MINUTES
OF A REGULAR MEETING
OF THE
PITTSBURG PLANNING COMMISSION
April 22, 2008

A regular meeting of the Pittsburg Planning Commission was called to order by Chairperson Ohlson at 7:03 p.m. on Tuesday, April 22, 2008, in the Council Chambers, City Hall, 65 Civic Avenue, Pittsburg, California.

ROLL CALL:

Present: Commissioners Diokno, Garcia, Kelley, Ramirez, Wegerbauer, Chairperson Ohlson

Absent: Commissioner Harris

Staff: City Manager/Planning Director Marc Grisham, Senior Planner Dana Hoggatt, Assistant Planner Jason Burke, Associate Planner Kristi Vahl, Assistant Planner Leigha Schmidt, Redevelopment Agency Project Manager Maria Allioti, Pittsburg Police Officer Dan Callahan, and Senior Civil Engineer Alfredo Hurtado.

POSTING OF AGENDA:

The agenda was posted at City Hall on Friday, April 18, 2008.

PLEDGE OF ALLEGIANCE:

Jim Miller led the Pledge of Allegiance.

DELETIONS/WITHDRAWALS/CONTINUANCES:

There were no deletions, withdrawals or continuances.

COMMENTS FROM THE AUDIENCE:

There were no comments from the audience.
PRESENTATIONS:

There were no presentations.

CONSENT:

Item 1: Minutes of Meeting, March 25, 2008

City Manager Marc Grisham requested an amendment to the second and third sentences of the last paragraph on Page 20 of the March 25, 2008, Planning Commission meeting minutes, as follows:

In terms of funding availability for redevelopment acquisitions, those efforts had been placed on hold due to the bond insurance market, response to the subprime mortgage market failure, and since the City/RDA’s bond insurance carrier, AMBAC, had lost its Triple A rating. The City/RDA was working with its financial management team and underwriters to come up with a shorter term solution to restructure debt.

MOTION:

Motion by Commissioner Garcia to adopt the Consent Calendar, as amended. The motion was seconded by Commissioner Ramirez and carried by the following vote:

Ayes: Commissioners Diokno, Garcia, Kelley, Ramirez, Wegerbauer, Ohlson
Noes: None
Abstain: None
Absent: Commissioner Harris

PUBLIC HEARINGS:


An application by Alberto Montano of Don Pepe’s Mexican Market, requesting approval of an amendment to a previously-approved use permit for a grocery store (Planning Commission Resolution No. 9739), in order to allow the sale of beer and wine and take-out food service in addition to retail sales of grocery products. The property is located at 2181 Loveridge Road, CC (Community Commercial) District. APN: 088-630-008.

Senior Planner Dana Hoggatt presented the staff report dated April 22, 2008. She recommended that the Planning Commission adopt Resolution No. 9752 approving an amendment to the use permit to allow take-out service of cooked foods, but recommended denying the request to sell alcohol.
Commissioner Diokno spoke to Section 3. Decision, Condition 6 b and c of Resolution No. 9752, and verified with Ms. Hoggatt that the City could restrict the use of CFC-processed packaging.

Commissioner Diokno also spoke to the floor plan and the location of the range, grill and fryer. He affirmed with staff that those were the major changes to the floor plan from the original approval.

Ms. Hoggatt added that there were two proposed changes, as noted on Attachment 3. The first change was for the hood and the range to be added if the take-out service was allowed, and the second was for the addition of a beer and wine case to be located near the front of the store, which would require some rearranging of some the product lines. There was no request for seating or tables in addition to the take-out service.

Commissioner Wegerbauer questioned how grease would be controlled from going down the drain.

Ms. Hoggatt explained that Section 3. Decision, Conditions 3 and 4 of Resolution No. 9752 had indicated that the applicant would be required to comply with the standard National Pollutants Discharge Elimination System (NPDES) conditions related to the management of grease.

Commissioner Wegerbauer wanted assurance that the applicant would follow the guidelines given the mixed uses in the center that would also be sharing the same sewer line.

Commissioner Ramirez questioned whether or not the applicant would use electricity or gas for cooking, with proper ventilation.

Ms. Hoggatt was uncertain whether gas or electricity would be used, although the applicant must comply with the Building Code for the installation of ventilation equipment.

PUBLIC HEARING OPENED

PROPOONENT:

ALBERTO MONTANO, 2181 Loveridge Road, Pittsburg, acknowledged that there were problems in the area of the center. His business had been experiencing slow activity which had been the reason for his request to sell alcohol. He pointed out that those causing problems in the center were not regular customers of his store or the center but were homeless persons who had been causing problems in the area. He commented that many regular customers would like to purchase beer from his store and many had been taking their business elsewhere since he did not sell the additional products.
Mr. Montano stated that he would like to provide such services for his customers. He added that he would not sell single alcohol containers. He had provided a letter to staff indicating that he would sell six-packs and 12-packs, with a condition that customers also purchase groceries. He supported a condition of approval requiring that if a customer did not purchase groceries, that customer would not be allowed to buy alcohol. If he was found not to be in compliance with all required conditions of approval, he recognized that the City could revoke the permit.

Commissioner Ramirez questioned the hours of operation for the grocery store, to which Mr. Montano stated that the store was open from 8:00 a.m. to 9:00 p.m.

Commissioner Wegerbauer commented that she had visited the store. She commended its appearance. She questioned whether or not the applicant planned to connect the floor drain to the sewer with a grease trap.

Mr. Montano advised that he had complied with the requirements of the Health Department and that the grease trap was one of the requirements when he had opened the grocery store. He also clarified that the stove would be a gas element with the hot plate and cold plate being electrical, all consistent with code requirements.

Pittsburg Police Officer Dan Callahan reported that East Contra Costa County and the City of Pittsburg were saturated with licenses to sell alcohol. Currently, one could not obtain a liquor license in East Contra Costa County except through a once a year lottery system. In order for the applicant to obtain a license to sell beer and alcohol, he must purchase it from a private party and bring it into the City.

Officer Callahan explained that the Police Department’s concerns had been outlined by staff and that any additional stores selling liquor in the City had the potential to cause additional calls for service, regardless of restrictions. He noted that there were monthly Alcohol and Beverage Control (ABC) stings in the community and with every store in the City, regardless of the training of employees, the stings had found alcohol sales to underage minors, primarily with someone else purchasing the liquor for the underaged. He stated that the addition of more stores selling liquor would limit the Police Department’s ability to monitor the existing stores in the community.

Officer Callahan stated that while he was impressed by the applicant’s commitment and the conditions to which he had agreed, the Pittsburg Police Department opposed the approval of any additional stores selling alcohol in the City. He noted that the disapproval of the request was based somewhat on the actions of the ABC and the over-saturation of liquor licenses in East Contra Costa County, which was something ABC did not see, would change in the future.
Commissioner Diokno questioned whether or not any license to sell alcohol had been revoked from any retailer or business in the community.

Officer Callahan advised that the first offense carried a fine, a second offense carried a 10-day suspension of the liquor license or an additional fine could be paid, and a third offense involved a 30-day suspension or an additional fine. As long as the merchant was willing to pay the fines, the license would not be suspended. There were currently three liquor stores in the City that were under 30-day suspensions. Those stores had agreed to pay $20,000 in fines rather than have the liquor license suspended.

Officer Callahan added that while the City of Pittsburg was fortunate to have a good relationship with ABC to monitor its licenses once a month, the Police Department had to work closely with that agency. The ABC had asked the Police Department to limit the number of liquor licenses in the City for that reason. He noted that additional liquor licenses in the City would have a detrimental effect on the City’s relationship with the ABC.

Mr. Montano stated, when asked, that he otherwise agreed with the staff recommended conditions of approval. He clarified that he had contacted ABC and understood that they would be open to new liquor license applications in September through a lottery system, or a license could be purchased from a third party. He currently did not have a license. If he had approval from the City, he would make application with the ABC for consideration in September. He commented that it would cost $6,000 to apply for an ABC liquor license and could cost as much as $10,000 to $12,000 if he purchased one from someone else.

Commissioner Diokno spoke to the problems in the Wal-Mart Shopping Center parking lot and questioned whether or not those activities were accurate.

Officer Callahan advised that the problems in the Wal-Mart parking lot included loitering within several areas nearby the center where there were homeless encampments. Individuals would loiter in the Wal-Mart parking lot and ask for money. As to other nearby liquor establishments that had experienced problems with the homeless, he acknowledged that the same problems had occurred with loitering, pandering and the like. He stated that the homeless purchased liquor when they had the money to do so, or they used minors to purchase alcohol for them, which had been evidenced through the ABC sting operations.

Mr. Montano suggested that such a problem would not occur in his store with a condition that no alcohol could be purchased without the purchase of groceries.

OPPONENTS: None

PUBLIC HEARING CLOSED
Commissioner Diokno noted that none of the neighboring stores had complained about the sale of alcohol in the store other than concerns with people loitering in the parking lot. Since the City had supported larger retailers and had imposed conditions on the smaller Mom and Pop operations, Commissioner Diokno stated it made it more difficult for those businesses to be successful. He liked the applicant’s condition that no alcohol be sold without the purchase of groceries, subject to a six-month trial period. If an arrest was made or it was shown that the business was in violation of the law, the license could then be revoked.

Commissioner Garcia requested clarification from staff on the process for a revocation of an approved use permit.

Ms. Hoggatt explained that if the business was found to be in violation of approved conditions after a six-month trial period, as an example, staff and the Planning Commission would have to go through a process similar to what had been done recently with the Mehran Restaurant, where steps would have to be taken for possible revocation of an approved use permit. There would have to be evidence to support a revocation.

Commissioner Wegerbauer was hesitant to support another establishment selling alcohol. She understood the concerns of the applicant, and affirmed that the business was nice, but in a poor location. While her instinct was to oppose the request, she questioned whether or not the use permit could be limited. If the sale of alcohol were permitted, she did not want to see the product displayed and stored at the front door. She suggested those products should be placed at the back of the store.

Commissioner Ramirez noted that the applicant had been willing to do anything to have the business succeed and he suggested that the applicant’s recommended condition would be reasonable. He was willing to support the request for a six-month trial period. If a problem were to arise, the permit could then be revoked. He agreed that if a customer was not purchasing groceries that customer could not purchase beer or wine. He also agreed that the applicant should be prohibited from selling single containers, with no alcohol to be consumed on the premises.

Commissioner Garcia commented that a revocation of a use permit, for alcohol in this case, involved a number of public hearings in a time-consuming process to prove that the applicant no longer warranted the liquor license. He explained that the only reason he could not support the request was the lengthy process to revoke a use permit. He recognized that the business was trying to succeed, although he pointed out that the applicant had originally indicated just a few months ago when the project had initially been approved that he did not plan to sell alcohol.

Commissioner Kelley liked the applicant’s ideas, although she recognized that the area was already saturated with liquor stores. She would have liked to have seen the applicant do what he wanted for his small business, although with the police calls to the center and
the stores in the area that also sold alcohol and given the proximity of nearby schools, she could not support the sale of alcohol.

Commissioner Kelley understood that the applicant could reapply for the same request in the future if the application was denied without prejudice.

Ms. Hoggatt affirmed that the request to sell beer and wine could be denied, without prejudice, which would allow the applicant to reapply within one calendar year.

Chairperson Ohlson supported the recommendations of staff and the Police Department. While he would support the request for take-out food service, he could not support the request to sell beer and wine.

**MOTION: AP-07-467 (UP)**

Motion by Commissioner Garcia to adopt Resolution No. 9752, amending AP-07-467 (UP), a use permit in order to allow take-out food service and prohibit the sale of alcohol from an existing grocery store at 2181 Loveridge Road, for “Don Pepe’s Mexican Market, Amendment of AP-07-467 (UP),” as conditioned and with an additional provision specifying that the request to sell alcohol was denied without prejudice.

The motion was seconded by Commissioner Kelley and carried by the following vote:

- **Ayes:** Commissioners Diokno, Garcia, Kelley, Ramirez, Wegerbauer, Ohlson
- **Noes:** None
- **Abstain:** None
- **Absent:** Commissioner Harris

Chairperson Ohlson identified the process to appeal a decision of the Planning Commission within 10 days by submitting a written appeal to the Planning Department for a hearing before the City Council.

**Item 3: Fort Knox RV and Boat Storage Phase VI. AP-07-497 (UP).**

An application by John Campagna of Fort Knox Self-Storage, requesting approval of a use permit to expand the existing Fort Knox Self Storage facility in order to accommodate parking for RV and boat storage in the CO-O (Office Commercial with a Limited Overlay, No. 07-1284) District. APN 088-072-065.

Assistant Planner Leigha Schmidt presented the staff report dated April 22, 2008. She recommended that the Planning Commission adopt Resolution No. 9754, as conditioned. She added that correspondence had been submitted to the Commission to identify
concerns with the facility being used beyond the established hours of operation. She suggested an additional condition, Condition 14 to Resolution No. 9754, restricting access to the property from 7:00 a.m. to 7:00 p.m.

Commissioner Wegerbauer inquired why the area was being replaced with gravel and not asphalt.

Ms. Schmidt explained that the use of gravel was less expensive and while the area was paved there were areas it would be replaced. If the entire area was repaved it would have to comply with C3 provisions, where swales and additional landscaping would be required to meet those requirements. With the use of compacted gravel, storm water could filter through the gravel into the ground, a more responsible way than the tearing up the asphalt. The compacted gravel would also allow striping to remain on the site.

Commissioner Wegerbauer commented that if the area was in poor condition and the use became storage, it would become a management nightmare to clear the area to allow it to be resurfaced.

Commissioner Garcia clarified with staff that the recommendation for an additional condition, Condition 14, would replace the existing condition or the condition could be added as a new condition.

On the discussion, Ms. Schmidt suggested that the new condition regarding the hours of operation could be renumbered as Condition 23.

Chairperson Ohlson spoke to Section 3. Decision, Condition 6 of Resolution 9754, and recommended the following amendment:

6. All landscaping shall be irrigated and maintained in a thriving and weed-free condition.

As to Section 3. Decision, Condition 10, Chairperson Ohlson commented that most recreational vehicle storage facilities had a sanitary dump site and might charge a low fee for that use which was an enhancement to the rental of the space. He suggested that the exterior of the recreational vehicles should be allowed to be washed on site with a proper berm area to ensure that the vehicles looked good.

Chairperson Ohlson also spoke to Section 3. Decision, Condition 11, and recommended that the condition include a reference to flat tires, broken windows, and body damage, although he acknowledged that the definition of a broken window could be difficult. He recommended that if the California Highway Patrol (CHP) were to issue a ticket because of a broken window that could be a definition of a broken window.

PUBLIC HEARING OPENED
PROPONENT:

JOHN CAMPAGNA, 260 Lakewood Road, Walnut Creek, representing Fort Knox Self-Storage, explained that the intent of the facility was only to allow the storage of recreational vehicles and boats. He did not want people to wash or conduct repairs on their vehicles given that the facility did not have those capabilities. He was not opposed to Condition 10 as shown. He emphasized that the intent was for storage only, with the hours of operation from 7:00 a.m. to 7:00 p.m. In terms of the landscaping, he explained that the dark bark in front of the property would be redone and the existing ground cover would be replaced with better plants. There would also be improvements to the irrigation.

DELFINO LOSA, Manager of the Fort Knox Self-Storage facility, 1026 Bending Willow Way, Pittsburg, explained that the pictures shown by staff of the site were old and outdated. Trees that had been depicted were now growing. They had been recently planted when the photographs had been taken.

Mr. Campagna also commented that they had matching paint to address the graffiti. In terms of the asphalt, a sweeper would clean that area, with any cracks, holes or dirt to be filled with gravel, which would be environmentally responsible.

Mr. Losa agreed with the conditions of approval, although he asked how many surveillance cameras staff had recommended to be placed on the site.

Ms. Schmidt explained that condition had been worded where the applicant shall submit a plan to staff. She had not conditioned a certain number of cameras and would leave that up to the applicant to determine the needs of the site. While cameras had been installed for the initial use, with a new use on 70,000 square feet of space, staff was of the opinion that it would be appropriate to add cameras for the new use.

Mr. Campagna acknowledged that cameras had been installed all around the property with the exception of the one area at the far end, although cameras would be added to that area.

Mr. Losa added that cameras would be added along El Dorado Drive to address the problems with the littering on the rear side of the property and to address graffiti problems.

Commissioner Wegerbauer questioned whether or not the applicant had encountered similar use of asphalt on other properties that they owned.

Mr. Campagna advised that he also owned property in Antioch that was located on gravel and dirt and that had experienced no problems.
Mr. Losa clarified that the facility hours of operation were from 7:00 a.m. to 7:00 p.m. for gates, with the office hours from 9:00 a.m. to 6:00 p.m. A second office was located at the rear of the facility and was open from 7:00 a.m. to 5:00 p.m.

Commissioner Garcia noted that the original conditions of approval had listed the hours of operation for the facility as stated by the applicant.

Mr. Campagna advised that the condition of approval for the hours of operation were from 7:00 a.m. to 7:00 p.m. consistent with the original documents.

Chairperson Ohlson questioned how the applicant would define and ensure that the stored vehicles would be maintained in good condition. He opposed the use of tarps with bungee cords to cover any of the vehicles.

Mr. Losa advised that the intent was not to have any vehicle older than 10 to 15 years old. The vehicles were to be in very good condition and be operable. He noted that the City was having problems with the parking of RVs and boats in residential areas and the intent was to provide storage for such vehicles. The only other facility of which he was aware that had similar storage was Sierra RV/Boat Parking on Buchanan Road. Tarps, bungee cords or ropes would not be allowed and they would ensure that the site was kept neat and clean.

A.J. FARDELLA, 209 Havenwood Circle, Pittsburg, Director of the Oak Hills Community Group, supported the proposal given the problems with RV parking in residential areas. He agreed that the property was underutilized and that the use followed all of the Zoning Ordinance requirements. He was also familiar with the applicant, whom he characterized as a quality individual who deserved the City’s support.

PETE CARPINO, 151 El Camino Drive, Pittsburg, acknowledged that the applicant had followed the wishes of the surrounding neighborhood in the past. He was pleased to see a condition related to the hours of operation. He commented that he had a copy of the original conditions of approval, which had stipulated that the hours of operation were from 7:00 a.m. to 7:00 p.m.

Mr. Carpino otherwise commented on problems with the site with respect to litter that was not the fault of the applicant, but that originated from some of the surrounding stores including a Mexican grocery store, an inoperable gas station, a restaurant and a vacant lot that had a great deal of debris blowing onto the site. He commented that there had also been problems with vehicles being parked on the vacant lot. He was pleased that the RV and boat storage would be screened behind a wall. He added that there were also problems with some of the tenants in Railroad Square with another restaurant directly adjacent to the subject use, and that had trash containers located in the middle of
the street within the exit for the self-storage facility. He questioned why that business had not been required to have an enclosed trash container as had other restaurants in the community.

Mr. Grisham advised that the concerns with the trash container were noted but were not germane to the subject discussion.

OPPORTENTS: None

PUBLIC HEARING CLOSED

MOTION: AP-07-497 (UP)

Motion by Commissioner Garcia to adopt Resolution No. 9754, approving a use permit to expand the Fort Knox Self-Storage Facility to include parking for RV and boat storage. “Fort Knox RV and Boat Storage. AP-07-497 (UP)”, as conditioned and subject to the following modifications:

- Add to Section 3. Decision, a new Condition 23 restricting access to the property to the hours between 7:00 a.m. to 7:00 p.m.; and
- Revise Section 3. Decision, Condition 6 to read:

  All landscaping shall be irrigated and maintained in a thriving and weed-free condition.

The motion was seconded by Commissioner Wegerbauer and carried by the following vote:

Ayes: Commissioners Diokno, Garcia, Kelley, Ramirez, Wegerbauer, Ohlson
Noes: None
Abstain: None
Absent: Commissioner Harris

Chairperson Ohlson identified the process to appeal a decision of the Planning Commission within 10 days by submitting a written appeal to the Planning Department for a hearing before the City Council.


An application by Contra Costa Waste Services, Inc. requesting use permit and design review approval to construct a 9,831 square foot and 30-foot tall mixed construction and demolition (C & D) recycling facility on a 6.52-acre parcel located at 1300 Loveridge Road in the IG (General Industrial) District. APN 073-200-014.
Assistant Planner Jason Burke presented the staff report dated April 22, 2008. He recommended that the Planning Commission adopt Resolution No. 9755 Approving AP-08-510 (UP/DR), as conditioned. He asked that the resolution number be corrected in the staff report with the resolution to read “Resolution No. 9755,” not Resolution No. 9754, as shown on the documents.

Mr. Burke added that the applicant had requested that the hours of operation for the facility be expanded from 7:00 a.m. to 5:00 p.m. to 7:00 a.m. to 10:00 p.m., which would be consistent with the applicable codes limiting the hours of operation to 7:00 a.m. to 7:00 p.m. for sites located within 500 feet of a residential area. Since the nearest residence to the subject facility was 2,400 feet away, staff was open to the suggestion to expand the hours of operation. As such, Section 3. Decision, Use Permit, Condition 4 could be modified to allow the increase in the hours of operation if supported by the Commission.

Commissioner Garcia spoke to the request for an expansion of the hours of operation and suggested that it would be difficult to deny the request given that from the west side of Loveridge Road, from the Antioch/Pittsburg Highway to the river all of the industries were operating 24/7, some of which were closer to residential uses than the subject facility.

Chairperson Ohlson referenced Page A3 of the proposed plans and recommended that the business hours, which currently read 7:00 a.m. to 6:00 p.m., be modified to reflect any expansion of the hours of operation.

PUBLIC HEARING OPENED

PROPONENT:

ROGER WILSON, Architect, 1250 Addison Street, Berkeley, explained that the hours of operation for the subject facility had been approved by the State Integrated Waste Management Board to allow the facility to operate from the hours of 7:00 a.m. to 10:00 p.m. As to the landscaping request, he noted that the applicant would meet the 10 percent requirement, although he suggested it would be better served if located on the east side of the property and on the GWF side. The west side would have minimal benefit with no plans for major development in that area.

Mr. Burke commented that there could be a difference of opinion on the landscaping requirement, although he acknowledged that a case could be made to include landscaping along the west side since it would provide an immediate visual and wind buffer. Although the height of the elevated pick line would be approximately 16 feet and the height of the activities at the plant would be 16 feet in the air, by the time the trees were planted and matured there could potentially be new development. There was currently no approved development for that area.
Commissioner Garcia affirmed with the Operations Manager of the Contra Costa Waste Services, C & D Operation that he had read the conditions of approval and was in agreement with the stated conditions other than the concerns raised with respect to the hours of operation and landscaping.

Commissioner Garcia commented that there was an empty field between the western fence and the trees along the Antioch/Pittsburg Highway. Since most traffic would be along Loveridge Road, he recommended that staff work with the applicant on the landscaping requirement.

In response to the Chair, the Operations Manager explained that the facility was close to the upper level of their permit. The facility had been floor sorting recycled items inside the building but had not been getting the percentage of diversion it would receive from the new mechanized operation, which must be placed outside. The new machinery should increase the diversion.

Chairperson Ohlson spoke to Page L3 of the plans and requested clarification of the 32-foot turning radius as shown on the plans.

Mr. Wilson advised that the turning radius was for the trucks delivering debris that would be sorted. The 32-foot trucks would be the largest trucks accessing the site. Larger 53-foot trucks would not come to the site.

The Operations Manager advised that the trucks coming to the site similar to the 53-foot trucks would be a Hinds Bros truck and trailer. The majority of the material would be delivered from debris boxes around 20 to 22 feet in length on average. He added that they planned to commence with the construction of the facility as soon as possible, although the resolution had shown a two year approval for the project.

OPPONENTS: None

PUBLIC HEARING CLOSED

Commissioner Diokno liked the architect’s suggestion to devote the landscaping efforts along Loveridge Road rather than on the rear of the site. He would like to see the landscaping condition modified as a result.

MOTION: AP-08-510 (UP/DR)

Motion by Commissioner Garcia to adopt Resolution No. 9755, approving AP-08-510 (UP/DR) a use permit and design review of plans to construct and operate a 9,831 square foot and 30-foot tall mixed construction and demolition (C&D) recycling facility on a portion of a 6.52-acre parcel located at 1300 Loveridge Road, (APN 073-200-014),
“Contra Costa Waste Services, C&D Operation, AP-08-510 (UP/DR),” as conditioned, subject to the following modifications:

- Modify condition under Section 3. Decision, Use Permit, to reflect the hours of operation as from 7:00 a.m. to 10:00 p.m.; and
- Section 3. Decision, Design Review, Condition 14 to be amended to reflect that the landscaping shall be brought up to 10 percent and shall be placed on Loveridge Road and abandoned on the west side fence line.

The motion was seconded by Commissioner Ramirez and carried by the following vote:

Ayes: Commissioners Diokno, Garcia, Kelley, Ramirez Wegerbauer, Ohlson
Noes: None
Abstain: None
Absent: Commissioner Harris

Chairperson Ohlson identified the process to appeal a decision of the Planning Commission within 10 days by submitting a written appeal to the Planning Department for a hearing before the City Council.

Commissioner Wegerbauer left the dais at this time due to a potential conflict of interest with Commission Consideration, Marina Commercial Building, Amendment of AP-07-461 (DR), since she had been under contract with the City for a portion of the project.

**COMMISSION CONSIDERATIONS:**

**Item 5: Marina Commercial Building. Amendment of AP-07-461 (DR).**

A Redevelopment Agency-initiated proposal to amend a previously approved design review application for the multi-tenant marina commercial building, in order to reduce the approved building size from a three-story design to a two-story design with the same building location and footprint. The project site is located at the Marina, east of Marina Boulevard, in the CW (Waterfront Commercial) District. APN 085-071-040.

Assistant Planner Kristi Vahl presented the staff report dated April 22, 2008. She recommended that the Planning Commission adopt Resolution No. 9753 approving AP-07-461 (DR), as conditioned.

**PROPOONENT:** City of Pittsburg Redevelopment Agency

MARIA ALLIOTI, representing the Pittsburg Redevelopment Agency, welcomed any questions on the proposed amendment. She reported that the City Council had approved the revised project.
JIM MILLER, Architect, 600 Cumberland Street, Pittsburg, explained that the same design elements had been preserved as presented on the three story building. As part of the amendment, the uses on the first floor had changed and there were no longer plans for a restaurant use there.

Mr. Miller commented that a condition had been imposed for the back portion of the building, which would have been a foot to 18 inches off of the existing promenade, where a barrier had been required for safety reasons around the outdoor terrace area. After the construction drawings had been developed and a survey prepared, they found they would not have a raised platform in the back and the terrace was a few inches above the existing promenade with no raised platform. He therefore asked that Section 3. Decision, Design Review Condition 5 be revisited since a barrier was no longer required.

Ms. Allioti added in response to Commissioner Garcia that the first floor space would be a City store/bookstore operated by the City. That space was no longer planned for a restaurant use.

Commissioner Diokno stated that he had originally asked for a condition for a barrier around the terrace area. He agreed that absent the raised platform, a barrier was no longer needed.

OPPONENTS: None

MOTION: AP-07-461 (DR)

Motion by Commissioner Ramirez to adopt Resolution No. 9753, amending AP-07-461 (DR), the design review approval for a two-story, 19,461 square foot multi-tenant commercial building on the east side of Marina Boulevard, “Marina Commercial Building. Amendment of AP-07-461 (DR),” as conditioned and with the elimination of Section 3. Decision, Design Review, Condition 5. The motion was seconded by Commissioner Kelley and carried by the following vote:

Ayes: Commissioners Diokno, Garcia, Kelley, Ramirez, Ohlson
Noes: None
Abstain: None
Absent: Commissioner Harris, Commissioner Wegerbauer [recused]

Chairperson Ohlson identified the process to appeal a decision of the Planning Commission within 10 days by submitting a written appeal to the Planning Department for a hearing before the City Council.

Commissioner Wegerbauer returned to the dais at this time.
**Item 6: Pittsburg Medical Center Building Parapets. AP-05-213 (DR).**

A City-initiated request for the Planning Commission to consider and provide feedback to staff on a modification to approved Design Review Application No. 05-213 (Planning Commission Resolution No. 9640) for the 10,071 square foot Pittsburg Medical Center located at 1270 East Leland Road in the CO (Office Commercial) District. APN 088-161-013.

Assistant Planner Leigha Schmidt presented the staff report dated April 22, 2008. She recommended the Planning Commission provide staff direction as to which option listed in the staff report met the intent of the design review approval for the Pittsburg Medical Center.

Commissioner Garcia expressed concern that the building had been allowed to be completed but was not in compliance with the approved plans. He questioned who had approved the building plans. He commented that he had received responses from residents suggesting that the building was one of the best looking in the community and he was shocked to have learned that the parapets had not been completed as approved.

Ms. Schmidt advised that she had inherited the project from a prior planner. She had conducted a pre-final inspection, but a final inspection had not been done. That would not be done until the developer called for a final inspection.

Mr. Grisham explained that the conditions relating to the construction of the building were always the responsibility of the applicant who was required to follow the conditions approved by the Planning Commission and by the building inspection department. He commented that he had recently spoken with an architect who had recommended that Planning Commission conditions of approval be required as an attached sheet to all construction drawings, which could resolve similar issues from occurring in the future. While staff could have picked up the error at certain points, the applicant was ultimately responsible for compliance of the project.

Commissioner Garcia commented that had the error not been pointed out, he would not have known of it. He was disappointed that staff had missed the details.

Mr. Grisham pointed out that sophisticated developers should know the code. He expected that all future construction drawings would include Planning Commission conditions.

Commissioner Garcia did not see that it made sense to take down the roof now in order to add the approved parapets all the way around.

Ms. Schmidt advised that staff had brought the matter to the applicant’s attention in January and had followed up with the architect and developer in February. Staff had not been approached until a couple of weeks ago that this was still an issue.
PROPONENT:

KEYVAN MASOUDI, 2734 Delta Fair Blvd. Antioch, identified himself as the property owner. He explained that his bank had denied raising his loan due to off-site work that had been dedicated to the City with no increase to the value of his building.

Mr. Masoudi expressed concern that he could be running out of time with a May 12 grand opening for the pharmacy tenant and with 90 percent of the other tenants having completed their tenant improvements. He advised that he was carrying a heavy mortgage along with tenants not paying any rent until they were open for business.

Mr. Masoudi commented that he had spoken with his architect, who had a signature/stamped approval from the City. His contractor had also been contacted and had indicated he had followed the drawings and the City should have informed him of the error prior to the completion of the building. He would have liked to have repaired the building but needed time and expressed concern that his tenants had legal recourse against him if they could not open for business.

While he did not like the appearance of the parapets and would like to make repairs, Mr. Masoudi reiterated that he needed time. He cited Popeye’s located across the street and which had the same parapet design elements. While he could remove the gray shingles and cover them with a metal frame and paint, at this time he questioned doing that work and not being able to open his businesses. He suggested that the project architect, contractor and the City should have seen the error. He reiterated that he had tenants ready to open and was concerned with further delays.

Commissioner Wegerbauer liked the building but agreed that it was not finished. Of the options before the Commission, as identified in the staff report, she questioned what option the applicant would be willing to complete.

Mr. Masoudi requested that he be allowed to resolve the issue in the same fashion as the Popeye’s building with metal on the back to be painted the same color as the building, although he emphasized that he could not do that work at this time.

Commissioner Wegerbauer questioned what options presented by staff in the staff report would be acceptable, including completion according to the plans, finishing the gray sections with the stucco to be painted to match the main structure, or requiring the cornice and other detailing to be carried around the back of the wall to be finished with stucco and to be painted to match.

Mr. Masoudi commented that he could do Option 3, although it would be costly and since the building was done the parapets and roof were no longer easily accessible, and the work could possibly cause damage to the building. He could remove the shingles and...
place stucco and paint it; however he did not have the time for the work now given the grand opening planned for the pharmacy.

Commissioner Diokno agreed that the job was not done, and regardless of when the problem had been identified, the architect and contractor agreed to the original approved plans prior to construction. That agreement had not been fulfilled. He acknowledged the property owner’s concerns with time, commended staff’s efforts to raise the bar in the community, and suggested that the bar should be raised for all projects.

Commissioner Diokno liked the concept but not the execution and found the building colors to be one color too many. He suggested that the building design appeared like a movie set with a phony façade.

Commissioner Diokno suggested that possibly the grand opening for the pharmacy could be permitted with a condition that the work be completed. He suggested that the applicant should comply with Option 1, within a certain timeframe. By that time, the applicant would have income from the center and might be able to obtain a new loan. He would like to find a way for the applicant to proceed with the grand opening of the pharmacy with minimal loss, with the City to benefit from a completed building it had previously approved.

Mr. Masoudi reiterated that the contractor and architect had signed and stamped plans from the City, as is. He suggested that someone was at fault but it was not him, and he might have to consider legal action.

Mr. Grisham advised that a temporary Certificate of Occupancy (COO) could be issued, which was another option. Once the Commission determined what option should be taken, staff could use a temporary COO as a tool.

Mr. Masoudi reiterated that since the plans were stamped by the City, he would have to seek legal action against the City. Again, his contractor had indicated that he had followed the drawings and had seen the signatures. He noted that he was not trying to flip the building. He owned the building and intended his dental and orthodontic office to be in the same area. He would like to complete the building and expressed his hope that the City would provide a solution for him to move forward with the project.

Mr. Grisham advised that from a legal perspective, such an issue had come up in the past, although when an architect had approved plans, that individual had accepted conditions based on the document as submitted. If the architect submitted drawings that did not follow the conditions of approval, the problem rested with the architect and with the applicant, not with the City. In this case, he was confident that the City would not be faced with any legal ramifications since the architect and the applicant were aware of the approved conditions. While sympathetic to the situation and desirous that the tenants
and applicant be successful, he was confident that the issue would not come up again since approved conditions would be attached to the construction drawings.

Commissioner Garcia questioned if the Commission required the applicant to comply with Option 1, whether a temporary COO could be issued with the applicant given the time to complete the work pending resolution of any legal action with the architect or other party.

Mr. Grisham recommended that if the Commission would like to impose such an option, it could create a COO where it had the ability to identify a period of time to resolve the issue, within two years for instance, before taking further action. That would depend on what option was chosen by the Commission. All of the options were costly and if the applicant was given time to conduct repairs, staff could work to structure that time and still allow the tenants to utilize the building.

Commissioner Garcia preferred Option 3.

A.J. FARDELLA, Pittsburg, commented that based on his experience, there was a step-by-step process for plan check where consistency for build out drawings were checked against code. In his opinion, Option 3 was the best long term solution. He suggested that it was not the fault of the property owner who should be given time to resolve the issue and allow the occupancy of his tenants. He suggested that a timeline of two years was generous.

Commissioner Diokno was willing to allow a temporary COO to allow the opening of the pharmacy with a completion time limit of two years for the roof parapet with Option 1, the preferred option, as recommended by staff.

Commissioner Wegerbauer did not want to look at an unfinished building for two more years. She agreed that the tenants should be allowed to open but whatever was decided, she did not want to have to deal with the issue over and over again as had happened with another business in the City. She expressed concern when agreements were made and all parties did not do their part.

Commissioner Ramirez clarified with Mr. Grisham that Option 1 was the most expensive option while Option 3 was the least expensive option.

Mr. Masoudi commented that he would have to speak with his contractor as to the cost of the identified options. He suggested that he could do Option 3 but would like the tenants to occupy the site and would like time before any work was conducted.

Chairperson Ohlson was not opposed to the applicant complying with Option 1, although he recognized that Popeye’s located across the street had a similar problem with its parapet.
Ms. Schmidt noted that Popeye’s had been poorly designed and executed. She asked that the Commission not use that building as an example of acceptable design for future projects. She reiterated that the subject building had been approved by the Planning Commission in 2006, with the parapet details to wrap around the building. The building elevations had shown the details wrapping around and the building permits had shown the details wrapping around, although during the building permit plan set, with the minutiae of detail, she acknowledged that staff had mistakenly missed the roof plan.

Mr. Masoudi advised that the same architect who had designed Popeye’s had designed his building.

Commissioner Wegerbauer emphasized that if the building design were permitted, it would set a precedent. With all of the investment in the City, it was time for the City to get what had been promised.

Commissioner Garcia inquired of the applicant if he would agree if the Commission were to impose Option 1, with a two year completion date.

Mr. Masoudi now suggested that legal recourse was not an option since he did not know whom to sue. While he had an attorney, he was not considering going after anyone for that mistake. In an attempt to resolve the issue, he would rather have to comply with Option 3. He emphasized that Option 1 would require much more money since the roof parapets would have to be redesigned and reengineered.

Chairperson Ohlson noted that since the architect for Popeye’s and the subject building was the same and regardless of the approved elevations, the architect had designed the building as he pleased similar to Popeye’s and had been able to slip it through the inspection phase. In his opinion, the architect was responsible and he would like to see Option 1 be required, which might force the property owner to sue the architect since he had gone on the plans signed off by the City, as had the contractor.

Commissioner Diokno suggested that any legal problems the property owner may have were not issues under the purview of the Commission when making a decision. He preferred that the applicant comply with Option 1, with a time limit to complete that option while allowing the tenants to open for business.

**MOTION: AP-05-213 (DR)**

Motion by Commissioner Garcia that the applicant/property owner complies with Option 3, subject to the following additional conditions:

- **Option 3**: Do not require that the parapet roof be continued around the back of the wall; however, require that the backs of the walls be finished with stucco and painted to match the main structure.
• A temporary Certificate of Occupancy to be issued; and

• The applicant/property owner must comply with Option 3 in one year’s time.

The motion was seconded by Commissioner Wegerbauer and carried by the following vote:

Ayes: Commissioners Diokno, Garcia, Kelley, Wegerbauer, Ramirez, Ohlson
Noes: None
Abstain: None
Absent: Commissioner Harris

Chairperson Ohlson identified the process to appeal a decision of the Planning Commission within 10 days by submitting a written appeal to the Planning Department for a hearing before the City Council.

After the motion was taken, Mr. Grisham clarified for the benefit of the applicant that staff would not recommend any extensions beyond the stated motion and would expect the work to be done in a timely manner.

Commissioner Garcia commented that he had difficulty making the motion given the mistakes that had been made. He suggested that the architect should have known better and in this case, he suggested that the property owner had been trapped.

Commissioner Diokno suggested to staff that any projects in the future with the same architect should raise a red flag.

Mr. Grisham added that he was distressed by the outcome of the decision. He emphasized that staff would start requiring additional construction sheets with all conditions and specifications on that sheet indicating that the project must be built in accordance with Planning Commission design review approval. If a project was not built that way, staff would have no tolerance for such a situation in the future.

**ZONING ADMINISTRATOR REPORTS:**

The Commission acknowledged the following:

7. **Notice of Intent to Exercise Delegated Design Review Authority:**
   Palermo-Lieser Storefront Remodel. AP-08-517 (DR).
STAFF COMMUNICATIONS:

There were no staff communications.

COMMITTEE REPORTS:

Chairperson Ohlson reported that the TRANSPLAN Committee had met with discussions on the East County Action Plan Update. He advised that the plan had been remanded to the consultant for continued work.

COMMENTS FROM COMMISSIONERS:

Commissioner Diokno spoke to the property located at Harbor Street with warehouse offices and retail at the front, across from the new church under construction. He suggested that the buildings were very unattractive and he questioned whether or not the Planning Commission could request that the exterior of the building be improved.

Mr. Grisham advised that the building had already been built and while the City could ask that improvements be made, the City could not make the applicant do anything to a project that had previously been approved and already built. He acknowledged that the project did not represent good architecture.

Commissioner Kelley questioned why there had been no sirens or alarms to alert the community in response to the recent fire at Sherman Island.

Mr. Grisham explained that there were no noticing requirements for natural brush fire events as for air quality incidents when shelter in place notices occurred.

Commissioner Wegerbauer advised that she had used the City’s website complaint system. She commended the response time. She questioned how code enforcement could be imposed on County-owned property. She cited residential properties located at Bailey Road which were in very poor condition and situated at one of the gateways into the City’s golf course.

Mr. Grisham encouraged the use of the system as a highly effective way to get issues resolved in the City. As to concerns with properties along Bailey Road, he advised that Contra Costa County’s Redevelopment Agency was purchasing many of those properties and could be contacted regarding the status of those properties.

Chairperson Ohlson commended staff on the positive changes to the agenda but requested that the Posting of the Agenda and Comments from Commissioners be reinstated. He also liked the new binders and the items stapled together. He inquired whether or not the Railroad Avenue Specific Plan would be coming before the Planning Commission in that he would be unable to attend the May 8 workshop.
Chairperson Ohlson otherwise inquired of the status of the Al's Snack Shop building located along Railroad Avenue which he understood carried certain conditions on the use of the property.

Mr. Grisham advised that the Planning Commission would participate in the Railroad Avenue Specific Plan approval process. He noted that the workshop on May 8 was the first step with more discussions to occur in the future.

Mr. Grisham understood that the Al’s Snack Shop property had transferred ownership. The property had been in a lease situation, converted to an ownership situation and had been sold to the current owner. At no time had any conditions been placed on the property since “Al” had never owned the property.

ADJOURNMENT:

There being no further business, the meeting adjourned at 9:59 p.m. to a Regular Meeting scheduled on May 13, 2008, in the City Council Chamber at 65 Civic Avenue, Pittsburg, CA.

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MARC S. GRISHAM, Secretary
Pittsburg Planning Commission