

## MINUTES

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

November 16, 2015

7:00 p.m.

Chair Campbell called the meeting to order at 8:00 p.m.

**ROLL CALL:** Present: Commissioners Gordon, Evans and Chair Campbell  
Absent: Commissioners Brown, Nibbelin, Cooper and Vaterlaus

**SALUTE TO FLAG:** Led by Chair Campbell

**STAFF PRESENT:** Planning Director Wehrmeister  
Asst. City Attorney Matthew Visick  
Assist. Planner Farbstein  
Assoc. Planner Murdock  
Code Enforcement Officer Ngai

**APPROVAL OF ORDER  
OF AGENDA** Chair Campbell stated that, because of not having a quorum, they would put order of agenda and minutes for October 5, 2015 on hold. He then asked the City Attorney if they could approve the order of agenda.

Asst. City Attorney Visick stated that there could be no action absent a quorum.

### **DESIGNATION OF LIAISON TO CITY COUNCIL MEETING OF NOVEMBER 23, 2015:**

Planning Director Wehrmeister stated that they would not need a liaison for the next City Council meeting.

Chair Campbell asked if they could entertain oral communications without a quorum.

Asst. City Attorney Visick stated that they could entertain oral communications but reiterated that no action can be taken.

### **ORAL COMMUNICATIONS:**

None

### **CONSENT ITEMS:**

None.

Chair Campbell stated that, at this point, they need another Commissioner to be able to move on to the public hearings, adding that they have dispensed with the preliminaries and will take a short break and be ready to jump right in to the public hearings when a quorum is reached upon arrival of Commissioner Nibbelin.

Chair Campbell reconvened the meeting upon arrival of Commissioner Nibbelin at 8:05 p.m.

**APPROVAL OF ORDER  
OF AGENDA**

Commissioner Gordon moved that the order of agenda be approved; Commissioner Nibbelin seconded the motion.

The motion carried 4-0.

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

**APPROVAL OF  
MINUTES:  
OCTOBER 5, 2015**

Commissioner Evans moved approval of minutes of October 5, 2015

Chair Campbell stated that they didn't have enough votes for a quorum and the minutes were deferred to the next meeting.

**PUBLIC HEARINGS:**

- 1. CDP-355-15 PSD-805-15** **COASTAL DEVELOPMENT PERMIT, CDP-355-15 and SITE DEVELOPMENT PERMIT PSD-805-15**, filed by the applicant and agent, Mark Bucciarelli, on behalf of the owner, Jessie Go, to construct a 466 square foot addition to an existing 934 square foot nonconforming single-family residence on a 4,500 square foot nonconforming lot at 120 Santa Rosa Avenue (APN 016-192-030). Recommended CEQA status: Categorical Exemption.

Asst. Planner Farbstein presented the staff report.

Commissioner Evans referred to conditions of approval #5 regarding a tree, and he asked if this was normal practice for an addition.

Asst. Planner Farbstein stated that it came about because of the requirements of a nonconforming property.

Commissioner Evans reiterated that he had never seen this condition before for an addition.

Asst. Planner Farbstein reiterated that it was because it was a nonconforming site.

Commissioner Nibbelin referred to the issue of the narrow opening off the dining and kitchen area, closing it off or linking it to the garage, and he asked that she walk him through that.

Asst. Planner Farbstein thought it was an unusual design, but it happens when you have a nonconforming slightly smaller lot than is typical. She stated that they were adding on to a house that was probably built in the 1950s, and it makes it difficult to do additions. She stated that, instead of adding on to the garage, they chose to keep a 4-foot strip so there is a separation between the garage and the proposed addition, rather than attaching them. She agreed that it was an unusual design and she brought it to their attention in the staff report. She stated that the applicant is aware of that and has responded in Attachment D. She added that the applicant was present to answer additional questions about the proposed addition. She stated that she checked with the building official, and there was a way to attach that area and still comply with the building code issues, such as fire, etc.

Commissioner Nibbelin asked if she had a particular recommendation as to whether addition should be attached to the garage versus the way the addition was proposed with a four foot separation.

Asst. Planner Farbstein wondered if it would help in terms of the garage which was a one-car nonconforming garage and then concluded that it doesn't help because the garage was nonconforming in terms of not having side by side parking. If they extend that, it was not going to help. She liked the idea that the applicant described that there is a window opening so it does allow a little bit more light in. She questioned whether getting more square footage would make the space more usable. She decided that it was appropriate as it was designed, but she wanted to bring it to the Commission's attention to see if there were other issues or concerns with this design.

Mark Bucciarelli, applicant, stated that he wasn't prepared to add anything. He was happy to answer any questions they have about the project.

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

Commissioner Evans commended him on coming up with a design for smaller homes that complies with all the codes and building needs. He liked the house and he didn't think there was an issue on the setbacks. He also didn't have a problem with that corridor.

Commissioner Gordon moved that the Planning Commission find that the project is exempt from the California Environmental Quality Act; **APPROVE** Coastal Development Permit CDP-355-15 and Site Development Permit PSD-805-15 by **ADOPTING** the attached resolution for the proposed addition to a single-family dwelling at 120 Santa Rosa Avenue, 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 4-0.

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

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.

2. **SP-153-15**                      **SPECIFIC PLAN SP-153-15**, filed by Preston Fung, to construct A new 3,111 square foot, three-story single-family residence on a vacant 6,105 square foot lot at 323 Beaumont Boulevard (APN-009-037-450). Recommended CEQA status: Categorical Exemption.

Assoc. Planner Murdock presented staff report.

Preston Fung, applicant, stated that he was a resident of South San Francisco and prior to that he grew up in Daly City and was familiar with the area. He and his wife considered Pacifica a good place to raise a family and were ready to build and make Pacifica their future home. He then turned it over to his architect, Brian Brickman to go over some technical aspects.

Brian Brinkman, architect, thanked Assoc. Planner Murdock, stating that the staff report was elaborative and detailed and covered all the points that he would plan to touch on. He stated that it was a tough design due to the topography and he felt they came up with a good balance of trying to keep the size as minimal as possible within the lot to reduce the amount of excavation. They took the owner's desire to incorporate contemporary elements into the design. He then stated that he was available to answer questions.

Commissioner Evans referred to condition of approval #9 which comes up with many units regarding trash and recycling containers, if stored outside, being contained and screened from public view. He stated that he didn't see in the drawing where that could be and he asked if they thought about that.

Mr. Brinkman stated that there was an area behind the garage that was a potential spot.

Commissioner Evans acknowledged that it was a minor issue.

Mr. Brinkman stated that it will be either that or on the left hand side but they would put a fence.

Commissioner Evans thought it would be a pseudo wall or part of the retaining wall. He stated that he wanted to hear his thoughts on where it might be.

Mr. Brinkman stated that there was a little retaining wall setback a little bit from the front corner of the house and they could push it back further and put a fence up and screen it that way.

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

Commissioner Evans referred to the soils report and asked if they were going to use the one done when the project was originally started or have a new one done.

Assoc. Planner Murdock stated that it may be a question if the applicant feels a need to update the soils report but it would typically not be required if the report reflects the type of project proposed.

Commissioner Evans stated that he was concerned because of the steepness, as it was the steepest lot on the street, and he wanted to be sure all the conditions were okay.

Mr. Brinkman stated that, as part of the building permit process, they were required to provide the completed plans to the soils engineer and he does a review to make sure that the proposed design

falls within his recommendations, so they will get a review letter based on the design, confirming that it was being built to their stipulations.

Commissioner Evans referred to the fact that they have pulled the house forward on the lot so there was less cut into the hill. He appreciated that, but asked if there will still be 1,500 cubic yards of removal.

Mr. Brinkman responded affirmatively, stating that there was an inevitability because the lot jumps up straight from the street.

Commissioner Evans stated that his only concern was that he calculates there will be 150 truckloads of dirt to haul out which was a lot of up and down on that street. He thought that then brings them back to the provision concerning any damage done to the streets. He asked about any thoughts on that.

Mr. Brinkman referred to whatever precautions the contractor keeps in mind, but mentioned that they pulled the garage to the front setback and tried to keep it as close as they could without providing a blank wall in the front and giving it some positive aesthetics from the street. He didn't know what more they could do to try and limit that.

Commissioner Evans understood that. He was not as concerned about the amount of dirt they are going to remove, but about possible issues on the street. He didn't know which direction they will be going, but asked if there was going to be someone monitoring the street for damage.

Assoc. Planner Murdock stated that the Public Works Department would typically assess the infrastructure and determine whether there were any impacts, referring to the condition placed by the city engineer regarding any damage and the applicant's responsibility to repair it. He acknowledged that the ideal situation was to avoid any damage, and the Commission could consider conditioning a maximum truck size if desired, or leave it for staff to follow up with the city engineer to determine an appropriate hauling plan.

Commissioner Evans thought the street size would limit the truck size anyway, assuming a 10 yarder would probably be the maximum down the street. He reiterated his concern about maintaining the street condition.

Commissioner Nibbelin asked if it was common or permissible to require bonding to return infrastructure to its status quo and ensure that happens with the financial resources to make it happen.

Asst. City Attorney Visick didn't think it was common but it was not out of the question. He thought that would be a question for Public Works staff to determine the appropriate level of bonding. He questioned, if there was a concern about that, if there was a way to articulate the concern and an amount of bonding to be required.

Commissioner Nibbelin stated that he was suggesting the idea to the commissioners, possibly not in this case, but in cases with a significant concern about that and he thought that would be a reasonable tool to bear in mind. He was generally in support of the project. He thanked staff, stating that all the reports were well prepared but this one was very easy to work his way through. They did a really good job of breaking down the issues and explaining staff's position. He noted the concern about the large amount of cut and need to move all the spoils off site which was a big

deal but unavoidable in this particular topography. He thought the concerns were offset by the other circumstances that exist there. He thought they put together a consistent design that works and he was in support of the project.

Commissioner Gordon echoed Commissioner Nibbelin's comments regarding the staff report. He also commended the architect or engineer who put the plan together. He felt the lot was tough and the hillside was very steep. He appreciated all the efforts in pulling the garage and house forward and stepping it up the hillside to reduce the inevitable excavation that has to happen. He thought the design was beautiful and does set a high standard for the neighborhood. He was in favor of the project. He thought Commissioner Evans raised some good points about the potential wear and tear on the road. Regarding the bonding suggestion, his inclination was that they can't get a building permit until they have made good on any damage that has been done to the road. He questioned whether there was an inspection required.

Commissioner Nibbelin stated that he thought it suggested that they can't get the permit until there is a note on the site plan which he thought was different from having the permit and doing the work, stating that a lot of it will happen during the course of the work.

Commissioner Gordon asked if they could an interpretation of how condition #26 would operate in real terms.

Assoc. Planner Murdock stated that the intent of condition #26 was to make it clear and put the applicant on notice that any damage caused to public improvements on the right-of-way by this project are his responsibility to repair. He stated that it was a function of the encroachment permit to the extent that work needs to be done in the right-of-way and is commonly addressed and handled during the construction process with the Public Works inspectors who are involved in the routine inspections of the site.

Commissioner Nibbelin asked if it could be modified such that they could not get a certificate of occupancy or some other device that they typically see at the end of the project, prior to paying for it. He stated that he wants to make sure there are actually funds available to pay for it when the project is done.

Planning Director Wehrmeister stated that functionally, the building will not be finalized until all divisions and departments sign off and this requirement will be implemented at that time. If engineering felt that there was some damage to the right-of-way that they need to correct, they would not authorize the building division to issue a certificate of occupancy until that was taken care of.

Commissioner Nibbelin thought that may be adequate.

Commissioner Gordon agreed that it sounded pretty adequate. He concluded that he was in favor of it.

Chair Campbell agreed, adding that it was a nicely designed project. He concluded that it was a good staff report, good designs from the architect and he was in favor of it.

Commissioner Gordon moved that the Planning Commission find the project is exempt from the California Environmental Quality Act; **APPROVE** Specific Plan SP-153-15 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.

Commissioner Evans also commended staff on the report and the architect and owners for the beautiful design.

The motion carried 4-0.

Ayes: Commissioners Nibbelin, Gordon, Evans and Chair  
Campbell

Noes: None

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.

- 3. CDP-356-15 COASTAL DEVELOPMENT PERMIT CDP-356-15, to Demolish an existing apartment building located at 330 Esplanade Drive (APN-009-413-030) which has been uninhabited for several years due to unsafe building conditions. Recommended CEQA status: Statutory Exemption.**

Planning Director Wehrmeister introduced Code Enforcement Officer Ngai and Ted Sayre, consulting geotechnical engineer from Cotton, Shires & Associates, who were available to answer any questions. She then presented the staff report, with a recommendation to amend Condition of Approval No. 27 to read as follows:

“RJR shall prepare a beach closure notification plan including locations and details of required signage. Applicant shall implement any measures identified by the City to properly secure the beach area below the project site from entry by beach users until the City issues final approval for the work described in CDP-356-15. Such measures may include, but are not limited to, posting notification signs and constructing and maintaining a suitable fence barrier. Applicant shall submit applications for and obtain all permits required to implement the safety measures identified by the City, including but not limited to permits pursuant to Condition No. 11. Closure posting shall be the obligation of the applicant.”

Commissioner Evans acknowledged that they were not looking at 320 Esplanade but the staff report mentions that it was recommended that they demolish that location also. He asked if that will be the next step if they approve this item.

Planning Director Wehrmeister responded affirmatively, explaining it is an ongoing code enforcement action but was not on the same timeline. She anticipated that they will be back for a request for that property as well.

Commissioner Evans assumed that building was also vacant.

Planning Director Wehrmeister responded affirmatively.

Commissioner Evans read about the recommendation to leave the slabs through the winter in case the weather changes before they get around to demolishing them as a protection for the bluff. He asked for an explanation about that.

Planning Director Wehrmeister stated that she would let Mr. Sayre elaborate on that.

Geotechnical Engineer Sayre stated that RJR Engineering can speak to this, but he explained that it was a spread footing type of foundation and they were planning to put an impermeable barrier between the spread footing as well as gravel to have a base for equipment to work from. He stated that there was merit to reducing water infiltration into the top of the bluff by having some barrier left there through the winter, and he thought that was the intent of the design engineer. He stated that the shot creek that may be facing on the bluff would probably be the last item to be addressed, and that would be in the spring as getting equipment there during storm season can be problematic. He concluded that the intent was to have a barrier below the footprint of the building to keep moisture from infiltrating into the bluff.

Commission Evans thought even disturbing the nails might be a problem in tearing into the bluff area.

Engr. Sayre agreed, explaining that the intent was to cut the nails off at the surface of the bluff and not try to extract them which could do damage to the bluff.

Commissioner Nibbelin referred to Condition No. 27. He had no problem with the proposal but he was unclear on the split of jurisdiction between the City and the Coastal Commission regarding beach closure, etc. He asked if those conditions would have to be approved by the Coastal Commission through another Coastal Development Permit application or were they within the City's power to approve.

Planning Director Wehrmeister stated that the Coastal Commission has not weighed in on what type of permit they will need. They may require a CDP and they may be able to do it under an emergency CDP. She stated that, with condition #27, staff wasn't intending to be very prescriptive in the type of signage but actually be able to tell the applicant that they need to do this and let the Coastal Commission weigh in on what they would like to see.

Commissioner Nibbelin concluded that they wouldn't put the applicant in a catch 22 position where they were telling them what they have to do, such as close off the beach, if the Coastal Commission ultimately said that they couldn't. He wouldn't want to be imposing a condition that cannot be complied with because the Coastal Commission wasn't on board.

Planning Director Wehrmeister understood that and assured them that it was not their intent.

Chair Campbell referred to remarks made by Cotton, Shires & Associates in a report regarding the work that would be performed, and he asked what was ultimately going to be left behind on the bluffs once the work was complete.

Planning Director Wehrmeister stated that the site will be graded such that there was positive drainage to the storm drain system at Esplanade and a landscape plan. She didn't think it would be elaborative or require irrigation, but something that will leave the site in a suitable condition. She stated that there will be perimeter fencing for the safety of the public preventing anyone from walking up to the bluff's edge.

Chair Campbell assumed that will be ensured through the Building Department.

Planning Director Wehrmeister stated that the demolition plans will need to include the final conditions and, just as when building something, upon completion they would inspect the site to ensure they install things correctly, and the property owner will be required to continue to maintain that.

Commissioner Evans asked if 310 Esplanade was currently inhabited.

Planning Director Wehrmeister responded that 310 Esplanade was inhabited.

Matthew James, attorney for 330 Esplanade owner, stated that he was present with Farshid Samsami, a member of 330 Esplanade LLC and Rob Anderson. He stated that his client has reviewed the staff report. His client requests that the Coastal Development Permit be approved with the conditions set forth in the staff report. He stated that they will answer any questions but deferred making further comments at this time.

Chair Campbell opened Public Hearing.

Dennis Thomas, 340 Esplanade, stated that he owned the adjacent building south of 330 Esplanade. He thanked the commissioners for approving two housing projects, adding that they need housing of all kinds and he appreciated that. He stated that he has been working with Farshid for years, and he knows Rob Anderson whom he considers an outstanding engineer. He stated that he reviewed the plan again and he thought it seems to be a viable plan. He stated that one of the biggest concerns he has is that this will be his northern flank and he has been looking at this since the 2009 event. He stated that they are experiencing a crumbling of the bluff. He stated that he had to repair the drainage on the building in one year when they had a lot of rain, adding that it was starting to get bad again. He stated that he and Mr. Anderson have gone over their plan, and he felt the surface drainage is crucial. He thought they need to consider that the site needs to be maintained in probable perpetuity and subsequent owners need to be required to maintain it as well. He stated that the subsequent owner could be Pacifica or the county if the owners decide to let it go for taxes, etc., or possibly no one would want to buy it. He felt it was important that whoever winds up with the property be required to maintain the drainage and be vigilant about it, adding that it can have a very negative effect on his property, and he might be next with 330 Esplanade and 320 Esplanade. He obviously didn't want that to happen, so he asked that they think about the mechanisms needed to ensure that. He stated that just one good storm can be a catastrophic event such as in 2009. He stated that once it gets going you can't stop it and the cost to repair is prohibitive. He concluded that it was very important for this to be studied and analyzed with a good mechanism in place to safeguard. He agreed that they have to take it down.

Richard Bona, 350 Esplanade, stated that he has nothing to say. He came to instruct himself.

Bart Willoughby, Pacifica, stated that he has been involved with most of the projects on Esplanade since 2007 and lives in 310 Esplanade. He read the report and had one concern that wasn't addressed in the report. He stated that there is considerable wind erosion that happens on the bluffs. He stated that, once they remove the buildings, they will have considerable sand on the top of the bluff, into the streets and pretty much all over the place and he felt that issue should be addressed as well. He thought one other issue that should probably be addressed is that, when they have severe droughts, the bluffs dry out and become sandy and gravity collapses, mentioning that it happened at Dollar Radio this year. He agreed that the shot creek wall should not come down until maybe the spring or summer, and should not come down at least until 320 Esplanade

has been demolished. He stated that 320 Esplanade and 330 Esplanade do not have concrete slabs underneath them. They have slabs on the back walkway but do not have slabs underneath the building. He wanted that made clear because he didn't think it was clear in the report. He stated that he monitors the weather conditions and has his own advanced warning systems, but the issue with El Nino is that he is not convinced that they are actually going to have any severe weather until probably the end of December, and the new Enzo report that came out on November 12 basically indicated that the southern portion of the United States, and Southern California, will probably have above average precipitation but the northern portion will probably have below average until after December. He stated that there will be a new report in December which he will be monitoring. He preferred that 320 Esplanade and 330 Esplanade would come down at the same time, but unfortunately, they have a problem with 320 Esplanade.

Chair Campbell closed the Public Hearing.

Chair Campbell asked the applicant what he thought about the comment made regarding maintaining the property once the project is complete. He asked what their plans were for that.

Rob Anderson, RJR Engineering, stated that the city had an outdated letter, explaining some of their ideas but stating that they will work with the city with the goal of creating an impermeable barrier to reduce infiltration. He added that, in doing that, they will have to work out how they are going to plant this with native perennials. He was a civil engineer at Land's End and they went through a lot of experimentation with what did and didn't work and they have developed a good planting palette on thinking about landscaping. He again gave some specifics of what they will be doing, along with a maintenance program for handling it with an alternative plan if needed. He stated that they are trying to keep it simple, but will have to find a balance between minimal infiltration and sustainable planting. He mentioned that this was what was seen on most of the terraces.

Chair Campbell commented that Land's End was beautiful. He asked if there will be any public access on any part of the property from the sidewalk.

Mr. Anderson stated that, for now, it will stay fenced off from a security point of view.

Commissioner Evans stated that when he moved to Pacifica in 1990, he initially lived at Land's End for three years, mentioning that there was no land there anymore. He referred to a berm for the edge of the bluff, and he asked if that would not happen until spring or will it be done now. He thanked him for the info of no slab. He wasn't aware there was no slab under the building and that changes a few things. He asked for more detail on the berm, stating that the reports mention no impact tools.

Mr. Anderson stated that they brought it in six feet, which may be adjusted after spring if there wasn't six feet there. He explained that the berm idea was part of the wind protection and to set up the drainage to keep it from going on to the neighbor's land. It would be hand compacted in whatever location. He stated that the nice thing about a berm was that it is easily adjusted. He stated that the plan fully looks at being somewhat dynamic and, in the year, they may change the shape in adjustments to the bluff. He added that, as it is hand compacted, they won't have any major loading to the bluff.

Commissioner Evans appreciated that, adding that it wasn't a good place.

Mr. Anderson stated that they average two feet per year of bluff loss and it may not happen for 20 years and then they lose a lot like they did at Land's End.

Commissioner Evans commented that that was why California land is so expensive, less of it every year. He asked the tool or method of maintaining the piece of property with any future owners.

Planning Director Wehrmeister stated that the conditions of approval of this CDP or any entitlement application run with the land. She stated that, because it was going to eventually be vacant does not mean there is nothing to maintain. She stated that this owner and future owners will be required to maintain the property as conditioned and the mechanism to ensure that it happens is through code enforcement.

Commissioner Evans asked if it would be the case even if it were county.

Planning Director Wehrmeister responded affirmatively.

Commissioner Evans added "or city."

Commissioner Nibbelin moved that the Planning Commission find that the project is exempt from the California Environmental Quality Act and APPROVE Coastal Development Permit CDP-356-15 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.

Asst. City Attorney Visick asked clarification that the motion that they voted on was to adopt with the conditions of approval as amended.

Commissioner Nibbelin responded that it was incorporated as read into the record with the amendment to Condition No. 27.

Asst. City Attorney Visick thanked him, adding that he missed that.

The motion carried 4-0.

Ayes: Commissioners Nibbelin, Gordon, Evans and Chair  
Campbell

Noes: None

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.

**CONSIDERATION:**

None

**COMMISSION COMMUNICATIONS:**

Commissioner Nibbelin apologized to staff, fellow commissioners and the public for being late. He was at the inaugural meeting of the San Mateo County Veterans Commission. He stated that a

fellow Pacifican, Ky Martin, was serving on the Veteran's Commission. This was the first meeting and they were doing some presentations. He stated he was looking forward to the work they are going to be doing.

Chair Campbell stated that it concerns a question from Tom Clifford regarding the coloring of pavement at Harmony at One project, which was whether the color requirement was being followed. He stated that Mr. Clifford had asked that this be agendaized, and he wanted to follow up with staff about any thoughts on it without discussion.

Planning Director Wehrmeister stated that the Harmony at One project improvement plans have been approved and the developer has been moving forward in developing the project. They do not include any notations regarding colored asphalt, specifically on the street in the project. She stated that, in looking at the conditions of approval, there are some conflicting conditions throughout the project. She stated that, not being able to identify any specific notes in the project files, she can only guess as to how the conditions were interpreted and applied to the project. She stated that the project currently does not have colored asphalt.

Chair Campbell wondered about agendaizing it. He stated that there may be good reasons why they don't go with colored asphalt or not, but he was more concerned about the integrity of the process to ensure that, when they place conditions on projects, they don't disappear without the city knowing about it. He wants to understand the rationale behind it. He asked for thoughts from the Commission on agendaizing this issue.

Asst. City Attorney Visick stated that this specific issue has come up already, and they have looked at it in depth. He stated that, from the legal perspective, the dilemma was that there is really no mechanism in the Municipal Code that provides for appealing a staff level determination about how improvement plans implement the conditions of approval for a project. He stated that there was really no mechanism by which the Planning Commission, or even the City Council, can take that issue up. He stated that he didn't know all the codes by heart about whether the issue of a staff level determination was appealable as governed by the Municipal Code. He stated that he could come up with a number of them that are appealable, but this wasn't one of them. He stated that there was nothing within the Commission's jurisdiction to agendaize.

Chair Campbell stated that he wanted to make sure he understood that. He mentioned that only two of the Commissioner can comment on this subject.

Commissioner Gordon stated that his comment was not about this particular project, but a general principle. He asked, if they approve a project with a condition and that condition is not realized in the project because of a staff decision, whether there is no remedy for anybody.

Asst. City Attorney Visick explained that he was saying there was no administrative remedy. He stated that, having looked at this issue, if Mr. Clifford was determined to pursue it, although he didn't understand how he might articulate the claim, he could seek some sort of judicial review, but there was no general appeal right for any staff level determination. He clarified that it was only the determinations appealable under the Municipal Code and this was not one of them.

Chair Campbell stated that, if they come up with conditions of approval, he was hearing that a staff level decision making point, they can be overridden or ignored.

Asst. City Attorney Visick stated that it was difficult, and he was being cautious about how far they go into this deliberation. He stated that he can only answer questions with specific facts, and the specific fact is an improvement plan implements the conditions of approval on an actual plan drawing with things called out on it and the approval of that improvement plan by a department head. That decision to approve that plan is not, itself, appealable, but it is not the case that, once the Commission acts, staff can implement it however they wish. He assured them that it was not the case.

Chair Campbell thought the general issue might be worth further explanation at the next Commission meeting to fully understand how the mechanism works so that the next time they come up with the conditions of approval they understand how they are going to be implemented or not, or binding or not binding, as educational information, and use the Harmony at One project as an example.

Planning Director Wehrmeister stated that, not directly addressing the question of agendaizing it, as she thought they should discuss that, this was an issue, generally speaking, that she has also been concerned about. She felt it was very important for staff, who have to implement the conditions of approval, to be clear about them and they are not conflicting and internally consistent. She mentioned the example of 650 Corona where they got into a quagmire because the condition could have been interpreted several different ways and still, depending on where you stood on that interpretation, be considered an accurate implementation of the condition of approval. She stated that there are no notes to the file, but that was the situation they were in with this issue rather than a clear condition of approval which staff is not implementing.

Commissioner Gordon thought it might be interesting to have an agenda item that takes examples where they were not very good at giving clear conditions of approval, stating that it sounds like they have two examples already. He thought it would be good for the Commission to learn about how they can avoid that in the future.

Planning Director Wehrmeister stated that it has a lot to do with the drafting, which staff is cognizant of as they are preparing the reports for them. They try, to the best of their ability, to ensure that does not happen again.

Commissioner Nibbelin thought it was a rare instance where they have imposed a condition of approval that was just flaunted or ignored. He thought it was more in the context of interpreting something that was either ambiguous or something that ends up being the subject of conflict because of something they crafted in real time as they are trying to add conditions. He assumed they would rarely get conflicting conditions in the staff report and be asked to approve those. He thought it more likely comes up in the context of trying to tweak things in real time, and it doesn't involve them going back and double checking to ensure it does not conflict with anything that was already in the conditions of approval.

Chair Campbell thought that was where he was most interested in understanding how or why it was in conflict so he doesn't do it again. He would like to understand the rationale so they don't do this on the fly again, but also understand which way the interpretation went. He stated that it sounds like the interpretation of it went, in this instance, towards getting rid of the requirement entirely where they could have interpreted it to more closely conform with the intent of the Commission and keep it. He would like to understand how that works a little bit better.

Commissioner Nibbelin stated that, if they bring it back, he would like to be clear with staff about some kinds of things. He didn't want to get involved in every discussion about how conditions of approval are interpreted, day to day, as people are trying to do their job.

Chair Campbell agreed, but he stated that this was a big one, with a couple of hundred people in the audience in favor of this one at the time in 2007.

Commissioner Nibbelin stated that he wasn't that interested in getting down to the nuts and bolts of interpreting as people try to implement.

Chair Campbell agreed, adding that if this wasn't such a "blood on the floor" condition back in 2007, he wouldn't even bring it up, but this was a big one. He wasn't saying it was right or wrong, adding that if the department has a good reason to have not done it, he gets that, but he feels left out and doesn't understand it. He didn't want to do it again and he also wants to understand why it was done.

Planning Director Wehrmeister stated that they can bring something back to them. She didn't know if they will be able to turn it around for the next meeting, but they will bring something back. She stated that it would be in a general context to talk about how conditions are drafted, how they are implemented when it gets to the building permit stage and not necessarily a discussion of Harmony at One.

Chair Campbell felt that was acceptable.

Commissioner Gordon referred to another project being mentioned of how it got contorted. He thought it would be interesting to know how that happened, not for purposes of blaming anyone but for purposes of knowing how it occurs so they can know how to keep their eye out for it so it doesn't happen again. He added that he wouldn't want something so abstract, but some real examples of where it happened.

Planning Director Wehrmeister responded that she understood.

Chair Campbell stated that it was his intent also, to avoid this in the future.

#### **STAFF COMMUNICATIONS:**

Planning Director Wehrmeister stated that she had none at this time.

#### **ADJOURNMENT:**

There being no further business for discussion, Commissioner Gordon moved to adjourn the meeting at approximately 9:20 p.m.; Commissioner Nibbelin seconded the motion.

The motion carried **4-0**.

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

Respectfully submitted,

Barbara Medina  
Public Meeting Stenographer

APPROVED:

---

Planning Director Wehrmeister