

MINUTES OF THE REGULAR MEETING OF THE FULLERTON PLANNING COMMISSION

COUNCIL CHAMBERS – CITY HALL

WEDNESDAY

SEPTEMBER 27, 2006

4:00 P.M.

- CALL TO ORDER:** The meeting was called to order by Chairman Savage at 4:00 p.m.
- PRESENT:** Chairman Savage, Vice Chairman Francis (arrived at 4:02 p.m.), Commissioners Bailey, Fitzgerald, Hart, Musante, and Thompson
- ABSENT:** None
- STAFF PRESENT:** Acting Director of Community Development Rosen, Acting Chief Planner Eastman, Senior Planner St. Paul, Acting Senior Planner Allen, Acting Associate Planner Kusch, Senior Civil Engineer Voronel, Redevelopment Manager Rob Ferrier (7:00 p.m. session only), Captain Greg Mayes (4:00 p.m. session only), City Attorney Christian Bettenhausen (4:00 p.m. session only), and Recording Secretary Pasillas.
- FLAG SALUTE:** Commissioner Hart
- MINUTES:** MOTION made by Commissioner Thompson, SECONDED by Commissioner Bailey and CARRIED unanimously by voting members present that the Minutes of the September 13, 2006 meeting be APPROVED AS WRITTEN.

PUBLIC HEARINGS

ITEM NO. 1

PRJ06-00156 – ZON06-00059 – CUP946A. APPLICANT: DIANA NEEDHAM; PROPERTY OWNER: KYOO H. CHOI.

Staff report was presented pertaining to a request for a Major Site Plan and modification to an existing Conditional Use Permit (CUP-946) to allow for the addition of a classroom building measuring approximately 1,300 square feet which would accommodate the expansion of the existing child care center from 35 to 48 children, including five teachers, on property located at 3516 West Commonwealth Avenue (southeast corner of Commonwealth Avenue and Thompson Avenue) (C-2 Zone) (Categorically exempt under Section 15303 of CEQA Guidelines) (AKU) (Continued from September 13, 2006).

Acting Associate Planner Kusch gave a brief overview of the project, including the July 1996 Planning Commission approval of a child care center for 35 children.

Vice Chairman Francis left the room at 4:04 p.m.

Photographs of the property were shown, and traffic flow was explained. The site plans of both the existing facility and proposed addition were shown, along with elevations.

Vice Chairman Francis returned to the room at 4:05 p.m.

Staff's recommended conditions were explained. Acting Associate Planner Kusch reported that a public information meeting was held, although no one from the public attended. One letter of concern was received, relating to traffic. He also explained that the applicant had a concern with condition number seven.

Public hearing opened.

The applicant, Diana Needham, 12927 Lucas Lane, Cerritos, stated that the owner agreed with all the recommended conditions except condition seven, which had to do with undergrounding of all utilities. She was unaware of how difficult or costly the undergrounding of the utilities would be, and preferred to have the Commission eliminate this condition and allow them to negotiate with the Engineering Department during the plan check process.

Commissioner Bailey asked about the south portion of the building, the door and two windows facing a residential area, and whether there had been any discussion concerning noise when the windows were open. The applicant advised that it had not been discussed, but there was quite a distance between the residences and classrooms. Commissioner Bailey asked the applicant if they would be open to a condition to keep the doors and windows closed during the day, and the applicant responded affirmatively.

Chairman Savage wanted to work something out with the City regarding condition seven, and the applicant thought that the condition could be eliminated, but may be required at a later time by Engineering.

Commissioner Fitzgerald asked Acting Associate Planner Kusch the setback from the residential property. Acting Associate Planner Kusch responded that the setback indicated on the site plan was fifteen feet from the building to the property line.

Commissioner Fitzgerald asked staff's opinion regarding condition seven. Acting Associate Planner Kusch responded that staff believed undergrounding utilities would improve the property. Unless it was a condition imposed on the applicant by the Commission, the applicant could work with the Engineering Department and Community Development Department to review the request, consider the improvements proposed, and possibly have the requirement waived or reduced in scope.

Chairman Savage asked the hours of operation, and Acting Associate Planner Kusch responded that they were not conditioned, and the zoning code related to noise would address noise compatibility concerns. Chairman Savage asked the normal hours, and Acting Associate Planner Kusch responded Monday through Friday from 7:00 a.m. to 6:00 p.m.

Vice Chairman Francis asked if there were pictures of the utilities available, and Acting Associate Planner Kusch showed several photographs of overhead utilities, and explained that an electrical line goes over Commonwealth Avenue from the north side and connects to the building.

Commissioner Thompson wanted clarification on the 15 feet between the wall and the neighboring property. Acting Associate Planner Kusch confirmed it was fifteen feet. Commissioner Thompson asked if the playground was adjacent to residences located on the east side, and Acting Associate Planner Kusch answered that it was not.

Commissioner Musante asked if the reason for not burying the utilities was cost, and Acting Associate Planner Kusch responded affirmatively. Senior Civil Engineer Voronel clarified the

procedure to waive the requirement; Fullerton Municipal Code had a requirement to underground utilities that specifically serve the building. The applicant can contact Southern California Edison to identify the cost and submit a letter to the City, and if it was determined to be a burden to the applicant, the requirement may be waived. Commissioner Musante asked if the Planning Commission eliminated the condition, would it still be mandated from Community Development. Senior Civil Engineer Voronel responded that the Planning Commission can waive the condition and authorize the City Engineer to waive the requirement. Acting Associate Planner Kusch clarified the undergrounding of utilities may still need to be done from the plan check side, but there was an appeal process.

The applicant added that there were three overhead lines; cable (not connected), telephone (pole on site), and electric (which would be appealed as it comes from the other side of Commonwealth Avenue).

Public hearing closed.

Commissioner Thompson would support removing condition seven and preferred not to make closed doors and windows a requirement as there had been no complaints.

The title of Resolution PC-06-33 APPROVING a major site plan and modification of an existing Conditional Use Permit (CUP-946) to allow for the addition of a classroom building measuring approximately 1,300 square feet to accommodate the expansion of the existing child care center from 35 to 48 children, including five teachers, on property located at 3516 West Commonwealth Avenue was read and further reading waived. MOTION by Commissioner Thompson and SECONDED by Commissioner Fitzgerald and CARRIED unanimously that said Resolution be ADOPTED AS AMENDED by removing condition seven.

ITEM NO. 2

PRJ06-00249 – PRE06-00051. APPELLANT: JUDITH KALUZNY AND MICHAEL ERMAN; PROPERTY OWNER: KENNETH ZIEG.

Staff report was presented pertaining to an appeal of a Staff Review Committee decision to allow the operation of a pet grooming vocational school on property located at 145 West Whiting Avenue (north side of Whiting Avenue, approximately 85 feet east of the centerline of Malden Avenue) (C-3 ROD zone) (Categorically exempt under Section 15301 of CEQA Guidelines) (HAL).

Acting Senior Planner Allen gave a brief overview of the project and the appeal. Overhead photographs of the property were shown, along with the zoning of surrounding properties. She explained the definition of a vocational school, along with the approval requirements for this type of school, and a brief history of this project was explained. Acting Senior Planner Allen reviewed the conditions placed on the facility by the Staff Review Committee (SRC) and their purpose, along with staff's recommended findings.

Commissioner Hart asked if, in a C-3 zone, would a nursery school be allowed or would a Conditional Use Permit (CUP) be required, and Acting Senior Planner Allen responded that it would require a (CUP). Commissioner Hart asked why it was different from a vocational school, and Acting Senior Planner Allen explained that a trade school required a minor site plan due to its impact being mainly on neighbors only, rather than the community as a whole. Commissioner Hart asked if there would be a limit on the number of dogs that would be outside at any one time, and Acting Senior Planner Allen explained that the Staff Review Committee had discussed this

possibility, but stipulating a certain number would be difficult to enforce, and instead conditioned supervision of the dogs, rather than the number of dogs, so as to not cause a disturbance.

Commissioner Bailey was concerned about the neighbors, and what their recourse would be if the dogs were noisy. Acting Senior Planner Allen explained that the standard noise and nuisance requirements would be in place through the Municipal Code, and there would also be a six-month review. A condition could be added that if there were a certain number of complaints, it would come back for review outside of the six month period.

Chairman Savage asked if there was public notice for the Staff Review Committee meeting, and Acting Senior Planner Allen responded that it was noticed to adjacent property owners.

Commissioner Bailey asked what the Fullerton Municipal Code was regarding barking dogs, and Acting Senior Planner Allen responded that it was not specific to dog barking, but only a certain noise level. Acting Chief Planner Eastman clarified that the interior space would have some noise reduction enhancements added during construction. He explained the reasons behind the Staff Review Committee conditions of approval regarding noise.

Vice Chairman Francis asked if a dog groomer could open with just a permit, and a grooming school required the minor site plan process, and Acting Senior Planner Allen answered affirmatively.

Commissioner Thompson asked how many animals would be on property at a given time, and Acting Senior Planner Allen responded that there was nothing specific noted in the application. Acting Chief Planner Eastman stated that at the Staff Review Committee the applicant estimated there would be approximately twenty or twenty-five dogs throughout the day. Basically, this would be a dog grooming facility that would have more employees than typically needed.

Public hearing opened.

The appellant Judith Kaluzny, 147 Whiting Avenue, stated that many of the Planning Commission questions were answered in the August 3, 2006 Staff Review Committee minutes, and she verified that the Planning Commission had received her letter. She gave an explanation of her concerns and her objection to this type of business in the downtown area. She explained that she had a tenant living in her building that would overlook this use, and there were no restrictions on dogs being outside at 6:00 a.m., which could possibly disturb her tenant. She believed this type of business was not allowed in a C-3 zone, and a CUP should have been required.

Vice Chairman Francis left the room at 4:53 p.m.

Ms. Kaluzny continued that if this appeal were denied, it would make a bad situation worse. Her business uses, a mediation office and another office, are not compatible with this type of use. Ambulance, fire truck, and police sirens, while on their way to St. Jude Hospital, would cause dogs to howl. She explained her concerns with various items that were brought up in the August 3, 2006 Staff Review Committee meeting.

Vice Chairman Francis returned to the room at 4:58 p.m.

Commissioner Bailey asked Ms. Kaluzny if she believed it would be possible to run a business of this type without excessive noise, and Ms. Kaluzny responded that she believed there would be noise. Commissioner Bailey then asked if this business could be run quietly, would she have a problem, and Ms. Kaluzny responded that there had been other businesses at this location before

without problems. Commissioner Bailey clarified that her sole concern was the noise from dogs and she confirmed that it was the noise and smell from the dogs outside.

Commissioner Thompson stated that his point was this grooming business should never have been approved without a CUP. He asked Ms. Kaluzny how she felt about the situation presently. Ms. Kaluzny responded that she had thought she could live with it until she found out the dogs could be outside.

The appellant, Michael Erman, 139 W. Whiting Avenue, concurred that a CUP should be required, however, his main concern was noise and the proximity of the business to his house. He was concerned with the applicant's tearing his property apart, and explained that he was not in good health and needed peace and quiet. He thought the building should be brought up to code prior to the business operating. He questioned the fencing, stating that there have been dogs on his property from the residential tenant. He also stated there were multiple code violations within the property.

Chairman Savage stated that a survey was conditioned and it would be a civil matter if that was an issue with the property line. He added that he had met Mr. Erman yesterday and looked at the property.

Commissioner Thompson asked what the noise level was at this time, and Mr. Erman explained that the business was presently vacant. Acting Chief Planner Eastman clarified that it was a mixed-use property with residential units in addition to the commercial space. The dog grooming business had not yet opened.

The following people spoke in opposition of the grooming school:

Charles Wesley, a tenant at 133 W. Chapman, Suite D
Wayne Daniels, 1425 Dorothy
Nick Perez, 211 W. Whiting
Glen Henderson, 200 Jacaranda
Lynn Chidester, 517 W. Whiting
Sue Daniels, 1425 Dorothy Lane

There points of opposition were:

- Cannot maintain a business in the building due to the noise and commotion from the dogs
- Dogs bring smell, flies, fleas, dust, dander, constant barking
- Area set aside for dogs to use as a bathroom was a pedestrian walkway
- St. Jude's Hospital was down the street and the dogs will howl when sirens pass by
- Would not want to own a home with any type of dog facility next door
- Concerned with parking with the additional students
- An office type business would fit better in this area

The following people spoke in favor of the grooming school:

Deanna Brix, 1000 N. Cornell Avenue
Annika Santalahti, 651 Beverly
Jennifer Rogers, 1188 N. Holly

Their points of support were:

- Had used this groomer previously and was pleased with the services
- Animals “talk” but there was not excessive noise
- There were pick-up bags in the potty area and would not be a mess or small
- The owner would make an excellent teacher and had a lot of experience to offer future students
- Shortage of grooming trade schools in the area
- Dogs bark, but it would not be excessive and would not be heard outside or in the businesses next door
- Dogs are required to be on leash if they are outside
- Any messes would be picked up immediately
- Doors would remain closed for the safety of the animals

The applicant for the Minor Site plan, Lindell Zieg, from Lisha’s Grooming, 145 W. Whiting, stated she had proposed the grooming school as it was allowed by the zoning with this Minor Site Plan and she had the skill and ability to teach. She felt there was a real need for facilities such as this.

Commissioner Fitzgerald asked, without the trade school, how many employees she had, and the applicant responded approximately four employees, depending on need. With the school, the hours would be from 9:00 a.m. to 4:00 p.m., and the number of employees would depend on student ability and the curriculum being taught. Normal business hours at Lisha’s were Tuesday - Thursday 8:00 a.m. to 4:00 p.m., Friday 7:30 a.m. to 5:30 p.m., Saturday 8:00 a.m. to 5:30 p.m., and Sunday and Monday by appointment only.

Commissioner Hart asked about the apartments referred to by a previous speaker, and the applicant responded that the property was mixed-use with an apartment above the grooming business; she may possibly live there. What irritated others irritated her and she would not allow unruly dogs. She would stand to lose any tenants in the apartment above if there was excessive noise.

Commissioner Bailey asked if she could operate in a way that would not impact the neighbors, and the applicant answered affirmatively. She had done it for twenty-one years and followed the rules of the Orange County Animal Control and State regulations in order for her school to be accredited. She had never had any complaints that she was aware of. Commissioner Bailey asked if it impacted the neighbors would she stop. The applicant responded that she had problems with the neighbors since she moved in, and felt that no matter what she did she would have problems.

Commissioner Hart left the room at 5:40 p.m.

Commissioner Musante asked if, in the present location, residences were as close as they would be at this location, and the applicant responded affirmatively.

Commissioner Hart returned to the room at 5:42 p.m.

Ms. Kaluzny stated that many of the people speaking in favor of the school did not live there. At Ms. Zieg’s current location she was not as close to the residences. With eight employees grooming 14-15 dogs a day, it gave an idea of how many dogs would be at the facility during the day, and cage free. She did not know why Ms. Zieg’s felt there was hostility; she had gotten along fine with the workmen and the new tenants.

Mr. Erman stated he had lived in downtown Fullerton his entire life. He felt dog grooming was fine, but it did not belong in this area.

Commissioner Thompson asked Ms. Zieg how many dogs would be at the business during the day as a grooming only business vs. a grooming business plus vocational school. Ms. Zieg responded that with the school there would be fewer dogs because students were slow and learning. Eight students meant there would be eight dogs, with the possibility of an experienced groomer adding a couple more dogs.

Commissioner Fitzgerald left the room at 5:50 p.m.

Commissioner Thompson asked about the business model; people would come and pay somewhat less to have a student groom their dog. Ms. Zieg responded affirmatively.

Commissioner Fitzgerald returned to the room at 5:51 p.m.

Attorney Bettenhausen left the room at 5:51 p.m.

Commissioner Hart asked if the dogs would be taken outside on a leash, and Ms. Zieg responded affirmatively. She explained the set up of the property and the precautions she had taken.

Vice Chairman Francis asked if the grooming school were not approved, what she would do at the property and the applicant responded that she had been licensed by the City to do dog grooming and dog daycare.

Judith Kaluzny reminded the Commission that this was the Central Business District (CBD) and it had particular rules for the type of business allowed and procedures for allowing businesses, also.

Public hearing closed.

Commissioner Thompson was compelled by the argument that staff had made a mistake in approving the dog grooming and daycare, and would like clarification on that determination. Acting Chief Planner Eastman responded that a kennel would require a CUP due to possible noise and odor issues. Commissioner Thompson asked why it was not logical to say this was like a kennel and would therefore require a CUP. Acting Chief Planner Eastman explained the history of looking at daycare type activities as a service type use, and grooming was allowed as part of a pet store. There are currently eight other facilities that do dog grooming in commercial zones within the City.

Attorney Bettenhausen returned to the room at 5:57 p.m.

Acting Chief Planner Eastman added that typically a CUP had broader impact on the community and a kennel would require a kennel license from the County of Orange. Primarily the Director of Community Development had the authority to determine if this was similar to other uses. Based on the history for pet stores and other type of facilities that do grooming in a commercial zone, the determination was that as a daycare/grooming facility this would be a permitted facility. Regarding the questions on requiring a CUP, the code states that "any commercial activity not listed in the table may be permitted in a commercial zone if the Director of Community Development determines that the use was similar to the uses permitted in that zone and consistent with the purposes of the commercial zone classification". This was a commercial classification that allows for residential use, but it was a C-3 zone. Following it states, as being referenced by Ms. Kaluzny, "Should the Director determine that a proposed commercial activity should be similar to other uses permitted in the zone, the commercial activity may be considered for approval as a Conditional Use Permit subject to the provisions of Chapter 15.68". Historically, grooming facilities have been permitted as commercial activities. Based on the way the code was written, it gives the Director

the authority to say this was a similar use and the determination was made that it was a permitted use. The Director “may” require a CUP; however, a CUP was not required.

Commissioner Thompson asked staff’s opinion, if it would have been legally permissible to determine that it was close enough to a kennel and needed to go through the CUP process. Acting Chief Planner Eastman responded that based on the precedent set in the past, it was not reasonable to determine the daycare/grooming uses to constitute a license determination.

Commissioner Fitzgerald stated that while downtown was a commercial zone, it was a unique commercial zone since it was mixed-use, and Acting Chief Planner Eastman responded that it was unique in that it allowed residential uses.

Chairman Savage stated that his dogs went to a groomer that had a restaurant next door, and he had not seen any problems.

Commissioner Thompson felt both arguments were compelling, but could not reasonably accept the appeal. He would be in favor of adding a condition that if there were three verified complaints it would come back to the Commission. He had a hard time believing it was not an intensified use and worried about noise.

Commissioner Bailey agreed with Commissioner Thompson and would like to add the recommended condition as was typical in a CUP. He would vote to deny the appeal because he believed they should be given a chance as the zoning was appropriate.

Commissioner Musante concurred with Commissioner Bailey.

Commissioner Hart thought a CUP would have been nice, and thought this problem would arise again with the downtown mixed-use properties. She also would like to add a condition on the complaints, and would vote to deny the appeal.

Vice Chairman Francis believed the complaints needed to be verified.

Commissioner Fitzgerald stated she recognized the uniqueness of a mixed-use property and the need to balance the businesses and residences. She will vote to deny the appeal.

The title of Resolution PC-06-34 DENYING an appeal of a Staff Review Committee decision to allow the operation of a vocational school on property located at 145 West Whiting Avenue was read and further reading was waived. MOTION by Commissioner Thompson, SECONDED by Commissioner Bailey and CARRIED unanimously that said Resolution be ADOPTED AS AMENDED by adding a condition that if there are three verified complaints, the site plan will be brought back before the Commission for review and reconsideration.

Acting Chief Planner Eastman explained the appeal process

Meeting adjourned at 6:14 p.m.

Meeting reconvened at 6:16 p.m.

ITEM NO. 3

PRJ06-00362 – LPP06-00011. APPLICANT: CITY OF FULLERTON.

Staff report was presented pertaining to a proposal to consider a Zoning Amendment modifying Title 15 of the Fullerton Municipal Code to prohibit the establishment of medical marijuana dispensaries in the City of Fullerton. (Exempt under Section 15061 of CEQA Guidelines) (BSP).

Senior Planner St. Paul gave a brief overview of the proposal. He provided the background of the Compassionate Use Act which passed in 1996 in the State of California and allowed seriously ill patients to obtain and use marijuana for medical purposes. He also explained that upon approval it immediately conflicted with Federal Law, and the Supreme Court had ruled in favor of the Federal Law. He explained the analysis that staff had prepared included a memo from the Fullerton Police Department. Staff was recommending that the Planning Commission adopt the Resolution recommending the City Council adopt an ordinance to prohibit medicinal marijuana dispensaries within the City of Fullerton.

Commissioner Bailey asked about the survey of surrounding cities in the County and how many of these cities allowed marijuana dispensaries. Senior Planner St. Paul responded that none of the responding cities in their survey allowed marijuana dispensaries. Captain Greg Mayes added that eleven cities in the County of Orange have adopted some type of action against medical marijuana; seven have adopted moratoriums to allow for further study, and four cities have prohibited medical marijuana dispensaries. He added that the Anaheim Police Department had included information on their interaction with the dispensary in their city; thefts of the drug from the dispensaries, individuals posing as caregivers to purchase the drug for resale on the street, and loitering near the facility. He believed in the spirit and intent of the Compassionate Use law, and added that the Police Department was not concerned with people, who had a medical card, cultivating and using marijuana in their own home. The likelihood for abuse existed and the dispensaries were not in the spirit of the law.

Commissioner Bailey asked if it was possible to regulate this type of business, and Captain Mayes responded affirmatively.

Chairman Savage asked if the dispensary in Anaheim was still operating, and Captain Mayes answered that he was unaware if it was still operating.

Commissioner Hart asked if a dispensary were approved, would it be illegal for the dispensary to obtain marijuana. Captain Mayes responded that the violation actually occurred when a person goes in to purchase marijuana. There are provisions to allow for distribution centers, which are non-profit. Federal law would preclude a dispensary from purchasing marijuana. The easiest proof of illegality was the person walking into a dispensary and purchasing marijuana; it was illegal to purchase marijuana.

Commissioner Fitzgerald left the room at 6:35 p.m.

Attorney Bettenhausen clarified that the decision was not criminalizing use, which was clear under both Federal and State law. The item before the Planning Commission was a land use item, within City of Fullerton. This particular use was not a defined term under State law, and therefore, the City will define and specifically exclude their definition of dispensaries. The decision does not impact the rights of an individual under the Compassionate Use Act.

Commissioner Fitzgerald returned to the room at 6:37 p.m.

Commissioner Musante asked if a pharmacy agreed to be a dispensary, would it be detrimental to the City; could marijuana be regulated the same as any other drug. Captain Mayes responded there were two scenarios: First, if it could be controlled similar to current drugs, by prescription

only, there would probably be no adverse impact. Second, if a person was in their final weeks of life, he believed this was compassion and that was what voters agreed on. It was voted to be dispensed by the primary caregiver or the person themselves. A dispensary was a different situation. There are people within Fullerton cultivating their own medical marijuana under the Compassionate Use Act.

Attorney Bettenhausen stated there was a conflict with Federal law; the real issue was the liability to the City. Since the dispensing of marijuana was in violation of Federal law, was the City aiding and abetting a crime. The key issue was whether they were meeting State guidelines for what was allowed under the statute.

Commissioner Musante asked if the issue was whether to prohibit or place a moratorium on the distribution of marijuana. He wondered if more study was needed to bring about the wishes of the people based on the Compassionate Use Act, and would a moratorium make sense. Captain Mayes believed the definition that had been drafted was in accordance with the law.

Attorney Bettenhausen explained that the problem was marijuana being classified as a certain schedule of drug, which did not have a recognized medical use, therefore it was different than drugs dispensed at your local pharmacy.

Commissioner Thompson asked if this item was brought before the Commission due to an inquiry about opening a dispensary. He wondered if the Commission could pass a resolution recommending the City Council to consider an ordinance that might prohibit dispensaries without providing a previous worded resolution.

Acting Director Rosen explained that the Planning Commission needed to consider the draft ordinance, they may modify the draft ordinance, but a draft ordinance must go to City Council.

Vice Chairman Francis left the room at 6:49 p.m.

Commissioner Thompson believed the resolution as worded came to a moral judgment as to the reasonableness of having a dispensary and he felt it would be better for elected officials to make the decision. Commissioner Thompson asked Attorney Bettenhausen if it would be a valid resolution if the fourth paragraph were removed.

Vice Chairman Francis returned to the room at 6:51p.m.

Acting Director Rosen clarified that Commissioner Thompson was speaking of the draft ordinance. Attorney Bettenhausen responded that the paragraph could be limited, but undermined the basis of what they are trying to accomplish with the resolution

Acting Director Rosen stated that due to the time, and Attorney Bettenhausen's time conflict, he recommended continuing item.

A MOTION to CONTINUE this item until the 4:00 p.m. session of the October 25, 2006 meeting was made by Commissioner Bailey, SECONDED by Commissioner Fitzgerald, and passed UNANIMOUSLY.

A MOTION to adjourn at 7:00 p.m. and reconvene at 7:30 p.m. was made by Commissioner Bailey, SECONDED by Commissioner Thompson, and passed UNANIMOUSLY.

7:00 P.M. SESSION

Reconvened at 7:32 p.m.

ITEM NO. 4

PRJ05-00606 – ZON05-00083. PROPERTY OWNER: CITY OF FULLERTON.

Staff report was presented pertaining to a mixed-use project proposed on existing City parking lots. The proposal includes 1) a 9-story building, comprised of eight stories of residential condominiums above-ground floor commercial and parking, and two subterranean levels of parking; 2) a four-story building with residential units above ground floor commercial and live/work retail; and 3) a five-level (four story height) public parking structure. (An Environmental Impact Report had been prepared pursuant to Section 15081 of CEQA Guidelines) (JEA).

Acting Chief Planner Eastman gave a brief overview of the project. The requested approvals included a Major Development Project, a Conditional Use Permit (CUP) to exceed the base floor area ratio (FAR) and provide shared parking, a Tentative Tract Map, an abandonment application, and also an Environmental Impact Report (EIR). Overheads of the site were shown and a brief background of the project was given. He also explained the changes made in the design since the August 9, 2006 Planning Commission meeting. New pedestrian walkways and access points were explained.

Commissioner Thompson left the room at 7:48 p.m.

Acting Chief Planner Eastman showed the changes in the elevations since the previous meeting.

Commissioner Thompson returned to the room at 7:51 p.m.

Comparisons to adjoining buildings were shown and a comparison was also made with the height of the Chapman Building, the tallest existing building in the downtown.

The Major Development Project was to consider the site design and architecture. The Redevelopment Design Review Committee (RDRC) had reviewed the project and recommended approval with some revisions. Acting Chief Planner Eastman explained how the project as proposed was consistent with the General Plan.

The CUP was to allow an increase in the floor area ratio and provide shared parking. The total site was 2.9 gross acres including Amerige. Both the north and south sides of the street were looked at when calculating FAR, and the CUP will regulate the project as a whole. Shared parking was to allow 524 public parking spaces on the north side, and 51 short-term spaces on south side, with approximately 26 spaces in the parking garage designated for residential use, for a total of 575 public spaces shared.

The Tentative Tract Map was for condominium purposes, including residential and commercial condominiums. The north side will have 13 residents, the south side will have up to 111 residents, for a total of 124 residents.

Chairman Savage asked if the parking included the 150% that was a requirement of the original Request for Proposal (RFP), and Acting Chief Planner Eastman explained that the developer needed to supply 450 spaces. Acting Director Rosen added that the provided public parking did not include the subterranean parking for the residents.

Commissioner Bailey asked where the employees would park, and Acting Chief Planner Eastman responded that they would use the public parking structure. Commissioner Bailey asked how long the short-term parking would be, and Acting Chief Planner Eastman responded that it would be somewhere around 30 to 45 minutes.

Acting Chief Planner Eastman continued that the parking lot and plaza space were designated letter lots or undevelopable lots in the Tract Map, which had to do with the Redevelopment Agency's negotiations in terms of maintenance and ownership of those lots.

An abandonment was also being requested, and was for a four-foot abandonment on the north side of Amerige Avenue. This abandonment would remove parking on Amerige and place it in the parking garage, thus creating a larger sidewalk. The travel lane itself would not change, and there would possibly be a loading area on the south side.

Staff recommended that the Planning Commission recommend to the City Council certification of the EIR, and approval of the proposed project, subject to the conditions identified in the staff report.

Vice Chairman Francis left the room at 8:07 p.m.

Chairman Savage asked who ordered the RFP and if there was a public hearing regarding the RFP. Acting Chief Planner Eastman explained that the proposal was put together to develop the City parking lots into a mixed-use project in December 2003. The Redevelopment Agency solicited requests from the development community to propose building a mixed-use project on the north and south side of Amerige. Twelve qualified applications were received, they interviewed the developers, and then at a public hearing Pelican-Laing was chosen as the developer based on their proposal.

Vice Chairman Francis returned to the room at 8:09 p.m.

Chairman Savage asked for clarification on who actually ordered the RFP, and Acting Director Rosen responded that the idea for additional parking came from various City staff based on the growing parking and commercial demand. Chairman Savage asked if the original RFP contained a requirement for 150% increase in parking, and Acting Director Rosen responded affirmatively. Acting Chief Planner Eastman added that the General Plan outlined goals for the downtown which included creating a more vibrant environment, entertainment uses, and things of that nature. Part of this project came forward as part of a desire to focus on the downtown, and create more units and activity.

Chairman Savage clarified that the RFP went out and the City received twelve responses. He asked if all twelve responses went before the public. Acting Director Rosen explained that it was filtered down to three or four, and then it went before the public hearing.

Commissioner Musante asked where the 150% additional parking requirement came from. Acting Director Rosen responded that it was a consensus number based on the professional judgment of City staff, and a recommendation was made to the Redevelopment Agency. Commissioner Musante asked if there was any technical basis, and Acting Director Rosen responded that there was no technical information available at that point, but traffic reports do support that number.

Commissioner Hart asked who would own the property at the end of the project. Acting Director Rosen explained the ownership as currently being structured. The parking structure would be

owned by the City with possible easements for the residents who live on the north side of the street. The south side would be privately owned with a public easement for parking.

In response to comments made by Fullerton Heritage, Chairman Savage asked staff to respond to the potential of a “domino” effect, and asked staff if there was evidence that a nine-story downtown would follow. Acting Chief Planner Eastman responded that currently there were no other multi-story proposals submitted for downtown, and in terms of anticipated precedence, it would require consolidation and demolition of current buildings, as no other large lots were available. Regardless of whether it was built or not built, it was a market demand that would drive future projects, and future projects would also have to come before the Commission and be considered on their own individual merits.

Chairman Savage asked what the major complaint staff heard regarding this project, and Acting Chief Planner Eastman responded that having a nine-story building in downtown was the concern he heard the most.

Chairman Savage questioned the shared parking; was there a zoning ordinance that allowed for shared parking. Acting Chief Planner Eastman responded affirmatively, that shared parking is allowed by CUP, and had been used on other projects in the downtown, and elsewhere in the City.

Chairman Savage asked if this project was included in the computerized model the City maintained for traffic structuring, and was it taken into consideration with other projects in town. Acting Chief Planner Eastman responded affirmatively, adding that the 1.91 FAR for the development was under the base of a 2.0 FAR in City General Plan traffic modeling.

Chairman Savage asked about the financing, specifically the Disposition and Development Agreement (DDA). The five million bond on the project, a CFD Bond, and payable by taxes that owners would pay on their property tax bill. Who would guarantee the bond to be paid if the building went defunct or no one paid their tax bill. Acting Director Rosen explained that these types of bonds were non-recourse and they cannot go back to City for payment. The final obligation was to the project, and he did not believe the City had any liability.

Commissioner Bailey left the room 8:30 p.m.

Chairman Savage asked if the City held any liability during the development and completion of the project, and Acting Director Rosen responded that the applicant was required to hold the City harmless.

Commissioner Musante thought a major objection to this plan was the massiveness and setting a precedent. He understood, from information at the last meeting, that if there was not the parking requirement the project could be more aesthetically pleasing. He asked if there was a need for a comprehensive planning study for the downtown. Acting Director Rosen responded negatively, and explained that two parking studies for the downtown had been completed in the last seven or eight years, but the issue of parking came down to having enough convenient parking.

Commissioner Bailey returned to the room at 8:32 p.m.

Acting Director Rosen explained the policy adopted by City Council was that there was insufficient parking in this quadrant and additional parking needed to be provided. Acting Chief Planner Eastman added that this was also what the developer was charged with meeting as part of the RFP.

Commissioner Musante asked if there was downtown parking available in the area that was underutilized. Acting Director Rosen responded that there were a number of areas underutilized at different times, but it went back to convenience, and staff and the applicant had moved forward at the direction of City Council.

Public hearing opened.

The applicant, Dick Hamm from Pelican Laing, explained the changes that had been made since they were last before the Commission in August.

Rocky Shen, KTGy, showed diagrams of the features that had been changed and gave a brief explanation of each.

John Loomis, 38th Street Architects, explained how the concept that downtown was a pedestrian place and Fullerton was a City of trees had been met. He explained how each diagram met the target goal.

Commissioner Thompson left the room at 9:05 p.m.

A video was shown to represent scale and massing.

Commissioner Thompson returned to the room at 9:09 p.m.

Mr. Hamm gave a brief explanation of the financial situation. There was no financial obligation to the City, the bonds were guaranteed by the real estate. The only recourse the bond holders had was through foreclosure of the property.

Commissioner Musante asked if the 150% parking requirement was not there, how would it reduce the density of this project. Mr. Hamm responded that, based on the parameters they had, in order to reduce the mass of the building on the south side down to the scale and size of the building on the north, and keep the same amount of open space, they would need to reduce parking by about 200 spaces.

Adjourned at 9:20 p.m. Reconvened at 9:27 p.m.

Public hearing opened.

The following people spoke in opposition to the project:

Melba Coles, 1119 S. Orchard Avenue
Tom Dalton, 200 N. Cornell Avenue and President of Fullerton Heritage
Dave Escapite, 209 West Fern Drive and owner of Mission Press Printing
Fred Moring, 128 W. Wilshire
Bruce Hastetter, 205 N. Cornell
Lee Kolp, 1350 Avelencia Drive
John Silber
Vince Buck
Harold Umberson, 134 N. Cornell
Katie Dalton, 200 N. Cornell
Dorian Hutter, 400 Virginia Road
Judith Kaluzny, 400 N. Malden Avenue
Christy Sims, 2336 E. Brookdale Place

Larry Archy, 141 W. Wilshire

Their points of opposition were:

- The project was considerably smaller in the beginning
- Out of scale with the downtown
- It will dwarf the surrounding buildings
- In support of the original proposal, but not the current one
- Downtown business asked for “a little more parking”, maybe 100 spaces, and now we have this huge project
- Great project, just in the wrong place
- A building needs to be built, parking was needed, but it was just too big
- An attempt to play “Mr. Potato Head” with the architecture
- Original study for the RFP envisioned all subterranean parking, which had gone away
- Parking study does not support 150%
- Already excessive / underutilized parking within the area
- Parking demand was driving this project
- Parking structures do not generate revenue, would like to see more commercial spaces
- Project was too massive, does not belong in Fullerton
- Need to be sensitive to what was built and how it influences the character of the area
- Nine stories was out of scale for the downtown
- Need a comprehensive study of the downtown to determine the best use of all the properties
- City needs to do more due diligence before getting into the project
- Disagreed with the conclusion of the draft EIR – buildings of this height can not help having an impact
- Traffic and air quality will be affected
- College students drinking downtown, why give them more parking

Robert Chattel, the preservation architect who prepared the cultural analysis regarding impacts to neighboring buildings, explained that the first part of his job was to identify what areas were registered as historical landmarks, and what other properties might be eligible. He had identified properties immediately adjacent to the project site which were local landmarks, and one property, the Rialto Theater, that may be eligible for listing in the California Register.

Vice Chairman Francis left the room at 10:15 p.m.

Mr. Chattel continued that he next looked at the project in terms of the impact of the proposed project, direct impacts will materially impair the quality of a historical resource, i.e. construction of the project that may cause damage to adjacent historical resources, and mitigation measures that may be required. Commissioner Bailey asked if an unreinforced masonry building built in the late 1800's could withstand subterranean construction and pile driving if located within twenty feet of the development, and Mr. Chattel responded affirmatively, if precautions were taken. He believed that through the use of the mitigation measures proposed, there would be a less than significant impact on historical resources.

Vice Chairman Francis returned to the room at 10:24 p.m.

Commissioner Thompson asked if it would be possible to build something that did not fit, but would not have a measurable effect on surrounding historical properties. Acting Chief Planner Eastman

responded that was the purpose of the mitigation measures. Commissioner Thompson asked if that was just an opinion or based on data, and Mr. Chattel responded that it was based on standards, and he was exercising his professional judgment and experience in evaluating the project.

Commissioner Hart asked about the business to the north of the north building, and whether customers would be able to get in the way they do now. Mr. Hamm responded that the building was on the east side of the Skentos building, and Acting Director Rosen explained that conditions were placed on the property when the building was reconditioned and the owner asked to have access to the public parking, which normally would not be allowed; therefore, a deed restriction was included stating that if the parking lot were ever developed they would be required to close those openings and take access from another location.

Commissioner Hart wanted clarification of whether the City had adopted a 70' ceiling in downtown, and Acting Director Rosen explained there was an update to the transportation center study that had been conducted in the mid 1990's, it was a guideline only, and the City Council could consider or reconsider that as part of the project.

Commissioner Hart asked about emergency access, and Mr. Hamm responded that they had worked with the fire department and City staff and located areas the fire department felt it necessary to have access, in addition to various measures that were included in the building construction.

Chairman Savage asked if the City of Fullerton had fire equipment that would work on a building of this size, and Mr. Hamm responded affirmatively, according to the Fire Chief.

Commissioner Hart asked if the City was giving five million dollars to merchants during construction to offset their losses, and Acting Director Rosen responded that there was a business loss mitigation fund being established, but it was provided by private funds. Mr. Hamm clarified that it was 1.5 million not five million.

Commissioner Hart asked about Ace hardware and no parking being available, and Mr. Hamm indicated on the display where numerous parking spaces would be available.

Commissioner Hart wanted to know what had happened to the idea of subterranean parking. Mr. Hamm answered that it was proposed, but the downtown business owners had grave concerns about having their patrons parking underground, to the point that it became unworkable.

Commissioner Hart asked why the façade was 300' long as opposed to the Chapman building. Mr. Hamm responded it was what people experience in the pedestrian plane, the first and second floor. The building was broken up to help with massing, and there would be wide sidewalks with trees, benches, etc. The street would be narrower so there would not be as much traffic, giving it a pedestrian feel.

Commissioner Hart questioned the sense of place, did it go with downtown. Mr. Hamm responded that one could be critical of the design, but needed to look at the improvements. They were trying to create a sense of place not only on the alley side, but all around the area.

Mr. Hamm added that in regards to the Chapman Building, it was a great building, and they had appreciation for what Fullerton had done with their downtown. They are going above and beyond what was done when the Chapman Building was built.

Acting Chief Planner Eastman explained that there was one more item to be heard after the current discussion, and due to the late hour, typically at 11:00 p.m., a vote was required to state if the Commission would hear additional items on the agenda. He recommended either a motion to hear, or a motion to continue.

A MOTION to CONTINUE item five until the next meeting was made by Commissioner Thompson, SECONDED by Commissioner Fitzgerald and passed UNANIMOUSLY.

Commissioner Bailey asked about the trash bin shown in front of a restaurant on the drawings; was it an error or would it remain. Mr. Hamm stated that staff had stressed handling the “back end” of the business, such as trash. Trash enclosures had been provided and this was shown because they felt a need for one in the area, but it was not necessarily going to be in this exact location.

Chairman Savage asked what staff was doing with the trash situation. Acting Director Rosen responded that they were working with a trash consultant to find areas for the mat wash and trash enclosure alternatives.

John Tillotson, Pelican Properties, explained the areas selected for the trash/mat wash areas and the setup for the “trash room”. He added that every morning the trash and mat area would be washed down and sprayed with disinfectant; thereby there was no odor or problem with bugs. He stressed the need for maintenance and upkeep.

Vice Chairman Francis asked if new restaurants would be pursued, and Mr. Hamm answered that there was potential space for two new restaurants, maybe a third, but the area would be shallow. The building would be preplanned for restaurant use to allow the possibility of a restaurant.

Public hearing closed.

Commissioner Musante thought the City Council needed to decrease the 150% parking requirement and he intended to vote no on the project. He thought it would be a great project when the parking was decreased.

Commissioner Thompson believed there was a need for more parking spaces in the downtown, but did not like the architecture and the scale of the project. He felt it started out as a creative solution to solve a parking problem with a mixed-use project. He thought 15,000 square feet of retail was not enough, and he would not support the project.

Commissioner Fitzgerald believed the City Council had asked for a developer to come in with a proposal to help revitalize downtown, and as time went by things changed. She believed it was important to trust the developer who had been working hard with all the issues, and she felt Pelican-Laing could be trusted. She thought they had done exactly what the City Council asked for and they deserved a chance to go before the City Council.

Commissioner Hart was not pleased with the original architecture, but was very pleased with the changes to the architecture. She believed the south building was somewhat out of scale, but believed it was what the City Council had asked for, therefore she would vote to approve the project, but would like to see it two levels shorter.

Vice Chairman Francis stated that five elected officials put out the RFP and Pelican-Laing stepped up with a quality project. The Chapman building was the tallest building in Orange County at the time it was built, sometimes risks need to be taken, and the downtown needed the parking. He will vote to approve the project.

Commissioner Bailey lived and worked in the downtown, and did business in Los Angeles. He enjoyed the project from a pedestrian standpoint, liked the architecture, but was a little concerned with the massing on the south side. He felt that sometimes the City needed to step outside the box and go for it. He will support the project.

Chairman Savage said that in the beginning he was nervous to put his name on something that was outside the box, as the Chapman building must have been in its day. He was not bothered with the height, but was concerned with parking in the downtown and he believed there was a need. He did not want to see the City add money to the project to create subterranean parking. He would be willing to add height if it would cut down on mass and create more open space. He would not vote for the project without a condition that it go to the RDRC and then come back to the Planning Commission prior to going to the City Council. He would like to see more street art, and believed the trash situation needed to be more formally worked out prior to the project going before the City Council.

Commissioner Thompson felt for the businessmen and their frustration trying to please everyone. He felt it would have been a better project if the City had sold the property and let the developer come up with their own project.

Commissioner Fitzgerald asked Acting Director Rosen why he recommended the project go to City Council for conceptual approval, then back to RDRC to work out specific design issues, than back to City Council. Acting Director Rosen stated it was what was in the development agreement.

Chairman Savage felt the Commission needed to give direction to the developer. He would like to see an improvement in the streetscape, the public art, and the trash situation worked out, and then have the project come back to the Commission prior to going to the City Council. He thought better computer simulations would give the Commission a better idea of the project.

Chairman Savage made a motion that the project go to the RDRC for review of the following changes: more pedestrian friendly space integrated into the project at street level and more public street art in the area, than come back to the Commission with computer generated photo analysis, and a trash study (how it will be handled, where will it be located), prior to the project going to City Council.

Motion failed due to a lack of a second.

Chairman Savage did not think the project was ready to go on to the City Council. He liked the improvements but still thought there was a ways to go.

Commissioner Thompson felt if the City gave a developer land, the bar should be set as high as it ever will as far as the quality of the project.

Commissioner Bailey agreed with Chairman Savage. He believed it still needed detail work and would like to see the project come back.

The title of Resolution No. PC-06-36 APPROVING a Resolution of the Panning Commission of the City of Fullerton recommending approval of a mixed use development project including up to 124 residential units above no more than 30,000 square feet of commercial space on existing City parking lots located on the north and south sides of the 100 block of West Amerige Avenue and the title of Resolution No. PC-06-37 APPROVING a Resolution of the Planning Commission of the City of Fullerton recommending to the City Council certification of Environmental Impact Report Sch No.

2006061034 and mitigation monitoring program were read and further reading waived. MOTION by Commissioner Fitzgerald, SECONDED by Vice Chairman Francis and approved by a 4-3 vote with Chairman Savage, Commissioner Musante, and Commissioner Thompson voting no, that said Resolutions be ADOPTED AS WRITTEN.

ITEM NO. 5

CONDITIONAL USE PERMIT CUP-1031B. APPLICANT: JAMES BARNUM; PROPERTY OWNER: STEVE FORELL.

Staff report was presented pertaining to a request to modify a Conditional Use Permit (CUP-1031) for the operation of events held in an existing banquet/dance hall (Wilshire Court), including removal of a 12:00 a.m. stopping time for events, removal of loading and unloading restrictions on Wilshire Avenue, and removal of designated beer consumption areas for the property located at 140 West Wilshire Avenue (located on the south side of Wilshire Avenue between approximately 50 and 100 feet east of Malden Avenue) (C-3 Zone) (Categorically exempt under Section 15301 of CEQA Guidelines) (AKU).

Item continued to the next meeting.

OTHER ITEMS

COMMISSION/STAFF COMMUNICATION

Acting Director Rosen explained that the master plan process for the transportation center was underway and they would like to have two Commissioners attend the meetings, if possible. The first meeting would be on September 28, 2006, with additional meetings on November 9 and December 14 at 6:00 p.m. at the Senior Center.

Acting Chief Planner Eastman asked for two volunteers to attend the three meetings, and Commissioner Musante volunteered for September 28, Commissioner Fitzgerald for November 9, and Chairman Savage stated that volunteers for the December meeting would be discussed at a later meeting.

REVIEW OF COUNCIL ACTIONS

Acting Chief Planner Eastman gave a brief report on recent City Council meetings.

AGENDA FORECAST

The next regularly scheduled Planning Commission meeting will be October 25, 2006 at 4:00 p.m. The October 11, 2006 meeting has been canceled.

PUBLIC COMMENTS

There was no one from the public who wished to speak on any matter within the Commission's jurisdiction.

ADJOURNMENT

There being no further business the meeting was adjourned at 12:06 a.m.

Janelle Pasillas
Secretary