



CITY OF FULLERTON
PLANNING COMMISSION/LANDMARKS COMMISSION
REGULAR MEETING MINUTES
JANUARY 8, 2020, 6:30 P.M.
Council Chamber
303 West Commonwealth Avenue
Fullerton, California

6:31 p.m.

CALL TO ORDER

Chair Gaarder called the meeting to order at 6:31 p.m.

All present

ROLL CALL

Present: Chair Gaarder, Commissioners Cox, Hansburg, Shanfield

Absent: None

Staff Present: Director Matt Foulkes, Deputy City Attorney Richard Adams, Associate Planner Christine Hernandez, Associate Planner Andrew Kusch, Deputy City Clerk Susana Barrios

PLEDGE OF ALLEGIANCE led by Associate Planner Kusch.

PUBLIC COMMENTS

None.

SELECTION OF CHAIR AND VICE-CHAIR

It was moved by Vice Chair Carvalho, seconded by Commissioner Shanfield, to move the item to the end of the meeting.

Motion carried 5 - 0.

CONSENT CALENDAR

It was moved by Vice Chair Carvalho, seconded by Commissioner Cox, to approve the consent calendar.

Commissioner Cox stated that there was great debate and comments regarding the Human Services Agency item and he appreciated and was proud of Vice Chair Carvalho's no vote.

Motion carried 5 – 0.

Approved

1. MINUTES – DECEMBER 11, 2019

RECOMMENDED ACTION: Approve the December 11, 2019 Planning Commission Meeting Minutes.

COMMUNICATION DISCLOSURE

Deputy City Clerk Barrios and Chair Gaarder referenced correspondence received after distribution of the agenda.

Chair Gaarder disclosed that he received an email from Tom McIntosh who voiced concerns regarding Item 3. He also received calls and text messages from Mario Marovic and TJ Fuentes and emails from Michael Torres regarding Item 7.

Commissioner Hansburg disclosed that she had a conversation with TJ Fuentes regarding Item 7.

Vice Chair Carvalho disclosed that he spoke with Michael Torres regarding Item 7.

Commissioner Cox disclosed that he received a call in December from a resident named Nick regarding Item 3 and TJ Fuentes regarding Item 7.

Vice Chair Carvalho noted that staff was recommending continuing Item 7 to the February 5th Planning Commission meeting and asked if that item could be moved to the beginning of the agenda if the public hearing does not have to be opened.

Director Foulkes noted that staff was recommending continuing the item based on recent information that came to light after public notice was released which warrants additional review, prior to the Planning Commission taking action on Item 7.

Deputy City Attorney Adams stated that the Planning Commission can continue the matter by opening the public hearing and entertaining a motion to continue the item. He noted that public comment would be about whether the Planning Commission continues the item or not. However, there is an option to not open the public hearing and make a motion to continue the item and staff will have to renotice.

Vice Chair Carvalho asked if the item could be continued to a date certain without having to renotice the item. Deputy City Attorney Adams clarified that if the public hearing is opened and the Planning Commission entertains a motion to continue the item, then staff does

not have to renotice.

Chair Gaarder stated that he would prefer to hear the items in the order that they appear on the agenda.

REGULAR BUSINESS

Resolution No. PC-2020-13 adopted

2. PRJ03-00075A – SUB-2019-0024. APPLICANT AND PROPERTY OWNER: PACIFIC COAST HOMES

Director Foulkes provided a staff report and presentation on a request for a 36-month time extension for recordation of final Vesting Tentative Tract Map (VTTM) 17609.

Chair Gaarder opened public comment at 6:49 p.m.

Bob Hayden, Open Coyote Hills Chair, spoke in support of the extension.

Jane Rands, Friends of Coyote Hills, spoke in support of the extension.

Chair Gaarder closed public comment at 6:51 p.m.

It was moved by Chair Gaarder, seconded by Commissioner Shanfield, to adopt Resolution No. PC-2020-13, entitled:

RESOLUTION NO. PC-2020-13 - A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF FULLERTON, CALIFORNIA, APPROVING A 36-MONTH EXTENSION FOR RECORDATION OF A FINAL MAP FOR THE WEST COYOTE HILLS VESTING TENTATIVE TRACT MAP 17609, INCLUDING PROPERTY BOUNDED ON THE NORTH BY THE CITY OF LA HABRA, ON THE EAST BY EUCLID STREET, ON THE WEST BY THE HAWKS POINTE DEVELOPMENT AND CITY OF LA MIRADA, AND ON THE SOUTH BY ROSECRANS AVENUE AND THE NORA KUTTNER AND CASTLEWOOD TRAILS

PUBLIC HEARINGS

Resolution Nos. PC -2020-03, PC-2020-03, PC-2020-04, PC-2020-05, PC -2020-06, Amended PC-2020-07 adopted

3. PRJ19-00087. APPLICANT: BRANDYWINE HOMES, INC.; PROPERTY OWNER: FULLERTON PUBLIC LIBRARY FOUNDATION

Director Foulkes provided a staff report and presentation on a request to develop a vacant 2.4 acre property with 33 two-story residential condominiums on property located at 751 East Bastanchury Road. Applications for the proposed development

include a General Plan Revision to change the land use designation from “Greenbelt Concept” to “Low-Medium Density Residential” (6.1 to 15 units per acre), a Zoning Amendment to change the zoning of the property from O-G (Oil-Gas) to PRD-I (Planned Residential Development – Infill), a one-lot Tentative Tract Map for condominium purposes and a Major Site Plan for review of site, architectural and landscape concept plans.

Chair Gaarder opened the public hearing at 7:17 p.m.

Alex Hernandez, Brandywine Homes President, stated that staff provided a thorough presentation. He referenced the site plan and explained the layout.

Brian Geis, Project Manager, noted that Brandywine Homes will be contributing to the City’s park traffic improvement fund and explained that the full width of Bastanchury Road for the full frontage of the project will be reconstructed. He noted that the road is in disrepair because drainage has been an issue for a long time at that location. Mr. Geis provided an outline of the community outreach activity for the project.

Duncan Johnson, Fullerton Public Library Foundation, read the Articles of Incorporation of the Fullerton Public Library Foundation, and spoke in support of this item.

The following members of the audience spoke on the item:

- Roger Keifer, Fullerton, was concerned about the short noticing period, limited community outreach, traffic and parking.
- Brian Hogan, Fullerton, was concerned about the short noticing period, hazards to students during construction, and traffic.
- Janet Keifer, Fullerton, was concerned about density, project setback, parking, and density.
- Chris Norby, Fullerton, spoke in support of this item.
- Tim Shaw, Fullerton, spoke in support of this item.
- John Stiver, Fullerton, was concerned about the short noticing period and limited time to review the project, traffic, and inadequate community outreach.
- Michael McKay, Fullerton, was concerned about density, traffic and parking.
- Moses Kim, Fullerton, spoke in support of this item.
- Bill Siebert, Fullerton, was concerned about traffic, density, noise and parking. He asked if there will be a retaining or privacy wall and if sewer and water on Puente Street will be impacted during construction.

- George Lentz, was concerned about density, traffic and egress/ingress into the development.
- Richard Nordsiek, Morningside Executive Director, was concerned about traffic and speed on Bastanchury Road, ingress into the development and parking overflow on Bastanchury Road.
- Hailey Brown, Fullerton, was concerned about the safety of students at Beechwood Elementary because of the access to the school from the Development, traffic and safety because of the speed on Bastanchury Road.
- Sean Paden, President of the Library Board of Trustees, noted the library relies on donations from the Fullerton Public Library Foundation and spoke in support of this item.
- Katherine Stiver, Fullerton, was concerned about parking, traffic, project setback, and noise.
- Brian Yanty, Fullerton, spoke in support of this item.
- John Santucci, Fullerton, was concerned about the project setback, construction, traffic, parking, ingress/egress into development, and density.
- Pete Paganucci, Fullerton, was concerned about density and student safety because of access to the school from the development.
- Roy Kobayashi, Former Fullerton Public Library Foundation member, spoke in support of this item.
- Ellen Ballard, Library Board of Trustees Member, spoke in support of this item.
- Kristoffer Gjevre, Fullerton, was concerned about density, project setback, ingress/egress into development, parking and traffic.
- Art Lamison, Fullerton, was concerned about density and traffic.

Director Foulkes responded to questions arising from public comments.

Alex Tabrizi, RK Engineering Group, referenced the traffic study and explained the trip generation analysis. He noted that based on the City's adopted thresholds of significance, the project does not create a significant impact on the level of service.

Alex Hernandez responded to questions arising from public comments.

Brian Geis responded to questions arising from public comments.

Chair Gaarder closed the public hearing at 8:58 p.m.

Chair Gaarder recessed the meeting at 8:58 p.m.

Chair Gaarder reconvened the meeting at 9:06 p.m.

Commissioner Shanfield was concerned about density, ingress/egress for the development and traffic.

Brian Estrada, RK Engineering Group, noted that the air quality study was prepared in conformance with the Air Quality Management District parameters as well as the California Air Resources Board standards. He explained the mitigation measures for dust during construction.

Greg Wong, Albert Grover & Associates, explained the feasibility of striping of a deceleration or turn-lane into the development.

Chair Gaarder recommended eliminating the condition regarding the requirement to underground the electrical lines and pole along Bastanchury Road, but continue to require the undergrounding of the remaining utility lines (telecommunications, cable, etc.)

Vice Chair Carvalho recommended that the applicant coordinate with the Fullerton Public Works Traffic Division on the feasibility of striping of a deceleration or turn-lane into the development utilizing a portion of the curb-adjacent lane of the westbound side of Bastanchury Road. The City Traffic Engineer shall provide written findings as to the feasibility of this request and provide a copy to the developer.

It was moved by Commissioner Hansburg, seconded by Chair Gaarder, to adopt the following resolutions, entitled:

RESOLUTION NO. PC-2020-03 - A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF FULLERTON, CALIFORNIA, RECOMMENDING THAT THE CITY COUNCIL ADOPT A MITIGATED NEGATIVE DECLARATION, INCLUDING ANALYSIS OF THE POTENTIAL ENVIRONMENTAL EFFECTS OF THE PROJECT, PROJECT DESIGN FEATURES, STANDARD CONDITIONS, MITIGATION MEASURES AND MITIGATION MONITORING AND REPORTING PROGRAM FOR A PROPOSED 33-UNIT RESIDENTIAL CONDOMINIUM DEVELOPMENT ON A 2.4 ACRE PROPERTY LOCATED ON THE NORTH SIDE OF BASTANCHURY ROAD, APPROXIMATELY 150 FEET WEST OF PUENTE STREET, ADDRESSED 751 EAST BASTANCHURY ROAD

RESOLUTION NO. PC-2020-04 - A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF FULLERTON, CALIFORNIA, RECOMMENDING THAT THE CITY COUNCIL APPROVE A GENERAL PLAN REVISION TO CHANGE THE COMMUNITY DEVELOPMENT TYPE FROM GREENBELT CONCEPT TO LOW-MEDIUM DENSITY RESIDENTIAL (6.1-15 UNITS/ACRE) ON A 2.4 ACRE PROPERTY LOCATED ON THE NORTH SIDE OF BASTANCHURY ROAD, APPROXIMATELY 150 FEET WEST OF PUENTE STREET, ADDRESSED 751 EAST BASTANCHURY ROAD

RESOLUTION NO. PC-2020-05 - A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF FULLERTON, CALIFORNIA, RECOMMENDING THAT THE CITY COUNCIL APPROVE A ZONING AMENDMENT TO CHANGE THE ZONING CLASSIFICATION FROM O-G (OIL AND GAS) TO PRD-I (PLANNED RESIDENTIAL DEVELOPMENT-INFILL) ON A 2.4 ACRE PROPERTY LOCATED ON THE NORTH SIDE OF BASTANCHURY ROAD, APPROXIMATELY 150 FEET WEST OF PUENTE STREET, ADDRESSED 751 EAST BASTANCHURY ROAD

RESOLUTION NO. PC-2020-06 - A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF FULLERTON, CALIFORNIA, RECOMMENDING THAT THE CITY COUNCIL APPROVE A ONE-LOT TENTATIVE TRACT MAP FOR CONDOMINIUM PURPOSES OVER A 2.4 ACRE PROPERTY LOCATED ON THE NORTH SIDE OF BASTANCHURY ROAD, APPROXIMATELY 150 FEET WEST OF PUENTE STREET, ADDRESSED 751 EAST BASTANCHURY ROAD

RESOLUTION NO. PC-2020-07 (AS AMENDED) - A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF FULLERTON, CALIFORNIA, RECOMMENDING THAT THE CITY COUNCIL APPROVE A MAJOR SITE PLAN APPLICATION FOR A 33 UNIT RESIDENTIAL CONDOMINIUM DEVELOPMENT, INCLUDING SITE, ARCHITECTURAL AND LANDSCAPE CONCEPT PLANS, ON A 2.4 ACRE PROPERTY LOCATED ON THE NORTH SIDE OF BASTANCHURY ROAD, APPROXIMATELY 150 FEET WEST OF PUENTE STREET, ADDRESSED 751 EAST BASTANCHURY ROAD

Motion carried 4 – 1 (No: Shanfield).

Resolution No. PC- 4.
2020-12 adopted

ZON-2019-0122. APPLICANT: CODE RED FAST PITCH; PROPERTY OWNER: STATE COLLEGE, LLC.

Associate Planner Kusch provided a staff report and presentation on a request for a Conditional Use Permit

application to operate a fitness facility (softball pitching lessons) on property located at 1201 S. State College Boulevard.

Chair Gaarder opened the public hearing at 9:49 p.m.

Ron Irish, Applicant and Property Owner's Representative, stated that the applicant was in support of the conditions of approval.

Chair Gaarder closed the public hearing at 9:53 p.m.

It was moved by Vice Chair Carvalho, seconded by Commissioner Shanfield, to adopt Resolution No. PC-2019-12, entitled:

RESOLUTION NO. PC-2020-12 - A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF FULLERTON, CALIFORNIA, APPROVING A CONDITIONAL USE PERMIT TO ALLOW THE OPERATION OF A FITNESS FACILITY AT 1201 SOUTH STATE COLLEGE BOULEVARD

Motion carried 5 – 0.

Chair Gaarder explained the 10-day appeal process.

Resolution No. PC-2020-08, PC-2020-09, PC-2020-10, PC-2020-11 adopted

5. PRJ19-00172 – ZON-2019-0111 – ZON-2019-0112 – ZON-2019-0113 – ZON-2019-0138. APPLICANT: KEISKER AND WIGGLE ARCHITECTS; PROPERTY OWNER: SABA INC.

Associate Planner Hernandez provided a staff report and presentation on a request for the construction and operation of two new restaurants. Applications include Conditional Use Permit ZON-2019-0111 for a proposed restaurant with alcoholic beverage sales and live entertainment at 147 West Santa Fe Avenue; Conditional Use Permit ZON-2019-0113 for a proposed restaurant with alcoholic beverage sales and live entertainment at 139 West Santa Fe Ave; Major Site Plan ZON-2019-0112 for review of site, architectural and landscape concept plans for 139 and 147 West Santa Fe Avenue and Minor Exception ZON-2019-0138 to allow minor encroachments of architectural features into setback areas. (Northeast corner of West Santa Fe and South Malden Avenues). (Categorically exempt under Section 15332 of State CEQA Guidelines) (M-G-ROD Zoning District – Manufacturing-General Restaurant Overlay District). (Staff Planner: Christine Hernandez)

Chair Gaarder opened the public hearing at 10:08 p.m.

Gary Wiggle, Keisker and Wiggle Architects, explained that the property owner was proposing two restaurants instead of one because the Restaurant Overlay District only allows 200 seats and both restaurants would be the appropriate size for 200 seats. He stated he appreciated working with staff and was available to answer questions. Mr. Wiggle noted that one restaurant will serve Mexican food and the other will be a fish house.

Judith Kaluzny, Fullerton, suggested that the Community and Economic Development Department market the City of Fullerton as a tourist destination.

Chair Gaarder closed the public hearing at 10:14 p.m.

It was moved by Chair Gaarder, seconded by Vice Chair Carvalho, to adopt the following resolutions, entitled:

RESOLUTION NO. PC-2020-08 - A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF FULLERTON, CALIFORNIA, APPROVING A CONDITIONAL USE PERMIT FOR A PROPOSED RESTAURANT WITH A TYPE 47 (ON-SITE SALE OF BEER, WINE AND DISTILLED SPIRITS) ABC LICENSE, AND ENTERTAINMENT ON PROPERTY ZONED M-G – ROD (MANUFACTURING GENERAL, RESTAURANT OVERLAY DISTRICT) LOCATED AT 147 WEST SANTA FE AVENUE

RESOLUTION NO. PC-2020-09 - A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF FULLERTON, CALIFORNIA, APPROVING A MAJOR SITE PLAN TO PERMIT THE CONSTRUCTION OF TWO NEW RESTAURANT BUILDINGS ON PROPERTY ZONED M-G – ROD (MANUFACTURING GENERAL, RESTAURANT OVERLAY DISTRICT) LOCATED AT THE NORTHEAST CORNER OF SOUTH MALDEN AND WEST SANTA FE AVENUES, ADDRESSED 139 and 147 WEST SANTA FE AVENUE RESPECTIVELY

RESOLUTION NO. PC-2020-10 - A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF FULLERTON, CALIFORNIA, APPROVING A CONDITIONAL USE PERMIT FOR A PROPOSED RESTAURANT WITH A TYPE 47 (ON-SITE SALE OF BEER, WINE AND DISTILLED SPIRITS) ABC LICENSE, AND ENTERTAINMENT ON PROPERTY ZONED M-G – ROD (MANUFACTURING GENERAL, RESTAURANT OVERLAY DISTRICT) LOCATED AT 139 WEST SANTA FE AVENUE

RESOLUTION NO. PC-2020-11 - A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF FULLERTON, CALIFORNIA, APPROVING A MINOR EXCEPTION TO PERMIT MINOR DEVIATIONS FROM SETBACK STANDARDS FOR CONSTRUCTION OF TWO NEW RESTAURANTS ON PROPERTY ZONED M-G – ROD (MANUFACTURING GENERAL - RESTAURANT OVERLAY DISTRICT) LOCATED AT THE NORTHEAST CORNER OF SOUTH MALDEN AND WEST SANTA FE AVENUES, ADDRESSED 139 AND 147 WEST SANTA FE AVENUE RESPECTIVELY

Motion carried 5 – 0.

Chair Gaarder explained the 10-day appeal process.

Pursuant to Planning Commission Resolution PC-09-14, the Planning Commission is required to take a vote as to whether any new public hearing items can occur after 10:00 pm. It was moved by Chair Gaarder, seconded by Commissioner Hansburg, to continue hearing items 6, 7 and the selection of Chair and Vice Chair. Motion carried 5-0.

Resolution No. PC-2020-01 adopted as amended

6. ZON-2019-0093. APPLICANT: ALBERT OCHOA (REVOLUCION CANTINA); PROPERTY OWNER: CEDAR MOUNTAIN, LLC.

A request to amend a Conditional Use Permit for a Type 47 ABC License (on-site sale of beer, wine and distilled spirits) for an existing restaurant (Revolucion Cantina), which includes entertainment per FMC 15.30.030.3.B.21 at 205 N. Harbor Boulevard. (Approximately 55 feet north of the intersection of Harbor Boulevard and Amerige Avenue, on the west side of Harbor Boulevard) (Categorically exempt under Section 15301 of State CEQA Guidelines) (C-3 – Central Business District Commercial Zone) (Staff Planner: Christine Hernandez)

Chair Gaarder recommended amending standard Condition No. 4 of the resolution that the business establishment shall endeavor to participate and/or coordinate with the adjacent businesses for removal of trash and debris. Director Foulkes noted the revised condition will reflect the same wording that was used for Stubrik's Steakhouse and Bar.

Chair Gaarder opened the public hearing at 10:22 p.m.

Albert Ochoa, Business Owner, stated he was proud to be a business owner in the City of Fullerton and was available

questions.

Chair Gaarder closed the public hearing at 10:24 p.m.

It was moved by Vice Chair Carvalho, seconded by Commissioner Hansburg, to adopt amended Resolution No. PC-2020-01, entitled:

RESOLUTION NO. PC- 2020-01 - A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF FULLERTON, CALIFORNIA, APPROVING AN AMENDMENT TO A CONDITIONAL USE PERMIT FOR AN EXISTING RESTAURANT (REVOLUCION CANTINA) WITH A TYPE 47 (ON-SITE SALE OF BEER, WINE AND DISTILLED SPIRITS) ABC LICENSE, AND ENTERTAINMENT ON PROPERTY LOCATED AT 205 NORTH HARBOR BOULEVARD (NORTH OF THE INTERSECTION OF HARBOR BOULEVARD AND AMERIGE AVENUE)

Motion carried 5 – 0.

Chair Gaarder explained the 10-day appeal process.

Deputy City Attorney Adams announced that staff was requesting a continuance of item no. 7 because there are a number of items that have come up in the last 24 to 48 hours that need further study. He noted there were issues with the application and an allegation that because a partner at Jones and Mayer owns property within 500-feet of the subject property. The recommendation is to continue this item to allow staff time to hire independent counsel to address the issues that have been raised. Deputy City Attorney Adams recused himself from the item.

No action taken

7. ZON-2019-0123. APPLICANT: JOSEPH FLORENTINE (FLORENTINE'S, PALAPA GRILL, TRIBUNE LOUNGE, 100 NORTH KITCHEN); PROPERTY OWNER: MARIO MAROVIC

Director Foulkes recommended continuing the request to amend a Conditional Use Permit for a Type 47 ABC License (on-site sale of beer, wine and distilled spirits) for existing restaurants (Florentine's, 102 N. Harbor Blvd.), (100 North Kitchen, 100 N. Harbor Blvd.), (Palapa Grill, 104 N. Harbor Blvd.), and (Tribune Lounge, 101 E. Commonwealth Ave.), which includes entertainment per FMC 15.30.030.3.B.21.

The Commission briefly discussed whether to hear public comments or not. Deputy City Attorney Adams explained that

while he is recused from the item he was available to answer procedural questions.

Chair Gaarder opened the public hearing at 10:32 p.m.

Joe Florentine, Applicant, noted that the staff recommendation was to continue the item and questioned why the public hearing was opened. Mr. Florentine explained that he was before the Planning Commission to amend his Conditional Use Permit (CUP) to be in compliance with the City's new alcohol ordinance. He noted that he is currently in a legal battle with the property owner, Mario Marovic. He stated that Mr. Marovic is obstructing the same things that he is going to benefit from at his establishment. Mr. Florentine explained that the Shell Oil Co. case law supports his position and gives him some right as a tenant to submit the CUP application because he has a long term lease. Mr. Florentine reiterated that he is trying to come into compliance with the City's new alcohol ordinance.

Michael Torres, Mario Marovic's Representative, explained that he was in attendance to discuss the Conditional Use Permit and not the Unlawful Detainer action filed against Mr. Florentine. He noted that the property owner has not consented to the CUP application submittal. Mr. Torres noted that the CUP application that was submitted by Mr. Florentine was modified and violates the Fullerton Municipal Code which requires property owner consent. He referenced the Shell Oil Co. v. City and County of San Francisco, and stated that Mr. Florentine is taking a narrow ruling that had to do with a specific code section from the City of San Francisco and is trying to interpret that as applying to the City of Fullerton. Mr. Torres noted that the City's lead partner at Jones and Mayer owns property within 200 feet of the project location and he believes it creates a potential conflict of interest. Mr. Torres noted the Conditions of a Conditional Use Permit run with the land and not unique to the operator. Mr. Torres asked the Planning Commission to uphold the law, and remove this item from the agenda and direct staff not to return with this item until the applicant files a new unmodified application and obtains the consent of the property owner.

Mario Marovic, Property Owner, noted that property owner consent is required on an application for a CUP amendment and referenced an email he received from former Community Development Director Ted White indicating that authorization of the property owner will be required in order to process an amendment to the CUP. Mr. Marovic noted that the City of Fullerton Master Application Form was modified by Mr. Florentine to read use owner instead of property owner. He referenced the Fullerton Municipal Code and noted that an

application for a CUP shall be filed only by, or written authorization from, the legal owner of the property. Mr. Marovic referenced the grant deed to the property and noted that he is the property owner and he did not give Mr. Florentine consent to submit the application. Mr. Marovic stated that he is not saying that he will never consent to a CUP amendment for the applicant, but if and when he does there are some topics and concerns he would like remedied. Mr. Marovic requested that the Planning Commission remove this item from the agenda.

The following members of the audience spoke on the item:

- Mike Waldo, Fullerton, spoke about the incomplete application, City Attorney Conflict of Interest and property owner rights.
- Nick Dunlap, Fullerton, stated that the City should not get involved in a private property matter, referenced the Shell Oil Co. case and noted that in that case it is referring to a deceased property owner that could not consent or deny the request.
- Frank Alvarez, Orange County Apartments Association of Orange County, spoke about property owners not tenants receiving Code Enforcement Citations/Violations, lack of property owner consent and this item being a private legal matter that should not be before the Planning Commission.
- Rob Hollstrom, Fullerton, requested that the Planning Commission remove the item from the agenda and spoke about individuals being treated equally and fairly within the law, and property owner rights.
- Tony Bushala, Fullerton, spoke about the City's Building Department permitting process and the modified CUP application.
- Nathan Holthouser, Commercial Real Estate Broker, spoke about property owner rights and potential liability for the City.
- Paul Dunlap, Fullerton Property Owner, spoke about property owner rights and the disincentive to invest in the City of Fullerton.
- James Lehigh, Commercial Real Estate Broker, spoke about the negative impact on future investments in the City of Fullerton.
- Judith Kaluzny, Fullerton, spoke about Mr. Florentine's ABC License and encroachment agreement and recommended removing the item from the agenda.

Mr. Florentine stated that he is not a fraud, liar or cheat. He stated he is not perfect and he makes mistakes and as far as

the application is concerned, the truth and facts have not all been presented. He stated he was truthful and honest with the City when the application was submitted and he submitted the application based on guidance of staff. He stated that he spent weeks doing research and trying to find a precedent and prior case study. Mr. Florentine stated this item should be looked at with serious consideration because there is a lot at stake because this is his career. He noted that he has a long term lease to run a restaurant and bar with dancing and entertainment. Mr. Florentine stated that Mr. Marovic bought the building and long term contract and he has the right to use the property the way he has been using it for years. He stated that Mr. Marovic should give his consent so that he can operate his business the way his contract allows him to.

Commissioner Shanfield stated that she did not feel comfortable with the proceedings for this item without appropriate legal representation from the City Attorney. Commissioner Hansburg concurred. Commissioner Shenfield inquired as to whether she could recuse herself from this item.

Mr. Marovic requested that the Planning Commission remove the item from agenda and direct staff not to return with this item until the applicant files a new unmodified application and obtains property owner consent.

Chair Gaarder closed the public hearing at 11:21 p.m.

Commissioner Cox recommended dismissing the item because the CUP application was modified and the property owner did not provide consent. He stated that he liked the collaborative efforts and trust demonstrated by staff and the downtown business owners when the new alcohol ordinance was put in place. He reiterated dismissing the item because the application is not complete.

Commissioner Shanfield asked if the item should be removed from the agenda.

Vice Chair Carvalho stated that in every city that he is aware of, all applications require the property owner's authorization. He referenced the Shell Oil Co. case and noted that in that case the applicant was considered the authorized agent because the property owner passed away, but he believed that argument was narrow and specific to San Francisco Municipal Codes 40 years ago. Vice Chair Carvalho asked if this item would be appealable to the City Council if the Planning Commission deems this application incomplete for the lack of property owner authorization.

Director Foulkes explained that an action by the Planning Commission to approve or deny the Conditional Use Permit is appealable to the City Council.

Commissioner Hansburg clarified that the Planning Commission was not going to act on the Conditional Use Permit without the guidance of legal counsel or a complete application.

Chair Gaarder recommended not taking action on this item and provided staff direction to go through whatever process is appropriate when an altered application is submitted. This will also provide the City time to utilize independent legal counsel for this item. He noted that in his three years on the Planning Commission, the City Attorney's Office has had applications come before the Planning Commission where they should have known in advance that they were conflicted on a project and arranged independent counsel, but the Planning Commission finds out at the dais or just before the meeting. Chair Gaarder asked that staff work with the City Manager on a process or procedure for determining when the City Attorney's office is conflicted on a project. He stated it was a horrible position for the Planning Commission to be in on any item, let alone this item without legal counsel.

Vice-Chair
Carvalho selected
as Chair and
Commissioner
Shanfield
selected as Vice-
Chair

SELECTION OF CHAIR AND VICE-CHAIR

Chair Gaarder opened the nominations for Chair.

Commissioner Shanfield commended and thanked Chair Gaarder on his job as Chair.

Commissioner Shanfield nominated Vice-Chair Carvalho for Chair, seconded by Commissioner Gaarder.

There were no other nominations.

Motion carried 5 – 0.

Chair Carvalho opened the nominations for Vice-Chair.

Commissioner Hansburg nominated Commissioner Shanfield, seconded by Commissioner Gaarder.

There were no other nominations.

Motion carried 5 – 0.

PLANNING COMMISSION / LANDMARKS COMMISSION

STAFF COMMUNICATIONS AND REVIEW OF CITY COUNCIL ACTIONS

Director Foulkes noted that there are currently three Conditional Use Permit amendments scheduled for the January 22nd Planning Commission meeting. On December 17, 2019 the City Council approved the Local Landmark designation of 200 N. Cornell Avenue and the Planning Commission recommendation that the Historic Name be the Naylor House and the Present Name be Dalton House. The City Council also approved the establishment and operating parameters for the Downtown Nighttime Paid Parking Program

Commissioner Hansburg requested an update on the parcel at the northwest corner of Malden and Santa Fe at a future date.

Commissioner Gaarder thanked staff for all their work.

Commissioner Cox thanked Commissioner Gaarder for his leadership as chair.

Chair Carvalho noted that the Planning Commission approval of the Human Service Agency was appealed to the City Council. Director Foulkes confirmed that an appeal was submitted by the property owner that shares the driveway with the project. He noted that item is agendaized for the City Council meeting on January 21, 2020.

AGENDA FORECAST

The next Fullerton Planning Commission/Landmarks Commission meeting will be held on January 22, 2020, at 6:30 p.m., in the Council Chamber, 303 West Commonwealth Avenue, Fullerton, California.

11:38 p.m.

ADJOURNMENT

Chair Gaarder adjourned the meeting at 11:38 p.m.

Susana Barrios, Clerk to the Planning Commission