

MINUTES

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

March 21, 2016

7:00 p.m.

Chair Campbell called the meeting to order at 7:05 p.m.

CLOSED SESSION:

Asst. City Attorney Visick stated there was nothing to report.

ROLL CALL:

Present: Commissioners Cooper, Vaterlaus, Nibbelin, Gordon, Evans and Chair Campbell

Absent: None

SALUTE TO FLAG:

Led by Commissioner Evans

STAFF PRESENT:

Planning Director Wehrmeister
Assist. Planner Farbstein
Asst. City Attorney Matthew Visick

**APPROVAL OF ORDER
OF AGENDA**

Commissioner Nibbelin moved approval of the Order of Agenda; Commissioner Evans seconded the motion.

The motion carried **6-0**.

Ayes: Commissioners Cooper, Vaterlaus, Nibbelin, Gordon, Evans and Chair Campbell

Noes: None

**APPROVAL OF
MINUTES:
FEBRUARY 16, 2016**

Commissioner Nibbelin moved approval of minutes of February 16, 2016; Commissioner Vaterlaus seconded the motion.

The motion carried **5-0**.

Ayes: Commissioners Cooper, Vaterlaus, Nibbelin, Gordon, Evans and Chair Campbell

Noes: None

Abstain: Commissioner Gordon

**APPROVAL OF
MINUTES:
MARCH 7, 2016**

Commissioner Cooper moved approval of minutes of March 7, 2016; Commissioner Vaterlaus seconded the motion.

The motion carried **4-0**.

Ayes: Commissioners Cooper, Vaterlaus, Nibbelin, Gordon, Evans and Chair Campbell

Noes: None

Abstain: Commissioner Evans and Cooper

DESIGNATION OF LIAISON TO CITY COUNCIL MEETING OF APRIL 25, 2016:

Planning Director Wehrmeister stated that they would need a liaison for the appeal of the Anchor Inn project on San Pedro Avenue and a single family residence on Stanley will be on the City Council's agenda.

Commissioner Vaterlaus volunteered.

ORAL COMMUNICATIONS:

Ron Maykel, Pacifica, stated that Kathryn Farbstein was planning to retire, and he wanted her to know that she did a very good job. He wished her the best. He mentioned that land use in Pacifica was a very contentious issue and he could understand that, at times, it would be very difficult in the Planning Department in that area. He congratulated her and thanked her for her many good years of service.

Asst. Planner Farbstein stated that she was trying to avoid that, but she thanked him for his kind words.

CONSENT ITEMS:

None.

PUBLIC HEARINGS:

- 1. GPA-91-15
PSD-788-14
PE-161-15**

GENERAL PLAN AMENDMENT, SITE DEVELOPMENT PERMIT and PARKING EXCEPTION, filed by the owner and applicant, Javier Diaz-Masias, to change the land use designation of two parcels to Low Density Residential (LDR), from Very Low Density Residential (VLDR), to construct two single-family dwellings with approximately 400 linear feet of associated street improvements in the public right-of-way, and to deviate from on-and-off-street parking standards at 50 and 60 Oddstad Way (APN 022-086-060, 022-056-080 and 022-056-090). Recommended California Environmental Quality Act (CEQA) status: Not subject to environmental review pursuant to Public Resources Code Section 2180(b)(5).

Asst. Planner Farbstein presented the staff report.

Commissioner Gordon asked if they got Todd Bray's comment.

Asst. Planner Farbstein explained that she gave both his and the applicant's attorney's letters, then realized that they did not have it. She gave him her extra copy.

Chair Campbell referred to Todd Bray commenting on whether it was a driveway or street.

Asst. Planner Farbstein stated that he was referencing the Oddstad Way extension, which she thought he was saying it was a driveway. She stated that, as proposed, it is in the public right-of-way and needs to meet all the city standards imposed by the engineering department, regarding paving, emergency access, etc. and it did comply all the city requirements in providing street improvements.

Planning Director Wehrmeister concluded that it would be a street.

Asst. Planner Farbstein agreed that it was a street. She stated that he was referring to it as a driveway but it was technically a street.

Shirley Fulqui, applicant, stated that her husband was Javier Diaz-Masias and they were co-owners. She stated that one home was intended to be their forever home and the other an investment property. She explained the process from the purchase of each lot and the due diligence they performed. She stated that they sent outreach letters to 42 identified addresses and they have collected 9 signatures of support. She explained the process they followed and explained why they were not setting a precedent. She asked that they be treated fairly and not be blamed for the mistakes made in the General Plan over 36 years ago.

Commissioner Cooper asked about their outreach efforts and alternates they proposed to the neighborhood.

Ms. Fulqui stated that they acknowledged that there was a VLDR issue and they didn't have enough land, according to the General Plan, and they stated that they would make the sacrifice of

merging the lots together into one and take away one home which would reduce their application by 50%.

Commissioner Cooper asked if it was the same size house.

Ms. Fulqui stated that this was their forever home and they didn't want to make their home smaller, and were willing to do away with the entire investment property. They will be a family of 7 and they want to be comfortable. She stated that her husband will build the road with his own money. She stated that they are giving up a lot, and were ultimately willing to give up a whole house.

Commissioner Cooper asked when that was.

Ms. Fulqui stated that it was in December.

Commissioner Evans asked if they talked to the Planning Department Director before they bought the lots.

Ms. Fulqui responded affirmatively.

Commissioner Evans asked if he gave them anything in writing.

Ms. Fulqui stated that they didn't give them anything in writing as they didn't expect that they would be involved in this issue. She stated that her husband went to him on numerous occasions as he looked at different lots for sale in the area, and they were told that they meet the requirements of 5,000 square feet.

Commissioner Nibbelin asked if the compromise they proposed involved anything further with the merger of the lots or were they anticipating having two separate lots when they were looking at the compromise.

Ms. Fulqui stated that their compromise was to merge the two lots and be one lot with 15,000 square feet and only one 3,400 square foot home. She stated that they were asking to have a small shed in the back and her husband wanted to have a small office area for his work, but they were willing to eliminate the investment property.

Chair Campbell referred to 2013, and asked if they were made aware of the road width requirements at that time.

Mr. Diaz-Macias stated that he didn't know about any road requirements at that time. He stated that the Planning Department did not mention it to them, although he knew he would have to finance the road on his own.

Chair Campbell stated that they may be called back for more questions after the public hearing.

Chair Campbell opened the Public Hearing.

Ron Maykel, Pacifica, stated that, throughout the study sessions, the commissioners were concerned about the complexity of the situation. He thought there were inferences made for the

need for staff to give some direction. He thought staff has given direction which was to deny the amendment to the General Plan. He stated that years ago they had a similar thing where the property owners had lots on the other side of the creek and there was a deed restriction placed on the lots and the owners of the property tried to get that overturned but they failed. He referred to another situation where they wanted to subdivide their lot to defer the cost of putting in the fire truck turnaround, and he was denied. He would like the city to be consistent, as it wouldn't be fair to those who were denied earlier and now let these people get away with this. He stated that they should be consistent and he didn't want to see a precedent set with the two houses built on substandard lot considering the zoning.

Rob Greenwalt, Pacifica, stated that he has lived on Rockaway since 1973. He stated that he has watched the neighborhood change for the last 43 years, with all the vacant lots that have been built up on Rockaway, with traffic doubled as well as potholes and the city has done nothing. He pointed out that safety issues have been mentioned at the Planning Commission meetings in February and March. He stated that Rockaway Beach Avenue is a substandard street throughout the length, demonstrated during the Rockaway fire. He stressed all the reasons for safety being the primary concern of the Planning Commission. He felt they were neglecting their duty in trying to change the VLDR to LDR against the General Plan for the proposed Oddstad development. He felt the development would also affect the aesthetics of the neighborhood by creating huge structures on insufficient lots. He suggested that they fix the safety and drainage issues before approving more construction.

Chaya Gordon, Pacifica, stated that she spoke on specifics at the previous meeting on this subject, and she didn't want to repeat herself. She thought the important thing to start with was that there were very good reasons for serious consideration of a moratorium on any construction on all Pacifica paper streets. She felt the bigger concern for Pacifica and why she and most people want to live in Pacifica, was to preserve the beauty of Pacifica. She felt they needed to have a thoughtful process to address all the specific concerns connected with this application. She understood that the applicant was angry but she felt that should not stop the Commission from looking at the issues and doing what is right for this area and all of Pacifica.

Bill Bray, Pacifica, stated that he lived on Rockaway Beach. He didn't know why this issue was under discussion. He mentioned some of the specific problems, parking, safety, etc. He referred to the lots that were going to be considered for rezoning, the majority in Rockaway, and he felt that adding to the problem was not the answer. He felt the VLDR existed to preserve the character of Pacifica, which they are proud of and want to maintain. He felt, if this project was allowed to go forward, it could destroy that character. He added that the decision they make will have enormous consequences in the future as once development starts it cannot be undone. He urged them to stay with the existing laws that he felt were reasonable. He concluded by saying that the good of the many outweigh the good of the few.

Stephanie McAuliffe, Pacifica, stated that she was in support of the staff recommendation which she thought was detailed and courageous. She admired people who can speak in analogies, and she thought of the analogy of "if you're in a hole, stop digging" and she felt it would be courageous of the commissioners to stop and address the issue of the impact on the infrastructure and really think through how to make the neighborhood viable with reasonable development and very low density development.

Chris Coppola, Pacifica, stated she has spoken at previous meetings about the serious issues they face with infrastructure in the street. She felt this was one example of what will happen throughout Rockaway Beach if they continue to not deal with the infrastructure needs. She stated that she measured the street with the hill on one side and the creek on the other side. She mentioned what she thought would be required to fix the problems. She also felt that they needed to have a moratorium and make a plan for all instead of piecemeal.

Joanne Wilson, Pacifica, thanked the Planning staff for their recommendation to deny the request and she urged the Commission to deny the requests. She and her neighbors felt that the proposed project would defeat the purpose of the VLDR designation of the General Plan, and denying the project would avoid adverse effects, limited emergency access, etc. She felt it was unfortunate if city staff made mistakes in explaining the density requirements. She stated that many of them were concerned about the limited and aging infrastructure in their neighborhood. She appreciated the staff report including the letter from Hal Bohner. She agreed with his assessment that, if the project were to go forward, it could not be deemed categorically exempt from CEQA as it contains exceptions to categorical exemptions. She asked that the Commission formally recommend to the City Council that they adopt an urgency ordinance declaring a moratorium on development in VLDR areas with conflicting zoning until this issue is resolved.

Andrea Aiello, Pacifica, stated that she would like to echo the previous speaker's and everyone else's call for a moratorium. She felt piecemeal planning was not the way to do this. She also mentioned that another developer was waiting to see what happens with this project and urged it to be approved because that was the next project, and she concluded that they were opening this up for another one by one approval and she concluded that the moratorium was the way to go to fix the problem that exists and has been existing for a long time.

Marianne Willett, Pacifica, stated that she had a speech prepared but has to change it. She stated that she bought four lots that the city asked her to make into one. She then mentioned that Mike Panesi came with a big shovel and put stuff on her property. She got a stop order. She mentioned that the road he cut led to their property and he has never repaired the damage he did to her property. She concluded that no one has been held responsible for this. She stated that she got their letter offering to make the sacrifice of building one house instead of two. She felt that the problem was that it was blackmail in that they were not going to build two but one, however, the land was not legal to even build one home. She stated that she didn't agree but acknowledged that it was a compromise. She agreed with the rest of the speakers, and would like a moratorium until the city can come up with information as to what will work and they can safely live with.

Janette Duarte, Pacifica, stated that she was in support of Mr. Javier Diaz-Masias. She stated that she was a 45-year Pacifica resident. She understood that they were trying to find their forever home. She hoped that the Commission would consider it.

Stephanie Barrueto, Pacifica, asked the Commission to see through the façade of concerned homeowners and not give into their efforts to hold on to what amounts to a view and an extended backyard or, as they call it, their paradise lost. She added that they do not own the land and their continued anti-development position was illegal. She stated that, against her advice, her sister and her husband tried to compromise with them by substantially cutting the project in the hope of finding some common ground. She felt that the truth was that you cannot compromise with anti-development as they don't want anything built. She stated that one Rockaway neighbor supporting the project wrote, "build the homes you want, don't be bullied." She stated that she

has sat idly by and watched the group try anything and everything to prevent the homes from being built, even telling vicious lies and spreading false truths about her sister and brother-in-law. In reality, they followed every rule and requirement laid out by the city, only to be presented, in the 11th hour, with the General Plan fiasco created by the city. She asked them to be fair and not misled by unconstitutional demands.

Kimberly Claussen, Pacifica, stated that she is friends with the owners, and she was outraged with the comments that one of the speakers made about the dirt on their land. She stated that she had a prepared speech because she was doing it. She stated that it wasn't them, and she needs to address the person who actually did it. She has the name. She stated that they spent so much time and energy planning proposals and safety for Pacifica. She stated there are only three ways out of Pacifica. She stated that she lives on Crespi and was affected by the fire also. She thought they think Rockaway is the only little community, but Pacifica was huge and the sewer system throughout the city needs help, the roads throughout the city need to be fixed. She stated if you go on Carmel in Sharp Park, there are tons of safety issues but they are putting it on this one property which she does not agree with. She stated that everyone around them are building, in San Bruno, Half Moon Bay, etc.

Kathy Salet, Pacifica, stated that she was in support of the owners' application. She was angry at the Planning Department. She mentioned that they started three years ago, doing everything with the Planning Department and three years into this they are told stop. She has not heard who was holding the Planning Department accountable and she felt that was where the issue was, adding that she didn't know if they were incompetent as she didn't know how it all came down. She stated that they have been fighting it for several years, doing everything they were told with the okay of the Planning Department who said there was nothing wrong and encouraged them to keep working, and at the 11th hour they do this. She felt it was unconscionable. She hoped that something was done with the Planning Department to hold them accountable for this.

Tony Dominski, Pacifica, stated that he had a metal fabrication business and he got evicted in San Francisco and had to move because of redevelopment issues. He looked at 70 properties in the Bay Area. He stated that he found what was his dream property for his industrial business and spent a lot of money and did a lot of due diligence as the owners did, but he thought they missed something. He stated after his due diligence and, at the 11th hour, he was in escrow and had a phase 1 and phase 2 done environmentally, and his environmental attorney found that there was a letter from the water department that was sent to the previous owner saying it was contaminated. He stated that he had to walk away and lost \$30,000. His point was that there was ambiguity which they admitted to, as the General Plan and zoning didn't agree with each other. He thought, if he was going into this, he would want to get it in writing and get a clarification before he went further. He stated that all his neighbors were not anti-development but for sustained development with a reasonable General Plan and zoning that matches. He thought the General Plan has been done with a lot of due diligence and can't be ignored. He didn't believe it was unconstitutional and he asked that they accept their staff member's professional opinion and vote no.

Anna Dominski, Pacifica, stated that as frustrated as the owners are, the neighbors are even more frustrated because they came to Rockaway Beach Valley because it was low density. In 1989, it was very low residential density. She stated that it was appealing to them at the time and, if they knew then, she wondered why these people didn't know. She stated that it was very serious thing to buy property as you are investing a lot of money and it was your responsibility to know what you can build there. She stated that she knows she can build on her property, if she wants to

change and go through all the hoops and do it. She stated that her neighborhood was not anti-development, but anti-people trying to build on property on which they aren't supposed to be building. She stated that it was very low density zoned property. She stated that she has a solution. First, the moratorium is a good one, and the other is that very low density says 7,500 feet for one house on one acre, and she thought it would be fair to do a percentage of allowable feet to what they have. She stated that they have 5,000 square feet and they can't build a big house but they could build a smaller house. She thought it was greedy to say they want to build two giant homes in very low density. She didn't feel it was fair to the neighborhood.

George Salet, Pacifica, stated that he was in favor of building the homes. He stated that he has been in that area for his business and half of the places should be torn down, but that didn't mean they shouldn't build their homes. He stated that the buildings were not that outrageous compared to the other buildings on the street. He thought they should do it. He stated that there have been problems, and it was too bad they don't have something in writing. He concluded that, if you don't want more people building next to you, you should buy the empty lots.

Daniel Fulqui, Pacifica, stated that he was a resident of Pacifica and all of them with pleasure and happiness. He stated that he was present to support Mr. Javier Diaz. He has spent a lot of time planning and the planning department is not letting Mr. Diaz finish his dream house, even though he followed all the procedures and in the end has spent a lot of money and time. He suggested that, if you put yourself in his shoes, you will understand the money problem and his frustration since it was approved by the City of Pacifica and the planning department. He felt it was unfair. He thanked them for the opportunity to speak and he looked forward to seeing Mr. Diaz' completion of his project.

Karen Rosenstein, Pacifica, stated that she was happy to see the recommendation of staff to deny this project as proposed. She thought it was consistent with what happened several years ago at her end of Oddstad when the property owner proposed splitting his three-quarter acre into two equal pieces before building on it. She stated that this honored the current zoning on the property, the wishes of current neighbors and gave them time to address the problems they face in their neighborhood, such as the moratorium. She understood the frustration of the applicant as expressed in his letter to planning staff that she saw in the packet. She stated that unfortunately he didn't do quite enough research. She stated that those who worked with former Planner Lee Diaz know he was fond of wanting to build out Rockaway. She stated that, while the applicant might see this as his dream home, they are not living there during the months of noise, dust, road blocks and more that construction will impact the resident's lives. She mentioned some of the particulars involved when work is done on the streets and homes are being built.

Deni Asnis, Pacifica, stated that she lives on Rockaway Beach and echoes the knowledge and eloquence of her many neighbors. She stated that once again she is present with grave concerns about the proposed development that will go against the intent of the very low density residential designation for the area. She urged a moratorium on any construction on Pacifica paper streets until there is a complete process to address all the concerns that have been raised on this matter and until policies for future development are formally integrated into the General Plan. She appreciated the Commission listening to the residents and their concerns. She stated that the applicants say they want to build their dream house but she felt the way they are going about it will contribute to the destruction of a dream neighborhood and a dream city. She looked forward to the time when all of them being called anti-development can use the Planning Commission's time to talk about building affordable housing in Pacifica which many of them strongly feel are

needed and fixing the infrastructure problems in the city. She urged them to follow staff recommendations.

Pankat Agarwal, Pacifica, stated that he will give back his time as enough has been said.

Kevin Casey, Pacifica, stated that his home is in the middle of all of this. He stated that Shirley and Javier had nothing to do with the bulldozing that was done and caused all the damage. He stated that it was done when the flag lot was going through its zoning periods. He stated that whoever owned the flag lot was the one who came in with a bulldozer and did all the damage. He stated that the damage was still there and whether they decide to go ahead with the plan, he felt there were some problems that the bulldozer caused, explaining that the water coming off the hill was not going in to the tributary that leads into Rockaway Creek. He stated that they had a lot of rain over the weekend. He took a photo of the water with only 4 inches from the top of the culvert hole. He also referred to the tributary on the south side which was dry because of the bulldozer's work. He felt this water problem needed to be addressed.

Carol Fregly, Pacifica, stated she lived on Rockaway Beach and thought it was one of the houses that was suggested should be torn down. She stated that none of them have been upset about proper building with consideration for the neighbors, but rather when the huge equipment are dragged up the street and tear up what was already substandard. They then sell the houses for large amounts of money and the neighborhood has been disrupted, the street compromised and they leave. She stated that she was going to look into an escrow fund, that other cities call an impact fund. The money sits in an interest bearing account and generates some money and they use that money to make improvements. She stated that she would be happy to help with a survey and contact neighbors in various areas such as Rockaway and Vallemar and ask them what their concerns are. She stated that they were worried that they would do something that will make a big problem geographically or destroy the environmental balance of the hills behind them. She thought the Commission should be concerned about that as well. She suggested that they get input from them to help them plan. She stated that being proactive is not a bad thing.

James Pickerrell, Pacifica, stated that he was fully supportive of safe, effective property development. He empathized with the property owners because this situation was a huge blow to their personal investment. He stated that the rest of the residents don't want to see anyone in that kind of position. He referred to a previous speaker mentioning the reality of this project. He agreed and felt this was a dangerous idea. He felt that this development will begin a huge snowball effect and will increase situations like these in areas where they will have more unsafe areas to build. He felt they were lucky in the previous fire to have professional crews attack from two different areas, mentioning some of the safety measures they need to institute.

Joe Davis, Pacifica, stated he love the area and took offense at someone saying that half their homes should be knocked down by a plumber. He then mentioned that he has talked about the street and what they love, and not against development but for smart development. He appreciated the speakers, adding that he thought the neighbors have covered all the points. He referred to a spring that was deteriorating his neighbor's driveway.

Ms. Fulqui stated that they sent a letter to the neighborhood the first time and waited for them to get back to them with many ways to contact them. They waited and the only call they got was from the Tribune and the article said they wanted to keep that area undeveloped and in pristine condition. She stated that it was anti-development. She stated that they shut them out completely

from the neighborhood. When they sent their second letter, they waited for them for an hour and a half at Pacifica Sea Bowl to talk and compromise. She stated that they were open for development but nobody showed up. Then, they sent them a letter that says that they wanted to see them rejected. She asked what kind of compromise that was. She stated that, at the study session, it was clear that the General Plan was unconstitutional and they wanted it to stay the way it was. She wanted to understand. They say they are okay with development but they were being called greedy even though they offered to give up 50% of their application. She stated that, if they merge their lots, they are only missing 31% of land in order to be aligned with the unconstitutional General Plan, but they were willing to give up 50%. She then mentioned Ms. Willett saying their letter was blackmailish and she said at oral communications that Javier Diaz-Masias was lying to the neighborhood, part of a five-contractor conspiracy and he was only there to make a profit and rape the land. She stated that they were a family. They were trying to build their forever home and this was wrong. She stated that, during the study sessions, they said a lot merger was a good idea and they would consider giving extra square footage to someone who voluntarily merged their lot. She added another comment about Ms. Willett, stating that she had a named individual who was on the back hoe. She stated that it took her husband a half hour looking through city records to find an individual with that name who owns land in that area. She stated that she blamed them for a year after they were absolved.

Commissioner Gordon stated that she said the General Plan was unconstitutional, and he asked her to explain why.

Ms. Fulqui stated that it says that lots in VLDR require 21,780 square feet, and their lots were subdivided before 1980 to the size that they are now, 7,500 and when the General Plan was adopted in 1980, it was automatically unconstitutional because it basically forgot about the lots. She stated that there was a value in the lots for building. They were taking the value of their land.

Commissioner Gordon stated that she was requesting a General Plan amendment so they can build on it, and he asked how that would be denying the value of their land.

Ms. Fulqui stated that they were being denied. She understood that they were being denied or asked to be denied for our amendment request.

Commissioner Gordon referred to the denial which said “as currently designed.” He stated that it didn’t sound like an absolute denial to him. He acknowledged that what they put forward wasn’t necessarily going to be approved, but that didn’t sound like the city was shutting the door on coming back with something else.

Ms. Fulqui stated that she didn’t know how this works. She was reading that their application should be denied.

Commissioner Gordon reiterated that it said “as currently designed.”

Ms. Fulqui stated that she didn’t know but it says that the proposed development is inconsistent with the General Plan. Then, there was a statement that the proposed development was inconsistent with the General Plan and requires a General Plan amendment. She stated that staff recommends denial of the General Plan amendment which would leave the proposed development inconsistent with the General Plan. She felt it was leaving them nowhere and like a dead end.

Commissioner Gordon stated that she was not reading the part where he was directing her. He stated that it says “as currently designed.”

Chair Campbell referred to the roadway and the width, and he stated that they have an existing rule of a 20-foot maximum width.

Ms. Fulqui stated that they have not received any controversy that she knows of.

Chair Campbell stated that it seemed that the proposal was for wider than 20 feet. He asked if that was discussed back in December 2013.

Mr. Diaz-Masias asked what his question was.

Chair Campbell referred to the maximum allowed width of the road under Section 9-4-2813, and it seemed like it was double the allowable width. He asked him to explain that.

Mr. Javier Chavaria said he was the civil engineer on the project. He became involved to help with the grading plan and design of the improvements for the street. He stated that they coordinated with the engineering department and the road was designed as directed by engineering. He was not familiar with the section he was citing. He asked, if he tells him what the section says, he might answer more accurately.

Chair Campbell stated that it says that the driveway width shall be a maximum of 20 feet but what was proposed was double the width.

Mr. Javier Chavaria stated that the initial proposal was a 20-foot road which the fire department declined. They met several times with the fire department and the road as designed currently is per the direction and requirements of the fire department.

Chair Campbell asked staff for clarification.

Planning Director Wehrmeister thought there was a confusion. There is the roadway width and then this section C which is talking about the driveway width on the property separate from the road.

Chair Campbell stated that it was the roadway that was the issue.

Asst. Planner Farbstein stated that, on Lot 50, there were two driveways, one driveway is to the two-car garage and the other driveway actually functions as an emergency turnaround so, for fire trucks to be able to pull onto the site and back up or other maneuver to leave the area. There is no cul-de-sac and it was not a through road and this was a way to allow emergency vehicles to get there, fight the fire and turn around and get back out again.

Commissioner Nibbelin stated that he was looking at page 9 of the staff report with reference to the Open Space Task Force report on Parcel 21. He stated that the staff report says they elected not to present the project for consideration and he asked if they wanted to say anything about their rationale.

Ms. Fulqui stated that all she remembers is being sent an email saying that it was the Open Space Task Force report. She didn't recall anyone suggesting that they contact anyone, but that it was just for their reference. She didn't know where they declined something and she didn't recall doing that. Her husband didn't remember that either. She was not sure where that was coming from.

Commissioner Evans referred to the double width driveway, and he understood the compliance for emergency vehicles, and he thought it pulled up the parking exemption. He asked if it was not feasible to mirror the two home plans where the two driveways are together and make that their turnaround rather than having a third driveway. He understood they would be changing things, but it might have an effect on the parking exception if nothing else.

Mr. Chavaria stated that they actual evaluated several scenarios with the fire department and their concern is that the hammerhead which was created as a turnaround must be an area that is kept clear and free at all times. Incorporating the turnaround with the driveways was an impractical solution for the fire department. They only way that they did it was to push it as it is shown so that it has enough forward space and enough turnaround for them without being interrupted by the traffic coming in and out from the driveways. He stated that the entire street will be red painted with no parking allowed unless it is on the parking proposed.

Commissioner Evans understood that you don't want to put a no parking sign in your driveway.

Chair Campbell closed the Public Hearing.

Commissioner Cooper stated that he has heard a lot of great discussion but he wanted to remind everyone that there is a human factor here and there are families involved and a lot of money involved. He stated that, when discussing and presenting in front of the board, it was helpful to stick to the issue and what they are talking about. He stated that there was a good point that we don't want to see anyone in this position. He stated that they were present to resolve the issue. That was why they were the Planning Commission. He appreciated all the comments, passion for family, neighborhood and each other and it was important to them, but they really have to look at the fact that there is a conflict, between the zoning ordinance and the General Plan. They don't match which is why they are there now. Otherwise, they wouldn't be here as an issue. As a commissioner, he was looking specifically at this application before him today. He cannot resolve the General Plan alone and the Commission cannot resolve that General Plan issue alone. He stated that, on looking at the particular application that they have before them today was what he was concentrating on. He stated that on looking at it and listening to the discussions, they either find there is an exception to the General Plan or they modify the General Plan. He stated that the modification takes a bit longer. They could find an exception to the General Plan but there were several factors that, as a commissioner, he would look to consider. He stated that the two factors are does it provide access which is safe and consistent with the level of development. He stated that he asks himself what that level is, such as are two 3,400 square foot homes proper for this point of land where he could see it consistent with the level of development within that neighborhood. He stated that the other was to promote orderly growth. He has a stronger feeling towards that, as just providing exceptions for 85 different parcels. He was looking at the application and what was before them and whether it was consistent with the neighborhood. He asked himself if it was a proper building for the neighborhood, taking into account the safety of the neighborhood. He hears a lot of consistent information about safety, sewer capacity, about all the other issues for the neighborhood. He again asked if this application affects any of those or in

such an extent that it would put them all at detriment. On looking at the application individually, he has to go back and look at these particular homes, the way it was presented in front of them, and whether or not it affects that particular aspect of this. He stated that the other element would be to modify. He stated that he heard some wonderful suggestions from the neighborhood, just like they did in the planning sessions, potentially a method from which to resolve this issue between the zoning ordinance and the General Plan. He stated that was a route they could go. He stated that they would obviously want to consider that. He stated that those were the types of things he was hearing about. Either there is an exception to the General Plan that exists from when they evaluate the project, or they modify the General Plan to deal with this in an orderly fashion and set some parameter and rules with everyone's involvement.

Commissioner Nibbelin thought Commissioner Cooper has gotten them off on the right foot in terms of analysis. He felt these were ultimately lots that would have to be buildable in order for them to remain on the right side of constitutional law principles. He didn't believe the General Plan was unconstitutional but believed it could be applied in an unconstitutional way if they were inclined to, but he didn't think anyone on the Commission was. He felt they have to look at what the General Plan says and what it was trying to do with the VLDR. He thought the staff report very well, on page 6, lays out the factors we ought to be looking at in addition to the things Commissioner Cooper has already covered. He believed some of the things mentioned are added to the mix. He thought it was possible to look at a project that was approvable. He was included to support staff's recommendation with respect to what they have sitting in front of them, but he thinks, to the extent that they end up with a proposal that better syncs with the factors. He would be open to further consideration of a project like that. He would also state that, with the analysis that the staff report provides with respect to the site development permit, as well as the parking exception, he was inclined to disagree with approving the project.

Commissioner Vaterlaus stated that she feels for the applicant with two years in the process. She did see on the table that this is not a precedent. She referred to one speaker whose home was built on a paper street and several homes built on paper streets that have very low density residential zonings and were still allowed to be built. She stated that, when she looks at the list, she doesn't see any homes as large as the ones planned. She did not think that this house is going to cause tree limbs to fall on people's property or on people, and if you are afraid of tree limbs, then you have to cut down all the trees, and if you are afraid of cars, then maybe they should outlaw that too. She had a question about impact fees. She asked, if they were to charge impact fees, would they go directly into Rockaway or used for the entire city of Pacifica.

Planning Director Wehrmeister stated that there would be a nexus study prepared and they would go specifically to the purpose for which they were collected. She stated that, assuming a study would be done on Rockaway specifically, the fees would be used in that area only.

Commissioner Vaterlaus thought the idea of impact fees was an interesting idea. She stated that the street is very narrow and it has been encroached on for years and years. Parts of it were never built out to the full extent of the street. She didn't think that this particular development will have a huge impact on the fact that Rockaway Beach was only 20 feet across.

Commissioner Gordon stated his starting point was a lot like Commissioner Nibbelin, that being that the General Plan designates the area as VLDR. However, the lots are less than half an acre so VLDR says you can't build on it, however, they have the ability to apply that so that it conforms with the constitution and there is not taking. So, from his view, the way to apply this in

a way that was fair, he would be in support of a project and a General Plan amendment to allow building on these lots if the project was more in conformity with the spirit of VLDR. He felt there was a reason the area was VLDR. They were looking for development that was less dense, don't have the massing, and he thought they probably won't be able to build a 3,400 square foot dream home, for the reasons laid out in the analysis in the site development permit. He would be in favor of something more in conformity with the factors that are in VLDR. He thought, perhaps a smaller home. He encouraged them to come back with a scaled down proposal and work with staff. He thought they were in the spirit of seeing something get built. He thought he heard about a dozen people say to have a moratorium, but he was not saying moratorium. He would like to apply the spirit of VLDR to allow some building on the land. He hoped he was coming down in the middle where the neighborhood and the applicant are both upset with him. He was in favor of staff's recommendation with his comments.

Commissioner Evans asked the applicant about the thinking of having one house for the two lots, and he understood they got negative feedback even on that. He asked why they didn't stay with that plan.

Ms. Fulqui stated that they were told by Planning Department that to ask for exactly what they wanted because they were going to be countered. So they wanted to start big with their ultimate intent to go smaller. They made it very clear in sending a letter to the neighborhood that they were willing to go down as far as 50%, but they really wanted to avoid all of this and help their application move faster as it had already been stalled significantly. She explained their thinking and it was more like negotiating, and that was the expectations they were given by the Planning Department that they would be countered on this. She stated that they weren't but were sent straight to the Commission as if they still wanted two homes. While they did originally, they were showing them that they were willing to work with the intent of very low density by sending out the letter.

Mr. Diaz-Masias stated that he sees them wanting to compromise. He felt they could work it out with the neighborhood and eliminate one of the houses. He stated that, in building one home on the two lots, he felt it would be in line with the intent of the VLDR. He stated that he was cutting his application 50% which means 50% less excavation, less impact to lives and less impact to the environment with more landscaping on the front of the house. There will be only one house and it was not possible the house will look the same. He felt, by doing all this, he was embracing a lot of the comments. He was trying to find a solution and compromise with Pacificans. He asked if they will support his project for this huge compromise.

Asst. City Attorney Visick stated that it was beyond the scope of what they can get to at this meeting, as it is a project that the Commission has not seen and the staff has not reviewed. He added that the sentiment that he is expressing is something that he can convey to the Commission but they can't really discuss that.

Commissioner Evans agreed, adding that they cannot approve or deny anything right in front of them. He knows he understands that part. He stated that his thinking is that it would be looked at in a much better light if he did come back with something, just one instead of the VLDR issue to low density, and he acknowledged that they can't do that with what was before them now. He thought, if he came back in good faith with the idea that he wants to live there and was willing to cut things down, and he stated as mentioned by other commissioners, in the spirit of the VLDR, they need to look at what fits in the neighborhood and lot. He was not telling him what to do but

trying to understand and give him his thoughts on this. He reiterated that he can't get into what it looks like now, but if he came back with something less, he thought it would be viewed in a much better light. He didn't know what staff could do.

Ms. Fulqui understands and that was where they were trying to go when they sent out the second neighborhood letter. She stated that the hard part was if they are telling them their standards don't apply and they aren't telling what the standards are, they don't know what to build. She stated that they felt they were going to get that from the Planning Department when they told them to seek a General Plan amendment petition and they would get back to them and they thought it would be with new requirements which never happened. She stated that they feel like they are guessing at what was acceptable and what was not. She questioned what happens if they come back in a few months and they are still not feeling it for VLDR and feeling that their application is not consistent with the General Plan. She stated that they need guidance and are asking the city to provide guidance. She stated that they have no guidance because the documentation itself is inconsistent and they need help.

Commissioner Evans was in sympathy with them and wished it hadn't gotten to this point. He wished all of it was discussed prior to even coming before them, but it hasn't. He apologized for himself for any part of this was upsetting to them and not understood. He stated every two weeks he gets stuff he doesn't understand 100% and he relies upon staff. He was sorry they didn't get the information needed, but he suggested that they look at that idea. He understood staff was there to help them, which he considered that the bottom line.

Mr. Chaveria stated that he was not the architect on the project and not the ownership but just the engineer on this case, but he felt, with the experience he has had in Pacifica, he believes there may be a solution. He thought the Planning Director may agree with him. He stated that Pacifica's zoning code already has an ordinance for non-conforming lots, and if this lot is not conforming with the very low density residential size, he asked if the home can be designed under the regulations of the non-conforming lot section of the planning code. He thought that, as they are willing to compromise to one home, and the two lots are merged, then they can have a lot that, following those regulations, may end up with a design that will be substantially more in agreement with the guidelines for the area, but possibly the same size home but with a double lot and following the step back of the hill which may be a solution.

Commissioner Evans stated again that they cannot discuss anything that was not in front of them.

Chair Campbell thanked the applicant for the candor with regard to how this project came before them. They often suspect that developers are shooting high, knowing they are going to carve it back but they don't often hear it so boldly stated. He stated that his issue doesn't have anything to do with the General Plan. He stated that it was the driveway width which was not something, with the 7,500 square foot lot, that he thought was a necessity to provide a parking exception. He sees that this has been on the books for a long time. When he had looked at their chronology, he had asked if this had been discussed, and he was told the answer was no. He stated that leads him to wonder how much specificity there was in the discussion with the planning department then. He thought it was incumbent on the applicants to understand that, if they are coming in with double the driveway width, there has to be a good reason. He was not seeing it. That leads to his second point regarding the General Plan. He stated that it was fairly clear to him, following the discussion, that there was a way forward for building a house that meets the spirit and intent of

the zoning. He stated that he would take the comments to heart and maybe there will be a way forward with a redesign.

Commissioner Cooper stated that a lot of projects come before them and they haven't cleared with the fire departments with the turnarounds, and if they submit another application, he suggested that he deal with them again and try to talk to them about what the turnaround would look like and what their access would be. He added that was something that holds some projects up. He referred to a woman who spoke who said she was not anti-development and she stated that she had an 800 square foot house on a bungalow property which was the original intent of that particular land. He thought some of the comments were important to listen to what might be in character and what might not, adding that he can't make a determination of what home would be in character.

Commissioner Gordon stated that it was an interesting conversation. He stated that often the applicants come in and haven't dialogued at all with the neighbors about the project, adding that it leads to a very difficult meeting. He stated that, ironically, in their case, they have dialogued a great deal with the neighbors. He would almost say it was too much. He thought they got some questionable advice such as coming in with more than they are really okay with. He stated his expectation when an application comes in that the applicant has met closely with the planning department and has gotten feedback about what works and what does not, with a lot of back and forth, and the project is adjusted and eventually there was a meeting of the minds with the planning department saying that it was close enough. He stated that there was a good feeling and it comes before them with a recommendation to approve with conditions. He encouraged them to get to a meeting of the minds with the planning department as it is not usual that projects come before them with a recommendation of denial, and they are facing a big hurdle. He stated that they have a counter proposal but they can't consider it because it hasn't been vetted and not before them, and not proper to consider stuff that has not been properly vetted. He encouraged them to take a step back and work with the planning department. He stated that they weren't their enemies but good people. He understands that there have been things in the past that have sucked and he didn't know. He stated that he didn't see VLDR going away and they will just have to work with it. He stated that the Commission was flexible. He stated that, if they applied it to the letter, they couldn't build on it because the lot was not big enough but they weren't taking that approach but taking the approach of encouraging them to work with the planning department and come up with something. He stated that, with offering proposals to their neighbors, he wouldn't go too far. He stated that whether they say yes or not, that doesn't mean anything in terms of what the Commission does.

Ms. Fulqui understood that. She stated that they just wanted to make sure that the neighborhood was happy with their application and they obviously weren't, no matter what they were going to do. She stated that they both respect the planning department, but they felt that, as soon as the legal issue came up, things changed and they didn't feel that there was any negotiating but more like can you build or can you not build. She felt it became very bureaucratic and they never got the feeling that they could even offer to really merge their lots and do that with the planning department. She stated that she didn't know if it was a joke and they were talking with them and asked what they could do, they just said do you know any neighbors who can buy any land. She stated that it made them feel that there wasn't anything they could negotiate with them and they had to go to the neighbors.

Commissioner Gordon said he was sorry about all that.

Chair Campbell thought they were done.

Commissioner Nibbelin stated that he was ready to make a motion.

Chair Campbell stated that, as Chair, he thought the requirements of the General Plan seem fairly clear to him and zoning seemed fairly clear to him, and he was not convinced that anything undue was said or done by the planning department, and he wanted to get that on the record.

Commissioner Nibbelin stated that he was very open minded to whatever they see in the future but he was ready to make a motion for this meeting.

Commissioner Nibbelin moved that the Planning Commission recommend to the City Council to deny the General Plan Amendment GPA-91-15 and deny Site Development Permit PSD-788-14 and Parking Exception PE-161-15 without prejudice, by ADOPTING the attached resolution, and incorporate all maps and testimony into the record by reference; Commissioner Gordon seconded the motion.

Commissioner Gordon that added that “without prejudice” means that you are not prejudiced from coming back and proposing something else.

The motion carried **6-0**.

Ayes: Commissioners Vaterlaus, Evans, Gordon, Cooper,
Nibellin and Chair Campbell

Noes:

Chair Campbell 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.

Chair Campbell called a break, then reconvened the meeting.

- 2. PSD-798-15 USE PERMIT and SITE DEVELOPMENT PERMIT, filed by owner and applicant, David Melton, to construct a single family dwelling of 3,300 square feet with an attached garage of 600 square feet and a second dwelling unit with an attached garage of 300 square feet on a vacant lot at 21 Malavear Drive (APN 023-270-580). A Negative Declaration was previously adopted for this project.**
UP-49-15

Commissioner Cooper explained that David Melton sold him his home about 11 years ago, but he has not had any personal communication with him since then. He will be voting on this issue and will not have a problem with it.

Asst. Planner Farbstein presented staff report.

Commissioner Gordon stated that they got an email from Tom Clifford on this project on pervious concrete.

Asst. Planner Farbstein stated that he came in and they talked about it. She stated that there was concrete paving for the driveway and walkway and the backyard area, and it is impervious which means it does not allow the water to go through. She stated that it was a 1.4 acre lot and a good portion of the property was going to have to stay undeveloped because of the settlement agreement. She added that, if the Commission would like, they could add a condition of approval to require that the areas be redesigned with pervious pavers for the patio and some kind of pervious concrete for the driveway.

Commissioner Cooper thought all the drainage goes to the detention ponds.

Asst. Planner Farbstein believed that was correct.

David Melton, applicant, stated that the project started about ten years ago, accomplishing most of what they set out to do then, and didn't finish a couple of the houses. He stated one was built and did not have to go into the detention ponds and the others were not built. He revived the project to finish it up. They have some outstanding issues, street light and monuments. He was currently working on the detention ponds and he has a permit for that. He was just trying to get the design of this one house approved, one was already built and another was previously approved a few months ago. He stated that, with the impervious driveways, the water is being caught on those driveways and it should end up into the detention pond area.

Commissioner Cooper stated that he was looking at the oversight plan and some of the elevations. He stated that, on the south side of the property, it looked like it slopes down toward the backside. He asked if it was being diverted back into the ponds or just going off into the natural landscaping.

Mr. Melton stated that now it was going to natural landscape, but when he submits the final plans, he is doing some changes on the drainage, adding that the house will be sitting on piers. He stated that where the slope goes down, it was about four feet from the property line and he was going to put some drains and it will go to the detention ponds.

Commissioner Evans stated that he was reading what he completed on the items, and he asked confirmation that all the ponds are done with the drainage.

Mr. Melton stated that the big pipes are put around the cul-de-sac and that catches the house and the impervious surfaces and right now, currently, he is doing the detention ponds which have to be completed and inspected and signed off before they can start the homes.

Commissioner Evans stated that he asked for the record.

Chair Campbell opened the Public Hearing and, seeing no one, closed the Public Hearing.

Commissioner Evans saw the amount of area and the fact that it was pervious and not impervious, but with the understanding that it was bound for the ponds, he has no problem with that at all. He stated that that was why the ponds were there, and he appreciated that, adding that they all know that the area along Linda Mar Blvd. was an issue. He was in favor of the project, adding that it looks nice, not oversized and he thought it will fit in nicely.

Commissioner Gordon was also in favor of the project. He stated that it was interesting and they were at the tail end of a long history. He stated that they will get to see everything smoothed out. He acknowledged that this has been through a great deal and he had no problems with it. He thought it was a fine project.

Commissioner Nibbelin echoed his colleague's comments, especially those who have had a chance to live it out over a significant period. He stated that the staff report laid out the basis for this project.

Commissioner Gordon moved that the Planning Commission find that the project substantially conforms to the development considered in the adopted Negative Declaration; APPROVE Site Development Permit PSD-796-15 and Use Permit UP-49-15 for the proposed single-family dwelling at 21 Malavear Drive by ADOPTING the attached resolution, including conditions of approval in Exhibit A; and incorporate all maps and testimony into the record by reference; Commissioner Evans seconded the motion.

The motion carried 6-0.

Ayes: Commissioners Vaterlaus, Evans, Gordon, Cooper,
Nibellin and Chair Campbell

Noes:

Chair Campbell 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.

COMMISSION COMMUNICATIONS:

Commissioner Cooper thanked Kathryn Farbstein, adding that he will miss not having her drop his package off at his house. He stated that the thoroughness of the packages have been excellent and he appreciates all her hard work in putting them together, adding that it was informative and helped them to make decisions. He wished her good luck in her future endeavors.

Commissioner Vaterlaus stated that was exactly what she wanted to say.

Asst. Planner Farbstein stated that since the Planning Director, she would pass that along as she reads all the staff reports and occasionally Assoc. Planner Murdock so she will pass that along to both for them.

Commissioner Nibbelin congratulated her. He thanked her for all her assistance over the past couple years since he has been involved in the Planning Commission.

Commissioner Gordon stated that 25 years was a long time. He was happy for her but sad for him and all of the Commissioners since they won't enjoy her excellent work. He will miss her very much.

Commissioner Evans was sad that she was leaving as she was the person when he had a question and needed something that no one else could find out, she did it. He thanked her, adding that her work has been excellent. He stated that, from a retiree to an almost retiree, way to go.

Chair Campbell thanked her, stating that every time she came to the house to provide him the packet of material, he felt a warm glow and felt he was in good hands. He appreciated her service to the city over the ten years he has been working with her.

Commissioner Evans stated that the smile of dropping the packet off on Friday was larger than usual.

STAFF COMMUNICATIONS:

Asst. City Attorney Visick stated that, on Thursday, the city got an initiative submitted for development at the quarry that is intended to go on the November ballot. He stated that the community was talking about it a bit and there were surveys done over the past month or so about it. They were still looking at the initiative but the basics of it would be allowing development so long as it is within certain parameters. He stated that the quarry currently was zoned by an initiative to not permit residential use and this would permit some residential use within certain parameters. He thought there might be a study session on the entitlements coming before the Commission in April.

Commissioner Cooper asked if they get a general site use plan, along with the initiative, listing percentages of residential, commercial, etc.

Asst. City Attorney Visick stated that, the way the initiative was drafted, it would allow for a lifting of the residential limitation within certain restrictions, however, they would still have to come in and process normal entitlements to do that and there will be CEQA review and General Plan amendments, etc., with specific boundaries.

Commissioner Evans asked the current status of 310 Esplanade.

Asst. City Attorney Visick stated that it was still under a yellow tag. He stated that there was an appeal hearing of that yellow tag. He stated that the owner and one of the residents and a combined group of residents, have appealed the yellow tag for that building. The hearing will be in the Council Chambers on Wednesday night before the Emergency Preparedness and Safety Commission meeting, but was still yellow tagged and not permitted for people to use it as residence.

ADJOURNMENT:

There being no further business for discussion, Commissioner Gordon moved to adjourn the meeting at 9:31 p.m.; Commissioner Vaterlaus seconded the motion.

The motion carried **6-0**.

Ayes:	Commissioners Vaterlaus, Evans, Gordon, Cooper, Nibellin and Chair Campbell
Noes:	None

Respectfully submitted,

Barbara Medina
Public Meeting Stenographer

APPROVED:

Planning Director Wehrmeister