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2  
3 **MINUTES OF THE REGULAR MEETING**  
4 **PINOLE PLANNING COMMISSION**  
5

6 **February 22, 2021**  
7

8 **DUE TO THE STATE OF CALIFORNIA'S DECLARATION OF EMERGENCY – THIS**  
9 **MEETING WAS HELD PURSUANT TO AUTHORIZATION FROM GOVERNOR**  
10 **NEWSOM'S EXECUTIVE ORDERS – CITY COUNCIL AND COMMISSION MEETINGS**  
11 **WERE NO LONGER OPEN TO IN-PERSON ATTENDANCE. THE MEETING WAS**  
12 **HELD VIA ZOOM TELECONFERENCE.**  
13

14  
15 **A. CALL TO ORDER:** 7:09 P.M.  
16

17 **B. PLEDGE OF ALLEGIANCE AND ROLL CALL**  
18

19 Commissioners Present: Benzuly, Flashman, Moriarty, Wong, Chair Kurrent  
20

21 Commissioners Absent: None  
22

23 Staff Present: David Hanham, Planning Manager  
24 Alex Mog, Assistant City Attorney  
25

26 **C. CITIZENS TO BE HEARD**  
27

28 The following speaker submitted written comments via e-mail that were read into  
29 the record and would be filed with the agenda packet for this meeting: ***Jim and***  
30 ***the Neighbors, Friends, Concerned Citizens of Pinole.***  
31

32 David Hanham, Planning Manager reported he would contact the Public Works  
33 Director to address some of the concerns raised in the correspondence, and was  
34 in the process of working with Dr. Lee's Ophthalmology Center regarding the trees  
35 that had been planted on the site. More information would be provided under the  
36 City Planner's/Commissioner's Report.  
37

38 **D. MEETING MINUTES:**  
39

40 1. Planning Commission Meeting Minutes from January 25, 2021  
41

42 Commissioner Moriarty thanked staff for attaching the e-mails that had been received  
43 from the public to the meeting minutes.  
44

Commissioner Moriarty also clarified that staff had responded to the concerns raised in the e-mail from Jessica Delgado regarding the Pinole Square Appian-80 Shopping Center Parcel Map, as discussed during the January 25, 2021 Planning Commission meeting.

**MOTION** by a Roll Call Vote to adopt the Planning Commission Meeting Minutes from January 25, 2021, as shown.

**MOTION: Moriarty                      SECONDED: Benzuly                      APPROVED: 5-0**

Assistant City Attorney Alex Mog reported that Commissioners Flashman and Moriarty both lived within the proposed Historic Preservation Overlay (HPO) District to be discussed under Item E1 and would have a potential conflict of interest. Given that the Commission was currently comprised of only five members, he stated if both Commissioners recused themselves from the discussion there would not be a quorum. The California Fair Political Practices Commission (FPPC) regulations stated that one of the Commissioners may be selected randomly to participate in the discussion. He reported that the name of the Commissioner had been selected randomly prior to the meeting and Commissioner Moriarty had been chosen to participate in the discussion.

Commissioner Flashman recused herself from the discussion and Mr. Mog advised that once the Planning Commission had made a decision on the HPO District and prior to the discussion of the Old Town Design Guidelines, Commissioner Flashman could return and participate as a member of the Planning Commission to discuss the Old Town Design Guidelines.

Commissioner Flashman muted her microphone and turned off her camera.

**E. PUBLIC HEARINGS:**

**1. Zoning Code Text Amendment Adding Chapter 17.28, Historic Preservation Overlay, to the Municipal Code and Adopting Old Town Design Guidelines – ZCA 21-01**

**Request:** Consideration of a Zoning Ordinance Text Amendment for creating a Historic Preservation Overlay (HPO) District. The District will define areas of the City of Pinole that have historic significance. The Ordinance will create standards of development within borders as described in Exhibit A of the Old Town Design Guidelines, as well as properties that may be subsequently added to the HPO District.

**Applicant:** City of Pinole  
2131 Pear Street  
Pinole, CA 94564

**Location:** Old Town Pinole as defined in the Old Town Design Guidelines, and applicable citywide

**Staff:** Alex Mog

Assistant City Attorney Mog provided a PowerPoint presentation of the February 22, 2021 staff report, and recommended the Planning Commission recommend to the City Council the approval of an Ordinance adding Chapter 17.28 Historic Preservation Overlay to the Pinole Municipal Code (PMC).

Responding to the Commission, Messieurs Hanham and Mog clarified:

- Determination of Existence of a Cultural Resource, as defined in Section 17.28.050 subparagraphs A and B, as shown in Exhibit A to Resolution 2021-02.
- Cultural Resources Definition, as defined in Section 17.28.020, subparagraphs A through D.
- The initial HPO District applied to the area known as Old Town Pinole but the Planning Commission had the ability to expand the area, if desired. Prior to submittal to the City Council an Overlay Map would be prepared based on the direction from the Planning Commission.
- If an area was not within Old Town Pinole but was added to the HPO District it would still be subject to the Old Town Design Guidelines at the time of submittal of a project. Because of that possibility, the Planning Commission discussed whether or not to change the title of the Old Town Design Guidelines to *Historic Preservation Guidelines*, which could be built into the recommendations to the City Council. Legal counsel was confident that changing the title would not result in a strong legal challenge.
- While the Old Town Design Guidelines had not been posted on the City's website they had been included in the agenda for the Planning Commission meeting. Staff promised to post the information on the City's website.
- The Planning Manager also served as the Zoning Administrator.
- The Municipal Code Update Subcommittee which had discussed the HPO District had consisted of current Mayor Martinez-Rubin and former Councilmember Murray, along with participation from the Planning Manager, Development Services Director/City Engineer, and Assistant City Attorney.
- Pursuant to the PMC a City Councilmember may appeal a Planning

1 Commission decision but there was no similar language for the Planning  
2 Commission to appeal the Zoning Administrator's decision. A Planning  
3 Commissioner in the capacity as a private citizen may file an appeal subject  
4 to the applicable appeal fee.  
5

- 6 • Accessory buildings may be designated as historic but not Accessory  
7 Dwelling Units (ADUs). Pursuant to State law design review for ADUs must  
8 be ministerial and objective.  
9

#### 10 PUBLIC HEARING OPENED

11  
12 No written comments were submitted via e-mail for this item.  
13

#### 14 PUBLIC HEARING CLOSED

15  
16 The Planning Commission discussed ZCA-21-01 and offered the following  
17 comments and/or direction to staff on the following topics.  
18

#### 19 ***Boundaries of the HPO District and consideration of changing the title of the*** 20 ***Old Town Design Guidelines*** 21

- 22 • Suggested the boundary be tightened; opposed keeping the Gateway  
23 properties in the HPO District since the properties were no longer historic,  
24 and properties down San Pablo Avenue past Appian Way and Oak Ridge  
25 Lane were also no longer historic. Suggested the boundary should be  
26 pushed around Buena Vista Drive and Quinan Street and include the  
27 property on the top of the hill by the railroad tracks. Recommended cutting  
28 the boundary by Henry Street to the east up Pinole Valley Road out by Oak  
29 Ridge Lane by San Pablo Avenue, and add the area around Buena Vista  
30 Drive and the house on the hill. Recommended the Old Town Design  
31 Guidelines be retitled to read *Old Town and Historic Design Guidelines*.  
32 [Kurrent]  
33
- 34 • Agreed there should be a closer look at the boundaries of the HPO District  
35 but recognized additional areas could be added or subtracted, and  
36 suggested language be added to the Ordinance where an area could be  
37 added or removed in the future. Accepted the initial boundaries of the HPO  
38 District at this time but sought flexibility. Since the HPO District may apply  
39 to any part of the City, suggested the Old Town name should not be  
40 attached. Suggested consideration of some other preservation guideline to  
41 address other locations beyond Old Town. Did not want to suggest that  
42 historic preservation was for Old Town Pinole only. [Wong]  
43
- 44 • Accepted the boundary of the HPO District as it currently existed but liked  
45 the flexibility of adding or removing areas in the future. [Benzuly]

- Emphasized Old Town Pinole had its own flavor and sense and did not want to lose the Old Town designation but was open to revising the title of the Old Town Design Guidelines to read *Old Town and Historic Design Guidelines*. Expressed concern the map was unclear and wanted to approve the HPO District without determining the exact boundaries at this time. [Moriarty]

Mr. Mog advised the Ordinance would have no impact if an Overlay was not adopted. The Planning Commission may make a recommendation to adopt the HPO District, expand it, change it, or forward a recommendation to the City Council to send it back to the Planning Commission to consider a house-by-house HPO District, as an example, rather than a broader HPO District. He acknowledged the Municipal Code Update Subcommittee had raised similar concerns as the Planning Commission regarding the boundaries of the HPO District.

Commissioner Moriarty suggested the HPO District boundaries be kept as is at this time but in the future there could be the addition of other areas of the City. She supported a beginning boundary to allow the Ordinance to be enforceable with a recommendation to the City Council to apply the current boundary that had been proposed and then have a future discussion with new members of the Municipal Code Update Subcommittee.

Chair Kurrent wanted the City Council to be made aware there were concerns that the boundaries were too generous, that the Planning Commission would recommend further review on expanding the boundaries of the HPO District, and there was discussion whether or not to include the Gateway properties and an extension of the HPO District past Oak Ridge Lane on San Pablo Avenue.

Commissioner Moriarty suggested the issue needed further discussion since the boundaries of the HPO District could ultimately be reduced or expanded after additional discussion.

Mr. Mog suggested the Planning Commission could recommend City Council approval of ZCA 21-01, with the Planning Commission to further study the HPO District where possible additions or subtractions may be offered in the future, which could be considered by the Planning Commission on its own via a subcommittee. Alternatively, the City Council could be asked to provide additional feedback when the Ordinance was presented to the City Council for consideration.

Chair Kurrent suggested the boundaries be kept as is, but language be added to the Old Town Design Guidelines or in the resolution of approval about properties outside of the HPO District. He suggested Page 2, Section 1.1, Boundaries, of the Old Town Design Guidelines could be revised to include the following statement: *Individual properties outside of the Old Town Design Guidelines Overlay District*

1       *which have historic significance can be designated as part of this Ordinance.*

2  
3       Mr. Mog clarified that Section 17.28.040, Designation Process, subparagraph A,  
4       addressed the process the Chair had recommended as part of the additional  
5       language.

6  
7       Commissioner Wong recommended the first sentence of Section 17.28.040,  
8       Designation Process, subparagraph A. be revised to read:

9  
10               *The Zoning Administrator, Planning Commission, or City Council may*  
11               *initiate proceedings to add or subtract the HPO zone designation to a*  
12               *property.*

13  
14       By consensus, the Planning Commission accepted Commissioner Wong's revision  
15       to Section 17.28.040 A.

16  
17       **Concerns with the language in Section 17.28.050, Determination of Existence**  
18       **of a Cultural Resource**

- 19  
20               • Expressed concern adding more layers to the approval process given there  
21               had been criticisms of the time required by the City to process an  
22               application. [Wong]

23  
24       Mr. Mog suggested language could be added where a Planning Commissioner  
25       may appeal a decision of the Zoning Administrator to the Planning Commission.

26  
27       Commissioner Wong suggested the Chair could also have communication with the  
28       Zoning Administrator, although Mr. Mog acknowledged that while the Zoning  
29       Administrator could have communications with any Planning Commissioner, there  
30       was no way to make the Chair have special powers that other Planning  
31       Commissioners did not share.

- 32  
33               • Supported the language the Assistant City Attorney offered where a  
34               Planning Commissioner may appeal a decision of the Zoning Administrator  
35               to the Planning Commission, and whereby, it would automatically go into  
36               potential design review, but the only issue was how the Planning  
37               Commission would be so informed. [Moriarty]  
38  
39               • Suggested the Planning Manager should report any decisions made, to  
40               allow the Planning Commission to determine whether or not any decision  
41               should be appealed. [Kurrent]

42  
43       Mr. Hanham suggested if and when the Planning Commission and City Council  
44       adopted the map for the HPO District, all properties within the HPO District would  
45       be highlighted and any projects on those addresses would be tagged triggering the

1 next level of review. He acknowledged that any process added to the existing  
2 review process would slow the processing of an application because of the review  
3 required. He detailed the Zoning Administrator review process pursuant to the  
4 PMC which could be considered and which detailed the requirements of a Zoning  
5 Administrator meeting where a Planning Commissioner may participate as a  
6 private citizen.  
7

8 Mr. Mog agreed there would be delays since a building permit would not be issued  
9 until the Planning Commission had its own review which may result in long delays,  
10 particularly since the Planning Commission only met once a month. To address  
11 the concerns language could be added to the Ordinance stating *All design review*  
12 *for projects in the HPO District goes to the Planning Commission*, although he  
13 cautioned it was possible the City Manager or Development Services Director/City  
14 Engineer may not be supportive of an additional level of review due to the burden  
15 on staff.  
16

17 Commissioner Moriarty preferred such a suggestion be made to the City Council  
18 and that there be more accountability rather than just the Zoning Administrator's  
19 role making the determination with no recourse after a decision had been made.  
20

21 Chair Kurrent suggested the language offered by the Assistant City Attorney was  
22 satisfactory.  
23

24 Mr. Mog suggested further refinement to Section 17.28.050, Determination of  
25 Existence of a Cultural Resource A., as follows:  
26

27 *Concurrent with design review, the Planning Commission shall determine*  
28 *whether the project would result in changes to a cultural resource on the*  
29 *property. Administrative design review for projects in the HPO Zone shall*  
30 *be conducted by the Planning Commission.*  
31

32 Mr. Mog suggested the Planning Commission recommend approval to the City  
33 Council of an Ordinance adding Chapter 17.28 Historic Preservation Overlay, to  
34 the Municipal Code, subject to the following revisions:  
35

- 36 • Change in the language to Section 17.28.050 as offered by the Assistant  
37 City Attorney; and  
38
- 39 • The first sentence of Section 17.28.040, Designation Process A. revised to  
40 read: *The Zoning Administrator, Planning Commission, or City Council may*  
41 *initiate proceedings to add or subtract the HPO zone designation to a*  
42 *property.*  
43

44 **MOTION** by a Roll Call Vote to Recommend Approval to the City Council of an  
45 Ordinance Adding Chapter 17.28 Historic Preservation Overlay, to the Municipal

1 Code, subject to:

- 2
- 3 • Revised the language to Section 17.28.050 A. as offered by the Assistant  
4 City Attorney to read: *Concurrent with design review, the Planning  
5 Commission shall determine whether the project would result in changes to  
6 a cultural resource on the property. Administrative design review for  
7 projects in the HPO Zone shall be conducted by the Planning Commission.*  
8
  - 9 • Revised the first sentence of Section 17.28.040, Designation Process A. to  
10 read: *The Zoning Administrator, Planning Commission, or City Council may  
11 initiate proceedings to add or subtract the HPO zone designation to a  
12 property.*  
13

14 **MOTION: Moriarty**

**SECONDED: Benzuly**

**APPROVED: 4-0-1**  
**ABSENT: Flashman**

15  
16  
17 Commissioner Flashman returned to the meeting via Zoom at this time.

18  
19 Mr. Mog provided a PowerPoint presentation of the Old Town Design Guidelines  
20 and sought input from the Planning Commission at this time.

21  
22 The Planning Commission discussed the use of the words “should,” “encouraged,”  
23 “discouraged” and “must” in the Old Town Design Guidelines. There was no  
24 consensus on the intent of the use of the words, with a recommendation to use the  
25 language in the Uniform Building Code (UBC).  
26

27 Mr. Mog clarified the Building Code had defined “should” to mean “recommend,”  
28 “shall” to mean “mandatory” specification or requirement. He suggested the best  
29 course of action would be to change Section 3.1, Language as shown on Page 10  
30 of the Old Town Design Guidelines and any recommendation to “should” in the Old  
31 Town Design Guidelines be revised to read “shall,” with the first sentence of this  
32 section revised to read: *Guidelines which employ the word “**should**” are*  
33 *mandatory*.  
34

35 By consensus, the Planning Commission revised Section 3.1, as proposed by the  
36 Assistant City Attorney.  
37

38 The Planning Commission walked through and discussed the Old Town Design  
39 Guidelines and offered the following additional recommendations for revision:  
40

- 41 • Page 16, C. Building Form and Scale 2., revised the first sentence to read:  
42 *New buildings are encouraged to contain three parts: a base, a mid-section*  
43 *and a top.*  
44  
45



- Pages 14 and 15, B. Building Orientation 4., revised the first sentence to read: *Blank walls or loading areas, shall not face public streets.*
- Pages 24 and 25, 4.4 Landscaping A. General 7., revised to read: *Shall use native and drought resistant plants, shrubs, and trees.*

Mr. Hanham clarified the Planning Commission could not impose the Old Town Design Guidelines on applications that had previously been approved, citing the Artisanal Garden and Dr. Lee's Ophthalmology Center as examples.

Commissioner Moriarty pointed out that had the Old Town Design Guidelines been in place the City would not have had the issues and concerns raised by the community related to the Artisanal Garden and Dr. Lee's Ophthalmology Center.

By consensus, the Planning Commission did not change the title of the Old Town Design Guidelines at this time deferring it to a future discussion.

#### PUBLIC HEARING OPENED

No written comments were submitted via e-mail for this item.

#### PUBLIC HEARING CLOSED

**MOTION** by a Roll Call Vote to Recommend the City Council Adopt the Old Town Design Review Guidelines, subject to the following revisions:

- Every reference to "should" to be interpreted as "mandatory."
- Page 10, Section 3.1 Language, first sentence of this section revised to read: *Guidelines which employ the word "**should**" are mandatory.*
- Pages 14 and 15, B. Building Orientation 4., revised the first sentence to read: *Blank walls or loading areas, shall not face public streets.*
- Page 16, C. Building Form and Scale 2., revised the first sentence to read: *New buildings are encouraged to contain three parts: a base, a mid-section and a top; and*
- Pages 24 and 25, 4.4 Landscaping A. General 7., revised to read: *Shall use native and drought resistant plants, shrubs, and trees.*

**MOTION: Flashman**

**SECONDED: Moriarty**

**APPROVED: 5-0**

**F. OLD BUSINESS: None**

1 **G. NEW BUSINESS:**

2  
3 **1. Housing Law Update**

4  
5 Mr. Mog advised that staff planned to hold the item over to the next meeting of the  
6 Planning Commission at which time two new Planning Commissioners would be  
7 seated. No motion was required and the item was continued to the next meeting  
8 of the Planning Commission scheduled for March 22, 2021.  
9

10 **H. CITY PLANNER'S / COMMISSIONERS' REPORT**

11  
12 **1. Verbal Updates of Projects**

13  
14 Mr. Hanham reported the City had received an application for a 33-unit affordable  
15 housing project at 811 San Pablo Avenue; and staff continued to work with the  
16 property owner at 2801 Pinole Valley Road with a notice of completeness letter  
17 having been sent to make improvements to the plans. Staff also continued to work  
18 with Dr. Lee's Ophthalmology Center on the landscaping. The building would not  
19 be finalized until such time as staff was satisfied with the landscaping. Taller  
20 shrubs/landscaping would screen the electrical box from view and some of the  
21 Italian Cypress that had been planted on the site would be relocated elsewhere on  
22 the property. He acknowledged the Planning Commission's disappointment the  
23 landscaping that had been planted was not close to what had been approved.  
24

25 Commissioner Flashman emphasized the landscaping plan for Dr. Lee's project  
26 was not reflective of the plan which had been approved by the Planning  
27 Commission and it should have been brought back to the Planning Commission  
28 for discussion. She suggested the Italian Cypress was not compatible, the  
29 landscaping plan did not provide the cohesive Old Town feeling, and the  
30 landscaping that had been planted was not what the Planning Commission, the  
31 City Council, or the people of Pinole preferred. She emphasized that significant  
32 changes to the landscape plan should have been brought back to the Planning  
33 Commission, and as someone who drove past the property daily she was not  
34 happy with what had occurred.  
35

36 Mr. Hanham added that staff continued to work with the project proponents for the  
37 former Doctor's Hospital site, Pinole Vista and Pinole Woods. As to the concerns  
38 raised in the e-mail read into the record under Citizens to be Heard, he advised  
39 that the owner of the Sprout's shopping center had been contacted but the situation  
40 was under the purview of the Public Works Department and he was unaware of  
41 the status. An update could be provided to the Planning Commission at its next  
42 meeting.  
43

44 Mr. Hanham read into the record public comments that had been received via e-  
45 mail from **Rafael Menis** related to agenda item G1, which comments would be filed  
46 with the agenda packet for this meeting.

1 Speaking to the Sprouts property, Commissioner Moriarty inquired about the status  
2 of the trees that were to have been planted along the creek and the status of  
3 ensuring there would be more vegetation planted, as promised, and Mr. Hanham  
4 advised he would provide an update at the next meeting.

5  
6 Commissioner Moriarty appreciated all of the staff work but agreed with the  
7 comments related to the disappointment with the process that had resulted in the  
8 final product for Dr. Lee's building. She agreed the building was not compatible  
9 with its surroundings and suggested perhaps the process for its approval should  
10 be re-examined. She asked whether the City had any legal recourse. She too  
11 was discouraged with the process and the fact that what the Planning Commission  
12 had voted to approve had been disregarded by the developer.

13  
14 **I. COMMUNICATIONS:** None

15  
16 **J. NEXT MEETING**

17  
18 The next meeting of the Planning Commission to be a Regular Meeting to be held  
19 on Monday, March 22, 2021 at 7:00 P.M.

20  
21 **K. ADJOURNMENT:** 10:14 P.M.

22  
23 Transcribed by:

24  
25  
26 Sherri D. Lewis  
27 Transcriber  
28