# MINUTES OF THE REGULAR MEETING OF THE FULLERTON PLANNING COMMISSION

## **COUNCIL CHAMBERS – CITY HALL**

<u>WEDNESDAY</u> JUNE 27, 2007 7:00 P.M.

**CALL TO ORDER:** The meeting was called to order by Vice Chairman Hart at 7:17 p.m.

**PRESENT:** Vice Chairman Hart, Commissioners Bailey, Chaffee, Musante, Savage and

Thompson

ABSENT: Chairman Francis

**STAFF PRESENT:** Acting Chief Planner Eastman, Senior Planner St. Paul, Acting Senior Planner

Allen, Senior Civil Engineer Voronel, and Planning Intern Bingham

**FLAG SALUTE:** Commissioner Savage

MINUTES: MOTION made by Commissioner Musante, SECONDED by Commissioner

Savage, and CARRIED unanimously, by voting members present and Commissioner Chaffee abstaining, that the Minutes of the June 13, 2007

meeting be APPROVED as written.

## **PUBLIC HEARINGS**

#### ITEM NO. 1

PRJ07-00191 – ZON07-00038. APPLICANT: JEANETTE ABNEY; PROPERTY OWNERS: FRED DENNY AND DENGO INVESTMENT, INC.

A request for a Conditional Use Permit to operate a drug and alcohol treatment/counseling center on property located at 104 North Raymond Avenue (east side of Raymond Avenue at the corner of Raymond and Commonwealth Avenue) (C-2 zone) (Categorically exempt under Section 15301 of CEQA Guidelines) (BSP).

Acting Chief Planner Eastman explained that the applicant was requesting approval for a "Human Services Agency" use, which participated in County programs; PC1000 and Proposition 36. Staff had received notice from the applicant that currently she was not participating in the Proposition 36 program. Staff had questions regarding the definition of this requested use, and whether or not a Conditional Use Permit would be required. There had been previous correspondence between the applicant's attorney and the City Attorney, regarding which category the applicant would fit in. Staff had spoken with the applicant and she was willing to continue the item until the next meeting, which would allow time to consult with the City Attorney and decide the course of action that would follow.

MOTION made by Commissioner Musante, SECONDED by Commissioner Chaffee failed to pass by a 2-4 vote, with Vice Chairman Hart, Commissioners Bailey, Savage, and Thompson voting no, that the applicant and public be heard tonight and then the item be continued to the July 11, 2007 meeting.

Acting Chief Planner Eastman indicated that the applicant was not interested in being heard if it was going to create controversy or problems.

MOTION made by Commissioner Savage, SECONDED by Commissioner Thompson and CARRIED unanimously that said item be CONTINUED to a date certain, the July 11, 2007 meeting.

Acting Chief Planner Eastman explained that if it was decided that the item did not need to come back before the Planning Commission staff would try to notify the public that the application had been withdrawn, and the applicant would proceed with their business pursuant to the Zoning Code.

# ITEM NO. 2 PRJ06-00294 - PM2006-224. APPLICANT AND PROPERTY OWNER: ASHOK PATEL.

A request to subdivide a parcel into two lots on property located at 1226 Mesa Del Sol, (terminus of Mesa Del Sol) (PRD zone) (Categorically exempt under Section 15315 of CEQA Guidelines) (HAL).

Acting Chief Planner Eastman explained that a memo had been prepared by staff and provided to the Commissioners summarizing a letter from the President of the Homeowner's Association (HOA). The property under discussion was a Planned Residential Development (PRD) property, and the access to the property was provided via a private street which was owned and maintained by the HOA. The President of the HOA requested that the item be continued, and staff recommended continuing the item to allow for further discussion between the HOA and the property owner as requested.

Vice Chairman Hart stated that it was her understanding that the majority of homeowner's in the community had signed off on this proposal, and Acting Chief Planner Eastman responded that staff had received a letter in 2005 indicating support of the subdivision. The President of the HOA had indicated that the request before the Commission today was not the request they believed they were approving in 2005. Issues related to CC&Rs and HOA responsibilities were civil issues, and as such need to be worked out between the HOA and the property owner. Staff was concerned that the only access to the property was over a property owned by the HOA.

Vice Chairman Hart asked if the property was zoned R-20, and was there a precedent on the HOA regarding zoning. Acting Chief Planner Eastman explained that the Commission could hear the item, allow for the subdivision and tentative tract map, and as a condition of the final map require that the property owner have authorization from the HOA before recordation of the final map. Because there was a lack of certainty that the permission from the HOA would be given, staff recommended the Commission not move forward with the item at this time to allow for discussion between the HOA and the property owner requesting the subdivision.

Vice Chairman Hart asked if it would be appropriate to ask the applicant if they had a preference, and Acting Chief Planner Eastman responded that it was his understanding that the applicant would like to move forward today.

Commissioner Bailey asked if the HOA had access rights, and Acting Chief Planner Eastman responded that they owned the street that would be used for access. Commissioner Bailey asked if, as part of the process to get City approval, the applicant was required to get approval from the HOA to use their property for access, and Acting Chief Planner Eastman responded that if a person owned a property, and the only way to take access to the property was over someone else's property, they could not subdivide the property. Access to a public street was required to have a legal lot.

Commissioner Thompson stated that in the interest of the property rights of the applicant, he would support the applicant's right to continue the hearing process; however, he believed it would behoove the property owner not to move forward at this time.

Commissioner Bailey also would support moving forward, however, if evidence was presented today that would limit the ability to subdivide the property, the Commission may rule in a way that the property owner would not want.

Commissioner Savage stated he would support the applicant moving forward, although he also did not believe it in his best interest.

Commissioner Musante asked if the HOA could block this request if they did not allow access to the second building, and Acting Chief Planner Eastman clarified that staff requested the continuance to help understand the circumstances of the request.

Vice Chairman Hart stated that in the entire HOA there were seven houses, and the only one that was uncertain was the President of the HOA, not necessarily the other people in the HOA. She wanted to know if the President of the HOA was acting as an individual or as the President of the HOA. Acting Chief Planner Eastman explained that it was his understanding that there were two people in opposition, and in reviewing the CC&Rs he understood that that may be enough opposition to not allow the subdivision. This was a civil matter, and staff and the City Attorney recommended that the Planning Commission not get involved with the CC&Rs.

Commissioner Savage clarified that he was in agreement with staff, that it would be better to continue the item; however, he also believed that if the property owner insisted he would be willing to hear the item based on what was in front of him.

MOTION made by Commissioner Thompson, SECONDED by Commissioner Savage and CARRIED unanimously that said item be heard tonight.

A five minute recess was taken so that the applicant and the HOA President could confer and see if they could come to an agreement or understanding. Acting Chief Planner Eastman stated that the applicant wished to proceed, and the Commission directed staff to continue.

Acting Senior Planner Allen gave a brief overview of the request. The property was lot number five in a seven lot residential subdivision that was approved in 1993. As part of that request the area of seven lots was changed to a zoning of Planned Residential Development (PRD). The current request was to subdivide the existing parcel into two lots, to create one parcel approximately 20,000 square feet, and a second parcel which would be 21,037 square feet. PRD zoning did not have a minimum lot size, but surrounding properties were all R-1-20 lots, and that was the minimum lot size applied to this request.

A parcel map was shown, and Acting Senior Planner Allen described the two proposed lots. An access easement was identified, which would provide access off of Mesa del Sol to the back parcel.

Acting Senior Planner Allen explained the recommended conditions outlined in the Staff Report and Engineering Letter. Due to the PRD zoning the properties were covered under a HOA which did have CC&Rs, and staff requested the CC&Rs be amended to incorporate the eighth lot prior to recordation of the final map. Additionally, because a building was not proposed at this time, at such time when a building to the rear lot came in it would need to comply with the standards in place at that time. Staff also requested that prior to development of the affected areas a certified arborist review the trees to determine if they were worthy of protecting in place, relocating, or replacing. The existing dwelling would encroach into a portion of the access easement that was required for the rear parcel, so staff conditioned that prior to recordation of the map that modifications were made to the existing dwelling to ensure that access could be provided to the rear parcel.

Commissioner Savage asked if the condition regarding the arborist was in reference to the trees on the private property, and Acting Senior Planner Allen responded that when there was a property with large trees generally an assessment was done prior to construction to ensure that the City was not losing its mature trees. Typically, many of the large trees had not been maintained in a healthy condition or would be removed, and as such, planting new trees would meet the requirement. Acting Chief Planner Eastman confirmed this was a standard condition for subdivisions.

Vice Chairman Hart asked if the Commission could still continue the item after listening to Acting Senior Planner Allen's report, and Acting Chief Planner Eastman responded affirmatively.

Commissioner Bailey asked if the Commission was to decide if the lot could be split, and that would be contingent upon staff's recommended conditions, which included the HOA allowing access to the property. Acting Senior Planner Allen responded that condition two required amended CC&Rs be approved by the City's Community Development Department, Engineering Department, and City Attorney prior to acceptance and recordation.

Commissioner Chaffee asked if the issue was access and if amending the CC&Rs would grant the access, or if the parcel map should show an easement and contain the HOA's signature granting the easement to the new lot.

Commissioner Savage clarified that there were two easements involved in the project; the easement that the HOA possessed, which was the road, and a mutual easement between the two lots created in the split.

Acting Chief Planner Eastman explained that the street contained an easement that was for the public's use, i.e. emergency access, but the street itself was a separate lot and it had joint ownership, one-seventh, as identified in the CC&Rs. It was a lettered, non-buildable lot, and belonged to the HOA.

Commissioner Chaffee asked if permission would be required from the HOA to allow an eighth owner of the street, and Acting Senior Planner Allen responded affirmatively. The lettered parcel would not change, but the CC&Rs would show an additional lot.

Commissioner Thompson asked if the Planning Commission approved the subdivision based on staff's recommended conditions, it would create two lots with one structure, and would the owner then have to follow the process prior to adding an additional building. Acting Chief Planner Eastman explained that if the Planning Commission approved the Tentative Parcel Map, the property owner would eventually have to come back to the City for a Final Parcel Map, which had a number of steps required to prepare the documentation, including the CC&Rs approval. Potentially, if the HOA did not approve the CC&Rs, the tentative approval previously given would be mute. Commissioner Thompson did not see a negative side to the Planning Commission approving the Tentative Parcel Map.

Public hearing opened.

Ashok Patel, the applicant, stated he agreed with the recommended conditions. Many of his neighbors had written letters in support of his project. His engineer was available to answer any questions. He was present today to hear of any concerns his neighbors or the Planning Commission had, and would agree to continue the project to July 11, 2007.

Commissioner Savage stated that he had visited the property. He had not yet seen the letters from the neighbors, and Acting Senior Planner Allen provided the Commission with letters in support from four of the properties. Mr. Patel stated that with his vote, five of the seven properties were in support.

Mr. Patel stated that Mr. Fox had changed his mind and was not currently supporting the project, but he would like to hear his concerns. He had been trying for twenty-two months to get the project moving forward, and was willing to work with the neighbors. Both property owners on either side of his property were in support.

Commissioner Bailey asked what Mr. Patel intended for the second lot, and Mr. Patel responded that he would like to build a home for his parents as they aged. When he went to the HOA originally and explained his proposal to construct a small, detached structure, they were in agreement. When he came to the City he was told that he could not have a detached house without subdividing the lot. He went back to the HOA and explained this requirement, and the HOA explained their condition that the houses must be at least 4,000 square feet, which he had designed. He did not intend to sell the house.

Commissioner Savage asked the size of Mr. Patel's house, and Mr. Patel responded it was 5,600 square feet. Commissioner Savage asked about the corner of his house that would need to be removed in order to make the easement, and Mr. Patel explained that he would have to remove approximately four feet from the house.

Eugene Fox, 1208 Mesa del Sol, and President of the HOA, stated that he was supportive of the project when it was a home for Mr. Patel's parents; not a rental, a house to be sold, or a lot to be sold. Because the City would not allow a "granny house" of more than 640 square feet, the lot must be subdivided. He did not want a separate water or gas meter so that the property could not be sold separately. He would agree with the project as long as the size was limited to 1,400 square feet and it could not be sold as a separate piece of property. He had concerns with additional traffic, and wear and tear on the street which the HOA had to pay for. He stated that the CC&Rs could be changed to allow a 1,400 square foot home so he could build a home for his father; however, if the City allowed Mr. Patel to build any size home, then Mr. Fox insisted that Mr. Patel pay an amount for the utilities equivalent to what the property owners originally paid when they built their homes (10% of the sale price).

Mr. Fox continued by explaining that there had been a meeting where the property owners had signed the proposed CC&Rs, which he believed they had not read. He did not attend the meeting but was given a copy, on which he hand wrote changes, initialed all the pages, and he signed the document. He had been unable to see a copy of the proposed CC&Rs that had been submitted to the City which contained the changes. He would support the project once he had seen the CC&Rs with the changes and was assured that the new house would be a "granny" house.

Vice Chairman Hart asked Mr. Fox if his request was coming from him as President of the HOA or as an individual property owner. Mr. Fox responded both.

Commissioner Musante asked if it was reasonable to insist on a "granny unit", and Mr. Fox stated that if Mr. Patel wanted to build a larger home that could be sold, then at the time the lot was sold or utilities were connected to the HOA's utilities, there would be an appraisal of the lot and Mr. Patel would pay the same fees as the other owners paid when they built their homes.

Commissioner Bailey commented that the Planning Commission could not control the CC&Rs. Mr. Fox stated that he understood that there were many issues that needed to be resolved which was why he was asking for a thirty day continuance.

Commissioner Savage clarified that the street contained sewer, electricity, gas, drainage. He asked Mr. Fox if the HOA had met prior to this meeting to discuss utilities, and Mr. Fox responded that they

had not. Commissioner Savage asked if he had contacted the other members of the HOA, and Mr. Fox responded that he believed he could resolve the issue between Mr. Patel and himself, therefore he had not met with the other members.

Commissioner Chaffee asked how the additional time would help to resolve the issues, and Mr. Fox responded that everyone needed to work to find common ground.

Commissioner Musante asked how the CC&Rs addressed conflicts when the property owners could not agree, and Mr. Fox responded that two-thirds was the majority, out of thirteen votes. Acting Senior Planner Allen clarified that the CC&Rs required a 71% vote to amend, which was ten votes out of thirteen.

James Kim, 1214 Mesa del Sol, stated when he bought the land there was three parcels plus one which consisted of three more. He moved to this area to have a quiet life and a large home. There were seven lots approved at the time he purchased his lot, and he did not think there would eventually be the same problems as is a housing tract. When service people come into the neighborhood they park on both sides of the street, which was only twenty feet wide, which creates traffic problems. He originally had agreed with Mr. Patel's request to add a guest house for his parents, but when the project changed to include a separate lot and house he did not agree. He also thought that having the entrance to both houses next to each other would look like a tract home. He had not seen the proposed, revised CC&Rs.

Peter Alexander, 1028 Crestview Drive, supported the project and believed it was within the code. The CC&Rs were a separate issue that needed to be worked out. Even though the road was a private street, anyone could access it; therefore the traffic issue was just part of living in Sunny Hills.

Jim Schreder, the civil engineer on the project, stated that they typically advise their clients not to go through all the details prior to the approval of a Tentative Parcel Map. Mr. Patel understood he would be conditioned with the CC&R revision and knew he would have to work out the issues with his neighbors.

Commissioner Thompson stated that Mr. Schreder used to be a client of his at a former company, but he no longer worked for the same company and therefore there was not a potential conflict of interest. He asked Mr. Schreder what he thought the end product would be, and Mr. Schreder stated that Mr. Patel would need to go back and work through the issues with the neighbors. He described what he envisioned the final project layout to be.

Commissioner Bailey asked if Mr. Patel could maintain the access easement and create one entry way and split it off down the side, or would he actually build it the way indicated on the diagram. Mr. Schreder stated that they were proposing a straight line at this time because it was the most simple, and it could be modified with the building permit.

Mr. Patel expressed his desire to work the issues out with his neighbors. He did not believe it was right for anyone to be told what size of home their parents could have, and that it was his dream to provide a nice home for his parents.

Commissioner Chaffee asked if Mr. Patel believed the thirty days would help to work out the issues, and Mr. Patel responded that the neighbors had twenty eight days to discuss the issues. He believed that the underlying issue was money, and was willing to pay the same fees as everyone else had if he eventually sold the second lot.

Mr. Fox stated that when the street was built the Fire Department required access and the Fire Department needs to confirm that there would be acceptable access to the property. Commissioner Musante stated that condition number five addressed this issue.

Mr. Kim stated that his dream was to have a nice home and peace of mind.

Public hearing closed.

Acting Chief Planner Eastman clarified that the Fire Department had reviewed the subdivision for Fire Department requirements, and conditions would address any outstanding Fire issues.

Commissioner Savage asked staff why the letters from the neighbors were not included in the staff report, and Acting Senior Planner Allen responded that the letters were received after the staff report was distributed. They were not provided on the dais for the meeting because of the recommended continuance.

Commissioner Musante was in favor of granting the request. The issues would need to be worked out between Mr. Patel and the HOA.

Commissioner Bailey agreed with Commissioner Musante.

Commissioner Savage believed the letters from the neighbors showed some movement in the direction of the HOA to approve Mr. Patel's plans. He hoped that when everything was done they would all still be good neighbors. There was a condition that required the CC&R approval was required, the fire issue was covered in condition three, and the issues brought up regarding traffic was not for them to decide. He would support the project, although he typically did not like flag lots.

Commissioner Chaffee would support the proposal. He had concerns with everyone coming to agreement on the various issues, but this Tentative Parcel Map would have to come back as the Final Map in the future. He understood the difficulty of parking within the cul-de-sac, and thought the HOA may want to consider some type of parking restrictions.

The title of RESOLUTION PC-07-15 APPROVING a Resolution of the Planning Commission of the City of Fullerton granting a Parcel Map to subdivide one parcel into two lots on property located at 1226 Mesa del Sol was read and further reading waived. MOTION by Commissioner Thompson, SECONDED by Commissioner Savage and CARRIED unanimously by voting members present, that said Resolution be ADOPTED AS WRITTEN.

Acting Chief Planner Eastman explained the 10-day appeal process.

#### **OTHER ITEMS**

A brief presentation on the General Plan Update process was give by Senior Planner St. Paul and RBF Principal Community Planner David Barquist.

#### **COMMISSION STAFF COMMUNICATION**

Commissioner Savage announced that he had been appointed to the General Plan Advisory Committee by Dr. Jones.

Acting Chief Planner Eastman asked for the Commissioner's input on cancelling a meeting in August, and there was some consensus to cancel the second of meeting in August.

# **REVIEW OF COUNCIL ACTIONS**

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

# **PUBLIC COMMENTS**

None

# **AGENDA FORECAST**

The next regularly scheduled Planning Commission meeting would be July 11, 2007 at 7:00 p.m.

### **ADJOURNMENT**

There being no further business the meeting was adjourned at 10:10 p.m.