



# Memorandum

**TO:** PLANNING COMMISSION

**FROM:** Stephen M. Haase

**SUBJECT:** SEE BELOW

**DATE:** 10-2-02

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COUNCIL DISTRICT: 9

**SUBJECT: RA01-06-005 STATUS REPORT REQUESTED BY THE PLANNING COMMISSION ON NEIGHBORHOOD IMPACTS RESULTING FROM OPERATIONS AT 2990 KILO AVENUE DURING THE SUMMER OF 2002.**

## **BACKGROUND**

On March 13, 2002, the Planning Commission adopted a resolution granting a Request for Reasonable Accommodation for a reduced number of residents for 2990 Kilo Avenue. The Planning Commission requested staff to provide a status report on the facility after it had operated over the summer months. This is an informational status report only for the Planning Commission that is being provided pursuant to the Commission's request. This is not a compliance hearing and the Planning Commission has not requested any reconsideration of its decision on this item. Accordingly, any public testimony should be focused on providing the Commission with information related to the recent facility operations, per the Commission's request. The public hearing on the reasonable accommodation recently granted by the Commission in this matter is not being re-opened at this time for purposes of reconsideration of the former Commission decision, or to change the reasonable accommodation as granted by the Commission. Once again, this item is a status report only that is being provided in direct response to the Commission's specific request therefor.

On February 27, 2002 the Planning Commission held a public hearing on an Appeal of the Director's decision to grant a Request for Reasonable Accommodation for 2990 Kilo Avenue to allow up to sixteen (16) occupants, including resident staff, with no more than five licensed drivers (including staff). The Director's decision was a reduction from the seventeen-(17) residents initially requested by the applicant. The appeal was filed by an attorney representing the neighbors, and alleged that the Director's decision to grant the request for reasonable accommodation was not properly supported by the applicant's application, testimony, or written administrative record, and should have been denied.

The Planning Commission received public comments and testimony. Approximately a dozen residents spoke in opposition to the proposed number of project residents. Neighbors identified their concerns about overcrowding of individuals within the household, the lack of facilities and supervision for children of clients within the residence, and the erosion of the quality of life in the neighborhood. The applicant provided testimony in support of the Request.

The Planning Commission, after considering the public testimony, granted a reasonable accommodation for a reduced number of occupants consisting of ten (10) total residents (maximum of six (6) adults including resident staff), five (5) of whom are licensed drivers, and children of residents for a total of 10 occupants. Pursuant to the Commission's adoption of the resolution, they requested staff to provide a status report to them regarding any neighborhood impacts resulting from operation of this facility during the summer of 2002.

## ANALYSIS

On September 4, 2002, Planning staff forwarded requests to the Building Division, Code Enforcement Division, Police Department, and the Santa Clara County District Attorney's Office for information regarding any building modifications, building code violations, complaints, calls for service, or criticism of the operation of the facility, which were received since the Planning Commission's action earlier this year. Below is a summary of the information received:

**Building Division:** A building permit search was performed. There have been no building permits requested or issued since March 2002.

**Code Enforcement:** One complaint was filed since the approval of the Request. The Code Enforcement Division identified that a case was opened on April 23, 2002, alleging "cockroaches and rats at the home". After inspection of the house revealed no findings to substantiate a code violation, the case was closed on May 30, 2002.

**Police Department:** The Crime Analysis Unit retrieved police calls for service and reported incidents from 2990 Kilo Avenue during the period of February 13, 2002 to the end of August, 2002. Reported incidents are defined as calls for police service where a written police report was taken. Calls for service denote any call where a police patrol unit was dispatched to a particular address. There were no reported incidents retrieved during that time period, however there were four (4) notable calls for service.

- On 3/23/02 at 7:30 PM a reporting party called in a disturbance involving a male associated with the listed address yelling profanities and cursing, possibly yelling at another neighbor riding a dirt bike. The call was classified as "beat information", meaning that police in the district are aware of the call and will not respond to the scene unless there is a further clarification that there is a need.
- On 3/28/02 at 6:55 AM a reporting party called in a "suspicious circumstances" occurring at 2990 Kilo Avenue alleging an "unfamiliar car" parked in the driveway. The reporting party believed that the facility had a rule forbidding visitors. Police responded, confirmed that there was no criminal activity, and left.
- On 7/30/02 at 11:00 PM a reporting party asked that police respond to 2990 Kilo to tell the residents that they were talking too loudly and that the TV was on too loudly. When the

police were able to get to the scene approximately 45 minutes later, there was no audible noise coming from the address.

- On 8/7/02 at 11:00 PM another disturbance involving “loud talking” from residents at the address was received. Police were on-scene within 20 minutes, made contact with the residents and at which time they agreed to be quiet.

**Santa Clara County Office of the District Attorney:** Complaints regarding parking issues were received in the past. No complaints regarding the operation of the facility were received. Police were present on the site seeking information about a former resident who had been arrested. David Byers, Investigator for the DA’s Office, inspected the home on September 16, 2002, and found it to be in compliance with the DA’s Certification Guidelines. The DA’s Office concluded that the home is being operated and managed properly.

### **Public Outreach**

Staff has exchanged a series of e-mails with Mr. Bruce Brunger, the neighborhood contact, regarding this item since early September. A “courtesy” notice of the pending status report and discussion by the Commission was sent to property owners and tenants within 300 feet from the property on September 27, 2002. The Notice identified that neighborhood input regarding issues or comments about the operation of the facility during the summer of 2002 were welcome at the meeting or in advance if in writing, and should be submitted in order to include their information in the staff report.

A packet of information was received from the “Neighbors Unite” Coalition on September 24, 2002. The neighborhood contact, Bruce Brunger, requested that this information be submitted to the Planning Commission in its entirety. Much of the information submitted is not relevant to the Planning Commission’s request to identify impacts to the neighborhood occurring during the summer of 2002. The only item in the packet that is responsive to the Planning Commission direction is the “List of Incidents at 2990 Kilo Avenue”, that is attached. Please note that staff is in no way confirming the validity, accuracy or completeness of the information submitted to the Commission by the public. Staff has no information independently verifying the accuracy of any this information, except where staff has expressly noted and summarized a police report related to an incident.

The list of incidents provided includes activity prior to the granting of reasonable accommodation in March 2002. The incidents go back to August 2001 and can be grouped generally around the issues of child supervision, “romantic” activities, noise from inside the house, parking on neighborhood public streets, on-site management, loitering, and abandoned shopping carts.

Four of the incidents described by the neighbors resulted in police calls for service during the summer of 2002 where no written report was taken. The District Attorney’s office did note that complaints regarding parking were made in the past, however there is no specific mention of dates to know if these were prior to the summer of 2002. An incident involving the Police, that took place shortly after the Planning Commission granted the Reasonable Accommodation request, was noted by both the neighbors, as well as the District Attorney. The incident, regarding check fraud, took place off-site but resulted in an arrest at the Rainbow Recovery home.

## CONCLUSION

Since the Planning Commission's March 13, 2002 approval of the Request for Reasonable Accommodation at 2990 Kilo Avenue for 10 residents, no reported incidents were made by the Police Department, however four calls for service were made. No complaints were filed with the Code Enforcement Division. Although the neighbors identify parking as a constant issue throughout the neighborhood streets, the District Attorney's Office indicates that the only car at the facility should be the manager's, as none of the clients own a car. The DA states that the facility is operating in conformance with their certification requirements.

STEPHEN M. HAASE, DIRECTOR  
Planning, Building, and Code Enforcement

Attachments: Memorandums from the Building (e-mail) and Code Enforcement Divisions (e-mail), the San Jose Police Department, Santa Clara County District Attorney's Office, "List of Incidents at 2990 Kilo Avenue and additional information from Neighbors Unite Coalition"

c: Nancy Wilson, Rainbow Recovery, Inc. P.O. Box 36024 San Jose, CA 95123  
Andrew Kubica 576 Calpella Drive San Jose CA 95120  
Bruce Brunger, 2962 Kilo Avenue, 95124

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