MINUTES
OF THE SPECIAL MEETING
OF THE
PITTSBURG PLANNING COMMISSION
May 29, 2007

A Special Meeting of the Pittsburg Planning Commission was called to order by Chairperson Tumbaga at 7:00 P.M. on Tuesday, May 29, 2007 in the Council Chambers, City Hall, 65 Civic Avenue, Pittsburg, California.

ROLL CALL:

Present: Commissioners Diokno, Garcia, Harris, Ohlson, Ramirez, Thomas, Chairperson Tumbaga

Absent: None

Staff: Planning Director Melissa Ayres

POSTING OF AGENDA:

The agenda was posted at City Hall on Friday, May 25, 2007.

PLEDGE OF ALLEGIANCE:

Commissioner Harris 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:

a. Minutes – None

COMMISSION CONSIDERATIONS:

Item 1: Request for Waiver from the Waiting Period for Demolition of Scampini Building

A request for a waiver of the required 180-day prior written notice for the planned demolition of the Scampini Building, a contributing building to the New York Landing Historic District. The site is located in a PD (Planned Development) District and is one of 39 parcels that comprise the Black Diamond (Vidrio) Redevelopment Project site. APN: 085-166-009.

Planning Director Melissa Ayres presented the staff report dated May 29, 2007. She recommended that the Planning Commission approve a waiver of the required 180-day prior written notice for demolition of the Scampini Building by adopting Resolution No. 9717.

PROONENT:

MUHAMMAD NADHIRI, Senior Project Manager, Vidrio Project, A.F. Evans Development Inc., 1000 Broadway, Suite 300, Oakland, explained that the waiver from the waiting period for the demolition of the Scampini Building was due to a financial hardship if required to wait 180-days for demolition, as reflected in a letter dated May 22, 2007 that he had provided to staff. He stated that a 180-day waiting period would result in a nine month delay, delaying the project to a winter weather pattern potentially putting off construction until April or May 2008, which would place the project in a difficult marketing situation. His marketing team had informed him he would require another three to four months to absorb or sell the units, resulting in a significant profit reduction affecting the ability to attract investors to the development. He noted that existing investors forming the basis of Phase II and their lenders would be severely jeopardized. He asked for approval of the waiver.

If the request for waiver of the waiting period for the demolition of the Scampini Building was approved, Commissioner Garcia asked when the actual construction would commence.

Mr. Nadhiri advised that if the waiver were approved, construction could commence in June or July. Equity was already committed and the developer was negotiating with its lenders who must go through due diligence and loan committee review placing the construction at the end of June or early July.
OPPONENTS:

RONALD JOHNSON, Jr., 79 Panoramic Avenue, Pittsburg, speaking for himself and the members of the Pittsburg Society for the Preservation of Historic Resources, suggested that the Planning Commission did not have the power to grant a 180-day waiver of demolition. He stated that the Municipal Code identified the Historic Resources Commission (HRC) as the only Commission that may discuss any waiver of demolition. The Planning Commission may deal with the functions of preservation, enhancement and the use of structures and may help to promote historic resources, although the Planning Commission did not have the authority for demolition or determination of a historic building.

Mr. Johnson spoke to the applicant’s comments regarding economic hardship and his statement that his team must go through proper procedures and due diligence, although he suggested that the Planning Commission was not following the proper procedures. While there were other issues involved with the Scampini Building, he reiterated his opinion that the Planning Commission did not have the power to waive the waiting period for demolition.

Ms. Ayres explained that the Historic Resources Ordinance had been amended three times over the past four to five years. As part of a recent settlement agreement, the last set of rules had been rescinded, although not those in effect prior to that time. While there had been changes to the rules which were all intended to implement policies in the General Plan, the matter before the Commission was within its authority and the Planning Commission, not the HRC, had the responsibility under the City’s current ordinance to respond and act on the request.

In the event the waiver was not supported by the Planning Commission, Commissioner Harris questioned the action the Pittsburg Society for the Preservation of Historic Resources planned to take.

Mr. Johnson noted that there were other legal issues involved with the Scampini Building which were not related to the matter before the Planning Commission at this time. Those issues related to California Environmental Quality Act (CEQA) requirements and the historic significance of the building, which he suggested had not been addressed through procedure and due diligence. He suggested that the City must follow its rules and laws and pursue the proper procedures.

Mr. Johnson referenced Page 4 of 7 of the May 29 staff report which had noted the preservation of historic structures and which had established historic districts per Section 15.84.090 of the Pittsburg Municipal Code (PMC) stating that the HRC, not the Planning Commission, had the power to grant waivers of the demolition waiting period. He reiterated that the City must follow its own rules and regulations. He highlighted the background of the formation of the New York Landing Historical District created in the 1980s by the City of Pittsburg, as defined by the Federal Government for the City.
Ms. Ayres clarified in response to Mr. Johnson’s comments that as part of the PMC, the applicant shall give 180-days written notice to the HRC, however the Planning Commission may waive that notice if it meets certain hardships. If the waiver was not granted, a 180-day notice would be required.

Mr. Johnson questioned the definition of an extreme financial hardship. In this case, he found it to be too vague.

Commissioner Ramirez spoke to Section 15.85.090, Demolition of Historic Structures, Waiver of Notice, whereby the Planning Commission upon the request of the property owner may waive the requirement of 180-days prior written notice if the action planned for the structure involved: a repair to, or removal of, an unsafe condition of the structure that required immediate attention; a relocation of the structure to a site approved by the Planning Commission; or relief of extreme financial hardship to the owner of the structure. He suggested that the action requested of the Planning Commission was clear.

Ms. Ayres commented that the Planning Commission oftentimes made many findings that were required by code, whether use permit or design review, which were not quantitative, but subjective. It was up to the Commission to decide whether or not there was adequate information to support that finding.

Commissioner Garcia commented that the interest rate or inflation rate in the future was unknown and could result in an extreme financial hardship if the developer had to wait to demolish the building.

Mr. Johnson suggested after speaking with the California Office of Historic Preservation (OHP) regarding the definition of extreme hardship, that often in an attempt to get a building built, rash decisions were made. The OHP had extensive records of ordinances passed by many cities. He suggested that if the Planning Commission were to act on the waiver request, and if it were approved, it would be irrevocable. The reality was that the financial hardship was indefinable. He again suggested that CEQA had not been followed, that proper procedures had not been followed, and although the City had received correspondence on May 19 to that effect, the City Council had recently adopted a Supplemental Environmental Impact Report (SEIR) for the Scampini Building.

RON JOHNSON, Sr., 79 Panoramic Avenue, Pittsburg, spoke to the history of the ordinance as it related to the HRC. He noted that the ordinance that existed before changes were made were clear that any waiver of 180-days must be done by the HRC. While the HRC had been inactive over the years, in 2004 the HRC had been restructured to comprise only residents of the City of Pittsburg. At that time, the Planning Commission along with the Director of Planning and one Recreation Commissioner had been designated to serve as the HRC. Subsequently in 2005, the HRC was again changed to make the Planning Commission serve alone in that capacity.
As part of a recent settlement agreement, Mr. Johnson explained that action had repealed the 2005 ordinance. As a result, the 2004 restructure would apply, an HRC comprised of the Planning Commission and two other individuals. Despite the analysis provided by staff, he suggested that the Planning Commission never had the authority to waive the waiting period for demolition.

Mr. Johnson expressed a desire to see documentation to show when the Planning Commission had the authority to waive demolition. He referenced the 2004 ordinance which had indicated that the Commission had the power to carry out all functions necessary for the preservation, enhancement and use of the structures in districts of historical, architectural, engineering significance located within the City, as defined within Chapter 15.84. He reiterated that the Planning Commission had not been given the power that was still within the HRC, the power of waiving the waiting period for demolition. He suggested that the staff recommendation was inaccurate and requested that clarification be provided to the Planning Commission’s authority before any action was taken.

Mr. Johnson went on to comment on his understanding that there would be a $7 million shortfall to complete the project. He suggested it would be a travesty to demolish the building when the funds were not available to complete the project. He questioned the past demolition of buildings in the entire Historic District in the community.

In response to Commissioner Ohlson, Mr. Johnson suggested before any action was taken at this time that the Planning Commission be clear on its authority to ensure it was following the rule of law. If the Planning Commission decided to break the law, his group would have to consider the appropriate remedies. He again requested to see the ordinance where the Planning Commission had the power to grant waivers, and again suggested that the Planning Commission did not have that authority.

Commissioner Thomas appreciated the comments made and agreed that due diligence should be taken. However, she was confident that the Planning Director had addressed the matter before it had been brought to the Planning Commission.

Mr. Johnson reiterated that it was not in the ordinance that the Planning Commission had such authority for waivers. He clarified, when asked, that he was speaking to Ordinance No. 04-1218, a copy of which he had obtained from the City’s website.

Ms. Ayres acknowledged that the City’s website was not up to date. She suggested that there had been misinformation in the comments made by the speakers. She clarified that the HRC had been comprised in the past of individual residents and had later been changed to comprise the Chair of the Planning Commission, the Chair of the Community Advisory Committee (CAC), the Chair of the Leisure Services Commission, Recreation and Planning Directors and the Curator and President of the Historical Society.
Commissioner Ramirez was confident the action being requested of the Planning Commission would not have come before the Commission without the City Attorney’s review of the law. He verified that staff had spoken with the City Attorney and was confident that what was being presented was legal and factual.

Ms. Ayres emphasized that she was confident the information was factual. She acknowledged that any decision of the Planning Commission may be appealed to the City Council. She commented that had she been contacted prior to the meeting by the Johnsons, she may have been able to resolve the concerns. She further clarified that typically the Planning Commission was not presented with every ordinance, but staff had cited those sections relevant to the matter before the Commission. Staff could provide that information to the speakers within the next business day.

Mr. Johnson suggested that the action before the Planning Commission had been given to the public at short notice. He had no documents to prove the Planning Commission had the authority to make the decision it was being asked to make.

TOM La FLEUR, 51 Lake Street, Pittsburg, representing himself and the Pittsburg Society for the Preservation of Historic Resources, echoed the comments made by the Johnsons. He commented that if the code was correct that the Planning Commission had the power to grant waivers that would be fine, although he would still disagree with the requested action. While recognizing that the City’s website was not routinely updated, he stated it was showing the code as it existed in August/September 2005.

Mr. LaFleur commented that the Society had litigated over the loss of historic resources without an EIR, which litigation had resulted in a settlement agreement. The settlement agreement effectively repealed the changes made to the ordinance. The City’s website displayed the 2005 ordinance that had been repealed. He suggested that the HRC was there for a reason and he saw no Commission member with the expertise or interest in historic resources other than a broader interest. In 2004, the HRC was comprised of two members of the Historical Society, two staff members, the Chair of the Planning Commission, the Chair of the Park and Recreation Commission and the Chair of the CAC. He stated that Commission had never met and should be called to order to act on the proposed request.

Mr. LaFleur reiterated that a lawsuit had been filed to defend that ordinance with a settlement agreement having been reached. While there could be an economic hardship on the applicant, he suggested it should be judged before the proper body. He asked that the Planning Commission not take an illegal action that would burden the City’s citizens to take further legal action to remedy. He asked that the matter be continued to allow a legal opinion on the matter.
Commissioner Garcia disagreed that neither he nor his fellow Commissioners had the expertise required to be on the HRC.

Ms. Ayres clarified, when asked, that the City Attorney had been actively involved in the preparation of the resolution.

Commissioner Ohlson expressed concern with the situation and suggested it would be reasonable to have the City Attorney provide a legal opinion for review. If there was a motion to approve the waiver, he would oppose that motion. He did not see there would be much of a hardship on the applicant if action on the request were continued for two weeks.

Commissioner Harris suggested if the matter were continued the opponents be provided with up to date information to support their claims. He personally did not see the value of preserving the building.

Commissioner Thomas stated that she had confidence in staff’s opinion. She reminded those present that any action of the Commission could be appealed to the City Council.

Commissioner Diokno commented that the decision of the Planning Commission was not made in a vacuum and having background in historical buildings for decades, and having demonstrated against the destruction of historical buildings on the National Register, he had seen bureaucratic delays thwart the best intentions of those desirous to preserve historical buildings. In this instance, he was not convinced the Scampini Building had that level of historical significance.

Chairperson Tumbaga agreed with Commissioner Diokno that the Scampini Building may not have the historical significance although she suggested there was sufficient doubt as to which body had the authority to act on the matter. She agreed that the matter should be delayed for two weeks to allow the documentation to be clarified.

Ms. Ayres advised that other staff was currently pulling the files to obtain copies of the ordinance in effect at the time the amended ordinance had been rescinded. She asked that the Planning Commission delay further discussion of the item pending the staff research, with the Commission to proceed with the second agenda item and then return to the subject discussion.

Commissioner Thomas inquired of the applicant if the item were continued whether or not that would constitute a further financial hardship.

Mr. Nadhiri acknowledged that a two week continuance would not be a financial hardship. He reiterated that he had lenders working on due diligence. He asked that the Commission consider the ordinances before them. He was confident that the staff
recommendation was correct and accurate.

At this time, the Planning Commission moved to consider agenda Item No. 2 to allow staff the opportunity to research the ordinances related to Item No. 1.

Item 2: Planning Commission Reports to the City Council


Planning Director Melissa Ayres presented the staff report dated May 29, 2007. She recommended that the Planning Commission review and approve the year end goals/accomplishments report for fiscal year 2006-2007 and the draft list of goals and objectives for fiscal year 2007-2008. She requested that the Commission provide additional direction with respect to other planning issues and concerns it would like to address this year.

Commissioner Thomas clarified with staff that Objective 3, as shown on the first page of the Draft Planning Commission Year End Accomplishments Report to the City Council for Fiscal Year 2006-2007, would be shown as complete, since all Planning Commissioners had completed the bi-annual training on open meeting laws for the Brown Act, upon evidence that Commissioner Diokno had completed that training.

Commissioner Ohlson advised that he would submit to staff written comments with suggested grammatical changes to the document.

Commissioner Ramirez commended staff on the report of accomplishments.

By consensus, the Commission approved the Draft Planning Commission Year End Accomplishments Report to the City Council for Fiscal Year 2006-2007, as amended.

As to the Draft Planning Commission Goals and Objectives for Fiscal Year 2007-2008, Ms. Ayres explained that since it was not known what the makeup of the Planning Commission would be until after appointments had been made by the City Council in June, she asked the Commission to review the goals and objectives and provide direction. She advised that the list would be brought back to the Planning Commission in July for consideration since it would be due back to the City Council by September.

Chairperson Tumbaga recognized that the City Council had not supported consideration of a Heritage Tree Ordinance for the current work program for 2007-2008, although she asked for consideration of that ordinance during the 2008-2009 fiscal year period.

Commissioner Ohlson asked that the planning projects anticipated to be completed during the current fiscal year include the Railroad Avenue BART Specific Plan.
Chairperson Tumbaga declared a recess at 8:03 P.M.

The Planning Commission meeting reconvened at 8:19 P.M. with all Planning Commissioners present and with a return to the discussion of agenda Item No.1.

**Item 1: Request for Waiver from the Waiting Period for Demolition of Scampini Building**

A request for a waiver of the required 180-day prior written notice for the planned demolition of the Scampini Building, a contributing building to the New York Landing Historic District. The site is located in a PD (Planned Development) District and is one of 39 parcels that comprise the Black Diamond (Vidrio) Redevelopment Project site. APN: 085-166-009. CONTINUED

Ms. Ayres explained that the Planning Commission had been provided with copies of Ordinance No. 04-1218, an adopted ordinance of the City Council on April 5, 2004, amending the Municipal Code Chapters relating to both the reorganization and structure of City Commissions including the Planning, Leisure Services, CAC and the Historic Resources regulations.

As shown on Page 13 of 18 of Ordinance No. 04-1218, Section 15.84.090, Demolition of Historic Structures, B, Waiver of Notice, in part, that “The Planning Commission upon the request of the property owner may waive the requirement of 180-day prior written notice if the action planned for the structure involves; No. 3, relief of extreme financial hardship.”

Ms. Ayres clarified that the last ordinance that had amended that section had been Ordinance No. 06-1266, which ordinance due to the settlement agreement had appealed the previous Ordinance No. 05-1248, putting back in place the ordinance as presented to the Planning Commission at this time [Ordinance No. 04-1218]. That action had not been challenged. Therefore Ordinance No. 04-1218 was legal and was the current ordinance in effect.

Ms. Ayres again acknowledged that the City’s website was not currently updated although Ordinance No. 04-1218 was, legal and currently in place, had been taken from the City Clerk’s internal webpage. The ordinance had been signed, executed and was valid. She added that the City Attorney was available through the telephone in the event the Planning Commission desired additional information.

Mr. LaFleur thanked staff for the information and clarification.

Commissioner Thomas asked that it be on the record that she had no doubt the Planning Director had the correct information which had been provided to the Planning Commission and the audience. As such, the question of whether or not the Planning Commission could
Commissioner Garcia made a motion to adopt Resolution No. 9717, as conditioned.

Commissioner Ramirez seconded the motion.

In response to Commissioner Thomas, Ms. Ayres understood that there was a concern with a possible conflict of interest from a member of the Planning Commission. With respect to that concern, she saw no conflict of interest at this time.

MOTION:

Motion by Commissioner Garcia to adopt Resolution No. 9717, granting a request for a waiver from the required 180-day waiting period to demolish the Scampini Building due to relief of extreme financial hardship to the owner for the “Black Diamond Redevelopment Project.” (APN 085-166-009), as conditioned. The motion was seconded by Commissioner Ramirez and carried by a roll call vote:

- Ayes: Commissioners Diokno, Garcia, Ohlson, Ramirez, Thomas, Tumbaga
- Noes: None
- Abstain: Commissioner Harris
- Absent: None

Subsequent to action on the motion, Mr. Johnson suggested that the ordinance just presented to the Planning Commission was still not appropriate, valid or legal.

Chairperson Tumbaga advised that the applicant, the City Council, City Manager, or any affected person may appeal either the denial, approval or any condition of approval of an item within 10 calendar days of the decision.

STAFF COMMUNICATIONS:

The Planning Commission acknowledged receipt of the following Notice of Intent item:


Ms. Ayres reported that the Planning Commission Appreciation Dinner had been scheduled for Friday, June 8, 2007.

COMMITTEE REPORTS:

There were no committee reports.
COMMENTS FROM COMMISSIONERS:

Commissioner Diokno inquired whether or not an application for development had been submitted to the City for a parcel between the Atlantic Plaza Shopping Center and the Good Shepherd Church since there appeared to be grading occurring on the property.

Ms. Ayres explained that the City had approved a use permit for a church for that parcel, which permit had since expired. The owner of the Atlantic Plaza Shopping Center had a proposal to widen the fire corridor when the building was expanded. She advised that she would further review that situation.

Commissioner Garcia understood that the parcel under discussion had been planned for a church which project had not come to fruition. The property had since been purchased by Discovery Builders which had disked the property for weed abatement purposes.

Commissioner Thomas inquired of the status of the Francis Green Church project.

Ms. Ayres expressed the willingness to provide an update on the Frances Green Church project at the next meeting of the Commission.

ADJOURNMENT:

There being no further business, the meeting adjourned at 8:31 P.M. to a regularly scheduled meeting on June 12, 2007, in the City Council Chambers at 65 Civic Avenue, Pittsburg, CA.

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MELISSA AYRES, Secretary
Pittsburg Planning Commission