

**FINAL MINUTES OF REGULAR PLANNING COMMISSION MEETING**  
**MARCH 29, 2000**

1 **Location:** North Berkeley Senior Center, 1901 Hearst Avenue.  
2 The meeting began at 7:05pm.

3 **Planning Commissioners Present:** Boverhuis (7:07), Bronstein, Capitelli, Howerton,  
4 McCamant (7:11), Morris (7:07), Poschman, Wengraf, Wrenn

5  
6 **Landmarks Preservation Commissioners Present:** Edwards, Eichenfield, Hanson, Kehlmann,  
7 Korte, Morse, Olson, O'Malley.

8  
9 **Landmark Preservation Commissioners Absent:** Dishnica.

10  
11 **Staff Present:** Cosin, Grube, Haney-Owens, LeGrant, Nabti, Rhoades, Wald.

12  
13 **PUBLIC COMMENT**

14  
15 None.

16  
17 **ORDER OF AGENDA**

18  
19 The order of the agenda was not changed.

20  
21 **CHAIRPERSON'S REPORT**

22  
23 None.

24  
25 **COUNCIL ACTIONS**

26  
27 It was noted that at its March 28<sup>th</sup> meeting, the City Council approved the Planning  
28 Commission's recommended schedule for the General Plan and the Southside Plan.

29  
30 **FUTURE AGENDAS**

31  
32 Staff Haney-Owens discussed the proposed changes to the Planning Commission schedule.  
33 Future agendas list approved without objection.

34  
35 **APPROVAL OF MINUTES FROM MARCH 22, 2000 MEETING**

36  
37 (M/S/C) to approve the 3/22/00 minutes with corrections (Poschman/Capitelli). The motion  
38 carried. Ayes: Boverhuis, Bronstein, Capitelli, Howerton, McCamant, Morris, Poschman,  
39 Wengraf and Wrenn. Noes: None. Abstain: None. Absent: None.

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**2626 BENVENUE AVENUE: PROPOSED CONVERSION OF A SEVEN-UNIT  
TENANCY-IN-COMMON (TIC) PROJECT TO SEVEN CONDOMINIUM UNITS:  
PUBLIC HEARING**

Staff Grube gave the staff report. The question was raised regarding whether other project conditions from the Condominium Ordinance related to rental units should apply to the rental units in this TIC project. Copies of the recommended project conditions were made available to the Planning Commission.

(M/S/C) to open the public hearing (Poschman/Wengraf). The motion carried. Ayes: Boverhuis, Bronstein, Capitelli, Howerton, McCamant, Morris, Poschman, Wengraf and Wrenn. Noes: None. Abstain: None. Absent: None.

John Gutierrez, real estate attorney, said that the Condominium Ordinance creates a dichotomy between the owner-occupied TIC projects and all other rental projects in that the affordable housing fee applies only to rental units not to TIC units. The latter are defined as of their owner-occupied status as of August 20, 1992, regardless of whether they are currently rental units. John Gutierrez stated that in TIC projects of 12 units or less, if 40% of the units are TICs, then the rental units can be treated as TICs.

Alex King stated that he has been living there since July 1998, which raises the question about the 40% owner/occupant rate, and whether the mitigation fees and renter protection would apply.

A neighbor who did not wish to give her name raised policy and legal issues. She stated that Staff Grube complied with noticing regulations, but notice was not effectively granted to the neighbors, as she had only seen one of the three notices, which was quickly torn down. She also brought up the issue of loss of affordable housing in the neighborhood. Commissioner Wengraf asked about the limit on the number of units that can be converted per year. Staff Grube answered that the limit is one hundred units per year and there has been only one rental project that contained eleven units converted in the last nine years.

John Gutierrez stated that the majority of these types of TIC conversions have been affordable, and it would be extremely unfair of the Commission at this point to apply different conditions to this project based on the fact that the project contains rental units.

(M/S/C) motion to close public hearing (Wengraf/Poschman). The motion carried. Ayes: Boverhuis, Bronstein, Capitelli, Howerton, McCamant, Morris, Poschman and Wrenn. Noes: Wengraf. Abstain: None. Absent: None.

(M/S) motion to approve the conversion of the seven-unit tenancy-in-common (TIC) at 2626 Benvenue to seven condominium units (Wengraf/Capitelli).

Poschman opposed, stating it is wrong to ignore the issues raised regarding the applicability of the provisions from the Condominium Ordinance regarding rental units. He suggested holding the item over to the April 12<sup>th</sup> meeting in order to hear the position of the City Attorney on this matter.

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1  
2 (M/S) substitute motion to hear the City Attorney's opinion before making a decision on the  
3 proposed project (Poschman, Bronstein).

4  
5 Commissioner McCamant stated that the Commissioners must differentiate between policy and  
6 law. The law may not be good policy, but it is in effect, and thus it should be followed.

7 Substitute motion failed. Ayes: Bronstein, Howerton, Morris, Poschman. Noes: Boverhuis,  
8 Capitelli, McCamant, Wengraf, Wrenn. Abstain: None. Absent: None.

9  
10 Original motion carried. Ayes: Boverhuis, Capitelli, McCamant, Wengraf, Wrenn. Noes:  
11 Bronstein, Howerton, Morris, Poschman. Abstain: None. Absent: None.

12  
13  
14 **DEFINITION OF DEMOLITION AND OTHER RELATED PROVISIONS IN THE**  
15 **ZONING ORDINANCE: PUBLIC HEARING**

16  
17 Staff Cosin gave the staff report.

18  
19 Commissioner Capitelli asked how the meeting was noticed. Staff LeGrant stated that notice had  
20 been sent to about 220 individuals and organizations interested in the Zoning Ordinance  
21 Revision process.

22  
23 (M/S/C) to open public hearing (McCamant/Poschman). The motion carried. Ayes: Boverhuis,  
24 Bronstein, Capitelli, Howerton, McCamant, Morris, Poschman and Wengraf Wrenn. Noes:  
25 None. Abstain: None. Absent: None.

26 The Landmarks Preservation Commission affirmed the action by consensus.

27  
28 John English suggested that rather than requiring an Administrative Use Permit (AUP) for all  
29 non-residential buildings, an AUP should only be required for non-residential buildings more  
30 than forty years old. He proposed an alternative of not requiring an AUP in the first place, and  
31 amending existing procedures so that major alterations to older buildings would be referred to  
32 the Landmarks Preservation Commission (LPC). Commissioner Edwards noted that such  
33 buildings are usually already referred to the LPC, but that this is not required. Commissioner  
34 Wengraf stated that if no AUP were required, applicants would only need design review.  
35 Commissioner Edwards stated that the building permit process involves design review. Staff  
36 Rhoades commented that the Permit Streamlining Act limits the time frame for action on a  
37 permit application and that the Design Review Committee and the LPC only meet once per  
38 month. Commissioner Hanson stated that the procedure must be such that applicants can get a  
39 quick decision.

40  
41 John English stated that the Commissions should consider to what extent the demolition  
42 definition should address floor area. He suggested simplifying or eliminating the floor area  
43 elements to reduce the staff effort required. Commissioner Edwards stated that he does not  
44 understand the need to regulate interior remodeling if the exterior is left intact. Commissioners  
45 Wengraf and Poschman stated that they do not remember floor area being discussed as an issue  
46 previously. Commissioner O'Malley explained that the floor area element was included in

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1 reaction to issues related to Downtown demolitions. She stated her concern about creating an  
2 Ordinance that would have a larger-than-intended impact, and what effect this might have on the  
3 development of office space in the Downtown. Commissioner Poschman asked what would be  
4 lost if the square footage limits (percentages) were removed from the definition, and whether this  
5 would apply to all non-residential buildings regardless of their location. Commissioner Edwards  
6 stated that the Design Review Committee at this point does not address the building interior; that  
7 was never its intent. Commissioner O'Malley stated that the impetus for including the floor area  
8 was that the LPC is charged to protect special buildings in this city and there have been a few  
9 that have been demolished by developers who used loopholes in the regulations. Floor area  
10 manipulation was one of these loopholes. The intent of the proposed amendments is to address  
11 these loopholes.

12  
13 Commissioner Hanson commented that Berkeley should have some process for approving  
14 buildings where the outside walls are left but the rest of the building is totally new.  
15 Commissioner Edwards noted the issue of passive demolition, or demolition by neglect. Staff  
16 Rhoades stated that under these conditions, buildings may become public nuisances.

17  
18 Commissioner Wengraf stated that she is interested in adaptive re-use and restoration. She  
19 would like to look at how this amendment would affect this kind of change. She stated that  
20 adaptive re-use and restoration should be encouraged.

21  
22 Commissioner McCamant asked for clarification regarding what is meant by the interior and  
23 exterior of the building. She asked why the inside of the building should matter if the exterior is  
24 left intact. Commissioner Poschman stated that if one is allowed to take down 50% of the walls  
25 and 50% of the roof, virtually the whole building is demolished. He asked whether these  
26 percentages serve the purposes of the Ordinance or whether lower percentages should be  
27 considered. Commissioner O'Malley stated that a building cannot be adaptively re-used or  
28 renovated if it no longer exists. The floor area question arose as a means to solve a more  
29 difficult problem related to the loss of historic buildings in the Downtown.

30  
31 Commissioner Morse asked whether paragraph A on page 2 of 3 of the March 29<sup>th</sup> staff report,  
32 about buildings less than 40 years old is needed. He suggested omitting paragraph A and  
33 keeping paragraphs B and C, as proposed by John English. Commissioner Edwards asked what  
34 would be required in the case of buildings that are less than 40 years old, but still of special value  
35 to the city. John English stated that these buildings would be subject to normal design review  
36 but would not be subject to the LPC review, with the exception of those buildings on the State  
37 Historical Resources Inventory.

38  
39 Commissioner Kehlman noted that there is a lack of LPC review of historic buildings.  
40 Landmark applications are very complex; Berkeley has many structures that are not landmarked  
41 but should be. Commissioner Capitelli asked whether the owner of a building on a potential  
42 landmark list is notified. Commissioner Kehlman said that they are not necessarily notified.  
43 Commissioner Wengraf asked about measures which exist to protect architectural features that  
44 are not buildings and are of historic interest. Commissioner Morris stated that these are larger  
45 issues that should probably be addressed in the General Plan. Commissioner O'Malley stated  
46 that there had been enough discussion such that the joint PC and LPC subcommittee could

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1 develop another draft. Poschman suggested asking the subcommittee to return on a certain date  
2 with a new draft incorporating the suggestions made by John English.

3  
4 Planning Commission vote: (M/S/C) to send the draft demolition definition back to the joint  
5 subcommittee for further work, and to return to the Planning Commission meeting of May 24,  
6 2000 (Poschman/Capitelli). The motion carried. Ayes: Boverhuis, Bronstein, Capitelli,  
7 Howerton, McCamant, Morris, Poschman, Wengraf, and Wrenn. Noes: Abstain: None.  
8 Absent: None.

9  
10 Landmarks Preservation Commission vote: (M/S/C)(Edwards/O'Malley). The motion carried.  
11 Ayes: Edwards, Eichenfield, Hanson, Kehlmann, Korte, Morse, Olson, O'Malley. Noes: None.  
12 Abstain: None. Absent: Dishnica.

13  
14 (M/S/C) to keep the public hearing open (Poschman/Capitelli). The motion carried. Ayes:  
15 Boverhuis, Bronstein, Capitelli, Howerton, McCamant, Morris, Poschman, Wengraf, and Wrenn.  
16 Noes: Abstain: None. Absent: None.  
17 The motion was approved by the LPC as a consensus item.

18  
19  
20 **APPEALS FROM ZONING ADJUSTMENTS BOARD AND LANDMARKS**  
21 **PRESERVATION COMMISSION DECISION: ADDITIONAL REQUIREMENTS**

22  
23 Staff Cosin presented the staff report.

24  
25 (M/S/C) to calendar the public hearing for May 24, 2000 (Capitelli, Poschman). The motion  
26 carried. Ayes: Boverhuis, Bronstein, Capitelli, Howerton, McCamant, Morris, Poschman,  
27 Wengraf and Wrenn. Noes: None. Abstain: None. Absent: None.

28  
29  
30 **ABATEMENT OF PUBLIC NUISANCES: POSSIBLE AMENDMENTS TO BERKELEY**  
31 **MUNICIPAL CODE**

32  
33 Staff Cosin presented the staff report. It was noted that there is a need to clarify the allocation of  
34 officers within a 24-hour period under the definition.

35  
36 Commissioner Capitelli stated that he does not understand the logic of assigning six officers at  
37 certain times of the day. Commissioner Morris stated that she would like to hear from the Police  
38 Review Commission and the Youth Commission regarding the criteria that would trigger  
39 dispatching a certain number of officers to an event.

40  
41 Commissioner Morris asked whether clubs and other private entertainment businesses would be  
42 advised regarding the proposed zoning changes. Staff Cosin replied that those on the  
43 Department's list of individuals and organizations interested in zoning changes will be notified.  
44 Commissioner McCamant stated that she would like more information regarding why the Zoning  
45 Adjustments Board should serve in a judiciary capacity for this issue, and why this issue has  
46 arisen. Staff Cosin stated that she will ask the City Attorney to be present at the next

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1 Commission discussion of this item to address these questions since the suggested amendments  
2 came from that office.

3  
4 (M/S/C) to set a public hearing for May 17, 2000 and that the Police Review Commission and  
5 the Youth Commission be notified of the meeting date (Capitelli, Poschman). The motion  
6 carried. Ayes: Boverhuis, Bronstein, Capitelli, Howerton, McCamant, Morris, Poschman,  
7 Wengraf and Wrenn. Noes: None. Abstain: None. Absent: None.

8  
9 **PRIORITIZATION OF ZONING AMENDMENT TO ALLOW RETAIL IN MIXED USE**  
10 **LIGHT INDUSTRIAL (MULI) DISTRICT**

11  
12 Staff Cosin presented the staff report.

13  
14 (M/S/C) to approve the staff recommendation (Bronstein/Poschman). The motion carried. Ayes:  
15 Boverhuis, Bronstein, Capitelli, Howerton, McCamant, Morris, Poschman and Wrenn. Noes:  
16 Wengraf. Abstain: None. Absent: None.

17  
18 Commissioner Morris asked to what extent do industrial and warehousing uses need adjacent  
19 retail to survive. She stated a concern regarding spot zoning. Commissioner Wengraf stated that  
20 this issue has given the message that Berkeley is inconsistent and arbitrarily anti-business. She  
21 said she does not support the motion because retail use will not cause detriment to manufacturing  
22 uses in the MULI District. Commissioner McCamant stated that the City should establish the  
23 goal of consistent enforcement of zoning regulations, which would prevent the issue of  
24 enforcement or lack of it, as a basis for arguments.

25  
26 Commissioner Morris noted that she would like to discuss the question of how to help retail  
27 survive in a thriving manufacturing zone.

28  
29 **BICYCLE AND PEDESTRIAN SAFETY TASK FORCE (BAPS) EVALUATION AND**  
30 **RECOMMENDATIONS REPORT:**

31  
32 Community Health Commissioner Nancy Holland and Staff Zachary Wald of the Health and  
33 Human Services Department presented the staff report.

34  
35 Commissioner Capitelli asked if there is data on the rate of pedestrians and bicycle use compared  
36 to surrounding cities. Staff Wald stated that the comparison is to urban areas similar to Berkeley,  
37 however this is slightly problematic, as Berkeley is a somewhat unique city. Commissioner  
38 Capitelli asked for a definition of rat boxes, whether the BAPS Task Force had considered the  
39 use of cameras that take pictures of autos that run red lights, and about the costs of staff  
40 resources. Staff Wald stated that rat boxes are devices which allow police to be on the far side of  
41 an intersection, where they can easily respond to someone who has run a red light, and at the  
42 same time see whether someone has run the red light or not. He also said that cameras were  
43 considered, but were rejected. He noted that there would be a cost of approximately \$50,000 in  
44 staff resources the first year (2001). In the second and following years, the cost would be more  
45 substantial.

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1 Commissioner Morris expressed concern about the number of goals and priorities, and noted that  
2 an immediate difference could be made at the high accident intersections such as Shattuck and  
3 University, and Telegraph and Durant. She stated that she would like to see a list of priorities.  
4 Staff Wald stated that high collision intersections will be prioritized, however a Pedestrian Plan  
5 would have the most far-reaching effects and would identify more specifics in terms of projects  
6 and districts.

7  
8 Commissioner Wengraf asked about the number of accidents that are related to right turns on red  
9 lights, as they are particularly problematic. Staff Wald said that the data is not that specific, but  
10 that the issue has come up. Commissioner Boverhuis stated that the problem with the right-turn-  
11 on-red is getting people to stop at reds. He said that Berkeley has devalued the stop sign by  
12 installing so many of them. Commissioner Wrenn suggested a traffic light pedestrian phase in  
13 high use intersections.

14  
15 Commissioner Wrenn suggested the use of state and federal funds such as the Safe Routes to  
16 School grants. Staff Wald said that he is currently working on a Safe Routes to School Grant  
17 application.

18  
19 Commissioner McCamant asked about the number of citations given to bicyclists per year, and  
20 asked why there is a proposal to lower bicycle fines when citations are rarely given. Staff Wald  
21 stated that police are less willing to give fines to cyclists because they have the same high fee as  
22 autos.

23  
24 Commissioner Morris asked if required bike licensing was considered as a source of funding.  
25 Staff Wald stated this option may be explored but that the revenue generated would be minimal.

26  
27 (M/S/C) to endorse the Bicycle and Pedestrian Safety Task Force Evaluations and  
28 Recommendations Report (Bronstein/Poschman). The motion carried. Ayes: Boverhuis,  
29 Bronstein, Capitelli, Howerton, McCamant, Morris, Poschman, Wengraf and Wrenn. Noes:  
30 None. Abstain: None. Absent: None.

31  
32 Meeting Adjourned: 9:45 P.M.  
33  
34