



CITY OF NOVATO
CALIFORNIA

PLANNING COMMISSION

Meeting Minutes

Monday, August 14, 2023 – 7:00 pm

A. CALL TO ORDER AND ROLL CALL

Commission Present: Commissioners Crockett, Engdahl, Heath, and Tiernan

Commission Absent: Commissioners Dawson, Derby, and Havel

Staff Present: Deputy Director of Community Development Steve Marshall, Senior Planner Kaitlin Zitelli, Engineering Services Manager David Dammuller, Assistant City Attorney John Abaci

B. APPROVAL OF FINAL AGENDA

COMMISSION ACTION: Upon motion by Commissioner Tiernan and seconded by Commissioner Engdahl, the Planning Commission voted 4-0-0-3 via roll call to approve the final agenda.

AYES: Commissioners Crockett, Engdahl, Heath, and Tiernan

NOES: None

ABSTAIN: None

ABSENT: Commissioners Dawson, Derby, and Havel

Motion carried.

C. PUBLIC COMMENT - NONE

D. CONSENT ITEM - NONE

E. UNFINISHED AND OTHER BUSINESS - NONE

F. PUBLIC HEARING

**F.1. MOGHADDASI RESIDENCE; FILE NO. P2022-071
PUBLIC HEARING AND POSSIBLE ADOPTION OF A RESOLUTION DENYING
AN APPEAL OF A CONDITION OF THE DESIGN REVIEW COMMISSION'S
APPROVAL OF THE MOGHADDASI RESIDENCE AND APPROVING THE
DESIGN REVIEW FOR ONE NEW SINGLE-FAMILY RESIDENCE ON A VACANT**

**LOT ON THE SOUTH SIDE OF BURNING TREE DRIVE APPROXIMATELY 270-
FEET NORTHWEST OF OBERTZ LANE, APN 160-335-02**

Senior Planner Zitelli presented the staff report.

Commissioner Tiernan asked staff questions to clarify the undergrounding obligations and the payment of in-lieu fees.

Senior Planner Zitelli clarified the overhead utilities that are required to be undergrounded. She noted in-lieu fees could be used for any city-initiated project involving undergrounding overhead utilities.

Commissioner Engdahl asked if all the utility lines service drops to individual houses were all undergrounded on Burning Tree Drive.

Planner Zitelli responded she did not know. Deputy Director Marshall told the Commissioners that Engineering Services Manager Dave Dammuller was present at the meeting and could perhaps provide more information related to the undergrounding requirements.

Engineering Services Manager Dammuller stated that he was not familiar with when undergrounding requirements began in the City of Novato. He stated that City undergrounding generally took place in locations with higher fire risks, most likely in the San Marin area.

Commissioner Crockett asked if there was a precedent for a special assessment district for all properties on a frontage to pay for undergrounding.

Engineering Services Manager Dammuller said maybe, but that would be expensive and would have to be approved by City Council.

The appellant's attorney Len Rifkind presented the appeal and stated that after his client spoke with PG&E, it is possible that 2 additional power poles beyond his client's frontage may need to be undergrounded as a result of the City's requirement. He stated that his client is willing underground the new service drop but is looking to not underground any existing utility lines or poles.

The Commissioners asked Mr. Rifkind questions regarding PG&E's requirements and costs for undergrounding.

Mr. Rifkind responded that the plan Commissioner Tiernan referred to was submitted accidentally by the appellant on March 7.

There was some discussion between the appellant, Mr. Moghaddasi, and the Commissioners regarding PG&E's estimated costs for the project if only the new service drop was undergrounded.

Commissioner Engdahl asked when Mr. Moghaddasi purchased the property was it disclosed that he would have to underground existing utility lines?

Mr. Moghaddasi responded that it was not disclosed by the seller, but the City mentioned the requirement in preliminary discussions.

Commissioner Tiernan asked why the drawing showing half of the utilities proposed to be undergrounded was submitted. Mr. Moghaddasi said he was trying to facilitate a discussion with the Public Works Department on the undergrounding requirements however they were not amenable to discussing the issue or options.

The public hearing was opened.

No members of the public wished to speak.

The public hearing was closed.

Chair Heath asked the Commissioners if they were interested in reviewing the whole of the project. All Commissioners responded no, they wanted to focus solely on the appeal of the condition to underground existing overhead utilities.

Commissioner Engdahl stated that the \$400,000 to be added to the cost of building the house was unfortunate. He asked if the real estate agent was required to disclose that undergrounding would be required.

Assistant City Attorney Abaci stated the ordinance requiring undergrounding was publicly available.

Commissioner Tiernan stated he was conflicted and is concerned about setting a precedent were they to waive the undergrounding requirement. He said he was hoping that the plan submitted on March 7 showing half of the utilities lines as undergrounded was a real offer.

Commissioner Crockett asked if this could be represented as a taking. He also asked if the requirement to underground was only for aesthetic purposes and not for fire safety purposes. He said the owner should have done due diligence before purchasing the property.

Assistant City Attorney Abaci said that a taking looks at the diminishment of a property value, not the cost imposed on the owner, which is not the situation here. The undergrounding would enhance the value of the property and there was no restriction placed on the use of the property. He said the undergrounding requirement is for aesthetic purposes.

Commissioner Engdahl asked if pole 5 served houses on the opposite side of the street.

Engineering Services Manager Dammuller responded he could not speak to that issue. Some conversation between Commissioner Engdahl and Engineering Services Manger Dammuller regarding technicalities of the undergrounding ensued.

Commissioner Tiernan said the issue was a question of equity and it would be great if the in-lieu fee fund would cover a percentage of the undergrounding for the appellant.

Commissioner Crocket said partial undergrounding was closer to the intent of the ordinance and that is it hard to accept the appellant doing nothing. He asked staff how the appeal could be referred to the City Council.

Deputy Director Marshall said the Planning Commission could take action on the appeal and someone could appeal that decision to city council, or the council could initiate a directed referral (requires project to be considered by city council). The third option would be for the Planning Commission to refer the appeal back to DRC if they have heard new information. DRC could provide a report and recommendation back to the Planning Commission.

Commissioner Tiernan asked if the DRC had issues with the lack of undergrounding.

Deputy Director Marshall reviewed the project history, noted that the appellant's desire to avoid undergrounding altogether was not clearly communicated to the DRC.

Assistant City Attorney Abaci said he agreed with Deputy Director Marshall, saying that other properties will not have the same number of poles along the property frontage.

Commissioner Crockett said he was not persuaded that the appellant's solution was innovative, and that it was minimal at best. He was still concerned over the precedent and felt the project was misrepresented to DRC, as there was some reasonable expectation that something would be done.

Commissioner Tiernan asked how much an in-lieu fee was, and if the money would be earmarked for undergrounding lines on Burning Tree.

Engineering Services Manager Dammuller said the in-lieu fee was the full estimate of what it would cost to underground the lines, and it was likely the money would go toward Burning Tree unless the city has a project in that area.

The Commissioners discussed the possible options for granting the appeal, denying the appeal, or modifying the condition.

COMMISSION ACTION: Upon motion by Commissioner Engdahl and seconded by Commissioner Crockett, the Planning Commission voted 3-1-0-

3 via roll call to adopt the resolution denying the appeal and upholding the Design Review approval.

AYES: Commissioners Crockett, Engdahl, & Tiernan

NOES: Commissioner Heath

ABSTAIN: None

ABSENT: Commissioners Dawson, Derby, and Havel

G. GENERAL BUSINESS - NONE

H. COMMITTEE AND LIAISON REPORTS - NONE

I. ADJOURNMENT

The Planning Commission adjourned the meeting at 8:33 PM.

I HEREBY CERTIFY that the foregoing minutes were duly adopted at the Planning Commission meeting of March 25, 2024.

/Steve Marshall/

Steve Marshall, Deputy Director of Community Development