

## **MAY 18, 2010 PLANNING COMMISSION DRAFT MINUTES**

b. Public Hearing and Action on Windsong Condominiums Site Plan, 3.99 acres, 3001 Valencia Circle. A proposal to construct 32 townhouse units (there are 12 existing units in Phase 1) for a total of 44 townhouse units – Staff Recommendation: Approval

Rampson explained the proposal and showed photographs of the property.

Audrey Lucas, 2039 Stratton Court, lived behind the existing 12-unit Windsong development and expressed the concerns and problems the neighbors have been having with residents of the existing development. Fences have been broken and neighbors' security has been violated, she said, which was very disconcerting. She was pleased that the petitioner had agreed to install a fence as part of this new development to stop the trespassing.

Rob Finch, 2165 Stone School Circle, board president of the Stone School Townhomes, called attention to the problems their residents have been having with residents of Windsong. He stated that there has been yelling and screaming late into the evening; little or no supervision of children; rocks being thrown onto their properties, causing damage; graffiti; power being turned off; profanity; and even one resident pulling a knife upon a neighbor. He said there has been a great deal of police activity at Windsong and drug trafficking has been known to occur. Many of the residents of Stone School Townhomes have worked hard to get out of bad neighborhoods, he said, and allowing this new development to be all Section 8 housing will only magnify the existing problems. To address the problems, he suggested that the majority of Windsong be owned by the residents and that, at the very least, an eight-foot fence along the south side of the Windsong property be installed.

Stacy VanWashnova, 2123 Stone School Circle, shared the same concerns as the previous speaker. She stated that her community has changed dramatically with the development of Windsong, with Windsong residents out at all hours of the night playing loud music and making a lot of noise. She was concerned that this new development would only increase the problems and decrease their property values. She requested a tall fence around the development and asked that all of the neighbors' concerns be taken into consideration.

Noting no further speakers, Bona declared the public hearing closed.

**Moved by Carlberg, seconded by Pratt, that the Ann Arbor City Planning Commission hereby recommends that the Mayor and City Council approve the Windsong Site Plan and Development Agreement, subject to preliminary approval from the Washtenaw County Water Resources Commissioner prior to City Council approval.**

Carlberg asked the petitioner if the new Windsong units would be rental or owner-occupied.

Peter Jobson, of Windsong LDHALP, petitioner, stated that they have were recently integrated into this project at the request of MSHDA (Michigan State Housing Development Authority), adding that they were not involved in the development of the initial 12-unit phase. The new units would be rental townhomes, he said.

Carlberg asked the petitioner, based on what was heard from the community, how he proposed to address who would be selected to live in the new units and what the conditions would be under which the tenants would have to live.

Jobson said they had a long history with MSHDA in developing properties throughout the state, stating that MSHDA had confidence in their organization and their development and management procedures. If there were lease violations with any of the existing 12 units, he said, then the management company would review to see if there was just cause for removing tenants and terminating leases. That would be

one option, he said. Another option, he said, was to provide an on-site manager, which they intended to do once the second phase was completed. He stated that a daily management presence, which would run credit checks and landlord histories and perform the detailed work of screening residents, would make a tremendous difference. As the owner, he said, they took a strong role in asset management, which he did not think the owner of the existing 12 units did. The existing condition of the property was not particularly advantageous to anyone right now, he said, noting that if this were to develop as a community with proper tenant screening, recruitment and management there was no reason why it could not become a vibrant, healthy part of the City.

Carlberg asked when on-site management would begin.

Jobson stated that they were not part of the original 12 units and did not have an ownership interest in them. However, he said, they would own the 32-unit phase and would begin on-site management and asset management for the 12-unit phase once construction began.

Everett, who would be managing this property with Mr. Jobson, stated that there was no excuse for what has happened at this property, adding that it has not been managed at all. He said the problems were grounds for termination and that they would be stepping in as soon as possible.

Carlberg asked what "asset management" meant and asked if they would eventually own the 12-unit phase.

Jobson replied no, they would not own the 12 units.

Rampson asked the petitioners what their potential ownership was related to the condominium association and how much the condominium association would have the ability to do.

Jobson stated that they would be the managing general partner of the 32-unit phase.

Rampson stated that this was not how it was represented to staff. She said the representation made to staff was that this was a condominium association with a master deed for both phases, which meant that there would be involvement of both as a single unit.

Jobson stated that in terms of the condominium association, if they had voting control of 32 of the 44 units, they essentially would control the condominium association.

Rampson asked if this meant the condominium association would have that type of involvement ability, or if there would be separate ownership.

Jobson stated that the actual ownership of the land upon which the 12 units were developed was not theirs; however, the land upon which the 32 units would be developed was. If there were one combined condominium association, he said, they would have the majority vote as owners of 32 of the 44 units.

Derezinski asked if the on-site manager would be living in the development.

Jobson replied yes, if necessary, adding that the management company and the property owner would determine if this would be necessary.

Derezinski did not understand the creation of a condominium association when the units would be rental units.

Jobson believed this property was zoned and legally defined as a site condominium, so it would have a condominium association.

Rampson stated that the master deed was recorded for the entire site in November 2004 and the site condominium was recorded in July 2005. Planning staff did not review these types of documents, she

said, and this situation did not come to light until staff was reviewing this development proposal. She would not characterize this as a site condominium, noting that she was not sure how they came to the conclusion to arrange this the way it was done. Staff was assured that this was a single condominium, she said. She suggested that the Planning Commission may want to place a condition on the approval that the ownership situation be reviewed by the City Attorney's Office to make sure it was acceptable. She added that if the land were subdivided as what has been described, it would not meet the R4B zoning requirements.

Derezinski presumed that a condominium association would have the ability to levy membership and recreational fees, but he wondered what guarantee there was that tenants, if part of Section 8 housing, would be able to afford those fees.

Jobson stated that they would not pay for maintenance of the property through the condo association. Their budget contained funding for maintenance expenses, he said, and there were replacement reserves for future capital improvements.

Derezinski asked where the petitioners' other properties were located.

Jobson replied that they had 137 units in South Haven, 200 units in Otsego, 136 units in Bath Township, and other properties in Dowagiac, Grand Rapids, Sterling Heights, Jackson, and the Kalamazoo area. He said they've been brought into this to make sure the property is developed and managed properly. He stated that it was in their best interest to address the problems occurring from the 12-unit phase because one bad tenant could drive out a number of good tenants, which no one wanted to see happen. From a physical design standpoint, he said, fencing and landscaping was needed, and the problem of an owner not taking pride in that ownership would change once this became a whole community.

Derezinski wanted to make sure that the adjacent neighbors' concerns about fences being torn down would be heard and resolved.

Jobson assured Commission that he had heard the neighbors' concerns and that he did intend to install fencing.

Pratt asked if the petitioner's other properties were MSHDA properties and if they were full or joint owners.

Jobson replied that most were MSHDA properties and that they were managing partners, which gave them daily control and responsibility.

Pratt referenced the police reports and asked if there had been a meeting with the Safety Services Unit to discuss the issues.

Rampson replied no, as staff just learned of the reports. She said staff would work with public safety staff on this.

Pratt asked whether this should be done prior to Planning Commission action or if it would be easy enough to incorporate as the project moved to City Council.

Rampson stated that the petitioner has indicated an interest in moving ahead because of MSHDA timetables. She said staff could work the public safety issue out as the project moves forward to Council. She stated that behavioral issues were outside of the Planning Commission's purview; however, now that staff was aware of the issues, they could bring the key people together to begin addressing them.

Jobson said they would be more than willing to talk to public safety staff. He said he also would be calling the management company for the 12-unit phase to show them the police reports and talk to them about the behavioral issues.

Pratt wondered if it would be appropriate to including language in the development agreement that identified when the on-site management would be placed on the property.

Jobson thought the appropriate time for on-site management would be when the certificate of occupancy was issued for the second phase.

Pratt would request staff's input on that. He also asked about the City's right to request a meeting each year between the owner and the public safety staff being added to the development agreement. If these types of items could be added, he thought there would be a good, solid agreement.

Rampson stated that these kinds of site management issues typically were not placed in a development agreement, which is more associated with on or off-site improvements.

Pratt agreed, but noted that this was not a typical development. He said he would defer to public safety staff for their recommendations on improving the problems that were occurring.

Rampson asked the petitioner if MSHDA incorporated on-site management into their agreements.

Jobson stated that this was not typically found in an agreement. However, he assured Commission that it was in everyone's best interest to maintain a viable, healthy community and that the reason there were problems with the existing 12 units was because they have not been managed correctly.

Pratt believed that on-site management has been incorporated into other development agreements. While he had every reason to believe this petitioner would succeed at managing this development, there was always a chance that ownership or staff could change, and it would be good to know all of this up front.

Briggs asked if the petitioner had any ability to influence who lived in the 12-unit development.

Jobson replied yes, they would have that ability, although not right now because they did not own the property. They would have that influence in the future, though, he said, adding that they envisioned a cooperative relationship between both phases. He also stated that he would be calling the management company of the 12-unit phase tomorrow to discuss resolving the issues.

Briggs said she had serious concerns about moving forward with assurances that the issues would be addressed. She preferred seeing progress first, such as if the owner of the 12-unit phase had a desire to be cooperative. It seemed to her that building another 32 units before some of the issues were resolved or knowing how they would be resolved would be a recipe for disaster. She referenced the police report for this property and expressed concern about the process MSHDA was following.

Rampson noted that staff received the police report this week, which was then forwarded to the petitioner. She was not aware of MSHDA's timeframe, but knew it was related to financing.

Mahler confirmed that the ownership structure being proposed did not meet the R4B zoning requirements.

Rampson replied that this was correct, as the minimum lot size would not be met.

Mahler said he was very concerned about the needs of the residents and their right for quiet enjoyment of their property. He would like to see a fence built, but said it would not be an absolute deterrent. He was also very concerned about the tone he was hearing this evening about possibly stigmatizing all who live in Section 8 housing. He did not want people to think that everyone living in Section 8 housing was bad, or that these types of issues going on here extended to all of MSHDA properties. He pointed out that there were very good tenants who lived in Section 8 housing and that there should not be a mentality that every Section 8 tenant in the 12-unit phase should be removed. This should be done on a case-by-case basis, he said, as he did not think every one of the tenants was the cause of the problems. He appreciated that

the petitioner would be working with the current owner and said perhaps the petitioner and MSHDA could take over that phase in the future. He asked if there were any covenants, such as rules about funding, that MSHDA required of the petitioner that would affect the petitioner's ability to interact with the current tenants.

Jobson stated that he did not mean to suggest that each of the tenants in the 12-unit phase would be removed from the development. Not all of the tenants were "bad apples," he said. He stated that MSDHA rules would not allow a mixing of the funds between both developments; however, he noted that the 12-unit development should have a reserve account to use for improvements. He also noted that they would not have a problem with building the fence.

Giannola stated that her major concern was the ownership issue, i.e., rental vs. condominium association. She asked the petitioner if it would be detrimental if action on this project were postponed until the next meeting to allow City Attorney review.

Jobson replied that slowing or delaying this project was not recommended, as there were timing issues involved. He believed placing a contingency on the action this evening would be a better solution. He stated that a major element of this project was financing from Key Bank, who tended to react if things did not go their way, which would be a concern of his.

Rampson stated that staff would not recommend postponement. If the Planning Commission believed the site issues were being addressed, she encouraged moving forward, adding that the project would be delayed if the ownership issues were not resolved.

Bona was also uncomfortable moving forward with this given the outstanding issues. She stated that the concept of making sure there was only one management company was important, as well as requiring on-site management. Regarding the fence, she thought she heard the neighbors say they would like one on all three sides and she was not sure if that was how it would be. She would not want the fence to be too high, but if it could be taller than six feet and the public safety staff concurred, she would support that. She would like to see the petitioner come back with some type of documentation, such as in the development agreement or on the site plan, that would reinforce that the issues could be addressed. This was a fragile situation, she said, and there should not be a rush to assume everything would be okay because there was a new owner.

Derezinski was pleased that the petitioner was coming in to take over a project that otherwise would remain a very unattractive site with problems continuing in the 12-unit phase. That might be the only positive aspect, he said, someone new taking over the project with MSHDA involvement, which meant that there would be a time limit on some of the tax credits and state funding. He pointed out that if this were to fall apart, the petitioner would leave, nothing would get done, and the existing problems would remain. He thought this was likely the best resolution. While he had questions to be answered, he did not want to stop the project at this time, adding that he was confident everything could be resolved. He also noted that this project would provide affordable housing and he would hate to see the City lose that opportunity by being reluctant to move forward to the next stage, even with contingencies.

Carlberg stated that this was a "catch 22" situation because the on-site management could not happen until the 32 units were built, so it was advantageous to move forward. She suggested that a contingency be added to Commission's recommendation that an arrangement with the present owners be undertaken and that a written plan be provided showing how both owners intend to resolve the problems with the current tenants. She stated that the site was unattractive, so it would be to the City's advantage to see this project completed. Money for housing was so scarce and it was fortunate that MSHDA was willing to come in and finish the project, she said, so the focus should be on a good relationship with the residents and putting on-site management in place. She trusted staff to work on these issues and suggested that the City Council members for this ward get involved by working with the neighbors and public safety staff on a plan to help resolve the problems.

Briggs thought it would be appropriate if contingencies were placed on the Planning Commission's recommendation and were resolved before Council consideration. With regard to Section 8 housing, she did not intend to say anything negative; rather, her comment regarding a recipe for disaster was related to constructing 32 additional units. She did not think the affordable housing stock should be increased in an area that already had problems. It was unfair to those already living in the area, as well as unfair to those moving into that area, she said, because they tended to have the least amount of options. She hoped this could be resolved and that no more units would be built until the problems were worked out.

**Moved by Pratt, seconded by Mahler, to amend the main motion by adding the following language: “; subject to (1) review of the ownership structure and documentation by the City Attorney; (2) incorporation of appropriate recommendations from the Safety Services Unit, including solid screening fence; (3) modifications where appropriate to written documents, such as the master deed, development agreements, or other agreements, to be finalized prior to City Council consideration; and (4) subject to a written agreement between the petitioner and the owner of the existing 12-unit development, which addresses current tenant issues, prior to building permit issuance**

Mahler believed these contingencies overstepped the Planning Commission's boundaries. He stated that getting into establishing and maintaining affordable housing policy was outside of the Commission's purview. He also did not think the Planning Commission could require the owner of the 12-unit phase to work with this petitioner. Commission could implore the owner to do this because it would be in the best interest, he said, but he did not think it could be legally required as part of the site plan. At the very least, he would be able to support the first contingency, which was the City Attorney reviewing the ownership structure and whether it conformed to the zoning requirements.

Derezinski agreed that the first contingency was the only legitimate one. With regard to the other proposed contingencies, he pointed out that the petitioner has heard the Planning Commission's concerns and he thought it should be left at that. He was concerned that adding contingencies other than what was required could result in the project not happening, which would mean a possible solution of the existing problems also would not happen.

Carlberg suggested revising language so the petitioner would make a good faith effort to meet with the owner of the 12-unit phase to work out a process for resolving the problems. She did not believe this was legally binding. She noted that City Council would be hearing the same concerns and would want to know that something has been done to address them. She said the petitioner would have to demonstrate, preferably in writing, that a meeting was held and the steps that would be taken to remedy the situation. She was considering proposing a revision to the second contingency to reflect this.

Mahler stated that he would have the same objection with this revised language. He appreciated what was trying to be done here, but this would be a standard that would require some demonstrable actions that lead to some result. He could imagine a scenario where someone would claim that a good faith effort had not been made because that person was unable to attend a meeting. He stated that this was a gray area and he was uncomfortable with including that as an amendment to the motion.

Bona stated that she would like to support all four of the proposed contingencies. She would be pleased if the first and second contingencies were added at the very least, stating that she thought requesting a recommendation from public safety staff was within the Commission's purview.

Briggs also believed the second contingency was within the Planning Commission's purview. She suggested that landscaping be added with the fencing to improve the appearance. If the consensus was that these contingencies should not be made part of the Commission's motion, she suggested a memorandum from Commission to Council outlining the issues and the Commission's concerns.

Bona stated that this was the purpose of the minutes, which were transmitted to Council with all other project documentation.

Pratt stated that he had no problem eliminating the third contingency. He suggested that the fourth contingency be revised to only require a report that the meeting was held and what the outcome was.

**Moved by Pratt, seconded by Carlberg, that the third contingency be removed and that the fourth contingency (now third) be revised to say, “(3) the petitioner meeting with the owner of 12-unit property and providing a report as to the possibility of future joint tenant management.”**

Mahler said he was uncomfortable that a report and recommendation from public safety staff was to be made part of the Commission’s recommendation. He thought the legalities of this were suspect and he would not be able to support it without the City Attorney’s office review.

Carlberg did not believe this was an unreasonable approach, especially given that the Police Department reviewed site plans in the past.

Tony thought the first contingency was appropriate because it raised a specific legal issue as to the validity of this proposal. He believed the others were inappropriate as site plan contingencies. He also noted that the minutes would be forwarded to City Council with this proposal, which he thought would be sufficient.

Giannola suggested that the contingencies be voted on separately.

A vote on amendment (1) showed:

YEAS: Bona, Briggs, Carlberg, Derezinski, Giannola, Mahler, Pratt  
NAYS: None  
ABSENT: Westphal, Woods

**Motion carried.**

A vote on amendment (2) showed:

YEAS: Bona, Briggs, Carlberg, Giannola, Pratt  
NAYS: Derezinski, Mahler  
ABSENT: Westphal, Woods

**Motion carried.**

A vote on amendment (3) showed:

YEAS: Bona, Carlberg, Giannola, Pratt  
NAYS: Briggs, Derezinski, Mahler  
ABSENT: Westphal, Woods

**Motion failed.**

A vote on the main motion as amended showed:

YEAS: Bona, Briggs, Carlberg, Derezinski, Giannola, Pratt  
NAYS: Mahler  
ABSENT: Westphal, Woods

**Motion carried, reads as follows:**

**Moved by Carlberg, seconded by Pratt, that the Ann Arbor City Planning Commission hereby recommends that the Mayor and City Council approve the Windsong Site Plan and Development Agreement, subject to preliminary approval from the Washtenaw County Water Resources Commissioner prior to City Council approval; subject to review of the ownership structure and documentation by the City Attorney; and subject to incorporation of appropriate recommendations from the Safety Services Unit, including solid screening fence.**