

FINAL MINUTES OF REGULAR PLANNING COMMISSION MEETING

October 25, 2006

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

2
3 Location: North Berkeley Senior Center.

4 5 **ROLL CALL**

6
7 Commissioners Present: Burke, Ferrazares, Gurley, Perry, Poschman, St. John, Stoloff,
8 Tregub, Wengraf.

9
10 Commissioners Absent: None.

11
12 Staff Present: Cosin, Strauss, Jensen, Gatzke, Harrison.

13 14 **ORDER OF THE AGENDA**

15 Item 11 will precede Item 10.

16 17 **PUBLIC COMMENT PERIOD**

18 Speaker 1: Leo Ellis, stated that while he is not personally affected by the creeks
19 ordinance he feels the whole community should pay for culverts.

20 Speaker 2: Ella Ellis said she is concerned about the need for the right to rebuild in case
21 of fire in spite of the creeks ordinance setback.

22 Speaker 3: Barbara Allen, of Neighbors on Urban Creeks, read from a letter stating NUC
23 is opposed to the "super variance" which reduces the variance requirement on creek
24 properties to enable compliance with the Creeks Ordinance because adjacent property
25 owners will likely lose property value. It is more sensible to allow a use permit to
26 encroach into the 30 foot creek setback.

27 Speaker 4: Vonnie Gurgin, also of NUC, continued to read from the NUC letter, and
28 added that there could be impacts to neighbors from moving houses due to the Creeks
29 Ordinance 30 foot setback and the people who will be impacted haven't be notified.

30 Speaker 5: Martha Jones, also of NUC, continued to read from the NUC letter, and urged
31 the Commission to reject 23B.44.010.

32 Speaker 6: Jerry Landis, also of NUC, stated that property owners should be allowed to
33 tear down an old existing house and rebuild to the same footprint and height by right.

34 Speaker 7: Bob Schneider recommended creek culverts be taken out of the Creeks
35 Ordinance and feels that repair of culverts should not be the responsibility of property
36 owners.

37 Speaker 8: Diane Crowley states that the limitations on "voluntary" loss is unfair and
38 doesn't make sense. Also, the right to rebuild should be extended to all properties.

39 Speaker 9: Juliet Lamont urged the PC to recommend the Council adopt the CTF Creeks
40 Ordinance recommendations with the Variance option. She stated the proposed
41 ordinance is less strict than the existing ordinance and was the result of an open and
42 collaborative process.

43 Speaker 10: Phil Price, a member of the CTF, urged the PC to support the CTF
44 recommendations and explained that creeks definitions are often flawed and difficult
45 to develop and the City's definition is consistent with many other cities and state

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46 agencies. Also, he does not agree with allowing the Variance to be relaxed for certain
47 standards in order to meet the creeks setback but instead there should be a new limit.

48 Speaker 11: Carole Schemmerling, a member of the CTF, urged the PC to support the
49 creeks ordinance amendments with the Variance option.

50 Speaker 12: Shirley Dean stated the right to rebuild should be allowed whether a structure
51 is destroyed by fire or termites, she supports the Use Permit rather than Variance
52 option, the city should pay to locate culverts and create an accurate map, the city
53 should take the financial responsibility for collapsed culverts, and should develop a
54 comprehensive watershed plan.

55

56 **PLANNING STAFF REPORT**

57 None. Staff answered Commissioner's questions about the City Council's action on the
58 MRA pipeline projects.

59

60 **CHAIRPERSON'S REPORT**

61 None.

62

63 **COMMITTEE REPORTS**

64

65 **Creeks Task Force**

66 None.

67

68 **Density Bonus Subcommittee**

69 None.

70

71 **Downtown Area Plan Citizen Advisory Committee**

72 None.

73

74 **Downtown BART Plaza and Transit Area Design Plan Citizens Advisory Committee**

75 The need to continue this Committee was discussed.

76

77 M/S/C to dissolve the BART Plaza Subcommittee (Wengraff/Poschman). Ayes: Burke,
78 Ferrazares, Gurley, Perry, St. John, Stoloff, Tregub, Wengraf. Noes: Poschman. Abstain:
79 None. Absent: None.

80

81 **Southside Plan Subcommittee**

82 None.

83

84 **APPROVAL OF MINUTES**

85

86 M/S/C to approve the draft minutes of September 27 (Poschman/Ferrazares). Ayes:
87 Burke, Ferrazares, Gurley, Poschman, St. John, Stoloff, Wengraf. Noes: None. Abstain:
88 Perry, Tregub. Absent: None.

89

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90 M/S/C to approve the draft minutes of October 11 (Poschman/Ferrazares). Ayes: Burke,
91 Ferrazares, Gurley, Perry, Poschman, St. John, Stoloff, Tregub, Wengraf. Noes: None.
92 Abstain: None. Absent: None.

93

94 **UPCOMING AGENDA ITEMS**

95 No Discussion.

96

97 **ACTION ITEMS**

98 **Item 9 DAPAC Quarterly Report**

99 Will Travis, Chair of the DAPAC, presented background on the previous DAPAC
100 meetings, including the themes developed by the DAPAC members and information on
101 UC plans for downtown, and discussed the upcoming meeting topics.

102

103 **Item 11 Recommendations on the Creeks Ordinance Revisions (BMC 17.08).**

104 Vice Chair Stoloff chaired the portion of the meeting pertaining to the Creeks Ordinance
105 and distributed an outline for the discussion with the issues identified at the previous
106 meeting. Deputy Planning Director Cosin gave an overview of her responses to their
107 questions and introduced Supervising Civil Engineer Lorin Jensen.

108

109 The Commissioners discussed the Use Permit verses Variance option for expansion into
110 the creeks ordinance setback and the proposed Use Permit findings. A motion was made
111 to recommend the council adopt the Variance option (Burke). A substitute motion was
112 made recommend the Use Permit option and modify the findings (Perry). A substitute
113 motion was made to recommend the Use Permit option and delete findings #3 (St.John).

114

115 M/S/C to recommend the City Council adopt the Use Permit option (Alternative Two)
116 and delete finding 17.08.050.D(3) (St. John/Perry). Ayes: Gurley, Perry, St. John, Stoloff,
117 Wengraf. Noes: Burke, Ferrazares, Poschman, Tregub. Abstain: None. Absent: None.

118

119 The Commission discussed the potential cost and burden to homeowners of locating and
120 repairing culverts and asked staff for clarification on homeowner responsibilities. Jensen
121 explained that if a property owner discovers their culvert is in disrepair and reports this to
122 the city, the city would require repair of the culvert if it is a nuisance, meaning a life-
123 safety issue or causing pollution.

124

125 M/S/C to convey to the City Council that the Planning Commission is deeply concerned
126 with the possible high costs to homeowners in terms of culvert requirements and
127 recommend the City Council research carefully and have solid information on actual
128 costs before approving this part of the Creeks Ordinance (17.08.045) and request the
129 potential costs be referenced in the Council report (Poschman/Wengraf). Ayes:
130 Ferrazares, Gurley, Perry, Poschman, St. John, Stoloff, Tregub, Wengraf. Noes: None.
131 Abstain: Burke. Absent: None.

132

133 The Commission discussed the issues of appeal of the City Engineer's decision. Strauss
134 explained that in order for the creek culvert permit to remain ministerial it cannot be
135 appealable. The group asked for clarification on why culverts are in the Creeks

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136 Ordinance. Strauss explained this is consistent with the common law definition of creek
137 and the position of the City Attorney.

138
139 The Commission discussed the definition of creek.

140
141 M/S/Fails to convey to the City Council that the Planning Commission is concerned with
142 the definition of creek and recommends the council give it careful consideration. Their
143 concerns include the language “general historic course,” “continuous swale or
144 depression” and the lack of a definition of a non-creek culvert (Wengraf /Perry). Ayes:
145 Perry, Poschman, Tregub, Wengraf. Noes: Burke, Ferrazares, Gurley, Stoloff. Abstain:
146 St. John. Absent: None.

147
148 M/S/C to recommend the Council incorporate the numeric standards for defining a creek
149 used in the Administrative Regulations into the creek definition (Perry /St. John). Ayes:
150 Gurley, Perry, Poschman, St. John, Wengraf. Noes: Burke. Abstain: Ferrazares, Stoloff
151 Tregub. Absent: None.

152
153 M/S/Fails to recommend changing “may” to “shall” in 17.08.030.A(6) (Poschman/
154 Wengraf). Ayes: Poschman, St. John, Tregub, Wengraf. Noes: Burke, Ferrazares, Perry,
155 Stoloff. Abstain: Gurley. Absent: None. (Note: this motion was made during Item 10).

156
157 M/S/C to recommend to the Council “rebuilding” be changed to “rebuilding of structure
158 and the resulting structure” in 17.08.058(2-5) (Poschman /St. John). Ayes: Ferrazares,
159 Gurley, Perry, Poschman, St. John, Stoloff, Tregub, Wengraf. Noes: None. Abstain:
160 Burke. Absent: None. (Note: this motion was made during Item 10).

161
162 M/S/C to convey to the City Council that the Planning Commission supports the Creeks
163 Ordinance as revised including the comments and recommended modifications adopted
164 tonight (Poschman /Ferrazares). Ayes: Ferrazares, Gurley, Poschman, Stoloff, Tregub.
165 Noes: None. Abstain: Burke, Perry, St. John, Wengraf. Absent: None.

166
167 **Item 10 ZA 6-06: Amendments to the Zoning Ordinance (BMC Title 23) related to**
168 **the Creeks Ordinance and rebuilding after involuntary destruction of structure.**

169 The Commission discussed the right to rebuild provisions of proposed 23C.04.100.
170

171 M/S/C to recommend the right to rebuild be extended to residential structures with four
172 units or fewer in line 17 (Attachment 1, Item 10 of October 25, 2006) (Poschman/
173 Gurley). Ayes: Burke, Ferrazares, Gurley, Perry, Poschman, St. John, Stoloff, Tregub,
174 Wengraf. Noes: None. Abstain: None. Absent: None.

175
176 M/S/C to strike “involuntary” and add “but not limited to” after “including” and add
177 “except the intentional act or omission of the property owner” after “flood” to
178 23C.04.100.A(1) and make the same changes to the language in BMC 17.08.055, line 27
179 page 10 (Attachment 2, Item 9 of October 11, 2006) (Perry /St. John). Ayes: Ferrazares,

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180 Gurley, Perry, St. John, Stoloff, Tregub, Wengraf. Noes: Burke. Abstain: Poschman.
181 Absent: None.

182
183 The commission discussed the use permit option for creek properties to comply with the
184 Creeks Ordinance proposed in revisions to 23B.44.010.
185

186 M/S/C to recommend adoption of the staff proposed provisions in 23B.44.010 with the
187 exception of “the height of buildings” (Perry /Ferrazares). Ayes: Burke, Ferrazares,
188 Gurley, Perry, Stoloff, Tregub, Wengraf. Noes: St. John, Poschman. Abstain: None.
189 Absent: None.

190
191 M/S/C to recommend the Council adopt the staff proposed Zoning Ordinance
192 amendments as modified by tonight’s actions (Stoloff / Ferrazares). Ayes: Burke,
193 Ferrazares, Gurley, Perry, Poschman, St. John, Stoloff, Tregub, Wengraf. Noes: None.
194 Abstain: None. Absent: None.

195
196 **ADJOURNMENT**

197 The meeting was adjourned at 10:55 pm.

198
199 Note on Commission Meeting Reporting:

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

204
205 For the October 25, 2006 Planning Commission meeting, the following will be reported:

- 206 Commissioners in attendance: 9
207 Members of the public in attendance: 18
208 Public Speakers: 12
209 Length of the meeting: 3 hours 50 minutes