

**MINUTES OF THE REGULAR MEETING OF THE FULLERTON PLANNING COMMISSION**

**COUNCIL CHAMBERS – CITY HALL**

**WEDNESDAY**

**JULY 26, 2006**

**7:00 P.M.**

- CALL TO ORDER:** The meeting was called to order by Chairman Savage at 7:00 p.m.
- PRESENT:** Chairman Savage, Vice Chairman Francis, Commissioners Bailey, Fitzgerald, Hart, and Thompson
- ABSENT:** Commissioner Musante
- STAFF PRESENT:** Acting Director of Community Development Rosen, Acting Chief Planner Eastman, Senior Planner St. Paul, Acting Senior Planner Allen, Consultant Planner Wolff, Senior Civil Engineer Voronel, City Attorney Christian Bettenhausen and Recording Secretary Pasillas.
- FLAG SALUTE:** Commissioner Fitzgerald
- MINUTES:** MOTION made by Commissioner Bailey, SECONDED by Commissioner Hart and CARRIED unanimously by voting members present that the Minutes of the July 12, 2006 meeting be APPROVED AS WRITTEN.

**PUBLIC HEARINGS**

**ITEM NO. 1**

**PRJ06-00221 – PM2006-196. APPLICANT: DAVID ROSELL; PROPERTY OWNER: SAM NAWAEY**

Staff report was presented pertaining to a request for a tentative parcel map to subdivide a lot into two parcels on property located at 455 East Valencia Drive (north side of Valencia Drive, between 600 and 700 feet east of Lawrence Avenue) (R-1-6 zone) (Categorically exempt under Section 15315 of CEQA Guidelines) (HAL)

Chairman Savage explained the rules of public comment to those in attendance. He stated that first the Commission would hear staff's report for 15-20 minutes, and then the applicant would have 15-20 minutes to make their presentation. After the applicant, the opposing group would be asked to pick a leader and have 15-20 minutes for their presentation. He further explained that, at the pleasure of the Commission, public comments would be limited to three minutes. He added that the public should try to limit restating their concerns, everyone would be heard on both items up for approval, and at the end of the presentations staff would answer any questions.

Acting Senior Planner Allen gave a brief overview of the project. Overheads of the property and neighborhood were shown, and she explained that the parcel would be divided into two lots of similar size as those of the neighboring properties. Engineering conditions for approval were explained. Staff recommended the Planning Commission adopt the resolution approving the parcel map subject to the conditions outlined.

Public hearing opened.

The applicant, Sam Nawaey, was available to answer any questions. The Planning Commission had no questions for the applicant.

There was no one from the public who wished to speak.

Public hearing closed.

The title of Resolution PC-06-21 APPROVING a request for a tentative parcel map to subdivide a lot into two parcels on property located at 455 East Valencia Drive was read and further reading waived. MOTION by Vice Chairman Francis, SECONDED by Commissioner Bailey and CARRIED unanimously by voting members present that said Resolution be ADOPTED AS WRITTEN.

**ITEM NO. 2**

**PRJ03-00363 - ZON03-00027 - ZON03-00028 - ZON05-00063 - LRP04-00024.**  
**APPLICANT: THE MORGAN GROUP; PROPERTY OWNER: JACK CHOU**

Staff report was presented pertaining to a request to demolish the existing tennis club and construct a 131-unit senior apartment complex on property located at 1900 Camino Loma. Requested applications include a Major Site Plan, a Conditional Use Permit for a "retirement complex", a Zoning Adjustment to exceed the maximum permitted lot coverage, and a General Plan Revision to change the land use designation from "Parks and Recreation" to "Office." (a 6.109-acre site located on the southwest corner of Rosecrans Avenue and Camino Loma) (O-P Zone) (Mitigated Negative Declaration) (Continued from June 28, 2006) (JEA)

Commissioner Thompson recused himself from this project due to the potential perception of a conflict of interest.

Acting Chief Planner Eastman explained the timing of the Mitigated Negative Declaration (MND) comments in relationship to the previous meeting, and the request to continue this project to the current meeting. Staff had anticipated the Response to Comments becoming available last week, but was unable to release the responses until July 25, 2006. As a result of this timing, staff was recommending the item be continued until the August 23, 2006 meeting so both the Planning Commission and the public would have adequate time to review the document.

Acting Chief Planner Eastman also clarified that part of the application included a General Plan amendment, which would require an affirmative vote by four Commission members, which was a majority of the Commissioner's on the panel, versus a majority of the Commissioner's present. He continued by explaining that because one Commissioner was absent, and one Commissioner had abstained, only five Commissioners remained. The General Plan amendment required four of the five remaining Commissioners to support the request; otherwise, the project would be considered a denial. The applicant could then appeal to the City Council. He further stated the Commissioners should consider if the public would be served by hearing this project, and also consider whether or not adequate time had been allowed for the Commissioners and the public to review the material that had become available one day prior.

Chairman Savage asked the City Attorney, Christian Bettenhausen, for his legal opinion. Mr. Bettenhausen stated that the responses were issued prior to the meeting, and the Commission

could proceed if they felt they had adequately reviewed the comments, and would take them into account when making a decision. Staff had made the recommendation to continue the project and he advised that the Commissioners may want to consider this also.

Chairman Savage asked the Commissioners their opinion. Vice Chairman Francis stated he had reviewed the comments, there were many members of the public present, and ultimately the project would go to the City Council for review. Commissioner Bailey agreed with Vice Chairman Francis, felt he had adequate time to review the comments, and would like to hear this item at this time. Commissioner Hart concurred with the other Commissioners and felt comfortable moving ahead. Chairman Savage stated there was a consensus to move ahead.

Acting Chief Planner Eastman gave a brief overview of the project. The proposal was to construct a 131-unit senior housing apartment complex. He explained the four required approvals: a Major Site Plan request, a Conditional Use Permit (CUP), a Zoning Adjustment to allow for the lot coverage to exceed the maximum allowed in the zoning ordinance, and a General Plan amendment (which would ultimately require review by the City Council.)

Vice Chairman Francis asked if the building had been demolished, and Acting Chief Planner Eastman confirmed that the property had been demolished, which did not require a hearing. He explained that the property's vacancy, a lack of maintenance, and ultimately a fire, created a safety hazard. Due to the fire damage and safety concerns, the property owner chose to demolish the building.

Acting Chief Planner Eastman continued with aerial photos of the site. He explained that the two tennis courts to the north of the property were not included in this request. A brief history of the project was given, going back to the original application date of May 2003. He explained where the project was today, and changes that had been made to the site. An overhead of a recent site plan, along with a new site plan that included garage parking were shown. Elevations were shown, and Acting Chief Planner Eastman stated the buildings would be a "mountain-resort" style of architecture. Existing cell towers would be included in faux chimneys. The project would contain four buildings, three of which would have a third-level below grade, which would not be seen from outside of the project.

Previously, the City Council had expressed a concern that the City's senior housing parking requirements were too low, and as a result, the Zoning Ordinance was revised recently to require more parking for senior projects. The code revision occurred after this project was originally submitted, but the proposal complies with the current standard. There had been a revision to the site plan, to which garages had been added in response to comments from the community. The addition of garages increased the lot coverage due to garages requiring a wider space. Lot coverage was originally proposed at 61.4%, and was now approximately 62%, with the maximum allowed by code at 60%. A traffic analysis was completed, which included vehicle trips to senior housing, ITE calculations, and the analysis of the Camino Loma and Rosecrans intersection to see if a traffic signal was warranted. The intersection did not meet the criteria for a signal. Staff had included a recommendation that two years after full occupancy the property owner would conduct a new warrant study, to address the public's concern with traffic hazards.

Acting Chief Planner Eastman explained the site plan application was related to the physical design, all of which had been reviewed by the Redevelopment Design Review Committee (RDRC). The applicant was proposing 131 dwelling units, which was under the 257 dwelling units that would be allowed by code (including State mandated 25% bonus for senior housing).

The two-story height and 30 feet above grade met code requirements, and the parking requirement of 237 spaces was also met.

He continued by explaining the CUP was concerned with compatibility of the proposal with adjacent properties. The current proposal included 131 dwelling units, a two-story height and 30 feet above grade. Staff believed this to be compatible with the surrounding properties, and had an appropriate architectural design. The property was currently zoned O-P, which was intended as a commercial buffer between more intense commercial and lower density residential. Staff believed this project would be an appropriate buffer.

Vice Chairman Francis asked if a large office building could be put on this property, and Acting Chief Planner Eastman explained that an office building could be proposed and theoretically there was no height limit in an O-P zone, except in relationship to adjacent residential, based on current zoning.

Acting Chief Planner Eastman stated that the surrounding property included condominiums – to the south they were one- and two-story with garages, at 13 dwelling units/acre, and to the north they were at 15 dwelling units/acre. Both properties had a General Plan designation that would allow for up to 28 dwelling units/acre. The current proposal was allowed 33.8 dwelling units/acre for a retirement complex in an O-P zone, and 22.5 dwelling units/acre were proposed.

The zoning adjustment request was to allow for a minor deviation in the code standard; a 10% increase in the development standard can be granted. The project as proposed had a 60% maximum lot coverage limitation, but the current project was proposed at 62% (with garages). For a zone adjustment, the code required special circumstances be applicable to the property, and not be considered a special grant of privileges.

The General Plan request was for an amendment to change the current land use designation, which was Parks and Recreation. The current zoning classification was O-P – Office Professional. Acting Chief Planner Eastman explained that zoning was intended to implement the General Plan, and State law required that the General Plan and Zoning be consistent. The current land use and zone classification were not consistent, and the City was required to amend either the General Plan designation or the zone classification in order to provide consistency. Currently, the General Plan required a park land-to-resident ratio of four acres per 1,000 residents. A mitigation fee had been included to offset the loss of the private recreation facility, which was proposed at half the required park dwelling fee, in addition to the park dwelling fee. This fee would be assessed at the time building permits were issued for the property.

Staff recommended the Planning Commission certify the Mitigated Negative Declaration (MND), deny the zoning adjustment, and approve the site plan, CUP, and the General Plan amendment, subject to conditions and mitigation measures identified in the staff report.

Chairman Savage asked if the General Plan was the “rule of the land”. He wanted to understand the General Plan conflict with the zoning designation. Acting Chief Planner Eastman explained that the General Plan established guidelines for land use issues. The zoning ordinance implemented the General Plan, and must be consistent with the General Plan, or the City was not implementing the General Plan appropriately. The current O-P zone was not consistent with the Parks and Recreation designation in the General Plan; therefore the City had an obligation to resolve the inconsistency. The General Plan was a policy document, and it was up to the City Council to decide if it should be amended. Ultimately, zoning and the

General Plan must be consistent with each other. The alternative would be to change the zoning to be consistent with the General Plan. Chairman Savage asked if no action were taken on the zoning matter, if the Planning Commission denied the request, would it remain Parks and Recreation. Acting Director Rosen responded that the City Council would determine the final policy language they deem appropriate for the community. They must make the General Plan consistent with the zoning.

Chairman Savage asked Mr. Bettenhausen what the property zoning was as of this date, and Mr. Bettenhausen explained that the General Plan was the governing authority, but the underlying zoning that had existed on this property was not currently in compliance, therefore, it must be resolved so the two were consistent. Acting Chief Planner Eastman added that the current zoning was O-P, and for any project to take place on this property the zoning or the General Plan must be changed. The applicant was requesting to change the General Plan. The issue for staff was that it was a privately-owned property and they could not force the property owner to operate a tennis facility. Chairman Savage asked about the mitigating fee, and Acting Chief Planner Eastman explained that in staff's recommendation a mitigation fee was included to allow construction or improvement of other park land in the City.

Commissioner Hart asked for clarification that the zoning was installed prior to the existence of the General Plan. Acting Chief Planner Eastman stated the zoning was established as far back as 1961 and had a comparable zoning of R-P (Residential-Professional). In the early 1970's the State mandated that cities adopt a General Plan, and that the General Plan be consistent with the zoning.

Commissioner Hart commented that when the property was subdivided initially for condominiums and the tennis center, part was zoned R-3-R and part was R-3. She then questioned if this was a mitigation issue based on the allowing of the R-3-R. She wanted to know if the condominiums were allowed to be built with the knowledge that this would become a recreation center. Acting Chief Planner Eastman explained that there had been public speculation that the tennis facility was part of the open space requirement for the R-3 property to the south; however, staff had found no records or conditions to that effect. People in the community had a recollection of this "condition", but staff believed it was a marketing issue for the condominiums not a City mandate. Based on City records, the racquet club facility was not conditioned or mitigated as accommodation for the adjacent condominiums.

Commissioner Hart asked when the mitigation fee would be assessed, and Acting Chief Planner Eastman explained that it was at the time building permits were pulled and the park fee level in effect at that time. Commissioner Hart wanted to verify that it was a mitigation fee based on the loss of use of park land. Acting Chief Planner Eastman responded that the standard park dwelling fee was for the impact of 131 units using the City's facilities, and would be required for any development in the City. The additional 50% park fee was for the mitigation related to the loss of the existing facility which was privately owned.

Commissioner Hart asked if there was a dwelling ratio that needed to be maintained to buffer the other properties. Acting Chief Planner Eastman said no, but that the CUP application allowed the Planning Commission to consider the site's appropriate scale of development. He explained the 25% bonus for dedicated senior housing the State required the City to grant if requested. Currently, based on criteria for property in a commercial zone, the maximum density allowed by City code would be 33.8 dwelling units per acre, plus the additional 25% mandated by the State. The applicant had not requested this additional amount. The current development was at roughly 22.5 dwelling units per acre.

Vice Chairman Francis asked if it was a private tennis club, and how it fit into public recreation. He wanted to know if it was similar to going to the movies or the gym, and how was it adopted into the General Plan. Acting Chief Planner Eastman explained that the General Plan had considered it a long-term commitment to recreational use. When the racquet club was open it was available for the public to use. Vice Chairman Francis asked if documents existed that said there was an obligation to the City, and Acting Chief Planner Eastman stated no document existed that tied the adjacent R-3 zoned properties to the south or north with the racquet club, in terms of meeting their requirement for on-site recreation by using this facility. Vice Chairman Francis questioned if it was a private businessman that opened a private tennis club, was there a commitment or obligation to be a tennis facility for a certain period of time. Acting Chief Planner Eastman responded that there was no agreement between the City and the property owner that committed them. Vice Chairman Francis asked if the property owner had requested a variance to build the tennis club. Acting Chief Planner Eastman responded that the owner obtained a CUP. Vice Chairman Francis asked if the CUP expired would the property return to O-P, and Acting Chief Planner Eastman stated the zone was O-P. Vice Chairman Francis stated that perhaps the General Plan was written to require that the tennis club remain.

Acting Director Rosen gave an example of a golf course, such as Coyote Hills, which had an underlying open space designation. The General Plan designation was Greenbelt concept, it was a private recreation facility, but was zoned open space. This was part of the development approvals for that particular project, and there was a contractual obligation to maintain it as a golf course for a particular period of time. In this case, it was a private facility, in a commercial zone, with a General Plan designation of Parks and Recreation and it was the City Council's obligation to resolve the inconsistency.

Chairman Savage asked Acting Director Rosen if the golf course was considered an open space use, and Acting Director Rosen responded that there were commercial, entertainment, retail, and open space components to the golf course.

Vice Chairman Francis asked how a property could be zoned one way and the General Plan designated differently. Acting Director Rosen stated the law had changed over time and mandated that cities make the areas consistent. Over the years the City had been trying to resolve these inconsistencies.

Commissioner Fitzgerald asked about the useable open space on the property, and what, if any, relationship there was between useable open space and lot coverage. Acting Chief Planner Eastman responded that the City required a certain amount of useable open space per dwelling unit. Commissioner Fitzgerald stated that the staff report indicated 300 square feet per dwelling unit, and the proposed project provided 658 square feet per unit. Acting Chief Planner Eastman stated that each unit also needed 100 square feet of private space (a balcony or patio), in addition to common areas. This 100 square feet was included in the 300 square foot requirement.

Commissioner Fitzgerald asked if the lot coverage issue were a matter of how many units were proposed, and were there discussions with the applicant on ways that could increase or decrease the lot coverage. Acting Chief Planner Eastman answered that there were detailed discussions on the calculations used for lot coverage and the application of lot coverage. There were a variety of ways in which the applicant could reduce lot coverage. They could reduce the number of units which reduced the parking, they could reduce the size of the building, in terms of the footprint, which would reduce the number of units and parking, they

could reduce the number of bedrooms and because parking was based on bedroom count per unit this would reduce the required parking spaces. There were ways to lower lot coverage and it was up to the applicant to resolve the issue, therefore, staff recommended denial of the zoning adjustment to increase lot coverage.

Commissioner Hart asked if the State was mandating a General Plan revision this year. Acting Chief Planner Eastman explained that the City was required to update the General Plan on a regular basis. Currently, a RFP for a General Plan consultant had been prepared, and staff was identifying needed revisions. Commissioner Hart asked if inconsistencies would be addressed during this revision and Acting Chief Planner Eastman responded that they would be identified, but some may require thoughtful discussion and difficult decisions in order to resolve.

Commissioner Bailey asked about the property to the west and to the south.

Vice Chairman Francis left the room at 8:27 p.m.

Acting Chief Planner Eastman responded that the condominiums to the south were a two-story mass including the garage, with varying grades, and one- and two-story elevations. Commissioner Bailey was looking at the elevations and felt the proposal did not look as high as the existing buildings to the south. Acting Chief Planner Eastman confirmed they were comparable. He stated this project would be conditional to a maximum 30 feet and two-stories, the same limitation as in single-family residential zones. The buildings may be longer, but the height was comparable to a single-family residence. Commissioner Bailey asked if it was normal to have these limits, and Acting Chief Planner Eastman responded that staff felt it appropriate for this project, and was required for a type-two retirement complex. Commissioner Bailey asked if over the two years of negotiations with the applicant, the applicant had scaled back. Acting Chief Planner Eastman responded that the project had been revised to meet the general direction staff expressed as appropriate for the property; the applicant moved forward towards that, and based on the current proposal, staff felt this height limit was consistent.

Commissioner Bailey asked why the State had the 25% increase for senior dwellings, and Acting Director Rosen responded that due to a housing shortage, the State had provided density bonuses for certain types of housing.

Commissioner Bailey asked the status of senior housing in the City. Acting Chief Planner Eastman did not know the exact number, but stated it varied by type; the City had assisted living facilities, but generally there was a shortage in the County and the State. He added that he had received many phone calls from citizens wanting to be placed on a waiting list for this project, because they thought the City was building the project.

Commissioner Bailey asked if the development approved in 1965, a 107,000 square-foot medical and general office project, could go on the property today. Acting Chief Planner Eastman responded that it could, but would also require a General Plan amendment. Commissioner Bailey asked if there were such a building would there be a corresponding increase in traffic and Acting Chief Planner Eastman responded that the traffic requirement would be worsen.

Commissioner Hart stated the property was currently zoned O-P and allowed senior apartments, but asked if a tract map would be required to build senior condominiums.

Vice Chairman Francis returned to the room at 8:34 p.m.

Acting Chief Planner Eastman responded that the zoning allowed for a retirement complex by CUP, it did not stipulate sale or rental.

Commissioner Bailey asked if the grading and different levels of the building would create a runoff or flooding problem. Acting Chief Planner Eastman responded that there was a drainage easement under the property to the south, and the project would meet drainage requirements.

Chairman Savage called a recess at 8:36 p.m. The meeting was reconvened at 8:45 p.m.

The applicant, Louis Kuntz from the Morgan Group, showed slides of the proposal and explained the project. The target market was explained as seniors downsizing their homes yet wanting to remain in Fullerton, seniors wishing to relocate to be near their children and grandchildren, and seniors wishing to socialize with their peer group. He stated that the concerns of staff and the public had been addressed:

- Buildings were too tall (*now two-story*)
- Too much traffic (*traffic study proves not*)
- Schools overcrowded (*no children except caregivers*)
- Density (*amenities need to be allocated over net rentable square footage*)
- Should remain tennis club (*economically not feasible*)

He further explained that under law, at least one resident must be 55 years or older (*cannot place restrictions on a spouse, significant other, caregiver, or qualified permanent resident 45 years or older*). These rules were specified in California Civil Code Section 51.3, and governed by the City of Fullerton's Municipal Code 15.55.030.H.3. The advantages of this type of housing were that it would be a quiet community, would fulfill a housing need that was not be addressed in Fullerton, would provide a natural transition between commercial and single family residential, would provide seniors with close proximity to family members, and allow seniors social interaction with a senior peer group.

Derek Empey, also from the Morgan Group, continued with the presentation by explaining the transition properties of this project. Slides were shown of the current property and neighboring properties.

Commissioner Hart left the room at 9:08 p.m.

Mr. Empey continued by discussing the characteristics of the property that led to the design of the project.

Commissioner Hart returned to the room at 9:09 p.m.

He explained that buildings were grouped towards the center, and he discussed the lot coverage adjustments that had been made, and possible ways to further lessen the lot coverage more if the zoning adjustment was not approved.

Vice Chairman Frances left the room at 9:19 p.m. and returned at 9:20 p.m.

The following people spoke in opposition to the project:

Al Stinsby, 1847 Conejo Lane

Fred Thornley, 708 East Hermosa Drive  
Scott Shaddock, 1732 Yermo Place  
Gilbert McFadden, 1633 Grissom Park Drive  
Rick Dobler, 721 Rodeo Road  
Paulette Marshall, 141 W. Wilshire Avenue, Suite B  
Betty Pearlman, 1253 Paseo Dorado  
Skip Redman, Buena Park

Their points of opposition were:

- The project was overwhelming to the area
- Staff was not working with the community
- Density was too great compared with adjacent residences
- They were not just numbers, but were people
- Traffic reports and other studies were inconsistent
- Lack of view and traffic signal, bad way to access property
- Camino Loma was 150' wide, too narrow, Red Cross trucks park there to unload
- Small cul-de-sac for the entrance to a huge piece of land, only one way in
- Moved to Fullerton because the City Council and Planning Department used to work for the residents
- The General Plan was the constitution for the City and should protect the resident's environment
- If a citizen wanted to build a building that was outside of the City's code, would the City change the code for them
- Too much traffic on Rosecrans and Camino La Vista
- Why did the developer continue with this project for two years and spend all the money when the General Plan / Zoning issue had not been decided
- City's decision was driven by the fact that the City had invested a lot of time and money into this project
- MND offered no explanation as to how the mitigation fee was established
- Mitigation fee was inadequate to provide tennis courts at an alternate location
- Fullerton was "park poor" in comparison to other cities in the State
- Staff's response that comments on aesthetics were "merely opinion" were not opinion, they were fact to the people who live there
- The Morgan Group was not local, it was based in Texas, and had already built "two boxes" in Fullerton, a "black box" in Amerige Heights, and a "multi-colored box" near the corner of Harbor and Chapman
- 22.5 units per acre was too dense
- Open space and recreational space was disappearing fast in Fullerton
- Tennis will come back again, what kind of legacy will we leave
- The property will never be returned to tennis or open space if the project is approved
- Increased demand for water and electricity the 131 additional units will require
- Planning Commission needed to be aware of the amount of development going on in Fullerton
- Compromise – keep eight tennis courts
- Need to be responsive to the needs of the residents
- Recently approved projects will already be increasing the traffic in North Fullerton
- City on a path to completely change North Fullerton from a quiet residential area to a densely populated area

- Why would the Planning Commission and City Council want to change the property from Parks and Recreation to Office-Professional when the residents were against it
- Tennis club was an asset to the community

Vice Chairman Francis left the room at 9:45 p.m. and returned at 9:46 p.m.

The following people spoke in favor of this project:

Mike Harris, 650 Las Palmas Drive  
 Joel LaTorre, 4111 Carol Drive  
 Jim Davis, 2200 Pinecrest Court

The comments were:

- State had shown a need for this type of facility
- The project was only going to be 131 units
- The project would be an exclusive facility and would bring more income to the area
- No new, young faces in tennis in Fullerton
- Tennis was not as popular as it once was and the demand for racquet clubs had run dry
- Hunt-Wesson and Hughes used to support Sunny Hills Racquet Club
- Change was difficult to deal with
- There are many tennis courts in the area now that were not used
- The issue should be if a person would be able to develop their property in a way that was useful to the community at large
- Fullerton could use more senior housing, rather than the large homes that were being built

Public hearing closed.

Commissioner Bailey left the room at 9:56 p.m.

Commissioner Fitzgerald asked the applicant to explain the traffic analysis. James H. Kawamura, P.E., from KHR Associates, responded that he had prepared the traffic study. He clarified the perceived comments made regarding inconsistencies in the traffic study between March 2005 and February 2006. The public comment was that the earlier report found less traffic generated than the tennis courts, whereas the more recent study concluded that there was an increase in traffic as a result of the proposed project. The reason for the inconsistency was when the study was first completed in March 2005, the Institute of Traffic Engineers (ITE) trip generation rates were used and applied to both the tennis courts and the senior housing project. There was a limited amount of data that had been collected by the ITE, and this indicated a trip generation rate that was low, which brought up a question of believability.

Commissioner Bailey returned to the room at 9:57 p.m.

Rather than argue the issue, Mr. Kawamura had hired an independent firm to go out and physically count traffic data from two Orange County senior housing projects that were similar to the proposed project. The data collected from these case studies indicated a little more traffic than the ITE had indicated, therefore they had used the higher trip generation rate. By using the most conservative higher rate in the second study, it was concluded that the project could generate more traffic than the tennis court calculations provided by ITE. Furthermore, Mr.

Kawamura clarified that the traffic conclusions assumed that the site is vacant, not an operating tennis facility. Commissioner Hart asked if the report took into account other projects in the area. Mr. Kawamura responded absolutely, and explained that he had been provided a list of current projects, plus a scenario of the year 2025 as to what was designated currently in the City's General Plan, and this information was used in their analysis. It was estimated that in 19 years, 2.7% of the total new traffic using the Euclid-Rosecrans intersection, would be generated from the proposed Jacaranda project. There would be additional traffic, but the level of service would remain the same, which was the criteria traffic engineers used to assess impacts.

City Attorney Bettenhausen advised Chairman Savage to allow the applicant a chance to respond to the public comments.

Public hearing reopened.

The applicant declined to rebut, but agreed to answer questions.

Public hearing closed.

Commissioner Fitzgerald asked the applicant about the park fee, and what the total fee was per unit. Mr. Kuntz stated it was approximately \$6,500 per unit, but due to the rate increase in August, by the time permits were obtained it would be over \$9,000 per unit. The additional mitigation fee was approximately \$625,000, which would bring the total park fee to approximately \$1,876,575. Commissioner Bailey asked if the applicant had an issue paying the fee. Mr. Kuntz responded they had a problem paying the increased fee, which was \$95.00 per square foot when the project was started, and was now \$140 per square foot. With a new tennis court costing approximately \$20,000, he felt the 50% additional park fee was excessive.

Vice Chairman Francis asked Mr. Empey about the zone adjustment and the 2% increase variance. Mr. Empey explained that the zoning code gave administrative leeway to address non-detrimental issues. He believed there were a number of factors that made the project unique; it was a giant flag lot, there were not multiple opportunities for access which affected the circulation plan, and the increased parking standard was driving the design. When these factors were combined together, it created a unique condition. A 2% increase when all development standards had been met, should be supported. Vice Chairman Francis asked if the zone adjustment were denied, what type of adjustments would be made. Mr. Empey responded that they would reduce the building size, reduce the number of units, reduce the size of the club house, or reduce the entry statement (circular entry), all of which would be detrimental to the project. The net result would be a negative effect on the project. If allowed, it made no difference to off-site impacts, there were no compatibility issues, if units were taken out of the middle of a building it would be a couple of feet shorter. He added that the values of economics were right at their margin, and they wanted to keep the number of units up so they could keep the amenities up.

Mr. Bettenhausen commented that the Planning Commission must find special circumstances in order to make the zone adjustment determination. Mr. Empey cited the irregular lot, the fact that the property was land locked, the slope of the property, the limited access (i.e. the narrow frontage for a six acre parcel), the onsite fire circulation requirements, and the higher parking standards, all as special circumstances. Acting Chief Planner Eastman explained the code requirements to the Commissioners.

Commissioner Hart asked what square footage the 2% equaled, and Mr. Empey responded approximately 5,400 square feet. Chairman Savage asked the total square footage of the project and Mr. Empey answered 131,000 square feet approximately, net rental. Acting Chief Planner Eastman explained that it was 2% of the site, not 2% of how much square footage they had proposed. Mr. Kuntz stated that based on their studies, they had come up with much less parking required, and they would prefer to not build this increased parking at this time. He would prefer to leave it as open space now, and designate a later date to add parking if there were a shortage of parking. Commissioner Hart stated that having no offsite parking available might be the reason additional parking was required. She felt that age 55 was not that old, and most of the residents probably still had cars. Mr. Kuntz stated that most residents would be in the age range of 65-70 years old, and if they still worked it was probably not during peak traffic hours.

Commissioner Fitzgerald stated the realities of Fullerton, and the current City Council, was their desire to have adequate parking at new facilities and developments. She asked staff when the parking requirement had increased, did it help to create a discrepancy between lot coverage and open space. Acting Director Rosen stated it could be argued that the developer could design a project that fit within the parking guidelines. Commissioner Fitzgerald asked if there was a record of other projects that had been granted administrative lot coverage zone variances similar to the one being requested. Acting Director Rosen responded that there had been other adjustments approved by staff or the Site Review Committee (SRC), but did not recall any lot coverage adjustments recently. Commissioner Fitzgerald asked what determined if the lot was covered, and could the pavement be treated in such a way to be more aesthetically pleasing. Acting Director Rosen responded that generally speaking there were no specific provisions for not counting pavement for lot coverage. Acting Chief Planner Eastman clarified that the definition for lot coverage identified areas that were used for parking and circulation, regardless of the type of material used.

Chairman Savage asked if, for the four items being requested, a vote was required on each item. He wanted to clarify what the process was. Acting Chief Planner Eastman explained that the Commission could make one motion as recommended by staff. Mr. Bettenhausen clarified that it would be best to do each item individually, it was the preferred method, and it was best to start with the MND. Acting Director Rosen stated the Commission could certify the MND, and then take any action on the other items.

Commissioner Hart stated this was a difficult situation; she lived in the neighborhood, and had attended functions at the tennis club. She thought it was the end of an era, and did not think the tennis club could be brought back. Things had changed, people evolved. Change was hard. She questioned if nothing were done would the tennis club come back, and felt the answer was no, because the owner did not want it. She was struggling with the General Plan amendment as she was not convinced that changing it was the right thing to do. She was also struggling with the zone adjustment, and did not think 5,400 square feet in the grand scheme was huge. She felt the site plan and design were good, and The Morgan Group produced a quality project. She did not like the density, but felt it was a good transition. Commissioner Hart ask if the applicant agreed with the MND, and Acting Director Rosen responded that if the applicant did not agree with the mitigation measure, there would be a problem, as the MND could not be approved.

Chairman Savage asked the applicant if they agreed with the mitigation measures. Mr. Kuntz responded that he felt it was a going out of business tax for a private business, and did not like

the increase in fee due to the time delays. He did not like the mitigation fee, but it would not stop the project.

Commissioner Hart summed up her opinion; she was for the General Plan amendment, agreed with the CUP, agreed with the site plan, and did not agree with the zoning adjustment.

Commissioner Fitzgerald asked Commissioner Hart what she meant when she said 5,400 square feet was not a lot, and Commissioner Hart responded that it did not seem like a lot, but felt she had compromised enough.

Vice Chairman Francis asked how many inconsistencies there were between the General Plan and zoning. Acting Director Rosen responded that there were approximately 600 at one point, but currently less than 100. Vice Chairman Francis felt that time changes things. He did not have a problem with the General Plan amendment, and thought it was the right thing to do. He enjoyed playing tennis, but felt that it was private land and the City should not force the property owner to put in another recreational facility. He did not have a problem with the 2% zone adjustment.

Commissioner Fitzgerald had met with both the developer and residents. She lived in Sunny Hills and drove the area daily. She stated that she believed the Commission must look at the facts and do what they thought was right for the community. In regard to the General Plan amendment, she thought the community evolved and changed. It was zoned Office before the General Plan designation of Parks and Recreation, and she felt it was designated Parks and Recreation due to the expectation that the tennis club would be there long term. As the community changed, it was agreeable to amend the General Plan to reflect the current community's needs. She agreed with the CUP, and thought the site plan showed a beautiful project and would be an asset to Sunny Hills and the Fullerton community. As for the zone adjustment, she felt it was difficult to go against staff's recommendation, but agreed with Vice Chairman Francis that a 2% variance was not significant.

Commissioner Bailey discussed the many issues involved. Although it was a commercial endeavor; someone had looked at the property and said it looked like a park, so it was zoned Parks and Recreation. He believed senior housing was a good buffer, he liked that the building was single family size, he liked the design, and agreed with the zone adjustment and site plan. His one concern was that he did not feel the applicant should be held responsible for the error in zoning and thought the mitigation fee was unnecessary.

Chairman Savage stated that he personally walked every project, and although he liked the tennis club, it was a private endeavor. He felt the current owner was a professional property manager, and was aware of zone/General Plan conflict. He also believed the neighbors had good reason to believe that the area would be a long-term recreational facility of some type. He did not have a problem changing the General Plan, but because this property was transitional in nature, he did not feel it was unreasonable to request the developer to design a lower density project that would have less of an impact on the neighborhood. He felt a lower density project would be a better transitional project. He stated that he did not believe a tennis court could be built for \$20,000. He was presently not going to approve the zone adjustment, was not going to vote for the CUP, would agree with the MND only, and would vote no on the site plan.

Commissioner Fitzgerald asked what Chairman Savage considered long term, as the General Plan designation was from 1970, and this was put in as a recreational facility. Chairman Savage responded that the tennis club had been there long enough to establish a way of life in

an area, and felt the City of Fullerton had said to the developers that they need to pay money because they were taking park land away. Vice Chairman Francis asked how that was fair when it was private land. Commissioner Bailey agreed and thought it was punishing the property owner. Chairman Savage did not think they should be charged, but could build something more compatible with the neighborhood. Commissioner Fitzgerald asked Chairman Savage what, in his opinion would be the density of a project that would be acceptable, and Chairman Savage responded he felt 100 to 110 units would be more compatible as a transition.

For clarity, Acting Chief Planner Eastman stated that the park fees totaled roughly \$1.8 million, with \$1.2 million the required amount, and \$600,000 as an additional mitigation fee.

Vice Chairman Francis stated that three of the commissioners were on the same page. He felt the only decision remaining was the park fee, and thought it should be lowered. Chairman Savage asked if that was part of the MND, and Acting Director Rosen responded affirmatively.

Commissioner Hart asked if they needed four votes, and Acting Director Rosen stated the Commission could try a motion and see what happened.

Chairman Savage made a motion to deny the recommendation of the MND to the City Council, and Commissioner Hart seconded. Vice Chairman Francis asked if they denied the MND was it because of the park fee, and Chairman Savage responded that he did not think they should pay the extra amount, and that the money would be better spent on the amenities of the property. Vice Chairman Francis asked Chairman Savage if he would approve the MND with an amendment that they do not pay the extra fee. Mr. Bettenhausen clarified that to reduce the amount would equal a denial. There was a determination of certain impacts and the fee was to offset those impacts. Acting Chief Planner Eastman state the MND reflected that there were some impacts to the General Plan amendment, and the question was if the fee was adequate to mitigate these impacts. The question was not necessarily if the fee was too much.

Chairman Savage explained he was trying to achieve a reduction in density, and lower the mitigation fee in exchange for this reduction. Acting Chief Planner Eastman explained that the two were not related, and even though the Commission may not agree, if the applicant was in agreement, the Commission could certify the MND. Chairman Savage clarified that he made no mention of changing the fee in his motion. He felt the problem was with the density of the project, and that the neighbors had a legitimate reason to believe the space would be park land because of the General Plan description.

Acting Director Rosen stated that the Commission needed to take action on the current motion. Vice Chairman Francis asked if the MND was not approved by four Commissioners, would the other items die. Mr. Bettenhausen stated that the CEQA issue must be resolved before they could move on to approving the project. Staff recommended the Commission identify whether or not they could certify the MND.

Chairman Savage clarified that he had a conversation with Mr. Bettenhausen and understood that with three votes they could continue the meeting until the other Commissioner was present at the next meeting. Acting Director Rosen agreed, and recommended the Commission conclude the action on the current motion.

Chairman Savage called for a vote, and the motion failed to pass 1-4, with Chairman Savage voting to deny the MND.

A motion was made by Commissioner Fitzgerald to APPROVE Resolution PC-06-22 recommending certification of the Mitigated Negative Declaration for a proposed 131-unit senior apartment complex on property located at 1900 Camino Loma, and was seconded by Vice Chairman Francis. The motion CARRIED 4-1, with Chairman Savage voting no.

A motion was made by Vice Chairman Francis to allow the zone adjustment based on the special circumstance of the irregular lot shape and the slope, allow the General Plan amendment, approve the major site plan, and approve the CUP. Motion seconded by Commissioner Bailey. After clarifying that the items should be voted on separately, Vice Chairman Francis withdrew his motion and Commissioner Bailey concurred.

A substitute motion was then made by Vice Chairman Francis to APPROVE Resolution PC-06-23 recommending approval of a zoning adjustment to exceed the maximum permitted lot coverage on property located at 1900 Camino Loma, and was seconded by Commissioner Bailey. Commissioner Fitzgerald clarified that it was due to the irregular lot size, the slope, and the limited egress and Commissioner Bailey concurred. Chairman Savage stated he would side with staff on this motion, and would vote against this motion due to the sensitivity of the proposal. Motion CARRIED 3-2, with Chairman Savage and Commissioner Hart voting no.

A motion was made by Vice Chairman Francis to APPROVE Resolution PC-06-24, recommending approval of a site plan to construct a 131-unit senior apartment complex and a conditional use permit for a “retirement complex” on property located at 1900 Camino Loma and was seconded by Commissioner Fitzgerald. Motion CARRIED 4-1, with Chairman Savage voting no.

A motion was made by Commissioner Fitzgerald to APPROVE Resolution PC-06-25 recommending approval of a General Plan revision to change the land use designation from “Parks and Recreation” to “Office” on property located at 1900 Camino Loma and was seconded by Commissioner Bailey. Motion CARRIED unanimously by voting members present.

Chairman Savage explained the item would be going before City Council.

## **OTHER MATTERS**

### **COMMISSION/STAFF COMMUNICATION**

Acting Chief Planner Eastman explained that there would be an Amerige Court workshop with the RDRC and community tomorrow, and a similar workshop with the Planning Commission on August 9, 2006 at 7:00 p.m.

Commissioner Fitzgerald asked if the President Homes homeowner’s association from a previous proposal had removed their fence, and Acting Director Rosen responded affirmatively.

### **REVIEW OF COUNCIL ACTIONS**

Acting Director Rosen gave a brief report on recent City Council meetings.

### **PUBLIC COMMENTS**

There was no one from the public who wished to speak on any matter within the Commission’s jurisdiction.

**AGENDA FORECAST**

The next regularly scheduled Planning Commission meeting will be August 9, 2006 at 4:00 p.m.

**ADJOURNMENT**

There being no further business the meeting was adjourned at 11:13 p.m.

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Janelle Pasillas  
Secretary