

**MINUTES  
SARATOGA PLANNING COMMISSION**

DATE: Wednesday, January 9, 2008  
PLACE: Council Chambers/Civic Theater, 13777 Fruitvale Avenue, Saratoga, CA  
TYPE: Regular Meeting

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

**ROLL CALL**

Present: Commissioners Cappello, Hlava, Kumar, Kundtz, Nagpal, Rodgers and Zhao  
Absent: None  
Staff: Director John Livingstone, Senior Planner Chris Riordan, Planner Shweta Bhatt,  
and Assistant City Attorney Bill Parkin

**PLEDGE OF ALLEGIANCE**

**APPROVAL OF MINUTES** – Regular Meeting of December 12, 2007.

**Motion: Upon motion of Commissioner Nagpal, seconded by Commissioner Cappello, the Planning Commission minutes of the regular meeting of December 12, 2007, were adopted with corrections to pages 11, 13 and 15. (6-0-0-1; Commissioner Kundtz abstained)**

**ORAL COMMUNICATION**

Mr. Neil Gupta, Resident of Brookside Glen Apartments:

- Stated that the residents of Brookside Glen are desperate.
- Reported that they received 60-day eviction notices on December 1, 2007.
- Pointed out that this was the worse time of the year to be evicted and this ruined many holidays and/or travel plans for the residents. This was a shock as they had been told that this would not occur until spring or summer.
- Reminded that with the approval for this site, Condition #24 was imposed that required the applicant to provide reasonable assistance in finding alternate housing. There has been zero assistance before December 18<sup>th</sup>. On December 18<sup>th</sup>, JSM dropped off a two-paragraph letter on their letterhead accompanied by a copy of a free apartment rental magazine. They did not provide rental listings until December 28<sup>th</sup> and refused to meet with tenants as a group but only individually.
- Said that tenants have asked about security deposit and moving expenses. On January 5, 2008, JSM offered a \$500 moving allowance.
- Reported that he has emailed the City Clerk and asked that this matter be agendaized before the City Council.

- Advised that only one tenant has moved out so far. He works at night and was able to go out searching for alternate housing during daytime hours when the other tenants are at work.
- Stated that 60 days is not a reasonable amount of notice especially during the holidays.
- Encouraged the City Attorney to look at Article 14.75 of the Subdivision Map Act that requires 180 days of notice in this exact situation, not 60 days.
- Asked for help.

Chair Hlava asked staff for comments.

Director John Livingstone said that the applicant is working with the tenants and have offered some money. They are also considering extending the time period.

Commissioner Cappello:

- Cautioned that the Planning Commission does not have jurisdiction over these tenant details.
- Asked staff what avenue the City has available to assist in this matter.
- Said that the only thing the Commission can do is to enforce the intent of its condition of approval and have the developer meet the spirit of what the Planning Commission wanted.

Director John Livingstone suggested that the City Attorney be given time to research this matter further.

Mr. Neil Gupta pointed out that other nearby cities usually have specific relocation plans.

Chair Hlava:

- Cautioned that this Commission cannot take action on this unagendized matter.
- Asked staff to contact JSM and report back.
- Added that this would be as a Director's Report and not as a formal agenda item.

Commissioner Kundtz suggested that staff consult with the City Attorney to make sure that these tenants have been treated reasonably. He asked if it would be possible to red tag the project site.

Commissioner Nagpal stated that the Commission must be careful as the only purview for this Commission is the one condition it imposed.

Chair Hlava asked staff to report back in two weeks.

Director John Livingstone said that he would address this later this evening during his Director's Report. He added that during the last few days numerous emails have been copied to Council. JSM is continuing to respond and negotiate.

### **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 3, 2008.

**REPORT OF APPEAL RIGHTS**

Chair Hlava 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 #07-366 (503-69-0120 KEYASHIAN, 21818 Via Regina (Continued to the January 23, 2008, meeting):** The applicant requests Design Review approval to add 1,977 square feet to the existing upper floor and convert 1,707 square feet to the existing basement creating a lower floor. The total floor area of the new house will be 5,677 square feet. The maximum height of the proposed building will not exceed the 26-foot height limit. The maximum impervious coverage will not exceed the allowable 25 percent of the net site area. The lot size is approximately 53,562 square feet and the site is located in the HR zoning district. Design Review approval is required pursuant to Saratoga Municipal Code Section 15-45.060. (Heather Bradley)

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

There were no parties present wishing to speak on this item.

**Motion:** Upon motion of Commissioner Nagpal, seconded by Commissioner Rodgers, the Planning Commission **CONTINUED CONSIDERATION TO ITS MEETING OF JANUARY 23, 2008**, a Design Review application to allow first and second story additions to an existing residence on property located at 21818 Via Regina, by the following roll call vote:

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

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**PUBLIC HEARING - ITEM NO. 4**

**APPLICATION #07-029 (397-25-009) Maesumi, 13921 River Ranch Circle:** The applicant requests Design Review approval to demolish the existing home and shed and construct a new two-story home. The total floor area of the proposed residence and garage will be

approximately 4,355 square feet. The net lot size is approximately 18,839 square feet and the site is zoned R-1-10,000. (Susanne Thomas)

Chair Hlava explained that the applicant is out of the town due to a family emergency and has asked for a continuance of his application to the next Planning Commission meeting on January 23, 2008.

Chair Hlava opened the Public Hearing for Agenda Item No 4.

**Motion: Upon motion of Commissioner Kundtz, seconded by Commissioner Nagpal, the Planning Commission CONTINUED CONSIDERATION TO ITS MEETING OF JANUARY 23, 2008, a Design Review Application (Application #07-029) to allow the demolition of an existing home and shed and construction of a new two-story residence on property located at 13921 River Ranch Circle, by the following roll call vote:**

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

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Commissioner Cappello advised that he would recuse himself from Public Hearing Item No. 2 as he lives within noticing distance of the project site.

## **PUBLIC HEARING - ITEM NO. 2**

**APPLICATION PDR07-0011 (386-43-006) Yongjian Wang, 19278 Bellwood Drive (Continued from the December 12, 2007, meeting):** The applicant requests Design Review approval to remove an existing 859 square foot second story of an existing two-story single-family residence and replace it with a new 859 square foot second story addition in approximately the same location. The residence will not exceed 26 feet in height. The net lot size is 14,712 square feet. The site is zoned R-1-12,500. (Chris Riordan)

Senior Planner Chris Riordan presented the staff report as follows:

- Distributed a materials board.
- Explained that this applicant obtained an over-the-counter building permit on July 19, 2006, for an addition and interior remodel. The second story was removed during construction due to extensive termite damage. With that removal, this project no longer simply required building permit approval but rather requires consideration of a Design Review approval by the Planning Commission.
- Reported that there is no change from the original approval and the project is already framed. The applicant signed an agreement that allowed him to continue with framing with the understanding that the Planning Commission might require changes during Design Review approval.

- Said that a neighbor was concerned about potential privacy impacts from a proposed second story bathroom window. As a result of that concern, the applicant has moved that window to the front elevation.
- Recommended that the Planning Commission grant Design Review approval.

Commissioner Rodgers sought clarification that two small windows that have been raised up are also out.

Senior Planner Chris Riordan said that the neighbor was fine with those as they were originally there. The proposed new window raised concern and was moved.

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

Mr. Yongjian Wang, Property Owner and Applicant:

- Said that he has nothing to add to Chris Riordan's report.
- Reported that his contractor advised him that these walls had to be removed as they had extensive termite damage and could not be retained for new construction.
- Advised that the neighbors are now satisfied.
- Said he hopes to receive approval this evening.

Commissioner Rodgers asked if the garage door is a vinyl carriage style.

Mr. Yongjian Wang assured that they would use a high quality garage door.

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

Commissioner Kundtz said that this is a good project and he is sorry they found termite damage during construction. Thanked Mr. Wang for his sensitivity to his neighbors' concerns and said he would be supportive of this request.

Commissioner Rodgers said ditto.

Commissioner Nagpal said that it is nice to see the quality of a project that was approved at staff level.

Chair Hlava:

- Pointed out that there are several items on tonight's agenda where a staff-level approval had to later come before the Planning Commission after construction had begun and problems were discovered.
- Said that it seems unfair to the applicant but that projects with more than 50 percent demolition must come to the Planning Commission.
- Suggested that there may be a need to rewrite the Code in some way to deal with this circumstance.

Commissioner Rodgers pointed out that there have been three such situations in the last two meetings.

**Motion:** Upon motion of Commissioner Nagpal, seconded by Commissioner Kumar, the Planning Commission granted Design Review approval (Application #PDR07-0011) to allow the demolition and reconstruction of an approximately 856 square foot second story for an existing residence located at 1928 Bellwood Drive, by the following roll call vote:  
**AYES:** Hlava, Kumar, Kundtz, Nagpal, Rodgers and Zhao  
**NOES:** None  
**ABSENT:** None  
**ABSTAIN:** Cappello

Commissioner Cappello returned to the chambers and dais following the completion of Agenda Item No. 2.

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### **PUBLIC HEARING - ITEM NO. 3**

**APPLICATION #PDR07-0017 (503-68-007) Miller, 14098 Palomino Way:** The applicant requests Design Review approval to remove an existing 1,320 square foot second story of an existing two-story single-family residence and replace it with a new 1,690 square foot second story addition in approximately the same location. The project also includes demolition of an existing garage and carport, construction of a new 466 square foot detached garage and a 370 square foot addition to the existing lower floor. The residence will not exceed 26 feet in height. The net lot size is 54,075 square feet. The site is zoned R-1-40,000. Design Review approval by the Planning Commission is required pursuant to Saratoga Municipal Code Section 15-45.060. (Chris Riordan)

Senior Planner Chris Riordan presented the staff report as follows:

- Distributed a color board.
- Said that this is a similar situation as the previous item.
- Advised that an Administrative Design Review approval was granted on June 23, 2006, for the remodel of a two-story single-family residence that included the demolition of the garage/carport; the construction of a new 466 square foot detached garage; a 370 square foot first-floor addition and a 446 square foot second-floor addition.
- Reported that when construction began, it was determined that the entire existing second floor had to be removed and replaced due to termite damage, which turned this project from an Administrative level application to a Design Review application granted by the Planning Commission.
- Recommended approval of this Design Review application.

Commissioner Nagpal asked if this Administrative Design Review application was more complex than the previously considered over-the-counter approval.

Senior Planner Chris Riordan replied yes as it included an addition to the second story.

Chair Hlava said that they had been shown the damaged boards at the site visit and it was clear that they were seriously damaged.

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

Mr. P. Miller, Applicant:

- Stated that he did not have much to add to the fact that they found termites and had to get rid of them.
- Added that this has been a more difficult process than he had expected.

Mr. Mike Amini, Project Designer:

- Advised that this kind of situation happens and wastes a lot of time.
- Reported that in other cities Planning Department staffs have the authority to make decisions on situations like this.
- Questioned the need for an onerous process if the exact same thing is going to be reconstructed. Why is the process necessary?
- Added that he could understand if the changes involved adding more square footage or making architectural design changes. In that case, it makes sense to bring it to the Planning Commission.
- Suggested that the Planning staff be given more authority to approve cases like this.

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

Commissioner Nagpal asked staff the level of noticing that goes out for Administrative Design Review versus Planning Commission Design Review hearings.

Senior Planner Chris Riordan said that the noticing radius for Administrative applications is 250 feet and is 500 feet for Planning Commission meetings.

Chair Hlava pointed out that a significant number of neighbors have signed off on the notification forms.

**Motion:**        **Upon motion of Commissioner Nagpal, seconded by Commissioner Cappello, the Planning Commission granted Design Review approval (Application #PDR07-0017) to allow the demolition and reconstruction of an existing second story, demolition of a garage and carport, construction of a new garage and an addition to the existing first floor of the residence on property located at 14098 Palomino Way, by the following roll call vote:**  
**AYES:**        Cappello, Hlava, Kumar, Kundtz, Nagpal, Rodgers and Zhao  
**NOES:**        None  
**ABSENT:**      None  
**ABSTAIN:**    None

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## **PUBLIC HEARING - ITEM NO. 5**

**APPLICATION #MOD07-0002 (397-08-091) Shadman, 15219 Sobey Road:** The applicant requests a Modification of Design Review approval to modify an application approved by the

Planning Commission at the October 13, 2004, hearing. The original approval was for a new single-story dwelling consisting of 5,677 square feet of floor area and a partial basement. Proposed changes include, but are not limited to, eliminating shutters, eliminating divided lites on some windows, relocating chimneys, relocating fireplaces and modifying a trellis on the rear façade. The gross lot size is approximately 46,082 square feet and the site is located in the R-1-40,000 zoning district. (Shweta Bhatt)

Associate Planner Shweta Bhatt presented the staff report as follows:

- Reported that the Planning Commission originally approved this application on October 13, 2004. The applicant subsequently applied for the building permit and this home is mostly completed.
- Explained that the applicant is seeking approval for some architectural modifications that include eliminating shutters and divided lites on some windows, relocating chimneys and fireplaces and modifying a trellis on the rear façade.
- Stated that staff can make the necessary findings to recommend approval.
- Advised that there have been neighbor comments both in favor and against this request. Concerns have been raised, specifically drainage on the northeast corner of the property.
- Informed that County Fire has inspected the site and found that there is adequate turnaround space on the driveway.
- Added that the slope has been restored. More grading had been done than originally approved.
- Said that the arborist has inspected the trees and determined that the replacement trees will be of greater value than those trees removed.
- Recommended approval.

Commissioner Cappello asked about the condition regarding drainage.

Planner Shweta Bhatt said that it is Community Development Condition #2.

Chair Hlava listed the proposed modifications and asked staff if changes can be made to the conditions.

Director John Livingstone said that if there were a nexus for addition conditions with this modification it would be appropriate to add/change conditions.

Commissioner Rodgers asked staff what are the drainage issues. She asked about the proposed sump drain beneath the basement floor.

Director John Livingstone said the issue is drainage from the roof, pervious surfaces and a sump pump for drainage from the basement. He said that a percentage of benefit is required to be established before the pervious materials can be required to be changed.

Commissioner Nagpal stressed the importance of using Best Management Practices if water cannot be contained on site.

Commissioner Rodgers questioned whether the Best Management Practices should be from 2004 or 2008.

Commissioner Nagpal replied when the project was originally approved.

Director John Livingstone advised that there has been no difference in Best Management Practices theories in the last 8 to 10 years.

Commissioner Nagpal asked if it can be determined that while not all storm water may be contained on site there is substantial compliance.

Commissioner Kundtz reported that there is a question as to whether grouting used on the pervious pavers is potentially rendering them impervious.

Commissioner Rodgers asked where the water goes that comes from the basement sump pump. Is it retained on site as well?

Director John Livingstone replied yes, it is all retained on site.

Chair Hlava opened the Public Hearing for Agenda Item No. 5.

Mr. Michael Shadman, Applicant:

- Reported that he purchased this property in October of 2005 and the home for the site was approved in 2004. He pulled the building permits one month after purchase, in November 2005. Construction has been ongoing for the last 26 months.
- Explained that there have been delays including a court battle over utility hookup.
- Advised that the Court has denied the case against us and the utilities were ultimately hooked up.
- Said that the chief issue is drainage. They have two energy dissipaters designed to contain water from the sump pump in the basement. Surface water is directed to a French drain located behind the retaining wall and there are three catch bins.
- Assured that they are not pumping water onto the street.
- Added that they are, in fact, catching runoff from four acres, including properties located above that drain onto his site.
- Said that the only area of concern is his driveway.
- Advised that there is no grout but rather sand between the pavers. This driveway was not counted as pervious but rather was counted as impervious surface.
- Reported that he is not against having another drain installed at the northeast corner but he would have to have water accumulated there pumped back onto his site.
- Reminded that the fire turnaround issue has been resolved as the site was tested by Fire using their Engine #8.
- Said that the grading issue was the result of a complaint by his neighbor. He was given the option to revise his grading plan to comply with the landscaping plan or to restore the grading to match the way it was on the approved plan, which is what he did.

Commissioner Rodgers advised that drainage changed on her own property with construction that occurred on the hills above. She asked for reassurance that the hillside is considered to be sufficient to support the uphill house.

Mr. Michael Shadman said that the hillside has been compacted and is not only safer than it was before, it is actually ten times better.

Commissioner Zhao asked if the report that states this is available.

Director John Livingstone said that typically grading reports are not included in the staff report but it is available this evening.

Commissioner Nagpal added that Building staff reviews the grading.

Commissioner Rodgers asked about the trees required to help anchor the hillside.

Mr. Michael Shadman:

- Said that they have planted flowering plums on the hillside.
- Added that while five or six trees were required, they are planning on installing seven or eight.
- Advised that Kate Bear wanted native plants with roots to help support the hillside.
- Reported that while the removed trees were valued at \$13,000, they are replanting with trees costing \$20,000.

Commissioner Rodgers asked if there is just one wood fireplace.

Mr. Michael Shadman said that there are no wood burning fireplaces, just gas.

Commissioner Nagpal asked where there is shallow ground water on site.

Mr. Michael Shadman said there is none. It is way down below.

Chair Hlava pointed out the neighbor's letter about the fence at the back of the hill. He claims it is on his property rather than Mr. Shadman's. Is that true?

Mr. Michael Shadman said that he does not know. He added that he used the same surveyor as his neighbor (Westphal Engineers) and will go back and certify where the fence is located. It will be dealt with. He said that property markers would be installed.

Chair Hlava asked why the changes to project are requested including removing the shutters and divided lights from two windows.

Mr. Michael Shadman said that there are only two small shutters. They don't match anything on the front. These are simply two isolated elements that don't fit in with the design.

Chair Hlava asked if the chimneys are being relocated because the fireplaces have been relocated within the house? Are they shortening the trellis on the back?

Mr. Michael Shadman said that the trellis in the area of the kitchen window is being shortened.

Commissioner Rodgers suggested planting the hillside area as soon as possible.

Commissioner Kundtz said that despite the December 2006 memo, nothing has been done.

Mr. Michael Shadman disagreed and reported that seeds and erosion material were installed. No erosion has occurred and the grass has grown to between four and five inches.

Commissioner Kundtz said that he did not notice any vegetation.

Commissioner Rodgers asked Mr. Michael Shadman if conditioning the installation of landscaping before final occupancy is a problem.

Mr. Michael Shadman said it would not be a problem to put in the groundcover.

Commissioner Zhao asked about the need for another dissipater near the driveway.

Director John Livingstone said that this is called for in Community Development Condition #2 requiring a drainage mechanism. The City Attorney wanted to amend the wording of that condition.

City Attorney Bill Parkin suggested striking "retain all water..." and replacing it with "maximum retention of..." He also distributed a copy of the 2004 plans.

Mr. Hermant Bheda, Resident on Monte Vista Drive:

- Said that he has no issue regarding the building modifications.
- Advised that he does have a number of issues and is requested that the application not be approved until these issues have been resolved, particularly the stability of the hillside.
- Reported that he was at City Hall this morning and found that the documentation certifying the safety of this hillside was not there available for review.
- Questioned the contention that the soil is safer than before.
- Asked that a certified professional provide satisfactory documentation to that fact.
- Said that the flowing plums planted on the western slope were planted bunched up rather than to plan (more spaced out).
- Requested that they be replanted per the plan in order to offer proper screening.
- Asked that no tall trees be planted on the western slope so as not to block his views of the valley.
- Said that fence and boundary monuments need to be determined. The markers need to be replaced and recorded. The contractor removed them.
- Asked Mr. Michael Shadman to clean up the concrete left behind.
- Urged the Commission not to approve this project until those issues have been resolved.

Chair Hlava expressed confusion. On one hand, Mr. Bheda wants screening. On the other, he does not want blocked views.

Mr. Hermant Bheda said that he doesn't want anything tall, like redwood trees. The trees need to be spread apart to screen the house. He suggested replacing the solid wood fence

with chain link so deer can jump over it. They will not jump over a solid fence as they cannot see what is on the other side.

Commissioner Rodgers reported that amendments to the Fence Ordinance are coming up for discussion. However, chain link fencing is a hot button issue.

Commissioner Nagpal asked if a slope study was required.

Director John Livingstone said that geotechnical standards are used. Work must be done with permits using guidelines.

Mr. Markus Willard:

- Said he is here to provide Mr. Michael Shadman with support.
- Advised that there has been a lot of stress on Mr. Shadman.
- Said that they have done every modification possible to appease both sides.
- Stated that he wants this to be over.

Ms. Karen Willard:

- Explained that she and her husband sold this property to the Shadmans.
- Reported that there has been a lot of heartache and stress including lawsuits.
- Said that issues have been dealt with.
- Stated that she is happy that the Shadmans are still friends.

Ms. Mahnaz Khazen:

- Said that she had hoped this would be her dream house.
- Said that there are so many personal agendas amongst her neighbors and they have been forced to file a lawsuit against friends.
- Stated that now it appears her neighbor wants a chain link fence and more trees, which is so frustrating since he doesn't even live there but rather has tenants on his property.
- Asked why such a hard time with this.
- Assured that they do not want to encroach on anyone's property.
- Thanked the Commission for its time and apologized for her emotions.

Mr. Edic Sliva:

- Said that he lives in the vicinity but is thankfully not a neighbor here.
- Stated that he is present this evening to attest to the character of Mr. Michael Shadman.
- Reported that he did a similar project in Monte Sereno that was much easier than this. This is a ridiculous process.
- Said he would not blame Mr. Shadman if he ends up choosing not to live here.
- Suggested that these neighbors are childish and not honorable.
- Asked that this project be approved so this family can live in their home.

John S. Perkins, Attorney for Mr. Tom Coe:

- Stated that it is false that a Court has approved the easements on this property under litigation.
- Pointed out that Mr. Coe did not sue but rather he was sued.

- Said that the problem is not that Mr. Coe is harassing Mr. Shadman but rather that Mr. Shadman does things first.
- Distributed photographs that depict a large puddle of water that formed on the cul-de-sac during the last big storm.
- Asked for a couple of week continuance as they have not had the time to go over the 1984 subdivision provisions regarding easements including drainage.
- Stated that Mr. Shadman does not have a drainage easement.
- Added that they are proposing an agreement regarding road maintenance.
- Reiterated that they would love a continuance so they can put all of this in order and in writing.

Commissioner Rodgers asked Mr. John S. Perkins for a quick list of what modifications he is looking for.

Mr. John S. Perkins said that there are easement issues, including drainage, water and sewer.

Commissioner Rodgers cautioned that the original map is not what was noticed for tonight.

Mr. John S. Perkins said they want to clean up all issues.

Commissioner Rodgers said that of the noticed issues, water might be the only one they can consider as part of this current application.

Mr. John S. Perkins:

- Said that grading needs to be returned to where it was. This includes the landscaping and retaining wall system. Otherwise, there needs to be some sort of soils certification that with the soil removed the hillside will support Mr. Coe's driveway and property.
- Added that the foundation of the fences trespasses on Mr. Coe's property and it is also too tall. At six foot in height, it will be ugly.
- Asked what is the purpose of that fence.
- Argued that the hammerhead turnaround is inadequate and that turns in or out would not be possible.
- Questioned the setbacks for the air conditioning units.

Commissioner Nagpal asked if the photos of pooled water were taken last Friday. She pointed out that this was the largest storm in the Bay Area in over 20 years.

Mr. Thomas Coe:

- Advised that he distributed a letter this evening.
- Reported that the pictures were taken on Saturday evening.
- Said that his first issue is to request a continuance based on the points raised in his letter.
- Said that lots of changes were made to the grading that changed the scope of this project.
- Suggested that the current staff report is in error and is misleading on the issue of grading especially since the grading plans are not on file as claimed.
- Pointed to the previous staff report from June 2004. On page 8 is listed the requirement to minimize impacts of grading and preserve as much topography as possible.

- Said that there have been abuses of this project and the applicant has not adhered to approved plans and excavated more than allowed.
- Added that to correct that error, they have added a significant amount of material. He asked that the western slope be restored to what was approved in 2004.

Chair Hlava sought to clarify that Mr. Coe's request is for a postponement and to have compliance with the original grading plan. Mr. Perkins stated issues of the easements, hammerhead, gate and air conditioning setbacks.

Mr. Thomas Coe agreed that the issues include storm water, the height of the gates, the placement of air conditioning units within required front setbacks, questionable roof ridge heights and many other issues to address.

Commissioner Nagpal asked staff if the Coes had replied to the meeting notification with their concerns.

Planner Shweta Bhatt said that the 500-foot notice was posted on December 22<sup>nd</sup> and the meeting was published in the Saratoga News on December 26<sup>th</sup>.

Mr. Thomas Coe said that the notice was received in the mail on December 24<sup>th</sup> and that the City Hall Offices were closed until January 2<sup>nd</sup>.

Commissioner Nagpal said that it appears these issues have been raised for some time.

Mr. Thomas Coe said that they had no idea of what the staff report would cover. They just got a copy of the staff report on January 2<sup>nd</sup>.

Ms. Norma Coe, Resident on Sobey Road:

- Said that per the staff report the utility easements are a civil issue.
- Argued that the City has a responsibility to the community to show proper utility easements prior to occupancy.
- Added that they need more time to address these issues.

Commissioner Nagpal:

- Explained that she was on the Planning Commission when this project was originally approved.
- Asked why more time was necessary when this Commission is simply modifying a previously approved Design Review Approval? These modifications to the original design include issues such as shutters, windows and a trellis. That's all.

Mr. Thomas Coe said that they have been bringing issues before the Planning and Building departments. He added that he was told this project would come to the Planning Commission in mid-February and he would have the opportunity to express his concerns and get resolution.

Commissioner Nagpal pointed out that these issues he is raising are beyond the requested Modification to the Design Review.

Mr. Michael Shadman:

- Said that Attorney Perkins has stated that there is no court approval.
- Reported that Attorney Perkins had filed a motion to enjoin his utilities and Judge Emerson denied that motion.
- Added that Attorney Perkins claimed that he had sued Mr. Coe. He did not.
- Recounted that during construction Mr. Coe continuously harassed his contractor and came onto his property so he told Mr. Coe to stay away and got a restraining order to accomplish that. Mr. Coe sued him.
- Added that while Mr. Perkins says he does not have easements, all of his utilities are in including PG&E and sewer.
- Said that it appears Mr. Coe now wants the retaining walls in.
- Advised that the proposed six-foot high gates are now three-feet high.
- Said that the hammerhead has been discussed.
- Pointed out that Mr. Coe's drive is only 12 to 14 feet. His own drive is between 20 and 27 feet.
- Reported that Mr. Coe has been fighting use of this land since 1983 when Judge Foley divided it.

Chair Hlava closed the Public Hearing for Agenda Item No. 5.

Chair Rodgers asked where the air conditioning mechanical room is located.

Planner Shweta Bhatt pointed to Sheet A-1 (Site Plan). The air conditioning unit was moved out of the front yard setback and placed within the niche where the building jogs.

Commissioner Nagpal sought clarification that the units are not in the setback.

Planner Shweta said they were in the setback but no longer are.

Commissioner Nagpal asked if the plans reflect that move or does this need to be conditioned.

Director John Livingstone said that staff believes the air conditioning unit is now out of the setback but Mr. Coe claims it encroaches by eight inches into the setback. He added that the Planning Commission could ask for confirmation or determine that it is substantially in compliance.

Commissioner Nagpal asked if the roof ridge heights are verified.

Director John Livingstone said that if an inspector has a concern they could require that a surveyor verify the height.

Commissioner Nagpal sought verification that a utility easement is not part of the Design Review process.

Director John Livingstone said that it is typically considered during subdivision.

Chair Hlava said that she does not recall a subdivision without easements in place and finds it difficult to believe there were not easements with this subdivision.

Commissioner Nagpal said that upon Arborist review there were no concerns about the tree spacing and Kate Bear did find compliance with the requirements.

Planner Shweta Bhatt replied correct

Commissioner Nagpal asked if it is fair to say that Building believes that there is substantial compliance with site drainage.

Director John Livingstone explained that the Building Department, based on Mr. Coe's complaint, reviewed the site and felt that some additional drainage could be added on one end.

Commissioner Zhao asked when the landscaping must be completed.

Director John Livingstone said that front yard landscaping must be completed but rear yard landscaping is typically not required except for tree replacement. The back is considered sufficient with tree replacement.

Commissioner Rodgers asked if additional shrubbery is being recommended for the hill on the west side.

Director John Livingstone said that there might be a nexus to require this. He added that the applicant has said that he intends to do so. The Commission can take the applicant's word or add a condition.

Commissioner Rodgers asked if the front gate is further forward than it appeared on the plans.

Planner Shweta Bhatt said the height of the gates and pilasters are acceptable and she is not aware of a concern over location of the gate. The gates are outside of the turnaround area.

Commissioner Nagpal asked what fencing is proposed where the neighbor had suggested chain link fencing?

Commissioner Kundtz said that the plan is to retain the existing wood fence.

Director John Livingstone said he is unaware of a chain link requirement as this is a fairly new fence at the rear property line.

Commissioner Zhao said that the applicant mentioned a three-foot fence reflected on the plans.

Director John Livingstone said that the posts are in place. However, fences don't require building permits.

Commissioner Zhao asked if the three-foot height meets Code.

Director John Livingstone replied yes.

Chair Hlava asked how far down the driveway is considered the front yard.

Director John Livingstone replied that the structure is at the front setback line.

Chair Hlava asked if there would be landscaping up to the house.

Director John Livingstone replied yes.

Commissioner Cappello:

- Said that this is a complicated project.
- Said that it must be determined if Design Review findings are met or not.
- Stated that the finding that the modifications avoid unreasonable interference with views and privacy can be made, as he does not see such impacts resulting.
- Added that the finding can be made that this results in the preservation of the natural landscape.
- Said that the finding for the preservation of native/heritage trees can also be made in the affirmative.
- Added that the minimization of bulk finding can be made. While details like shutters are usually liked in order to help minimize bulk, this house can be found to be compatible with bulk and height.
- Said that he cannot determine the issue of drainage control and he does not understand if that is a significant issue here.
- Advised that he can make the Design Review findings on the grading.
- Stated that he trusts staff's conclusion on the need for additional drainage. That is good enough for him.
- Said that this project is consistent with the design policies and techniques of the Design Review Handbook.
- Added that he would like to hear the other Commissioners' perceptions and has an open mind to consider their views.

Commissioner Kumar:

- Stated his agreement with Commissioner Cappello.
- Added that they need to focus on Design Review findings and said that he agrees with the staff position on Design Review findings.
- Said that on the issue of grading and erosion control, Mr. Shadman has indicated a willingness to work on those issues with Public Works.

Commissioner Rodgers:

- Agreed regarding the Design Review issues.
- Said that water and grading issues cause her concern and said that it is incumbent to address the northeast draining.
- Said that she trusts Building staff to make sure that occurs.

- Supported landscaping in the hillside to prevent erosion and suggested that specific recommendations be added to make sure things go smoothly.
- Agreed that there are civil issues that stem from the original subdivision and these issues are being considered in court.
- Said that if the Ordinance allows up to a three-foot high fence along the driveway, it needs to be three-feet.
- Said that the slope behind is fine and stable.
- Stated that if Fire is satisfied with the gate she has nothing to add.
- Said she would be unhappy if the AC units are located in the front setback and she would not approve any Variance request to place it there.
- Said that if there is a maximum building height issue that becomes a Code Enforcement matter.
- Advised that she would like to include the traditional language regarding fireplace restrictions for only one wood burning per structure.
- Said that she is fine with the aesthetics of the house.

Commissioner Zhao:

- Listed concerns raised as:
  - Water drainage – Condition imposed.
  - Utility Easement – not within PC jurisdiction.
  - Grading Issues – Building says there is substantial compliance.
  - Hammerhead – Fire has cleared it.
  - Fence – Applicant says it will be three-feet high.
  - Front Setback – No AC unit will be located within it.
  - Landscape – To plan.
- Advised that she is pretty comfortable with the draft resolution and can make the necessary Design Review findings.
- Said she is okay with this project.

Commissioner Nagpal:

- Reminded that she was on the Planning Commission for the original approval.
- Said that she was pleased with what she saw on the site visit.
- Stated that the architectural modifications are reasonable and she can make the Design Review findings to support them.
- Said that she hopes that healing can occur amongst these neighbors.
- Said that she agrees with the conditions and supports the fireplace and setback comments proposed.
- Added that the verification of the roof height and gate location can be required if the Commission feels it is necessary.

Commissioner Rodgers agreed that it is nice to go back and see how an approved project is executed.

Chair Hlava:

- Reiterated the recommendation of change to Condition #2 to “maximize” the retention of storm water runoff.

- Suggested adding Condition #9 that states that there may be no more than one wood-burning fireplace.

City Attorney Bill Parkin added the text “per approved grading plan” to the findings.

Commissioner Nagpal reiterated that nothing should be located within the front setback.

Commissioner Cappello pointed out that there could be no final occupancy sign off without compliance.

City Attorney Bill Parkin said that the Commission could either impose a condition or instruct staff to verify.

Chair Hlava suggested the added Condition #10 that reads, “There shall be no violations of front setback requirements.”

City Attorney Bill Parkin pointed out for the record that many of these conditions have already been complied with.

**Motion:** Upon motion of Commissioner Nagpal, seconded by Commissioner Cappello, the Planning Commission granted Modifications (Application #MOD07-0002) to the original Design Review approval granted on October 13, 2004, to allow changes to the original design for a new residence on property located at 15219 Sobey Road, with the following additions:

- Condition #2 to add “per approved grading plan.”
- Condition #9 added to limit one wood burning fireplace;
- Condition #10 added requiring the verification of front setbacks to ensure there are no violations prior to occupancy,

by the following roll call vote:

**AYES:** Cappello, Hlava, Kumar, Kundtz, Nagpal, Rodgers and Zhao

**NOES:** None

**ABSENT:** None

**ABSTAIN:** None

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Chair Hlava called for a break at 9:43 p.m.

Chair Hlava reconvened the meeting at 9:50 p.m.

### **PUBLIC HEARING - ITEM NO. 6**

**APPLICATION #MOD-07-001 (397-27-010) Pichetti/Cahoon, 18935 Hayfield Court:** The applicant requests Modifications to an approved Design Review approval. Modifications include, but are not limited to, the addition of stone to the front façade, the alteration of the

proposed home's placement on the site, the rotation of the garage and additional windows on the right elevation. The property is zoned R-1-40,000. (Shweta Bhatt)

Associate Planner Shweta Bhatt presented the staff report as follows:

- Informed that the applicant is seeking approval of Modifications to a Design Review approval from March 14, 2007, that allowed the construction of a 6,184 square foot home with basement.
- Listed the changes as including: moving the building pad by six feet to the south; adding stone to the front façade; rotating the orientation of the garage; and adding windows to the right elevation.
- Reported that there have been no comments received from neighbors.
- Advised that two trees were approved for removal with the original approval. No additional trees are proposed for removal.
- Recommended approval.

Chair Hlava opened the Public Hearing for Agenda Item No. 6.

Mr. Glen Cahoon, Project Designer, said he was available for any questions.

Chair Hlava asked why the garage is being rotated.

Mr. Glen Cahoon replied for easier access to the garage.

Commissioner Kumar asked why the house is being rotated.

Mr. Glen Cahoon said that the idea originated with a comment made by a Planning Commissioner during the original approval site visit. The applicant gave thought and decided that the Commissioner's point was valid. He said that they are also adding stone to the building and modifying rear windows.

Chair Hlava asked if this would impact the grading plan.

Mr. Glen Cahoon replied no.

Chair Hlava closed the Public Hearing for Agenda Item No. 6.

Commissioner Kundtz said that he liked this project before and still does. These modifications are modest.

Commissioner Rodgers agreed. She asked to add the standard fireplace language to the conditions.

Chair Hlava said that this would become Condition #11.

**Motion: Upon motion of Commissioner Nagpal, seconded by Commissioner Rodgers, the Planning Commission approved Modifications to a previously-approved Design Review approval, including, but not limited to,**

**the addition of stone to the front façade, the alteration of the proposed home's placement on the site, the rotation of the garage and additional windows on the right elevation on property located at 18935 Hayfield Court, by the following roll call vote:**

**AYES: Cappello, Hlava, Kumar, Kundtz, Nagpal, Rodgers and Zhao**

**NOES: None**

**ABSENT: None**

**ABSTAIN: None**

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### **PUBLIC HEARING - ITEM NO. 7**

**APPLICATION #PDR07-001 (510-01-016) Khouja/Ramirez, 15211 Hume Drive:** The applicant requests Design Review and Conditional Use Permit approvals to demolish the existing home and construct a new two-story home. The proposed structure will be two-story with a full basement and require a height exception to allow for adherence to the Queen Anne architectural style. A detached pool house is also proposed at a height of approximately 18 feet, nine inches. The gross lot size is 55,503 and the site is zoned R-1-20,000. (Shweta Bhatt)

Associate Planner Shweta Bhatt gave the staff report as follows:

- Distributed a materials board and color rendering.
- Explained that the applicant is seeking Design Review approval to demolish an existing residence and construct a new two-story Queen Anne style home.
- Said that this project was discussed at a November 2006 Study Session. The Heritage Preservation Commission found there to be no historic significance.
- Explained that a structure can go up to 30 feet in height with approval of a Use Permit if the case can be made that the added height is necessary to achieve architectural purity.
- Said that with this proposed home, the main ridge would be at 26 feet, 10 inches with a tower at 30 feet. A new pool house would be 18 feet, 9 inches. Accessory structures are limited to 15 feet in height but the Planning Commission can grant approval up to 20 feet with two required findings.
- Added that the home would have a full basement with a deed restricted second unit.
- Said that two additional neighbor comments were received this evening.
- Reported that the applicant has been working with the rear neighbor regarding concerns with the pool house. The applicant has agreed to place a six-foot solid fence at the property line and to house the pool equipment within an enclosed structure.
- Stated that 23 trees were inventoried and three require removal. Six have died. Replacements of equal value are required. Bond and tree fencing is required during construction.
- Said that this project is Categorically Exempt under CEQA.
- Recommended approval of the Design Review and Use Permit applications for this project.
- Advised that the applicant and his architect are here.

Commissioner Nagpal pointed out that one letter received states that this is a single-story neighborhood. She asked staff if there are other two-story homes in this area.

Planner Shweta Bhatt said that the applicant has provided a vicinity map depicting other two-story homes in the area.

Chair Hlava opened the Public Hearing for Agenda Item No 7.

Mr. Sergio Ramirez, Applicant's Representative:

- Said that they consulted with Virginia McAllister, the expert on Queen Anne architecture, to evaluate this design. Her recommendations were included in the plans.
- Said he has little to add.
- Assured that they have tried to do this project carefully in order to comply with the spirit and letter of the design guidelines.
- Added that the house is as green as possible. It has a number of solar panels. Additionally, the existing house will be completely deconstructed and materials recycled.
- Stated that water would be retained on site using Best Management Practices.

Mr. Khouja, Property Owner/Applicant:

- Said his children are in the 3<sup>rd</sup> and 5<sup>th</sup> grade and his family loves this City.
- Explained that they are building their dream house that will be magnificent.
- Said that he is proud of what they have done with the design.
- Thanked the Commissioners for their two site visits, the Study Session and tonight's hearing. Their valuable suggestions were included.
- Reported that the two conditions he and his rear neighbors have come up with include: 1) the requirement that any pool equipment shall be enclosed within a structure with walls and a roof and sound proofed to reduce noise and 2) If the pool house is built, the fence at the rear property line is to be replaced with a six-foot solid good neighbor fence (replacing the existing five-foot fence that is currently there).
- Stated that the conditions are fine with him and his neighbor, who has signed the neighbor notification form.

Commissioner Rodgers suggested planting something; perhaps antique roses, to soften the pool house as viewed from the neighbor's yard.

Mr. Khouja said that some sort of creeping rose would be fine.

Chair Hlava closed the Public Hearing for Agenda Item No. 7.

Commissioner Cappello said that he can make the Design Review findings easily as well as for the Conditional Use Permit to allow the height up to 30 feet. He has no issues.

Commissioner Kundtz agreed. He said that this project is architecturally significant and will be a tremendous compliment to the neighborhood.

Mr. Sergio Ramirez said that thanks must go to staff, including Shweta Bhatt, John Livingstone and the Planning Commission too.

Commissioner Rodgers:

- Thanked the applicants for consulting with Virginia McAllister, the recognized expert.
- Stated that this is a neighborhood with some very grand houses.
- Agreed that all the Design Review and Use Permit findings can be made in support.
- Thanked the applicant for the time spent.

Chair Hlava said this is a beautiful house and she hopes this family will be happy there.

Commissioner Rodgers asked that the standard fireplace language be added to the conditions and that the six-foot fence also be conditioned.

Chair Hlava said that Condition #10 would be for the pool equipment enclosure and Condition #11 will be for the six-foot high fence at the rear property line. Condition #12 will be the standard limitation to a single wood burning fireplace.

City Attorney Bill Parkin said that a minor correction is needed. In the findings for the Conditional Use Permit Section 15-12.100(b) should be modified to read 15-12.100(a).

**Motion: Upon motion of Commissioner Cappello, seconded by Commissioner Kundtz, the Planning Commission granted Design Review and Conditional Use Permit approvals to allow the demolition of an existing home and construction of a new two-story home with a full basement including a height exception to allow for adherence to the Queen Anne architectural style as well as a detached pool house on property located at 15211 Hume Drive, with the added conditions and correction to the finding, by the following roll call vote:**

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

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## **PUBLIC HEARING - ITEM NO. 8**

**APPLICATION ZOA-07-0003 (City Wide) Neglected Properties Ordinance (Continued from the December 12, 2007, meeting):** The Planning Commission will consider a draft ordinance to set standards for the minimum level of maintenance of private property in Saratoga. The ordinance would establish standards for 1) general property maintenance (e.g., overgrown vegetation, unsecured structures or conditions of deterioration or disrepair that creates a substantial adverse impact on neighboring properties), 2) single family residential use landscaping, 3) multi-family residential use landscaping, and 4) parkstrips between sidewalks and City streets. The ordinance would also specify enforcement and appeals procedures. (John Livingstone)

Director John Livingstone presented the staff report as follows:

- Reported that Code Enforcement receives complaints regularly about issues such as weeds, poorly maintained landscaping and/or homes.
- Added that nuisance conditions on a property have an aesthetic impact on neighbors.
- Said that nuisance properties can include buildings that are vacant or unsecured that can serve as an attractive nuisance; buildings that are in disrepair including peeling paint; and overgrown vegetation that is visible from the street.
- Said that staff is recommending that the Planning Commission forward a recommendation to the City Council to adopt this Neglected Properties Ordinance.

Chair Hlava offered some punctuation corrections to page 3, section F. She said that she would like to add "fallen trees or tree limbs" to the list.

Commissioner Rodgers said that in the hillside, limbs fall all the time. She said that under the definition of weeds (Section 7-15.040) an exemption had been discussed for hillside properties.

Chair Hlava opened the Public Hearing for Agenda Item No. 8.

Mr. Ed Vincent, Westover Drive:

- Commended the Planning Commission for taking up the subject of blight in the City.
- Suggested some changes from the draft from October 2007.
- Added that he is in favor of this proposed Ordinance, as the City needs it.
- Outlined changes including to Section 7-50.005: Add Item D, "To enhance and retain the visual beauty of the City."
- Said that under Abatement provisions for an executive fine administered by staff should be added.
- Recommended approval.

Chair Hlava said that the current draft now says that with existing ordinances the City Manager has the ability to levy fines.

Mr. Doug Diemer, Wardell Road:

- Stated that the City of Saratoga is not Disneyland. Not all are wealthy.
- Advised that he and his wife cannot afford professional landscaping although both of them work.
- Expressed concern that this ordinance may be applied to cosmetic issues if a neighbor finds something offensive.
- Declared that aesthetic issues are not health and safety concerns.
- Stated that this is governmental micromanagement at its worse.

Chair Hlava:

- Said that the name of the ordinance went from Blight Ordinance to Neglected Properties.
- Assured that his comments were heard when he spoke at previous meetings.

- Advised that the City is trying to deal with neglected properties that are egregious and offensive and not some exaggerated standard of landscaping.
- Said that the original draft ordinance was amended to reflect that.

Mr. Doug Diemer advised that he wants to comply with community standards as he can.

Commissioner Nagpal assured Mr. Doug Diemer that the ordinance was modified per his comments made at previous meetings.

Ms. Priscilla Ho, Woodmont Drive:

- Asked that the notification standards be modified to reflect 10 days after notice received rather than from date sent. The notice should be sent certified.
- Explained that if a property owner is out of town or the country, receipt of mail is delayed even if a property owner is managing the local property.
- Described the ongoing situation with a small lake of water near the railroad tracks off Cox.
- Said that this standing water poses a problem with the risk of the West Nile virus.
- Stated that she would love that condition to be corrected as this represents a serious threat to the health of Saratogans.

Chair Hlava closed the Public Hearing for Agenda Item No. 8.

Chair Hlava asked for comments on the issue of 10 day mailing standards.

Commissioner Rodgers said she concurs as she has lived overseas and mail from the US can be slow to arrive.

Commissioner Nagpal asked how the received date would be tracked.

Commissioner Kundtz said by certified mail receipt.

City Attorney Bill Parkin said that another option would be to extend the notification period.

Commissioner Kundtz suggested staying with 10 days for domestic mail and 30 days for international.

Chair Hlava asked how that is known.

Commissioner Nagpal said via the receipt.

City Attorney Bill Parkin cautioned that some owners would avoid certified mail.

Commissioner Kundtz said that it would be best to deal with specific circumstances, as the possibility of mailing having to go overseas is the exception.

Commissioner Rodgers said that it was more common that Commissioner Kundtz might think. She said that it could be left an option for the City Manager to allow more time in exceptional circumstances.

Commissioner Kundtz agreed and said the ordinance should be left as it is in this regard.

Chair Hlava suggested either basing it on 10 days following receipt of notification or 30 days after mailing of notification.

Commissioner Cappello cautioned that vagrants, children and/or vermin could be drawn to an unsecured building. This is a more serious situation that needs quick resolution.

Commissioner Rodgers said that if an immediate resolution is required the City Manager can take immediate action and the cost goes on the tax bill for the property owner.

Commissioner Rodgers agreed that the property owner would also likely want the problem remedied quickly.

Commissioner Zhao questioned the wisdom of leaving this to the City Manager's discretion without the owner's authorization. She stressed the need to notify the property owner.

Commissioner Cappello explained that the discretion would only be for circumstances where there are immediate unsafe conditions.

City Attorney Bill Parkin agreed that it would only be in extreme circumstances. Additionally, the City Manager would consult with the City Attorney who will ensure that due process takes place. He reminded the Commission about the house on stilts a few years ago. The City was careful to rectify that situation. He agreed that this would not be used arbitrarily.

Commissioner Rodgers reminded that this would only apply to properties having conditions that impact the public health, safety and welfare.

Chair Hlava gave as an example a building that kids are getting into and having drinking parties.

Commissioner Nagpal agreed that long-distance property owners must be properly notified. She added that there is already a process the City Manager can use in an emergency.

Commissioner Kundtz asked where the 10-day standard comes from.

Commissioner Cappello said that the time could be extended if necessary. He added that he could live with 30-day notification.

Commissioner Kundtz said if there is no rationale for 10 days that it can change.

Director John Livingstone said that staff compared other cities' ordinances.

Commissioner Rodgers said that other cities' ordinances are intended to clear larger areas.

Chair Hlava said that she likes 30-day notification and 30-day response times.

City Attorney Bill Parkin:

- Said that the first step in determining an unsecured building can be 60 days based upon complaints from neighbors.
- Added that there can be a 10-day period for notification after the abatement period.
- Said that he would rather see a longer period with no notice and a shorter period to follow up on the notice.

Commissioner Rodgers said the ordinance should clarify business versus calendar days and indicate the type of mail service.

Commissioner Nagpal supported using either certified or registered mail.

Chair Hlava:

- Clarified that the intent of this ordinance is to deal with egregious situations not setting community standards for maintenance of residential properties.
- Added that Council wants us to prevent properties from impacting the health, safety and welfare of the community.

Commissioner Kundtz asked if the Commission is approving this ordinance or forwarding a recommendation to Council.

Director John Livingstone said the Commission would forward a recommendation to Council.

Chair Hlava reiterated that the ordinance is not setting community standards just dealing with neglected properties.

Commissioner Nagpal said that it helps define neglected properties and gives the City Manager the ability to deal with specific circumstances if a property owner cannot afford to do so.

Commissioner Kundtz asked about the hardship language previously proposed.

Director John Livingstone said that it was taken out along with the requirement to have landscaping in the front yard. The original draft ordinance has been toned down.

Chair Hlava suggested including language that states the City Manager has the authority to determine when abatement would create hardship on an owner.

Commissioner Kundtz said that the issue would still have to be corrected, perhaps at the City's expense if there is financial hardship as determined by the City Manager.

Director John Livingstone:

- Said that neighbors are going to call in a complaint after a long time.
- Added that staff tries to deal with the complaint first.
- Stated that once that complaint has reached the City Manager level, there is another tool, a closed session with Council.

- Said that this is a slow process with different thresholds.

Commissioner Cappello said that along the process there could be creative solutions.

Commissioner Nagpal asked about the nexus between nuisance and public safety.

City Attorney Bill Parkin said that with abatement procedures there are also appellate rights.

Commissioner Nagpal said that she wants to make sure that complaints are based upon potential health, safety and welfare issues.

Commissioner Kumar said that the purpose of the ordinance is clearly stated.

City Attorney Bill Parkin said that if the complaint meets the standard, we have a neglected property.

Commissioner Nagpal stressed the need for a standard and purpose connection.

Commissioner Rodgers added enforcement and punishment. She asked why the ordinance mentions weeds when her is a Weed Abatement Ordinance.

Director John Livingstone said that the Fire District manages the Weed Abatement Ordinance. The weeds must represent a fire hazard. Weeds can be unsightly but still not represent a hazard. This ordinance goes a step lower to consider the aesthetic impacts.

Commissioner Rodgers pointed out that the Weed Abatement Ordinance provides for a declaration of public nuisance when weeds reach the point of threatening the public health, safety and welfare. The remedies available for that ordinance for nuisance abatement are civil-oriented whereas with the proposed ordinance there is no health, safety and welfare nexus. The penalty is greater, \$1,000 a day and criminal penalties.

Commissioner Kundtz suggested adding text to 7-50.060, "Situations of personal or financial hardships will be reviewed on a case-by-case basis by the City Manager."

Chair Hlava said that text works for her.

Commissioner Rodgers said she agrees to the text but not its placement.

City Attorney Bill Parkin asked if the review for hardship is imposed on the City Manager or is simply an option.

Commissioner Kundtz said it should be mandatory.

Chair Hlava read Article A: To establish community standards for the definition of neglect to properties.

Commissioner Rodgers said that she is not sure that fallen trees should be included as it can take awhile to get trees removed.

Commissioner Cappello reminded that this is relative to unsecured properties.

Commissioner Zhao asked if it applies to commercial properties too.

Commissioner Nagpal said that commercial properties are usually regulated by Use Permits.

Commissioner Cappello expressed support for a 60 day period and 10 day notification time for unsecured buildings and structures.

Commissioner Nagpal suggested added text to the standards section, "consistent to the purpose of the Article..."

Commissioner Rodgers said that she wants to be sure that hillside properties are not treated the same as other residential districts.

Commissioner Nagpal said that the standard is vegetation that has overgrown into the public right-of-way by more than 12 inches. She asked if there had been talk about exemption hillside zones.

Commissioner Rodgers pointed out that people sometimes dump onto hillside properties.

Commissioner Kumar suggested continuing this to another meeting.

Commissioner Nagpal said that they were close.

Commissioner Cappello agreed.

Chair Hlava said that only unsecured properties have a time limit, the rest do not. Enforcement is based on complaints.

Commissioner Nagpal restated that the complaint must constitute a threat to the health, safety and welfare of the community. She pointed to the standing water issue raised by Priscilla Ho this evening.

Commissioner Cappello said that if that represents a vector issue, it would be addressed.

Commissioner Zhao asked under what condition is it resolved, as this is not a residential property.

Commissioner Cappello said that the City has no jurisdiction over railroad property and this ordinance does not apply.

Commissioner Kundtz reminded that there are approved Use Permits for cell sites on railroad properties.

Commissioner Kumar asked where in the draft ordinance does it state that it applies only to residential properties.

Commissioner Nagpal replied at the front. She asked why commercial is not included.

City Attorney Bill Parkin said that commercial properties are dealt with elsewhere. He suggested that instead of requiring the City Manager to review every case for hardship, it should be done upon the request of a property owner wishing to claim financial hardship.

Commissioner Kundtz said that was fine.

City Attorney Bill Parkin suggested deleting the words “case-by-case basis” from the language Commissioner Kundtz previously drafted.

Chair Hlava outlined the following proposed amendments:

- Purposes of article:
  - A – To establish community standards for the definition of neglected properties.
  - B – Strike “consecutive” and replace with “business days as mailed by the City via registered or certified mail to the property owner.”
  - F – Thereof including, but not limited to:
    - Add fallen trees or limbs of trees
- Abatement: Upon request of the property owner, situations of personal or financial hardship will be reviewed by the City Manager.

Commissioner Rodgers suggested, “The City Manager may determine that temporary corrective action measures are required prior to the time that permanent abatement actions are instituted when the public health, safety and welfare are impacted.”

Commissioner Cappello asked if this is not against the spirit of the ordinance, which is intended to allow the City to take action where health, safety and welfare are not impacted. Adding in that language defeats the purpose of this Code.

Commissioner Rodgers said that this is only about temporary action by the City.

City Attorney Bill Parkin said he agrees with Commissioner Cappello. The whole basis of the Code is health, safety and welfare. The language is either redundant or takes away the intent.

Commissioner Cappello said that he does not want a provision that prevents the City Manager from taking action when an egregious property needs to be abated.

Commissioner Rodgers agreed. She said that there would have to be a threat to public health, safety and welfare for the City Manager to take action. There must be a nexus.

Commissioner Cappello said that there are other ordinances to react immediately.

Commissioner Nagpal disagreed.

City Attorney Bill Parkin said that what constitutes threats to public health, safety and welfare would have to be more clearly defined.

**Motion:** Upon motion of Commissioner Kundtz, seconded by Commissioner Cappello, the Planning Commission recommended that the City Council adopt the draft Neglected Properties Ordinance, by the following roll call vote:

**AYES:** Cappello, Hlava, Kumar, Kundtz, Nagpal, Rodgers and Zhao

**NOES:** None

**ABSENT:** None

**ABSTAIN:** None

Commissioner Rodgers wanted to note to Council that the intent is to adequately address and clarify abatement based upon health, safety and welfare issues only.

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### **DIRECTOR'S ITEMS**

There were no Director's Items.

### **COMMISSION ITEMS**

Chair Hlava suggested that a future Study Session be held on the issue of how to deal with projects that require 50 percent wall demolition following Administrative approvals that requires Design Review approval by the Planning Commission after construction has already begun.

### **COMMUNICATIONS**

There were no Communications Items.

### **ADJOURNMENT TO NEXT MEETING**

Upon motion of Commissioner Cappello, seconded by Commissioner Kundtz, Chair Hlava adjourned the meeting at approximately 11:51 p.m.

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