

**MINUTES  
PLANNING COMMISSION REGULAR MEETING  
August 2, 2011**

**1.0 CALL TO ORDER**

The Regular Meeting of the Planning Commission of the City of Highland was called to order at 6:00p.m. by Chairman Hamerly in the Donahue Council Chambers, 27215 Base Line, Highland, California.

Present:	Chairman	Randall Hamerly
	Vice Chairman	Trang Huynh
	Commissioners	John Gamboa
		Richard Haller
		Milton Sparks
		Michael Stoffel
		Michael Willhite

Absent: None

Staff Present: John Jaquess, Community Development Director  
Lawrence Mainez, City Planner  
Steven Rondina, Code Compliance Officer  
Brandy Littleton, Administrative Assistant I

**2.0 COMMUNITY INPUT**

There was none.

**3.0 CONSENT CALENDAR**

Commissioner Gamboa corrected Item #3.1 pertaining to Item #5.2. The vote was corrected to 6-1 with Commissioner Gamboa dissenting.

**A MOTION** was made by Commissioner Stoffel, seconded by Vice Chairman Huynh to approve the Consent Calendar, as amended, with Vice Chairman Huynh and Commissioner Willhite abstaining from Item #3.2. Motion carried 7-0.

3.1 Minutes of June 21, 2011, Regular Meeting.  
Approve the Minutes, as amended.

3.2 Minutes of July 5, 2011, Regular Meeting.  
Approve the Minutes, as submitted.

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- 3.3 Minutes of July 19, 2011, Regular Meeting.  
Approve the Minutes, as submitted.

#### 4.0 PUBLIC HEARINGS

- 4.1 Appeal (APP-011-001) of City's Staff decision for property located at 8047 Marilyn Avenue. APN: 0279-162-09. Appellant: Xam Thach. (Continued from the June 21, 2011, Regular Meeting.)

City Planner Mainez gave a description of the staff report.

Community Development Director Jaquess stated that nonconforming uses can be maintained but cannot participate in new construction. Staff feels they went beyond maintenance and now cannot grant them the right to reconstruct because it is not permitted.

Commissioner Willhite asked if this was a single family detached unit being used as a multiunit building. He then asked about the permit regarding any changes to the interior walls.

Community Development Director Jaquess explained during a post fire visit, it was discovered that they were in the process of converting the single family home into a series of apartments. They were advised that that zoning did not permit that.

Commissioner Willhite asked if the construction was going on without permits.

Community Development Director Jaquess answered yes.

City Planner Mainez stated the plans before the Commission were submitted to the City after the fire. The plans indicate that it is a single family residence, not multifamily.

Chairman Hamerly asked if, based on the applicant's claim, the Contractor saw a planning approval stamp and interpreted that to mean the plans were approved and had the ability to proceed.

City Planner Mainez stated that the applicant could probably address the communication, but understands that there was possibly a miscommunication between them and the Contractor, inconsistent with what the plan says. The plans did not indicate a whole reroof removal, It may have been suggested by the Contractor, in which they proceeded.

Chairman Hamerly stated he wanted to flesh out some question from the applicant about how the Contractor understood one set of circumstances

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because the plans had a planning approval stamp.

Code Compliance Officer Rondina stated the plans do not show for a new and raised foundation. The pictures show a new foundation and framing in the back that was not up to Code or done properly.

Chairman Hamerly stated he wanted to determine what someone would infer if someone had these plans and the Contractor said this was their scope of work. With the stamp saying approved, was there anything that would indicate the new construction was a part of the work or was it only as-built drawings.

Community Development Director Jaquess answered they were only drawing reflecting what they were authorized to do for new construction of roof repair.

Chairman Hamerly confirmed that the walls being framed were not in the drawings.

Code Compliance Officer Rondina stated that was accurate. The front façade was restuccoed without permits. The front was also covered with plywood.

Commissioner Huynh asked, referring to the permits dated March 25, 2011, what allowed them to tear off and reroof, would that mean the whole house.

Code Compliance Officer Rondina stated it allowed sheeting, not the framing.

Commissioner Huynh stated the structure framing of the front was supposedly untouched, only the rear where the plan shows new rafters. Commissioner Huynh asked when the fire assessment was done, was it possible that they did not know there might have been damage to the front when this plan was made.

Code Compliance Officer Rondina stated those issues were covered in a Special Inspection, done by the Building Official.

Commissioner Huynh confirmed that we were sure the front of the house fulfilled the structural requirements. There was no fire damage. Commissioner Huynh asked about the term, voluntary razing.

Community Development Director Jaquess explained the voluntary razing that occurred was work being done beyond what the permit authorized. What Staff authorized, was the maximum extent they could authorize reconstruction of a nonconforming use and still have it be considered maintenance of the structure.

Commissioner Stoffel asked if it was defined.

Community Development Director answered no, it was interpretation. The definition of maintenance is in the Code. The definition of what constitutes

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maintenance is subject to some interpretation.

Commissioner Huynh asked if they changed the look or the structure frame of the building after the roof was replaced.

Code Compliance Officer Rondina stated there was no roofing framing.

City Planner Mainez explained if they were to rebuild the roof, per the plans, there would be a slight change in the rear.

Commissioner Huynh asked, although the front was not authorized to be done, did it change the look of the building.

City Planner Mainez stated if the plans were done correctly, it should not have changed the look of the house.

Community Development Director Jaquess stated they could not answer the question directly because they did not see any of the plans they were proposing to do.

Commissioner Huynh asked what would happen to the back building.

City Planner Mainez answered if they had permits, they would be protected.

Commissioner Huynh asked if the front building had to be a commercial building.

City Planner Mainez stated that would be an extreme case to try to comply but they are not proposing that.

Commissioner Huynh stated he understands they did not have approval to put roof framing members on but asked what options did they have and what would the impact be.

Commissioner Haller stated this is a Business-Park zone. We want these nonconforming facilities to end their useful life when they can no longer be maintained, we do not want to allow for total rehabilitation. We have not allowed other to do it and we need to be consistent in how we apply this rule. This is supposed to be Business-Park zoning, not residential. It is supposed to transition to Business-Park which is the reason for the limitation on maintenance, and the purpose of the way the city Code was written.

Chairman Hamerly recalled discussions, at the Planning Commission and City Council level, regarding the limitations placed for a nonconforming use. Improving a nonconforming facility would disservice the implementation of the General Plan which is why Council determined they could maintain but not

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improve a nonconforming use.

Commissioner Stoffel asked about the differences in definition between maintaining and improving.

Community Development Director Jaquess reiterated it was up to interpretation. Generally, maintenance has been painting, repair plumbing, electrical, heating, and / or putting a roof, like new shingles, on a house. Because the roof was leaking, Staff allowed them to repair the leaky roof, with a gable format, over that portion of the house. He felt the interpretation of maintenance was generous, at that time, because Staff wanted to accommodate a problem.

Commissioner Stoffel asked if the other side of the roof leaked, would the City consider that maintaining or improving, if they wanted to fix it later.

Community Development Director Jaquess stated he would have to look at it on a case-by-case basis.

City Planner Mainez stated the Code book talks about maintenance and repairs but not improvements, unless they were talking about adding to a structure. Based on the Code, one could fix a leaking roof but cannot tear off an entire roof and build a second story. It depends on if they are extending the life or the use.

Commissioner Stoffel stated maintenance and repairs seems like it would extend the life.

Commissioner Haller stated it would allow them to use it for the expected useful life of the structure. A leaky roof could shorten the useful life of a structure. A typical building has some expectations of how long a roof would last and a leaky roof would prevent use of the area under the leak and could shorten the use of a life.

Commissioner Willhite explained how maintenance and improvements affect the effective years of a house.

Chairman Hamerly opened the Public Hearing and noted he had speaker slip.

City Planner Mainez stated Stella Alva was here but left because she was interested in a different public hearing item.

Michael Rider, Representative to the property owner and appellant, Xam Thach, explained that his client wants to open a rehabilitation permit. The property owner spent thousands of dollars on the property prior to the roof issue because after the disaster there was a Special Inspection. This was the property owner's opportunity to fix other things, unrelated to the fire. There was a

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misunderstanding regarding the permit between Hao Thach, the property owner's father, and Dale Everman. Based on the approved plans, the roof is different than the existing structure. From the plans and the permit, it is understandable how lay people, like his client, misunderstood that the City wanted to change this to what was on the approved plan. The Building Official said they wanted to match the existing. His clients thought that to mean to match the other two structures so they would all have the same roof. They wouldn't have spent thousands of dollars otherwise; they wanted to please the City and make it match. The pictures from Staff, himself, and the ones from his client shows it was not a matter of them hiding anything, the City came out at a time when they weren't calling for inspections and was in the middle of construction, which was misleading. What Staff characterized as pouring new slab was an issue involving potholes in the back. Staff did not go into the roof and crawl around during the Special Inspection. They did not see everything one would see when trying to reconstruct a roof. Miss Thach disagrees that the structure was voluntarily razed. As discussed with the Commissioners prior, there is no definition of voluntarily razed. It is impossible to know exactly what the intent of the City Council and Planning Commission intended to do there, it is almost meaningless to reasonable people, like his clients, because you don't know exactly what you can or cannot do. They thought they were following the permit, they weren't going to spend money on the house unless they had to fix it. It is a key term that is not defined. It doesn't seem to fit this situation which is a technical deviation from the permit which allowed some tear off and reroof. She was trying to make it so she could live there again. On the topic of the nonconforming use section of the Code; the aims of why the Code was amended in 2006 can still be met here if you allow my client to fix the roof and move back there. He explained why the aim of the statues will not be met anyways. Looking at the property in question, if it were demolished, that lot is substandard as far as a Business-Park or Industrial use. There will either be an incompatibility of use with the people who still have their legal nonconforming or it will be substandard in size lot that doesn't work in Business-Park. Even as a vacant lot, the City's goal cannot be accomplished. Similarly, the City has lost the ability to condemn the surrounding single family residences through eminent domain for lot assembly to make it into a viable Business-Park. As for safety and noise use, being close to the airport, is always an issue. However, his client can give an avigation easement, giving up her rights to complain about the airport. They did that in the City of Redlands. Miss Thach wants her single family residence back and is willing to do what is necessary, within reason to get her property back so she can live there. She is not an investor and will not be renting this structure to others. Mr. Rider believes they can do this because voluntarily razed is ill defined and they believe they were in the scope of their permit. The property owner is willing to go back to the previously existing roof, except for the leaking part. She is willing to work with the conditions with the Planning Commission to reinstate the permit.

Chairman Hamerly asked about the consistency between the work that was done

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and what was defined in the plans.

Mr. Rider explained that, subjectively, they thought they were doing it because they didn't want to spend money.

Chairman Hamerly explained that unless the work was specifically defined in their permit, it is additional activity.

Mr. Rider listed what the permit called for including the Special Inspection letter.

Community Development Director Jaquess stated he doesn't recall tearing down the roof into the house and reframing and putting in new slab.

Mr. Rider explained that because the plan showed a different roof, that's what they needed to do to make it right.

Chairman Hamerly explained that the roof is one thing, walls and foundation is another.

Mr. Rider stated they disagree with the assessment because there were potholes in which they fixed the existing foundation. If the Commission wants them to rebut item by item, Code Enforcement did not bring that up before. Some of the things they did related to the Special Inspection.

Chairman Hamerly asked if he could discuss the condition on the property where it is be converting to a multi-tenant occupant from a single family dwelling.

Mr. Rider stated that ceased when the fire occurred. It is not zoned for. A permit from the County had the right address and but wrong APN, and built for that.

Commissioner Haller inquired about the term pothole.

Miss Thach explained her idea of pothole and where they were in the house.

Commissioner Huynh asked since the designer did not put the Special Inspections on the plan, it was used as part of the permit.

Mr. Rider agreed.

Commissioner Huynh stated the Contractor followed that report in addition to other additions that was illegally done.

Mr. Rider explained that was Staff's contention.

Commissioner Huynh asked about the 1-A footnote on pg. A-2. He asked if they

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did that, finding and replacing the fire damage in the front of the house.

Mr. Rider explained they found additional damage from what the City found. The City characterized it as minor fire damage, being 25% of the value, but it was not as minor as the City thought.

Commissioner Gamboa asked why they did not go to the city when they found additional fire damage.

Mr. Rider thought it was due to it being beyond their knowledge. They also thought they were still within the scope of their permit.

Commissioner Willhite inquired if there was a Contractor for this project and who they were.

Mr. Rider answered Manh.

Commissioner Willhite clarified that the person who designed the plans was not the Contractor.

Mr. Rider stated the approved plans were done by Johnny Nuygen, who was also the Contractor.

Commissioner Willhite asked why when the Contractor designed the plans; he believed he could take the whole roof off, when he only asked for a portion, in the plans.

Mr. Rider stated Mr. Thach took off the roof, according to his understanding of the plans, to keep the costs down.

Commissioner Willhite asked for confirmation that the Contractor knew the whole roof was not supposed to come off, according to the plans the Contractor designed. Commissioner Willhite then asked about a letter from the City on December 6, 2010, in regards to prohibiting a new roof due to its zoning.

Mr. Rider explained their understanding was the approved plans said something else. Due to his client's unsophistication, she should not have to pay for the mistakes of others.

Chairman Hamerly asked if the Contractor was doing the work or not.

Mr. Rider answered the Contractor was doing the work.

Chairman Hamerly stated although his client is not sophisticated and unfamiliar with the process, the designer and Contractor, are professionals who are familiar

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with the process. Chairman Hamerly asked how the professionals misunderstood the letters, instructions, clarifications, and several meetings.

Mr. Rider answered they may not have understood. Even then, his client should not lose her property. If it were another zoning besides the legal nonconforming issue, they would be given an opportunity to fix it.

Commissioner Willhite asked if they had the opportunity, what would they do differently than what happened here.

Mr. Rider stated his uncertainty of that being true because it hasn't been approved by the Building Official. The issue was the roof was torn off and the director thought it was voluntarily razed and that was the end. There was a stop work notice but no list of corrections. They should be given an opportunity to bring the structure up to Code. They are willing to work towards bringing the property back to its previous state, minus the leaky roof, this is an opportunity to make it right. They want the same opportunity as someone who is not in a legal nonconforming situation if they went beyond the scope of the permit, which is to legalize it.

Chairman Hamerly stated they could not ignore the nonconforming use issue or the General Plan, it is the basis for all the decisions they make.

Mr. Rider stated the Commission could find that they did not voluntarily raze the property, they were trying to fix their property.

Chairman Hamerly explained that at this point, the work that has been done goes beyond what would reasonably be considered maintenance because of the extent of the removal. The scope of work goes beyond what would be permitted in the Code.

Mr. Rider explained that he doesn't think a lot of what Staff was saying was new.

Commissioner Gamboa expressed his confusion due to the representatives' discrepancies regarding who was doing the work, the father or the Contractor.

Mr. Rider explained that the Contractor was doing the work but the father was doing the roofing.

Commissioner Gamboa stated that it sounded like they have a problem with the Contractor, not the City. The Contractor should have stopped her father from removing the roof.

Mr. Rider stated this conduct doesn't meet the standard the director found that they voluntarily razed the roof because there is a lack of definition in the Code.

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Commissioner Stoffel asked Staff what happens if this is denied.

City Planner Mainez explained the applicant can appeal this to City Council within 10 day and the City Council will have the final say.

Community Development Director explained if the applicant appeals, or doesn't, and the Council opposes the Commissioner's action, they would have an obligation to remove the structure. The property would then have to be developed in concert with the zoning.

Commissioner Sparks asked if anyone was living on the property at the present time.

Mr. Rider answered no.

City Planner Mainez stated Staff notified them of the consequences if they continued with the roof removal. Staff held their hand through the process. In regards to the exhibit the attorney presented, there being a different roof configuration with the previous roof structure, he is unsure how relevant that is. The plans reflect existing and new.

Compliance Officer Rondina added the file the attorney reviewed, shows pictures showing the day of the fire, where the fire damage is and what was damaged. The fire department will peel back the ceiling past where the fire was to make sure there is no smoldering or fire damage. The fire did not leap from here to the other side of the building; it was contained in one portion of the building. The pictures show exposed roofing and framework throughout, which are passed the fire. The house is also converted into two places. It was completed into a duplex. Her father was living in the garage and the back workshop was being converted into another duplex, at the time. She was not living there.

Chairman Hamerly clarified the portions of the roof removed was not subject to the damage, discovered or evident, at the time the fire department peeled back the ceiling.

Code Compliance Officer Rondina stated that was correct.

Chairman Hamerly asked Staff if the primary point of contact was with the general Contractor.

City Planner Mainez stated the Planning Tech and the Building Technician were in contact with the Contractor, the dad, and Miss Thach.

Chairman Hamerly asked if Planning ever gave instructions to the owner or father without the presence of the General Contractor. If instructions were given,

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were they copied to the General Contractor.

City Planner Mainez indicated that the two people who would have had that contact was not present. He cannot answer that directly.

Chairman Hamerly stated the applicant's attorney suggested confusion in the instructions given. He wanted to know if the instructions were new or were they clarifying issues that have already been addressed and given to the General Contractor, the client just had questions.

City Planner Mainez recalled conversations between the Building Official and Mr. Thach concerning the roof. The Building Official would visit the City Planner's office on a number of occasions looking for solutions to Mr. Thach's request to fix drainage problems on the roof and the City Planner would reiterate the direction/policy from a previous action by the Planning Commission.. At that point, the Planning Tech communicated with Mr. Thach. They eventually met with Xam Thach and her dad, after the roof had been removed.

Commissioner Huynh asked besides not having approval for removing the roof framing, did it turn out the same way as before?

Community Development Director Jaquess indicated they have not done anything, yet.

Chairman Hamerly asked if these pictures were showing the scratch coat.

Code Compliance Officer Rondina indicated it was not scratch, it was new stucco, wiring, and tarp paper.

Commissioner Huynh asked if that was part of the Special Inspection.

Community Development Director Jaquess answered no, it was not.

Code Compliance Officer Rondina stated the pictures indicate new framing in the back. The potholes were filled and the foundation was now higher than the framing. The concrete was poured over the wood framing.

Chairman Hamerly asked if this installation would comply with Code.

Code Compliance Officer Rondina answered no. He placed a stop work order on the house after seeing the type of work and construction being conducted at that time.

Chairman Hamerly asked if that work was being done by Mr. Nuygen.

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Code Compliance Officer Rondina answered he reported to the house for a labor dispute with several workers.

Commissioner Huynh asked if the slab was inside or outside the house.  
Code Compliance Officer Rondina answered inside.

Commissioner Gamboa asked if the stucco would be done before or after the roof was put on.

Code Compliance Officer Rondina said he would not do that. He added that before you stucco, you have to have inspections. There are inspections in the process of the building.

Commissioner Willhite asked about the plumbing.

Code Compliance Officer Rondina explained he was supposed to have 2 bathrooms but there was not one where a bathroom was supposed to be located.

Chairman Hamerly asked if someone were stuccoing over a shear wall, what would the remedy be to get a final rough framing inspection.

Commissioner Huynh stated they would have to remove the stucco.

Code Enforcement Officer Rondina agreed.

Chairman Hamerly clarified that the work done, with or without a permit, would have to be removed to inspect it properly.

Code Enforcement Officer Rondina agreed and explained the discretion of the Building Official regarding how to inspect it at that point.

City Planner Mainez explained the issue regarding the lack of definition for voluntary razed. He states the Code allows the director to have discretion on this ordinance. Staff reviewed this with the City Attorney, and he agreed. City Planner Mainez also stated the General Plan is a long term plan but is not up for discussion. Regarding an avigation easement (related to Airport Aviation Impacts), they may have looked at that if it were a permitted use, but this type of use is not something we want there long term. There would be no point in an avigation easement.

Mr. Rider stated his client wanted to express her involvement dealing with Staff and what she felt was involved.

Miss Thach stated she spoke with Dale Everman and was asking for help. He was working with them for updating the Codes. When she asked when they could

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fix the roof, Dale replied she needed to finish their updating Codes. After doing that, she called Dale Everman, leaving a message, letting him know everything was finished. She met with him a week later, letting him know it was all updated, showing him the planning sheet paper. They looked at and discussed the plans. He came to the property, regarding the roof. Looking inside the roof, he said it was not doing good. They asked him if they could build their roof and Dale said not yet, he needed to talk to his supervisor. A week later she came into City Hall to show Dale the plans of the roof. He asked about the updating Code first, circling things that needed to be moved. When they went back to the roof she asked if it was ok, he said we can work with the roof. She asked if it was the whole roof and he answered yes, we can reroof whole roof. She asked for it in writing but a lady stated he could not write anything. Unsure if she could reroof, said claims he said don't worry, we can get this out of the way. Although she had no evidence, she was happy to get a roof. Her father called her later telling her they had to stop construction. Although her dad did not understand that it was partial, in her understanding it was the whole roof. She just needed the paper, which her dad went to pick up. Misunderstanding, her dad pulled off the whole roof himself, to cut down the costs.

Chairman Hamerly asked when she stated she was updating the Codes, did it mean she was correcting the items from the Inspection report and going through the Code issues.

Miss Thach answered yes.

Chairman Hamerly asked when she said reroof, was her understanding of it to remove the outer layer, the framing, or what portion of it.

Miss Thach states she meant the whole roof. After talking to Dale, asking for it in writing, everyday the answer was different.

Chairman Hamerly clarified the difference of replacing a roof and reroofing and how it applies to maintaining and modifying. He was asking if the term she was using was the same as her understanding of it.

Miss Thach stated she wasn't good at this but when the fire happened, it happened in the middle. They approved the back because of the leak but the fire wasn't there. Miss Thach claimed when she spoke with Dale, he said they could work with that and she thought that meant the whole roof and he said yes. She has no evidence though.

Commissioner Huynh asked what happened to the Contractor.

Miss Thach stated he did part of the work with planning but he charged too much to remove the roof. Her dad removed it with cheap labor, people from Home

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Depot, without asking the Contractor to look at it. The Contractor said they would be on their own. The Contractor helped a little but he did not help take the roof off, her dad did it.

Chairman Hamerly asked if the work done in the pictures was not done by the Contractor.

Miss Thach answered no.

Mr. Thach stated he saw that the plan was approved and started to build. His roof was one way and when they said the new one was approved. Now he must take the E-roof out.

Commissioner Huynh asked if the condition of the roof before was different than what it showed on the plan.

Mr. Thach answered yes. There have been 4 different roofs since the beginning of its life.

Chairman Hamerly clarified that the roof was no longer there.

City Planner Mainez stated that was correct.

Mr. Thach stated Dale went to the roof before he approved the plan. He was told to draw up new plans and they were approved.

Chairman Hamerly asked for confirmation that the existing roof had an E.

Mr. Thach explained the different parts of the roof.

Commissioner Stoffel asked if there were 4 different sections of the old roof and he couldn't build on top of the old roof.

Miss Thach explained that the roof has been built many times for many years and is a grandfather home. There are different diagrams making up the roof. Her dad wanted it to look like a roof. There would still be leakage if they only fixed one side.

Community Development Director Jaquess stated the focus seems to be only on the roof. There are other factors leading to Staff deeming the house as razed. A third of the house had been cut down, reframed, new ceiling joints, and because of all of that in total, it was Staff's conclusion that they could not issue a permit because it exceeded maintenance at that point. If it was just the roof, they still would have probably come to the same conclusion, but it is not just the roofing issue.

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Commissioner Huynh asked in regards to the addition, is there an option that any work that was done without permits or approval or inspection, be removed, and return the roof to its original structure. He understands all the violations, but we also asked them to put in new windows and fix things to enhance the building. Community Development Director Jaquess stated he did not recall the letter suggesting they had to put in new windows. They had to take windows out in the garage, but no requirements for new windows.

Commissioner Huynh asked what the impact would be, despite their mistakes and did not follow the requirements, if we allowed them, with certain conditions, to do it. They might decide that spending more money is not worth it or they could spend more money to bring it back to the original structure.

Chairman Hamerly stated if the front part is removed because it is nonconforming, the option he is considering is renovating the 2 existing structures that are not intended or permitted for residential occupancy. That would be modifying and improving a nonconforming use.

Commissioner Huynh stated that we gave them a permit to reroof the house. The material used to reroof can extend the life of the house too. They still have to fix the Inspection report due to fire damage, but they did it because of fire, not on their own. This is still a livable structure, it is not unsafe or red tagged. Commissioner Huynh discussed working with them on the design of the roof to create a win-win situation. They would still have to endure additional costs but he would rather leave it up to the property owner to make that decision. If it weren't for the fire, they wouldn't know anything about this and there would be illegal occupancy. Looking at the packets, they got permits and had receipts, but they ran into problems along the line. They should entertain the option to allow them to take the structure back to its original state and see how far they can go, if they decide to spend more money on it.

Commissioner Stoffel agreed with Commissioner Huynh.

Community Development Director Jaquess stated the direction Commissioner Huynh is proposing is a significant change in policy interpretation of how to treat a nonconforming use, which does have broader implications than just this property.

Chairman Hamerly stated there are certain design issues where Planning Commission has given broad discretion to make objective and subjective decisions. Interpreting the General Plan is something they aren't given privy to. They have to decide if it's conforming, permitted, and entitled by right of zone according to the Code. If it is prohibited or it violates, they have to make an effort to follow the Code and must be consistent interpreting it throughout the city. The discretionary body is the City Council. They make the final call and can grant

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leniency. They are the final body of appeal for any decisions we make.

Commissioner Huynh stated he agrees but sees the big picture. There are 2 structures. We took care of the front one but the back one is still legal and nonconforming.

Chairman Hamerly questioned if it was legal nonconforming because it sounds like there were unpermitted improvements. It doesn't look to be a storage unit and a garage. The other rooms added makes it look to be headed to be an occupied structure.

Commissioner Huynh states the zoning is for the whole lot. There is still a structure that is not fire damaged and is recognized as legal nonconforming. Commissioner Huynh asked, despite the changed roofing structure and illegal construction additions, if the problem is solved. There is an opportunity to make it work, they will just have to pay for it. The Council may have the final policy, but this body, here, makes the best judgments based on facts. He thinks there should be an option.

Commissioner Gamboa stated if it was just the roof, he might consider letting them rebuild the roof but with all the other violations, he cannot approve this.

Commissioner Willhite agreed. If we allow them to finish the house they are going to end up with a brand new house which is against the intent of business plan and it's definitely not maintenance. They had a Contractor, approved plans, and permits, they chose not to follow the permit and the plans. They have numerous correspondences from the City telling them they cannot do this. For the plans to say one thing and to have him say they were drawn wrong, we are not getting the whole story, but whatever happened didn't happen properly and they did not follow the rules and regulations, they ignored building and safety and planning, and that shouldn't be rewarded.

Commissioner Haller stated they are not in a position to waive the requirements of the City Code. The Code is clear and we have had other discussions on other properties where we did not allow a waiver of the Code. The drawings do not show a total roof replacement like what was being proposed in the other improvements. Had those improvements been shown on the plans, the City would have denied it. They did initially show it in the plans which was denied in the December 6<sup>th</sup> letter. We are sympathetic to an emotional argument, we don't want someone to lose their home but it's their job to interpret and apply the City Code to every situation and they should, in this case, support Staff's decision to conclude that it was voluntarily razed by the appellant. We have denied these types of requests in the past and it is appropriate to deny this appeal as well.

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**A MOTION** was made by Commissioner Gamboa, seconded by Commissioner Haller to uphold the Community Development Director's denial of a Rehabilitation Permit by approving the following Resolution:

- 1) Resolution No. 11-006, Denying the request to reconstruct a Single-family Detached Residential Unit in the City's Business-Park (BP) Zoning District in accordance with the City's Land Use and Development Code Section 16.08.150 (F),(1), Nonconforming Parcels, Uses and Structures.

Motion carried 5-2 with Commissioner Stoffel and Vice Chairman Huynh dissenting.

- 4.2 Environmental Review (CEQA) Clearance for the Mitigated Negative Declaration for the 5<sup>th</sup> Street Widening and Improvement Project Application, (Mitigated Negative Declaration) (ENV 008-016).

**A MOTION** was made by Commissioner Haller, seconded by Commissioner Willhite to continue this Item to the August 16, 2011, Public Hearing. Motion carried 7-0.

## 5.0 LEGISLATIVE

## 6.0 ANNOUNCEMENTS

Community Development Director Jaquess explained the Items tentatively scheduled for the August 16, 2011, Regular Meeting.

## 7.0 ADJOURN

There being no further business, Chairman Hamerly declared the Meeting adjourned at 8:11 p.m.

Submitted by:

Approved by:

  
\_\_\_\_\_  
Brandy Littleton, Administrative Assistant I

  
\_\_\_\_\_  
Randall Hamerly, Chairman Planning Commission

PC 08-02-2011