

MINUTES

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

June 20, 2016

7:00 p.m.

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

ROLL CALL: Present: Commissioners Baringer, Evans, Campbell, Cooper, Clifford and Vice Chair Nibbelin
Absent: Chair Gordon

SALUTE TO FLAG: Led by Commissioner Clifford

STAFF PRESENT: Planning Director Wehrmeister
Police Chief Steidle
Assoc. Planner Murdock
Asst. Planner Smith

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

The motion carried **6-0**.

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

APPROVAL OF MINUTES: JUNE 6, 2016 Commissioner Clifford moved approval of minutes of June 6, 2016; Commissioner Baringer seconded the motion.

The motion carried **4-0-2**.

Ayes: Commissioners Baringer, Evans, Cooper, and Clifford
Noes: None
Abstain: Commissioner Campbell and Vice Chair Nibbelin

DESIGNATION OF LIAISON TO CITY COUNCIL MEETING OF JUNE 27, 2016:

None

ORAL COMMUNICATIONS:

None

CONSENT ITEMS:

None.

CONTINUED PUBLIC HEARING:

1. **TEXT AMENDMENT TA-104-16** the City of Pacifica is proposing amendments to Title 9, Chapter 4, Article 10 of the Pacifica Municipal Code to allow massage establishments as a permitted use in certain commercial districts subject to compliance with licensing regulations administered by the Pacifica Police Department.

Planning Director Wehrmeister stated that the recommended motion was transposed from the last agenda and the recommended action was to adopt the resolution initiating the amendment and recommend City Council approval of the draft ordinance attached to the resolution.

Asst. Planner Smith presented the staff report.

Commissioner Campbell asked where they have evidence for filtering out illicit uses of the licenses.

Asst. Planner Smith stated that the evidence would be in the processing of those types of licenses through the police department. He suggested that the Police Chief address that question.

Planning Director Wehrmeister stated that, before, the Police Chief responded, she wanted to point out that the threshold was for use only and an establishment of any size would still need to be licensed through the police department.

Police Chief Steidle asked Commissioner Campbell to repeat the question.

Commissioner Campbell stated that they talked about the use licenses filtering out the illicit uses associated with massage establishments, and he was asking if there was evidence of that filtering working in surrounding communities.

Police Chief Steidle stated that part of the new ordinance being proposed to Council would require all new massage therapists to be licensed by the California Massage Therapy Council. He stated that the difference from the old way and the new way was that there was a higher threshold for education with many more hoops that massage therapists have to jump through with a higher number of hours to complete. He stated that they have already had a background investigation done, fingerprints taken to ensure that they don't have a criminal record before they even come to the police department to receive city registration to operate in our community. He stated that it was a new process and has been very good in helping communities keep people, doing nefarious activities, out. The Massage Therapy Council also keeps track of the schools where the therapists are getting their education and they have a high standard for the schools they accept. He stated that the old process of being able to send in money and get a certificate from a diploma mill claiming to be a massage therapy school was over.

Commissioner Campbell asked how long the new process has been in effect in San Mateo or San Francisco.

Police Chief Steidle stated that he didn't have any information on San Francisco, but for San Mateo County, he stated that over the past five years, several municipalities have established the criteria of having to be licensed by the Massage Therapy Council before they can go to the city.

Commissioner Campbell asked if the illicit activity has gone down, following this new process being in place, specifically if there are statistics showing that it has decreased.

Police Chief Steidle stated that they didn't have any specific statistics yet, but the important part of the licensing process being put into the ordinance in all San Mateo County cities allows the police to revoke licenses if they are not following the guidelines appropriately.

Commissioner Campbell stated that, to recap for the audience, he heard that there were new procedures in place, pursuant to state law. They don't have evidence that it was working to reduce illicit activity but, from the Chief's perspective, it should, based on the education requirements and the more stringent requirements associated with licensing massage parlor facilities.

Police Chief Steidle stated that, with his 27 years of experience, this is the best massage therapy regulations that he has ever seen.

Asst. Planner Smith referred to attachment C which was the draft ordinance from the Police Department, and that contains the details of the new ordinance.

Commissioner Campbell asked Chief Steidle if he was opposed to keeping things as they are.

Police Chief Steidle stated that he would be opposed to keeping things as they are. He stated that the purpose was two-fold. He stated that it was to keep illicit activity affecting the quality of life of our community, adding that he has seen in Pacifica where massage therapy businesses have been a front for prostitution. He stated that they have made arrests and closed the businesses down, adding that fortunately they are easy to spot and they are successful with doing that. He thought the new ordinance is streamlined and gives them the authority to close the businesses down with a defined set of regulations. He stated that they have a great deal of confidence in the Massage Therapy Council, knowing their standards are high, and we are getting dedicated people coming into town. He reiterated that he would be opposed to keeping it the old way. He stated that we now have 22 massage therapist licenses in town. He stated that, the way they conduct business, this new ordinance wasn't going to affect them since they are already doing the right thing. He thought this just gave them the chance to keep the bad people out of town but remaining business friendly in our community.

Commissioner Campbell asked staff if the adoption of this new ordinance was dependant on revocation of the existing use license requirement.

Planning Director Wehrmeister stated that it does not as they are separate. She stated that City Council can act on the licensing update separate from a change in the use permit requirement. She stated that the reason they brought this forward is that Council wanted things to be streamlined for new massage businesses and staff felt, with the licensing requirements in place, they could pull back on the use permit requirements. She added that, if they leave the use permit requirements as they are, it would not impact what the police department was proposing on the licensing.

Commissioner Evans asked, with this new ordinance, whether someone from the police department would be inspecting the locations for the units under 640 square feet before licensing or certification of their business.

Police Chief Steidle stated that they do not inspect prior to receiving the permit.

Commissioner Evans asked, with the use permit, whether someone goes in and looks at the facility.

Planning Director Wehrmeister stated that, if they need a building permit, staff would inspect the tenant space. If they happen to come upon a tenant space that is the right size, and all they need to bring in were the massage tables, they would likely not be doing an inspection.

Commissioner Baringer stated that he supports the square footage test for exclusion from the public hearing process as it was an interesting approach. He asked how they came up with the 640, such as purely the math, not relating to typical sizes for retail spaces.

Asst. Planner Smith stated that it was the justification given in the California Building Code for medical treatment rooms, with minimum floor space requirements and this seemed like a natural partner to the massage treatment rooms with similar types of equipment.

Commissioner Baringer concluded that, if they are going to eliminate public input, when they meet the qualifications and approval of the police department, they can pull a building permit, build it, get a business license and open for business without any public hearing. He asked if that was a fair characterization under this proposed ordinance.

Planning Director Wehrmeister responded that it was under the threshold.

Commissioner Baringer asked if they differentiate between a new building versus an existing building. He stated that he was comfortable with an existing building in facilitating a small business enterprise. He stated that, when they start building new buildings, they cease to be a small business. He wondered if it was possible to differentiate between an existing building and a new building, since they are talking about eliminating the public hearing.

Planning Director Wehrmeister explained that new buildings, no matter what is going in them, in a commercial zone require a site development permit.

Commissioner Baringer concluded that there was no way that anyone could construct a new commercial building in Pacifica without having a public hearing.

Planning Director Wehrmeister responded affirmatively.

Commissioner Clifford was happy to see the 640 square feet test for public hearing or no public hearing, which worked for him in terms of public access. He asked what kind of mechanism was set up for those who will break the rules anyway and don't get a license, don't have a certificate. He stated that he was a general contractor and he knows the state board requires a license and a city requires a license, every job he does requires a permit, but he felt there were still unlicensed

contractors without any of those costs who are his direct competition, and are often ripping people off. He asked what was available to the people who were doing everything right in protecting their business and the public from any illicit activities.

Police Chief Steidle concluded that he was asking what the mechanism was when dealing with those who don't.

Commissioner Clifford responded affirmatively.

Police Chief Steidle agreed that there are those who will go around no matter what they or the City Council decides in changes in the ordinance. He explained that they normally come out in a couple of ways, such as the public tells them, the officers notice those that are illicit, or they will find the advertisements on the website where you find that type of activity. He gave an example where there was one in town which they didn't believe was performing prostitution, but one or two were doing side massages and they sent undercover officers who received legitimate massages from people who turned out to be legitimately licensed by the state but hadn't bothered to come into City Hall or the Police Department to get licensed properly in town to do it. They issued administrative citations, ordered them to cease their activity and stated that they would check to make sure they stopped the activity.

Commissioner Clifford assumed that they still can get a license, and weren't prohibited from getting the license because they were doing something wrong by not following the process.

Police Chief Steidle stated that he was correct that they could still go through the process.

Commissioner Clifford assumed it was as long as they have the certificate.

Police Chief Steidle responded affirmatively.

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

Commissioner Campbell stated that his concern was taking away the public's ability to know about these matters and speak on them. He felt that he hasn't heard anything that has moved him off that position. He saw the ordinance that the Police Chief recommended that the Council pass, and he concluded that the ordinance wasn't dependent on what they decide now, and he felt that would move forward. He thought that was fantastic. He stated that it sounded like the new process mandated by the state has been in place for a while, but he wasn't hearing any evidence of it working, and he thought that, if they read the papers, San Francisco still has a significant issue, as well as San Mateo. He appreciated the movement regarding the size reduction, but he didn't see the relevancy and how it gets at the issue. He referred to whether the activity occurs in a 650 square foot facility or 750 square foot facility, etc., and he didn't see why square footage matters. He worried about the precedent of addressing these issues with square footage if new uses come into our city after the next election. He didn't see the need to change anything, but rather saw it as a solution in need of a problem, and he would keep things as they are.

Commissioner Evans asked staff clarification that there will be no public ability to address anything under 640 square feet but for a use permit over 650 and up there would be public comment available.

Planning Director Wehrmeister responded affirmatively.

Commissioner Evans concluded that the only ones that wouldn't be addressed by the public would be those under 640 square feet but they would go through the police department.

Planning Director Wehrmeister stated that they would all go through the police department and would still have to be licensed.

Commissioner Evans stated that was the clarification he needed.

Vice Chair Nibbelin referred to the form of the proposed ordinance, Exhibit A, stating that there was a reference to massage establishments under 640 square feet, and he crossed references to Title 5, Chapter 19, where the term was massage business. He wondered if, for consistency of terminology, they could use the term used in Title 5, Chapter 19, as he didn't see establishments as a defined term and massage business is. He asked if staff would be willing to make that change.

Planning Director Wehrmeister responded affirmatively.

Vice Chair Nibbelin referred to his land use work with the county where they have been involved in the unincorporated county, North Fair Oaks, etc., and the feedback he has gotten was that they have been very successful in shutting down illicit massage businesses in the unincorporated county. He stated that they adopted a process very similar to that which Chief Steidle was speaking to. He wouldn't translate it as definitive success, but he thought it was important to note that there has been some success in shutting down a number of illicit massage establishments in the unincorporated county.

Commissioner Clifford stated that he was happy with the language being changed to 640 square feet, because of the reasoning that there was an impact on the area in terms of parking, traffic, and that makes it reasonable for those to come in and see the neighboring businesses to speak to it. He stated that, when there is clearly no impact and the police have cleared them in terms of their certificate, they still will be looking at them. He stated that the smaller units have little or no impact on the surrounding areas and it makes sense not to have them come in for a use permit.

Commissioner Campbell appreciated the argument that, if you don't have the impact and the size of the facility ties into that, then it may be a way forward. He felt his issue was that there were no facts to make that decision yet as this ordinance hasn't been adopted by Council and no record of success yet. He thought the police will do a fine job, but before they jump to the conclusion that there was going to be no impact because of the proposed ordinance that will hopefully be passed by the Council, he would consider tabling this for a year and come back to see if that is happening.

Commissioner Baringer responded by saying that, when you are looking at what types of operations require a public hearing and which don't, it seems to him that it was arbitrary from time to time. He mentioned that if the intent was to facilitate a small business entry into our community, he could challenge that perhaps some things that require conditional uses could be facilitated by this type of a thoughtful discussion to expedite it. He thought this could help small businesses and create jobs and revenue, but with more complex uses, like this type of an operation where the police department gets involved, he thought that was like a "belt and

suspender” approach. He stated that you don’t have that kind of law enforcement oversight on a retail mini-market operation, with no background checks, but he thought, if you are going to facilitate small business, they have to create an environment where they want to come in, saving them \$3,000 filing fees which is substantial for a small business. He thought, if it turns out to be a bad experiment and counterproductive to our community, there is nothing to stop them from revising it back to the previous way. He wanted to facilitate small business, and he was concerned about who gets a review with the public hearing. He thought that something in 640 square feet can create difficulty but not as much as something substantially bigger and he didn’t have a major concern with the footage threshold.

Commissioner Clifford stated that Commissioner Baringer said everything he needed to say.

Commissioner Campbell appreciated that, if the intent of what they were doing was to facilitate small business, he can see that. Adding that the way he sees it is keeping the public informed and not lose the ability to be heard and speak and he felt that was the reverse intent of keeping things the same, adding that there are two ways of looking at it and the question was which one is prioritized.

Commissioner Evans stated that, if he understands this correctly, all they were doing was adding the licensing part onto an existing use permit other than under 640 square feet. He stated that they already have the use permit in place.

Planning Director Wehrmeister clarified that currently a use permit is required for any sized massage business. She stated that the City also currently has a licensing requirement for all massage businesses through the police department.

Commissioner Evans concluded that we already have a licensing process in town through the police department along with the use permit.

Planning Director Wehrmeister responded affirmatively.

Police Chief Steidle also responded that we have a licensing process already, but it was not as streamlined or as stringent or detailed as the proposed ordinance set to go before City Council.

Commissioner Evans concluded that they were adding the state language to our existing licensing.

Police Chief Steidle stated that the main portion of it was requiring the state licensing by the California Massage Therapy Council for all new massage therapists coming to town to do business.

Commissioner Evans asked clarification that it was instead of Pacifica licensing, although he acknowledged that they have to have a state license now if accepted, unlike previously.

Police Chief Steidle agreed, clarifying that now we have a two-tier system where someone coming into town for a license to be registered by the city but not Massage Therapy Council certified, we do the background, jump through the hoops and try and verify the schools, but the Massage Therapy Council has greater expertise in the certification of massage therapy schools than police departments do.

Commissioner Evans stated that he was more in favor now, as the only downside he saw was the public addressing the issue, but that will be intact with 640 square feet and up. He thought licensing will be improved a lot through the state process. He appreciated the concerns, as he had concerns as well, which was why he was in agreement with Commissioner Campbell during the discussion at a previous meeting.

Commissioner Campbell stated that what the police chief was in favor of was that the licensing was going to happen no matter what they do. He stated that if they keep things the same, it doesn't take that away.

Commissioner Cooper agreed with Commissioner Campbell that this was a problem searching for a solution or vice versa. He didn't see a lot of restrictions in what they were approving at this time. He thought it was minor in the establishment of square footage. He didn't have a problem with the language. He thanked the police chief for coming and agreed that the licensing was a bonus for our city and community, but he didn't see anything significant that he wouldn't be in favor of adopting, adding that it was not that big of an issue for him.

Vice Chair Nibbelin agreed with Commissioner Baringer. He agreed that the size of the establishment doesn't necessarily drive the impacts you can have if there was illicit activity taking place, and he thought Commissioner Campbell hit upon an important point. He didn't think the 640 square feet necessarily afforded him a lot of comfort one way or the other. He did have comfort in what he felt was a fairly robust ordinance that the City Council was looking at with a lot of protection and ways that people can be taken out of action quickly if engaging in illegal activities. He didn't think the 640 was necessary but, in total, he was in favor of what was being proposed.

Commissioner Cooper moved to adopt the resolution expressing intent to initiate a Zoning Text Amendment and recommending City Council approval of Zoning Ext Amendment to Title 9, Chapter 4, Article 10 of the Pacifica Municipal Code relating to permitted and conditional uses in the C1 Neighborhood Commercial District; find that the proposed amendment is exempt from the California Environmental Quality Act (CEQA); and incorporate all documents and testimony into the record by reference; Commissioner Clifford seconded the motion.

Planning Director Wehrmeister asked clarification, before they vote, that the motion included changing the language of massage establishment to massage business.

Commissioner Cooper modified his motion to include the reference suggested by the Planning Director.

Commissioner Clifford stated that his second still stands.

The motion carried **5-1**.

Ayes: Commissioners Baringer, Evans, Campbell, Cooper,
Clifford and Vice Chair Nibbelin
Noes: Commissioner Campbell

Vice Chair Nibbelin 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.

NEW PUBLIC HEARING:

2. **SP-156-15** **SPECIFIC PLAN SP-156-15**, filed by Carlos Dominguez, agent to Tony Hua, the property owner, to construct a new 3,898 square foot, three-story single-family residence on a vacant 9,152 square lot at 300 Coral Ridge Drive (APN 009-037-420). Recommended CEQA status: Class 3 Categorical Exemption, Section 15303(a).

Assoc. Planner Murdock presented staff report.

Commissioner Cooper saw that there was previous construction done on the site, and he asked why they stopped that construction.

Assoc. Planner Murdock responded that he did not know as it occurred prior to his time with the City.

Commissioner Clifford referred to page A3, stating that the height of the building as shown on the drawing was 35 feet, 3.5 inches and on the following page it shows at 35 feet.

Vice Chair Nibbelin stated that he could get clarification as to which was correct.

Commissioner Clifford thought most things agreed with the 34 feet, 11.5 inches but there are some discrepancies in the plans and he wanted to bring it to their attention.

Assoc. Planner Murdock stated that Section AA on Sheet A3 was indicative of the section height at that location but it was not necessarily indicative of the zoning definition of height which was from the adjacent grade to the lowest part of the building and that was typically taken at the outer perimeter of the structure and, with the section being an interior section, it was possible that it could result in a height that exceeds the zoning standard, but not problematic from a zoning compliance standpoint. He then referred to the south elevation drawing on page A4, stating that he didn't know exactly why the 35 feet was presented, but his interpretation based on the types of drawings typically prepared for this type of project leads him to believe that they were showing the maximum height of 35 feet 0 inches, and with this being so close to that, the casual observer would not notice the one inch difference.

Commissioner Clifford agreed but he wanted everything to be the same all the way through the paperwork.

Vice Chair Nibbelin opened the Public Hearing.

Commissioner Clifford asked if the applicant was supposed to be first and then public comment.

Vice Chair Nibbelin postponed the Public Hearing and invited the applicant to make their presentation.

Carlos Dominguez, agent, referred to the question of what happened with the previous owner. He didn't know except that he thought they made a mistake as where the wall was now, it needs to go down about eight feet more. He concluded that they started and realized they made a mistake and

decided to abandon the project and sell it to his client. He stated that the original approval had flat roofs and he and his client, and the Commissioners as well, didn't like flat roofs, so they put pitched roofs so, in the future, there could be the possibility of putting solar collectors on the roof. He stated that the differences in the plans were not intentional to get something by the Commission, as people do make mistakes. He mentioned some of the challenges with the project, and concluded that it was the best presentation they could come up with and the most appealing for what they have to deal with.

Commissioner Clifford stated that he had one question and concern. He saw a low curb and what looks like a 20-30 foot drop into the back yard. He stated that the curb was very slight and then just a straight drop down. He was concerned about someone inadvertently tripping over it and winding up 20-30 feet down on a patio. He asked if there were plans to put any kind of a railing. He thought, since they want to get light through, possibly they could put a plate glass railing to keep people from walking off the edge.

Mr. Dominguez thought it was a very good suggestion, adding that he had the same feelings. He thought, if they put some kind of a rail, it wouldn't be wood which would look tacky, but it would have to be some kind of stainless steel rails with cables through it.

Commissioner Clifford stated that he also has the back edge of the roof coming down where someone could step on to the roof. He knows kids, and he believes they will be up on the roof if they have the opportunity with the potential of landing on the patio from 35 feet. So, he stated that he would like to see something done so they would not have the ability to step on the roof.

Mr. Dominguez thought a possible solution would be to build a secondary wall at the property line and drop it down 3-4 feet which would give it enough so they would have to at least get a ladder.

Commissioner Clifford thought they would have to have something in writing to make sure it happens.

Mr. Dominguez stated it was not a problem.

Commissioner Clifford asked if they would be amenable if they conditioned something to deal with the potential drop.

Mr. Dominguez stated that he had no problems with that.

Commissioner Evans concluded that there will be a huge amount of excavation.

Mr. Dominguez responded affirmatively.

Commissioner Evans read it to be 2,700 cubic yards, asking if that was all going to be taken away or used for infill, although he didn't think there was any place for infill.

Mr. Dominguez stated that there wasn't.

Commissioner Evans stated that was a lot of ten-yard dump trucks going up and down many times. His concern was the huge amount of excavation. He understood why it has to be done,

but asked that he be kind to the neighbors with all the trucks, and kind to the city for the streets. He did acknowledge that there was a clause about repairing anything they damage.

Commissioner Cooper appreciated the sloped roof, which he prefers to flat roofs, adding that he be careful with the runoff. He stated that there was no gutter shown, which he thought was a minor detail, but erosion was not a good thing. He also had a concern about the excavation. He stated that, with so many trucks, they will need a sweeper as they will trail something onto the road and he highly recommended that they do that. He added that the neighbors won't be too pleased either. He stated that, while he was not a geotech, they were definitely excavating the toe of the slope away from the property owners, so he asked that he do the research and proper engineering.

Commissioner Baringer thought this was an interesting project and, after looking at it, he thought he has a challenge there. He has a concern about the geotechnical work done on the site. He thought they should make it a condition of approval that they retain a second geotech engineer to corroborate what their person does first. He thought, once they start, it is too late to walk it back. He would prefer to see a condition where there was a grading truck route that was negotiated and approved by staff as it was clear on the route by which they enter and leave the project, and they agree that it will be a condition of the project. He thought he will have happier neighbors and it would be clearer as a condition. He had also had some concerns about how the sides were going to work. He understood the terracing, and they will probably have some amazing views, but he thought they have to do some design work from a safety standpoint as it will be an attractive nuisance. He thought Commissioner Clifford's comment could save them and their insurance company a lot of money at some point. He referred to the hydrology, and stated that he wasn't as concerned unless the geotech shows some spring activity. He stated that he lives in Portola Shores and he thought they had two springs running underneath. He hopes they don't have one, but he thought they definitely want to identify it to accommodate it in their foundation design. He stated that he likes the project and he thought they will enjoy it once it's complete.

Commissioner Cooper stated that one of his pet peeves was the garbage and he asked where they are going to put the cans and recycle bins so they don't sit in the middle of the driveway.

Mr. Dominguez stated that there was a lot of room in the garage for that.

Vice Chair Nibbelin opened the Public Hearing.

Chris Weld, Pacifica, stated that he lives at 327 Coral Ridge, across the street from the proposed development and five houses up the hill. He stated that he was the architectural chairperson for the Fairmont Subdivision Improvement Association and stated that normally city staff would come to them first for their recommendation and review. He stated that the property was owned by Mr. Dividitch who owned two parcels, 300 and the one immediately adjacent. He proposed to build a three-car garage, 3 ½ story development with five bedrooms and a study. He stated the Association's concern with that plan was that the house was over built and completely out of character for the neighborhood. He stated that he knows nothing more than what was before him, but he counted 4 ½ bathrooms, five bedrooms and parking for only 3 vehicles with a substandard setback. He urged the Planning Commission to table this matter and allow the Fairmont Subdivision Improvement Association to have an opportunity to consult with the applicant, review his plans and discuss some of the concerns that they all have.

Mr. Dominguez stated that they were asked by Asst. Planner Farbstein to get a letter from the Association approving the plans and they got a letter from them saying they don't look at these projects anymore. He thought it should be on record.

Vice Chair Nibbelin closed the Public Hearing.

Commissioner Evans asked staff if there was a letter on file.

Assoc. Planner Murdock stated that he cannot say whether there was or not as he didn't identify that in his analysis for the project. He stated that there was no Municipal Code requirement for the Fairmont Association to review and approve plans, adding that they retain authority to approve projects within their homeowners association. He stated that, regardless of the City's action, should they oppose some aspect of the development, they would have the right to deny that application and the project could not be built. He stated that it has been staff's experience, when calling the Association, that they have indicated that the vacant lots presently in the Fairmont area are not part of the Association, so it is news to staff. If they have taken a different position, it would be helpful for the Association to communicate that so the procedures are reflecting that.

Vice Chair Nibbelin asked if he was saying that, if whatever power exists, was the power of CC&Rs or contract as between property owners.

Assoc. Planner Murdock responded affirmatively, adding that it was typically the Association requirement that was imbedded within the CC&R.

Vice Chair Nibbelin thought that lies outside what they would be concerned about as a municipality.

Assoc. Planner Murdock agreed, adding that often it extends greater control to private associations and are not limited by the same legal restrictions that municipalities are.

Commissioner Clifford stated that he would like a list of the condition they have been talking about placing to staff, and he asked staff to read back what they would like to see as conditions.

Planning Director Wehrmeister stated that she hasn't finished trying to draft all of them, but one was the decorative barrier on top of the retaining walls to prevent falls.

Commissioner Cooper thought it was a functional barrier, not a decorative one.

Planning Director Wehrmeister stated that it would be decorative at the same time.

Commissioner Cooper preferred a functional barrier than a decorative barrier.

Planning Director Wehrmeister agreed, adding that it will be a functional barrier that will be attractive.

Vice Chair Nibbelin stated "aesthetically pleasing."

Planning Director Wehrmeister stated the plans were to be amended to prevent convenient access to the roof, the geotech peer review and the traffic control plan.

Commissioner Baringer stated it was a specific plan related to the excavated soil removal, an agreed route for that.

Assoc. Planner Murdock made note of the comment by Commissioner Cooper with respect to a street sweeper for excessive cut and off haul, adding that there was no specific period identified, but generally that remark was made.

Commissioner Cooper asked if that was a condition he can put on to have a sweeper there during the excavation.

Assoc. Planner Murdock thought it sounded reasonable, adding that there was evidence of a large amount of cut being hauled from the site, and for comparison purposes, the project the Commission approved at 325 Beaumont estimated 1,100 cubic yards and this was in the order of 2,700, more than twice as much, and he thought there was a rational basis for it, and whether it was daily or weekly was for the Commission to decide what was acceptable.

Commissioner Cooper stated he would like to ask the applicant if that was an onerous restriction to have a sweeper during the activities. Then he stated that the applicant noted that was fine.

Chair Campbell wanted to make sure they get an assent from the applicant on the peer review.

Vice Chair Nibbelin stated that there were a number of conditions they listed, and he asked if there was any comment with respect to those conditions.

Mr. Dominguez didn't think they have asked for anything that was unreasonable. He stated that this was the second geotech report that has been prepared, and they found that they were in rock and the excavation was going to be hard with green stone outcroppings already. He stated that they had Joel Baldwin do the last one, and they will have to send it out for peer review for someone else to look at it, and they will have had three people looking at it and he thought they will be okay. He stated that they were in total agreement with the rails. He stated that, if they need a street sweeper, they will do that because, if the dirt gets out of hand, it becomes obnoxious for the residents and staff will be getting a lot of phone calls and they won't want those calls.

Vice Chair Nibbelin appreciated the feedback.

Commissioner Cooper moved that the Planning Commission find the project is exempt from the California Environmental Quality Act; APPROVE Specific Plan SP-156-15 by adopting the attached resolution, including conditions of approval in Exhibit A, which includes the barrier to prevent access to the roof, functional rail to prevent any issue with kids falling over the edge, and submission of a haul route to the Planning Director, as well as a street sweeper during mass excavation, and incorporate all maps and testimony into the record by reference; Commissioner Evans seconded the motion.

The motion carried **6-0**.

Ayes: Commissioners Baringer, Evans, Campbell, Cooper,
Clifford and Vice Chair Nibbelin

Noes: None

Vice Chair Nibbelin 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:

3. **CDP-372-16** **EMERGENCY COASTAL DEVELOPMENT PERMIT**
CDP-372-16, informational report regarding issuance of Emergency Coastal Development Permit to temporarily post up to 10 signs along a public access trail warning the public to keep away from recent bluff failure located at 200-222 Palmetto Avenue (APN 115-220-999).

Planning Director Wehrmeister presented staff report.

Commissioner Cooper felt the homeowners' association has been great and active within the community. He thought it was an attractive nuisance because people think it is a trail without reading the signs. He assumed that the permit solution would be doing something like removing the sidewalk and trail.

Planning Director Wehrmeister stated that the engineer still needs to figure out what the permanent solution was. She thought there would be some sort of measure along the bluff bottoms to prevent further erosion which would be under the Coastal Commission's jurisdiction or the Coastal Commission could ask that they start moving the trail back away from the bluff.

Commissioner Cooper asked if they have the right to prevent people from accessing that trail.

Planning Director Wehrmeister stated that the Coastal Commission will only allow that in very rare circumstances as they do not want to block public access to the coastline.

There were no public comments.

COMMISSION COMMUNICATIONS:

Commissioner Cooper asked when they are going to fix the rest of the promenade.

Planning Director Wehrmeister stated that she did not have a timeline but she knows that colleagues and the city are looking for grant funding, working with the Army Corp of Engineers to see if we can get the funds necessary to complete the project.

Commissioner Cooper asked if what was there now was a temporary fix.

Planning Director Wehrmeister thought it was temporary.

Commissioner Cooper concluded it was temporary to put concrete in it.

Commissioner Campbell asked about any new developments regarding the quarry developers' plans for moving traffic.

Planning Director Wehrmeister stated she had an update on the quarry, but not necessarily that specific question. She stated that the signatures for the quarry petition were qualified and they will likely see that on the November ballot. She stated that the Council has some options at the next meeting that will likely be on the November ballot. She stated that the quarry applicant indicated they should see an application at the end of the month. They have put up traffic monitoring cameras, which were originally put up without encroachment permits, and they subsequently did get the encroachment permits through the Public Works department.

Commissioner Campbell referred to his specific question regarding the northbound traffic egress from the project at Reina del Mar.

Planning Director Wehrmeister stated that staff has not seen their plans to see if they've changed anything since the study session, but they haven't asked for followup meetings with staff to brainstorm on how to address that issue and she had nothing new to report at this time.

Commissioner Campbell stated that they represented that they were going to provide something in May or June.

Planning Director Wehrmeister thought that was their target for the application submittal, but they have moved back and it was now the end of the month.

Commissioner Campbell stated that he has been asking that specific question and being told that they were going to address that specific issue in May or June.

Planning Director Wehrmeister affirmed that they have not.

Commissioner Evans referred to the map for the Coastal Commission, and asked if there was any word on the Dollaradio station house. He stated that it was real close the last time he was there, and the picture shows it even closer. He asked if anyone was doing anything about that.

Planning Director Wehrmeister stated that Dollaradio has a new owner and they have been talking to staff, but they didn't complete their permitting process for the emergency CDP that was issued many years ago, and there was no new information.

Commissioner Cooper stated that, in the planning session, there was some comment about potentially having Golden Gate National Recreational Area and exploring whether they have any funding.

Planning Director Wehrmeister stated that nothing has come forward.

STAFF COMMUNICATIONS:

Planning Director Wehrmeister stated that the state budget was passed but the trailer bill she mentioned at the previous meeting having to do with By-Right housing development was not passed and they were still negotiating. She stated that there was a possibility that it will pass but

likely they will not see any action until August with rewrites and changes happening. She stated that they received a copy of a letter from the Coastal Commission to the state expressing their concerns with the bill. She then mentioned that the school district was having a public meeting on future use of the Oddstad School site and workforce housing. She had no specific details other than having a community meeting.

Commissioner Evans thanked her and staff for the Commission's presentation at the City Council meeting, adding that she put a lot of work into that. He thought Commissioner Gordon did a good job on the presentation.

ADJOURNMENT:

There being no further business for discussion, Commissioner Cooper moved to adjourn the meeting at 8:20 p.m.; Commissioner Evans seconded the motion.

The motion carried **6-0**.

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

Respectfully submitted,

Barbara Medina
Public Meeting Stenographer

APPROVED:

Planning Director Wehrmeister