Minutes

Planning Commission March 16, 2009
City of Orange Monday–7:00 p.m.

PRESENT: Commissioners Cunningham, Imboden, Merino, Steiner and Whitaker
ABSENT: None

STAFF
PRESENT: Ed Knight, Assistant Community Development Director
Gary Sheatz, Assistant City Attorney
Robert Garcia, Associate Planner
Chad Ortlieb, Senior Planner
Dan Ryan, Senior Planner, Historic District
Sandi Dimick, Recording Secretary

ADMINISTRATIVE SESSION:

Chair Steiner opened the Administrative Session @ 6:50 p.m. with a review of the Agenda.

Chair Steiner stated that there would be a re-vote on the February 2, 2009 minutes as there had been an abstention in error on the previous vote. The minutes from the meeting of February 18, 2009 were also on the Agenda for approval. Commissioners Cunningham and Whitaker were not present at that meeting and would abstain from the vote.

Item No. 3 Bullock Residence. Chair Steiner asked if the Planner for the project would be present. Assistant Community Development Director, Ed Knight stated Senior Planner, Dan Ryan would be present for the presentation of the item. Commissioner Whitaker asked if there would be any community input. Mr. Knight stated it was not anticipated.

Item No. 4 CNI School. Commissioner Merino stated he would have questions for the applicant's consultants. Commissioner Whitaker stated he might need to recuse himself from the presentation, he explained that a business, Lancer Claims, processed claims and used his law partner as their defense attorney, and that client fell within the mapped area. Assistant City Attorney, Gary Sheatz stated the automatic presumption to get around the issue would be to analyze whether the decisions reached on the item presented could have a positive or negative financial impact and that was what was looked at. Commissioner Merino stated when in doubt, sit it out. Mr. Sheatz stated his advice would be if a business or conflict fell within the mapped zone to be recused from participation of the item.

Item No. 5 Bob's Big Boy. Commissioner Merino asked if a Police Department representative would be present. Associate Planner, Robert Garcia stated yes, a representative from the Police Department would be present.

Item No. 6 AT & T Chiller. Commissioner Whitaker stated he would have questions on the item. Chair Steiner asked if the application was for non-conforming equipment. Senior Planner, Chad Ortlieb stated it was legally non-conforming.

Chair Steiner asked for any additional news from Staff? Mr. Knight stated CHOC would go to City Council next week. He also noted that the adjournment for the Planning Commission meeting would be to March 24, 2009 at 3:30 in the Council Chambers for a CIP study session. There was no further discussion.

Administrative Session closed at 6:57 p.m.

REGULAR SESSION:

PUBLIC PARTICIPATION: None

CONSENT CALENDAR:

(1) REAPPROVAL OF THE MINUTES FROM THE REGULAR MEETING OF THE PLANNING COMMISSION ON FEBRUARY 2, 2009

Chair Steiner made a motion to approve the minutes from the regular meeting of the Planning Commission on February 2, 2009 as written. Chair Steiner stated the re-vote was due to an administrative error.

SECOND: Commissioner Merino
AYES: Commissioners Cunningham, Imboden, Merino, Steiner and Whitaker
NOES: None
ABSTAIN: None
ABSENT: None

MOTION CARRIED.

(2) APPROVAL OF THE MINUTES FROM THE REGULAR MEETING OF THE PLANNING COMMISSION ON FEBRUARY 18, 2009

Chair Steiner made a motion to approve the minutes from the regular meeting of the Planning Commission on February 18, 2009 as written.

SECOND: Commissioner Merino
AYES: Commissioners Imboden, Merino, and Steiner
NOES: None
ABSTAIN: Commissioner Cunningham and Whitaker

MOTION CARRIED.

COMMISSION BUSINESS:

(3) DESIGN REVIEW COMMITTEE NO. 4303-07 AND ADMINISTRATIVE ADJUSTMENT NO. 171-08 – BULLOCK RESIDENCE

A proposal to construct a 272 square foot one-story rear addition, remove two small roof dormers, install a matching shed dormer and construct a 678 square foot habitable basement on the 1,400 square foot single-family residence. The proposal includes expansion of the front porch and a request for an Administrative Adjustment to permit a reduced front yard setback. As the project will result in an expansion of more than 20% of the existing floor area, the project requires Planning Commission review and approval.

LOCATION: 373 Grand Street (Old Towne Orange Historic District)

NOTE: The proposed project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per State CEQA Guidelines 15.331.Historic Resource Rehabilitation, Class 31 consists of projects limited to maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction of historical resources in a manner consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings.

RECOMMENDATION ACTION:
Approve DRC No. 4303-07 for an Old Towne addition that exceeds 20% of the existing floor area and approve AA 171-08 for a reduction in a required front setback for a contributing residence.

Historic Planner, Dan Ryan presented a project overview consistent with the Staff Report.

Chair Steiner opened the hearing with any questions for Staff.

Commissioner Merino stated in taking another look at the plans, on the encroachment into the setback, it was noted as 17' but the stairs came out beyond the porch approximately 14'.

Mr. Ryan stated the measurement was taken from the vertical column on the porch and the steps were not included in the setback measurement. That was a standard requirement.

Commissioner Merino stated it behooved the Planning Commission not to set a precedent; and the administrative adjustment was not to encroach on the setback, and that issue had to be reviewed on a case by case basis. He asked if there were other properties on the street that encroached in the same manner and would it be safe to state that the project would not set a detrimental precedent?

Mr. Ryan stated the existing porch came out at the same dimension; the only difference would be the expansion of the porch to the side that would go to the full width of the building. In some respects it was a minor impact. For the remainder of the street and the street scape there were other buildings that came out just as far; and it would not affect the street scape.

Commissioner Merino stated he understood that, but was that sufficient justification to not call that a precedent setting decision?

Mr. Ryan stated he felt it was sufficient justification.

Chair Steiner opened the hearing and asked the applicant to come forward.

Applicant, Bill Bullock, address on file, stated he was available for any questions.

Commissioner Imboden stated, looking at the house in its existing form, he had not noticed that there was an existing chimney, an historic masonry chimney. He had noticed in the elevations of the interior remodel that there was a fireplace proposed. He asked if the applicant intended to have some sort of a stack for venting.

Mr. Bullock stated there was an existing furnace in the bedroom that they would be removing with the installation of a gas fireplace. The fireplace would use the same venting.

Commissioner Imboden asked if the applicant anticipated adding anything to the outside of the building to accommodate the fireplace.

Mr. Bullock stated no.

Commissioner Imboden stated in cases of added basement space there were challenges with secondary egress and he asked if the applicant had discussed that with the City's building department and the possibility of requiring secondary egress from that space?

Mr. Bullock stated it was his understanding that the secondary egress would be necessary if the room was a bedroom; and they had not intended to have a bedroom in that location.

Commissioner Whitaker stated the project was well done and it recognized all the historic assets that needed to be maintained and he was in support of the project.

Commissioner Whitaker made a motion to approve DRC No. 4303-07 and AA 171-08, Bullock Residence with the conditions contained in the Staff Report, recognizing the item was categorically exempt from CEQA.

Commissioner Imboden stated he appreciated that the project before them was a very reasonable size for Old Towne and that the bulk and mass that was being added was below grade and it had its place in Old Towne. The removal of non-historic elements would certainly bring the home into better status with the neighborhood. He had no issue with the porch, as the porch that existed was not the original historic porch and he felt

removing and replacing the porch as presented had not taken the project away from any historic status.

SECOND: Commissioner Merino
AYES: Commissioners Cunningham, Imboden, Merino, Steiner and Whitaker
NOES: None
ABSTAIN: None

MOTION CARRIED

NEW HEARINGS:

(4) CONDITIONAL USE PERMIT NO. 2736-08 – CNI SCHOOL

A proposal to occupy 18,246 square feet of a 23,790 square foot office building. The business complex consists of seven (7) buildings having 705 parking spaces for the entire complex. The proposal requests to be allowed to have an ultimate enrollment of 105 on-campus students and 26 staff members. A Conditional use Permit is required for the school use and for the code alternative parking standards proposal.

LOCATION: 702 W. Town and Country Road #D

NOTE: The proposed project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per State CEQA Guidelines 15301 (Class 1 – Existing Facilities) because the project proposes to occupy an existing building with a new tenant.

RECOMMENDED ACTION:
Adopt Planning Commission Resolution No. 13-09 approving the establishment of a trade school.

Commissioner Whitaker stated he would be recusing himself from the item presentation due to a possible conflict of interest.

Associate Planner, Robert Garcia presented a project overview consistent with the Staff Report.

Chair Steiner opened the item for any questions to Staff.

Commissioner Merino stated he understood in the Staff Report it appeared that the only way to bring the project, from a parking perspective, into line would be to count on 7% of students using public transportation or carpool and a 3% vacancy rate.

Mr. Garcia stated that was correct for the morning session of classes.

Commissioner Merino stated from the Staff Report he was assuming that was the worst case scenario.

Mr. Garcia stated that was correct.

Commissioner Merino asked if the applicant had provided to Staff any evidence that 7% of the students attending the existing school facility actually used public transportation or carpooled.

Mr. Garcia stated he understood that those numbers provided were based on the existing facility. One facility that was located in Orange and another facility that was located outside of Orange.

Commissioner Merino asked if he had been given any data that supported the 7%.

Mr. Garcia stated he had not.

Commissioner Merino asked if the landlord or company that owned the facility had somehow committed to a 3% vacancy.

Mr. Garcia stated no they had not; it was a part of the analysis.

Commissioner Merino stated he asked the question as he felt the landlords efforts would not be to maintain a vacancy rate, unless there was some historical data, both factors were based on assumptions in order to make the parking work?

Mr. Garcia stated that was correct.

Chair Steiner asked on the 3% figure was he aware of how that percentage had been arrived at, or was it randomly selected?

Mr. Garcia stated that was based on the numbers the applicant had provided Staff on their vacancy rate that they had experienced in the past.

Chair Steiner stated there was some empirical data for that estimate.

Mr. Garcia stated that was correct.

Chair Steiner opened the hearing and invited the applicant to step forward.

Applicant, Phillip Schwartze, address on file, stated the President of the college and a representative from the landowner were both present. The information that was provided in regard to parking was based on a parking and traffic study prepared by a traffic consultant that was submitted along with their application. CNI had been in the complex with their other college for over 10 years and due to a fire they had relocated to another property. They had been gone for quite some time; that particular business had done well in the training of medical personnel. There was a strong demand for that training and they felt it was a good time for the expansion. One of the issues had been parking. They had completed various counts and he had been involved with that site for about 10 years. During that time he had not experienced more than 70% of the parking being utilized during any point in time and the reason was that there was some indication of what was

not happening in real life, but what was happening with the code. It happened in Orange and other cities. There was more than enough parking and it was the property owner's intent to have 110% occupancy, if it could be done, nevertheless he was certain the project would have adequate parking, particularly with the evening session. The worse case scenario had been presented.

Commissioner Merino stated he appreciated that the applicant had been on the site and had not experienced a more than 70% occupancy rate; however, the school had not had the amount of students that were proposed with the application and the location with students coming with cars to attend a morning class. He asked if there was anything other than empirical or anecdotal evidence that actually showed that some of the students that would be attending would be utilizing public transportation or a carpool situation.

Mr. Schwartze stated a parking study had been submitted with the project. The study reviewed not only their college, but other colleges. He had his own experience with the other schools, how students arrived. That was the information that he had obtained. There were not more than 50 spaces utilized at one time.

Commissioner Merino asked if the October 3 letter addressed to Jim Buffington and signed by Mr. Sharma and Dennis Pasqual was the study he was referring to?

Mr. Schwartze stated that was the parking study. He was not certain how much of the study the Commissioners had received. There was a parking study.

Commissioner Merino stated he wanted to verify that was the study the applicant was referring to.

Chair Steiner stated the line of inquiry had been justified with the assumption behind the 3% vacancy rate and the 7% public transportation/carpool rate, and if those assumptions were incorrect the concern would be that a parking problem would result. If he understood the basis of the applicant's assessment of the parking analysis, would it be correct to say that even if those assumptions were incorrect that a parking problem would not occur?

Mr. Schwartze stated they had conducted counts as early as Thursday of last week, both in the morning and afternoon, and there was a better part of 200 parking spaces available.

Chair Steiner stated that would have been a count that had been conducted prior to development or imposition of new students.

Mr. Schwartze stated that was correct.

Chair Steiner stated assuming that the data that the applicant relied on in presenting the parking plan was invalid for some reason; he asked would it be the applicant's position that if the data were to be invalid and with the proposed project, as presented, a parking problem had not been anticipated?

Mr. Schwartze state they had not anticipated a problem and they certainly had not wanted to create a problem for their students. The landlord had existing tenants and they had looked at the existing individual businesses and taken that information into consideration for the parking study. He stated, without question, he believed there would be adequate parking.

Chair Steiner brought the item back to the Commission for further discussion.

Commissioner Imboden stated there was a standard condition that was generally placed on similar projects, Condition No. 9 which read: The trade school shall submit to the Community Development Director an annual report and in that report any parking impacts onsite or in the surrounding neighborhood. He asked Staff, should a report such as that be submitted in the next year or two that there were negative impacts onsite or in the neighborhood; he felt that condition would not give the City an opportunity to move back on an approval and what was Staff attempting to do with that type of condition?

Mr. Garcia stated the condition would provide the City an opportunity to remedy a negative situation. He felt language could be added that included revocation, if the City felt they needed to pursue that avenue. Primarily the City would want to work with the application to resolve the situation.

Assistant Community Development Director, Ed Knight stated he felt possible amendments could be considered. The intent of the condition was if a report was filed that showed parking problems, the City would want to bring that back to the Commission to look at other solutions such as reducing the morning class size or increasing opportunities for carpooling and/or re-striping of parking spaces. They would want to open up any and all ideas to correct the situation. He felt adding additional language, such as: If there were problems shown in parking studies, the item shall return to the Planning Commission for further analysis or recommendations to alleviate any parking concerns.

Commissioner Imboden asked if that made legal counsel nervous at all.

Chair Steiner asked Assistant City Attorney, Gary Sheatz to what extent would the presence of a remedy be, that was implied by the mere existence of a condition. If the condition was there, would not failure to comply trigger revocation proceedings?

Mr. Sheatz stated revocation would not be the only answer; contained in that section would also be modification. Those could be the potentials of occurrences if the parking became an issue and the City was receiving reports that there were parking impacts. He agreed with the suggestion of Commissioner Imboden to include additional language which would make the situation clear to all parties.

Chair Steiner asked if Mr. Knight or any of the Commissioners had a preference to the additional language for that condition.

Commissioner Merino stated he would support additional language being added based on the impact of the assumptions made. He had just verified the traffic study which he felt

was not as clear as the applicant had noted and it gave him further concern regarding the impacts. He would support the addition of language to the condition.

Chair Steiner asked Commissioner Imboden if he wanted to craft the language to the condition.

Commissioner Imboden stated he would leave that to Staff.

Chair Steiner asked Mr. Knight if he and Mr. Garcia had an understanding of what the Commission was wanting and asked if they felt comfortable in adding the additional language.

Mr. Knight stated yes that was fine. The additional sentence would be along the lines of if the studies show any type of parking impact, the item shall return to the Planning Commission for further consideration and possible modification of the CUP.

Commissioner Imboden made a motion to adopt PC Resolution No. 13-09 approving Conditional Use Permit No. 2736-08, CNI School, subject to the conditions contained in the Staff Report and with the modification to the language of Condition No. 9.

SECOND: Commissioner Cunningham
AYES: Commissioners Cunningham, Imboden, Merino, Steiner
NOES: None
ABSTAIN: None
RECUSED: Commissioner Whitaker

MOTION CARRIED

(5) CONDITIONAL USE PERMIT NO. 2738-08 AND DESIGN REVIEW COMMITTEE NO. 4401-08 – BOB'S BIG BOY

A proposal to establish a new 4,589 square foot restaurant with beer and wine service via a Type 41 (On-Sale Beer and Wine-Eating Place) ABC license. Exterior façade and interior tenant improvements are proposed to the restaurant including a 720 square foot outdoor dining area.

LOCATION: 1623 W. Katella Avenue #102

NOTE: The proposed project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per State CEQA Guidelines 15301 (Class 1 – Existing Facilities) because the project consists of the Operation and licensing of an existing private structure.

RECOMMENDED ACTION:
Adopt Planning Commission Resolution No. 12-09 approving a Type 41 ABC license with a Finding of Public Convenience or Necessity and exterior façade modifications.

Senior Planner, Chad Ortlieb presented a project overview consistent with the Staff Report.

Chair Steiner asked Mr. Ortlieb for the record and the public's benefit, if he could briefly read through the items for overriding considerations, those items on page 9, items 1 through 8. He felt they were useful and they had merit in the Police Department's recommendation.

Mr. Ortlieb stated the Orange Police Department had recommended approval based on the overriding considerations which he read for the record.

Chair Steiner opened the item for any questions to Staff, there weren't any. Chair Steiner opened the hearing and invited the applicant to step forward.

Applicant, Bobby Sawhney, address on file, stated he was available for any questions the Commissioners might have.

Chair Steiner asked the applicant if he had read and reviewed the conditions and if he was in agreement with those conditions?

Mr. Sawhney stated yes he had and he was in agreement. He stated they were experienced license holders and the proposal called for a Type 41 license, all the other restaurants in the complex held Type 47 licenses.

Chair Steiner asked the applicant, for the public's benefit, could he differentiate between the different types of licensing?

Mr. Sawhney stated the Type 41 licensing was for beer and wine only, Type 47 licensing was for a full bar. They were seeking a Type 41.

Applicant, Tracy Nonnemacher, address on file, asked Staff, on Condition No. 41, was that part of what they were seeking approval on in their presentation?

Chair Steiner asked the applicant if she was referring to the requirement to submit a project water quality plan due to the outdoor dining area being subject to cleaning by water.

Ms. Nonnemacher stated they had a concern as there had been an existing outdoor patio approved and they were not certain why the water quality plan was being required.

Mr. Ortlieb stated with new restaurants or a restaurant going into a space where a restaurant had not previously existed during the last 6 months, there was a requirement for a non-priority water quality management plan. It was a housekeeping provision to ensure that outdoor seating areas were not just hosed down to the gutter.

Chair Steiner asked the applicant if she was clear on that issue.

Ms. Nonnemacher stated yes.

Mr. Sawhney stated there had been a water quality plan that had been completed by the landlord. He could get a copy to Staff and would that fulfill the requirement for a water quality management program?

Chair Steiner asked when that report had been prepared.

Mr. Sawhney asked the landlord, who was present, when his water quality management program had been prepared?

Chair Steiner asked Mr. Ortlieb if the applicant had a report that had been prepared 2-3 years ago, would that be satisfactory.

Assistant Community Development Director, Ed Knight stated without looking at the plan he could not speculate whether it would suffice. The water quality regulations governed that. The theory would be that it would, however, not know until they reviewed the information submitted.

Chair Steiner asked Assistant City Attorney, Gary Sheatz if there was a way to incorporate into the language of Condition No. 41 the possibility that the preexisting and already approved water quality management plan could be reviewed by Staff and its applicability determined?

Mr. Sheatz stated that language could be added to give the applicant reassurance, ultimately whether it qualified or not was something Staff would not be able to determine until after their review of the plan.

Chair Steiner stated that there could be the possibility that a new water quality management program may be needed or the possibility that they would not need to prepare one. He asked the applicant if it was a condition they could accept.

Mr. Sawhney stated yes, they understood. They would furnish their information to Staff for review.

Ms. Nonnemacher asked, for item No. 38, it stated no logos or signs may be approved for any patio umbrellas. She wanted to verify that they could use the Bob's Big Boy logo on the umbrellas with an approval from Staff.

Mr. Sawhney stated they were seeking clarification on what could be used.

Mr. Ortlieb stated the sign code had not contained particular information for outdoor furniture and umbrella signage. The condition was carried over from prior approvals and was in line with the Stadium Promenade Sign Program. The statement was actually accurate in asking for no logos or signs, as it was an item that Staff could not approve.

Mr. Sawhney stated he believed the logo situation would be resolved as the landlord had a sign plan submitted through the City and that was the reason the signage was being submitted separately.

Chair Steiner stated, in reading the language, it stated that Staff could not approve logos or signs; however, it had not stated they could not have them.

Ms. Nonnemacher asked if the landlord could approve the logo use.

Chair Steiner stated he could not interpret the information, but they were bound by the language of the condition.

Mr. Sawhney stated they had worked out with the landlord their plans for signage.

Commissioner Merino stated he felt they were getting into a scenario where they were getting into the Staff's knickers, and if they needed to clarify the condition for the applicant that was one issue. There was some negotiating that he believed needed to occur outside of the hearing between Staff and the applicant, and that the condition should remain the same.

Chair Steiner opened the hearing for Public Comment.

Robert Atkinson, address on file, stated it was the 5th time he had appeared before the Planning Commission over the last 3 years. He thanked the City and the Planning Commission for the work they had done over the last few years. Bob's Big Boy was their last tenant in the shopping center. They had been working with Mr. Ortlieb on the sign criteria and they were nearly to completion with their submittal. The sign program should provide the tenant, if approved, with their needs. He suggested, on item No. 38, consideration be given to the last sentence, any logos or signs may be approved by Staff or that table umbrellas be consistent with the City's sign criteria. If the sign criteria was approved and it would allow logos, it would not be in conflict with the word no. Umbrella logos would be allowed in the sign criteria currently being processed; he wanted to remove any potential conflict.

Mr. Ortlieb stated that would be a possible option and he had no concerns regarding that request.

Chair Steiner closed the public hearing and brought the item back to the Commission for discussion.

Commission Whitaker stated he felt the proposal was very good and a good site for a family-oriented restaurant and he had no issue with the beer and wine application. He had not felt there was a need to add additional criteria regarding the pilasters and agreed with the Design Review Committee's recommendation. He felt a minor correction should be made to Condition No. 38, to change the sentence to read: logos or signs, if any, on the proposed table umbrellas must be in compliance with the Century Stadium Promenade sign program as approved by the City.

Chair Steiner asked the applicants if that language was agreeable, they nodded in agreement.

Commissioner Imboden asked if the statement should read in compliance with the municipal code for signage. Regardless of what the center prepared, it might not comply with the City's municipal requirement. The signage package was not before them and he had not want to approve or deny it.

Commissioner Whitaker stated he could modify the wording to include the municipal code.

Mr. Ortlieb stated the City code contained a provision for large shopping centers over 25 acres, which the Stadium Promenade qualified for and there would be a provision for the deviation to the sign code. If they were to establish that as the condition, it might be prohibitive in the future, outright, for umbrella signage.

Commissioner Whitaker asked if the additional qualifier was added, per the code, it might not allow the approval of what the applicant was seeking. There was an exception to the code that stated a large shopping center may have a different program as long as the program was approved by the Planning Department, and in stating, as per the code, would they not be complying with that?

Mr. Ortlieb stated he was correct.

Commissioner Whitaker made a motion to adopt PC Resolution No. 12-09 approving Conditional Use Permit No. 2738-08 and Design Review Committee No. 4401-08-Bob's Big Boy, subject to the conditions contained in the Staff Report with noted modification to Condition #38 and noting the item was categorically exempt from CEQA.

SECOND: Commissioner Merino
AYES: Commissioners Cunningham, Imboden, Merino, Steiner, and Whitaker
NOES: None
ABSTAIN: None

MOTION CARRIED

(6) CONDITIONAL USE PERMIT NO. 2739-08 AND DESIGN REVIEW COMMITTEE NO. 4373-08 – AT&T CHILLER

A proposal to replace an existing rooftop chiller and to provide a 12.5 foot high screening wall around the replacement chiller and other existing roof-mounted mechanical equipment. A CUP is requested and required to allow the chiller and screening walls to exceed the 32 foot height limit of the Office Professional zoning district.

LOCATION: 911 E. Chapman Avenue

NOTE: The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15301 (Class 1 – Existing Facilities). This exemption applies to the project because only mechanical equipment replacement and façade changes are proposed to the building and no new area is being created.

RECOMMENDED ACTION:

Adopt Planning Commission Resolution 11-09 approving the replacement of an existing roof mounted chiller with a new chiller and screening wall that exceeds the 32 foot height limit.

Senior Planner, Chad Ortlieb presented a project overview consistent with the Staff Report.

Chair Steiner opened the hearing for any questions to Staff.

Commissioner Whitaker stated that it appeared from walking the site that the screening was on the west and north sides where the current chillers existed and he asked if that was the site of the replacement chillers? It was along Cambridge and the north side of the property.

Mr. Ortlieb stated that was correct.

Commissioner Whitaker asked how high was the screening.

Mr. Ortlieb stated it would be 12.5' above the roof level. Currently there was a 2 ½' parapet on the roof line of the building; the screening would extend 10' above that.

Commissioner Whitaker stated, in walking the site, it appeared to him that they could install a lower screening, lower than the actual height of the chillers, due to sight line and it could keep the massing down.

Mr. Ortlieb stated a sight line study had not been provided. The concern was to ensure that the full height of the chiller was screened to ensure that the noise issues were addressed.

Commissioner Imboden stated he was a bit confused as to where the screen had and had not occurred. He understood the screening was on the west and north sides, with nothing on the south or east sides. He asked why there was not screening on all sides.

Mr. Ortlieb stated that was correct. The main areas of sound concern were to the residential neighborhoods to the north and west of the site. As far as the viewing of the chiller devices, the predominant view was from Cambridge Street. The positioning of the units was closest to that side as well and from other vantage points the equipment was not as visible from Chapman or Waverly. Rather than adding more massing and adding more screening around the entire building, they concentrated on the predominantly visible areas.

Commissioner Whitaker stated he was able to view that when walking along Waverly and the existing chillers could not be seen from those sides. The concern he had was that the screening walls on the north and west sides appeared to be high. In attempting to keep the massing down, he asked would a sight line study be used to determine the amount of screening that was needed.

Chair Steiner asked if the reason for not having a sight line study was noise, and because the primary focus was noise, why would they only shield two sides.

Mr. Ortlieb stated the noise would be bouncing off the walls back towards Chapman Avenue and had a larger distance to travel; and the larger distance area would dissipate the noise. There was not much of a concern for the south and east sides of the equipment. The equipment was located near the west side of the building and there was a greater distance for traveling across the building before it would reach the commercial area.

Chair Steiner asked about the sight line issue and the visual mass?

Mr. Ortlieb stated he was not an expert in noise reduction, and he could not state what would happen if the screen would be cut off at the exact height of the chillers. He would defer that question to the applicant.

Commissioner Merino stated it was a replacement project and was he aware if the equipment was a like for like, a chiller that was being replaced by another chiller with the same air handling capacity. Technology and mechanical air handling technology had changed quite a bit and he had experience with air condensing units and asked had the previous units contained the same number of units? If more fans or mechanical air handlers were being added, he wanted to know what were the components that were generating noise within the systems, those fans stopping and starting through out the day would be creating the noise factor.

Mr. Ortlieb would defer the question to the applicant.

Chair Steiner opened the hearing and invited the applicant to step forward.

Applicant, Todd Haggenmiller, address on file, stated essentially they would be removing a chiller that had reached the end of its life and replace it with a new one – like for like. They would remove one and install a new one. The question regarding noise was that the noise had come from the fans.

Commissioner Merino stated the existing system was a chilled water system and he asked how many fans were there and would they be adding more with the new system.

Mr. Haggenmiller stated the air handlers would remain fixed, as they were in the building. The actual chiller was what would be replaced. The number of fan units in the condensing equipment was the same with the replacement of a 90 ton chiller.

Commissioner Merino stated in looking at the catalog cut on page 6 of 10. He was looking at a couple of fan units on the top of the unit.

Mr. Haggenmiller stated he believed there would be 4 fans.

Commissioner Merino stated he understood that the existing chilled water system contained 4 fans. Since noise traveled up he asked if the fans were mounted on the top.

Mr. Haggenmiller stated the fans were on the top.

Commissioner Merino stated the equipment was possibly quieter and were they attempting to present to the Commission that the 4 fans on the new system would be quieter than the 4 fans on the existing system?

Mr. Haggenmiller stated that was correct with new technology there had been vortexes cut off of the back of the fan blades and with the arrangement they would break the air with less noise.

Commissioner Merino stated the baffling would be on the sides which was more of a visual and would not necessary address the noise coming from the top of the unit.

Mr. Haggenmiller stated yes and no. The coils had air that was drawn in from the sides and drawn up through the top. There would be noise from the sides which would be mitigated and from a visual perspective of the direct line of sight.

Commissioner Whitaker asked why the screen was at 12' and if he felt they could go lower?

Mr. Haggenmiller stated it was a redundant set up; apparently they were operating their equipment on the south side of the building. That chiller, when installed, was at 12-14' high and it had exceeded the screen wall. If the new chiller was the only item that needed screening they could bring the height down, however, there was other equipment on the roof that required screening. On the south side of the building there was a screen that had been added for a recent generator project and that would block a majority of the view from the south. He was all for a reduction in height.

Commissioner Imboden stated he would not want the wall to be any higher than necessary considering perspective and sight lines. He felt there might be a few things that had been overlooked, and again he was not quite clear from reviewing the plans as to what was existing and what it would ultimately look like from the south. Directly across the street to the south was a two-story mixed use structure with residential on the second level. He had concerns about the noise level and the visual impacts. The closest residential site to this building appeared to have been ignored.

Mr. Haggenmiller stated that residence was near the south side of the building and the equipment was on the opposite side and almost double in distance from where it appeared on the other side.

Commissioner Imboden stated, regardless of the distance, it was still visible.

Mr. Haggenmiller stated he thought that a church was located directly across the street.

Commissioner Imboden stated that was not correct. There was also a two-story structure to the north on the west side of the street and they probably covered that with the screening. He was not certain they had that same consideration to the property owners to the south.

Mr. Haggenmiller stated there was an existing screen wall. If looking directly through, there was a small path for a walk through. It could be covered to block that view. The main reason it was not screened was due to access issues. They could close it off.

Commissioner Imboden stated he was not clear as to the impacts the changes had to the south side of the property and he wanted to get clarification on that elevation.

Mr. Haggenmiller asked, in looking at the site from the south, was he speaking to the view from the south from ground level or from a second floor view?

Commissioner Imboden stated he was not asking for a perspective, he was asking for an elevation regardless of the height, it would be a flat image.

Mr. Knight stated the height of the screen that they were speaking of was 12'6".

Commissioner Imboden stated there was screening on two sides and he was not clear what was screened and what was not screened.

Mr. Ortlieb stated, looking from a straight elevation standpoint, there would be screening on the north and west side and there would not be screening on the south and east elevations.

Commissioner Imboden stated the applicant had stated there was an existing screen on the south side.

Mr. Haggenmiller pointed out a drawing and referred the Commission to look at a dark line that made up the proposed screen. On the south side the screen jogged to the east and it came directly south again and tied into the existing screen, which was noted as a lighter drawn line on the plans that were presented.

Chair Steiner clarified that there was an existing screen wall on the south side that would remain in place.

Mr. Haggenmiller stated it was not part of the proposal, it was an existing wall and it would remain in place.

Commissioner Imboden asked what was the height of the existing screen in relationship to the proposed screen.

Mr. Haggenmiller stated the existing screen was 8' and the proposed screen would be 12'.

Chair Steiner asked what was the height of the existing screen to the south?

Mr. Ortlieb stated it was 10' above the top of the existing parapet; 12' off of the roof.

Mr. Haggenmiller stated with a sight line study, they had pushed the screening in as tight as they could in order to minimize the roof equipment and the setback. It required a

higher wall to screen the equipment.

Commissioner Imboden stated he was pleased that they were able to clarify some issues. They were speaking to an issue that was over the allowable height and it was certainly critical that they obtain clarification on that. It was the intent of the project to screen for both aesthetic purposes and for noise issues and they wanted to insure those two factors were addressed. In concept he was not opposed to exceeding the 32' height limit. Normally when they were butting up so close to residential he would tend to pull back from that, however, it was the opposite case with this project as it was an existing condition that needed to be dealt with and if he had property near that location he would want screening of the equipment. He was in support of the proposed project through the clarification that had been presented.

Commissioner Merino stated sight line and aesthetic issues were important issues, but for his purposes it was much more important to address the acoustic issues and if the noise with the change out of the chiller equipment had been greater it would have been a much larger impact on the surrounding properties. Based on the assurances from the applicant and the document included from the acoustic consultants, the acoustic impacts would be less than the existing equipment allowed and he would be in support of the project.

Commissioner Imboden made a motion to adopt PC Resolution No.11-09 approving Conditional Use Permit No. 2739-08 and Design Review Committee No. 4373-08-AT&T Chiller, subject to the conditions contained in the Staff Report.

SECOND: Commissioner Merino
AYES: Commissioners Cunningham, Imboden, Merino, Steiner, and Whitaker
NOES: None
ABSTAIN: None

MOTION CARRIED

(3) ADJOURNMENT

Chair Steiner made a motion to adjourn to the City Council Budget Session on Tuesday, March 24, 2009 at 3:00 p.m. in the Council Chambers.

Mr. Knight stated the meeting could be at 3:30 p.m. and he would provide additional information to the Commissioners.

SECOND: Commissioner Merino
AYES: Commissioners Cunningham, Imboden, Merino, Steiner and Whitaker
NOES: None
ABSTAIN: None
ABSENT: None

MOTION CARRIED

MEETING ADJOURNED @ 8:19 P.M.