

City Manager Falk noted Ms. Feehan was present for any questions and recommended adoption of staff recommendations.

Both public hearings Items 9A.1 and 9A.2. were opened.

Public Comments:

Larry Blodgett, Chamber of Commerce, questioned the residential and commercial range per parcel.

Ms. Feehan said the residential range was \$10.92 to \$98 and was dependent upon the number of parcels within each zone. For the commercial district, the range was \$120-\$5,282. She did not know what the average commercial charge was, and confirmed with Mr. Blodgett it was a per year assessment.

Vice Mayor Federighi confirmed the assessments did not nearly cover the costs. Ms. Feehan said the City subsidizes about up to \$250,000 and this increased slightly each year.

Council Member Tatzin questioned whether the residential area covered its costs, and Ms. Feehan said it does and there was a reserve for maintenance for street lights.

There was no further public comment, and both public hearings were closed.

*ACTION: It was M/S/C (Tatzin/Anderson) to Adopt Resolution 2006-019 confirming the Diagram and Assessment for Assessment District 1979-1, the Core Area Landscaping and Lighting District, for 2006-2007. Vote: 5-0.*

*ACTION: It was M/S/C (Tatzin/Anderson) to Adopt Resolution 2006-020 confirming the Diagram and Assessment for Assessment District 1979-2, the Residential Lighting District, for 2006-2007. Vote: 5-0.*

**B. Greg Wolff, Senior Planner**

**Appeal of the Planning Commission's approval of HDP18-05 Ward-Young Architects (applicants) Paul & Alison Cocotis (owners): Request for Hillside Development Permit for a single family residence located on a vacant lot at 11 Hawk Canyon Place. APN 238-190-002**

Recommendation: Review the attached materials, find the proposed trees will be viable and will screen the proposed residence and approve the project with the newly proposed landscape screening.

Senior Planner Greg Wolff gave the staff report, history of the project appeal, said the first hearing was held May 8, 2006 where material was presented relating to size, visibility, and at the meeting the applicant proposed to install significantly more mature landscaping to mitigate off sight visual impacts that would occur from development of the subject house. Given the nature of the proposal to install such large oak trees, it was the Council's request that additional information be submitted by the applicant, that information be reviewed by the City's landscape consultant and the matter be brought back at this meeting.

Materials have been submitted by the applicant. The supplier of the trees has submitted a letter as well as the installer of the trees, Traverso Tree Service has submitted a letter who all suggest that the trees are uniquely situated for transplant at such large size. The City's landscape consultant reviewed the materials and concluded the likelihood for survival was high because of the special treatment provided to the trees and transplanting methods. Therefore, staff was recommending the Council find that the trees would be viable and would adequately screen the proposed residence and approve the project as proposed with the new landscape mitigation.

Mayor Samson disclosed that last week he met with the applicant, reviewed the model and the process of the tree installation and transplant. He also asked the applicant if he would consider entering into a condition of approval that they be willing to provide additional landscaping either if the trees do not survive, or if the trees do survive, in the city's judgment, do not constitute adequate landscaping after the project is constructed, at an expense not to exceed a certain amount.

Council Member Tatzin asked of the City Attorney, assuming the Council agrees the additional mitigation proposed is acceptable, would this then be a denial of the appeal or approval of the appeal as a result of the de novo hearing when the project was approved with different conditions than what the Planning Commission approved? Ms. Subramanian said it would be the latter.

Council Member Anduri asked what requirements must be met for an exception to permit development within a Class II Ridgeline setback. Mr. Wolff said the Council would need make either of two findings. One option is to find that, otherwise, there would be an economic taking and therefore, the Council would approve the project to remedy that, although the subject development would not be necessary to approve something of this scale to make that happen. The other alternative is that the project strictly meets with the findings necessary to approve a Hillside Development Permit as set forth in sections 2067 and 2070.

Council Member Anduri asked if there was an alternative outside the Class II ridgeline setback that the Council could not then approve development in the setback. Mr. Wolff said that in this case the only feasible building site was on the proposed pad, within the setback. Given the steep slopes and constraints of the lot, the focus has been on an appropriate development sited on the top as far away from the top of the slope as possible and screened as much as possible by the existing mass of trees.

David Bowie, the applicant's attorney, said at the previous meeting the Council reviewed the previous approval of the Design Review and Planning Commissions, they presented extensive materials in rebuttal, said they proposed to do a special landscape plan with fully mature trees to substantially screen the structure. He discussed the use of similar trees by Pixar in Emeryville, said they would be approximately \$6,000 per tree plus planting, and was concerned with the open ended condition suggested by Mayor Samson this evening, which might require putting additional trees in place.

Mayor Samson noted the proposed condition would have both a time cap and cost cap. Mr. Bowie said, however, if there was to be a requirement for additional planting, it would be fair that the planting not be the same type of tree but something much smaller and more traditional which could grow over a period of time.

Mr. Bowie said the lot was an existing lot of record, a lot which has a previously graded access driveway and flat pad in place and the requirements and findings you need to make are really somewhat different for that particular situation. He said the council must make a finding that each structure is substantially concealed when viewed from lower elevations from publicly owned property. He felt this has been met.

Also, the Council should find that the developer has used site planning techniques to the extent feasible to preserve hillsides, knolls and ridgelines, as this is being done. Lastly, adequate emergency vehicle access is present and they have preserved open space and uncluttered topography, and said this project would consume only 2% of the available land area. They are required to minimize loss of privacy to surrounding residents, and the home is about 2,000 feet away from any viewing area and not close to any affected homeowner. And, there is no significant visual impact from lower elevations.

Vice Mayor Federighi asked how many mature trees were proposed, and Mr. Bowie said there would be 6 trees and their location has been sited in consultation with the landscape architect.

Council Member Tatzin questioned and confirmed with Mr. Wolff that when the Council approves other Design Review applications on existing lots of record when there is a landscape plan in place, there is typically a landscape maintenance agreement which empowers the city to require the applicant to put it back into place if the landscaping is not maintained and does not survive. He asked if Mr. Bowie was requesting the City to waive its standard condition. Mr. Bowie said they could have proposed smaller trees which would eventually accomplish coverage. However, they were incurring significant expense and would not be bounded in a situation to repeat the extent of landscaping at a later time, but doing what was required as a standard condition.

Paul Cocotis, property owner, said they want to do anything they can to make the house as invisible as possible, said they will guarantee the trees would grow to the extent of the landscape maintenance plan. However, Mayor Samson's proposal seemed to require the revisiting of those 6 trees in 5 years to check for visibility and the potential for additional planting. Council Member Tatzin agreed, but Mr. Bowie was indicating something different. Mayor Samson confirmed that if any of the mature trees died, they would be replaced with mature trees and Mr. Cocotis agreed.

Mayor Samson said, assuming the mature trees were established and maintained or if they need to be replaced, could the City require the applicant to put in additional landscaping at a cost not to exceed something, for some period of time up to five years if the existing mature trees do not constitute adequate screening.

Council Member Anduri questioned whether Mr. Bowie was attempting to distinguish the project from a subdivision by talking about it being a lot of record. Mr. Bowie referred to Section 6-2070 that calls for the findings which are required for approval of development on existing lots of record in the hillside overlay district. Mr. Bowie agreed that the fact that there was a pad there was irrelevant to which the section applies; however, the point he was making was that this was really the only feasible building site and it is already an existing pad with an existing driveway. So, they were trying to minimize grading and disruption of hillsides, as the regulations require, and to do that would be to use a feature that already exists rather than attempt to expose some other spot on the hillside which would be more visible. He pointed out also that the fact that it is a level, flat lot and limited to only 15 feet in height and because of the viewing angles from off

site, he believes they have a situation where the home cannot be seen at all or within 2,000 feet away.

Council Member Anderson said he appreciated the efforts of the owner and applicant. He was concerned about the depths of soil, acknowledged tests on the quality of the soil, testimony about it working in terms of the trees not causing instability of the slope. However, there was minimum subsurface investigation and asked the actual depth of the soil where the proposed trees would be planted.

Paul Cocotis said they have done borings, the soil on the east side was 8-10 feet, the soil on the west side varies from 2-8 or 10 feet deep as well. They did not do enough borings to do a complete soil profile analysis of the west side; however, it is very feasible to plant the trees in a rock socket that is of the right size with proper drainage, which was contained in the detail provided.

John Traverso, consulting arborist, said trees require a soil depth of probably less than 3 feet and said most oak trees grow in the top 18-24 inches typically, and need to be shallow where the oxygen and nutrients are. He looked on the soil profile, it ranges from clay loam to sandy loam down to 3 feet plus, which he felt was a good growing medium for oak trees.

Council Member Anderson said the detail from Sutton Landscape shows to put the trees into the native existing slope to plant the trees. He questioned when going down that deep, was there rock or remaining soil. Mr. Traverso said if you were to go from the center of the tree down, it would be about 2 feet deep. The cut extends out and it is a slope, so at the edge it will be much deeper. It will be shallow on one side and deeper on the other side. The center of the tree will be native soil at a 2-3 feet bench cut. He said the root balls were very shallow at about 24 inches.

Paul Cocotis said the shallowest part found was where the house was. He said their theory was that the top of the hill was graded off at some point in time and pushed over the eastern side. He showed the Council where borings were done and asked about where the Council's concerns were specifically. Council Member Anderson felt that it most likely was not an issue because there was a guarantee from the applicant they would live or they would be replaced, but he did not understand that if the root ball itself was 2 feet or so in depth and a hole dug was 8 foot around, and you dig down so the root ball at least was at grade, it would be a distance, and you might be sitting on rock. Mr. Cocotis agreed they might be in a rock pouch, but this was okay. They were assuming the bottom of the hole was going to be rock, it would not drain, so that's what the drainage pipes were for.

Mr. Traverso agreed that the trees should not sit in water and do not know for certain as to whether the drain was actually needed or not, but it is specified in case it is. He also specified they do lateral trenches outside the pit so that the roots can extend outwardly and not sitting in a pail.

Council Member Tatzin said from Mr. Traverso's experience, what was the likelihood that the trees would survive over the long term. Mr. Traverso said Specialty Oaks have been around a long time, are well known for the way they grow and transplant trees, said they are grown in a mesh container so the roots grow through the mesh and then the mesh prunes the roots as they grow out so they keep putting out new roots inside the mesh responding to the pruning. So, there is a high percentage of success due to the added roots once the tree is transplanted.

Council Member Tatzin questioned what the likelihood of the tree surviving 5 years in the future. Mr. Traverso said they are growing on another part of the site and in his opinion, huge holes will be dug with drainage and feels they would not have a problem. He confirmed with Council that he has seen similar examples and the trees proposed here had a very, very high likelihood of survival, at 98%. The only way the trees might fail is if they don't keep the root ball moist until it roots in.

Council Member Anduri felt there was a distinct pattern of oak growth on hillsides, and questioned whether there was a reason for oaks not to be growing in the proposed open area. Mr. Traverso said they tend to grow in groves and winds have probably laid down seed there. He confirmed that once established, there should be no reason for them not to flourish in the proposed area and he had high confidence they would survive with proper maintenance.

Council Member Anduri referred to the model and confirmed it had the six proposed trees planted which were to scale. He questioned whether Mr. Bowie believed the visibility standard decreased the further one gets from the structure, and Mr. Bowie said not necessarily, but the language talks in terms of substantially concealed and obviously the further one is away from a particular viewing object, the smaller that object appears and the less it takes to conceal it, regardless if it is not concealed. He also said there was really nothing you could do in terms of the size of the structure that makes any qualitative difference, which was the finding that was made by Design Review and Planning Commission.

Mr. Bowie felt they have met the standard of what the findings are required to be, which is whether or not this is a project that is substantially concealed from lower public viewing elevations. Council Member Anduri said if the lot were a 1-acre lot on the top of the knoll instead of 5 acres, would Mr. Bowie feel it was substantially concealed? He questioned what the acreage has to do with whether it is concealed or not.

Mr. Bowie said the size of the acreage probably does not, but it has other affects in terms of what is an economically viable project to build and it also has the effect in terms of another finding which is whether or not this is a project that substantially preserves effectively open space. He felt that in this instance it does because the developed portion of the site was only 2% of the overall size of the lot.

The public hearing was opened.

#### Public Comments:

ROBIN PICARD, PO Box 1098, said his main concern is the large size of the structure on a ridgeline or hilltop, said he spoke at the previous meeting, felt that part of the general plan calls for maintaining the appearance of ridgelines and hilltops, said he would hate to see the precedent set that large houses can be built as long as there were trees to provide concealment, and agrees much of the surrounding area was open space which makes such a large structure more visible and all the more apparent.

Council Member Tatzin said in the City's ordinance they do differentiate between subdivisions and between existing lots of record. On existing lots, we have to allow some development by law or it is a government taking of private property. The ordinance calls for the development to be substantially concealed by existing or new vegetation. For subdivisions, we are approving new lots and concealment must be by existing vegetation. Mr. Picard thanked Council Member Tatzin for the distinction, but wanted to continue to voice concerns over the other issues.

CLIFF TONG, 9 Dianne Court, Burtonvalley.com, said his questions have been addressed during discussion of the studies, said his general impression was that for the detail, a lot of it seemed curiously vague and not specific to the actual location. For instance, McCarthy Tree Specialty letter, paragraph 4, recommends some preliminary excavation trials to determine the best planting locations to give maximum screening protection, which seems generic given there are 6 trees that have to be located in a very specific place, potentially in a hole or a rut in rock. He felt it was good to have expert opinions, said the soil and plant laboratory refer to soil samples they took to a depth of 12 to 30 inches, and if 6 trees must be located and drilled in convenient locations, we should know that those specific spots would provide the potential for them to be planted and thrive. Regarding guarantee of the work, there are expert opinions, and hoped that a bond be posted to guarantee this would work. He also asked that in case it does not work, the pictures taken by Glenda Warmouth compare 4,000 versus 2,000 square feet, and there is a substantial difference between the Craftsman 2,000 and the existing design, and felt this should also be further explored.

Council Member Anduri read twice Section 6-2048 of the hillside ordinance regarding off-site visibility into the record, which indicated existing vegetation or terrain must be used to the extent feasible. Ms. Subramanian clarified that there are findings that are required by Section 2067 and 2070 that in addition, there is Section 2048, which specifically states that “within 100 feet of a restricted ridgeline area or where an exception is granted to allow development within a ridgeline setback, each structure shall be substantially concealed by existing vegetation or terrain to the extent feasible when viewed from lower elevations from publicly owned property including freeways, roadways, open space, parks and trails.” It states further that “the requirements of this section are intended to protect views of the open and highly visible portions of the scenic hillsides and ridgelines so that they appear essentially undeveloped as viewed from below the dwelling.” She felt this section in addition does apply; that it is an addition to the findings that are required pursuant to Section 2067 and 2070.

Mayor Samson said the exact language was “substantially concealed by existing vegetation or terrain to the extent feasible.” Vice Mayor Federighi felt this could still be somewhat ambiguous where in this instance, the house is set back and nestled into the existing vegetation and felt the situation was difficult.

Mr. Bowie said the only difference he noted in the language from the 2048 was and 2070 was the reference to existing vegetation; otherwise the language is exactly identical. The distinction is that in Class I Ridgeline setback areas, you have to rely upon existing vegetation if you’re going to find an exception. In Class II, you don’t have to rely only upon existing vegetation; you can use vegetation as a part of your landscape plan, which is the distinction.

Council Member Tatzin said this question was asked of staff last week and it the answer he got was that it could be existing or new vegetation. Council Member Anduri was quoting another section which may make his statement incorrect, which was the current discussion. Mr. Bowie felt they were dealing with the most directly applicable statute which is the pre-existing lots of record and that is 2070, which does not have a prohibition against adding landscaping for this purpose. We also have a situation where the home itself has been pushed up against the oak woodlands, so in terms of existing natural vegetation, they have also substantially concealed it. He felt Tim Ward has come up with a design that incorporates features that will make the home virtually invisible especially with a viewing distance of 2,000 feet. He also said they were not trying to create an ornamental garden, but adding the same materials that exists on site, so it would not look artificial. He further discussed the history of the approved lot of record, existing

features, review by the Design Review Commission and Planning Commission, and unique circumstances that warrant approval of the project.

Mayor Samson said that if the Council were to determine under Section 2048 that the project was not substantially concealed by existing vegetation, could we then make a determination to allow the project to move forward under Section 2070 that allows for screening by new vegetation since it was an existing lot of record. Mr. Bowie felt Section 2070 should be applied because it was most directly on point to address the situation. If the Council found Section 2048 applied, he felt it would be more of an umbrella statute because you would go from the general to the specific and this was the specific that directly applies to the circumstance and that is the base on which the Council makes its findings.

Ms. Subramanian said there is no reference to existing or new vegetation in Section 2070. It simply states "substantially concealed using the viewing evaluation map." It is when you go back to section 2048 that talks about the off-site visibility which she felt was more specific and specifically references existing vegetation. Mr. Bowie felt there was another ordinance that addresses Class II ridgelines, which is not limited to existing vegetation.

Council Member Anduri said that if the specific overrules the general, then the applicable ordinance in Section 2048 deals with property that is within a Class II Ridgeline setback. Mr. Bowie would be right if the property were on a hillside, but not within a ridgeline setback. Mr. Bowie felt it was same exact language.

The public hearing was closed.

Ms. Subramanian felt that the general findings in Section 2070 do not specify existing or new vegetation; however, she felt the more specific language of Section 2048 is clear that it is "existing", but it also says to "the extent feasible". So, this being the caveat, if the Council did find it was substantially concealed to the extent feasible, then it would be in compliance with Section 2048 and the Council would be able to make the findings of Section 2070. She confirmed both sections are being reviewed within 100 feet of a restricted ridgeline area and the property was within a Class II.

Council Member Anduri said he did not like being put in the position by Design Review and the Planning Commission and felt these were hard decisions. He said months and months have gone into the project and said it was clearly not what was intended when the Council approved the hillside ordinance. Regarding the economics of the project, this project has the letter that states the lot costs a certain amount, costs a specific amount to develop, and therefore, you have to have a specific level of square footage, and he felt the Council should not be in that position. He felt there was no intrinsic value to the lot that requires a certain amount of square footage and the Council should not be in this position. He felt possibly people need to be told when at City Hall that if you are building on the top of a knoll, if it's going to be visible, it takes away from the character of the hillside. He said if this house were the average size of the lower areas of Lafayette, that it would be a lot less visible. A 2,000 square foot Craftsman house was clearly much less visible and could be concealed behind vegetation a lot easier. He hoped that one or two years from now, the Council would not have similar projects coming before the Council because it's a very hard decision to make after families have gone through the planning process.

Council Member Anderson questioned the economic question from staff's view and it was important to get clarification for members of the Council. He said this has come up several times

in discussions of ordinances put in place. They added triggers in some cases where there is the LR10, LR5, and asked for clarification of the role the economic viability of the site has in this decision. Ms. Subramanian said the Council does need to permit a home in order to avoid a takings, but the size of the home was well within the Council's purview.

Vice Mayor Federighi felt what Council Member Anduri said was absolutely true in many ways. There is an expectation for a large home given the expensive lot. It was the intent of the hillside ordinance to lessen considerably the visibility of homes on the hillsides. The huge problem is that in meeting with Design Review and Planning Commission, it has never been looked at in terms of size, there were all sorts of considerations looked at like colors, vegetation, massing, etc. and it was not until fairly recently that both commissions said they need something more definitive on how to handle size. From the beginning, the message was size is not the foremost factor, but what was important was visibility and how that visibility is mitigated. So, while she understands Council Member Anduri's comments, she was reluctant, given not only the history of the application but the history of a number of applications where the average size was well over 4,000 square feet, where the most the planning commission has limited the size of a house is to 2,500 square feet on a completely visible lot, this lot is different from that. She therefore felt she would support the application particularly in view of the additional mature trees to be put in place, soils samples taken, experts who were 98% sure they would grow given proper maintenance, and felt it was a project the Council could support.

Council Member Tatzin said one portion of the ordinance talks about the house being substantially concealed to the extent feasible. One might argue that the house was designed without the additional trees was substantially concealed to the extent feasible, but as the applicant has demonstrated, a smaller house would be less visible even located in the same place. Where you make the finding that a project as proposed is substantially concealed, you must have something less visible by making it smaller. He last asked the question of whether the City's existing ordinances specify existing terrain and vegetation for lots of record or whether additions to vegetation were allowable. The response he got was additional vegetation was allowable in order to reach a substantially concealed finding. He felt that led in part to the implicit trade-off the Council is looking at tonight of keeping the house at the  $\pm 6,000$  square foot size and adding the six oak trees. The question is under Section 2048 is that an allowable mitigation for the project that is within the setback area of the ridge. And the final complication is that there has been a subcommittee that he and Council Member Anderson with two Planning Commission members sit on that have looked at reviewing and altering components of the ridgeline ordinance. He thinks that what they were doing in the proposed amendment which will be come to the Council in the future is to make it explicit that for houses on existing lots of record, we would allow additions to vegetation to have a role in the definition of substantial concealment. So, he was concerned about approving the house if in fact our existing ordinances do not allow us to do that. He was also concerned about denying an application that 3 months from now if we approve the proposed amendments to the ordinances we'd allow.

Mayor Samson said he does not see an inconsistency even with what we have before us today. He filed the appeal on the project because he was concerned about so few members of the Planning Commission had an opportunity to review and pass judgment on it. Secondly, he was concerned about the visibility and wanted to spend some time on it. After reviewing the binder of materials provided and looking at the model and returning to the site in the area, he has concluded that 1) to the extent that size does matter, that is something that must be resolved by guidelines down the road; 2) he does not believe if the house were reduced from 6,000 to 4,000 feet given the low profile of the house it would affect the visibility at all; 3) he felt size did matter in regards to economics and felt it was only economically viable to put a substantial home with

considerable value on that property. If we were to restrict the square footage of a home on a lot of substantial value, he felt we were potentially looking at an economic taking and it has never been Council policy to do this, it would be unfair, and illegal; 4) Regarding Sections 2048 and 2070 and substantially concealed to the extent feasible, we cannot ignore section 2070 which does allow an existing lot of record to be screened by new vegetation and should not ignore it. It seems that the newly proposed vegetation did constitute substantial screening. He wanted to make sure that within the landscape maintenance agreement, if the trees at any point are damaged, diseased, or no longer viable, that at the applicant's expense, they would need to be replaced and there should be consideration for mandating replacement/additional landscaping in x number of years in an amount not to exceed a reasonable amount. So, he did not see how under the City's existing rules, it could turn down the application.

Mayor Samson disagrees completely with the interpretations of the ordinance and interpretations of the role of economics. He was particularly concerned about the statement of the role of the economics. He felt economics has no role in the council's decisions. So long as a house can be built, that's all the Council should care about and he felt there was no issue of takings so long as the City allows a house to be built on the site. He said in terms of the cost they paid for the lot and therefore must build a big house, the amount that is paid for the lot was driven by an expectation as to what can be built. There is no inherent value to the lot and he would turn this around and said someone could build a beautiful 1500 square foot house and enjoy a beautiful lot, trees and view and it would meet the City's hillside ordinance. The fact that the seller of the lot thought that a 6,000 square foot house could be built and the buyer thought that, this was beyond the Council's purview and irrelevant to the decision. He said the Council has tried to make the public aware of these concerns, and felt it was difficult to get the message out. The Planning Commission and Design Review have spent a lot of time on this, but the Council must use its independent judgment. He felt that, since it was a de novo hearing, the Council should not give any weight to what happened in the Planning Commission or Design Review meetings.

Regarding interpretations of the ordinance sections, Section 2070 to his knowledge does not talk about new vegetation; it is silent about whether the vegetation is existing or new. He still agreed Section 2048 superseded it. However, it was irrelevant. The subcommittee reviewing the ordinance has a big job, there are parts of the ordinance that are inconsistent; however, what was clear is the intent of the ordinance. It is clear that when the Planning Commission recommended it and Council adopted it, the City intended to keep the hillsides as open as possible. If there are no trees on a property, then there is nothing one can do in terms of vegetation, but what this does mean is there is still an obligation to minimize the impact of the house and the way to do this is to build a smaller house. What bothers him is that you have a limited commodity; we do not have many unobstructed hillsides. He said the view from the BART platform shows Burton ridge with enormous houses built which stand out. So, he did not think that there was any distinction between someone viewing it from 500 feet, 700 feet or 2,000 feet, and they were thinking there should be an unobstructed view of open hillsides. Putting houses that stand out takes away from that.

Regarding the point of mitigation, it is great thing, but he felt it did not make enough of a difference. As difficult as it is, he would vote no on the project because he felt the City has not allowed this under the hillside ordinance.

Council Member Anderson said he felt the Council was revisiting all the things we talked about the last time when it received staff's opinion that new vegetation was a legitimate way to mitigate this particular development. The Council followed that immediately with asking for more

mitigation, wanted to make sure it was viable, there was a lot of effort on the applicant, and he was concerned the City does not even know its own ordinances and what applies and are not informing applicants and citizens and protecting them. He felt the Council put a reasonable request on the applicant who, if they could provide viability of the trees, they could have a mitigated project. To come back now and say they cannot do it, the spirit was not being served with the Council not recognizing the effort and recognizing our own need to go back and clarify the City's ordinances. He struggles with it, said they talked about the Craftsman 2000, said in the binder it states the Craftsman 2000 would not be visible and would be invisible, so there has been nothing but honesty and straight-forwardness on the part of the applicant. However, he was concerned that the Council has gotten itself into this bind. He felt the Council should acknowledge there is a problem, but feels the effort of the applicant warrant some due consideration on the Council's part and he was inclined to support the proposal with the mitigations, with a suitable bond and assurances that the trees would be taken care of from now and forever, and then the Council do its homework and review its ordinances so that this does not happen in the future.

Council Member Tatzin requested answers to his questions. He felt the Council was present to interpret its ordinances, primarily recognizing there was some subjectivity that goes on, that he wants to understand that for this particular lot, do the City's existing ordinances allow us to consider additional vegetation. He noted the applicant was altering the existing hillside terrain and was proposing to add vegetation in the way of a berm, both of which add to concealment. He wanted to know whether this was allowable as a basis for establishing substantially concealed on the lot under the existing ordinance. Ms. Subramanian said everyone agrees there needs to be a home permitted on the site. If you take the notion of a home at 4,000 square feet versus the proposed home does not change the actual concealment issue, then arguably you could say that it does substantially conceal to the extent feasible, whether it be at 4,000 or 6,000. She felt then, it would be consistent with all provisions of the hillside ordinance. If the Council feels 4,000 was not substantially concealed but 2,000 was substantially concealed, the Council could make that argument and then only existing vegetation would be considered, per Section 2048. However, the subcommittee is revising the ordinance and she did not know how this would be potentially addressed in terms of clarification or not. So, 2048 and 2070 were not inconsistent and could be read together, and that 2048 was the more specific section.

Mayor Samson confirmed that for those Council Members who were inclined to approve the project, there was support for a condition that could potentially require additional landscaping to be added if the landscaping proposed guaranteed by the applicant proves to be insufficient down the road and up to a certain dollar amount.

Council Member Anduri said when he votes no, it is because that under any circumstances, the project is not substantially concealed.

*ACTION: It was M/S/C (Tatzin/Anderson) to continue the public hearing to July 10, 2006, to direct staff to draft a resolution of approval with the additional landscape mitigation proposed, with assurance that it would be maintained, a review within a period of time of up to five years by Council or its designee to determine whether additional landscaping is needed up to an agreed upon amount, and that the staff report include a report on what findings should be made and how those findings in the code sections work with each other. Vote: 4-1 (Ayes: Samson, Federighi, Anderson and Tatzin; Noes: Anduri)*

## **12. WRITTEN COMMUNICATIONS**