

**EMERYVILLE CITY PLANNING COMMISSION  
ACTION RECAP  
REGULAR MEETING  
SEPTEMBER 27, 2012**

**I. CONVENE, ROLL CALL, AND PLEDGE OF ALLEGIANCE**

The meeting was called to order at 6:30 p.m. by Chairperson Vanessa Kuemmerle. Commissioners present: Lawrence Cardoza, Gail Donaldson, Sean Moss, Kairee Tann, Vanessa Kuemmerle and John Scheuerman. Commissioner Steinberg had an excused absence.

**II. PUBLIC COMMENT - None**

**III. ACTION RECAP – August 23, 2012**

A motion was made by Commissioner Donaldson and seconded by Commissioner Cardoza to approve the Action Recap as prepared.

**Moved:** Donaldson  
**Seconded:** Cardoza  
**Vote:** Ayes: Donaldson, Moss, Cardoza, Tann  
Abstained: Kuemmerle, Scheuerman  
Absent: Steinberg

**IV. DIRECTORS REPORT**

Director Bryant reported on City Council actions at the September 4 Council meeting.

He also reminded the Commission about the annual Celebration of the Arts Show, October 6 through 28, at 5890 Christie Avenue, with a reception on Friday, October 5 from 6:00 to 9:00 p.m. He noted that staff member Arly Cassidy and Commissioner Steinberg both had pieces in the show.

He announced that the Zoning Update Steering Committee would be hosting a community workshop about the proposed new Planning Regulations on Saturday, September 29, from 10:00 a.m. to noon in the Council Chambers and link. This will be followed by a joint Planning Commission/City Council study session on Tuesday, October 30 at 6:00 p.m.; a final meeting of the Steering Committee on Thursday, November 15 at 6:00 p.m.; a Planning Commission adoption hearing on December 13; and a City Council adoption hearing on January 15.

**V. ADMINISTRATIVE ITEMS**

- A. Art.com Sign Revocation or Modification (SIGN11-013)** - Consideration of an order to initiate an action to revoke or modify the existing sign permit for two Art.com signs facing north and south near the top of the high-rise building at 2100 Powell Street, as previously approved by the Planning Commission on February 23, 2012, pursuant to the Revocation Procedures at Article 92 of Chapter 4 of Title 9 of the Emeryville Municipal Code. (APN: 49-1495-9).

Arly Cassidy, Assistant Planner, made the staff presentation.

Benjamin Stock outside Counsel for the City said this item was to determine if there is need for an action to modify or revoke the signs because they are a nuisance.

Applicant's attorney, Doug Akins, said they investigated the situation and found out that dimming the signs below 35% of their brightness caused a flickering of the lights and the signs become ineffective. He said they continued to work on their proposal and are

proposing to permanently dim the light to 35% of design brightness one hour after sunset. This would be a total reduction of 65% of the sign's brightness. Color changes to the signs would occur during daytime hours only.

Kevin Siegel, Special Counsel to the City, said the Commission can give direction to the Applicant and the staff to resolve this item to be brought back to them for approval.

The floor was opened for public comment.

There were a number of residents of Pacific Park Plaza, 6363 Christie Avenue, with comments.

Laurie Karzen said there are different viewpoints on what to do with the signs. She said the residents want the evidentiary hearing to take place. The 10:00 o'clock dimming of the light is still so bright she can do hand puppet signs on the walls of her home with her grandchildren.

Kris Owens said she is not affected by the sign's brightness on the north side because she lives on the other side of the building. There is no problem with the sign on the south side, but worries about the negative effect it will have on the real estate value of their properties.

Harold Jones said he lives on the 29<sup>th</sup> floor and is directly across from the Art.com sign. He said he thought he would get used to the light, but that did not happen. He said the sign actually glows and flashes.

Paul Gerhardt said he lives in front of the Art.com sign. He said some members of the City Council had come to his home to view the light from different rooms in his home. The light is now affecting his health and his wife's health. They can not sleep. The Art.com sign is a mistake. He said Art.com dimmed the letters around 10:00 p.m., but after midnight the sign returns to its original brightness. He is requesting the sign's removal.

Stanley Hegg said Art.com frequently points out that they are taking over the place of the old Siebel sign, and this is totally not true. The Siebel sign was elegant and Art.com is not.

Brian Gross said the sign is intrusive and deflates the real estate prices.

Reza Ilkhani said the sign is unattractive and one big blur if you are driving west from University Avenue towards Emeryville.

Brian Donahue made comments regarding the number of people that will come to a meeting to protest a sign, but no one shows up for the destruction of historical buildings and trees. He feels people have their priorities misplaced.

Gabriel Bosso said the sign is affecting his ability to sleep. The sign is outside his unit.

Michael Millman said he lives on the 30<sup>th</sup> floor and the sign is literally right outside his window. He said looking at the flashing sign makes him feel like Emeryville is vaudeville. The view is inherent to the property's value.

The public comment period was closed.

Commissioner Scheuerman said he appreciated all of the comments that were made. He stated he had no idea the signs would look like this. If he had known, he would not have approved the signs. The quality of the light is glaring. The light from the sign reflected his shadow on the wall when he walked into his home. He listed a number of issues, including the color, intensity and quality of the light, which is glaring and harsh and

different than the Siebel sign.

Commissioner Scheuerman made the following suggestion:

- 1) Let the south facing sign operate independently from the north facing sign.
- 2) Change timing of sign dimming from after sunset to before sunset.
- 3) Match color and hue as much as possible to the Hilton Garden Inn signs.
- 4) Try using the color red only.
- 5) Make it dimmer than 35% and use smaller wattage.

Commissioner Tann said she is not sure why there needs to be multiple colors. She would have an issue if she had to wait until after nine to have the sign dimmed, and thought it should be dimmed before sunset.

Commissioner Moss said he had spoken to a sign contractor and was told a plastic facing could be put over the sign and they could use channel letters to diffuse the light.

Commissioner Donaldson agreed with other Commissioners and said they need to test these suggestions before approval.

Commissioner Cardoza said he was in favor of following the suggestions of staff to initiate the process. He would like to see what the red color would look like dimmed to the 35% brightness.

Commissioner Kuemmerle agreed with other Commissioners. She said when the fog comes in, there's this glowing, garish light. It does qualify as a potential nuisance. She suggested measuring the sign's foot candles against the Hilton Garden Inn sign. She believes Art.com and staff can work something out. She said the Commission should adopt an order in October if City staff and Art.com can not work something out.

Commissioner Scheuerman said he was willing to continue the item, but wants to see changes soon.

Art.com asked that the item be continued so dialogue can be reopened and an agreement reached.

Commissioner Cardoza moved to continue the order.

Commissioner Scheuerman made a substitution motion to make the order to modify.

Commissioner Moss suggested a substitute motion scheduling a Special Meeting on October 11, prior to the regular Planning Commission meeting scheduled on October 25. At the Special Meeting they will consider a settlement or an order to initiate further proceedings.

Commissioner Moss made a substitution motion to continue the item to a Special Meeting on October 11, when Planning Commission hopes to hear a settlement or will place the order.

Commissioner Scheuerman seconded the motion.

**Moved:** Moss  
**Seconded:** Scheuerman  
**Vote:** Ayes: Kuemmerle, Moss, Steinberg, Donaldson, Cardoza, Scheuerman, Tann

There was a 5 minute break from 8:25 to 8:30.

## VI. PUBLIC HEARINGS

- A. **Tree Removal Permit, Ocean Lofts, 1258 Ocean Avenue (TREE12-001)** – A request for a permit to remove one street tree to accommodate a driveway in conjunction with the demolition of an existing single family residence and construction of two detached approximately 1,700 square residential units. The project was originally approved by the City Council on April 17, 2007. CEQA Status: This project is exempt from environmental review under State CEQA Guidelines Section 15378(a) in that it is not a “project” which has the potential for causing a significant effect on the environment, and under the “general rule” at Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the proposal may have a significant effect on the environment. General Plan Designation: Medium Density Residential (M); Zoning Classification: Medium Density Residential (R-M) (Applicant/Owner: Ali Eslami) (APN: 49-1469-6)

Commissioner Kuemmerle recused due to a possible conflict of interest. Vice Chair Cardoza presided.

Senior Planner, Miroo Desai, made the staff presentation and noted that staff recommended approval with Conditions of Approval.

City Arborist, Molly Batcheldor, spoke briefly.

The public hearing was opened.

Richard Ambrose said he is confused as to the status of the project. He is concerned about the trees on the project site, the Eucalyptus and fruit trees. He wanted to know if these trees are being removed.

Planning Director Bryant said this project has already been approved by the City Council, so whatever they have approved regarding these trees will be adhered to.

A motion was made to permit the removal of one street tree at 1258 Ocean Avenue (TREE12-001).

**Moved:** Donaldson  
**Seconded:** Scheuerman  
**Vote:** Ayes: Scheuerman, Tann, Cardoza, Donaldson  
Noes: Moss  
Recused: Kuemmerle  
Absent: Steinberg

- B. **Modifications to Landscape Plan, 1051 45<sup>th</sup> Street (UP06-07/DR06-06)** – An amendment to a previously approved Conditional Use Permit and Design Review to allow changes in the landscape plan. On August 24, 2006 the Planning Commission approved a Conditional Use Permit and Design Review to convert the first floor of an existing building into a dwelling unit bringing the total number of units on the project site to three. CEQA Status: The original project was exempt from environmental review under State CEQA Guidelines Section 15301, which applies to alterations to existing structures and the proposed amendment also qualifies for this exemption. General Plan Designation and Zoning Classification: Medium Density Residential (R-M). (Applicant/Owner: Iqbal and Baljinder Kullar) (APN: 49-1081-3) (Continued from June 28, 2012 meeting.)

Commissioner Tann recused due to a possible conflict of interest.

Senior Planner, Miroo Desai, made the staff presentation and noted that staff is recommending approval of the revised landscape plan.

The applicants requested an extension until April, 2013 to install the new landscaping.

The public hearing was opened.

Todd Britt, a tenant at 1051-45th Street, said he is in full support of the extension proposal.

The public hearing was closed.

It was suggested that the Carmel Creeper be replaced with something more suitable.

Commissioner Donaldson moved to approve the revised landscape plan and the requested extension until April 30<sup>th</sup> to install the new landscaping.

**Moved:** Donaldson

**Seconded:** Scheuerman

**Vote:** Ayes: Donaldson, Scheuerman, Moss, Kuemmerle, Cardoza

Recused: Tann

Absent: Steinberg

**C. Mid-Block Pedestrian Path at Escuela Bilingüe Internacional (UP10-007) –**

Consideration of the design of a mid-block pedestrian path connecting 45<sup>th</sup> Street and 47<sup>th</sup> Streets along the eastern property line of Escuela Bilingüe Internacional (EBI) school. On May 19, 2011 the City Council approved a Conditional Use Permit to establish EBI in an existing 28,000 square foot building located at 4550 San Pablo Avenue. Design and construction of this mid-pedestrian path was one of the conditions of approval. CEQA Status: CEQA Status: This project is exempt from environmental review under State CEQA Guidelines Section 15378(c) in that it is not a "project" which has the potential for causing a significant effect on the environment, and under the "general rule" at Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the proposal may have a significant effect on the environment. General Plan Designation: Medium Density Residential; Zoning: Medium Density Residential (R-M)(Applicant: Escuela Bilingüe Internacional)(Owner: EBI Campus LLC) (APN: 49-1174-26-1 and -31-2)

Commissioner Tann recused due to a possible conflict of interest.

Miroo Desai, Senior Planner, made the staff presentation with staff's recommendation for approval.

Applicant, John Horsh spoke. He emphasized it would be extremely costly for them to install gates for this pathway. Architect, Jeff Miller also spoke.

The public hearing was opened.

John Tann, resident of 1074A 45th Street, said having a pathway here would make it safer for kids to go to and from school. However, there is no need for the pathway to be left open at night. He expressed his concerns for the safety of his family if the pathway is left unlocked at night. He also stated that members of the Emeryville Police Department had concurred that leaving this pathway unlocked at night is dangerous and poses a serious threat to the neighbors.

Kairee Tann, resident of 1074A 45th Street, voiced the same concerns as John Tann. She is opposed to having the pathway left unlocked during the night. She stressed the need for caution now instead of waiting to see if something happens, then putting in locked gates after the fact.

The public hearing was closed.

Commissioner Scheuerman said the path should be straight and he could not support it as proposed.

Commissioner Donaldson expressed safety concerns. She suggested the pathway could remain open on the west side since there are no houses in this area.

A motion was made to accept the design of the mid-block pedestrian pathway (UP10-007).

**Moved:** Cardoza  
**Seconded:** Moss  
**Vote:** Ayes: Moss, Cardoza  
Noes: Kuemmerle, Scheuerman  
Abstained: Donaldson  
Recused: Tann  
Absent: Steinberg

The motion failed.

After consultation with the Planning Director, the public comment period was re-opened.

John Tann said living on the other side of the wall and seeing what goes on at night in this area is very frightening.

Ruth Major said Escuela Bilingue should find some way to pay for the gates.

After considerable discussion, Chair Kuemmerle made a motion to reconsider the failed motion.

**Moved:** Kuemmerle  
**Seconded:** Cardonza  
**Vote:** Ayes: Kuemmerle, Moss, Cardoza, Donaldson  
Noes: Scheuerman  
Recused: Tann  
Absent: Steinberg

The second vote to consider approval of the design of the mid-block pedestrian path at Escuela Bilingue Internacional (UP10-007):

**Vote:** Ayes: Moss, Cardoza, Kuemmerle  
Noes: Scheuerman  
Abstained: Donaldson  
Recused: Tann  
Absent: Steinberg

The motion passed; the path design was approved.

- D. Preservation of Significant Structures Ordinance (ORD12-001)** – Consideration of an ordinance to repeal Articles 64 and 67 of Chapter 4 of Title 9 of the Emeryville Municipal Code and to add a new Article 67 of Chapter 4 of Title 9 of the Emeryville Municipal Code, Preservation of Significant Structures, and adopt a list and map of significant structures as part of Article 67 of Chapter 4 of Title 9 of the Emeryville Municipal Code. CEQA Status: This ordinance is exempt from environmental review under State CEQA Guidelines Section 15378(a) in that it is not a “project” which has the potential for causing a significant effect on the environment, and under the “general rule” at Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the ordinance may have a significant effect on the environment.

This item was continued to the next meeting.

## VII. STUDY SESSION

- A. **Street Trees** – A study session on regulations, policies and issues concerning the City's street trees, and possible amendments to the Urban Forestry Ordinance.

Senior Planner, Miroo Desai, made the staff presentation.

Adrian McGilly 5514 Doyle Street, #9, said it appears the City does not value trees. The City should act responsibly and abide by the Urban Forestry Ordinance.

Ruth Major said she enjoyed the presentation, however when you remove trees, you remove the animals, birds and other life forms. The City must be responsible and think of the total effect when cutting down a tree.

Julie Temple said when considering an amendment to the Urban Forestry Ordinance, something is wrong when a developer can cut down trees without consulting an arborist. If the City can protect old houses it can protect old trees.

Richard Ambro said there should be a way to protect trees on private property as well.

The Commission passed a motion to extend the meeting beyond 11:30 p.m. to 11:45 p.m.

Concerning the questions posed by staff, the Commission agreed that it is desirable for street trees to be located between the curb and sidewalk if feasible; that the replacement value fee should be waived if removal of a street tree is proposed or required by the City; that "drip line" should be replaced by "root protection zone"; and that references to structural soil and "Silva Cells", and a tree protection plan during construction, should be added to the Urban Forestry Ordinance. The Commission did not agree that a tree removal permit should only be required for trees over a certain size, but did agree that guidelines should be prepared to assist staff and the Planning Commission in determining whether a street tree should be removed.

Director Bryant noted that the Commission's recommendations will be reported to the City Council at a study session on November 6.

## VIII. COMMISSIONERS COMMENTS - None

- IX. **ADJOURNMENT** – The meeting adjourned at 11:45 p.m.

**THE NEXT SCHEDULED MEETING WILL BE HELD ON THURSDAY, DECEMBER 13, 2012 AT 6:30 P.M. IN THE CITY COUNCIL CHAMBERS, CITY HALL, 1333 PARK AVENUE, EMERYVILLE, CA 94608.**