

1 **APPROVED MINUTES OF REGULAR PLANNING COMMISSION MEETING**

2 October 11, 2006

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4 Time: The meeting was called to order by Chair Burke at 7:05 p.m.

5

6 Location: North Berkeley Senior Center.

7

8 **ROLL CALL**

9

10 Commissioners Present: Burke, Ferrazares, Gurley (arrived 7:15), Perry, Pollack,
11 Poschman, Stoloff, Tregub, Wengraf.

12

13 Commissioners Absent: None.

14

15 Staff Present: Cosin, Dando, Gatzke, Harrison, Consulting City Attorney Betsy Strauss.

16

17 **ORDER OF THE AGENDA**

18 There was no change to the order.

19

20 **PUBLIC COMMENT PERIOD**

21 Speaker 1: Sennet Williams stated that with the added density in the City we are going to
22 need more parks and open space, especially in South and West Berkeley. He
23 suggested the school district property at Browning and Addison as a potential park
24 site, which also has a creek.

25

26 **PLANNING STAFF REPORT**

27 Secretary Harrison informed the Commission that on October 10th the City Council
28 adopted an Ordinance amending the recently adopted MRA Zoning Ordinance
29 amendments that addresses projects already in the approval pipeline by allowing those
30 projects for which a building permit application was received or the AUP application
31 deemed complete on or prior to September 26 to be subject to the "old regulations"
32 pertaining to residential additions. Deputy Planning Director Cosin informed the
33 Commissioners that Bayer released an annual report which was distributed to the
34 Commission and offered to answer questions.

35

36 **CHAIRPERSON'S REPORT**

37 No report.

38

39 **COMMITTEE REPORTS**

40

41 **Creeks Task Force**

42 No report.

43

44 **Density Bonus Subcommittee**

45 No report.

46

47 **Downtown Area Plan Citizen Advisory Committee**
48 Chair Burke reported that an architect has been selected for the downtown BAM/PFA,
49 Toyo Ito from Japan.

50
51 **Major Residential Additions Subcommittee**
52

53 M/S/C to disove the MRA Subcommittee. (Poschman/Wengraff). Ayes: Burke, Ferrazares,
54 Pollack, Poschman, Stoloff, Tregub, Wengraf. Noes: None. Abstain: None. Absent:
55 Perry, Gurley.

56
57 **Southside Plan Subcommittee**
58 Principal Planner Gatzke reported that staff will prepare a report on the Southside EIR
59 preferred alternative for the next meeting.

60
61 **APPROVAL OF MINUTES**
62 Approval was postponed to the next meeting.

63
64 **UPCOMING AGENDA ITEMS**
65 No discussion.

66
67 **ACTION ITEMS**
68 **Item 9 Public Hearing: ZA 6-06: Amendments to the Zoning Ordinance (BMC Title**
69 **23) related to the Creeks Ordinance and rebuilding after involuntary destruction of**
70 **structure. Public Comment: Recommendations on the Creeks Ordinance Revisions**
71 **(BMC 17.08) and Draft Initial Study.**

72
73 Vice Chair Stoloff chaired the following portion of the meeting related to the proposed
74 amendments to the Creeks Ordinance and Zoning Ordinance.

75
76 Deputy Planning Director Wendy Cosin presented the proposed ordinance changes.

77
78 The Commissioners asked questions regarding the rebuilding by right amendments.

79
80 M/S/C to open the public hearing on the Zoning Ordinance revisions related to the Creeks
81 Ordinance and take public comment on the Creeks Ordinance revisions.
82 (Gurley/Wengraf). Ayes: Burke, Ferrazares, Gurley, Perry, Pollack, Poschman, Stoloff,
83 Tregub, Wengraf. Noes: None. Abstain: None. Absent: None.

84
85 Speaker 1: Tom Kelley, a member of the CTF, spoke in favor of the Creeks Ordinance
86 amendments as drafted, noting they were endorsed by a strong majority of the CTF.
87 Also, he noted that he feels environmental review should be conducted on the Use
88 Permit option under consideration, as it would weaken existing regulations.

89 Speaker 2: Eric Wasserman stated that culverts should not be regulated by the Creeks
90 Ordinance, noting no other city does so, and that they were added to the ordinance by
91 interpretation and without public scrutiny.

92 Speaker 3: Bob Allen discussed the variance option for creek properties to reduce other
93 standards in order to meet the creek setback, calling it a "super variance" and stating
94 it would allow waiver of height, parking and setback requirements which would
95 adversely impact neighbors, impacting more people than the creeks ordinance does.

96 Speaker 4: Kitty McLean stated her preference for the variance option.

97 Speaker 5: Daisy Marshal stated she thinks that she thinks creek culverts should be a part
98 of the storm drain system

99 Speaker 6: Rosemary Green stated that it is the community's responsibility to maintain
100 culverts, not individual property owners.

101 Speaker 7: Joan Bajsarowicz stated she had received notice of a creek on her property
102 although there is not evidence of such.

103 Speaker 8: Carlene St. John, a member of the public works commission and CTF,
104 reported that the PWC wanted the ordinance to address the whole watershed system,
105 not just creeks.

106 Speaker 9: Tom Maklalsen stated that the City should consider culverts as part of the
107 storm drain system and not as creeks.

108 Speaker 10: Diane Crowley, a member of the CTF, discussed the Zoning Ordinance
109 amendment to 23C.04.100 addressing the right to rebuild by right after a disaster,
110 stating that it should not be limited to exclusively residential buildings and to
111 residential buildings of less than 3 units.

112 Speaker 11: Ann Riley, recommended adoption of the revised Creeks Ordinance, and
113 stated she is impressed by the quality of the CTF process and product. She also
114 recommends a Variance rather than a Use Permit be required to expand into the
115 setback.

116 Speaker 12: Elyce Judith, said she lives on an open section of Codornices Creek that
117 flooded last winter and that without her greater than 30 foot setback she would have
118 had severe damage to her house. She supports maintaining the Variance requirement.

119 Speaker 13: Jennifer Mary Pearson recommends the Creeks Ordinance as revised and the
120 Variance requirement.

121 Speaker 14: Carole Schemmerling, a CTF member, recommends the Variance option
122 because the people making the Use Permit findings would not be trained to deal with
123 creek related issues. Also, she stated that finding pipes underground is not as
124 expensive as staff reported.

125 Speaker 15: Jill Korte stated her 5-unit condo is on the Strawberry Creek culvert and she
126 did not receive notice, and she feels they should also be allowed to rebuild by right.

127 Speaker 16: Terry Mandel stated she thought the council promised to take culverts out of
128 the ordinance at their May 30, 2006 hearing. She feels the whole community should
129 pay for culvert maintenance and repair.

130 Speaker 17: Martha Jones stated she was speaking on behalf of NUC that she is very
131 concerned there is still not an accurate creeks map.

132 Speaker 18: Barbara Allen, CTF member, thanked the Commission for the public notice
133 and urged them to remove culverts from the Ordinance and take time to develop their
134 recommendations.

135 Speaker 19: Dan Dean described historic examples of when the city required developers
136 to put in culverts and stated it isn't fair to assume the are all the property owners
137 responsibility.

138 Speaker 20: Vonnie Gurgin stated her concern that there is no appeal of the City
139 Engineer's decision about culverts, that property owners should not have to pay to
140 locate their culverts, and that there should be a comprehensive watershed plan.

141 Speaker 21: Shirley Dean recommend the following changes to the proposed Creeks
142 Ordinance – to remove culverts, to better balance property owner's rights and
143 protection of the natural environment, to require an accurate map, to require a Use
144 Permit rather than a Variance for new construction in the setback, to eliminate the
145 "involuntary" language, to require the City to locate culverts on private property and
146 pay for their maintenance, and to prepare a comprehensive watershed management
147 plan.

148 Speaker 22: Joshua Bradt, CTF member, stated that in his experience working with
149 creeks it is not good to build closer to creeks so he recommends the Variance option
150 to protect property owners and the creeks.

151 Speaker 23: Sennet Williams, said he lives on the Strawberry Creek culvert and is
152 concerned about the relaxation of the regulations and suggested the Council designate
153 certain culverts for future restoration.

154 Speaker 24: Lisa Gambino, stated she lives near a swale that has flooded in the past, and
155 that flooding has destroyed her house which she doesn't think she should have to pay
156 for.

157 Speaker 25: Clifford Fred stated his concern that the reduced variance proposal abolishes
158 the height limit, that this could have environmental effects requiring and initial study.

159 Speaker 26: Sandra Waggener, stated she supports the NUC proposals and that she
160 doesn't feel property owners should have to pay to find the creek culverts or repair
161 them.

162 Speaker 27: Pauline Bondonno Cross favors the Use Permit option to expand next to a
163 creek and to allow variations in yard setbacks near creeks.

164 Speaker 28: Mansor Niofar stated that on May 30 the city promised the right to rebuild
165 and now it seems the city has changed their mind.

166 Speaker 29: Ella Ellis stated the right to rebuild language is not clear and culverts should
167 not be in the Creeks Ordinance.

168 Speaker 30: R. Krause encouraged the city to take culverts out of the ordinance and sated
169 the costs to located and repair culverts should not be born by property owners.

170 Speaker 31: Henrik Bull stated the ordinance does not achieve its stated goals.

171 Speaker 32: Joan Sprinson described a segment of the Strawberry Creek culvert near her
172 property maintained by the City of Albany and stated that property owners should not
173 be required to maintain creek culverts on their property.

174

175 The Commissioners discussed the public comments and the ordinance revisions.
176 Commissioners expressed concern about the size of residential buildings proposed to be
177 granted the right to rebuild by right, the definition of a creek culvert, the responsibility of
178 property owners to locate and repair culverts, "involuntary" destruction of a structure, the
179 "super variance", creek culverts in the ordinance, the transition area of creek culvert to

180 open creek, the lack of appeal for the City Engineer’s decision on creek culvert permits,
181 and the burden of the creek culvert survey.
182

183 M/S/WITHDRAWN to close the public hearing on the Zoning Ordinance revisions
184 related to the Creeks Ordinance. (Burke/ Poschman).

185
186 Chair Stoloff excused himself to meet with staff to organize the questions and concerns
187 raised by the Commissioners on the Creeks Ordinance.
188

189 **Item 10 Public Hearing: Telegraph Avenue Economic Development Assistance**
190 **Package, Zoning Component.**

191
192 M/S/C to open the public hearing on the Telegraph Avenue Zoning Ordinance
193 amendments. (Poschman /Tregub). Ayes: Burke, Ferrazares, Gurley, Pollack, Poschman,
194 Tregub. Noes: None. Abstain: None. Absent: Stoloff, Perry, Wengraf.

195
196 Speaker 1: Roland Peterson of the Telegraph Business Improvement District said he
197 general supports the amendments but thinks 23E.56.080.A.3, requiring a
198 transportation services fee, should be taken out.

199 Speaker 2: Jesse Arreguin encourages an extension of the by right hours of operation but
200 does not support allowing a UP to exceed quota limits.

201 Speaker 3: Kenan Wang of the student advocacy organization ACCESS encourages an
202 extension of the by right hours of operation to midnight.

203 Speaker 4: Amanda Purcell, also of ACCESS, encourages an extension of the by right
204 hours of operation. Delay until implementation of the Southside Plan would delay it
205 by at least year.

206 Speaker 5: Kriss Worthington stated delay in implementing these emergency measures
207 will hurt Telegraph businesses. He added there is significant demand for extended
208 hours and this is already a desire for those who participated in the Southside Plan
209 process.

210 Speaker 6: Alex Lemberg, also of ACCESS, stated that extending the hours will improve
211 safety due to more people and more lighting on the street.
212

213 M/S/C to close the public hearing on the Telegraph Avenue Zoning Ordinance
214 amendments. (Poschman /Tregub). Ayes: Burke, Ferrazares, Gurley, Perry, Pollack,
215 Poschman, Tregub, Wengraf. Noes: None. Abstain: None. Absent: Stoloff.

216
217 The group conducted a straw vote on support of extended the by right hours to 2 am 7
218 days a week: 6 of 8 were in favor. The group discussed 2 am vs. 12 midnight on
219 weekdays. The group discussed the value of quotas.
220

221 M/S to move the staff recommendations with hours of 12 midnight by right and 2 am on
222 Friday and Saturday with a UP. (Pollock /Stolof). A friendly amendment from Wengraff
223 to remove the TSF language was accepted.
224

225 Substitute M/S/F to move the staff recommendations with the hours of 2 am by right 7
226 days a week, eliminate quotas, and cut the TSF section. (Perry/Wengraf). Ayes:
227 Ferrazares, Perry, Wengraf.

228

229 Substitute M/S/C to move the staff recommendations with by right hours of 12 midnight
230 Sunday-Thursday and 2 am on Friday and Saturday and cut the TSF language. (Tregub/
231 Wengraf). Ayes: Ferrazares, Perry, Pollack Stoloff, Tregub, Wengraf. Noes: Burke,
232 Gurley, Poschman. Abstain: None. Absent: None.

233

234 **CONTINUED Item 9 Public Hearing: ZA 6-06: Amendments to the Zoning**
235 **Ordinance (BMC Title 23) related to the Creeks Ordinance and rebuilding after**
236 **involuntary destruction of structure. Public Comment: Recommendations on the**
237 **Creeks Ordinance Revisions (BMC 17.08) and Draft Initial Study.**

238

239 Chair Stoloff outlined the main issues to be addressed regarding the Creeks Ordinance
240 revisions and creeks-related Zoning Ordinance amendments.

241

242 M/S/C to incorporate the following language proposed by Commissioner Poschman into
243 BMC Section 23C.04.100: "The planning director shall also develop a description for
244 owners of qualifying residential structures of such building information required by the
245 city to document existing characteristics of the building in case of future damage or
246 destruction" (Poschman/Gurley). Ayes: Burke, Ferrazares, Gurley, Perry, Pollack,
247 Poschman, Stoloff, Tregub, Wengraf. Noes: None. Abstain: None. Absent: None.

248

249 M/S/C to close the public hearing on the Zoning Ordinance revisions related to the
250 Creeks Ordinance. (Burke/Tregub). Ayes: Burke, Ferrazares, Gurley, Poschman, Stoloff,
251 Tregub. Noes: Perry, Pollack, Wengraf. Abstain: None. Absent: None.

252

253 **ADJOURNMENT**

254 **The meeting was adjourned at 11:35 pm**

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256

257 Note on Commission Meeting Reporting:

258 In June 2005, the City Council adopted a plan that requires commission secretaries to
259 submit an annual report that summarizes for each meeting a) the number of
260 commissioners in attendance, b) the number of members of the public in attendance, c)
261 the number of public speakers and d) the length of the meetings.

262

263 For the October 11, 2006 Planning Commission meeting, the following will be reported:

264 Commissioners in attendance: 9

265 Members of the public in attendance: 60

266 Public Speakers: 39

267 Length of the meeting: 4 hours 30 minutes