

**MINUTES  
SARATOGA PLANNING COMMISSION**

DATE: Wednesday, April 23, 2008  
PLACE: Council Chambers/Civic Theater, 13777 Fruitvale Avenue, Saratoga, CA  
TYPE: Regular Meeting

---

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, Associate Planner Shweta Bhatt and Assistant City Attorney Bill Parkin

**PLEDGE OF ALLEGIANCE**

**ELECTION OF NEW CHAIR**

Commissioner Nagpal extended thanks to Chair Hlava for leading the Commission with humor and decorum and extending courtesy to the Commissioners and all who participated in the meetings.

Commissioner Cappello pointed out that many difficult projects were considered and Chair Hlava's leadership helped in a tremendous way.

Chair Hlava thanked the Commission.

**Motion: Upon motion of Commissioner Nagpal, seconded by Commissioner Rodgers, the Planning Commission elected Commissioner Cappello to serve as Planning Commission Chair for the next year. (7-0)**

**Motion: Upon motion of Commissioner Hlava, seconded by Commissioner Cappello, the Planning Commission elected Commissioner Zhao to serve as Planning Commission Vice Chair for the next year. (7-0)**

Outgoing Chair Hlava turned the gavel over to Incoming Chair Cappello.

Chair Cappello thanked the Commission for their vote of confidence and invited his family sitting in the audience to join him on the dais for a commemorative photograph.

**APPROVAL OF MINUTES** – Regular Meeting of April 9, 2008.

**Motion:** Upon motion of Commissioner Hlava, seconded by Commissioner Nagpal, the Planning Commission minutes of the regular meeting of April 9, 2008, were adopted as submitted. (5-0-0-2; Commissioners Kumar and Rodgers abstained)

**ORAL COMMUNICATION**

Ms. Holly Davies spoke at this time. Her comments have been relocated in the minutes under the Public Hearing portion of Item No. 2.

**REPORT OF POSTING AGENDA**

Director John Livingstone announced that, pursuant to Government Code 54954.2, the agenda for this meeting was properly posted on April 17, 2008.

**REPORT OF APPEAL RIGHTS**

Chair Cappello 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).

City Attorney Bill Parkin clarified that the appeal rights do not apply to the Fence Ordinance, as that item will go directly to Council for final action.

**CONSENT CALENDAR**

There were no Consent Calendar items.

\*\*\*

**PUBLIC HEARING - ITEM NO. 1**

**APPLICATION SUB07-0001 (386-47-035) Parker, 19161 Cox Avenue - Continued to the May 14, 2008 meeting:** The applicant requests Tentative Parcel Map approval to subdivide a parcel of land totaling 45,460 square feet located at 19161 Cox Avenue into two single-family residential lots. Parcel 1 would be 17,305 net square feet and Parcel 2 would be 23,024 net square feet allowing home sizes of approximately 4,284 square feet and 4,752 square feet respectively. Parcel 1 contains an existing residence currently listed on the City's Historic Resources Inventory, known as the Cox Residence, and Parcel 2 is vacant. The existing residence is proposed to remain on Parcel 1. The property is surrounded by: City property to the north (Brookside Park); and residential uses to the south, east and west. The access road to the Brookside Club abuts the property to the east. The property is located in an R-1-12,500 zoning district.

Director John Livingstone advised that due to an error in the notice for this item, it must be continued to the May 14, 2008, meeting.

**Motion: Upon motion of Commissioner Nagpal, seconded by Commissioner Rodgers, the Planning Commission CONTINUED TO ITS MEETING OF MAY 14, 2008, consideration of a Tentative Parcel Map (Application SUB07-0001) to subdivide a property at 19161 Cox Avenue into two residential lots. (7-0)**

\*\*\*

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

**APPLICATION ZOA07-0001 (City-Wide):** The Planning Commission will consider a draft ordinance that will update existing regulations regarding fences, walls and hedges. The draft ordinance proposes to: 1) establish an exception process that would allow property owners to exceed the maximum permitted fence height; 2) add fence height limitations around driveway aprons; and 3) clarify ambiguous language and areas of the code that are currently difficult to enforce. Other related topics, such as regulations regarding chain link fencing, an Initial Study and Negative Declaration for the project will also be reviewed and discussed.

Ms. Shweta Bhatt, Associate Planner, presented the staff report as follows:

- Reported that the changes to the ordinance that pertains to fences, walls and hedges has been considered at two study sessions and two previous public hearings.
- Added that an environmental review was prepared and no comments received. The community input received has been included in the packets.
- Reminded that at the last meeting two issues were determined to require further study. One was chain link fencing and the other issue was sight triangles around driveways.
- Clarified that the Hillside Specific Plan does not have mention of chain link fencing.
- Stated that the City's Traffic Engineer provided feedback on the issue of sight triangles for driveways and found that they represent an acceptable way to improve visibility.
- Said that as currently proposed, sight triangles would be required for new projects under Design Review applications.
- Gave a few corrections as follows:
  - Attachment 1, page 2, Subsection 3: Strike ~~Hillside Residential~~ and replace it with HR or R-OS.
  - Subsection C: Add "signs" after retaining wall.
  - Page 3, Subsection E: add, "or a sign permit per Section 15-30."

Commissioner Hlava:

- Pointed out a typo on Subsection 1 that requires the removal of the word "plus" as it was there twice over.
- Said that this Ordinance has undergone such a long process.
- Stated that this evening's staff report is so good. It is complicated but clear.
- Extended compliments to Planner Shweta Bhatt on her work. She did an excellent job.

Commissioner Nagpal thanked Planner Shweta Bhatt for her research on Measure A. She asked if there is now a mechanism to apply for alternatives to a visibility triangle for driveways.

Planner Shweta Bhatt said that the process is there now to go to the Traffic Safety Commission. Alternately, there is an exception process.

Commissioner Rodgers also thanked Planner Shweta Bhatt for all of her research. She asked if the consideration of a visibility triangle for driveways would also apply to Administrative Design Review or just the Design Review that comes before this Commission.

Planner Shweta Bhatt said that it would be for both Administrative and Public Hearing Design Reviews.

Commissioner Rodgers pointed to the section on non-conforming fences that states that if a non-conforming fence must be half replaced, it must be brought into full compliance. She questioned whether this provision also covers illegal fences that might require repairs.

Commissioner Zhao had questions about the 60 feet solid fence, 30-foot break provision.

Planner Shweta Bhatt said that solid fences have a limit of 60 feet in length before an opening of 30 feet in width is required after which another up to 60 foot length of solid fencing is allowed.

Commissioner Zhao asked if this is only within the Hillside zoning district.

Planner Shweta Bhatt replied correct.

Commissioner Zhao said that she didn't realize that this provision applied to wood fencing.

Commissioner Hlava said that it appears to repeat.

Planner Shweta Bhatt replied correct.

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

Mr. Bruce La Fountain, Resident on Pierce Road:

- Extended thanks to all of the members of the Commission for their hard work. This ordinance update has been going on for a long time.
- Stated that he appreciates the thoroughness and approach the Commission has taken and commends the Commission on how it conducts its politics.
- Added a commendation to Planner Shweta Bhatt.
- Thanked the Commission for visiting his site.
- Advised that he still has a problem with respect to the 30-foot openings required between 60-foot lengths of solid fencing.
- Said that this is a complex problem.
- Stated that he was careful to leave a wildlife trail with his fencing.
- Asked if this item would next go to Council.

Chair Cappello said that the Commission would forward an approved ordinance for Council to consider.

Commissioner Nagpal pointed out that there would be another opportunity for public comment at that Council meeting.

Mr. Bruce La Fountain said he appreciates the efforts.

Commissioner Nagpal said the 60/30 standard didn't mean anything to her until she visited Mr. La Fountain's property. She asked Mr. Bruce La Fountain if he has any recommendation.

Mr. Bruce La Fountain:

- Said that the enclosure area is set up so it is the least intrusive while offering security and enhancement of a property.
- Stated that a 4,000 square foot maximum enclosure is not very big. It is a rather small area and would look odd being just a square particularly on a larger parcel.
- Said that people go to great lengths to obscure their fencing.

Commissioner Zhao asked Mr. Bruce La Fountain what he feels is more appropriate for the Hillside.

Mr. Bruce La Fountain said that as long as it accommodates wildlife flow and continuity of the surrounding area and neighbors. It should be nothing obtrusive.

Commissioner Kumar asked what is the primary reason to enclose an entire property.

Mr. Bruce La Fountain said security and wildlife flow.

Commissioner Kumar said that if everyone in the Hillside district encloses his or her property, how would it impact wildlife.

Mr. Bruce La Fountain:

- Said that it is no problem. Wildlife adapts.
- Added that wildlife usually live and migrate in the upper hills.
- Added that most people in the Hillside go to great lengths to not restrict wildlife flow.
- Congratulated the newly appointed officers of this Commission.

Ms. Holly Davies, Resident on Oak Place:

- Thanked the Commission for their site visit at her home yesterday and for considering the impact the proposed changes might have had on her area.
- Said that she supports allowing hedges to be kept higher.
- Added that she also supports the inclusion of a two-foot high lattice on fences.

Commissioner Hlava asked about the limitation on entryway elements.

Planner Shweta Bhatt said the bottom of page 2 but added that the limit on number of elements has been removed.

Commissioner Nagpal clarified that hedges are not considered fences.

Planner Shweta Bhatt replied correct, hedges are not regulated under the current draft.

Director John Livingstone said that there might be an issue regarding arbors/trellis that are attached to a fence versus freestanding.

Commissioner Nagpal suggested removing the text, "when attached to a fence."

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

Commissioner Hlava:

- Stated that the use of chain link fencing within the Hillside zoning district raises the question as to the purpose of language to not allow huge long walls.
- Added that wrought iron would be allowed all around.
- Said that black clad chain link is more like wrought iron than a solid fence.

Commissioner Rodgers said that with the four-inch spacing on a wrought iron fence, more wildlife movement is possible than would be with the smaller spaced chain link fencing opening.

Commissioner Hlava:

- Stated that there are huge homes on huge lots on the Hillside.
- Added that she can understand why they would want to have their property enclosed for security.
- Pointed out that Mr. La Fountain has left a trail for wildlife.

Commissioner Nagpal:

- Suggested that the first discussion should be if it is still reasonable for the Hillside.
- Said that the second question is what are appropriate types of fencing.
- Added that the third consideration is the exception process.
- Pointed out that regulations are written for what most can live with.

Commissioner Hlava said that it is also important to look at what is already there.

Commissioner Nagpal asked if there is the impression that the 4,000 square foot enclosure standard is not being complied with.

Commissioner Rodgers asked why it is important for the Commission's consideration that some people have not complied with the existing requirements.

Chair Cappello said that the 4,000 square foot standard may be too limited and perhaps an adjustment is warranted.

Commissioner Nagpal said it appears that the Hillside is not about enclosed areas but rather appears to remain open.

Commissioner Hlava said that as these lots are so big, one does not see the fencing in place.

Commissioner Nagpal said she is fine with fencing as long as the required openings are in place.

Chair Cappello pointed out that a split rail type of fence would be possible that could easily allow wildlife passage through.

Commissioner Zhao sought clarification that fencing of 60 feet in length with a gap of less than 30 feet is currently considered an enclosure.

Director John Livingstone said that it is staff's interpretation that the same fencing product used continuously is an enclosure.

Chair Cappello stated that his assumption is that fence that does not prevent wildlife from passing through could be continuous.

Commissioner Nagpal said that the enclosure would still require gaps.

Director John Livingstone:

- Said that an area of enclosure would offer complete and full security with no gaps at all.
- Added that enclosures are allowed and generally desired by property owners to secure children, pets or a pool. It represents a solid fenced enclosure that is continuous with no breaks.
- Advised that in the past a six-inch gap meant that it was not enclosed. What the ordinance is trying to clarify is the need for a gap of at least 30-feet in width.

Commissioner Kumar asked for a historic perspective of the standard for 4,000 square feet of fenced enclosure.

Director John Livingstone:

- Directed the Commission's attention to the diagram prepared by Planner Shweta Bhatt.
- Explained that the Building Code requires a five-foot high fence around a pool and/or pond with water of a certain depth.
- Added that under the Fence Ordinance, one can have a pool enclosure in one area of the yard and a separate fenced enclosure elsewhere on the property.
- Said that the pool fencing is exempt up to 10 feet around a pool and doesn't count against the 4,000 square foot limitation.

Commissioner Nagpal asked if the Commission might want to look at that 4,000 square foot standard.

Commissioner Zhao asked for more information on how that 4,000 square foot standard was determined.

Commissioner Hlava said that it originated with the Hillside Specific Plan. It was thought at the time that people didn't want the Hillside to be so enclosed. That was 20 years ago when homes might be 2,500 square foot. Today the homes are larger.

Commissioner Nagpal stressed the need to maintain an open and natural environment in the Hillside district. She pointed out that the City has not had people from the Hillside asking for a change from the 4,000 square foot standard.

Commissioner Hlava:

- Said that owners just do what they want including constructing fences with boards and chicken wire.
- Stated that no one is paying attention and we don't enforce. If not, what's the point.
- Pointed out that these are big elaborate houses with valuable stuff in them. She can see why people want security.
- Added that the reason why it appears so open is that these lots are so big.
- Cautioned that if the ordinance is suddenly enforced, the City will be inundated with lots of fence exception requests. That is not good government to adopt Codes that are not enforced.

Commissioner Nagpal asked Commissioner Hlava if she has any suggestions.

Commissioner Hlava said she did not know but thought that some higher number or other way to handle it. Reminded that Ms. Davies has chain link in her front yard but it is not visible as it is completely screened by landscaping.

Chair Cappello suggested addressing the 4,000 square foot enclosure requirement first. Is it appropriate or not? Does it require adjustment? He said that the intent of the enclosed area is to give an area of security inside a confined area.

Commissioner Hlava said that Hillside homes are built into the contours of the hillside and are often barely visible.

Commissioner Rodgers:

- Stated that fences define a community.
- Added that the Hillside district is a different community from the rest of Saratoga.
- Said that what they have to recognize is the green nature of the hillside.
- Suggested that the purpose of a fence and aesthetics of a fence are two different things completely. One is for keeping things in (including kids or pets) or out (wild life and/or humans).
- Stressed the need to look for free movement of wildlife and not just a trail.
- Added that there are lots of opportunities for providing security on a property.
- Said that way of life must be protected. The aesthetics require that the location of the 4,000 square foot enclosure be invisible from the street.
- Cautioned that a fence painted green is not a green fence.
- Added that if a black chain link fence is permitted, it would be without the slats installed.

- Agreed that deer would jump a chain link fence and raccoons and skunks can get through pretty small places.
- Reiterated that the purpose of this ordinance is the aesthetics and sense of the community.

Commissioner Nagpal asked Commissioner Rodgers her thoughts on the current 4,000 square foot maximum enclosed fenced area.

Commissioner Rodgers:

- Said that she might support raising that limit to 5,000 square feet to match the larger homes of today.
- Added that the fact that people ignore rules is irrelevant.
- Stressed that the Commission needs to make its Ordinance decisions based on what we want for Saratoga.
- Reminded that enforcement is complaint based.

Commissioner Zhao:

- Agreed that some Hillside residents value open spaces but cautioned that others want enclosures for security purposes.
- Suggested that owners should be given options/rights to do so.
- Said that to her the 4,000 square standard is very limiting.
- Stated that it should be rethought altogether and/or increased.
- Questioned what the goal is. Is it wildlife free access?
- Asked whether more enclosed area would be allowed if there were some sort of openings in the fencing.

Chair Cappello asked Commissioner Zhao if she is proposing a requirement for gaps within the 4,000 square foot fenced enclosure.

Commissioner Zhao said that the gap issue is separate. What she is supporting is increasing the maximum 4,000 square foot standard for enclosed area.

Commissioner Kundtz:

- Said that if there is to be a limitation, 4,000 square feet is as good as any.
- Reminded that owners can be accommodated through the exception basis if more enclosed area is needed.
- Supported having a fixed number and if there are unique requirements that leads to an exception.

Commissioner Kumar:

- Said that 4,000 square feet seems dated to him.
- Pointed out that he has 8,000 square feet in enclosed backyard although he is on the flatland.
- Stated that the Hillside properties should be allowed more. They should be given the option to enclose completely or leave open.

Commissioner Hlava:

- Agreed that the enclosed area should be bigger than 4,000 square feet.
- Added that if the fencing is tightly enclosed, there needs to be some established limit.
- Agreed that properties in the flatland can have 8,000 or even more square feet of enclosed fenced area.
- Questioned why someone with a four-acre parcel cannot. It doesn't seem right.
- Suggested that perhaps they be allowed to enclosure greater areas with wildlife breaks. Perhaps it could be either/or.
- Reiterated that she feels strongly that people ignore the 4,000 square foot limitation.

Commissioner Nagpal:

- Said that she appreciates the comments and points made by Commissioners Kundtz and Rodgers who live on Hillside properties.
- Stated that fencing needs to be aesthetically pleasing as well as pleasing to the environment.
- Said that she is open to allowing a large standard of enclosed fencing area but has no basis for a recommendation at this point.
- Supported a set standard with an exception process.
- Expressed concern about changing the Hillside environment and said that she does not want to be a part of condoning that.

Commissioner Hlava said that she supports setting a maximum number and having the exception process available.

Commissioner Nagpal said she might support allowing people to go with larger fences with openings.

Commissioner Hlava said that the 60/30 standard does not make sense. It would be more rational to require a 10-foot opening for every 60 feet of fencing.

Chair Cappello said that the issue of gaps is in a different area of the Code.

City Attorney Bill Parkin:

- Said that if the gaps in the fenced area are greater than 30 feet, the fencing can encompass the entire lot. The Ordinance already provides for that.
- Brought the Commissioner's attention to Subsection A that reads, "as viewed from any street or property."
- Suggested that the same language be applied to the chain link fencing material section, "as viewed from any street or property."
- Pointed out that this provision in the Ordinance is itself an exception.

Chair Cappello:

- Asked the Commission to focus its attention to the 4,000 square foot standard without gaps.

- Said it appears that most Commissioners are agreeable/open to allowing a larger dimension although Commissioner Kundtz would like to keep the standard at 4,000 square feet.
- Stated that he feels it is too restrictive at 4,000 square feet and that a larger standard is more appropriate at this time.
- Suggested that 6,000 square feet makes sense.

Commissioner Hlava said that she could agree to 6,000 square feet as she agrees 4,000 is not enough. This solves a lot of problems in her mind. She cautioned that it makes enforcement harder if the standard is “who can see it.”

Chair Cappello asked the rest of the Commission if they can agree on this figure.

Commissioner Rodgers suggested leaving it at 4,000 square feet for existing homes and allowing an increase to 6,000 for any new homes. The existing homeowners can use the exception process if they want to pursue enlarging their existing fenced area.

Chair Cappello:

- Said that it is a pain to process exceptions. Exceptions delay projects and add cost.
- Said that he would like to come up with a number that doesn't require every other project to have to come before this Commission.

Commissioner Nagpal said that new projects would while existing could stay the same.

Chair Cappello said that if the Ordinance is changed, owners could extend to 6,000 square feet by right. They would not be grandfathered in at a smaller size.

Commissioner Nagpal suggested allowing an increase from 4,000 to 6,000 square feet with an over the counter or Administrative review that would allow for public notice.

Chair Cappello pointed out that over the counter permits are not noticed.

Commissioner Nagpal said that another option is to leave it at 4,000 square feet.

Commissioner Rodgers said that 4,000 square feet is fine.

Commissioner Nagpal asked Director John Livingstone if he is okay with her suggestion and if not does he have any recommendations.

Director John Livingstone said no, he did not like the idea of an Administrative process to increase from 4,000 to 6,000 square feet. He added that he does not know the history of where the 4,000 square foot standard came from. It may have simply been subjective.

Commissioner Nagpal asked Director John Livingstone if people struggle with the current 4,000 square foot standard.

Chair Cappello said that extending the allowable size to 6,000 would mean fewer would struggle with the standard.

Director John Livingstone said that people go with the maximum setback and height allowances. He added that the area of enclosure standard already has its own exception process. The new process could replace the existing.

Chair Cappello said he favors the new exception process.

Commissioner Hlava agreed saying it is easier and clearer.

Chair Cappello asked if all Commissioners agree to eliminate the language in Subsection Paragraph E regarding exception for enclosed area.

Commissioner Hlava said that the language about accommodating wildlife doesn't appear to be there specifically.

City Attorney Bill Parkin said that by dropping the Hillside exception the Commission would likely want to add findings that apply specifically to Hillside areas to the standard Ordinance exception process.

Commissioner Nagpal asked if the standard, "as visible from the public street," should be applied throughout Saratoga.

City Attorney Bill Parkin said that staff should craft proposed language and bring it back.

Director John Livingstone said perhaps an attempt can be made later in this meeting. Right now the concentration is on enclosed fencing areas on the Hillside. It appears some are against allowing enclosures. Others are okay with the existing 4,000 square foot size and others support a larger size. It appears the majority view is staying with the current 4,000 square foot.

Commissioner Hlava said that it actually appears that three want to stay the same but four support enlarging the size to 6,000 square feet.

Commissioner Nagpal said that she is okay with 6,000 square feet with some basis. Right now, it seems fairly arbitrary.

Chair Cappello said that his basis is that it would be a little easier for homeowners to deal with the 6,000 square foot standard and will not need an exception as often.

Commissioner Rodgers asked if there has been any demand to increase from the 4,000 square foot standard.

Director John Livingstone said it does not happen often. He added that staff discourages exceptions and/or variances. There have only been two to three to the Planning Commission in his recollection. This is not a regular issue.

Commissioner Hlava said that she remembers one case when she was first on the Planning Commission and what they approved was ugly because of the existing limitations.

Commissioner Nagpal asked if the process was accomplished via an exception or a variance.

Director John Livingstone replied variance.

Commissioner Hlava said it could have been prettier. She said to go with the 6,000 square foot standard.

Commissioner Kundtz voted to keep the 4,000 square foot standard.

Commissioner Kumar supported 6,000 square feet.

Commissioner Zhao supported 6,000 or even 8,000 square feet. She reported that she has a friend who recently moved onto a Hillside property with two young daughters who needs a safe play area for her children.

Chair Cappello asked if anyone else could support 8,000 square feet.

Kumar said yes.

Hlava said she was not sure

Rodgers stayed with 4,000 square feet.

Nagpal said while she could increase to 6,000 she was not ready for 8,000 square feet.

Chair Cappello agreed and said that there is a majority that supports an increase to 6,000 square feet and the removal of the exception process for this portion of the Code. He suggested addressing the other provision for fencing in Hillside districts and that is fencing with gaps. The current standard is 60 feet of solid fencing must be broken with 30 feet of open gap.

Commissioner Hlava pointed out that as the Code reads, if a black clad chain link fence is located where no one can see it from the street, they could exceed the 60-foot distance. She asked where the requirement for a 30-foot opening comes in.

City Attorney Bill Parkin said that a fence with a gap is not enclosed. The length deals with linear feet as visible from the street or neighbor.

Commissioner Hlava said that the 60/30 standard doesn't make sense at all.

Director John Livingstone said that the question may be what is the point is having the gaps in the fence. If it is to allow wildlife passage the next question is the size of the gap.

Commissioner Nagpal agreed that the reason for the gap could either be aesthetic or to allow a wildlife trail.

Director John Livingstone said perhaps both.

Chair Cappello said that gaps might not be required if the proposed fencing style can meet both the aesthetics and allow for wildlife flow.

City Attorney Bill Parkin said that the gaps are still required so that the fencing would not be considered enclosed. He explained again that there are two concepts here. One is the allowable linear length of fencing and the other is the issue of enclosed area.

Chair Cappello said that gaps would have to be provided for wildlife. However, if the fence design allows for wildlife to easily pass through, the need for additional gaps makes no sense.

Commissioner Hlava said that she prefers the establishment of some sort of ratio such as six to one (6:1). For example, for every 60 feet of solid fencing, a ten-foot gap would be required. A 120-foot long fence would need a 20-foot gap.

Commissioner Rodgers said that she is uncomfortable considering type of fence. There is way too much detail that makes it difficult.

Chair Cappello said that the options include a 30-foot opening or another dimension more appropriate.

Commissioner Rodgers said she is not sure there are enough facts before this Commission to evaluate and wildlife experts might need to be consulted on what sort of space is necessary for safe passage by wildlife. She said she is willing to leave the standard at 30 feet.

Commissioner Kundtz asked where the 60 foot length standard came from.

Chair Cappello said it could be for getting farm equipment through or fire trucks. The 30-foot wide gap is more than wildlife being considered here.

Director John Livingstone:

- Said it was from the original conversation way back.
- Stated that if the gap were to be only five to 10 feet wide, a gate could easily be put in later. The 30-foot gap prevents that after the fact alteration.
- Added that if the gap is too small there is the possibility that it would create a choke point that would make wildlife basically sitting ducks. The 30-foot distance gives wildlife room for more maneuvering.

Commissioner Rodgers recounted a story where a deer got trapped within an area and was killed by a predator.

Commissioner Zhao said that establishing some ratio as suggested by Commissioner Hlava makes sense. The 60/30 standard is kind of strange. She added that she does not have a strong opinion as to what would be better as she really doesn't know.

Director John Livingstone said that the definition of enclosure is in several sections.

Commissioner Hlava said that it is not clear in this language. A solid fence is one that is made of stone or wood and cannot be seen through. The length of a solid fence or wall cannot exceed 60 feet "unless not visible from the public street or neighbors." She asked if gaps would still be required if the fencing is not visible. If not visible, it is likely the fence could be lots longer than 60 feet.

Director John Livingstone said another question is, if visible when does a length of solid fence end.

Commissioner Rodgers questioned the need/purpose of an exterior fence completely enclosing the lot outside of 4,000 square foot enclosed area.

Commissioner Hlava said that it seems like it should say, "Solid fences may be unlimited if no more than 60 feet is visible from public view."

City Attorney Bill Parkin said that the standard is shall not exceed 60 feet.

Commissioner Nagpal said that even if the fence is not visible from the public street it should not be unbroken.

City Attorney Bill Parkin said that a lot of what is here is from the original ordinance. The lengths of fence versus enclosure are two different concepts here. The length is aesthetics and the enclosure is regarding wildlife access/passage.

Commissioner Rodgers suggested that staff separate both concepts out in the next draft.

City Attorney Bill Parkin suggested that one subsection be on fence section length and another subsection be on area of enclosure.

Chair Cappello asked what is the purpose of this. From his standpoint the issue is some sense of security for the property owner.

Commissioner Kumar pointed out that the required 30-foot wide gaps eliminate the security function.

Chair Cappello agreed and said that they are working with opposing objectives, security versus wildlife access versus defining a property line.

Commissioner Kumar said that the security aspect is not addressed when there are openings in the fence.

Chair Cappello:

- Agreed with Commissioner Kumar
- Stated that he is simply trying to clarify the objectives in order to approach them differently: privacy, wildlife access and aesthetics.
- Said that it is easier to deal with specifics such as materials, type of fence and size of openings.
- Added that even with openings there is still some level of security.

Commissioner Kumar said he questions why have a fence at all if it has openings.

Chair Cappello said that it provides some privacy and might discourage neighbors and passers by from entering onto private property. Additionally, it would delineate a property line so the neighbor does not plant a tree on your property or place a play structure. If one wants absolute security, this fencing won't provide that.

Commissioner Nagpal said that she mostly looks at aesthetics. There are two big factors, aesthetics and wildlife. She stated that the last thing we want is a hillside that is impacted by fences.

Commissioner Hlava said that she gets the impression that the Commission will not be passing this ordinance this evening. She pointed to Section B that reads "wrought iron and wire material." Added that she does not know what is meant by wire material and whether there is no limitation of fence length if made of those materials.

Commissioner Nagpal said that it is aesthetics versus solid fencing.

Commissioner Hlava said that the way the ordinance was originally written is screwed up. There is need to rewrite the whole thing. The first decision is the amount of enclosed area on the Hillside district. Next comes the types of fencing and last comes the lengths of fencing allowed.

Commissioner Rodgers said that this has been debated for two hours tonight.

Commissioner Hlava said that it is too hard to understand.

Chair Cappello asked for recommendations for openings in solid fences and what about wrought iron fences, do they require additional openings?

Commissioner Hlava said that they couldn't.

Chair Cappello asked if wrought iron would be limited to the same length limitation as a solid fence and with the requirements for gaps. How about chain link?

Commissioner Hlava said that there is already a 4-inch gap in wrought iron fencing that lets more wildlife get through.

Commissioner Nagpal said that there is no limitation on wrought iron.

Director John Livingstone said that there appears to be a general consensus that the Commission wants to regulate the length of a fence. A long solid fence that a neighbor could see is not aesthetically pleasing. The Commission appears to want to regulate the length of fences or maybe that's not an issue at all.

Chair Cappello said that the limitation would be on a solid fence one cannot see through.

Commissioner Zhao added if viewed from any street.

Commissioner Nagpal clarified street or adjacent property.

Director John Livingstone said that he has never enforced a standard that states "as viewed from" anything. That would be very difficult to enforce. He asked if a solid wood fence beyond 60 feet in length is found to be distasteful.

Commissioner Rodgers asked if he means on the Hillside versus citywide.

Director John Livingstone said Hillside.

Commissioner Hlava said that having only a 60-foot long fence on an 80-foot frontage is what would look funny.

Chair Cappello said that a solid fence along the entire length of a front yard would look strange beyond 60 feet. However, wrought iron would be okay there.

Commissioner Nagpal suggested a study session where the Commission can brainstorm a list of options/alternatives on a board.

Commissioner Kumar said that the regulations must be based on wildlife or aesthetics, on whether to ban or enforce.

Chair Cappello asked what if the gaps are reduced to five feet in width.

Commissioner Kumar said that it doesn't serve any purpose.

Commissioner Hlava said that this ordinance should go back to another study session in order to re-organize language to reflect area of enclosure. It is too confusing for the Commission let alone the applicants.

Chair Cappello suggested providing guidance on what the Commission does agree on. How about the stretch of solid fence length?

Commissioner Nagpal said that visibility is a factor. She reminded that no one from the Hillside has said that they don't like the ordinance. She said that she finds their lack of input disturbing considering the number of people these regulations will impact.

Chair Cappello said that the study session would offer Hillside residents another opportunity. He stated that the requirement for a 30-foot gap is too large.

Commissioner Rodgers said that 30 foot is a minimum. She said she is not sure it serves any purpose to have that as it may negatively impact neighbors.

Commissioner Hlava said that the regulations have holes in them. There is language that needs to be rewritten to have a clear system. What's visible is subjective.

Commissioner Nagpal said that what is visible is from the public right-of-way.

Commissioner Hlava said that it isn't yet a coherent system and something clearer is necessary.

Director John Livingstone said that this could go back to a study session to consider the basics and then slowly expand to the next point. He reminded that the Hillside is the more troublesome area.

Commissioner Rodgers suggested continuing on with the discussion on non-Hillside issues tonight.

Commissioner Hlava said that the Hillside regulations are the only problem. The rest is fine to her.

Commissioner Nagpal asked if the continuance would be to a date certain.

Director John Livingstone said yes.

Chair Cappello suggested a discussion on the visibility triangle requirement.

Commissioner Rodgers suggested discussing regulations as they apply to legal, illegal and non-conforming fencing. She also mentioned the possibility of establishing a temporary fence exception.

City Attorney Bill Parkin said that they could but would need to discuss just what temporary means.

Director John Livingstone said that there is already an exception process in the updated ordinance. Prior to that, a variance was possible albeit hard to approve.

Commissioner Nagpal agreed that exceptions are easier to issue than variances. She questioned whether the Traffic Safety Commission might not be the appropriate body to decide visibility issues for driveways on new Design Review projects. She added that she would like to see an ability to come up with alternatives to the view angle.

Chair Cappello asked if alternatives would have to be approved by the Traffic Safety Commission.

Commissioner Nagpal said it would be them or this Commission although she would prefer their input.

Director John Livingstone said that there is nothing written that allows referring back to the Traffic Safety Commission. He added that although he does not want to speak for the Public Works Director, he can say that they prefer a simple process. The Traffic Safety Commission does not support use of mirrors, etc.

Commissioner Nagpal said that she still would like the ability to consider alternatives to a visibility triangle.

Commissioner Hlava said that as she reads the draft ordinance, the view triangle is something that would have to be met in Design Review. It only applies to new construction. She asked if everyone was okay with that.

Commissioner Nagpal said that she is concerned about old growth having to be chopped down to create this view triangle. She said that she hopes that the Traffic Safety Commission would be open to considering alternatives on a case-by-case basis.

Commissioner Rodgers said that there is the potential issue of historic markers and/or heritage trees within a proposed visibility triangle that might need to be saved.

Commissioner Nagpal asked how this would be handled.

City Attorney Bill Parkin said he would look into this issue.

Chair Cappello asked if it might be through an exception process.

City Attorney Bill Parkin said he would come back with an answer on this.

Commissioner Rodgers said that staff should look at Section 15.29.090 to make sure that it has not eliminated the requirement to have illegal fences made complaint.

City Attorney Bill Parkin said that the intent for legal non-conforming is to leave them as they are until they are 50 percent destroyed and ready for replacement. He assured that he would make sure that illegal fencing was not unintentionally left out.

Chair Cappello asked about rows of trees.

Commissioner Nagpal said that they represent a green hedge. The intention is to exempt green hedges.

City Attorney Bill Parkin said that this was already eliminated from the ordinance outright.

Chair Cappello asked for dates for the study session. It will be noticed and the public is welcome.

Director John Livingstone said that the Commission is not limited to meeting or site visit days.

Chair Cappello asked if there are any near term options.

Director John Livingstone advised that Shweta would be gone for most of June as she is to be married and go on her honeymoon. Therefore the amended draft would be brought back to this Commission for continued public hearing in July. He advised that May 14<sup>th</sup> is an option for the study session.

Chair Cappello suggested May 27<sup>th</sup> from 5 p.m. for the study session, immediately following the site visits.

**Motion: Upon motion of Commissioner Hlava, seconded by Commissioner Nagpal, the Planning Commission CONTINUED TO A DATE CERTAIN (MAY 27, 2008 – 5 P.M.) consideration of amendments to the Fence Ordinance to a Study Session to be held on May 27, 2008, at 5 p.m., with the subsequent return of an amended draft to the second regular Planning Commission meeting in July. (7-0)**

\*\*\*

### **DIRECTOR'S ITEMS**

Director John Livingstone advised that he would like to schedule a Housing Tour. Work has begun on the Housing Element with a kick-off meeting. The tour would be of some existing affordable housing in Saratoga (Saratoga Court on Cox and the Oddfellows).

Commissioner Kundtz asked if this would simply be a drive by tour or would the Commissioners be able to go into the facilities.

Director John Livingstone said the tour would include going inside the developments. He suggested emailing a calendar matrix.

Commissioner Kundtz asked about early on a Saturday.

Commissioner Zhao suggested incorporating it into a site visit schedule.

Commissioner Kundtz asked how long the tour might take.

Director John Livingstone said about one hour.

Chair Cappello asked if it could be delayed until June.

Director John Livingstone said yes.

Commissioner Hlava cautioned that she would be gone the week of June 9<sup>th</sup>.

Chair Cappello agreed that a date could be confirmed via email.

**COMMISSION ITEMS**

There were no Commission Items.

**COMMUNICATIONS**

There were no Communications Items.

**ADJOURNMENT TO NEXT MEETING**

Upon motion of Commissioner Nagpal, seconded by Commissioner Kumar, Chair Cappello adjourned the meeting at approximately 9:53 p.m.

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