

MINUTES

REGULAR MEETING OF THE LANCASTER PLANNING COMMISSION

January 19, 2010

CALL TO ORDER

Chairman Vose called the meeting to order at 6:00 p.m.

INVOCATION

Commissioner Larry Burkey did the invocation.

PLEDGE OF ALLEGIANCE

Commissioner Raj Malhi led the Pledge of Allegiance to the flag of the United States of America.

ROLL CALL

Present: Commissioners Burkey, Harvey, Haycock, Jacobs, Malhi, Vice Chair Smith, and Chairman Vose.

Absent: None.

Also present were the Deputy City Attorney (Joe Adams), Planning Director (Brian Ludicke), Principal Planner (Silvia Donovan), City Engineer (Carlyle Workman), Assistant Environmental Planner (Jocelyn Swain), Assistant Planner (Elma Watson), Recording Secretary (Joy Reyes), and Recording Secretary (Marion Coleman).

CONSENT CALENDAR

1. APPROVAL OF MINUTES

It was moved by Commissioner Burkey and seconded by Vice Chair Smith to approve the Minutes from the Regular Meeting of December 21, 2009. Motion carried with the following vote (7-0-0-0):

AYES: Commissioners Burkey, Harvey, Haycock, Jacobs, Malhi, Vice Chair Smith and Chairman Vose.

NOES: None.

ABSTAIN: None.

ABSENT: None.

CONTINUED PUBLIC HEARINGS

2. Conditional Use Permit No. 09-08

Chairman Vose opened the public hearing at 6:04 p.m. to hear a request by Brothers Pena, Inc., for a Conditional Use Permit for on-site sale and consumption of alcohol (Type 47, sale of beer, wine and distilled spirits for a bona fide restaurant) for an existing restaurant, located at 814 West Lancaster Boulevard.

Staff report was presented by Silvia Donovan.

There was one speaker who wished to comment, as follows:

Ruth A. Sanchez, applicant, stated their business would be a contribution to the City based on the fact that the business is expanding, and sales have increased at their facility. She appealed to the Commission to honor the permit, and added that the letter of consent had been signed and agreed to all conditions.

Public hearing closed at 6:06 p.m.

It was moved by Commissioner Malhi and seconded by Commissioner Jacobs to adopt Resolution No. 10-02 approving Conditional Use Permit No. 09-08. Motion carried with the following vote (7-0-0-0):

AYES: Commissioners Burkey, Harvey, Haycock, Jacobs, Malhi, Vice Chair Smith and Chairman Vose.

NOES: None.

ABSTAIN: None.

ABSENT: None.

3. Tentative Parcel Map No. 66115

Chairman Vose opened the public hearing opened at 6:07 p.m. to hear a request by Carlo Bondanelli for a subdivision for 45 industrial lots in the LI (Light Industrial) Zone, located on 49.15± gross acres at the southeast corner of future Avenue L-4 and future 5th Street West.

The staff Report was presented by Brian Ludicke. He stated that this case was continued from the December 21, 2009, meeting to address the concerns of the Commission regarding the environmental studies and initial study that was performed on the project. He stated that the Biological Study, Phase I Hazardous Study, and Archeological Study, were forwarded to the Commission as requested, along with a letter from the California Department of Fish and Game (CDFG) in regards to the proposed project. He stated the reports and studies were for the Commission's approval and/or re-review for action.

Chairman Vose stated a letter of consent dated January 12, 2010, had been received from the applicant's representative indicating agreement with Staff's recommendation and conditions or approval as recommended.

Barry Munz, representing the applicant, Mr. Bondanelli, who was also present in the audience, stated that there were questions from the Commission at the regular meeting of December 21, 2009, concerning the environmental studies performed, particularly the Phase I Environmental Site Assessment, that did not specifically address potential hazardous material that might exist on site. He added the report stated potential hazardous material was not found, and some other studies showed trash piles that may contain hazardous materials; therefore, there were inquiries whether the studies supported the environmental findings as stated by the Planning Staff. He stated another question was brought forth by the Commission concerning the age of the study, which he added began in 2004, and if there would be a necessity to update the studies. He added that subsequent to the meeting, a letter was received from CDFG, who also shared same concerns about the environmental studies of the property. Barry Munz stated he had spoken to the consultant who prepared the biological study and reviewed the conditions of approval the City had placed on the project,. The consultants believe the studies and Staff's recommendations covered CDFG's concerns. He added that based on the information, the consultants did not think CDFG's response necessarily impacted the Commission's findings other than the fact the age of the study was in question. Barry Munz stated they were prepared to follow through with the project in whatever direction the Commission wanted them to proceed.

Chairman Vose inquired if the applicant had received anything in writing from CDFG, and Barry Munz responded he had not. He stated CDFG had only been available by phone the day of the hearing, and had been unavailable before the date of the hearing.

Chairman Vose concluded that the Commission has to judge the evidence that is presented by way of staff reports, writings from various consultants, comments from CDFG, and the representative's testimony. Chairman Vose stated that when CDFG indicates that they do not recognize a consultant's studies in a case older than one year, with the current study being over four years old, he asked Barry Munz how he felt the Commission should react to the studies received.

Barry Munz responded that the concern was one that he also shared as he followed up with the consultant. He stated they looked at the conditions the City had placed on the project and the various studies that had been required, and in the conversations he was told that CDFG did somewhat agree with the fact that they are going back out and requiring these studies to be done prior to any ground disturbing activities that might take place on the site.

Chairman Vose asked if the consultant from the biological study was present and Barry Munz responded she was not present. Chairman Vose continued that as previously explained, there were a number of inconsistencies in the three reports provided to the Commission. He stated based on the letter from CDFG acknowledging the age of the reports indicating that they were not satisfied that the age of the reports met CDFG minimum requirements. He also stated that CDFG commented in the letter that there were no studies or discussion about streambed issues on the site. He stated the letter indicated CDFG would like to see further analysis of the potential Joshua tree impacts. Chairman Vose questioned Barry Munz if he agreed concerning CDFG inquiry of the findings.

Barry Munz responded that during a conversation with CDFG earlier in the day, the consultant pointed out that CDFG did not provide all the pages of the biological study to be reviewed. Barry Munz stated he was not sure if that meant the report could not be found and did not think that would change anything from CDFG's response. He commented on the jurisdictional issues regarding drainage that this was one of the conditions of the project that they would review again to affirm whether a streambed alteration permit would be required. He agreed that there were some inconsistencies in the initial report on identifying the materials that may be on site. He stated there was also an issue on the Swanson's hawk, which CDFG is concerned about, and is looking for someone to point out on a map and show that this project is within 10 miles of a nesting area. He stated that CDFG felt this could impact the investigation and that the City had a handle on the mitigation measures that were necessary for this project.

Chairman Vose reiterated there was nothing in writing from CDFG to support what was stated, to which Barry Munz concurred. Chairman Vose asked Barry Munz to explain the procedure of the development of the project requested. He inquired of how it would be accomplished one lot at a time for a development that requires infrastructure, including underground and utilities.

Barry Munz replied that one lot at a time is the building development of the project and that the actual development of the project would take place in several phases. He stated from an infrastructure standpoint, the streets, utilities and other type of infrastructure needed to support the overall development would be conducted in three phases; for example, Phase 1A consisted of 9 or 10 lots; Phase 1B consisted of about 8 lots; and Phase 2 consisted of the remaining lots. He stated the actual development of each lot would be on an individual basis. He stated the lots would be sold off as finished lots to individual business owners who would develop and obtain necessary permits from the City to construct the building.

Chairman Vose inquired how it was proposed to build infrastructure without affecting the individual lots. Barry Munz responded the grading that will take place would be the street right-of-way, and there is grading to take place as a portion of the infrastructure development. He stated that type of construction activity would take place within the right-of-way and other areas depending on the street elevations indicated on the map. He added there may even be stock piling materials on the lots. Chairman Vose referenced back to the environmental review report, which he stated was predicated on an individual lot or a phased development, and not the entire project. He stated when impacting potential streambed alteration or a biological issue, there is a conflict with what has been presented to the Commission relative to the studies and reports, based on the application in the development of the project.

Barry Munz stated he could see where there could be some gray areas in the understanding of how the development is to take place. He stated it was never their intent that they would build only one lot and the infrastructure on another.

Chairman Vose inquired about the drainage and stated he could not understand how flood control, or storm sewers for example, could be dealt with relative to each phase of the project, and questioned the direction of flow.

Barry Munz responded that all the drainage would flow in a northwesterly direction. Chairman Vose inquired if this would impact the Armargosa Creek drainage area. Barry Munz indicated the project did not necessarily involve the Armargosa Creek area, and stated that for the most part the drainage would end at Avenue L before getting to the Creek based on the topography of the area; it joins the Creek at the northeasterly direction. He noted that the Armargosa Creek does not necessarily front on their property. Chairman Vose cited that there are 45 lots with drainage that are impervious soil, and questioned what would be done with the water which is not addressed in the environmental impact report. Barry Munz replied that from a development project impact, they prepared a study of the drainage and the street system, and, based on the street capacities, they will handle the storm run-off. There are also requirements by the City to handle the drainage properly. He expressed he was not sure of the mitigation process for that stage of the project.

There were none in the audience who wished to speak in opposition to the request. Public hearing closed at 6:26 p.m.

Commissioner Burkey questioned Staff recommending approval of the project and stated the Commission's concern of the age and inconsistencies of the studies, and asked if this was a concern of Staff.

Brian Ludicke responded that in general, staff would want the studies to line up with CDFG requirements. He stated, however, the environmental representative and Staff have reviewed the studies, and do not believe the differences in the reports are significant enough that it would change Staff's final recommendations. He also added, despite the concerns raised by CDFG, it is not Staff's belief that the site is a biologically significant site, although when CDFG report was reviewed, it is arguable that some of the studies do not match their protocol, and it does not address the concern of rare plants that may be present. He indicated that in previous studies, plants considered rare or endangered have been found further north in the Armargosa channel near the freeway improvement area. He stated the reasoning of staff's position in recommending approval is due to the timeframe during which the Armargosa Creek Specific Plan study was conducted in spring of 2005 after a very wet winter; an extensive study was done on 168 acres of the Armargosa Creek general site north of Avenue L. He concluded that the reports that came back from the biologists were that the Armargosa Creek in this area was not a significant biological issue.

Commissioner Burkey asked Staff if they would give the Commission a brief outline of the conditions and mitigations.

Brian Ludicke responded that the species most likely to be found on site are the burrowing owl. He stated that Staff will require, as with any project that requires ground disturbance, a walk over of the site prior to the ground disturbance occurring. He added the ground disturbance issue applies not only for potential existence of burrowing owl, but also applies for the potential of any bird if in the season of nesting. He stated the issue of whether or not a streambed alteration agreement is necessary is the responsibility and obligation of the applicant to verify with CDFG. This subject has previously been discussed for several years with CDFG, and CDFG declared that they are the final determiner of whether or not a streambed alteration agreement is required. He concluded the applicants are informed of all these terms.

Commissioner Burkey expressed his concern with the lack of details in the environmental study, and asked if asbestos or other hazardous materials were to be found at the site at the time the project begins, what proposed conditions would address those types of concerns.

Brian Ludicke responded that there are a number of things already contained in the State or Federal laws in regards to those concerns, and prior to construction, Staff would require that the site would be adequately monitored. He stated that; (1) any potential hazardous material would be moved from the property, (2) any materials uncovered during construction (for example, buried material), site is shut and someone has to verify what type of material was found, and it has to be mitigated.

Chairman Vose commented on a statement by CDFG regarding jurisdictional drainage, which he understood to mean that a sufficient analysis of the streambed was not conducted. He added, from reading the report at paragraph 5, page 3, Staff directed to contact CDFG to determine whether streambed alteration agreement is necessary, however, CDFG's comment back to the City/Agency was that the job was not completed.

Brian Ludicke stated CDFG seem to be implying that the documents received from the applicant do not supply sufficient basis for determining what the mitigation or impact might be for the streambed, if in fact it is a streambed. He stated if he were sitting in CDFG's position, he would probably ask the applicant for an updated set of studies in order to determine possible impact and mitigation.

Chairman Vose commented that the Commission could not make an informed finding of conformance with that study. The Commission would not have the ability to make a decision based on the inconsistencies and gaps as stated by the custodial agency that has jurisdiction

Brian Ludicke responded the one area that the Commission might have concern would be the drainage potentially not being adequately mitigated.

Chairman Vose stated it might be prudent for the Commission to make a finding that studies be conducted under the current protocols required by CDFG, and that a complete Phase I analysis be provided. Based on that analysis, the mitigation be re-circulated and consider a complete report in the near future.

Brian Ludicke agreed that this was an option, particularly in the biological area, since CDFG is the main agency concerned for that portion of the report.

It was moved by Commissioner Burkey and seconded by Commissioner Jacobs to adopt Resolution No. 09-36 approving Tentative Parcel Map No. 66115.

Motion to approve failed and carried with the following vote (3-4-0-0):

AYES: Commissioners Burkey, Jacobs and Malhi.

NOES: Commissioners Harvey, Haycock, Vice Chair Smith and Chairman Vose.

ABSTAIN: None.

ABSENT: None.

It was moved by Chairman Vose and seconded by Commissioner Haycock to continue Tentative Parcel Map No. 66115 indefinitely. The Commission referred case back to staff and applicant to revise the environmental documentation and review, including specifically:

- Revised/updated Phase I hazardous materials evaluation;
- Revised/updated biological assessment addressing the issues raised by CDFG in their letter of December 21, 2009;
- Preparation of initial study evaluating the overall potential development of the tentative parcel map as the project.

The revised environmental document shall be re-circulated for public review in accordance with CEQA prior to reconsideration by the Planning Commission.

Motion carried with the following vote (7-0-0-0):

AYES: Commissioners Burkey, Harvey, Haycock, Jacobs, Malhi, Vice Chair Smith and Chairman Vose.

NOES: None.

ABSTAIN: None.

ABSENT: None.

NEW PUBLIC HEARINGS

4. Conditional Use Permit No. 96-01 AM2

Chairman Vose opened the public hearing at 6:52 p.m. to hear a request by David Shamsian to delete Condition No. 19, thereby allowing the applicant to remove the required raised center median on 18th Street West.

An uncontested hearing letter was received from the applicant agreeing to all conditions. Staff report was presented by Carlyle Workman. He stated the applicant initially submitted an application in May 1996 for a conditional use permit to allow a gas station to be constructed, and the Commission denied that request. He added that upon appeal in June 1996, the City Council approved the conditional use permit but added a condition that prohibited any driveway access on 18th Street West. He stated the applicant was not satisfied with the decision and sought to amend the conditional use permit. In July 1997, the Commission heard the case again and denied the amended conditional use permit, and it went to the City Council as an appeal. He stated that the City Council approved the conditional use permit, and added a condition that would allow for driveway access on 18th Street West only if a raised median was constructed. He stated that at the time, Staff and City Council's decision was based on a premise that a median would discourage traffic from driving through the neighborhood. He stated that over the years, it has been observed that some unintended results occurred from building the median; vehicles make illegal "U"-turns beyond the median to go back to the service station, or 3-point turns which have caused some disruptions to the neighborhood. Therefore, he stated that the applicant has requested the Commission to reconsider the requirement for the median. He

informed the Commission that the City's traffic division investigated the area, and determined that there are some problems with the way the street is functioning with the median. Therefore, Public Works was not objecting to the request to have the median removed. He concluded that from these findings, Staff is recommending to the Commission to approve the conditional use permit to allow the median to be removed. The median would be removed at the applicant's expense.

Commissioner Jacobs requested Staff to explain how a requested amendment of a specific condition is evaluated by staff.

Brian Ludicke responded that the issue is reviewed specifically, in this case the median. He stated the operational use would be reviewed to the extent of its effects on the area of concern, and if it is intricate to the operation of the use. In this case, the focus is how the median affects the area of traffic flow on 18th Street West, in the neighborhood and the entrance to the driveway, which was the reason for the initial imposition of the requirement.

Commissioner Jacobs opined that the owner's intention for removing the median was not for the benefit of the neighborhood but for his business. He stated that from what he understood from the photo, removing the median would create more traffic and a parking issue. He asked Staff if they felt that the Commission should be looking at both issues.

Brian Ludicke responded that from Staff's standpoint, the median was observed specifically in regards to the effect on the neighborhood, because that was the stated reason it was imposed. He agreed that the applicant's primary reason most likely has nothing to do with the neighborhood, and is more concerned about how easily traffic enters or leaves the business sight. He added the Commission is within their rights to look at the overall site, if the Commission can find the connection between the site and a potential effect on the original findings of the conditional use permit. He stated that he did not know whether removing the median would create more traffic or on-site parking problems; however, it would affect the direction of travel.

Commissioner Jacobs stated that he was aware that the median does make the street very narrow; therefore, no parking would be allowed on the street. He stated if the median were removed, it would add more space to the street. He asked Staff if encroachment of on-street parking would be a problem for homeowners.

Carlyle Workman responded that on the west side of 18th Street West, it would probably not happen, and on the east side, there were two turning lanes of traffic to turn in either direction, therefore, no parking is allowed. He stated he was not aware if there were signs that prohibited parking on the west side. If there were a concern, it would not be a problem to post a sign to prohibit parking.

Commissioner Burkey commented that he had been in the area, and did not see the possibility of parking on either side of the street with the median removed without creating accidents.

Chairman Vose noted that while reviewing the staff report, the standard conditions that were discussed and referenced could not be found in Standard Condition No. 06-16. He stated

he could not tell if the standard conditions were mentioned in previous staff reports presented before the Commission or the City Council.

Brian Ludicke referred the Commission to the attachment to Resolution No. 97-95, Conditions List, with reference to all standard conditions as set forth in Planning Commission Resolution No. 96-01, which was the former standard conditions for conditional use permits that existed at the time.

Chairman Vose read Condition No. 25 of Standard Resolution No. 06-16, and asked if this was addressed in the previous reports or conditions. He added that the issue was raised concerning signs and ordinances to be on record and so the applicant would be aware and informed. He added that he felt these issues should be addressed by the City's Code Enforcement since the application is before the Commission, and prior discussions concerning the matter of applicants complying with the ordinances.

Brian Ludicke responded that he would forward the information on the Commission's request to Code Enforcement.

There were none in the audience who wished to speak in opposition to the request. Public hearing closed at 7:08 p.m.

It was moved by Commissioner Malhi and seconded by Commissioner Haycock to adopt Resolution No. 10-01 approving Conditional Use Permit No. 96-01 AM 2. Motion carried with the following vote (7-0-0-0):

AYES: Commissioners Burkey, Harvey, Haycock, Jacobs, Malhi, Vice Chair Smith and Chairman Vose.
NOES: None.
ABSTAIN: None.
ABSENT: None.

5. Conditional Use Permit No. 09-11

Chairman Vose opened the public hearing at 7:10 p.m. to hear a request by El Toreo, Inc., for on-site sale and consumption of alcohol (Type 47, sale of beer, wine, and distilled spirits for a bona fide restaurant) for a 2,440 square-foot El Toreo Mexican Restaurant, located at 830 West Avenue L, Suite 139.

Chairman Vose stated a letter of consent was received from Thomas Kestler.

Thomas Kestler, applicant's attorney and Vincent Murillo, owner of the restaurant, approached the podium to address the Commission. Thomas Kestler stated they were having challenges at the restaurant's location on 10th Street West. Vincent Rio added that they wanted to offer the best service they could to the residents of Antelope Valley.

Chairman Vose asked the applicant if he was aware of the conditions set by Staff referencing the letter stating their agreement. Thomas Kestler acknowledged that they were

advised, and understood and accepted the conditions. They are also aware that there will not be additional restaurants allowed to be built in the center.

There were none in the audience who wished to speak in opposition to the request. Public hearing closed at 7:13 p.m.

Chairman Vose commented on his concerns of signs in the area. He stated there were two wooden signs advertising nail salons, a fast-food restaurant with 25 percent of the windows covered with advertisement signs, a deteriorated "Now Open" banner on Suite 101, which has been open for business over one year. He continued that the signs on building 18 are gone and they are closed, and stated that the removal of signs are required within 90 days. He concluded that there was a very large banner on Suite 137 that limited visibility. He added that he noticed that day a banner to the south of the property advertising self storage, and requested that Code Enforcement to enforce the sign ordinances.

Brian Ludicke responded that Code Enforcement is at work enforcing the sign ordinance.

Commissioner Burkey stated that the current owner/landlord of the development is aware of the parking restrictions. He asked Staff what would happen if the landlord wanted to sell the property to someone else, and how would they know about the requirements/restrictions.

Brian Ludicke responded that all conditional use permits are recorded against the property, and that would be in the report. He stated also that the approval is attached to the land and not the property owner; therefore, the buyer of the property would know by record that they must adhere to the conditions listed in the conditional use permit.

It was moved by Vice Chair Smith and seconded by Commissioner Jacobs to adopt Resolution No. 10-03 approving Conditional Use Permit No. 09-11. Motion carried with the following vote (7-0-0-0):

AYES: Commissioners Burkey, Harvey, Haycock, Jacobs, Malhi, Vice Chair Smith and Chairman Vose.
NOES: None.
ABSTAIN: None.
ABSENT: None.

NEW BUSINESS

None.

DIRECTOR'S ANNOUNCEMENTS

Brian Ludicke informed the Commission to contact Joy Reyes if they will be attending the Planners Institute in March 2010 to be held in Monterey, California.

Brian Ludicke reminded the Commission that at the November 2009 Planning Commission regular meeting, the Commission indicated that it wished to commence hearing the City-wide re-zoning issues at the February regular meeting. He stated the draft zoning map will soon be ready for distribution for a 30-day public review, and considered for approval. He stated that there are minor revisions to the text on portions of the zones, as well as the mixed use zone classification text, to comply with the changes made to land use designations on the General Plan. He added the Commission is not expected to take any action at the February meeting, but to hear comments and receive testimonies from the general public. The Commission would hold the hearing possibly at its regular meeting in March.

COMMISSION AGENDA

Chairman Vose brought up the e-mail correspondence received from the City Clerk's office concerning the application to be considered in the next appointment of the Planning Commission. He stated if any of the Commissioners was interested, they must submit an application.

PUBLIC BUSINESS FROM THE FLOOR - NON-AGENDA ITEMS

None.

ADJOURNMENT

Chairman Vose declared the meeting adjourned at 7:23 p.m., to Monday, February 8, 2010, at 5:30 p.m., in the Planning Large Conference Room, City Hall.

JAMES D. VOSE, Chairman
Lancaster Planning Commission

ATTEST:

BRIAN S. LUDICKE, Planning Director
City of Lancaster