

P16-1349/PUD-121, Abbas Mash

Applications for Planned Unit Development (PUD) Rezoning and Development Plan approval to: (1) demolish the existing approximately 3,510-square-foot restaurant building; (2) rezone the subject parcel from C-F (Freeway Commercial) District to PUD-C (Planned Unit Development – Commercial) District; and (3) construct an approximately 10,980-square-foot, single-story, multi-tenant commercial building and related site improvements located at 6455 Owens Drive. Zoning for the property is C-F District.

Associate Planner Eric Luchini presented the specifics of the item in the Agenda Report.

Commissioner Balch inquired about the side setback which is identified as ‘one and a half.’

Mr. Luchini noted this was a typographical error, and the table in the agenda report reflects the current requirement is currently 20 feet, proposed to be reduced to 14 and 19 feet on the east and west sides, respectively, of the building and 13 feet on the front.

Commissioner Brown inquired about putting the restaurant in the opposite end of the building where Suites A1-A2 are located.

Mr. Luchini deferred to the applicant.

Commissioner Balch inquired about the current zoning use of Freeway Commercial District (C-F) and confirmed that although restaurants are permitted, coffee shops, donuts and bagel uses are not called out separately; and the Planned Unit Development (PUD) would then allow for those uses, subject to a CUP. He referenced Condition No. 7 proposed by staff with respect to restaurant uses, and that the maximum allowed (3,349 square feet), would be a reduction from what was analyzed in the Traffic Impact Analysis (TIA), and that 3,349 square feet corresponds to the size of Suite A5.

Mr. Luchini confirmed.

Commissioner Balch asked, and Mr. Luchini confirmed that staff evaluated the traffic and by capping the restaurant use at 3,349 square feet, the trips generated by the project would be fewer trips than the TIA would show.

Commissioner Brown asked, with respect to coffee and donut shops whether these would be different from the restaurant uses that would go into unit A5.

Mr. Luchini responded that a “coffee shop” use going into Suite A5 would not be along the lines of a Starbucks or Peets or one of the larger chain coffee shops, rather more along the lines of a diner style restaurant that may happen to serve coffee or have a coffee bar as a side or ancillary element.

Commissioner Balch asked why coffee/donut/bagel shops had been especially called out

Mr. Luchini confirmed they were specifically called out so that they would be excluded from the more general restaurant category and could be addressed separately.

Commissioner Balch asked, and Mr. Luchini confirmed that coffee shops, etc. would be included in the overall square footage envelope for the new commercial building; however, based on their higher trip generation that could affect the square footage of other uses proposed within the new commercial building.

Commissioner Balch asked if there were any other high traffic-generating uses within the restaurant designation that should also be more specifically addressed.

Referencing the TIA, Mr. Luchini noted that it had analyzed the “fast food” category, which is a different category within the over-arching restaurant category.

Commissioner Balch noted that this went to his exact concern, which is that there could be large differences in traffic patterns between different types of restaurant uses, like sit-down versus fast food restaurants, but they still all fall into the restaurant land use category.

Planning Manager Ellen Clark clarified Commissioner Balch’s question, whether there is a more impactful restaurant use other than fast food that should also be called out. Her understanding is that fast food is one of the highest trip generating restaurant categories, and there are no other types of restaurant uses that would be more impactful.

Commissioner Balch said the restaurant category between fast food and the restaurant category which is one impact level below fast food is the restaurant category he is trying to ask about it, and he suggested calling it “coffee shops” at this point.

Ms. Clark stated coffee shops are a little different because they have a different a.m./p.m. pattern, so it is not just total daily trips but also the timing of those trips; coffee and donut shops happen to have a very high a.m. peak trip generation associated with them. Other restaurant categories have a more balanced trip distribution or may skew to the pm peak.

Commissioner Balch said one of the things he is trying to evaluate is that if restaurants are coming in for a PUD because it is not initially zoned as such, and the Commission would be limiting them to the 3,300 feet that’s the size of suite A5, that does not mean that restaurants would be limited to that space, only that that was the basis for the size limitation in Condition No. 7. He asked if there were other uses that still could be impactful in the restaurant envelope that the Commission should be evaluating.

City Traffic Engineer Mike Tassano said until 10 or 15 years ago, fast food restaurants were inclusive of coffee and bagel shops, but then people started going to these coffee shops every morning. Now, traffic engineers all over the country are no longer using fast food as a marker for the coffee/bagel shops because the trips are significantly different, and therefore broken out as a separate category.

Each time traffic engineers find a new use that is significantly different they break that out as a separate marker. For similar reasons they break out fast food separately from fast food with a drive-thru because they are in fact different. They break out coffee shops from coffee shops with a drive-thru because those are also different. The highest generators or the difference in the morning peak trips are coffee/bagel shops; they are different, and they have a much larger number of a.m. peak trips. As far as the difference between an Arby’s and a Carl’s Jr. or whichever fast food restaurant, that does not have a drive-thru associated with it, they are

pretty much the same. These are lumped together and although there are some variations in that use, he would not be concerned with which fast food chain came in as a tenant. The exception might be Chick Fil-A which has an unusually high trip generation.

Commissioner Balch said while Mr. Tassano's description is exactly what he is asking, the Pleasanton Municipal Code (PMC) for a permitted use, which is what the Commission is being asked to go in per the revised schedule, restaurants are permitted. However, staff's memo suggests that coffee shops be a conditional use. He asked if he was correct in saying that there was no other limitation on restaurant uses that would be recommended based on the traffic study, other than Condition No. 7 which is limiting the total square footage allotted to a restaurant use. He asked if this was a correct interpretation.

Ms. Clark confirmed, stating there is a limitation on the total square footage for restaurants. In order to exceed that limit, an applicant would have to go through an additional analysis to determine they were not generating more trips than were analyzed in the TIA.

Commissioner Balch asked, and Mr. Tassano confirmed, that the use within the restaurant category that has the highest traffic generator is fast food, as was used in the Traffic Engineer's study, and staff analysis, and in the TIA.

Commissioner Brown asked if outdoor dining areas would be excluded from the square footage limitation.

Mr. Luchini confirmed that the outdoor dining area is assumed to be included with the restaurant uses inside the building and is not counted separately.

Commissioner Balch stated his biggest concern is traffic on Hopyard Road turning right onto Owens Drive and then onto Johnson Court; the agenda report indicates there will be such a significant delay that the western driveway of this parcel will be both the entrance and the exit. He voiced concern that they do not drop below level of service (LOS) E.

Mr. Tassano said he would not be as concerned with traffic exiting because they are sitting within the parking lot; he would look more at the impact to the entrance. In the memo, staff was trying to convey that they're trying to address the delays experienced from Chick-Fil-A, which can have over 400-feet of stacking with vehicles waiting in a long queue. Staff is trying to work with Chik-Fil-A to help ensure they mitigate the existing issue, as required by their conditions of approval. Staff also considered Chik-Fil-A's queuing and the impact to In-and-Out Burger, which also has a relatively long queue, however, they do not interfere with each other. Although, staff also doesn't want vehicles backing out and exiting onto Owens Drive or onto Johnson Court. The largest concern is trying to avoid creating more of an impact to the City's roadways because vehicles are currently sitting in long queues that are backing up onto the roadways. Whatever the solution proposed, it will likely need to include a monitor on site to alleviate the congested queuing. Independent of the project being reviewed tonight, it is the City's goal to fix the existing congestion in this location.

Chair Allen inquired whether there is a good solution and whether it is a problem that can be fixed. She said if there is no solution, it impacts all vehicles visiting these and the surrounding locations.

Commissioner Balch agreed and said the City is challenged because the Commission understands this project is inherently different than Chick-Fil-A and the queuing issues that have arisen, however, they're all in the same general vicinity.

Mr. Tassano agreed, and said he believes there are solutions, and thinks they just need to re-route their traffic. The congestion becomes worse throughout the Chik-Fil-A and In-and-Out parking lots, but they have to find a solution which prevents the traffic from spilling onto Owens Drive to the point that City staff might look to closing the Johnson Court. Staff previously looked at this as an option, but one of the difficulties is that it is a public roadway and if it is closed, they would have to give that property back to Prudential, who was the property owner at the time, and trying to give land back now would be relatively difficult. Although Staff explored doing this, it is not currently a viable option because it's a convenient access which would be difficult to eliminate, so they are looking at Chick-Fil-A to help mitigate their impacts.

Commissioner Brown expressed his hesitations because after visiting the site at Chick-Fil-A, he said there needs to be a way to solve the existing problem. The safe way to get to Chick-Fil-A is past BevMo since it avoids that entire area. Given the size of that property and how much of the Floor Area Ratio (FAR) is covered by the building, he could not see any obvious solution. He also said it would not be appropriate for the Commission to review the current project based on this existing issue, but it is a problem.

Commissioner Balch referenced the memo provided by staff, which talks about closing the area out of the Larkspur Landing driveway and creating a median island that would be impassable. He understands it is a condition for this project to pay for it and it appears that the applicant is willing to do so. He asked if that has any negative impact to the Larkspur Landing Hotel exit and asked if they were amenable to the change being proposed, given that he thinks it would significantly impact them, as well as Tommy T's located on the other side of the street.

Mr. Luchini responded that the Larkspur Landing representative he communicated with, who he believed was the hotel's General Manager, was in full support of the proposed project with those mitigations, and she did not mention any negative impacts to their business. There were also no public comments received.

Mr. Tassano referred to the left turn lane volumes, which were going southbound out of Larkspur Landing. He said there were 14 left turns in the a.m. versus six in the p.m. hours. The opposite direction on the Tommy T's side had five left turns in the a.m. and three in the p.m. Therefore, he didn't think it would be a large impact.

Commissioner Balch referenced the date of the TIA as April 25, 2018 and questioned whether there is an issue, given it is over one year old. He asked at what point the City considers data or reports stale and asked if staff was still able to use the data.

Mr. Tassano said he looked at the volumes specifically at Hopyard Road and Owens Drive and they do not normally see a yearly fluctuation at more than a percent or two at any location. They could almost as equally see more of a daily fluctuation than they do from a year-to-year basis. He looked at the volumes and they have remained generally the same, so he is comfortable with what is shown in the TIA.

Commissioner Balch referenced the transportation report, which is not a City-generated report, that the gateway intersections are excluded from the typical LOS D standard, but also considers compliance with City goals and policies. He then asked Mr. Tassano whether it is the City's goal and policy to allow this intersection to drop below, from a D to an E.

Mr. Tassano stated this had been discussed on multiple occasions during the General Plan Update from 2005-2009, noting that previously, every gateway was exempted. The General Plan now states that the intersection is exempted if the mitigations determined necessary to maintain the LOS would be contrary to other City policies. The vision is that Hopyard Road should not be an 11-lane roadway and making such a change would go against the City's general policies, whether the basis is beautification or pedestrian access.

He noted that those mitigations are something the City Council would want to review and indicate that they know the LOS is poor in that location, but in order to fix it, they wouldn't recommend establishing 11 lanes, which is where the language becomes important. If the solution includes extending the left turn pocket or adding left turn lanes, he did not think that would go against City goals. This would help considerably with the LOS so it's actually one of those General Plan mitigations staff could move forward.

Commissioner Balch mentioned the 25-percent pass-by traffic mentioned in the memo and said he didn't see it stated in the memo whether the assumption of 25-percent was acceptable. He questioned why it was not 10-percent or 35-percent.

Mr. Tassano responded that for each and every land use the Institute of Transportation Engineers (ITE) estimates the number of pass-by trips. Gas stations, for example, have a pass-by rate of 83-percent, meaning that the majority of vehicles that go to a gas station are already there en route to another destination. The pass-by rate is based on a general survey which asks the motorist where they are going and where are they coming from. In general, the City typically does not factor in pass-by trips because it tends to be confusing to staff and decision-makers because it results in a subtraction of trips. He clarified that pass-by means vehicles that are on the road, but in this case, they are likely on Hopyard Road, not Owens Drive. Sometimes, pass-by numbers hinder the developer. For example, if a vehicle is traveling northbound on Hopyard Road and they're trying to get to a fast food location in that shopping center, instead of continuing northbound which will take them over the freeway, they must make the left turn on Owens Drive and upon exiting, they will likely make another left turn which creates more of an impact. He said staff looks at these instances and for the most part would eliminate the pass-by to avoid that confusion.

Commissioner Balch stated his question was whether 25-percent was an appropriate estimate for the credit being given in the analysis or whether 50-percent was a more appropriate estimate, and he confirmed it is use-based, as referenced by Mr. Tassano.

Mr. Tassano confirmed that 25-percent is the amount estimated by ITE for pass-by for a fast food restaurant and it is the standard.

Commissioner Balch inquired whether retail was also in the same category.

Mr. Tassano confirmed it is also 25-percent, but they are not the same use.

Commissioner Balch noted it was on Table B versus A, and he confirmed that the report was paid for by the developer but was contracted through the City. Therefore, the developer doesn't get the opportunity to adjust the results.

Commissioner Balch said the main concern is the Larkspur Landing driveway and to mitigate that, the applicant has found a solution to raise the median, which forces vehicles to make a right-turn both upon entrance and exit. When exiting to the right, it causes vehicles to make a U-turn at the intersection and that impact can be mitigated.

Mr. Tassano said they may see an increase in the number of vehicles who decide not to use the Larkspur Landing driveway because they want to make a quick U-turn, which means they may end up in the Chick-Fil-A exiting volume. He conjectured if this takes longer or created more delay for those vehicles, they might continue to use the Larkspur Landing driveway. He said even if they took the extra U-turn volume into account, it would be minimal impact at an additional three or four vehicles. There is not a lot of delay occurring at this location because eastbound Owens Drive is relatively low and there are enough gaps. Even at build-out, the delay would be minimal to make that U-turn. Additionally, regarding Larkspur Landing, when a vehicle has to make a right-turn upon exiting potentially there is a lack of storage for queued vehicles at Owens Drive and Johnson Court. The consultant commented that modifying the signal timing could address this issue by creating better efficiency in moving vehicles through the intersection.

Lastly, Mr. Tassano clarified that vehicles can still make the left-turn into the Larkspur Landing parking lot as they would make a left-turn into the Tommy T's parking lot, which is preferable by developers. He said the developers aren't as concerned with how vehicles exit, but ensuring they have easy access entering the location is of bigger concern.

Commissioner Balch voiced appreciation for Mr. Tassano's explanations regarding his questions and concerns.

Chair Allen inquired about the current queuing on Hopyard Road for vehicles exiting the I-580 freeway from the eastbound and turning right onto Hopyard Road. She recently visited this location and there is a visible issue and concern with traffic backing up on the freeway exit lanes. She knows there are anticipated changes for this location, and she asked Mr. Tassano to describe those changes and for the current traffic and queuing levels at the intersection of Hopyard Road and Owens Drive. She then inquired about the improvement of adding an additional right turn lane and the anticipated traffic at build-out which could potentially include Costco or other large businesses.

Mr. Tassano responded that the project design for a new southbound turn lane at the Hopyard Road and Owens Drive intersection is at 95-percent design. The plan is to add a right turn lane at the face of the brick building and shift all the lanes to the east in order to have enough space, however, the new right turn lane would extend all the way to the freeway off-ramp. Currently, there are more than 600 vehicles per hour making the right-hand in the afternoon/p.m. peak hours. In the morning/a.m. peak hours, it is currently 574 vehicles per hour. Previously, the morning hours had the heavier movement which could have been addressed by adjusting one of the through lanes into a right turn lane. However, now that evening/p.m. volumes have resulted in increased right turns, a new lane needs to be added.

He continued by saying when the Chick-Fil-A project was constructed, staff had them dedicate land for the new turn lane as one of their mitigations. The project would've already been constructed, but as staff was looking at it at this time last year, decided to modify the design to improve the bike lane proposed, given the traffic speeds and volumes. Rather than placing the bike lane between the travel lane and right turn lane; they are now elevating the bicycle lane so after crossing southbound and traveling through the eastbound intersection off-ramp, so cyclists would go up onto an elevated surface which will result in a more protected location all the way to the traffic signal. At the traffic signal there will be a designated bicycle traffic signal which stops traffic and will run independently. This way, when a bicyclist approaches, the through lane for the bicyclist will be actuated and through an illuminated "No Right Turn" sign, it will stop vehicles from turning.

Commissioner Balch noted that this isn't an ideal solution at Valley Avenue and Bernal Avenue; Mr. Tassano recognized this concern and how residents will handle that.

In response to Chair Allen, Mr. Tassano stated construction is projected to start next summer, and with respect to full buildout adds a third southbound turn lane and a second eastbound lane so there will be two left turn lanes and two thru lanes. It also adds a second left hand turn lane and a second northbound left-turn lane. Therefore, every approach increases by a lane.

In response to Commissioner Balch, regarding available room for the improvements, Mr. Tassano stated the medians are wide enough, and so as it's acceptable not to have trees in these locations, the design will work.

In response to Chair Allen, regarding Level of Service (LOS) with buildout of the improvements, Mr. Tassano stated they are currently at LOS D. One issue is that the eastbound and westbound movements at Hopyard Road and Owens Drive run independently. All westbound traffic moves, then all eastbound traffic moves. They need to separate those movements out so the left turn is activated, which is a heavier movement, and then the through lanes, which are lighter, would be activated. Instead of having 60 seconds for those two movements it's reduced to 45 seconds, so this increases the north/south movement by 15 seconds, which is a noticeable improvement, and it's still at LOS D which is 42 or 43 seconds of delay per vehicle, which is still very good.

Chair Allen asked if the City would also need these improvements if and when Costco is approved, and then if LOS D would be maintained.

Mr. Tassano stated the LOS is at buildout. If the mitigation was a requirement of Costco, they would have required it of Costco, so currently they are at LOS D and with Costco built they will still be at LOS D.

Commissioner Balch asked if this project affects Owens Drive and Hopyard Road, and Mr. Tassano stated the report states it is affected by a couple of seconds, but that change does not drop it below LOS D.

Chair Allen asked for a recap of what the level of traffic volumes or trips were with the former Denny's usage and if those volumes versus what is being proposed today shows an incremental difference.

Commissioner Brown noted this is shown in Table 4 in the memo, and Mr. Tassano confirmed the trips referenced, as shown in the table.

Commissioner Balch said his only comment is that if Condition No. 7 were implemented which would reduce or require a cap on the fast food restaurant to the 3,349 square feet, the retail would increase to 7,631 square feet, and he assumes it is not tiered allocation of trips, but based on a standard flat ratio. For example, in taking 1,724 daily trips divided by 4,980 square feet, this ratio he could apply to a lower square footage and come out with the number of trips. Then, staying with the 25-percent pass through, it would come to 1,087 daily trips instead of the 1,463 as reported in the table. So, the net increase is 791 trips.

Mr. Tassano said this could be correct but noted that he does not typically look at daily trips because that's not how he evaluates impacts.

Commissioner Brown said if the Commission did not agree to the PUD rezoning, he asked what would be the maximum trip generation for the parcel.

Mr. Luchini responded that there are caps on the FAR for straight zoned properties, including for the C-F district, which he didn't know off the top of his head, but could confirm. Assuming a new project was to come in and fully adhere to that zoning designation they would be capped by whatever the C-F FAR ratio is.

Commissioner Balch stated he did the math assuming a full 10,980 square feet of retail and it would be virtually the same number of trips as it was when Denny's occupied the space.

Chair Allen said if the restaurant and fast food category were not here and it was office or retail use, then the number of trips would be more in line with what C-F allows and would be similar to what it was with Denny's.

Ms. Clark stated the C-F zone district allows a variety of uses including retail and restaurant; among which she believed fast food would be a permitted use. Staff would review the zoning and confirm the answer to this question.

Commissioner Balch noted then that would beg the question on the agenda report because he thought the reason for the PUD was because they were only adding restaurants and coffee shops.

THE PUBLIC HEARING WAS OPENED

Applicant Abbas Mash and the applicant's architect, Scott Gibson, gave a presentation and spoke about various requirements from Planning-relating to zoning, traffic, and standards.

Mr. Gibson referenced sit-down restaurants as opposed to fast-food restaurants, double-stacking the drive-thru lines to help mitigate traffic queuing, said the project is highly articulated, voiced appreciation from staff, and commented it was interesting to hear about traffic generation questions and ways to mitigate traffic queuing. They are willing to accept everything and move forward with the project and were available to answer any questions to get the project approved.

Commissioner Balch referenced traffic and asked if the applicant is comfortable with Condition No. 7 relating to fast-food restaurants.

Mr. Gibson responded that is unfortunate that other projects are hindering the proposed project, but said it is not likely they will have issues and commented there are two busy fast-food restaurants nearby, so understands the concern.

Commissioner Brown referenced the architectural plan and Suite A1, noting it could be subdivided. He asked if there was anything architecturally from stopping re-orientation of the units.

Mr. Gibson agreed that there is flexibility in the proposed design, and this is not a set plan. He wants their tenants to be successful and once they get into the leasing of the spaces, they will discover more, given the tenants could change several times during the life of the building, and the building will be of high quality.

THE PUBLIC HEARING WAS CLOSED

Commissioner Balch stated the agenda report indicates that the project is using C-C district as the zoning.

Mr. Luchini confirmed and explained originally at the work session the applicant was leaning more towards C-F uses, and they are now using the C-C district as the baseline for the proposed uses list.

Commissioner Balch referenced page 11 of the agenda report, which states “The C-F and C-C includes such uses as restaurants, personal services, offices, financial institutions, bars and brew pubs, gyms, health clubs, liquor stores and tutoring facilities.” He asked and confirmed with Mr. Luchini that these are all standard in those two districts. He inquired about the purpose of requesting a PUD when the existing zoning meets the current zoning.

Mr. Luchini clarified the reason was that the applicant removed some uses after working with staff that staff did not feel would be appropriate for the site. In terms of uses different between the C-C and C-F, the “bars and brew pubs” use was one in particular that would fall under that category.

Commissioner Balch stated the restaurant is the high traffic generator. He asked if it was just a restaurant as part of the plan, if the Commission would have the ability to talk about the traffic in as much detail as they have been.

Mr. Luchini said that was unlikely, to which Ms. Clark added that a restaurant is a permitted use in a C-F district.

Chair Allen questioned if the Commission would have the ability to look at how much square feet would be allowed if traffic was a legitimate concern.

Ms. Clark stated that staff would look at aspects like whether the use would fit the allowable setbacks, FAR, and provided adequate parking in particular; traffic would not typically be one of the items studied for a permitted use.

Commissioner Balch referenced if the applicant had proposed a straight zoned, C-C or C-F restaurant use adequately parked and meeting FAR and setbacks, the Commission would have no review.

Mr. Luchini clarified that if it was a drive-thru restaurant, it would require a CUP by which would then be considered by the Planning Commission.

Commissioner Balch recognized the applicant has eliminated some items that they do not feel are compatible with their project and then these are not included in the list and they have requested a PUD. This is where the restaurant size restriction element has come forth, because of the traffic.

Ms. Clark stated this is correct; because the Commission was asked to analyze the range of allowable uses and staff had to come up with criteria that could determine if this combination of uses, at this location, will or will not cause a traffic impact.

Chair Allen added that through the PUD they are also reducing some of the setbacks, so there is a little bit of flexibility the Commission is giving in exchange for that ability too.

Commissioner Balch said the 3,500 square feet the Commission is conditioning in No. 7 as the maximum was set because it is Suite 5 and that was probably how they derived that number. But, with that number they are still increasing over the Denny's traffic based upon the traffic analysis of about 600 daily trips; from around 390 to around 780.

He did not have any further questions and thinks the building is outstanding. The architecture is top notch but is worried about the traffic on Owens Drive, but as Mr. Tassano stated, it does not decrease the LOS and he does not feel this applicant should bear the Chick-Fil-A traffic problem and thinks the Chick-Fil-A should be returned as a CUP item if they do not cooperate.

Commissioner Brown said with the existing trade-up zoning, he asked if there was anything that prevents a fast-food restaurant.

Mr. Luchini stated restaurants are permitted uses in the C-F district with the exception that if they were to come in with a drive-thru they would require a CUP. Fast-food without a drive-thru would be a permitted use under the current code designation.

Commissioner Brown stated the proposed use is part of the PUD and allows for a fast-food restaurant without a drive-thru. He asked which would be equally permitted under the current zoning.

Ms. Clark responded that the current zoning allows for restaurants. In the traffic analysis staff looked at the category of fast food as a conservative analysis because it is a high traffic generating use. A restaurant use could be anything from a sit-down white tablecloth restaurant to a McDonald's.

Commissioner Brown stated he was testing the null hypothesis, or project site alternatives as pointed out in the agenda report. As a project site alternative, if they chose not to agree to the PUD zoning which specifies and limits certain uses, he understands if it was the equivalent of a Denny's restaurant, there would be the existing trip generation similar to what they used to

have. What he is trying to determine is even with this straight-up zoning, the applicant could still have a use generating over 1,000 trips.

Mr. Tassano replied that they could through the zoning portion of it and go up to a certain FAR. Where they run into an issue with it is within the City's plan review, where the traffic model only assumes Denny's was ever going to be there, so at build-out there was only a 3,500-square foot restaurant trip generation for Denny's. If the applicant came in and said they would like to go up to their maximum FAR, i.e., 10,000 square feet of whatever use, he would look at that as to whether they generated more traffic than Denny's because that would need approval. Therefore, anytime they went over the numbers generated by Denny's they are required to do a study and obtain approval. It would not be a scenario where they just get 1,000 trips for free. They have the numbers from Denny's so any increase must receive approval from the City. If denied, ultimately it would come before Planning Commission for a significant change.

Chair Allen stated this is very helpful information.

Commissioner Balch referenced what staff has done with the restaurant in light of the PUD and since the Commission really dove into traffic inquiries, he thinks they have done a great job and he thinks Owens Drive and Johnson Court is going to be a prime location and was very amenable to the plan and design.

Chair Allen mentioned that she had concerns surrounding traffic and now that she has a better understanding of the long-term plans, she feels less concerned, especially if the City works with Chick-Fil-A and making sure they fix their problem or they move into some other alternatives. She loves the high-quality design and commended the applicants. She voiced support of the project and noted that Condition No. 7 focuses solely on being able to go beyond the 3,349 square feet if they secured additional parking. But, based upon Mr. Tassano's comments about traffic and incremental trips, she thinks something should clarify that it is not just parking but also includes trip analysis and traffic volumes.

Commissioner Balch said this might be what is implied by going before the Traffic Engineer.

Chair Allen said it is not clear. It states that if Tommy T's agrees to rent them spaces, this might conclude their parking issue is solved, but the reality is that they have not solved the issue of incremental trips and that would require further analysis.

Mr. Tassano said the area staff struggled is because the traffic study analyzed 5,000 square feet of restaurant and then the 6,000 square feet of retail, which is their maximum. However, staff is limiting them to 3,500 square feet because they are out of parking. If they wanted another 1,500 square feet, staff has already analyzed the impact so they could increase another 1,500 square feet if they found parking elsewhere, such as a joint use agreement with the office complex or an alternate location. He said he'd feel comfortable since staff has already analyzed this; anything beyond that would then require a traffic study. Therefore, they cannot go beyond 5,000 square feet because this was previously analyzed by staff.

Commissioner Balch expressed concern that this as a potential Pandora's Box because he thought they were limiting it to 3,500 square feet to stay underneath the analyzed amount in the TIA because that way he felt they were being more conservative than the TIA with the number of trips.

Mr. Tassano said the TIA analyzed 5,000 square feet.

Commissioner Balch agreed, but said Condition No. 7 is limiting it to a lesser amount. Despite the analysis, they were only doing ± 780 trips based on his math versus the 1,200 additional square feet per the TIA.

Mr. Tassano said if this is what the Commission wanted to do, they would have to remove the condition which allowed that additional square footage and limit it to 3,500 square feet.

Commissioner Balch said he thinks this would be short-sighted because conditions change. The intersection changes and they do not know what will happen in perpetuity. He was supportive of the condition. His point is that he would agree with Chair Allen; it is a trip issue, but now he understands what Mr. Tassano is saying, it's not a trip issue for another 1,500 square feet.

Mr. Tassano confirmed.

Mr. Gibson said there will never be a fast-food tenant because they will not be allowed a drive-thru in this location, nor would a national coffee shop chain want to inhabit any of this space because, again, there wouldn't be a drive-thru allowed. So, he thinks some of the concerns about the traffic might not come into play.

Commissioner Balch and Chair Allen both remarked that there are no guarantees.

Commissioner Brown referenced page 3 of the COAs, which talk about other options such as veterinary offices and dance facilities of up to 20 students, which creates additional traffic.

Chair Allen referred to page 3 of 19 of the memo and asked if they anticipate any potential changes. She referred to "grocery market" because in terms of usage, she was not sure they would want one in that location. They explicitly stated earlier they did not want a convenience market in that location, so the grocery market is similar in terms of usage. She asked if the applicant was opposed to removing "grocery market" because of the risk it might pose to traffic.

Applicant Mash said he has already made accommodations per what the Planning Department has requested and advised, and he was not comfortable in removing this from the allowed proposed uses.

Chair Allen asked if grocery market was allowed in C-F or C-C.

Commissioner Brown said he continues to have concerns surrounding traffic in this location and the future timing of traffic improvements, especially given present day Johnson Court. He said by only doing a median improvement, it will force everybody on Johnson Court to then loop around. He was struggling with the general approval of the project but did not want to continually say "no" given their right to develop or redevelop because it desperately needs redevelopment; this is the reason for his questions, which he doesn't feel he's received clarity on.

He continued by saying he didn't know whether approving the project as proposed and leaving it in its straight zoning, if the project would worsen the existing traffic issue. It is not clear that the project, as proposed, results in more traffic versus not approving the project, and he would hate to do that after 20 re-designs, but this is his position. He agrees with the other comments regarding articulation, design and the quality of the architecture, etc. He was just struggling with whether he wanted to make a bad situation worse for an extended period of time before the other traffic improvements are in place around that piece of property. He asked whether, if not approved, future development would be limited to the maximum number shown in Table 4 under 'Daily Trips.'

Chair Allen asked if they were to condition the timing of construction such that at least the right turn lane, as planned for next summer, and some other short-term improvements being mitigated were implemented prior to the project being constructed or occupancy being approved, whether that would begin to mitigate some of Commissioner Brown's concerns.

Commissioner Brown said possibly, as he has spent enough time in that area, and currently the traffic is terrible. He was trying to figure out if they were giving something by doing the rezoning or not, and this is not clear to him.

Chair Allen asked for a response from staff on this. If the Commission said "no" to the PUD, she asked what the applicant could come forward with.

Ms. Clark noted that the current zoning would allow a 40-percent FAR, which based on the size of the site would allow for a 14,000 square foot building. Realistically, however, the building would not be that large because they would have to park it. In her estimation they would likely end up with a building about the size proposed, at 9,000 or 10,000 square feet. This building would have to go through a design review process but a number of uses being proposed are permitted as of right. The City would have the ability to look at things like parking and to some degree, traffic, in the analysis. However, a future project might not be something the City could completely say "no" to for a use permitted by right in that zoning district.

To Commissioner Brown's question, she thinks one thing to bear in mind is that the traffic analysis was conservative. It looked at a very aggressive trip generation as to fast-food and with more square footage. In that respect there are more "checks" in this PUD than there might otherwise be in a use permitted as of right in this district.

Commissioner Balch said the problem he has is that Denny's is closed so currently there are zero trips being generated. It is a terrible intersection and section of town as it relates to traffic, given there is currently no traffic generated from this parcel. So, it is just unfortunate as to the timing of when this applicant came before the Planning Commission, but he thinks at least from the prior one, they are getting building setbacks pretty close to straight up zoning in addition to an attractive building compared to the initial version. The parking is in the rear, not the front, so there is the streetscape with the sidewalk in addition to funds for the traffic impact fees and the center island. However, he recognized the concern and doesn't want to minimize it.

Commissioner Brown said he has no desire to limit any property rights and no desire to make someone else's successful business and traffic issues the applicant's property concerns. In terms of acting in the best interests of the public based on the projects the Commission has

previously approved, the verbiage around the PUD, and what is and isn't permitted, is throwing him off. At the end of the day, he always prefers to know what he is getting rather than playing a guessing game. In any case, it is a great design, great architecture, well thought out, and ultimately, he wants good use of the property and something that gives the property owner rights to enjoy their property and profit from it. He was just trying to figure out whether or not by approving this PUD he was guaranteeing a higher trip generation than they would have if the Commission did not approve the project.

Acting Community Development Director Brian Dolan said he agrees that without the PUD there is the potential to get the same square footage with more liberal uses that could generate more traffic.

Commissioner Balch also recognized the blight of the previous Denny's restaurant which would go away if the project moves forward.

Chair Allen recirculated the question to staff surrounding conditioning timing of the project around future traffic improvements, noting right now there are known issues.

Ms. Clark responded that staff would query the relationship between this project and the existing traffic issues that are not caused by this project and whether or not there would be a nexus for a condition like that.

Chair Allen likened it to adding to what is already a bad situation that just happens to exist.

Mr. Dolan responded that if the applicant is forced into a by-right project, there wouldn't even be a conversation.

Commissioner Balch responded that he doesn't think it's fair and is hard for the applicant to hear they have to wait because the City's process has been delayed due to a redesigned intersection for a bike lane. The applicant is already being held up by the traffic, which isn't generated on their parcel. He would hate to advocate for delaying this project based on traffic caused by adjacent properties. He thinks the proposed project is well-designed and it seems hard to say the City would need that right turn lane on Hopyard Road to Owens Drive completed before this one could move ahead. It may be coincidentally constructed at the same time and it doesn't seem too far off. Therefore, he already sees the timing as aligned.

Commissioner Brown said he thinks they were able to previously make that condition on a prior proposal to the Johnson Drive Economic Development Zone (JDEDZ) because there was a direct degradation in the LOS for the major intersection. He confirmed staff is saying because the traffic analysis does not degrade the Owens Drive and Hopyard Road intersection from LOS D to LOS E or F as a result of this project, they may not be able to tie those together as a nexus.

Commissioner Balch noted that they'd probably be tied together because it is a PUD, but the question is whether they should. The impacts at Larkspur Landing Drive, they are already mitigating, and that is already a condition.

Chair Allen referred to the two mitigations in the report that would be conditioned and said she assumes those mitigations would be implemented prior to occupancy.

Ms. Clark confirmed.

Commissioner Balch added that there are a few more conditions such as bicycle parking in the design, so those are already included.

Chair Allen asked for further discussion and if not, suggested a motion.

Commissioner Balch moved to approve P16-1349/PUD-121, as revised per the Staff Memo dated September 25, 2019 related to Draft Condition No. 7 and 8 and Table 1 permitted in Conditional Permitted Uses as per recommended in the Agenda Report numbers 1 and 2.

Chair Allen seconded the motion

Commissioner Brown stated he could not vote at this time and told the applicant that he wanted to get to “yes” because of the well-designed project and it is much better than what currently exists. He knows the Commission cannot tie the project to the right-hand turn lane, but he would like to, and he could not get to “yes” without that, but he was okay with proceeding to a vote.

Chair Allen stated she too was struggling with this.

Commissioner Balch asked and confirmed that if approved today, the project would go through a 90-day review period prior to the applicant obtaining their permit to start construction.

Ms. Clark responded that the project would first go before City Council for approval. Upon approval, all construction drawings would need to be prepared, the space tenanted, and then operations could begin. She stated Mr. Luchini was speaking with Mr. Tassano about the timing of the additional turn lane. Based upon Council approval, it will be a relatively quick build so it is likely that the opening of this project and the construction of that turn lane would closely align. Therefore, conditioning them may not be necessary in this case based upon the expected timing.

Chair Allen asked Mr. Gibson if he would be willing to accept a condition that states they would not occupy the space until the right turn lane is completed.

Mr. Gibson responded that they can't control that but that they wouldn't have tenants occupying space until at least late 2020.

Commissioner Balch said he thinks the risk is valid but minimal and suggested a compromise.

Mr. Dolan stated he was not sure staff would join the Commission in the recommendation to City Council regarding conditioning the timing restriction without the ability to create the nexus that this project is causing the problem. If approved 2-1, which the applicant would likely be happy with as long as he could move forward, or 3-0 with a recommendation to include the timing condition, they are likely to receive a different recommendation from staff, to exclude the condition.

Commissioner Balch suggested doing this; adding a condition to restrict Certificate of Occupancy as contingent upon the installation of a right turn lane, and he would probably vote

“no,” but then it would go before City Council for discussion and approval. He thinks it is a great project and personally did not think the occupancy should be tied to the turn lane.

Chair Allen stated she was open to inserting that condition. Staff would bring it to the City Council to provide both perspectives, and the Council would ultimately make the decision.

Commissioner Brown said he has no desire for a well-designed, well-architected project to be roadblocked by the Planning Commission to thwart progress with the project. If this is what moves it forward to the governing body who would ultimately decide whether they are willing to tie those two pieces, he’s amenable.

Chair Allen suggested a motion.

Mr. Luchini reiterated that staff would prefer not to have the timing condition included.

Chair Allen added that there is some degradation that appears without the right turn lane. Without that right turn lane, this project adds more trips. There is some limited tie-in and more trips impacting that intersection and the LOS change was one to two seconds, incrementally, as a result of this project. She noted that one to two seconds today can be a lot on the cusp of freeway traffic backing up on Hopyard Road; the Commission just does not want the project occupied with one or two more seconds of delay until that is resolved.

Commissioner Brown said during lunchtime he sees traffic backed up all the way from Johnson Court to the intersection and beyond and he cannot in good conscience vote “yes” on a project that is going to aggravate that situation and add more traffic and make it worse, even though from an LOS perspective the category will not worsen from LOS D. As a member of the Commission, he cannot vote for this.

Commissioner Balch noted that the TIA was based upon fast food, which will cause more trips, and which the applicant strongly believes is not a likely use for the project. So, if it went 100-percent retail, it would result in less trips than the previous Denny’s restaurant. All uses of any type will be greater than today because Denny’s is closed, and to him, it has been a benefit to the community in this regard. Therefore, his argument is that he may join the motion, so the applicant knows he strongly supports the project, but the concept is that the timeline is closely aligned with the City’s timeline for the intersection improvements already. The trip adds do not reduce LOS but do increase it by seconds.

Commissioner Balch moved to approve P16-1349/PUD-121, as revised per the Staff Memo dated September 25, 2019 related to Draft Condition No. 7 and 8 and Table 1 permitted in Conditional Permitted Uses as per recommended in the Agenda Report numbers 1 and 2.

There was no second to Commissioner Balch’s motion and it died.

Commissioner Brown moved to find that the proposed PUD rezoning P16-1349/PUD-121 are consistent with the General Plan for purposes of the PUD ordinance and adopts a Resolution recommending approval of P16-1349/PUD-121 subject to the required findings and revised draft conditions and revised uses per staff’s memo, and subject to

**an additional requirement that occupancy would not take place prior to the completion of the right hand turn lane improvements on Hopyard Drive onto Owens Drive.
Commissioner Balch seconded the motion**

ROLL CALL VOTE:

AYES: Commissioners Allen, Balch (with objection to last condition) and Brown

NOES: None

ABSENT: Commissioners O'Connor, Pace and Ritter

ABSTAIN: None

Resolution PC-2019-22 approving Case P16-1349/PUD-121 was adopted with revised draft conditions and uses per staff's memo and an added condition, as motioned.