

**CITY OF UNION CITY
MINUTES FOR THE REGULAR PLANNING COMMISSION MEETING
OF AUGUST 17, 2006, 7:00 P.M.
IN THE COUNCIL CHAMBERS OF CITY HALL
34009 ALVARADO-NILES ROAD, UNION CITY, CALIFORNIA**

**I. ROLL CALL: Commissioners Anderson, Savage, Sweeney and Chairpers on Lew
ABSENT: Commissioner Sison**

STAFF: Mark Leonard (Director, Economic and Community Development); Vern Smith (Housing Coordinator); Janice Lum (Assistant Planner); Avalon Evans (Assistant Planner); Farooq Azim (Principal Civil Engineer); John Bakker (City Attorney); Kris Fitzgerald (Administrative Assistant).

II. APPROVAL OF MINUTES: The regular Planning Commission Minutes of July 20, 2006 were approved as submitted.

III. ORAL COMMUNICATIONS: None.

IV. WRITTEN COMMUNICATIONS: None.

V. PUBLIC HEARINGS:

A. CONTINUED HEARINGS:

- 1. SPRINGFIELD HOLDINGS, LLC., 33377 CROATIAN WAY, Tentative Tract Map 7800 AND USE PERMIT UP-05-06; the applicant is requesting approval of a Tentative Tract Map TTM 7800 to subdivide a 20,054 square foot parcel into five (5) parcels. The proposal includes creating one 9,758 square foot commonly owned parcel where the parking lot is located and subdividing the existing 10,297 square foot building into four (4) tenant spaces. Use Permit Approval (UP-05-06) will allow for the industrial planned unit development and automotive repair and service uses. The property is located at 33377 Croatian Way (APN: 475-0111-054-00). This project has been determined to be categorically exempt per Section 15301, Class 1(e) – Existing Facilities, of the California Environmental Quality Act (CEQA) Guidelines.**

Avalon Evans, Assistant Planner, presented the staff report.

Commissioner Sweeney asked if the existing industrial condominiums have CC&R's.

Ms. Evans replied that staff is not aware of any existing CC&R's.

Commissioner Sweeney asked if there is an existing CC&R's then which would have precedence over these condominiums.

Ms. Evans referred the question to the applicant.

Commissioner Sweeney asked if the application for the project on Atlantic Street had a condition regarding whether cars could be parked outside at night or had to be moved inside the facility.

Ms. Evans replied that the condition was finalized at the City Council meeting and it was decided that cars that were undergoing repairs on blocks could not be parked outside.

Commissioner Anderson asked if lot #3 is the lot under consideration this evening.

Mark Leonard, Director, Economic and Community Development, replied that is correct.

Commissioner Anderson asked what is being divided in lot #3.

Ms. Evans stated that this would divide the airspace in the existing building and the underlying parcel would remain whole.

Commissioner Anderson asked for more clarification.

Ms. Evans replied that this would be for condominium purposes.

Commissioner Anderson stated that he does not understand how the Tentative Tract Map can divide the building.

John Bakker, City Attorney, stated that Tentative Maps can create condominium maps.

Commissioner Anderson stated that something has to be already divided for the condominium and a Tentative Tract map only divides the land.

Mr. Bakker stated that the final recorded map actually does the division and the Tentative Map shows what the final map will look like.

Commissioner Anderson asked if this map is dividing lot #3 into 5 pieces or will this divide the lot into two pieces, the land and the building.

Mr. Bakker replied that the underlying land remains as a single parcel but it becomes part of a common area and the airspace in each of the units is what constitutes individual ownership that can be sold and the undivided interest in the common area. Mr. Bakker stated that it is a complicated process and not shown well on a one dimensional map.

Commissioner Anderson stated that he thinks they are approving a Tentative Tract Map, a PUD and a condo conversion but the language is not clear with regards to what is being approved.

Ms. Evans asked for a specific example.

Commissioner Anderson replied that the Tentative Tract Map divides the land and we are not dividing the land.

Ms. Evans stated that it is a Tentative Tract Map commercial condominium conversion. Ms. Evans stated that if the words "commercial condominium conversion" were not on the map then it would be a map for dividing the land.

Commissioner Anderson stated that he did not see that title in the Zoning Ordinance.

Ms. Evans stated that it is on the map itself. Ms. Evans stated that Title 17 is for subdivisions so we don't talk about it in the Zoning Ordinance.

Commissioner Anderson stated that there is no such thing as a “Tentative Tract Map commercial condominium conversion” ordinance.

Ms. Evans stated that it is located in the Subdivision Map Act. Ms. Evans stated that it is a Public Works issue more than a planning issue.

Commissioner Anderson asked if the Tentative Tract Map and the condominium conversion are two separate things.

Mr. Leonard stated that this is a condo conversion so the Zoning Ordinance does not apply. Mr. Leonard stated that we follow the State Subdivision Map Act in the procedures to divide a building through an airspace division.

Commissioner Anderson stated that he doesn’t think that this is a Tentative Tract Map.

Mr. Bakker stated that it may be a matter of terminology. Mr. Bakker stated that typically in the subdivision context those terms continue to apply even though we are talking about units which are airspace instead of dirt. Mr. Bakker stated that what you are approving is the creation of airspace. Mr. Bakker stated that there can also be dirt condominiums as well.

Commissioner Anderson stated that he still doesn’t see the difference.

Mr. Bakker stated that the way that the actual airspace is created is not by the Planning Commission or by the City but is actually done via a condominium plan which is a separate document which we have no control over. Mr. Bakker stated that the owner of the property records a condominium plan which creates the real estate that can be sold.

Commissioner Anderson asked what is to be sold.

Mr. Bakker stated that it would be the airspace plus the undivided interest in the common area.

Commissioner Anderson asked if this Tentative Tract Map divides the parcel into two parts, a building with saleable airspace and a common parking lot area.

Mr. Bakker stated that looks correct and would also include the land under the building and any necessary easements that allow each unit owner to get back and forth.

Commissioner Anderson stated that on the Tentative Tract Map all the land must be accounted for with nothing leftover.

Mr. Bakker stated that on this Tentative Tract Map there are five lots, lot A being the common area and lot 1 – 4 being the four units. Mr. Bakker stated that all of the surplus space should be in lot A.

Commissioner Anderson stated that if you have something being divided into more than four pieces then it is not a minor subdivision anymore.

Mr. Bakker stated that this is not a parcel map.

Commissioner Anderson stated that it says that it is a parcel being divided into five parcels in the heading in the staff report.

Ms. Evans stated that if you removed the words “for condominium purposes” then it would be a different project. Ms. Evans stated that if the map did not have the words “for condominium conversion” it would not be this project but because this language has been added it is to the satisfaction of the engineers of the City staff.

Commissioner Anderson stated that a PUD was mentioned in the staff report but there is no application for a PUD before the commission.

Ms. Evans stated that in Chapter 18.40 of the Zoning Ordinance it allows for industrial planned unit development so that it is not a PUD as set out in Chapter 18.44. Ms. Evans stated that with the approval of a Use Permit an industrial planned unit development is a conditionally permitted use in the ML zoning district. Ms. Evans stated that staff thought that it was appropriate to use in this unique set of circumstances. Ms. Evans stated that there is no definition for an industrial planned unit development.

Commissioner Anderson asked if the code requires an application for a PUD.

Ms. Evans stated that the code is silent on requiring a separate application.

Mr. Leonard stated that the Home Depot center was an industrial planned unit development and there have been others.

Commissioner Anderson stated that the Zoning Code should be amended to include a definition for an industrial planned unit development.

Ms. Evans stated she will be bringing several zoning text amendments to the Planning Commission at their next meeting and she will include this.

Commissioner Anderson asked if the Tentative Tract Map requires a Use Permit.

Ms. Evans stated that it does not by itself but with the condo conversion it does.

Commissioner Anderson asked if the industrial planned unit development require a Use Permit.

Ms. Evans replied that it does.

Commissioner Anderson asked if the one Use Permit will cover all three applications.

Ms. Evans replied that one Use Permit can cover both applications unless the commission would rather break them up. Ms. Evans stated that the Use Permit for the industrial PUD is the vehicle to approve the condo conversion tract map and the Use Permit also approves the automotive uses.

Commissioner Anderson stated that for the industrial planned unit development there are no design requirements, no qualifications, no minimum requirements for site area, etc.

Ms. Evans stated that the purpose of the PUD chapter in the code is to allow for slight variations from a district’s requirements in order to keep the overall high quality of the site layout or design. Ms. Evans suggested that we can treat an industrial PUD in a similar manner. Ms. Evans stated that this PUD is not proposing to vary from any standards.

Commissioner Anderson stated that it does because it states that the minimum site requirement is five acres.

Ms. Evans replied that it is important to remember that the underlying parcel is going to remain whole.

Commissioner Anderson stated that the size of the existing parcel is too small to qualify for a PUD.

Ms. Evans stated that this requirement in the PUD chapter might have to be amended.

Commissioner Anderson stated that there is no definition for an industrial planned unit development and he is being asked to approve one.

Ms. Evans stated that as long as you can make the Use Permit findings for the condo conversion and/or the automotive use, you can use those findings as the basis for your review of the industrial PUD.

Commissioner Anderson stated that one of the findings refers to the CEQA exemption and this project does not meet it.

Ms. Evans replied that condo conversion for existing facilities is a specific CEQA exemption and the City Attorney verified that.

Commissioner Anderson referred to condition #4 and asked if the applicant will be required to fix Croatian Way before turning the project over to the association to maintain.

Ms. Evans replied that condition #6 requires that the applicant submit a signed written agreement from each of the new owners providing for its ongoing maintenance prior to the final map.

Commissioner Anderson stated that “ongoing” maintenance assumes that it is Ok already but this road is in need of repair.

Ms. Evans suggested adding the words “and repair” to condition #6

Ms. Evans stated that Croatian Way is part of a flag lot and the two back parcels own Croatian Way and it is not directly owned by the subject property although they all take access from it and staff felt that it was appropriate to include the condition to require all property owners to maintain the road.

Commissioner Anderson stated that this will be an additional problem with all the new owners and the original owners don't have an association.

Ms. Evans stated that in condition #5 it states there will be one association and one representative so that the owner's association of this building will have its own funds to cover building and common area maintenance. Ms. Evans stated that it is anticipated that the applicant will attempt to get the owners of all four buildings to maintain Croatian Way. Ms. Evans stated that per the City Attorney this is as far as the City can go.

Commissioner Anderson asked if it is possible to ask the applicant to repair the road before the map is approved.

Ms. Evans stated that it is more of a legal question than a planning question.

Commissioner Anderson asked why the resolution was not in the packet.

Ms. Evans stated that it usually is included on more complex projects and in this case the resolution will be a cut and paste of your findings and conditions of approval.

Commissioner Anderson stated that it should be in the packet because one of the findings in missing.

Ms. Evans agreed to include resolutions on future projects.

Chairperson Lew referred to the Use Permit for the PUD and auto repair shops and asked about the third element, the condo conversion.

Ms. Evans replied that the PUD accommodates the conversion so it is just two uses in the Use Permit.

Chairperson Lew stated that there is no commitment for the auto repair shops to go into that site and it is not clear that they will need a Use Permit for auto repair shop and she feels that each potential owner should apply for their own Use Permit.

Mr. Leonard stated that staff disagrees with that because this building would be an appropriate location for auto repair and if the property owner chooses to sign leases with auto repair facilities this Use Permit would facilitate the process.

Chairperson Lew stated that this one Use Permit is going to serve multiple purposes regardless of what businesses enter into the sales.

Mr. Leonard stated that is correct because they would have to meet a host of other requirements including Hazmat requirements, Fire requirements and Building requirements.

Chairperson Lew is not comfortable with granting a Use Permit when they don't know all the details.

Commissioner Sweeney asked if there is more than one auto use and one of them does not abide by the conditions and we pull the Use Permit does that affect all automotive uses in the building under this scenario.

Ms. Evans stated that condition #7 be amended to address that issue more directly and make it so that the business causing the problem would be the only business affected.

Commissioner Anderson asked how that can be done when we don't know who the businesses will be.

Mr. Bakker replied it can be done on a unit by unit basis.

Commissioner Sweeney asked if the single Use Permit will permit us to do that.

Mr. Bakker replied that if the condition were drafted in a way that we could potentially revoke the Use Permit as to a particular unit but not others.

Chairperson Lew asked for some clarifying language for condition #7.

Mr. Leonard replied condition #7 would read "the applicant or occupants failure to adhere to any conditions of approval shall be cause for revocation of the Use Permit for all or a portion of the project".

Chairperson Lew stated that there is no assigned parking for this project and suggested that some parking be assigned in the sale for each space.

Ms. Evans stated that staff would take direction from the commission and their only concern is that there be some flexibility in review of the parking situation.

Chairperson Lew stated her concern that no one would want to buy because there is no assigned parking.

Mr. Bakker stated that the current owner of the property has an incentive to create saleable lots and if setting aside parking spots for each unit makes the units more marketable, then the owner will do so.

Ms. Evans stated that condition #5 states that all parking will be shared and none will be reserved for a specific use. Ms. Evans stated that if the commission wants to change it to some reserve parking for each unit they can.

Mr. Leonard recommend that the commission keep condition #5 as written because it is possible that there will be a low intensity user and a high intensity user and we would want the parking to be fully available to everyone in the building.

Chairperson Lew asked even if a buyer would like a place to park and there are no spaces when he or she shows up for work.

Mr. Leonard stated that is correct.

Chairperson Lew asked if that was in the best interest of the applicant.

Mr. Leonard replied it is in the best interest of the City.

Chairperson Lew asked what impact that would have on the City.

Mr. Leonard replied that there would be less on street parking potentially.

Chairperson Lew stated that street parking is allowed on Pacific and Dowe.

Mr. Leonard stated that the demand could be slightly less if you have parking in common.

Commissioner Sweeney stated that the point is that if you reserve a space that is not used when you have demand from another business then that person has to park on the street, whereas they could have been accommodated in the lot. Commissioner Sweeney stated that you may say a person wants a space to park if they are not using it and someone else needs it then shared parking permits that person to use it.

Chairperson Lew stated that she cannot imagine anyone in that area not needing a parking space since this is a driving city.

Chairperson Lew referred to condition #5 and stated that when the condition is this long it should be broken up into bullet points or by some other method to make it clearer and easier to read.

Chairperson Lew referred to condition #11 and asked to make it clearer when the plans should be submitted.

Ms. Evans replied that it should be amended to read "prior to final map approval" since there are no building permits associated with this application.

Chairperson Lew referred to condition #21 and recommended that it be changed from "draw" to "provide".

Ms. Evans replied that the engineers are satisfied with the language of condition #21 being amended to say "prepare the final tract map" instead of "draw the final tract map".

Chairperson Lew recommended some additional findings for Section V. Chairperson Lew asked to renumber the current finding #4 to finding #3 and add a new finding #4 that reads "the design, density and improvements of the proposed subdivision are consistent with the General Plan". Chairperson Lew asked to add an additional finding that reads "that the site is physically suitable for this project". Chairperson Lew asked to renumber finding #5 to finding #6 and change #6 to #7 and change #7 to #8. Chairperson Lew asked to add at the end of the first line of new finding #6 add the words "Title 18". Chairperson Lew asked to change the same language in finding #8.

Chairperson Lew opened the public hearing.

Mike Berry, Springfield Holdings, introduced himself to the commission.

Jim Toby, Lea & Braze Engineering, stated that the existing buildings that are on the property are not condominiums. They are individual fee simple lots. Mr. Toby stated that they are proposing to do a brand new condominium conversion of one of those lots. Mr. Toby stated that they are proposing to create brand new air spaces in which there will be individual ownership of the airspace only. Mr. Toby stated that the underlying lot will stay as one lot. Mr. Toby stated that they are using a Tentative Tract Map because that is what the Subdivision Map Act requires them to do.

Commissioner Anderson stated that he does not understand why they are using a parcel map to divide the airspace with the condominium conversion.

Mr. Toby replied that the final map they are creating will not look anything like the Tentative Tract Map. Mr. Toby stated that the Tentative Tract Map shows all the underlying building, location of everything including parking and utilities; it shows what the applicant's intent is. Mr. Toby stated that the final map will show only a one lot map, it will not show lots or units, but will show the underlying building. Mr. Toby stated that what is recorded with the county is a piece of paper with the overall outlying boundaries. Mr. Toby stated that a separate air space plan is filed with the Department of Real Estate for California.

Commissioner Anderson asked if there is another name for the air space plan.

Mr. Toby replied that it can be called a condominium air space plat or a condominium air space plan.

Mr. Bakker stated that the statutes call it a condominium plan and it is not regulated by local governments, it is regulated by the title companies.

Mr. Toby stated that the Department of Real Estate does need to review it before sale of the condominiums.

Mr. Toby stated that instead of being of a tract map recorded with the county, a condominium air space plan is a packet of 3 or 4 title sheets with definitions and an explanation of what the project is and then an actual designation of how you will designate the air space in three dimensions. Mr. Toby stated that is usually dictated by where you build the walls.

Commissioner Anderson asked what the tax assessor will do with the conversion.

Mr. Toby stated that they will break it up.

Commissioner Anderson asked doesn't the tax assessor assess parcels.

Mr. Toby stated that they do.

Commissioner Anderson asked if they will assess airspace.

Mr. Toby stated that they will assess air space and the one quarter of common ownership of parcel A.

Commissioner Anderson asked if there will be revenue from the parking lot.

Mr. Toby stated that there will be because the tenant will own part of inside the building and a one quarter interest in the remaining property. Mr. Toby stated that all four owners will equally own the remaining property and they equally have to maintain it and the building.

Commissioner Anderson asked what the assessment of the property will be based on.

Mr. Toby replied it will be based on the air space plans filed for the property.

Mr. Berry stated that the taxes will be based on the purchase price.

Mr. Toby stated that you are buying a common ownership with the three other tenants. Mr. Toby stated that is why they have to agree to the association rules and by-laws.

Commissioner Anderson asked why the commission is reviewing a Tentative Map that has no interest, no value.

Mr. Toby replied that the Subdivision Map Act is the law that grants the rights and they have special wording regarding condominiums that requires a Tentative Tract Map be provided to the commission for review and approval.

Commissioner Anderson stated that he thinks the condo conversion act was meant for residential uses.

Mr. Toby stated that there is wording in their regarding commercial uses as well.

Mr. Bakker stated that it is an incredibly broad act and you could create condos in water if you wanted to.

Chairperson Lew asked what will be the asking prices for the units.

Mr. Berry replied it will range between \$590,000 to \$640,000.

Chairperson Lew asked if each unit has an individual address.

Mr. Berry stated that is correct.

Chairperson Lew asked why the individual address are not shown on the Tentative Tract Map.

Mr. Toby stated that it is the same as an apartment building that has separate addresses.

Chairperson Lew stated that she is also confused about this project.

Chairperson Lew asked if the land under the building and the parking lot will be called the common areas.

Mr. Toby replied that it will be the undivided interest in the existing lot. Mr. Toby stated that the only thing that they are exclusively buying is the area inside the walls inside the building.

Chairperson Lew asked if that includes the interior walls.

Mr. Toby stated that the interior walls are generally maintained by the association as a whole. Mr. Toby stated that it is usually to the inside face of the wall.

Chairperson Lew asked if the CC&R's will cover the interior walls, exterior walls and the common area.

Mr. Toby stated that is correct.

Chairperson Lew asked if they assumed that all the parking would be available to all the owners and their clients.

Mr. Berry replied that it can go either way and they are willing to abide by the commission decision.

Chairperson Lew stated that in the conditions it says that all the parking is shared.

Mr. Berry stated that there is no assigned parking.

Chairperson Lew asked if he expected there to be overnight parking.

Mr. Berry stated that as long as the car is not on blocks it would be fine.

Chairperson Lew asked if he had a problem with no assigned parking.

Mr. Berry stated that the CC&R's and By-laws will allocate a number of parking spaces and if someone abuses that it will be an issue.

Chairperson Lew stated that the condition states that there will be no assigned parking spaces it will be all shared parking.

Mr. Berry stated that there will be things in the CC&R's that are not in the staff report. Mr. Berry stated that they will have an attorney create the by-laws, CC&R's and a budget. Mr. Berry stated that they will hire a property manager to manage the property for at least the first two years.

Mr. Berry stated that they have contacted all four owners about the street and they are all agreeable to a maintenance agreement to do work on the private street.

Chairperson Lew closed the public hearing.

Commissioner Sweeney asked to divide the Use Permit into two Use Permits.

Mr. Leonard replied that it could be stated as UP-05-06a for automotive uses, UP-05-06b for planned unit development.

Chairperson Lew asked if there is a requirement for emergency exits at the back of the building.

Farooq Azim, Principal Civil Engineer, replied that the Fire Department is apparently happy with the set up and he does not have any problems with it.

Ms. Evans read the changes to the conditions:

- Change condition #5 to pluralize “owners” and bullet items.
- Change condition #6 to add “repair and ongoing maintenance”.
- Change condition #7 add at the end “for all or a portion of the project”.
- Delete condition #9
- Change condition #11 to read “prior to final map approval”.
- Add a new condition “If either Use Permit A or Use Permit B is not established on site it will expire in one year”.
- Change condition #21 remove “draw” and replace with “prepare”.
- Change condition #22 to delete the last sentence.
- Change the findings so that the numbering is correct and add Chairperson Lew’s other findings.
- Change the resolution to reflect UP-05-06A and UP-05-06B.

Commissioner Sweeney made a motion to recommend to the City Council approval of Tentative Tract Map TTM 7800 and approve Use Permit UP-05-06A and Use Permit UP-05-06B, making findings 1 – 8, with amended conditions of approval and adopting resolutions confirming these actions.

Commissioner Anderson seconded

AYES	4 (Anderson, Lew, Savage, Sweeney)
NOES	0
ABSTAIN	0
ABSENT	1 (Sison)

B. NEW HEARINGS:

1. **CITYWIDE, Zoning Text Amendment AT-04-06**, the City is proposing to update *Title 18.33, Affordable Housing*, of the Municipal Code to clarify the text and amend the requirements for the program. This project has been determined to be categorically exempt per Section 15061(b3) of the California Environmental Quality Act (CEQA) Guidelines.

Vern Smith, Housing Coordinator, presented the staff report.

Commissioner Sweeney asked where the \$180,000.00 for the optional in lieu fee came from.

Mr. Smith replied staff looked at the typical write down for a home and came up with a number that consistently floats and gives the write down value.

Commissioner Sweeney asked what is the mechanism that brings this up for review on a timely basis so we don’t find ourselves behind on an upcoming project.

Mr. Smith stated that there is language in the ordinance that says that fees and the ordinance should be reviewed in a timely fashion.

Commissioner Sweeney asked if “annually or as needed” is sufficient language.

Commissioner Sweeney stated her concerns that the fees are reviewed and kept current.

Mr. Smith stated that language could be added to that effect.

Mr. Bakker suggested that the City Council adopt the fee by resolution and then there is no 1st reading, 2nd reading and waiting 30 days to be effective. Mr. Bakker stated that in Union City there is a master fee schedule and it is updated every year by the CPI. Mr. Bakker suggested adding this fee to the master fee schedule so that it is updated by the City Council.

Commissioner Sweeney asked to also apply that to the small project in lieu fee.

Mr. Smith agreed to the changes.

Chairperson Lew asked how certain situations were taken care of.

Mr. Smith stated that they are detailed in the resale restrictions on each unit.

Chairperson Lew asked how inheritance would affect the property.

Mr. Smith stated that the family would still have to be qualified to remain in the property.

Chairperson Lew asked how the City would handle a situation where a family no longer qualifies to be in one of the affordable units but hasn't moved.

Mr. Smith stated that with ownership projects there is not a certification process.

Chairperson Lew referred to Exhibit A, page 5, paragraph E and asked to have it rewritten so that it is easier to read. Chairperson Lew asked to change the third line on the fifth page and add a period after "construction or materials", delete "and" and start a new sentence.

Mr. Bakker stated that the way that Chairperson Lew has suggested changing that paragraph will change the meaning of the sentence and would be incorrect.

Commissioner Sweeney stated that it is supposed to be all encompassing.

Mr. Bakker suggested that it could be drafted as three separate sentences and make it clearer, and have the third sentence indicate that it applies to the two previous sentences and allows deviations from those two requirements if the City approves a plan.

Commissioner Sweeney suggested bulleting those three concepts.

Commissioner Anderson stated that bulleting them would not carry the same weight.

Mr. Bakker suggested starting with the phrase "Unless the City approves an alternate development plan for the affordable units then. . ."; then list all three.

Commissioner Lew referred to 18.33.060 B and asked where the 5 year time frame came from.

Mr. Smith stated that it was a suggestion from the Planning Commission.

Commissioner Sweeney stated that if you hold the money for too long it doesn't do as much good.

Mr. Smith stated it was to keep the projects moving.

Mr. Bakker stated that he has a suggestion for the previous sentence.

Commissioner Sweeney stated that the sentence is in the wrong paragraph.

Mr. Smith stated that it should be for any in lieu fee.

Mr. Bakker stated that maybe it should be in both paragraphs.

Commissioner Sweeney agreed.

Chairperson Lew asked if the five years only pertains to the in lieu fees.

Mr. Smith stated that it does.

Commissioner Sweeney asked if that seems to be an unreasonably short period of time. Commissioner Sweeney stated that the five year time frame could be removed. Commissioner Sweeney stated that the concept is to actually use this money in a timely fashion where it doesn't maintain the value.

Mr. Smith stated that it becomes an issue closer down to the end of the line.

Commissioner Sweeney stated that refunding the money is not the purpose either.

Mr. Smith stated that the housing program includes all types of programs not just housing production it is also housing preservation. Mr. Smith stated that these funds could be used for neighborhood preservation, for housing rehabilitation, for rehabbing existing affordable housing. Mr. Smith stated that the funds could be used for these uses 10 to 15 years from now.

Commissioner Sweeney asked if that can be done legally.

Commissioner Anderson stated that he feels that the funds should only be used for new housing within the five year period.

Mr. Bakker stated that from a legal prospective the funds must be committed to an affordable housing project, so that would be the criteria for spending the funds. Mr. Bakker stated that code enforcement would probably not be appropriate.

Mr. Smith stated that he would include home preservation and rehabilitation as affordable housing.

Mr. Bakker stated that to the extent that we can interpret that as an affordable housing project that would be permissible.

Commissioner Anderson stated that he does not want to change it.

Commissioner Sweeney stated that she wants to steer away from that path in our City thinking and look at this money as a way to provide more units. Commissioner Sweeney stated that the reason we got it in lieu is because they did not build the units. Commissioner Sweeney stated that if we think of this as a slush fund for rehab, it is really inappropriate.

Mr. Smith stated that he was looking 20 years down the road when there isn't any land to build on.

Commissioner Sweeney stated that at that point we will be redeveloping units and that will still be providing affordable units.

Chairperson Lew asked if would be added to the other project.

Mr. Smith stated that he would duplicate the sentence for both sections.

Chairperson Lew asked if the City is going to establish a policy for use of these fees.

Mr. Smith stated that it would be determined by the City Council and Redevelopment Agency Board as to what is an appropriate project for these funds.

Chairperson Lew asked what is meant by the City's discretion.

Mr. Smith replied that it would be the City Council approving the projects.

Chairperson Lew stated that the City should be providing guidance to their employees because that is the first place that the project is reviewed before it goes to the City Council for approval.

Mr. Smith stated that the idea of this ordinance is to look at potential flexibility and alternative ways to meeting these goals and to have as broad a scope as we can to develop affordable housing opportunities. Mr. Smith stated that they would work with both profit and non-profit developers.

Chairperson Lew stated that she had looked at another city's housing ordinance and they based their fees on the square footage of the project as a whole and not on the replacement housing. Chairperson Lew asked if that had been looked at for this ordinance.

Mr. Smith stated that it had been considered, however, the idea is that we want to see what that actual affordable unit or units to be built would be and then we would determine the fee is on those particular units so that we can decide whether we want the actual units to be built or the in lieu fees instead. Mr. Smith stated that we don't necessarily want a generic fee for everyone out there because it is not something that we may not apply across the board or at all.

Commissioner Anderson asked what is the purpose of adding at the City's discretion in the second to the last sentence.

Mr. Bakker stated that he doesn't think that it is necessary since it is the City doing the review.

Commissioner Anderson stated that in its current location it seems to give the City the option of whether to do the review annually.

Mr. Smith stated that he was trying to give the City as much flexibility as possible to look at a particular situation and do what they need to do.

Commissioner Anderson stated that it looks more like you are giving the City the option to not do anything.

Mr. Smith stated that could be an option.

Commissioner Anderson stated that it is giving the City the option to not do anything at all.

Commissioner Sweeney suggested removing that phrase.

Commissioner Anderson agreed that it should be removed.

Mr. Smith stated that he would remove it.

Commissioner Sweeney stated that it should be removed on both paragraphs.

Chairperson Lew asked if everyone was in agreement that these fees would be placed on the master fee schedule and reviewed every year.

Commissioner Sweeney stated that this language is going to be changed to reflect that.

Commissioner Sweeney stated that the “at discretion” should still be left out.

Mr. Bakker stated that the language that is usually used is “the Council may from time to time adjust . . .”.

Chairperson Lew opened the public hearing.

Hugh McNamara, Union City, gave a scenario of persons living in an affordable unit who for whatever reason become unable to maintain the mortgage on the unit and it is repossess by the bank. Mr. McNamara further suggested that the persons living in the affordable unit have done extensive damage to the unit and asked if there is any legal recourse against the persons who did the damage.

Chairperson Lew closed the public hearing.

Commissioner Anderson made a motion to recommend approval to the City Council Zoning Text Amendment AT-04-06, making findings 1 – 3, and adopting a resolution confirming this action.

Commissioner Sweeney seconded

AYES	4 (Anderson, Lew, Savage, Sweeney)
NOES	0
ABSTAIN	0
ABSENT	1 (Sison)

2. **CINGULAR WIRELESS, NILES CANYON, Use Permit UP-06-06 and Administrative Site Development Review ASD-30-06;** the applicant, Cingular Wireless, is requesting approval of a Use Permit and Administrative Site Development Review (ASD-30-06) to place two new antennas and related equipment on an existing monopole located in the Caltrans right of way along Niles Canyon Road. The subject property is located at APN: 085A-5500-001 (just south of Baptist Church). This project has been determined to be categorically exempt per Section 15301, Class 1(e) – Existing Facilities, of the California Environmental Quality Act (CEQA) Guidelines.
(APPLICANT HAS WITHDRAWN APPLICATION)

Chairperson Lew asked if the commission needs to take any action on this application.

Mr. Leonard stated that this particular pole was not in the City limits so the applicant withdrew their application.

VI. SUPPLEMENTAL STAFF REPORTS:

A. **CONTINUED REPORTS:** None.

B. **NEW REPORTS:**

1. **NELIDA CAMPOS AND SURAS CHAND, 33950 DEPOT RD. and 33941 NINTH ST., Administrative Site Development Review ASD-26-06 and Administrative Site Development Review ASD-31-06;** two requests for Administrative Site Development Review approval (ASD-26-06 and ASD-31-06) to construct two (2) new two-story, single-family homes on two separate owned vacant parcels located at 33950 Depot Road (APN: 486-0027-139 and 33941 Ninth Street (APN: 486-0027-138). This project has been determined to be categorically exempt per Section 15303 – New Construction or Conversion of Small Structures, of the California Environmental Quality Act (CEQA) Guidelines.

Janice Lum, Assistant Planner, presented the staff report.

Commissioner Savage stated that the marina wall would provide more privacy and safety than a wood fence.

Commissioner Sweeney asked what is the setback from the sidewalk for the marina wall.

Ms. Lum replied that it would be 35 feet back from both front property lines and 10 feet back from the Decoto road property line.

Commissioner Sweeney asked for more clarification.

Ms. Lum stated that the marina wall would probably have to come in along the 10 foot line and then turn back to meet the house rather than coming against the house. Ms. Lum stated it is required to be setback a minimum of 30 feet from the front property line but it could be more than that.

Commissioner Sweeney asked if the wall would be about twenty feet long.

Ms. Lum stated that it will be probably a little longer than that, maybe 25 feet.

Commissioner Sweeney stated that she thinks it will look really silly when you look at the rest of the neighborhood. Commissioner Sweeney stated that it is a short segment that doesn't go the length of the property line. Commissioner Sweeney stated that she is not in favor of the marina wall.

Mr. Leonard stated that if this was a typical subdivision, we would place a sound wall back from Decoto Road at 5 or maybe 10 feet to allow for a screening area with landscaping and then the wall to act as a sound barrier. Mr. Leonard stated that as Decoto Road gets more and more busy it would make sense to put a wall along Decoto Road as close as we can get to it without blocking visibility at street corners and allowing adequate landscaping.

Commissioner Sweeney stated that she thinks it is completely out of character with the existing neighborhood including the relatively new homes that the City permitted to be built on City owned property. Commissioner Sweeney stated that she thinks it stands out as an anomaly by putting it there.

Mr. Leonard stated that it was just a suggestion from staff and if you think it would make the homes look out of character you can remove it. Mr. Leonard stated that as the Intermodal area is built, traffic will become a factor and it would make sense to have some sound protection and a safety barrier.

Commissioner Sweeney asked if other homes that have wooden fences along the sidewalk would be permitted to replace them with marina walls. Commissioner Sweeney stated that this is just another example of walling off our City instead of making it look like a neighborhood. Commissioner Sweeney stated that in this instance this is not a precedent that is healthy.

Mr. Leonard stated that he agrees with the observation about isolation but he is looking at the future when there will be high-rise or mid-rise development across the street with lots of traffic and the need for some privacy and sound protection, however, it can be done later.

Commissioner Sweeney referred to condition #11 and asked why the street side yard was not included in this condition.

Ms. Lum stated that it could be added to the condition.

Commissioner Anderson stated that he did not think that the marina wall is necessary and would detract. Chairperson Lew asked for clarification as to whether undergrounding of utilities will be required.

Farooq Azim, Principal Civil Engineer, stated that there should be no overhead utilities.

Chairperson Lew referred to the staff report which stated that the utilities did not have to be put underground.

Mr. Azim stated that his understanding is the pole itself does not need to be underground but the connection from the pole to the house must be underground and the staff report is in error.

Chairperson Lew asked if condition #40 is correct.

Mr. Azim stated that condition #40 is correct.

Chairperson Lew suggested adding all “new” utility lines to the condition.

Mr. Azim stated that the word “new” should be crossed out even on condition #40.

Mr. Bakker stated that he does not think the word “not” should be crossed out because there are no existing utilities on the site except for the poles that front the site. Mr. Bakker stated that the poles do not have to be undergrounded but any new or additional utility drops would have to be undergrounded.

Chairperson Lew asked to change condition #40 to remove the word “new”.

Commissioner Sweeney asked to make sure that the master conditions of approval is also corrected.

Chairperson Lew referred to page 15 and suggested adding a couple of findings.

Chairperson Lew asked to add finding #6 that states “the proposed use and structures meet the requirements purpose and intent of Chapter 18.72 of the Zoning Ordinance.”

Chairperson Lew asked to add finding #7 that states “that the project conforms to all applicable design criteria specified in the Residential and R 5000 district regulations.”

Chairperson Lew stated that she is in agreement with Commissioners Sweeney and Anderson that the marina wall is out of place and out of character for that neighborhood.

Chairperson Lew asked where the fence line is for the two properties.

Ms. Lum pointed out on the plans where the fence line will be.

Mr. Leonard recommended adding a condition that reads “The applicant shall submit a fencing plan to the Economic and Community Development department when building permits are applied for.”

Chairperson Lew agreed with that change.

Suras Chand, Union City, stated that he does not want the marina wall. Mr. Chand would like a wrought iron fence with landscaping that won’t attract graffiti. Mr. Chand stated that he understands that it will be a high traffic area and high noise area. Mr. Chand stated that the homes had been designed to move the living areas away from Decoto Road and there are less openings on those sides of the homes. Mr. Chand stated that a marina wall will do nothing for the upstairs.

Chairperson Lew stated that she thinks they are two beautifully designed homes.

Commissioner Sweeney made a motion to approve Administrative Site Development Review ASD-26-06 and Administrative Site Development Review ASD-31-06, making findings 1 – 7, with modified conditions of approval and adopting resolutions confirming these actions.

Commissioner Anderson seconded

AYES	4 (Anderson, Lew, Savage, Sweeney)
NOES	0
ABSTAIN	0
ABSENT	1 (Sison)

VII. REDEVELOPMENT AND ECONOMIC DEVELOPMENT REPORTS: None.

VIII. COMMISSION MATTERS:

- A. Follow-up on Planning Commission referrals to the City Council.
- B. Upcoming applications for the Regular Planning Commission meeting of September 7, 2006.

IX. GOOD OF THE ORDER:

The commissioners thanked staff for the new zoning ordinance binders.

Chairperson Lew stated that she has been looking at the findings for the projects.

Ms. Lum stated that staff is also still getting used to the updated code and they will pay closer attention for future projects.

Chairperson Lew stated that she is glad that the Dyer/Meteor project is coming back because the property has become an eyesore and she would at least like to see the building torn down.

Chairperson Lew stated that at the corner of Dyer and Alvarado, there is a person parking a truck on City streets with an advertisement for garage doors.

Mr. Leonard stated that the City Council also brought up this issue.

X. **ADJOURNMENT:** 9:36 pm

APPROVED:

JO ANN LEW, CHAIRPERSON

ATTEST:

MARK LEONARD, SECRETARY