

TOWN OF FAIRFAX PLANNING COMMISSION MEETING

February 15, 2007

Minutes

CALL TO ORDER

Meeting was called to order at 7:30 p.m.

ROLL CALL

Commissioners Present: Chair Meigs, William Madsen, Barbara Petty, Shelley Hamilton, Peter Lacques, Brannon Ketcham

Commissioner Absent (Late Arrival): Alec Hoffman

Staff Present: Ann Welsh; Planning Director, Linda Neal; Senior Planner, Susan Waters; Clerk.

APPROVAL OF AGENDA

M/S Motion to approve the agenda as submitted.

APPROVAL OF MINUTES

1. Minutes from the January 11th and 18th 2007 meetings.

M/S Madsen/Petty to approve Minutes from January 18th.

Ayes: ALL

Opposed: None

Corrections to January 11, 2007 Minutes as noted:

p. 3, bottom –spelling Lacques.

M/S Madsen/Petty to approve Minutes from January 11th as noted.

Ayes: ALL

Opposed: None

PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

None

COMMISSIONER COMMENTS AND REQUESTS

Commissioner Petty recuses herself from item #5 as she lives within 500 ft from 21 Creek Road.

Chairperson Meigs suggested discussing Mixed Use Overlay Zone Ordinance every two weeks to complete process. She asked the rest of the Commission to advise her if they object. She also requested 30 minutes at the next meeting to review the Tree Ordinance so it does not get lost in process. She requested Staff to bring forward the process of “civility” during meetings. She also asked Staff to place on the next agenda discussion of a new Commissioner to replace Commissioner Lacques on the Tree Committee (may be a shared position). Bring back Commissioner Hamilton’s comments that she worked hard on (word processed and sent to Director Welsh) to the next workshop for review.

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Commissioner Madsen reminded the group that the Commissioners had previously agreed to stay with one topic per meeting to finalize topics.

Chairperson Meigs affirmed staying with the plan to cover one topic until complete.

2. Discussion/consideration of forwarding a request to the Town Council that the draft Tree Ordinance be moved to a higher position on the list of tasks to be Completed by the Planning Department.

Commissioner Meigs requested moving this item to the end of meeting for review.

CONSENT CALENDAR

3. 201 Cascade Dr; Application #07-04 Request a continuance until the March 15, 2007 meeting for a Use Permit and a Height Variance to construct a play room/pool house with a bathroom and front entry.

Item will be continued to a future date.

PUBLIC HEARING ITEMS

4. 275 Frustuck Avenue; Application #07-02 Continued consideration of a request for an Encroachment Permit and Fence Height Variance to erect a sound wall around the existing equipment cabinet at the request of the owners of adjacent residences; Assessor's Parcel No. 002-022-32; AT & T, applicant; town of Fairfax, owner of right-of-way easement; Residential Single-family RS 6 Zone: CEQA categorically exempt 15303(e) and 15305(b).

Senior Planner Neal gave the Staff Report. Staff Recommends approval of #07-02 based on findings subject to condition in Staff Report.

Senior Planner Neal clarified photos can be requested of the applicants in advance. Per the police report, the equipment exceeded the noise level when measured on a day when other traffic was happening. The complaint took place on a summer night in August.

Mr. Lucq, the applicant for AT & T, stated that the Commission requested that story poles be erected and that he check decibel levels (compare with Sonoma location). The noise levels were lowered when wall was installed.

Chairperson Meigs asked Mr. Lucq if the walls in Sonoma were similar.

Mr. Lucq stated that there are 3 sides instead of 2 in Sonoma and the site is located at a busier roadway and covered with a CEC cabinet that is larger than the one used at Frustuck. No more complaints were received after the wall was erected. A mailing to the residents did occur.

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Commissioner Ketcham stated the PG & E box on the pole next to the AT & T cabinet looked new.

Paul Fitzgerald – 1 Corey Lane

Shared that the PG & E pole with meter head is for his residence. He also felt the sound wall is very large for a 5ft 6” cabinet.

Mr. Lucq stated that the wall that is being proposed has 2 open sides. The cabinet in Sebastopol is a controlled environmental cabinet.

Chairperson Meigs asked in the worst case scenario, what would Mr. Lucq recommend?

Mr. Lucq stated that it has taken 4 years to get to this point and beyond the proposed walls he does not know what further measures to recommend.

Commissioner Madsen said if it was in his backyard, he would have a problem with it. He expressed it would be in AT & T’s best interest to keep the public happy.

Mr. Lucq indicated that the 3 other boxes across the street are located on Town property. An additional at that location (Corey Lane and Frustuck Ave.) was prohibited by the Town.

Senior Neal stated that the current readings; taken by the police only exceeded the limit by a small amount and the excess could have been caused by the ambient noise.

Commissioner Hoffman asked if there could be a varying number of fans or is it all or nothing? He said what he has heard when he visited the site would have been considered maximum noise.

Mr. Lucq said it is all or nothing. Soundfighter Company says this is best solution.

Chair Meigs: Asked if a sound specialist reviewed this design?

Mr. Lucq: No, AT & T has spent a lot of money on the process to date. They would need further direction for next steps.

Senior Planner Neal stated that if a violation of noise level occurs, AT & T will need to find a solution.

Paul Fitzgerald shared that when the issue first came up, Pacific bell provided a letter, but did not indicate there would be noise. The large wall will blow sound up higher. His neighbor, Josie, started the process as she is more directly affected. The box is small, the wall is huge. He asked what the sound/decibel level in the summer will be at 3 a.m.

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Linda Neal indicated at night time, 10 p.m. to 7 a.m. it is 40 decibels, during the day after 7 a.m. it has registered 50 decibels.

Mr. Fitzgerald requested another test be taken. The sound wall is placed right in front of his meters. He is opposed to the sound wall.

Commissioner Hoffman asked Mr. Fitzgerald if he was only opposed to the sound wall. Mr. Fitzgerald restated that the letter from Pacific Bell did not indicated sound. He felt a wood fence would be better. The current fence is 6ft. tall. The July '97 Pacific Bell letter requested an encroachment variance. The Internet Service later asked to place the box. No notice was sent regarding noise to the neighbors.

Commissioner Ketcham asked Mr. Fitzgerald if sound was the primary concern.

Mr. Fitzgerald stated that Josie's property is most affected by the sound. The PG & E service was installed last year.

Commissioner Petty asked the applicant how a wooden fence would baffle the noise.

Mr. Lucq stated that the sound wall has baffling and should screen noise better than a fence.

Commissioner Petty asked if the walls would get in the way of reading the PG & E meter?

Mr. Lucq answered that they will not get in the way and AT & T works with PG & E often.

Commissioner Madsen stated that this would be an opportunity for AT & T to place the equipment underground but they would have to carry the debt. Nothing has been said about the sound. The sound has exceeded the permitted levels the Town can hold AT & T accountable. Plastic is a petroleum product and not sustainable. The Planning Commission may make a recommendation to the Town Council to review the permit as well as deny the wall.

Commissioner Ketcham stated that last month the Commission talked about the visual impact. There has been four years of noise and another 2-3 years of noise is expected. Is there a solution that will resolve the sound issue?

Commissioner Hamilton – if we were flooded with neighbors after sending out a notice, we could move to deny the permit. He suggested the Planning commission move forward.

Commissioner Lacques said it is a tough decision. Sight versus sound. Many people drive up Frustuck. The wall could be effective in absorbing sound. He is concerned with the visual aspect. It is impractical to consider moving the network due to the large

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number of DSL lines. He thinks the wall does not need to be built, but perhaps it should go to the Design Review Board so they can review the visual impact. Recommends paint, shrubs to mitigate visual and work with home owner regarding the backside. Another month is not onerous. AT & T can afford the Design Review Board process.

Commissioner Petty – Also agrees AT & T has been presented with a problem. She does not feel it is practical to take on AT & T and appreciates the efforts of AT & T to resolve this problem. The dark forest green color will blend in. She recommends use of native plants (previously recommended) to camouflage the wall. She is not sure about including the Design Review Board.

Commissioner Hoffman stated that for all of the neighbors who have complained, noise is the concern. It is unfortunate the neighbors are not here. Additionally, if Mr. Fitzgerald was willing to build a fence, it might be an option if the wall is approved. He is more concerned with passing traffic. The dark forest green is the best color choice. Could help to use native plant selection. Ideally he would like to see the cabinet moved to where the other utilities are located. This is a “Band-Aid” – 5 years from now, wall could possibly be removed. Question for Staff – once approved, is there a mechanism for removal?

Senior Planner Neal shared that it is the Town right-of-way and we can remove it if necessary.

Commissioner Madsen stated AT & T is a big corporation and this is Fairfax. He thought Fairfax always fought corporations?

Commissioner Ketcham asked can we send this request to the Design Review Board before the wall goes up. Can we put wording that if the box is replaced, walls can be removed or restricted?

Senior Planner Neal said “yes”. We can request the applicant submit a bond to make sure the landscaping becomes established.

Commissioner Hoffman feels this is more about the neighbors and making them feel comfortable. He recommended the Commission move forward.

Commissioner Lacques: This will be a Band-Aid and it will not be pretty. Maybe some of the public will want to comment on the appearance, the solution, the process. We should proceed so folks can have their input.

Chairperson Meigs stated she is very concerned Town may have dropped the ball. Were the neighbors notified? The complaints are primarily related to noise. Also noise levels may have chronic effects on health. She is concerned that the sound engineer was not included. AT & T should provide the best possible solution. Are there more negatives than positives? She would prefer to send to Council. Not comfortable with proposal.

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Senior Planner Neal – PG & E/AT & T franchise agreement is not your typical encroachment permit. The Planning Commission could pass their concerns onto Town Administrator. The Planning Commission could take an action. If the project is denied, then neighbors can appeal the action to the Town Council.

Commissioner Lacques said that the Planning Commission cannot direct the course of action. It is being driven by neighbors. He recommends approving project so the noise is mitigated.

Chairperson Meigs suggested continuing this matter and direct AT & T to come back with a more professional resolution. She also recommended that the Town take more noise meter readings.

M/S Ketcham/Petty

Move to approve application #07-02 subject to the conditions contained in the Staff Report including the following: native plants that will be 6-18ft in height, shall be planted along the wall and the applicant shall submit an 18th month bond to the Town. Additionally, if the box is removed, reinstalled or relocated, it must be reviewed.

Commissioner Ketcham – friendly amendment – not just the sound, but the size and height of the box.

Commissioner Petty – Seconded the friendly amendment.

Commissioner Lacques – friendly amendment – request project go before Design Review Board.

Commissioner Petty – Seconded the friendly amendment.

Commissioner Hamilton – respectfully does not accept

Unfriendly amendment – no second.

Roll Call prior motion:

AYES: Petty, Hoffman, Hamilton, Lacques, Ketcham

NOS: Masen, Meigs

Motion carries.

Commissioner Petty recused herself at 8:45 p.m.

5. 21 Creek Road; Application #07-03

Request for a Use Permit, Creek Setback Variance, Side Setback Variance and an Encroachment Permit to raise an existing single family residence 4.8ft in height to convert the existing basement/crawlspace to living space and expand the upper floor of the residence 43sf increasing the living space from 819sf to 1,717sf. The

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project also includes the construction of two parking spaces, one of them a garage space; Assessor's parcel No. 002-025-18; Residential RD 5.5-7 Zone district; Lori and Dan Hennessey applicants/owners; CEQA categorically exempt, 15303(e).

Senior Planner Neal gave the Staff report.

Commissioners questions for Staff:

Chair Meigs – was a request sent to applicant to require parking and covered parking?

Linda Neal responded “yes.” The Town Code requires covered parking.

Commissioner Hoffman – may we continue the application? Is the uncovered parking further out in the creek than the existing parking? Can the applicant apply for 1 parking space? Are we hearing from applicant for the first time?

Senior Planner Neal answered that the Commission can continue the application and the proposed parking structure does extend further into the creek. She indicated that the Town Code requires that the applicant have 2 spaces and it prohibits tandem parking. We can continue and re-notice neighbors. Need to provide findings so you don't create a precedent for anyone else. No one has done a survey on Forrest Avenue site. This is the forum for suggestions only. Planning Commission can add, remove guidelines.

Chairperson Meigs asked if Ray Wrynski has approved the proposed project?

Senior Planner Neal answered “yes, he is ok with the recommendations.”

Dan Hennessy the applicant, came forward and attended the meeting with his family present, including Lori, Selena and Shannon Hennessy. He said he has not received the Staff report, but that his architect did receive it on Monday. Mr. Hennessy said they purchased the lot above so people could not look down on their home lot. They have been working on the project for 3 years. Lot was purchased 13-14 months ago. They hired Mr. Dowd, Architect. There is a funky house that sits 6-8 ft off the ground, it is unheated, with a dirt floor currently. It will be 1600 sq ft when finished. They would like to lift the house to create 3 bedrooms and install new insulation. The big issue is the garage. Current foundation is 26 years old. Applicant has visited agencies 3 times including Fish & Game, Water Quality Control Board and Army Corps of Engineers.

Chairperson Meigs asked the applicant if he is in favor of Plan A?

Mr. Hennessy replied “Yes, I like Plan "A", I do not like Plan “B”.

Mr. Dowd, the project architect, stated “I have contacted Public Works Director Johnson for comments (Exhibit C). It is not a given solution. We need to look at the turning radius. County requests 26'. The issue is relative to the neighbor who is unable to be

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here this evening. Structure may constrain views. Visual connection is most important. Bridge view is paramount.

Commissioner Ketcham asked the applicant if he is just looking for parking space or does he require garage space?

Mr. Hennessy answered, "I would like to have 2 parking spaces and a garage. Currently there is no off-street parking. Parking spaces would help the neighborhood. The covered garage is away from the Creek bank."

Chairperson Meigs – Was the geotech and piers, etc. done with Plan A?

Mr. Hennessy replied "Yes and tested in area. "Back Hoe" new lot? We do not know at this time.

Mr. Dowd stated that the alluvial material on the site is 16ft deep.

Chairperson Meigs – Do you want more information regarding the merger from Staff?

Mr. Hennessey – No

Commissioner Madsen – the Staff recommendations were clear.

Commissioner Hoffman – the parcel is over Deer Park Creek.

Mr. Dowd – The standard lot definition applies – concern regarding hardship put on individuals. The bill of sale indicates 6,600 sq ft on slope lot. Start with 7,000 sq ft 90 ft width. Parcel meets current requirements. Yes, it's a viable lot. See p.6 letter Town Engineer. #3 – prefers not to continue.

Senior Planner Neal – We don't want loose silt to run off into the creek. There are two creeks.

Mr. Dowd indicated that the applicants do not have a problem providing a landscaping plan.

Chairperson Meigs opened session to public for comments.

Donnie Poe – 33 Creek Road

"I have lived at this address since 1956 and is a neighbor to the Hennessy's." He attested that the Hennessey's have cleaned up the creek significantly since their arrival and now it is the healthiest section of the creek. They are fine neighbors and a wonderful family. He does not want them to move. He supports their proposal.

Commissioner Hoffman thanked the Architects and Applicant for excellent 3D visuals. They are very helpful.

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Senior Planner Neal said that in reviewing the zoning ordinance and general plan, citizens have asked that our creeks be enhanced and structures be removed from the creek or close proximity to creek.

Commissioner Ketcham said the creek looks like it has been stable for many years, however, if a failure should occur, the dynamics of the creek system and habitat may be affected.

Commissioner Madsen said the applicant has shown due diligence in the planning process. The house is modest and under the FAR and is a reasonable proposal. Need to provide more off-street parking. The process has been underway for several years and he expressed support of the project.

Commissioner Hoffman indicated that he felt raising of the house is necessary for the family and had no second thoughts on the home construction. He is, however, concerned with the parking pad as it is proposed. He questioned the statement in the letter dated 4/22/2004 from Fish and Game that “no work was occurring below the creek bed – no significant removal.” Bank clarification requested. Ordinary high water level is 1600 feet. Do we need to discuss the house?

Commissioner Madsen requested a straw vote.

Commissioner Hamilton – are we ok with the house?

Commissioner Lacques – I am ok with the house.

Commissioner Hamilton – If the house were back from the creek do we cover the culvert? Do we need an infrastructure report?

Chairperson Meigs – Please make sure everything is covered.

Senior Planner Neal – the Town Engineer and Department of Public Works need to review arguments and address comments (i.e., culvert).

Mr. Dowd – shared that he has met with the Public Works Director Johnson, Town of Fairfax and she agreed with Dowd’s proposal that the location was most ideal relative to the garage. On January 10, 2007 he received Ray Wrysinski’s letter of January 9, 2007, requesting all information be returned by the 29th for this evening’s meeting. See Exhibit D/item 12 for Wrysinski’s response.

Commissioner Madsen requested that in due diligence the Commission request a 30 day time out for allowance of Town Engineer to review.

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Chairperson Meigs said that the home is in a beautiful location. She shared her concern with the pad. She is more comfortable with the garage, leaning towards approval. Final concern is on the merger. Applicant does not want the merger.

Senior Planner Linda Neal said the “Landslide Hazard Zones” have been determined. Parcel on Forrest does not meet “stability” standards. Merger takes place due to parcels not complying, currently a legal lot, if merged code indicates to go forward with merger because under common ownership.

Commissioner Hamilton asked if lot is not merged and sold, would developers be required to come to Planning Commission?

Senior Planner Neal said “Yes”, due to “right of way” variance.

Commissioner Hoffman asked if we cannot vote to allow structures along creeks following the serious flood a year ago. Do we have other options i.e., variances to allow non-covered tandem parking? We can play with models or ideas, but cannot continue with this plan stated this way. The neighbors may have visibility. Consider that the area gets stricter near the bridge. It may be possible to pull the garage to the creek setback line so you can keep views, but have a more direct line.

Mr. Dowd recommended referring to the plans and to see civil engineered drawings. Curve left option – rip-rap?

Commissioner Hoffman suggested pulling in further out of the top of the bank to a point of reconfiguring where the garage is. Not in favor of covered parking. Avoid retaining wall at top of creek bank. Encourages tandem parking (2 spaces) – no pad.

Chairperson Meigs invited other Commissioner comments.

Commissioner Ketcham asked if in responding to Town Engineer solution and family solution, are there other options? Are there solutions that will not take more than 30 days? In December, couldn't walk across the location. In January the bank stabilized. Requested continuance to review alternate parking ideas. Not comfortable with current proposal.

Commissioner Madsen apologized to Commissioner Hoffman and the public for losing his temper on the topic.

Commissioner Hoffman is concerned with the alteration of the stream back. Piers will be dug into the ground and the retaining wall is not fine to hold back movement of stream. Renegotiation can be done.

Commissioner Lacques stated the location is a very challenging site to be built on. The home has been there a long time. He would support the application. The issue is

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engineering; how to turn the driveway. May have less amount of creek impact. Adjustments to protect the creek should be worked out so as to be amenable to everyone.

Chairperson Meigs shared that she would like to see the family proceed with plans. She understands Commissioner Hoffman's concerns. The structure has been there 80 years. She could vote continuance to work out details with the engineer. Keep plan "A." Less concerned with retaining wall. Cannot go back after retaining wall is installed.

Commissioner Madsen asked if the Commission could propose motion to move ahead at this time.

Commissioner Hoffman asked if can you avoid retaining walls?

Mr. Dowd said the piers will go to a 16-20 ft depth to hit solid rock and they will be gray grade beam. They have looked at all options.

Mr. Hennessey said the piers are really helix screws that tie into the concrete for the retaining wall.

Chairperson Meigs recommended developing a motion.

Commissioner Lacques requested clarification – what is linear feet for retaining wall? Exposed 5ft triangle to 0 ft? 10ft wide/20ft length?

Commissioner Hamilton asked that if you could make it tandem, could it possibly be 3 spaces?

Commissioner Hoffman said he is comfortable with a continuance.

Senior Planner Neal said that the Town is required to have a clear project.

Commissioner Madsen said he hears Commissioner Hoffman's concerns, but given the situation, would like to have a garage and parking.

Commissioner Ketcham said that the bank failure is his main concern. The trees are our friends on the stream bank. When forcing mechanisms in creeks and streams, please be cognizant of trees. Provide more trees to reinforce banks.

Commissioner Madsen made a Motion to approve Application #07-03 with driveway and garage – version A, with Staff recommendations and extend by 30 days.

Commissioner Lacques seconded the motion.

Commissioner Hamilton placed a friendly amendment on motion adding landscape plan that requires additional landscaping along the edge to assist with scouring to stabilize the bank. Riparian trees to be established upstream to stabilize banks.

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Chairperson Meigs indicated that the item be re-tabled as there is a problem with the merger. These are “special privileges” that we would be allowing. Has the merger ever not been approved? We need findings for the motion.

Senior Planner Neal said the applicant would like to keep the extra lot as a “nest-egg” in case of emergency. Town Council may direct Staff not to go forward as a matter of precedent. In 1984 many mergers were done. We usually go forward when we find out about the properties. The property owners are notified that the Town is considering a merger. This is a state subdivision law.

Commissioner Hoffman asked if we may include a judicial opinion regarding this particular property?

Senior Planner Neal said “yes, if added as findings”.

Commissioner Lacques said the Commission is not really setting a precedent. We do not need findings on the merger because it is an independent judicial action by the Town of Fairfax, which we can accept or not. It could be brought to the next Town Council meeting. There is no precedent that says in order to approve a project where you have two substandard lots owned by the same person that you have to force them to a merger.

Commissioner Ketcham asked “does the language in the Ordinance say shall or should.” We would be changing the intent of the law if we did not consider it. The merger ordinance includes average slope to determine conformity.

Commissioner Madsen shared he has been on the Planning Commission for seven years and does not remember doing a merger within that time. He suggested the Planning Commission could make it a condition of the merger as part of the final approval.

Mr. Hennessey stated that the main problem is emotional. They purchased the lot 3 months ago. They are not opposed to the merger.

Commissioner Hoffman asked the Staff if there is any failure into the creek, can the Town be held liable?

Senior Planner Neal said “yes, a judge would make a decision.”

Commissioner Madsen suggested the Commission move ahead with Commissioner Hoffman’s recommendation to go to Town Council.

Senior Planner read the purpose section of the Ordinance “the Ordinance may be initiated by the Planning Director, Planning Commission or Town Council. The purpose is to provide a method to achieve orderly development, protect new development and implement the policy of the General Plan.” She said in this case it is being initiated by Staff as directed by the Ordinance.

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Chairperson Meigs said that the commission does understand the difficulty for the applicant.

Commissioner Lacques said the Commission could approve with out restrictions, but to receive final permit, must be a merger. It prevents the applicant from being able to sell properties.

Mr. Hennessey, the applicant, said he does not know what happens when you merge as to the tax consequences.

Commissioner Hamilton said that she appreciates the work that has been done and that the commission is struggling with working on the applicant's specific case and how the Commission is also responsible to broader legal responsibilities.

Commissioner Madsen stated he would like wording on the merger to state: "there must be a merger to receive final permit (approval) if the parcels are no longer under common ownership."

Senior Planner Neal said if parcels are no longer under common ownership, they may be merged.

Commissioner Lacques asked the Commission to please "waive" the merger requirement in the motion.

M/S Madsen/Lacques

Motion to approve Application #07-03 with driveway and garage – version A, subject to the conditions contained in the staff report including the additional condition that the applicant shall provide the Design Review Board with a landscaping plan that includes riparian vegetation to be established by the parking structure to stabilize the creek bank and mitigate scouring. The motion included removal of the parcel merger requirement from the list of conditions.

AYES: Madsen, Meigs, Hamilton, Lacques

NOS: Hoffman, Ketcham

Recused: Petty

AYES carried – proceed forward. 10 days to submit a written appeal.

6. Second Dwelling Unit Amnesty Program

Continued to March 1, 2007 Planning Commission Workshop Meeting. Possible vote at March 15 Planning Commission Meeting if completed.

Ken Kirke (ABAG) to be scheduled for a future date.

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DISCUSSION ITEMS

PLANNING DIRECTOR'S REPORT

Information was provided in the packet regarding the Mixed Use Overlay Zone. This information is for future discussion at the March 1, 2007 workshop. The subject of this information is possible parking requirements and the rational for the ratio of affordable housing to market rate housing.

Meeting was adjourned at 11:40 p.m.

Respectfully submitted,

Susan Waters
Clerk