



**MEETING MINUTES
PLANNING COMMISSION
CITY HALL COUNCIL CHAMBERS
154 SOUTH EIGHTH STREET
GROVER BEACH, CALIFORNIA
TUESDAY, MARCH 11, 2008
6:30 P.M.**

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in a City meeting, please contact the City Clerk's Office (473-4568) at least 48 hours prior to the meeting to ensure that reasonable arrangements can be made to provide accessibility to the meeting.

CALL TO ORDER Chair Peterson.

FLAG SALUTE: Commissioner Blum led the flag salute.

PRESENT: Commissioners: Blum, Coleman, Long, Marshall, Nielsen, and Chair Peterson.

ABSENT: Vice Chair Snow

PUBLIC COMMENTS: *At this point of the meeting, members of the public may bring up any items within the jurisdiction of the Planning Commission that are not on the agenda. Please limit your comments to three (3) minutes. The Planning Commission will listen to all comments; however, in compliance with the Brown Act, the Commission cannot act on items not on the agenda.*

Edie Brether, 668 Charles Street, asked about what was happening with a property in her neighborhood. Planning Manager suggested that she contact Community Development staff during business hours, and they can try to assist her.

PUBLIC HEARING ITEMS:

**1. Revocation of Home Occupation Permit
Business Name – Bernal Landscaping
Business Owner – Elpidio Bernal**

This is a request by Staff for revocation of a Home Occupation Permit issued to Elpidio Bernal for the property located at 29 & 31 Parkview Avenue (Assessor Parcel No. 060-513-013) in the Coastal Residential (C-R-2) District. The project planner is Planning Manager Diana Gould-Wells.

Staff will request that this item be withdrawn from further consideration. The applicant has corrected existing violations.

Planning Manager Gould-Wells, indicated that the business owner has come into compliance with the requirements of the Home Occupation permit, and staff is requesting that this item be removed from the agenda. It was brought to the Commission's attention that Commissioner Nielsen had a conflict on this item due to his proximity of the address, and he left the hearing room at this point.

Commissioner Coleman made the motion to withdraw the revocation hearing from the agenda. Commissioner Marshall seconded the motion, and it was carried.

Commissioner Nielsen returned to the hearing room.

2. Revocation of Home Occupation Permit

Business Name – Great Rate Plumbing

Business Owner – Kevin Kuktavy

This is a request by Staff for revocation of a Home Occupation Permit issued to Kevin Kuktavy for the property located at 1031 Newport Avenue (Assessor Parcel No. 060-106-008) in the Single Family Residential (R-1) District. The project planner is Planning Manager Diana Gould-Wells.

Commissioner Blum had a conflict on this item due to having property within 500 feet of the business address and left the hearing room.

Planning Manager Gould-Wells presented the staff report for revocation of a Home Occupation Permit for the subject business. She presented the background for the Home Occupation Permit and the issues related to it, including several complaints and site visits by Code Enforcement. She outlined the Code Enforcement correspondence with the business owners. No response was received from the business owners, and they were sent a notice about this public hearing.

She outlined the Municipal Code violations that exist on the site, including business vehicle parking, employees of the business who do not reside at the residence, and multiple business locations. Staff's recommendation is for the Planning Commission to adopt the resolution which would terminate the Home Occupation permit for the subject business.

Commissioner Long asked if there had been ongoing inspections of the property as part of the Home Occupation permit. Planning Manager Gould-Wells deferred the question to be answered by the Code Enforcement representative.

Andrew Steele, Code Enforcement Officer, relayed conversations he had with Mr. Kuktavy, and that Mr. Kuktavy understood the violations that existed and that they had to be resolved. He indicated that the photos presented were obtained from the complainant, and were representative of the conditions that were found on the site.

Fire Chief Mike Huber was also present.

Commissioner Marshall asked Mr. Steele if the business owner indicated during their conversations that they would come into compliance. Mr. Steele indicated that Mr. Kuktavy indicated that they could come into compliance by the first of the year.

City Attorney Koczanowicz outlined the procedures for the revocation hearing and discussed the intent of the Home Occupation Permit. He stated that any one of the violations outlined in the staff report is grounds for a revocation of the permit.

Kevin and Cynthia Kuktavy addressed the Planning Commission. Mr. Kuktavy indicated that the complaints were from a landlord and a tenant at the same property. He presented a petition that was signed by people in the neighborhood. He also indicated that he took pictures. He indicated that he has one company truck on site, and one company truck that he took the sign off of, and intends to sell it. He indicated that he has laid off one employee and currently only has one employee that works through a temporary service. He stated that he has an employee due to previous illness, and he's doing the best he can. He stated that he has taken care of the violations, and the City could come to reinspect. He outlined the dispute with the complainant.

Mrs. Kuktavy indicated that they have rental properties near their home, but they contain no plumbing equipment located at those sites. She indicated that they have done plumbing work on the other properties. She also indicated that one of their employees lives near the complainant, and he used to be picked up for work at his residence. Mr. Kuktavy indicated that they have a place in Arroyo Grande where they can store things, if the need arises.

City Attorney Koczanowicz showed photos of a truck and asked the Kuktavy's if it was one of their trucks. They indicated that it was, but it was parked at the rental unit to pick someone up. City Attorney Koczanowicz gave the dates of the pictures for the record as the December 11, 12, 14, 16, 21, and 28, 2007.

Commissioner Nielsen asked if they had employees. Mr. Kuktavy indicated that they have employees that work through United Staffing, and that they do not live at the subject residence.

Commissioner Marshall asked if it was still possible that they could come into compliance with the regulations. The Kuktavy's indicated that they could. Commissioner Marshall asked if they would be in compliance with the regulation regarding employees. Mrs. Kuktavy didn't know they weren't in compliance with that, since their employees are through a temporary agency.

City Attorney Koczanowicz indicated for the record that Section 9142.4a states that the "occupation be conducted entirely by the occupants of the house."

Mr. Kuktavy stated that they could come into compliance with the employee regulations within a few months and that they are scaling things down. Commissioner Marshall asked if they have considered renting a place to run their business. Mr. Kuktavy indicated that indicated that business is slow and they could not manage it right now.

Commissioner Long asked if Mr. Kuktavy had contact with Code Enforcement and asked for more time. Mr. Kuktavy stated that he did not.

Neal Sather, 971 Newport, employee of Mr. Kuktavy, stated that there haven't been any plumbing trucks at 955 Newport unless there was work being done there.

Raymond DeJohn, 832 Guadalupe Road, Arroyo Grande, indicated that he worked for Mr. Kuktavy from April 2005 to June 2007. He stated that all dispatch is being done by phone. They did not report for work at Mr. Kuktavy's home.

Gerald Burns, 941 Newport, stated that there were never any problems until the complainant moved in across the street, and she had also accused him of running a business from his home.

Eugenia Gelman, 1017 Newport, lives near the subject property and stated that the Kuktavy's are good people, and he had assisted her with some repairs. She stated that she has never had any problems with noise or other issues.

Mike Biven, 433 Sousa Dr., Nipomo, works for Mr. Kuktavy through a temp agency. He stated that he picked up his coworker and that was his automobile in the pictures. He indicated that he doesn't honk the horn, but calls him before he gets there.

Liz Doukas, Newport Avenue, presented a petition to the Planning Commission. She stated that this problem have been going on for at least a decade. People would complain, and he would stop for a while but start up again. She outlined times and dates when she saw the vehicles at the residence. She stated that the people that signed the petition were tired of driving around the

vehicles and having to navigate around them, as well as the noise, honking and yelling that takes place. She stated that there are a lot of other things going on at the property, as well. She stated that this area isn't appropriate for this kind of business.

Chair Peterson closed the public hearing. Planning Manager Gould-Wells summarized the testimony that had been given, outlining the violations of regulations.

City Attorney Koczanowicz informed the Planning Commission that their role is to determine whether or not evidence presented shows that the Home Occupation Permit was violated during the period of time indicated, not to determine what may happen in the future. If the Commission follows staff's recommendation, in the future, Mr. Kuktavy could return and apply again, assuming the business could be operated within the regulations.

Staff recommends the revocation of the Home Occupation Permit.

Commissioners Long and Coleman and Marshall indicated that there was enough evidence to revoke the Home Occupation Permit. Commissioner Nielsen indicated that if there were only one or two items out of compliance, he could see working with them further, but with at least four, he supports staff's recommendation.

Chair Peterson stated that she supports small businesses, but they have to go with the regulations that are in place and supports staff's recommendation.

Commissioner Long made a motion to follow staff's recommendation, Commissioner Coleman seconded the motion, and it was carried by a vote of 5-0-1-1 with Vice Chair Snow absent and Commissioner Blum excused due to conflict.

City Attorney Koczanowicz reminded them that the decision of the Planning Commission is appealable to the City Council within five (5) working days by contacting the City Clerk. He requested that the Planning Commission ask the business owner what time frame they need to come into compliance with the revocation. Mr. Kuktavy indicated that they would like to appeal the decision. City Attorney Koczanowicz indicated that if they appeal, then the action is stayed while the appeal is in the process and they can continue operations. If they don't appeal, two weeks could be a reasonable time to come into compliance.

3. Development Permit Application 07-043

Applicant – Jeff Williams

This Application is a request for approval of Site and Architectural Plans to allow the construction of a second story roof deck. The subject property is located at 800 Nice Avenue (Assessor Parcel No. 060-337-001) and is zoned Single Family Residential (R-1). The project planner is Cassandra Mesa.

Planner Cassandra Mesa presented the staff report. She described the current condition of the property and the proposal before the Planning Commission for a second story roof deck. Staff believes it is consistent with the General Plan and is exempt from CEQA. Staff recommends approval of the project.

Commissioner Blum asked about the setbacks. Ms. Mesa stated that on the one side that is adjacent to another property, the roof deck is set back three feet.

Commissioner Marshall asked about the Roof Deck Ordinance. Ms. Mesa indicated that the ordinance applies to all residences in the R-1 zone.

Chair Peterson asked about a possible second unit, and how the privacy of the second unit might be impacted by the roof deck. Planning Manager Gould-Wells indicated that the second unit isn't under consideration at this time.

John Mack, 1141 Highland Way, spoke representing the applicant. He asked that the Planning Commission approve the addition of the roof deck.

Commissioner Nielsen expressed concern regarding the Jacuzzi that is proposed for the roof deck. Mr. Mack indicated that it was seismically designed to carry the weight of the water.

The public hearing was closed.

Commissioner Marshall made the motion to follow staff's recommendation. Commissioner Coleman seconded the motion, and it was carried with a vote of 5-0-1-0, with Vice Chair Snow absent.

4. Development Permit Application 07-012

Applicant – Clearwire Wireless

This Application is a request for a Use Permit to allow the construction of a 60-foot high monopine for wireless communication purposes, antennas, and related ground equipment. The subject property is located at 750 Charles Street (Assessor Parcel No. 060-443-049). The property, zoned Single Family (R-1) has street frontages on both Charles Street and North 8th Street and formerly had the address of 751 North 8th Street. The project planner is Janet Reese.

Planner Janet Reese presented the staff report. She indicated that the project site is the existing City of Pismo Beach water tank site. She describe the surrounding uses.

Staff would like to add an additional condition, CDD 7, limiting the hours of construction from 7 a.m. to 7 p.m. M-F and 8 a.m. to 5 p.m. on weekends and holidays, in accordance with the Municipal Code.

The height of the proposed pole and foliage is similar to nearby trees and is compatible with the neighborhood. Staff is recommending the granting of the use permit.

Commissioner Marshall asked what the tower was for. Planner Reese stated that it is a wireless broadband/internet site. Commissioner Marshall asked if it operated the same as cell phone towers. Planner Reese stated that it has antennas that are mostly hidden by the branches, which is similar to cell towers.

Commissioner Marshall asked who benefits from this project, and why the applicant wanted to use this site. Planner Reese stated that that would be a better question for the applicant.

Commissioner Marshall stated that it surprised him that it was located next to a school site. Planner Reese stated that because of the type of service, wireless internet, it needed to be located close to residential uses to provide the desired coverage. Commissioner Marshall expressed concern about exposure risks with children.

Commissioner Coleman asked if this type of tower was typically placed in neighborhoods. She

stated that it seems like it should be located away from residential uses.

Commissioner Coleman stated that it seemed like an odd location for this tower. She stated that more information would be helpful.

Chair Peterson asked if the Municipal Code had height restrictions for utilities. City Attorney Koczanowicz stated that there is no specific height restriction, which is why a use permit is required. Anything over 12 feet must have a use permit.

Chair Peterson opened the public hearing and asked the applicant to come forward.

Tricia Knight spoke representing the applicant. She showed a picture of a similar pine tree pole on the Arroyo Grande Hillcrest water tower site. She stated that the antennas are not visible and the trees are color matched to the area. She stated this proposal differs from cellular phone services in that it provides wireless internet service. They want to start a service here because there is a demographic that cannot afford the other types of internet service that are currently available. Clearwire's objective is to establish a network that offers internet services at a lower price range. They feel that it fills a need in the community and have been establishing networks within other cities in San Luis Obispo County.

Commissioner Nielsen asked what the range on the tower was. Ms. Knight stated that the range is about 2-3 miles.

Commissioner Marshall asked if this were the best place, or if there was a better place in Pismo or Arroyo Grande. Ms. Knight stated that unlike cell phone service that can be located outside of the population area it is trying to cover, this service is trying to cover the residences and it is beneficial for them to be as close to the users as possible.

Commissioner Marshall asked if there was any concern about the proximity to the school. Ms. Knight stated that the guidelines for this type of technology, as well as cell phones, are governed by the FCC, and there are exposure limits that have to be complied with. These towers are so low-powered that they are well below the FCC standards, so they do not have any concerns about that issue.

Commissioner Marshall asked if they will be paying a leasing fee to the City of Pismo Beach. Ms. Knight stated that they would be. Commissioner Marshall stated that the City of Pismo gets the leasing fee, but the City of Grover Beach has to look at the tower. Ms. Knight stated that that was correct, but added that the residents of the City of Grover Beach will potentially use the services provided.

Commissioner Coleman asked if the antenna on Hillcrest was the same height as the proposed one. Ms. Knight stated that it was the same height, 65 feet.

Commissioner Coleman asked if exposure is increased when more antennae are added to the pole.

City Attorney Koczanowicz stated that that area of concern is controlled by the Federal Government. The FCC sets the guidelines and limits, and compliance with the FCC regulations is what they need to comply with. He stated that whatever decision they reach should not be based on these criteria, as the City is preempted from regulating that area.

Ms. Knight stated that right now, there are only three panel antennas and a microwave antenna proposed, and that has been evaluated in the report that was submitted. Anything else that may be added would have to come before the Commission again, with new evaluations and reports based on the additions.

Commissioner Long asked if they are planning for that in the future. Ms. Knight stated that there is always the opportunity for additional carriers to request co-location, but there is nothing planned at this point.

Commissioner Long asked if there have been other towers located in close proximity to a public school. Ms. Knight stated that yes, there is a site in Nipomo and the site at Hillcrest that are both located near residences and schools.

Commissioner Blum asked what the capacity of this monopine is. Ms. Knight stated that approximately three carriers could locate on the pole.

Chair Peterson asked if it was possible to put another monopine on the Hillcrest site. Ms. Knight stated that the site is already very crowded, and there is insufficient room to locate another one there. There is physically not enough room. Chair Peterson asked if there was enough capacity for them to co-locate on one of the other existing monopines. She stated that there was not.

Chair Peterson opened the public hearing.

Norma Nuno, Grover Beach resident, received the public notice for this item. She has lived here for a long time. She stated that it seems that when Pismo Beach wants to do something, they come into the prime areas of Grover Beach. She would like to find out why this is proposed in Grover Beach, instead of Pismo Beach. She is not against it, but is curious.

Robert Brether, Grover Beach resident, lives near the site. He has a background in electrical engineering. He stated that you can get radiation from the electromagnetic field no matter where you put an antenna with a radio frequency. He expressed concern about interference with other electronic equipment. He also asked why it was proposed so close to a school.

He stated that it was brought up that the height of the antenna would be similar to the trees around it. He stated that the tree that was near it has been cut down. He stated that artificial trees are not that great to look at. It is a wonderful area, and the water tanks are bad enough. He stated that line of site is very important, and it would be better if they could find a nice hill that wasn't next to a home or a school. He wants to keep the neighborhood beautiful.

Chair Peterson closed the public hearing.

Commissioner Coleman asked if there was a reason the monopine couldn't be located on a hillside somewhere that wasn't a residential area. Ms. Knight stated that the proposed site will cover the greatest distance with the users it is trying to attract, without having to have multiple sites. The further they are from the residences means that more of them are needed to cover the same area.

Commissioner Coleman asked what the benefit is to Grover Beach. Ms. Knight stated that it benefits the population of Grover Beach by providing an option for lower-cost internet access. It gives lower income families an opportunity to afford those services. Commissioner Coleman asked if they would still have that option if it was located someplace else. Ms. Knight stated that if the signal was able to reach the area, yes.

Commissioner Marshall asked about the potential for interference with existing cell phones and other electronics in the area. Ms. Knight stated that the FCC takes precautions regarding interference with other carriers. For emergency services, if there is concern about that, there have been conditions on other projects where upon turning the facility on, if they are in the vicinity of emergency services, a test can be run right when they turn it on to ensure that there are no interferences. Typically, at 800 mhz, which this will run at, there are no interferences.

Commissioner Marshall asked what happens if they turn it on and the City receives complaints from residents about interference. Ms. Knight indicated that that has never happened before, since they operate at different frequencies than other equipment.

Commissioner Marshall asked if they are mainly targeting Grover Beach residents. Ms. Knight stated that that is true, and the intent is to have the one facility that covers a large area.

Commissioner Marshall stated that even though the site is in Grover Beach, Pismo Beach gets the money.

Commissioner Marshall stated that he is concerned about the proximity to the school. He stated that the only benefit to Pismo Beach is the leasing income. The benefit to Clearwire is the ability to add more antennas from other carriers and charge them.

City Attorney Koczanowicz stated that the fact that the City of Pismo Beach owns the property is not relevant. In theory, any property owner could ask for the same consideration.

Commissioner Marshall stated that his other concern was the artificial tree. He has heard people say that they are very unattractive. Ms. Knight stated that these are different than the older ones. The one on the Hillcrest tower has been up for 5-7 years.

Chair Peterson asked about the trees that Mr. Brether stated had been cut down. She thought that if trees were going to be cut down, a permit had to be obtained. She asked if staff had any information about the trees being removed.

City Attorney Koczanowicz stated that, generally speaking, there is no permit required to remove trees. There are some exceptions to that, if the tree is of a size, age and species of tree that is protected, an arborist review might be required.

Ms. Knight stated that if the trees have been removed, then it might be more compatible if they were to reduce the height of the pole.

Chair Peterson asked how low they would be willing to bring the pole. Ms. Knight stated that they would be willing to reduce it to 50 feet, at the top of the foliage and the antennas would be at about 45 feet.

Commissioner Marshall asked if lowering the antennas would increase the exposure to the kids walking underneath it. Ms. Knight stated that they are in compliance with regulations, regardless of how low the antennas are placed. Commissioner Marshall read in a report that the people who work near these things have to take precautions. Ms. Knight stated that it applies when people are working on the antennas. She stated that they are occupational standards and she is unsure about the specifics of the requirements.

Commissioner Long asked if they looked at other sites within the City. Ms. Knight stated that they did. She stated that there aren't existing buildings that they could locate it on. When they looked at the area that they wanted to cover, they want to find the largest unobstructed view. That is how they ended up at this site. They also looked at the park that is adjacent to the school, and they also looked at Hillcrest, but they lacked the space needed.

Commissioner Blum asked if they checked with the school district to see if the facility could be located on a school site. Ms. Knight stated that they considered the school. It is not ideal, because they don't have a lot of extra space that can be used.

Chair Peterson asked for a motion, and a second, before further discussion.

Commissioner Nielsen made the motion to adopt Resolution 08-013, accepting staff's recommendation. Commissioner Blum seconded the motion.

Commissioner Blum stated that since similar towers are already located near school sites, this technology is a way to create opportunities in the city and possibly in the school. He thinks it will open up a wireless potential for businesses on the Grand Ave. corridor.

Chair Peterson reminded the Commissioners that their decision has to be based on findings of fact based on substantial evidence in the record. They don't have evidence in the record that it would be detrimental.

Commissioner Long asked if the motion presented was for the original staff recommendation. Commissioner Nielsen stated that it was. Commissioner Long stated that there was discussion about lowering the height, and Commissioner Marshall stated that there was a condition discussed regarding interference with emergency services, and he would also like to extend that to interference the residential areas.

City Attorney Koczanowicz stated that the condition regarding emergency services is already in the resolution. Commissioner Marshall asked about interference with residences. City Attorney Koczanowicz stated that that is not part of any condition, and if the Planning Commission wishes to propose that, they need to determine if they are talking about the entire city, or within a certain distance to the site. Commissioner Marshall stated that the only people who will know about the condition are the people closest to the site. He stated that there was an engineer who spoke and indicated that interference was a possibility. He stated that he could probably support the resolution, with the revised height, and the conditional language that was discussed. Chair Peterson asked if Commissioner Nielsen wanted to amend his motion. He stated that he did. Commissioner Blum revised his second.

City Attorney Koczanowicz asked for clarification regarding what kind of mechanism the Planning Commission envisions to deal with residential interference. Commissioner Marshall stated it could be based on complaints. City Attorney Koczanowicz stated that it would be very difficult to enforce or condition the project like that.

Ms. Knight stated that the City of Arroyo Grande required that they have an outside consultant that coordinates with emergency services to get the frequency information, and run tests that show that they will not interfere with those services. It is a little tricky when you are dealing with individual residences, because how is it verified that the interference is coming from a specific source. City Attorney Koczanowicz stated that with the emergency services, there is a mechanism in place that is used as a standard to monitor this type of thing. With regard to home owners, he is not aware of any way to measure or verify this information. He will leave it to the

Planning Commission to decide.

Mr. Brether stated that in Nipomo, south of Highway 101, off of Tefft, four or five blocks from Tefft, there is a church with a beautiful pine tree that is an antenna. When he was next to it, he saw that there was a large, fenced off area with a sign warning people to stay away. He stated that there is a path from the school on the proposed site next to the antenna location. If there is a problem or high radiation or electrocution, there could be an easy way for a child to get into that.

Commissioner Marshall stated that he is willing to leave off the condition regarding the individual residences. He asked if there was anywhere on the site where the pole could be moved to keep it away from the pathway.

Ms. Knight stated that to meet the setback requirements, the current location is the only place it can go. Commissioner Marshall asked who owned the area with the path. Planner Reese stated that the City of Pismo Beach owned it. He asked if there was a public easement across the property. City Attorney Koczanowicz stated that they can get that information. He stated that there is a pathway that serves the neighborhood.

Commissioner Coleman asked if they had received any complaints after the installation of the Arroyo Grande pole. Ms. Knight stated that they did not have any complaints or interference issues with emergency services or anyone else. Commissioner Coleman asked if there was as much public access to the other site as there is to this one. Ms. Knight stated that there is no pathway directly, but there are residences that abut the project site from the rear and sides.

Commissioner Marshall asked if there was any way to get free internet access for the school. Ms. Knight stated that she can bring that up to her client.

Chair Peterson stated that she is looking at the findings of the resolution. She stated that in the area they are proposing, there aren't a lot of high trees. She doesn't believe that putting a 50 foot fake tree is consistent with the City's goals and policies. She stated that it is a utility, and they are limited to 12 feet without a use permit, and this is going to be 50 feet. She can't agree that it is consistent, and that it won't be detrimental to the neighborhood. She stated that they could argue about the government saying it is safe. She stated that she would still argue that it is not consistent and that it is detrimental to the general welfare of the people in the neighborhood, if nothing else, visually and architecturally. She thinks it is a detriment. She thinks that they have an opportunity not to put up a hideous eyesore. She supports growth and providing good services, but she cannot support this. She stated that the presentation was very professional, she just disagrees with the project.

Chair Peterson called for a vote. The motion failed with Commissioners Coleman, Long, Marshall and Chair Peterson voting no, Commissioners Nielsen and Blum voted yes.

5. Development Permit Application No. 07-011 (continued from March 4, 2008)

Applicant – Eric Briggs

This Application is a request for approval of Site and Architectural Plans, Use Permit, and Tentative Parcel Map to allow the construction of a three-unit, three-story residential condominium project. The subject property is located at 1210 Nice Avenue (Assessor Parcel No. 060-357-007) and is zoned Multiple Residential (R-3). The project planner is Planning Manager Diana Gould-Wells.

Planning Manager Gould-Wells presented the staff report. She described the current conditions of the site and the proposed layout of the proposed project.

She brought up the location of guest parking space 3, located partially in the rear yard setback. The zoning code does not allow parking in the setbacks, however, in some cases, the Planning Commission has approved parking in the setbacks in the past. Staff recommends allowing the space to remain in its proposed location.

Another issue is related to a street vacation both on Nice and S. 12th Street. The vacation would involve six feet on each frontage street. The street vacation would be done at the sole expense of the applicant. It is a condition of project approval, and without the vacation, the project cannot move forward as proposed. The street vacation is subject to the approval of the City Council.

She described the need for a tentative parcel map and the exhibits related to that component.

Staff is recommending approval of all three components of the project and the associated resolutions.

Commissioner Marshall asked about a paved area that looked like parking. Planning Manager Gould-Wells indicated that the area is not a designated parking space, and if the Commission desired, they could condition it to add some landscaping.

Commissioner Long asked for clarification about the street vacation. Planning Manager Gould-Wells stated that the street vacation allows for the applicant to develop more of the lot. City Attorney Koczanowicz stated that if the City Council is able to make a finding that the remainder of the right of way can be abandoned, then they would grant the request and abandon the right of way.

Chair Peterson opened the public hearing.

Kim Hatch spoke representing the applicant. He described the goal and intent of the project and stated that the site has a lot of requirements and limitations. He described the reason for the vacation of the easement. He described the process of working with staff to work out the guest parking issues. He left the front area paved because he is hoping that it will be a safer way to exit the site. Mr. Hatch described the architecture of the project and the attempt to provide as much usable yard space as possible. He requested that the Planning Commission approve the project.

Commissioner Coleman asked about the Unit 3 guest parking space. Mr. Hatch indicated that due to the smaller size of the site, there weren't many options for the guest parking. The area of the space that encroaches into the setback doesn't impact anything else.

Commissioner Marshall stated that he disagrees with the Code that requires the guest parking, as projects end up being over-paved. He asked about the stairs in the back. Mr. Hatch stated that the old building code required two exit stairs from the third floor. Under the new code, it might be an option that it doesn't need to be provided. Mr. Hatch also indicated that there are a lot of older, smaller homes that may be redeveloped with higher densities in the next 10 years.

Commissioner Marshall recommended that the landscaping plan have nursery grade trees, to keep the building from appearing out of scale. Mr. Hatch stated that in his experience that box trees are good, but not if you are trying to get growth. The smaller trees tend to grow faster and may exceed the height of the box trees in 10 years.

Commissioner Nielsen asked if there was a minimum yard space required of 10x10. Planning

Manager Gould-Wells indicated that there is a total square footage requirement for private open space, and this project does meet that requirement.

Mr. Hatch stated that there is a square footage requirement and also a requirement for a minimum of 10 feet or more in any direction. This project has met those requirements.

Commissioner Blum asked if he has built with pervious paving. Mr. Hatch stated that they try to use that wherever they can. For a small project, it is too expensive to consider.

Commissioner Marshall asked what material was planned for the paved areas. Mr. Hatch indicated that they would probably use asphalt but if the budget worked out, they would recommend concrete. He said that they are open to whatever it takes to have the Commission approve the project.

Chair Peterson closed the public hearing.

Commissioner Long stated that the design is great, but finds it hard to make the finding that it is compatible with the neighborhood. Commissioner Marshall also feels like it is too big for the area and has mixed feelings about it.

Commissioner Blum stated that he likes the design, and it isn't the maximum height it could be. It is in an R-3 area and will stand out, but it could be incentive for other properties to improve.

Chair Peterson stated that the neighborhood has room for redevelopment and likes that the density is increased. She can support staff's findings.

Commissioner Marshall indicated that he could support the project if some sort of landscaping was in the guest parking area. Mr. Hatch suggested the use of grasscrete. Commissioner Marshall stated that that was acceptable, and asked for a condition to be added to that effect.

Commissioner Blum indicated that he could support that amendment.

Commissioner Blum made the motion to accept staff's recommendation. Commissioner Marshall seconded the motion. The motion passed with a vote of 4-2-1-0, with Commissioners Nielsen and Long voting no, and Vice Chair Snow absent.

COMMISSIONERS' COMMENTS:

Report from City Council Representatives

None.

Other Commissioners' Comments

Chair Peterson stated that she wanted someone to look into the trees that were removed related to Item 3 on the agenda. Staff indicated that they would look into that and report back.

ADJOURNMENT: 9:33 p.m.

/s/
CHAIR BLUM

/s/

SECRETARY TO THE PLANNING COMMISSION
PAT BECK, INTERIM COMMUNITY DEVELOPMENT DIRECTOR

(Approved at PC Meeting: April 14, 2009)