

**MINUTES OF THE REGULAR MEETING OF THE FULLERTON PLANNING COMMISSION**

**COUNCIL CHAMBERS – CITY HALL**

**WEDNESDAY**

**MARCH 26, 2008**

**7:00 P.M.**

- CALL TO ORDER:** The meeting was called to order by Chairman Bailey at 7:03 p.m.
- PRESENT:** Chairman Bailey, Commissioners Musante, Savage, Francis, Chaffee, Richmond, and Whitaker
- ABSENT:** None
- STAFF PRESENT:** Community Development Director Godlewski, Acting Chief Planner Eastman, Senior Planner Allen, Assistant City Attorney Adams, Deputy City Attorney Summerhill, Redevelopment Manager Kovac, Senior Civil Engineer Voronel, Community Preservation Supervisor Warren, Community Preservation Officer Torrico, Community Preservation Officer Mendoza and Clerical Assistant Flores
- FLAG SALUTE:** Commissioner Richmond
- MINUTES:** MOTION made by Commissioner Musante, SECONDED by Commissioner Richmond, and CARRIED 6-0, with Commissioner Francis absent, that the Minutes of the Regular Meeting of February 27, 2008 be CONTINUED.

**CONSENT CALENDAR:**

**PRJ05-00753 – ZON05-00106 – TR-16993 – ZON06-00009. APPLICANT AND PROPERTY OWNER: NEW CASTLE DEVELOPMENT.** A request for a one-year time extension of a previously-approved major development project, zoning adjustment and tentative tract map on property located at 345 East Commonwealth Avenue.

MOTION by Commissioner Musante, SECONDED by Commissioner Chaffee, and carried 6-0, with Commissioner Francis absent, APPROVING the one-year time extension.

**PUBLIC COMMENTS**

No public comments.

**PUBLIC HEARINGS**

Commissioner Francis arrived at 7:07 p.m.

**PRJ08-00043 – ZON08-00017 – ZON08-00018 – TTM-17278. APPLICANT: HABITAT FOR HUMANITY OF ORANGE; PROPERTY OWNER: CITY OF FULLERTON REDEVELOPMENT AGENCY.** A request for a major development project, additional incentives available under density bonus provisions, and a tentative tract map to develop nine (9) affordable residential

condominium units on property located at 413, 425 and 431 West Valencia Drive, in a Community Improvement District (north side of West Valencia Drive, between approximately 471 feet and 651 feet east of Richman Avenue (R-2 & R-3 zones) (Categorically exempt under Section 15332 of CEQA Guidelines) (HAL)

Senior Planner Allen stated that the item concerned the second and third phases of the Habitat for Humanity projects within the City. Senior Planner Allen referenced a site plan, and explained the request. She explained that the project included approval of a major development project for 9 affordable housing units, affordable housing incentives, and a tentative tract map to consolidate the lots and to create residential condominiums for separate ownership of each home. Senior Planner Allen stated that the site plan orients 5 units to Valencia, and stated that there was a four unit cluster to the east, and a five unit cluster to the west. Senior Planner Allen explained that vehicle access to all of the units would be off the alley. She stated that each cluster has its own motor court, and each unit has a two car garage. Senior Planner Allen explained that there are 3 different floor plans and explained each one. She explained that the houses are the same architectural style as those found in the project across the street. She stated that the units are different by the design of the porch and the materials that are on each porch. Senior Planner Allen explained that the Fullerton Municipal Code as well as state law provide for certain incentives that are available to affordable housing projects. Senior Planner Allen explained that the incentives the developer was requesting are often referred to as a Density Bonus. She explained that the incentive was for two setback reductions for the front setback along Valencia, because all the units would require a 15 foot setback. She stated that there was also the request to reduce the required distance for parking stall back up space, and explained that 25 foot backup is required. The developer was also requesting incentives that would allow them to reduce the requirement regarding building to building separations, and consideration to reduce the required open space. Senior Planner Allen stated that Staff recommended approval of the major development project, affordable housing incentives, and the tentative tract map for lot consolidation and condominium purposes.

Chairman Bailey asked what the deviations were, and why they were being requested. Senior Planner Allen explained that in the Municipal Code allows certain specific incentives to a developer who is doing an affordable housing project. She stated that based on the level of affordability, they are eligible for certain incentives. Senior Planner Allen explained that typically it is a density bonus to add more units, or setback reductions, parking reductions, and open space reductions. She stated that Code sets limits to those reductions, and the developer has exceeded those. Senior Planner Allen explained that state law requires an approving body to make a finding against approving the incentives otherwise it has to be approved.

Chairman Bailey asked if the Redevelopment Design Review Committee (RDRC) had reviewed the project. Senior Planner Allen responded that they had, and recommended approval.

Commissioner Savage asked what the total number of bedrooms and bathrooms are. Senior Planner Allen explained the 3 different floor plans and stated there would be a total of 25 bedrooms. She stated that there was a condition that all units have 2 baths.

Commissioner Savage asked if Valencia Drive allowed over night parking. Acting Chief Planner Eastman responded that he believed over night parking is allowed. He volunteered to verify the answer if necessary.

Commissioner Chaffee asked how the proposed units compare to the units already built. Senior Planner Allen stated that they had similar architectural features, a similar design and similar landscaping.

Commissioner Chaffee asked if the incentives were similar to the ones required for the units across the street. Senior Planner Allen stated that the units across the street had the setback reduction, parking stall backup reduction, and an open space reduction. She stated that the only thing that was different is that the property across the street was zoned R-2, and did not have the building to building separation requirements.

Commissioner Chaffee stated asked why the project had so little open space. Senior Planner Allen explained that if open space doesn't meet certain dimensions, full credit is lost, and some of the smaller areas are affected that way. Commissioner Chaffee asked if the open space was there and cannot be counted, and Senior Planner Allen responded yes.

Commissioner Chafee stated there was a condominium tract map, but the units were detached and asked why the units were considered condominiums. Senior Planner Allen stated that a condominium map allows for a condominium like ownership, and allows CC&Rs and a home owners association.

Chairman Chaffee stated that the affordability period was 45 years and asked if there was any reason it could not be 55. Senior Planner Allen stated that it was a requirement of the DDA with the Redevelopment Agency. Chairman Chaffee stated that if this was rental housing a typical affordability period would be 55 years.

Charles Kovac, Redevelopment Agency, stated that redevelopment law specifically states that the affordable covenant shall be 45 years. Mr. Kovac stated that it was 45 years for ownership and 55 years for a rental, and it's just a requirement embedded in Redevelopment law. He stated that since the project was funded by the Redevelopment Agency it falls under that jurisdiction.

Commissioner Chaffee asked if they were minimum periods. Mr. Kovac stated that it could have been longer, but it was not listed in the DDA, and there would have to be an amendment to extend the period longer.

City Attorney Adams stated that the affordability covenant is an Agency issue and not a land use issue.

Public hearing opened.

Mark Coronado, Habitat for Humanity, stated that the only comment he had was with Condition #3. He stated that because of drainage issues, and a Planning Department request to leave the 4 foot spaces open adjacent to the number 2 plan on both the east and the west developments, suggested that they be allowed to put a maximum of 3 foot fence for defensible landscaping.

Acting Chief Planner Eastman clarified that staff was in agreement with the amendment and recommended that any fencing be to the satisfaction of the Director of Community Development, should the condition be amended by the Commission.

Mr. Coronado clarified that Habitat for Humanity records a CC&Rs against every property that guarantees first right of refusal to Habitat for a period of 60 years. He explained that the first right of refusal runs not with the property, but the ownership. He stated that none of the 124 homes built have gotten outside of the Habitat program. Mr. Coronado believed that less than one tenth of one percent of any of the homes built by Habitat will be outside of the program.

Chairman Bailey asked if the 124 homes Mr. Coronado referred to were state wide, and Mr. Coronado responded that it was only in Orange County. Chairman Bailey asked how many homes Habitat for Humanity has built nationally, and Mr. Coronado responded that they were close to 250,000.

Chairman Bailey asked if people who move out of the homes can they only sale to qualified people or Habitat for Humanity. Mr. Coronado explained that first right of refusal goes to Habitat and was not sure if in the DDA the Redevelopment Agency could have second first right of refusal. He stated that if Habitat and or the City decide not to exercise the first right of refusal, then there will still be a covenant recorded against the property for 45 years.

Commissioner Savage was concerned about traffic, and asked about parking. Mr. Coronado stated that over crowding is specifically addressed in Habitats CC&Rs and the development agreement with the City. He stated that the CC&Rs require that the garages must remain available for parking. Mr. Coronado explained that his experience with low income wage earners is that they do not have the disposable income to have more then 2 vehicles. He stated that the average amount of vehicles in the household is about 1.5, and those are the statistics that are monitored by Habitat. Commissioner Savage asked if Habitat was expecting about 14 cars for the development and Mr. Coronado responded yes.

Mr. Coronado stated that they had sufficient guest parking as well and it will be denoted in the CC & R's that guest parking spaces and are not to be used by full time residents.

Vice Chairman Musante stated that he fully supported Habitat for Humanity. He stated that there seems to be a large disparity between the number of Habitat units in Orange County and asked Mr. Coronado if he would address that. Mr. Coronado stated that it had to do with willingness to partner with Habitat and philosophy of providing affordable housing. He explained that some jurisdictions do not see the value of spending sizeable subsidy on single family dwellings or ownership dwellings versus spending smaller amounts of dollars for affordable rental units.

Chairman Bailey asked how long the average ownership was for a single family detached Habitat for Humanity house. Mr. Coronado believed that since 1988, only 3 houses have been re-purchased.

Commissioner Savage stated that there were discrepancies in the amount of parking spaces noted on the site plan and the staff report. Mr. Coronado clarified that there were 18 covered parking spaces as well as the guest parking spaces. Acting Chief Planner Eastman clarified that the staff report was incorrect, and directed the Commission to the site plan.

Commissioner Chaffee stated that he was privileged to attend the dedication of the units across the street and believed that Habitat for Humanity did a spectacular job. Commissioner Chaffee explained that the City has certain requirements to maintain affordable housing. He stated that when a covenant expires the affordable housing has to be replaced. Commissioner Chaffee stated that Habitat for Humanity had a creative way of maintaining the affordability for a long time.

Public hearing closed.

Commissioner Richmond believed that the City needed more affordable housing, and was in support of the project.

Vice Chairman Musante agreed with Commissioner Richmond, and stated that the resolution should be amended to allow 3 foot fencing.

The title of RESOLUTION PC-08-11 APPROVING a Resolution of the Planning Commission of the City of Fullerton granting a major development project, additional incentives available under density bonus provisions, and a tentative tract map to develop nine (9) affordable residential condominium units on property located in a Community Improvement District at 413-431 West Valencia Avenue, was read and further reading waived. MOTION by Commissioner Savage, SECONDED by Vice Chairman Musante, and carried 7-0, that said Resolution be ADOPTED AS AMENDED to include no fencing next to the number 8 plans, except as reviewed and approved by the Director of Community Development.

Chairman Bailey stated that the area had a lot of pedestrian access, and there would be a lot of walk through. He suggested making the fencing safe so the residents can have their stuff outside.

Acting Chief Planner Eastman explained the 10-day appeal process.

**ADJOURN AS PLANNING COMMISSION**  
**CONVENE AS APPEALS BOARD**

The Commission took a 5 minute break

**PRJ08-00066 – ZON08-00022. APPELLANT: AMY AND MATT RUIZ.** An appeal of an Order of Abatement by the Public Nuisance Hearing Officer requiring the removal of the portion of the wall that exceeds three feet in height, located in the view clearance area, on property located at 319 E. Virginia Road (northeast corner of Virginia Road and Skyline Drive) (R-1-7.2 zone)

Senior Planner Allen explained that in Tile 6 of the Fullerton Municipal stipulates that the Planning Commission will act as the Appeals Board for items identified as a public nuisance.

Senior Planner Allen stated that the request has been filed to appeal an Order of Abatement to remove a portion of a wall exceeding 3 feet in height in a view clearance area. Senior Planner Allen gave a brief overview of the background. She explained that that the wall was inspected and the permits were finalled with the wall height of four feet. Senior Planner Allen stated that in June 2004 a complaint was filed concerning whether the wall was too high to obstruct the view of traffic at the corner of Virginia & Skyline. The Community Preservation Officer at the time saw that a building permit had been issued and closed the case. Senior Planner Allen stated that in May 2007 a second complaint was filed stipulating that the wall was obstructing eastbound traffic down Francis as viewed from the property's driveway. She explained that an inspection was conducted by a Community Preservation Officer and concluded that the wall did present a traffic hazard. Once the traffic hazard issue was addressed a notice of violation was sent to the property owner in September 2007. The notice advised the property owner that the wall height above three feet was not approved by Planning, and any approval by the Building Division was done in error based on incomplete information provided by the applicant. The notice requested that the property owner reduce the height back to 3 feet in a 15 foot cutoff area. Senior Planner Allen stated that in December 2007 a notice was provided to Community Development that the property owner wished to bypass the administrative hearing process in response to the notice, and proceed directly to the Appeals Board. The Director of Community Development reviewed the issues and the site to look for administrative remedies to the

situation. In reviewing the site, a conclusion was made that the topography and the location of the wall could create an obstruction. The Order to Abate was upheld and the request was to remove any portion of the wall that was over 3 feet in the view clearance area. In February 2008 the property owner's attorney requested to proceed directly to the Appeals Board for resolution. Senior Planner Allen explained the view clearance area, and stated that the Code prohibits anything in the area from exceeded 3 feet in height. The property owner in requesting the additional height of the wall would require Director review to determine if additional height could be granted to not negatively impact the surrounding properties. Senior Planner Allen explained that information was not provided to alert those reviewing the application that the adjacent property had a driveway which would put a view clearance area adjacent to the wall. Senior Planner Allen referenced photos of the property and the wall. Staff recommended that the Appeal Board deny the appeal and order abatement within 30 days.

Commissioner Francis left the room at 7:51 p.m.

Commissioner Savage referenced the photos and asked if the 15 feet were measured from the curb. Senior Planner Allen stated that the 15 feet were measured from the edge of the driveway, and referenced the photos. Commissioner Savage asked if it was parallel to the wall that faces the street, and to the wall on the side of the driveway. Senior Planner Allen explained that it was parallel to the street and come in at a right angle along the easterly property line. Commissioner Savage asked where the height of the wall was measured from, and Senior Planner Allen responded it would be measured from grade. Commissioner Savage asked where the grade was, and Senior Planner Allen referenced a photograph.

Commissioner Francis returned to the room at 7:52 p.m.

Commissioner Savage asked if staff was using the original grade before the wall was put in. Director Godlewski stated that the actual property line was 4 ½ feet behind the curb. He explained that when measuring from the view clearance the driveway cannot be seen on the adjacent property. Director Godlewski explained that he took the measurement from the edge of the driveway (top of "x") which is about 4 ½ feet east of the brick wall, and referenced a photograph. He stated that the wall was measured from grade in front of the wall, and measures four feet in height. Director Godlewski explained that code allows a 3 foot wall, and also allows the Community Development Director to increase the height an additional foot to 4 feet, when site conditions indicate that it is not a hazard to do so. Director Godlewski stated that he did not have a problem with the 4 foot wall as it is on the property, however when the adjacent driveway is included there is a corner situation where the line of sight is obscured.

Commissioner Savage asked about landscaping, and Director Godlewski stated that landscaping can also cause a hazard. He stated that in many cases it does in neighborhoods with traffic volumes and impacted residential streets. Commissioner Savage referenced a photograph, and asked about the bush in front of the wall which is a 1 ½ taller. Director Godlewski stated that the bush was in violation, and would need to be cut down. Commissioner Savage believed that the bush was a large part of the obstruction, from his perspective, when backing out of the driveway. He requested clarification of where the 15 foot measurement was started from. Director Godlewski explained that he started the measurement on the neighbor's side, on the edge of the driveway from the garage door. Commissioner Savage referenced a photograph and stated that the expansion crack goes up to the garage door, and Director Godlewski stated that was where he measured from. Commissioner Savage asked why that spot was chosen, and Director Godlewski stated if someone was backing out they would not be backing out over the curb, they would back out in the bottom of the driveway apron.

Commissioner Savage stated that seemed reasonable, but asked if there was something in the code to measure from there. Director Godlewski stated that the only thing in the code was the view clearance area drawing, which just indicates from the edge of the driveway.

Vice Chairman Musante referenced a photograph and asked if the property on the right was having the view clearance issues. Director Godlewski stated that the home on the right was the property that staff had a view clearance concern about. Vice Chairman Musante referenced the photograph and asked if the road was the lane that people would be traveling from left to right on. Senior Planner Allen stated that the road is Virginia Road which runs east and west. Vice Chairman Musante asked staff if they tried backing out from the driveway. Director Godlewski stated that he did not try backing out because there was a vehicle in the driveway. He stated that he drove both east and west on Virginia Road. Vice Chairman Musante believed that it would not be a problem. Director Godlewski stated that the Code only allows a 3 foot high wall unless the Director approves otherwise. Director Godlewski believed it was prudent not to approve an extra foot, because if there was an accident there would be little defense for the City. Vice Chairman Musante asked if someone on staff with the City granted a permit for the one foot extension. Director Godlewski explained that the applicant came in for the permit, planning staff noted on site plan a maximum of 3 feet in height. He stated that there were mistakes made by City staff later when the property owner came in for an extension of the wall height, which was not routed through planning again.

Commissioner Chaffee stated that he read the code section and believed that it applied to the person obstructing the driveway, and not necessarily to the adjoining land owner. Director Godlewski stated that the applicant could build a wall to 3 feet in height within the front yard setback up to the property line. He stated that the question was when they go beyond 3 feet is it prudent to approve that extension or not to approve the extension. Acting Chief Planner Eastman clarified that what was being indicated was the standard by which staff uses to look at corner cut offs at driveways. He stated that part of the issue before the Appeals Board was the fact that the wall is in a front yard setback. He stated that the code identifies that the highest a retaining wall can be is 3 feet. Acting Chief Planner Eastman explained that the Director can approve a retaining wall higher than that. He explained in reviewing the criteria for the expansion of the height of the wall the Director determined that there was a concern. The Director used the corner cutoff/driveway exhibit as a value of judgment. Commissioner Chaffee stated the grade appears to be a sloped area, and asked if the 3 feet would move with the grade. Director Godlewski stated that it's measured from the finished grade which is along the front of the property. He stated that along the side there is finished grade on the neighbor's property.

Commissioner Francis asked if the view clearance area was a California Building Code or City Code. Director Godlewski stated that the City Code limits the height of the wall in the front yard setback. Commissioner Francis asked if the dirt was all the way to the top in the front yard behind the wall, and Director Godlewski responded that it was nearly leveled. Commissioner Francis asked if it would affect holding back much of the front of the yard by coming down a foot. Director Godlewski stated that other then the view cut off he liked the wall, and by holding that 4 foot from the corner they maintained level. Commissioner Francis referenced the corner of the street, and asked if the corner was a factor in his decision. Director Godlewski stated that the code says 3 feet and he can approve 4 feet when there are no issues. However, he believed there was a potential for a view issue and he was being overly cautious.

Commissioner Francis left the room at 8:08 p.m.

Commissioner Chaffee asked what the view was on the other side traveling west, and Director Godlewski stated that the view was clear.

Vice Chairman Musante asked if the road was heavily traveled, and Director Godlewski stated that it was a residential street and was not considered an arterial or a collector street. Acting Chief Planner Eastman stated that he did not know what the Appeals Board considered heavily traveled, but it is an access point coming off of Lemon.

Chairman Bailey talked about the inspection process and asked what level of responsibility the inspector has. Senior Planner Allen stated that the inspectors make sure that the project has been built per plan, and the project is being built per applicable building and safety codes. She stated that on a wall an inspector looks at the footings to make sure they are installed appropriately per plan. Senior Planner Allen stated that in reviewing the code enforcement and building notes they obtained the permit for the 3 foot high wall. There were inspections done on the footings and were authorized to proceed with construction. Senior Planner Allen explained that there was a lapse and the permit was about to expire, at which time the applicant amended the description on the permit to allow a 5 foot wall. Then they called for a final inspection on the 4 foot wall. Senior Planner Allen stated that the inspector was looking at how the wall was constructed, and there was a section on the plans which indicated a 5 foot wall. Chairman Bailey asked if the burden of building something is on the shoulders of the City inspector or the burden on the shoulders of the property owner. Director Godlewski stated that if something is built that creates a hazard, even if the permits were taken out, and the end result is something that is in violation of code, then the burden is on the property owner. Chairman Bailey asked if a property owner would have to know all the codes and all the rules for building, and cannot rely on a City official to know all of those rules. Director Godlewski stated that what happened in this case is that there were mistakes made by the City, but when the end result is something that is in violation of the Code, it is up to the homeowner to remedy that.

Commissioner Francis returned to the room at 8:10 p.m.

Vice Chairman Musante stated that he did not see how a person that has a license cannot back out of the driveway.

Assistant City Attorney Adams stated that this was the time to ask clarifying questions of staff. He stated that the Board was acting as a tribunal, and should not formulate an opinion on this matter until all the evidence and public comments have been heard.

Public hearing opened.

Rick Price, Attorney for Appellants, stated that the Planning staff generally does a good job in processing matters and interpreting the law. He stated that this was not a shining moment for the City because error after error has been made. Mr. Price stated that Mr. and Mrs. Ruiz improved their property based upon permits that they pulled from the City of Fullerton. He stated that in April 2004, his clients wanted to improve their front yard, and hired an engineer to prepare plans. Mr. Price stated that the plans depicted a wall higher than 3 feet, and were approved on May 19, 2004 by the Building and Engineering Divisions. The next day the plans were approved and signed off by Melanie Mullis on behalf of Planning. Mr. Price referenced the architectural drawings and talked about the height of the walls.

Chairman Bailey referenced one of the drawings and stated that there was a note about a 3' tall wall. Mr. Price explained that it was a permit fee calculation based on the height. Chairman

Bailey stated that based on the notes staff thought that it was a 3 foot wall all the way around. Mr. Price clarified that staff could not have thought that because there were elevations marked up by the Engineering Department showing that the highest wall was 48". Mr. Price explained that there was a corner cut-off complaint that was resolved after work began. Commissioner Francis asked Mr. Price what he meant by the corner cut-off. Mr. Price stated that there was a provision in the Code that says that if a wall is built using a certain calculation in the corner of a street it could be a code violation. Mr. Price stated that the property owners thought the complaint was resolved because the case was closed. Commissioner Francis asked who had closed the case, and Mr. Price responded Code Enforcement. Mr. Price stated that they received a second complaint and letter from Community Preservation Supervisor Warren stating that the corner cut-off clearance was an issue. Mr. Price stated that while the work was being done the inspector asked them to pull a new building permit to reflect up to 5 feet high walls, and a new building permit was issued. Mr. Price explained that from January 2005 to May of 2007 there were no complaints or issues. However, a new complaint was filed on May 21, 2007, and they believed it had to do with landscaping. Mr. Price stated that his clients will remove the bush if that is the remedy. He explained that Community Preservation Torrico was shown the permits and the sign-offs, and thought the issue was resolved. In June 2007 the property owners asked Ms. Torrico if she thought it takes anything else than ordinary caution to back out of the driveway and she responded no. Mr. Price stated that his client was concerned and called Mayor Nelson. Mayor Nelson assures his client that nothing will be happening. Mr. Price stated that on October 24, 2007 they get a letter from Mr. Warren stating that the wall is a public nuisance and identified the corner cut-off issue. Mr. Price believed that this was not a case of a public nuisance or code violation, but a dispute between neighbors. Mr. Price stated that a public nuisance was an extreme situation and does not equal to someone having to be careful pulling out of their driveway.

Chairman Bailey asked Mr. Price if there was a liability for his client if his neighbor gets in accident backing out of the driveway. Mr. Price stated that there was always the potential that a claim can be made against his client, the City or driver. Mr. Price stated that the City cannot reverse code and make a permitted item be taken out. Mr. Price stated that once a permit is issued there is a vested right to be able to rely on that. Chairman Bailey asked Mr. Price if he was suggesting there was a fiduciary responsibility on the City's behalf. Mr. Price stated that there is a doctrine of estoppel where a person can rely on what a City approves.

Matt Ruiz, 319 Virginia Rd, had the following comments:

- Everything at issue was permitted by the City years ago
- There is no view clearance / cut off area
- No relevant portion of the wall exceeds three feet in height
- Proposed remedy is burdensome and would accomplish nothing
- There is no unsafe condition

Mr. Ruiz referenced the original site plans and the view clearance exhibit and explained in detail the issues above.

Chairman Bailey asked Mr. Ruiz if he needed the bush there. Mr. Ruiz explained that the reason this all started was because on May 11 he caught his neighbor coming onto his property and cutting his bush, and he got into an argument with his neighbor. Commissioner Francis asked Mr. Ruiz if he would take that bush out. Mr. Ruiz responded yes, and stated that he believed it would be an improved situation.

Mr. Ruiz stated that he has spent the last ten months and thousands of dollars defending the City approved project from the City itself. He stated that he was appealing the City's findings of violation for the following reasons.

- Obtained all of the necessary permits, and went through the entire regime of inspections and sign-offs
- Constructed project with the City's approval, and guidance as evidenced by the engineering plan prepared at the City's request
- There is no view clearance or cut-off area
- The relevant portion of the wall that is the portion of the wall that has any affect on visibility from the neighboring driveway at no point exceeds 3 feet
- There is no unsafe condition and the City's Community Preservation Officer confirmed it

Chairman Bailey asked what it would cost to fix the wall, and Mr. Ruiz stated that he did not know. Chairman Bailey asked what it cost to build it, and Mr. Ruiz stated that they spent an excess of twenty thousand dollars to build the walls. Chairman Bailey asked how much it has cost him to litigate this, and Mr. Ruiz responded upwards of three thousand dollars.

Steve Sourapas, 1311 Skyline Dr, had the following comments:

- Stated that he had a 45 signature petition of neighbors who love the wall and believe it does not opposes any dangers or risks

Anthony Rentz, 1301 Frances Ave, stated that his primary concerns were the lack of visibility and safety when exiting his driveway. He stated that he did have a lively conversation with Mr. Ruiz when he was trimming his bush to improve his visibility. Mr. Rentz explained that although east bound traffic can see the rear end of his car he cannot see them. He stated that it was an uncontrolled intersection with four directions of traffic coming at him west bound while he focusing on not backing into something east bound.

Vice Chairman Musante asked Mr. Rentz if the bush was cut down a foot if it would still be a problem. Mr. Rentz stated that would improve the visibility and would be beneficial. Vice Chairman Musante asked how far into the roadway Mr. Rentz's car would be if the bush was not there to be able to see traffic. Mr. Rentz stated that it would be  $\frac{3}{4}$  quarters of his car.

Commissioner Francis Left the room at 9:01 p.m. Assistant City Attorney Adams informed the Board that they should wait until Commissioner Francis returns before continuing. Commissioner Francis returned at 9:02 p.m.

The following people spoke in favor of the appeal:

Caryn Chavez, 1303 Skyline Dr  
Lois Laughlin, 1345 Skyline Dr  
James Maley, 318 E Virginia  
Wendy Gillroy, 1133 Paula Dr  
Their points of support were:

- Virginia Road is not a high traffic area
- Visibility issue is coming from the other direction not from the side the wall is on
- This situation makes home owners feel vulnerable

- The trees traveling north on Lemon and west on Virginia are more of a visibility issue
- It's a great neighborhood
- Neighbor should back into his driveway

Commissioner Savage requested to hear staffs rebuttal on the cut-off issues. Director Godlewski stated that there was a question on what is allowed on the front yard setback. He stated that the retaining wall occurs near the side property line in the front yard setback, and the code says nothing over 3 feet in height in the front yard setback, however it gives discretion to the Director to allow up to 4 feet in height. He stated that in his review of the application he looked at whether the wall could go up to 4 feet and what intervening factors might change his decision from 4 feet and putting to the code height requirement of 3 feet. Director Godlewski stated that that the only thing he saw was the concern for the ability of the neighbor to view on coming traffic. He stated that in his opinion it was prudent not to approve the wall over 3 feet in height because it did have the potential to create a vision problem for the adjacent property owner. He stated that the view clearance on the adjacent property was in fact the adjacent property owner's side lot line. Commissioner Savage asked if staff had asked for the traffic engineer's opinion and Director Godlewski stated that staff had not. Commissioner Savage asked if it was a view hazard. Director Godlewski believed it had the potential of being a view hazard because it falls in the area above 3 feet in height.

Commissioner Savage asked the City Attorney for clarification on vested rights and gave his business example. Commissioner Savage asked if vested rights were an issue when a property owner has building permits. City Attorney Adams responded that the City cannot give a vested right in violating City laws. He stated that this was an unfortunate situation, but it does not give a vested right if a mistake was made, and the City also has immunities because the law must be followed.

Commissioner Savage asked if it was within the Boards purview to decide whether this was safe or not. City Attorney Adams stated that the Board does have discretion in making a finding whether it's hazard and a public nuisance or not.

Commissioner Francis stated that the law says the wall can be 4 feet at the discretion of the Director of Community Development. Commissioner Francis believed that wall is not necessarily in violation of the code because there is a variance of one foot allowed.

Vice Chairman Musante asked if this was a judgment call by the Director of Community Development then is it a judgment call by the Board of Appeals.

Andrew Morrison, 225 Jacaranda Pl, stated that there were many mistakes made by the City, and this should not be an issue.

Mr. Price stated that the Board of Appeals has the discretion to make a judgment call on whether or not the wall should come down. He stated that his client will remove the bush if asked, but the wall should not come down.

Public hearing closed.

The Appeals Board took a 5 minute break

Commissioner Francis stated that this was a time to use discretion. He believed that if the bush was gone, and the neighbor has already said he would take it out. Commissioner Francis

believed that by the time Mr. Rentz's car is a foot or two onto the street there is a clear line of sight.

Commissioner Bailey asked if the Board was voting that this item is a nuisance. City Attorney Adams stated that if the Board decided to agree with the appellant that the wall is not a nuisance on the condition that the bush is removed, that would be appropriate.

Commissioner Bailey asked how much latitude the Board has, for example reimbursing the property owner for legal expenses. City Attorney Adams stated that would not be within the purview of the Board.

Commissioner Francis stated that the Community Development Director was being prudent, and his decision was a safe one. Commissioner Francis referenced a photograph, and stated that if the bush was gone the adjacent property owner would not be out on the street before he could see a car.

Vice Chairman Musante stated that the Community Development Director did the right thing if there is a possibility that this could cause a problem. He stated that this was a judgment call, and he would not want it on his shoulders. Vice Chairman Musante believed this was not a nuisance with or without the bush. He stated that if the bush was cut to three feet that would be reasonable. He stated that he did not see a problem in backing out of the driveway, and was in support of the appeal.

Commissioner Chaffee stated that the side yard was not an issue. He stated that he drove around the area and believed that people have to be careful and look while driving everywhere. Commissioner Chaffee believed that if there was an accident, it would be because the person backing out of the driveway was being careless or someone was driving on the opposite side of the road. He agreed with Commissioner Francis that an extra foot would be appropriate for the Director to grant, in this case. He stated that he was in support of the appeal.

Commissioner Whitaker stated that he did not fault Director Godlewski for trying to limit the liability that the City might have. He stated that he backs out of parking lots everyday that are more hazardous than this one. Commissioner Whitaker believed that the Board's role was to come up with something reasonable in this case.

Commissioner Savage stated that he commended the City for admitting to making a mistake. He stated that the Director of Community Development did what his job told him to do. Commissioner Savage agreed with what the other Commissioners said.

Commissioner Richmond stated he would like to get rid of the bush, and keep the wall.

Chairman Bailey stated that City staff and Community Preservation officers do the best they can, and work with what they have. He stated that in this situation it may have not been within the City's best interest to disagree or agree with this, but bring it before the Board. Chairman Bailey stated that he would be supporting and upholding the appeal.

Commissioner Francis stated that the Director made the right decision bringing the issue before the Board of Appeals.

MOTION by Commissioner Chaffee to uphold the appeal, SECONDED by Vice Chairman Musante.

Assistant City Attorney Adams asked if the motion included the removal of the bush.

Commissioner Chaffee stated that the notice of violation did not talk about the bush. He stated that perhaps the two property owners could remove the bush on their own.

Commissioner Francis stated that due to the neighbors past history it should be included in the motion. He suggested removing the bush or not letting it exceed 3 feet.

Vice Chairman Musante stated that the bush adds something to the property aesthetically and would like to see that it remains cut to 3 feet.

MOTION by Commissioner Savage to AMEND the motion to remove the bush. Amendment failed to pass for lack of a second.

MOTION by Vice Chairman Musante to AMEND the motion to limit the bush to no higher than 3 feet, SECONDED by Commissioner Francis.

Commissioner Chaffee believed that more landscaping was needed, but would rather not get involved in whether the bush should be there or not. He believed the neighbors should resolve the issue.

The title of RESOLUTION PC-08-12 of the Planning Commission, acting as the Board of Appeals of the City of Fullerton, APPROVING an appeal of an order of abatement by the public nuisance hearing officer requiring the removal of the portion of the wall that exceeds three feet in height, in a view clearance area, on property located at 319 east Virginia road, was read and further reading waived. MOTION by Commissioner Musante, to AMEND the motion to include that the bush cannot be higher than 3 feet, SECONDED by Commissioner Francis, and carried 6-1, with Commissioner Chaffee voting against the motion, that said Resolution be ADOPTED AS AMENDED.

Assistant City Attorney Adams clarified the following findings based on the public testimony.

- Virginia Road is not a high traffic area
- The Board found that there is adequate sight distance with the bush being lowered to 3 feet

Assistant City Attorney Adams stated that the Director of Community Development shall mail copies of the Appeals Board Order to the Property Owner or anyone else requesting the same within 5 working days after the adoption, and the Appeals Board decision shall be final and any action to review the decision of the Appeals Board shall be commenced no later than the time period set forth in California Code of Civil Procedure, Section 1094.6.

Commissioner Richmond stated that he lived at Courtney and Flower and did not know if he had a conflict of interest in the following matter. He requested that staff identify if he was within the 500 foot clearance.

**PRJ08-00095 – ZON08-00032. APPELLANT: GREGORY AND ERIC PARKIN.** An appeal of an Order to Abate Substandard Property on property located at 1201 S. Gilbert Street (Parkin Gardens) (generally located on the west side of Gilbert Street between approximately 150 feet and 288 feet north of Orangethorpe Avenue (R-3 zone).

Yolanda Summerhill, Deputy City Attorney, requested that the Appeals Board uphold the City's Order to Abate Substandard Property at 1201 Gilbert.

Chairman Bailey asked Ms. Summerhill to clarify what an order to abate was. Ms. Summerhill stated it was a finding of a public nuisance. She stated that the property owners were asked to provide a hygienist report based on a sewage spill that occurred on the property. Chairman Bailey asked if the property was not in good condition and the City was trying to bring it into better conditions, and Ms. Summerhill responded yes.

Ms. Summerhill stated that the property was substandard pursuant to the health and safety code 17980.6 and 17920.3 in addition to some municipal code sections. The property owners were asked to provide a hygienist report saying that the units are safe to reoccupy. Ms. Summerhill explained that the property owner would also have to provide mold remediation because mold was also found. Ms. Summerhill gave a brief overview of the order to abate substandard building under the Health and Safety Code Section 17920.3. She stated the municipal code sections 6.01.030 (A), (B), (C), and (Q) deal with improper maintenance. Ms. Summerhill stated that Community Preservation Officer Torrico and Tom Wong, Orange County Health Department, were present during the inspection that occurred, and could provide testimony. Ms. Summerhill stated that a declaration from a hygienist has been provided that clearly shows that there are nuisance conditions on the property. Community Preservation Officer Torrico went out to the property based on a code enforcement complaint of flooding on February 12, 2008. Ms. Summerhill stated that Ms. Torrico could testify that she noticed a sewage spill in unit 22. Ms. Summerhill referenced photographs, and explained that the sewage spill had been at the unit for a considerable amount of time.

Chairman Bailey asked how long the sewage spill had been present. Ms. Summerhill stated that she had signed declarations from tenants that had made complaints in 2007. Chairman Bailey referenced a photograph and asked if people were living in the unit. Ms. Summerhill stated that the unit referenced was vacant, but there were tenants in adjacent units.

Ms. Summerhill referenced a photograph and explained that the maintenance workers were working without gloves, boots, or clothing that would not contaminate their bodies. On the inspection day the property owners were informed by Community Preservation that they would have to hire an emergency service to have the sewage abated. They would also have to relocate the tenants that were adjacent to the two units, because of potential contamination. Ms. Summerhill stated that on that day they did hire a company to do the clean up, but that only partially fixed the problem. She explained that the company would only remove the sewage, and there was also a contamination issue. She stated that the adjacent resident's items were contaminated, and there had to be confirmation from a licensed hygienist that the property was safe to re-enter. Ms. Summerhill explained that the initial clean up was completed by that company.

Chairman Bailey asked who the company was, and Ms. Summerhill responded ESR.

Commissioner Francis asked if that was the company doing the clean up when staff walked in, and Ms. Summerhill stated that the people initially cleaning up were Parkin Garden employees with no contamination protection. Commissioner Francis asked if Community Preservation could require that the property have a specific company, and Ms. Summerhill responded that they can and did require a specific company.

Chairman Bailey asked if the company required would clean everything up including the dry wall, and Ms. Summerhill stated that there are separate cleaning divisions. She explained that the first division cleaned up the sewage, but there is an additional aspect of removing the contaminated portion of the drywall. Chairman Bailey asked if it was ESR's responsibility to make it so people can occupy the building. Ms. Summerhill stated that the owner made a determination of how much they wanted to pay and who was going to do what. Ms. Summerhill stated that the City's obligation was to make sure that they receive the appropriate sign-offs on the work being done.

Ms. Summerhill stated that when the cleaning crew came to remove the walls that had been contaminated by sewage they found 29 sq feet of preexisting mold in the walls, they walked away because they did not have the licensing to deal with mold.

Commissioner Francis asked if the walls contaminated with mold were connected to other livable space units, and Ms. Summerhill responded yes.

Ms. Summerhill stated that there were tenants that were relocated to a motel. She stated that in one case there are six individuals to one motel room, and have remained there today. Ms. Summerhill stated that the sewage leaks that were inside the units the tenants were occupying was not a recent occurrence. She stated that an anonymous complaint was received today that a sewage leak occurred last week for five days straight. Ms. Summerhill stated that Ms. Torrico could testify that ESR informed the property manager that a second clean up would be required, but the City has not received indication that the second clean up has been completed. The property manager was also ordered to relocate the tenants, and to provide proof that the effected units have been properly decontaminated. The property manager was also informed that a hygienist report must be provided to prove that the adjacent units would be safe to occupy again. Ms. Summerhill stated that three weeks after the initial discovery of mold on February 13 she prepared a notice to abate substandard property which is pursuant with the Municipal Code and the Health and Safety Code. She explained that her notice indicated that they would have to do a fungus remediation and get a hygienist report. Ms. Summerhill gave the property owner a 5 days notice to comply, and to date there is a partial fungus remediation report. However, there is no indication from a Hygienist that the units are safe to occupy. Ms. Summerhill explained what Ms. Torrico and Mr. Wong witnessed in the units on February 12, 2008 that were in the photographs presented. She stated that Mr. Wong could testify to the health effects of being exposed to raw sewage. Ms. Summerhill explained the declaration and the inspection report from a hygienist that was at the property on March 6, 2008. Ms. Summerhill explained that the hygienist found 13 visual observations of violations of best manager practices that assume the cleanup would have been appropriately conducted. She stated that the hygienist had intended to conduct air sampling to see if the air had been contaminated, but since the unit had not been properly contained, that determination couldn't be made.

Chairman Bailey asked to see of a photograph of the building.

Commissioner Savage asked what the cause of the sewage was, and Ms. Summerhill stated it was a back up. Ms. Summerhill believed the spillage occurred when the toilet was physically removed from unit 22, then everything that was down came up.

Commissioner Chaffee stated that he was looking at Order to Abate Substandard Building, and believed that an attachment was missing. Ms. Summerhill stated that the goal was to determine whether it's a substandard property. Commissioner Chaffee asked if it was the whole complex or just part of it. Ms. Summerhill stated that she was referring to units 21, 22, and 23 where the

sewage spill occurred. Commissioner Chaffee stated that he noticed a report in the material provided by someone that listed a number of other units having problems, and asked if the other units were part of the consideration. Commissioner Chaffee asked if there were copies of the other notices of violation that the order says are attached, and are not. Ms. Summerhill stated that the appeal was strictly the order to Abate Substandard Property, and stated that there were previous notices of violation on the final notice of violation submitted to the property owners in September and November. She stated that those became final after 30 days and the scope of the appeal should be based on the sewage spill and the order to abate that was submitted on March 6. Commissioner Chaffee stated that he was looking at the March 6 order to abate, but it looks like it is missing some of the paperwork.

Chairman Bailey asked if someone else could submit the missing paperwork, and Ms. Summerhill responded yes.

Chandra Spencer, Attorney at Law, stated that she represented the 1201 S Gilbert Avenue Tenants Association. Ms. Spencer stated that she became involved with the tenants in this case in November. The City issued orders in September and November which became the subject of a criminal prosecution. Ms. Spencer stated that an expert hired by her office to try to evaluate what the current condition of the property was. Ms. Spencer stated that it's important for the Appeals Board to understand that the property owner refuses to take responsibility for the property. Ms. Spencer stated that she was providing information to the Appeals Board on behalf of the tenants to show that the order should be upheld because the property owner has not done what they need to do to solve the problem at great damage, expense, and misery to the tenants. Ms. Spencer stated that the tenants have been trying to get a habitable place to live, and the latest sewage spill is an example of how the property owner has taken a "band aid" approach to a property that requires major surgery. Ms. Spencer provided a summary of the testimony provided in the declarations. She explained that Maria Cruz was the tenant who lived in unit 21 who called in the complaint about the sewage spill. Ms. Spencer stated that Ms. Cruz was now living in a 1 bedroom hotel room with a family of six with no per diem allowance, and does not know when she will be able to move back into her home. Ms. Spencer stated that Ms. Cruz and the other tenants could testify that there are leaks, backups, and sewage spills constantly in the building. Ms. Spencer clarified that she received a call from a tenant who is afraid to speak up because he was afraid of retaliation from the property manager, who has been harassing and retaliating against the tenants. The tenant was also afraid of the property owner who uses his power as an attorney to intimidate the tenants. Ms. Spencer explained that last week there was a sewage spill and the workers were pushing sewage out onto the patio and it lasted five days straight.

Chairman Bailey asked how the tenants were intimidated. Ms. Spencer responded that the tenants have been intimidated by 3-day notices relating to mundane issues. Chairman Bailey asked if the notices were to pay or quit. Ms. Spencer gave an example and stated that there was a tenant that had a small Chihuahua companion dog, and many of the other tenants have pets also. The tenant had to get a report from his doctor and prove that the Chihuahua was a companion dog so he could stay there. She stated that a number of the tenants are undocumented, and they are afraid of reports to immigration. Ms. Spencer stated that when she walks onto the property the manager is very confrontational, and the tenants are afraid.

Commissioner Francis believed that the intimidation factor did not pertain to the decision that needs to be made by the Appeals Board that the property owner needs to clean up the mess.

Ms. Spencer explained that the Appeals Board is required to determine whether or not the property is substandard and whether or not the order by the City Attorney was reasonable. Ms. Spencer clarified that after having been given over three weeks to correct the problem affecting the tenants on a day to day basis they were given five days to comply. Ms. Spencer stated that it has been 6 weeks and the tenants are still living under the same conditions. Ms. Spencer stated that the manner in which the property owner has approached the problem has not solved the problem because the City has a public nuisance, and the tenants have been clearly affected by the substandard and hazardous conditions. Ms. Spencer stated that no one could dispute that sewage and mold are problems. She stated that the type of mold found in the building according to the hygienist report is a very serious health hazard. Ms. Spencer stated that the property owner was disregarding the health risks and the life risk of the tenants. Ms. Spencer stated that both tenants on adjacent sides were living in a hotel room but there are all the tenants who are around that walked by during the improper mold remediation, who have had to deal with all the conditions the property owner has subjected them to. Ms. Spencer stated that the property was a problem, and has an irresponsible property owner who is having a negative affect on people's health. Ms. Spencer clarified that there was mold that has not been taken care of, sewage that wasn't taken care in a timely fashion, tenants who continue to live in hotels, and their personal items have been contaminated. She stated that there was an ongoing pattern of failing to address these very serious problems. Ms. Spencer stated that the property owner, without evidence, was claiming the backup was caused by a tenant who threw rocks in the pipe. Ms. Spencer stated the Appeals Board has an opportunity to uphold an order because once the order is final, the tenants and the City can take action to abate the problems. Ms. Spencer stated the documents provided by RGA Environmental do not say that the problem has been solved. She stated that the RGA representative watched people who did not work for his company blowing the mold onto the sidewalk where people were walking by. Ms. Spencer believed that the RGA document was an incomplete record by the property owner who is trying to convince the Appeals board that he has taken action.

Chairman Bailey clarified that the property owner has taken measures, but not to the level Ms. Spencer believed would be sufficient. Ms. Spencer stated that the property owner has taken measures that are further endangering the health of the people in the building.

Chairman Bailey asked if the RGA letters certifying that the units can be re-occupied are incorrect, and Ms. Spencer believed that they were certifying that the units could be occupied. Chairman Bailey clarified that the letter stated that based on the air sampling, unit 22 could be re-occupied. Ms. Spencer stated that the letter does not guarantee that the fungal growth will not come back. She stated that it also doesn't say that all the contamination in the unit has been taken care of, or that they have done the proper mold remediation to take care of it. Ms. Spencer believed that the Appeals Board needed to compare RGA's reports to Ms. Jenkins and City Staff's reports saying it is insufficient. Chairman Bailey clarified that the property owner hired an Environmental Firm to fix the problem, and they gave him a letter stating that the units can be re-occupied, and asked if the property owner was expected to hire someone else. Ms. Spencer clarified that RGA provided oversight during the mold remediation and did not do it themselves. Ms. Spencer stated that the RGA representative stated that the people doing the mold remediation did not work for him.

Ms. Spencer asked if the Appeals Board would like to hear from the tenants and Commissioner Francis asked Ms. Spencer if she could speak for them in the interest of time. Ms. Spencer stated the tenant's declarations were provided.

Commissioner Savage asked Ms. Spencer if she was hired by the tenants. Ms. Spencer responded that she represented a Tenant Association recently formed at the building. Commissioner Savage asked why the tenants do not move. Ms. Spencer stated that many of the tenants were low income people, some on Section 8 housing, or just could not raise the security deposits to move. She stated that many of the tenants have considered Parkin Garden their home.

Vice Chairman Musante asked City Attorney Summerhill what kind of a hammer the City would get if the Appeals Board moves to uphold the order to abate. Ms. Summerhill clarified that the Board would uphold the order to abate and to make an order that the property owner comply within 5 calendar days. She stated that if the property owner did not comply, the City would proceed to take action to abate the property.

Commissioner Francis asked if the City would clean it up, and bill the property owner. Ms. Summerhill responded that is an option, and stated that the City could also obtain a receiver who would be able to do that on their own.

Commissioner Chaffee asked if what the property owner was appealing the order to abate the problems of the 46 units or just the units contaminated by the sewage spill. City Attorney Adams clarified that the Board of Appeals was dealing with units 21, 22, and 23. Commissioner Chaffee stated that the notice of abatement includes a problem with all the other units. He stated that in the staff report the Board was being asked to declare the property located at 1201 S Gilbert Street, substandard and has nothing to do with the specific units. He stated that the order being appealed had all the units as being substandard.

Commissioner Whitaker stated that Ms. Spencer believed the building was a bad building and the tenants would like to have the problems corrected and move back in. He asked Ms. Spencer if she believed anything short of almost complete reconstruction would solve the problem of being a bad building. Ms. Spencer stated that there was a substantial amount of rehab that would be needed, and does not have a rehab plan or an estimate, and believed that based on the extensive nature of the violations, the rehab work would need to be done under court supervision.

Ms. Summerhill stated that the order to abate and the two notices of violations were included. She stated that the back page of the notice of violation and the final notice of violation, there is an appeal period of 30 days which the property owners failed to exercise. Ms. Summerhill stated that the appeal was specific to the health and safety code order to abate substandard property related to the sewage spill. Commissioner Chaffee stated that he did not get that in his package and was unclear. Ms. Summerhill stated that a package was provided to the Board, and Commissioner Chaffee stated that he got the attachments that indicated all 46 units had problems, and was confused by what the property owner was appealing. He asked if all the problems were apart of what the property owner was ordered to abate. Ms. Summerhill stated the property owner was given a notice to abate and had a specific period of time to appeal, and they should have exercised those rights within the period of time. She explained that in both instances the property owner did not appeal the findings. Ms. Summerhill clarified that the findings that were made now were in regards to the sewage spill that occurred and the order was in regards to obtaining a hygienist report and insuring that the fungus would be properly remediated in units 21, 22, and 23. Assistant City Attorney Adams stated that the order to abate was limited to the sewage spill and getting a hygienist report. Commissioner Chaffee stated that it was not limited to that, and read that the property owners were ordered to take appropriate action to abate the violations set forth and in the notices of violation attached

hereto, and believed that it had been made part of the new order. Ms. Summerhill stated that the Board was here to make a finding that the sewage spill and all that occurred there after was the basis for the substandard finding. Commissioner Chaffee stated that the staff report does not deal individually with those units and stated that it asks the Board to declare the entire property as substandard. He stated that he did not want to rush through this because there are a lot of people whose health is at stake. Ms. Summerhill stated that units 21, 22, and 23 are located within 1201 S Gilbert and if those units are substandard within the property, then that would be sufficient to make a finding that 1201 S Gilbert is substandard.

Chairman Bailey stated that if those units are substandard then maybe the rest of the building needs to be checked as well.

Commissioner Francis stated that mold is airborne and the property at that address could be substandard.

Ms. Summerhill clarified that the RGA report deals strictly with the mold remediation and is not sufficient. She explained that there is also a hygienist report that indicates the units are not safe to re-occupy.

Gregory Parkin, Appellant, stated that it was his understanding that some of the other issues would not be brought up. Mr. Parkin stated he had a petition by 17 units that are happy with the property. Mr. Parkin stated that they were in the process of getting rid of undesirable tenants. He stated that they were not trying to intimidate the residents with 3-day and 30-day notices. He explained that they were trying to inform the tenants that if they did not clean their units they would be fined or evicted. Mr. Parkin stated that most of the people in the lawsuit were evicted because they would not clean up their units. Commissioner Francis stated that the sewage spill was not the tenant's responsibility. Mr. Parkin stated that the environmental report was addressed to Ms. Elders the attorney representing 12 units, and believed that the report was not prepared impartially. He stated that the report was prepared for the attorney suing to get money for very undesirable people.

Chairman Bailey asked Mr. Parkin why he suggested the tenants were undesirable people. Mr. Parkin responded that their units were filthy, and they have damaged the property. He explained that he has judgments against some of those tenants for not paying rent and damages that they did to the property. Mr. Parkin explained that he was having problems with the City because of cockroaches, and the only way to remediate that was to get the tenants to clean up or get out.

Commissioner Francis stated that the City was saying that he had units that have problems with mold and sewage, which has not been fixed. He asked Mr. Parkin if he had a problem fixing the problem within the next five days. Mr. Parkin stated that he could not do that. Commissioner Francis stated that the Board was focused on units that may cause a health risk to the neighborhood and other people there. Mr. Parkin stated that when one of the tenants was told that he would be evicted the windows in the office were broken the next day. He believed that the tenant also put rocks and bricks in the sewer of the building that units 21, 22, and 23 are in, causing the sewer backup. Mr. Parkin explained that unit 22 was being rehabbed and the toilet was taken out in order to put in the tile floor. He stated that a plumber came out and had to cut off the pipe that had all the rocks, and was a big mess. He stated that his maintenance employees were trying to repair the problems and the tenant in Unit 21 called the City and complained.

Commissioner Francis referenced that the photographs and asked Mr. Parkin if he could see why people would complain. Commissioner Francis stated that mold does not grow overnight. He asked Mr. Parkin if the mold had been taken out of the units and if the sewage was gone and Mr. Parkin responded yes. Commissioner Francis asked if the City staff had been there to inspect it, and Mr. Parkin stated that he did not think so. Mr. Parkin explained that when the City came out with the health department they told him which company to hire to clean up the mess. He stated that the environmentalist had a subcontractor come out and do some of the work. Mr. Parkin stated that he did not know exactly what they did because he was not allowed into the units. Commissioner Francis asked Mr. Parkin if he hired the company the City told him to hire, and Mr. Parkin responded yes. Mr. Parkin believed that everything was handled because he was notified of the job completion, and was told to hire someone for the mold. He stated that he was referred to RGA for the mold remediation and testing, and after removing the drywall and further testing he was told that all the units had passed. Later he was given letters that the air samples came back from RGA that they had compared the samples outdoors and in the units and they were consistent.

Commissioner Francis stated that if everything has been resolved then 5 days would not be unreasonable if the units are clean and comply with City Code. Mr. Parkin stated that the decontamination was done, and two of three units did not have mold. Commissioner Francis asked if it would be unreasonable for the Board to move forward and give him five days to comply. Mr. Parkin stated that he had complied, and had the letters from the environmentalist saying that the units had been checked by the laboratory and the mold situation has been rectified. He stated that one unit would need remedial work and more testing would be needed to confirm that the mold situation has been taken care, and believed that it could not be done in five days. Commissioner Francis stated that if after talking to the City Attorney about time, would it be an issue for Mr. Parkin if the Board moved forward and granted a few more days. Mr. Parkin stated that there would be no issue, but the Attorney does not want to accept the letters from the environmentalist.

Chairman Bailey asked Mr. Parkin if he would mind having a mutually agreed upon investigator or environmentalist come in to do testing. Mr. Parkin responded that would be fine. He stated that they are paying for the hotel rooms the tenants are staying in and losing rent on the apartments. Mr. Parkin stated that it was to his best interest to get this resolved. He stated that he was doing what the Health Department asked him to do and paying for it.

Mr. Parkin stated that the letter to Ms. Elder was ludicrous, and stated that he would like to get permits so his maintenance employees can repair units 22 and 23.

Commissioner Francis stated that he would like a proper timeline from the City Attorney to get these things resolved as long as it's reasonable.

Commissioner Savage asked how many total units were in the building, and Mr. Parkin responded 15.

Commissioner Chaffee stated that the order was directing Mr. Parkin to obtain a report from a licensed hygienist, and asked Mr. Parkin if he had a problem with doing that. Mr. Parkin stated that he had the same people writing the reports that the attorneys have writing their reports. He stated that they could be called a Hygienist or an Environmentalist but they were the same thing. Commissioner Chaffee believed that there was a difference. He stated that he read all the reports and did not read anything from any of the experts confirming that all the problems are resolved. Commissioner Chaffee believed that what was being asked was that a hygienist

confirm that all the work has been done. Mr. Parkin stated that he did not have a problem with that. Commissioner Chaffee stated that there are a lot of cockroaches involved and asked if there was an exterminator. Mr. Parkin stated that Dewey Pest Control came to the property every other week. He stated that he has had cockroach problems throughout the buildings because some of the people that were evicted were dirty. Commissioner Chaffee asked Mr. Parkin if he was appealing the concerns with the 3 units, and Mr. Parkin responded yes.

Commissioner Francis asked Mr. Parkin if he had an issue if the City Attorney and the Board came up with a reasonable time to clean everything up. Mr. Parkin stated that he was ready to clean it all up.

Commissioner Whitaker stated that it was indicated on the report that Mr. Parking was withholding a housing allowance to tenants unless they signed a release of liability form. Mr. Parkin believed that he was not liable for the housing allowance because what happened was beyond his control. He explained that he was willing to help the tenants out with their extra expenses, but was not assuming any liability or any wrong doing. He stated that there was a civil action going on and he had to be careful of what he does.

Commissioner Francis asked Ms. Summerhill if 5 days was unreasonable to mitigate the problem. Ms. Summerhill stated that the property owner received the notice on March 6, 2008 and has had plenty of time to come into compliance. Commissioner Francis asked when the last time was that somebody from the City has been at the property to see the units. Ms. Summerhill responded February 26, 2008. Commissioner Francis stated that Mr. Parkin believed the units had been cleaned up for the most part and asked if five days would be enough time for the finishing touches. Ms. Summerhill stated that they disagreed with what the report from RGA Environmental was. Commissioner Chaffee asked what Mr. Parking would have to do in five days. Ms. Summerhill stated that he would need to come up with a hygienist report and do mold remediation which indicates that air sampling has been done and the mold has been completely removed from the premises.

Commissioner Francis asked Ms. Summerhill if that could be accomplished in five calendar days. Ms. Summerhill stated that he has more then five calendar days and it has not been completed. Commissioner Francis stated that he understood that the City has been more then reasonable with time, but believed that Mr. Parkin could not fix the problems in five days. Ms. Summerhill stated that she was amenable to five business days, and Commissioner Francis believed that was more reasonable.

Vice Chairman Musante asked what would be accomplished if the Board granted the Order to Abate. Ms. Summerhill explained that when an Order to Abate is not complied with, then the City takes action to abate the nuisance and or legally obtain a receiver to go into the property and abate it. Ms. Summerhill stated that the tenants that have been relocated are paying rent on their units.

Vice Chairman Musante asked if it would be a problem for the tenants if the hearing was continued so Mr. Parkin does everything that is expected of him. Ms. Summerhill stated that she would like that for the problem to be completed fully and completely. Ms. Summerhill stated that she would like a finding of what the City is seeking because there has been plenty of time to comply. Vice Chairman Musante believed that it could save Ms. Summerhill paperwork, Mr. Parkin pain and grief and the City expense if Mr. Parkin was allowed a couple of weeks to get everything resolved. Ms. Summerhill respectfully requested that the determination be made that the property is or is not substandard and give it time to comply.

Vice Chairman Musante asked what the harm was if the hearing was continued to a date certain. Ms. Summerhill stated that that based on her experience it was just going provide an additional amount of time for the tenants to not be in their units and eventually she would have to prepare pleadings to get the job done.

Commissioner Francis asked if it should be done immediately because Mr. Parkin had been given enough time and the building is a public nuisance and health hazard, and Ms. Summerhill responded that was correct. Commissioner Francis asked if the Board would be done with this item if Mr. Parkin was given 5 business days to comply, and Mr. Summerhill stated that was correct. Commissioner Francis stated that if Mr. Parkin does not comply then the City can get it done correctly and bill the property owner. Ms. Summerhill stated that there were many avenues that could be used. She stated that in many cases, aside from paying the attorney fees, the City will not have to have any out of pocket with respect to the clean up.

Commissioner Francis asked Ms. Summerhill if it was her opinion that this was such a nuisance that needs to be dealt with immediately, and she responded yes.

Commissioner Chaffee stated that the need for a hygienist report was specified and asked if there was something in the code that states it has to be that kind of person. Ms. Summerhill stated there was nothing specific in the code that says that. Commissioner Chaffee asked if there was work that needed to be done before any kind of report can be made to say it's finished. Ms. Summerhill believed the hygienist would have to make the determination that additional work would need to be completed. Commissioner Chaffee believed that such a report could be obtained but it may say that more work is to be done and Mr. Parkin will be out of time at that point. Commissioner Chaffee asked if the decision tonight was appealable to the City Council and Ms. Summerhill stated that the decision was not appealable to the City Council. Assistant City Attorney Adams clarified that the Board of Appeals decision was final. Commissioner Chaffee asked if the five business days expire how much more time it taken before the City takes any action. Ms. Summerhill stated that it depended on how long it takes her to prepare her legal documents. Commissioner Chaffee asked if the property owner could appear in court to contest whatever she was doing, and Ms. Summerhill responded that was correct. Commissioner Chaffee stated that this could extend into the future beyond the time the Board allows, and Ms. Summerhill responded "absolutely".

Gloria Adams, 1201 S Gilbert St #18, had the following comments:

- Has been living at Parkin Garden Apartments for 2 ½ years, and has had no problems
- Parkin Garden Apartments are safe and in a nice area
- The problem tenants smoke marijuana in the courtyard in front of children
- The maintenance employees paint over graffiti and 30 minutes later there is graffiti again
- Her complaint was with City staff because locks were put on the garages and believed that other tenants should not have to suffer because of the problem tenants
- There has not been five consistent days of backups because every time something backs up in the plumbing the maintenance workers have to go through her apartment
- She believed the property owner should not have to suffer for what the tenants are putting down the drains

Commissioner Chaffee asked Ms. Adams how close her apartment was to units 21, 22, and 23. Ms. Adams stated she was very close, but not in the same building.

Maria Cruz, 1201 S Gilbert St #21, had the following comments:

- Has been living at Parkin Garden Apartments almost 2 years
- She stated that she was tired of the situation
- The property manager does not fix the problems
- She was tired of the bad smell
- She has been living in a 1 bedroom hotel for two months with her family of 6
- She stated that she was putting her situation in the Boards hands

Jose Oropeza, 1201 S Gilbert St #23, had the following comments:

- In November 2007 they did not have water for three days
- In January 2008 his apartment was flooded over night and the property manager would not replace the carpet
- Both of the bathrooms in his unit had mold
- Has been living in a 1 bedroom hotel with his family of four
- Is receiving \$200 a month for food, which doesn't cover the cost of eating out

Chairman Bailey asked Mr. Oropeza how long he has been living there and he responded 3 ½ years. Chairman Bailey asked if that if the sewer problem has been the only problem. Mr. Oropeza explained that they had cockroach problems and the drains were always clogged.

- The property manager blamed him for the clogged drain in the kitchen
- He would like to see the problems fixed immediately
- Was not sure if his personal belongings had been contaminated with the mold

Commissioner Chaffee asked Mr. Oropeza what unit he was in, and Mr. Oropeza responded unit 23.

Lori Ciraulo, 1201 S Gilbert St #44, had the following comments:

- Ms. Ciraulo stated that she was on Section 8 housing, and has lived at Parkin Garden Apartments almost 5 years
- Many of the people on the petition are new tenants that are not aware of the problem and the others are scared of the property manager and getting evicted
- Ms. Ciraulo believed that Susana the property manager only intimidated certain people
- She stated that Ms. Adams did not have a problem with her apartment because it belonged to the prior manager and was in good condition
- The sewage problem happens in every building
- Her next door neighbor beat Mr. Parkin in court on her eviction
- The maintenance workers are young boys who do not know what they are doing
- She stated that both displaced families are very good people
- Living in a motel is difficult
- Each building has some kind of sewage in the units at this time
- People are to scared to complain to the City

Commissioner Chaffee asked how the units pass the annual section 8 inspections. Ms. Ciraulo stated that it depends on the Section 8 inspector. Some of the inspectors are strict and some are not. She stated that her unit has not passed inspection a couple times. Commissioner Chaffee asked if the owner was required to fix the problems that fail inspection. Ms. Ciraulo responded yes, and stated that the last time her unit passed inspection, it took three times.

Susana Garcia, Parkin Garden Property Manager, had the following comments:

- Has lived at the property for 12 years
- Section 8 housing inspectors stated that Ms. Ciraulo's bathtub had to be replaced and what the maintenance workers did was clean it
- Trying to clean up the sewage
- No one reports the clogs because they do not like to

Chairman Bailey asked why a tenant would not report a problem, and Ms. Garcia responded that the tenants have said that it was no use to report a problem in the past. Ms. Garcia stated that during inspections she would find things wrong with the units, and the tenants would tell her that they meant to report the problem and never got to it. Chairman Bailey stated that Ms. Garcia has been at the property for 12 years, and asked Ms. Garcia if the problem reporting was before she got there. Ms. Garcia stated that she has been the Property Manager for 2 years and 8 months. She stated that she liked the area and her apartment.

Chairman Bailey asked if a week would be sufficient to clean the units. Ms. Garcia stated that it would depend on the hygienist, but two weeks would be better.

Carmen Morales, 1201 S Gilbert St #21, had the following comments:

- He stated that his wife reported the sewage spill and the property manager stated she would send someone to clean up
- Someone cleaned up the water, and then the leaks happened again
- Ms. Morales complained again, and two weeks later there was a bad smell
- Mr. Morales told Ms. Garcia that if his kids got sick it would be her fault

Commissioner Francis stated that the City was trying to get the units cleaned up and safe.

Commissioner Chaffee asked Mr. Morales if his possessions were in apartment 21, and Mr. Morales stated that he was not sure if his belongings were still there. Commissioner Chaffee asked Mr. Morales who was paying for his motel and he responded that the property owner was paying. Commissioner Chaffee asked if it was a 1 bedroom motel, and Mr. Morales stated that it was a one bedroom motel room for his family of six. Commissioner Chaffee asked Mr. Morales if he had been back to unit 21 to see if more work needs to be done. Mr. Morales stated that they go to the property manager to see when the unit will be ready, and the property manager responds that she does not know.

Vice Chairman Musante asked Mr. Morales how long he has been in the motel, and Mr. Morales responded almost two months.

Ms. Spencer stated that it's important for the Board to figure out who is telling the truth, and what the right thing to do is. She believed it was wrong for the tenants to continue to live in the motels with little ability to pay for their food, and 5 days is more than adequate. Ms. Spencer

stated that the property has had more than six weeks to comply. She encouraged the Board on behalf of the tenants to move as quickly as possible. She stated that once there is a final order the City Attorney or tenants can go into court and get an order.

Commissioner Chaffee asked what the conditions of units 21, 22, and 23 were. Ms. Spencer stated that she had not been to the property since March 6. She stated that when she was there the conditions were bad and none of the tenant's personal items have been cleaned. Ms. Spencer stated that not only the units, but all the items in the apartments may now be contaminated by the mold. She stated that a legitimate hygienist report will report that. Ms. Spencer stated that the Parkins have appealed the order within the 5 days, and they are before the Board 3 weeks later. She stated that they have had six weeks to comply. Ms. Spencer stated that the minimum amount of time under the Health and Safety Code is 5 days. Ms. Spencer believed that if it was important to the property owner he could have gotten it done. She stated that the tenants have been paying their rent while living in the motel. Ms. Spencer believed that the property owner would probably ignore the Board's order.

Shawn, Community Organizer, had the following comments:

- Parkin Garden and other apartments in the City of Fullerton are run by slumlord and are not maintained
- Supports tenants because there are problems not being taken care of
- The Board's decision could be a precedent for the City, not dealing with owners not maintaining their buildings
- 5 Days should be given, but there should be policy change that will have an impact on how management of apartment houses are maintained in the City
- He believed there should be consequences to pay if owners do not maintain their properties
- Stated that he was horrified by the living conditions of the tenants in the motel rooms
- The process just keeps going on and on

Mr. Parkin stated that he was paying for the tenants' motels. He stated that he was not an environmentalist and had to hire someone else and rely on their time frame. He stated that if he could have gone in and cleaned up the mess with his employees it would have been done a long time ago. Commissioner Francis stated that City first asked him to clean up the mess, and asked if a month was not enough time. Mr. Parkin stated that he had to hire someone because he was not allowed to do it. Commissioner Francis stated that he asked if in a month's time they were not able to clean up the 3 units from the sewage and the mold. Mr. Parkin stated that they were cleaned up, but unit 21 did not pass because of mold. Commissioner Francis stated that it would not be a problem if the City checked the units in five days. Mr. Parkin stated that units 22 and 23 are done. Commissioner Francis asked why the tenants were not back in the units. Mr. Parkin explained that they needed to get permits from the City to put the drywall back up. He stated that the tenants of unit 23 could be in there tomorrow night. He stated that they have offered to move the tenants of unit 21 into another apartment that has been rehabbed in the same complex. However, the tenants do not want to do that because they do not want to change their address. Mr. Parkin stated that it was out of his control if the hygienist took two weeks.

Commissioner Francis asked Mr. Parkin how long he would need if he was granted more than 5 days. Mr. Parkin stated that he would like to get a continuance to the next meeting because he

would need to find a hygienist. Commissioner Francis asked if 10 working days would be okay, and Mr. Parkin responded yes.

Commissioner Chaffee stated that some of the tenants were living in substandard conditions, and asked Mr. Parkin if he had a problem putting them in a larger motel room if he was granted time. Mr. Parkin stated that he would like to just move them into an apartment. Commissioner Chaffee asked if Mr. Parkin would put them up in a more suitable place while this was ongoing. Mr. Parkin stated that the tenants picked the motel. Commissioner Chaffee asked Mr. Parkin if he would let the tenants pick a larger motel and pick up the tab. Mr. Parkin stated that he had an apartment that they could move into.

Chairman Bailey stated that Mr. Parkin stated the tenants could move into a vacant apartment, and asked if they could move there temporarily. Mr. Parkin stated that the tenants were offered the apartment and they didn't want to do it. Chairman Bailey asked if the tenants were paying rent while they were staying in the hotel, and Mr. Parkin responded no.

Ms. Garcia stated that the tenants were housed at Fullerton Inn. She stated that the contract for the family of six was only for five people. Ms. Garcia stated that they were in the process of renovating units 10 and 14. She stated that they were giving the tenants of unit 23 \$200 dollars a month for food.

Public hearing closed.

Commissioner Savage stated that this was a frustrating matter and believed that 5 days was plenty of time to get the property cleaned up. He stated that it needs to be put in the hands of the courts and be done with it.

Commissioner Francis stated that 5 working days was going to be tough, but achievable. He believed it was going to cost money to get it done on time.

Vice Chairman Musante stated that he was upholding the City of Fullerton's Order to Abate. He stated that 6 people living in a one bedroom motel was out of the question. He stated that the complex seemed substandard. He believed that housing in Fullerton was valuable to the people of Fullerton and Parkin Garden Apartments should be brought up to standards, even if it means raising rent.

Commissioner Chaffee stated that his only regret was that code allows five days, because he would make it a lot less than that. He believed that a lot of people have been taken advantage of, and stated he was sorry about that.

Commissioner Whitaker stated that he was convinced by the testimony that there has been a sense of urgency to get the mess corrected by everyone, but the property owner. He stated that the lack of urgency demonstrated by the property owner was disturbing to him. Commissioner Whitaker believed that all the residents currently there are exposed to all the health issues, which may expand. He stated that he saw evidence of "band aids" being used, and was in support of the recommendation.

Commissioner Richmond stated the he agreed with the City Attorney.

Chairman Bailey stated that he agreed with everything that had been said. He believed that Mr. Parkin conveniently removes himself from certain situations, but other situations he seems to

know what is going on. Chairman Bailey stated that Mr. Parkin should take a look at his property and bring it up to code.

MOTION by Commissioner Francis that the property owner be allowed 5 working days.

Vice Chairman Musante stated that the motion should be an order to move to uphold the City of Fullerton's Order to Abate Substandard Property which provides in pertinent part that the property located at 1201 S Gilbert, Fullerton, CA is substandard as defined in California Health and Safety code Section 17920.3 and is a public nuisance as set forth in Fullerton Municipal Code Section 6.01.030 (A), (B), (M) and (Q).

Commissioner Francis stated that 5 working days would be fair. Chairman Bailey stated that the City Attorney was recommending 5 days.

MOTION by Commissioner Francis that the property owner gets 5 working days.

Commissioner Savage asked Assistant City Attorney Adams if the recommendation was 5 working days or 5 days. City Attorney Adams clarified that the recommendation was to uphold the Order of Abatement. He stated that in the Order of Abatement the five days has already expired. Assistant City Attorney Adams explained that if the Board adds five days they would just give the property owner additional time.

The title of RESOLUTION PC-08-13 of the Planning Commission acting as the Board of Appeals of the City of Fullerton DENYING an appeal of an order to abate substandard property at 1201 S. Gilbert Street (Parkin Gardens) MOTION by Commissioner Francis, SECONDED by Commissioner Whitaker, and carried 7-0, that said Resolution be ADOPTED AS AMENDED.

Assistant City Attorney Adams explained that the Appeals Board decision was final and any action to review the decision of the Appeals Board shall be commenced no later than the time period set forth in California Code of Civil Procedure 1094.6.

**ADJOURNED AS APPEALS BOARD**  
**RE-CONVENE AS PLANNING COMMISSION**

MOTION by Commissioner Francis that the rest of the agenda be postponed to the next meeting. Motion failed.

**OTHER ITEMS**

None

**COMMISSION STAFF COMMUNICATION**

Acting Chief Planner Eastman informed the Commission that he had provided Amerige Court Plans and Addendum for the next meeting. He stated that if any Commission Member would like the Final EIR that was adopted by Council he can provide it to them. Commissioner Chaffee stated that he would have to recuse himself from the Amerige Court project and will be out of town for the April 9, 2008 meeting.

**REVIEW OF COUNCIL ACTIONS**

Acting Chief Planner Eastman gave a brief overview of recent City Council actions.

**AGENDA FORECAST**

Commissioner Whitaker stated that he would be out of town for the April 9, 2008 meeting.

The next regularly scheduled Planning Commission meeting will be April 9, 2008 at 7:00 p.m.

**ADJOURNMENT**

There being no further business the meeting was adjourned at 12:11 a.m.

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Susana Flores  
Clerical Assistant