MINUTES
SARATOGA PLANNING COMMISSION

DATE: Wednesday, January 24, 2007
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 Hlava, Kundtz, Rodgers and Zhao
Absent: Commissioners Cappello and Nagpal
Staff: Director John Livingstone, City Arborist Kate Bear and Assistant City Attorney Phil Parkin

PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES – Regular Meeting of January 10, 2007.

Motion: Upon motion of Commissioner Hlava, seconded by Commissioner Kundtz, the Planning Commission minutes of the regular meeting of January 10, 2007, were adopted as submitted (4-0-2; Commissioners Cappello 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 January 18, 2007.

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.

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PUBLIC HEARING - ITEM NO. 1

APPLICATION #07-200 (503-28-109) Cunningham, 21070 Canyon View: The applicant is appealing the denial of a Tree Removal Permit. The permit denied the removal of four mature oak trees.

City Arborist Kate Bear presented the staff report as follows:

- Explained that this is an appeal of a denial of a Tree Removal Permit. The appellant wants to demolish an existing house before selling the property including the removal of four mature Coast Live Oak trees in the process. Three of the trees are located in a courtyard surrounded by the house and the fourth tree grows next to the house and partially through a deck.
- Stated that staff had recommended to the appellant that prior to demolition of the house he should determine if there are constraints on what could be constructed on the property if the house is removed in case it is preferable to remodel the existing home.
- Said that denial of the appeal is consistent with the General Plan, which states that the City shall control the removal or destruction of trees and states that the Design Review process shall be utilized to consider which trees, if any, should be removed when a project is submitted for new construction.
- Added that denial of the appeal is also consistent with Code 15-50.080 in that the application does not meet the burden of proof for the criteria used in determining whether a tree can be removed.
- Outlined that the appellant did not meet the following criteria.
  - The oak trees are not diseased.
  - They are not in imminent danger of falling.
  - They are not interfering with utilities.
  - They don't threaten damage to the house.
  - The trees grow on a very steep slope and their removal may possibly increase erosion of the hillside on which they grow.
  - There is an alternative to removing the trees. The house can be demolished around the trees leaving them in place.
- Advised that the general purpose of Article 15-50 is to preserve healthy mature trees.
- Stated that no information has been provided so far about a possible design for a new home, any safety issues or other extenuating conditions that may require the removal of the trees in order to demolish the house.
- Said that removal of the trees is not required for enjoyment of the property in that they allow the existing house and could potentially allow for a major remodel.
- Recommended that the Commission adopt a Resolution denying the removal of the four oak trees.

Commissioner Zhao asked staff how old the trees were.

City Arborist Kate Bear said that she was not certain but could say they are older than 50 years old and perhaps as much as 75 years old.

Chair Rodgers sought clarification that although there are nine criteria not all are required but a weighing of them is considered.

City Arborist Kate Bear said that is correct. She weighs the criteria overall.

Chair Rodgers opened the public hearing for Agenda Item No. 1.

Mr. Brian Cunningham, Appellant and Property Owner:

- Thanked the Commission for allowing him to make an appeal.
- Advised that he is representing his family trust and is responsible for selling said property following the passing of his parents.
- Assured that his family has always loved oak trees and that is evidenced by the fact that they have built their house around and amongst these trees.
- Said that he does not want to have to take these trees down. However, unfortunate structural damage to the residence makes it questionable as to whether fixing the house is cost effective.
- Added that he is asking the Planning Commission to recognize that this is an unusual situation and allow the removal of these trees during any needed demolition as well as grant permission to rebuild the home on the existing house footprint that has been in place for 40 years.
- Said that the Arborist used four criteria to deny his Tree Removal Permit in October. He said that he agrees with the first criteria that the trees are healthy and not dead. However, two other criteria deal with the tree not threatening damage to the residence or property. If the residence is repaired or replaced, this condition may apply.
- Added that one of the trees is currently pushing up on a large support beam for the front deck and those are tied in to the house support. One can even visually see a little movement on it.
- Said that the courtyard trees bang into the house during windy days.
- Disagreed that removal would have an adverse reaction on soil or water flow, as a home would be rebuilt over the tree location and effectively eliminate local erosion and water would still be carried away via gutter.
- Pointed out that five other allowed criteria were not evaluated in the original decision. Of those, three of them can reasonably be used to justify the tree removal. One has to do with the number of trees on the property being able to support the removal. This 1.1-acre property is heavily oak forested.
- Stated that another criteria has to do with whether the removal is contrary to the Ordinance's intent in maintaining a sustainable urban forest. He said that the situation here is unusual as the trees are in the middle of a house and one tree is growing into the support beams of a house. This is not a sustainable element but rather is an unusual situation that does not meet the Ordinance's intent.
- Added that another criteria is consideration of economic enjoyment of a property. Blocking removal of the trees reduces options, increases expenses and devalues his property. Therefore, it has a devastating financial impact on the owner.

- Said that potential mitigation factors that can help justify removing these trees is that they could then clear out currently unreachable vegetated areas, reducing fire hazard and replant additional oaks there.
- Said that replacement of the house with something modern that is energy efficient is a positive environmental factor.
- Pointed out that there are many new regulations today that complicate rebuilding on site. They include new root zone limitations applied to defined tree canopies, new building site slope regulations, new structural post height requirements, new Fire Department turnaround requirements and probably many others of which he is not yet aware.
- Asked that the Planning Commission allow his Tree Removal Permit and further allow replacement of the existing structure with a modern structure without requiring a series of post build codes that exclude building a replacement home on this well-established housing footprint.
- Said he does not understand why there is not a grandfather clause to protect residents that suffer these types of calamities and are then subject to further financial harm due to the City changing the rules after completion of the game.
- Said that seems unfair.

Commissioner Zhao sought clarification as to whether what is being considered this evening is the Tree Removal or does it include other things not mentioned in the application.

Chair Rodgers clarified that only the Tree Removal Permit is to be considered.

Director John Livingstone said that the request is for a Tree Removal Permit. Some of the appellant's reasonings are more of an explanation.

Chair Rodgers said that appellant wants the option to be able to rebuild the house on the existing location, tear it down and build a new house or do a major reconstruction on the house.

Mr. Brian Cunningham said yes, that is what he is looking for.

Chair Rodgers asked Mr. Brian Cunningham if he has plans yet.

Mr. Brian Cunningham replied no.

Mr. John Colistra, Neighbor:
- Said that he lives two doors down from the Cunningham home.
- Added that he is a 29-year resident that built a home on a vacant lot.
- Stated that the Cunningham home needs to be replaced no question.
- Said he cannot see why this request for a Tree Removal Permit is not approved, as there are lots of trees on site. The trees the Cunninghams are trying to remove are located in the middle of the pad and will not threaten mudslides if removed.
- Pointed out that there is no description in the report on the number of trees on this property.
- Said that the house is not visible from other properties.

- Advised that Brian Cunningham is trying to enhance this property and these trees are hindering his opportunity to make it buildable.
- Stated that it is unreasonable to make an economic hardship on this family.

Chair Rodgers closed the public hearing for Agenda Item No. 1.

Commissioner Kundtz:
- Stated that he would personally feel better if there was a design plan in place that would replace the existing structure.
- Said that it would be a massive undertaking to renovate this home.
- Added that without a plan he cannot approve this Tree Removal Permit with the demolition of the house as the end result may be a vacant lot due to the difficulty in building a replacement structure.
- Expressed his support for the staff recommendation to deny.

Commissioner Hlava:
- Agreed with Commissioner Kundtz.
- Said that she too has problems with this request although she also has sympathy for the property owner's situation.
- Added that if there were a specific plan to review, she might be willing to say that some trees can come down if necessary if they are located on the only place available on site to build a new home.
- Stated that there are lots of oak trees on site.
- Said that she knows that the same house cannot be built on the same footprint under current regulations. A 30-foot beam holding it up will not happen under current Building Code requirements.
- Said that she thinks it is in the best interest of the Cunninghams to deny the Tree Removal Permit and have them obtain professional to help plan the future use of the lot.
- Concluded by staying she cannot make the findings and supports the staff recommendation to deny this appeal.

Commissioner Zhao:
- Said that when she was on site she could see potential damage to the structure.
- Added that without a future plan it is hard to approve this Tree Removal Permit as that potential design could end up keeping the trees and locating the house elsewhere on the property.
- Suggested that the Cunninghams come back with a design.
- Expressed her agreement with the staff recommendation.

Chair Rodgers:
- Said that the purpose of criteria is to protect trees.
- Added that trees define Saratoga. Values of the City of Saratoga include the beauty of its hillside and its urban forest.
- Agreed that the house is in terrible shape. That is not just because there are trees leaning against a beam. The windows are not square. The floor sags everywhere you walk.

There are places roped off because the owner felt they were too dangerous for visitors to walk on. Large posts seem to have sagged.
- Advised that she is not sure demolition by hand can be done inexpensively.
- Said she prefers to leave the trees and allow a new owner to work on how best to plan contruction.
- Added that a new owner may want to build closer to the front of the lot and further from the back hillside.
- Said that because right now this is all speculative, she is not comfortable allowing this tree removal.
- Stated that she is not seeing the difference in economic enjoyment to the current or future owner.
- Said that because of topography, Tree Ordinance regulations and the fact that there are alternatives available, she supports staff's decision.
- Stated that this is such a beautiful property with potential for a beautiful house.

Motion: **Upon motion of Commissioner Hlava, seconded by Commissioner Zhao, the Planning Commission denied an appeal and upheld the administrative decision denying a Tree Removal Permit for four mature oak trees on property located at 21070 Canyon View, by the following roll call vote:**
AYES: Hlava, Kundtz, Rodgers and Zhao
NOES: None
ABSENT: Cappello and Nagpal
ABSTAIN: None

Chair Rodgers advised Mr. Cunningham that he has the option to appeal this action to Council and/or she wished him good look with the sale of his property.

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PUBLIC HEARING - ITEM NO. 2

APPLICATION #07-082 (City Wide) Draft Land Use and Open Space/Conservation Elements of the Saratoga General Plan and Negative Declaration: The proposed project includes an update of the City's Land Use and Open Space/Conservation Elements of the Saratoga General Plan and Negative Declaration. These Elements establish City goals and policies related to the location, type, density and intensity of development in the City as well as the location of trails, open space and natural resource areas.

Contract Planner Deborah Ungo-McCormick presented the staff report as follows:
- Reminded that this General Plan Update to the City's Land Use and Open Space/Conservation Elements was most recently continued from a Study Session held on December 12, 2006.
- Reported that for that Study Session a matrix of items for discussion was created. A third column was used to reflect changes resulting from the Study Session.
- Advised that the changes from the Study Session were made accordingly.
- Said that she and her associate, Jerry Haag, were available for any questions.

- Stated that staff is recommending moving this forward to Council for approval.

Chair Rodgers said that the updates have been discussed at length at previous meetings.

Commissioner Hlava said that she is unclear on the edits to page 14 (Community Facilities Sites). She pointed out that West Valley College is listed both under Community Faculties as well as Public Facilities.

Contract Planner Deborah Ungo-McCormick said that repetitions could be eliminated. She added that schools are listed under Institutional and Public Facilities.

Contract Planner Jerry Haas said that the term "i.e." could be replaced with "e.g."

Commissioner Hlava suggested revising the order of language on the value statement.

Chair Rodgers read out, "…residents value quality educational facilities, neighborhood parks for recreation, cultural opportunities and community involvement for all ages."

Chair Rodgers opened the public hearing for Agenda Item No. 2.

Ms. Cheriel Jensen:
- Said that she has a number of comments.
- Started with three comments about the Land Use Map (attachment 2):
  - The first is on page 5 of 54 (Historic Orchard/Library Site). She said that the Library is a Community Facility but the Orchard is Open Space/Managed Resource.
  - The second is on page 14 of 54. The housing development site depicted includes a commercial area fronting Saratoga-Sunnyvale Road. The commercial area should be designated Commercial-Retail to be accurate.
  - The third is regarding page 4 of 54 (The Belle Grove Area). The professional office space located on the southeast corner of Cox is currently designated as M-10 but should be designated Professional Office.
- Pointed to page 7 of the Land Use Element draft, third paragraph, should read, "… no sites used <u>or designated</u> for industrial purposes."
- Added that descriptions on page 7 are not correct and need to be changed.
- Advised that Marshall Lane School has been left off page 8 listing of schools as well as the Cupertino School District.

Commissioner Hlava said that it was decided to list only those schools physically located in Saratoga.

Ms. Cheriel Jensen:
- Pointed out that Marshall Lane is indeed located in Saratoga.
- Added that mistakes and inconsistencies need to be corrected.
- Stated disagreement with using the term "significant amount of" in relation to the amount of open space/parks available since the City does not even have half the parkland it should have.

Commissioner Hlava said that there is lots of adjacent open space available to Saratogans.

Ms. Cheriel Jensen:
- Said that the list of creeks does not include Vasona Creek, which meets Wildcat Creek.
- Said that on page 11, some important Neighborhood Character issues have been left out including light, air space and privacy.
- Stated that on page 12 building site coverage needs to be addressed at some point. Some homes are being built now that are too large for their neighborhoods. The current design standards are not strong enough to prevent that from happening.
- Stressed the importance of prohibiting timber harvesting outright (page 15).

Commissioner Hlava pointed to page 42 in the Open Space/Conservation Element draft where a policy says, "discourage logging to the maximum extent possible."

Ms. Cheriel Jensen said logging should be prohibited outright.

Chair Rodgers asked if logging is best handled under the Land Use or Open Space Element.

City Attorney Phil Parkin said that logging is an activity that occurs on land but is not a Land Use Element issue.

Ms. Cheriel Jensen said that she really appreciates her comments that have been incorporated into the draft. She mentioned that the level of activity allowed in Neighborhood Commercial designated areas might not be appropriate in the Village.

Commissioner Hlava clarified that Neighborhood Commercial is a Zoning designation and Commercial Retail is a Land Use designation.

Ms. Cheriel Jensen:
- Said that allowing residential uses in a commercial zone makes sense in the Village but not elsewhere in the City's other commercial sites because there are so few such commercial sites.
- Said that basement issues have not been integrated with issues of building height limitations.

Chair Rodgers advised that a house's height is measured from average grade.

Ms. Cheriel Jensen:
- Said that the employment trends outlined on page 20 are based on projections by the State Department of Finance. They are so unrealistic and absurd. They don't really make sense and are not likely to come about since there is no land and it is expensive to live here.
- Stated that the City should not have to amend its Land Use policies to accommodate their projections, as they don't make sense.
- Brought up page 25 (Land Use Policy 2.3). She said that a decision should be made as to whether bed and breakfasts should be allowed in residential districts. If not, don't include the possibility of that in the General Plan.

Contract Planner Deborah Ungo-McCormick said that there are no recommended changes here and the language is existing language.

Ms. Cheriel Jensen:
- Stressed the need for consistency within the documents.
- Raised the issue of the North Campus via page 26 (LU-4), suggesting that public uses should "keep the publicly owned land in Saratoga or trade for lands more appropriate but equal in acreage and seek to acquire more land for parks."
- Said that 75 to 80 percent of the voters wanted to keep the North Campus. A policy is needed to protect City-owned property.
- Said that on page 27 (LU-5.2), privacy does not appear here and should be added to the list.
- Said that on Policy LU-5.3 development plans should be added.
- Said that on Policy LU-5.4 privacy should be added.
- Said that on page 28 LU-6.4 should include language that says, "development plans should include native trees."
- Said page 29 LU 9.1 is an inconsistent policy.

Commissioner Hlava asked why it is inconsistent.

Ms. Cheriel Jensen:
- Said that it is redundant to say what you cannot do.
- Added that she just likes things to be really clear.
- Cautioned that if there is an opening in a General Plan someone will find it and use it.
- Mentioned LU 11.1, saying she is not sure the City wants to be consistent with the other districts/jurisdictions but rather more strong and firm and doing the right thing. She said that policy is really a mistake and doesn't' serve us.
- Said that regarding the Conservation Element some discussion on creeks needs to be held to make sure creeks are not channelized. The current language is not strong enough to prevent creeks from channelization.
- Thanked the Commission for hearing her comments and including many of the recommendations she had suggested at previous meetings.

Chair Rodgers thanked Ms. Cheriel Jensen for her participation in the process.

Ms. Meg Giberson:
- Advised that she has some concerns and feels that perhaps another Study Session is in order to iron out the remaining issues since certain things still need to be addressed.
- Said that she submitted something in writing that was mischaracterized by the staff response and said that she wants to submit more comments in writing.
- Stated that she had asked that the Hillside Specific Plan areas that were added in 1994 be shown with more particularity in the documents. A very general description is in the document and the map but the map is not sufficiently clear so people can see if they fall in the area or not.

- Said that she would like to see the Conservation easements listed somewhere on a map or on a list in these documents.
- Pointed out that there is some good protective language in the County Plan on grading and riparian corridors.
- Reiterated her suggestion that another Study Session be held.
- Submitted five pages of comments to staff.

Chair Rodgers closed the public hearing for Agenda Item No. 2.

Chair Rodgers asked staff to comment on Ms. Jensen's and Ms. Giberson's comments.

Contract Planner Deborah Ungo-McCormick:
- Reminded that the purpose of a General Plan is to set policy.
- Said that background was added.
- Stated that each Element is self-sufficient yet consistent.
- Said that specific plans are incorporated by reference but their details are not included in the General Plan. The specific plans are separate documents. Maps identify the specific plan areas.
- Reminded that any change to the General Plan has to go through a General Plan Amendment.
- Reported that the City is in the process of updating maps incorporating the GIS system.
- Added that the environmental document is also incorporated by reference.

Contract Planner Jerry Haag said that the City is adopting Land Use and Open Space/Conservation Elements and not individual development projects. Environmental review is limited to the two Elements.

Commissioner Hlava:
- Said that Ms. Cheriel Jensen brought up a few things worth discussing.
- Suggested that perhaps language could be added to the Open Space Element on page 40, Policy 9.1, that currently reads, "… retain water courses as much as possible." She suggested adding "…and prevent future channelization of creeks."

Chair Rodgers said that one has to allow for natural changes to water courses.

Commissioner Hlava said that it might be good to put this into the General Plan to prevent future channelization of creeks, however, what if someone comes in with a big water problem?

Mr. Jerry Haas said that it is tough to make absolute projections and that the existing language is pretty clear while opening the door for extenuating circumstances.

Commissioner Hlava agreed that she would not want to absolutely say one cannot do it but perhaps the text could read, "… and discourage future channelization of creeks."

Commissioner Kundtz pointed out that only four of the seven Commissioners are here tonight. He said that he didn't know if another Study Session is in order and assured that Council

would not simply rubber stamp the Planning Commission recommendation without further discussion. He asked staff what procedure there is for people to get comments to Council.

Director John Livingstone advised that a Study Session is planned for Council prior to its holding the final public hearing.

Commissioner Zhao said that she did not think that hard language should be in the policy that leaves no flexibility. She said it is fine as proposed.

Chair Rodgers agreed.

Commissioner Hlava said that Cheriel Jensen also brought up two other things including adding a privacy issue to LU-5.2 and LU-5.4. She said she is concerned about adding such language.

Contract Planner Jerry Haas said the question is how does one quantify/judge what is a privacy impact. The Design Review process is the appropriate place. He said he is leery of putting this issue into the General Plan because once it is there it would be something that is required to be looked at.

Commissioner Hlava agreed that privacy is something already looked at with Design Review and may be better left to Design Review.

Chair Rodgers said that LU-5 (Neighborhood Protection) is concerned with public safety hazards.

Commissioner Hlava questioned whether light, air space and vegetation are things that should be added to the list of values.

Chair Rodgers said that there is no Ordinance currently dealing with light and/or air space. This would be a major change.

Commissioner Kundtz asked about the maps on pages 4, 5 and 14.

Planner Therese Schmidt:
- Explained that she prepared the maps.
- Assured that staff can make the maps friendlier so they are clearer.
- Stated that all issues on the maps have been met.

Commissioner Zhao said that all schools should be incorporated.

Chair Rodgers suggested using the reference in the Open Space Element.

Contract Planner Deborah Ungo-McCormick said that instead of using the same list, they had referred to the Land Use Element. She assured that she would make sure language is checked out for consistency and accuracy.

Commissioner Zhao supported including the list from the Land Use Element in the Open Space/Conservation Element.

Contract Planner Deborah Ungo-McCormick said that would be fine.

Chair Rodgers asked if on page 8 it might make sense to state, "… significant land devoted to parks…"

Commissioner Kundtz said that he agrees with the existing language and is comfortable with it.

Contract Planner Jerry Haas asked if it is proposed to have a new Land Use designation of Neighborhood Commercial?

Contract Planner Deborah Ungo-McCormick clarified that there is no recommendation of changes since zoning has specifics.

Commissioner Kundtz said that Meg Giberson's suggestion for another Study Session would be well served by attending the Council Study Session.

Motion: **Upon motion of Commissioner Hlava, seconded by Commissioner Kundtz, the Planning Commission recommended adoption of a Negative Declaration for a General Plan Amendment to the Land Use and Open Space/Conservation Elements of the General Plan, by the following roll call vote:**
AYES: Hlava, Kundtz, Rodgers and Zhao
NOES: None
ABSENT: Cappello and Nagpal
ABSTAIN: None

Motion: **Upon motion of Commissioner Hlava, seconded by Commissioner Zhao, the Planning Commission forwarded a recommendation of approval for a General Plan Amendment to the Land Use and Open Space/Conservation Elements of the General Plan, as modified, by the following roll call vote:**
AYES: Hlava, Kundtz, Rodgers and Zhao
NOES: None
ABSENT: Cappello and Nagpal
ABSTAIN: None

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DIRECTOR'S ITEMS

There were no Director's Items.

Chair Rodgers asked Director Livingstone if there are any appeals pending.

Director John Livingstone advised that Council would hear one appeal at the second meeting in February on the paving issue around olive trees on Springer.

COMMISSION ITEMS

Chair Rodgers advised that she attended a recent Council Study Session where they outlined some initial green environmental objectives, some of which relate to Planning Commission review. Council has asked the Commission to look at these issues first and forward initial recommendations back to Council.

Commissioner Zhao asked what brought this issue up.

Chair Rodgers replied that Council is preparing its agenda for the year.

Director John Livingstone added that this is a Federal and State issue, including issues such as global warming. Council has placed a lot of emphasis on this issue and wants the Commission to begin looking at it.

Chair Rodgers added that this discussion needs to occur before the next joint session with Council.

Director John Livingstone suggested that this brainstorming session occur in March after a site visit. He said he would provide some initial information for review and to help start off this discussion. He added that another Study Session on two-story additions would be held in February.

Commissioner Kundtz said that February 13th is better for him as he will be traveling on February 27th.

Commissioner Zhao said she couldn't attend a Study Session on February 13th.

COMMUNICATIONS

Contract Planner Deborah Ungo-McCormick announced that she would no longer be working on contract for Saratoga as she has taken full-time employment with a San Jose-based law firm.

The Commissioners extended their best wishes and appreciation to Deborah Ungo-McCormick for her work on development projects and especially on the General Plan Update.

ADJOURNMENT TO NEXT MEETING

Upon motion of Commissioner Hlava, seconded by Commissioner Kundtz, Chair Rodgers adjourned the meeting at 9:15 p.m. to the next Regular Planning Commission meeting of **February 14, 2007**, at 7:00 p.m.

MINUTES PREPARED AND SUBMITTED BY:

Corinne A. Shinn, Minutes Clerk