

Vice Chair Federighi questioned the timing for bid, and Ms. Merideth said it was hard to say, that there were four agencies to work with, reviews may take some time, and felt staff would hopefully get everything ready for the Fall.

Agencymember Anderson requested for the next report to receive more information on maintenance costs and the potential for a tax on this. Ms. Merideth said maintenance was folded into the whole governance issue and until the Agency has the organization in place, this would be the next step in terms of how maintenance is funded.

Agencymember Tatzin said in his reading of the Cortese Knox Act, it appears that the process used is for the City to initiate the formation and unless there is a protest, LAFCO could approve the formation of the district. However, for the district to have a tax, citizens do have to vote and approve it by a 2/3 majority.

Agencymember Anderson felt the Agency needs additional tax money to run the facility, so having an idea on what the cost would be would be smart, given additional tax initiatives.

ACTION: It was M/S/C (Tatzin/Anderson) to receive and file the report. Vote: 3-0-2 (Ayes: Federighi, Anderson and Tatzin; Noes: None; Absent: Anduri and Samson).

Adjourn Redevelopment Agency

ACTION: It was M/S/C (Tatzin/Anderson) to adjourn Redevelopment Agency. Vote: 3-0-2 (Ayes: Federighi, Anderson and Tatzin; Noes: None; Absent: Anduri and Samson).

BREAK

The Council called for a break at 8:42 p.m., and reconvened the regular meeting at 8:50 p.m.

9. PUBLIC HEARING

A. Glenda Warmoth, Assistant Planner

Appeal of the Planning Commission's Approval of HDP18-05 Ward-Young Architects (applicants) Paul and 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 materials and continued to June 12, 2006.

Assistant Planner Glenda Warmoth said when the item was before the Council on March 27th, Council directed the applicants to provide a comparison of the approved design with a smaller one with the idea that it would test the lower limits of possibilities of what could be developed on the property and the off-site visibility impact. The applicants have done this and this was included under Tab B, in the attachments to the staff report. Ms. Warmoth noted the applicants would provide more detail on the project during their presentation.

Councilmember Anderson questioned whether there were certain rules, given the hearing was a De Novo hearing. Ms. Warmoth said the entire scope of the project was up for review and editing by the Council.

Vice Mayor Federighi noted the applicant had a ten-minute presentation time, however, additional discussion could take place as a result of questions asked. The audience could then comment publicly for three minutes and then the applicant could provide a rebuttal for five minutes.

Vice Mayor Federighi commented on the materials submitted for Council review, said they were very well organized, thorough, said the introductory information regarding the history and relation to tabs was extremely helpful, and Councilmember Tatzin agreed and felt the presentation was very well organized.

David Bowie, Attorney for Paul and Allison Cocotis, said they both put together the entire presentation and his contribution was the initial letter. He began the presentation by drawing attention to the model, felt it was unusual to have this type of modeling for a project which is just a single family residential project, it provides a good idea of exactly the type of presentation the house would make to the surrounding community. He described the model as a one level structure which was backed by lots of very large trees. Those trees are all existing trees on the site. Interestingly, the only trees which are part of the landscaping which are to be added to the site are those that appear directly in front of the building itself and go down the hill. Of those, you will note that some of those trees are fairly good size. One of the comments they run into all the time is that people say well, it looks fine, but are we going to have to wait 20 years before the trees take shape and give a certain size, so there actually is the screening level that one would expect to ultimately receive from those trees. They have done something very interesting here at Mr. Cocotis' urging. He has looked into the availability of very large trees that have at least 5 years growth or more, which are from Sutton Landscaping, which are in scale and proposed for making part of the actual application and brought in right away as part of the actual approval process as they complete the structure of the home. He said this was not a situation where trees would not be screened for many, many years, but would provide immediate screening.

Responding to a by a Councilmember of the trees' age, Mr. Bowie said the trees are 15 years old, there is a way to grow them, bring them in, plant them, and Paul and Allison were prepared to do this. Mr. Bowie said he usually was before the Council on matters that have been turned down by the Planning Commission and/or the Design Review Commission, but this application was approved by both and before the Council for further review of visibility.

Mr. Bowie continued by stating that they did do an extensive architectural presentation in the folder before the Council. He said Tim Ward was present as the architect and also Jim Everett, their appraiser, whose letter was also a part of the packet. One of the issues raised is what the appropriate size for a home on the subject lot. Mr. Bowie noted that the Planning Commission and Design Review Board both determined that a 4,000 to a 5,300 square foot presentation could be appropriate, although the approved residence had more square footage, it was essentially subterranean, and as such was indistinguishable from a qualitative standpoint from off sight. The question was raised by the council during previous discussions if there would be any different presentation in the event the residence was significantly reduced in size, specifically 2,000 square feet. One of the reasons he had an appraiser come to the Council is that, frankly, a 2,000 square foot home would not make financial sense on the site. It would be economically unfeasible and literally his clients would be deprived of the economically viable use of their property if they were restricted to that kind of size.

In this particular instance, they did show the Council on a few drawings exactly what the difference was between a 2,000 square foot home and a 4,000 square foot home and attention was drawn to Tab B, where they used this as the basis for comparison. One of the interesting things is that this is a home which is not visible at all off site from anywhere near this particular project. You have to go a distance of roughly 1900 to 2050 feet before there is any visibility whatsoever, and this visibility is obviously from a significant distance.

Mr. Bowie felt it was also a situation where from that distance; one really has no depth perception. You cannot perceive the depth of the particular structure at all from that kind of perspective, and what they have is a situation where the presentation of a 4,000 or a 5,000 square foot home is essentially the same. They also have a presentation where even a 2,000 square foot home does not make much difference, and they decided to use Tabs 52 and 68 to illustrate this. Tab 52 shows the comparison from Merriewood which is a distance of about 1900 feet of the 4,000 square foot home versus the 5,000 square foot home. The 4,000 square foot home was the blue presentation; the 5,000 square foot home was the green presentation. Mr. Bowie noted the pictures were telephoto pictures, so it looks much closer and much larger than it does in real life.

Mr. Bowie referred to Tab 68, there is superimposed (as the white presentation) the 2,000 square foot home and this home is also very visible against the telephoto lens presentation and you can see actually all three homes in this particular presentation; the green and yellow was the 5,000 square foot, the blue and yellow was the 4,000 square foot, and the white presentation was the 2,000 square foot home.

Mr. Bowie noted, even a significant amount of square footage has been removed, you nonetheless have a situation where it ends up being relatively visible if you are looking right at it, although from a distance of nearly 2,000 feet. This is exactly why they proposed to put up much larger trees as ordinarily would go on a site such as this because if you put the trees in place, what you find is that the home becomes invisible regardless of the size. This is also illustrated by the presentation shown on the boards in front of the Council, where a telephoto view with 24 inch box trees, which is relatively visible and then the telephoto view with large trees, where you basically cannot see the structure at all.

Therefore, fundamentally, we believe we are entitled to build a home of this size, think the economics of the situation really demand that, and we also think that in terms of off-site visibility, there is no real impact. So, there effectively is no difference in terms of size. There are no other mitigation measures they need other than the landscaping they propose.

James Everett, real estate appraiser from Martinez, said he was hired by Mr. Bowie to make an analysis of the property as proposed with a 5,300 square foot house and then with a 2,000 square foot house. The way he made his comparison was to compare what was going to be built as 2,000 square feet with other 2,000 square foot homes which were recessed in the Burton Valley area. His conclusion once the project was complete is that the value would be somewhere around \$1.4 to \$1.6 million once completed.

Councilmember Tatzin said Mr. Everett's approach and theory was to take the cost of the lot, the cost of the improvement, take the cost of the square foot of the house and try to see what matches in market value. He said he was commenting because he did not like the methodology. If the cost of the improvements to the lot is \$3 million, then what we really need here is a 20,000 square foot house to justify it. So, he felt there was no analysis in the information to indicate what is reasonable and what the market will value; it is just providing all costs, tack a margin onto it, and this tells what the house should be allowed, and the government should go along with that. He disagreed with this approach. Also, even using his approach, a 4,000 square foot house sort of comes out to be within the range of something that is comparable, that you did not need to get to 5,300 square feet to get to economic value. Mr. Everett said he did not analyze a 4,000 square foot home, and felt Councilmember Tatzin's

comment about the 20,000 square foot was possible; however, he did not feel there was a market in Lafayette for a 20,000 square foot home.

Vice Mayor Federighi said she felt the comparisons were all on very small lots, she doubted the properties had the views this one has, and to get the value for the large homes, the appraiser chose Happy Valley Road all on large acres. She felt they were apples and oranges and did not find the information that disposable.

Mr. Everett said he did try to find closed sales on 5 acre lots in Burton Valley, but there were none in the last year.

David Bowie said he would let Mr. Everett confirm this, but one of the interesting things about real estate appraisal is that size of lot is not a determinant factor of value of the resulting end product (i.e. of the home and lot together). However, people do not pay a lot of extra money for excess land because residential land is valued in terms of what you can do with it, the number of units you can put there. So, unless you can subdivide it, and that does not apply here, what you really have is just excess land which adds marginal additional value. And, as Mr. Everett has indicated, the big problem we have is trying to find any comparable properties in Burton Valley because there are not a lot of larger homes or larger lots in the area but based on what he could find, that actually is a valid comparable segment.

There were no other questions of the applicant.

Public comments:

ROBIN PICARD, Lafayette Valley Estates, said he has with him a copy of a petition that was obtained from Burtonvalley.com with over 100 signatures requesting the Council review the proposal and that the Council try to have the proposal reduced for visual impacts and size. He said he was hiking in the open space in Lafayette and the project is visible from a number of areas along the trails. He said one can see more than one side of the structure, so there is a feeling of width and depth. So, size does make a difference and it is apparent. He also felt that in some of the recommendations and guidelines of the City, screening structures on ridgelines with trees and plantings was not necessarily an acceptable way of mitigating impact and this was heard at many meetings. Also, the driveway and roadway is painted brown, when most is black which would have a more visual impact.

Councilmember Tatzin questioned that when Mr. Picard was hiking, was he generally above or below the site, and Mr. Picard said he was slightly below the site, noted there were many trails in the area and described the surrounding trails near the school which were probably higher, as well as other areas he did not hike around.

TOM OLSON, 3237 Lucas Circle, said the average size of the house in their area was about 2,000 square feet and he felt this was a relatively large home. He said there was another test case; the Strand property which had similar visibility issues and that home was held to 2,000 square feet and this should be taken into consideration. Also, when originally proposed, there were three sites and one site was sitting lower on the property. He felt that possibly, given the size of the proposed house, it might need to be built in the lower area to make it less visible. However, regardless he felt it was not in character with the neighborhood because of the size and hoped something could be done with reducing it.

BRAD KISNER, 3408 Echo Springs and owns a property at 3159 Lucas Drive, said he met with Paul Cocotis prior to his purchase of the property and during his due diligence process, said they met out on the lot, felt the lot was a high test lot wholly within a Class II ridgeline and he said he was not surprised if it made it to the Council level because he believed it was one of the first ones of its kind. However, Mr. Cocotis fully purchased the lot knowing exactly what the limitations were. Mr. Kisner felt the Strand was a comp which should be looked at, said Mr. Strand purchased it for \$585,000; the Planning Commission held it to a height constraint and a maximum square footage of 2,000 square feet, and Mr. Strand has chosen not to develop it for \$1 million. He noted part of it was within the Class I ridgeline but the approved construction area was just outside the Class I ridgeline. In terms of the model, he pointed out a cluster of trees that did not exist, and felt the photos depicted very barren hillsides. He has a property that has the same exposure and it was very difficult to plant trees there. Many of the neighbors have tried, there is not enough top soil, but if someone says they can put in 24 inch box trees, the likelihood that they would grow up to be very big was not very great. He also pointed out an area where there were cell towers, there were many trees planted recently and others put in about 10 years ago, which were wind blown and stressed, which should be taken into account. Finally, he felt the test was that any project must be substantially concealed with existing vegetation.

Councilmember Tatzin said when we are doing a subdivision, the test is that we approve lots where the houses can be substantially concealed by existing vegetation, however, he questioned whether this was the same requirement for a lot of record, and Ms. Srivatsa said Councilmember Tatzin was right; the existing vegetation and topography are tied to subdivision applications. For lots of record, vegetation can be proposed to mitigate offsite visibility.

Vice Mayor Federighi said regarding the Strand property, she thought it was limited to 2500 square feet and confirmed there the property was a pretty barren site, with one dead oak tree on the site and she recalled it was 2,000 square feet plus garage and there was discussion that it be a maximum of 2500 square feet, but she would have to confirm this with records.

CLIFF TONG, 9 Dianne Court, echoed Council comments relative to the analysis, felt it was flawed for the same reasons, felt part of the problem gets back to the economic viability issue—if an owner overpays or pays much higher than market for a piece of property and thereby saying the economic viability of it means they must build more square footage in order to be able to have a market value of that property to justify the investment, then in essence, by the City approving that application, they are essentially underwriting someone's investment in the property and he felt it was unreasonable and unrealistic. Some of the analysis and statistics provided relative to Mr. Wolf's analysis of 16 HDP approved home sites had a higher square footage approved than non-HDP applications. He said he personally visited all 16 properties and 12 or 13 were totally uncontroversial. He felt we should recognize each property was unique and he did not think one could take statistics and say one could build 5,000 square feet in a neighborhood or 5,000 square feet required in HDP and apply it and say we should be able to build 5,000 square feet on this particular property. He felt the property had extreme visibility restrictions, agrees you cannot build a lot without it being visible, but he felt it was difficult to make a judgment on the 2,000 versus 4,000 square foot analysis and would not want to be confident as to their analysis as being accurate.

Councilmember Tatzin said what the Council was seeing tonight on the modeling was additional landscaping with larger trees as opposed to the 24 inch box trees. He asked Mr. Tong about the model and his thoughts. Mr. Tong said he agrees with Mr. Kisner that we do not have a history of highly concealing landscaping on this type of area, but the Liviacas property was an example,

and had an extensive landscaping plan, the plants did not hold and now the property is barren. So, if the Cocotis' could shield the property and guarantee the trees would stay there and grow it would be good, but he did not have a lot of confidence they could survive.

Rebuttal:

David Bowie said the modeling is accurate as are the photos and Tab 72 which shows much of the same tree cover as represented that does exist. Mr. Kisner's comments, indicating he did not think this was real, are not factually accurate. The model has been made to scale with respect to real trees. The trees proposed to put in are grown in bags, are 15 years old and come with a warranty, felt the situation was tried and true, said Mr. Cocotis has looked into the matter and the tree vendor has a 98% success rate in making sure that the trees actually continue to live. There is no evidence that the tree cover proposed would not have any effect we are proposing it would actually have, which was to screen the site. Again, there were examples of the photo montage indicating how completely screened the structure is and that is also the case with the model. When looking at the entire matter, it has to be a situation where there is some sort of adverse impact created off site; otherwise, there is no point in shrinking any kind of square footage whatsoever, and he did not see any adverse impacts off site. There is no near term adverse impact because you have to be about 2,000 feet away. When 2,000 feet away, there is no material difference in terms of visual impact between 5,300 square feet, 4,000 square feet or even 2,000 square feet. When they take the extra step of mitigating that impact by putting trees in place of a full-grown size, the entire matter goes away. When it goes away, there is no basis whatsoever to turn down this particular project. He recognized Council has problems with the appraisal issue. There is a certain amount that says, logically, the larger the home built then the better you are for the valuation standpoint. This does happen to be true. It was suggested also that this house is actually out of scale for Burton Valley in that particular area. The fact though, as Mr. Tong said in his concluding comments, each one of these sites is unique and this is a very unique site. It has an existing graded path that was not graded by his clients. It has an existing access road. The Planning Commission went to great lengths to study siting on the house. This is the site the Planning Commission chose for this particular house. He said this is a very large lot; 5.87 acres. Most of Burton Valley is probably 1/3 of an acre, if that. They are entitled to have a larger home on this lot and it sits by itself in a fact that has no visual impact on anyone else. It does make it unique and it is precisely the unique character of the lot that suggests this is a project that actually should be approved, not disapproved by the Council. He felt the Council can rely on their Planning Commission and the Design Review Commission who have both done a good job. And, it is not at all unusual for people to use what is called, "the developer's residual approach to valuation of land". What you do with that, and that is the most typical valuation of land used by developers, is you work all of your costs to a particular point of end product and decide what it will sell for, and then work your way back to decide what the residual land value is. This is what they did in this instance. He did not believe there was any way, with the cost of this land, that you can build a small home and be economically successful. He asked the Council to approve the project and to uphold the decision of the Planning Commission and Design Review Commission.

Councilmember Anderson questioned the other sites considered and asked Ms. Warmoth to describe what was looked at in terms of other sites. Ms. Warmoth said she could not because that meeting took place before she became involved with the application, and possibly the Council might want to direct Tim Ward to address his comments.

TIM WARD, Architect, said in the first meeting there were two sites discussed; on the back side where there is a large, dormant landslide without access, there was a discussion about where

on the knoll and the front portion was decided not to be good, there was a road which drew neighborhood resistance due to drainage and the cut of the road coming down, there are 50% slopes along many areas, they looked at slope overlays and got down to only certain areas.

Councilmember Anderson asked if there was any soils work done to determine to support vegetation on top of the hill. Mr. Ward said there was a soils report, but he would need to check in terms of vegetation. Mr. Cocotis said when you start to go down the slopes, the soil above the rock gets much steeper and that is why there are slides. On top, there is probably about only two feet of soil before you hit bedrock. But, as you get down on one side, there is 6-10 feet of soil before hitting rock. He felt the planting of the large trees would not be an issue.

Councilmember Anderson said he would be very concerned about digging 72 inch bagged trees into rock that is two feet below the soil, which he felt was an issue. He felt it would be important to know this would be successful, does not doubt the vendor has a good record, so getting a better certainty about the viability of the mitigations would be critical to move forward on the site.

Councilmember Anderson said in looking at the Craftsman 2000, it was stated that the house would be invisible from a 10 degree viewing angle off of Lucas Drive and Merriewood. To him, this is an indication that there is a difference from size. It is stated in the documentation on Tab B, second page, last paragraph which talks about the Craftsman 2000 being fairly invisible. One of the things that bother him about the Planning Commission process is that they set a 4,000 square foot limit, there is no policy that indicates there is supposed to be a 4,000 limit or any other square foot limit for assessment. So, what we wanted is a look at other sizes to give information on the potential for screening the dwelling to a much more sufficient manner than it is now. He felt this has been done, there is some value in making the building smaller than what it is now, felt it was demonstrated by the Craftsman 2000, felt the building did not necessarily need to be 2,000 square feet, but what it does indicate to him is that setting the 4,000 square foot limit was arbitrary and there was no basis for it. He felt it might be a matter of tweaking of what there is now to bring it down, possibly giving strong evidence of mitigation requirements that the trees would actually be successful, there are several pieces that would be important to him to move forward on the project.

Councilmember Tatzin echoed Councilmember Anderson's opinion, thanked the efforts of the Cocotis' and the idea of the larger tree sizes to mitigate the visual impacts, said it was pretty clear they want to build a home of over 6,000 square feet, went to some of the viewing sites today and looked at the staking, said it pretty much covers the knoll, said as he looks at the siting and felt it was the right decision. He thinks there have been a lot of changes to try to make the house less visible without reducing size, with upgrade of landscaping being the most recent effort. He agrees that before we would approve this size house, we would want to know how likely the landscaping would work. He felt if it did not work it would be very apparent. He wanted to continue to work with the applicants to make the proposed house work, get some sense of whether the trees would survive in the location which would be a next step before requesting redesign.

Vice Mayor Federighi said she was less concerned, although the issue about how well a tree would take hold was a valid question. She was looking at it from the standpoint that a Craftsman 2000 square foot home was not a reasonable request. She said when they met with the Planning Commission and Design Review Board and were talking about how do we handle big houses on visible hills, the Planning Commission admitted that its' most extreme demand was for the limit of 2,500 square feet on one slope. And in that case, the slope was entirely exposed and this example was not the same situation. From the beginning, visibility has always been the

issue. From time to time, Planning Commission members said they would like to see a smaller house and it seemed to be the consensus that the more important question was visibility reduction and not size per se. It was reduced to one story, house colors darkened, the silhouette changed, and to her the house was big. 4,000 square feet seems more reasonable or even 3,500 square feet, but yet the applicant demonstrated to the Planning Commission and Design Review Board that reducing it would not make a significant difference. By reducing it to 2,000 square feet would make a significant difference, but given the analysis and what one gets for their money, it is not reasonable for the home to be that small. She felt the photo montages were persuasive that the home was not that visible given the backdrop and trees. She felt we have not quantified in the past as a Council or as a Planning Commission what is the threshold size we hold hillside applications to. So, she felt it was now hard to impose something like that in this case. She felt a majority of the Council would not approve the proposal tonight but she was not sure she would vote that way.

Councilmember Anderson felt the critical piece was reduction and visibility of the structure to the maximum amount feasible. To him, it would be critical to be assured that the mitigations proposed for this or any other structure on the site were viable. So, he asked to get some certainty on the value of the screening, its potential to be there over time and work, which would give more guidance on how to look at this and other proposals. If there is a mechanism like that and information comes back without evidence or success, we can go from there. He felt conditions could also be written in, but hopefully this should not need to be done. He said he wanted to see something from an arborist to indicate they felt certain that it would be possible to make the transplant work. If it would not work 100%, then at what percentage are we looking at and how it would work.

ACTION: It was M/S/C (Anderson/Tatzin) to continue the item to allow the applicant to return at the meeting of June 12, 2006 with more information evaluating the soil composition and tree viability of the proposed screen trees from Sutton Landscaping, and that staff have the opportunity to work with the applicant and arrive at an independent conclusion that the assessment is reasonable. Vote: 3-0-2 (Ayes: Federighi, Anderson and Tatzin; Noes: None; Absent: Anduri and Samson).

10. CONSENT CALENDAR

ACTION: It was M/S/C (Tatzin/Anderson) to approve the Consent Calendar Items 10A-10F. Vote: 3-0-2 (Ayes: Federighi, Anderson and Tatzin; Noes: None; Absent: Anduri and Samson)

A. City Council Minutes

April 24, 2006

Recommendation: Approve.

B. Traffic Enforcement Report for Reliez Station Road

Recommendation: Receive and file.

C. Resolution 2006-03 denying the appeal by Miller Starr & Regalia representing Bedford Properties Investors, Inc. of the conditional approval of L13-02 and DR55-02 located at 210 Lafayette Circle. APN 243-150-017

Recommendation: Continue the matter to the City Council meeting on June 12, 2006.

D. Agreement relating to the installation and maintenance of existing and new landscaping between property owners, Peter & Frances Rasimus and the City of