



## Planning Commission Staff Report

Date: January 11, 2012

To: Planning Commission

Case: PDD 267 / TTM 31525

Application Type: Planned Development District Amendment

Location: East side of Sunrise Way, between San Rafael Drive and Whitewater Wash.

Applicant: K-Hovnanian Companies

APN: 669-460-005, 669-70-030, 669-470-031

Zoning: PDD 267

General Plan Designation: L-4 (Low Density Residential)

From: Craig A. Ewing, AICP, Director of Planning Services

Project Planner: Edward O. Robertson, Principal Planner

---

### **DESCRIPTION AND ANALYSIS:**

The applicant, K. Hovnanian Companies is requesting the Planning Commission to waive obligations to perform utility undergrounding as required by the Municipal Code and approved conditions of approval for the Four Seasons Development within Tract 31525. The proposed request will change previously approved conditions of approval requiring undergrounding of utilities on a planned park site denoted as Lot G of Tract 31525.

### **RECOMMENDATION:**

That the Planning Commission deny the request to waive the applicant's obligations to perform utility undergrounding at the Four Seasons Development within Tract 31525.

## **BACKGROUND:**

On January 18, 2006, the City Council approved tentative tract map 31525 for the subdivision of approximately 24-acre land into 70 single family residential lots and two lettered lots along with the dedication of seven-acre parcel for park purposes. Tract 31525 occupies a triangular portion on the easterly two-thirds of two other tracts; 30054 and 30058. Tracts 30054 and 30058 were previously approved as part of the larger Four Seasons Planned Development Districts 267 and 269.

On September 20, 2010, K. Hovnanian Companies, the applicant, submitted an application requesting a waiver from Engineering Conditions #32 and #33; these conditions required the developer to perform undergrounding of overhead utilities at the Four Seasons Development. Those conditions read, as follows:

Eng. 32: All proposed utility lines shall be installed underground. The undergrounding of the overhead utilities shall occur in two phases: Phase 1 shall be the residential portion of the site, and Phase 2 shall be the park site.

Eng. 33: In accordance with Chapter 8.04.401 of the City of Palm Springs Municipal Code, all existing and proposed electrical lines of thirty-five thousand volts or less and overhead service drop conductors, and all gas, telephone, television cable service, and similar service wires or lines, which are on-site, abutting, and/or transecting, shall be installed underground unless specific restrictions are shown in General Orders 95 and 128 of the California Public Utilities Commission, and service requirements published by the utilities. The existing overhead utilities across the property shall be installed underground. A detailed plan approved by the owner(s) of the affected utilities depicting all above ground facilities in the area of the project to be undergrounded, shall be submitted to the Engineering Division prior to approval of any grading plan building permit. Undergrounding of applicable overhead utility lines on the residential portion shall be completed prior to issuance of a certificate of occupancy. Undergrounding of applicable overhead utility lines on the park site shall be completed in conjunction with the certificate of occupancy for the last construction phase, or eight homes, whichever is larger.

The conditions in question were imposed by the Public Works Department in accordance with requirements of Chapter 8.04.401 of the City of Palm Springs Municipal Code. Because the City included condition numbers 32 and 33 regarding the utility undergrounding, their deletion must be reviewed by the Planning Commission. The City's requirement for undergrounding utilities (Chapter 8.04.401 of the Municipal Code) was enacted by Ordinance 1306 on September 7, 1988. The Ordinance states:

*No certificate of occupancy for new buildings or structures shall be issued unless or until all existing and proposed electrical lines of thirty-five thousand volts or less and overhead service drop conductors, and all gas, telephone, television cable service, and similar service wires or lines, which are on-site, abutting, and/or transecting, are installed underground unless specific restrictions are shown in General Orders 95 and*

*128 of the California Public Utilities Commission, and service requirements published by the utilities. (Ord. 1316 § 1, 1988: Ord. 1306 § 1, 1988: Ord. 1124 § 1 (part), 1981)*

This Ordinance has been in place and is unchanged since its original adoption. The Engineering Department is required to defer the implementation of this obligation to the Planning Commission and/or City Council, as there is no discretionary waiver or deferral of the obligation allowed to staff specific to "new development".

The applicant requests the waiver of the two conditions because of a land swap agreement between K-Hovnanian Four Seasons Development and the Desert Water Agency (DWA) in which the title of the park site, Lot G of Tract 31525 was deeded to DWA. The applicant is claiming that since the existing utility poles in question are now located on the DWA property, they are no longer obligated to the conditions. There has been no communications between the City and DWA regarding this matter. The applicant also claimed that K. Hovnanian is unable to perform undergrounding of the utilities due to the "encountered resistance" from Southern California Edison (SCE). The encountered resistance according to the applicant includes the request for numerous indemnifications and letters of credit by Southern California Edison. K. Hovnanian is claiming that these requirements "are unreasonable and unfair expectations to be placed on them in order to satisfy a condition that does not have any impact on their development". (See attached letter dated September 25, 2011)

Staff is not in agreement with the above-stated assertions. Lot G was and is a part of Tract 31525. The Developer objected to the dedication of Lot G as a park site on the basis the requirement was excessive under the City's Code the overall acreage exceeded their calculation of the in-lieu fees otherwise due; and was not otherwise lawfully required. The City disagreed with K. Hovnanian, in that in its conditional approval of Tentative Tract 31525, the City approved reduced development standards (increased density) to facilitate their proposed development. Tract 31525 was ultimately recorded without the dedication of the park site; however, Lot G was created as a lot of record with the recordation of Tract 31525. Lot G was included in the CC&Rs as an Association Property Lot, an open space lot required to be landscaped and maintained in perpetuity by the Developer and ultimately the homeowners' association.

The City's position is that K. Hovnanian remains obligated to fulfill its conditions of approval regardless of its decision to sell Lot G to DWA; the Developer understood at the time Lot G was sold to DWA that it was required to install utility undergrounding across Lot G. The cost to underground the existing utilities across Lot G is the responsibility of K. Hovnanian, and the obligation was clearly identified in the conditions of approval accepted by K. Hovnanian.

### **CONCLUSION:**

Staff generally will recommend deferral of utility undergrounding for small, individual commercial projects, and single family home projects. In this case, however, it is our recommendation that Lot G remains a part of the Tract 31525, the Developer has received the benefit of the recordation and the sale of lots within Tract 31525, and the

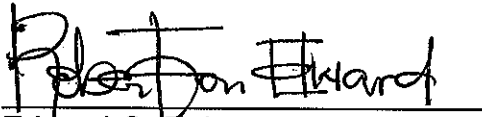
Developer should therefore comply with all of the conditions of approval, including the undergrounding of utilities within the boundaries of the Tract. Consequently, staff recommends that the Commission retain the existing conditions and deny the request.

### RECOMMENDATION

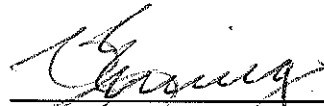
Staff recommends that the Planning Commission deny the applicant's request, and require the applicant to perform undergrounding of utilities as required by the conditions of approval for TTM 31525 consistent with Section 8.04.401 of the City of Palm Springs Municipal Code.

### NOTIFICATION

Review of minor changes to a Final Development Plan does not require public notice.



Edward O. Robertson  
Principal Planner



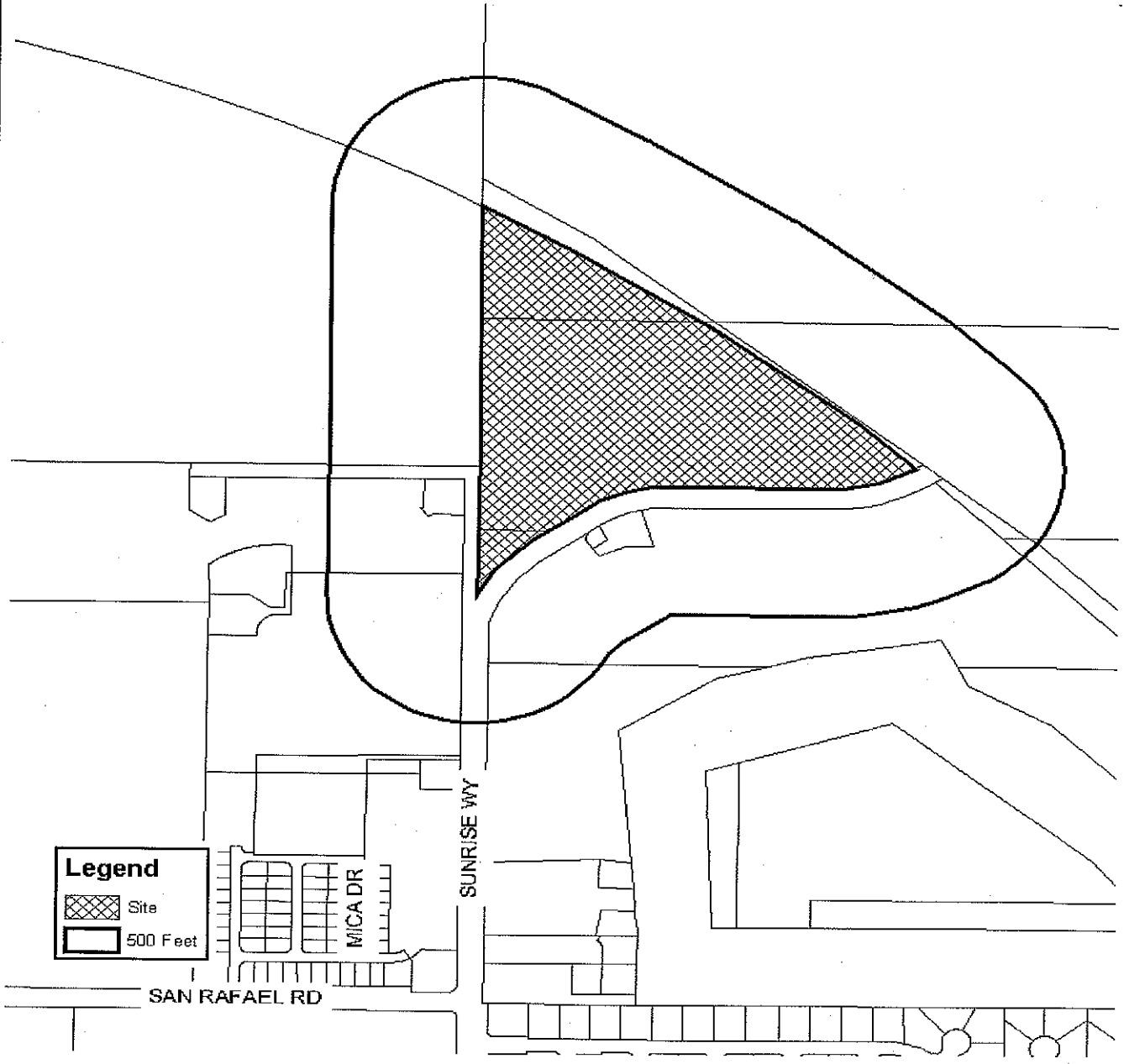
Craig A. Ewing, AICP  
Director of Planning Services

#### Attachments:

- A. Vicinity Map
- B. Draft Resolution
- C. Letter from the applicant dated September 30, 2009



Department of Planning Services  
Vicinity Map



**CITY OF PALM SPRINGS**

**CASE NO:** TTM 31525

**APPLICANT:** FOUR SEASONS AT  
PALM SPRINGS

**DESCRIPTION:** Application by K. Hovnanian Companies for Tentative Tract Map 31525 request to waive obligations to perform utility undergrounding.

## RESOLUTION NO.

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF PALM SPRINGS, CALIFORNIA, DENYING THE REQUEST TO WAIVE OBLIGATIONS TO PERFORM UTILITY UNDERGROUNDING AS REQUIRED BY CONDITIONS OF APPROVAL NOS. 32 AND 33 FOR TRACT 31525; FOUR SEASONS DEVELOPMENT BY K. HOVNANIAN LOCATED ON THE EAST SIDE OF SUNRISE WAY NORTH, BETWEEN SAN RAFAEL DRIVE AND WHITEWATER WASH, ZONE PD-267, SECTION 36.

WHEREAS, K. Hovnanian, applicant, has requested an amendment to the previously approved Tract 31525, within Planned Development District 267, to waive obligations to perform utility undergrounding as required by the conditions of approval; and

WHEREAS, on January 14, 2012, a meeting was held by the Planning Commission in accordance with applicable law; and

WHEREAS, in accordance with the California Environmental Quality Act (CEQA) Guidelines, the proposed project is exempt under Section 15061(c) (General rule); and

WHEREAS, the Planning Commission has carefully reviewed and considered all of the evidence presented in connection with the hearing on the project, including but not limited to the staff report, all written and oral testimony presented.

THE PLANNING COMMISSION HEREBY FINDS AS FOLLOWS:

Section 1: Chapter 8.04.401 "New Construction" of the Palm Springs Municipal Code states:

No certificate of occupancy for new buildings or structures shall be issued unless or until all existing and proposed electrical lines of thirty-five thousand volts or less and overhead service drop conductors, and all gas, telephone, television cable service, and similar service wires or lines, which are on-site, abutting, and/or transecting, are installed underground unless specific restrictions are shown in General Orders 95 and 128 of the California Public Utilities Commission, and service requirements published by the utilities.

Section 2: Chapter 8.04.401 "New Construction" of the Palm Springs Municipal Code was enacted by Ordinance 1306, adopted by the City Council on September 7, 1988, has existed and is unchanged since its original adoption.

**Section 3:** Utility undergrounding requirements have been applied equitably and fairly on development projects throughout the City of Palm Springs since the adoption of Ordinance 1306.

NOW, THEREFORE, BE IT RESOLVED that, based upon the foregoing, the Planning Commission hereby denies the applicant's request to waive obligations to perform utility undergrounding as required by the Municipal Code and conditions of approval Nos. 32 and 33 for the K. Hovnanian Four Seasons Development within Tract 31525.

ADOPTED this 14th day of January, 2012.

CITY OF PALM SPRINGS, CALIFORNIA

---

Craig A. Ewing, AICP  
Director of Planning Services



**VIA HAND DELIVERY AND EMAIL**

September 25, 2011

Edward Robertson  
City of Palm Springs, Planning Department  
3200 E. Tahquitz Canyon Way  
Palm Springs, CA 92263

**RE: K. Hovnanian's Four Seasons at Palm Springs, LLC  
Tract Map 31525 Condition of Approval No. 33  
Request for Waiver of Condition**

Dear Mr. Robertson:

In connection with our letter dated as of September 30, 2009 in which we requested the City to waive condition number 33 "Utility Underground Sunrise Way" and per our recent phone conversations in which you requested we submit a letter stating the reason we could not satisfy this condition, we offer the following:

As you are aware, we entered into a land swap with the Desert Water Agency ("DWA") in which we were able to develop 3 additional lots in Tract 30058 in exchange for deeding title of Lot G of Tract 31525 to DWA. The utility poles in question are currently located on the DWA property known as Lot G ("PIQ, Lot G"). When we approached Southern California Edison ("SCE") about the possibility of undergrounding these lines in order to satisfy the City's condition, we encountered resistance from SCE. SCE did not want to proceed with undergrounding those lines because the adjacent development, which at the time was in bankruptcy, had not done any street improvements. When street improvements are not installed the ultimate designs have a high risk of changing.

In order to satisfy SCE, they were requesting numerous indemnifications as well as letters of credit that would be in effect until the adjacent property was developed and the continuation to Sunrise Way was completed so that SCE had certainty that there would be no impact on the undergrounded lines. These are unreasonable and unfair expectations to place on K. Hovnanian in order to satisfy a condition that does not have any impact on our development.

As such, we request to have this condition waived as originally requested in our letter dated September 30, 2009 and have our letter of credit posted with the City of Palm Springs immediately released.

Should you require any additional information, please feel free to contact my cell at (909) 208-8743.

Sincerely,

A handwritten signature in black ink, appearing to read 'Chris Courtney'.

Chris Courtney, Land Planning Manager  
**K. Hovnanian Homes**  
Email: [ccourtney@KHOV.com](mailto:ccourtney@KHOV.com)  
Cell: (909) 208-8743

CC: