

MINUTES

REGULAR MEETING OF THE LANCASTER PLANNING COMMISSION July 15, 2013

CALL TO ORDER

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

INVOCATION

Pastor Darmie Sule Odu of Redeemed Christian Church.

PLEDGE OF ALLEGIANCE

Commissioner Malhi.

ROLL CALL

Present: Commissioners Cook, Malhi, Terracciano, Vice Chairman Hall, and Chairman Vose.

Absent: Commissioner Harvey.

Seventh Commissioner's seat vacant; Sandy Smith resigned effective July 1, 2013.

Also present were the Deputy City Attorney (Joe Adams), Planning Director (Brian Ludicke), Associate Planner (Chuen Ng), Associate Planner-Environmental (Jocelyn Swain), City Engineer (Michelle Cantrell), Recording Secretary (Joy Reyes), and an audience of approximately 20 people.

RECESS

Chairman Vose recessed the meeting at 6:02 p.m., and reconvened at 6:03 p.m.

CONSENT CALENDAR

1. APPROVAL OF MINUTES

It was moved by Commissioner Malhi and seconded by Commissioner Terracciano to approve the Minutes from the Regular Meeting of June 17, 2013. Motion carried with the following vote (5-0-0-1):

AYES: Commissioners Cook, Malhi, Terracciano, Vice Chairman Hall, and Chairman Vose.

NOES: None.

ABSTAIN: None.

ABSENT: Commissioner Harvey.

NEW PUBLIC HEARINGS

2. CONDITIONAL USE PERMIT NO. 06-08

Chairman Vose opened the public hearing at 6:06 p.m. to hear a request by The Frank and Yvonne Lane 1993 Family Trust, to construct a 395,355 square-foot commercial shopping center, with off-site sales of alcoholic beverages for the Anchor 1 building and the Drug Store, 40.26± gross acres located at the southeast corner of 60th Street West and Avenue L.

An uncontested hearing letter was received from the applicant stating agreement to the conditions of approval as stated in the staff report. The staff report was presented by Chuen Ng, with the addition of Condition Nos. 72 and 73, and the modification of Condition No. 2, which would allow for the expiration date of the Conditional Use Permit to be co-terminus with the expiration date of a tentative map, provided that the map was approved prior to expiration of the Conditional Use Permit and the City's municipal code is amended to allow for the co-terminus expiration date.

Chairman Vose clarified that at present, this is the last extension for the conditional use permit; if the applicant files a tentative map prior to the termination date, the map would give entitlement and the conditional use permit would continue if the municipal code is amended to allow for this. Chuen Ng affirmed that the conditions as stated in the tentative map expressly state that the expiration date of the tentative map and conditional use permit shall be co-terminus under those circumstances. Chairman Vose also clarified that no tentative map had been filed with the present project. Chuen Ng affirmed.

Commissioner Terracciano asked if the proposed conditions will apply to all future tentative tract maps or the conditional use permit for the project. Brian Ludicke responded that although a tentative map has not been filed for the proposed site, since the applicant has indicated the intent to file a tentative map, the conditions lay out an option for a co-terminus expiration date for the conditional use permit and tentative map to occur.

Vice Chairman Hall inquired if the tentative map is submitted before the expiration date in September 2014, would the conditional use permit be extended for three years or from year to year. Brian Ludicke stated that if the extension is approved on the conditional use permit, the expiration date is September 11, 2014. If the City amends the municipal code (LMC) and the written requirements are established, whenever an applicant files a tentative map that is approved prior to the expiration of the conditional use permit, the Planning Commission can, by virtue of the conditions approved in the tentative map, create a co-terminus expiration date for the conditional use permit. Vice Chairman Hall inquired as to when the amendments to the LMC would occur; Brian Ludicke stated the City Attorney's office is preparing a draft that will be available for the Commission to review in approximately three months.

Commissioner Cook inquired if the conditions of the tentative map would be "grandfathered" in and become an agenda item; Brian Ludicke stated the conditions would not be "grandfathered" in, and would have to be specifically approved as a condition of the map.

Chairman Vose referred to the staff report on page 3, Condition No. 73, regarding time extensions and modifications to the plan, and requested definition of the phrase "do not raise significant new issues". Brian Ludicke responded concerning extensions, and stated as the Director of Planning he does not have the authority to unilaterally extend time of conditional use permits as an administrative function. As to the specific language, this is a way to evaluate proposed

modifications, such as access to the site; do the changes that are being proposed in the site plan change the point of access; is the change significant in terms of traffic flow or safety; does revised plan indicate an increase in square-footage that would affect findings that were made or requirements that were put in place to deal with traffic, pedestrian, or bicycle safety, and so on. Staff takes a look at the orientation of the buildings, i.e., distance of property lines, or a reduction of a requirement that may have been put in place to address a public concern that was raised at the hearing. Staff allows flexibility so that there is some administrative leeway in how plans are laid out, but try to make sure that those changes do not alter in any significance of what the Planning Commission has approved. In this case, the City Council approved the conditional use permit.

Chairman Vose commented that the “note” in Condition No. 73 still stands and focuses on entitlement of a conditional use permit, which requires the slab of a major building would be a typical requirement and inspection to consider the permit used. He requested the definition of “use” due to the size of the project. Brian Ludicke stated the language out of the Lancaster Municipal Code (LMC) states that a conditional use permit is considered “used” when development that is authorized by it occurs. The courts in California have generally stated that a vested right is obtained when an applicant has done significant investment in reliance on a permit. At that point, the City as a public agency cannot pull back the approval back from them. The City recognizes that there are differences between projects and size, and even phasing of how they occur. Staff would look at each situation carefully, and it is ultimately the determination of the staff as to whether a use permit has been “used”; with a right of appeal.

Chairman Vose confirmed that there were no phasing plans approved as part of the project; Brian Ludicke responded there were no phasing plans approved as part of the conditional use permit.

There were two speaker cards:

Speaker George Lane, applicant representing Lane Trust, stated he would hold his comments.

Speaker Vince Roche, applicant representative, stated he was available for any questions.

There were none in the audience who wished to speak in opposition to the request. Public hearing closed at 6:23 p.m.

It was moved by Commissioner Malhi and seconded by Vice Chairman Hall to grant a one-year extension to September 11, 2014, based on the findings contained in the staff report and subject to all previously approved conditions, with the addition of Condition Nos. 72 and 73, and the modification of Condition No. 2. Motion carried with the following vote (5-0-0-1):

AYES: Commissioners Cook, Malhi, Terracciano, Vice Chairman Hall, and Chairman Vose.

NOES: None.

ABSTAIN: None.

ABSENT: Commissioner Harvey.

3. CONDITIONAL USE PERMIT NO. 13-07

Chairman Vose opened the public hearing at 6:25 p.m., to hear request by Springhill Suites (c/o Meyer Crest LTD), to allow the sale or furnishing of beer, wine and distilled spirits for consumption on the premises to the establishment's overnight transient occupancy guests or their invitees (Alcoholic Beverage Control Type 70) within an existing hotel (Springhill Suites), in the CPD (Commercial Planned Development) Zone, and a waiver for the separation distance requirement, located at 1811 West Avenue J-12.

The reading of the staff report was waived since an uncontested hearing letter was received from the applicant stating agreement to the conditions of approval as stated in the staff report. There were none in the audience who wished to speak in opposition to the request. Public hearing closed at 6:25 p.m.

It was moved by Commissioner Terracciano and seconded by Commissioner Malhi to adopt Resolution No. 13-07 approving Conditional Use Permit No. 13-07. Motion carried with the following vote (5-0-0-1):

AYES: Commissioners Cook, Malhi, Terracciano, Vice Chairman Hall, and Chairman Vose.

NOES: None.

ABSTAIN: None.

ABSENT: Commissioner Harvey.

4. GENERAL PLAN AMENDMENT NO. 13-01, ZONE CHANGE NO. 13-01, CONDITIONAL USE PERMIT NO. 13-05

Chairman Vose opened the public hearing at 6:27 p.m., to hear request by Psomas, to (1) amend General Plan land use designation for the subject property from O (Open Space) to NU (Non-Urban Residential); (2) rezone subject property from PK (Park) and RR-1 (Rural Residential, minimum lot size 1 acre) to RR-2.5 (Rural Residential, minimum lot size 2.5 acres); and (3) construct three photovoltaic solar electric generating facilities in the RR-2.5 Zone for a total of 13.3 megawatts (MW), located 92.7± gross acres generally bounded by Avenue K-8, Avenue L, 20th Street East and 30th Street East.

Chairman Vose informed there was correspondence received from Eva Kovacs (property owner in area of project) in opposition to the project.

The staff report was read by Jocelyn Swain, concluding that due to correspondence received concerning the project, the applicant requested an additional 30-day continuance to the August 19, 2013, Planning Commission Meeting.

There were two speaker cards:

Speaker Mitchell Tsai distributed hard copies of a comment document containing at least 200 pages, and stated he was representing the Labor Locals #300, which have members that live in the Lancaster area, and have environmental interest affected by the environmental impact of the project.

Vice Chairman Hall questioned why the comments were not received 30-days prior to the hearing; Mitchell Tsai responded the comments were submitted on July 9, 2013, when notice was received on the project, and the closing of the comment period was July 9, 2013. He stated in this case generally when comments are received; cities will wait until 30 days after in order to hear a project. In this case, the hearing was almost immediately after notification was received.

Speaker Nicole Parsons opined the 52-acre expansion of the project is the cause of the community's concern; if the acres are decreased that may solve the problem. She expressed her concern of biochemical referring to a case in New York, which is death defining like pesticides.

Chairman Vose declared, with a consensus from the Commission, the public hearing remains open without objection in continuance to the August 19, 2013, Planning Commission Meeting.

5. GENERAL PLAN AMENDMENT NO. 13-02, ZONE CHANGE NO. 13-02, CONDITIONAL USE PERMIT NO. 13-06

Chairman Vose opened the public hearing at 6:37 p.m., to hear request by Silverado Power, LLC (dba Plainview Solarworks, LLC), to (1) amend General Plan land use designation for the subject property from UR (Urban Residential) to NU (Non-Urban Residential); (2) rezone subject property from SP (Specific Plan) to RR-2.5 (Rural Residential, minimum lot size 2.5 acres); and (3) construct a 30 megawatt photovoltaic solar generating facility in the RR-2.5 Zone, located 254± gross acres generally bounded by 110th Street West, Avenue J, 97th Street West, and Avenue J-8.

An uncontested hearing letter was received from the applicant stating agreement to the conditions of approval as stated in the staff report. The staff report was presented by Jocelyn Swain. She addressed concerns from comment letters received from five agencies (Department of Regional Planning (DRP); Southern California Edison (SCE); California regional Water Quality Control Board, Lahonton Region (Water Board); Antelope Valley Air Quality Management District (AVAQMD); and Native American Heritage Commission (NAHC)) on the initial study of the project.

There were two speaker cards:

Speaker Garret Bean, representative of applicant, stated he was available for any questions.

Chairman Vose inquired if applicant had received copies of the five agency comment letters and if he had a comment. Garret Bean responded that the comment letters had been received, and had no comments; the comment letters received were standard, the staff and Silverado addressed all that had been requested.

Speaker Virginia Stout stated she is a representative of Citizens of Rural Open Space (CROS) who are property owners in the area of the project. The property owners have expressed that the General Plan Amendment (GPA) is driven by solar rather than by citizens, and are requesting a 30-day continuance to address the developers of the project. She stated a report is being prepared by a biologist. She summarized concerns of dark sky initiative; drainage; chain link fence; impacts everyone who lives in the project area; impact of the scenic view; vegetation; degrade the character; dust control plan not working; and concluded CROS would like to see something better.

Chairman Vose requested verification of record for letter dated July 11, 2013, from DRP regarding proposed mitigation; however, not clear about fourth paragraph, page 1, phrase “including covering of all graded surfaces with ¾-inch crushed rock to minimize fugitive dust”, and also inquired if this was covered in AVAQMD Rule 403. Jocelyn Swain responded that Rule 403 requires, by definition, that all graded surfaces shall be a stabilized surface; this stabilization is determined by AVAQMD and the applicant, which indicates no dust can come off surfaces during construction or when in operation. Chairman Vose stated that DRP is suggesting that the Commission impose it as an added condition, and inquired as to what staff recommended. Jocelyn Swain recommended that AVAQMD and the applicant work out a solution. Chairman Vose stated that DRP requested to work with City staff; Jocelyn Swain clarified that AVAQMD has been working with the City on the dust busters group, as well as other solar developers. Chairman Vose also requested definition of “high wind” in same paragraph. Jocelyn Swain informed that according to AVAQMD, high wind is 25 mph or higher; additionally, at that high wind rate all work is to cease.

Chairman Vose referenced letter from SCE concerning the switching and installation of new cables. Jocelyn Swain stated it would be along with the Gen-tie line connecting the collector substation in to the Antelope Substation. Chairman Vose commented the SCE letter was a letter to clarify the scope of interaction with the project; Jocelyn Swain affirmed.

Chairman Vose referenced letter from AVAQM, specific comments: first bullet paragraph, last sentence portion “capture site run-on”; he commented if site is compacted, the percolation is limited, and if site is graded, the problem is exacerbated; therefore, don’t do anything. Jocelyn Swain stated the issue could be debated; the road is being compacted because the fire department requires 95% compaction for roads. However, most of the site is not being graded; therefore it is not going to exacerbate the “run-off” problem, and will not impede any natural recharge that would be reoccurring on the site. Second bullet paragraph, first sentence regarding “post-construction monitoring”; Chairman Vose inquired if there was a condition to vegetate the site. Jocelyn Swain stated the only condition that applies would be installation of landscape 10 feet around perimeter of the site. Chairman Vose asked if the site was predominantly barren; Jocelyn Swain affirmed and stated the site was previously farmland. Third and fourth bullet paragraphs regarding “detailed Hydrology Study”, and referenced “Basin No. 626.50”; Chairman Vose inquired of the location. Jocelyn Swain responded the basin was a part of the Antelope Hydrologic Unit of the Lahontan Region, and also mentions the minor surface waters and minor wetlands which are not on the project site. A jurisdictional delineation was done which observed whether there were Army Corps wetlands, potential drainage site swell were subject to fish and wild life, or the regional board, and it was determined there are no waters of the state or federal government on the property. Chairman Vose agreed, and stated that it is suggested that delineation of any and all potential permit requirements that the Water Board might impose when the project moves to the level of review; however, the mitigation measures and initial study clearly identify the requirement to conform to all of the permitting requirements. Jocelyn Swain affirmed, and stated that compliance with existing regulations does not count as mitigation; the process has to be done whether or not the Planning Commission or staff identifies those regulations for the applicant.

Chairman Vose commented that the staff report states the site would not be graded; Jocelyn Swain added with the exception of areas to be mowed. Chairman Vose inquired as to what condition states “The remainder of the site would be mowed to accommodate the development, but the site would not be graded.” Jocelyn Swain stated the verbiage was not in the condition, because it was part of the project description. She stated the statement could to be added to condition. Chairman Vose explained that given the concerns that have been expressed, the condition may be recommended on all photovoltaic projects. Jocelyn Swain agreed. Chairman Vose advised that adding the

condition would give clarification to the developer present; but may not be so to the developer's successor. There was a consensus of the Commissioners to add the condition.

Chairman Vose referenced to the statement made by Virginia Stout concerning the view from 90th Street West. Jocelyn Swain stated the project is approximately .75 mile west of 90th Street West, and easternmost boundary of the Antelope Substation; does not impact the areas considered scenic, and will not block the view from drivers' vehicles.

Chairman Vose referenced the comments regarding dark skies. Jocelyn Swain stated the project is next to a substation; only perimeter lights will be added, and will not impact the area any more than what exists on the facility.

Vice Chairman Hall referenced to the statement by Virginia Stout concerning the drainage and water flow. He stated from his knowledge of past projects approved, the drainage has been included. Jocelyn Swain stated that most of the projects are not paved, which allows percolation of the water to go in, as discussed, and does not create additional run-off from the sites. The condition for the 50-foot-wide dedication for a drainage channel is part of the master plan of drainage.

There were none in the audience who wished to speak in opposition to the request. Public hearing closed at 7:05 p.m.

It was moved by Vice Chairman Hall and seconded by Commissioner Malhi to adopt Resolution No. 13-10 recommending to the City Council approval of General Plan Amendment No. 13-02 and Zone Change No. 13-02 on the subject property. Motion carried with the following vote (5-0-0-1):

AYES: Commissioners Cook, Malhi, Terracciano, Vice Chairman Hall, and Chairman Vose.

NOES: None.

ABSTAIN: None.

ABSENT: Commissioner Harvey.

It was moved by Vice Chairman Hall and seconded by Commissioner Cook to adopt Resolution No. 13-11 approving Conditional Use Permit No. 13-06, with added Condition No. 15, as follows: "Grading on the project site shall be kept to the minimum required in order to construct the proposed project, as determined by the Director of Public Works. Specifically, grading shall be limited to roadways; pads for inverters and transformers; the collector substation; and trenching necessary for cables and electrical wires." The approval of Conditional Use Permit No. 13-06 is not valid until the effective date of General Plan Amendment No. 13-02 and Zone Change No. 13-02. Motion carried with the following vote (5-0-0-1):

AYES: Commissioners Cook, Malhi, Terracciano, Vice Chairman Hall, and Chairman Vose.

NOES: None.

ABSTAIN: None.

ABSENT: Commissioner Harvey.

Brian Ludicke informed the public that General Plan Amendment No. 13-02 and Zone Change No. 13-02 will be calendared for consideration by the City Council.

DIRECTOR'S ANNOUNCEMENTS

None.

COMMISSION AGENDA

Chairman Vose informed that the Commission and staff discussed noticing requirements for conditional use permits. The noticing requirement under the Lancaster Municipal Code mentions notifying property owners and owners listed on the fee or tax roll, however, there is not a noticing requirement for adjacent tenants, or those who may be impacted by a use that may be sensitive. Staff was questioned if the Commission could request modifications to the LMC in regards to the notification issue.

Brian Ludicke asked staff to look into other cities with same practice; in the interim applicants in a similar case, have been asked to distribute flyers to adjacent tenants. Chairman Vose clarified that the fliers would contain same information as the notice; Brian Ludicke affirmed.

Chairman Vose announced the resignation of Commissioner Smith, and stated a formal recognition to be announced at a later date; also, acknowledgement of the absence of Commissioner Harvey.

PUBLIC BUSINESS FROM THE FLOOR - NON-AGENDA ITEMS

None.

ADJOURNMENT

Chairman Vose declared the meeting adjourned at 7:12 p.m., to the Special Meeting for Agenda Review on Monday, August 12, 2013, at 5:30 p.m., in the Planning Conference Room, City Hall.

JAMES D. VOSE, Chairman
Lancaster Planning Commission

ATTEST:

BRIAN S. LUDICKE, Planning Director
City of Lancaster