

OAKLAND CITY COUNCIL

RESOLUTION No. **77763** C.M.S.

John T...
JAN 11 11:53 AM '03
CITY CLERK

INTRODUCED BY COUNCILMEMBER _____

RESOLUTION DENYING THE APPEAL AND SUSTAINING THE DECISION OF THE CITY PLANNING COMMISSION IN APPROVING THE APPLICATION FOR A MAJOR CONDITIONAL USE PERMIT AND VARIANCE TO ESTABLISH A SPECIAL HEALTH CARE CIVIC ACTIVITY WITHIN AN EXISTING STRUCTURE LOCATED AT 5319 FOOTHILL BLVD, OAKLAND

WHEREAS, the HIV Education and Prevention Project of Alameda County (HEPPAC) has, since 1996 actively and exclusively provided for the health care needs of Oakland residents who are currently using hypodermic needles to illegally inject controlled substances; and

WHEREAS, in late December, 2000, HEPPAC's base of operations, a building located at 3229 San Leandro Blvd. and known as Casa Segura, was destroyed by fire; and

WHEREAS, ever since the fire, HEPPAC has worked with the Oakland community seeking to acquire a new facility from which it could provide certain services to its clientele; and

WHEREAS, on January 24, 2002, HEPPAC purchased a building located at 5319 Foothill Blvd for the purpose of using the facility as the base of its operations; at that time, the Oakland Planning Code permitted the use of the building for the intended use; and

WHEREAS, on February 5, 2002, before HEPPAC commenced operations in the building, the Oakland City Council adopted an emergency ordinance which required that a major conditional use permit be obtained prior to the operation of any facility which primarily provides health services to persons using hypodermic needles to inject controlled substances; and

WHEREAS, the emergency ordinance was replaced with a permanent ordinance by the City Council's adoption of ordinance 12450 C.M.S. on October 22, 2002, which permanent ordinance requires the issuance of a major conditional use permit prior to the commencement of any Special Health Care Civic activity; and

WHEREAS, in late 2002, HEPPAC applied for a conditional use permit pursuant to the requirements of Ordinance 12450. The City Planning Commission took testimony and considered the matter at its meeting held December 4, 2002. Action on the matter was continued until January 8, 2003. At the January 8 meeting, the Commission was informed by staff that field work conducted between December 4 and January 8 revealed that the property was located

within 500 feet of a K-12 school, in violation of one of the distance requirements of Ordinance 12450. Because of this, prior to further consideration of the matter, the applicant was required to obtain a variance from the strict provisions of the Planning Code's distance requirements as they apply to Special Health Care Civic Uses in addition to the major use permit required by Ordinance 12450. At its meeting held on January 22, 2003, the Commission considered the applicants application for both a major conditional use permit as required by Ordinance 112450, as well as a variance from the 500 foot elementary school distance requirement specified in that ordinance. At the conclusion of the public hearing held for the matter, the commission deliberated the matter, and voted. The vote that evening was tied, 3-3 with one commissioner absent. In conformity with provisions of the Zoning Code, consideration of the matter was continued to the next meeting. At its meeting held on February 5, 2003, the entire commission re-voted on the matter, resulting in the approval of the use permit and variance.

WHEREAS on February 18, 2003, an appeal of the Planning Commission's approval and a statement setting forth the basis of the appeal was received; and

WHEREAS, after giving due notice to the Appellant, the Applicant, all interested parties and the public, the Appeal came before the City Council for a public hearing on April 29, 2003; and

WHEREAS, the Appellant, the Applicant, supporters of the application, those opposed to the application and interested neutral parties were given ample opportunity to participate in the public hearing by submittal of oral and/or written comments; and

WHEREAS, the public hearing on the Appeal was closed by the City Council on April 29, 2003;

Now, Therefore, Be It

RESOLVED: The requirements of the California Environmental Quality Act (CEQA) of 1970, as prescribed by the Secretary of Resources, and the City of Oakland's environmental review requirements, have been satisfied, and, in accordance the adoption of this resolution is exempt from CEQA under Section 15303 "New Construction or Conversion of Small Structures" of the State CEQA Guidelines.

FURTHER RESOLVED: That, the City Council, having heard, considered and weighed all the evidence in the record presented on behalf of all parties and being fully informed of the Application, the City Planning Commission's decision, and the Appeal, finds that the Appellant has not shown, by reliance on evidence already contained in the record before the City Planning Commission that the City Planning Commission's decision was made in error, that there was an abuse of discretion by the Commission or that the Commission's decision was not supported by substantial evidence in the record based, in part, on the December 4, 2002 Staff Report to the City Planning Commission, the January 8, 2003 Staff Report to the City Planning Commission and the February 5, 2003 Staff Report to the City Planning Commission, including the January 22, 2003 Staff Report to the City Planning Commission (attached as Exhibit "A")

and the April 29, 2003, City Council Agenda Report (attached as Exhibit "B") hereby incorporated by reference as if fully set forth herein. Accordingly, the Appeal is denied, the Planning Commission's CEQA findings and decision are upheld, and the Project is approved (the Major Conditional Use Permit and Variance), subject to the findings and conditions of approval contained in Exhibits "E" in the Staff Report for this item prepared for the City Council meeting of April 29, 2003.

FURTHER RESOLVED: That, in support of the City Council's decision to approve the Project, the City Council affirms and adopts both the December 4, 2002 Staff Report to the City Planning Commission, the January 8, 2003 Staff Report to the City Planning Commission, the January 22, 2003 Staff Report to the City Planning Commission and the February 5, 2003 Staff Report to the City Planning Commission (including without limitation the discussion, findings, conclusions and conditions of approval) all attached as Exhibit "A", as well as the April 29, 2003, City Council Agenda Report, attached hereto as Exhibit "B," (including without limitation the discussion, findings, and conclusions) except where otherwise expressly stated in this Resolution.

FURTHER RESOLVED: That, the City Council finds and determines that this Resolution complies with CEQA and the Environmental Review Officer is directed to cause to be filed a Notice of Exemption with the appropriate agencies.

FURTHER RESOLVED: That, the record before this Council relating to this application and appeal includes, without limitation, the following:

1. the application, including all accompanying maps and papers;
2. all plans submitted by the Applicant and his representatives;
3. the notice of appeal and all accompanying statements and materials;
4. all final staff reports, final decision letters and other final documentation and information produced by or on behalf of the City, including without limitation and all related/supporting final materials, and all final notices relating to the application and attendant hearings;
5. all oral and written evidence received by the City Planning Commission and City Council during the public hearings on the application and appeal; and all written evidence received by relevant City Staff before and during the public hearings on the application and appeal;
6. all matters of common knowledge and all official enactments and acts of the City, including, without limitation (a) the General Plan; (b) Oakland Municipal Code (c) Oakland Planning Code; (d) other applicable City policies and regulations; and, (e) all applicable state and federal laws, rules and regulations.

FURTHER RESOLVED: That, the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are respectively: (a) Community & Economic Development Agency, Planning & Zoning Division, 250 Frank H. Ogawa Plaza, 3rd Floor, Oakland CA.; and (b) Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st floor, Oakland, CA.

FURTHER RESOLVED: That, the recitals contained in this Resolution are true and correct and are an integral part of the City Council's decision.

APR 29 2003

In Council, Oakland, California, _____, 2003

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, ~~REID~~, WAN, AND
PRESIDENT DE LA FUENTE - 7

NOES- 0

ABSENT- 0

ABSTENTION- Reid - 1

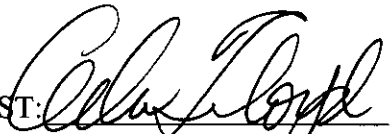
ATTEST: 
CEDA FLOYD
City Clerk and Clerk of the
Council of the City of
Oakland, California

Exhibit A

[December 4, 2002 Planning Commission Staff Report,
January 8, 2003 Planning Commission Staff Report,
February 5, 2003 Planning Commission Staff Report, including
the January 22, 2003 Planning Commission Staff Report]

Exhibit B

[April 29, 2003 City Council Agenda Report]