DRAFT

MINUTES OF THE REGULAR
PINOLE PLANNING COMMISSION

March 25, 2019

A. CALL TO ORDER: 7:06 P.M.

B. PLEDGE OF ALLEGIANCE AND ROLL CALL

Commissioners Present: Brooks, Kurrent, Thompson, Chair Wong
Commissioners Absent: None
Staff Present: Daniel Hortert, Interim Planning Manager
Tamara Miller, Development Services Director
Justin Shiu, Contract Planner
Alex Mog, Legal Counsel

C. CITIZENS TO BE HEARD

There were no citizens to be heard.

D. CONSENT CALENDAR

1. Planning Commission Meeting Minutes from February 25, 2019

MOTION to approve the Planning Commission Meeting Minutes from February 25, 2019, as shown.

MOTION: Thompson SECONDED: Brooks APPROVED: 4-0

E. PUBLIC HEARINGS:


Request: Consideration of a vesting tentative parcel map to establish a three-lot subdivision.

Applicant: Keith Bush and Ryan Engel
Bay Area Land Surveying, Inc.
3065 Richmond Parkway, Suite 101
Location: 2150 Appian Way, 1402 Tara Hills Drive, and 1500 Tara Hills Drive (APN: 402-281-005, 402-281-004, and 402-281-002)

Project Staff: Justin Shiu

Contract Planner Justin Shiu presented the staff report dated March 25, 2019, and recommended the Planning Commission adopt Resolution 19-03 approving a Vesting Tentative Parcel Map (VTM) to establish a three-lot subdivision, subject to conditions of approval contained in Exhibit A to Attachment A of the staff report.

Responding to the Commission, Mr. Shiu clarified the action to be taken by the Planning Commission, and explained that approval of the VTM required recordation of the Final Map after finalization of the easements on the map, to be recorded with the County Recorder’s office. At this time, there had been no request to change the zoning of the parcels.

PUBLIC HEARING OPENED

KEITH BUSH, Bay Area Land Surveying Inc., 3065 Richmond Parkway, Suite 101, Richmond, the applicant, explained that the subdivision had originally been a lease parcel with three Assessor Parcel Numbers (APNs) assigned to the lease. The Subdivision Map Act required a VTM, which was the purpose of the request to be able to actualize the property in the eyes of the record. The maintenance of the easement would be defined in a separate document to be filed concurrently with the map and portioned out as part of that document.

JIM ESWAY, Managing Partner, Crossroad Ventures Group, clarified the property had been owned by Appian and Associates for many years. McDonald’s was located on one of the parcels and had an over 50-year lease agreement; the property was not located in a redevelopment area; and the properties at 2150, 2160 and several other addresses on Tara Hills Drive comprised over 65,000 square feet of offices occupied by doctors. While the VTM should have been approved years ago, finalizing the parcel map would provide fee simple interest for the ownership. The maintenance and management of the ingress and egress had been managed by Appian and Associates for a number of years and most of the leases ranged between two- and ten-year lease terms. One parcel located at 1500 Tara Hills Drive had over 70 parking spaces where City code required parking in the mid-50 space range. The ownership requested an exception to the requirement for reciprocal parking since that address had more than sufficient parking.

The Planning Commission commended the property management for the upkeep and maintenance of the properties.

PUBLIC HEARING CLOSED
The Planning Commission discussed Vesting Tentative Map MS 651-2019-01 and offered the following comments and/or direction to staff:

- Recommended a condition to address the fact the driveway was under the control of the property owner, with staff noting the applicant must provide documentation on the access easement establishing use maintenance agreements. (Thompson)

Mr. Bush clarified that as long as the agreement was the maintenance of the driveway it should not matter who was identified to pay since proposed Parcels 1 and 2 were currently paying for that maintenance for the benefit of the three parcels. Parcel 3 desired to be independent and Parcels 1 and 2 could have a reciprocal parking easement.

- Suggested the resolution remain as is since Condition 5 had addressed the reciprocal access and parking agreement. (Kurrent)


**MOTION:** Kurrent **SECONDED:** Thompson **APPROVED:** 4-0

Chair Wong identified the 10-day appeal process of a decision of the Planning Commission in writing to the City Clerk.

2. **Conditional Use Permit CUP 18-03: U-Haul Truck Rental**

**Request:** Consideration of a use permit request to operate a truck rental business on an approximately 20,038 square foot lot shared with an existing approximately 1,440 square foot glass company building and two existing dwellings totaling approximately 2,700 square feet

**Applicant:** Karen McMullen
1123 Willow Avenue
Pinole, CA 94564

**Location:** 795 San Pablo Avenue (APN: 402-166-026)

**Project Staff:** Justin Shiu

March 25, 2019
Contract Planner Justin Shiu presented the staff report dated March 25, 2019, and reported that additional exhibits had been provided to the Planning Commission at the dais titled Exhibit 1: photographs of the site and existing lighting conditions, and Exhibit 2: an assessment from the Pinole Police Department of lighting conditions. The Pinole Police Department also recommended along with motion sensors that lighting be fully operational and gating be installed to provide security. He added that the applicant had requested a modification to Condition 17, to read as follows:

A site security plan shall be provided. The plan shall describe measures to prevent rental vehicle theft and vandalism.

Mr. Shiu commented that the request to modify Condition 17 was reasonable, and both Conditions 16 and 17 would be reviewed by the Pinole Police Department.

Mr. Shiu recommended the Planning Commission adopt Resolution 19-04, conditionally approving a conditional use permit to allow a truck rental business at 795 San Pablo Avenue, subject to the conditions of approval as contained in Exhibit A, to Attachment A of the staff report, as modified.

Responding to the Commission, Mr. Shiu clarified again Conditions 16 and 17, as modified, and advised that at this time no condition had been imposed to require a gate as the Pinole Police Department had recommended.

PUBLIC HEARING OPENED

KAREN McMULLEN, Owner/Operator, U-Haul Truck Rental, 1123 Willow Avenue, Pinole, introduced herself to the Planning Commission.

SEAN BERNARDO, Area Field Management, U-Haul East Bay, described his work with franchisees and business owners to establish a business.

Ms. McMullen clarified, when asked, that she had not had any trucks vandalized or stolen from her lot in the past three years. A police report in the record had involved a truck that had been reserved at her location but that had not been returned. She also clarified the facility would have trucks and one trailer, which had been assigned to the location, although she had requested two trailers be allowed on the property, separate from the parking of the trucks.

PUBLIC HEARING CLOSED

The Planning Commission discussed Resolution 19-04, U-Haul Truck Rental, and offered the following comments and/or direction to staff:

- Revise the second sentence of Condition 9 to read: The plan provided to
staff shall include striping the designated truck rental parking area to accommodate the vehicles shown in the site plan received February 14, 2019. (Brooks)

- Revise the last sentence of Condition 16 to read: Any new lighting shall include downward shielding to prevent off-site light and glare, especially shielding for adjacent residential units consistent with the requirements of the Pinole Municipal Code; and revise Condition 13 to add the following sentence: Vehicle returns may be allowed outside of regular operating hours except in no case shall vehicles be returned between 10:00 P.M. and 7:00 A.M. (Kurrent)

MOTION to adopt Planning Commission Resolution 19-02, with Exhibit A: Conditions of Approval, Resolution of the Planning Commission of the City of Pinole, County of Contra Costa, State of California, Approving a Conditional Use Permit (CUP 18-03) to Allow the Operation of a Truck Rental Use at 795 San Pablo Avenue, APN: 402-166-026, subject to the following:

- The second sentence of Condition 9 revised to read:

The plan provided to staff shall include striping the designated truck rental parking area to accommodate the vehicles shown in the site plan received February 14, 2019.

- An additional sentence added to Condition 13 to read:

Vehicle returns may be allowed outside of regular operating hours except in no case shall vehicles be returned between 10:00 P.M. and 7:00 A.M.

- The last sentence of Condition 16 revised to read:

Any new lighting shall include downward shielding to prevent off-site light and glare, especially shielding for adjacent residential units consistent with the requirements of the Pinole Municipal Code.

- Condition 17 revised to read:

A site security plan shall be provided. The plan shall describe measures to prevent rental vehicle theft and vandalism.

MOTION: Brooks SECONDED: Kurrent APPROVED: 4-0
Chair Wong identified the 10-day appeal process of a decision of the Planning Commission in writing to the City Clerk.

Request: Consideration of a Zoning Code Text Amendment modifying Chapters 17.10, 17.12, 17.20, 17.76, 17.98 and adding Chapter 17.77 to regulate the deployment of small cell wireless facilities in the City, including provisions regulating placement, location, and design; permitting procedures; as well as design guidelines.

Applicant: City of Pinole
2131 Pear Street
Pinole, CA 94564

Location: Citywide

Project Staff: Alex Mog, Legal Counsel

Legal Counsel Alex Mog presented a PowerPoint presentation and recommended the Planning Commission approve Resolution 19-05, a Zoning Code Text Amendment (ZCA) to add Chapter 17.77 to the Zoning Code to regulate small cell wireless facilities and make other minor amendments to Title 17. In addition, the Planning Commission was asked to consider proposed design guidelines for small cell wireless facilities.

Responding to the Commission, Mr. Mog advised he was unaware of any city that had outright banned 5G service for small cell wireless facilities but it could be an option for the Planning Commission to recommend to the City Council; the Planning Commission may make any recommendation it saw fit that would be incorporated into the ordinance for City Council consideration with the City Council to take final action; and existing wireless facilities were required to go through design review, although the process was currently subjective and under the Federal Communications Commission (FCC) order objective standards were required.

Mr. Mog provided an overview of the discussions of the Municipal Code Update Committee which had encouraged small cell wireless facilities be more than 800 feet away from any residential structure, and while he acknowledged that number could be less or more, the greater the distance the greater the suggestion of an effective prohibition. He also clarified the permitted and conditional uses as part of the zoning use table in the ZCA. In addition, he had not reviewed the ordinance for the Town of Ross, but had reviewed an emergency ordinance adopted by Mill Valley.

Additionally, the City’s existing Noise Ordinance had catch-all language but had not created an objective standard that could be considered for the small cell wireless
facilities such as a limit on the decibel level.

The ordinance could be further clarified when addressing the preference for undergrounding ancillary equipment; and the size of the unit could be addressed with the equipment required to be narrower to ensure it was small. Surface mounted facilities would require an encroachment permit if located within the right-of-way (ROW); ownership of light poles varied throughout the city whether owned by the City or the utility company and whether or not the light pole was owned by the City the applicant would still be required to comply with the design guidelines and operation.

Mr. Mog also clarified the shot clock process; stated staff was unaware of any health studies related to small cell wireless facilities but from a legal perspective the City was bound by the FCC guidelines; reported that applicants were required to submit a Radio Frequency (RF) report with an application, which was a public document; and applicants were also required to submit annual reports as part of an application to ensure compliance with FCC requirements. An applicant may request an exception from the design guidelines but it would require a full discretionary process. As to the permitted locations, distance from schools had not been identified in the ordinance but could be identified with a preference that a small cell wireless facility not be located within 800 feet of a school.

PUBLIC HEARING OPENED

DAVID RUPORT, Jr. Pinole, stated he had previously offered certain basic resources to the City and had e-mailed City staff a series of items that would have been beneficial on the discussion of cell towers and associated health issues, which could have added to the discussion. He provided details of Section 74 of the Telecommunications Act of 1996, and recognized due to changes in technology, such as 5G technology, that there were multiple towers and wireless facilities, an issue that all communities were required to address. The City was under a mandate, the ordinance was not perfect, and he urged the Planning Commission to review all information provided since there could be a problem with compliance, enforcement, and application.

PUBLIC HEARING CLOSED

The Planning Commission discussed ZCA 19-01: Small Cell Wireless Facilities and offered the following comments and/or direction to staff:

- Recommended the design guidelines include a requirement not only for photo simulations but a mock-up or story poles; expressed concern with potential noise impacts and suggested the City's Noise Ordinance be taken into consideration; the language in the ordinance to be strengthened.
regarding the preference for ancillary equipment to be underground; if an
applicant chose a light pole that was owned by a utility, efforts should be
made to transfer that small cell wireless facility to a pole owned by the City,
and notification should be provided to both the owner and the tenant of a
property. (Thompson)

- Recommended a new Section 4 be added to Permitted Facilities of Chapter
  17.77, with language that small cell wireless facilities outside of the public
  right-of-way shall not be located on any school structure without prior
  issuance of a Conditional Use Permit; to Section C, Permitted Locations,
  add or school building to any reference to residential development; and
  suggested the 800-foot distance could be overly restrictive to wireless
  carriers and there should be some scientific evidence to justify the
  requirement while recognizing the burden was on the applicant to request an
  exception to the ordinance. (Kurrent)

- Agreed the 800-foot distance could be overly restrictive to the cell phone
  companies but was uncertain what the number should be and
  recommended the City Council be provided information on what other cities
  had considered. (Wong)

Mr. Mog summarized the Commission’s comments for the equipment to be
underground; notices mailed to tenants and property owners of the home, if
different; ban the placement of small cell wireless facilities on school properties
(places where children gather but not apply to parks); the 800-foot rule to apply to
schools; with the City Council asked to consider whether the 800-foot distance
requirement was overly restrictive. He also clarified any changes to the ordinance
would come to the Planning Commission and thereafter to the City Council for a
first and second reading. The design guidelines, with any modifications, would be
adopted separately by the City Council by resolution but could also be referred
back to the Planning Commission for additional input.

MOTION to Adopt Planning Commission Resolution 19-05, Recommending that
the City Council Adopt an Ordinance Adding Chapter 17.77 Regulating Small Cell
Wireless Facilities and Making Other Related Minor Amendments to Title 17 as set
forth in Exhibit A, and Also Recommends the City Council Adopt the Additional
Design Guidelines Set Forth in Exhibit B, subject to the modifications discussed by
the Planning Commission.

MOTION: Kurrent SECONDED: Brooks FAILED: 3-1
NOES: Thompson

Mr. Mog explained that since there were only four Planning Commissioners
present of the seven-member board the motion did not carry. He recommended
the Planning Commission make a motion to recommend City Council
consideration of the item, with a notation of the dissent. The Commission could
consider a new motion to adopt the resolution with an additional statement that one Planning Commissioner dissented on the motion, or make a recommendation to consider the resolution subject to the comments discussed by the Planning Commission.

The Planning Commission discussed various options at length.

**MOTION** to Recommend the City Council Consider the Changes to Chapter 17.77 of the Zoning Code to Regulate Small Cell Wireless Facilities and Make Related Minor Amendments to Other Title 17, As Well as Recommend Approval of Certain Design Guidelines, subject to the modifications discussed by the Planning Commission and communicating to the City Council that three Planning Commissioners recommended approval and one Planning Commissioner had dissented.

**MOTION:** Kurrent **SECONDED:** Thompson **APPROVED:** 4-0

F. **OLD BUSINESS:** None

G. **NEW BUSINESS:** None

H. **CITY PLANNER’S / COMMISSIONERS’ REPORT**

Interim Planning Manager Daniel Hortert reported that Dr. Lee’s medical office project at 1289 Pinole Valley Road had been revised with an informal presentation to be provided to the City Council on April 16. Based on comments from that meeting, the item would be agenized for the Planning Commission meeting of April 22. Additional upcoming Planning Commission items included Valero Gas Station to be converted into a 7-Eleven/Union 76; revised plan for the extra space mini-storage facility at 890 San Pablo Avenue; a joint work session with the City Council on May 20 for the Pinole Woods 100-unit senior development; and a proposal for 30 to 35 full service residential units at 2801 Pinole Valley Road.

The Planning Commission welcomed Mr. Hortert to the City; thanked and recognized former Planning Manager Winston Rhodes for his service to the City; and recognized former Planning Commissioner Ruskin Hartley for his service to the City. The Planning Commission had vacancies and applicants desirous to serve on the Commission were encouraged to make application at City Hall.

I. **COMMUNICATIONS:** None

J. **NEXT MEETING**

The next meeting of the Planning Commission will be a Regular Meeting to be held on Monday, April 22, 2019 at 7:00 P.M.
K. **ADJOURNMENT:** 9:28 P.M

Transcribed by:

Anita L. Tucci-Smith

Transcriber