

**City of Lafayette  
Lafayette Regular City Council Meeting  
Crime Prevention Commission Special Meeting**

**MINUTES**

**Lafayette Community Center – Community Hall  
3491 Mt. Diablo Boulevard, Lafayette, California**

**June 11, 2012  
7:00 p.m.**

**1. CALL TO ORDER**

Vice Mayor Anderson called the City Council meeting to order at 7:03 p.m.

**2. ROLL CALL**

Present: City Council: Vice Mayor M. Anderson; Councilmembers B. Andersson and Tatzin

Absent: Mayor Federighi and Councilmember Anduri

Staff Present: Steven Falk, City Manager; Tracy Robinson, Administrative Services Manager; Lt. Eric Christensen, Police Services Manager; Niroop K. Srivatsa, Planning & Building Services Manager; Tony Coe, Engineering Services Manager; Ann Merideth, Special Projects Manager; Cathy Surges-Moscato, Community Services Officer; Michael P. Cass, Assistant Planner; Mala Subramanian, City Attorney; Joanne Robbins, City Clerk

Also Present: Crime Prevention Commission: Traci Reilly, Chair; Commissioners Larry Bellusa, Cameron Burks, Tom Titmus, and John Worden.

**3. PLEDGE OF ALLEGIANCE** –Vice Mayor Anderson led in the Pledge of Allegiance.

**4. ADOPTION OF AGENDA**

ACTION: It was M/S/C (Tatzin/B. Andersson) to adopt the agenda. Vote: 3-0-2 (Ayes: M. Anderson, B. Andersson, and Tatzin; Noes: None; Absent: Anduri and Federighi).

**5. REPORT FROM CLOSED SESSION** –None

**6. PUBLIC COMMENTS** - None

**7. PRESENTATIONS**

- A. Crime Prevention Commission  
Goals and Accomplishments 2011-2012**  
Recommendation: Receive and file.

Crime Prevention Commission Chair, Traci Reilly, introduced the commissioners that were in attendance, Larry Bellusa, Cameron Burks, Tom Titmus, and John Worden and noted that Commissioners Rita Charles and Ed Vallencia were absent.

Ms. Reilly presented the Crime Prevention Commissions achievements for the 2011-2012 year where they implemented Child Identification at the Annual Art & Wine Festival, Montessori School and the Bunny Brunch. They also held five Neighborhood Watch meetings and a Business Watch meeting along with the Police Services Officer. The Commission also distributed over 400 "No Solicitor" Signs and "If I Were a Thief" cards.

Ms. Reilly reported the Commission's goals for 2012 will be to partner with the Chamber of Commerce on safety reminders and business watch. Do public outreach through community events, and continue the Child Identification and Neighborhood Watch programs. She also reported the statistics on the Solicitor Ordinance 579.

Vice Mayor M. Anderson thanked Ms. Reilly and the Crime Prevention Commission for their report and all their good work.

## **8. CONSENT CALENDAR**

Councilmember Tatzin requested removal of Item G and asked that no action be taken.

**ACTION:** It was M/S/C (Tatzin/B. Andersson) to remove Item G and approve Consent Calendar Items A, B, C, D, E, F, H, I, and J. Vote: 3-0-2 (Ayes: M. Anderson, B. Andersson, and Tatzin; Noes: None; Absent: Anduri and Federighi).

### **A. City Council Minutes**

**May 29, 2012**

Recommendation: Approve.

### **B. Approval of public art for Signature Development Group's Lafayette Townhomes Project at 3201 Mount Diablo Boulevard.**

Recommendation: Approve public art proposed by artist Roger Berry.

### **C. Approval of public art at the Merrill Gardens Project at 3454 Mount Diablo Boulevard**

Recommendation: Approve public art proposed by artist Archie Held.

### **D. Resolution 2012-23 Consenting to Consolidation of Elections and Setting Specifications of the Election Order**

Recommendation: Adopt Resolution 2012-23.

### **E. 755 Solana Drive – Request for Encroachment Agreement for Concrete Stairway into the Public Right-of-Way to be Maintained by Owner**

Recommendation: Approve the encroachment of the concrete stairway and railing into the City's right-of-way at 755 Solana Drive.

### **F. Amendment to City Attorney Legal Services Contract for FY2012-2013**

Recommendation: Approve Fourth Amended Agreement to provide legal services to the City of Lafayette.

**G. Agreement with CH2MHill for the Extension of Building Maintenance Services for the Lafayette Library & Learning Center**

Recommendation: Approve the agreement with CH2MHill for the Extension of Services for the Lafayette Library & Learning Center. **(No Action Taken)**

**H. Request to Establish a 30-minute Parking Time Zone in Front of 3500 Golden Gate Way (Great Wall Restaurant)**

Recommendation: Adopt Resolution 2012-26 designating a 30-minute parking time zone in front of 3500 Golden Gate Way.

**I. Removal of Parking Meters and Parking Time Zones for Ten Spaces on Brown Avenue South of Deerhill Road**

Recommendation: Adopt Resolution 2012-027 amending Resolution 38-00.

**J. Allow City Manager to Negotiate Short Term Leases for 941-949 Moraga Road Properties**

Recommendation: Allow City Manager the ability to negotiate and sign leases with tenants for office space at 941-949 Moraga Road provided that the leases are for a duration of six months or less.

**9. OLD BUSINESS**

**A. Matt Luttropp, Associate Engineer  
Walnut Street Sidewalk Construction**

Recommendation: Authorize staff to proceed with the construction of the sidewalk improvements on Walnut Street utilizing a combination of private funding and the project construction contingency money remaining at completion.

Engineering Services Manager Tony Coe gave the staff report, stating the Council awarded a construction contract last month and directed staff to return with options for funding for the sidewalk component, which staff recommended be deleted. Staff has worked out an agreement with the affected property owners and the arrangement is that the owners will commit to paying for the sidewalk work with the proviso that any unspent contingencies in the project will be used at the end to lower their share of the costs. Staff recommends that the Council authorize staff to proceed.

Councilmember Tatzin questioned any variances between cost per neighbor, and Mr. Coe replied that the cost per property depends upon frontage in relation to the entire length of the sidewalk.

Vice Mayor M. Anderson called for public comment and there were no speakers.

**ACTION:** It was M/S/C (Tatzin/B. Andersson) to authorize staff to proceed with the construction of the sidewalk improvements on Walnut Street utilizing a combination of private funding and the project construction contingency money remaining at completion. Vote: 3-0-2 (Ayes: M. Anderson, B. Andersson, and Tatzin; Noes: None; Absent: Anduri and Federighi).

**10. STAFF REPORTS**

**A. Aziz Aineb, Construction Inspector**

**Request for encroachment into the City's right-of-way at 4260 El Nido Ranch Road for two wooden planters and two flagstone posts**

Recommendation: Approve encroachment of the two wooden planters and two flagstone posts into the City's right-of-way, provided that the improvements are relocated to 5.5 feet from face of street curb.

Engineering Services Manager Tony Coe gave the staff report, stating the item is a retroactive request by the property owners asking that the Council grant an encroachment agreement for some landscape planters and two flagstone posts placed in the City's right-of-way. Staff's position is that they require the property owner place the encroachments within a certain clearance offset from the street curb. In this case, because it is a retroactive application, by the time they discussed this, the work has been done and the property owners do not want to incur the costs of relocating the work and asks that the Council grant them special dispensation to allow the encroachment to stay.

Councilmember Tatzin noted that the staff recommendation is to approve the encroachment at least 5.5 feet from the face of street curb, and he asked and confirmed they were currently about 2 feet back.

Ann Ng, said they planted hedges when they purchased the house in 1988 because one of the trees matured, and one side is growing taller than the other side. A couple of years ago, magazine solicitors got angry because they questioned their legitimacy and they drove their truck over their lawn and over the hedges out to the street. Her husband decided they needed something more solid. They removed the hedges and placed wood planters on top at a height of about 30 inches so neighbors can still see the oncoming traffic. They feel that with the use of wood fencing, children will be safer and bicyclists will stay away from the property which will result in the street being safer. They also installed two 5' posts; one of which has a security mailbox to keep mail confidential and safe.

Councilmember Tatzin said the issue is not whether staff is recommending the owners can have the mailbox in the post; but a question of where. He asked if there was a reason why Ms. Ng did not inquire as to the encroachment before doing construction. Ms. Ng said this was their oversight. They did not realize such an issue existed. They simply removed the hedges and installed the planters at the same location.

Councilmember Tatzin questioned impacts to the owners if the Council followed staff's recommendation. Ms. Ng said they would have to remove the posts and place it at 5.5 feet.

Vice Mayor M. Anderson called for public comment and there were no speakers.

Vice Mayor M. Anderson said the encroachment permit provides that the City has the right to remove the improvements if needed, and he asked if the owner could bear the cost of this. Mr. Coe said in the case where improvements and encroachment is codified by a formal agreement, the cost is clearly on the property owners.

Councilmember B. Andersson said encroaching into the right-of-way is a legal issue. Part of the concern is that, at some point, if a sidewalk were to be put in the improvements would have to be removed. This generally is covered in these cases to include a proviso that if in fact an improvement will be made, the owner will move them at their expense from the right-of-way. Here, staff is recommending there be at least a minimum of 5.5 feet so people can park, open car doors, and it is a safety issue.

Mr. Coe noted however, that in this case there is minimal parking on the street and he has not seen people walking either, but it does not mean at some point conditions will not change and there will be a need for that right-of-way. He emphasized that in this stretch of about 3-4 properties, there are other cases where neighbors have walls and landscaping along the frontage and they are surprisingly set back a good distance from the street curb.

Vice Mayor M. Anderson said he can appreciate the property owner not understanding where the property line was but there are security concerns. There are also other examples of neighbors with improvements set back from the curb.

Councilmember B. Andersson said the mitigating factor is that there was already a hedge at this location and it is just placing a more permanent structure there. On the other hand, most neighbors' improvements are set back and this is a permanent structure which is the difference. If there is only 2 feet between the structure and the roadway this is tight, and he is inclined to follow staff's recommendation.

**ACTION:** It was M/S/C (B. Andersson/Tatzin) to approve encroachment of the two wooden planters and two flagstone posts into the City's right-of-way, provided that the improvements are relocated to 5.5 feet from face of street curb. Vote: 3-0-2 (Ayes: M. Anderson, B. Andersson, and Tatzin; Noes: None; Absent: Anduri and Federighi).

**B. Eric Christensen, Chief of Police**

**Request to use current Police Vehicle Replacement Sinking Funds to replace vehicle-mounted Mobile Data Computers (MDCs).**

Recommendation: Add \$60,000 to Fund 11-210-907 for FY11-12 and release \$60,000 from the vehicle replacement sinking fund for the purchase and installation of eight mobile data computers in Lafayette police vehicles.

Lt. Eric Christensen, Chief of Police stated current the Police Department has 9 police vehicles. Of those vehicles, 8 are equipped with an older model mobile data terminal. The transition to a new mobile data computer system allows them to do some significant changes in how to do policing in the community. The first is the report writing system. Several years ago, the Sheriff's Office switched to a fully automated system. Because of the older models in the cars, they do not have the transmission rate to be able to use that system in the vehicle. This requires officers to respond to calls for service, take the report from the citizen and return to the station to complete the report. This time period is a significant amount of time, and by using the mobile data computer system in the car, it allows them to leave the officer in the field and still accomplish the goal of getting the report into the system timely.

The second thing a new system would allow them to do is that the County has started to field a mobile I.D. program. It identifies individuals by their fingerprint in the field from the computer in the car, which will cut down time to bring someone in the station to book them, validate their I.D., and associate them with any sort of violation. The next is the movement of the Sheriff's Office to a new CAD system. Next summer the Sheriff's Office will be fielding a new computer dispatch system which will afford the officer a number of products, one of which is a mobile mapping system that gets them to calls for service faster. The current system will not support the system because of the transmission rates.

Lastly, the request allows use of the ARIES program, a countywide computer system, where the officer can pull up mug shots, create photo line-ups, search record systems of the five counties, and provides law enforcement resources that officers currently do not have.

The request is to move money from the Sinking Fund into funds for the Police Department so they can make this purchase.

Councilmember B. Andersson questioned the health of the Police Vehicle Replacement Sinking Fund, and Vice Mayor Anderson noted it is quite healthy with extra funds.

Vice Mayor M. Anderson called for public comments and there were no speakers.

Vice Mayor M. Anderson supported the request and suggested the extra money put in for the police transition into the account be reviewed for some other use.

**ACTION:** It was M/S (Tatzin/Andersson) to add \$60,000 to Fund 11-210-907 for FY11-12 and release \$60,000 from the vehicle replacement sinking fund for the purchase and installation of eight mobile data computers in Lafayette police vehicles. Vote: 3-0-2 (Anduri and Federighi absent).

City Manager Falk requested the Council move ahead Items on the agenda until such time that Michael Cass returned from his attendance at the Design Review Commission meeting.

Councilmember Tatzin noted there has been a request to continue the item and he questioned if the Council could discuss this part of it. Vice Mayor Anderson suggested moving ahead Item 11B and allowing for public comment on Item 11A, and then continue the public hearing to a date certain.

## **11. PUBLIC HEARINGS**

### **B. Sarah Allen, Planning Technician**

**Ordinance No. 600, adopting the (1) 2010 California Building Code, (2) 2010 California Residential Code, (3) 2010 California Green Building Standards Code (4) 2010 California Electrical Code, (5) 2010 California Plumbing Code, and (6) 2010 California Mechanical Code, with changes, additions and deletions to address certain local climatic, geological or topographical conditions.**

Recommendation: Introduce Ordinance 600, take public testimony and continue to June 25, 2012 for a second reading and adoption.

Planning and Building Services Manager Niroop K. Srivatsa said staff is requesting the Council introduce Ordinance No. 600, adopting several changes to the California Codes, including the Building Code, Residential Code, Green Building Standards Code, Electrical and Plumbing Code and Mechanical Code. Contra Costa County has adopted these codes with amendments based on local conditions and, as the City contracts with the Contra Costa County Building Inspection Department, it is the County that administers and enforces these sections of the Code. Staff has reviewed changes made by the County to reflect local conditions and they are consistent with previous amendments made. Therefore, staff supports these changes and asks that the Council introduce the ordinance and continue the matter to the June 25<sup>th</sup> meeting, at which time the ordinance can be adopted along with a resolution making the findings necessary for this task.

Vice Mayor M. Anderson said he noticed that oil derricks are exempt in Ordinance No. 600, which he found interesting.

The public hearing was opened. Vice Mayor Anderson called for public comment, and there were no speakers.

**ACTION:** It was M/S/C (Tatzin/B. Andersson) to close the public hearing, introduce Ordinance No. 600 and continue to June 25, 2012 for a second reading and adoption. Vote: 3-0-2 (Ayes: M. Anderson, B. Andersson, and Tatzin; Noes: None; Absent: Anduri and Federighi).

## **12. ITEMS REMOVED FROM THE CONSENT CALENDAR - None**

## **13. COUNCIL/COMMISSION REPORT**

### **A. Councilmember report on activities and consideration of matters a councilmember wishes to initiate for placement on a future agenda.**

Councilmember Tatzin reported on his attendance at the Mayors' Conference where Chris Mackenzie gave a presentation regarding the state of state visa vi cities, which faces a larger budget deficit as previously. While they have not found a source of city money to go after, they continue their search. They also welcomed the new County Supervisor and adjourned the meeting in honor of Gayle Uilkema.

## **14. WRITTEN COMMUNICATIONS – None**

### **BREAK**

Vice Mayor Anderson called for a short recess at 7:26 p.m. and thereafter reconvened the regular meeting at 7:35 p.m.

### **A. Michael Cass, Assistant Planner**

**Appeal by Jane & Edward Ord of the Planning Commission's approval, subject to conditions, of: DR24-10 Vladimir & Ekaterina Malinovsky (Owners), R-20 Zoning: Request for: (1) Design Review approval and (2) Category II tree removal permit to construct a new 5,204 sq. ft. two-story single-family residence (including garage) with an average building height of 24'-9", requiring removal of approximately one protected tree, located on a vacant lot on Las Huertas Road, APN 234-210-013.**

**Recommendation:** Adopt Resolution 2012-24, denying the appeal and upholding the Planning Commission's approval of application DR24-10, subject to conditions.

Assistant Planner Michael P. Cass gave the staff report, stating before the Council is an appeal of the Planning Commission's approval of application DR24-10, which is for the construction of a new two-story, single-family residence as well as a tree removal permit. The new residence is proposed to be constructed on a vacant lot on Las Huertas Road. The application was originally reviewed by the Design Review Commission both with two study sessions as well as multiple public hearings for the subject application. The Design Review commission ultimately approved the project, subject to conditions of approval. The majority of the Commission was in favor of the project, with Commission Marquand dissenting. Commission Marquand's decision primarily was based upon compatibility of the project in relationship to the surrounding neighborhood, particularly given the circumstances of this property being a corner lot and having more visibility than other properties within the neighborhood.

The Ord family, who reside on the property located across the street to the north, appealed the decision. The appeal was heard by the Planning Commission on three separate dates. The Planning Commission, similar to the Design Review Commission, ultimately denied the appeal

and upheld the Design Review Commission's approval of application DR24-10, subject to conditions. Similar to the Design Review Commission, one Commissioner; Commissioner Mitchell, dissented. His concern was similar to Commissioner Marquand's citing two specific findings that could not be made for the subject application having to do with compatibility and the size and mass of the proposed residence. Commissioner Mitchell also cited the house size study as evidence for why the project could not be approved.

Staff recommends that in the City Council's evaluation of the project, it not include the recommendations of the house size subcommittee, as those recommendations have not been adopted or formally acted upon by the City at this point in time.

Jane and Edward Ord appealed the Planning Commission's decision to approve the application, subject to conditions. The Ord's appeal is before the Council this evening. The Ords cited a number of arguments with which they will go into detail. The Ords submitted a request after the staff report was published requesting a continuance of this matter for two weeks, and a copy of the request is before the Council, as well as having been sent via email. However, per the request of staff, Isabel Ord is present this evening and will represent the appellants, should the Council wish to consider the matter this evening.

As this item has been noticed and placed on the agenda, staff recommends that the City Council open the public hearing, hear from members of the public who may not be able to attend future meetings, and continue the matter leaving the public hearing open which would give the appellant and applicant additional time to present concerns and recommendations. Ultimately, when the Council fully evaluates the project, if not done this evening, staff would recommend the Council uphold the Planning Commission's conditional approval of the subject application and deny the appeal, as no circumstances have changed and staff believes all required findings still may be made.

However, staff highlights one item that has changed subject to the last meeting. The Planning Commission expressed some concerns regarding the permitted hours of construction. The hours of construction are stipulated per a condition of approval from the original subdivision which created the subject property, which is a departure from what the City does as a standard condition of approval for current applications. The subdivision conditions stipulate that construction hours are permitted from 7:00 a.m. to 6:00 p.m., Monday through Friday, rather than 8:00 a.m. to 6:00 p.m., Monday through Saturday. Given the concern expressed, the property owners have indicated that they are more than amenable to further restrict hours of construction to between 8:00 a.m. and 6:00 p.m., Monday through Friday, which is more restrictive than a standard condition, as well as is more restricted than what is stipulated in the conditions of approval. A letter is attached to the staff report regarding their willingness to do so, with the stipulation that this be limited to noise-generated construction.

Vice Mayor M. Anderson referred to the driveway issue and the requirement that the applicant hold the City harmless. He visited the property and did not understand what the issue was of concern. Mr. Cass said this was a concern that originally was expressed by the City Engineer during the study session phase, prior to a formal application being evaluated by the Design Review Commission. The City Engineer's concern primarily had to do with ingress and egress issues with the driveway and site distance concerns because it is located near an intersection. His recommendation, rather than having the driveway on the northern side, would be to locate it on the eastern side because it would allow the driveway curb cut to be located further away from the intersection. However, the applicant has expressed a number of reasons why they prefer the location with the project as currently designed and they worked with the City Engineer to address



the mitigations he requested, such as siting it as far to the west as possible, incorporating a hammer-head turnaround so vehicles would not be backing into the street, as well as removing some of the Oleanders to improve the existing situation in regards to visibility concerns. If this is done, the City Engineer requested that the property owners be held responsible for any sort of liability issues should they arise, and they would enter into an agreement which would be reviewed and approved by the City Attorney. The City Attorney was involved in discussions both months ago as well as more recently in regards to this matter. Staff would like to point out that there is no way to fully ensure the City is protected; however, this is a good effort to do so, both through the modifications and the agreement. If the Council did not feel this was as strong as what they would like, the Council could require the property owners to hold liability insurance in the amount of \$1 million as well, which has been required in the past for projects when there is an encroachment within the public right-of-way. If there was a major catastrophe, the City would have a little bit more comfort and leverage.

The public hearing was opened.

Vice Mayor Anderson called on the Appellant's presentation.

ISABEL ORD, said she is the daughter of Edward and Jane Ord and lives at 3336 Las Huertas Road with her husband and two children, which is across the street from the subject property. Her father is not able to attend this evening due to medical reasons, which is the reason they requested continuance. They understand his recovery will be such that he will not be available to deal with this at least until the end of July and she asked if it could be pushed out that far. There are comments he has asked her to make and questioned when the Council desired these comments to be voiced.

Vice Mayor Anderson asked Ms. Ord to provide whatever information she has and the Council will discuss the continuance separately.

Ms. Ord thanked staff for their continuing efforts to work with them and to provide the lengthy record. She said the street is unusual in that it is bisected by the bike trail at two points. It has two orchards on it currently and a lot of nice, older homes so people will often come off the bike trail and walk along the street with dogs or children. The street was recently described to her by a well-known real estate broker in town as a hidden gem and it is a unique environment. It still has a country feel to it, even though there are some larger homes on the street now. There are other neighbors who could not be present tonight or who prefer not to be involved in the public discussion. She and her parents are the most visible of those neighbors in that they are proceeding with this, but there are others who have expressed concerns to them about the development even in its current status, but they are not comfortable speaking in this environment. Some of those people did previously provide comments which are in the record. She said she does not object to the development of the property. It is a nice corner lot and an attractive house would be a good thing for everybody in the neighborhood. Their objections are more specific and relate to the safety issue with the driveway, particularly the location and placement of it. The City Engineer has determined that there may be a safety issue, and while they are now talking about indemnity, indemnity is about who pays for it when someone gets hurt and not about preventing the harm from happening in the first place. Further, an indemnity is only as good as the person who is going to make good on it, and if there were to be a large judgment that would be a problem for the City as well as the property owners and they think that situation needs to be addressed.

Ms. Ord said the house is on a corner where there is a piece of dirt that comes off the side of the road and people traditionally cut the corner and drive on the piece of dirt that is on there now, so there is already a history in the neighborhood of people going around the corner a bit fast. They feel that this concern, which has been identified since the beginning by the City Engineer. She believes that this makes it difficult to make some of the required findings about this project being in the best interest of public health, safety and general welfare. In fact, the hazard is significant enough that the City wants to be indemnified in case there is a problem there later.

Regarding how the project came about, Ms. Ord said the property owner initially provided a design, which he prepared himself. It was a two-story residence with a dormer that gave the appearance of a third story, and through the design process, he was able to work with a professional architect and there were major modifications to what had initially been proposed which she thinks resolved some of the concerns of neighbors. But at this point, their concerns are still with regard to bulk and mass and that this is a house which is substantially taller than the average height in the neighborhood and on a smaller lot than many of the other properties in the neighborhood. This neighborhood has larger homes but they are far set back from the street, which is not the case with this house, and the Council will see in the materials that the average height of the homes is 20.35'. This house is proposed to be approximately 25'-0" in the most recent proposal, so it is already taller than most homes in the neighborhood. There are only 2 other houses in a sample of 25 that are as tall, or taller, than this house. There is a third house referenced in the sample, but it is not constructed and is located on Glenside Drive, which is not on the same street and it is across the bike trail. Her house, by example, is approximately 18'-0" tall.

Ms. Ord said there is also an interesting history in the design of the project which can be found on page 9 of 13 in the staff report which shows that during this process, the house got larger before it got smaller. In September 2011, the floor space increased from 5,944 to 5,975 sq. ft. The footprint grew from 4,224 to 4,632 sq. ft. The first floor grew from 3,439 to 4,632 sq. ft. There have been some modifications and reductions since that time to the size of the home, but in appreciating those reductions, it is important to understand that the house got bigger before it got smaller. So even though there have been modifications, they are not as extreme as they would appear. There has also been concern about whether the story poles could be viewed from her house and what privacy issues there may be. They are able to see the story poles at their current height from their yard and from inside their house. They are also able to see the story poles from the bike trail. They appear over the roof from the neighboring house and they appear from in their kitchen as well. She noted the house has improved in that it is not as big and tall as it was when originally proposed, but these are incremental modifications and nothing that addresses the larger bulk and mass issue.

As was referenced by staff, when at the Planning Commission level, Commissioner Mitchell was not able to make findings 6-1905 (2 and 3) which relate to scale and style of the neighborhood. These are her concerns also in terms of the house fitting into the neighborhood. She thinks they are getting there and part of what can be done with continuance is to talk with neighbors about what the applicant may be willing to do and about what neighbors would be willing to agree to. However, they want to be sure things are addressed and in the end that the house that goes on the property is in keeping with the neighborhood.

Vice Mayor Anderson called on the Applicant's presentation.

VLADIMIR MALINOVSKY, owner, introduced his wife, Ekaterina Malinovsky who distributed photographs to the Council, and said they do not feel the matter should be revisited. They have

been in the process for over two years, have attended multiple meetings and personally view this as a delay tactic from preventing them in moving forward. At the Planning Commission meeting, when the appeal was denied, he could tell there was some discomfort. They provided very detailed information such as survey maps, but they hope to show intimate details in the photographs distributed. He referred to a map of the area and the proposed home. To the left is the Riggio's home and across the street diagonally is the Ord residence. He asked the Council to make note of where the pool is located, where their home elements are, and as shown by the entrance walkway, he does not characterize the Ord's home as directly across the street but across the street from the neighbors located two or three properties away. The pool area is their front yard. It borders two streets. He feels the Ords should bear some responsibility for maintaining their privacy. It is unique to have one's backyard in the front yard bordering two streets, but he has done everything they can from a landscaping perspective from setback changes to layering their second story to accommodate them.

Mr. Malinovsky said he took photographs and by using a 12-foot ladder on a pickup truck next to the story pole that would be where the front office windows would be at about 18-feet in the air. He took photographs in several directions which he displayed, presented a photo in the direction of the Ord's home, parts of their front yard, looking directly across the street, looking at the corner which is directly across the street from him, the intersection, and Mr. Bassett's home. He then said the Riggio's allowed him to go to their second floor, right window facing the street and take a picture directly at the Ord's property, one from their front yard, from inside the hallways taking a picture of his story poles, which he displayed. He said their second story is almost lined up with their second level, given 4 or 5-feet.

He considers the Ord's residence as not directly across the street, but from the side and at an angle, and as facing the corner but not facing their home or backyard directly. His second story is set back 44-feet from the property line which means they are approximately 94-feet from their property line, given the 50-foot right-of-way, and in reviewing the context map created by the civil engineer, unfortunately the Ord's pool was not surveyed, but by using satellite imagery, they estimate the pool is about 145-feet away from the second floor window and that their home was roughly 200-feet away. Therefore, the pool and home are about one-half of a football field away and they feel this is a non-issue.

Lastly, he acknowledged support they have received in the neighborhood and asked those in the audience in support of the project to stand.

Councilmember Andersson confirmed the basis for the pictures is to show that the applicant cannot see the Ord's property and presumably, they will not be able to see his.

Vice Mayor Anderson referred to changes made to the front office windows. He asked if these were at a higher height than normal. Mr. Malinovsky said they start at about a 4.5 foot sill height and go up to about 6.5 feet. He added there was repeated concern over this and this is the reason he took photographs. He feels they should not be made to change anything and does not see any privacy issues.

#### Public Comments:

ALEX MALINOVSKY said he is Vladimir's brother and they have lived in the neighborhood since 1973. He moved back in with his parents around 2000 and took care of them. They always wanted to split the lot so they could live nearby. They applied for and received approval for a lot split and the only opposition they received was from the Ords and it was obvious they never

wanted a house there from the beginning. He said he is surrounded by three other two-story houses and this will be the fourth one directly next to them, and he supports the project.

JURGEN STRASSER said he and his wife have lived on Las Huertas Road since 1982 and are well aware of what is happening in the neighborhood. They are also good friends of the parents of the applicant. They live at the far end of the street, drive by their house every day, saw the plans, think the house will be very nice and fit well in the neighborhood, and have no objections whatsoever to the development.

MADLINE STRASSER pointed out the fact that there is precedent in the neighborhood which should allow this house to be built and she does not understand why there is such a delay. They live on a flag lot which is the last house on Las Huertas Road. The side yard faces their house and they look directly onto their front yard and for her it is an asset which is neighborly. The house in front of them is a two-story house. The back of their house also looks onto their front yard and home. On Las Huertas there are two very large two-story homes; the Riggio's which is not directly in front of the Ord's property, but on the side where the pool might be and the Malinovsky's house would be at the very end of the property. So, there does not seem to be a legitimate reason why this house should not be approved without any further delay. They would welcome it and think it will be very nice for the neighborhood.

LAUREL ANDERSON-MALINOVSKY said she is the wife of Alex Malinovsky and they have lived in their home for 12-years and they have never seen anyone cut the corner. Everybody is very careful and aware of people who walk down the street. She also supports the project, as the Malinovskys have made every effort to design a beautiful house that will fit into the neighborhood better than the other ones and along with landscaping, it will be a beautiful addition to the neighborhood.

MICHAEL MILLER, said he is not directly affected by the proposed house, but is a little stunned at the level of how many times this has been approved and appealed. He drove through the neighborhood several times up and down the street and he is looking for a reason not to put a house on the lot. He saw the plans, pictures, and slide presentation and is dumb-founded. He does not want to mitigate the sentiment from the Ords, as all decisions affect people and families, but he does not think this is a hard decision.

SCOTT ANDERSON, said he has lived in Lafayette since the 1960's and said the property owners are a family that is tied to the community as is he. He has seen Las Huertas Road turn into a spectacular neighborhood. The Malinovsky family are artists and this is their dream. They want to work with everyone, are extremely reasonable people, the last thing they would want to do is do anything to the detriment of the street even to the benefit of themselves, and he would love to see the project move forward.

JANICE BENOIT, said they purchased the lot in 1983 and she remembers Jeanne Ateljevich congratulating them for designing their house discreetly. She is a dear friend of Vladimir and Alexander Malinovsky's mother and is enthusiastic about the house being built for her son, hopes they stay there, and she has no objection to the house. However, her feeling about the mass of the house and where it is placed in the corner is that she sees the cars going by which are fast. If there is a car backing out regularly for a household with children, this is a serious aspect to the project which she is sure could be mitigated. Her main concern is that she is aware that as a home builder, there is potential for people carving pieces out of larger lots on Las Huertas that have the potential to be split for other houses, which opens up the potential for appeals. To have 5,000 square feet on a small lot will set a precedent. It encourages all neighbors who have

children to carve out smaller lots for additional homes. She welcomes the house but has serious objections to the size.

ERIC C. OLSON, voiced support for the Malinovsky family, said Vladimir is very detail oriented, has worked through the process over several years to get the design where it is today, and has shown himself to be flexible with meeting reasonable needs of the community and City.

BARBARA RIGGIO, voiced no objection, stating the house would be an asset to their home and she did not see there would be a problem with the traffic. She backs out of her driveway and has had no near collisions, does not know of any accidents in the area and therefore, she sees no concern. However, if the Council feels there is a problem, a sign could be installed. She also does not feel the home is too large for the property. There is plenty of space around the home, said many neighbors are supportive, and the Malinovsky's are wonderful people.

ALLAN MOORE, Gagen and McCoy, said he has been working with the Malinovskys for a few months and Mr. Malinovsky asked him to address some of the legal issues raised by the request for continuance. He concurs with the continuance request and if the Council desires a continuance, it has great discretion to do so. They noted; however, that the request indicates they request a continuance for two weeks but Ms. Ord voiced a request for two months. He respectfully asked that the Council not delay it longer than the first week in July. The second legal issue that came up is that the Ord family indicates that a refusal to grant the continuance would be a violation of due process. For the record and for those listening, with regard to due process: this City, like it always has, has bent over backwards to be fair and to allow for public process. He was not at the hearings but he said there have been six Design Review Commission hearings which were appealed by the Ord family. The Planning Commission held two de novo hearings which were also appealed by the Ord family. But, with those eight hearings and this one as the ninth, he asked to place on the record when granting the continuance and they agree with it, that the Council is granting the continuance because of fairness and courtesy and it is the right thing to do and not because there has been due process violations. He did not want those words to go unanswered. With that, they support the continuance, appreciates the Council's careful review and he looks forward to further discussions.

Councilmember Tatzin said the Council's first meeting is July 9<sup>th</sup> and the second is July 23<sup>rd</sup>. He asked Mr. Moore if the 23<sup>rd</sup> would be acceptable. Mr. Moore said Mr. Malinovsky is requesting the 9<sup>th</sup>, but if the Council has a reason for the 23<sup>rd</sup>, they always defer to the Council on a continuance.

Vice Mayor M. Anderson said the question is whether the Council wishes to hold the public hearing open and continue this item to a date certain, and he asked and confirmed with Mr. Cass that a rebuttal period can occur now or during the continued hearing and the Council can keep open or close the public hearing.

Councilmember Tatzin said he believes that whoever wants to speak at the next hearing will have an opportunity to do so. He is in favor of a continuance and the applicant is accepting of that, given the date chosen. He questioned the agendas for both July Council meetings. Mr. Cass said the DSP is scheduled to be heard in the second meeting in June and at the July meetings. He said the Lafayette Municipal Code speaks to the timing for appeals and the Council is to conduct a de novo hearing within 60-days, which has been done this evening, but the intent is to keep a project moving forward and not unreasonably delaying a final determination. He thinks continuing it close to two months is an excessive amount of time and recommends the matter return on July 9<sup>th</sup>.

Councilmember B. Andersson said he too would prefer July 9<sup>th</sup> date. While Mr. Ord might have difficulty attending this, he thinks his views can be made known and one month is sufficient.

Councilmember Tatzin agreed and commented that Ms. Ord did an exceptional job presenting their views. He stated that if Mr. Ord has any other comments between now and July 9<sup>th</sup> these can be provided or Mr. Ord can record a statement which can be entered into the record at the meeting. He said in Mr. Ord's appeal letter, he talks about the appeal fee being unconstitutional. His view is that there is a nexus related to the City processing the appeal. City Attorney Subramanian said this is correct; the process and amounts are appropriate, as this is also a private development application and not a City project. The City adopts its fee schedule as part of its budget process and develops a nexus in terms of appeals and staff time costs.

**ACTION:** It was M/S/C (B. Andersson/Tatzin) to continue the public hearing to July 9, 2012. Vote: 3-0-2 (Ayes: M. Anderson, B. Andersson, and Tatzin; Noes: None; Absent: Anduri and Federighi).

## **15. ADJOURNMENT**

The City Council adjourned the meeting at 8:43 p.m. to the next regular meeting on June 25, 2012.

APPROVED:

\_\_\_\_\_  
Carol Federighi, Mayor

ATTEST:

\_\_\_\_\_  
Joanne Robbins, City Clerk