CITY OF SAN MATEO

APPROVED

PLANNING COMMISSION
MINUTES OF THE REGULAR MEETING
DECEMBER 18, 2012

The meeting convened at 7:30 p.m. in the City of San Mateo Council Chambers and was called to order by Chair Whitaker, who led the Pledge of Allegiance.

Those present were Chair Whitaker, Vice Chair Massey, Commissioner Bonilla Commissioner Moran and Commissioner Hugg.

A motion was made by Commissioner Moran, seconded by Commissioner Massey to approve the minutes of the Regular meeting of October 23, 2012.

Vote: Motion passes 5-0.

***** PUBLIC COMMENT**

Chair Whitaker opened the public comment period.

Jeannie Berg, San Mateo spoke. Her comments included:

- A shortage of housing for those on a fixed income.
- The increase in rents at Hillsdale Garden Apartments since 2006. Has been going up by $300 a year for the past 3 years.
- We are being kept alive by St. Vincent de Paul, Second Harvest Food Bank and Meals-on-Wheels.
- There has to be a way for those who are less fortunate than others to live a good existence without being afraid of rent increases and losing their homes.
- We are unable to find another place to live for financial reasons.

<u>ITEM 1</u>
*** PUBLIC HEARING**
PA12-071, 501 N. San Mateo Market (APN 032-153-140). Hearing regarding status of legal non-conforming market located at 501 N. San Mateo Drive, in accordance with Section 27.72.030 of the San Mateo Zoning code.

CEQA: Categorically Exempt Sections 15061(b)(3) and 15321(a).

Read into the record by the Chair:

The purpose of tonight's meeting is to determine whether the market use at 501 No San Mateo Drive is a legal nonconforming use. Tonight's meeting is strictly an examination of the question "is the market a legal nonconforming use?" Earlier this year on 10/30/12 the Planning Commission held a meeting to determine if the market was especially burdensome to the neighborhood w/respect to public health, traffic, parking lighting, loading, crime and noise. While the question of being especially burdensome is an important one, it is not the focus of tonight's meeting. The Planning Commission has already had a hearing on that question and has made a recommendation to the City Council. Tonight's meeting is strictly to determine if the market use at 501 No San Mateo Drive is a nonconforming use. The hearing to determine if the market use is a legal nonconforming use is a very different hearing than the type of meeting the Planning Commission normally holds. As a result I'd like to take a moment to go over the procedures for tonight's meeting.

- Staff presentation
- Questions of clarification from the Planning Commission
- Presentation by private attorneys and neighborhood
- Planning Commission Chair to ask questions submitted by private attorneys involved to those individuals who were served subpoenas.
- Individuals will be sworn in by the Commission Chair.
- Planning Commission Chair will ask the private attorneys for clarification if needed.
- Public Hearing: remind the public the purpose for this meeting – is a market a legal nonconforming use under provisions of the Zoning Code Section 27.72.030. Hearing had already been held to determine if use is "especially burdensome".
- Summation of private attorneys and neighborhood
- Planning Commission questions, discussion, deliberation and vote for a recommendation to the City Council.

Lisa Grote began the Staff presentation. Emily Schliter interrupted and the Assistant City Attorney requested that she approach the microphone. Ms. Schliter explained that questions had been submitted to the City Attorney regarding time length for attorneys comments and that she understood that the attorneys for all parties would have 20 minutes each. The Assistant City Attorney commented that that length of time did not reflect her conversations with the City Attorney, Mr. Shawn Mason. It was shared that allowing 20 minutes for attorneys, etc., would not be an efficient use of the time, however, it would be up to the Planning Commission to decide.

The Chair and Vice-Chair have had a number of meetings with staff and the city attorneys regarding the agenda for this meeting. It was determined that 10 minutes for each side was the correct amount of time. Whatever the Commission does should be fair to everyone. (Audio on DVD lost for a few minutes). Planning Commission settled on 10 minutes per side.

Lisa Grote, Director of Community Development continued with the staff presentation. Ms. Grote gave a brief background on the project.

The Planning Commission had the following questions for staff:

- Please go to the slide regarding a code amendment. Would this apply to just this property or would it change for all nonconforming properties throughout the city? *Staff:* It would change it for all nonconforming properties through the city. *Commissioner:* If it would be a city-wide ordinance why focus on this one property? *Staff:* Because this happened to be the property that the individuals were interested in but it would eventually been advertised to all city-wide nonconforming properties. *Staff:* Zoning code does allow a property owner to initiate a zoning code amendment. Extensive research had not yet been done to determine feasibility. *Commissioner:* applicant withdrew code amendment*? Staff: Yes.*
- What is the date of the first zoning code? *Staff: 1937 is the first one we can find a copy of.*
- We have a full copy of Chapter 27.72 Non Conforming Buildings and Uses. There is an annotation at the end indicating the chapter has been amended 6 times over the years. 27.72.020 appears to not been amended, ever. *Question to staff:* has this section ever come up as an issue in the past, to your knowledge? *Staff: We have analyzed discontinuances of uses in the past. None of the discussions have resulted in a code amendment.*
- If a new owner purchased the property with the intention of using it for medical/dental*,* would that use have required a special use permit *or code* amendment? *Staff: A medical/dental office would not have been considered a continuation of the market use because a medical/dental office is not the same type of use and it would have required a special use permit.*
- Did initial demolition work actually start prior to obtaining a building permit. *Staff: Yes, there had been a code violation of this type and when notified, the owners corrected it by obtaining a demolition permit.*
- 27.72.030 – refers to ascertainment of establishing as a nonconforming use in the manner herein provided –is the manner "herein provided" referring 27.72.052 HEARINGS PROCEDURE?. *Attorney: Yes, we reviewed the chapter and the only section that allows for the public hearing is 27.72.052 and we are relying on this for the procedure. There are 5-6 issues that have been raised and it would be helpful for the City Council to have Planning Commission input on each of these points.*

Presentation by Peter Briening representative for the neighborhood. Mr. Breining outlined numerous code violations of city code.

- More than 5 city codes violated but will focus on 3
- Use discontinued for more than 6 months and abandoned
- Physically changed from market use to office use
- Increased intensity of use

Attorney for Portfolio Development Partners ("PDP"), Richard Givens;

- 5 operative facts:
    - Former owner asks for determination of nonconforming use
    - Matter referred to interim city attorney; she is still an employee of the city
    - City applies law to facts and finds nonconforming use has not been lost
    - Building permits issued on August 30, 2012
    - PDP takes title to the property
- Tonight's hearing calls for determination of existence of legal nonconforming use
- The law is the same now as when Cecilia Quick made her determination

Attorney for 7-Eleven, Mr. Stephen Jamieson. As only 10 minutes were allowed for the attorneys for PDP and 7-Eleven, there was not sufficient time for a presentation by the attorney for 7-Eleven, Mr. Jamieson.

The Assistant City Attorney confirmed questions that were submitted for specific individuals by representative attorneys and verified which individuals would be asked questions during the hearing. Emily Schliter approached the microphone and spoke regarding questions that had been submitted to the City Attorney by the neighborhood.

Questions and Answers of Isaac O. Choy

- When did you first obtain the property located at 501 No. San Mateo Drive, hereinafter the "property"? *December 2010*
- From whom did you purchase the property? *B Street Ventures*
- At the time you obtained the property, was the property being used for any purpose? *No, it was formerly a deli, but vacant at the time.*
- What was your purpose in purchasing the property? *Investment property.*
- Did you intend to use the property yourself? *It was one of the possibilities.*
- If so, what use did you intend to use the property for? *Office space*
- Why did you decide to sell the property? *Investment property so sort of fell into the overall investment strategy for the property. We received an offer so we decided to sell.*
- How long after you purchased the property did you determine to sell the property? *After we renovated the property we decided to put the property on the market for sale or lease.*
- Did you contact a real estate agent for assistance in marketing and selling the property? *We used the existing real estate agent, The Green Banker.*
- If so, who did you contact? *The Green Banker.*
- What instructions did you give to the real estate agent with respect to the sale of the property? *To evaluate and present all offers.*
- Did the property get marketed for you for sale? *It was for sale or lease.*
- To whom was the property marketed? *We listed it in multiple listing and internet sites.*

- How was the property initially marketed, i.e. for "market" use or for some other use? *Office space, but not limited to that. We also marketed it for liquor store or convenience store.*
- Did you have any interest in the property? *Sale or lease, we were not intending to use it at that time.*
- At some point, changes were made to the interior of the property, where the interior fixtures were removed and carpeting was installed. Why did these changes occur? *Removing all existing structures and things non functional. Basically cleaning up the property and leaving a clean "shell" in order to present its' marketability.*
- Who authorized these changes? *City of San Mateo*
- Who initiated these changes? *The owners*
- Did you contract with an architect to implement these changes? If so, who was the architect? *Jack Matthews Architects in San Mateo*
- What instructions did you give the architect with respect to the changes? *We wanted a space to market for lease or sale. Based on square footage and feasibility study we wanted to know the marketability of the space.*
- Did anyone contact the City of San Mateo or obtain a building permit from the City of San Mateo to initiate these changes? *Yes we did.*
- If not, why not?
- Is it true that you received a Notice of Building Code violation from the City of San Mateo for making the interior changes without first obtaining a building permit? *Yes at the initial start when removing trash and other garbage and some of the interior fixtures.*
- What did you do to rectify this situation? *We obtained the proper permits.*
- After the changes were made, the property was then re-listed in a new MLS listing with a new use listed as "available for medical/dental office," is that correct? *It was not limited to medical/dental but also for market.*
- Did you provide instructions to the real estate agent to make these changes in the MLS listing? *Yes we did.*
- Why did you make these changes to the MLS listing? *It was a new listing and the property had been abandoned and we were bringing it back onto the market.*
- After the change to the MLS listing, did you in fact, market the property for use as "medical/dental?" *Available for medical/dental to increase our ability to lease.*
- To whom was the property marketed after the interior was modified for use as a "medical/dental"? *Placed on MLS multiple listings and other internet sites.*
- In the fall of 2011, you received a letter from the City of San Mateo that the property could no longer be utilized as a market, as the market use had been discontinued for a period of six months or more, and that the zoning code required an amendment if you wanted to retain the non-conforming use variance, is that correct? *Yes that is correct.*
- What did you do in response to that letter? *We went to the city and reviewed our options and continued to market the use of the property.*

- At some point, you sold the property to Portfolio Development Partners (hereinafter PDP), correct? *Yes.*
- What did that sale occurred? *August 2012*
- At the time that you were working on selling the property for PDP, did you know what use PDP intended to make of the property? *Initially no.*
- What did the MLS listing at the time of the sale to PDP indicate was the available usage for the property? *Medical/dental but not limited to.*
- Was this a new MLS listing? *Same as from the original.*
- When was the first time you learned that a 7-Eleven might go on the property? *During escrow we learned that there was to be a national retail chain, did not know details. During negotiations in escrow we learned it might be 7-11*
- How did you learn about it? *Realtor*
- Were you involved in the negotiations with PDP and 7-Eleven? If so, explain the nature of your involvement. *Not involved.*
- With whom did you discuss the possibility of a 7-Eleven going on the property? *Nobody*
- Identify each individual with whom you discussed the possibility of a 7-Eleven going on the property. *Other than our realtor who told us and the buyers, no one.*

Susan Lin provided written answers to questions proposed by the neighborhood.
Stanley Lo provided written answers to questions proposed by the neighborhood.
Gene Stangelini provided written answers to questions proposed by the neighborhood.

Questions and Answers of John Luchessi

- Please describe your involvement with the property located at 501 No San Mateo Drive. *I'm a project architect with Jack Matthews Architects in San Mateo, responsible for design and project management in the office.*
- When did you first become involved with this project? *November 2010*
- Why did you become involved in this project? *John Matthews Architects was hired and I was assigned to this project.*
- Who hired your office for this work? *We provided design consultant services to 3 individuals: Chi Hwa-Shao, Susan Lin and Isaac Choy and then Portfolio Development Partners.*
- You were engaged to provide architectural renderings for a conversion of the site to an office, isn't that correct? *Our services never got so far as to be a real architectural project. For each client services were limited to exploring what might work on the property in the form of feasibility studies. First with Chi-Hwa Shao who, on his own, had determined that a residential development would not be financially feasible. He was looking for and exploring the uses of another store a coffee house and subsequently a medical office. Dr's Lin and Choy wanted us to explore the uses of a medical office use and 3rd Portfolio Development was interested in how the property might be used again as a market.*

- Was it your understanding that you were to modify the structure to enable it to be marketed as an office use? *We were never engaged to modify structures. Each client limited our services to feasibility studies, to explore potential uses for the building. None really developed into full projects. What was generated for Dr. Choy was a site plan diagram that illustrated a balance between an area of building use and the number of parking spaces provided. We had no authorization to develop further presentation documentation or design or construction documents for remodeling.*
- Where did you get this understanding? *From our clients and as directed by our agreements with them.*
- Did you have any discussions with Isaac Choy, Susan Lin and/or Stanley Lo regarding the modifications your firm was to make to the site? *I personally never had any discussions with Stanley Lo regarding this project. Dr's Lin and Choy asked us to explore the feasibility of medical office use at this property but we were never asked to develop drawings any further for building permits or construction at the site initially.*
- Please describe the contents of those conversations and when they occurred? *I assume you are referring to our services for Dr's Lin and Choy. Our initial contact was 11/22/10 with Dr. Lin and agreement for feasibility studies was signed 11/23/10. This work led to development of feasibility diagrams as I spoke of before. These were dated 11/24/10 and subsequently meeting with Stephen Scott and Dr. Choy to discuss those feasibility diagrams and at that time planning staff determined that a medical use of a limited area would be considered an acceptable use on that site. We followed up with a letter that documented that meeting and it was confirmed with an email by planning staff.*
- Was a building permit initially taken out for these changes? *No. At this time our firm was never asked to develop any further architectural drawings or building permit construction documents for this work.*
- Did anyone contact the city requesting permission to make these changes? If not, why not? If so, what were the nature of those contacts? *Not that I am aware of. Initially, our firm was never asked to, as I said before, never asked to prepare construction documents for this work. In my email of 12/11/10 to Dr. Choy I clarified that our feasibility study services were complete and really our services under the initial contract were done and our firm could be contacted for further work if needed. At that time, we weren't.*
- Were you aware that the owners received a notice of violation for making the interior changes without a permit? *Yes, Dr. Choy contacted us 01/13/11 and informed us that he had received a violation.*
- What did you do to address this in the scope of your work? *We met with Dr. Choy 01/14/11 and we mutually agreed to provide demolition drawings to clean up the existing conditions at the site. Dr's Lin and Choy did not request services for design and construction documents for any new project.*
- What was your understanding about why the property owners wanted to modify the inside of the building? *To be clear, our scope of work for Dr's Lin and Choy at this time were to produce demolition drawings to get a demolition permit. Not for new design*

work or new improvements. This demolition work included removing all the existing interior finishes, nonstructural partitions, and fixtures. The sheds in the rear of the building and patching the rear wall where the sheds were to close an opening in the wall. The interior, according to our drawings, was to be stripped down, as a shell, and even with an exposed concrete floor and we assumed this was to make the building appear more tenant ready and cleaner in appearance.

- How did you get this understanding? *The general scope of the demolition was determined from our meetings and our discussions with Dr. Choy on 1/14/11.*
- Did you believe that the owners intended to abandon the original market use of the property by making the interior modifications? *As I said, our scope of services for Dr's Choy and Lin did not involve any interior modifications that would either suggest or prevent any particular use. As I stated before, the demolition drawings were to leave the building as an empty shell without even a floor finish. We were not informed of the owners' intentions or how they wanted to use the building.*
- Were you aware that the city had determined that the non-conforming use, i.e., the use as a market, had been discontinued for a period of more than six months and, therefore, that the use had to revert to residential? *In the fall of 2011 we were engaged by Portfolio Development to explore the feasibility of a market use. In a meeting with Stephen Scott 10/10/11 it was made clear to me that too much time had passed since the closure of the market and legal non conforming use considered abandoned. Therefore the only permitted use would be pure residential as the zoning dictates and there was no special use process available to permit another use. The only potential course of action might be pursuing a zoning amendment. Stephen said in this meeting that he would review his reading of this situation with Ron Munekawa and Lisa Ring and get back to me with a follow up which he did.*
- How did you become aware of this? *Stephen Scott confirmed what was discussed at this meeting in an email to me 10/14/11 and he cited the applicable section in the zoning code 27.72.020.*
- Were you involved in the City's determination as to the reversion of the non-conforming use to conforming use? *No. In fact, we thought Portfolio was pursuing the zoning amendment process. I was not aware there was a change in the city's findings regarding the non-conforming use.*
- If so, how? *I didn't know.*
- The public records shows that you had many phone calls and meetings with planning department staff, in particular, Stephen Scott, about the site, during the time your firm was working on the interior office remodel. Please describe the nature of all such communications with Mr. Scott and any other planning department staff regarding this project. *As I described earlier, our firm never worked on or was engaged to work on any drawings for an interior office remolding for any of the property owners. The demolition drawings that were produced for Dr's Lin and Choy were started 1/19/11 and completed 1/28/11. During this period of time, I don't believe I ever spoke, or met, with planning staff about that project. Over the time period of November 2010 to October 2011, the*

process providing of providing architectural services to 3 different clients and their inquiries about the property, I may have met with Stephen Scott 3-4 times and had about 9 telephone calls to him in this time period and many of these phone calls were to schedule or confirm meetings. After my 10/10/11 meeting and subsequent 10/14/11 email from Stephen Scott I believe I had no further communications with him or planning staff about this project.

- Did you receive any consideration, financial or otherwise, that caused you to lobby city staff with respect to the non-conforming use issue? *No. I'm no lobbyist. I'm an architect.*
- If so, from whom did you receive, and what was the nature of, the consideration? *There was no lobbying and no consideration.*
- What were you asked to do in exchange for the consideration you received? *I think I answered that already.*
- Were you involved with the City in an effort to convince the city to change its determination regarding the non-conforming use? *No. Since the 10/14/11 Stephen Scott email to me establishing his determination of nonconforming due to abandonment, we were under the perception that Portfolio was pursuing a zoning amendment process to change the zoning code through the public process to permit a market on their own. We provided Portfolio Development with a proposal and agreement for professional services to assist them in this process but this agreement was never signed or executed so we were never hired.*
- If so, describe your involvement, with whom you spoke about this issue and when you had such discussions. *I was not involved.*

Questions and Answers of Jack Matthews

Mr. Matthews: We received these questions in advance and wrote out our answers so that we would be providing accurate and correct responses.

- Please describe your involvement with the property located at 501 No San Mateo Drive. *I am an architect and a member of the City Council. I make it standard practice in my office to assign responsibility for managing projects within the City of San Mateo to one of my associates, in this case John Luchessi. I believe it is important to maintain an arm's length distance with city staff on projects in the city. I did contact Stephen Scott on 11/04/10 to ask a few questions. That was the last contact I had with Stephen Scott or any other staff member.*
- When did you first become involved with this project? *04/05/10 phone call from Chi-Hwa Shao regarding the property. What uses were available. I did research.*
- Why did you become involved with this project? *We are architects and this is what we do for a living.*
- Who hired your office for this work? *Chi-Hwa Shao 11/01/10 about a possible retail use, restaurant use or medical/dental use. Then we were hired by Dr's Lin and Choy to follow up with the city about a medical/dental use.*

- You were engaged to provide architectural renderings for a conversion of the site to an office, isn't that correct? *Depends on what is meant by renderings? We did sketches to show how the property could be used for medical/dental use.*
- You stated to a neighborhood representative that your firm was only involved in the office conversion part of the project, is that true? *We provided some consultation to PDP on whether or not the legal nonconforming use could be continued. Stephen Scott indicated that a code amendment would be required. We then provided drawings regarding a market use and made a proposal for architectural services for a code amendment modification. We were not hired and have had no contact with 7-Eleven at all.*
- Was it your understanding that you were to modify the structure to enable it to be marketed as an office use? *We made some sketches for Dr's Lin and Choy but not construction drawings for a building permit?*
- Where did you get this understanding? *There was no understanding about doing drawings for an office – we only did demolition drawings for a future use?*
- Did you have any discussions with Isaac Choy, Susan Lin and/or Stanley Lo regarding the modifications your firm was to make to the site? *Yes.*
- Please describe the contents of those conversations and when they occurred. *Communications were principally with Dr. Choy. Discussed landscaping, restrictions on public portion of building in order to comply with parking and ADA requirements. We had conversations with Dr's Lin and Choy between 11/22/10 and 12/7/10/. Brief phone conversation with Stanley Lo regarding potential cause for tenant improvements.*
- What was your understanding about why the property owners wanted to modify the inside of the building? *They wanted to clean it up to lease it to another user.*
- How did you get this understanding? *We recommended that in addition to the rear of the building be removed, the interior partitions be removed for a more flexible and clean space.*
- Why were these modifications made? *I'm not sure what you are referring to. I am not aware of any improvements other than paint and carpet.*
- Was a building permit initially taken out for these changes? *If you're referring to interior demo and storage shed, the answer is no.*
- Did anyone contact the city requesting permission to make these changes? If not, why not? If so, what were the nature of those contacts? *I do not know and I have no knowledge of any contacts with the city by the owner.*
- Were you aware that the owners received a notice of violation for making the interior changes without a permit? *Yes.*
- What did you do to address this in the scope of your work? *We made a proposal for a demolition plan that was approved by Dr.'s Lin and Choy. Work was completed on 01/28/11.*
- Did you understand that the owners were intending to abandon the market use and to offer the property as a medical/dental office use? *We did not have conversations*

regarding uses other than medical/dental; I do not have knowledge of any other uses they may have had in mind.

- Why was this their intention? *I do not know their intention(s).*
- How did you understand that it was their intention? *We did not talk about future uses other than medical/dental but they may have had other intentions.*
- Were you aware that the city had determined that the non-conforming use, i.e., the use as a market, had been discontinued for a period of more than six months and, therefore, that the use had to revert to residential? *Yes*
- How did you become aware of this? *John Luchessi met with Stephen Scott.*
- Were you involved in the City's determination as to the reversion of the non-conforming use to conforming use? *No*
- If so, how? *We were not involved in that determination in any way.*
- The public records shows that you had many phone calls and meetings with planning department staff, in particular, Stephen Scott, about the site, during the time your firm was working on the interior office remodel. Please describe the nature of all such communications with Mr. Scott and other planning department staff regarding this project. *We didn't work on any interior office remodel, only the demolition plans for a building permit. I only had 1 phone call with Stephen Scott 11/04/10 about zoning requirements and continuing a legal non-conforming use. Stephen Scott provided a telephone log as part of the freedom of information act and you can make inferences as there are phone calls from me listed, but these could be any project that we currently have in our office. Mr. Matthews gave examples of some of the phone calls on Stephen Scott's telephone log as being associated with other properties in San Mateo.*
- Did you receive any consideration, financial or otherwise, that caused you to lobby city staff with respect to the non-conforming use issue? *I want to emphasize that that would be illegal and a betrayal of the public trust. We are architects, not lobbyists.*
- If so, from whom did you receive, and what was the nature of, the consideration? *I've answered the question already – I did not do that.*
- What were you asked to do in exchange for the consideration you received? *Same answer as before.*
- Were you involved with the City in an effort to convince the City to change its determination regarding the non-conforming use? *This is the same question as #23 and it is the same answer, no.*
- If so, describe your involvement, with whom you spoke about this issue and when you had such discussions. *I had no involvement. If we did have involvement we would have created a very strong paper trail.*

The members of the Planning Commission had some discussion about when to ask questions of those who had been providing testimony.

Assistant City Attorney indicated that she had written declarations from Isaac Choy, Lisa Grote, Susan Lin, Susan Loftus, Lisa Ring, Stephen Scott, and Gene Stangelini.

What is the recourse in regards to those individuals who submitted written declarations. No subpoenas were issued by either Portfolio Development Partners or 7-Eleven so those individuals are not mandated to be at tonight's hearing. The PC is free to issue additional subpoenas and continue the hearing.

There are no "live" witnesses for 7-11 or Portfolio Development Partners, only for the neighborhood.

Questions had to be submitted prior to tonight's meeting; that no questions would be submitted tonight. There was additional discussion on the style of the questions, how they were answered and who got them. The Assistant City Attorney provided Richard Givens copies of the declarations that were in her possession. The neighborhood association also requested a copy of the declarations.

Questions and Answers of Lisa Ring

- When were you first assigned to or have any involvement with the 501 No San Mateo Drive project? *Towards the end of February 2012.*
- What knowledge did you have of the previously issued decisions from the planning department and the process before you took over the project? *I knew that a neighborhood meeting was required for a potential citywide code amendment but I had no knowledge of any other decisions.*
- What did you understand those decisions to be? *I didn't have any understanding of specific decisions but only that the applicant was applying for a zoning code amendment.*
- Did you know that many people, including the head of planning (your boss), other planners previously assigned to this project, and the assistant city attorney determined that the property legally reverted back to R4 status and issued opinions accordingly? *No, the understanding was going to be a neighborhood meeting to discuss a potential code amendment as it related to the applicant's site.*
- What files did you received for the project? *I received a file with applicant information including the project app and the proposed code amendment which is typical for application intake.*
- What work had Julia Yeh done on the project? *I believe she had previously reviewed the proposed project and set up the neighborhood meeting with noticing.*
- Why was the case reassigned to you? *It was assigned to me to help with the work load.*
- Documents in the record show the matter was reassigned to you on February 27, 2012. *It was assigned to me towards the end of February 2012 but I don't recall the exact date – I believe it was prior to 2/27/12.*
- Had you had any discussions with Stanley Lo, Josh Amoroso, Jeffrey Neustadt, Susan Lin, Isaac Choy, or Ed McGovern prior to your official reassignment to the project? *No*

- Does the planning commission have meetings where the status of projects is discussed? *No, the Planning Commission typically only reviews projects in a formal study session or when a formal review of a project is required.*
- Two days after you were assigned to the matter, on February 29, 2012, you apparently communicated to Josh Amoroso that the city had reinterpreted the situation and the statue and that the City had determined that the statue required an intent to abandon and, that further, because there appeared to be no evidence of intent to abandon, building permits for tenant improvements could be issued without a zoning amendment or public hearing process. This was a 180 degree change from the previous decision communicated to the property owners. Is that correct? *I was assigned the project towards the end of February 2012. I let Josh Amoroso know of Cecilia Quick's determination on February 29, 2012.*
- Was there any discussion with anyone that the city needed to reinterpret the statute to allow the project to go forward in order to avoid the public hearing process and avoid public opposition thereto? If so, with whom and describe the nature of those conversations? *No*
- How did you communicate the new interpretation with Josh Amoroso? *By telephone*
- Is there any document in the city's file that demonstrates that the original decision was reversed? *Yes, Cecilia Quick's 3/2/12 email to city staff.*
- Was anything in writing ever provided to anyone, other than the building permit, that communicated that the decision had been reversed? *Yes, Cecilia Quick March2, 2012 email to city staff.*
- Josh Amoroso states in his declaration that he received a written communication from the City regarding the redetermination. Is it true that he received a written communication? If so, what form of written communication did he receive? *Cecilia Quick's March 2, 2012 email memo to city staff, forwarded to him in an email.*
- Who provided that written communication? *I provided that.*
- When was the written communication provided? *I forwarded Cecilia Quick's March 2, 2012 email to Josh Amoroso on March 7, 2012*
- Did you discuss the project, meet or talk directly with Josh Amoroso, Jeffrey Neustadt, Ed McGovern, Stanley Lo, Isaac Choy, Susan Lim, Portfolio Development Partners, Jack Matthews and/or John Luchessi at any time prior to February 29, 2012? If so, describe all conversations and when they occurred. *I did not have conversations with any of them.*
- Describe any and all communications including oral, written, emails or text messages, you had with Josh Amoroso, Jeffrey Neustadt, Ed McGovern, Stanley Lo, Isaac Choy, Susan Lim, Portfolio Development Partners, Jack Matthews and/or John Luchessi following February 29, 2012. *After February 29, 2012 I forwarded Cecilia Quick's memo to Josh Amaroso on March 7, 2012. I received an email requesting withdrawal of the code amendment from Josh Amaroso. Josh Amaroso forwarded a draft letter from Stanley Lo indicating what steps had been done to market the property and how the*

property was still being used. Stanley Lo also sent me a copy of the letter on March 12, 2012. No communication with anyone else on that list.

- What caused you to make a 180 degree change from the determination made by the City in the fall of 2011 that was communicated to the property owner? *In preparation of the neighborhood mtg, I had mtg with Cecilia Quick on the code amendment and applicability on the market use of the project site and the impact as it was considered city-wide.*
- Please describe your communications with Cecilia Quick regarding this issue. *I met with her to discuss potential code amendment.*
- What directions did you give Cecilia Quick? *I did not give her any direction, I consulted with her regarding the code amendment.*
- When did you discuss the project with Ms Quick? *I talked with her on various occasions after being assigned the project.*
- How could an opinion come about so quickly, in two days time? *We were discussing the code amendment when it was assigned to me at the end of February 2012.*
- It seems like an awful lot of research was done in two days time. Isn't it true that you had been working on the matter well before it was officially assigned to you on February 27, 2012? *It was not assigned on 2/27/12 although it was towards the later part of February. Julia Yeh had been assigned this project and she had been working with Stephen Scott and Ron Munekawa.*
- Please describe your communications with Stephen Scott regarding this issue. *When I was assigned the project, I discussed the code amendment in preparation for the neighborhood meeting. I told Stephen about* Cecilia Quick *decision on the market use. I told both Stephen and Ron what had occurred at the neighborhood meeting.*
- Please describe your communications with Jack Matthews regarding this issue. *I had no communication with him.*
- Please describe your communications with John Luchessi regarding this issue. *I had no communication with him.*
- Per the zoning code, is city staff allowed to determine the legality of a non-conforming use? *Staff is often called upon to interpret/apply the zoning code on properties in the city. That is often our job and is what occurred here.*
- Did the property owner, city council, or planning commission ever initiate a request for determination before this hearing? *No*
- A public hearing was held on February 29, 2012 at the King Center, the day the reinterpretation of the statute was apparently communicated to Josh Amoroso. The public hearing was ostensibly to discuss a "neighborhood market," and was part of the public hearing process required for a zoning amendment. Is that correct? *The February 29, 2012 meeting was a neighborhood mtg that is part of the pre-application process.*
- Since the reinterpretation of the statute rendered moot the application for zoning amendment that had been filed by the property owners, why didn't you advise the people at the King Center that a reinterpretation had been made? *I did advise the*

attendees that that had occurred. I was specific regarding the meeting with Cecilia Quick*.*

- At the King Center meeting, why did you compile a list for correspondence regarding developments with respect to the project, when you already knew that no further public process would be required by virtue of the reinterpretation of the statute? *It is standard practice to compile a list of meeting attendees.* Why did you never communicate to the neighborhood residents the purposed change in City's determination? *At the neighborhood meeting I told the attendees of the change in determination.*
- When considering the project and interpretation of the statut*e,* did you look at the provision regarding the intensification of use in determining whether the building permit could be issued? If not, why not? *I did not review the building permit.*
- When evaluating the project, what consideration did you give *t*o the fact that the site use had been changed to an office in 2011 in violation of 27.72.010(b) ("normal maintenance and repairs."). *It was not my understanding that the use had been changed.*
- Why did you determine that this change of use from market to dental/medical did not constitute evidence of intent to abandon? *I did not make that determination.*
- What evidence of intent to abandon would have been sufficient to demonstrate intent to abandon? *I think this is difficult and could be many things. It could have been opening of another use on the site. These could be evidence of that.*
- Prior to August 30, 2012, did anyone from the city address the issue of the affects a 24-hour convenience store would have in the surrounding neighborhood? *Not to my knowledge.*
- Had you at any time considered whether there would be any negative effects on the surrounding neighborhood? If so, what effects did you consider? *For the October 30, 2012 and November 15, 2012 Administrative Reports, I worked with staff on whether or not the use would be especially burdensome. Those contained the potential negative effects.*
- If you considered such effects, why didn't those effects have any bearing on your decision? *As it related to the determination of the non-conforming status, under the zoning code, these issues were not relative. Only under termination of use were they relative.*
- At any time, did you inquire of anyone in the City as to whether this decision should be through the normal public process to allow for public input? *I did not. The determination of a legal non-conforming use is a decision generally made at the staff level.*
- You had been informed at the King Center on February 29, 2012, that the residents were opposed to a 7-Eleven type market going in to the site, correct? *I recall the residents expressing what they wanted in a neighborhood market: organic produce. They also said what they did not want – a convenience store.*

- Yet, with this knowledge, you determined that the public should not be involved in the process? Why? *I did not determine that.*
- Were you aware at the time of the King Center meeting on February 29, 2012, that the property owner intended to put a 7-Eleven in the location? *No*
- If so, why did you let the property developers mislead the public by presenting what appeared to be a "neighbor" market like the prior Stangelini's deli? *I did not know.*
- If you were not aware that the intended tenant was 7-Eleven, when did you first become aware that it would be developed as a 7-Eleven? *I became aware when Stephen Scott told planning staff had reviewed the building permit that had been submitted by Portfolio Development Partners and that he would approve it.*
- Do you believe that the public should have been provided a public hearing process for this intensified use? *This was not provided for in the zoning code as legal nonconforming uses is done at staff level on general basis.*
- What would you do differently if you had a chance to handle this matter again? *I feel that I handled this appropriately.*
- Did you receive any consideration, financial or otherwise, that influenced your work on this project? *No*
- Did you receive, or were you offered by the City, any of the following sorts of incentives with respect to your work on the project: promises of job security, a promotion, an increase in pay grade, salary or title, extra time off, business trips, or any other perks? *No*
- Do you believe that this project was influenced by outside forces? If so, by whom and how did the influence manifest itself? *No*
- Were you under any threat, duress or pressure either internally by the City, or by any external forces, to assist in reinterpreting the statute in the manner in which you did? *No*

Questions and Answers of Stephen Scott

- When were you first involved with what is now known as the 7-Eleven project at 501 No San Mateo Drive? *Sometime in late 2010.*
- In the fall of 2011, you issued a letter to the then owners of the property, Susan Lin and Isaac Choy, advising them that the City had determined that non-conforming market use had been discontinued for a period of greater than 6 months, and therefore, under the statute the use of the property had to revert to conforming use, i.e., residential, and that you could see no basis to determination otherwise without an amendment to the zoning code, is that correct? *Yes*
- Who made the determination you communicated to Susan Lin and Isaac Choy? *I did.*
- With whom did you consult regarding this issue leading up to your issuance of the letter to Susan Lin and Isaac Choy? *Chief of Planning Ron Munekawa and Assistant City Attorney Gabrielle Whelan*
- What did you rely on in determining that the non-conforming use had been discontinued? *Basically, conversations with representatives of the project made it clear*

that the space was empty, it was on the market and we were getting phone calls about it. That provided the motive for what future uses could be.

- Sometime after your issuance of the letter, an application was made for an amendment to the zoning code. Who submitted this application? *Portfolio Development Partners*
- Were you assigned to work on the application for the zoning amendment? *No*
- If not, who was assigned to work on the application? *Julia Yeh, Associate Planner*
- At some point, Julia Yeh was assigned to work on the application, is that correct? *Yes*
- What was the nature of her work on the assignment? *She had the initial work on the application, set up the neighborhood meeting and worked with the applicant on this. Also worked with the applicant on revision of their application and revision of the text on what the code amendment might be.*
- From the date of the issuance of the letter to Susan Lin and Isaac Choy, through February 27, 2012, the date in the City's records that the matter was reassigned from Julia Yeh to Lisa Ring, did you have any discussions about the 501 No San Mateo Dr project with anyone else in the City. If so, identify who and provide the details of such communications. *Ron Munekawa and Lisa Ring – general discussion of the project.*
- From the date of the issuance of the letter to Susan Lin and Isaac Choy, through February 27, 2012, the date in the City's records that the matter was reassigned to Julia Yeh to Lisa Ring, did you have any discussions about the 501 No San Mateo Drive project with anyone else outside of City employees or workers. If so, identify who and provide the details of such communications. *The applicant, Josh Amoroso, Portfolio Development Partners*
- Describe all events that occurred with respect to the project between the date of the issuance of the letter to Susan Lin and Isaac Choy and February 27, 2012. *The discussion with PDP had to do with how to submit the application, what was involved, and the types of things they needed to put forward as documentation to support their request to change the code.*
- The matter was reassigned from Julia Yeh to Lisa Ring on or about February 27, 2012, correct? *Yes, it was toward the end of February, not necessarily the 27th, perhaps earlier.*
- Why was the matter reassigned? *Management of Julia's workload.*
- Prior to the "official transfer" of the matter to Lisa Ring, had Lisa Ring been involved in any way on the project? If so, describe the nature of her involvement. *She had not been involved.*
- If she was involved, why are there no public records to reflect the scope of her involvement? *Because she was not involved.*
- When you transferred the project to Lisa Ring, what discussions did you have with her regarding the project? *As with any transfer of any project from one planner to another, general background information is shared. This is a private entity proposing a code amendment. Background information was provided.*

- Did you inform her of the previous determination that a retail use was no longer permitted as the nonconforming use had been discontinued for a period of 6 months or more? *It is my recollection that I did.*
- In the course of this reassignment, did you have any communications with Cecilia Quick regarding the project? If so, describe the nature of those communications. *No.*
- What prompted the City to initiate reinterpretation of the statute? *I cannot say for certain.*
- You had many phone conversations with Portfolio Development Partners ("PDP"), predominantly with Josh Amoroso, and Jack Matthews and John Luchessi regarding the project. Please provide the details of those communications, including dates and content of such conversations. *I had a number of conversations with individuals you mentioned but I do not recollect the specifics of those conversations. Some involved other properties within the city.*
- Did you discuss the project, meet or talk directly or otherwise with Josh Amoroso, Jeffrey Neustadt, Ed McGovern, Stanley Lo, Isaac Choy, Susan Lin, PDP, Jack Matthews, and/or John Luchessi? If so, please provide the dates and details of those communications. *I recall having some type of communication with all of these individuals except Ed McGovern and Susan Lin. I don't recall the specific contents of any of those conversations.*
- Does the planning commission have meetings where the status of projects is discussed? *The only thing is that there is an item on every agenda for general communication where staff informs the Planning Commission of items coming before them or on items where the PC has requested information.*
- Two days after Lisa Ring was officially assigned to the matter, on February 29, 2012, a communication was made to Josh Amoroso that they had reevaluated the situation and reinterpreted the statute and that the City determined that the statute required an intent to abandon. Is that correct? *We would not necessarily agree that was two days before the 29th. It was some days before but I don't know the date.*
- Mr. Amoroso was further informed that because there appeared to be no evidence of intent to abandon, building permits for tenant improvements could be issued without a zoning amendment or public hearing process. This was a 180 degree change from the previous decision communicated to the property owners. Is that correct? *Yes*
- Was there any discussion with anyone that the city needed to reinterpret the statute to allow the project to go forward in order to avoid the public hearing process and avoid public opposition thereto? If so, with whom and describe the nature of those conversations? *There was not.*
- How was the new decision communicated to Josh Amoroso of PDP, in writing or orally? *Before hearing Lisa Ring's testimony, I did not know how.*
- Who provided the communication to Mr. Amoroso? *It would have been Lisa Ring as the project planner.*

- Is there any document in the city's file that reflects that the original decision was reversed, other than the issuance of the building permits? *The memo from CQ, I don't know of any other document.*
- Did you receive any consideration, financial or otherwise, that influenced this 180 degree change from the previous decision? *I did not.*

The Assistant City Attorney advised that the Planning Commission could ask questions of individuals present.

Planning Commission questions of the witnesses.

- Mr. Choy: Who is Chi-Hwa Shao? What was his involvement? *He was the previous owner, B Street Ventures, LLC.*
- Was he also involved in the discussions with Jack Matthew's Architects? *I don't know.*
- Ms. Ring: Elaborate on the nature of neighborhood meeting – seems there was a focus on what they wanted but zoning amendment had to do with extension of legal non-conforming uses with the city. *Response: The intent of the zoning amendment was to extend the length of time a legal nonconforming use could be vacant.*
    - Why was entire city not involved? Why only a small group? *Response: That was one reason I was talking with Cecilia Quick. It was in this discussion that the various sections of the code were reviewed.*
    - Why not expand this to city-wide? *Response: Discussion never went that far.* How did you "jive" both opinions – that of Ms. Quick and Ms. Whelan? *Response: We were still in early discussions. I was not aware of all the decisions that had been made by Ms. Whelan. My discussion with Ms. Quick was general.*

The Chair opened the Public Comment Period. The following individuals spoke: Richard Givens; Jeff Gilbert, San Mateo; Richard Smith, San Mateo; Peter Breining, San Mateo; Sean Johnston, San Mateo; Cindy Skelton, San Mateo; Steve Carlson, San Mateo; Emily Schliter, San Mateo; Stephanie Hamilton, San Mateo; Greg St. Clair, San Mateo; Mike d'Abra, San Mateo.

- We are being bullied. Why would a large corporation rely on the interpretation of the code by a temporary employee and not by the original person who made a determination. We will not be bullied by large corporations.
- I remind people that I was at the February neighborhood meeting, but apparently I was not there as the declaration that was given to you is different than what my recollection is. Feels that staff had information at the meeting that was not relayed to meeting attendees. I am shocked that the process would allow another planner to overrule the zoning administrator. It used to be that everyone stayed informed with changes in code interpretation(s). I hope you'll have robust discussions in the future that includes staff and when needed, the public. Promises were made that were not fulfilled.

- Involvement with Chi-Hwa Shao. I had proposed buying the property in 2010 but through communication with my realtor but was told to contact Jack Matthews. Seems a strange decision that so many people were told to contact Jack Matthews.
- I did some research on Portfolio Development Partners. I addressed Mr. Neustadt at the meeting and told him that we did not want a 7-Eleven. A conscious decision was made to move forward even though the neighbors made it clear that this was not welcome. This will probably go to court and I want to be a witness. We were not kept informed. I've been a realtor for 25 years. You don't put carpet in a building where you're going to have a market. You leave the floors open and market as is.
- I am a realtor in San Mateo and I take issue with the comments made about city employees. City employees do their best to make things right. Maybe 7-Eleven can agree to have some extra security, turn down the lights, whatever it takes to make the neighborhood more comfortable.

No one else wishing to speak, the Chair closed the public comment period.

The Assistant City Attorney confirmed that all the documents that should be in evidence: Written statements: Lisa Grote, Susan Loftus, Lisa Ring, Stephen Scott, Stanley Lo, Cecilia Quick, Josh Amoroso. Two declarations being discussed by Mr. Givens are inaudible on the DVD.

(Commission took a short break to resume at 11pm)

Chair reopened the meeting. The Neighborhood attorney was allowed to address the Commission.

Camas Steinmetz, Attorney for the San Mateo Heights Neighborhood Association.

- We dispute Cecilia Quick's tortured interpretation of the zoning code. Ms. Steinmetz reiterated the zoning code and challenged Mr. Givens interpretation of the code. The use of a market on the site had been abandoned with testimony from Mr. Choy indicating that they (the owners) wanted to market the property for medical/dental. The building permits do not grant a vested use as a market.

Stephen Jamieson, Attorney for 7-Eleven Corporation

- This hearing was supposed to be a hearing on a code section regarding a legal nonconforming use. Instead all I've heard is that 7-Eleven is not welcome in our neighborhood, etc. The rules don't change based upon the popularity of a business. It is not a special use. It is either legal or not; nonconforming or not. I've heard too much character assassination this evening – you have professional staff doing a good job. I respect the opinions of the neighbors on how they feel about 7-Eleven. There is only one issue that should be addressed tonight: is the use legal nonconforming or not? This is not about whether or not 7-Eleven is a popular tenant. . Please, follow the law. Look at the documents before you this evening. The declarations have not been read into the

record, but please read them. Look at the facts. Whether the use should be terminated is not before you tonight, only whether this use is legal nonconforming or not.

The Planning Commission Chair brought the meeting forward to the Commissioners. Lisa Grote provided information on some points that the Commission could discuss. 2 PowerPoint slides were displayed that provided the questions/issues for the Planning Commission to address.

The Assistant City Attorney advised that the Commission could just vote on whether they felt the use was legal nonconforming, with no discussion.

Planning Commission: We do need to opine on these comments/questions, we do need to be cognizant of the issues and the time.

The Assistant City Attorney offered the alternative to make a motion that simply stated whether it was a legal non-conforming use but to clearly state the rational so that the City Council has that before them.

Commission:

- I believe there are 5-6 questions for the Commission to discuss. *Staff: There are 6 points that were brought up by the neighborhood attorney, Camas Steinmetz*
- The Code allows us to make a recommendation to the City Council. The City Council is the decision-maker.
- We are non-lawyers being asked to make a decision. This is more than a legal decision, it is also a policy decision. We are not to be staff or lawyers, but community representatives. I think we need to express our concerns to the City Council.
- We should focus on the matter before us. We should defer other discussions to another time. Agendizing some of what was discussed tonight is a good idea. This is a complex and somewhat confusing issue. We do need a certain level of detail in order to provide our recommendation to the City Council.
- We should discuss each point.
- Let's look at the 5 questions before us and then discuss them.

Questions for discussion:

- Confusion with the words abandonment, discontinued. Abandonment does not come with a timeframe. It doesn't necessarily come with 6 months, can be a matter of weeks. Discontinuance has a timeframe.
- In this case I believe we have both discontinuance and abandonment. I believe there is evidence for both. I believe you can have one or the other.
- We cannot read in the intent of a word.

The Assistant City Attorney asked for a motion. The Planning Commission asked if it was better to have individual motions or to wait until all discussion was complete and then have one

motion. The Assistant City Attorney responded that waiting until completion of discussion and having one motion was fine.

- A nonconforming use is a limited right. This market became a nonconforming use in 1937, there has to be an end, which is why there is 6 months written here. So, that is one of the things that struck me about it, it is a right to continue a non-conforming use but it is deliberately limited by the community to prevent it being a permanent use and anyone engaging in that would certainly have some responsibility to recognize that.
- Spending a million dollars because of an email seems crazy.
- I only saw real estate listings for medical/dental. Appears that the use of a market had been discontinued. If it priced so high that there are no buyer/tenants, the market loses its' nonconforming use.
- The code was designed so that if there was no more need of the use, then the use goes away and is no longer legal.
- Removing everything from the building as well as adding carpet indicates to me that the use had been discontinued. I see that as a clear case of abandonment.
- Appears to be a clear intent, radical departure, with the marketing of the building as medical/dental. It also appears they gave up on the idea of a market.
- Actions of Dr's Choy and Lin clearly indicate abandonment of the use. These were real estate investors and bought the property for that reason. As such, they created a clean, 'vanilla shell' in order to market the building, they made the building look nice. You don't need a clean shell to market a property as prospective tenants come in and do their own tenant improvements.
- This legal nonconforming use has been around since 1937. If PDP and 7-Eleven is allowed to move forward it will incur an additional 30 years. At some point, the use should be discontinued. In this case, by the time Portfolio Development Partners and 7-Eleven came along, the use had been discontinued. Probably no one in 1937 ever thought something called a 7-Eleven would exist.
- I don't believe proof of abandonment is necessary. Improvements made inconsistent with a market use. I have yet to see a market with carpet.
- I believe that the two times changes were made to the structure resulted in the loss of the use. The structure has been altered – the roof trusses have been strengthened. Structures removed from the parking lot allow a different use for the parking lot.
- We allowed a garbage enclosure right behind a housing unit? *Staff: yes, the code didn't prevent it, there have been adjustments to the lighting to minimize the impact.* If the building code allows this, I'd like to put this on a list of follow-up items to review.
- There is an intensity of the use on the site with the added capacity of improvements to the site.
- The legal nonconforming use was lost when the owners expanded their options and reconfigured the site for a different type of use.

- The building permits allowed for an intensification of use. Lighting, garbage pick-up, etc., I believe the permits were illegal. Building permits allows construction activity and doesn't grant the right to occupy a building.
- Discussion of potential damages and potential profit to Portfolio Development Partners and 7-Eleven. I'm sure that Stangelini's Market never made the amount of money that Portfolio Development Partners and 7-Eleven will make off of this venture.
- I don't care what you call it, it is an extreme modification when compared to what was there before.
- Perhaps we could add convenience store vs corner deli to our list of future discussions.
- I believe we all concur that the legal nonconforming use status had been lost. We've seen the documents that have been sent to us.
- I think we should also recommend that the police department provide a more robust enforcement of vehicles at this site as there is more traffic, more deliveries. We should be ensuring the citizen's safety. Traffic at the corner cannot view the stop sign when delivery trucks are present. Public Works should be requested to view the situation and rectify it. *City Attorney: Public Works is going to be installing a sign regarding a prohibition of delivery parking in that area.*
- Relying on an email memorandum, that makes no definitive conclusion on the matter, and to buy property, enter into 30-year agreements and then make million-dollar improvements doesn't seem to make sense. More prudence seems to have been warranted.
- Our codes are adopted to protect the public; their health, safety, and welfare.
- There are a lot of troubling gaps in the process. What is in the larger public's interest? I recognize individual property rights, but when sacrificing the larger viability of the community, then we need to review the question.
- I have been troubled by the allegation that there was something corrupt in this process. In the years I've been on the PC, I've worked closely with staff and others and I've never had the slightest inkling that their actions were anything less than fully ethical and above the call of duty. There are deficiencies in the process. Regarding performance of city staff, it is insulting that someone would come before us and ask us to question staff on what they were compensated for their actions or changing their mind. That is upsetting.
- I have no feeling of any malfeasance on the part of city staff.
- The seller, the real estate broker, and the purchaser, may/may not have understood the restrictions that were on this property. This should have been researched prior to purchase. At one point it was conveyed that a market could not be put on the site.
- In reviewing the two opinions that were given by our city attorneys, I would have gone with the opinion given by our regular attorney and not the temporary one.
- I attended the neighborhood meeting spoken of but have no recollection of some of the points that were made by the neighbors although I believe there is an element of truth in what I heard tonight.

- I do not believe that 7-Eleven has been a good neighborhood in trying to make their entrance into the neighborhood easy.

Planning Commission requested guidance for the Assistant City Attorney on how to word the motion.

A motion was then made by Commissioner Massey:

> With respect to PA12-071, 501 No San Mateo Drive, I move that the Planning Commission recommended to the City Council that it determine that the 7-Eleven store at 501 No San Mateo Drive is not a continuation of the previous legal nonconforming use; based upon the evidence in the record that has been fully and completely reviewed by the Planning Commission.
>
> By action initiated by the Planning Commission (suggested by the Assistant City Attorney), added that the convenience store use is not a legal nonconforming use.
>
> Motion so amended.

Motion was seconded by Commissioner Hugg. Motion passes 5-0. This is a recommendation to the City Council. The date of the City Council meeting is scheduled for January 14, 2013. The time has yet to be determined.

A 2nd motion by Commissioner Moran:

> To agendize at a future meeting, a discussion of nonconforming use determinations and other elements of the city's process and its code that we have learned about through this process. Other elements for discussion would include the definition of markets, public noticing procedures, 24-hour uses which we would also recommend for City Council consideration – through a Study Session and not a Public Hearing. Also, zoning and building code provisions regarding garbage/recycling locations, and lighting. We recommend to the city council that a robust enforcement of parking and the delivery vehicles at this specific location be enforced. We need better knowledge of those parcels in the city that are currently considered legal non-conforming.

Motion 2nd by Commissioner Bonilla. Motion passed 5-0.

The Commission also noted that at the meeting of October 30, 2012, there was considerable discussion of the City's Zoning Code provisions for nonconforming uses and buildings. The Chief of Planning mentioned that the Council will be holding their goal setting session in February whereby some of these items may be established and then added to the Planning Work plan.

COMMUNICATIONS/ANNOUNCEMENTS

1. Communications from Staff: there is a full calendar for the Planning Commission through March-April 2013.
2. This is the last meeting for 2012.
3. Communications from the Commissioners: Maintenance of our notes regarding 501 No San Mateo Drive? Should we keep our files? *Assistant City Attorney: yes, in light of the possibility that there could be a public records request on this item.*

ADJOURNMENT

There being no further items before the Planning Commission, Chair Whitaker adjourned at 12:45 a.m. on Wednesday, December 19, 2012.