



PLANNING COMMISSION MINUTES

City Council Chamber
200 Old Bernal Avenue, Pleasanton, CA 94566

APPROVED

Wednesday, March 11, 2009

(Staff has reviewed the proposed changes against the recorded proceedings and confirms that these Minutes are accurate.)

CALL TO ORDER

The Planning Commission Regular Meeting of March 11, 2009, was called to order at 7:00 p.m. by Chair Pearce.

1. ROLL CALL

Staff Members Present: Brian Dolan, Director of Planning and Community Development; Donna Decker, Principal Planner; Larissa Seto, Assistant City Attorney; Jenny Soo, Associate Planner; and Maria L. Hoey, Recording Secretary

Commissioners Present: Chair Jennifer Pearce, Commissioners Phil Blank, Kathy Narum, Greg O'Connor, and Arne Olson.

Commissioners Absent: Commissioner Anne Fox.

2. APPROVAL OF MINUTES

There were no Minutes for consideration.

3. MEETING OPEN FOR ANY MEMBER OF THE AUDIENCE TO ADDRESS THE PLANNING COMMISSION ON ANY ITEM WHICH IS NOT ALREADY ON THE AGENDA

There were no speakers.

4. REVISIONS AND OMISSIONS TO THE AGENDA

There were no revisions or omissions to the Agenda.

5. **CONSENT CALENDAR**

6. **PUBLIC HEARINGS AND OTHER MATTERS**

- a. **PDR-804/PCUP-233, Tom Kubo/William Wood Architects, Hana Japan**
Application for design review approval to construct an approximately 6,000-square-foot building at 11991 Dublin Canyon Road for Hana Japan Steak House and for a conditional use permit to serve alcoholic beverages after 10:00 p.m. Zoning for the property is C-C and PUD-O (Central Commercial and Planned Unit Development-Office) District.

Also consider a Negative Declaration for the project.

Ms. Soo presented the staff report and described the scope, layout, and key elements of the application.

Assistant City Attorney Larissa Seto noted that the staff report outlines issues about both Measures PP and QQ which were passed in November 2008. She stated that staff is recommending that the Commission find the application consistent with Measures PP and QQ, as those provisions have been incorporated into the General Plan by the voters' actions.

Ms. Seto explained that while Measure PP has restrictions about structures being placed on areas with a slope of 25-percent or greater or grading on slopes of 25 percent or greater, this project has unique circumstances, based on the Caltrans drawings of the 1970's which shows that the property had a slope that averaged about 10 percent. She noted that the construction of Dublin Canyon Road effectively piled dirt onto the lot creating areas sloping greater than 25 percent.

Ms. Seto continued that the structure is proposed for a knoll on the property; an area that is less than 25-percent slope, and the 25-percent manmade slope that would need to be graded is for the parking lot to support the restaurant. She stated that this also raises the issue of the fact that someone could say a light pole in a parking lot is a structure.

Ms. Seto stated that staff is recommending that the Commission make the determination that this project complies with Measure PP because the 25-percent slope is a man-made feature, it does not impact open space areas, it is not near a ridgeline, and it is in an area of the community that is already served by municipal services.

With respect to Measure QQ, Ms. Seto stated that it refers to preserving open space areas and not impacting the ridge and the Pleasanton East and South hills. She noted that this project does not implicate those, and, therefore, staff also recommends the project as being consistent with Measure QQ.

Commissioner Blank thanked staff for providing the radius of notification. He reported that he had done some research about the legislative process in California and stated that when a law is passed, there is usually a legal section that creates enabling rules and regulations surrounding that law. He noted that this occurred with Proposition 65, Proposition 13, Proposition 8, and others, and the same thing happens if it is passed by a vote of the people or the legislature. He expressed concern that this has not happened with Measures PP and QQ and that he had not received any guidance from the City's legal staff of the City's recommendation for the implementation of Measures PP and QQ. He inquired what the City planners will be guided by, what will occur at the counter, what applicants could expect, and what the relief valve would be if the writers disagreed with how Measures PP and QQ are administered, as their remedy is to go to court.

Commissioner Blank also expressed concern about the non-existence of the entire Measures PP and QQ discussion, and staff's recommendation does not contain any reference to Measures PP and QQ. He noted that whether the Commission approves or disapproves the project, he did not believe it was appropriate for the Planning Commission to be deciding on a case-by-case basis whether or not Measures PP and QQ apply or not, as there has been no guidance from the City Attorney on the administrative process. He stated that he believed Measures PP and QQ are irrelevant to the process of deciding on whether the Commission will approve or not approve the application because there is no directive on the City's implementation of Measures PP and QQ.

Ms. Seto noted that on December 16, 2008, after both Measures PP and QQ had passed, City staff went to the City Council with options on how to implement the two measures, some of which included issues which Commissioner Blank raised regarding regulations, guidelines, or an implementing ordinance. She indicated that the Council decided that the approach it wanted to take was that this would be implemented on a case-by-case application, based upon language added to the General Plan by both Measures PP and QQ.

Ms. Seto noted that there have been other City measures that have been similar to this type of approach, such as the Pleasanton Ridge Lands Ordinance and some Initiatives and Measures. She stated that as a project moves through the Planning Commission and City Council processes, various decision-makers can look at the language of both measures, apply them in much the same way as the policies and programs of the existing General Plan are applied, and determine whether projects are consistent or not consistent with those policies and programs.

Commissioner Blank noted that this was not contained in the recommendations of the staff report and that he felt Measures PP and QQ were such potential "lightning rods" that people will point out consistencies or inconsistencies in their administration. He added that from a planning perspective, he felt it did not make for good planning.

Ms. Seto stated that if the Commission is sensitive to the Measures with respect to this project, the Commission may want to limit its discussion to and base its decision on the fact that the 25-percent slope is a man-made slope. She added that there is other language for the Commission to also discuss that light poles in the parking lot are not considered structures, and the Commission can expand it to include that discussion. She explained that staff was simply trying to provide a narrower option.

Commissioner Blank inquired whether, if the Commission indicates, for example, that parking lots do not count, that artificial land does not count, and the headline in the newspaper states, "Planning Commission overturns a key provision of Measure PP," the only remedy would be for the matter to go to the City Council and then for the proponents to sue the City.

Ms. Seto stated that the Commission's decision could be appealed to the Council and agreed that this would be the process.

Commissioner Blank stated that he thought it would be cleaner not to make judgments about what the authors of Measures PP and QQ meant and that he would rather decide on the project based on its merits, independent of Measures PP or QQ. He added that if the proponents of Measures PP and QQ decide that the Commission's approval was inappropriate, they have the means to file an appeal. He stated that if the project is denied, he did not want the proponents to say the Commission upheld Measures PP and QQ as a precedent. He also pointed out that four years from now, there could be different Commissioners who could come to different conclusions, and this could be where the City gets in trouble.

Commissioner Narum inquired if the Council moved to incorporate the language of Measures PP and QQ in the General Plan. Ms. Seto said yes. Commissioner Narum noted that the question would then be if this was consistent with the General Plan, which was not included in the staff report.

Commissioner Narum stated that Measure PP reads: "Exempt from this policy are housing developments of ten or fewer housing units on a single property" and is silent about commercial property. She noted that this parcel was legal as of January 1, 2007.

Commissioner Narum stated that she has a problem with the fact that the site was a man-made slope done in the 1970's and existed at the time Measure PP was written, circulated, and voted on. She stated that she was more inclined to make the statement that this is one unit or structure that was a legal parcel on January 1, 2007 and then state that this is what is consistent with the General Plan.

Commissioner Blank agreed that it is much more powerful for the Planning Commission to say as a body that this is consistent with the General Plan and not talk about specific Measures PP and QQ issues because they are not relevant in terms of precedent.

Commissioner Narum referred to the exempt policy. She agreed this was one structure that was on a parcel January 1, 2007 and whether or not it was man-made becomes irrelevant. She added that it is part of the General Plan, and the Commission can make the finding that it is consistent with the General Plan.

Ms. Seto agreed with a more general determination that this is consistent with the General Plan, and noted that it appears there is a preference from a Commissioner to leave it more broad in that manner.

Commissioner Blank said he would prefer to have a recommendation that this is consistent with the General Plan than to imply that the Planning Commission determines that artificial slopes do not apply, parking lots do not apply, or a light pole is not a structure.

Commissioner Olson agreed with Commissioner Blank. He noted that it appeared to him that the Commission's consideration of Measures PP and QQ was like trying to determine what the framers meant when they wrote the Constitution. He indicated that he did not believe a discussion of Measures PP and QQ should be included.

Commissioner O'Connor said he agreed that the finding the Commission should be looking for is whether or not this is consistent with the General Plan. He noted, however, that the language of both Measures PP and QQ was incorporated into the General Plan; therefore, by reference, if it is specific to the General Plan, he believes the Commission needs to determine whether it is consistent with Measures PP and QQ.

Commissioner Blank stated that he believed this can be done without saying, "parking lots don't count" or "man-made ledges don't count," or "a light pole is not a structure." He noted that when the Commission gets to this level of specificity, it is opening up itself to future challenges.

Commissioner O'Connor stated that this could be the case; however, the specific wording does not discuss man-made slopes or natural slopes. Commissioner Blank stated that this is precisely the reason why he does not want to be the one to make that formal determination and have future Commissioners disagree.

Chair Pearce advised the Commissioners that discussion would continue after the public hearing is opened and closed.

Commissioner Blank disclosed that he has eaten at Hana Japan several times.

THE PUBLIC HEARING WAS OPENED.

William Wood, Project Architect, stated that he has worked with the site for a corporate offices project back in 1988, which was the downturn of the market. He

noted that the property was later sold to Mr. Yoon, and he discussed having a restaurant with offices on the second floor. He continued that the structure then evolved into a one-story building and was a beautiful site. Mr. Wood stated that he met with staff on numerous occasions to receive input, and they were more involved in this process than in 1988 primarily because there are more legal and growth issues. He noted that Mr. Yoon is very well-established with additional businesses, and he felt strongly about his plans for the restaurant. He noted that Jim Diggins was present to answer questions about grading or drainage, Brian Killian was present about any landscape questions, and Attorney Allan Moore was present to address any legal questions.

Mr. Wood then described the 6,000-square-foot restaurant and bar, with a total seating of 150, stating that Mr. Yoon purchased the property in the rear to maintain fire department regulations and have the ability for parking. He described the architecture as revised from 1988; with a design that could be compatible for present and future uses. He indicated that he worked on the Bing Crosby's and McCovey's Restaurants and felt that this business would be a success. He added that they agreed with staff's recommendations and conditions of approval.

Commissioner Blank referred to the sprinklers and to the trees and landscaping on Sheet L-1, which looks like a huge row of trees across the front. Mr. Wood explained that they actually put trees on the rendering as an overlay in 1988, and staff asked them to leave them out. He confirmed that the trees on the landscape plan were those intended to be used.

Allan C. Moore, Attorney, Gagen McCoy in Danville, stated that he has been a Planning Commissioner for Walnut Creek for 11 years and a land use attorney for 30 years. He indicated that he is sensitive to land use issues and felt the project was unique. He noted that the project is away from any ridgeline or hillside and that the slope was 10 percent and piled up to 25 percent at a corner by Caltrans in the mid-1970's.

Mr. Moore stated that they are satisfied with the staff report's determination that the project, as conditioned, would be consistent with the General Plan. He stated that he would not want to rely on the exemption as he felt it was a narrow holding and refers to housing developments, whereas this is a commercial use. He indicated that they worked long and hard when Measures PP and QQ were passed and acknowledged the Council's review on a case-by-case basis. He stated that he feels this project is clearly not a gray area nor a part of Measures PP and QQ, and that he is willing to work with the City in any way.

THE PUBLIC HEARING WAS CLOSED.

Commissioner Blank moved to find that the proposed development would not have a significant effect on the environment and to adopt the Negative Declaration prepared for the project; to find that the proposed development conforms to the Pleasanton Municipal Code and approve PDR-804, subject to the Conditions of Approval as shown on Exhibit A-1; and to make the findings for the Conditional Use Permit as listed in the staff report and to approve PCUP-233, subject to the Conditions of Approval as shown on Exhibit A-2; and that the project is consistent with the Pleasanton General Plan. Commissioner Narum seconded the motion.

Commissioner Olson referred to the hours of operation and proposed that they be referenced in the Exhibit A-2 Conditions of Approval.

Ms. Soo explained that the Condition No. 1 of Exhibit A-2 references the written narratives, which was provided by the applicant and references the hours of operation. She added, however, that the hours of operation can be added as a separate condition if the Commission desires.

The amendment was acceptable to Commissioners Blank and Narum.

Commissioner O'Connor stated that the restaurant is a fine one and that the design of the building is impeccable; however, he does not believe the site was fitting for the building and is not consistent with the General Plan because of the text of Measures PP and QQ which have been incorporated. He indicated that he could not support the motion as the language specifically states: "no grading to construct residential or commercial structures". He stated that a parking lot is required and grading is required for the structure; therefore, he cannot find that it meets the General Plan.

Commissioner Narum reiterated the exemption, but Commissioner O'Connor stated that this applied to residential. Commissioner Narum stated that she felt this was an unintended consequence and was a situation where it did not cover everything. Commissioner O'Connor stated that he believed the measures also mention the hillside area, and he considers this a hillside area because as one travels farther down Foothill Road, there are many steep areas that in the overlay look like they should be zoned residential.

Commissioner Blank inquired if there was any bearing that the original hill was 10-percent slope and that the hill was man-made. Commissioner O'Connor stated that the text does not differentiate between man-made and not with respect to making the finding of consistency with the General Plan. He indicated that he was not sure there were areas that were over 25 percent before the road was put in and stated that he would like to see an actual topographic of the site today and a topographic of the site before the road was put in. He noted that the staff report refers to an average slope.

Commissioner Blank stated that, theoretically, someone could bulldoze a section of a property, create a slope greater than 25 percent, and leave the property no longer available for development.

Commissioner Narum referred to the Council meeting where the question was discussed about the Bypass Road on the property and recalled that the two authors of Measure PP stated that their intent was not to exclude that or that they would be fine with grading for the Bypass Road. She noted that If they find that grading to be falling within the intent of the initiative, she would think that grading on a corner of a lot like this for parking would be the same thing.

Commissioner Blank stated that if the authors of Measure PP were not in agreement with the Commission's decision, they have the ability to appeal the decision to the City Council and then take it to court or referend it.

Chair Pearce supported the motion and stated that she felt it meets the General Plan and the intent of Measure PP.

ROLL CALL VOTE:

AYES: Commissioners Blank, Narum, Olson, and Pearce.

NOES: Commissioner O'Connor.

ABSTAIN: None.

RECUSED: None.

ABSENT: Commissioner Fox.

Resolution No. PC-2009-07, approving the Negative Declaration for PDR-804 and PCUP-233, and Resolution No. PC-2009-08, approving PDR-804 and PCUP-233, were entered and adopted as motioned.

7. MATTERS INITIATED BY COMMISSION MEMBERS

Chair Pearce noted that the sign in front of Mr. O'Callaghan's building on 725 Main Street which indicates that the building will be done in 2008 was still up. Ms. Decker indicated that the Pleasanton Downtown Association was working on repairing the sign.

8. MATTERS FOR COMMISSION'S REVIEW/ACTION

a. Future Planning Calendar

No discussion was held or action taken.

b. Actions of the City Council

No discussion was held or action taken.

c. **Actions of the Zoning Administrator**

No discussion was held or action taken.

9. COMMUNICATIONS

No discussion was held or action taken.

10. REFERRALS

No discussion was held or action taken.

11. MATTERS FOR COMMISSION'S INFORMATION

- a. Brief report on conferences, seminars, and meetings attended by Commission Members

12. ADJOURNMENT

Chair Pearce adjourned the Planning Commission meeting at 7:47 p.m.

Respectfully,

DONNA DECKER
Secretary