

MINUTES OF THE REGULAR MEETING OF THE FULLERTON PLANNING COMMISSION

COUNCIL CHAMBERS – CITY HALL

WEDNESDAY

JANUARY 23, 2008

7:00 P.M.

- CALL TO ORDER:** The meeting was called to order by Chairman Bailey at 7:03 p.m.
- PRESENT:** Chairman Bailey, Commissioners Musante, Chaffee, Richmond, Savage, and Whitaker
- ABSENT:** Commissioner Francis
- STAFF PRESENT:** Community Development Director Godlewski, Senior Planner Allen, Assistant City Attorney Duarte, and Clerical Assistant Flores
- FLAG SALUTE:** Commissioner Savage
- MINUTES:** MOTION made by Vice Chairman Musante, SECONDED by Commissioner Savage, and CARRIED 5-0, with Commissioner Richmond abstaining, that the Minutes of the Regular Meeting of December 12, 2007 be APPROVED AS WRITTEN.

PUBLIC HEARINGS

PRJ07-00188 – CONDITIONAL USE PERMIT CUP-497A. APPLICANT: FULLERTON FOUNTAINS HOA; PROPERTY OWNERS: VARIOUS A request to modify an existing Conditional Use Permit (CUP-497) for Fullerton Fountains on property located at 301 and 351 N. Ford Ave (south along Chapman Avenue at the northwest corner of Ford and Wilshire Avenues) (R-5 zone) (Categorically exempt under Section 15301 of CEQA Guidelines) (HAL)

Senior Planner Allen gave a brief overview of the Fullerton Fountains background and explained the request. The request was to modify the Conditional Use Permit that was issued to reduce the required parking. Condition "A" of the original CUP required that for each of the two buildings a passenger van (handicapped equipped) be provided. One van was originally provided by the developer and provided transportation for residents that needed it two to three times a week, and continued service through March of 2006. At that time, the van driver retired and in February 2007 the Homeowners Association (HOA) voted to use a transportation company to provide transportation. The request is to remove the requirement of two vans and to allow an outside transportation company to provide the shuttle service in lieu of the association van. Staff recommends that a modification be approved for only one van, with discretion by the Community Development Director on a second van as needed. For the second portion of the request, staff recommends that the Planning Commission deny without prejudice the request to utilize an outside transportation company in lieu of providing the association operated van service.

Vice Chairman Musante asked if the HOA had a Board of Directors that are elected by the residents, and Senior Planner Allen responded that the applicant was a member of the board and she could answer specific questions about the HOA.

Public hearing opened.

Ruth Perrance, 351 N Ford Ave #124, stated that she served with four other members on the Board of Directors of Fullerton Fountains. Ms. Perrance explained that the modification was for removal of one van from the CUP and continuing use of the alternative transportation. Ms. Perrance stated that the board took the following factors into consideration.

- Fullerton Fountains is a senior complex with many living on fixed incomes
- The Board concentrates on how decisions that are made affect all residents, and not just a few
- Fullerton Fountains is not an assisted living facility
- Transportation is a concern the board considered, and provided alternative transportation by Global Limousines, which is less expensive than re-operation of the existing van
- The HOA was forced by the City to comply with the existing CUP at an expense of \$3,171 to reinstate the van
- It is more cost effective to use alternative transportation
- Concern for all residents and their money spent wisely
- Frivolous law suits depleted money that should have been spent to maintain the complex
- If compelled to continue the van service as required by the City, it will be more expensive with less comfort

Commissioner Savage asked Ms. Perrance if she was elected to the Board of Directors of the Homeowners Association by the homeowners, and if she was aware of the petition that was signed to keep the van. Ms. Perrance responded that she was elected and clarified that many of the residents who signed the petition were not homeowners. Ms. Perrance explained that renters are allowed to sign the petition and ride the van, but are not allowed to vote in the election of the Board of Directors. Commissioner Savage asked how many were renters, and Ms. Perrance responded that more than half of the people that signed the petition were renters.

Chairman Bailey asked how many renters versus owners lived at Fullerton Fountains and Ms. Perrance responded more than half. Chairman Bailey stated that many of the residents are on fixed incomes, but the people who own the property may not be on a fixed income.

Vic Alfaro, 301 N Ford Ave #330, stated that the modifications of the CUP were based on the audited financial report for the last fiscal year ending January 31, 2006. Mr. Alfaro stated that the HOA had a deficit of \$162,947 because of frivolous law suits. He stated that the Board of Directors was working to balance the budget, and believed that everyone would financially suffer.

Vice Chairman Musante asked if the financial report was a cumulative or yearly deficit, and Mr. Alfaro responded that it was a cumulative deficit. Vice Chairman Musante asked what the last fiscal year's deficit was, and Mr. Alfaro responded that he did not have that information.

Commissioner Chaffee asked Mr. Alfaro if he was on the Board and Mr. Alfaro responded that he had been the Treasurer of the Board for the past three years. Commissioner Chaffee asked if the association still owned the van, and Mr. Alfaro answered affirmatively. Commissioner Chaffee asked what the van's condition was, and Mr. Alfaro responded that it was running and had low mileage. Commissioner Chaffee asked what the HOA dues are, and Mr. Alfaro

responded that the dues will be \$210 beginning February 1, 2008. Commissioner Chaffee asked how much of dues were allocated for transportation of the residents, and Mr. Alfaro responded that he was not sure. Commissioner Chaffee asked what the cost difference was for the van and the outside transportation. Mr. Alfaro stated that there was a difference in cost because of insurance, maintenance, and driver expenses. Commissioner Chaffee asked who paid for the outside transportation costs and Mr. Alfaro responded that the association pays for the cost. He stated that the residents are supposed to pay \$2.00 per ride, but never do.

Chairman Bailey asked when the lawsuits happened, and Mr. Alfaro responded that the lawsuits extended over a period of three years. Chairman Bailey asked what the cost was to rent two vans a month, and Mr. Alfaro responded that it was approximately \$2,000 dollars.

Commissioner Chaffee asked if the lawsuit had anything to do with the use of the van, and Mr. Alfaro responded no.

Vice Chairman Musante asked if everyone was happy with the van service before the van driver retired and Mr. Alfaro said yes. Vice Chairman Musante asked if the expenses were in line with what was expected during that period. Mr. Alfaro responded that they had to prioritize expenses to balance the budget so the HOA turned to alternative transportation to save about \$400.00 a month. Vice Chairman Musante stated that \$400 dollars a month is saved, but the residents are unhappy with the service.

Chairman Bailey asked what the van driver's hours were, and Mr. Alfaro responded that he worked three times a week.

Commissioner Savage asked if only one van was put into service from the original CUP, and Mr. Alfaro responded yes.

Sally Cuthbert, 351 N Ford #203, explained the operation of the van when she was President of the Board and ran the van. Ms. Cuthbert stated that the dues at the time the van was running were about \$36 dollars per year. She stated that after the van driver retired the new board did nothing to find a new driver until they got cited by the City and then offered the alternate transportation. Ms. Cuthbert stated that there is between \$40-50 thousand in the reserves for a van, but believed that an 11 passenger van was not needed.

Chairman Bailey asked if an 11 passenger van was not needed because the usage was going down. Ms. Cuthbert responded that there were about 8 passengers and because of costs an 11 passenger van was not needed.

Commissioner Chaffee stated that initially two vans were required by the CUP and asked if only one van came into service, and Ms. Cuthbert responded that the former boards found that a second van was not needed. Commissioner Chaffee asked if money was set aside for a second van. Ms. Cuthbert responded that the money was there for a second van, but was used for a new roof. Commissioner Chaffee asked if the van transportation was used for medical emergencies by residents that do not drive. Ms. Cuthbert stated that van was not used for medical purposes because Fullerton Fountains was not an assisted living facility. Ms. Cuthbert stated that a resident could hire the van driver at their expense. Commissioner Chaffee asked if the limited use of the van was intentional, and Ms. Cuthbert responded that it depended on the availability of getting drivers. Commissioner Chaffee asked if there would be a problem in finding a van driver today, and Ms. Cuthbert responded that the DMV had a list of qualified

drivers. Commissioner Chaffee asked what the hourly rate would be for the driver, and Ms. Cuthbert responded that she was not sure.

Vice Chairman Musante asked Ms. Cuthbert what her recommendation was, and she recommended keeping both vans just in case. Ms. Cuthbert believed that at least one van was needed, the alternative transportation was not adequate, and the correct cost to run the van was needed. Vice Chairman Musante asked Ms. Cuthbert what she believed the expense was for the van, and Ms. Cuthbert estimated that the cost would be \$415.00 a month. Vice Chairman Musante asked about the limo service compared to the van service. Ms. Cuthbert stated that they liked the limo service and driver, but the Global coaches did not have seatbelts, and they had no say on the Global driver's schedule. Vice Chairman Musante asked if the users of the service set up the schedule, and Ms. Cuthbert responded that the driver is contracted for one time a week. Vice Chairman Musante asked if the van service was cut from three days to one and Ms. Cuthbert responded yes.

Patricia Liefeld, 301 N Ford #223, stated that the van users were a small minority group and most of the people at Fullerton Fountains drive their own cars. Ms. Liefeld stated that there are only about seven people who use the van service, and there is not a need for two vans. Chairman Bailey asked Ms. Liefeld if she was familiar with a CUP, and she responded yes. Chairman Bailey stated that in this case the property would not have been able to be built without the CUP.

The following people spoke in opposition of the project.

Jane Walker, 301 N Ford Ave, #323
Hazel O'brien, 301 N Ford Ave, #215
Patricia King, 301 N Ford Ave, #321
Raymond Pittman, 1454 Bunker Hill, San Jacinto
Ethel Robinson, 301 N Ford #118

Their concerns were:

- Clarified that the outside transportation was a good service, but not adequate
- One day for three hours is not adequate time to meet shopping needs
- Using the van is more cost effective for three days a week than the alternative service
- The van service is an amenity regardless of how many people use it
- Love the complex
- Future need for van amenity
- HOA receives over \$40,000 a month in HOA dues, and only a small portion is required to run the van
- One van is adequate

Public hearing closed.

Commissioner Savage stated that the HOA and the Home Owners need to get together and discuss the situation because the financial responsibility will be yours. Commissioner Savage gave the history of Fullerton Fountains. He believed that staff has offered a reasonable way to solve the problem, and was in support.

MOTION made by Commissioner Savage, SECONDED, by Commissioner Musante to APPROVE the request to modify Condition "A" to remove the requirement for a 2nd van, but DENY WITHOUT PREJUDICE the request to utilize an outside transportation company in lieu of providing an Association operated van.

Vice Chairman Musante stated that there was a discrepancy between \$415 and \$1260 a month to run the van. When the development was built a CUP was put in place and a van service needs to be provided.

Commissioner Chaffee believed that the van service was an amenity that needs to be kept. He stated that the development was not an assisted living facility therefore more transportation was needed. Committee Member Chaffee was concerned about the scheduling, and stated that he would like to add that the schedule of the van service be approved by the Director of Community Development.

MOTION by Commissioner Chaffee, SECONDED, by Commissioner Musante to AMEND the motion, with Commissioner Savage accepting the amendment to include scheduling of van service to be approved by the Director of Community Development.

Commissioner Whitaker believed that the Commission should not get involved in the financial management of the HOA. He was concerned about the City getting involved in the day to day operations of the facility by needing to review a schedule. He explained the affordability of the van amenity and stated that the van makes up for the deficiency in parking.

Chairman Bailey agreed with Commissioner Whitaker. He stated that he did not want to get involved, and was going to speak against modifying the condition. He believed that the condition was intended to mitigate parking issues and cost. Chairman Bailey stated that he would like to see the van there all the time, and available all day long because he believed that was the intent of the CUP. Commissioner Richmond also agreed and stated that the City should not get involved with scheduling. Commissioner Savage stated that the amendment to his original motion was a mistake on his part because it would add costs to the City by getting involved.

Vice Chairman Musante stated that two vans are not needed, but adequate service needs to be provided.

MOTION by Commissioner Chaffee, SECONDED, by Vice Chairman Musante to AMEND the motion, failed to pass by a 2-4 vote, with Chairman Bailey, Commissioners Savage, Whitaker, and Richmond voting no, that the scheduling of the van service be approved by the Director of Community Development.

Commissioner Bailey stated that he did not want to change anything in the CUP and would like to see the two vans. He stated that if the people present were not in attendance the Commission would not know if there were one or two vans. He stated that he would go with the Commission and the revised conditions, but would like to see no changes.

The title of RESOLUTION PC-08-02 APPROVING a Resolution of the Planning Commission of the City of Fullerton granting a request to modify an existing conditional use permit (CUP-497) for Fullerton Fountains on property located at 301 and 351 N. Ford Ave was read and further reading waived. MOTION by Commissioner Savage, SECONDED by Commissioner Musante, and CARRIED 6-0, that said Resolution be ADOPTED AS WRITTEN.

Commissioner Chaffee stated that the resolution being adopted provides for potential of the second van coming back should there be a need.

Senior Planner Allen explained the 10-day appeal process.

The Commission took a five minute break at 8:29 p.m.

Commissioner Savage recused himself from item number 2, and stated that he owned property within 500 feet of the property in question. He left the room at 8:35 p.m.

OTHER ITEMS

PRJ06-00006 - ZON06-00001. APPLICANT: HISHAN ABDALLA; PROPERTY OWNER: LEONARD LINDBORG A report on the history of the operations of Twilight Hookah Lounge, a current update on the status of compliance with conditions of approval, and consideration of setting a future date to conduct a public revocation hearing, for property located at 1335 and 1337 E. Chapman Avenue (northeast corner of Chapman and Victoria Avenues) (C-2 zone) (Categorically exempt under Section 15301 of CEQA Guidelines) (HAL)

Senior Planner Allen gave a brief overview of the project. The Municipal Code allows for an application to come back before the Committee for non compliance of conditions of approval, violations, and complaints. Chairman Bailey asked if staff initiated the inspection review, and Senior Planner Allen stated that it was resident initiated because there were indications that some of the conditions of approval were not being followed. Fire department began an inspection process of the building and determined that the filtration devices and the appropriate ventilation system for heating the coals that were required were never installed. Senior Planner Allen stated that both the applicant and the property owner have received two Administrative Citations for non compliance. Senior Planner Allen explained that as of Monday the ventilation system and the hood for the heating coals have been installed and approved by the Building Division. There are several remaining violations of the conditions of approval that include complying with state smoke free workplace, valet service requirements, and the condition that the business comply with all federal, state, and local laws. Senior Planner Allen stated that a resolution has been prepared should the Commission consider revocation or modification of the conditions of approval.

Chairman Bailey asked if this was an action item. Senior Planner Allen stated that if the Commission feels that revocation is warranted the action by the Committee would be to set a date for the hearing.

Commissioner Chaffee asked what the difference was between the letter in December and the letter today. Senior Planner Allen stated that the letter in December was all the violations as of the date of that letter. The letter today addresses the fact that the filtration devices and the hood for the heating of coals have been installed and the fire code violations have gone away. Commissioner Chaffee asked if the labor issues could be explained. Senior Planner Allen explained that the state smoke free workplace legislation prohibits smoking in the workplace. By the nature of the business there is smoke and in order to not violate the smoke free work place laws it can not be a work place; the only way around it is to be owner operated.

Chairman Bailey asked who enforces the labor code and Director Godlewski stated that the Fair Labor Access Board does, and would be a state action.

Vice Chairman Musante asked if the owner can get it together, and Senior Planner Allen stated that they have progressed slowly, but staff has consistently made him aware that he needs to apply by the conditions of approval.

Commissioner Chaffee asked if the progress was enough to continue the item to allow more progress or set a hearing to consider revoking the CUP. Senior Planner Allen stated that if the Commission does consider it for revocation staff would recommend revocation or modification.

MOTION by Chairman Bailey, SECONDED, by Commissioner Chaffee, that a revocation or modification hearing be heard in two months. Senior Planner Allen stated that staff was recommending the February 27, 2008 meeting.

Hishan Abdalla, Twilight Hookah Owner, stated that he had never dealt with the various City Divisions so that is why there have been delays in compliance. Mr. Abdalla stated that the ventilation and the hood are working fine and his doors are closed all day long. Mr. Abdalla stated that he has been working with his attorney to legalize having employees. Mr. Abdalla stated that his liability insurance would be expensive for valet parking and stated that he has never had complaints about parking.

Chairman Bailey stated that a hearing should be held to possibly modify the condition for valet parking.

Commissioner Musante asked staff is the valet parking was not needed and Senior Planner Allen stated that staff has discussed the possibility of removing the valet condition.

The title of RESOLUTION PC-08-03 a resolution of the planning commission of the City of Fullerton setting a hearing to consider revoking or modifying a Conditional Use Permit for the operation of a Hookah Lounge on property located at 1335 and 1337 East Chapman Avenue was read and further reading waived. MOTION by Commissioner Musante, SECONDED by Commissioner Chaffee, and CARRIED 5-0, that said Resolution be ADOPTED AS WRITTEN.

COMMISSION STAFF COMMUNICATION

Director Godlewski stated that a brochure had been provided to the Commissioners regarding the League of Cities training. He explained that if any of the Commissioners wanted to attend the City would make registration arrangements.

REVIEW OF COUNCIL ACTIONS

Director Godlewski gave a brief overview of recent City Council actions. Director Godlewski gave a brief overview of the alcohol ordinance meeting on February 22, 2008 and a discussion regarding the meeting followed.

PUBLIC COMMENTS

None.

AGENDA FORECAST

The next regularly scheduled Planning Commission meeting will be February 13, 2008 at 7:00 p.m.

ADJOURNMENT

There being no further business the meeting was adjourned at 9:11 p.m.

Susana Flores
Clerical Assistant