

MINUTES

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

February 4, 2019

7:00 p.m.

Chair Campbell called the meeting to order at 7:01 p.m.

ROLL CALL: Present: Commissioners Rubinstein, Clifford, Gordon, Nibbelin, Kraske and Chair Campbell
Absent: None

SALUTE TO FLAG: Led by Commissioner Kraske

STAFF PRESENT: Planning Director Wehrmeister
Sr. Planner Murdock
Asst. City Attorney Sharma
Police Chief Steidle
Asst. Planner Gannon

APPROVAL OF ORDER OF AGENDA Commissioner Gordon moved approval of the Order of Agenda; Vice Chair Clifford seconded the motion.

The motion carried **6-0**.

Ayes: Commissioners Rubinstein, Clifford, Gordon, Nibbelin, Kraske and Chair Campbell
Noes: None

APPROVAL OF MINUTES: JANUARY 22, 2019 Vice Chair Clifford moved approval of minutes of January 22, 2019; Commissioner Gordon seconded the motion.

The motion carried **6-0**.

Ayes: Commissioners Rubinstein, Clifford, Gordon, Nibbelin, Kraske and Chair Campbell
Noes: None

DESIGNATION OF LIAISON TO CITY COUNCIL MEETING OF February 11, 2019:

Chair Campbell stated that they would not need a liaison.

ORAL COMMUNICATIONS:

None

CONSENT ITEMS:

None

CONTINUED PUBLIC HEARINGS:

- 1. PSD-835-18** **File No. 2018-046 – Site Development Permit PSD-835-18,**
CDP-400-18 **Coastal Development Permit CDP-400-18, Use Permit UP-110-18**
UP-110-18 **UP-110-18 and Tentative Subdivision Map (Condominium)**
SUB-240-18 **SUB-240-18,** for the construction of a three-story, two-unit
residential condominium duplex on a 4,726-square foot (s.f.) vacant
lot at 2105 Beach Boulevard (APN 016-182-010). Recommended
CEQA Action: Class 3 Categorical Exemption, Section 15303.

Asst. Planner Gannon presented staff report.

Brian O’Flynn, applicant, stated that they hired one of the best geotech engineers who was very familiar with Pacifica and has worked for a lot of private parties. He reviewed the Moffatt and Nichols report and found that their site was even better suited than the current site. He reinforced how well the project will be built, adding that he over designed the building for its coastal position for the future to last a long time, and more so than would have been required by any regular building. He stated that it had been through all the different departments but the timing didn’t work out with the approval of the subdivision improvement agreement as the city didn’t get back to them in time. He then turned it over to the architect, Alan Martinez.

Alan Martinez, architect, stated that they had expected someone from geotech but they couldn’t make it. He thought the planning summary hit the main points, i.e., the seawall is effectively higher and any ponding will be in the street, and the first floor level is two feet above the ponding, and the first story is concrete and designed as a loss if there is a tsunami and flooding through the first floor will not structurally damage the building.

Mr. O’Flynn reinforced the point that the position of the building is in a very different position than any property north of the pier as mentioned in some public comments and it was a very different animal, and he hoped those two situations aren’t conflated in the analysis.

Chair Campbell opened up public comments.

Stan Zevin, Pacifica, thanked the city for recognizing how dangerous it would be to have people sleeping on the first floor on Beach Blvd. and he thanked the commissioners for asking some good and pointed questions at the last meeting. He mentioned that he read a new study on West Antarctica, the major glacier, and they have discovered a huge hole in the glacier. He stated that in the eight years he has been watching sea level rise studies, not one study has shown that it was slowing down and we were making the wrong choices. He stated that they show there is more ice melting and it will continue that way. He asked the city if they would put the conclusions of the Moffatt & Nichol reports so people know what the choices are. He stated that the city’s intent was to keep the sand nourished and keep the wall built and strong, but he stated that the city has no control over how fast sea level will rise and there was very questionable thought in terms of whether they can get any kind of grants after they get their first round of grants for the wall or even for the nourishment. He asked that they keep in mind that, as sea level rises, the ground water rises and there is a chance of liquefaction when this happens. He stated that, if the foundation is not down to bedrock, there could be a chance of damage to the building and even worse injury to the people inside. He thought this was a lose-lose for the city, and he didn’t see anything written that protects the city and the people of Pacifica from future liability problems

although he realized some of the infrastructure can't be legalized but other liabilities can. He would like an explanation as he has not seen anything about the geology, liquefaction etc., and he sees a lot of chances in the future where this property could cost Pacifica a lot of money. He thought they only need to do a few things like get the foundation down and have something in writing that protects the city from future liability.

Ciya Moazzami, Pacifica, stated he is a resident on Montecito Avenue. He thanked them for taking the time to review the project. He stated he was present when the project was originally approved and he was supportive of the project then and now. He thought sea level rise was a sensitive subject but was not an exact science. He thought Mr. O'Flynn had an ownership in the most well-maintained properties along Beach Blvd. He thought, if they are concerned about long term maintenance and longevity of the property, they would be approving a project to a property owner who maintains and takes care of his properties. He hoped the project is improved and moves forward as it will be a nice addition to the neighborhood. He thought additional density in West Sharp Park would help the future development along Palmetto which will hopefully be a vibrant main street for the city. He thought there were a lot of benefits to getting the project approved and moving forward. He stated that he wasn't a geotechnical engineer but he thought if there was sea level rise and liquefaction, he thought his slab would move as well.

Eric Bruner, Pacifica, stated that he is in full support of the project, adding that Mr. O'Flynn was a very thoughtful builder. He was building a tsunami proof house which is probably the only one on Beach Blvd. and will last for a long time. He thought it would be a great opportunity for people to come and see how beautiful Beach Blvd. is and the potential for Pacifica in the future. He thought it would be great to have a tsunami house that he would live in. He stated that, if he is looking to do that, he was being very thoughtful in the planning. He hoped the Commission sees that and with other reports saying that the seawall is higher and the entire pier protects that property.

Chair Campbell closed public comments.

Mr. O'Flynn reiterated that the building had exceptional structural integrity and wasn't designed to not have people on the ground floor as one of the commenters said, and the building is not built north of the pier as it was alluded to in the previous meeting. He hoped they can support the project, adding that they won't be disappointed in the results.

Vice Chair Clifford stated that he looked at the soils report and the structural plans that the Commission did not get. He thought it was going to be an excellent building. He was convinced that the building will survive sea level rise for the foreseeable future.

Commissioner Nibbelin stated that he had the opportunity to review the GeoSoils report and the rest of the materials submitted, and he was convinced of the integrity of the project. He was confident of Vice Chair Clifford's and staff's competency regarding the soils report. He was in support of the project before and he reiterated his support.

Commissioner Gordon thanked the applicant for going out and retaining Mr. Skelly, as he needed a site specific report. He stated that it was interesting that many of Mr. Skelly's observations were made by the applicant in the last meeting but it was good to get it from an independent expert, adding that the company's name was GeoSoils. He pointed out that there was a lot of discussion at the meeting where this came up about whether the Moffatt report could be readily

applicable to this project site since it was so close. He understood they went round and round and Mr. Skelly said it was applicable. He pointed out that the author of the Moffatt report did say he did not think his report was applicable to this new site despite its proximity because of very specific issues that made that project site different from this site. He understood that Mr. Skelly said no and he thought that the project site was even better protected from wave overtopping than this particular site. He thought that was good, but if he was to do it all over, he thought it was important for the city to get a site specific report if possible. He stated that he has been in the situation of having to defend his client in court from arguments that he was negligent. He stated that whatever the city can do to make it look like it is taking all reasonable steps to make sure that they have done a thorough investigation. He stated that it goes a long way if things ever go south. He stated that, as a lawyer, they are always trying to protect themselves. He thought it was a good thing to do and he thought it was great when he got the packet and the report, and the report said that the project site was better protected from wave overtopping and coastal hazards than the City Council building and now it is actually on the record and the city can rely on this to go forward. He felt they were in a better position than they were before. He stated that it was fair to the applicant to be taking time to talk about this, but it was an ancillary issue that, if it comes up again, it might be good to go the extra step and say they want to see a report specific to the project. He was in support of the project. He acknowledged the comments from the public and it wasn't good news regarding the sheets in Greenland and Antarctica are all melting and sea level rise is a real deal but at the same time the city is doing everything they can to make sure that the buildings that go up in the coastal zone are protected to the extent possible and the city was also protected to the extent possible. He was comfortable with the project and supports it, adding it was good to hear Vice Chair Clifford give his thumbs up.

Commissioner Kraske stated that he was satisfied and was in support of the project. He suggested that, the next time the applicant decides to develop another site, he get the appropriate permits and doesn't let them expire to save everyone some time.

Chair Campbell was glad that they got the site specific analysis required under the city's General Plan and rules. He appreciated that the new report makes certain assumptions and the city has it. He thought the important one was where they say the wave overtopping is unlikely, and that was good.

Commissioner Nibbelin moved that the Planning Commission finds the project is exempt from the California Environmental Quality Act; APPROVES Site Development Permit PSD-835-18, Coastal Development Permit CDP-400-18, Use Permit UP-110-18 and Subdivision (Condominium) SUB-240-18, by adopting the attached resolution, including conditions of approval in Exhibit A; and incorporates all maps and testimony into the record by reference; Commissioner Rubinstein seconded the motion.

The motion carried **6-0**.

Ayes: Commissioners Rubinstein, Clifford, Gordon, Nibbelin,
Kraske 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.

NEW PUBLIC HEARINGS:

- 2. MUP-3-18** **File No. 2018-024 – Marijuana Use Permit MUP-3-18** to locate a marijuana retail operation within an existing commercial building at 403 Dondee Way (APN 022-027-010). Recommended CEQA Action: Class 1 Categorical Exemption, Section 15301.

Asst. Planner Gannon presented the staff report.

Edward Gullian stated that he was with the architectural engineering firm working on this project and he can answer any questions pertaining to the project. He stated that he was there for the applicants, and the was running late.

Commissioner Nibbelin stated that historically they normally have the operator but he understood they were there to think through the land use planning aspects. He asked if there was someone who could speak to some of the operational components of the business.

Phil Cancila stated he was the CEO of Green Haven.

Commissioner Nibbelin stated that he didn't have a question at this point but wanted to know, if they have a question on the operational level, they would be able to ask questions.

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

Vice Chair Clifford asked if the police chief had the opportunity to review the security plan for this applicant.

Police Chief Steidle stated that he did review the security plan with his staff and they approved the security plan in phase 2.

Commissioner Nibbelin thought it looked like the proposal was to have no more than four staff members present on site at any one time. He asked clarification as to whether one of those four was a security staff member.

Mr. Cancila stated that the security officers are third party so they didn't consider them staff.

Commissioner Nibbelin concluded that they would have no more than four staff member plus a security guard.

Mr. Cancila stated it would be four staff members plus one security guard.

Commissioner Nibbelin asked if the delivery service person would be part of the four staff people who might be present at any given time.

Mr. Cancila stated that it could be but they also have another delivery facility in Hayward and they might deploy the drivers to Pacifica to pick up the order and fill the delivery as well as a staff member inside Pacifica.

Commissioner Gordon stated that he had a comment/question for anyone, including the police chief, which he thanked for coming. He was aware of the density issue where they are going to have six MROs and a limit of two per overlay district and this is an overlay district in Rockaway. He stated that they heard another application for a site near the UPS building.

Sr. Planner Murdock agreed, stating that it was at 450 Old County Road.

Commissioner Gordon thought that was about a five-minute walk from this site.

Sr. Planner Murdock thought it was less.

Commissioner Gordon stated that they were in brand new territory since this has never been done before and he wondered about thoughts on pros or cons of having two dispensaries. He asked if the prior dispensary was for recreational or medical or just medical.

Sr. Planner Murdock stated it was for both.

Commissioner Gordon asked if there were any thoughts about having two by each other. He asked if it raises any concerns or was it a good thing because it will create more competition and will lower prices or increase services. He thought it was interesting.

Sr. Planner Murdock stated that City Council as a policy matter has determined that up to two marijuana retail operations per overlay district could be appropriate under certain circumstances. He stated that they did not provide a blanket direction to approve per overlay district, but they did enact this marijuana use permit process so a careful discretionary review could be conducted of the particular circumstances surrounding permitting any particular marijuana retail operation or a pair of marijuana retail operations, and the city's regulations have a finding to require the Commission to determine that the particular arrangement, proximity, size, characteristics of the proposed marijuana retail operations would not be likely to adversely impact the neighborhood. He stated that the Commission has discretion if they should be concerned about any particular aspects of the marijuana retail operations. He added that staff's analysis, in conjunction with the police chief, has not identified any such circumstances but they were there to answer questions or provide information about any matters of concern by the Commission. He added that the Council on appeal has approved two marijuana retail operations in relatively close proximity in the Sharp Park overlay district and this would not be unprecedented to have two authorized in the same overlay district.

Chair Campbell concluded that this was the second one approved in Rockaway.

Planning Director Wehrmeister responded affirmatively.

Sr. Planner Murdock qualified that by saying that the Commission's approval at the last meeting has been appealed to the City Council and that approval was not final.

Chair Campbell assumed that, if that survives the appeal, they will have two in Rockaway that have been approved by Planning Commission through the process. He asked if Seaweed was still open.

Sr. Planner Murdock stated that it was a business in the Rockaway Beach neighborhood but was not a marijuana retail operation per the city's definition. He stated that business operator has applied and is on the lottery list to conduct and operate a marijuana retail operation but is not currently eligible due to the numerical limitations, if both of these are approved. If this application is disapproved or the other application is denied on appeal, there may be a possibility for Seaweed's application to be considered.

Planning Director Wehrmeister stated that city staff has received direction from Council at a recent study session to bring to the Planning Commission for consideration of recommendation of amendments to the marijuana regulations, one being to consider allowing three marijuana retail operations within certain overlay districts. She stated that it was not germane to this hearing as those are not adopted regulations but because they were asking about the number, but she thought it would be good to let them know that.

Chair Campbell appreciated the information. He then stated that he didn't know if efforts have been made by the city or police, etc., to shut it down, but if the proposed amendments come before them, he would want to see that in the package if possible. He then thanked the Police Chief for attending.

Commissioner Nibbelin referred to the conversation they were having regarding proximity of one potential dispensary to another, and he was trying to get a sense of the maximum distance these operations could be located from each other. He thought 350 feet was more than a football field and he could walk it in less than five minutes. He was curious from a densification perspective as to how far could they realistically could spread these out in that particular overlay district.

Sr. Planner Murdock thought it would not be very far apart as the Rockaway Beach district is very condensed. He stated that, should the Seaweed application move forward, it was between these two and they would run the length of Rockaway Beach in many respects and he didn't think they would get a great lateral or horizontal separation given the layout and nature of commercial activities in Rockaway today.

Commissioner Nibbelin added his thanks to Chief Steidle for coming. He then asked if there were benefits to enforcement and monitoring by having things co-located or proximate in terms of the work they have to do.

Chief Steidle stated that there can be but it depends on whether one or both of them become problems or not. He stated that they have the staff available to monitor them. He stated that, by having two in the same location, he didn't have any concerns about their ability to monitor them both.

Chair Campbell stated that the applicant was present and was available to answer any questions.

Vice Chair Clifford acknowledged that they received an email from Carly Garr who is concerned about having more than one in the area based on traffic, parking, etc. He didn't have any particular concerns about this operation as it was in its own two-story building and the whole building will be dedicated to the business and has its own parking. He thought this was the best one of all the projects that have come forward.

Commissioner Rubinstein stated that he would like to hear more from the applicant in terms of the operation before he would be comfortable proceeding, as he thought there was a lack of clarity.

Chair Campbell thought that was okay as they barely used a couple of minutes.

Mr. Kirkland thanked the city for allowing them to come here. He has worked with several of the staff and it has been a very professional experience. He has a long cannabis background that is well thought out. He thought, as Vice Chair Clifford pointed out, this was a very ideal spot with the structure and parking. He thought it will be a very attractive building and was well suited as they have built their understanding and ethos of their approach was very high scale. They believe in the industry beyond the economics and it a good thing for the economy and the people. They looked forward to working with staff. They were open to any comments they may have.

Commissioner Rubinstein asked for more specifics on his comments on ethos and vision for the business.

Mr. Kirkland stated that they fundamentally believe that this plant has been with us for millions of years and there are phenomenal doctors around the world and this was a worldwide movement, not just happening in California, adding that the Cannabis Commission in UCLA was showing incredible things. He stated that they will follow those roots and bring in the best offered and provided scientific approach to use it beyond recreational use. He also thought there will be great innovation in recreational use. He stated that they want to be innovative and bring it to Pacifica. He thought they were well located to San Francisco and other places to bring innovations to people outside Pacifica through home delivery. He thought this will continue to grow in California and they plan on being part of that and tax revenue will generate here. He stated that they will provide good service which brings people. He stated the density was brought up, and it was a small area. He stated that they know the other applicant and plan on being very cooperative with them and have talked about how to develop the industry to bring healthy participation from the Pacifica community and outreach to other places. He thought that more locations didn't necessarily mean a bigger economic impact. He thought two is the right number but they need to see how this will develop. He thought Pacifica was uniquely geographically located and they have to see if they will be able to bring some of the outside community here to participate in what they are doing. He was optimistic. He stated that they look forward to working with the company to the south as well. He felt it was a very good industry with very long legs and will do very well with enough room for more than one and they can bring a high level of operations that they can grow with each other. He stated that it was healthy for the community and they look forward to doing that. He stated that, more directly addressing the question, they believe that cannabis comes out of the medicinal world and that is their true roots and they look to bring health insurance to their employees and higher than a minimum wage to their base employee staff and look to educate people here and beyond with the ability to move up. He stated that they were very excited about this area and they look to help everyone and think this is good business.

Commissioner Gordon asked if Green Haven was operating other dispensaries.

Mr. Kirkland stated that their lineage is in the industry. He stated that they are not operating now since grandfathering out of the collective law as of January 10, and they shut down. They do not

participate now and are waiting on licensing. They are committed to doing it the right way and are implementing policies within the company to do that.

Commissioner Gordon asked if their idea was to open up dispensaries in other locations in California.

Mr. Kirkland stated that they are permitted in Hayward and are looking in Oakland. He stated that it was an operation that has a lot of nationwide industry expertise that is available and they see the Bay Area as one of the great markets for cannabis in the country and it was attracting a lot of talent and resources and they will do it in a way that is responsibly done. He stated that they are in discussion with a lot of people beyond economics, such as licensing of their products. He stated that they will bring a lot of professionalism they have learned around the country.

Commissioner Gordon asked if Green Haven has a footprint outside of California.

Mr. Kirkland stated that he was an attorney that has been in the industry for three years and is a principal here, not the majority shareholder but the CFO, general counsel and was very involved including all around the country, speaking with the elite groups that are getting involved. He stated that they have access to a phenomenal amount of resources, technology, products and they will bring them all here. He stated that people are excited about Pacifica.

Commissioner Gordon asked if they operate any dispensaries outside of California.

Mr. Kirkland stated that Green Haven does not, with a lot based on the federal rules that cross border and interstate commerce issues say they cannot do so. He stated that they are very cooperative with companies all across the country.

Commissioner Gordon asked if they have affiliated entities that operate in other states.

Mr. Kirkland stated that they do, mentioning Massachusetts, Pennsylvania, Maryland, Michigan, adding name a state and they probably have a connection to it that is fairly significant.

Commissioner Gordon asked, when he says connection, if there is an affiliated entity.

Mr. Kirkland stated no economic equity ownership which is very straight up, not creative legally. He stated that they are a stand alone, a very small company, but they have access to companies that can give them insight on how to do it. They look to best practices where they find them and tap into them. He reiterated that they are a small stand alone. He stated that Phil Cancila is the CEO. He stated that they started this a couple of years ago. Mr. Cancila has been in the business through the vape manufacturing business for 7 or 8 years with a very successful company out of San Francisco and was the COO there. He broke out to start a collective under the Proposition 215 or SB 420 law and developed a lot of the expertise from it. He stated that he hired him as a lawyer and they spent time together. He saw that he was authentic and he decided to come on board. He stated that he has not been paid in this company for over two years and he was excited.

Commissioner Gordon jokingly stated that working without pay was not legal.

Mr. Cancila stated that he was a good man. He stated that he was excited about it and it was going to be done very well.

Chair Campbell stated that he was opening up the Public Hearing to give the public the opportunity to comment again and, seeing no one, closed the Public Hearing.

Commissioner Gordon moved that the Planning Commission finds the project is exempt from the California Environmental Quality Act; APPROVES Marijuana Use Permit MUP-3-18; by adopting the resolution included as Attachment A to the staff report included conditions of approval in Exhibit A to the resolution; and INCORPORATES all maps, the applicant's MUP application and all attachments and testimony into the record by reference; Vice Chair Clifford seconded the motion.

The motion carried **6-0**.

Ayes: Commissioners Rubinstein, Clifford, Gordon, Nibbelin,
Kraske 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.

COMMISSION COMMUNICATIONS:

Chair Campbell asked staff if there was any progress on the specific plan for Pedro Point.

Planning Director Wehrmeister stated yes somewhat, reporting that she brought that as well as the request to study the Rockaway parking district fee to the City Manager and they were working on putting that on the list of items for Council's consideration on March 9 when they will have their goal setting session.

STAFF COMMUNICATIONS:

Planning Director Wehrmeister also reported that marijuana use permit for the 450 Old County Road site was appealed and will tentatively be heard by Council on February 25th. She stated that they have another Planning Commission meeting in between and will be asking for a liaison for that meeting. She stated that on the 25th they will bring an update on the library project and community outreach they have done, as well as a preliminary conceptual drawing for the two facilities.

Commissioner Gordon asked how many marijuana retail operations they have approved.

Planning Director Wehrmeister stated that, with this one, it was four.

Commissioner Gordon asked how many have been appealed.

Planning Director Wehrmeister stated it was three.

Commissioner Gordon concluded that everyone they approved has been appealed.

Planning Director Wehrmeister responded affirmatively.

Commissioner Gordon asked if they were appealed by different appellants.

Planning Director Wehrmeister stated that the first two were by Adam Zollinger and the last one was James Stark.

Commissioner Gordon asked if they were competing establishments.

Planning Director Wehrmeister stated that the last appeal was mentioned as a concern about the parking in the Rockaway District and with the first two, she wasn't sure if there was a clear reason for the appeal. She stated that she didn't think they have to have one.

Sr. Planner Murdock stated that the appellant for the first two in Sharp Park was the next individual on the lottery list for Sharp Park, but that fact was not stated as one of the bases for appeal. He stated the appellant's bases for the appeals were enumerated in the reports that were prepared for Council.

Planning Director Wehrmeister stated that they have already mentioned this, but in March draft revisions to the cannabis regulations will be brought to the Planning Commission for

recommendation and consideration, as well as updates to the ADU ordinance to be in compliance with recent state law changes.

ADJOURNMENT:

There being no further business for discussion, Commissioner Nibbelin moved to adjourn the meeting at 7:58 p.m.; Vice Chair Clifford seconded the motion.

The motion carried **6-0**.

Ayes:	Commissioners Rubinstein, Clifford, Gordon, Nibbelin, Kraske and Chair Campbell
Noes:	None

Respectfully submitted,

Barbara Medina
Public Meeting Stenographer

APPROVED:

Planning Director Wehrmeister