

CITY OF CERES
PLANNING COMMISSION
MINUTES

October 6, 2008

MEETING CALLED TO ORDER: 6:00 p.m.

ROLL CALL:

PRESENT: Kachel, Kline, Smith, Williams

ABSENT: Del Nero

ALSO PRESENT: Community Development Director Kenneth H. Craig, City Attorney Mike Lyons, Planning Manager Barry Siebe, Senior Planner Tom Westbrook, Associate Planner James Michaels, Redevelopment/Economic Development Manager Bryan Briggs, Administrative Secretary Linda Ryno

PLEDGE OF ALLEGIANCE:

The Pledge of Allegiance was led by Vice Chairperson Williams.

APPROVAL OF MINUTES:

1. August 18, 2008.

It was moved by Commissioner Smith, seconded by Commissioner Kachel, to approve the minutes as presented. Carried 4/0.

CONFLICT OF INTEREST DECLARATION:

None

CITIZEN COMMUNICATION:

None

APPROVAL OF AGENDA AS POSTED (OR AMENDED) AND CERTIFICATION OF POSTING:

It was moved by Commissioner Kachel, seconded by Commissioner Kline, to approve the agenda as posted. Carried 4/0.

CONSENT CALENDAR:

None

NEW BUSINESS:

None

PUBLIC HEARINGS:

2. 08-13 CUP; Public hearing for a proposal for a conditional use permit to allow the continued operation of a preschool program at 2004 Evans Road.

Senior Planner Westbrook gave a report.

Commissioner Kline asked if “Children are Present” or similar signs would be installed.

Director Craig responded that staff could certainly look into whether signage and/or painting of the curb should be applied.

Commissioner Kachel asked if a building permit was required as was suggested in the Conditions of Approval, item 3, page 10.

Senior Planner Westbrook replied that the center was already built, and that item 3 was just a boiler plate condition.

The public hearing was opened at 6:11 p.m.

Jay Simmonds, representing the Ceres Unified School District, stated that the facility was not increasing in size, but simply that the School District didn’t realize the facility required a conditional use permit to operate.

The public hearing closed at 6:13 p.m.

Commissioner Kline expressed concern that there should be some type of signage identifying children are present.

Vice Chairperson Williams asked if the signs on Central Avenue for Caswell School would be sufficient that children are in the general area.

Director Craig asked Interim City Engineer Brinton if the existing signs would be sufficient. Mr. Brinton responded that he was not familiar with the project.

Planning Manager Siebe responded that he believed that since this project is a private business, that a school type of sign would not be permitted.

Commissioner Kline asked about "Children at Play" not necessarily a school zone sign.

Commissioner Smith agreed with Commissioner Kline and said she supports the conditional use permit, but would hate to wait six months to determine if signage is needed, especially given the fact that they've been operating for a year.

City Attorney Lyons interjected that he believed any signs on the roadway have to be those approved by CalTrans. He further stated that an informational sign (children at play) would require the city to do some investigating on what the City's rights are in posting and would be willing to investigate that with the School District.

Planning Manager Siebe commented that the condition that's relative to the review and at the discretion of the director is broad enough to follow it up once staff has done some research. The School District has agreed if we need curb striping or signage, that they're agreeable to putting those in. Staff can move forward to investigate if the Commission wishes.

Director Craig referred the Commission to condition 4, page 11, and said that the Commission has made it very clear that they would like this to happen sooner, rather than later so staff will certainly do that.

Vice Chairperson Williams asked if staff knew of any complaints of cars speeding down the street or people complaining about not being able to get into the automatic gate or any types of traffic issues.

Senior Planner Westbrook responded there were no complaints about speeding cars and as he mentioned in the staff report, the parents who drop off their children, do not have access to the gates. He further commented that he has not received any complaints that residents are not able to get into the complex.

Director Craig further stated that the project was referred to the Public Safety Department for comment and no input was received.

Planning Manager Siebe said the pedestrian gate is located on the east side of the parking area so where they enter the pedestrian gate and walk them along the walkway to the building is completely out of the parking area; no one has to cross the parking area or cross the vehicle gate to access that. There is full sidewalk, curb and gutter along Evans Road and there are no reported problems with vehicle or pedestrian conflicts with the gate or otherwise.

It was moved by Commissioner Kline, seconded by Commissioner Smith, to approve PC Resolution 08-27 approving 08-13 CUP. Carried 4/0.

3. Consider Annual Review of a previously approved Development Agreement to determine if the City should extend the provisions of the Agreement for an additional period of one year for property located at the northeast corner of Mitchell and Fowler Roads.

Associate Planner Michaels gave a report.

Commissioner Smith asked if the applicant is proposing to flip the restaurant parcel with that of the proposed Rite Aid.

Director Craig responded that the proposal for Rite Aid is not being considered at this meeting; that the Development Agreement requires the restaurant to be located on the corner, but the Planning Commission can make a recommendation that the Development Agreement be modified.

City Attorney Lyons commented the Development Agreement has specific terms and that it is possible to amend the agreement but it would take the mutual consent of the property owner and require proceedings for actual amendment of the DA under the provisions of the City Municipal Code and the Government Code.

Commissioner Smith asked if that was an option. City Attorney Lyons responded that it isn't one of the options presented to the Commission. The options being presented are those that are totally under the control of the ultimate discretion of the Council. The amended flip flop locations would require the consent of the developer.

Commissioner Smith said that she would like to see a sit down restaurant, but questioned that the Commission can't make that recommendation because what's on the table is all or nothing. She further commented that she understands the options are that the restaurant site stay at the site currently identified in the DA or let it go so Rite Aid can move to the corner,

City Attorney Lyons added that another option is to extend the term of the Development Agreement.

Director Craig said that the Commission can certainly make a recommendation based on the components in the staff report and outside that, could also recommend that perhaps the City should work with the property owner to modify its term and move the location.

City Attorney Lyons responded that the Commission can make that additional recommendation if they desire.

Commissioner Smith said that appears to be a win-win; the restaurant will still be in the area and Rite Aid has a place to go.

Commissioner Kline asked the question, "Wouldn't you say the corner lot is the prime real estate to get a restaurant?"

Director Craig responded that, although he's not a marketing specialist, that it is traditional for a corner piece to have some enhanced desirability depending on its specific location.

The public hearing opened at 6:34 pm

Greg Smith, Coldwell Banker Commercial Real Estate, 220 Standiford Avenue, Modesto, gave a brief history of the site. Mr. Smith said he was hired by the City to acquire the parcel for a fire station on the rear of the parcel and then intended to market the remainder of the parcel. In marketing the residual parcel, he tried to reserve the corner for the City to try and get a sit down restaurant. Mr. Smith stated his marketing strategy was to send out flyers to 33 restaurants, listing the City as owner, but he received no favorable response. Brian Greer approached him and stated that if he could build an additional 15,000-20,000 square feet of retail buildings that he would agree to leave .7 acre on the corner to try & get a restaurant. The City agreed and a Development Agreement was formalized. In the meantime, Mr. Greer never closed escrow and instead, sold the property to Mr. Mastagani. Mr. Mastagni agreed to try and get a restaurant, so Mr. Smith sent out the material again as well as making phone calls to the potential restaurants. 60-90 days later, Mr. Halferty approached Mr. Mastagni to use the property for a Rite Aid Store. The signs continued to be on-site advertising the parcel as a restaurant pad. After two years of the sign being on-site, the only response was from Panda Express, Perkos, a few fast foods, some gas station/food marts; none of which the City was interested in. The time frame has been that there has never been a six month period of time to report on marketing. Rite Aid has stated they may leave the community if they can't relocate. The difficulties with all the restaurants are that they want to be near the freeway rather than on an interior lot. Applebee's wanted a confirmation that WalMart will be in their existing location for 20 years, which Mr. Smith said he couldn't provide.

Commissioner Smith asked if it is possible that Rite Aid could be at the other end of property.

Mr. Smith responded that it doesn't work with the drive through.

Commissioner Smith said then that Rite Aid's requirement is a corner lot.

Mr. Smith continued that as part of the two year DA, the city required Smith to provide six month reports on marketing effort, and the City was going to have an annual review that should have happened last February and didn't. Mr. Smith commented that he believed the lapse occurred because everyone was involved in the Rite Aid proposal.

Phil Mastagni, 1208 Country View Drive, Modesto, said a component that no one has addressed is the willingness of the property owner to finance a restaurant. He commented that he's built them previously for a number of people and he would not own a restaurant. To build a spec building for a restaurant is something he would not be willing to undertake. If a restaurant were interested in the parcel, then they would have to buy it from him.

Mr. Mastagni commented that the proposal for Rite Aid is an upscale development and that it's needed for that corner; Moving Rite Aid doesn't work. He continued that he acquired the property in March 2007 which included active permits for additional retail. He dropped that development plan when the Rite Aid approached him.

Jim Halferty, 1999 S. Las Robles, Pasadena, explained that he works with Rite Aid from Bakersfield to Modesto. The store in Ceres is deplorable and embarrassing. He further commented that he understands that SaveMart has the opportunity to take the existing Rite Aid if and when they leave. Rite Aid wants to be on the corner. Mr. Halferty would like to preserve the opportunity to have a restaurant just north of the Rite Aid, but to have Rite Aid on the corner because all their competitors are locating on corners. He feels there are two reasons to market the interior site as a restaurant: Rite Aid is a draw; and with the Mitchell Plaza mid block light; it almost makes the parcel a corner pad.

Vice Chairperson Williams asked about the three options: extend, lapse or terminate the DA as soon as possible and that the lapse would happen in February. If the Commission recommends termination as soon as possible, where does that leave the developer? Can they switch to the Rite Aid location?

Director Craig responded the only proposal consistent with Halferty property is option 3. Does not preclude the Commission from recommending the termination of the DA and adding a request that the Council enter into a DA with Mastagni to move the site to the remaining parcel.

Vice Chairperson Williams commented that she agrees with Mr. Halferty that the parcel isn't the right location for a restaurant and that she would be voting to terminate the agreement.

Public hearing closed at 6:54 p.m.

Planning Manager Siebe informed the Commission that he received the following email from Chairperson Del Nero: That he would vote to extend the provisions of the agreement unless the property owner can show he has advertised and tried to sell as a restaurant in which case he would agree to terminate. He would agree to extend unless shown otherwise.

Commissioner Kline commented that the corner is prime location; thinks getting a restaurant into the interior will be difficult and that he remembers a recent action by the Commission for a parcel map on Service/Mitchell for possible sit down pads which he believes would be more enticing for this type of development.

Commissioner Kachel said that he felt Mr. Smith has done some marketing, although reports weren't done and that he doesn't have a problem recommending to the Council to terminate the agreement. Not a lot of time difference before the DA lapses and that he was glad to hear that SaveMart has right of first refusal on the existing Rite Aid.

Commissioner Smith agreed with Commissioner Kachel that agreement only has 5 months left. Would hate to lose Rite Aid over 5 months.

It was moved by Kline, seconded by Kachel to recommend to the City Council option#3 to terminate the Development Agreement.

Commissioner Smith proposed including consideration of maintaining or amending or doing something to the DA so the restaurant site is maintained on the parcel somewhere that is not occupied by Rite Aid.

Kachel seconded the amendment.

AYES: Kachel, Kline, Smith, Williams

NOES: None

ABSENT: Del Nero

Carried 4/0.

PUBLIC MEETINGS:

4. Review Application by City of Ceres Redevelopment Agency for Designation of Clinton Whitmore Mansion as a Historic Landmark and make determination whether the application has merit.

Redevelopment/Economic Development Manager Bryan Briggs, gave a brief power point presentation and said that if the Commission.

Commissioner Kline asked if the whole parcel would be designated as such.

City Attorney Lyons responded that the designation would apply only to the structure.

It was moved by Commissioner Smith, seconded by Commissioner Kachel, to adopt PC Resolution 08-29 making the determination that the application has merit. Carried 4/0.

UNFINISHED BUSINESS:

None

MATTERS INITIATED BY PLANNING COMMISSION AND STAFF:

None

REPORTS/COMMUNICATION:

Commissioner Smith asked about the trees that were removed at the house at Moffet/Glasgow. Director Craig responded that the City's tree policy did not include private trees on private property.

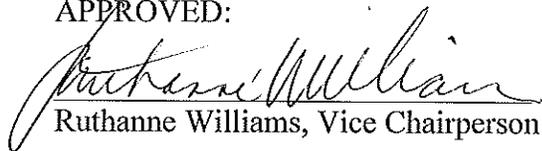
Commissioner Kline asked about the vacant Student Commissioner position. Director Craig replied that when he made a presentation to the Ceres Youth Commission, two students were interested, but he hasn't heard anything further. Vice Chairperson Williams asked if any contact was made at Central Valley High. Director Craig replied that when he originally approached them about making a presentation, he didn't receive a response.

Director Craig advised the Commission that the City continues to recruit for a City Engineer and should have a new Engineering Division Secretary by November.

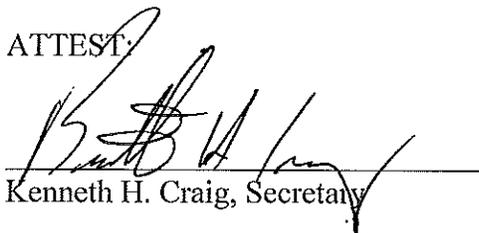
ADJOURNMENT:

The Commission adjourned at 7:16 p.m. to the next regularly scheduled Planning Commission meeting of November 17, 2008.

APPROVED:


Ruthanne Williams, Vice Chairperson

ATTEST:


Kenneth H. Craig, Secretary