

**MINUTES
SARATOGA PLANNING COMMISSION**

DATE: Wednesday, May 24, 2006
PLACE: Council Chambers/Civic Theater, 13777 Fruitvale Avenue, Saratoga, CA
TYPE: Regular Meeting

Chair Rodgers called the meeting to order at 7:00 p.m.

ROLL CALL

Present: Commissioners Cappello, Hlava, Kundtz, Rodgers and Zhao
Absent: Commissioners Hunter and Nagpal
Staff: Director John Livingstone, Associate Planner Therese Schmidt, Assistant Planner Suzanne Thomas, City Arborist Kate Bear and Assistant City Attorney Jonathan Wittwer

PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES – Regular Meeting of May 10, 2006.

Motion: Upon motion of Commissioner Kundtz, seconded by Commissioner Cappello, the Planning Commission minutes of the regular meeting of May 10, 2006, were adopted with corrections to pages 8 and 18. (5-0-2; Commissioners Hunter and Nagpal were absent)

ORAL COMMUNICATION

There were no Oral Communications.

REPORT OF POSTING AGENDA

Director John Livingstone announced that, pursuant to Government Code 54954.2, the agenda for this meeting was properly posted on May 18, 2006.

REPORT OF APPEAL RIGHTS

Chair Rodgers announced that appeals are possible for any decision made on this Agenda by filing an Appeal Application with the City Clerk within fifteen (15) calendar days of the date of the decision, pursuant to Municipal Code 15-90.050(b).

CONSENT CALENDAR

There were no Consent Calendar Items.

PUBLIC HEARING - ITEM NO. 1

APPLICATION #06-314 (503-75-017) SABELLA, 21771 Congress Hall: - The applicant requests an exemption to fence requirements enclosure of an area in excess of 4,000 sq. ft. in Hillside Residential Districts to allow for construction of 6-foot high fence, consisting of both chain link and tubular steel, enclosing approximately 11,251 sq. ft. of the rear yard. The lot size is 48,447 square-feet and the site is zoned Hillside Residential (HR). (Therese Schmidt)

Associate Planner Therese Schmidt presented the staff report as follows:

- Advised that the applicant is seeking an exception to fencing requirements to allow an enclosure in excess of 4,000 square feet on a Hillside Residential District.
- Described the proposed fence as being five-feet high tubular steel. The request has been reduced to one that would enclose 8,651 square feet of a 48,000 square foot lot. Additionally, the original proposal consisted of a combination chain link and tubular steel. When advised by staff that chain link fencing was prohibited in this Zoning District, the applicant changed the fencing materials to consist only of tubular steel.
- Stated that staff is recommending denial of this exception and that no CEQA review has been done nor is required.
- Informed that Section 15-29.020-c allows a Fencing Exception to be granted by the Planning Commission for an enclosed area in excess of the 4,000 square feet allowed under the Hillside Zoning.
- Reported that staff is unable to make any of the three required findings to support this exception. One finding allows an exception if it can be demonstrated that visibility of fencing can be reduced by existing topography, landscaping, etc. That is not the case here. Another finding would allow an exception if said fencing is needed for safety reasons. Since there is already required fencing around the pool that already exceeds 4,000 square feet in enclosed area, this finding is not met. Another required finding might be that an exception has been granted for a neighborhood area. That is not the case here.
- Added that this fencing request is not in compliance with the intent of the General Plan for rural areas. There are visual impacts. It is not in compliance with the Hillside Specific Plan.
- Recommended denial.

Commissioner Hlava asked if just one or all three findings had to be made.

Planner Therese Schmidt replied at least one of the three required findings must be made in the affirmative.

Chair Rodgers asked about CEQA requirements if the Commission elects to grant this fence exception.

Planner Therese Schmidt said that it would fall under a Categorical Exemption but deferred this to the City Attorney.

City Attorney Jonathan Wittwer said that this is request clearly falls under Categorical Exemption.

Chair Rodgers opened the Public Hearing for Agenda Item No. 1.

Mr. Jerry, Reed Associates Architects:

- Explained that the Sabellas came to him a couple of years ago to design a pool that works well with the Hillside.
- Said that they are concerned about the current fence location and approval for fear that it could look like a cage or sports court and would distort views.
- Reported that one neighbor describes it as San Quentin.
- Said that if the approved fencing were installed in the approved location, it would be visible from many locations.
- Assured that it would be less visible if it were to be relocated as they are requesting this evening.
- Pointed out that only 17 percent of this land would be enclosed within fencing.
- Added that as proposed, the fencing would not impede the migration patterns of wildlife.
- Stated that this proposal this evening is the best alternative for the community.

Commissioner Cappello asked for clarification as the drawing states that one of the reasons why this proposed fencing is required is due to sloping terrain. At one point in the fencing area, it is felt that it would be easy for a child to hop the fence and access the pool.

Mr. Jerry said yes, they wanted to avoid that possibility. He added that the fencing would not be visible as they are proposing tonight.

Ms. Lori Burns, Resident on Congress Springs Lane:

- Stated that she is on the Board of the Saratoga Heights Homeowners Association.
- Pointed out that there are covenants in the CC&Rs that require changes to architecture be funneled through the Homeowners Association's Architectural Review Board.
- Advised that there has been no contact by the applicant to the HOA about this project. Neighbors have not been directly involved and that is a significant problem.
- Asked that the Commission take the existing CC&Rs into consideration.
- Pointed out that many people these days are considering solar panels. That issue would also need to be considered by the HOA Architectural Review Board.

Commissioner Zhao asked Ms. Lori Burns if she has seen the fencing design.

Ms. Lori Burns replied no. She added that a message has been sent to all owners reminding them of the need to use the HOA's Architectural Review Board for any architectural changes to their property.

Director John Livingstone pointed out that CC&Rs are a private matter between property owners. It is the homeowner's responsibility to deal with their HOA. The City does not enforce the CC&Rs. He added that a pool is an over-the-counter permit as long as it meets Code and such permits are issued without Planning Commission review or noticing.

Ms. Lori Burns said that she understands that the City is not mandated to enforce CC&Rs. She recounted about one neighbor who needed to obtain neighbor sign-offs in order to change rooflines so it seems odd that neighbor sign off was not required in this case. She said that owners should be encouraged by staff to contact their HOA.

Chair Rodgers asked if 500-foot notification distances are determined at ground level or as the crow flies.

Director John Livingstone replied as the crow flies.

Chair Rodgers advised Ms. Lori Burns that this is the time to express specific objections and asked if she has anything else to add.

Ms. Lori Burns said the City might want to consider changing its process in order to require HOA notification.

Commissioner Kundtz said that in his experience CC&Rs are recorded and attached to a property's deed.

Chair Rodgers asked the City Attorney to address the issue of City enforcement of CC&Rs. She added that this Commission does consider neighborhood input.

Ms. Lori Burns offered the HOA to be used for other decisions to be made in the future.

Commissioner Hlava said that she understands the concerns of the HOA having once been active on an HOA. She asked Ms. Lori Burns if the HOA wishes it had been consulted before the pool was approved. She asked Ms. Burns if she has an opinion one way or the other on the issue of this proposed fence exception.

Ms. Lori Burns said that what has been described this evening is different than the description on the notice.

Mr. Bob Commins:

- Said that he has three concerns including the CC&Rs and HOA, the variations between the description on the mailed notice and that description given during the staff report this evening and the neighbor notification form requirements.
- Said that the applicant gave him a form to sign that certifies that he has reviewed the plans and has no objection.
- Stated that he is an engineer, "Show me something with more substance."
- Added that not enough information has been provided to neighbors to respond to this request to sign off on a consent form.

Planner Therese Schmidt:

- Advised that the applicant made changes to their plan after the noticing went out. However, the proposed changes are a reduction so did not require renoticing.
- Pointed out that the notice advised the public that the project plans were available at City Hall for their review.
- Added that the site was also staked and flagged to outline the proposed fencing for about a week or two.

Chair Rodgers asked Mr. Bob Commins if he asked the applicant to see the plans.

Mr. Bob Commins said that while he talked to the applicant he saw no plans.

Ms. Deborah Sabella, Applicant and Property Owner:

- Apologized to the HOA.
- Pointed out that she understands there has been just one HOA meeting in the last eight years and that she never received formal by-laws.
- Advised that she spoke with Mr. Bob Commins two weeks ago and tried to outline her plans to him. At that time, he did not seem to have a problem with the proposal.
- Added that she followed up with a letter and explained that no chain link fencing would be used and also provided her phone number.
- Said that she spoke with Mrs. Commins who said she thought this fence was lovely.
- Added that she saw Mr. Commins today and he didn't express concerns.
- Assured that she would have provided plans to Mr. Commins if he had asked to see them.
- Stated that she has tried to do the right thing here and made the enclosed area small and used better materials.
- Said that she doesn't want to look at anything ugly either.

Commissioner Cappello:

- Expressed appreciation for the efforts made by Ms. Sabella.
- Said that the three required findings are based upon visibility and impact on views, safety and previous Planning Commission approval.
- Stated that he does not see any safety issues.
- Asked Ms. Sabella if she believes there is a potential safety issue in one area.

Ms. Deborah Sabella replied yes. There is one area near the existing patio walls. She added that she believes their new plan presented tonight is more discrete and less visible.

Commissioner Zhao asked for the height of the patio wall.

Mr. Jerry replied two to two-and-a-half feet.

Commissioner Zhao asked if the proposed fence would be eight feet at that location.

Mr. Jerry explained that an area is created that can easily be climbed over with the existing approved proposal but that problem would be corrected with tonight's proposal.

Commissioner Kundtz asked Ms. Deborah Sabella if she was previously aware of the CC&Rs.

Ms. Deborah Sabella said she is aware of them now. Today is the first day she heard about them. She added that she was living on the east coast when this house was purchased so she is not sure if she ever saw CC&Rs at the time of purchase.

Chair Rodgers closed the Public Hearing for Agenda Item No. 1.

Commissioner Cappello asked staff to clarify that it does not believe there is a safety concern with the already approved fencing plan.

Planner Therese Schmidt said that the applicant does have an option to go up to six-foot height in that area of concern in order to correct any anticipated problems there.

Commissioner Cappello asked staff to clarify that it does not perceive there to be a current safety concern.

Planner Therese Schmidt replied not that staff is aware of.

Director John Livingstone said that five-foot high fencing is what is required to keep small children safely away from pools.

Commissioner Kundtz:

- Advised that he is torn on this issue.
- Stated that the Commission does not rule based on the CC&Rs but that he does believe that people should comply with CC&Rs when they are in place.
- Pointed out that staff's recommendation is for denial of this request.
- Said that the current approved plan is an eyesore.
- Stated that a solution is need that meets the safety standard and softens the approach.
- Said he wants to support this.

Commissioner Hlava:

- Said that she is not sure there is a safety issue to be addressed here.
- Stated that she is real sure that this is not the way the Hillside is supposed to look.
- Reminded that this property is already over the maximum of fencing enclosure area allowed with the existing fencing surrounding the pool.
- Said that it might be better to run the fence along the property line where oleanders are available to screen it but realizes that is not allowed.
- Said that she can make the finding based on visibility as what is proposed here is better than the already-approved fencing plan.

Chair Rodgers reminded that staff has said in the report that planting plants and shrubs creates an artificial screen further affecting the area.

Commissioner Hlava said that she does not see how screening landscaping can have more of an impact than a wrought iron fence.

Commissioner Cappello asked what if the staff recommendation was to be denied? Would a Variance be required to proceed with the proposal for fencing made by the applicant?

Planner Therese Schmidt said no, a Fence Exception and not a Variance is what is used for this request. Findings for a Fence Exception are less stringent than those findings required supporting a Variance.

Commissioner Zhao:

- Said that she too is torn on this issue.
- Stated that she agrees with the staff report and cannot make the required findings on the issue of safety.
- Added that any fence can be climbed over. It is only intended to keep young children safely away from the pool.
- Reiterated that she agrees with the staff recommendation to deny this exception.

Chair Rodgers asked if this Fence Exception is denied tonight would the original fencing already approved for this property be reinstated?

Planner Therese Schmidt replied yes.

Chair Rodgers asked if the Commission could modify the existing approval.

Planner Therese Schmidt said that the planting requirements could be modified to soften the impacts. The applicant can be required to use non-metallic paint. Alternately, the Commission can elect to modify tonight's request to allow a Fence Exception but for a much smaller area.

Chair Rodgers:

- Said that she agrees with all others on the issue of safety. She cannot make the finding.
- Agreed with staff on the issue of reduced visibility as a result of topography and features of the site.
- Said that she does not like the approved fencing plan that looks like Versailles.
- Stated that she does not like to see large amounts of land on the Hillside fenced in.
- Added that the Ordinance limitations are there for a reason.
- Said that apart from the fencing needed to secure the pool, excessive fencing would create an atmosphere that is not currently found on the Hillside district.
- Said that she cannot vote to approve this fence using vines to create a visual barrier.
- Reminded that there is significant migration of wildlife in this area.

Commissioner Cappello:

- Stated that he agrees with the previous statements made and he also agrees with the staff findings.
- Said he has a problem in that he does not like the design and will deny this request for an Exception.
- Advised that he would like to see this applicant go back and work with her HOA Architectural Review Committee as required by the CC&Rs.
- Suggested that the applicant come back with a design that does not require an Exception.

Chair Rodgers asked about conditions for denial.

City Attorney Jonathan Wittwer clarified that this applicant has an approved fence plan. They can choose to go ahead and build according to that plan. They also have the option to work with their HOA.

Director John Livingstone explained that the options for the Commission are to approve, deny or continue this matter.

Commissioner Cappello said he couldn't approve this Exception as it stands today due to an inability to make the required findings.

Commissioner Zhao said she couldn't make the findings.

Chair Rodgers asked if the Commission wants to go with the staff recommendation or to approve something with conditions to reduce enclosed area.

Commissioner Zhao said she prefers a modified plan but is not sure.

Chair Rodgers said that if the Commissioner agrees with staff's recommendation, they can deny this request and the approved fencing plan remains in effect. Alternately, the Commission can approve the current proposed application with modifications.

Director John Livingstone agreed as long as it is clearly articulated to staff so they can work with the applicant.

Commissioner Cappello said that what is before the Commission is an Exception to the Ordinance for a new fence design that is based upon three required findings that he cannot make. He said he would have to deny this request. He cannot approve it with redesign options.

Commissioner Kundtz suggested that the applicant be asked if they are willing to accept a continuance to give them time to work with their HOA.

Mr. Jerry:

- Said they have lost a lot of time.

- Added that if they were not successful in obtaining this Exception tonight, the construction on the already approved fencing plan would start tomorrow as his clients are having a graduation party at their home soon.
- Reported that countless hours have been spent on options and that there is not a lot that they can do at this point. They have brought the fence in as much as possible. There are not a lot of alternatives.

Motion: Upon motion of Commissioner Cappello, seconded by Commissioner Zhao, the Planning Commission adopted a Resolution DENYING an exception to fence requirements to allow the enclosure of approximately 11,251 square feet with a six-foot high fence on property located at 21771 Congress Hall, by the following roll call vote:

AYES: Cappello, Rodgers and Zhao

NOES: Hlava and Kundtz

ABSENT: Hunter and Nagpal

ABSTAIN: None

PUBLIC HEARING - ITEM NO. 2

APPLICATION #06-351 (386-10-007) FANG, 18480 Prospect Road: - Request for a Conditional Use Permit to allow a Dental Office in an existing tenant space located in a Commercial Neighborhood Zoning District. (Suzanne Thomas)

Assistant Planner Suzanne Thomas presented the staff report as follows:

- Stated the applicant is seeking a Conditional Use Permit to allow the establishment of a dental office in an existing commercial space located at the Big Tree Shopping Center.
- Explained that a Use Permit is required under Section 15-19.030.
- Added that this center has two anchor tenants, See's and Round Table Pizza. Another internet business that was previously located in the subject tenant space, The Zone, closed a year ago.
- Advised that this is a difficult space to lease for retail use. It has limited window display area for such a large tenant space that consists of approximately 2,300 square feet.
- Said that it is believed that a dental office will benefit the center and bring new clients.
- Informed that the neighbors were notified and that no comments were received.
- Outlined the operational hours as 9 a.m. to 5 p.m. weekdays and from 9 a.m. to 2 p.m. on Saturdays. There would be four employees.
- Described the parking as consisting of 56 spaces. Dental practices require one parking space for every 200 square feet of tenant space. That is the same ratio as for retail use.
- Said that staff surveyed the parking area and found it to be adequate. There were usually 20 to 30 vacant spaces available at any given time.
- Said that a new sign would be installed within the existing casing. It would be illuminated between dusk and midnight.
- Added that this dental practice would serve both children and adults.

- Recommended approval and advised that this would be the only dental office in this shopping center. It would not be detrimental to the health, safety or welfare of the community.
- Said that the required findings to support this Use Permit can be made in the affirmative.
- Recommended the adoption of a resolution approving this Use Permit.
- Advised that the applicant is present and available for questions.

Commissioner Kundtz expressed concern that limiting this practice to four employees may be too restrictive in the future.

Planner Suzanne Thomas suggested bringing this issue up with the applicant.

Commissioner Hlava asked if the restrooms serving this space also serve the pizza restaurant.

Planner Suzanne Thomas deferred this question to the applicant.

Chair Rodgers opened the Public Hearing for Agenda Item No. 2.

Dr. Fang, Applicant:

- Advised that he is a five-year dentist.
- Said that the restrooms are part of the complex but are not shared with the pizza parlor.
- Said that for the first four years, they are likely to have staffing at just four people. One is his wife, also a dentist, who will practice with him.
- Added that they might expand the practice in the future so there may be more than four staff in the future.

Commissioner Kundtz said that the Use Permit should not limit the Use Permit to four staff.

Director John Livingstone said that there are no staffing limitations outlined in the Resolution.

City Attorney Jonathan Wittwer added that the noticing did not place staffing limitations either.

Dr. Fang advised that he is returning home. He grew up here and his parents are still here.

Commissioner Kundtz saluted Dr. Fang's brilliance in locating his dental practice next to a candy store.

Commissioner Hlava said she was interested in hearing what the building owner plans to do in the future as far as aesthetic improvements to the building such as painting.

Chair Rodgers cautioned that the application under consideration is a dental practice Use Permit. Conditions won't be placed on this applicant for exterior building improvements.

Dr. Fang assured that he would be developing a state-of-the-art dental office.

Commissioner Cappello said that this is the second dental practice that recently has been considered by this Commission for establishment within a typically retail area. He asked Dr. Fang what brings him to a retail area versus a typical medical office area.

Dr. Fang replied exposure. People pass by. It is difficult to compete these days and dentists are moving out of office suites and retail space is the best option today.

Mr. Mike McGuire, Property Owners Representative:

- Stated that he is a realtor with 10 years of involvement in leasing this building.
- Said that this tenant space is the problem child. Its frontage is small but the tenant space itself is big.
- Pointed out that this center is unique. It is not visible when traveling west on Prospect toward Lawrence.

Chair Rodgers asked Mr. Mike McGuire if there are any retail uses that could be pursued for this space.

Mr. Mike McGuire said not at the size of this space. It is too big for most retail.

Commissioner Zhao asked what previous tenants occupied this space.

Mr. Mike McGuire said there was a second-hand store, the internet business called The Zone, as well as the temporary use of the space for the sale of antiques by Bensons.

Commissioner Zhao asked if after-school tutoring programs such as Kuman had ever been considered.

Mr. Mike McGuire said he appreciates the lead but is not sure how traffic flow and circulation on site would work for such a use that requires the drop off of children.

Mr. John Seagull, Property Owner:

- Explained that he bought this center in 1976 and has now owned it for 30 years.
- Said that filling small tenant spaces is never a problem but this tenant space has always been a problem. It has never successfully operated as a true retail and is often vacant.
- Described some of the previous tenants including a church for one year, a consignment used clothing store for about two years; a sewing and embroidery class for about three years and an antique business that was very successful there but was only paying about 43 cents a square foot in rent. An Internet business lasted less than one year likely because this is too affluent an area to support it.
- Said that when Dr. Fang applied, they felt he represented the perfect solution for this corner tenant space.
- Added that they had tried to split the space in the past but it didn't work out.
- Reiterated that he believes that a dental office is perfect for this spot. They would be a stable tenant and provide a different type of visitor that would be a big help for the other tenants in the center.
- Added that the parking demands for a dental office are modest.

- Pointed out that the single-story structure is better for elderly and/or disabled dental patients to access their dentist's office.
- Reported that this See's in this center is the second best selling location in the entire chain.
- Explained that he has plans for painting the building tan with white trim and amber doors.
- Said that the big tree in front of Kraegan's blocks the signage on this site.
- Said that while a parapet has been suggested to obscure the roof-mounted HVAC unit, he had a new \$50,000 roof installed five years ago. He is reluctant to penetrate that roof.
- Said he is available for any questions.

Chair Rodgers closed the Public Hearing for Agenda Item No. 2.

Commissioner Cappello said he liked the concept and can appreciate the benefits of a dental office in a retail location. He said that since there have been difficulties in filling this spot with a retail use, he can make the required findings to support this Use Permit.

Commissioner Zhao said she agrees with the report and can make the findings to support this request.

Commissioner Hlava said she too agrees about the Use Permit but also feels that new signage should be considered by the owner in the future to upgrade this center.

Chair Rodgers said she agreed with the comments made by the others and is excited by the concept of a dental office being located here.

Motion: Upon motion of Commissioner Hlava, seconded by Commissioner Cappello, the Planning Commission adopted a Resolution approving a Conditional Use Permit (Application #06-351) to allow a dental office in an existing tenant space within a Commercial/Neighborhood Zoning District on property located at 18480 Prospect Road, by the following roll call vote:
AYES: Cappello, Hlava, Kundtz, Rodgers and Zhao
NOES: None
ABSENT: Hunter and Nagpal
ABSTAIN: None

PUBLIC HEARING - ITEM NO. 3

APPLICATION #06-092 (389-46-006) HANEY, 13397 Sousa Lane: - Staff has denied a tree removal request from the applicant to remove one deodar cedar tree on the subject property. The applicant is appealing Staff's denial to the Planning Commission. (Kate Bear)

City Arborist Kate Bear presented the staff report as follows:

- Advised that the appellant has prepared a packet of information for the Commissioners.
- Explained that the appellant is appealing the administrative denial of a Tree Removal Permit.

- Said that this property owner applied for a Tree Removal Permit on March 14, 2006, to remove a deodar cedar tree.
- Reported that staff was unable to make the findings to approve this request and therefore denied it.
- Added that the problem expressed by this property owner was that the tree drops limbs. Staff believes that this problem can be corrected with proper pruning of this tree.
- Said that this owner elected to appeal that denial to the Planning Commission.
- Stated that neighbors within 500 feet were notified and no comments were received. The applicant has provided several letters from her neighbors.
- Recommended denial of this appeal and informed that a revised Resolution has been distributed this evening.

Commissioner Hlava asked staff what is different with the revised Resolution.

Arborist Kate Bear replied that it has been edited to reflect that the required findings should be met over all and not just simply one of them.

Commissioner Zhao asked staff for feedback on the two arborist reports provided by the applicant this evening.

Arborist Kate Bear said she had seen one of them before and the second for the first time tonight. She said that she wanted to be conservative in her approach to this request and wants to see pruning attempted before approving a removal.

Chair Rodgers asked Arborist Kate Bear if she had a chance to review the second report this evening.

Arborist Kate Bear replied yes. This was prepared by a good competent arborist and contains good information. He says that he cannot guarantee that limbs will not fall from this tree and that is true.

Chair Rodgers asked about the liability issue and how it relates to the Commission's discussion of this request.

City Attorney Jonathan Wittwer said that the specific findings must be considered but that damage to property can be considered.

Chair Rodgers opened the Public Hearing for Agenda Item No. 3.

Ms. Diane Haney, Appellant and Property Owner:

- Explained that she brought the new material to City Hall at 5 p.m. today for the Commissioners to review and consider.
- Said that she had the opportunity to speak to several of the Commissioners at the site visit and just picked up the Mitchell arborist report late yesterday.
- Added that she secured this second report when City Arborist Kate Bear denied her first report.

- Stated that this tree is not safe and both of her arborist reports say that limbs can fall down. This is a hazardous tree from which large branches have fallen in the past.
- Said that overall she has discussed this tree with five arborists, including Mr. Coate and Mr. Babby.
- Pointed out that both of the reports she provided this evening say the same thing, nothing will stop this tree from dropping its branches. Branches up to 20 feet long have fallen. One weighed about 300 pounds and required a chain saw to cut up and the debris filled an entire pickup truck.
- Recounted that in March another large branch was hanging and had to be removed. It costs lots of money and has caused damage to their roof by cracking roof tiles.
- Said that this tree has dropped branches over at least 44 years as recounted by neighbors.
- Said that per page 3 of Mr. Mitchell's report, it is possible that damage occurred to this tree during construction about eight years ago. It is subject to failure without warning. This may be caused by changes in weather and moisture.
- Informed that her young grandchild can't play in the yard and that's not fair. She is even afraid to go out into the yard to mow the lawn and does the job quickly.
- Said that this is resulting in their not using their yard. That impact meets the required finding.
- Stated that there has been damage to property and they can't use their yard. There is potential of harm to people.
- Agreed that this tree is beautiful.
- Said that she is willing to plant six replacement trees.
- Stated that she feels very unsafe with this tree on her property so close to her house.
- Pointed out that one neighbor a few years ago was allowed to remove the same species of tree immediately and without a permit or arborist report when just one branch fell.
- Said that she is deathly afraid of that tree. While Kate Bear wants to trim it to see if it solves the problem, she has two arborists who say that this tactic will not work. Previous owners had the tree trimmed twice.
- Reported that they bought this house "as is" and there was a branch on the roof at the time that they had to remove themselves. They were not aware of the ongoing problem with dropping branches.

Chair Rodgers explained to Ms. Diane Haney that the Tree Ordinance changed in recent years after quite a bit of debate. There is a different process in place now.

Chair Rodgers closed the Public Hearing for Agenda Item No. 3.

Commissioner Hlava asked what replacements would be required if this tree is removed.

Arborist Kate Bear said that typically removed trees are replaced. Particular size and species for the replacement(s) trees can be specified.

Chair Rodgers asked about the oak from the rear yard that was removed and if it too would be replaced. If the Commission decides to allow removal of this cedar, would it be replaced with a native species tree?

Arborist Kate Bear advised that she told the Haneys that they would need to replace the oak removed from the rear yard with a 24-inch box native tree from the list. It could be conditioned that the replacement tree for the cedar also be a cedar.

Commissioner Cappello asked if cedars typically have this problem of dropping branches.

Arborist Kate Bear replied that they are not more prone than any other species to drop branches. This tree has been incorrectly pruned in the past. She hopes that if correctly pruned over the next couple of years, this tree would stop dropping branches.

Commissioner Zhao asked how long it might take to see the results of proper pruning.

Arborist Kate Bear replied right away. If the tree is pruned now and drops limbs in the next winter storm than the effort did not work but she said she believes pruning would work.

Commissioner Hlava pointed out that two arborists have said that pruning will not solve this problem. She asked Arborist Kate Bear what she thinks about that.

Arborist Kate Bear said that sometimes professionals disagree on a solution. It is accurate that two arborists have differed from her recommendation.

Chair Rodgers said it appears the tree may not be at its natural grade.

Arborist Kate Bear said that doesn't sound familiar.

Chair Rodgers asked Arborist Kate Bear if she can see construction related damage to this tree.

Arborist Kate Bear replied no.

Chair Rodgers asked if this is a drought tolerant tree and if perhaps wet weather harms the tree.

Arborist Kate Bear said that the tree does well in drought tolerant conditions.

Chair Rodgers asked if there is no drought are there problems with this tree.

Arborist Kate Bear said there might be root rot problems but not dropped limbs as a result of wet weather.

Chair Rodgers asked about the tarpaper that had been wrapped around the trunk of this tree and whether it caused damage to the tree.

Arborist Kate Bear said that the tarpaper had no impact. There was no damage detected once the tarpaper was removed. She was told that this tarpaper was there to keep squirrels off the tree.

Commissioner Zhao asked staff to clarify the findings required and how many must be met.

Arborist Kate Bear replied that not just one finding but all must be evaluated. While not all must be met, it should be more than just one.

City Attorney Jonathan Wittwer said that a number of factors can be considered and some are more important than others in different conditions. The object is to apply and find which findings are more important and to decide overall what is the best course of action.

Commissioner Kundtz:

- Said he thought this was a beautiful tree.
- Added that he can only find three findings (#3, 6 and 7) to support the staff recommendation and six findings that support the removal including an inability to enjoy the use of property safely. The site has a number of healthy trees. It is a lovely and well-maintained property.
- Said he could support removal conditioned upon suitable replacements.

Commissioner Hlava:

- Said that she typically goes with the staff recommendation. However, if this were her house, she said she would be down here to take down this tree.
- Said that she wants to see the replacement installed for the oak removed from the rear yard as well as replacement for this proposed removal. The replacements should be native species that will look good and not create the same problem in the future.

Commissioner Zhao agreed and said she too can make the findings about health and safety concerns. She said she has young children herself and can support removal of this tree with appropriate replacements.

Commissioner Cappello:

- Said he appears to have the minority opinion on this request.
- Stated that trees have a value to the community and the Commission has the responsibility to the community to preserve trees as much as possible.
- Reminded that the City Arborist has told the Commission that the main reason this tree is dropping branches is because of improper pruning and that allowing this removal is setting precedent. Most trees drop limbs at one time or another.
- Said that the City Arborist is paid to do a job and he values her recommendation and therefore he cannot approve this appeal.

Chair Rodgers:

- Stated her agreement with Commissioner Cappello.
- Said that the tree canopy is important to all.
- Reminded that a lot of effort went into the drafting of the Tree Ordinance.
- Said that while she does not know if this tree can ultimately be save, she would like to see the effort made to do so before a removal is granted.

- Reiterated that this is a large beautiful tree that may thrive if given a chance with proper pruning.
- Pointed out that five arborist reports were solicited by Ms. Haney and two supported removal.
- Stated that there should be some provision that would allow the removal of this tree if damage continues despite pruning.
- Said that she would vote to oppose this removal.
- Asked how the motion should be crafted.

Director John Livingstone suggested that when in doubt simply say motion to remove or save this tree.

Arborist Kate Bear explained valuation. This tree proposed for removal has been assessed a value of \$20,000. Replacement trees are valued at \$150 (15 gallon); \$500 (24-inch box); \$1,500 (36-inch box); and \$5,000 (48-inch box).

Ms. Diane Haney said that she is startled by that amount of valuation. She added that her property could not accommodate enough of the smaller sized trees to reach that valuation.

Director John Livingstone said that if an applicant cannot accommodate the replacement trees on their property, they could pay into a tree fund used to place trees throughout the City. The Commission has the discretion to condition the size and value of replacement trees.

Commissioner Kundtz said he is not comfortable imposing a \$20,000 expense on these owners to allow removal of this tree.

Commissioner Hlava said it is difficult to properly place trees to prevent such problems in the future.

Commissioner Cappello said that this is a big beautiful 44-year old or likely even older tree. The arborist says there are not safety issues.

Commissioner Kundtz expressed concern in the event the arborist is incorrect. He added that he still takes issue with the \$20,000 replacement expense.

Commissioner Cappello said that he is not there yet as far as allowing removal and replacement. He added that the \$20,000 valuation reemphasizes the importance and value of this big beautiful tree.

Commissioner Kundtz asked if there is some latitude in the valuation number.

Director John Livingstone replied that the Commission has complete latitude on the replacement requirements.

Commissioner Zhao said that she would like to leave it up to the City Arborist to decide on the appropriate replacement.

Chair Rodgers asked what about if the value appears excessive.

Commissioner Zhao replied that is simply what it takes to remove such a large tree.

Chair Rodgers said that the replacement requirement demonstrates that it is difficult to remove trees in Saratoga.

City Attorney Jonathan Wittwer reminded that the Commission has discretion, as does the City Arborist. The valuation is based upon ISA (International Society of Arborists) calculations. The Code says that the Arborist makes a decision on equivalent replacement based upon aesthetics and value. The applicant can appeal the Arborist's replacement requirements back to the Planning Commission.

Commissioner Kundtz said that the applicant should be motivated to work with the Arborist.

Motion: Upon motion of Commissioner Kundtz, seconded by Commissioner Hlava, the Planning Commission adopted a Resolution upholding an appeal and overturning the administrative denial of a tree removal request (Application #06-092) for the removal of a deodar cedar tree on property located at 13397 Sousa Lane with the requirement that the applicant work with the City Arborist on replacement tree requirements, by the following roll call vote:

AYES: Hlava, Kundtz and Zhao
NOES: Cappello and Rodgers
ABSENT: Hunter and Nagpal
ABSTAIN: None

DIRECTOR'S ITEMS

There were no Director's Items.

COMMISSION ITEMS

There were no Commission Items.

COMMUNICATIONS

There were no Communications Items.

ADJOURNMENT TO NEXT MEETING

Upon motion of Commissioner Cappello, seconded by Commissioner Hlava, Chair Rodgers adjourned the meeting at 9:30 p.m. to the next Regular Planning Commission meeting of **June 14, 2006**, at 7:00 p.m.

MINUTES PREPARED AND SUBMITTED BY:
Corinne A. Shinn, Minutes Clerk