TO: HONORABLE CITY COUNCIL

FROM: CITY MANAGER DEPARTMENT: PLANNING AND COMMUNITY ENVIRONMENT

DATE: NOVEMBER 20, 2006 CMR: 412:06

SUBJECT: 610 CALIFORNIA AVENUE [05PLN-00358]: APPEAL OF THE DIRECTOR OF PLANNING AND COMMUNITY ENVIRONMENT'S DECISION TO APPROVE A PARCEL MAP FOR CONDOMINIUM PURPOSES TO ESTABLISH “AIR SPACE RIGHTS” WITHIN THE TWO EXISTING BUILDINGS ON A LOT UNDER COMMON OWNERSHIP. ENVIRONMENTAL ASSESSMENT: EXEMPT FROM THE PROVISIONS OF CEQA. ZONE DISTRICT: RMD(NP).

RECOMMENDATION
The Planning and Transportation Commission (Commission) recommends that the City Council deny the appeal and affirm the Director of Planning and Community Environment’s decision to approve a parcel map at 610 California Avenue for condominium purposes to establish “air space rights” within the two existing buildings. The Record of Land Use Action denying the appeal is contained in Attachment B.

BACKGROUND
The existing site is located in the Two Unit Multiple Family Residential District (RMD) with a Neighborhood Preservation Combining District (RMD(NP)) and contains two single-family residential structures and a detached garage.

On August 4, 2006, the Director of Planning and Community Environment approved the Parcel Map. This decision was based upon the information contained in the project file, testimony received at the Director’s Hearing held on July 20, 2006, and an analysis of the project’s compliance with Title 18 (Zoning), Title 21 (Subdivisions) and the Comprehensive Plan. In particular, the decision was based on the City Attorney’s opinion that state law allows for such “air rights” condominiums, notwithstanding the intent of the zone regulations and the Comprehensive Plan.

Joy Ogawa submitted a letter dated July 20, 2006 to the Director of Planning and Community Environment at the Director’s Hearing arguing against the proposed subdivision. This letter was not included in the Commission staff report. The letter is contained in Attachment G.
On August 14, 2006, the City received a request for an appeal from Pria Graves. The Planning and Transportation Commission held a public hearing on the appeal on September 27, 2006.

Prior to hearing the appeal, the Commission considered an urgency ordinance that would prohibit the separate sale of airspace rights to second units in the R-2 and RMD zones. Staff concluded that the RMD and R-2 zone regulations did not adequately protect single family structures and second dwelling units from potential subdivision and sale as airspace condominiums, which could impact the stock of rental housing in Palo Alto. The Commission voted 7–0 to recommended approval, with corrections suggested by the City Attorney.

This motion included exemption of 610 California Avenue from the provisions of the ordinance. During the public hearing, members of the public generally spoke in favor of the urgency ordinance and the appeal to overturn the Director’s decision.

On October 16, 2006, the City Council enacted the urgency ordinance, including the exemption for this project.

**DISCUSSION**

**Basis for the Appeal**
The basis for the appeal, as stated in the letter submitted by Ms. Graves, is that the purpose of the RMD District (Palo Alto Municipal Code (PAMC) Section 18.10.010(c)) does not allow separate ownership of second dwelling units. The appellant states that the subdivision would undermine the intent of the NP Combining District to preserve existing single-family structures, in that the subdivision would reduce the protection and preservation of the existing historic structure on the site. The appellant also states that the subdivision would not be consistent with the Comprehensive Plan with regards to the loss of rental housing, in that the Housing Element’s Program H-29 requires that a subdivision be denied if there is a loss of rental units (as would be the case with this Parcel Map). The appellant’s letter is contained in the September 27, 2006 Commission staff report Attachment C.

**Property Owner Arguments in Favor of the Subdivision**
The applicant submitted a letter (Attachment F) to the Commission, dated September 27, 2006, which responds to the appellant’s arguments for denial of the parcel map. In summary, the applicant argues that the RMD district does not specifically prohibit condominium conversions. According to the applicant, the condominium form of ownership is consistent with the purpose of the district to allow a second dwelling unit under the same ownership as the initial dwelling unit. The applicant states that, “the lot and all but the air-space rights would remain under common ownership. As noted in the (September 27, 2006) staff report, a commonly owned parcel qualifies as a single lot of record.” The applicant also argues that the character of the neighborhood would not be affected by the subdivision and that the types of housing opportunities would be further increased within an area that already has varied housing types. The applicant responded to the appellant’s claim that the subdivision would reduce the protection and preservation of the existing historic structure on the site by stating that the CC&Rs would typically contain protections regarding changes or modifications to the property, thereby increasing the protections for preservation of the structures.
Staff Basis for Approval of the Parcel Map
Staff concluded that the creation of air-space condominium lots would not be consistent with the purpose of the RMD District, but that the text of the ordinance did not expressly prohibit them. This was based upon the existing language within the Zoning Ordinance, PAMC 18.10.010, which did not expressly prohibit such subdivisions, and understanding of State law, where a common parcel qualifies as a “single lot of record for a use or group of uses” with the group of uses being the two homes. The rational is that if the lot itself was not being subdivided and would continue to exist under single, albeit common ownership, individual air space condominium units could be created, each having individual ownership.

Existing Condominiums in College Terrace
The applicant, in his presentation to the Commission, indicated that the RMD District in the College Terrace neighborhood contains two properties with condominium units: 2385 & 2395 Williams Street and 2333 & 2337 Williams Street. Staff has reviewed the status of these properties. These properties were subdivided to create air-space condominium units. The first two addresses received approval in 1981 and 2333 & 2337 Williams Street received approval in 1982. In 1983, the RM-3 District was changed to the Two Unit Multiple Family Residential District with a Neighborhood Preservation Combining District (RMD(NP)), thus creating the current ownership requirements for two units on one lot.

COMMISSION REVIEW AND RECOMMENDATION
At the September 27, 2006 Planning and Transportation Commission public hearing, staff recommended that the Commission continue the public hearing to allow staff to present the City Council with an urgency ordinance that would prohibit the separate sale of airspace rights to second units in the R-2 and RMD zones, and return to the Commission after a decision by the City Council. The Commission considered the information contained in the staff report, heard testimony from the applicant, appellant and members of the public, and voted to uphold the Director’s decision to approve the Parcel Map (4-3-0-0, with Commissioners Holman, Sandis, and Keller voting against the motion).

Commissioners who spoke in favor of the subdivision noted that each residential building on the site is distinct and can operate independently from each other, each building has access to different streets (Yale Street and California Avenue), and that the buildings and landscaping are of high quality and design. The concern was that the urgency ordinance would create the perception of overruling a previous decision if it was unpopular. Commissioners who spoke in favor of the appeal to overturn the Director’s decision maintained that the purpose of the RMD district to allow a second dwelling unit under the same ownership as the initial dwelling unit is clear. The condominium association’s ability to enforce the Covenants, Conditions and Restrictions (CC&Rs) was cited as a possible problem, in that maintenance, repairs and improvements would require approval from the association, which can result in conflicts between the respective owners.

The Commission staff report and attachments are contained in Attachment C and the meeting minutes are contained in Attachment D.
RESOURCE IMPACTS
Property taxes will likely increase as a consequence of the subdivision and sale of the properties at market value. The City will receive a one-time transfer tax upon sales. These taxes are dependent upon the value of the eventual transactions. No net incremental costs to the City are expected from this project.

ENVIRONMENTAL REVIEW
The California Environmental Quality Act (CEQA), Section 15303 lists a minor land division of property in an urbanized area into four or fewer parcels as exempt from CEQA if the subdivision is in conformance with all zoning regulations. As this project would create two units, the project is exempt from the provisions of CEQA, in accordance with Section 15303.

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ATTACHMENTS/EXHIBITS
Attachment A - Site Map
Attachment B - Record of Land Use Action to Deny the Appeal and Uphold the Director’s Decision
Attachment C - Planning and Transportation Commission Staff Report, September 27, 2006 with Attachments
Attachment D- Planning and Transportation Commission Verbatim Minutes, September 27, 2006
Attachment E - Applicant’s Letter to the Planning and Transportation Commission, September 27, 2006
Attachment G- Letter from Joy Ogawa dated July 20, 2006

COURTESY COPIES
Brian Wilson
Pria Graves
John Hanna
Bill Garrett
Joy Ogawa