

**APPROVED MINUTES OF THE SPECIAL MEETING OF THE PLANNING
COMMISSION
MAY 17, 2000**

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Location: North Berkeley Senior Center
The meeting was called to order at 7:12 p.m.

Commissioners present: Boverhuis (arrived at 7:25 p.m.), Bronstein (left at 9:05 p.m.), Capitelli (left at 8:00 p.m.), Howerton, McCamant (left at 10:15 p.m.), Morris, Poschman, Wengraf (left at 10:12 p.m.), Wrenn.

Commissioner absent: None.

Staff present: Cowan, Haney-Owens, Solomon, Wendover

PUBLIC COMMENT

There was no public comment.

ORDER OF AGENDA

There were no changes to the order of agenda.

CHAIRPERSON'S REPORT

There was no Chairperson's report.

COUNCIL ACTIONS

Commissioner Wengraf stated that at the May 16, 2000 Council discussion on transferring funds from the West Berkeley Parking Garage project to the I-80 Pedestrian/Bicycle Overcrossing, members of the public stated that they felt there are insufficient parking requirements imposed on private development in West Berkeley. She stated that this is evidence of the fact that there is not a universal opinion on parking requirements in the City, and that the Planning Commission should keep this in mind when discussing car-free housing.

FUTURE AGENDAS

Staff noted that the Draft Sidewalk, Benches, and Planters Guidelines staff presentation will be added to the May 24, 2000 Planning Commission meeting agenda.

Commissioners recommended that the Planning Commission Subcommittees item be moved to the June 28, 2000 Planning Commission meeting agenda.

Commissioners Wengraf and Bronstein requested that the Rezoning related to Transitional Housing for Victims of Domestic Violence item be moved to a future meeting date.

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1
2 A Public Hearing on the permanent restriction on changing residential space to office space in
3 the Dwight/Hillside neighborhood will be added to the June 28, 2000 Planning Commission
4 meeting agenda.
5
6

7 **APPROVAL OF MINUTES FROM THE APRIL 26, 2000 MEETING**
8

9 Commissioner Morris clarified that the motion on the Southside Plan Housing and Land Use
10 Working Group item was not intended to adopt a new zoning proposal, but merely to direct staff
11 to analyze the working group's proposal and to write draft zoning language that the Planning
12 Commission would later discuss.
13

14 Commissioner Capitelli stated his support for reading a written copy of the motion aloud before
15 all future votes on motions, to avoid the confusion that related to the motion following the
16 presentation by the Southside Plan Land Use and Housing Working Group at the April 26, 2000
17 Planning Commission meeting.
18

19 (M/S/F) to approve the minutes of the April 26, 2000 Planning Commission meeting
20 (Poschman/Morris). The motion failed. Ayes: Capitelli, Morris, Poschman, Wrenn. Noes:
21 Boverhuis, Wengraf, McCamant. Abstentions: Bronstein, Howerton.
22
23

24 **ABATEMENT OF PUBLIC NUISANCES: AMENDMENTS TO BERKELEY
25 MUNICIPAL CODE (BMC): PUBLIC HEARING**
26

27 Zach Cowan from the City Attorney's office delivered the staff report. He stated that the intent
28 of the change to the Berkeley Municipal Code is to allow the Zoning Adjustments Board (ZAB)
29 to take action with regard to a use permit on the basis of a single event that is defined to
30 constitute a public nuisance.
31

32 Commissioner Poschman asked how common these types of laws are in other municipalities.
33 Staff Cowan stated that the City of Oakland has a licensing ordinance to accomplish the same
34 expanded control over single events.
35

36 Commissioner Morris asked if the Police Review Commission had commented on this
37 amendment.
38

39 Staff Haney-Owens stated that the Police Review Commission had been made aware that this
40 amendment was coming before the Planning Commission, and had chosen not to comment on
41 this item.
42

43 Commissioner Wengraf asked why only private use is covered in this amendment.
44

Staff Cowan stated that uses on public land, including parks, would be covered by a separate, but
parallel Ordinance.

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

4
5 PUBLIC COMMENT

6
7 Osman Vincent of the Alcatraz Avenue Neighborhood Association stated that he wrote a letter to
8 the Commission stating his problems with the proposed amendment. He stated that in San
9 Francisco, the Police Department has a committee to address nuisances. He stated that his
10 neighborhood has experienced several event-related disturbances where there was loud music,
11 bottles thrown, and speeding cars. He stated that after each of these events, the owners claimed
12 they had no responsibility for the behavior of the event attendees. He also stated that he
13 questions the section of the amendment that will trigger a use permit review by the ZAB after a
14 certain number of police officers are called. He stated that the number of officers at an event has
15 very little to do with the magnitude of the disturbance.

16 Commissioner Poschman asked about Vincent's preferred alternative to the tying the permit
17 review to the number of police called to the event.

18 Osman Vincent stated that a senior police officer should come up with a determination of the
19 man-hours needed to solve the disturbance and those criteria should be used to trigger a ZAB
20 review of use permit.

21
22 Commissioner Howerton asked what the criteria are for determining how many officers are
23 assigned.

24 Staff Cowan stated that it is based on the determination of the police.

25
26 (M/S/C) to close the public hearing (McCamant/Poschman). The motion carried. Ayes:
27 Boverhuis, Bronstein, Howerton, McCamant, Morris, Poschman, Wengraf, Wrenn. Noes: None.
28 Absent: Capitelli.

29
30 Commissioners Morris and Howerton stated a concern that the number of police called to a scene
31 may not be representative of the severity of the problem.

32 Staff Cowan stated that the ZAB still has to make a determination before a fee is charged to the
33 landowner or the use permit is restricted. He stated that ZAB could decide that the number of
34 police officers called to an event was excessive and decide not to take punitive action.

35
36 Commissioner Wengraf asked what power the ZAB has over a private homeowner whose
37 property is the site of an event that does not require a use permit but creates a nuisance, for
38 instance, a teenager creating a disturbance by holding a party.

39 Staff Cowan stated that the ZAB could levy a fine against the homeowner.

40
41 Commissioner Morris stated that the amendment does not do enough to prevent future
42 disturbances.

43 Staff Cowan stated that the amendment makes it clear that a single event could result in the
44 revocation of a use permit. He stated that there is no way to invoke prior restraint on events. He
45 stated that this amendment also applies fire safety requirements about maximum capacity, egress,
46 and security.

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1
2 Commissioner McCamant stated that she does not see what is gained from Section 2, Paragraph
3 C of the amendment. She stated that the number of police officers is a problematic criterion for
4 defining a nuisance, and that any actual nuisance is likely to involve one of the offenses listed in
5 Section 2, Paragraph A, which would define it as a nuisance, regardless of the number of police
6 called to the event.
7 Staff Cowan stated that the purpose of Paragraph C is to define a narrow class of less frequent,
8 but more serious disturbances and to provide the ZAB more authority to act in those instances.
9 Commissioner McCamant stated that the ZAB will be making a subjective decision in any case,
10 and that they are more likely to make a decision based on the presence of the offenses in
11 Paragraph A than they are to make a determination based on the number of officers on the scene.
12
13 Commissioner Poschman stated that Paragraph C seems to make it easier for police officers to
14 trigger a ZAB review by simply showing up to a disturbance in large numbers. He asked to see
15 more information about how many times this criterion would have triggered ZAB review in the
16 last year.
17
18 Commissioner Wengraf stated that property owners do not read the Zoning Ordinance. She
19 stated her disappointment that this amendment does not provide for an education component.
20
21 Commissioner Bronstein stated that the problem is that the City does not enforce its current
22 zoning laws.
23
24 Commissioner Poschman stated that he cannot vote for the amendment at the current time. He
25 stated his desire to see more information.
26 Commissioner Boverhuis stated that he would like to have a representative from the Police
27 Department be present at the next discussion of the amendment.
28
29 (M/S/C) to request 1) more information on recent public nuisance enforcement and the number
30 of police officers dispatched to those events, 2) information about how the police determine the
31 number of officers to send to a disturbance, and 3) ways to trigger ZAB review of a use permit
32 for a single event that are not based on an officer count (Poschman/Wengraf). The motion
33 carried. Ayes: Boverhuis, Bronstein, Howerton, McCamant, Morris, Poschman, Wengraf,
34 Wrenn. Noes: none. Abstentions: none. Absent: Capitelli.
35
36

37 **RELATIONSHIP BETWEEN THE SOUTHSIDE PLAN AND THE UNIVERSITY OF**
38 **CALIFORNIA'S UNDERHILL AREA PROJECTS: PUBLIC WORKSHOP; CONTINUED**
39 **PUBLIC HEARING ON THE DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR)**
40 **FOR THE UNDERHILL AREA PROJECTS**

41
42 **PUBLIC COMMENT**

43
44 Michael Katz stated that he hopes the University will extend the public comment period until
45 after the Transportation Demand Management (TDM) Study and the Southside Plan are
46 complete. He stated that the Draft EIR acknowledges that the preferred project is not the most

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1 environmentally sound. He stated his support for moving some of the parking proposed for
2 Underhill to the Tang Center lot location, because the lot could be used both during the day and
3 for evening events in Downtown.
4

5 Jeff Eichenfield of the Landmarks Preservation Commission stated his concerns regarding the
6 massing and bulk of the Underhill Projects, and the need to protect the several historic structures
7 that surround the Underhill Area, including Anna Head, Casa Bonita, Shorb/Davis House, and
8 Fox Cottage. He stated his desire for an alternative design that would save Fox Cottage.
9

10 John English stated that he is unconvinced that Fox Cottage has to be removed. He stated that the
11 University had done studies that proposed alternatives to the demolition of Fox Cottage.
12

13 Bill Marquand stated his support for Alternative G in the Draft EIR (the dispersal scheme) and
14 his belief that the centralized location of facilities at Underhill will ruin the historic
15 neighborhood and turn the area into an annex of the University.
16

17 Leslie Emmington-Jones stated that the historic resources around the Underhill Area could be re-
18 used for the benefit of the Southside community. She asked about the future uses of Anna Head
19 School, the Shorb/Davis House, and Piedmont Way.

20 Tom Lollini of UC Berkeley stated that there are no future plans yet for Anna Head or the
21 Shorb/Davis House, but that the Shorb/Davis House needs disabled access and seismic work.
22

23 Commissioner McCamant asked about the University plan to return historic houses to housing
24 uses from current office use.

25 Tom Lollini stated that is still the plan, but that high-occupancy buildings receive more priority
26 for funding, due to seismic concerns.
27

28 Commissioner Morris stated that she would like to see an alternative developed that preserves
29 Fox Cottage. She stated that she would also like to see shading studies of the surrounding
30 buildings.

31 Tom Lollini stated that the conclusion of the University's Design Review Committee was that
32 the context of Fox Cottage would already be so compromised by the proposed project that it
33 would retain no value in its present location. He stated that the University explored the idea of
34 moving the Cottage, but found that the costs were prohibitive.
35

36 Carrie Olson of the Landmarks Preservation Commission stated that in 1991, the University
37 declared the Fox Cottage a University landmark, so there is no basis for demolishing it. She
38 stated that the Underhill Project includes a low-density, one-story café and suggested altering the
39 proposal to turn Fox Cottage into that café.
40

41 Susan Cerny stated that a diminished context for Fox Cottage is not a reason to tear it down. She
42 stated that the Cottage could be retained for student use.
43

44 Becky O'Malley stated her support for alternatives that protect historic resources. She stated that
45 University stewardship of Anna Head has led to neglect of the building. She stated that the
46 University cannot neglect a building and then demolish it because it is too expensive to repair.

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1
2 Michael Katz stated that there are better uses for Fox Cottage. He stated his support for smaller
3 scale, more contextual new projects.
4
5 An unidentified speaker stated that Piedmont Way is a historic resource and that traffic impacts
6 of the proposed parking garage will be detrimental to Piedmont Way.
7
8 John McBride stated that area preservationists and Anna Head alumni would likely help with
9 renovation projects. He stated that continuing University expansion in the Southside is
10 detrimental.
11
12 Martha Nicoloff stated that seismic issues, including the location of the fault line, are omitted
13 from the Underhill Draft EIR. She stated that the Hayward Fault line falls very close to the
14 Underhill Area, and that its effects are significant.
15 Tom Lollini stated that the Underhill buildings are being built to withstand seismic events so that
16 they may serve as emergency centers for food and shelter for students and the neighborhood.
17
18 Jurgen Aust stated that the existing conditions report in the Draft EIR does not accurately reflect
19 the current conditions because they are based on outdated information.
20
21 Jeff Jordan stated that the traffic figures used in the Draft EIR are not very recent and are the
22 result of sloppy research on the part of the University.
23
24 Rick Young of People Against Lots of Parking and For Housing on the Underhill Block (via cell
25 phone) stated that the University needs to develop a more balanced approach to parking.
26
27 Jason Meggs stated that the City has failed to address its 1977 General Plan directive to reduce
28 auto traffic.
29
30 Kate Gordon of Students for a Liveable Southside (SLS) (in a statement read by Andy Katz)
31 stated that students are not able to attend this meeting because they are in final exams. She stated
32 her support for more housing and less parking. She stated that SLS supports Alternative F (the
33 increased housing alternative) in the Draft EIR.
34
35 Andy Katz of the Associated Students of the University of California (ASUC) stated that the
36 ASUC supports Alternative F in the Draft EIR. He stated that pedestrian safety mitigations are
37 inadequate, considering that two meals occur during rush hour and that is when students will be
38 crossing to get to the dining halls.
39
40 Martha Jones stated that she has lived in the area since 1948. She stated that adding more
41 housing in the Southside is unwise and that it should be scattered in other areas of the city
42 instead.
43
44 Jeff Jordan stated that he lives on Parker Street and that residents of his area are greatly affected
45 by traffic problems.
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1 Paul Hogarth of Students for a Liveable Southside (SLS) stated that while the University
2 presents Underhill as a pro-student project, the project does not really reflect the demands of
3 students. He stated that the University uses the concept of student demand to defend itself from
4 criticism by neighbors, but in fact, students don't support large buildings with a lot of parking.
5 He stated that SLS prefers Alternative F in the Draft EIR (the increased housing alternative).
6

7 Doris Willingham of the Claremont/Elmwood Neighborhood Association stated that there is no
8 attention paid to the relationship between the Underhill Area Project and the Southside Plan. She
9 stated that the increase in population in the Southside will cause infrastructure problems if the
10 area's infrastructure is not upgraded.
11

12 Lesley Emmington-Jones stated her support for a dispersed program on the Underhill site. She
13 stated that she wants a process to discuss the other alternatives in the Draft EIR.
14

15 Susan Cerny stated that she wants more information regarding the criteria for identification of
16 project alternatives.
17

18 Becky O'Malley stated that programmatic alternatives need to be considered.
19

20 Jurgen Aust stated that there are not sufficient transportation alternatives and that removing mid-
21 block pedestrian crossings should be considered an impact in the EIR, but that in the Draft EIR,
22 removal of crossing is considered a mitigation.
23

24 Tom Lollini stated that the University requests an acknowledgement of the objectives of the
25 Underhill Area Projects, which contain objectives for improving the Southside, such as widening
26 sidewalks. He also stated that the Underhill Area Projects are part of a balanced program,
27 including bicycle improvements, BART access, and drive-alone rate reductions.
28

29 (M/S/C) to close the public hearing (McCamant/Poschman). The motion carried. Ayes:
30 Boverhuis, Howerton, McCamant, Morris, Poschman, Wrenn. Noes: none. Abstentions: None.
31 Absent: Bronstein, Capitelli, Wengraf.
32
33

34 **COMMISSION DISCUSSION**
35

36 Commissioner McCamant stated that she would like to see the EIR address the impacts of
37 increased density on services such as fire protection. She stated that the City might need to
38 increase the mitigation fees paid by the University.

39 Tom Lollini stated that the University has already paid a sizeable amount to put extra sprinklers
40 in University housing.
41

42 Commissioner Morris stated her support for Alternative G in the Draft EIR (the dispersed
43 alternative).
44

45 Commissioner Poschman stated that there is no limit on attended parking.

46 Tom Lollini stated that attended parking will only be used in special situations.

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1 Commissioner Poschman stated that he would like the EIR to provide more detail on the
2 management of parking in the structure.

3
4 Commissioner Wrenn stated his concerns with the Underhill Area Projects Draft EIR:

- 5 • the failure to analyze the impact of attended parking
- 6 • inadequate attention to impacts on pedestrians
- 7 • inconsistent definition of the parking component of the project
- 8 • inadequate attention to impact on transit
- 9 • inadequate attention to impact on bicyclists and the bike boulevards
- 10 • the selection of an environmentally inferior preferred project
- 11 • failure to prevent demolition of a landmarked building.

12
13
14 (M/S/C) to forward the Commission's comments, public comments, and staff comments to the
15 City Council (Poschman/Boverhuis). The motion carried. Ayes: Boverhuis, Howerton, Morris,
16 Poschman, Wrenn. Noes: none. Abstentions: none. Absent: Bronstein, Capitelli, McCamant,
17 Wengraf.

18
19 Commissioner Morris stated her support for holding a workshop on the relationship between the
20 Southside Plan and the Underhill Project.

21 Commissioner Wrenn stated that it should be held in the fall, to allow students to attend.

22
23

24 **COMMITTEE REPORTS**

25
26 There were no committee reports.

27
28

29 **ADJOURNMENT**

30
31 The meeting was adjourned at 10:43 p.m.

32