Atascadero City Council
Staff Report – Community Development Department

Amendment to Oak Grove II
PLN 2099-0855 / CUP 2004-0130 Amendment
Affordable Housing Requirement Condition
1225 El Camino Real / Atalaya Street
(Peoples’ Self Help Housing)

RECOMMENDATION:

Council adopt Draft Resolution A, modifying the Affordable Housing Requirement Condition of Oak Grove II (TTM 2004-0054 & CUP 2004-0130) to allow an exemption to the resale deed restriction requirement, provided that the entire project meets the alternative criteria for affordability, as specified in the revised Condition of Approval.

DISCUSSION:

Situation and Facts:

1. Owner/Applicant: Peoples’ Self Help Housing, 3533 Empleo St. San Luis Obispo, CA 93401
2. Project Address: Originally 1225 El Camino Real; Now Atalaya Street Lots 18 & 24 of Tract 2640 (Deed restricted lots) APN 049-047-024 and 018
3. General Plan Designation: Single Family Residential (SFR - X)
5. Site Area: 5.18 acre development; 6,400 sq. ft. lots
6. Existing Use: Graded building pads; units not yet constructed
7. Environmental Status: Consistent with Certified Mitigated Negative Declaration completed for Oak Grove II
Background

Oak Grove II was approved by City Council as a Planned Development #17 in October 2004. The PD-17 overlay zone allows up to four (4) units per acre as a base density in the RSF-X zone. The project development was approved with an affordable housing density bonus to allow an additional three (3) units, for a total of 24 units in the Oak Grove II development. A condition was included in the resolution which required that the developer designate either two (2) very-low income units, or four (4) low income units, deed restricted for a period of 30 years. At the time of final map, the previous developer recorded 30 year very-low income affordable deed restrictions on lots 18 and 24.

After the final map was recorded, the project went into foreclosure. The previous developer did not complete the public improvements as required by the Subdivision Improvement Agreement. Over the past year, the City’s Public Works Department worked with the bonding company to have the road improvements completed so that the 24 recorded lots could be developed. The 5.16± acre development site was recently purchased by People Self Help Housing (PSH) who will develop all 24 lots as affordable, mutual self-help housing.

People’s Self Help has submitted an application to make a few changes to the project prior to construction. On October 4, 2011, the Planning Commission is scheduled to review the following items:

1. Remove one hazardous 48" Live Oak tree from Lot 6
2. Remove requirement for architectural façade enhancements on the side elevation of Lot 1, facing El Camino Real
3. Amend conditions of approval to modify affordable housing deed restriction requirement (Planning Commission recommendation will be forwarded to City Council)

The tree removal and architectural changes are subject only to Planning Commission review. However, City Council review is required in order to change the Affordable Housing condition of the project, as this requirement is in accordance with an adopted City Council Policy for Inclusionary Housing and density bonuses.
Analysis

Peoples’ Self Help Housing works with homeowners to secure loans through the USDA (United States Department of Agriculture.) The City of Atascadero qualifies as a rural community based on population, and is therefore eligible for the low interest financing provided by USDA Section 502 mortgages for income qualified affordable housing buyers. Due to the strict lending requirements of USDA, the lender will not loan on units which have deed restrictions. Therefore, Peoples’ Self Help Housing is requesting that the deed restrictions on lots 18 and 24 be removed so that these units may be financed through USDA as affordable, mutual self-help housing, along with the rest of the Oak Grove II development.

This issue of deed restrictions and affordable housing lenders was addressed by the County of San Luis Obispo in 2006. The Board of Supervisors amended the County’s Land Use Ordinance so that the new Affordable Standards included the following provisions for mutual self-help projects (Peoples’ Self Help Housing and Habitat for Humanity projects):

San Luis Obispo County Land Use Ordinance 22.12.070, Affordable Standards:

G. Exceptions to initial sales price limitations and resale restrictions. The Director of the Planning and Building Department may grant an exemption to the initial sales price limitation and resale restrictions for housing units that meet all of the following criteria:

1. The housing units are provided in a development consisting exclusively of housing for very low income, lower income or moderate income households; and

2. The housing units are constructed with at least 50 percent of the work performed by volunteers and/or households purchasing the housing; and

3. The Director of the Planning and Building Department has determined that the home purchase financing provided will be affordable to the purchasing households for at least 30 years.

Peoples’ Self Help Housing is currently proposing to amend Tentative Tract Map (TTM) Condition #9 / CUP Condition #11 of Oak Grove II to include provisions similar to those that County has adopted. This would allow the deed restrictions on the two (2) very-low income lots to be lifted, provided that the project demonstrates affordability per the deed restriction exception. Modifications consistent with the applicant’s request have been included in the attached draft resolution for Council consideration. Prior to releasing either of the affordable deed restrictions, the applicant would need to demonstrate that at least two (2) units in the development have been sold to very-low income qualified buyers, or four (4) units have been sold to lower income qualified buyers, all at qualified affordable sale prices with USDA Section 502 mortgages. Evidence of the title vested, recordation of the USDA mortgage, and Certification of low-income status would be provided to the City from the developer, and the City would remove the 30-year covenant from title as each sale closes.
The applicant has addressed the question about maintaining affordability of the units once the deed restrictions are released. The USDA loans operate much like the City's Moderate Income Equity Share program. If a unit sells before 30 years, the homeowner has an equity share with USDA. The amount of profit the homeowner gets to keep increases the longer they are in their home. USDA also has the option to resell the unit to another qualified income buyer to keep the unit in the program. Therefore, while the City of Atascadero would be giving up their 30 year recorded deed restrictions on the two (2) very low income units, Peoples’ Self Help Housing would be developing 24 mixed income affordable homes (very-low, low, and moderate) which will be available to income qualified families for a period of 30 years due to the USDA subsidized loan financing. The County of San Luis Obispo has been able obtain HCD affordable housing credits for all units provided with the USDA long term affordable financing in the County.

Conclusion

Peoples’ Self Help Housing has been developing affordable housing for over 40 years in San Luis Obispo County, and has produced many quality mutual self-help developments, with over 1,000 homes in San Luis Obispo County. As the new owner of Oak Grove II, they have proposed to modify the project conditions to remove the 30 year deed restrictions in exchange for a 24-unit affordable, mutual self-help project with affordable financing. If approved, the proposed Amendment would allow an alternative way for the applicant to demonstrate that the project provides affordable housing. The requirement for the 30 year deed restriction is derived from an adopted Council Policy, and therefore, City Council approval is required in order to make this change. The amended CUP Condition in the draft resolution is recommended by staff for Council approval and is consistent with the County of San Luis Obispo’s adopted Affordability Standards.

FISCAL IMPACT:

There will be no direct fiscal impact to the City as a result of the proposed amendment.

If the project is developed by Peoples’ Self Help Housing as proposed, the City would add an additional 22 very low, low, and moderate income units to its affordable housing stock that would go towards meeting the City’s Region Housing Needs Allocations (RHNA credit.)
ALTERNATIVES:

1. The City Council may approve the Amendment with modified conditions of approval.

2. The City Council may deny Conditional Use Permit Amendment based on appropriate findings. To deny the application, the City Council must find that it is inconsistent with one of the required findings.

3. The City Council may continue the application and refer the project back to staff for additional information or analysis. Direction should be given to staff and the applicant.

ATTACHMENTS:

1. Zoning and Land Use Map
2. Letter from Applicant
3. Brochure on Peoples' Self Help Housing
4. USDA Subsidy Repayment Agreement
5. Draft Resolution A
Peoples' Self-Help Housing

February 17, 2011

Callie Taylor
Associate Planner
City of Atascadero
6907 El Camino Real
Atascadero CA 93422

Re: Tract 2640 Affordability Agreement

Dear Callie:

Peoples' Self-Help Housing Corporation (PSHHC) anticipates closing escrow on the 24 lots as soon as the site work is completed. The architect is revising the plans to meet updated code requirements. Soon we will begin recruiting families to build their own homes. PSHHC works with the families to help them apply and qualify for the home loans and conducts a Home Buyer Education Program. We anticipate starting the first group of twelve homes in June or July 2011, followed by a second group of twelve in the early fall.

Each family purchases their lot before construction begins. USDA funds the purchase and the construction costs. Generally there are also other non-profit or government lenders with silent second loans. The families and their friends will perform about 75% of the work to build their homes. Certain trades such as plumbing, electrical, drywall, stucco are performed by subcontractors. It generally takes the families about 12 months to complete their homes.

USDA requires that all the borrowers in their 502 program be at 80% or below of median income and must intend to occupy the property as their primary residence. Certified USDA Loan Packagers on PSHHC staff prequalifies the families and submits the loan package to USDA. USDA has allowed the families to take title with the County Affordable Housing Agreement remaining on title with the understanding that when the low-income family completes the home and moves in, the Affordable Housing Agreement with resale restrictions will be removed from title. When the home is ready for occupancy, PSHHC staff submits a copy of the recorded USDA Deed of Trust and a certificate certifying that the owners are low-income. I trust that a similar process would work with the city of Atascadero.

Based upon the square foot cost of other homes we have built, we anticipate that the homes will cost about $240,000 and be value at about $260,000. This is more than the county’s maximum sales price for Lower Income Households ($158,000 – 3 bedroom), but below the maximum limit for Moderate Income Households ($308,000). The homes are affordable to the low and very low income households due to the loan terms of the USDA mortgages and the silent second loans, and due to the reduction in costs attributed to the households sweat-equity.

USDA has very strict repayment guidelines to ensure long term affordability. The maximum LTV ratio is 41%. The maximum PITI ratio (Principal Interest Taxes Insurance & also includes HOA fees divided by monthly income). The payments vary with the household income and may be as low as a payment based on 1% interest. USDA collects income data from the household annually and adjusts the payment as income varies. The difference between the full note payment and the reduced payments is called Payment Assistance. The

3633 Empioe Street
San Luis Obispo, CA 93401
Tel: (805) 781-3088
Fax: (805) 544-1901
E-mail: admin@pahhc.org
www.pahhc.org

26 E. Victoria Street
Santa Barbara, CA 93101
Tel: (805) 961-6152
Fax: (805) 961-6152
E-mail: sboffice@pahhc.org
www.pahhc.org
Payment Assistance that has accrued during the life of the loan will be recaptured when the home is ultimately sold per the Recapture Agreement (copy attached). Also, in order to help families to qualify, silent loans, loans that do not require monthly payments, but are due upon sale or refinance, are often granted by various government or non-profit entities.

Self-Help families stay in their homes much longer than the average family due to several reasons; 1) the families take pride in the high quality construction they themselves performed, 2) unless their incomes increase substantially, they cannot qualify for traditional mortgages, 3) The default rate on the USDA mortgages is almost null due to the initial strict affordability guidelines and the Home Buyer Educational curriculum, so the only families that lose their homes to foreclosure are among the few that refinance and take cash out. Occasionally, families do need to sell due to a divorce, job transfer or another reason. In near-by Templeton, 61% of the 41 homes in the Lone Oak subdivision built 20 years ago are still owned by the self-help builder. 56% of the 48 homes in the Harvest Meadows subdivision built 15 years ago are still owned by the self-help builder.

As you discussed with Dana Lilley, Supervising Planner at the County of San Luis Obispo, the county believes that their exemptions to the Affordable Housing Agreement do not conflict with state law governing density bonus. Prior to adopting their ordinances, county staff conferred with HCD staff who agreed that USDA financed homes should be considered as affordable due to the provisions of USDA financing (33 and 38 year loans and deep subsidy recapture).

I look forward to working with you to help 24 low-income families achieve their dream of homeownership.

Sincerely,

Sheryl Flores
Homeownership Director
Attachment 3: Brochure on Peoples’ Self Help Housing

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What are the income limits? Income limits vary by financing source. You don't qualify if your household income exceeds the amount listed for your family size.
WHO IS PEOPLES' SELF-HELP?
Peoples' Self-Help Housing (PSHH) is a private community based non-profit organization. PSHH helps families to obtain loans for housing and assists them in building a home.

WHAT IS MUTUAL SELF-HELP HOUSING?
Mutual self-help housing is a group method of home construction for limited income families. Utilizing "sweat equity" homes are constructed by individuals as owner-builders under the supervision of PSHH. The group provides mutual labor exchange in the construction of their homes. As a result, a substantial cost savings is realized as well as a strong sense of pride in ownership and community spirit.

WHO QUALIFIES FOR SELF-HELP HOUSING?
Families who cannot afford to build or buy modest homes by customary methods. They must have reasonably good credit and have the ability to repay a loan.

WHAT IS THE PLANNING AND BUILDING PROCESS?
Generally 10 families make up a self-help building group. With the help of PSHHC, families form an informal association and agree to help each other build their homes. The families sign an agreement with PSHH and with each other for this purpose.

DOES THE FAMILY NEED CONSTRUCTION EXPERIENCE?
No. PSHHC provides a construction supervisor for each group of families. The supervisor teaches the families how to build their homes, orders materials, brings in the sub-contractors at the proper time, and sees that the homes are built in an efficient, workmanlike manner.

HOW MUCH OF THE HOUSE DOES THE FAMILY BUILD?
The families do almost all of the construction except the plumbing, electrical, drywall and stucco work. Those jobs are sub-contracted to professionals.

HOW MANY HOURS DOES EACH FAMILY CONTRIBUTE?
Each family must contribute a minimum of 40 productive hours per week. "Family" hours include the labor of both adults and any child 16 years of age and over.

"Productive" hours mean useful work is being done. Both men and women are expected to participate in the labor requirement. The family must also attend all pre-construction and construction meetings.

HOW LONG DOES IT TAKE TO COMPLETE A HOME?
Generally it takes 3-4 months for loan application and approval, and 12 months in actual home construction.

WHEN ARE THE HOUSES BUILT?
Since most of the families in a self-help group work during the day, most of the work on the homes is done weekends. If a family is not willing to make this commitment, they should not join a self-help group.

MUST THE FAMILY HAVE A MAN AS ITS HEAD OF HOUSEHOLD?
No. Families with a woman as head of household may qualify as long as they can provide the required labor. Single applicants (male or female) must provide written verification that another adult has agreed to help them with the required labor. This person CANNOT be paid to help with the labor.

MUST THE APPLICANTS BE U.S. CITIZENS?
No. However, they must prove that they entered the United States legally and must be permanent residents with valid MICA (Green Card).

ARE THE HOMES WELL-BUILT?
Yes. In addition to the usual city and county building inspections, financing sources may also inspect the homes throughout construction.

HOW LARGE ARE THE HOUSES?
The size of the house depends on the number of people in the family and the makeup of the family. Most houses have 3, 4, or 5 bedrooms and between 1,100 to 1,550 square feet.

PSHHC PROVIDES THE FOLLOWING ASSISTANCE:
(a) Preparing application for land and construction material loans from RURAL DEVELOPMENT.
(b) Holding meetings with the families at which the self-help program and subjects related to home ownership are discussed, including real estate taxes and homeowners insurance.

(c) Providing approved house plans.
(d) Preparing applications for building permits and ordering building inspections.
(e) Obtaining cost estimates for construction materials and required sub-contracting. Ordering materials and sub-contracting as needed during construction.
(f) Supervising and training families in proper construction methods.
(g) Paying all bills related to the homes (with family loan funds) and maintaining an accounting of funds for the families and Rural Development.

HOW MUCH CASH IS NEEDED?
To begin processing a loan a credit check is required. If you are approved for a loan you will need to purchase course of construction insurance and hand tools. The total is generally from $400 to $500.

WHO PROVIDES THE LOAN MONEY?
Various lenders including USDA Rural Development provide the mortgage/ construction loan. The loan covers the cost of the land, construction materials, and sub-contractors.

WHAT ARE THE TERMS OF A RURAL DEVELOPMENT SELF-HELP LOAN?
The loans are for 33 years. Current interest rates are subject to change but subsidies are provided that can bring the interest cost as low as 1%, depending on a family's income and size.

WHEN DO THE PAYMENTS START?
Monthly payments will begin when the home is completed or twelve months after the loan is closed, whichever comes first.

HOW MUCH ARE THE MONTHLY PAYMENTS?
Payments are determined based on the family's income and family size. USDA Rural Development reviews each loan every year. If the family's income has changed or the size of the family has changed, the payments will change. For example, if the family income has increased, it's possible the payment will increase. Before you sign the final loan documents you will know both the highest and lowest amounts you would ever be required to pay.
SUBSIDY REPAYMENT AGREEMENT

Only one agreement should be executed by the subject borrower for the subject property. The agreement is completed at the closing of the first Agency loan to the borrower regardless of whether or not they qualify for payment assistance at that time.

1. As required under section 521 of the Housing Act of 1949 (42 U.S.C. 1490a), subsidy received in accordance with a loan under section 502 of the Housing Act of 1949 is repayable to the Government upon the disposition or nonoccupancy of the security property. Deferred mortgage payments are included as subsidy under this agreement.

2. When I fail to occupy or transfer title to my home, recapture is due. If I refinance or otherwise pay in full without transfer of title and continue to occupy the property, the amount of recapture will be calculated but; payment of recapture can be deferred, interest free, until the property is subsequently sold or vacated. If deferred, the Government mortgage can be subordinated but will not be released nor the promissory note satisfied until the Government is paid in full. In situations where deferment of recapture is an option, recapture will be discounted 25% if paid in full at time of settlement.

3. Calculating Original Equity.

For Self-Help loans, the market value is the appraised value as determined at the time of loan approval/obligation, which is subject to completion per plans and specifications. If the house is not ultimately furnished under the Self-Help program, an amended agreement using the market value definition for all other transactions as outlined below must be completed.

For all other transactions, the market value is the lower of the:

- Sales price, construction/rehabilitation cost, or total of these costs, whichever is applicable
- OR
- Appraised value as determined at the time of loan approval/obligation.

If the applicant owns the building site free and clear or if an existing non-Agency debt on the site without a dwelling will not be refinanced with Agency funds, the market value will be the lower of the appraised value or the construction cost plus the value of the site.

Market value of property located at:

$ ____________________________

Less Prior Liens

$ ____________________________ Held by ____________________________

Less Subordinate Affordable Housing Products

$ ____________________________ Held by ____________________________

Less Rural Development Single Family Housing Loans

$ ____________________________ Held by ____________________________

Equals Original Equity (If negative number use “0”)

$ ____________________________

Percent of Original Equity

(Determined by dividing original equity by the market value)

$ ____________________________

% ____________________________

4. If all loans are not subject to recapture, or if all loans subject to recapture are not being paid, the amount to be recaptured is computed according to the following formula. Divide the balance of loans subject to recapture that are being paid by the balance of all open loans. Multiply the result by 100 to determine the percent of the outstanding balance of open loans being paid.
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6. Calculating Recapture

Current Market value

LESS
- Original amount of prior liens and subordinate affordable housing products,
- RHS balance,
- Reasonable closing costs,
- Principal reduction at note rate,
- Original equity (see paragraph 3), and
- Capital improvements (see 7 CFR part 3550).

EQUALS
- Appreciation value. (If this is a positive value, continue.)

TIMES
- Percentage in paragraph 4 (if applicable),
- Percentage in paragraph 5, and
- Return on borrower's original equity (100% - percentage in paragraph 3).

EQUALS
- Value appreciation subject to recapture. Recapture due equals the lesser of this figure or the amount of subsidy received.

Borrower agrees to pay recapture in accordance with this agreement.

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DRAFT RESOLUTION A

RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF ATASCADERO, CALIFORNIA,
APPROVING AN AMENDMENT TO CUP 2004-0130 AND
TTM 2004-0054 OAK GROVE II TO AMEND THE
AFFORDABLE HOUSING CONDITIONS

(1225 El Camino Real / Atalaya Street / People’s Self Help Housing)

WHEREAS, an application has been received from People’s Self Help Housing (3533 Empleo St., San Luis Obispo, CA 93401), Owner and Applicant, to consider a project consisting of an Amendment to the Affordable Housing Condition of CUP 2004-0130 and TTM 2004-0054 at 1225 El Camino Real/Atalaya Street; and,

WHEREAS, the site’s General Plan Designation is SFR-X (Single-Family Residential - X); and,

WHEREAS, the site’s Zoning District is RSF-X (Residential Single-Family -X) with a Planned Development 17 (PD-17) Overlay; and,

WHEREAS, the Planned Development #17 requires the adoption of a Master Plan of Development in the form of a Conditional Use Permit, and specific Conditions of Approval are included in that Master Plan of Development; and,

WHEREAS, the proposed Amendment is consistent with Mitigated Negative Declaration 2004-0022, which was prepared for the project in 2004 and made available for public review in accordance with the requirements of the California Environmental Quality Act (CEQA) prior to being certified by City Council; and,

WHEREAS, the Atascadero City Council, at a Public Hearing held on October 11, 2011, studied and considered the proposed project Amendment (CUP 2004-0130 & TTM 2004-0054) after first studying and considering the Certified Mitigated Negative Declaration prepared for the original project, and,

NOW, THEREFORE BE IT RESOLVED, by the City Council of the City of Atascadero:

SECTION 1. Findings. The City Council finds as follows:

1. The proposed project amendment or use is consistent with the General Plan and the City’s Appearance Review Manual; and,
2. The proposed project amendment or use satisfies all applicable provisions of the Title (Zoning Ordinance) including the PD-17 Ordinance; and,

3. The establishment, and subsequent operation or conduct of the use will not, because of the circumstances and conditions applied in the particular case, be detrimental to the health, safety, or welfare of the general public or persons residing or working in the neighborhood of the use, or be detrimental or injurious to property or improvements in the vicinity of the use; and,

4. That the proposed project amendment or use will not be inconsistent with the character or the immediate neighborhood or contrary to its orderly development; and,

5. That the proposed use or project amendment will not generate a volume of traffic beyond the safe capacity of all roads providing access to the project, either existing or to be improved in conjunction with the project, or beyond the normal traffic volume of the surrounding neighborhood that would result from full development in accordance with the Land Use Element.

SECTION 2. Approval. The City Council of the City of Atascadero, in a regular session assembled on October 11, 2011, resolved to approve an Amendment to CUP 2004-0130 and TTM 2004-0054 subject to the following:

Amend CUP Condition #11 & TTM Condition #9 to state:

**Affordable Housing Requirement**: The applicant shall designate either 2 units as very-low income or 4 units as low-income, deed-restricted for a 30-year period as follows in accordance with the State Density Bonus Program provisions. Such units shall be located throughout the project and shall be subject to planning staff approval.

**Exception to resale restriction**: The City will release the 2 very-low income, or 4 low income 30 year recorded deed restrictions if the developer can demonstrate that the project meets the following criteria:

- The project shall be developed as an entirely affordable project, consisting of a mix of very low, low, or moderate income units;
- The housing units must be constructed with at least 50% of the work performed by volunteers and/or households purchasing the housing;
- The applicant must demonstrate that the home purchase financing provided will be affordable to the purchasing household for at least 30 years;
- At least 2 very-low income units, or 4 low income units shall be provided within the 24 unit project to meet the density bonus provisions. When the first very low income unit, or first two low income units are sold to qualified buyers, one of the very-low income deed restricted units shall be released by the City. When the second very-low income unit, or an additional two low income units are sold to qualified buyers, the second very-low income deed restricted unit shall be released by the City.
On motion by Council Member ________________ and seconded by Council Member ________________, the foregoing Resolution is hereby adopted in its entirety on the following roll call vote:

AYES:

NOES:

ABSENT:

ADOPTED:

CITY OF ATASCADERO

By: __________________________
   Tom O’Malley, Mayor

ATTEST:

___________________________
Marcia McClure Torgerson, C.M.C., City Clerk

APPROVED AS TO FORM:

___________________________
Brian A. Pierik, City Attorney