

**CITY OF PIEDMONT
COUNCIL AGENDA REPORT**

MEETING DATE: April 4, 2005

FROM: Kate Black, City Planner

SUBJECT: Application #04-0329 to Subdivide the Property at 415 Pacific Avenue

RECOMMENDATION:

- A. Approve the proposed Parcel Map subdivision application as recommended by the Planning Commission, subject to the following recommended conditions:
1. Reciprocal access easements shall record concurrently with parcel map.
 2. The certificate sheet shall include statements for both the owner and the trustees (or beneficiaries), as listed in the title report in compliance with the Map Act.
 3. Parcel Map must conform to the Map Act and Article VI of Section 19.35 of the Municipal Code. As noted in Section 19.35, the requirements for the parcel map are the same as those listed for a final map.
 4. Both parcels shall have access from a public street.
 5. Water, sewer and utility services shall be provided to Parcel A prior to the issue of a building permit or other entitlement.
 6. Applicant shall obtain encroachment permits from the City and other agencies prior to issuance of any building permits.
 7. Applicant shall pay all fees prior to the recordation of the parcel map. All applicable connection and development fees and assessments shall be paid prior to issuance of building permit.
 8. All utility services shall be undergrounded should a new residence be constructed on Parcel A to the extent deemed feasible by PG&E.
 9. In accordance with a request from the East Bay Municipal District, the

applicant shall comply with Assembly Bill 325, Model Water Efficient Landscape Ordinance (Division 2, Title 23, California Code of Regulations, Chapter 2.7, Sections 490 through 495).

10. Pursuant to sections 66474.9(b)(1) and (b)(2) of the Subdivision Map Act, the subdivider shall defend, indemnify, and hold harmless the City or its agents, officers and employees from any claim, action or proceeding against the City or its agents, officers, and employees to attach, set aside, void, or annul, an approval of the subdivision by the City if action is brought within the time period provided for in Section 66499.37. The City will promptly notify the subdivider of any claim, action or proceeding and will fully cooperate in the defense.
11. Prior to the submittal of an application for a final map, the applicants shall provide evidence in the form of a photocopy of the deed showing the recording date and recording number that the deed from K.S. Mattson Partners LP to Michael R. Perkocha and Tina M. Stott, husband and wife, as to an undivided 25% interest in 415 Pacific Avenue, which deed was notarized on January 18, 2005, submitted as part of this application, has been recorded.

B. Adopt the Planning Commission recommended findings for approval:

- (a) The proposed map is consistent with the Piedmont General Plan, any applicable specific plan, and all applicable provisions of this Code as follows:
 - (i) The dimensions of the new lots are consistent with established density standards, in conformance with Goal A, Policies 1 and 2 of the Land Use Element of the Piedmont General Plan which requires that the subdivision of large lots and estates must at a minimum meet density standards and further, be compatible with existing lot sizes.
 - (ii) The proposed map is consistent with Goal 1, Quantified Objectives 1 and 2, Policy 1.1, and Implementation Program 1.1 of the Housing Element of the Piedmont General Plan, to provide an adequate number of sites for the development of housing consistent with ABAG's recommendations, by facilitating the construction of above-moderate income single-family residences, in that the possible subdivision of this property was contemplated in the list of possible "vacant lots" in Table 1-4.

- (iii) The proposed map is consistent with Goal B, Policy 4 of the Community Design Element of the Piedmont General Plan, which encourages future development and redevelopment to be in harmony with the character of the existing development in the neighborhood, in that the proposed lot sizes and frontages are no smaller than the majority of lots in the immediately surrounding neighborhood.
 - (iv) The proposed map is consistent with Goal D, Policy 2 of the Community Design Element of the Piedmont General Plan, which specifies that subdivisions should be designed and implemented in a manner that fully recognizes the character and aesthetics of the community while observing the rights of the property owners, because the proposed subdivision is in keeping with the existing subdivision pattern of the neighborhood.
 - (v) The proposed map is consistent with Goal D, Policy 3 of the Community Design Element of the Piedmont General Plan, which specifies that subdivisions should be designed with a lot layout and improvements which ensure minimum disturbance to existing trees, because the proposed subdivision proposes to retain the existing large trees.
 - (vi) As conditionally recommended for approval, the proposed map is consistent with Goal D, Policy 4 of the Community Design Element of the Piedmont General Plan, which requires that all utilities be placed underground whenever feasible.
- (b) The proposed map does not have a substantially detrimental effect on the public service needs of the residents of the city, or if it does, the benefit of additional housing outweighs the detrimental effect, in that the addition of one more residence in this neighborhood will not have a measurable effect on public service needs, and the addition of a new residence is in compliance with the City's obligation to provide for the construction of more above-moderate income single family residences;
- (c) The proposed map does not have a substantial detrimental effect on available fiscal and environmental resources or, if it does, the benefit of additional housing outweighs the detrimental effect for the same reasons as cited in subsection (b) immediately above, and the addition of a new residence is in compliance with the City's obligation to provide for the construction of more above-moderate income single family residences;

- (d) The site is physically suitable for the type and density of development because: the size of each resulting lot exceeds the minimum lot size and frontage requirements of Zone A; the resulting lot frontages are similar to the lot frontages of lots in the neighborhood; and the floor area ratio, and lot coverages for the existing improvements on proposed Parcel B are in compliance with the development controls of Zone A;
- (e) The design of the subdivision and the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidably injure fish and wildlife or their habitat as defined by the California Environmental Quality Act. The scope of the project – a two lot subdivision with no variances and an average slope of less than 20% - is exempt from CEQA pursuant to Article 19, Sections 15315 which states:

"Class 15 consists of the division of property in urbanized areas zoned for residential, commercial, or industrial use into four or fewer parcels when the division is in conformance with the General Plan and zoning, and no variances or exceptions are required, all services and access to the proposed parcels to local standards are available, the parcel was not involved in a division of a larger parcel within the previous 2 years, and the parcel does not have an average slope of greater than 20%";
- (f) The discharge of waste from the proposed subdivision into an existing community sewer system will not violate existing regional water quality control board requirements because the waste discharge of one additional home will not have any perceptible effect on those water quality requirements;
- (g) There are no known public easements which would be affected by this subdivision;
- (h) The design of the subdivision or the type of improvements are not likely to cause serious public health or safety problems because the addition of one possible future residence in this neighborhood will have no measurable effect on the public health and safety. The access to both proposed parcels is currently proposed via the existing curb-cut and driveway, along with a mutual access easement, and should alternative access to either lot be proposed in the future, the access and safety will be evaluated at that time, including compliance with Section 17.20.9 (b) of the Zoning Code; and
- (i) The design of the subdivision provides, to the extent feasible, for future passive or natural heating or cooling opportunities, in that there are no proposed changes to the topography of the site or structures on the site as part of the proposed subdivision that would preclude those opportunities.

The possible future development of Parcel A will be addressed through the design review process for its compliance with the General Plan, the Residential Design Review Guidelines, City policies and the Zoning Code, specifically Section 17.20.9 (b).

APPLICATION SUMMARY:

An application for Subdivision has been submitted by K. S. Mattson Partners, LP, Michael R. Perkocha and Tina M. Stott, for the property at 415 Pacific Avenue. The application proposes to subdivide an existing 27,104 square foot "through-lot" property with 131.23 feet of frontage on Pacific Avenue and 125.33 feet of frontage on Hagar Avenue into two properties: Parcel A is proposed to be 10,040 square feet with 94.1 feet of frontage on Pacific Avenue, and Parcel B is proposed to be 17,064 square feet with 125.33 feet of frontage on Hagar Avenue and 37.13 feet of frontage on Pacific Avenue. The existing house and garage are proposed to be located on Parcel B. An access easement is proposed for part of the existing Pacific Avenue driveway, which would provide access for both proposed parcels. No physical alterations to the property or improvements are proposed under this application.

CRITERIA FOR EVALUATION:

NOTE: In evaluating this application, the Planning Commission and City Council are required to consider criteria in several City plans and codes, including the General Plan, the Zoning Code and the Subdivision Code. The next section of this report provides the procedures and criteria for evaluation of the application under each applicable plan and code. The final section of this report, beginning on page 13, summarizes the Commission's deliberations at the March 14, 2005 Planning Commission meeting.

Chapter 17 – Zoning Code

Because this subdivision does not propose any physical changes to the property or improvements, design review is not required. No variances are required. However, because the application proposes the creation of two lots, each of which is individually subject to compliance with the Zone A regulations under Chapter 17, the code compliance section of this report has been broken into separate analyses for each parcel:

Zoning Compliance – Parcel A

The area of the property proposed as Parcel A currently has several large trees, but no structures. A large portion of the existing driveway is located on the proposed new

parcel. No physical changes to the site or structures on the proposed parcel are proposed as part of this application. Parcel A is located in Zone A.

Parcel A is proposed to be 10,040 square feet with 94.1 feet of frontage on Pacific Avenue. The minimum lot area required in the City Code for properties in Zone A (section 17.10.2) is 10,000 square feet (*complies*) and the minimum lot frontage (section 17.10.3) is 90 feet. *Complies*.

The impervious surface coverage for the existing 27,104 square foot lot (prior to the proposed subdivision) is 35.6%. Under this application, the impervious surface coverage for proposed Parcel A is proposed to be 27.3%. The maximum limit in the City Code (17.10.4) is 70%. *Complies*.

Because there are no existing or proposed structures on the portion of the property designated as Parcel A, analyses of setbacks, structure coverage, floor area ratio and parking compliance are not relevant or required.

Zoning Compliance – Parcel B

The area of the property proposed as Parcel B contains the existing residence, the existing garage, some landscape features and one large tree. A small portion of the existing driveway is located on the proposed new parcel B. No changes to the site or structures are proposed as part of this application. Parcel B is located in Zone A.

Parcel B is proposed to be 17,064 square feet with 125.33 feet of frontage on Hagar Avenue and 37.13 feet of frontage on Pacific Avenue. The minimum lot area required in the City Code for properties in Zone A (section 17.10.2) is 10,000 square feet (*complies*) and the minimum lot frontage (section 17.10.3) is 90 feet. *Complies*.

The structure coverage for the existing 27,104 square foot lot (prior to the proposed subdivision) is 16.5%. Under this application, the structure coverage for Parcel B is proposed to be 26.2%. The maximum limit in the City Code (section 17.10.4) is 40%. *Complies*.

The impervious surface coverage for the existing 27,104 square foot lot (prior to the proposed subdivision) is 35.6%. Under this application, the impervious surface coverage for Parcel B is currently proposed to be 40.5%. The maximum limit in the City Code (17.10.4) is 70%. *Complies*.

The northern side yard setback to the existing garage is proposed to be 4 feet to the proposed new property line. The minimum required side yard setback in the City Code (section 17.10.7) is 4 feet. *Complies*.

The proposed rear yard setback from the deck of the house to the proposed new property line is 4 feet. The minimum required rear yard setback in the City Code (section 17.10.8) is 4 feet. *Complies.*

The floor area ratio for the existing 27,104 square foot property (prior to the proposed subdivision) is 23.7%. Under this application, the floor area ratio for Parcel B is proposed to be 37.7%. The limit in the City Code is 45% for a parcel which exceeds 10,000 square feet (section 17.22(c)). *Complies.*

No changes are proposed that would affect the building height for either the residence or garage, the street setbacks to the garage from Pacific Avenue or the residence from Hagar Avenue, or the southern side yard setback to the house or garage. No new rooms eligible for use as a bedroom are proposed, nor are changes to the parking proposed.

General Plan

The General Plan is the City's long-range vision for the development of the City. It serves as the "constitution" for the development and use of land within the City boundaries. It is the foundation on which city codes and policies are built; and the codes and policies must be in compliance with the General Plan's vision. It is organized into several "elements" that address different subjects such as housing, circulation, noise, and community design. Each element has several goals, and each goal has *quantified objectives* and *policies* to achieve the goal, and *specific programs* to implement the goal.

Provisions in the City's General Plan that the Council may find relate to this subdivision application include the sections provided in Exhibit E, page 28, which are excerpted below. It should be noted that other provisions in the General Plan (including the Housing Element, the Safety Element and the Community Design Element), provisions in the City Code (including Chapter 17, the Zoning Code and Chapter 5, the Building Code), the Residential Design Guidelines, and other adopted city policies (such as the Story Pole and Window policies), may apply to future applications for the development of a residence on Parcel A and/or redevelopment of Parcel B.

Land Use Element

The land use designation in the Land Use Element of the City's General Plan for this property is "Suburban Residential":

The Suburban Residential designation provides for the development of single-family residences and accessory structures in harmony with the character of the existing and proposed development in the neighborhood. Many lots within this designation are non-conforming. This designation provides for development of single family residences with a density of approximately 2-4 dwelling units per acre.

Goal A: Maintain the character of Piedmont as a residential community.

Policies of Goal A:

1. *Require that the development of undeveloped parcels and vacant lots must be consistent with established density standards.*
2. *Require that the subdivision of large lots and estates must at a minimum meet density standards and further must be compatible with existing lot sizes.*

Housing Element

Piedmont's Regional Housing Needs Assessment

Under the Housing Element, the City is required to provide incentives for the creation of a certain number of new housing units. The City's Regional Housing Needs Assessment (RHNA) is established by the Association of Bay Area Governments (ABAG) which requires each city to provide its "fair share" of the region's housing needs. During the period between 1999 and 2007, Piedmont's current "fair share" is 45 new housing units broken down by income group in the table below:

| INCOME GROUP | # OF UNITS |
|---------------------|-------------------|
| Very Low | 6 |
| Low | 4 |
| Moderate | 10 |
| Above Moderate | 25 |
| TOTAL | 45 |

Several provisions in the recently approved Housing Element of the City's General Plan may relate to this subdivision application. It is noted that implementation of the Housing Element programs is on-going: some of the programs have already been implemented and some have not yet been implemented.

Goal 1 – New Housing Options: Provide a range of new housing options in Piedmont to meet the needs of all household types in the community.

Quantified Objectives of Goal 1:

1. *Zone the City's remaining vacant and redevelopable lots to accommodate the construction of at least 47 units of new housing.*
2. *Facilitate the production of at least 20 single family homes (suitable to above moderate income households)....*

Policies of Goal 1:

- 1.1 *Provide an adequate number of sites for the development of housing consistent with ABAG's recommendations.*

Implementation Programs of Goal 1

- 1.1 *Vacant Land Inventory. Prepare an annual update of the City's vacant land inventory, indicating the status and availability of each site for potential development.*

A vacant land inventory has been prepared as part of the Housing Element update (see Table 4-1 on page 37, of Exhibit E). This inventory should be updated annually, with an indication of the ownership, availability for sale, and status of any pending construction projects. Information about potential new parcels should be added, in the event that lot standards of subdivision regulations change.

(It is noted that table 4-1 specifically lists "419 Pacific" as a possible 10,000 square foot lot if it is split from 415 Pacific Avenue).

Goal 4 – Housing Constraints: Minimize constraints to the development of additional housing without compromising the high quality of Piedmont's neighborhoods.

Quantified Objectives of Goal 4:

1. *Process 80% of all complete applications for planning and building permits within 30 days after they are received, instead of the 60 days allowed by the Permit Streamlining Act.*

Policy of Goal 4:

- 4.3 *Promote the expeditions processing and approval of residential projects that are consistent with the General Plan, Zoning Ordinance, and Design Review Guidelines.*

Programs of Goal 4:

- 4.3 *Establish exceptions to Piedmont's lot size requirements to facilitate the development of existing non-conforming lots and to allow the creation of a limited number of additional lots in the City. The following changes should be explored:*
- Allowing the creation of lots as small as 8,000 square feet in Zone A where the prevailing lot size (within 500 feet) is 8,000 square feet or less. There are many areas in Zone A where the prevailing lot size is between 6,000 and 8,000 square feet. This measure could create the capacity for a few additional units in the City without adversely affecting neighborhood character.*
 - Allowing new lots to be created with 60 feet of frontage instead of 90 feet of frontage where other minimum standards (including lot size) can be met, and where there would be no adverse effects on traffic, infrastructure, and neighborhood character. One possibility might be to allow such subdivisions subject to certain conditions, such as an agreement to include a second unit in any house constructed on the property.*

(It is noted that the implementation of Program 4.3 has not yet occurred. The process of considering a code amendment to reduce the minimum lot size and minimum lot frontage requirements in Zone A has not yet commenced.)

Community Design Element

Several provisions in the Community Design Element of the City's General Plan may relate to this subdivision application:

Goal B: Preserve and enhance the aesthetic character of Piedmont

Policy of Goal B:

4. *Encourage future development and redevelopment in harmony with the character of the existing development in the neighborhood.*

Goal D: Maintain subdivision regulations which enhance the residential character of Piedmont.

Policies of Goal D:

1. *Review the current regulations to ensure an orderly planning process and consistency with applicable State subdivision law.*
2. *Subdivisions should be designed and implemented in a manner that fully recognizes the character and aesthetics of the community while observing the rights of the property owners.*
3. *Encourage the developer to provide for a lot layout and improvements which ensure minimum disturbance to existing trees and maximum passive solar opportunities.*
4. *Require that all utilities be placed underground whenever feasible.*
5. *Ensure proper fire and police access in the layout of public and private streets.*
6. *Preserve private open space through the use of design solutions.*
7. *Minimize adverse visual impacts on surrounding properties and protect solar access.*
8. *Ensure improvements meet current City Standards (e.g. sidewalks).*

Implementation Program of Goal D:

1. *The City will implement Chapter 19 of the City Code.*

Chapter 19 – Subdivision Code

The Subdivision Code sets forth the procedures for the processing of subdivision applications, the required application materials, and the criteria for evaluation. Attached is

a letter from the City Engineer determining that the parcel map submitted by the applicant is complete (Exhibit D on page 27). Pursuant to Section 19.35.4, the Planning Commission shall review the parcel map - when it is deemed complete by the City Engineer - according to the procedures in Section 19.17. The Commission shall recommend that the City Council approve, conditionally approve or deny the parcel map.

Section 19.17.2 states:

In reaching a decision upon the tentative map, the Planning Commission shall consider the effect of that decision on the housing needs of the region and balance these needs against the public service needs of its residents, residents' health and welfare, and available fiscal and environmental resources.

Approval or conditional approval of the parcel map may be recommended by the Commission if it makes the findings required by Section 19.18.2 below. Conversely, denial of the tentative map may be recommended to the City Council by the Planning Commission on any of the grounds provided by the Subdivision Map Act or Subdivision Code. Pursuant to Section 19.17.4, the Commission shall make a recommendation to deny the tentative map if it fails to make one or more of the findings required by Section 19.18.2.

Section 19.18.2:

The Planning Commission is required to provide the Council with recommendations on all of the following approval criteria and the Council shall approve the tentative map if it makes findings to support each of the following criteria:

- (a) *The proposed map is consistent with the Piedmont General Plan, any applicable specific plan, and all applicable provisions of this Code;*
- (b) *The proposed map does not have a substantially detrimental effect on the public service needs of the residents of the city, or if it does, the benefit of additional housing outweighs the detrimental effect;*
- (c) *The proposed map does not have a substantial detrimental effect on available fiscal and environmental resources or, if it does, the benefit of additional housing outweighs the detrimental effect;*
- (d) *The site is physically suitable for the type and density of development;*
- (e) *The design of the subdivision and the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidably injure fish and wildlife or their habitat as defined by the California Environmental Quality Act, conversion of apartments to condominiums excepted. Even if such damage or injury were likely, the City Council may nevertheless recommend approval of such a tentative map if an environmental impact report was prepared for the project*

and a finding was made pursuant to Section 21081(c) of CEQA that specific economic, social or other considerations make infeasible the mitigation measures or project alternatives identified in the environmental impact report;

- (f) The discharge of waste from the proposed subdivision into an existing community sewer system will not violate existing regional water quality control board requirements;*
- (g) The design of the subdivision or the type of improvements will not conflict with easements acquired by the public at large for access through or use of property within the proposed subdivision. In this connection, the City Council may approve a map if it finds that alternative easements for access or for use will be provided, and that these will be substantially equivalent to ones previously acquired by the public. This subsection shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction, and no authority is hereby granted to the City Council to determine that the public at large has acquired easements for access through or use of property within the proposed subdivision.*
- (h) The design of the subdivision or the type of improvements are not likely to cause serious public health or safety problems; and*
- (i) The design of the subdivision provides, to the extent feasible, for future passive or natural heating or cooling opportunities.*

ISSUES FOR COUNCIL CONSIDERATION

Neighborhood Context

Both the General Plan and Subdivision Code call for a review of the proposed subdivision in the context of the existing neighborhood development pattern. Exhibit C, page 26, is a map of the surrounding neighborhood, showing the streets, properties and structures. It is derived from the City's GIS program and aerial photographs, and is illustrative of the general layout of the neighborhood and each lot, but is not as precise as a map derived from individual lot surveys would be. Exhibit B, page 23, is a listing of the approximate lot sizes of surrounding properties for comparison purposes. It is important to note that the lot sizes are taken from the County Assessor's records, which are developed for taxation purposes, and are not always accurate to the exact lot size that would be determined from a survey. According to the Assessor's information, the average lot size of residential properties within 500 feet of 415 Pacific Avenue is 9,321.06 square feet. Of those 125 lots, 31 lots are greater than 10,000 square feet (24.8%), and 94 lots are smaller than 10,000 square feet (75.2%).

Unfortunately, neither the City nor the Assessor have information that is easily compiled concerning lot frontages. The Council may wish to review the lot pattern in Exhibit C

(page 26) and make a visual evaluation of the subject property and the surrounding neighborhood during the Council site visits to evaluate the proposed lot frontages.

Undergrounding of Utilities

Both the General Plan and Subdivision Code encourage the undergrounding of utilities. The 415 Pacific Avenue residence and property (prior to the subdivision application) are already part of an undergrounding district, as are the Hagar Avenue residences adjacent to the property and across Hagar Avenue. The houses adjacent to the portion of the lot proposed as Parcel A, (fronting Pacific Avenue) are part of the district, as are the houses directly across Pacific Avenue. Staff recommended, and the Commission concurred, that undergrounding of utilities to the proposed Parcel A be required in order to be consistent with the requirement for the existing property and the surrounding properties.

Cleanwater Compliance

The proposed project does not propose any physical alterations to the property or improvements, and thus will not create *or replace* more than 5,000 square feet of impervious surfaces and will not result in any significant changes to water runoff at the site. Implementation of stormwater treatment Best Management Practices (BMPs) as well as the Bay Area Stormwater Management Agencies Association's *Start at the Source* criteria for stormwater quality protection is not necessary. Compliance with the Cleanwater program will be re-evaluated should applications for the development of Parcel A or redevelopment of Parcel B be submitted in the future.

CEQA Compliance

The proposed project is Categorical Exempt from the provisions of the California Environmental Quality Act pursuant to Article 19, Sections 15315 which states:

"Class 15 consists of the division of property in urbanized areas zoned for residential, commercial, or industrial use into four or fewer parcels when the division is in conformance with the General Plan and zoning, and no variances or exceptions are required, all services and access to the proposed parcels to local standards are available, the parcel was not involved in a division of a larger parcel within the previous 2 years, and the parcel does not have an average slope of greater than 20%."

Permit Streamlining Act

The application was submitted on July 6, 2004 and determined incomplete on August 4, 2004. It was resubmitted on August 12, 2004 and determined incomplete on September 3, 2004. It was resubmitted on December 10, 2004 and determined incomplete on January 5, 2005. It was resubmitted on February 11, 2005 and was determined complete on March 7, 2005 by the City Engineer. A notice of City Council hearing has been published scheduling the application for City Council consideration at the April 4, 2005 City Council meeting. However, the City Council must take action on the application by the April 18, 2005 meeting.

PLANNING COMMISSION DELIBERATIONS AND DECISION:

On March 14, 2005, the Planning Commission held a hearing to consider the subdivision application. As indicated in Exhibit F, page 38, numerous letters were received in support of and opposition to the subdivision, and although a few people spoke in support of the application at the hearing, the majority of people spoke in opposition to the application (the meeting minutes are attached as Exhibit A, page 15). After a review of all of the information in the application and consideration of the public testimony, the Commission unanimously recommended approval of the proposed subdivision application.

In making their determination, the Planning Commission noted that the application before them was merely to subdivide the lot, without any physical changes to either proposed parcel. They noted they were limited to the criteria in the General Plan, Zoning Code and Subdivision Code related to subdivisions, and that despite opposition from some of the immediately surrounding neighbors, could not find a basis to recommend denial. They noted that both parcels met the lot size and frontage requirements of the zone, and that the property had specifically been identified as one of three lots with the potential for subdivision in the Housing Opportunity Table of the Housing Element of the General Plan (see Exhibit E, page 47).

However, the Commission members were sensitive to the fact that it was highly likely that an application to develop Parcel A would occur if the subdivision was approved. They noted that some of the properties across Pacific Avenue have significant views of Oakland, the bay, and San Francisco over proposed Parcel A, which currently has no structures. They stressed to the applicants and neighbors that the design of a new residence on Parcel A would be strictly reviewed for its compliance with the Zoning Code and Design Guidelines; noting that while “view” is not a specific criterion for evaluation of subdivision applications, it *is* for design review of new residences. Several Commission members noted that it would be unlikely that a new residence could be built to the maximum height and bulk standards of Zone A, and would likely have to be reduced in size and height due to the limitation created by the driveway easement and the need to protect neighborhood views. Commissioner Karren voiced concern over the lot configuration, urging the applicants to withdraw their application to find a better configuration without an easement, but noted that the proposed subdivision met the criteria for evaluation, and should therefore, be approved.

CITY COUNCIL ACTION:

The City Council is the final decision-making body on the subdivision application.

Date report prepared: March 29, 2005

EXHIBITS:

| | |
|---------------------|--|
| Exhibit A, page 15 | March 14, 2005 Planning Commission Meeting Minutes |
| Exhibit B, page 23 | Table of Residential Lot Sizes of Neighborhood within 500' |
| Exhibit C, page 26 | GIS Map of Neighborhood within 500' |
| Exhibit D, page 27 | Memorandum from City Engineer |
| Exhibit E, page 28 | General Plan Sections |
| Exhibit F, page 38 | Public Comments Received by Planning Commission |
| Exhibit G, separate | Application Materials |

PIEDMONT PLANNING COMMISSION

Regular Meeting Minutes for Monday, March 14, 2005

A Regular Session of the Piedmont Planning Commission was held March 14, 2005, in the City Hall Council Chambers at 120 Vista Avenue. In accordance with Government Code Section 54954.2(a) the agenda for this meeting was posted for public inspection on February 28, 1005.

CALL TO ORDER

Chairman Hege called the meeting to order at 5:00 p.m. She announced that Agenda Item #2 (Variance/Design Review, 361 Moraga Avenue) has been withdrawn from tonight's consideration (application deemed *incomplete*).

ROLL CALL

Present: Commissioners Arleta Chang, Marty Greenman, Tamra Hege, Fred Karren, Suzanne Summer and Alternate Commissioner Jonathan Levine

Staff: City Planner Kate Black, Assistant Planner Linda Ajello, Planning Technician Kevin Jackson and Recording Secretary Chris Harbert

City Council Liaison: Councilmember Dean Barbieri

REGULAR CALENDAR

The Commission considered the following items of regular business:

**Subdivision
415 Pacific Avenue**

K.S. Mattson Partners, LP, Michael R. Perkocha and Tina M. Stott are requesting subdivision of property located at 415 Pacific Avenue. The application proposes to subdivide an existing 27,104 sq. ft. *through lot* property with 131.23 ft. of frontage on Pacific Avenue and 125.33 ft. of frontage on Hagar Avenue into two properties:

- Parcel A is proposed to be 10,040 sq. ft. with 94.1 ft. of frontage on Pacific Avenue;
- Parcel B is proposed to be 17,064 sq. ft. with 125.33 ft. of frontage on Hagar Avenue and 37.13 ft. of frontage on Pacific Avenue. The existing house and garage are proposed to be located on Parcel B. An access easement is proposed for part of the existing Pacific Avenue driveway, which would provide access for both proposed parcels.

Written notice was provided to neighbors. **Eight affirmative and six negative response forms** were received. **Correspondence** was received from: Stella Kwoh, March 7; Carl Tsukahara, March 10; Ross & Virginia Hambly, March 7; Harold Smith, March 10; Harold & Marian Smith, March 10; Gale Rocks, August 24; Bruce & Ellen Gilmore, March 10; Kathy & Jim Burden, August 11; Marian Bamford Smith, March 11; Clifford Chan, March 10.

Public testimony was received from:

Michael Perkocha stated that as an architect he is excited to undertake the restoration of the original "Hagar" mansion with the help of his wife who is an urban planner. He noted the many subdivision options explored to create the best layout for the renovation of the mansion

property and provide a new buildable lot. He stated that development of the new lot will probably not occur for approximately 5 years given that the first priority is to restore the Hagar mansion (approximately a 2 year project). However, subdivision at this time is desired so that the configuration of both lots is determined upon which to base the design of the new house as well as the layout of the mansion property. He stated that no design has been prepared for the new lot, although it is anticipated that a 3,000-4,000 sq. ft. house with a 3-car garage will be proposed.

Tina Stott noted that their proposal complies with the City's General Plan and Housing Element.

Harold and Miriam Smith opposed approval of the proposed subdivision at this time, requesting that a proposed design for the new lot be submitted first. They emphasized the importance that development of the new parcel not obstruct the existing magnificent Bay views of neighbors because of the substantial adverse financial and property enjoyment impacts such a view loss would impose on the neighborhood. They also questioned the wisdom of permitting the subdivision prior to the approval of a proposed new house given Mr. Mattson's poor track record in connection with his 62 Farragut mansion property development.

Peter Smith, representing his parents, referenced his correspondence in questioning the completeness of the current application, stressing the fact that if the existing house has 7 bedrooms, it is in non-compliance with the City's parking requirements and thus cannot be subdivided given this non-conforming situation and urging that subdivision approval be conditioned upon height, size and location restrictions being placed on proposed development on the new lot – 1-story, low profile home on the lowest rather than highest point on the lot. He cautioned the City upon relying upon promises and guarantees given by Mr. Mattson given Mr. Mattson's actions related to property development at 62 Farragut.

Jim Guitteau and Grant Powell supported subdivision approval, agreeing with the applicants that a house design for the new parcel cannot realistically be developed until the new lot is approved. They voiced confidence in the Perkocha/Stott's ability to design and build an attractive home which will be sensitive to neighborhood impacts and enhance the neighborhood as well as attractively restore the old Hagar mansion property.

Virginia and Ross Hambly opposed the proposed subdivision citing concerns that creation of a new lot on Pacific will aggravate an already congested neighborhood, will decrease neighboring property values, and will exaggerate the bulk of the Hagar mansion by reducing the amount of yard space to offset this large home. They suggested that if subdivision is inevitable, the new lot be created on the south rather than north side of the property.

Bruce Gilmore also opposed the proposed subdivision, citing that the proposed new development will occur too close to his property line. He also requested new development on the south rather than north side of the property and suggested that as a condition of subdivision approval, a plan be required indicating the location and building envelope size of proposed new house construction.

Allan Gutsche read a letter into the record requesting that height and size restrictions upon new house development be imposed as a condition of subdivision approval to protect and preserve existing neighborhood views.

Wilson Wendt, attorney representing the Perkocha/Stott and Mattson property owners, reiterated that the proposal complies with the City's General Plan, Housing Element and Zoning Ordinance. He stressed that neighborhood concerns over new house development will be addressed and mitigated at the time of design review. In response to Commission questions concerning property ownership, Mr. Wendt replied that the property is owned by Perkocha/Stott as tenants in common with Mr. Mattson.

The City Attorney requested that if the Commission approves the proposed subdivision request, three additional conditions to those recommended by staff be included in the approval resolution. The additional recommended conditions were: (1) requiring compliance with the Model Water Efficient Landscape Ordinance as requested by the East Bay Municipal Utility District; (2) holding the City harmless as set forth in the Subdivision Map Act; and (3) submitting a copy of the recorded deed from K.S. Mattson Partners LP to Michael Perkocha and Tina Stott as to an undivided 25% interest in 415 Pacific Avenue, which deed was notarized on January 18, 2005. The City Attorney also stated that the City's position is consistent with that set forth in Mr. Wilson Wendt's letter of March 14 concerning the bedroom count of 415 Pacific, the inclusion of easements in lot calculations, and General Plan density calculations and private view protections.

The Commission agreed that the proposed subdivision complies with the City's Zoning Code regulations, General Plan and Housing Element and therefore there is no basis to recommend denial. The Commission cautioned the applicants, however, that it is extremely unlikely that any new house on the new parcel will be allowed to be built to the maximum height, FAR and lot coverages permitted by code because of the importance under the Design Review Guidelines of preserving significant neighborhood views – in this case magnificent views of San Francisco Bay. Commissioner Karren repeatedly and strongly urged the applicants to withdraw their subdivision request, believing that the proposed lot configuration was not the best one possible for the property. He cited in particular the likely inability of constructing a 2-story home on the new parcel, the desirability of eliminating the need for easements and the proposed convoluted property lines creating an awkward appendage which has the potential of being neglected by an absentee owner and thus becoming an eyesore to the neighborhood.

Resolution 329-S-04

WHEREAS, K.S. Mattson Partners, LP, Michael R. Perkocha and Tina M. Stott are proposing to subdivide property located at 415 Pacific Avenue, Piedmont, California; and

WHEREAS, the application proposes to subdivide an existing 27,104 sq. ft. *through lot* property with 131.23 ft. of frontage on Pacific Avenue and 125.33 ft. of frontage on Hagar Avenue into two properties:

- Parcel A is proposed to be 10,040 sq. ft. with 94.1 ft. of frontage on Pacific Avenue;

- Parcel B is proposed to be 17,064 sq. ft. with 125.33 ft. of frontage on Hagar Avenue and 37.13 ft. of frontage on Pacific Avenue. The existing house and garage are proposed to be located on Parcel B. An access easement is proposed for part of the existing Pacific Avenue driveway, which would provide access for both proposed parcels; and

WHEREAS, City approval is required for the proposed parcel map pursuant to Section 19.18.2 of the City Code; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with said subdivision, and after having visited subject property, the Piedmont Planning Commission makes the following findings:

1. The proposed parcel map is consistent with the Piedmont General Plan, any applicable specific plan and all applicable provisions of this code as follows:
 - (a) the dimensions of the new lots are consistent with established density standards, in conformance with Goal A, Policies 1 and 2 of the Land Use Element of the Piedmont General Plan which requires that the subdivision of large lots and estates must at a minimum meet density standards and further, be compatible with existing lot sizes;
 - (b) the proposed map is consistent with Goal 1, Quantified Objectives 1 and 2, Policy 1.1, and Implementation Program 1.1 of the Housing element of the Piedmont General Plan, to provide adequate number of sites for the development of housing consistent with ABAG's recommendations, by facilitating the construction of above-moderate income single family residences, in that the possible subdivision of this property was contemplated in the list of possible "vacant lots" in Table 1-4.
 - (c) the proposed map is consistent with Goal B, Policy 4 of the Community Design Element of the Piedmont General Plan, which encourages future development and redevelopment to be in harmony with the character of the existing development in the neighborhood, in that the proposed lot sizes and frontages are no smaller than the majority of lots in the immediately surrounding neighborhood;
 - (d) the proposed map is consistent with Goal D, Policy 2 of the Community Design Element of the Piedmont General Plan, which specifies that subdivisions should be designed and implemented in a manner that fully recognizes the character and aesthetics of the community while observing the rights of the property owners, because the proposed subdivision is in keeping with the existing subdivision pattern of the neighborhood;
 - (e) the proposed map is consistent with Goal D, Policy 3 of the Community Design Element of the Piedmont General Plan, which specifies that subdivisions should be designed with a lot layout and improvements which

ensure minimum disturbance to existing trees, because the proposed subdivision proposes to retain the existing large trees;

- (f) as conditionally recommended for approval, the proposed map is consistent with Goal D, Policy 4 of the Community Design Element of the Piedmont General Plan, which requires that all utilities be placed underground whenever feasible.

2. The proposed map does not have a substantially detrimental effect on the public service needs of the residents of the City, or if it does, the benefit of additional housing outweighs the detrimental effect in that the addition of one more residence in this neighborhood will not have a measurable effect on public service needs, and the addition of a new residence is in compliance with the City's obligation to provide for the construction of more above-moderate income single family residences;

3. The proposed map does not have a substantial detrimental effect on available fiscal and environmental resources or, if it does, the benefit of additional housing outweighs the detrimental effect for the same reasons as cited in subsection 2 immediately above, and the addition of a new residence is in compliance with the City's obligation to provide for the construction of more above-moderate income single family residences;

4. The site is physically suitable for the type and density of development because: the size of each resulting lot exceeds the minimum lot size and frontage requirements of Zone A; the resulting lot frontages are similar to the lot frontages of lots in the neighborhood; and the floor area ratio, and lot coverages for the existing improvements on proposed Parcel B are in compliance with the development controls of Zone A;

5. The design of the subdivision and the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidably injure fish and wildlife or their habitat as defined by the California Environmental Quality Act. The scope of the project – a two lot subdivision with no variances and an average slope of less than 20% -- is exempt from CEQA pursuant to Article 19, Sections 15315 which states: *“Class 15 consists of the division of property in urbanized areas zoned for residential, commercial, or industrial use into four or fewer parcels when the division is in conformance with the General Plan and zoning, and no variances or exceptions are required, all services and access to the proposed parcels to local standards are available, the parcel was not involved in a division of a larger parcel within the previous 2 years, and the parcel does not have an average slope of greater than 20%;*

6. The discharge of waste from the proposed subdivision into an existing community sewer system will not violate regional water quality control board requirements because the waste discharge of one additional home will not have any perceptible effect on those water quality requirements;

7. The design of the subdivision or the type of improvements will not conflict with easements acquired by the public at large for access through or use of property within the proposed subdivision. There are

no known public easements which would be affected by this subdivision.

8. The design of the subdivision or the type of improvements are not likely to cause serious public health or safety problems because the addition of one possible future residence in this neighborhood will have no measurable effect on the public health and safety. The access to both proposed parcels is currently proposed via the existing curb-cut driveway, along with a mutual access easement, and should alternative access to either lot be proposed in the future, the access and safety will be evaluated at that time, including compliance with Section 17.20.9(b) of the Zoning Code; and

9. The design of the subdivision provides, to the extent feasible, for future passive or natural heating or cooling opportunities in that there are no proposed changes to the topography of the site or structures on the site as part of the proposed subdivision that would preclude those opportunities. The possible future development of Parcel A will be addressed through the design review process for its compliance with the General Plan, the Residential Design Review Guidelines, city policies and the Zoning Code, specifically Section 17.20.9(b).

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission recommends City Council approval of the subdivision application of K.S. Mattson Partners, LP, Michael R. Perkocha and Tina M. Stott for the proposed subdivision at 415 Pacific Avenue, in accordance with the plans and specifications on file with the City and subject to the following conditions:

1. Reciprocal access easements shall record concurrently with parcel map.
2. The certificate sheet shall include statements for both the owner and the trustees (or beneficiaries), as listed in the title report in compliance with the Map Act.
3. Parcel Map must conform to the Map Act and Article VI of Section 19.35 of the Municipal Code. As noted in Section 19.35, the requirements for the parcel map are the same as those listed for a final map.
4. Both parcels shall have access from a public street.
5. Water, sewer and utility services shall be provided to Parcel "A" prior to the issue of a building permit or other entitlement.
6. Applicant to obtain encroachment permits from the City and other agencies prior to issuance of any building permits.
7. Applicant shall pay all fees prior to the recordation of the parcel map. All applicable connection and development fees and assessments to be paid prior to issuance of building permit.
8. All utility services shall be undergrounded should a new residence be constructed on Parcel A to the extent deemed feasible by PG&E.

9. In accordance with a request from the East Bay Municipal District, the applicant shall comply with Assembly Bill 325, Model Water Efficient Landscape Ordinance (Division 2, Title 23, California Code of Regulations, Chapter 2.7, Sections 490 through 495).
10. Pursuant to sections 66474.9(b)(1) and (b)(2) of the Subdivision Map Act, the subdivider shall defend, indemnify, and hold harmless the City or its agents, officers and employees from any claim, action or proceeding against the City or its agents, officers, and employees to attach, set aside, void, or annul, an approval of the subdivision by the City if action is brought within the time period provided for in Section 66499.37. The City will promptly notify the subdivider of any claim, action or proceeding and will fully cooperate in the defense.
11. Prior to the submittal of an application for a final map, the applicants shall provide evidence in the form of a photocopy of the deed showing the recording date and recording number that the deed from K.S. Mattson Partners LP to Michael R. Perkocha and Tina M. Stott, husband and wife, as to an undivided 25% interest in 415 Pacific Avenue, which deed was notarized on January 18, 2005, submitted as part of this application, has been recorded.

Moved by Greenman, Seconded by Chang

Ayes: Chang, Greenman, Hege, Karren, Summer

Noes: None

Absent: None

**LOT SIZE COMPARISON - RESIDENTIAL PROPERTIES
WITHIN 500' OF 415 PACIFIC AVENUE**

(not counting the EBMUD reservoir)

SUMMARY

| | |
|--|-----------------------------|
| Average Lot Size is | 9,321.06 square feet |
| Number of Lots Greater than 10,000 square feet | 31 |
| Number of Lots Smaller than 10,000 square feet | 94 |

| Property Address | Lot Size |
|-------------------|----------|
| 160 Bell Ave. | 6389.25 |
| 161 Bell Ave. | 10431 |
| 165 Bell Ave. | 5941.63 |
| 170 Bell Ave. | 5022.63 |
| 0 Bellevue Ave. | 11308.06 |
| 37 Bellevue Ave. | 69167.25 |
| 44 Bellevue Ave. | 14302.6 |
| 47 Bellevue Ave. | 42462.94 |
| 50 Bellevue Ave. | 14626.6 |
| 57 Bellevue Ave. | 6269.75 |
| 60 Bellevue Ave. | 13943.88 |
| 64 Bellevue Ave. | 4783.38 |
| 68 Bellevue Ave. | 4698 |
| 70 Bellevue Ave. | 5222.38 |
| 634 Blair Ave. | 8580.25 |
| 638 Blair Ave. | 11034.69 |
| 668 Blair Ave. | 5200.13 |
| 672 Blair Ave. | 8455.06 |
| 676 Blair Ave. | 8221.31 |
| 680 Blair Ave. | 5531.25 |
| 700 Blair Ave. | 11152.13 |
| 701 Blair Ave. | 6021.13 |
| 710 Blair Ave. | 9258.19 |
| 711 Blair Ave. | 6435.19 |
| 712 Blair Ave. | 8675.88 |
| 33 Dormidera Ave. | 7862.44 |
| 34 Dormidera Ave. | 5879.25 |
| 40 Dormidera Ave. | 4760.63 |
| 43 Dormidera Ave. | 10225.63 |
| 36 Dudley Ct. | 8568.19 |
| 37 Dudley Ct. | 9795.44 |
| 38 Dudley Ct. | 26722.06 |
| 41 Dudley Ct. | 6830.88 |
| 49 Dudley Ct. | 9380.25 |
| 45 Dudley Ct. | 8457.44 |
| 71 Dudley Ave. | 30259.75 |
| 115 Dudley Ave. | 13823.44 |
| 115 Hagar Ave. | 5870.94 |
| 116 Hagar Ave. | 8833.44 |
| 121 Hagar Ave. | 3730 |
| 123 Hagar Ave. | 5869 |
| 127 Hagar Ave. | 5950.69 |
| 133 Hagar Ave. | 6039.75 |
| 137 Hagar Ave. | 8594.38 |

| | |
|----------------------|----------|
| 139 Hagar Ave. | 12135.06 |
| 143 Hagar Ave. | 5989.5 |
| 144 Hagar Ave. | 11316 |
| 147 Hagar Ave. | 9536.69 |
| 150 Hagar Ave. | 5242.56 |
| 155 Hagar Ave. | 5989.5 |
| 157 Hagar Ave. | 6030.63 |
| 167 Hagar Ave. | 5910.94 |
| 465 Mountain Ave. | 7832.81 |
| 471 Mountain Ave. | 8222.81 |
| 475 Mountain Ave. | 8029.69 |
| 479 Mountain Ave. | 11516.5 |
| 496 Mountain Ave. | 12023.06 |
| 500 Mountain Ave. | 10517 |
| 510 Mountain Ave. | 10230.69 |
| 550 Mountain Ave. | 10147.75 |
| 551 Mountain Ave.(1) | 7656.44 |
| 551 Mountain Ave.(2) | 7443.94 |
| 560 Mountain Ave. | 7239.88 |
| 570 Mountain Ave. | 7137.56 |
| 580 Mountain Ave. | 8834.56 |
| 585 Mountain Ave. | 6017.69 |
| 586 Mountain Ave. | 8349.75 |
| 588 Mountain Ave. | 8423.19 |
| 600 Mountain Ave. | 8369.31 |
| 601 Mountain Ave. | 11704.19 |
| 115 Pacific Ave. | 11384.69 |
| 201 Pacific Ave. | 54743 |
| 202 Pacific Ave. | 5358.44 |
| 205 Pacific Ave. | 9795.31 |
| 206 Pacific Ave. | 5276.38 |
| 207 Pacific Ave. | 10208.88 |
| 209 Pacific Ave. | 8874.19 |
| 210 Pacific Ave. | 4968.69 |
| 211 Pacific Ave. | 7624.44 |
| 214 Pacific Ave. | 3893.5 |
| 215 Pacific Ave. | 6135.75 |
| 218 Pacific Ave. | 6113.5 |
| 221 Pacific Ave. | 7778.38 |
| 231 Pacific Ave. | 10437 |
| 235 Pacific Ave. | 7015.19 |
| 300 Pacific Ave. | 4374.06 |
| 303 Pacific Ave. | 20372.81 |
| 304 Pacific Ave. | 10421.25 |
| 306 Pacific Ave. | 7126 |
| 308 Pacific Ave. | 6345.94 |
| 310 Pacific Ave. | 6258.56 |
| 312 Pacific Ave. | 7750.69 |
| 314 Pacific Ave. | 7867.94 |
| 316 Pacific Ave. | 6144.94 |
| 320 Pacific Ave. | 8302.38 |
| 324 Pacific Ave. | 5864.25 |
| 328 Pacific Ave. | 6076.06 |
| 329 Pacific Ave. | 6588.81 |
| 332 Pacific Ave. | 6060.19 |
| 333 Pacific Ave. | 4082.94 |
| 337 Pacific Ave. | 5951.88 |
| 341 Pacific Ave. | 5132.63 |
| 406 Pacific Ave. | 10016.44 |
| 418 Pacific Ave. | 6306 |

GIS MAP OF PROPERTIES WITHIN 500' OF 415 PACIFIC AVENUE

**CITY OF PIEDMONT
CALIFORNIA**



Public Works Department

Memorandum

DATE: March 7, 2005
TO: Planning Commission Members
CC: Kate Black, City Planner
FROM: Vern Phillips, City Engineer
RE: Review of Tentative Parcel Map #7777
415 Pacific Avenue

The above referenced tentative map has been deemed complete, with the following conditions of approval.

1. Reciprocal access easements shall record concurrently with parcel map.
2. The certificate sheet shall include statements for both the owner and the trustees (or beneficiaries), as listed in the title report in compliance with the Map Act.
3. Parcel Map must conform to the Map Act and Article VI of Section 19.35 of the Municipal Code. As noted in Section 19.35, the requirements for the parcel map are the same as those listed for a final map.
4. Both parcels shall have access from a public street.
5. Water, sewer and utility services shall be provided to parcel "A" prior to the issue of a building permit or other entitlement.
6. Applicant to obtain encroachment permits from the City and other agencies prior to issuance of any building permits.
7. Applicant shall pay all fees prior to the recordation of the parcel map. All applicable connection and development fees and assessments to be paid prior to issuance of building permit.
8. All utility services shall be undergrounded should a new residence be constructed on Parcel A.

