

PLANNING COMMISSION MEETING
COUNCIL CHAMBERS, RICHMOND CITY HALL
1401 Marina Way South, Richmond, CA
January 17, 2008
7:00 p.m.

COMMISSION MEMBERS

Virginia Finlay, Chair
Stephen A. Williams
Vacant

Vice Chair Nagarajo Rao
Jeff Lee, Secretary
Vacant

The meeting was called to order by **Chair Finlay** at 7:10 p.m.

Commissioner Williams led in the Pledge of Allegiance.

ROLL CALL

Present: Chair Finlay, Secretary Lee and Commissioner Williams

Absent: Vice Chair Rao

INTRODUCTIONS

Staff Present: Janet Harbin, Hector Rojas, Kieron Slaughter and Mary Renfro

MINUTES – None

Chair Finlay provided an overview of the Consent Calendar, meeting procedures for speaker registration and public hearing functions and procedures. She said certain items approved by the Commission may be appealed in writing to the City Clerk by Monday, January 28, 2008, by 5:00 p.m. and announced the appeal process after each affected item.

CONSENT CALENDAR

Chair Finlay noted the Consent Calendar consisted of Items 1, 2 and 3.

Ms. Harbin reported staff had a few changes for Item 2; staff has added to the background section of the report, second paragraph, where it discusses and clarifies the land exchange that was required with the City of Richmond and the porch. She said this particular parking area that will be improved replaces some of the parking that was over in a lot across the street from the Ford Assembly Building. It also will improve this particular area slightly different than the original plan for the Ford Assembly Plant parking lot. The area improved is closest to the City offices, is about 56,000 square feet.

In addition, at the end of the discussion there is also a section requiring amendment that addresses the main entrance for the Port parking lot. It will be at the northwest corner of the major parking lot, which is off of Hall Avenue and in close proximity to the current City of Richmond offices and parking lot, which is in Exhibit A.

Staff also added a new condition in the staff recommendation section; Condition 3 to read, "Prior to issuance of building permits, the applicant shall submit a complete storm water control and management plan that is prepared in accordance with the latest edition of the Contra Costa County Storm water C3 Guidebook, and which demonstrates the project complies with provision C3 requirements."

Staff also modified conditions of approval; Condition 8 which will now be Condition 9, to read, "This conditional use permit shall be valid for a period of 10 years and expire on January 28, 2018 subject to 5 year extension options." Therefore, the applicant could apply for a 5-year extension and prior to the termination of that extension, could apply for another 5 year extension, for a total of 20 years. She said the project planner is present for questions of the Commission.

Chair Finlay confirmed there were no speakers on Item 2 and requested two additional changes to be reflected in a revised staff report or memorandum: 1) In the staff report, under Item 4 on page 4, 2nd paragraph, delete "...from Harbour Way on the south side". 2) On the memorandum, Item 2, delete the word, "main" and change the sentence to read, "The entrance for the Port parking lot..."

Commissioner Lee requested Item 1 be removed from the Consent Calendar and confirmed there were public speakers for the item.

ACTION: It was M/S (Williams/Lee) to adopt the Consent Calendar consisting of Items 2 (as amended) and 3; unanimously approved.
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Items Approved:

- 2. CU 1104399 – Conditional Use Permit for Vehicle Storage at 1414 Harbour Way South**
- PUBLIC HEARING to consider a Conditional Use Permit for vehicle storage activities at 1414 Harbour Way South (APN: 560-181-103). The proposed project is a request of the Port of Richmond. M-2, (Port/Maritime) Zoning District. Eddie Orton, owner; Norman Chan, applicant. Planner: Kieron Slaughter. Tentative Recommendation: Conditional Approval

- 3. V 1103662 – Variance to Reduce the Minimum Lot Size at the southwest corner of Terrace Avenue and Vine Avenue** - PUBLIC HEARING to consider a Variance to reduce the minimum lot size from 6,000 square feet (SF) to 5,250 SF for the purpose of constructing a 2,607 SF single-family residence on the vacant lot located at the southwest corner of Terrace Avenue and Vine Avenue (APN: 558-082-001). SFR-2 (Very Low Density Residential) Zoning District. Firas & Amina Jandali, owner/applicant. Planner: Lina Velasco. Tentative Recommendation: Hold Over To 3/6/2008.

Brown Act – Public Forum

Regina Cochran spoke in anticipation of a possible revocation hearing for the installation of cell tower antennas by T-Mobile at 260 Water Street, asked Planning Commissioners to meet with neighbors at the site to see what is occurring and to visually understand the proximity of the residence to the tower.

Items Discussed:

- 1. ZTC 07-02– Zoning Text Change for Wireless Communication Facilities Ordinance - PUBLIC HEARING** to consider amendments to the Wireless Communication Facilities Ordinance (Section 15.04.820.030) of the Richmond Municipal Code. Planner: Lina Velasco. Tentative Recommendation: Conditional Approval or with Modifications.

Ms. Harbin said on September 18, 2007, in response to community concerns over unsafe and unsightly cellular antenna and tower placements, the City Council adopted a 45-day moratorium on the issuance of permits for wireless communication facilities. The moratorium was extended for six months to allow time for staff to amend the cellular antenna ordinance so that any type of cellular antenna in various zoning districts would require conditional use permits and discretionary review.

The City Attorney's office has written the amendment to the ordinance, Assistant City Attorney Mary Renfro is present for questions or further presentation on the issue and there are also members of the public in the audience who wish to speak. She said there have been two public meetings on the revisions to the ordinance and several issues were brought up as noted in the report such as public noticing, public hearings and location of facilities on residential structures and further restriction on those. There was also a request for clear guidelines to the wireless companies when locating cellular antennas in the City. Staff recommends the Planning Commission recommend the ordinance to the City Council.

Assistant City Attorney Mary Renfro said she has been working with the Planning Department to coordinate a lot of information from different stakeholders; cell phone users, members of the Pt. Richmond Neighborhood area, and cellular providers to ensure the City has an ordinance that complies with the Telecommunications Act and that helps to guarantee coverage in a reasonable way with having minimum impacts on the environment. The issue that arose at 260 Water Street was that people felt the exception that permitted that cell tower to be installed without a CUP was too broad and vague. One of the primary revisions to the ordinance is that exceptions are proposed to be incredibly narrow, allowing users to install without a CUP only when the antennas and/or towers are invisible, underneath roof structures, and that a CUP is required everywhere. In the old ordinance there were certain areas where there were no cellular towers; however, it was very loop holed and full of exceptions and not an enforceable provision. Staff therefore struck this provision. In order to minimize the impact of the number of towers and facilities, staff increased the submittal requirements and the rigor with which the provider's applications have to show they have done everything in their power to get the same amount of coverage with fewer, smaller antennas or co-locating. They have made clear submittal requirements and clear findings the Planning Commission will have to make.

Ms. Renfro noted that the moratorium would expire on March 18th, staff was directed to have a new ordinance in place before the moratorium expires and in order for the new ordinance to be effective, it would have to be enacted 30 days prior to March 18, 2008, which is February 18, 2008. A first reading must be at least 5 days prior to that date. Therefore, the first reading must be introduced in early February.

Chair Finlay said if the City had an original moratorium and then a 6-month extension, she questioned why another extension could apply. Ms. Renfro said under State law, a zoning moratorium can go up to 8 years; however, there is some question as to whether or not it can be longer than 6 months for telecommunications facilities. Staff is attempting to work within that

framework and bring all of the stakeholder's issues and providing a revision of the ordinance to clarify it and remove some exceptions.

In response to Secretary Lee, Ms. Renfro said if the City does not meet the 6 month moratorium deadline, the old ordinance would remain in effect and the moratorium would end. She said there is also a case out that does not allow governments to provide notice for a City Council prior to action being taken by a Planning Commission.

Public Comments:

Robin Carpenter, co-founder of RAP (Responsible Antenna Placement and Planning), President of the Pt. Richmond Neighborhood Council who voted unanimously to support the moratorium, revision of the ordinance and site mapping of all current antennas, asked that the item be continued until February or to be denied, as they believe the old ordinance is better than the proposed new ordinance. The public noticing did not occur to the members of RAPP, they have a CD of what the Council directed staff to have done, which was an ad-hoc committee the Mayor named to work with the Planning Department and telecommunications people per the FCC recommended guidelines for moratoriums and code revisions. She said she received a late telephone call alerting her of the meeting. She attended the first meeting where only two people were present and four people for the second meeting. She said Ms. Velasco presented a great break-out of four cities' ordinances at the second meeting, which included Orinda, Albany, Berkeley and Oakland' ordinances, which she discussed and which held up in court. Also, by working on the Code, it was their leverage to get the telecommunication companies to provide their sites where antennas are located, and she noted that a City intern has been working on this information.

Secretary Lee questioned if the 30-day extensions of the other cities' moratoriums was over and above the 6 month extension and Ms. Carpenter said yes; the longest a City went was an additional 12 month period, and no one had a total moratorium more than 12 months total. The FCC prefers starting with a 3-6 month period and then extend as needed, believes the current ordinance has glitches, but it is better than what is proposed.

Chair Finlay said that normally the Planning Commission would either approve or disapprove an item; it could then be appealed to the City Council, but this is not the case here. She said because it is a zoning text change, the Planning Commission has the ability to hear the item but can only make a recommendation to the City Council to approve or deny, or to make some modifications. And, the City Council has the ability to extend, should they choose to do so, and she was not sure if it was a benefit for the Commission to continue the matter. Ms. Carpenter said she would therefore request the Planning Commission recommend denial to the City Council.

Ms. Renfro said if the Council was to extend the moratorium and to request a new ordinance or significant revisions, that new ordinance would in all likelihood come back to the Planning Commission for referral.

Secretary Lee questioned the downside of the Commission continuing the item. Ms. Renfro said the moratorium would expire and no action would have been taken. Or, the Council might indicate it will not wait and they will still review the ordinance.

Andrew Olmsted, co-founder of RAP, said while they have an opinion on how long the moratorium should last, they do not want to discuss the moratorium which they feel has been

used as a device to force the matter to this Commission's agenda. They believe the proposal is a much worse ordinance than the current ordinance and reiterated they would rather have the old ordinance remain in effect and work through political means to get the ordinance re-written. He asked the Commission to recommend denial to the City Council, as it was their desire to have an ad-hoc committee meet with all stakeholders and bring a good ordinance to the Commission, which has not been the case.

Regina Cochran, said they have had their hands tied with the 260 Water Street installation, concurred with the two previous speakers, said Councilmember Butt recused himself from involvement in the matter, said she has watched T-Mobile work in concert with consultants on exposure levels in the neighborhood and they orchestrated the lowest possible reading without shutting the test down completely. She has precise notes, observations, pictures and everything needed to validate her statements. She asked the Commission to visit the site, said 14 households live 40-110 feet at eye level from the extremely powerful installation, they do not have a lot of options in terms of relocating and many do not know they are being exposed.

Rebuttal – Applicant

Ms. Renfro clarified a legal point regarding regulation of the placement of cell towers, stating under Federal law, no state or local government may regulate on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the FCC's regulations concerning such emissions. Therefore, local government has no power to write into its local ordinances anything regarding emissions; they are placed according to other matters of local concern such as aesthetics.

Rebuttal – Public

Robin Carpenter, said their issue with the ordinance does not have to do with the environmental health issues, but the Federal Appeals Courts have upheld the fact that properties are devalued in residential areas when antennas are placed because of the perception of health risk, and people have been awarded damages.

Ms. Harbin gave the staff summary, stating staff has presented an amendment to the Wireless Communication Facilities ordinance, ZTC 07-02; it would apply citywide to properties, it presents guidelines for the approval of conditional use permits and staff recommends the Planning Commission recommend the ordinance to the City Council to amend Chapter 15.04 of the Zoning Ordinance.

Chair Finlay questioned and confirmed that Commissioners had no modifications to make to Exhibit A.

Commissioner Williams felt it would be beneficial to continue the matter to the next meeting. **Secretary Lee** agreed there was no downside to continuing it, thought an additional 30 days could be awarded by the City Council or it could revert to the old ordinance until official action is taken and effected.

ACTION: It was M/S (Lee/Williams) to continue ZTC 07-02 for 30 days to the next Planning Commission meeting; unanimously approved.

COMMISSION BUSINESS

4. Reports of Officers, Commissioners and Staff

a. Planning Director's Announcement – Status of 260 Water Street Revocation

Planning Director Richard Mitchell reported that the City Manager and legal staff has been working very closely to relocate the 260 Water Street facility; they do not have a signed agreement but do have the framework for one. The immediate problem hopefully will be taken care of in the next couple of weeks to remove the antenna to a non-residential location which would satisfy the communication objectives of T-Mobile and relieve residents of issues relating to it. The need for a revocation hearing would be removed if this is achieved; if not, the Commission would take up the issue.

Secretary Lee pleaded with the Mayor and City Council to help staff the Planning Commission body, and **Commissioner Williams** agreed.

Chair Finlay said if the antenna issue is returned in a month, she asked public speakers to be definitive in what they do not like and what their recommendation would be.

Public Forum - None

Adjournment

The meeting was adjourned at 8:08 p.m.
