hearing none, he then asked if the Commission had any questions for the City Attorney.

11-03-09.PC

A question was asked by a Commissioner as suggested by Mr. Charot, if the Commission adopts the Ordinance, that all businesses will comply with Local, State and Federal laws and what that clause would do that other mechanisms do not. Attorney Ward responded the clause did not make it as clear and this makes it more thorough / direct why banning the Dispensaries and the Findings associated with that. A question was asked by a Commissioner that it does not target that section or pertinent clause and Attorney Ward responded the State law is ambiguous with Medical Marijuana Dispensaries in that there is a portion of law that allows cooperatives / collectives can associate for the purpose of distributing Marijuana to Members. There is room for argument if a business was to form here in Highland being a cooperative / collective, they would not be in violation of State or Federal law and they could still distribute Marijuana. The proposed Ordinance would expressly prohibit that and thought this was a better way to target this directly.

A question was asked by a Commissioner if the Land Use Ordinance the Commission is considering would also address regardless of the form of organization it is saying, this activity as opposed to this form of organization or name of the business and Attorney Ward responded that is correct.

Chairman Haller asked if the Commission had any further questions of Staff or Attorney Ward. Hearing none, he then asked if anyone else would like to speak on the Item. Hearing none, Chairman Haller closed the Public Hearing and opened the floor for discussion amongst the Commissioners.

Discussion ensued between the Commission and Staff regarding Federal Government, Local Zoning decisions can be regulated through the City's Land Uses, Land Use compatibility and could be more stringent done locally rather than Statewide or Federally.

There being no further questions of Staff or discussion amongst the Commissioners, Chairman Haller then called for the question.

**A Motion** was made by Vice Chairman Gamboa and seconded by Commissioner Hamerly to approve Resolution No. 09-024 recommending the City Council approve the following:

1. Adopt a Notice of Exemption and Instruct the City Clerk to file a Notice of Exemption with the County Clerk of the Board, and;
2. Introduce an Ordinance to Amend Title 16, Land Use and Development Code, adding Chapter 16.80 "Medical Marijuana Dispensaries."

11-03-09.PC

Motion unanimously passed on a 7 – 0 vote.

(Note: Assistant Planner Kelleher left the Chambers at 6:25p.m.)

- 4.3 Toll Brothers has submitted the “La Costa” Floor Plan for Tract 16914 (SUB 04-001) for the Planning Commission’s consideration. Toll Brothers is proposing the La Costa Floor Plan as an alternative to satisfying the Condition of Approval that fifteen percent (15%) of the houses within Tract 16914 be single-story units. Tract 16914 is a sixty (60) Lot Subdivision located on an approximate 54-acre Site on the north side of Oak Creek Channel and east of Plunge Creek at the terminus of San Benito Street. Representative: Brad Hare, Senior Project Manager for Toll Brothers

Chairman Haller introduced the Item and called for Staff’s presentation.

Commissioner Huynh explained he has a conflict of interest on this Item since he resides within the Tract.

(Note: Commissioner Huynh left the Dais at 6:25p.m.)

City Planner Mainez explained Senior Planner Meikle was unavailable for tonight’s Meeting, explained the Applicant is here and then thanked the Commission for its tenacity concerning the single story issue and then gave the presentation from the Staff Report and then concluded his presentation.

Chairman Haller asked if the Commission had any questions of Staff.

Chairman Haller asked if the Commission had any questions of Staff. Hearing none, he then opened the Public Hearing and asked if the Applicant would like to make a presentation.

Mr. Brad Hare, of Toll Brothers, 725 Town and Country Road, Suite 500, Orange, California, who is the Senior Project Manager, addressed the Commission. He introduced Mr. Charlie Raddatz, who is the Divisional President of Toll Brothers to the Commission.

Mr. Raddatz explained he has been with Toll Brothers for about twelve (12) years now then Mr. Hare explained the proposed displayed Floor Plan design provided a brief history of the Tract to the Commission and indicated only three (3) of the single story units have sold due to the economy and sales in general. Mr. Raddatz further explained the suggestions that were made that maybe the

11-03-09.PC

Developer would do a better Floor Plan or come up with alternative Floor Plans and he is willing to do and explore that. For his first project located in Carlsbad, there is a single story unit requirement be either a true single story element or have sixty percent (60%) of the roofline element be single story element and this house is one of the houses that they went with in that community and met that Condition not counting the foyer area which would make it then approximately sixty-nine percent (69%) single story element. It was a 72 unit project and could not sell the single story units and how people would walk through the models and then bought the two story units and how the Developer had built two (2) single story units and then had to have discounts made in order to sell those two (2) single story units. Mr. Raddatz further explained how that house qualified as a single story unit, became the second best seller. With people not wanting to climb stairs, the master bedroom was located on the first floor and the Rear Elevation and some Side Elevations looks like a single story element, people like it and this could be located around the Tract's perimeter for the adjacent neighbors. He believes this Project could be built out, but was concerned about the six (6) remaining Lots would be vacant and proposed to the Commission to offer the proposed Floor Plan as an alternative, and not a replacement for the single story unit and has past experience with the proposed design that it is popular. There is \$100,000 under each house and the current single story is the least expensive house and most affordably built and was also done in Yorba Linda where the City had a single story requirement. With a sixteen (16) unit project, only one (1) single story element was built. Mr. Raddatz indicated the public generally if not an aged community or Palm Springs, does not want single story units and requested the Commission consider the proposed Alternative and further indicated this design was not the only one (1) single story Plan the Developer considered, there were many alternatives that were considered, but felt this design was the best Alternative. Mr. Raddatz then asked the Commission if they might have questions for him.

Chairman Haller asked if the Commission had questions for the Applicant.

The following are comments made by the Commission: 1) with the last presentation / hearing on this issue, pressed the Applicant's Representatives for additional information such as internal surveys, polls and if this was local, regional or nationwide data if they had it on why the single story unit is unmarketable and hearing none, the Commissioner read the AIA Homes Trends Design Survey, National Association of Realtors and National Association of Home Builders and the national survey results are that 49% - 56% people preferred either new or existing single story units, and; 2) need to elaborate on

11-03-09.PC

the data and why there is a disconnect in the market for a single story plan - is it of the inadequacy of the Plan or the particular people coming to this community. Mr. Raddatz responded and stated the current (proposed) Plan is a nice plan and that the Developer is different than most builders and he provided an example that no one needs two (2) staircases and blocks into the entries and foyers on some of the Developer's higher end products. He further provided another example on how no one is buying a Mercedes because it has a steering wheel and that Toyota has a steering wheel. You are buying it because you want a Mercedes because of the name and has more amenities. He has built homes across the country and will need a single story himself one day and indicated is dependent on the builder and the market and provided another example of homes located in Florida, how people move there to retire. He said if the Developer was a lower end builder, he believed that this would not be an issue and indicated that is his opinion and does not have statistics. A Commissioner responded the home design awards are single story units that are either contemporary or traditional homes and have more options in creating more dramatic volumes, opening up the roofs, adding interesting architecture, dramatic lighting features and is it the local market factor or a design issue – there are hits / misses with single story units with only one (1) design and there are many with the two story design to choose from. Mr. Raddatz responded in Yorba Linda, there is a single story unit plan that had high volume ceilings and a grand entry and sold one single story out of sixty. He explained the Toll Brothers is the Pick Your Lot / Pick Your Plan to the Commission and said how buyers are telling the Developer what they want and hears what the Commission is saying. Mr. Raddatz further explained how they have looked at other better Plans and as an Alternative, because this has a single story element feel and indicated if they could sell the (single story) homes, they would. With the footprint of the 3,000 – 4,000 square foot single story house, it takes up the whole Lot while a two-story home doesn't take up the whole Lot.

A comment was made by a Commissioner that the yard is a factor with young families and subsidizing Lots to sell in house or contracted out with the Pick Your Lot / Pick Your Plan and asked how much of an additional step to offer a Design Studio Allowance or with a Design Consultation Plan. Mr. Raddatz responded how Toll Brothers is not a custom builder, but offers extensive options, and has to be careful because of restrictions i.e. offering an extra room, adding on square footage, etc. and being flexible. He provided an example about the cost for the Toll Brothers located in Las Vegas being \$300,000 (but are not offering those in Yorba Linda) because of the views of Catalina. Mr. Raddatz reiterated how the Developer is offering extensive incentives and a single story house cost per square foot is the least expensive.

11-03-09.PC

Chairman Haller asked if the Commission had any further questions of the Applicant. Hearing none, he then continued the Commission's discussion on the Item.

The following are comments made by the Commission: 1) likes the direction the Applicant is headed with the design because it has the flavor of a single story which kind of fits the intent the Commission trying to reduce the apparent density from the street and especially around the Tract's perimeter, but does not want to give up on the single story Plan; 2) is nervous about the proposed Plan is still a two-story element; 3) intent is to reduce apparent density so not to have "cookie cutters" two-story elements that are between ten feet and fifteen feet (10' – 15') apart up and down both sides of the street and the need to add diversity; 4) the single story unit does that eleven (11) Plan offers within the Tract to accomplish that and are dealing with some big units, and; 5) the Pick Your Lot / Pick Your Plan have restrictions on corner Lots. Mr. Raddatz stated there have been three (3) single story units built, but there is a requirement of six (6) remaining Lots to be single story. Discussion ensued regarding the Tract's private streets and not having to locate the single story units at the corner since it is a gated community and not like the adjacent Tract. It was also discussed the number of Lots that are allocated for the single story units and there are a total of nineteen (19) Lots remaining to sell within the Tract. Mr. Raddatz is concerned if there are six (6) Lots left that have to be single story and they do not sell.

The following are comments made by the Commission: 1) concern there will be on little section of the Tract not developed and will be vacant; 2) the single story is a popular Floor Plan, if priced right; 3) Toll Brothers is different and the Project is a high class Project; 4) one has been in units that are listed at \$200 / per square foot cost which is nice in any neighborhood and they are single story units and is a high end product and could be anything dependent who is asking for it; 5) cost is a key issue; 6) a great design trumps anything and if one could "knock somebody's socks off" with any product and that somebody says "wow, they want to have this" and it is out there; 7) another way to look at it is that a great price will trump anything; 8) a Commissioner has been both on the DRB and PC for a long time and the fifteen percent (15%) single story requirement and the Commission has been pretty inflexible with that because it was important to have that, otherwise the Tract is degraded without this single story unit; 9) is unique that this Project is a high end gated community; 10) the economy times are different issue and may need to be a little more flexible; 11) with the one (1) displayed design on the left that the roofline looks more massive and is conflictive; 12) the one displayed design on the left with the roofline looking more massive reads more like a single story design because it is forcing the person's eyes down and from a visual impact, it seems bigger.

11-03-09.PC

Discussion ensued between the Commission and Mr. Raddatz regarding how developers ask for leniency from the fifteen percent (15%) single story unit design requirement and the Developer unable to sell them.

The following are further comments made by the Commission: 1) the feasibility of discounting the Condition because of the economy; 2) an example was provided with the Commission's action on the recent proposed Freeway Sign that was stated the business needed that Freeway signage or the business would be unable to conduct their business in that is a specific Condition for a specific location; 3) if the Commission forgives the Condition because of hard times in order to lessen the impact on the community; 4) the gated Tract is an isolated Tract located up against the hillside and the only people that it is affecting are the residents that live in that community and there is no through traffic; 5) inclined to give the Developer a little more leniency due to the unique geographical circumstances in that there would not be that much impact on the community, at large; 6) if the Commission started to bring up economic conditions every time that someone sales drop off, the Developer can say how he has problems and need to do this then it will have "gone down the slope" and would be hard to defend that model throughout the rest of the City; 6) what is the marketability for the single story units if the market conditions change and are not out there for single story houses and if people do not want them in that community or another community which requires the fifteen percent (15%) requirement and then would the houses be constructed and left vacant or have vacant Lots ; 7) a Commissioner disagrees with the above comment about the marketability; 8) the Developer could build the single story units and then discount them just to get rid of them; 9) a Commissioner who had reviewed the data is conflicted because there is a 50 / 50 split or askew towards the desire for the single story Plan, nationwide both from a design, realtor and the construction side of it and saying that the single story plan is a desirable Plan and how a developer say that he cannot even sell five percent (5%) of them is a mystery to the Commissioner; 10) is a housing product or location with that particular Tract; 11) a Commissioner agreed – the Commissioner has friends that live nearby if there was a Variance, review to allow regarding the Tract's location and in the future in a similar situation; 12) is location specific or because the Tract is a gated community; 13) concern about the size of the Lots and houses; 14) if made concessions with the Developer and the Commission has done this before and is concerned it could come back to bite the Commission; 15) refuse to make any more concessions in that it would start jumbling things up; 16) the Commission to stay with the set of Standards – if start making more adjustments, it will look like the Tract was piecemealed; 17) what about the marketability and selling the product; 18) the Developer does not want to build single story units and if the developers have

11-03-09.PC

their way, there would not be any single story units and would be all two-story homes; 19) the developers cite because they need the economics in order for them to make it (the development) work; 20) because of the data's broader set, that is why the Commissioner questions if this is location specific or regional because the data reviewed is Statewide and may not be accurate and Nationwide is skewed in certain areas of the country; 21) the market is slow right now with the type of house and being at the higher end; 22) at the time when the Project started that it was going to be tough due to the Tract's location, at that time, the economy was fine and as a Commissioner, had a feeling that there may be a problem and the economics now is a problem now and is having a hard time for the Developer to fit in to what the Commission's requirements as a City and having to make concessions – is undecided and about making concessions for the City and how another developer could say the Commission did this concession for this Tract (Toll Brothers), why not him; 23) due to the Tract's location, does not want to see vacant Lots; 24) would not see the vacant Lots – the Variance has strict Findings / Site Conditions enforcing a Policy i.e. visibility, access, etc.; 25) unsure if you could go that far with restricting the COAs; 26) with the Tract's location, there is a hillside there, there are limited views from the adjacent community and is a lower community and the Wash is also a factor; 27) there is one (1) more wrinkle if the proposal did present itself as a true single story Plan from Front and/or Rear or any side that is visible may be doable; 28) there is no second story window on the Side Elevation on the bottom; 29) someone had said that one can look into one neighbor's back yard and another person's house; 30) liked the far left displayed design, and; 31) questioned if the Developer has a large loft displayed in front and indicated he has seen that type of design in Chapman Heights (in Yucaipa). Mr. Raddatz responded that the far left displayed design is the Mission Style Design and the second displayed design is a single story design and explained that particular design to the Commission.

Chairman Haller stated that he has heard a lot of comments and the proposed Findings of Facts do not express the Commission's thoughts. This is more of a one of a kind situation, the Tract's location, geography, and that the Tract is a gated community and the Findings of Facts are generic.

The following are comments made by the Commission: 1) legally, could the Commission do some kind of Variance and would we have problems later with others; 2) it has to be defensible and the Findings would have to identify a unique set of circumstances that are not linked to anything that someone could say it's a hardship, not impact the adjacent Tracts or general public; 3) initially, the Project

11-03-09.PC

came in with the fifteen percent (15%) of the houses to be single story units and kept going and there is a limit to that and the cost for the houses out there is \$800,000 and then the house next door is \$400,000 and suggested to stay with the fifteen percent (15%) requirement for the single story units, and; 4) then if the Commission takes the Developer's word, there is a potential there will be six (6) vacant Lots in the Tract. Attorney Ward explained the Findings of Facts and the feasibility of defensibility to the Commission. Mr. Raddatz responded Toll Brothers does not intend to walk away from the community, is not on the verge of bankruptcy and that he understands the Commission's concerns about setting a precedent. Mr. Raddatz then reiterated about the Carlsbad requirements for a true single story elements or with a single story units with sixty percent 60% of roofline. Yorba Linda requirements was their single story units were to be backed up to the arterials. He explained how this house would qualify with the roofline from the rear has that single story element. Based on the Tract's location, not seen by the public, reiterated he is not eliminating the single story unit and would sell it tomorrow if he could sell it and introduce the proposal as an Alternative for the single story element and may be a Variance.

A question was asked by a Commissioner what is the time frame for the Developer to be out of the Tract and Mr. Raddatz responded when the Tract sells out.

A comment was made by a Commissioner if there were three (3) more single story Plans as a 2:1 ratio for the two-story offerings to single story offerings, at least there would be some competitiveness there. The buyer may not like that single story Plan, but may like the single story plans if there was more of a variety to choose from, the buyer may go for it. Possibly have the Developer set up a test market and try for three (3) months with a number of options and suggested the Developer explore more options and holding to the standard that has been uniform throughout the City. Mr. Raddatz responded that is an option and indicated that has been done internally. A true single story has to be smaller on the Lot and the house design is not a bad house design and is attractive from the street. He then explained the design to the Commission that it is a tall home, but people prefer others. The Commissioner indicated about the characteristics in no dual staircases, there is no sense of a grand entry. There is a corridor that leads a person past the kitchen and how the eye is drawn to a tiny bay window and a breakfast nook and family room. There is no sense of "wow". There is no vaulted dome that goes sixteen feet to eighteen feet (16' – 18') that give the entry volume. There is a need for a "wow" factor for the single story and needs to have some set of a transition as a person moves through the house to create the

11-03-09.PC

drama and a suggestion was made regarding a higher roof element in the middle and drawing in some light in from the sides by creating natural light and is an option that would be in the single story that is not available in the two-story. Mr. Raddatz responded will would be a challenge to do that in a 3,000 square foot house and in Yorba Linda, had a 4,000 square foot house which had that “wow” factor, but will not fit on these Lots. He indicated that he is willing to explore it and it is a good alternative, and reiterated this design was the second most popular design in Yorba Linda. The Commissioner responded would sell, if a different look than the other units in the Tract and indicated “let’s not to kill the single story unit yet” and would like to see some in the Tract and indicated how the Developer has to subsidize the units and that there has to have a bottom line for vacant Lots because of infrastructure costs. He believed that one or two of the residents would like to have a double Lot and install “the mother of all back yards” so that they could have a double wide Lot that would give that resident something that no one else in that community has. The Commissioner then asked if the Developer had offered a vacant piece of land, what is the price point and would it be attractive to have a contiguous property and give the resident a double Lot. Mr. Raddatz responded would have to reverse Lot line and that Highland is a problem for selling homes for \$600,000; \$700,000 and \$800,000 and would the person want to pay \$1 million for a double Lot and is not sure if he has that type of buyer here. Mr. Raddatz said this Tract has sixty (60) Lots and have nineteen to twenty (19 - 20) Lots to build. A question was asked by a Commissioner how many two-story homes were sold and Mr. Raddatz responded that eight (8) sold last year and the Commissioner responded then it comes back to pricing and that buyer is not here right now. Mr. Raddatz responded if a buyer comes to the door for a single story unit, will build it for the buyer and the Commissioner stated there are still so many two-story units that need to be sold and another Commissioner indicated how Dana Point is not getting any buyers there either. Staff asked the Commission to get back to the Variance and reminded the Commission of the Initial COA provision, as read, did not have the verbiage provision stating or as amended by the Commission or DRB and this was clearly left out. Staff further explained the intent was the Tract was not Toll Brothers at the time, it was treated as a normal Tract. If there were to be a change to that, that would be a amendment to the COA in which the Developer tried in the past and was denied and this is Staff’s interpretation to the COA approve a product to meet the intent for the single story unit. Staff further explained it would not be a Variance and how Staff is surprised that the Developer is not going to substitute a single story with this product and with Staff’s understanding that this product was going to be a replacement for the single story. A Commissioner responded that is what the Commission requested from the Developer is to provide a new single story design because if this one is not cutting it, have the Commission review another product.

11-03-09.PC

The following are comments made by the Commission: 1) the need for more options to offer to the buyers and to see if the single story is viable, and; 2) are the 3,000 square foot single story units similar to the proposed Plan with other Floor Plans. Mr. Raddatz responded the (3,000 square foot) single story units are too large and will not fit on the Lot and they have smaller single story homes, but are not as attractive and then he described the 4,000 square foot single story house located in Palm Springs to the Commission. Mr. Raddatz then said about going back to the drawing board, yes, but thought this (proposed Plan) was the best design for the Project. A question was asked by a Commissioner regarding the feasibility of an entry court and if one could be put on the product. If offer a 2,800 square feet model, would it fit on the Lot there and have outside space and provided an example with a covered patio, or interior court yard with open doors off the entry which would appeal and could fit, but having a reduced Floor Plan. The Commissioner asked if this could be a product that could be sold even at a reduced price point the buyer said he could afford that in this neighborhood and because of the seclusion. Mr. Raddatz responded that he is willing to work and go back to the Architect and explore that. He further indicated that he is not optimistic, but reiterated that he is willing to do that. He is also willing to explore that if the lowest price house is lowered by \$25,000 would make it sell, is an idea, but he has not the authorization for that. The Commissioner said the price is not our (the Commission's) point, it is the design parameters and the Developer needs to stick to it for consistency and perpetuity. Staff responded how the Commission did not allow flexibility for this Tract. Since then, Tracts have been allowed some flexibility. There are also adopted Guidelines and were codified in the Municipal Code to allow flexibility and is reviewed on a case-by-case basis and further stated this Tract is a private, gated community.

Discussion ensued between the Commission and Staff regarding "going down the slippery slope", flexibility is built into the overall effect of the neighborhood on the surrounding area and perceived density within the Tract, don't place the largest unit on the Tract Entry's corner, do a four-sided architecture, setbacks on the facades, wrap around facades, and try to respect the perceived density and openness for the community and the proposed design. That is why the single story units were located on the corner lots coming into a Tract.

A comment was made by a Commissioner that he is confused regarding the fifteen percent (15%) requirement and Staff responded that is how the COA for fifteen percent (15%) requirement is written for nine (9) parcels. A question was asked by a Commissioner if the COA could be changed and Staff responded and explained this is the Tract's COA and Policy. The Tract's record went into the

11-03-09.PC

Guidelines and this Tract's COA requirement of fifteen percent (15%) would be for single story units and was denied previously and directed the Developer come back with solutions. A comment was made by a Commissioner to show a single story plan with one (1) or two (2) options and would then be competitive with the two story plans. Discussion ensued regarding the DRB's 2 – 2 vote.

Discussion ensued between the Commission and Staff regarding the initial and previous action taken on the Tract between the Commission and DRB and based on the discussion and the concern about changing the definition for a single story, the feasibility of modifying the COA rather than modifying the definition and reluctant to redefine the single story unit. Staff indicated to delete the fifteen percent (15%) COA completely.

The following are comments made by the Commission: 1) concerned the Commission is setting a precedent defining what a single story unit is; 2) questioned regarding a Variance for that COA and particular location and interpretation and one (1) single story unit design; 3) how Carlsbad goes by the roofline and Highland does not, and; 5) what are the Commission's options and single story elevations. Staff responded and indicated Staff's appreciation (the Commission) not defining the single story design and added the interpretation is to meet the intent of the single story unit.

Further discussion ensued between the Commission and Staff regarding the fifteen percent (15%) single story unit COA requirement and how the single story unit design would be for six (6) Lots. Staff stated the Commission is interpreting the proposal to meet the intent of the single story or can deny the proposal or state the proposal as a single story or redesign the single story. A Commissioner responded with Staff's recommendation makes no sense and read Staff's recommendation and the Commission would then be waiving this COA and not caring about the single story offering. Staff responded it should have the word, "intent" in there and is it the consensus of the Commission for the proposed design for the Tract and Staff could come back and revise the Findings and not ambiguous about the intent and the unique character of the neighborhood, with private, gated, big bulk buildings, etc. With deleting the fifteen percent (15%) single story requirement, this proposal is an alternative, it's not a single story design.

A comment was made by a Commissioner about modifying the COA. Staff responded it appears the Commission's consensus is to deny the proposal and that is inappropriate to have brought it for the Commission tonight as an amendment to the COA. A Commissioner responded that the Commission would be establishing a precedent that a two story design element can be a one story design element.

11-03-09.PC

Further comments were made by the Commission: 1) if the other Commissioners were comfortable with the proposed Plan; 2) the proposed Plan/Elevation has less presence on the street, roofline tapers down and is a less impact on the north and surrounding neighbors; 3) the COA needs to be reworded, and; 4) the Developer is willing to take another look at a one story design.

Discussion ensued between the Commission and Staff regarding the Public Hearing process. Staff indicated if the Commission's recommendation is to deny (the proposal) without prejudice, the Commission understands the Commission is open to entertain an amendment to the COA. Attorney Ward stated if bring back in a different form, he recommended the Commission to deny it. Staff added how the advertisement was for this product and Staff was misinformed of the design intent. As a DRB, there is nothing wrong about offering the proposed Plan, but it is not a substitute and does not satisfy the COA.

The following are comments made by the Commission: 1) not approve the proposal; 2) bring back to the Commission and the feasibility of being an added Plan; 3) is a separate item and the feasibility of modifying the Motion. Staff responded based on the advertisement (of the Public Hearing), recommended the Commission deny the project, as it is presented tonight. A question was asked by a Commissioner if to have the Developer return with an alternative single story design. Staff responded that is an option and also the Developer has an option to appeal up to the City Council. Discussion ensued regarding the Commission to deny Staff's recommendation (listed on the Staff Report).

**A Motion** was made by Commissioner Hamerly and seconded by Chairman Haller to:

1. Deny the La Costa Floor Plan, including three (3) Building Elevations, as an alternative to satisfy the Condition that fifteen percent (15%) of the units in Tract 16914 be single-story units, subject to the Conditions of Approval, and;
2. Deny the Findings of Fact.

Motion carried on a 6 – 0 vote with the abstention of Commissioner Trang.

Chairman Haller explained to the audience the Commission's action can be appealed to City Council in ten (10) (calendar) days.

11-03-09.PC

Mr. Raddatz explained the Commission did not approve the proposed Design and can bring it back for the community (Tract). Mr. Raddatz asked if the language can be changed for the Commission in order to allow the Applicant to fulfill the obligation of the single story units. A Commissioner responded in that there was discussion and a split decision was made and questioned about the COA on the fifteen percent (15%) single story requirement and with the 2 - 2 vote and that would be maybe something Mr. Raddatz could ask the Commission to consider. Mr. Raddatz responded how Staff reworded the COA for that particular community (Tract) and the Commission will explore other alternatives. A Commissioner responded that the Applicant would need to bring back Elevations as Alternatives for the one story elements and Mr. Raddatz responded that the Applicant is willing to work with Staff and then thanked the Commission.

(Note: Commissioner Huynh returned to the Dais at 7:40p.m.)

## **5.0 LEGISLATIVE**

There were no Items.

## **6.0 ANNOUNCEMENTS**

Staff explained the Items tentatively scheduled for the November 17, 2009, at 6:00 p.m.

A question was asked by a Commissioner about the potential Study Session for the CenterStone Project and Staff responded when the Applicant would be prepared to do that and Staff does not have an answer for the Commission. A suggestion was made by a Commissioner about having a Joint Study Session with the City Council and the Planning Commission for CenterStone. Staff responded and indicated not recommending that because it's an Appeal issue and discussion ensued about the potential Appeal and the Council's involvement with the Commission.

11-03-09.PC

**7.0 ADJOURN**

There being no further business, Chairman Haller declared the Meeting adjourned at 7:42 p.m.

Submitted by:

Approved by:

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Linda McKeough, Community  
Development Administrative Assistant III

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Richard Haller, Chairman  
Planning Commission

11-03-09.PC