Minutes

Planning Commission April 6, 2009
City of Orange Monday–7:00 p.m.

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

STAFF
PRESENT: Leslie Aranda Roseberry, Planning Manager
Gary Sheatz, Assistant City Attorney
Robert Garcia, Associate Planner
Sandi Dimick, Recording Secretary

ADMINISTRATIVE SESSION:

Chair Steiner opened the Administrative Session @ 6:52 p.m. with a review of the agenda. He stated he would ask for a moment of silence after the flag salute to honor the police officers that had been recently murdered in the line of duty in Oakland and Pittsburgh.

Item No. 1 and 2 meeting minutes. Commissioner Imboden and Commissioner Merino stated they would abstain from the vote on the March 2, 2009 minutes as they had been absent from that meeting. All were present for the March 16, 2009 meeting. Chair Steiner stated they would take separate motions on Items No. 1 and 2.

Item No. 3, Carl's Jr.: Chair Steiner asked if all Commissioners were o.k. to hear and vote on the item. All Commissioners stated they were. Commissioner Imboden stated he would have questions on the Item. Commissioner Merino stated he would have questions.

Commissioner Merino stated he was being called by the Navy to active duty on July 10, 2009. Commissioner Whitaker asked if this was a call up from the reserves. Commissioner Merino stated yes it was and the assignment was for a year and typically he would serve 6 months. He felt it should not affect his position on the Commission. He would be stationed in Port Hueneme. Assistant City Attorney Gary Sheatz stated there was a provision in the personnel code for employees called up for active duty. He imagined the situation would not be treated much differently for Commissioner Merino. Chair Steiner asked if an interim appointment could be made in his absence. Mr. Sheatz stated that would most likely be the case.

Chair Steiner asked for any additional news from Staff? Planning Manager, Leslie Aranda Roseberry stated Step Up Recovery had been heard by the City Council. Chair Steiner stated he had heard that the meeting had gone past 11:30 p.m. with 55 speaker cards submitted. Commissioner Merino stated he attended the meeting. Commissioner Whitaker stated that he had watched the City Council meeting on TV. Mr. Sheatz stated the applicant's attorney, Poland from Washington, had a connection with a D.O.J. attorney and they were investigating whether the City discriminated against the type of

housing in the Step Up Item. The attorneys wanted to interview Council and Committee Members. The City's advice was for Council and Committee Members to not enter into dialogue with the applicant's attorneys.

Administrative Session closed at 7:00 p.m.

REGULAR SESSION:

PUBLIC PARTICIPATION: None

CONSENT CALENDAR:

(1) APPROVAL OF MINUTES FROM THE REGULAR MEETING OF MARCH 2, 2009

Chair Steiner made a motion to approve the minutes from the regular meeting of the Planning Commission on March 2, 2009 as written.

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

MOTION CARRIED.

(2) APPROVAL OF MINUTES FROM THE REGULAR MEETING OF MARCH 16, 2009

Commissioner Whitaker made a motion to approve the minutes from the regular meeting of the Planning Commission on March 16, 2009 as written.

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

MOTION CARRIED.

NEW HEARINGS:

(3) CONDITIONAL USE PERMIT NO. 2680-07, MINOR SITE PLAN NO. 529-07, DESIGN REVIEW COMMITTEE NO. 4283-07 AND ADMINISTRATIVE ADJUSTMENT 152-07 – CARL'S JR.

A proposal to construct a new 2,830 square foot fast food restaurant with a drive thru window in a redevelopment project area.

LOCATION: 145 N. Tustin Street

NOTE: The proposed project is categorically exempt from the

provisions of the California Environmental Quality Act (CEQA) per State CEQA Guidelines Section 15303 (Class 3 – New Construction) because the project is a single structure that is less than 10,000 square feet and where all necessary public services and facilities are in place.

RECOMMENDED ACTION:

Adopt Planning Commission Resolution 14-09 to allow a new 2,830 square foot fast food restaurant with a drive thru.

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

Chair Steiner opened the item for any questions to Staff.

Commissioner Whitaker stated that one of the things they generally received in their Staff Report when there was an issue of parking was a chart that gave information on the current counts, what was requested, and the difference with regard to the code. The reduction of 28 spaces, with 250 spaces and that being 68%, he asked if the applicant was seeking a variance to be below the required parking spaces.

Mr. Garcia stated there was an Administrative Adjustment for the parking, as the reduction in parking represented a 7% reduction, which was below the 10% threshold. If it had been 10% or more, the applicant would be required to seek a variance.

Chair Steiner stated there was a brief reference in the Staff Report that the applicant might want the drive-thru to be open 24 hours, was that correct?

Mr. Garcia stated that was correct.

Chair Steiner asked to what extent had that been addressed in the conditions.

Mr. Garcia stated there were no conditions related to a 24 hour drive-thru. It would be permitted in the particular zone for the business.

Chair Steiner stated in the past with other applicants requesting a 24 hour drive-thru, there had been some issues, speaking specifically about the Walgreens at the south west corner of Tustin and Chapman. The concerns had been related to noise issues from the neighbors. He asked if there were any concerns with this application.

Mr. Garcia stated he was not aware of any concerns. There were no residential properties bordering the property. The closest residential area was across the street behind the commercial center, which was quite a distance. It was to the north of the site.

Chair Steiner clarified that it would be behind an additional building, with a building between the applicant and the closest residential area.

Mr. Garcia stated that was correct.

Commissioner Imboden stated in reviewing the site plan and the Alta Survey, he had not seen the proposed project laid out with the existing conditions. He asked if he was missing that information from his packet and was it something that had been provided, information that showed the center and how the applicant's site integrated into that. He was interested in reviewing that as he wanted to see how the setback worked in relationship to the other buildings there. He stated it had been his recollection that the City had changed its minimum parking spaces to 9' and it appeared the parking on the proposed plans came in at 8'6"; he wanted to insure that they addressed that up front and would not run into a situation where there would be a greater parking deficiency.

Mr. Garcia stated the Alta Survey had been performed to get an idea of what was out there in regard to parking, it was not intended to show the proposed site plan as an overlay.

Chair Steiner asked if there was a map that showed the respective position of the proposed structure with regard to the other structures on the site.

Mr. Garcia stated not in the packet that the Planning Commission had before them. He might have access in the file to an older plan that had the information for the entire site.

Commissioner Whitaker stated because the Commission did not have that before them, when he looked at the very first plan overview, page A-1, it implied that the spaces that were remaining in the center were on the diagonal heading to the east and in looking at the Alta Survey would that be interpreted that the two first lanes of parking (double lanes) were being eliminated, and lane 3 would remain?

Mr. Garcia stated that was correct. The first two lanes would be eliminated.

Chair Steiner stated in looking at the Alta Survey the first two on the left?

Mr. Garcia stated the first two islands, parking islands would be eliminated.

Chair Steiner asked about the issue in respect to the parking spaces?

Mr. Garcia stated when the proposed project had been submitted the ordinance had not taken effect in regard to the new parking dimensions. The proposed project would remain with the 8'6" spaces.

Commissioner Imboden stated going back to the issue with attempting to super impose the plans, looking at L-1, in the upper left hand corner there was a call out of C4 and he assumed that was the existing drive apron. The entry would be off of Tustin Avenue straight in line with the driveway necessitating an immediate right into the drive-thru lane.

Mr. Garcia stated that was correct.

Chair Steiner opened the hearing and invited the applicant to step forward.
Applicant, Wayne Goding, address on file, stated he was the project manager for

construction. They had gone over and over issues with Staff and they had gotten the project this far. Some issues still remained, some major and some minor on the Conditions of Approval.

- Item No. 14 indicated that they would submit a photometric analysis of the parking lot area, he would like that to be changed to be a study of their site. He felt the way the condition was worded that it appeared they would be required to submit a study for the entire property.
- Item No. 20 he understood Mr. Garcia's concern in regard to public safety with the queuing, they could not accept restricting or blocking the drive-thru lane as a Condition of Approval. They would like to work with Planning that in the event an issue arose they could resolve it without shutting down the drive-thru; as 65% of the business was with drive-thru customers.
- Item No. 21 they had permeable paving on the site and the item indicated more permeable paving, he wanted the word more removed.

Chair Steiner stated with regard to Item No. 21, line 3, and site design features more permeable paving; he wanted the word **more** removed and why was that?

Mr. Goding stated they had already indicated two areas that would include pavement and they had not wanted to be required to add more.

Chair Steiner stated the concern was that Condition No. 21 suggested that what was there was insufficient in some way.

Mr. Goding stated the permeable paving was in place where the grading indicated run off and there was filtering systems in the drive-thru area that would act as a filtering system. The permeable pavement was a part of that system. The Water Quality Management Plan was based on everything that had been put together thus far and they wanted to eliminate the word more.

Chair Steiner stated thank you and continue.

Mr. Goding stated they had no problem with the requirement to install a fire hydrant, domestic water service, fire service and landscape service, but they wanted to eliminate the plural – they would install a fire hydrant, a water service to the building, fire service and landscape service to the building.

- Item No. 25, he had spoken with Ms. Takahachi about that and he understood Item No. 25 and it was no longer an issue.
- Item No. 38 was a condition to relocate the existing water connection from Tustin to the water main on Chapman, again he had spoken with Ms. Takahachi and it was not a condition which she required and he would like that condition to be removed.
- Item No. 41, again they had gotten into plurals and they would want to provide an on-site fire hydrant.

Chair Steiner stated on this Condition, there was a parenthetical use of the **"s"**, wherein

the other condition, it was not a parenthetical use.

Mr. Goding stated they would agree to install one.

- Item No. 42 for the number and location of the hydrants they wanted that to be narrowed down to just 1.
- Item No. 45, which stated all streets less than 36' shall be marked. They were not doing anything in the streets and he was not certain why the condition was included.
- Items No. 46-49 he felt they would not apply to their project and he was asking for the removal of those Conditions.

Chair Steiner asked Mr. Garcia if he had an opportunity to note the applicant's concern and could he approach the bench to discuss those items.

Mr. Garcia stated he had noted the concerns.

Chair Steiner stated, in regard to Item No. 14, a photometric study of the entire area, given the size of the property it would not appear necessary to require the applicant to conduct a photometric study of the entire area.

Mr. Garcia stated that was correct and the intention was for the study to be for the Carl's Jr. Restaurant area.

Chair Steiner asked the applicant if that was agreeable and that No. 14 would relate only to the applicant's area.

Mr. Goding agreed with that change.

Chair Steiner stated, in respect to No. 20, the applicant had a concern with the restricting or blocking of the drive-thru lane.

Mr. Garcia stated on that condition Staff was concerned as there was access to the drive-thru lane from the northern area off of Tustin and the eastern side and it could create a bottle neck where traffic could back up heading north and affect the incoming traffic entering from Tustin. With that being the potential, they wanted to restrict the access from that area so that cars would need to drive all the way around and enter the drive-thru from the east and maintain the area's traffic flow.

Commissioner Whitaker stated he understood the concern and the logic; however, that was not how the condition read. He was hearing that the applicant's concern was that 65% of his business came through the drive-thru and he had not wanted the drive-thru access blocked as it would greatly restrict his business. He felt there was a traffic control model that the City used at the In and Out Burger on Chapman, where the queue was directed at high traffic times with the use of cones placed back through the parking lot. He felt Staff was thinking in those terms with that type of model and if there was an issue they would need to block the northern access with the eastern access remaining accessible. Would there be a better way to word the condition, such as: to include re-

directing access to the drive-thru lane.

Mr. Garcia stated the language could be modified.

Commissioner Merino stated he wanted to understand that 65% of the business came through the drive-thru and he wanted to ensure that the applicant understood Staff's concern. There was a likelihood that the situation that Staff was concerned about could occur at an instance of 65% or greater and he felt Commissioner Whitaker's point was well taken. It was an intent to address a situation that was more likely to occur because 65% of the business used that access.

Chair Steiner asked Commissioner Whitaker to restate his question to Staff.

Commissioner Whitaker stated he felt it was a matter of re-visiting the situation if it became an issue and to re-direct access to the queuing or was it truly in Staff's opinion that it would be such an issue that the drive-thru access would need to be shut down?

Mr. Garcia stated Staff wanted an opportunity to re-visit and resolve the situation; it was not Staff's intent to have the drive-thru lane shut down.

Chair Steiner stated the language restricting and blocking could be modified.

Commissioner Whitaker stated a better choice might be re-directing access.

Chair Steiner suggested to strike the language "restricting and blocking"; and add the language "re-directing". He asked Staff if that would work?

Mr. Garcia stated yes.

Chair Steiner asked the applicant if that was acceptable?

Mr. Goding stated yes.

Chair Steiner stated on Item No. 21 for the word more, regarding permeable paving, he asked for clarification?

Mr. Garcia stated the comment was taken from the Water Quality Section from the Public Works Department. He knew that the applicant had been given a preliminary approval to the Water Quality Plan.

Chair Steiner asked if he had any objection to deletion of the word more.

Mr. Garcia stated he had no objection.

Chair Steiner stated on Item No. 24, what was Staff's opinion on the multiple plural uses compared to the lot size, project and over all need?
Mr. Garcia stated with anything having to do with Fire, it was not within Staff's purview to change those Conditions. He would assume one fire hydrant would be sufficient;

however, he could not change that.

Planning Manager Leslie Aranda Roseberry stated Staff preferred the use of a parenthetical "s" as it was dependent on the water and fire plans and they would agree to change that.

Commissioner Merino stated in the review by the Fire Department that would require one or more hydrants, had that review been conducted yet, and would it be conducted after plans were submitted?

Mr. Garcia stated that was correct. Only a cursory review had been completed by the Fire Department.

Commissioner Merino stated that a specific number of fire hydrants had not been identified. He wanted to ensure that they would not restrict the Fire Department's requirements on the site.

Mr. Garcia stated that was correct.

Chair Steiner stated, speaking to the applicant, they were not experts in the area of Fire Department concerns and it could very well be that the Fire Department would be o.k. with one fire hydrant. He was not certain what their position would be, it would be the best approach to correct the "s" to a parenthetical "s" and was he agreeable to that change?

Mr. Goding stated yes, that would be agreeable.

Chair Steiner stated, on Item No. 25, the applicant had indicated it was no longer a concern.

Mr. Goding stated on that matter they needed to keep the Condition in the event that they needed to add a driveway that would have a Fire Hydrant. The condition would cover that need.

Chair Steiner asked what about Condition No. 38?

Mr. Goding stated, on Condition No. 38, he was informed that there was substantial water on Tustin to serve Carl's Jr.

Mr. Garcia stated, per the conversation the applicant had with Ms. Takahachi, he would be in agreement to strike the Condition; it had been added per the previous review.

Chair Steiner asked the applicant if he would be in agreement to allowing the language in that condition to remain until Mr. Garcia could confirm whether the condition was necessary?

Mr. Goding stated he would agree to that.
Commissioner Merino stated they could add the language; if required, in the event the

condition was needed that would cover all parties.

Chair Steiner asked the applicant if he had any objection to that proposed language?

Mr. Goding stated he had no objection.

Chair Steiner stated on Condition No. 41 would it be agreeable if the addition of parenthetical references was made?

Mr. Goding stated he felt that he could work with Staff and the Fire Department on those issues.

Chair Steiner stated there could be the potential that more than one hydrant would be required and that Mr. Garcia would work within the law and the safety requirements to insure what was necessary.

Mr. Goding stated he felt, with the approval on the Carl's Jr. parcel, that only one hydrant would be required.

Chair Steiner stated he had not obtained a degree in fire safety and the applicant could very well be correct. On Item No. 42, again would the addition of the parenthetical "s" be agreeable?

Mr. Goding stated yes.

Chair Steiner stated on Item No. 45, all streets, he asked if Mr. Garcia could shed some light on that condition as there did not appear to be any streets in the project.

Mr. Garcia stated Staff would be comfortable removing the condition, again the condition came from the Fire Department and some of the conditions might not be necessary.

Commissioner Merino stated on Condition No. 49, not exceeding a certain grade for Fire Department access, it was a standard condition and he would be concerned with removing a condition that could potentially affect the Fire Department's access to the property.

Chair Steiner stated he understood the applicant's concern with conditions that he felt would not apply to his project, however, by the same token, if there was no issue with a 12% grade on the project then theoretically there would not be an issue on the project, would that be correct?

Mr. Goding stated without having completed a full grading plan he was not certain if a 12% grade issue occurred on the sight.

Chair Steiner stated the purpose of Item No. 49 would be that in the event a 12% grade issue occurred the applicant would not be allowed to exceed that.

Commissioner Merino stated they were in a "catch 22", the applicant had not completed

their grading plan and the Fire Department felt they needed a generic requirement in the event the grading condition occurred. They would need to rely on both parties to work that out during the approval process.

Chair Steiner stated he felt they should handle Item No. 49 as they had done with the other Fire Department related conditions.

Mr. Goding stated they would probably need to go before the Fire Department and discuss those issues with them; he was in agreement in having the conditions remain.

Chair Steiner asked the applicant if they had addressed all of his concerns?

Mr. Goding stated he thought so.

Chair Steiner opened the hearing for Public Comment, there was none. He closed the Public Hearing and returned the item to the Commission for further discussion.

Commissioner Whitaker stated generally the project had been through the Design Review Committee twice and it appeared there had been a fair amount of give and take to get the project to where it was. Parking was his number one issue and the center where the proposed project would be located appeared to have an over abundance of available spaces. He was in support of the project.

Commissioner Merino stated he concurred that it would be appropriate to move ahead with the project, his concern was often times Police, Crime Prevention and Public Safety and he felt with the applicant's cooperation on some of the Fire Department related conditions he was pleased to move forward with the project.

Commissioner Imboden stated he had the same feelings as to what had already been stated. One comment, for future reference directed to Planning Staff, with a project that was so dependent on the site with egress and ingress, the project had not had its own street access and circulation and flow had been discussed thoroughly with the DRC; there was not a drawing presented to them that had shown site access and in the future it would be an extremely helpful tool as they reviewed such projects. The building setback was also an important element and having that information would be helpful. He felt they had worked the conditions to his satisfaction and he would be in support of the project.

Commissioner Cunningham stated he had nothing to add to what had already been said.

Commissioner Whitaker made a motion to adopt PC Resolution No.14-09, approving Conditional Use Permit No. 2680-07, Minor Site Plan No. 529-07, Design Review Committee No. 4283-07 and Administrative Adjustment 152-07, Carl's Jr., subject to the conditions contained in the Staff Report and with the corrections to Conditions No. 14, 20, 21, 24, 38, 41 and 42, noting that the item was categorically exempt from CEQA.

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

ABSTAIN: None
ABSENT: None

MOTION CARRIED

(4) ADJOURNMENT

Chair Steiner made a motion to adjourn to the next regular meeting of the Planning Commission on Monday, April, 20 2009.

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

MOTION CARRIED

MEETING ADJOURNED @ 7:35 P.M.