

MINUTES

**CITY OF PACIFICA
PLANNING COMMISSION
COUNCIL CHAMBERS
2212 BEACH BOULEVARD**

March 20, 2017

7:00 p.m.

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

ROLL CALL: Present: Commissioners Baringer, Evans, Nibbelin, Campbell,
Clifford, Cooper and Chair Gordon
Absent: None

SALUTE TO FLAG: Led by Commissioner Campbell

STAFF PRESENT: Planning Director Wehrmeister
Assoc. Planner Murdock
Asst. City Attorney Nira Doherty
Dep. Dir. of Public Works-Eng. & Field Svcs Evan
Albert

**APPROVAL OF ORDER
OF AGENDA** Commissioner Clifford moved approval of the Order
of Agenda; Commissioner Cooper seconded the motion.

The motion carried **7-0**.

Ayes: Commissioners Baringer, Evans, Nibbelin, Campbell,
Clifford, Cooper and Chair Gordon
Noes: None

**APPROVAL OF
MINUTES:
FEBRUARY 21, 2017** Commissioner Clifford moved approval of minutes of
February 21, 2017; Commissioner Evans seconded the
motion.

The motion carried **5-0-1**.

Ayes: Commissioners Baringer, Evans, Nibbelin, Clifford and
Chair Gordon
Noes: None
Abstained: Commissioners Campbell and Cooper

DESIGNATION OF LIAISON TO CITY COUNCIL MEETING OF MARCH 27, 2017:

None

ORAL COMMUNICATIONS:

None

Planning Director Wehrmeister introduced Asst. City Attorney Nira Doherty who is Matthew Visick's replacement. She stated that she will be attending Planning Commission meetings.

CONSIDERATION ITEMS:

- 1. CDP-380-17** **EMERGENCY COASTAL DEVELOPMENT PERMIT CDP-380-17**, filed by applicant, Andrea Maltzer, for Temporary Installment of Barriers Which Prevent Pedestrian Access Along a Section of Public Access Trail at 200-222 Palmetto Avenue (APN 155-220-999).

Chair Gordon stated that their action was only to receive it and file.

Planning Director Wehrmeister stated that there was not much more to explain than what he read in the introduction, which was that this condo complex has been proactive with staff and were concerned and retained the services of a geotechnical engineer to give them expert advice. She stated that, within the next 60 days, they will propose a long term solution. She stated that it was a condition of approval to maintain that trail and they will need to propose a replacement in moving the trail further back for public access.

Commissioner Cooper asked what the “big brown blob” meant on the map, which apparently extends up to two more units.

Asst. City Attorney Doherty stated that it appeared to indicate an area of fill.

PUBLIC HEARINGS:

- 2. PSD-757-06** **SITE DEVELOPMENT PERMIT PSD-757-06, USE PERMIT UP-965-06, AND TENTATIVE SUBDIVISION MAP (CONDOMINIUM) SUB-211-06**, filed by Shaohong “Simon” Weng; Pinkstone LLC, to Extend the Expiration Date of Permits for the Construction of Nine Condominiums Located at 1567 Beach Boulevard (APN 016-011-190).

Planning Director Wehrmeister presented the staff report.

Commissioner Campbell stated that he had a question regarding the relevancy or significance of the tentative map to what they were doing. He asked, if there was a vesting tentative map in place today that had not expired, whether it would have frozen zoning in place at the time that that it was applied.

Asst. City Attorney Doherty explained that a tentative vesting map would have been one of the considerations staff would have looked at in determining whether or not any rights under the entitlements were vested, but it wasn't the only element at which staff would have looked. She stated that a development right vests when there was a reasonable expectation and reliance on a continued use or development, adding that here, because there had been no groundbreaking and no building permit had been issued or development occurred there were no rights to have vested. She stated that the tentative map would have been one, but not the sole, consideration.

Commissioner Campbell stated that subdivision map 208 extended it for a while, but he thought, even if they were looking at the continued viability of the vesting map, it would have expired the previous year because they didn't extend it.

Asst. City Attorney Doherty stated that the map didn't expire, and the development permits issued in 2007 were the ones that would have expired but for the annual renewal that occurred for the last 10 or so years.

Commissioner Campbell thought the map expires after 24 months.

Asst. City Attorney Doherty stated that she now understood his question and he was correct.

Commissioner Evans asked if there was someone present to speak on the sea wall.

Planning Director Wehrmeister stated that engineering staff was present.

Commissioner Evans stated that he wanted to know the difference between the south sea wall to the north sea wall and why it has been good and the north side has not, asking if there was a short answer.

PW Dep. Dir.-Eng. & Field Svs. Albert stated that they were constructed differently. He explained that the north wall was built on a small foundation with mostly concrete tiles with horizontal tiebacks and the tiebacks are held in place by friction with the weight of the soil on top of them. The south side was built on piles that are driven in the ground with a much larger footing or toe to the wall and a larger face for the retaining wall. It also has a wave diffuser at the top of the wall, clarifying that they were two different construction types of walls and the northern wall was more susceptible to failure compared to the southern wall based on the two designs.

Commissioner Evans asked if he would conclude that, as the years build, it was becoming more susceptible to damage.

PW Dep. Dir.-Eng. & Field Svs. Albert stated that was out of his expertise and he wouldn't say that. He stated that, with the northern wall, if the soil were to escape from behind the wall where there is a mesh behind the tiles, that would take away the friction holding in the tiles and that could be a cause for failure.

Commissioner Evans compared it to leakage into the wall through the cracks.

PW Dep. Dir.-Eng. & Field Svs. Albert agreed.

Vice Chair Nibbelin referred to pages 85-86 and stated that they have the staff report from September 2015 which he concluded was the prior extension, and it makes reference to the fact that, at that time, they didn't see any particular significant changes, conditions or circumstances affecting the project. He asked if they were relying on the analysis that has evolved since that time or were some of the conditions to which they were looking were in place at that time.

Planning Director Wehrmeister thought a significant occurrence was failure of the sea wall and they are taking a fresh look at everything they are doing and bringing that to the Commission.

Vice Chair Nibbelin didn't think they were bound by this but he thought it was something about which they should be thinking.

Commissioner Cooper referred to the repair to the sea wall and asked if, at that time, there was any recommendation of how to permanently improve it or were they thinking about replacing or upgrading the wall.

PW Dep. Dir.-Eng. & Field Svs. Albert stated that they did a ground penetrating radar survey of the wall, and all they did was look for voids and they mitigated or repaired any voids found. He stated that there was no study done regarding the future integrity of the wall of which he was aware.

Commissioner Cooper referred to the wave action and people who are near the pier on the north wall. He stated that those waves break over the wall to the pedestrian walk, but he has not seen that on the south side of the wall. He asked if there is a way the wall is designed on the south side that makes the waves break away from the people sitting on the curb compared to the north wall.

PW Dep. Dir.-Eng. & Field Svs. Albert stated that the southern wall had what they called a wave diffuser which deflects the waves, but the north wall does not have that built into it and it could be one of the reasons, adding that there could be other reasons of which he was not aware.

Commissioner Cooper stated that there was a comment in one of the letters from Vector Vision, dated March 20, 2017 to Mark Haseloo from Bahram Mosiheni which regarded the off-site storm water treatment and he asked if the property owner would have to provide treatment of the water on Beach Boulevard for that particular section.

Assoc. Planner Murdock thought the analysis was referring to the installation or removal and replacement of impervious surface. He stated that, as the city's permit for storm water discharge requires, when such materials are removed and replaced, they need to be adequately treated in accordance with current standards.

Commissioner Cooper concluded that he would be responsible for treating that.

Assoc. Planner Murdock agreed, adding that, since the property owner was pursuing this project, even though it was in the public right-of-way, they would require him to adequately address that.

Commissioner Cooper noticed that, in the hotel in Rockaway, when there are big storms, they clear out the bottom parking because it gets a lot of sand and water. He asked whether the water in that parking lot is treated or automatically discharged to the beach.

Assoc. Planner Murdock stated that he did not know the particulars of the design of that parking garage, but that site was permitted and constructed prior to imposition of these technical requirements.

Commissioner Cooper noticed that the driveway entrance that was supposed to be servicing this was right on the area and he asked if that area was public access on Beach Boulevard.

Assoc. Planner Murdock asked if he was referring to the turnaround approaching closely to the top of the wall

Commissioner Cooper responded affirmatively.

Assoc. Planner Murdock stated that he couldn't speak to the extent of the right-of-way in that location. He thought the turn-around may be in the right-of-way subject to an encroachment permit, but it wasn't clear to him.

Commissioner Cooper stated that it just seemed too close to put a driveway and put additional pressure on the wall.

Commissioner Clifford asked if it was true that the Army Corp of Engineers has initiated a first look at the north sea wall.

PW Dep. Dir.-Eng. & Field Svs. Albert stated that it was correct. They were currently in the data gathering phase of the whole process.

Mark Haseloop of Bahram Mosiheni, stated that in addition to doing this work for 30 years, he also served as a Planning Commissioner in San Carlos. He apologized for sending the letters at the last minute but thanked them for reading the letters they received and digesting most of what was in them. He clarified that this was not the applicant's sixth extension but his third as he purchased the property in 2013 after the property was foreclosed upon and after the initial approvals. He commented that they have acted fairly diligently and probably could have pushed it harder, but they were doing a complete reanalysis of the C3, C6 storm water analyses. He stated that those requirements didn't exist when this project was originally done. He stated that the Vector Vision's letter addresses those efforts and gives them a good picture of what went on. He stated that the project met the highest standards for storm water drainage as of summer of 2015 when CGS, the third party consultant, and Public Works approved it and it went forward. He explained that the easements were granted by the client, adding that there was also a subdivision agreement recorded September 12, 2016, three weeks before the application for extension without the city mentioning they were going to take a look at it. He stated that his client was shocked when they got the staff report as they thought the extensions were routine as in the past. He referred to the issues raised by staff, and stated that they have already addressed storm water. He appreciated Pacifica's concerns about sea walls, etc., but referred to Mr. Skelly's recent letters which mentioned that the project was not impacted by the sea wall or vice versa. He stated that they questioned how significantly the changed codes impact this project but they didn't get a clear answer. He stated that CGS' letter mentioned certain deficiencies based on the new standards. He stated that, at the time they applied for an extension, the project complied with the codes because the 1116 requirements weren't effective at that time. He referred to the next step that will deal with sub-metering the multi-units, adding that the storm water situation was the city's storm water, not the project's storm water. He referred to the equities, mentioning that the applicant has paid approximately \$300,000 in development costs since purchase of the property with extensive renegotiation, etc. He referred to further costs that will be incurred, and he questioned what happens to that if they deny the extension. He stated that he has been doing this work for a long time and this was the only project he has seen that has had six extensions. He acknowledged that part of that was due to the recession and the foreclosure of the property. He stated that the applicant was close and all they need at this time was to post the bond and record the final map. He stated that, if they grant an extension of 6 months or up to the year requested, with the caveat that they are done at that point, he didn't think that would be a problem and he would work with them. He then mentioned the process on this extension, stating that it has not been very collaborative. He stated that his client did not know that there was going to be a recommendation of denial of the extension until the staff report before the December 19 Planning Commission meeting, adding that saying it was an earthshaking surprise was an understatement. They then consulted him and he hoped he did a good job documenting things, etc. He stated that they told Planning that they would make all their consultants available to city staff and their

consultants to reach a consensus, and they did not take advantage of that. He thought, if the collaborative effort had been made, there would have been a different picture painted. He acknowledged that the project wasn't technically in compliance with every aspect of building codes, but no project approved in the past is. He thought the project substantially complies and was not a burden to health and safety with a sound sea wall, adding that there are no details about significant risks to the public health and safety. He urged them to grant a brief or minor extension of this permit to let the building permit get issued.

Commissioner Campbell thanked him for the report and appreciated his background as a planning commissioner. He referred to his letter mentioning the vesting of the development and entitlements, and asked him to talk more about why he considers that this project was vested.

Mr. Haseloop stated that there was a tentative map, conditional use permits, and the Coastal Commission has also issued a development permit for the project, which were entitlements owned by the owner. He acknowledged that there were sunsets on them so they can expire. He stated that the project was entitled and if, prior to the date of expiration, they had submitted a final map to City Council, those were certifications that the map complies with the technical requirements of the subdivision map act and technical requirements of law. He stated that the final map goes to the Council and wasn't a discretionary hearing, but just authorizing its recording as a ministerial act which they consider vesting. If they had gotten that to the in a timely manner, he didn't think there would be much of an issue. He felt that, from an equitable point of view, to grant or not grant the extension has to do with the easements, mentioning subdivision agreements that will require his client to spend a considerable amount of money on improvements. He asked if they deny the extension and this project disappears, what happens to those agreements. He was convinced that, with an extension, the owners will get their act together and get this done.

Commissioner Campbell referred to mention of the storm water discharge being the city's problem, and he asked his thoughts regarding the city having an obligation under the MRP to control the discharge of storm water, untreated, directly to the ocean or be subject to liability.

Mr. Haseloop agreed that it was their responsibility to do it, and even if it was not a requirement, it was a good idea and the right thing to do. He mentioned that staff agreed with him that, when they get to the final permitting, and Public Works thinks they need treatment for the water, they can do it at that time.

Commissioner Clifford referred to the finalizing of the easement, but he asked about a paper street which has been added to the applicant's property that has also been finalized.

Mr. Haseloop agreed that there was a paper street that has been resolved.

Commissioner Clifford asked if it was fully attached to his property or shared with the property behind him.

Mr. Haseloop thought the actual act of finalization would be recordation of the final map. He stated that, under the subdivision map act, when you record the subdivision map, all legacy easements are gone officially, including the paper street.

Commissioner Clifford concluded that he didn't know if the property owner behind this site also gets half of that paper street. He stated that he has seen that happen in the past.

Mr. Haselooop was aware there was a paper street and the paper street was addressed as part of the subdivision but was not aware of exactly how it was addressed. He asked if the owner knew.

Mr. Weng, owner, stated that the paper street problem was raised by the Engineering Department in 2015. A title company then eventually got the problem solved. After that, they had the subdivision and easement agreement. He stated that they solved the issues one by one. He stated that the engineering took a long time because there were a lot of issues.

Mr. Haselooop stated that the question was whether, when the paper street was dealt with, did he get all or did a neighbor get part of it.

Mr. Weng stated that, for the details he wasn't sure, it was eventually solved by the Engineering Department.

Commissioner Clifford stated that he will ask Engineering.

Mr. Haselooop commented that a paper street was usually on some old subdivision map where the city did not accept the dedication and the city was not responsible for the upkeep, maintenance or responsibility if someone falls. He stated that it was a good question as to who actually owns paper streets.

Commissioner Clifford asked if Engineering can answer the question.

PW Dep. Dir.-Eng. & Field Svs. Albert stated that he went back to the records. This project predates his involvement, but the records show that easements were recorded and subdivision agreements were also recorded. He stated that the final map has not been recorded.

Commissioner Clifford asked how the paper street was handled, whether it was completely a part of this project or split in the middle with half of it belonging to the property owners behind and half to this project.

PW Dep. Dir.-Eng. & Field Svs. Albert stated that all he has seen in the records, as well as speaking to the engineer who did the plans, was that there are just easements, not the paper street.

Assoc. Planner Murdock stated that he didn't know and he thought the disposition of the Bella Vista right-of-way was unclear to the staff.

Commissioner Clifford concluded that there was some valuable land that has gone to this property owner.

Assoc. Planner Murdock stated that he didn't know the disposition of the Bella Vista easement.

Commissioner Clifford stated that there was a paper street and now there isn't.

Assoc. Planner Murdock reiterated that he didn't know the disposition.

Commissioner Cooper mentioned that there was some discussion regarding the inclusionary housing requirement and he was curious as to how his client was planning to address that in the overall scheme of things since he wasn't going to put in the unit.

Mr. Haseloop stated that it was a sticky wicket because you can't go back at this point. He stated that the project was nine units which, under the current ordinance, would require one BMR unit or an in lieu fee. He stated that in a month he will be back to the Commission on a different matter where this will be much more prevalent. He asked if the in lieu fee was \$28/foot.

Planning Director Wehrmeister stated that the Council has not established an in lieu fee.

Mr. Haseloop stated that the 21-city County nexus study has proposed \$28 a square foot as an in lieu fee for projects. He stated that neither the unit nor the in lieu fee was in the project's pro forma. He didn't know at this point in time how they would handle that or go back other than agreeing that they will enter into some kind of BMR agreement with the city over the project. He thought the legal question was that the project was approved and all the work was done prior to the BMR unit. He stated that the project does have benefit to the city as the city needs market rate housing and below market rate housing. He didn't think that the inclusion of one unit citywide was a significant factor. He stated that a short answer was that he didn't know how they get around that issue.

Chair Gordon asked if he had submitted a card.

Mr. Haseloop stated that he did because he didn't know if the applicant had to submit a speaker's card.

Chair Gordon asked if it was on behalf of the owner or himself.

Mr. Haseloop stated that it was on behalf of the applicant, adding that he can tear that up.

Commissioner Campbell referred to his letter mentioning CEQA rights are vested, and stated he didn't know that CEQA rights ever vest, but he asked his thinking on a revised CEQA analysis.

Mr. Haseloop stated that he always goes through the initial study form, Exhibit G in the subdivision map act or CEQA law, to see what has changed. He acknowledged that there have been some code changes, but going through the 17 item checklist, the construction of the project doesn't note any of them significantly changed, mentioning pollution, noise, etc. He mentioned staff talking about the storm water issues and the sea wall, but from a CEQA analysis, he didn't think much changed.

Chair Gordon opened the Public Hearing:

Craig Joyner, Pacifica, stated he lived directly north of the proposed development site and owned the building. He stated that, in the process of purchasing it, he was told he had half of the paper street, but he has not had a survey. He stated that he didn't have the eloquence of applicant's attorney who was a very good speaker and very good at minimizing the changes that have occurred in the last ten years. He stated that you can't minimize the effect of time in this type of situation. He assumed that, when purchased, the owner took over the original owner's plans as it sounds like it is a process that has continued on one set of plans for years. He stated that a lot has changed, mentioning science on sea level change. He stated that, on his property, they had to make two different repairs to the revetment the previous year and they have to make one repair this year. He stated that they had more damage on the revetment this year than last year. He stated that he has seen a lot of waves break over into that property and he didn't think it was accurate to say there was not a storm risk, particularly with an underground garage. He thought that this project needs to start over and, if the developer made covenants that he was

going to spend money on easements and what was mentioned earlier, he would urge the Commission to make sure he is relieved of those commitments and let him start again from ground zero with current laws and a scaled down project that fits the neighborhood and that property and acknowledges the changes that have occurred in the last ten years.

Dave Blackman, Pacifica, stated that he has nothing vested in the project, but he had a few pros and cons to add. He knows how difficult it is to get through all the different requirements from the Fire Department to build an apartment, and he thought if they could give him more time, that would be awesome. He stated that the problem he had with the project was that it was four stories and way over 35 feet, adding that the city keeps reinterpreting height limits. He stated that he built the duplex diagonal from this and he was familiar with the right-of-way behind it. He also watched the properties that are on paper streets. He stated that there is no legal term for a paper street, but just a concept. He thought it usually means that a subdivision was recorded a long time ago and the city owns it and never did any improvements. He stated that in this case, it was rejected, and the easement was not an easement but still private property. He stated that, if you offer land to the city, which was at the county level and they rejected it, it went back to the owners. He stated that was why there was confusion of who owns it. He stated that it was still the original owners who came forward with the subdivision.

Nick Langhoff, Pacifica, stated he was speaking on his father's behalf, as well as the neighbors in the surrounding area. He stated that he has followed this project through his father for ten years through its different phases with the Commission from the first owner. He echoed the concerns of the first speaker and believes his father would as well, that they want somebody who will build responsibly, sustainably and scaled back. He stated that he realized that there was still a proposed nine units and an underground garage, and was surprised they were still in the proposal. He wondered if a geotechnical engineer has been consulted about an underground garage. He stated that his father moved into his residence in 1998 and some spray has gotten on the building over those years but in January, a rogue wave came through and delivered power and completely destroyed the fence in front of the unit and almost seriously damaged the building. He stated that he still hasn't rebuilt the fence and you can see how completely gone it is, and he was offering that as a recent example in changing and progressive weather patterns.

Chair Gordon closed the Public Hearing.

Mr. Haseloop stated that, if they deny this, they go back to square one, and all the issues they are talking about, such as the fence, etc., a new project coming in will not take care of his fence. A new project may be more units to accommodate the BMR pro forma or less units, but if less units, it doesn't need any BMR component. He stated that they have looked at what a project coming back will look like, such as will it be significantly different for any of the speakers. He didn't think it would be. He stated that the difference will be the issue of the BMR. They will come back with a bigger or smaller project. He stated the issue of underground parking was looked at by the soil engineer, Mr. Baldwin, who did the original geotechnical review. He stated that the structural engineer looked at it. Mr. Skelly looked at it, and they were all good with underground parking. He stated that a big concrete box stabilizes the ground around it. He stated that the city's consultants didn't have a problem approving underground parking. He suggested that they think about whether any of these issues will be different if they come back in 1 ½ or two years.

Vice Chair Nibbelin asked what happens to the various agreements referenced in the comments if they deny the extension and things go back to square one.

Asst. City Attorney Doherty stated that, if they deny the extension, they would expire by an operation of law.

Vice Chair Nibbelin asked if it was the various easement agreements.

Asst. City Attorney Doherty stated that the easement agreements would not expire as they run with the property. She didn't know the answer as to when the subdivision map agreement would expire. She stated that the map itself and the permits issued to date would expire eventually, but the easement would continue in perpetuity.

Commissioner Baringer stated that he has only been on the Commission a short period of time, but they have these legacy projects that, for all kinds of reason, some justified and some not, seem to take forever to come to fruition and he thought this was one of those projects that could use tightening up. He was glad that the applicant's lawyer was present because he wanted to ask a question. He asked if they were to consider some type of an extension, can they limit the amount of time they give and condition it fairly aggressively so that if there was a failure to comply with the extension that it is over and they couldn't come back for another extension and would have to start over.

Asst. City Attorney Doherty stated that they can set the amount of time of the extension, and they could determine that the applicant could not come back for another extension.

Commissioner Baringer asked if the Commission, in granting an extension, could enter into an agreement where all those things hanging out get resolved during the extension period, understanding that, at the end of the extension if they fail to comply, it is a clean slate and they start over with a letter on file terminating any agreements if needed.

Asst. City Attorney Doherty stated that, if they are extending the existing site development and use permits, they cannot recondition the permits but could add new conditions.

Commissioner Baringer stated that he was trying to deal with the outstanding issues which he thought were fairly technical and he was going to look at them from a binary standpoint, either complying with the storm water or not, and if not, he asked if the Commission can condition that as a function of the extension.

Asst. City Attorney Doherty understood that he would add conditions related to some of the issues that staff has raised in the staff report. She believes that they can, but she was not sure that staff would advise going that route. She would defer to staff as to whether they would make that recommendation. She reiterated that they do have that option within their purview.

Planning Director Wehrmeister stated that there was a provision in the code that allows the Planning Commission, after a notice of public hearing, to add conditions to an extension request. She thought, in this case, the crux of the matter was that to simply add a few sentences that say comply with the storm water requirements; the applicant would need to substantially modify the site plan. She stated that it would not be the same plan previously approved. She stated that it was not as simple as looking the same and just changing the technical design of a planter area. She stated that it will change how big the planter area is, how close it can be to the building, etc. She thought that was the nub of staff's concern.

Commissioner Baringer asked if they were creating an equity issue if they could continue this for 30 days where the agenda could be accommodated to give them time to satisfy staff on the

outstanding items and then come back with a request for an extension to proceed with the other items that are outstanding.

Asst. City Attorney Doherty stated she would defer to staff regarding whether they would recommend going forward with that.

Planning Director Wehrmeister stated that, with such a substantially changed project, she would not feel comfortable coming back to the Commission without revisiting the CEQA document which would take more time than 30 days. She would also be concerned about the public process by giving the public adequate time to participate and understand the revised project.

Commission Baringer asked if the public was noticed for this hearing.

Planning Director Wehrmeister responded affirmatively, but she added that they would be asking for a revised project.

Commissioner Baringer concluded that she was telling him that, it was either extend it as is or deny it and make them come back.

Planning Director Wehrmeister stated that there were potentially less drastic changes for which the Planning Commission could ask, but she didn't know if that was the full extent of the options in front of them.

Commissioner Baringer thought they had absolute discretion to do what they wanted, but he now concluded that it was not true.

Asst. City Attorney Doherty thought that the Planning Director was suggesting that, while they do have the discretion to add conditions to the project, those conditions should not rise to a level of requiring a new project which would trigger a host of other review criteria, including potentially a new CEQA document and new public notice.

Commissioner Baringer concluded that, if they ask them to comply with the storm water criteria discussed during this meeting, it might require a substantial "redraw" of the plans. He asked if the Planning Director thought it created a new project.

Planning Director Wehrmeister believed that it would.

Chair Gordon stated that he wasn't sure if Commissioner Baringer was at the original hearing in December as it was deja vu as he was saying what they discussed before, specifically, because of the passage of time, various regulations that govern the project have changed so much that, in order to comply with the new building code, storm water, etc., it would require such a change in the design that, by definition, it would be a changed project so they couldn't grant the extension because they would not be extending the same project and they would have to start over again. He thought the applicant was kind of in a catch 22, because it was out of compliance with current laws and to make it compliant with current laws, he would have to cross the threshold where it was no longer a minor modification but a new project. He stated that they tried to explain it to the applicant then who was without his counsel and there was an additional language issue. He didn't remember whether it was the applicant or the Commission who came up with the idea of a continuance, but thought it was the Commission who suggested that he needed assistance in understanding the proceedings and they didn't rule on the project but gave him the opportunity to

come back with a representative. He stated that he took umbrage in the applicant counsel's letter where he talked about the due process.

Commissioner Cooper asked staff to clarify when the application was filed in 2007 and the building permit of 2010 versus 2016 and what the difference was. He knew he could go to when the application was filed but he thought they were going to the building permit which was filed in 2013. He then asked how they determined the building code in 2010 versus 2016.

Assoc. Planner Murdock stated that there was a provision in the beginning of the California building code that describes the code applied to a particular building permit application. He stated that it was a short section which says the codes that apply to a building permit application will be those in effect on the date the application is submitted, adding that even though there is a disconnect when the entitlement permits went through, the building permit application sets the date and determines which building code will apply.

Commissioner Cooper concluded that the original application permit was 2007. He stated he was concerned about the inclusionary housing ordinance and how they address that as the Planning Commission, acknowledging that the requirement was not in the original project and it can't be met. He didn't think we had a way to address it currently even if we wanted square foot in lieu of a fee as they haven't established what the fee is. He asked if that requirement was able to be met and negotiated without City Council.

Planning Director Wehrmeister thought that was an example of one of the new requirements or changed circumstances that could be met with a condition. They could add a condition to comply with inclusionary housing ordinance and that would not substantially affect the design of the project.

Commissioner Cooper stated that, from the site development permit issue and the policy of prohibiting development in hazardous areas unless detailed site investigations ensure that risk can be reduced to acceptable levels. He stated that a lot of things have changed in Pacifica with two apartment buildings falling in the ocean and the hole they have and how long it took to fix that. He stated he had a concern, mentioning having a similar failure of the wall on Beach Boulevard and they prevented access to that building. He asked what the city's liability was for that.

Asst. City Attorney Doherty asked if his question was the city's liability if they move forward with the renewal with a change in conditions.

Commissioner Cooper asked, if they did that and had a similar event happen where Beach Boulevard is eroded and we don't have the money to fix or it takes a while to fix it, whether they have any liability to the owner of that property because they approved the development permit.

Asst. City Attorney Doherty stated that she didn't think that was an easy yes or no, but it depends. She thought the likely answer was that the city would not bear responsibility to the owner because the damage would be caused by a natural event, even if the city knows the potential likelihood of that natural event.

Commissioner Cooper stated that, as a Commissioner looking at where this is located and the owner finishes his place and it gets washed out, he could see him coming back to them saying the city knew this and they could question how the city thought this project would be different with circumstances changing over the past several years. He acknowledged the comment that time changes things and he knew more than he knew before. He stated that he didn't want to say what

he thought would happen but the knowledge of what does and has happened was a concern to him. He was also concerned about the use permit. He referred to a provision pointed out about the obligation to the welfare of those residing or working in the neighborhood or the general welfare of the city. He wasn't sure the risk was commensurate with what the applicant was providing.

Commissioner Campbell referred to the new CEQA analysis where it requires them to look at whether it has adverse effects to the environment. He thought the staff report made a fairly good case that the project could impact the sea wall adversely. He was looking at the Skelly report which talks about both things but it emphasizes a couple of spots and there was no significant change to the sea wall fronting the site since the initial project approval. He stated that, if the sea wall collapsed in the future, it would not jeopardize the development. He thought that was a backwards way of looking at it. He thought they would want to look at whether the development would jeopardize the sea wall, concluding that they respectfully disagree with staff's conclusions that the analysis of potential impacts relating to geology, soils and hydrology should be revisited. He stated that the 2016 failure of the sea wall 500 feet away from the site did not impact the site. He was taking some things out of the Skelly report which does talk about both things. He thought there was a good argument that another CEQA analysis, in light of the sea wall's failure over the last year, might require a relook.

Commissioner Clifford agreed, and pointed out that most of the talk about the project in relationship to the sea wall was that the project would be safe as long as the sea wall was maintained. He thought there was no guarantee that they are going to be able to maintain it. He mentioned that they are having the Army Corp of Engineers look at it now, but they don't know what maintenance actually will entail or from what source the funding will come. He asked, from a public safety standpoint, if it will be a safe project for the people who ultimately are going to own it and live in it. He thought it might be able to be built safely but over its lifetime will the people living there be safe, adding that he did not know the answer but thought it needs to be looked at.

Commissioner Evans referred to the sea wall and did agree with everyone's statements about it, but asked staff if on the L1 plan, the applicant's plan, it shows the driveway and the turnaround. He asked if he was correct that both those items are right on the sea wall, one on the real point where the sea wall makes a right angle and the other on the turnaround where the turnaround is right on the sea wall.

Assoc. Planner Murdock responded affirmatively.

Commissioner Evans stated, if the Army Corp of Engineers as they are looking at it and determines that the sea wall will not last and the city needs to put a new sea wall, that he would guess that the sea wall will come back a ways, mentioning that the one south of the pier was larger than the one on the north side. He thought, at that point, they might not have room for the driveway. He stated that, without a new sea wall, he could not say that they can do anything there until they determine what they need to do about the sea wall. He referred to a Commissioner's comment that, if it goes, will they have the money to repair it or will they spend money they don't have to repair it. He thought the City Attorney has to answer those questions. He couldn't, in good conscience, do anything with this, reiterating that, if they have to move the sea wall back several feet, there might not be room for a driveway and they won't know that until the sea wall is addressed and he felt it was just getting worse.

Vice Chair Nibbelin thought he would keep it at a higher level. He thought a lot of things have been raised appropriately regarding the sea wall, storm drainage, etc., and he was sympathetic to the owner, but he felt the permits have timelines for reasons. He thought the passage of time does matter, with a lot of changed circumstances they have dealt with over years and these tough situations make for tough law. He stated he would be more comfortable if he knew what the status was with the agreement regarding the subdivision if they declined to grant the extension. He was sympathetic to the owner but with all the information mentioned, his inclination was to deny this extension.

Commissioner Baringer agreed with Commissioner Cooper that they now have an opportunity to review the project and the liability to which they expose the community in the event of a sea wall failure. He mentioned a recent project where they were able to have an indemnification included into the use permit for damages that may occur in connection with a failure of the land adjacent to the ocean. He felt they owed it to the community to take a fresh look at those issues to protect the community from exposure to that liability. He felt it was unfortunate and thought there will be legal documentation that will need to be rethought and they need to take this opportunity, reset, look at everything with a fresh set of eyes and be sure the community is protected as well as the future residents of the project.

Chair Gordon stated that he was also sympathetic to the owners. He thought the lawyers could relate to this as a great case study on changed circumstances. He felt it rarely occurs in life where you have a material changed circumstance that impacts the application, and this was one of them. He referred to the past year and the loss of homes that have slid into the ocean and the failure of the sea wall. He agreed with Commissioner Campbell that a CEQA review would be helpful to see what kind of impacts the proposed development would have on the environment. He encouraged the applicant to put energy into a revision of the project with the new circumstances. He stated that Planning likes to work with applicants to make really great projects and the Commission also supports that. He stated that they weren't seeing a great fit, but he didn't think there couldn't be a great fit. He encouraged thinking about a revision of the project, adding that he would not vote in favor of an extension. He thought they needed a motion.

Commissioner Clifford moved to adopt the resolution included as Attachment K denying the request to extend the expiration date of Site Development Permit PSD-757-06 and Use Permit UP-965-06 for the construction of nine condominiums; Commissioner Campbell seconded the motion.

The motion carried **7-0**.

Ayes: Commissioners Baringer, Evans, Nibbelin, Campbell,
Clifford, Cooper and Chair Gordon
Noes: None

Chair Gordon declared that anyone aggrieved by the action of the Planning Commission has ten (10) calendar days to appeal the decision in writing to the City Council.

STUDY SESSION:

3, TA-105-17

STUDY SESSION ON TEXT AMENDMENT TA-105-17,
Initiated by the Planning Department of the City of Pacifica, to
Amend Various Pacifica Municipal Code Provisions to Conform
with Amendments Enacted by the California Legislature to
Government Code Section 65852.2 Concerning Accessory Dwelling

Unit (i.e., Second Residential Unit) Permitting by Local Agencies. The Text Amendment to be Discussed Would Affect Residential Property Citywide. A Study Session Allows the Planning Commission to Receive Input from the Public and Provide Direction to Staff Regarding This Future Text Amendment. The Study Session is Open to the Public, Although it is Not a Public Hearing and the Planning Commission Will Take No Formal Action.

Assoc. Planner Murdock presented the staff report.

Commissioner Clifford asked if an ADU can go up to 1200 square feet which was as big as a Linda Mar rancher or bigger. He also asked if it was based on a percentage of the main dwelling.

Assoc. Planner Murdock stated that there was a different threshold for an attached ADU which is in addition to an existing residence and a detached ADU and he explained that the law allowed the city to establish a maximize size of 50% of the existing dwelling unit or 1200 square feet, whichever is less, for an attached ADU but for a detached ADU, they were not allowed to establish a threshold based on the primary dwelling unit and a detached ADU could be up to 1200 square feet.

Commissioner Clifford assumed they could take out the existing garage and put an ADU in that.

Assoc. Planner Murdock responded affirmatively.

Commissioner Clifford stated, regarding a deed restriction on the property, that was something that gets removed. He asked if that would make all existing deed restrictions on properties from the past null and void.

Asst. City Attorney Doherty stated that it would not.

Commissioner Clifford asked if people owning homes with those restrictions would be able to apply to the city and ask to remove their deed restriction.

Asst. City Attorney Doherty stated that people could request that the City record a cancellation of the deed restriction.

Commissioner Cooper thought if you put a 1200 square foot unit in, it would obviously be more than one bedroom and he thought there should be one parking space per bedroom rather than per unit. He also thought it was important to provide parking on site for any cars that were in the garage if it is used as housing. He also thought, if they do a formal ADU, they should have a tax on any vacation rental. He referred to a restriction for 30 days or more, and he wasn't sure he was in favor of this restriction.

Assoc. Planner Murdock stated it was 30 days or less.

Commissioner Cooper stated that he was in favor of having the rental units, AirBnB, as he felt we live in a very nice area. He thought if someone wanted to do that and make extra income, that was okay, but he wasn't in favor of restricting it for less than 30 days. He agreed that a resale of an ADU separate from the residence was a good restriction. He wondered why they didn't put a tax in for a short term rental. He asked if that was part of this provision.

Asst. Planner Murdock stated that staff struggled with the question of short term rentals, but he thought it was a bigger policy question for the City Council and they have identified it as something they want to talk about. He stated that it was inconvenient to be visiting this ordinance at this time but it was an important question. He mentioned that it was possible for the Commission to remain silent or include any provision related to that, but he stated that taxation was not an appropriate question for this land use ordinance.

Commissioner Cooper asked how they leave the door open to say they want to address it if it is a separate question. He thought that, if they are going to rent out a unit less than 30 days, they should start some sort of dialogue to allow that to happen.

Assoc. Planner Murdock thought the Commission could indicate that they want a recital in whatever recommendation is made to Council addressing the issue but perhaps not a codified section of the ordinance, but some way to convey it in a formal way in the resolution.

Commissioner Cooper stated he would be in favor of that, acknowledging that his fellow commissioners might have another idea of the restriction less than 30 days, and thought they should put something in the resolution saying what they want for short term rentals.

Vice Chair Nibbelin stated that he was opposed to the idea of ADUs being used as short term rentals as he thought the intellectual underpinning of this expedited approval of ADUs was that they were trying to address the issue of affordable housing. He thought that ADUs being made available for short term rentals undercuts why ADUs are being favored this way legislatively. He then referred to TOTs and was guessing that their definition of hotel in the TOT regulations was broad enough to encompass short term rentals, which he stated was the case in the county which he had looked at closely.

Commissioner Campbell agreed that he was also strongly opposed to the notion of facilitating short term rentals with this ordinance as the underpinnings were to deal with long term housing shortage in the city. He hoped there was a way to start the mechanism of getting a tax in place for short term rentals, possibly through the TOT ordinance.

Planning Director Wehrmeister mentioned that it was on the City Council's work plan for the following year, to address land use issues as well as taxation issues around short term rentals.

Commissioner Evans stated that he was also against the short term rentals as mentioned previously, adding that the previous item was about affordable housing. He referred to what was happening in San Francisco where they are taking away affordable housing because of short term rentals, adding that most of them aren't even registered. He referred to Commissioner Clifford's reference to 1200 square feet, and stated that he thought even a single detached unit was bigger than most of the houses in Edgemar and way over the size that ADUs are supposed to be. He thought a granny flat was supposed to be just that. He also agreed about the tandem parking and thought it should be looked at again which he thought was fine, especially with ADU involvement. He stated that he could not think of any area in the city that doesn't have parking problems and thought they need to keep their eye on where parking was going to go. He thought it was great to add more units but they also need to provide off street parking for that which was difficult on small lots.

Commissioner Baringer stated that he was opposed to short term rentals. He has lived in communities that have that use extensively and felt it was in direct conflict to quality of life in most single family residential neighborhoods. He hoped the Council will take up the issue and

try to resolve it. He stated that he went on line before the meeting and found that there were 6 or 7 VRBOs in Pacifica, concluding that it was not hugely prolific. He thought that creating a situation where people can construct opportunities to do this financially, it will work well and he was willing to do that. He stated that he was fundamentally opposed to this because it was changing and wiping out single family residential zoning in our community, adding that, with no public hearing process, you can build another structure on a lot and rent it out. He thought there was something fundamentally wrong with that. He felt they should do whatever they can to substantially limit anybody's ability to do that. He understood that the genesis of this legislation was to support housing and creation of additional housing and streamline the process but he thought they have gone too far. He had discussed this with counsel before the meeting and he would oppose some of these openly if possible because he felt there should be parking requirements and definitely be a restriction on short term rental. He would prohibit the resale of an ADU as you are subdividing small lots, adding that there may be areas in Pacifica where the parcel sizes are substantial enough to accommodate some type of an additional structure and still maintain the quality of life within the community which he would not oppose. He felt there needed to be public input as he was concerned about purchasing a single family home and then there is a building in the backyard and someone is renting it. He was concerned how that affects the core of our property rights in our community and basic zoning.

Chair Gordon stated that there were still lights, but he wanted to structure things differently. He wanted to give the public a chance to speak before they bring it back to the Commission. He acknowledged that staff has asked some specific questions in the packet. He stated that they could have the speakers comment and then the commissioners can address the bullet points. He asked if everyone was okay with that, and acknowledged positive responses.

Chair Gordon opened public comments.

John Sebastinelli, Pacifica, stated that he was president of the Fairmont Subdivision Improvement Association, and represents 1,553 single family residents in Pacifica. He reached out to the city's planning department on February 22, with a written question of whether this ordinance would invalidate existing grant deeds covenants, conditions and restrictions in connection with an existing home owners' association agreement stating that all residents in the association must be single family residences. He didn't think that was the intent of the proposed ordinance as recent changes to the law have not given local governments the power to invalidate existing grant deed covenants already applicable to said properties and invalidate existing homeowner association agreements. He then read the response from the Planning Director which stated that staff was not recommending that the draft ordinance have any impact on existing CC&Rs and homeowner association rules. He stated that the Fairmont Subdivision Improvement Association concurs with the Planning Director's comments which were consistent with the United States Constitution. He stated that the law itself was permissive with respect to whether a local government may adopt a secondary unit law and if it does, the requirements of the law are mandatory but adopting such a law was optional.

Erin Macias, Pacifica, thanked Commissioner Baringer for being the voice of reason on this subject. She felt this was a serious issue that affects the entire city. She stated that the law has changed regarding single family residential zoning statewide and felt it affects the quality of life of everyone. She stated that they require a vote for the quarry and she felt this should go to the voters if they are going to rezone the residential R1, which makes up the majority of the city. She acknowledged that the Commission was qualified to make the determination, but she felt it was a large issue. She mentioned that the public notice on this item was posted in the Tribune but the EQ basin item was posted in the San Mateo County Times and the public hearing on NextDoor.

She felt there was an issue with how information was disseminated in the community and they need to work on that as a community. She felt they needed to actively solicit public comment on this very large issue requiring careful consideration. She agreed that it was inconsistent with the current zoning. She mentioned that federal and state law prohibits marijuana sales but they have had a dispensary on Palmetto for years, and she didn't think it requires a zoning change. She also did not think this item did anything to help with affordable housing but furthers the divide between the wealthy and the poor because there was no rent control on the accessory dwelling units and no added tax base but a demand on services. She felt Pacifica should not embrace this state law but fight it to the best of our ability. She also agreed that there should be no less than 30 day rentals allowed in the R1 zone, which affects the quiet enjoyment of residential neighborhoods, but was different in R2 and R3 zones. She asked that they give this their full attention.

Chris Weld, Pacifica, stated he was a resident in Fairmont since 1973 and was an active member of the FSIA. He mentioned that at the time of purchase, he was obligated to the CC&R covenants, conditions and restrictions applicable to his property. He stated that, in the past ten years, he has been the architectural chairperson for the FSIA and has had to deal with the illegal secondary units which are abundant in Pacifica, particularly on Gateway Drive where the quality of life has been severely impacted. He urged them to drive down Gateway and try and find a parking place. He stated that the city's code enforcement officer has worked with them, and people are paving over their front yards to provide secondary parking for illegal secondary units. He stated that the FSIA proceeds against them when they can prove the secondary residence, mentioning that they need things they can't have such as PG&E billings, etc. He stated that we have slum landlords in Pacifica, mentioning one who was close to \$2000 in arrears on his FSIA dues. He mentioned that they have sued him but he owns seven properties and this was a quality of life issue in Pacifica. He stated that to allow a secondary unit, there should be a requirement that it be owner occupied in the ADU or parent structure.

Andrea Dion, Pacifica, stated that she was a lifetime resident of Pacifica. She stated that the only reason she was present was because Erin Macias posted it on NextDoor. She thought there would be more attendance but notification of all city issues was difficult. She stated that parking was already a problem in many neighborhoods. She stated that, in her neighborhood if one neighbor has guests, no one can park in their parking spot and family members will have to park down the street from their home. She referred to public transportation, stating that she has tried to use Flex Bus transportation but cannot figure it out. She stated that she works in public safety in another city and most of the properties in that city have secondary units and it has created a nightmare with parking, as well as illegal dumping as they aren't required to have an additional solid waste contract. She stated that it has also made it difficult for fire and law enforcement to locate the unit. She stated that Pacifica was special because of the community. She stated that she bought her home in Pacifica because she wanted to live in a neighborhood of single family homes and raise her children in this community. She stated that tenants in secondary units were less likely to be long term residents and less likely to become an active part of the community. She stated that she didn't want to see Pacifica change into a neighborhood of renters.

Chair Gordon stated she had another minute.

Ms. Dion stated that she would let someone else use it. She then stated that she didn't tell them what city she worked for, but she will talk to them off line and let them know about the nightmares they have.

Patrick Mora, San Francisco, stated he is a San Francisco architect and wanted to give his opinion on the general standards listed on the last page of the report and address one of the biggest concerns in the Bay Area, affordable housing. He considered it a subject almost equal to global warming. He referred to the list of conditions that they could apply, such as a lot coverage that would refrain anyone from overbuilding on a lot too small, mentioning items such as height limitations, etc. He stated that, regarding parking, they could allow a unit if the primary unit complies. He mentioned that a parking requirement per bedroom might not work if you have a cottage with one bedroom requiring two parking spaces and a three bedroom unit as a primary resident and could have four cars per lot. He thought the considerations were for discussion. He thought the owner should be present, adding that an absentee owner was the worst thing that can happen. He thought it should not be a rental because that ruins the relationship of businesses, such as hotels. He stated that he would like to participate in a discussion.

Dave Blackman, Pacifica, stated that he hadn't planned to speak on this but he was confused and others may be confused. He asked if what they were talking about was state mandated and they have to deal with it. He hoped for clarification on what was being handed to them and what they can talk about in discretion. He thought some of the items they were debating on were already forced on them. He stated that the way the code works is that, if you have a detached garage and you want to put an apartment above it, there was no defined height limit, and it just says you can do it. He thought that was bizarre and he has seen in-law units on buildings that were high. He stated that the rule says an accessory building can be 12 feet but, if you put a second unit on it, you can go over 12 feet. He suggested that they tighten it up, saying what was mandated and what they can negotiate.

Chair Gordon closed public comments.

Chair Gordon reiterated that it made sense for the Commission to go through the bullet points briefly and give feedback. He asked staff if they wanted to address Mr. Blackman's comment to give some context as to what was being mandated versus the Commission's role.

Assoc. Planner Murdock stated that it was difficult to break it down comprehensively in terms of what was a mandate and where they have discretion as a city. He tried to do that by boiling down the questions on the back page of the staff report which he thought summarized the issues that were subject to local discretion with the remainder that they have to comply with whether they put them into an ordinance or not and just comply with the state laws.

Asst. City Attorney Doherty added that there was very little that the state laws delegate to local agencies, but that the State laws do reserve local agencies standards such as height, setback, lot coverage, traffic, maximum size of a unit, and standards preventing adverse impact to properties listed as historic places. She stated that there were areas of discretion with respect to where parking can be located if parking is required of an ADU.

Chair Gordon assumed the eight questions for which staff asked for guidance were all areas where the city has some discretion.

Vice Chair Nibbelin assumed that the resale item wasn't intended to be on the list.

Assoc. Planner Murdock responded affirmatively, asking that they not respond to the fifth bullet point.

Chair Gordon suggested they start with Commissioner Clifford and go down.

Assoc. Planner Murdock stated he would like to respond to Mr. Blackman's specific comment. He stated that the current accessory structure standards in the zoning are ambiguous, with a 12-foot height limit and you can exceed one story if you put living space but it was not particularly helpful. He stated that they have defined that scenario in the proposed ordinance, i.e., if an accessory dwelling unit was located between the house and street and in front of the primary dwelling unit, they would establish a 15-foot height limit, adding that you can't do much with 15 feet. He stated that an ADU above the structure anywhere else would be subject to the standard zoning district height limit of 35 feet, and that was what staff was proposing. The Commission had some discretion in that area and they were inviting their input and guidance.

Chair Gordon confirmed that the Commission was okay with that. He stated he would start with Commissioner Clifford.

Commissioner Clifford stated that he would go through all of them. He stated he had one question in terms of lot coverage, asking what the standard was in terms of how much of a lot can be covered with structures.

Assoc. Planner Murdock stated that it was 40%.

Commissioner Clifford concluded that it left 60% out of 5,000 square feet. He knew what 1200 and 1200 came to, but he wasn't sure of the percentage. He didn't think it was 50%.

Assoc. Planner Murdock thought it was 48%. He stated that was an important point as they didn't have a floor area ratio which was a combination of all the floor area on a site relative to the lot area, and just have lot coverage which was all of the ground area covered. He stated that, to do a single 1200-square foot house in a single story 1200-foot ADU would likely push someone over the lot coverage, especially on a smaller lot. He thought it was unlikely that would occur.

Commissioner Clifford acknowledged that it had the potential to be out there. He stated that the city should develop standards of underlying zoning districts to construct an ADU of lot coverage, landscaping, height, etc. He thought the city should impose height standards on an ADU constructed in front of a primary development, adding that he didn't think a building in front of the primary dwelling should be taller than the primary dwelling which would look odd. Regarding permitting construction of an ADU that does not comply with all standards subject to approval of a variance or prohibit construction in such instances, he thought that was primarily why the Planning Commission should be available to deal with those on a case by case basis. Regarding requirement of owner occupying either primary or ADU units, he came up with no based on a friend's circumstances because she has been forced to move into assisted living, and she was renting her home. If she had an ADU on the property, he questioned whether she would have to close it down because she was living in assisted living or be forced to sell her home. Regarding prohibiting rental of an ADU for less than 30 days, he had a lot of notes but no answer, listing AirB&B, TOT and neighborhood disruption. He thought they were all issues. He acknowledged that AirB&B can be a neighborhood disruption but can also provide revenue to the city. He agreed it takes away from the intent of the state's ordinance which was affordable housing and not a place for someone to live in the city for a few days. Regarding the possible off street parking requirements for one space per AD Unit or per bedroom, he thought a 1-2 bedroom should have at least one parking space and 3-4 should have two. Regarding a replacement of off street parking spaces eliminated by conversion or demolition of a garage to create an ADU, his answer was yes.

Commissioner Cooper thanked the public for their comments which he found helpful. He thought the city should apply the same development standards, appreciating Mr. Blackman's comments on the height standards and agreed that there should be some relationship to the current height standards and additional dwelling units. Regarding the city permitting construction of an ADU that does not comply, he felt they should comply. Regarding requirement of owner occupancy, he agreed with this, adding that there were comments regarding it being bad for the neighborhood to have the ADU, but he felt home prices were so expensive and if you purchase your home and you have the availability to do an ADU, that would be the only way to purchase the home. He questioned how it would lower the quality of life if you could rent out the ADU and be able to have one of the partners stay home and raise their child because of the income from the other ADU. He thought there were two sides of the story. Regarding prohibiting resale, he was in agreement. Regarding rentals of ADUs for less than 30 days, he disagreed with that. He asked why they have 1200 square feet which he thinks is so large. He asked if there was a standard less than that. He thought it was so big that it didn't seem like an ADU but like a second home. He stated that these were comments and staff did not have to respond.

Asst. City Attorney Doherty stated that the state laws mandate the 1200 square foot amount, not the city, adding that the Department of Housing Community Development published a guidance memo on the ADU laws and advised, although not binding, that maximum size of units may be between 800 and 1200 square feet because those numbers are "reasonable." She stated that some cities were not imposing the 1200 square foot maximum size of a unit. She stated that was the most defensible standard to incorporate into an ordinance because it was directly set forth in the state laws. She mentioned that there was some ambiguity in the state laws where the state laws provide the maximum size of the unit can be 1200 feet, 50% of the existing floor area of the primary unit, up to 1200 square feet. She stated that the state law also said the city has discretion to determine the maximum size of the unit, and they believe it was the drafter's error. She suggested that, if it was the will of the Commission to recommend a lesser amount, it was potentially defensible but not as defensible as incorporating the language of the state law itself.

Commissioner Cooper asked why there was no minimum, mentioning an individual who got around the ADUs by staying underneath the shed limit, which was 20 x 10 and did not have to facilitate all the building permits because it was considered an out building. He asked what prohibits the owner from renting a shed.

Assoc. Planner Murdock thought a number of building and life safety regulations, but the city's accessory building standards established non-dwelling usage as a threshold for locating in certain places on the lot. He commented that most people do not put their shed in the middle of the property compliant with the main building setbacks of a 20-foot rear setback, and it would be in violation of the zoning for accessory structures.

Commissioner Cooper stated that they had a gentleman whose father-in-law was on the porch, adding that he thought he moved him inside but it was a very small area and questioned whether it would be considered an ADU or not. He referred to the comment made about an ADU where the city didn't recoup city services, such as water, etc. He asked if the city had considered metering an ADU separately to gain that service fee.

Assoc. Planner Murdock stated that he had a couple of considerations, such as having every expectation that the county assessor would charge property tax just like any other residential dwelling and they would be contributing on a proportional basis as much or more, given Proposition 13, than certain single family homeowners. He stated that the law does limit the city's ability to require separate utilities for an accessory dwelling unit, clarifying that they cannot

require separate utilities from attached accessory dwelling units, but they can charge proportionate fees for the impacts of these utilities, but they have to be mindful of the proportionate impact they have relative to the main dwelling units. He stated that they can require separate utilities for detached accessory dwelling units.

Commissioner Cooper questioned why someone who had an ADU would not put a second meter and charge for that for the city to recoup that cost.

Assoc. Planner Murdock stated that he had that option, but the city cannot mandate it.

Commissioner Cooper thought the CC&R restriction was a valid point if someone has a CC&R, they should not override that which was why some people bought into that community. He stated that parking was an issue and, if you convert something, you should provide the parking space for that person.

Commissioner Campbell agreed with some of the speakers that this was probably the wrong way to plan and zone in the state and felt it was a terrible decision by Governor Brown to approve this law. He saw that it came from legislators in Fremont and Santa Monica who were dictating for the state, adding that they probably have more room, especially in Fremont. He concluded that we were stuck with some of this. Regarding the city applying the same zoning standards for construction of an ADU, he answered yes. Regarding the city imposing height standards on an ADU, he answered yes. Regarding the city permitting construction of an ADU that does not comply with all standards, he answered no. Regarding the city requiring owner occupancy of either the primary unit or ADU, he answered yes. Regarding the city prohibiting resale of an ADU separate from the primary dwelling unit, he will skip that. Regarding the city prohibiting rental of an ADU for periods of less than 30 days, he answered yes. Regarding, when off street parking may be required, whether the city should require one space per ADU or bedroom, he answered yes. Regarding the city requiring replacement of off street parking spaces, he answered yes. He referred to off street parking, and stated that he read that state law allowed for parking in side setbacks and asked if that was true.

Assoc. Planner Murdock stated that the law allowed the city to determine places where parking was permissible, and staff recommended requiring the same places on the property already allowed for the primary dwelling unit.

Commissioner Campbell concluded that it doesn't change.

Assoc. Planner Murdock stated that it doesn't, but he thought this may be touching on it in that it allows the conversion of garages and other accessory structures that may not meet the main building setback, such as having a garage built with a 2-foot side setback and the law allows them to convert it into an accessory dwelling unit.

Commissioner Cooper asked if he put in an ADU which included a kitchen, would he have to put a sprinkler in that place.

Assoc. Planner Murdock stated that the kitchen was not a determining factor of when the city may require fire sprinklers, adding that the law has an interesting phrase stating that they can require them when required for the primary dwelling unit. He stated that staff has laid out what they believe their interpretation was of that and will move forward with that.

Chair Gordon thought the public comments were important and they value them. First bullet point, yes to applying same development standards; second, yes to imposing the height standards; third, he thought Commissioner Clifford hit the nail on the head, and he thought variances were fine; fourth, yes to requiring owner occupancy of either one; fifth, yes to prohibiting rentals of less than 30 days; six, he liked Commissioner Clifford's proposal and asked if they recalled what it was.

Assoc. Planner Murdock stated that they did, adding that if there was an opportunity when he was done, he asked that Commissioner Campbell clarify his response to number 6 as he didn't seem to have made note of that, which was asking if they should apply a one parking space requirement per ADU or one space requirement per bedroom.

Commissioner Campbell opted for one space per bedroom.

Chair Gordon asked staff to jump in if he needed any clarifications to their answers.

Chair Gordon referred to the last bullet point, requiring replacement of off street parking spaces, and responded yes.

Vice Chair Nibbelin thought he was generally sympathetic to the notion of ADUs which can be important means of infill development to address the need for affordable housing. He thought, whatever they do, it was incumbent to move quickly because they were in a place where they were operating under state law and were more generous than the sense from the Commission and public comments, adding that those comments were helpful in digesting his thinking. Regarding the city applying the same development standards of the underlying zoning districts in construction of an ADU, he thought they should. He asked if they were talking about the 15-foot height standard referenced in the ordinance.

Assoc. Planner Murdock responded affirmatively.

Vice Chair Nibbelin stated that he was in agreement with imposing the 15-foot requirement for something constructed in front of the primary dwelling. He was in agreement with Commissioner Clifford and Chair that, in the case where an ADU does not comply with all standards, a variance would be an appropriate mechanism to have in place in the ordinance. Regarding requiring owner occupancy of primary or ADU units, he asked if it would be possible to imbed in the ordinance a requirement that, at least at the time that the permit came in, they were talking about an owner occupancy recognizing that it wouldn't be a condition required to remain in place in perpetuity.

Asst. City Attorney Doherty stated that this is an option they could pursue.

Vice Chair Nibbelin stated that he would be in favor of that, as things happen. Regarding prohibiting rentals of ADUs for periods of less than 30 days, he felt we should prohibit that. Regarding parking, he understood from the staff report that it was a small number of circumstances under which they can regulate parking with respect to ADUs as he thought it would be a small number of parcels that are involved.

Assoc. Planner Murdock stated that it was, based on their current understanding of the law. He stated that, among the many unfortunate provisions of this law, it says that the city cannot require parking for an ADU located within a half mile of public transit with no further clarification. He stated that, from what they understand about the legislative process in making this law, someone

approached the sponsor to further define that in regard to service minutes, but he said no. He thought it was meant to be very broad, and he hoped there will be some clarification down the road in some cleanup bill.

Vice Chair Nibbelin thought it was important that the community understand that they are talking about very few circumstances under which they can impose any parking requirements which led him to eliminate the parking requirement altogether as it looks like a relatively meaningless tool. He concluded staff's thought was that there would be some clarification legislation with change in the future to make sense to have these kind of limitations just in case.

Assoc. Planner Murdock stated that he was not aware of any pending cleanup bill, but the way they have structured the proposed ordinance and, if the law changes and it allows the city to define what public transit is, they have imposed a standard they think is appropriate with minimum service levels that would drastically change the map to a much smaller portion of the city, given the current level of transit service we have.

Vice Chair Nibbelin thought, to the extent they are able to regulate it, he would be more inclined to require space per bedroom which was more consistent with the number of cars people have, and he thought we should require replacement of off street parking spaces, if the circumstances arise.

Commissioner Campbell stated that he has been convinced by his fellow commissioners that, to the extent they are going to have ADUs, hating the fact that it is dictated from above, he addressed the question of the city requiring owner occupancy at all times and felt Commissioner Clifford brought up a good point and he would make his answer more consistent with Commissioners Nibbelin, Clifford and Chair Gordon.

Assoc. Planner Murdock assumed he meant at the time of building permit certifying that fact.

Commissioner Campbell responded affirmatively.

Commissioner Cooper stated that he didn't agree, as owner occupancy was the only way to guarantee that the space will be taken care of.

Assoc. Planner Murdock stated that, to clarify the intent of the first question of whether the city should apply the same development standards of the underlying zoning district or make the standards less restrictive, he was trying to get at the rear setbacks. He stated that the rear setback was 20 feet for a habitable structure and it could limit opportunities depending on the size and configuration of the lot where the existing primary dwelling unit was. He stated that, if the Commission were very pro-ADU and very accepting of them, it may want to reduce that to allow an ADU with a 10-foot or 5-foot rear setback and it would be a departure from the primary dwelling unit standards. He was trying to get at whether there was openness to ADUs in the rear yard.

Commissioner Evans thanked all the speakers, adding that there was a lot of wisdom and he liked that. He asked how the state law affected whether they want to put this to a vote of the people in the city.

Asst. City Attorney Doherty stated that they could put the portions of the state law that were delegated to local agencies to a vote of the people or they could put the question of whether or not they want the city to adopt an ordinance in the first place regulating ADUs to a vote of the people,

but regardless of whether or not the city has an ADU ordinance, whether adopted by Council or vote of the people, the state law standards apply.

Commissioner Evans concluded that, even if they voted as a city not to have ADU, we still have to have ADU.

Asst. City Attorney Doherty confirmed that the city cannot put to the vote of the people whether or not there will be ADUs because the standards for approval of ADUs are mandated by the state law.

Commissioner Evans referred to the question of whether the city should apply the same development standards, and answered yes, but agreed with the fellow commissioners that, if they look at it like a variance and look at each item as it comes in as to how close it can go to the back, they need to take a look at that.

Assoc. Planner Murdock stated that the law requires the city to establish a ministerial process. He could say there is no setback and they would approve an ADU with any setback, but they couldn't come in and say a specific case is okay at 5 feet and another at 10 feet because that was not an ministerial process.

Commissioner Evans stated that we don't have to have setbacks, and he asked if that was what he was looking for.

Assoc. Planner Murdock stated that any setback the Commission thinks is appropriate as long as it results in the ability to construct an ADU is acceptable.

Commissioner Evans stated that he said he could not have a variance, so he will say no to the same standards.

Assoc. Planner Murdock clarified that, the way the ordinance was structured at this point was to require the same setbacks that a primary dwelling unit would have to meet. Staff was seeking guidance if the Commission wanted to be more permissive of ADUs to allow a lesser setback, but they would have to specify what the lesser setback is to have a standard against which to measure and it is not subject to discretion. He reiterated that, if they want every ADU to come in for a variance to look at the rear setback by the Planning Commission would not be a ministerial process and would conflict with state law and could arguably render the whole ordinance null and void. He reiterated that they have to be particular if they want a lesser setback or no setback.

Commissioner Evans stated he would say a lesser setback, and did not know if anyone has come up with a figure yet.

Assoc. Planner Murdock stated that staff would suggest nothing less than five feet, mentioning that there are other codes triggered in the building code at five feet where construction materials have to change. He reiterated that five feet would be the minimum. He stated they would like to have a conversation about whether they are in support of that, but they do want the Commission's feedback.

Commissioner Evans stated that he will go with the five feet and the same in the side yards. Regarding the city imposing a height standard, he replied yes.

Commissioner Cooper asked if that was five feet from the front or from the side.

Commissioner Evans stated that it was five feet from the back property line. Regarding the city permitting construction of ADU that does not comply with standards, he decided to say yes as all the houses are different and properties are different. Regarding the city requiring owner occupancy, he responded yes. Regarding the city prohibiting rentals of less than 30 days, he responded yes. Regarding off street parking, he responded that it should be by bedroom. Regarding the city requiring off street parking spaces, he stated that he was torn as he believed that, if eliminated, they need to come up with another spot on property and not on the street as there is too much trouble now. He then referred to the CC&Rs, concluding that the CC&Rs overrode the state law.

Asst. City Attorney Doherty stated that they wouldn't go away by virtue of the state law.

Commissioner Evans understood. He then referred to problems with blight and garbage on the streets, and he liked the idea of a second waste contract.

Commissioner Baringer thought it was fair to state for the records that he didn't believe this will create affordable housing. He agreed that it will create additional housing but there are no requirements that he could see that it was to be designated in any way to pass an affordability statute and they were not creating affordable housing but creating housing that could be available for rental or use by family members. He thought it was important to keep that in mind going forward and not oversold with an altruistic motivation. He referred to whether it was as restrictive as current ordinances, and asked if we would be creating a form substance issues if we amended our ordinances to have a more aggressive rear setback that might trigger a less ministerial review. He asked City Attorney, if we have a certain percentage that are ministerial and a certain percentage that have to go through the variance, whether there was any magic number.

Asst. City Attorney Doherty responded negatively, adding that she thought the review of applications as a whole have to be ministerial.

Commissioner Baringer asked whether it meets our guidelines or not.

Asst. City Attorney Doherty responded affirmatively, explaining that the review of applications needs to be ministerial in its entirety. She stated that, whether an application was reviewed ministerially was a question of whether or not the reviewing person exercises any independent judgment in conducting their review, and a ministerial review has to basically be a set of questions and check marks. She added that they have discretion over the issuance of variances and they can structure the ordinance in such a way that would require ministerial review but enable the issuance of variances to expand on or change the standards that are ministerially prescribed by the ordinances.

Commissioner Baringer stated that pretty much everything triggers a variance review in this regard and we have an opportunity for the community to give input and the neighbors can show up and say they were or were not okay with this. He would like to see a 30-foot rear setback. He stated that, if they trigger 100% of them going to variances, that will raise some kind of an issue and they will have a problem with that.

Asst. City Attorney Doherty thought they could technically comply with the state laws while still triggering variances for every one of the standards that are reserved to local agencies.

Commissioner Baringer asked, if they changed the standards now as opposed to after the ordinance was adopted, would it be better, worse or not matter.

Asst. City Attorney Doherty did not understand his question.

Commissioner Baringer explained if they could increase the rear setbacks to 40 feet from 20 feet.

Asst. City Attorney Doherty stated that, in adopting the ordinance, they need to set the city's setback standards.

Commissioner Baringer asked if they could change it in connection with this ordinance and not raise any eyebrows on it, because it would be more restrictive than they have been historically.

Asst. City Attorney Doherty stated that the state law didn't set standards for setbacks for ADUs which was left to the discretion of local agencies.

Commissioner Baringer stated that he would be for more aggressive setbacks to trigger that. He added that, while he may be the only one who wants to do that, it was his preference.

Vice Chair Nibbelin asked if the standards can be more aggressive than they have for the primary dwelling on the unit.

Asst. City Attorney Doherty responded affirmatively.

Commissioner Baringer stated that he would definitely be for that in some capacity to do it and not end up in protracted litigation. He stated that they should be imposing height standards and clear that up from a housekeeping standpoint. He stated that, if the construction of the ADU does not comply, if it goes through the variance process and the neighbors and Planning Commission agree that it was something they can live with, he would be in favor of that. He thought the owner should be an occupant as he agreed that absentee owners were not conducive to good maintenance and quality of life in the neighborhoods and he agreed with that requirement, but he wasn't sure how they would enforce it going forward. He thought they should prohibit ADU rentals for less than 30 days. He was big on parking, stating there was a huge parking problem in our community and we should be doing what we can to get cars off the street. He stated that, to the extent they can do that with this ordinance, he thought we should try. He questioned the half mile for public transit, asking if it means that if there was a bus stop less than a half mile you don't have to have parking.

Assoc. Planner Murdock responded affirmatively.

Commissioner Baringer thought that was wrong on a lot of levels. He stated that they will be coming to them for a variance on that. He thought the parking should be a minimum of one per bedroom. He thought, if they eliminate parking by converting the garage, they need to provide the parking somewhere and have to get around the half mile issue.

Chair Gordon concluded that was it.

Assoc. Planner Murdock stated that it worked for him.

COMMISSION COMMUNICATIONS:

Vice Chair Nibbelin asked what happened to David Blackman's project appeal to City Council.

Planning Director Wehrmeister asked if he was talking about 4009 Palmetto.

Vice Chair Nibbelin responded affirmatively.

Planning Director Wehrmeister stated that the City Council approved the project and it was now being challenged.

Commissioner Evans stated that he is the liaison to the Library Advisory Committee and he was not able to go to the last meeting, and he asked if the Planning Director would like to fill them in during staff communications.

STAFF COMMUNICATIONS:

Planning Director Wehrmeister stated that the Library Advisory Committee had a very good meeting. On the following Monday, staff was taking the item to City Council to ask for direction on where they go from here. She stated that the LAC helped staff form their recommendations for that meeting. She stated that they broke into groups, brainstormed and reported back to the whole group. She stated that the chair will be part of staff presentation to Council. She stated that there will be a full summary of LAC's action in the staff report published Friday for Council.

Vice Chair Nibbelin referred to the appeal to Council of the storm water retention basin project, stating that the appeal was denied.

ADJOURNMENT:

Commissioner Campbell thanked Asst. City Attorney Doherty for being present and answering all the questions.

There being no further business for discussion, Commissioner Campbell moved to adjourn the meeting at 9:40 p.m.; Commissioner Clifford seconded the motion.

The motion carried **7-0**.

Ayes:	Commissioners Baringer, Evans, Nibbelin, Campbell, Clifford, Cooper and Chair Gordon
Noes:	None

Respectfully submitted,

Barbara Medina
Public Meeting Stenographer

APPROVED:

Planning Director Wehrmeister