

**REGULAR MEETING OF THE CITY OF
COSTA MESA PLANNING COMMISSION**

February 27, 2006

The Planning Commission of the City of Costa Mesa, California, met in regular session at 6:30 p.m., February 27, 2006 at City Hall, 77 Fair Drive, Costa Mesa, California. The meeting was called to order by Chairman Perkins, followed by the Pledge of Allegiance to the Flag.

ROLL CALL:

Commissioners Present:

Chairman Bill Perkins
Vice Chair Donn Hall
Eleanor Egan, James Fisler, and Bruce Garlich

Also Present: R. Michael Robinson, Secretary
Costa Mesa Planning Commission
Christian Bettenhausen, Deputy City Attorney
Ernesto Munoz, City Engineer
Mel Lee, Senior Planner
Wendy Shih, Associate Planner

MINUTES:

The minutes for the meeting of February 13, 2006 were accepted as corrected.

PUBLIC COMMENTS:

**PLANNING COMMISSION
COMMENTS/SUGGESTIONS:**

None.

CONSENT CALENDAR:

None.

PUBLIC HEARINGS:

APPEAL OF PLANNING
STAFF'S APPROVAL OF
BUILDING PLAN CHECK NO.
B06-00096

The Chair opened the public hearing for consideration of an appeal of the zoning approval for a 1,218 square-foot, second-story addition to a single-family residence located at 3250 Oregon Avenue. Environmental determination: exempt.

3250 Oregon Avenue

Senior Planner Mel Lee reviewed the information in the staff report and gave a presentation. He explained that Commissioner Bruce Garlich is the appellant in this case and would be addressing issues related to the appeal. Mr. Lee said staff was recommending the Planning Commission uphold staff's recommendation of approval, by adoption of Planning Commission resolution.

Commissioner Garlich reviewed the history of the zoning code, design guidelines process, and the present standards addressing second-story additions, the footprint, and noticing of the application. He said that in relation to this project, a couple those neighbors who received notice contacted him about their concerns. Commissioner Garlich said the reason for appealing this application was so that the neighbors could have an opportunity to express their concerns and perhaps find resolution. He also found that there were concerns about the "privacy" issue and that this forum would allow discussion for those concerns.

In response to a question from Commissioner Garlich regarding the rear elevation, Mr. Lee explained that in this instance, the north elevation is the left side and confirmed that the east elevation faces the 3 properties to the rear.

The Chair requested that the Godfreys (3250 Oregon Avenue), come forward to speak about their second-story addition. Neil Godfrey said he purchased this 3-bedroom home in 1996, and that young families who moved to the Mesa Verde area before the housing boom, face the same dilemma in that they have outgrown their starter home but bigger houses in Mesa Verde are unaffordable. The options are that they can use the equity in their home to add a couple of bedrooms either upstairs or downstairs, or, they can buy a bigger house where they are cheaper. He

felt the residents of Mesa Verde should encourage families like his, who invest in their property and in the community, to stay. The residents of Mesa Verde are all in agreement that they don't want to see the character of the neighborhood destroyed by it's residents engaging in "one-upmanship" where each building is bigger, with more elaborate housing than the last. He said they are grateful that the Commission has already confronted the issues of mass, scale, and privacy and resolved them with the guidelines. He explained how this project meets and exceeds the guidelines. He said they have read the minutes of meetings for the past 2 years, and there are many cases where the applicant is seeking an exception or a variance, and they are not. Mr. Godfrey said they simply do not want to be stopped from improving their property when they have followed all of the City's rules. They simply want to enjoy the same rights as other property owners. He said within half a mile, there are at least 4 other homes with a second-story addition over the past year. He asked that the Commission to uphold the City's approval of their plan.

In response to a comment from the Chair about those neighbors closest to the subject project and who would be the most affected, Mr. Godfrey stated that the two immediately to the north and immediately to the south, and the two across the street, are all fine with this project.

In response to the Chair regarding the most recent packet information prepared for this evening's hearing, Mrs. Ann Godfrey, 3250 Oregon Avenue, acknowledged they had received the package and thoroughly reviewed it. She said they would be happy to provide additional enhancements, but have some confusion as to which one, and want to make sure that the cost will not be exorbitant for the elevations. She said if it's some shutters, or some siding, of course they can do that. She was worried that the request was for something structural and proceeded to discuss their finances to this point. In response to the Chair, Mr. Lee stated that what he asked for was to provide some additional "architectural" enhancements rather than structural enhancements. Rather than specify the type of materials, colors, treatments, etc., he usually leaves that to the discretion of the owners and their contractor.

Chair Perkins advised that the contractor the Godfreys selected is someone who has done projects in Costa Mesa previously and can understand what was said by staff.

Commissioner Garlich commented that Mr. Godfrey's presentation was well done and he did not disagree with anything that was said. He said the one concern he has as being the appellant in this case, had to do with the privacy issue. He discussed the various issues that concern the neighbors most often (placement of windows and backyard issues such as swimming pools). He asked Mr. Godfrey if he would be amenable to installing opaque windows or some other mitigation such as trees, etc., that would afford the neighbors to the easterly and northerly directions facing their backyards, privacy from his window views. Mr. Godfrey responded that opaque windows are not his choice but they would certainly be willing to work with staff to come up something along those lines and perhaps consider planting. He said they don't want to particularly look into their neighbors' backyards anymore than the neighbors want it. He felt they deliberately designed those areas so that the rooms least used on the easterly side, would be their bedroom and bathroom. He said there would be no game room, or family room, or anything like that. He said he was amenable to window treatments and trees, etc.

Commissioner Fisler noted that the Godfreys' sidewalk was buckling. Mr. Munoz stated that this portion of the sidewalk in this location is currently under design and a contract will be awarded most likely in May of this year and under construction at the later part of the year so the Godfrey's can expect that problem will be corrected with the new program.

Doyle Forth, contractor for the Godfreys' second-story addition, 12612 Hoover Street, Garden Grove, felt that the appeal was not justified because this project is within all City guidelines and was approved to proceed to the Building Division. He felt changes in these plans would not

only be costly, but cause unnecessary delays and gave detailed examples of what could happen. He also felt if the neighbors had issues with privacy, they could have discussed it with the Godfreys previously, but no one came forward. Commissioner Garlich explained that he appealed this project because he had received calls from surrounding neighbors who complained about their privacy. Further, he felt they should have a chance to express their views before the project begins. Mr. Forth disagreed because he felt that no matter what, there would always be a neighbor who will complain about a second-story addition and this did warrant stopping the project.

John Sullivan, 3249 Montana Avenue, explained that although the Godfreys live behind him, he does not know them nor has he seen them, mainly because he has the pie-shaped lot in back of them. He just spent \$30,000 making his backyard aesthetically pleasing with a Koi Pond and 7 waterfalls integrated in a beautiful garden. He said they don't have drapes on their bedroom windows so they can enjoy looking at the garden and listening to the waterfalls, and, waking up to the same thing in the morning. He said with the second-story addition, those windows would look straight down into his bedroom and his backyard. He said the Godfreys have never approached him or spoken to him about any kind of tree accessories that they could put up to help block their view and that is why he is at this meeting.

Jim Stolp, 3265 California Street, explained that he is the neighbor with the swimming pool in his backyard. He said although he is opposed to second-story additions, he knows there is nothing he can do about them. He said they have enjoyed their pool for many years and with the advent of a second-story right behind his property, they will be affected by the easterly and northerly windows of the addition. Mr. Stolp showed photographs of views from his back patio (also showing the swimming pool) forward to the Godfreys' property. He felt that plantings come and go over the years and he preferred the windows be removed and skylights installed. Mr. Stolp said he wanted to tell Mr. Godfrey and his contractor Mr. Doyle, that they have been neighbors for many years, and "everything is great and we get along great."

Daniel Wexler, 3108 Madeira Avenue, said he is not directly impacted by the second-story addition but he is a concerned citizen who lives in this community. He felt the City does a fine job on these areas. He said his comment is that one person's right to a quiet enjoyment of his property has to be weighed against how it impacts the rest of the community. Mr. Wexler felt there was a very reasonable resolution to this problem in that perhaps plantings or something along that line, would allow some privacy, and whether or not it's the Godfreys' responsibility, or the neighbor's, it will be decided by the Commission. He suggested that perhaps the 50% to 80% of the first floor area ratio might have created this problem.

Commissioner Garlich did not agree that the increase in floor area ratio created this problem. In fact he believed it is working, because this is the first time in several years that it rose to a level he thought was appealable. He said it is working very well.

Martha Hilchey, 3245 Montana Avenue, explained their yard as being "L" shaped and the reason they moved to this address in 1996 was because the yard is so large and they have such a great view. She said their concerns also lie with the privacy issue. She read the neighbors' statement from the petition circulated by Joan Stolp dated February 16, 2006. She said the first time they heard about this was when they received the postcard notice from the City. She felt it would have been nice had the Godfreys notified the neighbors themselves and then everyone would have been able to have their input into the project. Mrs. Stolp then submitted the petition to staff.

No one else wished to speak and the closed the public hearing.

MOTION:

A motion was made by Commissioner Garlich, seconded by Vice Chair

Bldg. Plan Check No. B06-00096
Upheld Approval

Hall and carried 5-0 to uphold Planning staff's zoning approval, by adoption of Planning Commission Resolution PC-06-11, based on information and analysis contained in the Planning Division staff report, and findings contained in exhibit "A", subject to conditions in exhibit "B" with the following addition:

Conditions of Approval:

1. The property owner shall work with staff to find mutually agreeable solutions to mitigate the neighbors' privacy.

Deputy City Attorney Christian Bettenhausen advised the Chair that the Godfrey's should be allowed to speak and/or to address any issues brought up by previous speakers. The Chair then reopened the public hearing.

Mrs. Godfrey said she understands the privacy issue and that's why they were very careful about placing their bedroom to the east. She said they would be glad to address it with trees and window treatment. She assured her neighbors that their goal is not be looking into other people's yards. She said they looked at homes in Costa Mesa and they just could not afford to buy and so they felt it was necessary for them to add a second-story addition. The Chair suggested she talk with her neighbors while she is going through this and she responded that her neighbors live next door and they know where she lives. Mrs. Stolp came to visit once because there was a problem with a tree. They trimmed the tree. She asked why they didn't come to see her when they received the postcard from the City instead of calling the Planning Commission?

Mr. Godfrey stated that it would have been better had they involved the neighbors more, and found out what their issues were. He also felt they did not have a lot of options when it came to building the second story because of structural considerations, i.e., to stay on target in keeping and locating bathrooms in order that the egress works as it needs to, etc. They were limited as to what they could actually do. Unfortunately, they both work and by the time the kids are in bed, it is hard to go around the neighborhood and organize something, but he wished they had done that. He said he hoped that they could come to a feasible resolution for everyone.

Commissioner Garlich said he appreciated the Godfreys willingness to work with staff on the window treatment issue. He explained for the record, that the Commission needs to look at different aspects of the project, i.e., someone else may come in and turn that space into a game room. He said the Commission wants to have some idea of how the future looks for this project. He said he was glad to hear about how the Godfreys planned to use that space, and he felt it mitigates a lot of the concerns.

Mr. Godfrey said that at this point, timing is everything because the contractor is essentially waiting, and they have a contractor they really like who's sensitive to issues in terms of how long it takes, and he will finish it quickly so disruption to the neighborhood is minimized.

No one else wished to speak and the Chair closed the public hearing

Commissioner Fislser commented that he would support this motion and was still baffled as to why this was appealed and was sorry the Godfreys had to waste their time really being here. He said this is the kind of project he likes to see; there is no variance; it is adequately parked; it complies with the City's residential design guidelines, and he is happy this Commission seems to be leaning towards approving the project.

Vice Chair Hall discussed the privacy issue and asked that Commissioner Garlich restate the condition that was added to clarify that the privacy issues *shall* be resolved rather than wondering if the neighbors are going to make changes. Vice Chair Hall also gave examples of what has happened to the neighbors who have been affected by second-story additions. He said by code, it is the right of people to add second stories with conditions that must be complied with. He strongly felt that the

rights of adjacent property owners should be considered, particularly the “shade and shadow” aspect, i.e., one neighbor has a swimming pool and now he will not have anymore sun, so the pool is not necessary anymore.

Commissioner Garlich amended his motion.

The Chair summarized both sides, but he felt there was no legal basis to turn this request down. He said he felt bad for the adjacent property owners, especially the pool owner. He felt this would end up being a great project. He complimented Mr. Doyle on his projects in Costa Mesa.

In response to a question from the Chair regarding Vice Chair Hall’s request for further study regarding streamlining second-story additions, and adjacent property owners rights, Mr. Robinson stated that if the Commission would like staff to take this to City Council for authorization, they would be happy to do that, if there is a motion by the Commission to do so.

The Chair called the original motion as shown above.

MOTION:
Second-story Additions/Neighbors’ Rights
Withdrawn

A motion as made by Vice Chair Hall, and seconded by Chair Perkins to bring forward to City Council, issues related to streamlining second-story additions and neighbors’ rights.

Commissioner Garlich said he wasn’t clear if Mr. Robinson’s comment was motivated by his concern for the 4-hour rule, so Council will give permission to make suggestions to the Planning Commission, or whether it was not. He said his personal preference would be for staff to give some thought to this issue and bring some options back to Planning Commission that would get discussed in a study session. In this way, they could make some meaningfully recommendations to City Council as opposed to just throwing it over the fence to them, and because Planning Commission was created to help City Council with things like this.

Mr. Robinson explained that any new work requiring more than 4 hours of staff time needs prior Council approval and that was his intent.

Vice Chair Hall withdrew his previous motion and made the following motion.

MOTION:
Streamlining Second-story Additions/Neighbors’ Rights
Approved

A motion was made by Vice Chair Hall, seconded by Chair Perkins and carried 5-0 to present to City Council in anticipation that it will require more than 4 hours of staff time, a grant of permission for a study session for Planning Commission to proceed with a discussion of issues relative to streamlining second-story additions, and neighbors’ rights.

Commissioner Fislser stated that as a realtor, he takes people around to purchase homes and one of the things that is always look at is “lot orientation” because so many people are into gardening. He said, as Vice Chair Hall stated, the north side always suffers from the sun. He points things out like that to the buyers because it is important to them; the path of the sun and what is going to happen. He felt in a perfect world, he would like to see one-story tracts, with no second-story additions. He said second-story additions are now the reality and it would be a good idea to study the privacy issues.

In response to a suggestion from the Chair concerning parameters from the City Attorney’s Office, Vice Chair Hall said he would prefer to have a memo to the Planning Commission at the study session.

Commissioner Egan said that she would like to remind Mr. Forth and anybody else who may be interested, that all of the Commission study session agendas, as well as meeting agendas, are on the internet; go to the City’s website at www.ci.costa-mesa.ca.us and all of that information will be there, including staff reports. The Chair then confirmed with Mr. Robinson that Mr. Forth would be notified of the study session if it is approved.

The Chair explained the appeal process.

PARCEL MAP PM-05-319

Polahmus/Favreau

The Chair opened the public hearing for consideration of Parcel Map PM-05-319 for Chuck Favreau, authorized agent for Richard Polhamus/Studio Development LLC, for a tentative parcel map to subdivide a single industrial building into two airspace condominiums, located at 3190-B Airport Loop Drive, in an MP zone. Environmental determination: exempt.

Senior Planner Mel Lee reviewed the information in the staff report and gave a presentation. He said staff was recommending approval by adoption of Planning Commission resolution.

Robert Sundstrom representing Favreau Engineering who is the authorized agent for Richard Polhamus, 3434 Via Lido, Newport Beach agreed to the conditions of approval. He said the project as proposed, is consistent with the existing adopted CC&R's. He said no changes will be physically done to the buildings or anything regulated by the CC&R's on the property.

Bill Boodman, 3190-C Airport Loop Drive, owner of the building next door to building with the proposed subdivision changes, said he was concerned about the impact on his business operations. He said the parking lot is being used to its capacity, and at the present time, it is difficult for his employees and customers to find parking spaces. He felt by subdividing the building, there would be two businesses rather than one operating out of the same building and it could dramatically increase the use of the already strained parking lot. His understanding is there will be significant number of cars with this new purchase with a possible plan to remove the large grassy area with the large tree in front of the proposed building to create a parking lot with a surcharge to the business owners in the area. He felt it was unfair to have his business absorb that additional expense because of the subdivided building. He asked the Commission, if they were inclined to approve this project, to limit the number of parking spaces for clients and employees of both businesses.

In response to Mr. Boodman's concerns, Mr. Lee stated that the industrial complex is parked at a parking ratio established by the City's Municipal Code—any deviations from that parking requirement would require a review by the Planning staff and/or the Planning Commission, depending upon the type of use that's proposed. With regard to this particular space, staff is not aware of any specific proposed uses that would require additional parking above and beyond what the complex is already providing, and those parking provisions as far as who can park, and where, have already been established in the CC&R's for the property.

In response to a question from Commissioner Egan regarding whether the owners could delete some landscaping and substitute parking without the City's permission, Mr. Lee said it would require the City's approval before they could do that.

Mick Hall, 3190-A Airport Loop Drive, Costa Mesa, stated that he has been leasing the 3190-A building and it is his experience regarding the parking in the front of his building and over to Bill Boodman's area, is maxed out all the time. He is also concerned about the impact of the parking; they try and maintain 4 parking places in the front of the building so that customers have a place to park. He felt when the proposed business fills up the building; it would be tight in parking behind their building to be able to provide the 4 spaces. He felt with 2 more businesses coming into that building, it would be even more difficult.

In response to a question from Commissioner Egan concerning parking allocations and if that is something that could be done by the property owners through the CC&R's. Deputy City Attorney Bettenhausen stated that it wouldn't necessarily be the property owners that you could attach conditions on because it's something that affects all the property owners. Commissioner Egan explained that she is asking if that is something that they could handle without the Commission's involvement. Mr. Bettenhausen confirmed that they could.

Dan Curtis, 3187 Airway Avenue, Costa Mesa said he was president of the community association referred to as Koll Irvine Center Community Association. He said he owns the building at 3187 Airway Avenue in that business park, just across the street and about 5 doors away from the subject buildings. Mr. Curtis gave an overview of the 50-acre business park. All parking is free and “in common.” He said this particular building was one of the models when first built. He said it was over-landscaped with 10,000 to 12,000 feet of extra lawn and landscaping directly in front of the subject building. He said that perhaps now was the time they should consider adding additional parking to the project. In summary, as president of the board, he said they have reviewed the CC&R’s, the addendums to the CC&R’s, and the by-laws of their community association; they have also corresponded with their attorneys on retainer and there is no opposition to the plan to make this an airspace condominium. Because of the “in common” parking, there is more than adequate parking; it just may not be at the front door of each unit.

Rick Polhamus, 3195B Airport Loop Drive, Costa Mesa, stated that he bought the subject building and decided to split it in half and keep one half for himself and sell the other half. He stated the reason by buying the building was because of the beautiful landscaping around this particular building, and the fact that he is a landscape architect. He said there are currently employees in there now, and his own employee. He found it hard to believe he was impacting the parking of the previous speakers.

No one else wished to speak and the Chair closed the public hearing.

MOTION:
PM-05-319
Approved

A motion was made by Commissioner Fisler, seconded by Commissioner Egan, and carried 5-0 to approve by adoption of Planning Commission Resolution PC-06-12, based on information and analysis contained in the Planning Division staff report, and findings contained in exhibit “A”, subject to conditions in exhibit “B.”

The Chair explained the appeal process.

Commissioner Egan commented that she is seeing a trend of subdividing large industrial buildings. She felt there was a great market for it and she is seeing big companies that have occupied huge amounts of space in the past and they are gone. She believed that we would see more of these and we should be prepared to deal with whatever new issues may be presented to the Commission.

BREAK:

The Chair called a recess and resumed the meeting at 8:10 p.m.

PLANNING APPLICATION
PA-05-57

The Chair opened the public hearing for consideration of Planning Application PA-05-57 for Smajil & Alaudina Bostandzic, Amir & Alma Mustedanagic, and Senad & Azra Vejzovic, for a conversion of a 3-unit apartment project into a common interest development; with a variance from private open space requirements for one of the units (10 ft. minimum dimension required; 7’ 9” dimension provided), located at 1773, 1775 and 1775-1/2 Anaheim Avenue in an R2-HD zone. Environmental determination: exempt.

Bistandzics, Mustedanagics, and
Vejzovics

Senior Planner Mel Lee reviewed the information in the staff report and gave a presentation. He said staff was recommending approval by of the conversion, as well as the variance for the patio, by adoption of Planning Commission resolution, subject to conditions.

Mr. Lee noted that the project’s approval would not increase the degree of nonconformity and that the applicants are joint property owners and do not rent any of the units, and therefore, the conversion of the units will not result in a loss of affordable units as specified in the City’s General Plan Housing Element. He pointed out that because of conversion from rental units to ownership units, it would increase home ownership opportunities within the City. He also discussed drainage and water quality issues and a suggestion to incorporate them into the CC& R’s.

Commissioner Garlich disclosed that Bill Turpit is the author of the correspondence regarding the issues of drainage and water quality and their

inclusion as conditions of approval that would reference the CC&R's. Commissioner Garlich said that Mr. Turpit called him regarding these issues and he referred him to City Engineer Ernesto Munoz and Assistant Development Services Director Michael Robinson, for assistance with his concerns.

In response to a questions from Commissioner Fisler regarding the number of units on the property, Mr. Lee explained that the properties to the rear are zoned single-family residential, but immediately to the north and south, those may be duplexes and triplexes, as well as what's on the subject property. Commissioner Fisler stated that on this particular project at 6,000 square feet, legally, and asked if it is 2 units without a variance. Mr. Lee confirmed it is 2 units maximum. Commissioner Fisler confirmed that if there were the 2, the parking spaces required, would vary from 8 parking spaces to perhaps 10, depending upon the number of bedrooms.

Alaudina Bostandzic, 1175-1/2 Anaheim Avenue, Costa Mesa, one of 3 owners of the Anaheim Avenue properties and is s resident of one of the three-2-bedroom apartments, stated that she is not representing the owners as a whole but her third of the property. She agreed to the conditions of approval. She said the property was purchased as one building in 2000. All 3 owners are separate families, unrelated to each other and it is difficult for them to come to agreements on all issues. She said one of the reasons for the condo conversion request is to make it easier for all 3 units to legally function independently. She reviewed the information in the staff report and gave a detailed account of the conditions under which each of the 3 owners is living in their separate unit. Mrs. Bostandzic asked the Commission to approve their request.

Commissioner Garlich confirmed that the ownership is tenants in common and that they that own the entire property. Mr. Lee explained that the applicants are all co-owners of the property and each one occupies a unit on the property so they are not actually leasing the units. They are each living in a separate unit on the property.

Mrs. Bostandzic, in response to a comment by Commissioner Garlich concerning reaching agreements between the parties, explained that right now, there is no legal entity that would bring all three owners of all three units together to make any decision. She said in her opinion, if they had the homeowners association that would be a legal entity, which would enable them to function with monthly meetings, and to resolve issues.

Commissioner Fisler said he was not sure whether it's the title is held as tenants in common or joint tenants, that allows people to own different percentages of a building, and in others they have equal percentages, and can in both cases, sell off their percentages to other people who can then come in. Deputy City Attorney Bettenhausen explained joint tenancy is a manner of holding title wherein if one of the people who is a party to the joint tenancy dies, his interest is terminated immediately as of the death, and no action needs to take place. The remaining people in the joint tenancy take that interest. Any decisions made on the subject property would require they all be in agreement. The only avenue would be to go to court for division of the interest (the court would probably require either a sale, or a buyout of another tenant in common).

Vice Chair Hall pointed out that what the Commission is interested in this evening, is a common-interest development, and how they did it in the past is of no concern to the Commission. The Chair agreed.

Alma Mustedanagic, 1773 Anaheim Avenue, Costa Mesa, agreed with Mrs. Bostandzic's comments and felt that a conversion would be good for them.

Bill Turpit, 1772 Kenwood Place, Costa Mesa, stated that he has lived next to this property for 25 years and during that period there have been 3 owners of the property. Two of those owners, including the current group have been owner/occupants and has been a very good arrangement to the extent that condominium ownership will continue

owner/occupancy, he supported the request and believed that they have a good plan and they are good neighbors. He said he has a couple of concerns having to do with the other nonconforming aspect of this property that was not in the staff report.

Commissioner Garlich offered that Mr. Turpit has proposed language for conditions in his email and asked staff if the Commission could use that language. Mr. Lee reviewed the language and stated that the wording would be perfect because the wording is straight out of the easement document for the cross-lot drainage. Mr. Bettenhausen agreed but requested that the last sentence be stricken from the drainage paragraph.

Mrs. Bostandzic said she supported Mr. Turpit and would really like to comply with everything; keeping the drainage clean; and not putting any waste or paint into the drainage that would cause damage to the environment. However, she was not sure why it was necessary to condition this. Mr. Lee explained that the current owners are aware of the drainage issues leading to Mr. Turpit's property, however, in the future, if the property changes ownership, the future owners may not be aware of the drainage and water issues. The purposes of incorporating these conditions into the CC&R's, is to provide an additional level of notification that there is an agreement in place for the drainage, and that the drain must be maintained. In this case, it would be through the CC&R's rather than through the individual property owners.

Sanda Hnatjuk Bahic, 27297 Nicole Drive, Laguna Niguel, a realtor and friend of the Bostandzic family, stated that she helped these people understand their property profile. She said when they purchased the property, they were honest in saying they did not know what they signed because it was very unclear.

No one else wished to speak and the Chair closed the public hearing.

Vice Chair Hall asked if all three of the current property owners are in favor of this common interest development. Mr. Lee confirmed.

MOTION:
PA-05-57
Approved

A motion was made by Vice Chair Hall, seconded by Commissioner Garlich and carried 3-2 (Egan and Fisler voted no), to approve by adoption of Planning Commission Resolution PC-06-13 based on information and analysis contained in the Planning Division staff report, and findings contained in exhibit "A", subject to conditions in exhibit "B" with the following additions:

Conditions of Approval:

The following disclosure and use restrictions shall be a part of the CC&Rs and shall also be included in the conditions of approval.

10. Drainage: An easement for the installation, maintenance, repair and replacement of a private underground drain line has been granted for the benefit of the property over the adjacent residential lot to the west, for the purpose of connecting drainage facilities on the property to the public right-of-way on Kenwood Place. This drainage easement was recorded on December 15, 1995, as Instrument No. 19950560931 in the Official Records of Orange County. The drainage facilities on the property are designed to convey all surface water run-off on the property to the catch basin located at the west end of the driveway, and to convey that water into the private underground drain line. The owners of the property shall at all times maintain these drainage facilities and the catch basin on the property in a condition that is free of debris, in a fully operational condition in conformance with the terms of the drainage easement.
11. Water Pollution Prevention: The property is subject to the provisions of the Federal Clean Water Act and its municipal component known as the National Pollutant Discharge Elimination System (NPDES). NPDES is implemented by state and county agencies which impose procedures known as Best Management Practices (BMP) pertaining to the quality of water runoff that flows into storm drains and waterways. The owners shall maintain the prop-

erty in compliance with all applicable BMPs, and shall not discharge household cleaners, chemicals, fertilizers, motor oil, paints or other pollutants into street gutters or catch basins, including the drainage facilities and private drain line serving the property. Violations of applicable water quality laws may subject the owners to fines and other penalties.

Commissioner Garlich asked if Vice Chair Hall, based on the recommendation of the Deputy City Attorney, would agree to delete the last sentence of the drainage clause. Vice Chair Hall confirmed and noted the change.

Commissioner Egan said she could not support the motion and felt this was going to end up in court no matter what the Commission does. She said she had no problem with the open space variance. She felt the parking was inadequate, and the extremely high-density makes it too far out of conformity with the General Plan and Zoning Code. She said this property is within the boundaries of the residential ownership plan that is currently in process, which would mean that the properties could, under certain circumstances, have 20 units per acre. This property is already more dense than that. It needs 8 open parking spaces and 3 covered parking spaces. There is no way they can get 8 open parking spaces in there. In order to get the 3, they have to remove the storage shed currently there. They would still be 5 spaces short and that's an impact on the entire neighborhood. If it remains rental property, it is still going to be short, but if this is approved just on the basis that it's already nonconforming, it isn't going to get any better, and the standards need to be adhered to. Because it's a parking shortage, it's a particularly serious non-conformity. Unfortunately, being so high-density, there is no chance somebody's going to tear down 3 rental units and build one unit. She said she is not inclined to approve property that is this far out of conformity with condo standards for the R2 zone. She then made the following substitute motion.

SUBSTITUTE MOTION:
PA-05-57
Failed to carry

A substitute motion was made by Commissioner Egan, seconded by Commissioner Fisler and failed to carry 2-3 (Hall, Garlich and Perkins voted no) to deny the project based on the evidence in the record and the finding that the information presented does not substantially comply with Costa Mesa Municipal Code Section 13-29(e) in that (a) the project is not compatible and harmonious with existing developments and uses in the general neighborhood in that the extremely high-density and lack of adequate parking do not come close to the development standards for condominiums in the R2 zone; and (b) that the project is not consistent with the General Plan for the same reason.

Commissioner Fisler said he could not agree more and the only thing he likes about this project is the open space. He felt the parking, lot size, and density were all bad for the quality of life in Costa Mesa but did acknowledge that it is a legal, nonconforming property, and would stay that way if the this motion passes. He felt if we are to do conversion, we need to "raise the bar" of conformity.

The Chair called the substitute motion which failed to carry 2-3 (as shown above).

The Chair then called the original motion, which carried 3-2 as shown above).

The Chair explained the appeal process.

PLANNING APPLICATION
PA-06-04 & PARCEL MAP
PM-06-110

Sacuy

The Chair opened the public hearing for consideration of Planning Application PA-06-04 and Parcel Map PM-06-110 for Temir Sacuy, to convert 3 units under construction and one existing unit (owner occupied) to airspace condominiums; with a parcel map to facilitate the subdivision, located at 191, 193, 195, and 199 Mesa Drive in an R2-MD zone. Environmental determination: exempt.

Associate Planner Wendy Shih reviewed the information in the staff report and gave a presentation. She said staff was recommending approval by adoption of Planning Commission resolution, subject to conditions.

In response to a question from Commissioner Garlich concerning the former approval for this project, Mr. Shih stated that the design review approved in 2004, was, to allow construction of 3 two-story residences on this property and keeping the existing two-story residence. It was only the development project that was approved. Without the map and approval of this conversion, these would be rental units. She said the applicant is proposing to convert these newly constructed units into condominiums to allow separate ownership. When it was approved the first time, the applicant's intention was an ownership project, but he did not come forward with an application for subdivision and conversion.

Commissioner Egan pointed out that there is a sentence in the prior approval, PA-03-50 in the analysis, "the applicant is reminded that any approval of this project, does not constitute automatic approval of any future requests for a subdivision map and design review for conversion of the residences to ownership status." She said even though they are under construction, they are basically built, so how could the Commission do a design review at this point. Ms. Shih stated that the current application is a conversion and subdivision map approval. Ms. Shih stated that the design review portion was approved in 2004.

Temir Sacuy, 199 Mesa Drive, Costa Mesa, agreed to the conditions of approval.

No one else wished to speak and the Chair closed the public hearing.

MOTION:
PA-06-04/PM-06-110
Approved

A motion was made by Commissioner Fisler, seconded by Commissioner Vice Chair Hall and carried 5-0 to approve by adoption of Planning Commission Resolution PC-06-14, based on information and analysis contained in the Planning Division staff report, and findings contained in exhibit "A", subject to conditions in exhibit "B.

The Chair explained the appeal process.

REPORT OF THE DEVELOPMENT SVS. DEPARTMENT:

None.

REPORT OF THE CITY ATTORNEY'S OFFICE:

None.

ADJOURNMENT:

There being no further business, Chairman Perkins adjourned the meeting at 9:00 p.m. to the study session of Monday, March 6, 2006.

Submitted by:

R. MICHAEL ROBINSON, SECRETARY
COSTA MESA PLANNING COMMISSION