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REDDING PLANNING COMMISSION
 Regular Meeting, 4 p.m.
 Tuesday, January 31, 2006
 City Council Chambers
 777 Cypress Avenue
 Redding, California 96001

MINUTES

Chairman Randy Memeo called the meeting to order at 4 p.m., with Commissioners Gary Brickwood, Jim Chapin, Randall Smith, and Chris Young present. Absent were Commissioners Michele Goedert and Bert Meyer. Also present were Development Services Director Jim Hamilton, Land Development Manager Gary Otremba, Planning Manager Douglas DeMallie, City Attorney Rick Duvernay, Associate Planner Ron Adams, and Executive Assistant II Anita Felion.

APPROVAL OF MINUTES

Commissioner Jim Chapin moved approval of the minutes of the meeting of November 22, 2005. Commissioner Randall Smith seconded the motion. Chairman Randy Memeo abstained. The motion carried with a vote of four ayes and one abstention.

PUBLIC HEARING - APPEAL OF DEVELOPMENT SERVICES DIRECTOR'S DETERMINATION, by Kip Rickel, regarding Code Enforcement penalties established in response to unauthorized tree removal at the site of the College View Townhouses project located at 1390 College View Drive in a "GC" General Commercial District. Staff Recommendation: Deny appeal. L-010-390-700, A-030-070 and C-110-100-400

Associate Planner Ron Adams summarized the staff report. He noted that Kip Rickel was the owner and developer of the College View Townhouses project, which was currently under construction on property located along College View Drive just east of Churn Creek Road. He advised that the project was approved by the Board of Administrative Review on April 13, 2005, under Site Development Permit SDP-35-04 (SDP), and a building permit to allow construction of the first residential units was issued on November 1, 2005.

Mr. Adams stated that on December 27, 2005, the City received a complaint from a concerned citizen that oak trees identified for protection under the final SDP site plan approval had been cut down. He said City staff conducted site inspections, which confirmed that seven blue oak trees required for preservation with diameters ranging from a little less than 18 inches (but which still qualified for protection) to 27 inches had been cut down. He advised that the cut trees were located in a highly visible location adjacent to College View Drive and were protected within the common open-space area of the complex. Mr. Adams explained that their preservation allowed the project to meet the intent of the City's Tree Preservation Ordinance, Zoning Code Chapter 18.45. He noted that since the trees were effectively preserved as a group, many other trees on the site were allowed to be removed to make way for the project.

According to Mr. Adams, a code enforcement action was initiated by the City in response to the violation. He said the Development Services Director subsequently reviewed the matter and, considering the facts of the violation, determined that the penalties established under authority of Chapter 18.45.110, Tree Preservation Ordinance-Violation and Penalty, of the Zoning Code should be applied, which included: A fine of \$1,000 per cut tree, resulting in a total fine of \$7,000; no additional development beyond that approved with SDP-35-04 allowed on the project site for a period of two years; and replacement planted at a minimum ratio of 2:1, with a minimum 24-inch-box planting size in the approximate location where the trees were removed. Mr. Adams advised that Mr. Rickel paid the required fine on January 13, 2006, then filed an appeal on the restriction of any additional development for at least two years.

Mr. Adams explained that in the processing of the project's site development permit, tree preservation was a major design issue that ultimately affected the final site plan approval. He said staff and the project engineer hired by Mr. Rickel worked through numerous site plan revisions so the subject trees

could be saved and provide an amenity to the future residents in the complex, consistent with the intent of the Tree Preservation Ordinance. He continued that the location of trees was originally plotted on a site tree survey and again on various improvement plans and construction drawings, all prepared by the project engineer. He stated that once construction commenced on the complex this past fall, there were a few trees originally planned for preservation that were removed due to unavoidable utility conflicts; however, staff was never informed that there were development conflicts with the seven remaining trees.

Mr. Adams advised that in early November 2005, the project engineer contacted City staff to informally discuss the possibility of adding an additional four-unit townhouse building in the area of the subject trees. He said staff expressed concerns with the potential loss of the trees and explained that an amendment to the SDP would be required and that approval should not be considered automatic. Mr. Adams commented that a substantial tree replanting plan was identified as a requirement for the application if the developer chose to pursue the amendment and that staff never suggested that the trees could/should be removed. He explained that Mr. Rickel's letter of appeal stated two specific reasons for the tree cutting: Removal of three of the seven trees was necessary due to the trees being located within or near paved driveways, due to a misplotting of the trees on the site improvement plans; and all seven trees were removed to ultimately make way for an additional four-unit townhouse building with the understanding that the tree removal was sufficiently discussed with staff. Mr. Adams continued that in the letter, Mr. Rickel stated that he understood now that his assumptions were incorrect, but that the tree cutting was not for malicious reasons or an attempt to circumvent requirements of the code, claiming essentially that there was a misunderstanding. He said Mr. Rickel requested that the penalty for the building moratorium be waived on the basis that it would create an extreme hardship and financial burden. He indicated that staff found it very difficult to accept an explanation that the trees were misplotted or that staff somehow preauthorized their removal, as Mr. Rickel contended in his letter of appeal. Mr. Adams said staff recommended that the Planning Commission uphold the Development Services Director's code enforcement penalty determination, thereby prohibiting additional development on the project site beyond that approved with SDP-35-04, other than corrective actions necessary to remedy the violation, for a period of two years.

Commissioner Jim Chapin inquired if the trees to be saved had been protected with snow fencing. Mr. Adams replied that snow fencing was a requirement in the conditions of approval but did not know if it had been utilized once construction commenced in November 2005.

Development Services Director Jim Hamilton advised that the trees had been left after work had commenced on the project and that someone had been attempting to follow the plan.

Commissioner Chris Young questioned if the trees were valley or blue oak, citing a discrepancy in the descriptions of the trees between the permit and the appeal. Mr. Adams said he was not certain which type of oaks they were, but reiterated that they were oak trees required to be saved.

Commissioner Gary Brickwood asked what factors the City applied when arriving at the penalties. Mr. Hamilton explained that the project was an active site, there was a clear delineation of trees to be preserved, construction had commenced, and the trees had been initially preserved. He added that the applicant's representative had contacted staff regarding the potential for removal of the trees to add an additional unit on the site. Mr. Hamilton pointed out that he had spoken with Councilman Ken Murray, who had been in contact with Mr. Rickel and his representatives, and the question was raised at that time what it would take to remove the trees. He remarked that after discussion with the engineering representative, the trees were then removed. Mr. Hamilton maintained that it was a particularly egregious violation and done to provide a potential development scenario. He said in his experience, he had seen very few that rose to this obvious level of violation.

Commissioner Randy Memeo asked if the developer had submitted an amendment request or replanting plan. Mr. Hamilton replied not to his knowledge. The Chairman opened the public hearing at 4:17 p.m.

John W. Reese, Jr., attorney for Mr. Rickel, clarified that there was never any designation, fencing, or marking of the trees. He said the applicant had never claimed any preauthorization to remove the trees. He continued that the problem was not miscommunication between the City and the representative, Kevin Butler, but between Mr. Butler and Mr. Rickel. Mr. Reese explained that the

applicant initially had planned an eight-building complex. He asserted that after the seven-building project was underway, Mr. Rickel and Mr. Butler determined that if the eighth building was not constructed concurrently, it would be impractical, if not impossible, to complete it later. Mr. Reese continued that the eighth building was in the area of the removed trees and that once the seven buildings were completed, access to the site would be almost impossible for construction staging, storage of materials, etc. Because of this, Mr. Reese said Mr. Rickel asked Mr. Butler to review the requirements necessary to apply for the eighth building and determine if an application was appropriate and had a chance of being granted.

According to Mr. Reese, the following events occurred:

- Mr. Butler said Mr. Adams indicated during an informal roundtable discussion that an additional request for a permit could be submitted and that no additional parking or pavement would be needed, but that approval of any amendment would necessitate strict requirements for landscape.
- Mr. Butler passed on the information to Mr. Rickel and then went on vacation.
- Mr. Rickel then spoke with his contractor about Mr. Butler's discussion with Mr. Adams and staff. The contractor apparently misunderstood the conversation and removed the seven trees.

Mr. Reese claimed that three of the trees were misplotted and that the other trees were removed because they were where the building was going to be sited. He said there was no disagreement that the trees should not have been removed without following the appropriate process. He pointed out that Mr. Rickel paid the fines and agreed to replant the additional trees. Mr. Reese remarked that because of the need to go forward with the eighth building, the penalty was being appealed. He maintained that a two-year moratorium on the project would create an extreme hardship and that if he could not build now, Mr. Rickel would never be able to. He asked the Commissioners to be aware that Mr. Rickel was not a professional developer, this was his only project and he was not sophisticated in the requirements. Mr. Reese pointed out that the approved SDP had shown additional trees to be preserved, but they were found in a utility easement and the City allowed them to be removed. He added that oak trees did not do well in landscaped, watered areas, and it was questionable if the trees would have survived where they were located. Mr. Reese contended that if an application for the building (which the applicant intended to submit) was approved, then conditions could be promulgated with respect to tree planting, landscaping, and siting to fully mitigate the removal of the trees. In closing, Mr. Reese asserted that Mr. Rickel did not intentionally violate the Ordinance and questioned the appropriateness of the penalty. He requested that the penalty of the two-year moratorium be eliminated.

Commissioner Randall Smith noted that the item as approved at the Board of Administrative Review meeting had a shade area with tables and a playground. He asked when the applicant initially desired the eighth building. Mr. Reese explained that the plans initially included the eighth building, but then the plan was scaled down to seven buildings when the application was submitted to the City. He said it became clear as the project moved along that the eighth building should have been planned for. He maintained that the area was still large enough for landscape and the other amenities and met the acreage criteria required for the density proposed.

Commissioner Gary Brickwood asked where the confusion originated. Mr. Reese replied that the message relayed to Mr. Rickel by Mr. Butler was that he had talked with staff and that the application could be made and there would be heavy mitigation for removal of the trees. Mr. Rickel told the contractor, Gil Rocha, and the contractor understood that he could take down the trees, but no one actually ordered that the trees be cut down.

Mari Marien said she had worked with developers and was aware of how they operated. She urged the Commissioners to deny the appeal and enforce the rules of the Ordinance. Determining that no one else wished to comment, the Chairman closed the public hearing at 4:31 p.m.

Mr. Memeo asked if there had been any discussion about what would be required if the applicant sought an amendment for the eighth building. Mr. Hamilton said there was staff discussion regarding the potential to seek an amendment. He clarified that during the initial development review process,

the plan was changed to construct seven buildings instead of eight, which was so the trees could be preserved and the requirements of the Ordinance satisfied.

Planning Manager Douglas DeMallie explained that the requirements for multiple-family development included land for open space and play areas, which was one of the reasons for the modification of the application; this satisfied the tree-preservation and open-space requirements. He mentioned that the citizen's complaint to the City had indicated that the trees were cut down on Saturday, December 24.

Mr. Adams further clarified that the initial application and site plan included a request for 8 buildings, 32 units (all 4-plexes). He said staff visited the site, and tree preservation was identified as one of the issues, along with common open space, that would have to be addressed. He said the project engineer responded to initial staff review and came back with revised plans that included use of two 6-plex buildings so that the initial goal of 32 units could be maintained, while providing space to preserve trees and appropriate common area.

Commissioner Chris Young questioned if the tree-preservation requirements would have been the same if the applicant had applied to construct a gas station. Mr. Hamilton said tree preservation would have still been an issue, but the trees to be saved might have been located in a different area.

Mr. Brickwood saw no reason to dispute Mr. Hamilton's determination that this was a willful violation. He felt the punishment was sufficient because fines alone were not enough to stop a developer. He suggested that maybe the alternative would be to triple the fines. Mr. Brickwood believed the moratorium was appropriate.

Mr. Chapin said it appeared that there was a lack of communication and supervision on the part of the engineer and that the applicant was not given good advice. He continued that there was no lack of communication or error on the part of the City. He, too, believed the penalty was appropriate.

Motion: Commissioner Randall Smith moved that the Planning Commission uphold the Development Services Director's code enforcement penalty determination, thereby prohibiting additional development on the project site beyond that approved with SDP-35-04, other than corrective actions necessary to remedy the violation, for a period of two years.

Second: Commissioner Jim Chapin.

Ayes: Commissioners Brickwood, Chapin, Memeo, and Smith.

Noes: Commissioner Young.

Abstain: None.

Absent: Commissioners Goedert and Meyer.

PUBLIC HEARING - APPEAL OF DEVELOPMENT SERVICES DIRECTOR'S INTERPRETATION, by Dr. Don Nelson, regarding conditions of approval for Use Permit UP-17-94 and Variance V-4-94, concerning the location for a proposed single-family residence within the building setback area adjacent to the Sacramento River on property located at 7051 Riverside Drive in an "RS-2" Residential Single Family District. Staff Recommendation: Deny appeal. L-010-390 and L-010-410

Development Services Director Jim Hamilton reviewed the item by referring to the staff report. He noted that in 1993, Dr. Nelson applied for an abandonment of a portion of Riverside Drive right-of-way. He said the application was followed with applications for a use permit and variance to allow placement of fill within the Sacramento River floodplain and encroachment into the required building setback from the floodplain boundary in order to gain additional land area to construct a home. He said the property was encumbered by floodplain boundaries on two sides and constrained by the location of a septic system approved in 1983 by the County. Mr. Hamilton outlined the series of events that occurred in 1994 and 1995 and the actions by the City Council (Council) related to Dr. Nelson's request. He utilized diagrams to help clarify the decisions reached by the Council and his explanation of those decisions.

Mr. Hamilton advised that at its meeting of March 21, 1995, the Council approved the placement of additional fill and the elimination of conditions pertaining to dedication of a pedestrian easement and

open-space easement. He added that the Council had placed a new condition on the permits, requiring that "no part of the structure shall extend beyond the line established by the back porch of the house to the north." Mr. Hamilton mentioned that the previous City Attorney, Len Wingate, had issued a letter to Dr. Nelson, indicating that Dr. Nelson could comply with the required 30-foot setback, which would allow the construction of the home nine feet past the southeast corner of the neighbor's home. He said he believed Mr. Wingate had assumed that no Planning Commission or City Council clearance was needed, which Mr. Hamilton felt was incorrect. He advised that the current City Attorney had reviewed the item and opined that the conditions applied by the Council for the variance approval overrode Mr. Wingate's letter.

Commissioner Randall Smith questioned the abandonment request. Mr. Hamilton explained that Dr. Nelson had repeatedly made attempts to abandon Riverside Drive in front of his lot, which would have affected public access to the river and that the Council had ultimately denied the request.

Commissioner Gary Brickwood asked if there had been objections from the owners of the house to the north. Mr. Hamilton responded that there was no clear information in the minutes regarding the issue. He mentioned that he had spoken with Terry Hanson, the planner at the time, and Ken Murray, City Councilman at the time, who related to him that the desire was to protect the view to the south of the adjacent property.

City Attorney Rick Duvernay explained that Dr. Nelson had always desired to extend his home ten feet past the neighbor's home. He observed that Dr. Nelson had received approval for the permits in 1995, but contacted the City Attorney and Planning Director in 2000, requesting clarification due to ambiguity in the record. He said the record reflected the final Council action in 1995, which did not change the condition in the use permit relative to where Council was directing the structure to be placed. Mr. Duvernay said he had not spoken with Mr. Wingate and was not sure if he had all the information available to him at the time. He speculated that Mr. Wingate believed there was a mixed bag in the record and wanted to make sure the neighborhood was protected. He continued that in 1999, the neighbor said he had no objection, but Dr. Nelson did not proceed with the permit. Since then, the property changed hands, with the current neighbor concerned about the letter and Dr. Nelson's request. He felt staff did not have the authority to accept plans in contradiction to the conditions placed by the Council.

Mr. Brickwood clarified that the 1995 decision remained in effect today, since the variance was granted but not acted upon. Mr. Duvernay replied affirmatively. The Chairman opened the public hearing at 5:15 p.m.

Dr. Don Nelson, appellant, submitted documentation to the Commissioners and staff to support his contention that the interpretation by the Development Services Director should be overturned. He utilized overheads to further explain his reasons, asserting that there were mapping errors that invalidated the accuracy of the site plan on which the Council based its decision. He contended that the errors depicted conditions that were in direct conflict with the true facts, rendering any decisions made by the Council based on those site plans in the March 21, 1995 appeal to be unsupportable. He maintained that the amendments should be voided and that UP-17-94 and V-4-94 should be reinstated as they were amended and approved on August 16, 1994. Dr. Nelson requested that the Commissioners allow construction plans to go forward in conformance with the Council's original intent, which included confirmation that there was no intended setback linkage of any kind to the house to the north.

Mr. Chapin asked why Dr. Nelson did not act upon this item in 1995 and waited until now to respond. Dr. Nelson indicated that he had lived five hours away at the time and did not feel he needed to be present at that meeting. He said he thought he could wait until he retired to pursue the matter. Determining that no one else wished to comment, the Chairman closed the public hearing at 5:43 p.m.

Chairman Randy Memeo believed the Council had wanted to preserve the view for the adjacent neighbor.

Mr. Duvernay clarified that the applicant submitted plans that were ten feet closer to the river than the neighbor's home. He opined that what Dr. Nelson asked for was not what the Council approved. Mr. Memeo agreed that the intent of the Council's added condition was to maintain the view of the neighbor, which seemed to be the primary focus at the time.

Motion: Commissioner Gary Brickwood moved that the Planning Commission deny the appeal and direct that modification be made to the building plans submitted by Dr. Nelson to comply with the requirements of Condition 8 of Variance V-4-94 Amendment prior to issuance of a building permit.

Second: Commissioner Jim Chapin.

Ayes: Commissioners Brickwood, Chapin, Memeo, Smith, and Young.

Noes: None.

Abstain: None.

Absent: Commissioners Goedert and Meyer.

PUBLIC PARTICIPATION

None.

COMMISSIONERS' COMMENTS

Commissioner Randall Smith advised that the Tree Preservation Ordinance Committee was scheduled to start meeting on February 2. He said every effort would be made to bring the matter back to the Planning Commission within 90 days.

DIRECTOR'S REPORT

Development Services Director Jim Hamilton thanked the Commissioners for attending the Healthy Communities Workshop, noting that it was also greatly attended by the community.

ADJOURNMENT

There being no further business to come before the Planning Commission, Chairman Randy Memeo adjourned the meeting at 5:47 p.m.

_Jim Hamilton, AICP
Acting Secretary

Randy Memeo
Chairman