

1 **ABSENT: Harris, Holt and Humann**
2 **ABSTAIN: None**

3
4 **7. CONTINUED PUBLIC HEARINGS**

- 5
6 **A. HDP70-04 Eric Strand (Applicant & Owner), LR-10 Zoning:** Request for house site
7 consideration from the Planning Commission to establish a house site pursuant to
8 Section 6-2015 of the Lafayette Municipal Code (LMC) which requires a Hillside
9 Development Permit to ultimately construct a new, one-story single-family residence on
10 the existing 5.33 acre vacant, unaddressed parcel on Burton Ridge accessed via Michael
11 Lane, in the Hillside Overlay District. Once a house site has been established by the
12 Planning Commission, the applicant will submit full design plans for Hillside Development
13 Permit consideration by the Design Review Commission and Planning Commission.
14 Public notification will be provided again at that time. Only establishment of an
15 appropriate house site is under consideration at this time. APN 238-080-035.
16 **Recommendation:** Receive verbal staff report and "power point" style presentation from
17 Planning staff. Discuss findings of the April 14, 2005 site visit. Approve the best home
18 site and refer the application to the Design Review Commission for recommendation
19 before returning to the Planning Commission for final action.
20 **Project Planner:** Greg Wolff, Tel: 925-299-3204; gwolff@lovelafayette.org
21

22 Mr. Wolff reported that this is a continuation of a permit hearing for a proposed single-family residence on
23 an unaddressed parcel with access from Michael Lane. The Planning Commission last considered this
24 project at its April 7, 2005 meeting. At that time it was decided it would be beneficial to visit the site on
25 April 14th. Four Commissioners were at the April 14th site visit, and two other Commissioners visited the
26 site later in the week with staff accompaniment. The applicant requested a continuance from the April
27 21st meeting to the May 5th meeting. The Planning Commission asked the applicant to look at the entire
28 property for a suitable building site including lower on the hillside from Site 1, and in the triangular portion.
29 The applicant worked with staff, has identified three sites, which have been staked with 17-ft. story poles
30 covering a 60-ft. x 90-ft. footprint. The poles were up during the site visit. Mr. Wolff handed out color
31 and black exhibits of the site showing the three sites on an aerial photo, and gave a power point
32 presentation of photographs of the site from different viewpoints.
33

34 Mr. Wolff stated for the benefit of the public that this is a legal lot of record. Considering the Hillside
35 Development regulations, staff would suggest that there are no good building sites on this parcel.
36 Nonetheless the City cannot deny development on the property unless it is willing to purchase it. The
37 U.S. Constitution provides that government shall not take private property without just compensation and
38 courts have found that when a local jurisdiction has denied economic use of property it constitutes a
39 "taking".
40

41 In the supplement staff report, staff provided a table wherein the pros and cons of Sites 1S, 2S, and 3 are
42 evaluated. Mr. Wolff stated that the story poles for Sites 1 and 2 were erected to the north of the dead
43 oak tree, not to the south of the tree as shown on the plans. The foremost constraint on this property is
44 the ridgeline setback. The Hillside Regulations prohibit development within a 400-ft. setback of the
45 ridgeline. Site 3 is entirely within the ridgeline setback and unless the Commission can find no other
46 viable site on the property that would provide economic use of the property, a strict interpretation of the
47 regulations would prohibit approval of a house on Site 3. Site 1S encroaches into the 400-ft. ridgeline
48 setback, and Site 2S slightly encroaches but could easily be shifted down slope and thus outside the
49 setback. Site 3 is the least visible from Burton Valley properties in Lafayette, but would have significant
50 visual and potentially physical impacts on the Lafayette/EBRPD Ridge Trail. For those reasons, staff is
51 not supportive of development on Site 3. The applicant is proposing to build on Sites 1S or 2S, either of
52 which would be highly visible from some vantage points in Burton Valley. Staff is more supportive of Site
53 2S being furthest down slope. Staff would support a variance to push the house lower yet and well into
54 the 50-ft. setback since there will be no future development to the west that would be adversely affected
55 by a reduced setback. Staff is recommending the Commission consider a horizontal intercept of the dead

1 oak knoll extending it to the north, which the home would have to be constructed beneath. This could
2 eliminate visibility from the south -a significant portion of Burton Valley.

3
4 Commissioner Chastain clarified that the rectangles shown in the plans for Sites 1, 2, and 3 are not a
5 building footprint.

6
7 Mr. Wolff said that each rectangle is a representation of roughly 5,400 square feet where a house,
8 outdoor living space, driveway, yard, etc. could be situated and that Design Review would go into a
9 greater level of design detail as the process moves forward. Mr. Wolff further stated that staff finds the
10 upper driveway layout would be less visible than the lower driveway layout.

11
12 Vice Chair Ateljevich said they should allow the developer to build within an area shown as greater than
13 the 30% slope to allow for flexibility.

14
15 Mr. Wolff said the 30% slope was provided by the applicant based on aerial topography and subsequently
16 a round survey was completed which would allow for a more detailed slope analysis to be provided. Staff
17 is recommending a modified Site 2S by pushing it as far west as possible and that the house not
18 encroach above the horizontal intercept of the dead oak knoll.

19
20 Commissioner Mitchell wondered if moving Site 3 further into the setback, would make it less visible.

21
22 Mr. Wolff said that if the site were contiguous with the property line it would be difficult, if not impossible to
23 see the house from the Burton Valley floor. Such a site would be within the 400 ft. ridgeline setback and
24 within the 50-ft. setback.

25
26 Commissioner Lovitt asked if Site 3 were entirely within the 400 ft. setback.

27
28 Mr. Wolff replied that it was.

29
30 Eric Strand, applicant, said he wants to build a house and has no issues with either Sites 1S or 2S, either
31 driveway, etc. He doesn't know what the height of the house needs to be in order to meet with staff's
32 recommended height limit of the horizontal intercept of the dead oak knoll.

33
34 Commissioner Lovitt asked if the water to the property was provided through EBMUD.

35
36 Mr. Strand replied that he would have no other alternative.

37
38 Vice Chair Ateljevich opened the meeting to public comment on this item.

39
40 Jim Townsend, 2980 Peralta Oaks Court, Oakland, Trails Program Manager with the East Bay Regional
41 Park District, said that if the Commission decides it is required to approve a building site on the property
42 that it should be located outside of the Class 1 Ridgeline Setback and well away fro the trails. There is a
43 trail connection planned across Burton Valley and EBRPD has spent \$5.8 million to purchase 1,000 acres
44 to the south near Las Trampas Wilderness ensuring there will be no development on those acres. Site 3
45 is immediately adjacent to the trail and wildlife corridor.

46
47 Paula Mitchell, 3814 Quail Ridge Road, Lafayette, is on St. Anselm's Church Property Committee and is a
48 resident of Lafayette. She is concerned with water runoff, as she feels increased building on the site will
49 increase the water burden on the church.

50
51 Jeff Peacock, 3341 Walnut Lane, represents the Parks, Trails and Recreation Commission, and echoes
52 the words of Mr. Townsend to preserve the area on the ridgeline, near the trail and requests that the
53 Commission consider another area for the building site.

54
55 Rev. John D. Sutton, 682 Michael Lane, represents St. Anselm's Church, asked staff if they received
56 letters from the church. Mr. Wolff replied in the affirmative and stated the letters had been included in

1 previous Commission agenda packets. There is a pre-school on the east side that borders the hillside
2 and they have had problems with slides. Rev. Sutton feels building on Sites 1 and 2 will be a danger to
3 the pre-school children. He respects the right of the applicant to build but feels there is danger because
4 of the steepness of the swale and drainage runoff.
5

6 Don Eisenberg, 643 Augustine Lane, said his front windows face the site. The story poles are in his view
7 and thought the ordinance protected the hillside. He asked if it were truly legal to build on this site.
8

9 Steve Gatti, 3210 Sharon Court, recommends building on Site 3. Regardless of where you put that house
10 on the property there is a potential trail, which will connect with Michael Lane. Mr. Gatti suggested
11 relocating the trail so that it does not pass near the home. Site 3 would have an excellent view of Mt.
12 Diablo. The swale is a lot smaller than the size of the house and would nothing would shield that location.
13 He encouraged the Commission to make the right choice for the citizens of Lafayette and not choose a
14 site near the dead oak tree, but rather choose Site 3.
15

16 Vice chair Ateljevich said this trail has been mapped for twenty years ago and there is no intention of
17 moving it.
18

19 Sherry Hoover, 3212 Sharon Court, Lafayette, said the neighbors are concerned with visibility from
20 Burton Valley. There are 220 signatures opposing building on the lower site and she has 70 more. They
21 would prefer a location in the less visible location and recommends Site 3.
22

23 Clifford Tong, 9 Dianne Court, represents burtonvalley.com, and acknowledges that this is a difficult
24 property to develop with no easy answers. He commends staff for their analysis and the pros and cons.
25 The problem is one of visibility. This is a beautiful trail but the problem is the visual impact. He feels if
26 there is a trade-off between hikers vs. residents, the favor should side with the residents. Procedurally,
27 the Planning Commission is within its rights to deny a site based on their ability to make the required
28 findings set forth in the Hillside Ordinance. The upper driveway proposed for Sites 1 and 2 goes through
29 the ridgeline setback, thus requiring an exception, and the lower driveway is more visible.
30

31 Mr. Wolff responded to Commissioner Mitchell's earlier question regarding Augustine Lane illustrating the
32 extent to which a house on Site 2S might be visible from Augustine. Mr. Wolff reiterated that staff's
33 recommendation is to put the house in the swale, which would reduce visibility.
34

35 Commissioner Lovitt asked what was needed for the Commission to be able to support an exception for
36 this project.
37

38 Mr. Wolff answered that he understood Commissioner Lovitt's question to be when should the applicant
39 submit an economic analysis and data to support his case for an exception. If the Commission chose
40 Site 2S there might not be a need for an exception because it could be located entirely outside the
41 ridgeline setback, including the driveway. Economic data would need to be submitted if and when the
42 applicant requested an exception to allow development to encroach into the ridgeline setback.
43

44 Keith Vaisnor, 633 Murray Lane, said it is disappointing to see homes on Augustine Lane and around the
45 valley subjected to visual attack. He feels there is no other choice but Site 3. He asked for smart
46 decision making on the part of the Commission and that they should slow this process down so that the
47 choices made keep the interests of most of the people in mind. He is a proponent of the trail and this
48 would not be the first time that trails have gone by a private residence.
49

50 Commissioner Lovitt asked if July 7th, 2005 was the statutory deadline.
51

52 Mr. Wolff said at the very least, a home site at least must be decided by this date.
53

54 George Wasson, 3123 Indian Way, Lafayette, lives on the hillside and is not opposed to building on it but
55 is concerned with St. Anselm's Church once the site is approved. The applicant needs to look at drainage
56 and the possible impacts on the church down below.

1
2 Brad Kisner, 3159 Lucas Drive, represents burtonvalley.com, and is troubled by the application and
3 wonders if the Commission can make the findings for Site 2S. He would like the Commission to explore
4 legal and other options as it relates to this application and Site 3. He was not aware that the Trails
5 Commission met in an official capacity with regards to this application. He thinks the opinions of the
6 residents should definitely outweigh those of the trail users.

7
8 Eric Meinbress, 626 W. Silverado Drive, Lafayette, said this is a difficult challenge. He thinks visibility is
9 the primary issue. He recognized concern for the trails but Burton Valley need to be considered and
10 recommends Site 3.

11
12 Marie Blits, 3166 Lucas Drive, said this parcel used to be over top of the hillside but there have been lot
13 line adjustments and legal maneuvering of Mr. Moore, the former property owner. She said this is a
14 difficult position but urged the Commission not to be swayed by the threat of lawsuits.

15
16 Mr. Strand had no rebuttal.

17
18 Vice Chair Ateljevich closed the public comment period on this item.

19
20 Vice Chair Ateljevich said she wanted to clarify a few things regarding the General Plan for the public. As
21 Mr. Wolff explained, this is a legal lot of record. The City's experience includes a small tank parcel
22 previously owned by EBMUD. The new owner wanted to do a lot line adjustment to make the parcel
23 larger and make it a buildable parcel. The City denied it and the City lost the case in court when the
24 property owner sued for a taking claim. Staff is justified in saying that each parcel that is a lot of record
25 and has an assessor's number has a right to be developed, and this has been confirmed by the City
26 Attorney.

27
28 Vice Chair Ateljevich clarified that the General Plan does speak to maximize and create as much open
29 space as possible but carefully defines three kinds: 1) public owned open space e.g. Briones Park; 2)
30 privately owned and privately maintained and has a recorded scenic or conservation easement; and 3)
31 privately owned space that has been dedicated for use as trails. The City typically has no legal ability to
32 ask for a dedication of private open space in conjunction with the construction of a single-family residence
33 on an existing legal lot of record; however, staff confirmed that we can require dedication of an easement
34 for a public trail planned by the City and East Bay Regional Park District.

35
36 Mr. Wolff agreed with Vice Chair Ateljevich and said there would be a clear nexus for doing so.

37
38 Vice Chair Ateljevich said both the General Plan and the zoning ordinance recognize that we will consider
39 a lot of record to be a developable parcel. The development must preserve open space and be
40 concealed by existing vegetation or landforms to the maximum extent feasible, in contrast to their
41 requirements for subdivisions, which are stricter. There are exceptions for lots of record. There are two
42 subdivisions on either side of this parcel and the Commission needs to follow the General Plan so that the
43 ridgelines would be protected.

44
45 Commissioner Lovitt said he has little choice regarding development in the ridgeline setback. There were
46 several statements that the desires of residents should outweigh the desires of trail users but those
47 desires cannot outweigh the law and the General Plan.

48
49 Commissioner Chastain said that no one wants to make a decision that is not made for the public good.
50 He is constrained by the General Plan and Planning Commission actions with other sites in making a
51 recommendation. He is uncomfortable with transporting problems to other communities and is less
52 compelled by the statement that only a few people use the trail and more by the value of preserving the
53 ridgeline. The Hillside Ordinance also states the quality of landscape, and he is also concerned about the
54 wildlife corridor.

55

1 Commissioner Mitchell said that Vice Chair Ateljevich is correct regarding the Hillside Ordinance and
2 existing lots of record being allowed to develop while preserving open space and being concealed to the
3 extent feasible. He is impressed with staff's new proposal to use a level plan ("horizontal intercept") and
4 feels it is a good idea. He feels the Commission should take an aggressive view of the ordinance. Site
5 #3 is his preference as he feels Site 2S, while outside the 400 ft. setback is too visible and the findings
6 could not be made.

7
8 Commissioner Chastain said he preferred Site 2S as it stays outside the setback.

9
10 Vice Chair Ateljevich and Commissioner Lovitt agreed with Commissioner Chastain.

11
12 Commissioner Chastain suggested tucking the house back as far as possible and turning it so that it did
13 not present such a wide frontal view down slope.

14
15 Vice Chair Ateljevich said she would like the house closer to the access road and down lower well into the
16 50-ft setback as long as mitigation can be done. The driveway decision could change depending on its
17 visibility. She would like to keep the house as low as possible even if they have to dig in. She also feels
18 there should be size constraints on the house.

19
20 Vice Chair Ateljevich said she was willing to grant a variance for the 30% slope, which would keep
21 visibility down. Design Review should be asked to use all the tools and design ideas it can to keep
22 visibility and size down.

23
24 Commissioner Lovitt said there are livability and visibility issues. The ordinance says to the extent
25 feasible but the site is very heavily constrained and would therefore have to have a smaller house than
26 the average house in Lafayette.

27
28 Commissioner Mitchell said he liked Commissioner Chastain's idea expressed at an earlier meeting
29 asking for proposals where they would be able to see the visual impacts. He suggested Design Review
30 be given proposals where they could see the visual impacts.

31
32 Commissioner Chastain said that in assessing the visual impact it was only a size constraint, was abstract
33 and will depend on the design of the house. He thinks that Site 2S is preferable and would charge the
34 applicant, through the Design Review process to demonstrate how a larger house would not be overly
35 destructive. He said the design review should begin with a constrained footprint.
36 Vice Chair Ateljevich, and Commissioners Chastain, Lovitt and Mitchell support a 2000 sq. ft. limit, for a
37 unanimous agreement.

38
39 Vice Chair Ateljevich recapped the Commissioner's recommendations that the house should be outside
40 the 400 ft. setback, permitted on 30% slope or greater, house to present a narrow profile down slope;
41 change orientation; dig the home into the hill to the extent possible; encourage Design Review to move
42 the house downhill, and rotate it to accomplish the goal of reducing the visibility.

43
44 Commissioner Chastain said they should also require a hydrologic study and drainage plan from the
45 applicant early in the process with review by the City Engineer to ensure appropriate handling of the
46 water with the design.

47
48 Mr. Wolff clarified his understanding that the Commission suggested a 2000 sq. ft. as a starting point for
49 the home but that it would be incumbent on the applicant to demonstrate that a larger home would have
50 no more significant impact than a smaller home.

51
52 Commissioner Lovitt said staff should drop the "significant" impact and the other Commissioners agreed.

53
54 Vice Chair Ateljevich said the applicant needed to show the 15-degree declination on a site selection as
55 part of the process.

1 **Commissioner Lovitt moved and Commissioner Chastain seconded to continue this application to**
2 **the Consent Calendar of the May 19th Commission meeting for review of staff's preparation of the**
3 **Commission's direction.**

4 **AYES: Ateljevich, Chastain, Lovitt, and Mitchell**

5 **NOES: None**

6 **ABSENT: Harris, Holt, and Humann**

7 **ABSTAIN: None**

8
9 Mr. Wolff advised the public that when the application comes before the Design Review Commission, the
10 public would be notified.

11
12 **8. NEW PUBLIC HEARINGS**

- 13
14 **A. L13-02 Bedford Property Investors, Inc. (Applicant & Owner), SRB Zoning:** Request
15 for a land use permit approval per Section 6-965 of the Lafayette Municipal Code and
16 Design Review approval per Section 6-973 to construct a 3-story approximately ~~45,000~~
17 13,000 gross sq. ft. commercial building with retail space and parking on the ground floor
18 located at 210 Lafayette Circle. APN 243-150-017. (See *secondary applications* DR55-
19 02 & V52-02).

20 **Recommendation:** Consider the application and direct staff to prepare a resolution
21 approving it, including conditions of approval, for consideration at the May 19, 2005
22 meeting.

23 **Project Planner:** Greg Wolff, Tel: 925-299-3204; gwolff@lovelafayette.org

24
25 **Commissioner Mitchell moved and Commissioner Lovitt seconded to continue application L13-02**
26 **to the May 19, 2005 meeting.**

27 **AYES: Ateljevich, Chastain, Lovitt, and Mitchell**

28 **NOES: None**

29 **ABSENT: Harris, Holt, and Humann**

30 **ABSTAIN: None**

31
32 **9. OTHER BUSINESS (NONE)**

33 **10. PLANNING MANAGER'S REPORT (NONE)**

34
35 **11. ADJOURNMENT**

36
37 Vice Chair Ateljevich adjourned the meeting at 9:40 P.M. to the regular Planning Commission meeting of
38 May 19, 2005.

39
40 Respectfully submitted,

41
42
43 / s /

44 Marie V. Pettersen

45 Contract Minutes Taker