Minutes

Planning Commission November 2, 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
Sandi Dimick, Recording Secretary

ADMINISTRATIVE SESSION:

Chair Steiner opened the Administrative Session @ 6:46 p.m. with a review of the Agenda.

Item No. 1, Minutes from the regular Planning Commission Meeting of October 5, 2009. There were no changes or corrections noted. Commissioner Merino would abstain from the vote as he was absent on October 5, 2009.

Item No. 2 Medical Office and Parking Structure. Chair Steiner stated the item was a request for a one year extension on an already approved project. He asked if it was a request by the City or the applicant. Planning Manger, Leslie Aranda Roseberry, stated the extension was an applicant request, and the item was placed on the agenda as a consent item. Chair Steiner asked if there would be any questions on the item. The Commissioners concurred there would be no questions.

Item No. 3, Ordinance Amendment 19-09. Ms. Aranda Roseberry stated she would be presenting the item, which was a City initiated Ordinance. Commissioner Whitaker stated he would have questions on the item.

Chair Steiner asked if the General Plan Update would be finalized at the next Planning Commission Meeting. Ms. Aranda Roseberry stated at the next meeting the remaining discussion on the General Plan Update would be presented for final comments and there were 6 additional items on the agenda.

Chair Steiner asked for any news from City Council. Ms. Aranda Roseberry stated there was nothing to report.

There was no further discussion.

Administrative Session closed at 6:50 p.m.

REGULAR SESSION:

PUBLIC PARTICIPATION: None

CONSENT CALENDAR:

(1) APPROVAL OF MINUTES FROM THE REGULAR MEETING OF October 5, 2009.

Chair Steiner made a motion to approve the minutes from the regular meeting of the Planning Commission on October 5, 2009 as written.

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

MOTION CARRIED

(2) MND 1783-06; MJSP 0480-06; CUP 2683-07; CUP 2689-07; DRC 4178-06 – MEDICAL OFFICE AND PARKING STRUCTURE

A request to extend the entitlements to construct a three-story, 65,370 square foot medical office building and a three-story parking garage with 395 parking spaces on an existing surface parking area with landscape improvements and a Shared Parking Agreement between two parcels. Ordinance No. 12-09 adds Section 17.38.030 and 17.38.040 to the Orange Municipal Code relating to uses made non-conforming due to the General Plan Update and termination of non-conforming uses.

LOCATION: 999 Town and Country Road

RECOMMENDATION:
Approve one-year time extension

Chair Steiner made a motion to approve MND 1783-06, MJSP 0480-06; CUP 2683-07; CUP 2689-07 and DRC 4178-06–Medical Office and Parking Structure, subject to the conditions contained in the Staff Report.

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

MOTION CARRIED

(3) ORDINANCE NO. 19-09 AMENDING TITLE 17 OF THE ORANGE MUNICIPAL CODE RELATING TO EXTENSIONS TO LAND USE ENTITLEMENT EXPIRATION DATES.

The ability for applicants and developers to secure construction financing and move from planning entitlements to being able to complete construction drawings, obtain building permits, and complete projects has been more difficult. The City's Zoning Code does

provide for a one year extension, with such extension request being heard and acted upon by the original final approval body. Ordinance 19-09 amends the City's Zoning Code to change the maximum one-year extension to two years and include a sunset clause.

NOTE: The proposed ordinance amendment is not subject to the provisions of the California Environmental Quality Act (CEQA) because it does not meet the definition of a "project", pursuant to Public Resources Code Section 21065. The proposed ordinance merely offers applicants the ability to request a two year extension to existing entitlements.

RECOMMENDATION:

Adopt Planning Commission Resolution No. 39-09 recommending that the City Council adopt Ordinance 19-09 amending Section 17.08.060 of the OMC relating to extensions to land use entitlement expiration dates.

Planning Manager, Leslie Aranda Roseberry, presented a project overview consistent with the Staff Report.

Chair Steiner opened the hearing for any questions to Staff.

Commissioner Whitaker stated the one question he had was why was there a sunset clause and why the date of January 1, 2012?

Ms. Aranda Roseberry stated Staff wanted to include the sunset clause because of the entitlement limit and the ability for a one year extension that would encourage applicants to complete their projects within a timely manner. If it would be a case where the project would extend out longer than that, there was generally development agreements involved and at the City Council's pleasure zoning ordinance changes, development standards changed and with the extensions, they would be stuck with the older standards. That was the reason for the sunset clause. Certainly over time if it was something that the Planning Commission and City Council chose to change, whether it be the entitlement, the 2 year entitlement that existed where the entitlements were good for two years or the extension, they could do that. The Planning Commission had the option to not recommend the sunset clause to the City Council. Staff had looked at a 2012 date thinking that by then the economy should be well on its way back up and perhaps further extensions would not be needed.

Commissioner Merino stated to address some of Commissioner Whitaker's concerns, building codes changed every three years and many of the codes and regulations had a cycle date or were re-reviewed by a public body and it would behoove them to have the opportunity as those things changed to come back and take another look. To leave it opened ended, it could remove the Planning Commission from having flexibility as a body. He was supportive of having the sunset clause.

Chair Steiner asked if there was anything that would prevent, if the sunset clause was included, its renewal. If for example, the economy improved around the time the sunset clause approached, would there be anything that would prevent the Planning Commission or City Council from extending it further?

Ms. Aranda Roseberry stated it would require another zone change. She deferred the question to the Assistant City Attorney for his thoughts.

Assistant City Attorney, Gary Sheatz, stated he would not contradict Ms. Aranda Roseberry's statement, an amendment to the Ordinance could be just to change the sunset clause; it would offer a lot more flexibility.

Commissioner Imboden stated he had more of an administrative question for Planning Staff, in regard to the projects that would be eligible for the extension, how would that actually be granted? Would it be a blanket that covered any project that had been approved between specific dates or outstanding projects? If a person wanted an extension would that require the applicant returning to the City to apply for that extension?

Ms. Aranda Roseberry stated that component would not change. Currently an applicant was required to come forward to the City to apply for an extension to their entitlements. That request would go back to the approving body, in the same manner that the previous project on the agenda had come before the Planning Commission. If the Design Review Committee had been the final approving body, the project would return to the DRC for the approval of the extension. Staff had reviewed everything that they could find and there were approximately 50 projects outstanding, which had not been constructed. Some of the projects had very recent approvals and Staff wanted to allow those applicants the opportunity to construct their projects. Staff had sent out 46 Public Hearing notices, which were to those applicants that had entitlements still pending.

Commissioner Whitaker asked if an applicant came to the City in 2010 and was entitled, and there was a longer sunset than what was being proposed; in 2012 when the normal entitlements would have expired, would that applicant be able to apply for the extension? Was the intent only for the 50 projects outstanding and not for any new projects?

Ms. Aranda Roseberry stated the intent would be that the extensions would be available for any projects that were currently approved and any new projects that came about until the sunset clause ran out. If an applicant received an approval in 2010 for 2 years and they were able to return prior to the 2012 sunset clause date, they would be able to receive the extension, otherwise once the sunset clause went into effect it would revert back to a one year entitlement extension.

Chair Steiner stated the sunset clause would not refer to the extension.

Ms. Aranda Roseberry stated that was correct, it would be for the time to apply for the extension.

Commissioner Merino stated if he understood the proposal correctly, should the City Council come in and decide to extend the sunset provision, and an applicant came in one year prior to the sunset clause date, that applicant could have the extension as well, based on the time line the Council approved, be that 2 years, 3 years or whatever was decided upon.

Ms. Aranda Roseberry stated it would depend on how the Ordinance was structured. As it stood currently, a current project that had a 2 year entitlement, and had a 2 year extension approved on top of that, the applicant in that particular project would have 4 years to build. If the extension was for 3 years, that would allow a 5 year window of opportunity to build with the sunset clause.

Commissioner Merino stated what he was getting at was that an applicant approved in 2011 could request an extension to 2013 or 2014 and could make an appeal based on their specific concerns, they would have the ability to ask for consideration of getting an approval on another amendment, and he asked if that was correct?

Ms. Aranda Roseberry stated generally Staff received the requests very close to when the entitlement was about to run out. Applicants would get their project on the ground and felt everything was fine and then bumps would occur along the way, whether that was an applicant attempting to build an addition to a home or a very large subdivision. As things occurred along the way the extension request was generally requested near the end of their time frame. She felt the scenario that Commissioner Merino had presented would not occur as they generally received the requests for extensions near the end.

Chair Steiner brought the item back to the Commissioner for further discussion or a motion.

Commissioner Whitaker stated he would be in favor of having a 3 year extension, especially if the consensus was that a sunset clause was required. Simply he felt there was too much uncertainty with respect to the recession. He would also suggest that the sunset clause be January 1, 2013, simply because if an applicant had the courage to bring a project forward in January or February of 2010 their two year entitlements would expire in January of 2012, which would be past the sunset date, which was being proposed in the Ordinance Amendment. If the consensus was that, for flexibility, a sunset date was required and a full 3 years was recommended, he would be inclined to move approval with a 3 year extension and that the sunset date should be January 1, 2013.

Ms. Aranda Roseberry stated she was not certain if she had misunderstood what was stated, however, Staff was looking at applicants as having a 2 year window of opportunity and with the 3 years suggested by Commissioner Whitaker that would be on top of the time frame and allow with an extension to 5 years.

Commissioner Whitaker stated that was correct.

Commissioner Merino stated he was supportive of Commissioner Whitaker's suggestion and it made sense and was well balanced.

Commissioner Imboden stated he would support the comments and suggestions made by Commissioner Whitaker. His only reservation was that with potential projects that might get started and then if things slowed down and came to a stand still he would not want inconveniences to occur for properties or residents that surrounded those projects. There was a safe guard in that the projects would need to return to the approving body for a request of an extension to their project, and that would alleviate his concern.

Commissioner Cunningham stated he supported Commissioner Whitaker's proposal and also commended Staff for presenting the item as it was a way to be proactive and accommodate the difficulty people were having in the current economy.

Commissioner Whitaker made a motion to recommend approval to the City Council, Ordinance No. 19-09, Amending Title 17 of the Orange Municipal Code relating to extensions to Land Use entitlement expiration dates, subject to the conditions in the Staff report and with the following changes that the extension statute be for a 3 year period and the sunset clause date shall be January 1, 2013.

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 for adjournment to the next regular scheduled meeting of the Planning Commission for Monday, November 16, 2009.

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

MOTION CARRIED

MEETING ADJOURNED @ 7:15 P.M.