Minutes

Planning Commission April 19, 2010 City of Orange Monday 7:00 p.m.

PRESENT: Commissioners Cunningham, Imboden, Merino, Steiner and Whitaker

ABSENT: None

STAFF

PRESENT: Leslie Aranda Roseberry, Planning Manager

Robert Garcia, Associate Planner

Dan Ryan, Historic Preservation Planner Gary Sheatz, Assistant City Attorney Sandi Dimick, Recording Secretary

ADMINISTRATIVE SESSION:

Chair Whitaker opened the Administrative Session @ 6:53 p.m. with a review of the Agenda.

Item No. 1, Minutes from the regular Planning Commission Meeting on March 15, 2010. There were no changes or corrections noted. Commissioner Cunningham would abstain from the vote due to his absence on March 15, 2010.

Item No. 2, General Plan Conformance Finding, Chair Whitaker stated he had not attended the study session on the item, however, had read through the information. There were no further questions on the item.

Item No. 3, Henry's Grill, Chair Whitaker stated there was a letter in the Commissioner's Hot File that everyone should have read and asked if there would be any questions on the item? Commission Imboden stated he would have questions.

Item No. 4, Cancellation of Development Agreement –The Block, Commissioner Merino stated he would have questions on the item.

Chair Whitaker asked if there was any additional information or updates from Staff? Planning Manager, Leslie Aranda Roseberry, stated there were no changes or anything additional for the Agenda. The Ridgeline project was coming up for Planning Commission review and she had heard from all the Commissioners with the exception of Commissioner Steiner regarding the need for a Staff briefing on the proposal, and asked if he required a Staff briefing? Commissioner Steiner stated a Staff briefing would not be necessary. Chair Whitaker stated he had heard from neighborhood constituents who had requested a meeting regarding the proposed project and he had given them his dates of availability. Ms. Aranda Roseberry stated that a member from City Staff would attend the meeting. Assistant City Attorney, Gary Sheatz, stated he had nothing additional to add.

Administrative Session closed at 6:57 p.m.

REGULAR SESSION:

PUBLIC PARTICIPATION: None

CONSENT CALENDAR:

(1) APPROVAL OF MINUTES FROM THE REGULAR MEETING OF THE PLANNING MARCH 15, 2010.

Commissioner Merino made a motion to approve the minutes from the regular meeting of March 15, 2010 as written.

SECOND: Commissioner Imboden

AYES: Commissioners Imboden, Merino, Steiner and Whitaker

NOES: None

ABSTAIN: Commissioner Cunningham

ABSENT: None

MOTION CARRIED

(2) GENERAL PLAN CONFORMANCE FINDING FOR FY 2010-2011 THROUGH FY 2016-2017 – SEVEN YEAR CAPITAL IMPROVEMENT PROGRAM

The Capital Improvement Program (CIP) serves as a single comprehensive plan of proposed capital improvement projects for the budget year FY 2009-2010 and the six years thereafter. In accordance with state law, the City must determine that the CIP is consistent with the General Plan.

NOTE:

Staff has reviewed the list of projects identified in the CIP and determined that a number of projects will involve the need for preparation of environmental documentation in accordance with the California Environmental Equality Act (CEQA).

RECOMMENDATION:

Find the projects identified within the proposed seven-year Capital Improvement Program are consistent with the City's General Plan.

Commissioner Imboden made a motion to approve by consent the General Plan Conformance finding for FY 2010-2011 through FY 2016-2017, Seven Year Capital Improvement Program.

SECOND: Commissioner Merino

AYES: Commissioners Cunningham, Imboden, Merino, Steiner and Whitaker

NOES: None ABSTAIN: None ABSENT: None

MOTION CARRIED

Commission Business:

(3) DESIGN REVIEW COMMITTEE NO. 4452-09 – HENRY'S GRILL

A proposal to combine and convert a non-contributing, one-story retail space into a 2,018 sq. ft. restaurant. The applicant is proposing to restore any original façade elements (glass transom windows) and duplicate the original design elements on the full façade.

LOCATION: 149 & 151 N. Glassell Street, Old Towne Plaza Historic District

NOTE: This project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per State CEQA Guidelines Section 15301 (Class 1 – Existing Facilities) and Section 15331

(Class 31 – Historical Resource Restoration and Rehabilitation)

RECOMMENDED ACTION:

Approve DRC 4452-09 subject to the conditions listed and any conditions that the Planning Commission determines appropriate to support the required findings for the façade and site improvements on a non-contributing commercial building.

Historic Preservation Planner, Dan Ryan presented a project overview consistent with the Staff Report.

Chair Whitaker opened the item for any questions to Staff.

Commissioner Merino commented regarding the letter that was received in the Hot File; there had been a question raised regarding parking. It raised the question whether there would be a different standard for the existing use that had left the space and the new use? He had not found that it had been addressed specifically in the Staff Report and he believed that the parking requirements would be the same for both uses.

Mr. Ryan stated in the Downtown Plaza in lieu parking district, a tenant could change from retail to restaurant without any impact on parking, unless parking spaces were removed or additional square footage was added. At such time changes were made, it would be calculated in the in lieu parking fees that would be paid by the applicant to be designated to a fund that would eventually go towards a parking structure.

Commissioner Merino stated he had not believed the applicant had changed the square footage of the existing space.

Mr. Ryan stated no, that was correct. However, outdoor patio area was counted as an expansion area. The additional 400 square feet that would be added to the restaurant space for the patio would be calculated as an expansion and subject to the in lieu parking fees. It was a small amount.

Commissioner Merino stated the City would be placing an additional requirement on the owner for fees for parking.

Mr. Ryan stated it was based on the patio expansion area.

Commissioner Imboden asked if colors and materials for the proposed project were available?

Mr. Ryan presented color and material information to the Commissioners.

Chair Whitaker stated there had been quite a bit of discussion in the Staff Report that the original 149 building was originally one space for the Studebaker Dealership and he asked if there were any photographs, blueprints or depictions that showed the materials and if an attempt was made to work with the applicant regarding restoration?

Mr. Ryan stated there had been thorough research through the archives and other sources to obtain any information that might be available as well as other views from the Plaza. They had not found much additional information that would have given them a clear picture of what had been there. Based on the fact that there was original prismatic glass on the store front elements on the former antique store, Staff knew that was how the remainder of the façade had been as it had been one building at one point in time. The applicant had not uncovered the other tenant space.

Commissioner Imboden stated he wanted to be certain of what was being proposed and how it was being proposed. The existing façade, as it stood today, was not considered a contributing historic resource to the district and what they were currently reviewing was not in so much a restoration, but rather a rehabilitation of a new façade that was appropriate for Old Towne.

Mr. Ryan stated when the building was reviewed for the Plaza Historic District, it had been categorized as non-contributing and there had not been a mention of one half of the façade being original. Staff had requested that the applicant attempt to reproduce the prismatic glass transoms and provide that for the other half of the store front rather than removing historic materials that currently existed. The idea would be to keep what was in place and use those materials as much as possible. The Francoli Restaurant that had recently opened duplicated the prismatic glass transoms and that had come out very nice.

Commissioner Imboden stated it was one of the reasons he had asked the question as Mr. Ryan had indicated that the applicant had not had a good idea whether the glass transom still existed. He asked if he understood correctly that the plan was to install a new glass transom if one was found not to exist?

Mr. Ryan stated one half of the store front had original glass that was still in place.

Chair Whitaker stated as he understood it, there currently existed glass on one half of the space that was currently covered up by canopies or other materials and it was missing from the other side.

Mr. Ryan stated that was correct and they were asking the applicant to uncover the existing material to check if the glass existed on the other half of the building and if so, to uncover it or duplicate it.

Chair Whitaker invited the applicant to address the Commission.

Mr. Jack Selman, address on file, stated since he had last spoken with Mr. Ryan, they had completed some exploratory work and found that the other side of the building had glass and it would be exposed and rehabilitated. It was different than what existed on the Francoli Restaurant building. It was the same pattern, however, the material was different. It had stained glass around the perimeter and a translucent stained glass in the middle and thought it would be a nice feature to restore. He had found one picture at a very oblique angle that showed one half of the building. The transoms were visible and the building was all brick which they would be restoring and if necessary, replacing the brick with similar brick. The awning shapes they proposed were those that were present in the photos. The Studebaker name had been applied to the awning, however, they would be replacing the awnings with plain material. The glass that had been replaced over time was not historic and they would be using a steel metal frame with wood windows. Their intent, although the building was not on the contributing list, was to bring the building back to a more original state. It would be an asset and added feature to the downtown area.

Commissioner Imboden stated there was an elevation where the awnings projected from below the transoms that they had been discussing. In reviewing a sectional view of the awnings, it showed that they went up to the top of the parapet.

Mr. Selman stated it was the existing section and the metal canopy that was parallel to the ground was an existing condition and there were three different awnings. There were structural columns that existed on the original Studebaker Building. The awnings would be in the original shape and location of the original awnings.

Commissioner Imboden stated in regard to the new HVAC system that would be placed on the roof, it had not appeared that there was any screening proposed for that equipment.

Mr. Selman stated there was no screening and it was not visible. There were currently two units on the building and they were higher and not currently visible from the front or back.

Chair Whitaker asked if he was referring to the line of sight Exhibit No. 4?

Commissioner Imboden stated the drawing showed a person out at 69 feet and he disagreed that they would not be visible, as the existing HVAC units were visible from the street.

Mr. Selman stated not from the front of the building. He supposed from the back, if a person was on Orange Street, that possibly one of the units was currently visible. In the area where people might find the view offensive he felt it could not be seen from those places. He felt the drawing was accurate; that from 100-150 feet it was not visible.

Commissioner Imboden asked City Staff what the requirements for screening were? He stated that the existing HVAC was visible and he had a concern considering the new unit would be closer to the edge of the building and it was not being addressed. Another item that had not been mentioned by Staff was the trash location. Certainly with a new use of a restaurant, the business would generate more trash than the previous use and he asked if there was a plan regarding the trash?

Mr. Selman stated there were trash facilities that were provided for the businesses along that area and the issue would be to have the trash picked up more frequently. They would have a dumpster dedicated to the restaurant.

Planning Manager, Leslie Aranda Roseberry stated in regard to screening; the code indicated that all mechanical and air conditioning equipment shall be shielded and screened from view of any adjacent streets and properties. The screening shall be integrated architecturally with the building. From there, the code spoke to ground mounted equipment.

Commissioner Imboden stated he would need to see how the other Commissioners felt. Certainly it was something he would want to know if the applicant was open to screening.

Mr. Selman stated his feeling was in the far distance if a square piece of equipment was visible, it was sometimes less offensive than a metal screen that would go all the way across a building. There was not much of a difference to him. He would add a screen if that was what the City desired and stated it would not buy them much. The new unit could be placed further back and a sight line evaluation could be done to study if the unit could be moved back far enough until it was not visible. He was willing to do that. If screening was necessary, he was agreeable to that. There were four very dense trees and he had been required to keep those trees. The units were not visible due to the landscape screening. The Sycamore trees had a fairly dense branch structure and there was a wrought iron fence that kept people off of the roof; the one little unit was not, to him, visually distracting.

Commissioner Merino asked if there were any residential properties that had a view of the roof?

Mr. Selman stated the only visibility was from Orange Street and that view was through the trees. He would check the view himself. With the trees there, he was certain the equipment was not visible. There might be 3 months during the winter that the equipment could be seen through the trees. The units were a light color.

Commissioner Merino asked who would be impacted by the view of the units? His thinking was that unless a person was walking on the street, the units would not be visible to residential properties.

Chair Whitaker asked if there were any further questions?

Commissioner Merino stated he was asking the applicant for his opinion?

Mr. Selman stated personally, as an architect, he felt it was not necessary. However, if required by code, he would do it and it was not a huge deal. It would become more of a maintenance issue with roof penetrations and he preferred not to do it. He had not wanted the proposed project continued over a small issue. He would work with Mr. Ryan on finding a solution. He wanted to get a better feel of what was visible and he could check on moving the new unit up. He asked what if the existing equipment was visible and had his proposed project required screening of new or existing equipment?

Ms. Aranda Roseberry stated the code indicated all equipment.

Mr. Selman stated he would comply with whatever the Commissioners desired.

Commissioner Steiner stated the code referenced adjacent streets.

Ms. Aranda Roseberry stated that was correct.

Commissioner Steiner stated Orange Street was adjacent.

Mr. Selman stated it was a matter of what counted as screening and would trees count?

Commissioner Steiner asked if the code referenced trees for screening?

Ms. Aranda Roseberry stated the code had not referenced trees at all.

Commissioner Steiner asked if the code mentioned limiting the view from only residential properties?

Ms. Aranda Roseberry stated it read adjacent streets and properties.

Chair Whitaker stated the Design Review Committee approved the proposed project on January 6, with 3 Conditions regarding the historical materials, an existing tree being retained, alternative location of the transformer and wainscot on the west side of the building, and he asked the applicant if he had agreed to all of the conditions?

Mr. Selman stated they had gone to a single electrical panel and eliminated the transformer. The tree would remain, there had been a bit of a hassle with his neighbor as the tree hung over their property and had dropped leaves and such. The wainscot would be added and he was fine with the Conditions of Approval.

Chair Whitaker opened the hearing for Public Comment.

Jeff Frankel, address on file, representing the OTPA, stated they were pleased and from the Staff Report, understood that the intent of the applicant was to restore the building's façade. They agreed with the recommendations made by Staff and conditions by the DRC, including all original materials be retained or restored and that the defining features be recreated. They were not quite sure of all the specific reasons why the building was non-contributing and recommended that the applicant research further in obtaining a contributing status as it would add value to the property and the Plaza District.

Judy Schroeder, address on file, stated she was not present to object to the proposed project as proposed and she trusted that the applicant would do an excellent job. Her concern was the proliferation of liquor licenses. She had contacted ABC Licensing and was told there was nothing she could do as her business was a competing business. She had not understood how a gallery could compete with a business that sold liquor. She was concerned and not the only merchant that was there. She was the only one present. On Sunday morning at 2:00 a.m. her fourth window had been broken within 12 years and she would not hesitate to state that liquor was the cause of those windows being broken. From the Plaza to Rutabegorz, the proposed project was the 10th liquor license on N. Glassell. Beer and wine were contributors and the tenor of the neighborhood was affected. There was a neighbor to the north that wished they could turn the clock back and they were having a lot of problems. The Police officer she spoke with Sunday morning spoke of the fights, public drunkenness and vandalism that was present. Everyone who had shops in the area suffered. She urged the Commission, if they were going to allow all of these, where would the controls and patrols be? Up until 2007, Maple Avenue was lit; there was a storm and their light was broken and had not been fixed. It was very dark and The Filling Station was promised over 9 years ago to have more lighting. She found Jagermeister bottles, cups of beer, vodka bottles and beer cans on a regular basis and there was a lot going on around the corners. There was much more going on and she could document it. Where would the line get drawn?

Ms. Aranda Roseberry stated although the applicant had submitted a request for a CUP for alcohol, they had asked that the DRC portion of the application be heard first as they were still working on the CUP. Generally both were brought to the Planning Commission together, however, the applicant had asked that the building portion move forward so they could begin work on their restaurant and the CUP would follow. The CUP review would be a Public Hearing and would be noticed and that was why other neighbors might not have known of the current meeting as DRC items were not publicly noticed. The CUP for beer and wine would be publicly noticed and brought before the Planning Commission at a later date.

Chair Whitaker stated Ms. Schroeder's comments were noted and she had the opportunity to speak before the Commission at a later date.

Chair Whitaker brought the item back to the Commission for discussion or a decision.

Commissioner Imboden stated that DRC Condition No. 12 might be a carryover from another project and they might want to strike that.

Chair Whitaker stated item 12 appeared to be irrelevant.

Commissioner Steiner stated gauging from the questions and issues the Commissioners had, he had notice of interest particularly the screening issue and he had not cared quite frankly, however, the statutory language appeared to be very clear with regard to whether the HVAC unit required screening. He felt there was some legitimate and equitable argument that trees screen and the equipment could not be seen except from a distance away. He was not certain if they wanted a certain fidelity to the language and he was not clear on how they could exempt themselves from that language. He was placing those

thoughts out there to consider how the Commission could have very clear language not applicable to the applicant; if in fact that was the sentiment.

Ms. Aranda Roseberry stated when the code spoke to ground mounted screening, it had allowed landscape as screening.

Commissioner Merino stated he hoped that they could do something for the applicant and understood the Commission had some discretion and that was the reason those matters came before them. Knowing the neighborhood and that they had not received any complaints regarding the existing units and their visibility, he was not certain that requiring the applicant before them to go through such an effort, and in his experience as an architect many times the screening was worse than the equipment itself, he was not certain there would be much value in requiring the applicant to go through that. If there was a way, as Commissioner Steiner implied, that the project could work without the screening he would be in favor of that.

Commissioner Imboden stated simply that his question was why? The City had an Ordinance that was clearly intended to screen HVAC units on the tops of buildings and there had been other applications before them that it had been required. The units that were there were visible and they had heard testimony that 3 months out of the year the units were visible. He could state that on April 19, 2010 they were visible. There was no guarantee that the trees would remain; they had heard there was current conflict between the neighbors regarding the trees. He had not seen any overriding circumstance and it was a requirement that they had enforced with other applicants. The proposal was for new units on the roof that would be placed closer to the building's edge and would be more visible. He stated that there was a reason for the Ordinance and it should be utilized.

Commissioner Cunningham stated initially his reaction on the screening issue was more in line with Commissioner Steiner. Personally he had not cared about and actually people would not generally have visibility of the HVAC units. There was a statute that required something and he would want to find a way to comply with it and the applicant had shown a willingness to comply. He was under the impression that no one was quite certain of what could be seen on the roof of the structure from a specific point.

Commissioner Merino stated in response to Commissioner Imboden's comments, the Commission had required several projects to install screening and there was a utility company on Chapman that had done that and in his opinion it was a worse solution than seeing the HVAC units themselves. It was difficult to pass judgment without reviewing the proposed screening. That being said, he was not certain if during a very short timeframe when the trees were full, the landscaping had been a requirement and the value the City would achieve by requiring screening, would resolve Commissioner Imboden's concerns. They could be attempting to solve a problem that was not a problem.

Chair Whitaker stated he wanted to put forth something for the Commission to consider. He would tend to agree that not a lot of screening was needed, but he also understood that the statute existed and was in place for a reason. He understood the applicant not wanting a continuance on a minor issue and that they were agreeable to compliance. He

would support a condition, a new Condition No. 13, that would leave it up to Staff and the applicant with a new requirement of a sight line study, that if Staff was on the street and the units were visible and a sight line study that projected visibility that the applicant, with Staff's input, would provide adequate screening. It would allow the applicant to move forward with their project, comply with the statute in a least intrusive manner, and avoid a continuance.

Commissioner Imboden stated he was fine with that and he felt it might not be necessary for the applicant to incur costs for a sight line drawing and it could be as simple as a member of the Planning Staff meeting with the applicant on site to take a look.

Chair Whitaker asked Mr. Ryan if he was comfortable with that much subjectivity?

Mr. Ryan stated what had been done for the Elks Building was that the applicant constructed a PVC pipe outline of the HVAC equipment and it was placed on the roof with photos taken from different angles.

Commissioner Imboden stated again he had not seen the need for the applicant to incur additional expenses and they might be making a bigger issue of the situation. Screening was often required if the units were visible from an adjacent street and he testified that they were. If City Staff wanted to go out and confirm, with the applicant, that the condition existed it was simple to do. He felt the item could be conditioned in that any HVAC units visible from Orange Street shall be adequately screened in accordance to the City's Municipal Code.

Chair Whitaker asked the applicant if he agreed to meet with Staff to determine visibility.

Mr. Selman stated he would be okay with that.

Commissioner Imboden made a motion to approve DRC No. 4452-09, Henry's Grill, subject to the conditions contained in the Staff Report and noting the item was categorically exempt from CEQA, and noting the removal of Condition No. 12 and an additional Condition No. 13, that any HVAC/mechanical roof mounted equipment shall be adequately screened in accordance with the Municipal Code.

SECOND: Commissioner Steiner

AYES: Commissioners Cunningham, Imboden, Merino, Steiner and Whitaker

NOES: None ABSTAIN: None ABSENT: None

MOTION CARRIED

New Hearing:

(4) CANCELLATION OF DEVELOPMENT AGREEMENT APPROVED BY CITY COUNCIL ORDINANCE 04-04 AND REVOCATION OF ASSOCIATED ENTITLEMENTS INCLUDING MAJOR SITE PLAN REVIEWS (MJSP 297-03, MJSP 300-03), AND CONDITIONAL USE PERMITS (CUP 2461-03, CUP 2462-03 AND CUP 2463-03) – THE BLOCK AT ORANGE

A proposal to cancel a Development Agreement with the City approved under City Council Ordinance 04-04 which includes revocation of Major Site Plan Review (MJSP 297-03 and MJSP 300-03) and Conditional Use Permits (CUP 2461-03, 2462-03 and 2463-03) for construction of retail space, an apartment complex and two hotels.

LOCATION: 20 City Boulevard West

NOTE: The proposed cancellation of a Development Agreement and

revocation of associated entitlements is not subject to the provisions of the California Environmental Quality Act (CEQA) because it does not meet the definition of a "project" pursuant to

Public Resources Code Section 21065.

RECOMMENDED ACTION:

Adopt Planning Commission Resolution No. 08-10 recommending that the City Council cancel the Development Agreement by and between the City of Orange and Orange City Mills Limited Partnership and revoke MJSP Review 297-03, MJSP 300-03 and Conditional Use Permits 2461-03, 2462-03 and 2463-03.

Associate Planner, Robert Garcia presented a project overview consistent with the Staff Report.

Chair Whitaker opened the item to any questions for Staff.

Commissioner Merino asked if there were any entitlements or conditions placed in the development agreement that were designed to mitigate issues from the original project when the The Block was originally developed?

Mr. Garcia stated any mitigation measures that were put in place during the 2004 expansion would remain in place. The Environmental Impact Report was not being terminated. Other Conditions of Approval associated with the entitlements would be removed.

Commissioner Merino stated he understood what Mr. Garcia was stating, but in the development of the subsequent agreement, were there issues brought forth that the City took action to mitigate for the current development agreement that were now going away.

He asked if Mr. Garcia understood what he was saying because there had been issues? He had been to several City Council meetings over the last two years and the issue had come up before the City Council, and he wondered if they would be approving something. He stated let me backup, and asked was the cancellation going to the City Council as well or would it stop with the Planning Commission?

Mr. Garcia stated the item would be moving to the City Council.

Commissioner Merino stated for information purposes he wanted to ask the question if there was anything that was contained in the development agreement that perhaps brought forth an issue, since the initial project that Mr. Garcia was aware of, or had been placed in the current development agreement?

Mr. Garcia stated he was not aware of any and asked if Commissioner Merino was referring to projects dating back to the 1996 and 1998 expansion?

Commissioner Merino stated correct.

Chair Whitaker invited the applicant to address the Commission.

Blake Windal, Manager for The Block, 20 City Boulevard West, Orange, stated he was present to endorse the recision of the development agreement.

Chair Whitaker asked if there were any question for the applicant? There were none.

Chair Whitaker brought the item back to the Commission for further discussion or a decision.

Commissioner Cunningham made a motion to adopt PC 08-10, recommending approval to the City Council, Cancellation of Development Agreement approve by City Council Ordinance 04-04 and revocation of associated entitlements including Major Site Plan Review (MJSP 297-03, MJSP 300-03), and CUP's 2461-03, 2462-03 and 2463-03, The Block at Orange.

SECOND: Commissioner Imboden

AYES: Commissioners Cunningham, Imboden, Merino, Steiner and Whitaker

NOES: None ABSTAIN: None ABSENT: None

(5) ADJOURNMENT:

Commissioner Cunningham made a motion to adjourn to the next regular meeting scheduled for Monday, May $3,\,2010.$

SECOND: Commissioner Imboden

AYES: Commissioners Cunningham, Imboden, Merino, Steiner and Whitaker

NOES: None ABSTAIN: None ABSENT: None

MOTION CARRIED

Meeting adjourned @ 7:50 p.m.