



Chris Pattillo, Chair  
Jahaziel Bonilla  
Michael Coleman  
Jim Moore  
Adhi Nagraj  
Emily Weinstein

**November 20, 2013**  
**Regular Meeting**

**ROLL CALL**

**Present:** Pattillo, Bonilla, Coleman, Moore, Nagraj, Weinstein.

**Staff:** Scott Miller, Betty Marvin, David Valeska, Christina Ferracane, Edward Manasse, Ann Clevenger, Heather Lee, Cheryl Dunaway.

**WELCOME BY THE CHAIR**

**Director's Report**

Staff Member Betty Marvin gave a Status Report on Mills Act contract selections, 2013: 1218 East 21st Street; 1710 Filbert Street; 3054 Richmond Boulevard.

Chair Pattillo asked if there are any upcoming applications for the year 2014, and is it safe to say the department feels positive about the number of participants in the program.

Ms. Marvin responded stating yes, there at least Six, and yes, the maximum amount is usually ten per year.

**Committee Reports**

Vice Chair Moore gave reports for both the Design Review Meetings (DRC) on November 13, 2013 of the Broadway Valdez District Area Plan and November 20, 2013 on the Children's Hospital and Research Center.

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***For further information on any case listed on this agenda, please contact the case planner indicated for that item. For further information on Historic Status, please contact the Oakland Cultural Heritage Survey at 510-238-6879. For other questions or general information on the Oakland City Planning Commission, please contact the Community and Economic Development Agency, Planning and Zoning Division, at 510-238-3941.***

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Mr. Miller announced the upcoming committee Meeting schedule for the remainder of 2013 and the entire year of 2014.

**Commission Matters**

Election of Vice-Chair – Chair Pattillo made a motion to approve Commissioner Moore as Vice Chair, seconded by Commissioner Weinstein.

Action on the matter: Approved 6 ayes, 0 noes. Commissioners Weinstein, Coleman, Nagraj, Bonilla and Vice Chair Moore stated that they met with members on different dates and times concerning the Kaiser project and a phone conversation with Kaiser's staff.

**OPEN FORUM**

**Speakers:** Aaron Forkash, Steve Lowe.

Chair Pattillo asked staff if they could submit a report on Mr. Forkash's request to consider amending the zoning codes for this area.

Mr. Miller asked Mr. Forkash to submit his request in writing to Director Flynn for her review and staff would then follow up with a Director's report in the following weeks.

**PUBLIC HEARINGS**

1.	<b>Project Name:</b>	<b>Every Dog Has Its Day Care</b>
	<b>Location:</b>	<b>1315 16<sup>th</sup> Street (APN005-0482-001-00)</b>
	<b>Proposal:</b>	Allow a board and care facility for dogs
	<b>Contact Person/Phone Number:</b>	David Trachtenberg (510)649-1414 ext. 12
	<b>Owner:</b>	Lauren Westreich, Romeo West LLC
	<b>Case File Number:</b>	<b>CM13283</b>
	<b>Planning Permits Required:</b>	Major Conditional Use Permit to allow Animal Care and Boarding in a 24,000 square foot building (half existing, half to be built) on a 48,500 square foot parcel
	<b>General Plan:</b>	Business Mix
	<b>Zoning:</b>	CIX-1 Commercial Zoning District/S-19 Combining District
	<b>Environmental Determination:</b>	Categorically Exempt under California Environmental Quality Act (CEQA) Guidelines Section 15303 & 15332
	<b>Historic Status:</b>	Not a Potential Designated Historic Property.
	<b>Service Delivery District:</b>	1
	<b>City Council District:</b>	1
	<b>Commission Action to Be Taken:</b>	Approve Staff Recommendation
	<b>Appeal:</b>	Appealable to the City Council within 10 days
	<b>For Further Information:</b>	Contact <b>David Valeska</b> at (510) 238-2075 or <a href="mailto:dvalueska@oaklandnet.com">dvalueska@oaklandnet.com</a>



Staff Member David Valeska gave a presentation.

Chair Pattillo asked the following questions:

- Please explain what type of community outreach surrounding the facility was done, and what responses were received.
- What was the response to the noise complaint after the facility is completed and occupied by dogs?
- Please explain condition #16 pertaining to the public announcement sound system.
- Please explain the rational for condition #23 which allows deliveries until 9:00 P.M.
- Why does condition #20 allow 2 cubic yards of manure to be stored onsite, is this a standard amount?

Mr. Valeska gave the following responses to Chair Pattillo's questions:

They used the usual noticing process for the neighbors within 300 feet of the project site which weren't very many in this area. He didn't receive any responses from the neighbors.

They would use the standard and enforcement procedure in place for noise complaints. A noise engineer would come to the complainant's home or business to measure the amount of noise and so forth.

Condition #16 is more of a preventive measure where if the applicant chooses to have a public announcement system, it will need to be restrained.

The rational for allowing deliveries until 9:00 P.M. is that there are very little residents in the area.

He isn't sure if 2 cubic yards of manure is the standard amount that can be stored at the facility. The Planning Commission may amend the standard amount of manure stored on the premises.

**Applicant:** Lauren Westreich gave a PowerPoint presentation.

**Speaker:** Steve Lowe.

**Planning Commission Questions, Comments and Concerns:**

Vice Chair Moore asked the following questions:

- Is the spa area is used for grooming the dogs and how is the hair disposed?
- Were you requesting the hours of operation be from 7:00 A.M to 7:00 P.M. on weekends?



- Would you need to utilize all of the dog runs when letting them out before 7:00 A.M.?

Ms. Westreich gave the following responses to Vice Chair Moore's questions:

They perform all of grooming work except for haircuts.

They mostly give baths so there isn't much hair to cause significant impacts, but they do use a hair trap in the bath area.

She requested that they be allowed to let the dogs that spent the night at the facility out before 7:00 A.M., but not open for business until 7:00 A.M.

They let the dogs out in groups so that they don't have to utilize all of the dog runs at once.

Chair Pattillo asked staff if there's a problem with allowing dogs to be released before opening to the public. She offered the time of 6:30 A.M. as a time to release the dogs.

Mr. Miller suggested that they add to condition #1(e) that "dogs that are boarded overnight may be brought outdoors for short periods as necessary at other times".

Commissioner Coleman asked the following questions:

- How is the waste disposed of?
- Why is barking actively discouraged at all times?

Ms. Westreich made the following responses to Commissioner Coleman's questions:

They currently have use biodegradable bags which are doubled and tripled to place the waste in which is placed in our small dumpster that is emptied once a week.

The dogs are separated based on their temperament so the dogs that are more active aren't mixed with the ones that are mellower to keep the barking to a minimum.

Commissioner Bonilla recommended that the contractors that are chosen to work on this project provide employment of the youth in Oakland.

Ms. Westreich responded stating that they currently hire locally and have other forms of outreach such as: community outreach, working with local high schools, job fairs and various job resource centers. They also train the employees to succeed in future employment elsewhere.

Mr. Miller brought a typo in one of the conditions to the Planning Commission's attention.



Commissioner Coleman made a motion to approve with the condition that the dogs that are boarded be released to play before 7:00 A.M., seconded by Commissioner Weinstein.

Action on the matter: Approved 6 ayes, 0 noes.

2.	<b>Location:</b> The Lake Merritt Station Area Plan Area is generally bounded by 14 <sup>th</sup> Street to the north, I-880 to the south, Broadway to the west and 5 <sup>th</sup> Avenue to the east.
	<b>Proposal:</b> The City is preparing a Lake Merritt Station Area Plan (Plan) for the area surrounding the Lake Merritt BART Station that will provide a roadmap for how the area develops over the next 25 years. The purpose of this public hearing is to solicit/provide comments on the Draft Environmental Impact Report (DEIR) associated with the draft Plan, Design Guidelines, and General Plan and Planning Code Amendments (text and map changes).
	<b>Applicant:</b> City of Oakland
	<b>Case File Number:</b> ZS11225, ER110017, GP13287, ZT13288, RZ13289
	<b>General Plan:</b> Land Use and Transportation Element (LUTE) Areas: Central Business District, Institutional, Urban Open Space, Urban Residential, Business Mix, Community Commercial, Neighborhood Center Mixed Use. Estuary Policy Plan Areas: Planned Waterfront Development 1, Mixed Use District.
	<b>Zoning:</b> CBD-X, CBD-P, CBD-P/CH, CBD-R, CBD-C, OS-(SU), OS-(LP), OS-(NP), OS-(RCA), S-2, RU-4, RU-5, M-40/S-4
	<b>Environmental Determination:</b> An Environmental Impact Report is being prepared for the Lake Merritt Station Area Plan. The DEIR was released on October 31, 2013, and the 45-day public review period ends on December 16, 2013.
	<b>Historic Status:</b> The Plan area includes Areas of Primary Importance (API); Areas of Secondary Importance (ASI); properties individually rated A, B, C, D; and Landmark properties. Many of these properties are considered CEQA Historic Resources in the DEIR, since they may be eligible for, or are on an historical resource list (including the California Register of Historic Resources, the National Register of Historical Resources, and/or the Local Register).
	<b>Service Delivery District:</b> Metro, 3
	<b>City Council District:</b> 2, and a small portion of 3
	<b>Action to be Taken:</b> Receive public and Planning Commission comments on the DEIR. No decisions will be made on the project at this hearing.
	<b>For Further Information:</b> Contact project planner Christina Ferracane at 510-238-3903 or <a href="mailto:cferracane@oaklandnet.com">cferracane@oaklandnet.com</a>
	Project website: <a href="http://www.business2oakland.com/lakemerrittsap">http://www.business2oakland.com/lakemerrittsap</a>

Staff Member Christina Ferracane gave a PowerPoint presentation.



Vice Chair Moore reiterated pursuing the Oakland Unified School District (OUSD) owned sites as opportunity sites for adaptive reuse. Is a Request for Proposal (RFP) associated with this since its OUSD owned?

Ms. Ferracane responded stating that she deferred to the Landmarks Preservation Advisory Board's comments. In the draft plan various opportunity sites were identified under various ownerships are likely to redevelop, but the City will not be the developer. Staff associated some development programs with those sites in which they request that the development program staff associates with the OUSD sites is one that is more of keeping an adaptive reuse. The projection is about 350 units on this site which may or may not be feasible with the current buildings.

Commissioner Nagraj asked the following questions:

- Does the stationary map received in the Planning Commissioner's packet show the current proposed zoning and height limits?
- Please explain what is meant for the open space with no height associated and open space up to 125 feet.

Ms. Ferracane made the following responses to Commissioner Nagraj's questions:

This is the most recent draft of the zoning and height limits.

The 125 Feet may've been stated in error. Staff uses existing open space zoning designations with each having their own associated height limit which is 35 feet not 125 feet.

Commissioner Weinstein asked how does rezoning the Kaiser Center to the Central Business District (CBD) to allow for flexibility provide the kind of intention for it to be an adaptive reuse. What mechanisms could be put in place to ensure that it's historically preserved?

Ms. Ferracane responded stating that the current general plan designation of institutional has a limited amount of land use activity that is allowed thereby, limiting the potential reuse for the building. If a wider variety of activities were allowed, an adaptive reuse would also be allowed.

Mr. Manasse further explained that the Environmental Impact Report (EIR) didn't study the demolition, removal or alteration of the Kaiser Center in any way. If this were proposed, an independent environmental study would be conducted, but this plan doesn't facilitate that outcome at all. It's potentially likely that building may be privately run or owned at some point in the future as part of the adaptive reuse. The institutional zoning and general plan is designated specifically to public ownership if the City of Oakland were to sell or lease it to a private organization, they would be hindered in their possibility to reuse if it kept their institutional designation.



Commissioner Coleman asked the following questions:

- What is the difference between adaptive use and opportunity sites?
- Is it proposed that all of the one way streets will be converted into two way streets?
- Is there a map available for the 500 year flood?

Mr. Manasse responded stating that the opportunity sites are properties that they've identified where the development program is physically located. Adaptive reuse is the way they've envisioned that portion of the program to be accommodated on the Kaiser Center site. It's a reuse program for the existing building potentially used for retail office and other uses. It's a portion of that program applied to that property as part of its reuse plan.

This is a phase II element that requires additional study. The community requested over the years that this be a high priority. The plan recommends additional studies that will review the feasibility of certain streets converting from one to two ways. This is outside of the scope of this particular plan and would've required a significant budget for traffic study that surpasses the current budget.

Mr. Miller explained to the Planning Commission that the Landmarks Preservation Advisory Board's comments were not included in the Planning Commission packet they received on the previous Friday due to the Landmarks Preservation Advisory Board's meeting was the following Monday. Since the comments are being submitted by staff, there needs to be a vote by the Planning Commission to accept them into record.

Chair Moore made a motion to accept the draft minute notes from the Landmarks Preservation Advisory Board's November 18, 2013 meeting into record, seconded by Commissioner Coleman.

Action on the matter: Approved 6 ayes, 0 noes.

**Speakers:** Naomi Schiff, Vivian Huang, John Klein, Ulysses Saitowitz.

### **Planning Commission Questions, Comments and Concerns:**

Commissioner Nagraj asked the following questions and comments:

- Understanding the demographics of the plan, how many community members usually attend the meetings and workshops?
- He would like to see what is called "heat maps" where the up zoning shows in the color red and down zoning shows in the color blue. This will show where the actual delta is.
- In the future, he would also like to hear the justification of the changes if there is very little height Changes.



- The description of the marketing conditions in the station area plan felt over simplified. Acknowledgment is needed of the hot and cold market in some areas.
- He read a passage on page 419 of the plan that pertains to affordable housing and feels that the language has a missing link to it and should be revisited to justify why affordable housing is necessary.

Mr. Manasse and Ms. Ferracane gave the following responses to Commissioner Nagraj's questions:

Mr. Manasse stated that staff has outreached to the Chinatown community for the past 4 years.

Ms. Ferracane also added that the average amount of attendees are about 200 and has outreached to various nationalities such as: Vietnamese, Cantonese, Mandarin, etc. For the most part, they are in agreement with this plan so far. This may be why there aren't many community members at tonight's meeting. Staff continues to receive comments and concerns from the community.

Mr. Manasse explained that the majority of the heights that is proposed is the same or less than what is currently allowed by Zoning. There has been some up zoning close to 14<sup>th</sup> Street, but the majority of the area is the same or less than what is currently allowed.

Chair Pattillo reminded the Planning Commission that they are to comment on the Environmental Impact Report (EIR) only at tonight's meeting.

- Commissioner Nagraj the comparison of the proposed plan with a Transportation Demand Management (TDM) alternative didn't seem like the additional infrastructural improvements or transit improvements that were needed were financially great. He didn't see clear articulation of why the recommended plan was superior to the Transportation Demand Management (TDM) alternative.
- Table 4.2-2 refers to impacts of the transit preferred plan, but he doesn't see an assertion of why the proposed plan is still recommended over the Transportation Demand Management (TDM) or any of the other alternatives.
- He affirmed a comment that one of the public speaker's made pertaining to displacement of housing or tenants. On page 4.16 of the plan it refers to the "Ellis Act" ordinance impacts being less than significant. Without knowing the full benefits of the "Ellis Act" ordinance, he doesn't agree that it creates less than significant impacts.

Ms. Ferracane stated that she clearly understands the questions above concerning the Transportation Demand Management (TDM) alternative and staff will look into it and respond at a future Planning Commission meeting.





Commissioner Weinstein made the following comments:

- Previous studies of various Chinatowns in different cities didn't capture their cultural heritage. There should be policy priorities on maintaining the cultural significance of the entire area so that Oakland doesn't make some of the mistakes that other areas have.
- Why isn't the Transportation Demand Management (TDM) the preferred alternative?
- She would like for the Kaiser Center site to be used as an adaptive reuse site and for the two Oakland Unified School District (OUSD) sites to go in the same direction. She would also like to see a mechanism in place to ensure they will follow proper protocol for adaptive reuse.
- What are the community benefits?
- Suggested that the Planning Commission review the maps to identify where existing affordable housing is located throughout Oakland so, they will have an idea of what the long term affordable housing growth may be.

Chair Pattillo asked for clarity of what is the Planning Commission's focus tonight, to eliminate confusion.

Mr. Manasse explained that they are to provide comments on the Environmental Impact Report (EIR) on the plan, general plan and the zoning. Not necessarily on the plan, general plan and zoning itself, but on the Environmental Impact Report (EIR) study. There will be opportunities for those to be commented on per item at the various committee meetings.

Chair Pattillo asked Ms. Schiff and Ms. Huang if they are requesting an extension of the hearing exclusively on the Environmental Impact Report (EIR) or other components.

Ms. Schiff and Ms. Huang responded stating that they would like more time to allow further discussion and comments on issues in the proposed plan and Draft Environmental Impact Report (EIR) in a public hearing setting.

Vice Chair Moore made the following comments:

- He is intrigued by his fellow Planning Commissioner's suggestions that Oakland Unified School District (OUSD) sites are reclassified as an adaptive reuse from an opportunity site.
- He feels the applicant may always explain why the BART development component is not in place until it's in place. By having it there it formed a lot of the things being studied and by not having it there, an opportunity is being missed.
- The southwest portion mixed use change is a good idea.



Chair Pattillo clarified that the deadline for submitting written comments is December 20, 2013.

Mr. Miller confirmed that the deadline for submitted written comments is December 20, 2013.

Chair Pattillo offered to entertain a discussion on if the Planning Commission would like to continue this public hearing or extend the written comment period.

Commissioner Weinstein stated that she is in favor of continuing the written comment period.

Vice Chair Moore stated that he is supportive of continuing this hearing as well.

Mr. Miller asked Mr. Manasse for clarification on the deadline date for the written comment period. Is the deadline December 20, 2013 as stated at tonight's meeting or is it December 16, 2013 as stated in the notice.

Mr. Manasse stated that the deadline date was extended to December 20, 2013 within the first few days after the notices were sent out.

Commissioner Weinstein made a motion to extend the public hearing on the Draft Environmental Impact Report (DEIR) to the December 4, 2013 Planning Commission Meeting, seconded by Coleman.

Action on the matter: Approved 6 ayes, 0 noes.



**APPEALS**

3. **Location:** A portion of the Kaiser Permanente Oakland Medical Center, Phase 2 site –*the Phase 2 site is on the full block between Broadway and Piedmont Ave., and between I-580 and West MacArthur Blvd.; this project is a portion of the site located at the corner of Piedmont Ave. & W. MacArthur Blvd.*  
(APN: 012-0940-001-03)
- Proposal:** Appeal of a Zoning Approval of an Interim Landscape Plan, including landscape, streetscape enhancements and lighting, and temporary façade improvements, in accordance with Condition of Approval #25 for the original hospital renovations project approved under Case #DR07-496).
- Contact Person/Phone Number:** Sarah Cohen, et al - Appellant, Representing Richmond Blvd. (Oak Glen Park) Neighbors  
(510)414-6005
- Owner:** Kaiser Foundation Hospitals
- Case File Number:** A13273 (related to DR13177 and DR07496)
- Planning Permits Required:** Appeal of a Zoning Approval of an Interim Landscape Plan and other improvements related to the renovation of an existing hospital, for the corner of MacArthur Blvd. and Piedmont Ave.
- General Plan:** Institutional
- Zoning:** D-KP - 2 Kaiser Permanente Oakland Medical Center
- Environmental Determination:** An EIR for the Kaiser Permanente OMC Master Plan was prepared by the City of Oakland. That EIR was certified by the Oakland Planning Commission on June 6, 2006, and its certification confirmed by the City Council on June 27, 2006. The current project is generally consistent with that analyzed in the Master Plan EIR. No additional environmental review is required.
- Historic Status:** Not a Potential Designated Historic Property; Survey Rating: F3
- Service Delivery District:** 2
- City Council District:** 3
- Date Filed:** September 23, 2013
- Staff Recommendation:** Deny Appeal
- Action to be Taken:** Decision regarding Appeal Request
- Finality of Decision:** Final, not administratively appealable
- For More Information:** Contact Case Planner, Ann Clevenger, at (510)238-6980 or [aclevenger@oaklandnet.com](mailto:aclevenger@oaklandnet.com)

Staff Member Ann Clevenger gave a presentation.

Chair Pattillo asked staff the following questions:

On the top of page 6, what does “Regular Design Review” mean in that sentence.

Have you seen a legible plan of the proposed improvement, if so, why wasn’t it included in the Planning



Commission packet?

Ms. Clevenger explained that a “regular” design review is an administrative level of approval which requires public notification and approval is decided by the Planning Division staff.

Mr. Miller informed Chair Pattillo that a set of legible plans were included in her packet.

Commissioner Coleman stated that the report states “although it’s not specifically required”, there is an implication that landscape and public access requires actual accessibility which is the feeling he gets from reading all of this material and it’s not mentioned anywhere in the plan, which isn’t a negative or positive. He isn’t sure how to address this.

Mr. Miller explained that staff’s position in reading that condition and applying it to the master plan provisions and the design review criteria is that, if in 2008 the Planning Commission at that time, if the intent for this interim landscaped area to be publically accessible beyond what they’ve already shown. It should’ve been specifically placed into that condition because, presumably, Kaiser at the time in 2008 would’ve voiced opposition about that condition.

Commissioner Coleman stated that his interpretation was the total opposite of Mr. Miller’s explanation. He read the conclusion on page 15 which states, “the commission merely required as condition 45, an interim improvement plan for the landscaping lighting and security of the undeveloped portion of the phase II site, including, but not limited to landscape and streetscape enhancements temporary facade improvement to the hospital exterior walls additional lighting and signage”. This doesn’t exclude or include public accessibility.

Mr. Miller acknowledged that each individual may interpret condition #25 differently.

Commissioner Weinstein asked if staff’s interpretation of condition #25 is that the condition itself in the interim plan must comply with the general plan or, more specifically that the content of the plan implied within that condition must meet the requirements of the general plan.

Ms. Clevenger responded stating that the plan was required to be reviewed under the regular design review process and the regular design review process in the Kaiser Permanente zoning regulation states that it must conform to the master plan. Staff’s findings were that the plan does conform to the condition and the master plan.

Mr. Miller further explained that yes, it does need to meet the master plan as well as the regular design review criteria.

**Appellants:** Kate Dobbins, Sarah Cohen, Lucia Wong, Laura Arazi gave an argument.

**Applicant:** Michael Lane gave a rebuttal to the appellant’s argument.

Commissioner Bonilla asked staff if the City of Oakland has any proprietary interest in the project land. If Kaiser owns the project land, reassurance that they can build isn’t needed because it’s their right. That’s not



what's at stake here at tonight's meeting. There are laws in the United States that protect private property so, this should not be a concern. His concern is that the neighbors in the surrounding areas have the right to express their concerns about accessibility. Kaiser has a good reputation of providing good services, stable employment and good benefits. He doesn't understand Kaiser's resistance and rigidity about having this fenced off from the public area. He feels that security is enhanced through job creation, training, accessibility to resources, educational opportunities, etc. not by placing 7 feet or higher fencing around the property. There should be a compromise in terms of accessibility, and property rights shouldn't be an issue where Kaiser needs reassurance from the Planning Commission when they own the project land.

Mr. Miller confirmed that Kaiser does own the project land.

Mr. Lane responded stating that acknowledges there is a concern, warranted or not. He stated that he didn't foresee having this discussion at tonight's meeting at the time an interim condition was approved in 2008. If Commissioner Bonilla feels that it's not necessary to get reassurance from the Planning Commission it may work both ways and informing Kaiser that they have the right to build on their property doesn't hurt either. This is an interim condition that was a carefully crafted agreement that went through an extremely thorough review in 2008. It's built on itself and they are starting to make changes, this is essentially a new condition. They won't argue the points on technicalities, they want to make this work and in return of making this work, the Planning Commission acknowledges that they can build on this land.

Commissioner Bonilla reiterated that this is Kaiser's property in which they have the right to build there. He received numerous comments from the various neighborhood associations and nowhere in their communications does it state that the public space be open indefinitely for the foreseeable future. They understand it's an interim condition, but they would like access once it's landscaped. The streetscape will attract people and he doesn't understand the resistance and rigidity on this. The security concerns may be addressed with having security guards on the premises or other security measures in place. Again, the issue isn't getting reassurance from the Planning Commission for Kaiser to build on their own property.

Commissioner Weinstein asked what the difference is in the square footage between this proposal and the previous one.

Mr. Lane responded stating that in the original proposal Kaiser made 6,800 square feet available. The current proposal is estimated at 5,600 square feet in addition to the 6,800 square feet.

Vice Chair Moore asked the following questions:

How does Kaiser perceive the difference between maintaining security services and the landscaping on the private and public sides of the fence?

Presumably the paving and whatever landscaping there is on the public side of the fence would be designed to handle more traffic.

Does Kaiser have a heightened responsibility for security on the private side of the fence if it were open to the public vs. the fence being pulled back?



Mr. Lane gave the following responses:

There may not be a huge difference. He assumes there will be different uses on the public side of the fence which will require more maintenance than on the private side of the fence.

It is Kaiser's responsibility to maintain the public side of the fence as well.

It depends on which is more manageable for Kaiser. If access is prevented on the sloped area and provide access to the area on the sidewalk and the corner, it can be incorporated into their regular maintenance routine.

Commissioner Coleman stated that he understands Kaiser's desire of preventing public access to the sloped area. Is it possible to move the fence inside of the arc of trees so that a significant part of the site would be available? This will still protect the slope, provide an amazing amount of open space and more parkland.

Mr. Lane responded stating that Commissioner Coleman's idea will be considered.

Commissioner Nagraj asked if Kaiser received legal expert advice stating if they open a space that is privately owned, it could compromise future development even though they have full property ownership and entitlement rights or is this a fear of Kaiser's.

Mr. Lane responded stating that Kaiser received legal advice stating that they negotiated an agreement in 2008 that opening up this fence is a new condition that should not be imposed on them which they are not arguing that issue at tonight's meeting.

**Speakers:** Joe Chojnacki, Dan La Forte, Anne Janks, Valerie Winemiller, Lucia Wong, George Horton, Jennifer Rose, Josh Harkinson, Lynette McElhaney, Julie Waters, Andre Jones, Dan Kalb.

Mr. Miller gave the following three options for the Planning Commission to consider:

Accept Kaiser's compromise or urge them to further revise the plan to move the fence back, which will formally  
replace denying the appeal with approving a revised project.

Continue the hearing to allow Kaiser, neighbors and staff to further negotiate.

Approve the appeal outright, and adopt a plan that Kaiser disagrees with. This option would be done by a straw vote at tonight's meeting and would need to be brought back to a formal Planning Commission meeting for findings to be made in that regard. Mr. Miller also explained that a fourth option was considered by denying the appeal and accept staff's plan, but the staff's plan isn't an option since Kaiser submitted a compromise.

**Planning Commission Questions, Comments and Concerns:**



Vice Chair Moore thanked everyone for attending tonight's meeting. The intention for the MOB building was for the overall project, Phase II to activate Piedmont Avenue and make a pedestrian connection from the upper part of Piedmont Avenue to Broadway. This is how the interim plan should be reviewed and it accomplishes the same thing that the original plan didn't. The neighbor's request to open it up during daytime hours was a reasonable request to begin with and he had hoped the neighbors and Kaiser would've worked this issue out by now. He previously asked at tonight's meeting about maintaining the private and public sides of the fence and if it was open to the public for a reason. He wonders why there is resistance from Kaiser to move the fence all of the way in. The only real reason he can think of is Kaiser is protecting their entitlement to build on their property which they wouldn't lose especially if this remains an interim plan. He didn't see anywhere in the condition that mentioned a fence, but it did mention security which is perceived to be an addition to crime based on concerns raised at tonight's meeting. Whatever landscaping, paving or planting occurs outside of the fence, if it is moved back would need to be addressed, but at the same time, this plan with the decomposed granite may not be the appropriate thing to move forward with if it's outside of the fenced area. He is supportive of moving the fence to the top of the berm which should not have been that big of an issue to begin with. If Kaiser feels they need assurance from the Planning Commission to build on their property he is willing to assist them with figuring out a way to do so. The undercrossing still needs to be addressed.

Chair Pattillo thought about asking Kaiser to move the fence to the top of the slope, but she feels it's a moot point. Mr. Miller gave three options the Planning Commission could take such as: accept, deny or deny the appeal with conditions. This will involve them collectively designing the space on the dais in order to define the conditions that Kaiser would be bound to, which isn't a good idea. She feels Kaiser made a very generous proposal and is willing to give up one half of the space which is more than expected. If they've agreed to a lot so far, she doesn't see why they wouldn't agree to moving the fence to the top of the slope. She feels the only option is to continue this hearing to allow Kaiser the opportunity to reexamine their design thoughts for this space. She noted that, the discussion is moving the fence to the top of the slope thereby, making the vast majority of the area accessible. She also heard many times, there is a need to activate the space in which those two things don't go together. What is being reviewed is a very passive, pastoral, soft green space with almost no hard surface paving. By simply moving the fence will not address the need to animate the space, it needs to be redesigned. She would like bring that up for discussion if there is consensus to continue this before considering many other possibilities.

Commissioner Coleman stated that continuing this hearing is an excellent proposal. When he previously asked Kaiser if they were willing to move the fence back behind the arc of trees, there was general support from both sides. He agrees with Chair Pattillo that the Planning Commission is unable to design that at tonight's meeting. He feels that drawing the line leaves some awkward places on the property and as stated, this doesn't activate the space at all. As reluctant as he is to continue this hearing, he feels it's necessary because they won't get any answers tonight. He suggested that Kaiser be asked to please redesign the space return so they can review it again.

Commissioner Weinstein stated that she also agrees with continuing this hearing. She heeds caution that this doesn't become an argument about placement of the fence, but that it's reviewed as the entire space. The ultimate goals and intentions of the master plan is to activate the space and make it pedestrian friendly. There are a lot of landscaping and design solutions that can accomplish that, but she doesn't feel that moving the fence one way or the other will accomplish that. She feels that a new landscape plan is needed



that allows them to review the amount of open space and all of the elements that is involved in a landscaping plan. She concurs with her fellow Planning Commissioners that the in the neighbors communication, did they assume the interim landscaped area was permanent. In terms future, some of it is about public perception. Kaiser may be concerned that in 15 years, there may be different neighbors that may not be concerned when the garden is no longer there. There are ways to deal with that, not only within the landscaping plan, but how you market the name and brand of this park that will inform neighbors that this is a temporary space.

Commissioner Bonilla concurs with his fellow Planning Commissioners about the intent is to activate. If this means redesigning to meet that purpose than it should be taken into consideration and followed through. He feels that this hearing should be continued which will allow Kaiser and the neighbors to meet and work out their differences.

Commissioner Nagraj stated he appreciates everyone attending this meeting and the appellant's communication engagement which is the most communication he has received so far. He also commended Kaiser's great work in the community and how much he appreciates it. He feels that a lot of progress was made at tonight's meeting and supports continuing this hearing. He agrees with his fellow Planning Commissioners that they are not the best parties to decide on this matter, it will take Kaiser and the neighbors to work on a solution that is equally beneficial.

Chair Pattillo asked the community to please keep in mind that this is an interim open space improvement. She suggested that Kaiser construct a different design that is comparable in value to what was shown to them this evening and not to expect a full blown park design such as; tot lots, concrete walls, etc. There are 8 benches, a few plants and some paving, which a little more paving may be needed using temporal material like decomposed granite opposed to concrete or brick paving.

Mr. Miller reminded the Planning Commission that if they choose to continue this item, they may want to continue it to a date certain. He asked that Kaiser give a particular date or a special meeting may be proposed if necessary.

Chair Pattillo asked Kaiser if they would like to continue this hearing until after January 1, 2014 or is it possible that they vote to have staff work with Kaiser on a date certain.

Mr. Miller stated that yes, the Planning Commission could vote to continue this hearing to an indefinite date and staff will send a 17 day re-notice to the interested parties.

Vice Chair Moore asked if it would be simpler to uphold the appeal and return it to staff.

Mr. Miller explained if the appeal is approved, it would be a straw vote and would have to come back with findings anyway and isn't very beneficial. He also suggested that Kaiser could withdraw their approved application and start all over again in concert with the neighbors to develop a new plan to formally resubmit to staff to make a decision that all is in agreement with and won't result in an appeal to be brought before the Planning Commission. That leaves the discussion open, but input should be received from Kaiser and the neighbors on that approach. The Planning Commission may still continue this hearing to an indefinite





date, and Kaiser could make the decision to withdraw their application and start from square one and still continue that process.

Commissioner Weinstein's concern is, if the negotiations between Kaiser and the neighbors don't result in an agreeable solution for both parties, and the City approves the design. Will the resident's be allowed to appeal the review again?

Mr. Miller responded stating that if the hearing is continued to an indefinite date, the option for the residents to continue with the appeal is there.

City Attorney Mark Wald further explained that if there is no agreement, it will come back to the Planning Commission. If there is an agreement, it would be to withdraw the appeal, submit an application that everyone agrees with and there wouldn't be any further appeal. This is an option that's open with a continuance that doesn't need to be decided today.

Commissioner Nagraj stated that the continuance option would be preferable from how he understands it. If there is a disagreement, the appellants won't have to pay to appeal again.

Mr. Wald responded stating that Commissioner Nagraj is correct, the appeal would automatically be brought back before the Planning Commission.

Vice Chair Moore made a motion to continue this appeal to an indefinite date and direct Kaiser to work with the appellants and staff to work out a compromised plan, seconded by Commissioner Bonilla.

Action on the matter: Continuance approved 6 ayes, 0 noes.

#### **Approval of Minutes**

Chair Pattillo made a correction to the October 16, 2013 meeting Minutes on page 7, 2<sup>nd</sup> paragraph this states that "she is disappointed about the lack of retail on Broadway in the plan". She stated that her comments were that she was disappointed about the lack of retail shown on Broadway, not in the plan.

Commissioner Bonilla made a motion to approve with revisions, seconded by Commissioner Coleman.

Action on the matter: Approved with revisions 6 ayes, 0 noes.

#### **ADJOURNMENT**

Meeting adjourned at approximately 10:30 P.M.

**SCOTT MILLER**  
Zoning Manager  
Planning and Zoning Division

**NEXT MEETING:** December 6, 2013