

Minutes
City of Clayton Planning Commission Meeting
Tuesday, March 10, 2009

Call to Order

Chair Catalano called the meeting to order at 7:00 p.m. at the Library Meeting Room, Clayton Community Library, 6125 Clayton Road, Clayton.

Present: Chair Tuija Catalano, Vice Chair Ed Hartley, Commissioner Bob Armstrong, Commissioner Keith Haydon, Commissioner Sandra Johnson

Absent: None

Staff: Community Development Director David Woltering
City Attorney Dan Adams
Planning Consultant Nick Pappani
Assistant Planner Milan Sikela, Jr.

Administrative

- 1A. Review of agenda items.
- 1B. Commissioner Haydon to report at the March 17, 2009 City Council meeting.

Approval of Minutes

2. Approval of minutes from the meeting of February 10, 2009.

Chair Catalano moved and Commissioner Armstrong seconded a motion to approve the minutes from the meeting of February 10, 2009, as submitted. The motion passed 5-0.

Discussion Items

3. Presentation by City Attorney Dan Adams regarding Conflict of Interest standards.

Director Woltering provided an introductory overview and City Attorney Adams presented the report. Attorney Adams referenced and summarized key points in a publication that he had previously forwarded to the Commissioners entitled "Key Ethics Law Principles for Public Servants." In addition, Mr. Adams discussed the 500-foot rule wherein a Commissioner must recuse themselves from considering an application if the Commissioner has an ownership interest in real property with a value of \$2,000 or more within 500 feet of the site of the application being considered.

Commission questions included:

- What if a Commissioner rents a property within 500 feet of the project site? Attorney Adams responded that the Commissioner should contact the Fair Political Practices Commission for direction in that circumstance. He added that he did not think it would constitute a conflict of interest issue since the Commissioner did not own the property and, as a result, would not stand to gain anything by project approval.
- Should Commissioner Haydon have excused himself from the Clayton Station Site Plan Review Permit application since it only involved a remodel of the exterior colors and materials? Attorney Adams replied that, if the Commissioner owns real property with a fair market value of \$2,000 or more within 500 feet of the project site, the Commissioner then has a direct economic interest in the decision. As a result, he would have to recuse himself from the decision.

Attorney Adams emphasized that if a Commissioner is unsure about whether they have a conflict of interest, ultimately that determination would need to be made by the Fair Political Practices Commission (FPPC). He stated that this determination could not be made by other Commissioners, but only by the FPPC. He suggested that if a Commissioner requests a determination from the FPPC, that the Commissioner needs to receive the determination in writing in order to have a defense to any claimed violation of the Act.

Public Hearings

4. **ENV 01-08, Development Plan, Komgold.** The proposed project site is located at 1005 and 1007 Oak Street (APNs 119-050-009 and 119-050-034) and includes a third parcel located west of Mitchell Creek (APN 119-050-008). The purpose of this item is to review and receive comments on the Rivulet Project Initial Environmental Study/Mitigated Negative Declaration (IES/MND), prepared in accordance with the California Environmental Quality Act. This report analyzes the potential impacts caused by the proposed project and identifies various measures to mitigate these impacts. The proposed Rivulet project involves the removal of two existing single-story modular buildings and the redevelopment of the site with a two-story, mixed-use building with approximately 7,000 square feet of retail space on the ground floor and seven (7) residential units on the second floor.

Director Woltering provided an introduction of the purpose of this agenda item as being to receive comments on the IES/MND environmental document and he described the process for adoption of the environmental document and the approval of the project. Planning Consultant Nick Pappani then provided an overview of the IES/MND, including the environmental findings of the document.

Commission comments and questions included:

- Will the addition of the third parcel satisfy landscaping and open space? Director Woltering indicated that staff believed it would.
- Will the residential units be sold or rented? Director Woltering said that the residential units could be either sold or rented.
- Who is responsible for preparing the Development Plan? Director Woltering answered that the applicant would be responsible.
- In reference to Mitigation Measure 1, the Commission asked who will monitor the air quality? Planning Consultant Pappani answered that the City Engineer would be monitoring the air quality.
- Does this air quality monitoring result in a weekly or bi-weekly report? Planning Consultant Pappani indicated that a weekly or bi-weekly report is not normally required, but can be conditioned. There is also a training program that is required.
- Regarding biology, it was suggested, in particular reference to Mitigation Measure 4, that a monitoring report requirement be added.
- Regarding cultural resources, what would happen if a resource is found? A training requirement should be added so that on-site construction personnel are familiar as to what to check for. This training could be part of a pre-construction meeting requirement.
- Regarding hydrology, the hydrology section should indicate the design objectives, including proposed plantings and erosion control measures, should be beneficial.
- If construction had been underway during rain, would there be measures to avoid negative downstream water quality impacts? Planning Consultant Pappani indicated that siltation fences and straw waddles would be installed. Laura Hoffmeister, Stormwater Manager for the City of Clayton, also addressed the Commission and indicated that after heavy rain events the City is required to inspect water quality devices to ensure that they are working properly.

- Will there be any impacts upon existing trail to Mount Diablo Elementary School, which is located adjacent to the project site? Planning Consultant Pappani indicated that there would be no impacts to the trail. We are trying to provide a seating area at the terminus of Center Street that is intended to block direct pedestrian/bicycle traffic across Mitchell Creek to and from the trail at that location.
- What is meant by general support from Department of Fish and Game (CDFG) representatives? Nick Pappani indicated that CDFG has indicated support for the proposed removal of invasive plants and the installation of native riparian vegetation to help protect Mitchell Creek and enhance the habitat there. Additionally, CDFG has indicated that the proposed project will not trigger the need for a Streambed Alteration Permit. Personal correspondence with a local Fish and Game representative is referenced in the Initial Environmental Study.
- Will property owner be responsible for C.3 Stormwater monitoring requirements? Planning Consultant Pappani indicated "yes" and referenced Mitigation Measure 12.
- Is it true that the number of species to be impacted is zero? Planning Consultant Pappani indicated, yes, since there is an existing physical impediment that prevents fish from coming upstream, and terrestrial vertebrates would not be impacted because of the mitigation measures required in the IES/MND .
- Does the third parcel west of Mitchell Creek include both the pedestrian bridge and vehicular bridge? Assistant to the City Manager Hoffmeister indicated that the pedestrian bridge is in the Mount Diablo School District and the vehicular bridge is part of an assessment district.
- Who is going to take care of the large leaning tree on-site? Planning Consultant Pappani indicated that risks for the tree will be transferred to the property owner.
- Will the stormwater requirements be the same as for Flora Square? Planning Consultant Pappani answered that the approaches between Flora Square and the Rivulet project are essentially the same. Ms. Hoffmeister confirmed that the Flora Square project includes the same stormwater concepts into its system; for example—infiltration planters.
- So flood gate requirements will apply? Planning Consultant Pappani answered "yes."
- Restaurant uses should be factored into the traffic study. Planning Consultant Pappani indicated that, given all of the studies, intersections would operate at either level of service (LOS) A or B even under the cumulative scenario. Changing the trip generation rate for the project from a general retail category to a more specific category pertaining to restaurant uses would not result in any significant intersection impacts. Planning Consultant Pappani indicated that he can have the traffic consultant run some numbers if the Commission so desires.
- Are all biological resources part of the biological report? Planning Consultant Pappani answered "yes."
- Did the cumulative scenario traffic study take into consideration that the City of Clayton is encouraging restaurant usage in the downtown? Planning Consultant Pappani indicated that he would research further to respond to that question.
- Page 27 of the report should reference the Study that determined no presence of listed or threatened species on the site.
- What is the City's position on requiring a greenhouse gas emission impact analysis? Ms. Hoffmeister indicated that the City Council is keeping up-to-date with this ever-changing issue and its associated regulatory environment. Given the lack of identified quantitative thresholds, Ms. Hoffmeister indicated that the Council is waiting for specific State directives.

The public testimony period was opened.

Jerry Davis, 6000 High Street, indicated the following:

- Will people be able to cross the vehicular bridge to gain access to the open space area west of Mitchell Creek? Planning Consultant Pappani indicated that open space area is not intended as active open space, but as a passive open space area.
- What right of way will be abandoned? Planning Consultant Pappani indicated that the terminus of Center Street is the right of way that will be abandoned.

There being no further public comment, the public testimony period was closed. Commission comments and questions included:

- Have you heard of other items that will result in revisions? Planning Consultant Pappani answered "no."

By Consensus, the Planning Commission asked if the comments received were sufficient for staff. Community Development Director Woltering indicated that, yes, the comments were sufficient and added that the comment period for the Rivulet IES/MND extends through until April 2, 2009.

Old Business

5. None.

New Business

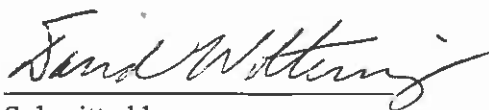
6. None.

Communications

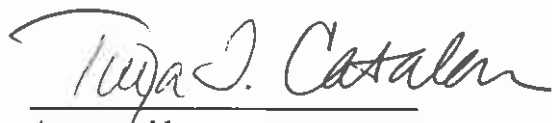
- 7A. Staff.
7B. Commission.

Adjournment

7. The meeting was adjourned at 9:30 p.m.



Submitted by
David Woltering, AICP
Community Development Director



Approved by
Tuija Catalano
Chair

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