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**SAUSALITO PLANNING COMMISSION**  
**Wednesday, August 25, 2010**  
**Approved Minutes**

**Call to Order**

Commissioner Cox called the meeting to order at 6:30 p.m. in the Council Chambers of City Hall, 420 Litho Street, Sausalito.

Present: Commissioner Joan Cox, Commissioner Richard Graef,  
Commissioner Bill Werner

Absent: Vice Chair Stan Bair, Commissioner Stafford Keegin

Staff: Community Development Director Jeremy Graves  
Associate Planner Lilly Schinsing, Assistant Planner Alison Thornberry,  
City Attorney Mary Wagner

**Commissioner Werner moved and Commissioner Graef seconded a motion for Commissioner Cox to chair the meeting. The motion passed 3-0.**

**Approval of Agenda**

**Commissioner Cox moved and Commissioner Werner seconded a motion to switch the order of Agenda Items 2 and 3 and approve the modified agenda. The motion passed 3-0.**

**Approval of Minutes**

November 19, 2008                      July 21, 2010

**Commissioner Cox indicated in the November 19, 2008 Minutes, on page 11, Item 7, the minutes indicate the motion to continue the item to the meeting of January 14, 2009 passed, but did not identify those who opposed the motion. The Commission requested that information be added and the Commission would consider the minutes again.**

**Commissioner Cox moved and Commissioner Werner seconded a motion to postpone Approval of Minutes from this evening's agenda to the September 8, 2010 meeting. The motion passed 3-0.**

**Public Comments**

None.

**Public Hearings**

- 1. DR/SP 10-149, Design Review Permit, Sign Permit, ICB Associates, LLC, 480 Gate 5 Road.** Design Review Permit and Sign Permit to allow for addition of the word "ART" to existing signage on three sides of the Industrial Center Building (ICB) at 480 Gate 5 Road (APN 063-140-25).

1 The public hearing was opened. Assistant Planner Thornberry presented the Staff  
2 Report.

3  
4 Commission question to staff:

- 5 • Since this exceeds the normal size allowance, does it need any kind of special  
6 permission or variance, or can it just be approved? *Staff responded it does not*  
7 *need a variance since the Zoning Ordinance states the Planning Commission*  
8 *has the discretion to determine if this size is suitable for this location.*

9  
10 The public comment period was opened.

11  
12 Commission questions to Barry Peterson, the applicant:

- 13 • What is the purpose of adding the word “ART” to the building signage? *Mr.*  
14 *Peterson responded they wanted to have the building be associated with the*  
15 *local arts community. Until now it has been called the Industrial Center*  
16 *Building, although in truth it houses artists, graphic designers, architects, and*  
17 *marine related services, et cetera. The owners do not wish to change the*  
18 *name because of its historical notoriety, but wish to identify the true services*  
19 *that occupy the building.*
- 20 • Signage informs an audience. Who will be the audience for this signage? *Mr.*  
21 *Peterson responded twice yearly they invite the public to come into the*  
22 *building, and it is difficult for people to find that building because they are*  
23 *looking for art studios and the building’s signage indicates it is an industrial*  
24 *building.*
- 25 • Why do you propose to put up permanent, year-round signs to accommodate  
26 two weekends a year? *Mr. Peterson responded they have wanted*  
27 *identification on their building to associate it with the arts community for a long*  
28 *time. They have finally gotten the financial means and the building owner’s*  
29 *permission to do that.*

30  
31  
32 The public comment period was closed.

33  
34 Commission comments:

- 35 • Signage is usually put up to attract customers, but in this case it is clear these  
36 are studios and the Marinship Specific Plan does not allow retail sales.
- 37 • The Commission objects to adding a sign to the north side of the building, as  
38 there is not one there now.
- 39 • There is no necessity for the signage. This building has always gotten along  
40 fine with respect to people finding the building at the twice-yearly public events.  
41 Additional signage will not add understanding to that building.
- 42 • The addition to the signage itself is not objectionable, as it is innocuous,  
43 generic, and superfluous.
- 44 • The sign is not visually obtrusive, and it shows that this industrial building in a  
45 light industrial area houses artists.

1 Commission question to Mr. Peterson:

- 2 • There is Commission consensus on approving Signs A and B, but not Sign C  
3 on the northern side of the building. Would you prefer that the Commission  
4 approve A and B, but not C, or would you prefer to withdraw your application  
5 and bring it before the Commission again when there are more Commissioners  
6 available. *Mr. Peterson responded Signs A and B are much more important to*  
7 *them and they would modify their application to remove the request for the*  
8 *approval of Sign C on the north side of the building.*

9  
10 **Commissioner Cox moved and Commissioner Graef seconded a motion to**  
11 **approve a Design Review Permit and Sign Permit for 480 Gate 5 Road to allow an**  
12 **addition to existing signage on the south and east sides of the building, as**  
13 **modified by the applicant. The motion passed 3-0.**

14  
15 **2. DR 09-102, Design Review Permit, Staninec, 103 Bonita Street.**

16 Amendment to a Design Review Permit to change the roofline of a previously  
17 approved addition to 103 Bonita Street (APN 065-082-04). The original Design  
18 Review Permit was approved on June 11, 2008 for the construction of an  
19 addition connecting an existing single-family residence to a detached garage;  
20 a modification to the roofline was approved on September 9, 2009. The new  
21 proposed roofline is currently under construction at the project site.  
22

23  
24 The public hearing was opened. Assistant Planner Thornberry presented the Staff  
25 Report.

26  
27 Presentation was made by Kathy Shaffer and Michal Staninec, the applicants:  
28

29 Commission questions to Mr. Staninec:

- 30 • Did you send your March 18, 2010 email to the Planning Department after the  
31 roof drawn by Kathy Shaffer had been framed? *Mr. Staninec responded yes.*  
32 *The photos show the framing of the parapet, which is the top of the roof of the*  
33 *addition.*
- 34 • Had an inspector seen the home after framing and before the roof was  
35 installed? *Mr. Staninec responded yes, every step has been inspected, and the*  
36 *inspector gave them the go ahead to install the first layer of stucco.*
- 37 • So the inspector approved the roofline as framed? *Mr. Staninec responded that*  
38 *is correct.*
- 39 • So what motivated the change was a structural consideration? The approved  
40 design was structurally problematic in terms of the existing house and tying this  
41 into it, and it would require extra work and expense? *Mr. Staninec responded*  
42 *yes, exactly.*
- 43 • Is that why the roof has been modified from the original design? *Mr. Staninec*  
44 *responded yes, that and the fact that the story poles were what his neighbor*  
45 *approved.*  
46

47  
48 The public comment period was opened.  
49  
50

1 Sam Chase, 19 Bonita Street, indicated the following:

- 2 • He lives across Pine Street from the subject property.
- 3 • For the past couple of years they have worked with Mr. Staninec, who has
- 4 been faithful in seeking their approval on his design. They support the existing
- 5 design.
- 6 • He has no issues with the existing roof and appreciates its minimal nature.
- 7 From the side of his house it is barely obvious that there has been an addition
- 8 to Mr. Staninec's house.
- 9 • He hopes the Commission can approve the existing roof. A larger, bulkier roof
- 10 would cause them to lose more view of the trees on the 111 Bonita Street
- 11 property.
- 12

13 John McCoy, Don Olsen Architects, indicated the following:

- 14 • Don Olsen Architects had no contact with Mr. Staninec or the contractor
- 15 regarding any errors after the approval of their design until three or four weeks
- 16 ago when this issue came to light.
- 17 • The current as-built design is an appropriate solution to the problem.
- 18 • The current design solution will help get the project built and finished and
- 19 works well with the house and the neighborhood. Although it keeps the flat
- 20 roof, there is a drain and an overflow drain to prevent standing water.
- 21
- 22

23 Commission questions to Mr. McCoy:

- 24 • Was this a design that you had presented to the Planning Department? *Mr.*
- 25 *McCoy responded it is. He brought in a CAD sketch for the Planning*
- 26 *Department's opinion and was told staff would recommend denial for the*
- 27 *reasons stated this evening.*
- 28 • Did that occur prior to the September 2009 approval by the Planning
- 29 Commission? *Mr. McCoy responded yes, that meeting occurred prior to the*
- 30 *last approved submittal.*
- 31 • So you submitted this sketch, the Planning Department told you they would not
- 32 recommend it, you submitted something different, and the Planning
- 33 Commission approved that? *Mr. McCoy responded correct.*
- 34 • Did the contractor build your earlier sketch? *Mr. McCoy responded it was not*
- 35 *the exact same sketch, but it was a similar design concept. As built, the full*
- 36 *addition does not need a roof, only over the stair tower, so the design concept*
- 37 *was to create a flat roof that tied in to the existing roofs. He cannot remember if*
- 38 *his sketches contained the parapet addition, because that was the final*
- 39 *approved and could be a conglomeration of two ideas.*
- 40 • But the sketch you submitted that was not endorsed by the Planning
- 41 Department, you had reduced that to CAD drawings? *Mr. McCoy responded*
- 42 *correct, although it was not officially submitted.*
- 43 • Did you share those CAD drawings with Mr. Staninec? *Mr. McCoy responded*
- 44 *yes.*
- 45
- 46

47 Ken Economy, 111 Bonita Street, indicated the following:

- 48 • He and his wife live next door to the subject property.
- 49 • They submitted a letter describing their perspective regarding the applicant's
- 50 unapproved construction.

- 1 • A year ago Mr. Staninec asked them to support him in raising the roof height,  
2 not in lowering it, as Mr. Staninec suggested this evening. They were told if Mr.  
3 Staninec could not raise the roof height it would cost him hundreds of  
4 thousands of dollars. They signed his petition in support and the City approved  
5 his request. It appears he then subsequently directed his new contractor to  
6 build the structure different from the plan he requested.  
7 • They believe this purposeful deviation should not be tolerated because it sets a  
8 bad precedent. They believe Mr. Staninec did as he wished with the  
9 assumption that if it was discovered later he could convince the neighbors to  
10 allow him to leave it as is and the City would agree.  
11 • They want Mr. Staninec to be compelled to build the structure according to  
12 what he requested and they supported, as it was more aesthetically pleasing  
13 and more architecturally integrated.  
14 • They also request Mr. Staninec's privacy trellis on his deck be revisited. At last  
15 year's Planning Commission meeting they requested a trellis that would  
16 prevent someone from looking into their bedroom window from the Mr.  
17 Staninec's deck, but they believe Mr. Staninec directed his architect to redraw  
18 the plans for an abbreviated trellis to suit his own needs, not theirs. The trellis  
19 as drawn does not provide the privacy they require. It appears the City, without  
20 a thorough review of what had been requested, approved the drawing. They  
21 wish the trellis plan to be redrawn per their understanding of the agreement.  
22 • They met with the Staninecs a couple of weeks ago to look over the project. At  
23 that meeting Mr. Staninec verbally agreed to three conditions, which they then  
24 wrote in their contract. They submitted the contract to Mr. Staninec, but he  
25 refused to sign it. That is what caused them to discontinue working with him, as  
26 it was not the first time they were not been told the entire truth regarding this  
27 project.  
28  
29

30 Commission questions to Mr. Economy:

- 31 • Mr. Staninec told the Planning Commission he was willing to sign your  
32 agreement with some modifications. Is that true? *Mr. Economy responded the*  
33 *only thing Mr. Staninec was willing to sign was the movement of a fence that*  
34 *would have been six inches onto his property. He refused to sign the other two*  
35 *conditions to readdress the trellis and address a significant cosmetic issue in*  
36 *their neighborhood.*  
37 • At the Planning Commission meeting in September 2009 a Condition of  
38 Approval was imposed for a full-length trellis? *Mr. Economy responded that*  
39 *was his understanding.*  
40

41 The public comment period was closed.  
42

43 Staff comments:  
44

- 45 • Regarding Mr. Staninec's comment that after sending his email to the Planning  
46 Department he requested a meeting and a site visit, Staff has communicated  
47 with Mr. Staninec numerous times via telephone, email, and in person  
48 regarding the emails he has sent. Staff tried to work with him and explained  
49 that if one does not want to construct what has been approved, then one has to  
50

1 go back to the Planning Commission. Mr. Staninec did not want to do that, so  
2 staff informed him he had to construct what was approved.

3  
4 Commission questions and comments to Staff:

- 5 • According to the September 2009 condition regarding the trellis the  
6 Commission left it up to the review and approval of the Community  
7 Development Director with direction that the trellis must adequately protect the  
8 privacy of the residence at 111 Bonita Street. *Staff responded that is correct*  
9 *and the trellis was reviewed when it was submitted. At the time staff felt it was*  
10 *an accurate representation for the privacy of the neighbor.*
- 11 • Did staff feel the trellis would adequately protect the privacy of the neighbors of  
12 111 Bonita Street? *Staff responded yes.*
- 13 • Did staff do a site visit after the Mr. Staninec's March 18, 2010 email? *Staff*  
14 *responded she walked the neighborhood and went to the subject property and*  
15 *saw what was being constructed, but she is not a building inspector and could*  
16 *not know what the framing would look like and whether or not it was being*  
17 *constructed as what was approved. Staff went to the subject site multiple*  
18 *times, but it did not connect that what was being constructed was completely*  
19 *different than what was approved.*
- 20 • When Mr. Staninec raised the issue that the inspector had approved the  
21 framing did you look at the card to see whether indeed the inspector had  
22 checked off the framing? *Staff responded what she noticed on the inspection*  
23 *card was there was one notice left by a visiting building inspector saying the*  
24 *applicant was required to submit a height survey of the roofline and that*  
25 *construction was not to continue until it was submitted. The height survey was*  
26 *not submitted to the Planning Department. It is staff's understanding that the*  
27 *Building Inspector did not note the issue until the Stop Work Order was issued*  
28 *on May 5<sup>th</sup>.*
- 29 • Did staff have any conversation with the Building Inspector to ascertain how he  
30 discovered the discrepancy? *Staff responded yes. Staff does not know if what*  
31 *was structurally approved matched what was structurally being constructed.*  
32 *When the Building Inspector looked at the roof after it was substantially*  
33 *completed he realized it is not what was approved.*

34  
35  
36 Commission questions and comments to Ms. Shaffer:

- 37 • What documents might have been used to construct what was constructed  
38 other than the documents that were approved? Did someone build these with  
39 drawings or with no drawings? The CAD sketch is not the same as construction  
40 drawings, so it does appear not there were any structural drawings with the low  
41 roofline. *Ms. Shaffer responded she has a printout of the structural drawings*  
42 *that were used to build the structure.*
- 43 • Are your structural drawings the same as the drawings that were approved by  
44 the Planning Commission? *Ms. Shaffer responded they are the same as the*  
45 *description in the Planning Commission approval, which is the two separate*  
46 *structures, but it was never coordinated with the architectural drawings. She*  
47 *believes the contractor felt more comfortable working with engineer-stamped*  
48 *construction drawings. No one ever checked to see if they were coordinated.*
- 49 • Who stamped those drawings? *Ms. Shaffer responded Five Engineering.*

- 1 • That answers the Commission's question that somebody produced some  
2 drawings that the contractor used to measure and build the structure. *Ms.*  
3 *Shaffer responded Don Olsen Architects did some construction drawings,*  
4 *which were not coordinated with the structural drawings, so she believes the*  
5 *contractor started building from the structural drawings. He looked at the story*  
6 *poles and started building at that height. Then as he was going along and as*  
7 *the Building Inspector inspected they realized that it didn't match the approved*  
8 *drawings.*  
9

10 Commission comments:

- 11 • Regarding the notion of maintaining the prevailing design character of the  
12 neighborhood, there is no prevailing architectural character of this  
13 neighborhood, only a disconnected collection of objects. There is far more  
14 inconsistency between the existing house and the garage on this site; the  
15 connection between them and the fenestration on the connection has nothing  
16 to do with the rest of the building. The approved roofline would simply have  
17 extended an embracing cap onto a collection of units that are not related.  
18 • Regardless of how it happened, no harm is done by this modification; in fact it  
19 is better than what was approved because it is less consistent.  
20 • The existing roofline is actually lower than what was approved and not harmful  
21 to the neighbor's views. It is set back, unobtrusive, and not objectionable.  
22 • The Commission is bothered by the precedent about the way this was done  
23 without benefit of bringing it back to the Planning Department and getting an  
24 approval to make a change. It is difficult to believe this was an accidental and  
25 not a conscious change.  
26 • It is not the responsibility of the applicant to prevent the ability to look into  
27 neighbor's windows. Staff has indicated the trellis as it is now proposed meets  
28 what they thought was the intent of the original Condition of Approval.  
29 • In a letter from Mr. Staninec he says, "Concerning the trellis, I cannot formally  
30 agree to something that is not part of my approved plans. I plan to put the trellis  
31 up, but if the City asks me to take it down I will have to remove it if requested  
32 for the inspector's signature." It sounds as though staff has approved a form of  
33 trellis, so it is going to be installed and does not need to be readdressed other  
34 than to make sure it is not removed, as Mr. Staninec's letter seems to imply it  
35 could be.  
36 • It is hugely troubling that the approved plans were not followed and that  
37 coincidentally what was built was what was proposed and not approved.  
38 • The major concern for the Economys at 111 Bonita was the privacy trellis. The  
39 issue with the fence and the other neighborhood issues were not before the  
40 Planning Commission at the time this application was presented. The  
41 Commission does not see the harm that this new design poses to the  
42 Economys other than the fact that the overall appearance of this project lacks  
43 consistency or transition, but changing the roofline as proposed by staff would  
44 not make a huge difference.  
45  
46  
47

48 **Commissioner Werner moved and Commissioner Graef seconded a motion to**  
49 **approve an amendment to a Design Review Permit for 103 Bonita Street. The**  
50 **motion passed 3-0.**

1  
2  
3 **3. TR 08-003, Tree Removal Permit, Tsedendamba Tsedendamba and**  
4 **Bazarsad Oigonjargas, 147 Edwards Avenue.** Tree Removal Permits to  
5 remove eight protected trees and retroactive Tree Removal Permits for the  
6 previous removal of seven protected trees at 147 Edwards Avenue (APN 065-  
7 292-04). A Design Review Permit was approved on November 14, 2008 for  
8 the construction of a single-family residence at 147 Edwards Avenue.  
9

10 The public hearing was opened. Associate Planner Schinsing presented the Staff  
11 Report.  
12

13 Commission questions to staff:

- 14 • In staff's initial letter to the applicant regarding the improper removal of the  
15 protected trees a fine of \$100 per tree was assessed. Staff then received a  
16 letter from the applicant's attorney saying they would not pay the fine until they  
17 consulted with the City Attorney, because the owner had not removed the  
18 trees. Has the fine been paid? *Staff responded the fine has not been paid.*  
19 *There is a condition in the draft resolution of approval that requires payment of*  
20 *all fines and any deficient fees. Staff received a letter today from the applicant's*  
21 *attorney addressing the removal of the trees, the main issue being that her*  
22 *client was not aware that the trees were removed while they owned the*  
23 *property. The letter the Commission received today indicates the trees were*  
24 *removed while the owner owned the property and the fine needs to be paid;*  
25 *that is included as a condition in the resolution.*  
26
- 27 • The November 2008 staff report was prepared by a former planner and stated  
28 that there were no protected trees on the property. That was a mistake in the  
29 application materials. *Staff responded the Staff Report did say that there were*  
30 *no protected trees on the property due to the diameter of the trees being less*  
31 *than 12 inches at breast height.*  
32
- 33 • But even if none of the trees were protected, their removal still required a Tree  
34 Permit, correct? *Staff responded that is not correct. A Tree Permit is required*  
35 *for the removal of a protected tree, a dedicated tree, or a heritage tree.*  
36
- 37 • After receiving your letter the applicant did hire an expert who provided a report  
38 to the Commission that stated that indeed the trees removed were protected  
39 because of their diameter at breast height. Is that something that the applicant  
40 is responsible for knowing, even if the Staff Report is incorrect? *Staff*  
41 *responded the applicant is responsible for knowing all codes of the City.*  
42
- 43 • Staff has now made commencement of grading contingent on obtaining a Tree  
44 Removal Permit. Should grading have started on that site prior to the removal  
45 of the trees? *Staff responded the Grading Permit was conditioned so that no*  
46 *grading would occur in the area of the existing trees. Until such permit is*  
47 *obtained no grading is allowed in those areas, but would be allowed in the*  
48 *areas where the trees have already been removed.*  
49
- 50 • Are the stumps left from the trees that were removed counted as existing trees  
because they protect the stability of the slope while in place? *Staff responded*  
*the Community Development Director, the Public Works Director, and the City*  
*Engineer had reviewed that question and they do not count the stumps as*



1 existing trees. There are steps in the building process to ensure slope stability,  
2 which include the steps that if in fact the stumps provide stability that it would  
3 be addressed through that process.  
4

5 **Commissioner Cox indicated she had spoken with Deborah Kartiganer, the**  
6 **applicant's attorney, and Matthew Rowe, the neighbor at 145 Edward Avenue.**  
7

8 **Commissioner Werner indicated he had spoken via telephone with the applicant's**  
9 **attorney, Deborah Kartiganer, earlier that day.**  
10

11 **Commissioner Graef indicated he had spoken via telephone with the applicant's**  
12 **attorney, Deborah Kartiganer.**  
13

14 **Commissioner Cox indicated many members of the Planning Commission had**  
15 **been copied on emails concerning this project.**  
16

17 Presentation was made by, Deborah Kartiganer, the applicant's attorney.  
18

19 Commission questions to James Lasco, Arbor Logic:  
20

- 21 • There is a concern about placing 15 new trees at this site outside the building  
22 and patio envelope, especially given the steep slope of the site. Is it truly  
23 feasible to place 15 trees on this site? *Mr. Lasco responded he was looking at*  
24 *approved landscape plans, although they will be modified for the additional*  
25 *replacement trees. There were nine trees on that particular landscape and six*  
26 *more will be added. The contractor told him that they already proposed some*  
27 *tall, thin trees between 145 and 151 Edwards.*
- 28 • Have you looked at how you would amend the landscaping plan to incorporate  
29 six additional trees? *Mr. Lasco responded he didn't feel that was the purview of*  
30 *the landscape architect, but he does believe those trees can be fit there as*  
31 *long as there they are the proper species with proper drainage and*  
32 *amendments.*

33  
34 The public comment period was opened.  
35

36 Matt Rowe, 145 Edward Avenue, indicated the following:  
37

- 38 • Most of the focus up to now has been on the applicant and the applicant's  
39 representatives denying they removed the protected trees. The trees were  
40 removed in the fall of 2009. He and his neighbors informed the City that this  
41 had occurred, but no action was taken by the City to address, investigate, or  
42 comment until recently.
- 43 • The bigger issue is the Commission needs to look at is the lack of proper  
44 insurance.
- 45 • When he was before the Planning Commission in 2008 he was granted a  
46 special, non-standard Condition of Approval 32 and he dropped his opposition  
47 to the project. The proposed excavation for the finished floor at 147 Edwards is  
48 going to be 22.5 feet down and 7 feet away from the corner of his house. He  
49 asks the Commission to consider the implications of issuing retroactive Tree  
50

1 Removal Permits both for procedural error and for the implications of issuing  
2 such permits.  
3

4 Commission questions and comments to Mr. Rowe:

- 5 • What would you have the Commission do tonight, keeping in mind the only  
6 thing the Commission is considering are retroactive and prospective Tree  
7 Removal Permits? *Mr. Rowe responded he would request that the permits be*  
8 *denied due to procedural errors that had the trees removed without a Grading*  
9 *Permit, and that there be discussion of whether it is even feasible to execute*  
10 *this project at this time of year. He submitted a letter from structural engineer*  
11 *Bruce King where Mr. King advised that it is not safe to assume that this*  
12 *project and it cannot be executed prior to the rainy season. The behavior of the*  
13 *general contractor and the lack of communication with the owner has*  
14 *demonstrated to him that he should be wary of their experience level and ability*  
15 *to executive this project at this late stage in the season.*
- 16 • The applicant now has a Grading Permit, which is required for tree removal.  
17 The City cannot tell the applicant they cannot build on this lot because they  
18 improperly removed trees. The City can assess fines and require that they  
19 plant replacement trees. *Mr. Rowe responded if that is the procedure he will*  
20 *respect that, but this project is now 24 days past when grading should have*  
21 *started by rule. He and his neighbors are now put in a position where they have*  
22 *to scramble to get themselves insured now that building and grading permits*  
23 *have been issued. His insurance broker has told him that he is not covered,*  
24 *and his attorney has told him to make sure he is covered.*
- 25 • Condition 32 requires the applicant provide the City with evidence of project  
26 insurance. Have you been provided with evidence of project insurance? *Mr.*  
27 *Rowe responded in his opinion, no.*
- 28 • The issue of project insurance is not before the Commission; the only  
29 peripheral way it is even relevant is that the only thing standing in the way of  
30 grading is the issuance of a tree permit. Is it your position that the grading  
31 cannot be accomplished between now and the deadline of October 15<sup>th</sup>. *Mr.*  
32 *Rowe responded that is correct. There is also the complication that on July*  
33 *31<sup>st</sup>, a Saturday, Rich Brunelle of AB WIN Construction brought a backhoe*  
34 *onto the lot and stated moving and removing dirt in the area where the stumps*  
35 *remained from the illegally removed trees.*
- 36 • If you had your choice today, you would like the Commission to make sure  
37 there is evidence of project insurance of not less than \$2 million and that  
38 grading not start until the spring? *Mr. Rowe responded yes to both.*  
39  
40

41 Deborah Kartiganer's rebuttal to public comments

- 42 • The site conditions that are of concern to the neighbors have undergone  
43 rigorous review and scrutiny by City staff. There have been multiple reviews of  
44 all areas of concern, such as insurance, timing, and tiebacks.
- 45 • City staff has signed of on the timing of the project and her client would like the  
46 ability to start construction as soon as possible. Although they respect the  
47 opinion of Mr. King, the expert Mr. Rowe brought in, they agree with staff's  
48 opinion that there is time available to do what needs to be done.  
49  
50

- They are continuing to go above and beyond what is required by the Conditions of Approval. They are continuing discussions with Mr. Rowe regarding his concerns about insurance, even though the City has completely signed off on it, and are trying to put him at ease.

Commission questions to Rich Brunelle, AB WIN Construction:

- Can you address the issue of timing and being able to get the grading and shoring done on time? *Mr. Brunelle responded they have contracted Demex Engineering, who is familiar with the area, to do the earthwork. They met with the City staff last week and believe they can get the entire earthwork done in the allotted time and before the rains being if they begin work soon.*
- What is the deadline for completing such work? *Mr. Brunelle responded it is October 15<sup>th</sup>.*
- Do you have a schedule worked out that has been approved? *Mr. Brunelle responded their schedule has met with the City's approval as long as they complete the work necessary and install the drainage system.*
- Will your shoring encroach on the neighbor's properties? *Mr. Brunelle responded no, it will not.*

Commission questions to Todd Teachout, City Engineer:

- Are you satisfied that this contractor can accomplish the earthwork required and stabilize this hill in the appropriate manner prior to October 15<sup>th</sup> and prior to the rainy season? *Mr. Teachout responded it would be close, but based on the review of the schedule, yes.*
- What is the schedule you have seen? *Mr. Teachout responded the schedule requires six weeks to do this work, and there is now seven weeks available.*
- To your knowledge can Demex Engineering mobilize within the next week to begin work if the Commission grants the Tree Removal Permit? *Mr. Teachout responded that question would have to be answered by the general contractor.*

Commission questions to staff:

- Is it not more appropriate to give the applicant a Tree Removal Permit going forward and impose a fine and appropriate sanctions for their improper prior removal of trees rather than a retroactive Tree Removal Permit? *Staff responded the Planning Commission has granted retroactive permits for a variety of activities that have taken place in the past. Approving retroactive permits allows the Commission to impose Conditions of Approval on the retroactively. The Commission can approve the retroactive Tree Removal Permits as well as impose fines, so it is both.*
- How would staff feel about planting protected trees in another area of the City, such as Dunphy Park or some other appropriate place, other than 151 Edwards? *Staff responded that is an excellent idea in concept, however the Parks and Recreation Department has no interest in such trees, because they do not want to maintain them. It is possible to explore the possibility of the Public Works Department putting trees in traffic medians.*
- The Commission has been informed the grading had to start by August 1<sup>st</sup> to fulfill project timing requirements. If the Commission is not optimistic that construction could start immediately and so approved the Tree Removal Permit

1 to be effective March 15, 2011, would that impose deadline issues upon the  
2 applicant? *Staff responded a Grading Permit has been issued and it allows the*  
3 *entire site to be graded except for the area where the existing trees are. The*  
4 *absence or presence of a Tree Removal Permit for the existing trees does not*  
5 *affect the applicant's ability to install the foundation piers.*

- 6 • So the applicant does not need the Commission's approval of the retroactive  
7 Tree Removal Permit to commence grading? *Staff responded those trees have*  
8 *already been removed.*
- 9 • So even if the Commission denies the Tree Removal Permit this evening, the  
10 applicant can start grading except in the area of the patio? *Staff responded that*  
11 *is correct, although if and when the Commission decides to approve a Tree*  
12 *Removal Permit in that area it might be more difficult for the applicant to*  
13 *remove the trees from that area, because they would have already started the*  
14 *foundation work.*

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17 Commission questions and comments to Todd Teachout:

- 18 • Does all grading have to be completed within a certain amount of time from the  
19 August 1<sup>st</sup> commencement? *Mr. Teachout responded that question goes to*  
20 *Condition 38, which states, "...and shall commence and conclude within a*  
21 *single dry season."*
- 22 • The Grading Permit was issued two days ago, so the applicant started grading  
23 without a grading permit? *Mr. Teachout responded the City allows excavation*  
24 *from zero to fifty cubic yards without a permit.*
- 25 • The intention of the Condition of Approval that mandates grading start by  
26 August 1<sup>st</sup> is to ensure there is time to complete the work before October 15<sup>th</sup>.  
27 It does not intend the grading to be started without really starting, and then  
28 mobilize a month later. *Mr. Teachout responded this time of year staff is often*  
29 *faced with a situation where grading has been delayed due to Plan Check and*  
30 *the applicants are almost ready to go. Staff then has to decide whether or not*  
31 *to let them continue. The condition is precise in its language, but the weather*  
32 *and physical world may not conform to that.*
- 33 • In truth the dry season can last until mid-November, as it did last year. *Mr.*  
34 *Teachout responded the October 15<sup>th</sup> through April 1<sup>st</sup> constraint is primarily a*  
35 *water quality driven requirement and not necessarily a structural and*  
36 *geotechnical driven.*

37  
38 The public comment period was closed.

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40 Commission comments:

- 41 • There is no reason to deny this application. The Commission should let this  
42 project get underway and be finished in a timely fashion.
- 43 • The Planning Commission approved this project knowing it was likely that all  
44 the trees on the property were going to come down. The Grading Permit has  
45 been issued and the rest is irrelevant.
- 46 • Instead of retroactive Tree Removal Permits perhaps the resolution should  
47 simply say it will cost the applicant \$100 per tree. The applicant can write the  
48 check and move forward.

- There is concern regarding the late commencement of construction and the applicant's ability to safely perform the entire earthwork, shoring, and drainage required between now and the rainy season.
- It does not make sense to perform the grading piecemeal in the area of the already removed trees and then in the area of the trees to be prospectively removed.
- The applicant's attorney, Ms. Kartiganer, stated in an email and again in her presentation her intention to work with Mr. Rowe to ensure that the project insurance policy in place comports with Condition of Approval 32. Therefore that should be imposed as a Condition of Approval.

Staff comment:

- The Tree Ordinance is clear on what types of conditions can be imposed, and they are for the protection of other protected trees that remain during construction. From the City perspective the insurance issue has been reviewed and is closed and Condition 32 has been satisfied. If the applicant wants to work with the neighboring property owner, that is their prerogative.

Commission comments to staff:

- The proposal to impose a Condition of Approval that the project insurance policy comports with Condition of Approval 32 goes to Finding 3, which the Commission is required to make for Tree Removal Permit findings, and it relates to the trees' value to the neighborhood, adequate provisions for draining, erosion control, land stability, et cetera. *Staff responded if the Commission did not think those issues were met it could deny the Tree Removal Permit.*
- The Commission is required to make findings that adequate provisions for draining, erosion control, land stability, et cetera, have been made. The Community Development Director emailed the Planning Commission opining that removal of trees adversely impacts slope stability. *Staff responded staff recommendation was that the insurance provision does not provide draining, erosion control, and land stability.*

Commission comments:

- Imposing such a Condition of Approval is outside the scope of what the Commission is being asked. The Commission should not further complicate an already complicated scenario. The applicant and neighbor can settle the matter between themselves. The City is comfortable that Condition 32 has been satisfied. The Planning Commission is part of the City, so the Commission should also be comfortable with it as well.

The public comment period was reopened.

Comments by Deborah Kartiganer, the applicant:

- She concurs with the City Attorney it would do no good to cut off discussions with the neighbor, because they have to continue working with him, the insurance issue will not have any affect on the physical state of the property, only on potentially what would happen if something went wrong.

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- As staff has stated, they have gone through an enormous number of hoops to ensure that nothing goes wrong, but that everyone is protected if it does.
  - The suggested Condition of Approval regarding Condition 32 is not appropriate here. In addition, she questions how the Condition of Approval would be worded and how the business arrangement would work. These are issues that should be worked out between the property owner and the neighbor, and they are willing to do that.

9 Commission comment to Ms. Kartiganer:

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- It is unfortunate that the insurance policy was transmitted today, so we don't have any opinion regarding its validity. *Mr. Kartiganer responded the Commission does have an opinion, that of the City staff. The insurance policy was transferred to Bickmore Risk management and was extensively reviewed by them.*

16 Staff comment:

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- Bickmore Risk Services are of the opinion that the insurance policy is project insurance. The physical measures to ensure slope stability have been done through the plans and through the work that will be done in the grading.

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22 **Commissioner Werner moved and Commissioner Graef seconded a motion to**

23 **approve Tree Removal Permits for eight protected trees, and to approve**

24 **retroactive Tree Removal Permits for seven protected trees with the attached**

25 **conditions, for 147 Edwards Avenue. The motion passed 3-0.**

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27 **Old Business**

28 None.

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30 **New Business**

31 None.

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33 **Staff Communications**

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- Selection of Chair and Vice-Chair is on the next Commission meeting's agenda as Staff anticipates full attendance.
  - The City Manager has asked the Community Development Department to assume management of and staff support for the Trees and Views Committee. Assistant Planner Thornberry will be the lead planner for the Committee.

40 **Adjournment**

41 The meeting was adjourned at 9:59 p.m.

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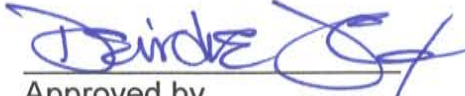
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Submitted by  
Jeremy Graves, AICP  
Community Development Director

  
Approved by  
Joan Cox  
Commissioner