

MINUTES OF THE REGULAR MEETING OF THE FULLERTON PLANNING COMMISSION

COUNCIL CHAMBERS – CITY HALL

WEDNESDAY

OCTOBER 25, 2006

4:00 P.M.

- CALL TO ORDER:** The meeting was called to order by Chairman Savage at 4:01 p.m.
- PRESENT:** Chairman Savage, Vice Chairman Francis (7:00 p.m. session only), Commissioners Bailey, Hart, Musante, and Thompson
- ABSENT:** Commissioner Fitzgerald
- STAFF PRESENT:** Acting Director of Community Development Rosen, Acting Chief Planner Eastman, Senior Planner St. Paul, Senior Civil Engineer Voronel (7:00 p.m. session only), Director of Redevelopment Rob Zur Schmiede (4:00 p.m. session only), Redevelopment Manager Ramona Castaneda (4:00 p.m. session only), Redevelopment Manager Rob Ferrier (4:00 p.m. session only), Redevelopment Project Manager I Christine Pilapil (4:00 p.m. session only), Captain Greg Mayes (4:00 p.m. session only), Assistant City Attorney Kim Barlow (4:00 p.m. session only), and Recording Secretary Pasillas.
- FLAG SALUTE:** Commissioner Hart
- MINUTES:** MOTION made by Commissioner Musante, SECONDED by Commissioner Bailey and CARRIED unanimously by voting members present that the Minutes of the September 27, 2006 meeting be APPROVED AS AMENDED (Page 167, third paragraph, first sentence to read: In response to comments made by Fullerton Heritage, Chairman Savage asked staff to respond to the potential of a “domino” effect, and asked staff if there was evidence that a nine-story downtown would follow.).

4:00 P.M. SESSION

PUBLIC HEARINGS

ITEM NO. 1

PRJ06-00362 – LPP06-00011. APPLICANT: CITY OF FULLERTON.

Staff report was presented pertaining to a proposal to consider a Zoning Amendment modifying Title 15 of the Fullerton Municipal Code to prohibit the establishment of medical marijuana dispensaries in the City of Fullerton. (Exempt under Section 15061 of CEQA Guidelines) (Continued from September 27, 2006) (BSP).

Senior Planner St. Paul gave a brief background of the proposal. The item was previously heard on September 22, 2006 and continued to allow further discussion and public comment. He explained the goal of a medical marijuana dispensary was to operate as a business and to distribute marijuana, for profit. He added that the current City code was silent on the issue, state

law did not address dispensaries, and federal law prohibited the sale or other dispensing of marijuana.

Assistant City Attorney Barlow explained a list she had obtained from cities throughout the State and their zoning rules on medical marijuana dispensaries, and the vast majority of cities had either adopted moratoriums or prohibited medical marijuana dispensaries. A few cities had allowed dispensaries, most under very controlled circumstances and in limited areas, and the majority of these cities have reported problems as outlined in the staff report. She also mentioned an article in the October 25, 2006 Los Angeles Times regarding Los Angeles' moratorium on new dispensaries due to the difficulties they were having with existing dispensaries.

Public hearing opened.

Norman Wells (aka Norman A. Norman), a medical marijuana patient, explained that he suffered from arthritis and had tried other treatments without success. He believed the dispensaries were necessary for patients with a genuine need, and believed there needed to be a safe way for patients with illnesses to get their medication.

William Britt, Director of the Association of Patient Advocates, and himself a medical marijuana patient, felt the reason Los Angeles had put the moratorium in place was that there was not a need for additional "clubs". By refusing to provide guidelines for patients, and for these collectives to set up, he felt the State was denying people their civic right to set up and distribute medical marijuana and implement the law.

Chairman Savage asked if dispensaries were referred to as clubs, and Mr. Britt responded that the term club referred to patients who associated in order to collectively or cooperatively cultivate marijuana. The dispensary was not really the collective; it was just the place the collective designated for the dispensing of the marijuana to the collective members. Clubs are not for profit or retail sales; usually a membership fee or make a donation would be made.

Commissioner Thompson asked about the organization Mr. Britt represented, and Mr. Britt explained that it was a grass roots organization of patients helping patients. He trained disabled people to become advocates, and they advocated for the rights of patients on different issues.

Commissioner Thompson asked if there were for-profit organizations that dispensed marijuana, and Mr. Britt responded that in San Diego there had been several for-profit clubs, but due to a lack of guidelines they had since shut down. In his clubs' case, any extra funds must go back into the collective.

Commissioner Thompson asked where Mr. Britt believed the best run dispensary in the State was, and Mr. Britt cited the Patient Caregiver Group in West Hollywood. Commissioner Thompson asked who managed the facility, and Mr. Britt responded the Director was Don Duncan. Commissioner Thompson asked if the dispensaries "self police" in terms of verifying the patient's legal status as a medical marijuana patient, and Mr. Britt responded affirmatively. He gave an example of a collective he had been at recently where a fake letter was discovered, the police were called, and the person arrested. Commissioner Thompson asked if there was a limit on the quantities a person was allowed to purchase, and Mr. Britt answered that by law eight ounces was the most a person could travel with, but most collectives distribute one ounce at a time. Commissioner Thompson asked if it was sold loose, and Mr. Britt responded that it was generally loose, but there were also edibles and concentrates. Commissioner Thompson was concerned that the presence of a medical marijuana dispensary would attract recreational users. Mr. Britt

responded that it was difficult and expensive to grow, and the prices were usually higher at a dispensary than on the street due to the overhead costs.

Commissioner Hart asked if there was consumption of the marijuana on site. Mr. Britt responded that Los Angeles County allowed on-site consumption to allow employees and others who needed a safe place to use their medicine, without going out on the streets. The law said the consumption area must have special ventilation and be isolated from the main area of the dispensary.

Commissioner Bailey asked what one ounce of medical marijuana would cost. Mr. Britt responded it would be between \$100 and \$350 per ounce depending on the type of marijuana. Commissioner Bailey stated that federal law made dispensing medical marijuana illegal, and wanted to know if Mr. Britt was aware of any federally exempt people that possess and use marijuana for medical conditions. Mr. Britt answered negatively, and added that the federal government had said they would not go after people with an approved use, who were not transporting across state lines. Commissioner Bailey asked about a recent Federal Supreme Court decision, and Mr. Britt responded it was the "Raich" decision and it did not overturn the state law, but directed Congress to address the issue.

Assistant City Attorney Barlow stated that some of Mr. Britt's statements were inaccurate. The DEA had raided a number of dispensaries since the "Raich" decision, and there was not a "hands off" policy by the DEA. Medical marijuana dispensaries were a violation of federal law. The state criminal exemption that was provided for in the Compassionate Use Act related to possession and use, not distribution and sale. Sale and distribution remain illegal under federal law. There was a California state exemption from criminal prosecution for collective growth that did not allow for sale, but was intended to allow for a patient who could not grow medical marijuana on their own to receive it from some one who could grow it.

Chairman Savage stated that the item before the Planning Commission had nothing to do with the individual crime prosecutions, only the land use for dispensaries.

Assistant City Attorney Barlow added that this item was not about whether or not marijuana was a dangerous drug, whether or not it helped people, or even the Compassionate Use Act; it was about the impact medical marijuana dispensaries have on the communities in which they have been located.

Will B. King, who lived in Venice Beach at the corner of Commonwealth and Lincoln Blvd., stated there was a dispensary on the corner above him. It was open 24 hours per day, seven days a week, and the dispenser lived at the business. He added that people were in and out of the business all night long. For \$165 to \$195 someone from the business would take you to a foot doctor and get a prescription for medical marijuana. He felt it was dangerous when people left the dispensary and drove. He did not believe there was adequate ventilation, and the smoke outside affected the neighbors.

Public hearing closed.

Commissioner Musante believed "prohibit" was too strong a word and "moratorium" would give hope to people who may need medical marijuana. He stated that in 1996, 74% of the voting public in California voted to approve medical marijuana. He added that he had done an informal poll of 45-50 people in their 60's or 70's, and they all stated they would like to have the option to utilize medical marijuana if they had cancer or some other fatal illness. He preferred a moratorium over prohibiting dispensaries to allow an option when the federal and state came together on the issue. Commissioner Musante thought it possible to put together regulations so that marijuana, with a

doctor's prescription, would be dispensed through a state licensed pharmacy or hospice. He believed this would accommodate the public's interest and be in line with the Compassionate Use Act.

Assistant City Attorney Barlow clarified that under state and federal law, no pharmacy, hospital, or other licensed medical dispensary was permitted to dispense marijuana. It had been ten years since the Compassionate Use Act proposition passed, and there was no sign of the federal government wanting to work with the state to reconcile state and federal law. A moratorium would last for a maximum two years; it would start with 45 days, and could be added to, and staff would need to report back to the Commission on what they were doing to address the issue. Most cities that had passed a moratorium had since changed to a prohibition.

Chairman Savage made a motion recommending the adoption of the proposed ordinance prohibiting medical marijuana dispensaries within the City of Fullerton. Commissioner Hart seconded.

Commissioner Thompson wanted to be sensitive to the needs of people who were ill or in significant pain. He believed marijuana probably worked, but federal and state laws have not left the City with a choice. He felt it was important to safeguard the City from any liability and would support a prohibition.

Chairman Savage stated that in regards to a moratorium versus prohibition, laws were changed all the time, and this could also be changed. He believed that to not put a prohibition in effect would open the City to potential legal issues that were far reaching and very expensive.

Commissioner Bailey agreed with Commissioner Musante that a flat out prohibition on the sale of medical marijuana within the City was not the right way to go, and preferred a temporary moratorium. He felt medical marijuana could be properly regulated. There were banks and 7-11's that were hot spots for crime, and this would not be any more dangerous. When three-quarters of the State voted for something it sent a message. He would not support a prohibition.

Chairman Savage believed citizens had voted for individual medical marijuana use not medical marijuana dispensaries.

Commissioner Bailey explained that his mother died in the mid-1990's, at the age of 47, from breast cancer. Marijuana was recommended to her by her doctor, but his dad was a Los Angeles Police Officer and could not go out and buy marijuana. He believed there was a need for a safe place for people to obtain this medicine that the state and its citizens have authorized.

Commissioner Hart understood what Commissioner Bailey had stated and believed there were good uses for medical marijuana; her dad also died from cancer. The issue tonight was land use, and she thought the Commission needed to look at the City as a whole, and the impact on everyone in the City. The Commission needed to determine if it was detrimental to the health, welfare and safety of the citizens of this City. Without federal or state guidelines allowing this use, it would not be safe for the citizens. She would vote to prohibit medical marijuana dispensaries.

Commissioner Musante made a substitute motion with wording that changed the ordinance from prohibiting medical marijuana dispensaries to placing a moratorium on the dispensaries.

Assistant City Attorney Barlow responded to Commissioner Musante's substitute motion by stating that the Planning Commission's authority to make land use and zoning decisions was based on the health, welfare and safety of the citizens, therefore she was concerned with eliminating some of

the language that referred to the health, safety, morals and welfare as the basis of the decision. Also, if medical marijuana dispensaries were defined as licensed pharmacies, it would prohibit them because no licensed pharmacy would distribute medical marijuana for fear of losing its state license. Another concern would be that in order to impose a moratorium, the Commission must make certain findings which were not contained in the proposed ordinance.

Commissioner Bailey seconded Commissioner Musante's substitute motion for the sake of discussion. He liked the substitute motion, but wanted to eliminate the description of the facility as recommended by City Attorney Barlow.

Chairman Savage did not believe it a wise idea for the Planning Commission to play lawyer and start drafting law. The proposed ordinance had been reviewed by the City Attorney, and he would be against the substitute motion.

Commissioner Musante stated his intent was to present a common sense solution to the problem. He reminded the Commission that they were not passing an ordinance, just making a recommendation to the City Council.

Commissioner Musante withdrew his motion.

Commissioner Bailey made a substitute motion to delay the ruling and ask staff to draft an ordinance with a moratorium pending regulations from the federal and state governments.

Commissioner Musante seconded this motion.

The motion failed to pass 2-3, with Chairman Savage and Commissioners Hart and Thompson voting no.

The title of Resolution PC-06-35 RECOMMENDING to the City Council approval of a zoning amendment modifying Title 15 of the Fullerton Municipal Code to prohibit the establishment of medical marijuana dispensaries in the City of Fullerton was read and further reading waived. MOTION by Commissioner Savage, SECONDED by Commissioner Hart and CARRIED 3-2, with Commissioners Bailey and Musante voting no, that said Resolution be ADOPTED AS WRITTEN.

Assistant City Attorney Barlow and Captain Mayes left the meeting.

Meeting adjourned 5:11 p.m.

Meeting reconvened 5:18 p.m.

ITEM NO. 2

APPLICANT: FULLERTON REDEVELOPMENT AGENCY.

Staff report was presented pertaining to a request that the proposed 2006 Fullerton Redevelopment Project Area merger was found to be in conformance with the City of Fullerton General Plan.

Director Zur Schmiede explained the Redevelopment Plan amendment request and the Planning Commission's role. A project area map was shown indicating the four current project areas, and Director Zur Schmiede explained each. The proposed amendment involved a financial merger of its four project areas into one. A merger would enhance the Agency's credit rating for bonding purposes and allow the Agency to more easily direct its resources to neighborhoods with the

greatest need and projects of the highest priority. The proposed merger would also amend the Redevelopment Plans to conform to the City's General Plan. Existing Redevelopment project areas would retain independent financial reporting status and become components of the merged project area.

Director Zur Schmiede continued by explaining the Planning Commission's role was to review the proposed merger for General Plan conformity (Health and Safety Code Section 33346). The Planning Commission's choices would be to determine whether the merger was in conformity and recommend approval, determine that the merger was in conformity and recommend approval with comments, or determine that the merger was not in conformity and recommend denial.

Director Zur Schmiede gave an overview of the merger requirements and the anticipated schedule.

Commissioner Hart asked, concerning the three areas identified in the 1970's, if there would come a time where the area was considered developed and then abandoned. Director Zur Schmiede responded that the plans were forty-year plans and expired in 2016 for Area One (Orangefair), and 2017 for the central and east areas. Area Four was adopted in the early 1990's, and therefore it had a longer plan duration. Redevelopment law allowed extending a plan's life, but that would generate other changes in how the funds could be spent.

Commissioner Hart questioned what would happen if the areas that were merged together had different expiration dates. Director Zur Schmiede responded that each area maintained its own financial identity which would remain post merger. The merger would allow one project area to support another from an underwriting standpoint, and also allow the Agency to spend its revenue within the merged project area.

Commissioner Thompson asked if he could find the amendment in conformance with the General Plan, but not recommend approval. Director Zur Schmiede responded affirmatively.

Commissioner Bailey asked if this was similar to what was done in Long Beach with its redevelopment areas. Director Zur Schmiede responded that in Long Beach approximately 50% of the City was in a redevelopment area, several of which had very active and large project area committees. He indicated that he was not certain if Long Beach's proposed merger had been completed. Commissioner Bailey did not want to spend money in one area, and not spend money in another area. Director Zur Schmiede explained that post merger the Redevelopment Agency / City Council would decide each year where funds would be spent.

Chairman Savage was concerned with the financial aspects of this issue, if it was within the purview of the Planning Commission, since land use was usually the only topic they were legally authorized to discuss. He had met with staff prior to this Planning Commission meeting, and he now understood the Planning Commission's role. He continued by explaining that his initial reaction was that the merger would take money from one area to spend in another area, and he was concerned. Director Zur Schmiede responded that the way things were currently, the City Council was not completely prohibited from spending money from one area in another, but that certain findings were required to do so. The larger benefit of the merger was an enhanced credit rating.

Chairman Savage felt that it would be a plus to be viewed more favorably by bond issuers. He asked if people who owned properties in the areas would be notified about the City Council meeting. Director Zur Schmiede answered that each property owner would receive a legal notice and a newsletter explaining the merger. Acting Director Rosen added there would also be multiple publications in the newspaper, one time per week for four weeks and it would also be posted.

Commissioner Musante believed this was a procedural type issue to get the merger before the City Council. He also stated that he did not believe the City Council had an allegiance to one specific area.

Commissioner Bailey asked for clarification; he wanted to confirm that the Redevelopment Agency distributed the \$77 million that came in. Director Zur Schmiede confirmed that \$77 million in bonds were sold in December 2005, and the Agency had programmed a small portion of the funds, while engaging in planning studies that would ripen into actual capital projects. The bonds had a portion attributable to each area, and when the funds were budgeted for spending, under the current, non-merged status, the Agency must be mindful of these project areas' spending limitations.

Commissioner Thompson asked if it was a federal or state statute that mandated 20% be set aside for low income housing, and Director Zur Schmiede responded it was a state statute.

Commissioner Bailey asked if, internally, the funds for each area could still be identified and would it function basically the same way, but at the same time have the increase in bond rating. Director Zur Schmiede responded that financial reporting would still be made by area, as was required by the State Controller.

Commissioner Hart asked if, by merging the funding, any existing project would be negatively impacted by the merger and Director Zur Schmiede responded negatively.

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

Commissioner Bailey stated that after hearing there would continue to be individual reporting he was not concerned with the money movement, and believed the Redevelopment Agency was in touch with what was going on in the City. He would support the merger.

Commissioner Thompson thought the logical extension of merging would be to declare the whole City a redevelopment area, which would provide the same benefits. He believed this was City government participating in the development game, and the height of "big government". He thought the City Council was basically acting as a development company. He would vote no on the merger because he believed there was a need to slow down and ultimately discontinue redevelopment programs.

Commissioner Musante stated if you turned a design team loose on the four areas to develop an overall plan, you would get a better plan than four separate designs. He would support the merger.

Chairman Savage believed it was the lawful duty of the Planning Commission to decide if this fit in with the General Plan, not to analyze the laws of redevelopment. Commissioner Thompson disagreed because he was being asked to recommend approval of a merger.

Commissioner Hart understood Commissioner Thompson, but felt it was necessary to have some redevelopment areas. She thought pooling the money was good, and would like to see the redevelopment areas shrink in the future as they expire.

Commissioner Thompson would be voting against the merger because he did not want to recommend approval of the merger to the City Council.

Commissioner Musante felt there was a need for the Planning Commission and the Redevelopment Agency to represent the private sector, and a blending of the two made good sense.

Chairman Savage supported the motion, but was concerned with tax money being moved around, combined, and shifted. He was unsure if people within the areas had received proper notice that this merger was in the works.

Commissioner Hart believed the merger would allow the spending of funds from an over funded area on things that could be better utilized in another area. She would support the merger.

Chairman Savage stated his concern was that the money would be moved for political purposes, not the reasons Commissioner Hart referred to.

Commissioner Musante had no concerns, and believed it a good idea to allow the City Council to spend the money on the overall area where it could do the most good.

The title of Resolution PC-06-38 making its report and recommendation as to the conformity of the proposed 2006 Fullerton Redevelopment Project Area Merger with the Fullerton General Plan, and recommending to the Fullerton City Council and the Fullerton Redevelopment Agency that said Redevelopment Project Area Merger be approved was read and further reading waived. MOTION by Commissioner Musante, SECONDED by Commissioner Hart and CARRIED 4-1 with Commission Thompson voting no that said Resolution be ADOPTED AS WRITTEN.

OTHER ITEMS

COMMISSION/STAFF COMMUNICATION

Acting Director Rosen explained that some Planning Commissioners still needed to attend the state mandated AB 1234 training. Staff would notify these Commissioners when a make-up class had been scheduled.

Commissioner Bailey asked about the mention of possible development at Orangethorpe/ Brookhurst in the Mayor's State of City address, and Acting Director Rosen explained that it was a private development with multiple property owners who had been unable to agree.

REVIEW OF COUNCIL ACTIONS

Acting Chief Planner Eastman gave a brief report on recent City Council meetings.

AGENDA FORECAST

The next regularly scheduled Planning Commission meeting would be December 13, 2006 at 4:00 p.m. The November 8, 2006 and November 22, 2006 meetings had been canceled.

Meeting adjourned at 6:21 p.m.

7:00 P.M. SESSION

Meeting reconvened at 7:00 p.m.

ITEM NO. 3

CONDITIONAL USE PERMIT CUP-1031B. APPLICANT: JAMES BARNUM; PROPERTY OWNER: STEVE FORELL.

Staff report was presented pertaining to a request to modify a Conditional Use Permit (CUP-1031) for the operation of events held in an existing banquet/dance hall (Wilshire Court), including removal of a 12:00am stopping time for events, removal of loading and unloading restrictions on Wilshire Avenue, and removal of designated beer consumption areas for the property located at 140 West Wilshire Avenue (located on the south side of Wilshire Avenue between approximately 50 and 100 feet east of Malden Avenue) (C-3 Zone) (Categorically exempt under Section 15301 of CEQA Guidelines) (Continued from September 27, 2006) (AKU).

The applicant had withdrawn the request.

ITEM NO. 4

PRJ04-00919 – PM2006-248. APPLICANT: PSOMAS; PROPERTY OWNER: ACCRETIVE LAGUNA PARTNERS, LLC.

Staff report was presented pertaining to a request for approval of a tentative parcel map to consolidate 12 lots into three numbered lots and one lettered lot on property located at 300 West Bastanchury Road, 1933-83 Sunny Crest Drive and 134 Sunny Crest Drive (aka Providence Center) (southwest corner of Bastanchury Road and Laguna Road, encompassing an area between Bastanchury Road, Laguna Road, Laguna Drive and Sunny Crest Drive) (C-2 zone) (previously certified Mitigated Negative Declaration) (JEA).

Acting Chief Planner Eastman gave a brief overview of the project, and overheads were shown. The project had gone before the City Council on appeal, and they upheld the Planning Commission's decision, and also certified the Mitigated Negative Declaration (MND), and Mitigation Monitoring Program. The item being discussed was a parcel map to adjust property lines and easements, which could have been an administrative process, except the applicant had requested a parcel map to create commercial condominium spaces for sale on the north side of Sunny Crest Drive. He explained that the lettered lot encompassed a street right of way, and would be undevelopable. In addition, the parcel map would dedicate the ten-foot area at the intersection Bastanchury and Laguna Road, which would fulfill a required Mitigation Measure for the Providence Project.

Commissioner Hart asked why this parcel map was not done with the original project, and Acting Director Rosen responded that originally it was thought that the adjustments would be handled through administrative approvals, but due to the number of lots being adjusted it would be cleanest to adopt a map. In addition, the applicant was not ready to do the condo map portion at that time.

Commissioner Musante asked if the residents in the surrounding area were notified, and Acting Chief Planner Eastman responded affirmatively.

Public hearing opened.

Kelly Carlisle, a representative of the applicant stated that they agreed with both the staff report and staff's recommendations, and she was available for any questions.

Public hearing closed.

The title of Resolution No. PC-06-39 GRANTING a parcel map to consolidate twelve lots into three numbered lots and one lettered lot including abandonment and rededication of certain public easements on property located at 300 West Bastanchury Road, 1933-83 Sunny Crest Drive and 1934 Sunny Crest Drive (Providence Center) was read and further reading waived. MOTION by Commissioner Hart, SECONDED by Commissioner Bailey and CARRIED unanimously by voting members present that said Resolution be ADOPTED AS WRITTEN.

OTHER ITEMS

PUBLIC COMMENTS

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

ADJOURNMENT

There being no further business the meeting was adjourned at 7:12 p.m.

Janelle Pasillas
Secretary