



Agenda
Planning Commission Meeting
7:00 P.M. on Tuesday, December 14, 2010
Hoyer Hall, Clayton Community Library, 6125 Clayton Road, Clayton

CALL TO ORDER, ROLL CALL, PLEDGE TO THE FLAG

Administrative

- 1A. Review of agenda items.
- 1B. Vice Chair Richardson to report at the City Council meeting on December 21, 2010.

Public Comment

Approval of Minutes

- 2. Approval of minutes from the meeting of November 9, 2010.

Public Hearings

- 3. **ENV 05-10, Environmental Review, City of Clayton, Clayton Community Park (APN 118-520-013).** A review of the Community Park Parking Lot Expansion Initial Environmental Study/Mitigated Negative Declaration (IES/MND) which analyzes the expansion of the existing Community Park parking lot by adding a total of one-hundred (100) new parking spaces along a paved driveway parallel with Marsh Creek Road. Improvements would include construction of the new driveway, new asphalt and concrete paths, stairs, a patio extension, stormwater filtration planters and appurtenances, and new lighting.

Proposed Action: Review and provide comments on the IES/MND to staff.

Old Business

- 4. None.

New Business

- 5. Review and discussion pertaining to standard guidelines for Planning Commission participation in hearings and avoiding potential conflict of interest.

Communications

- 6A. Staff.
- 6B. Commission.

Adjournment

- 7. The next meeting of the Planning Commission scheduled for **Tuesday, December 28, 2010** will be cancelled. The Planning Commission will adjourn to the following regularly scheduled meeting of **January 11, 2011**.

Most Planning Commission decisions are appealable to the City Council within ten (10) calendar days of the decision. Please contact Community Development Department staff for further information immediately following the decision. If the decision is appealed, the City Council will hold a public hearing and make a final decision. If you challenge a final decision of the City in court, you may be limited to raising only those issues you or someone else raised at the public hearing(s), either in oral testimony at the hearing(s) or in written correspondence delivered to the Community Development Department at or prior to the public hearing(s). Further, any court challenge must be made within 90 days of the final decision on the noticed matter. If you have a physical impairment that requires special accommodations to participate, please contact the Community Development Department at least 72 hours in advance of the meeting at 925-673-7340. An affirmative vote of the Planning Commission is required for approval. A tie vote (e.g., 2-2) is considered a denial. Therefore, applicants may wish to request a continuance to a later Commission meeting if only four Planning Commissioners are present. Any writing or documents provided to the majority of the Planning Commission after distribution of the agenda packet regarding any item on this agenda will be made available for public inspection in the Community Development Department located at 6000 Heritage Trail during normal business hours.

Minutes
Clayton Planning Commission Meeting
Tuesday, November 9, 2010

Call to Order

Chair Sandra Johnson called the meeting to order at 7:00 p.m. at Hoyer Hall, 6125 Clayton Road, Clayton.

Present: Chair Sandra Johnson, Vice Chair Dan Richardson, Commissioner Bob Armstrong, Commissioner Tuija Catalano

Absent: Commissioner Ted Meriam

Staff: Community Development Director David Woltering
Assistant Planner Milan Sikela, Jr.

Administrative

1A. Review of agenda items.

1B. Chair Johnson to report at the City Council meeting on November 16, 2010.

Public Comment

None.

Approval of Minutes

2. Approval of minutes from the meeting of October 26, 2010.

Vice Chair Richardson moved and Commissioner Catalano seconded the motion to approve the minutes from the meeting of October 26, 2010, as amended. The motion passed 4-0.

Public Hearings

3. **SPR 01-10, Site Plan Review Permit, Jan Richards**, 1381 Lydia Lane, APN 120-052-015. A request for a Site Plan Review Permit to allow the construction of a two-story addition on an existing single-story, single family residence. The addition measures approximately 24 feet in height and 1,700 square feet in area.

Assistant Planner Sikela presented the staff report.

Wendy Hunter, co-property owner of the project site, indicated the following:

- As staff indicated in the presentation, the second-story addition has been located at the rear of the residence so as to minimize visual impacts from the public right-of-way as well as to maintain the existing open space areas in the front and side yards of the lot.
- This project has been on the drawing board for over a year, with multiple revisions prior to submitting a Site Plan Review Permit application to the City.
- The adjacent home is a two-story structure.
- She proposes matching exterior materials and colors to integrate the addition with the existing residence.
- We made an attempt to preserve the existing trees on the property.

The public hearing was opened by Chair Johnson.

Jack Mortenson, 1371 Lydia Lane, indicated that he lives immediately south of the subject property. He stated the proposed home addition would blend in with surrounding homes and he supports the project.

Commission comments regarding the proposal included the following:

- Commissioner Armstrong indicated it would be a nice addition to the neighborhood.
- Chair Johnson indicated that the drawings submitted understate the improvements being proposed. She indicated support for the proposal.
- Commissioner Catalano stated the addition is well designed and fits in with the neighborhood.
- Vice Chair Richardson stated that the applicant has proposed the addition with consideration of impacts upon neighboring properties and that the proposal will fit in very well.

Commissioner Catalano moved and Commissioner Armstrong seconded a motion to approve Site Plan Review SPR 01-10, with the findings and conditions of approval recommended by staff. The motion passed 4-0.

Old Business

4. None.

New Business

5. None.

Communications

6A. Staff.

Director Woltering indicated the following:

- A housing unit in the City's Affordable Housing Program is being offered for sale by the owner. The unit has been advertised in the Contra Costa Times and posted on the City's website.
- The draft Initial Environmental Study/Mitigated Negative Declaration (IES/MND) for the Community Park Parking Lot Expansion project will be complete by the end of November 2010.
- At this time, staff anticipates releasing the public review draft Environmental Impact Report (DEIR) for the Clayton Community Church project in January 2011.

6B. Commission.

Commissioner Armstrong indicated that the TRANSPAC meeting has been changed from November 11, 2010 to one day earlier on November 10, 2010.

Commissioners directed staff to return with information and general guidance addressing Commissioner participation in projects within the 500 feet of Commissioner residences to avoid potential conflicts of interest.

The Commissioners expressed interest in larger projects using story poles for purposes of assessing potential visual impacts of those projects.

Adjournment

7. The meeting was adjourned at 7:50 p.m. The next regular meeting of the Planning Commission is scheduled on **Tuesday, November 23, 2010.**

Submitted by
David Woltering, AICP
Community Development Director

Approved by
Sandra Johnson
Chair

Plng Comm\Minutes\2010\1109

PLANNING COMMISSION STAFF REPORT

Meeting Date: December 14, 2010

From: David Woltering, AICP, Community Development Director 

Subject: Community Park Parking Lot Expansion Project
Initial Environmental Study/Mitigated Negative Declaration (ENV 05-10)

BACKGROUND

The proposed project is located in the City of Clayton, northwest of the intersection of Marsh Creek Road and Regency Drive, on the Clayton Community Park property. Diablo View Middle School (DVMS) is located directly north of the property. The proposed project involves an expansion of the existing Community Park parking lot by adding a total of 100 new parking spaces along a paved driveway parallel with Marsh Creek Road. More specifically, expansion of the existing parking lot area would consist of the construction of seven new parking spaces (five standard plus two handicap accessible) within the existing Community Park parking lot area and the construction of a 25-foot-wide driveway, double loaded with perpendicular parking (89 standard stalls plus four handicap stalls), from the north end of the existing parking lot to the driveway serving DVMS's gymnasium parking lot. The City, Clayton Redevelopment Agency, and the Mount Diablo School District entered into a 40-year agreement to share funding and use of the school gymnasium, driveway, and parking lot.

Additionally, improvements would include lighting, construction of a new asphalt path along the easterly side of the new parking driveway, a concrete path and stairs to Marsh Creek Road, a patio expansion near existing bathrooms for the relocation of an existing picnic area being removed, and the construction of stormwater filtration planters and appurtenances for the treating of stormwater runoff prior to discharge from the site.

An *Initial Environmental Study/Mitigated Negative Declaration (IES/MND)*, prepared in accordance with applicable provisions of the *California Environmental Quality Act (CEQA)* by a consultant, Raney Planning & Management, under contract with the City, analyzes the impacts associated with construction and implementation of this proposed project. Given the limited improvements proposed for the project, the *IES/MND* concludes that with the incorporation of the City's standard mitigation measures addressing four identified issues there would be no significant impacts resulting from the project. The mitigation measures for the project pertain to air quality, biological resources, cultural resources, and geology.

The 30-day public review period for the *IES/MND* concludes on December 22, 2010. The Planning Commission must provide provisional approval of the *IES/MND* prior to approval of authorization for the solicitation of bids for the proposed improvements.

On November 22, 2010, a "Public Hearing Notice of Intent to Adopt a Negative Declaration" was mailed to property owners within 300 feet of the site and interested parties. The same public hearing notice has been submitted to the *Contra Costa Times* for publication and the County Clerk for posting.

As of the date of writing this report, staff has received only one formal comment on the project *IES/MND*. This comment came from the East Contra Costa County Habitat Conservancy confirming that the proposed project is exempt from the *East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP)* because the site "...is entirely mapped as urban and turf." Accordingly, this project is not required to pay any related impact fees. Additional comments on this *IES/MND* may be submitted through December 22, 2010.

DISCUSSION

Based on continued review, refinement, and budget considerations associated with the proposed project, staff anticipates several adjustments to the design as described below.

It would be beneficial for traffic circulation purposes and public awareness purposes to locate a monument sign at the Gym Lane entry to identify this particular entry to access the Middle School gymnasium and the Clayton Community Park site. It is likely that a monument sign for these purposes meeting City standards will be added to the final design.

The steps proposed that extend from the parking area down to Marsh Creek Road are likely to be eliminated to reduce project costs. It is not anticipated that the steps would gain much use and they would add to initial costs as well as on-going maintenance and repair costs.

Approximately midpoint in the northernmost segment of the proposed parking area, it is anticipated that one additional landscape projection (i.e., landscape island) will be added on either side of the driveway aisle to add shade in the parking area. The intent is to accomplish this without losing any parking spaces.

The landscape plan will be further evaluated to assure adequate coverage for the purpose of generally screening the parking lot area and, specifically, the undercarriages of the vehicles parked there, without creating an excessive on-going maintenance or water demand impact.

None of the above-described adjustments being considered are anticipated to alter the findings and the recommendations in the project *IES/MND*.

RECOMMENDATION

Staff recommends that the Planning Commission take the following actions on the *IES/MND*:

- Accept a presentation on the *IES/MND* at the December 14, 2010 Planning Commission meeting;
- Take public comment on the *IES/MND* at the December 14, 2010 Commission meeting;

- The Commission should provide direction to staff regarding any modifications of the *IES/MND*, if applicable; and
- Following the conclusion of the public comment period on the *IES/MND*, the Commission should provide provisional approval of the *IES/MND*, subject to City Council confirmation.

EXHIBIT

Community Park Parking Lot Expansion Project Initial Environmental Study/Mitigated Negative Declaration Public Review Draft, dated November 2010

comdev/ENV/2010/05-10.Community Park IES.sr1

Memorandum

To: Chair Johnson and Planning Commissioners

From: David Woltering, AICP, Community Development Director 

Date: December 14, 2010

Subject: Agenda Item 5 Regarding Commission Participation in Public Hearings and Avoiding Potential Conflicts of Interest

At the November 9, 2010 Planning Commission meeting, Commissioners requested staff to provide general guidance on commissioner participation in public hearings to help assure the avoidance of any conflict of interest. Commissioners indicated a request to receive this information in a timely manner given the approaching public hearing process on the Clayton Community Church project and the complexity of that particular application.

Staff contacted the City Manager and the City Attorney regarding this request and the City Manager and the City Attorney have researched the matter and provided the attached information for the review and use of the Planning Commission and the City Council. The information provided is very useful and, importantly, suggests that if a commissioner may have a potential conflict of interest and is uncertain about the need to recuse herself/himself, that individual is strongly encouraged to contact the staff at the Fair Political Practices Commission (FPPC) for a written determination. The FPPC may be contacted at (866) 275-3772.

Attachments

David Woltering

From: Gary Napper [gnapper@ci.clayton.ca.us]
Sent: Friday, December 10, 2010 2:22 PM
To: 'David Shuey (E-mail)'; 'Hank Stratford'; 'Howard Geller'; 'Joe Medrano'; 'Julie Pierce (E-mail)'
Cc: dwoltering@ci.clayton.ca.us; dadams@thalaw.com; 'Bob Armstrong'; 'Dan Richardson'; 'Sandy Johnson'; 'Ted Meriam'; 'Tuija Catalano'
Subject: Possible Conflict of Interest on Church development application
Importance: High
Attachments: SKMBT_C65010121013300.pdf; SKMBT_C65010121013260.pdf
 Mayor & Council, Planning Commissioners:

Early in 2011 the City will formally commence its public reviews and hearings concerning the Clayton Community Church's land use development application that it filed in 2010.

In preparation of a process that many have deemed controversial, it is vital the City engage a course that is, as much as possible, free of allegations of biases or conflicts of interest in those City officials charged with recommending and ultimately ruling on this land use application. Consequently, it is staff's duty to assist in looking out for any such potentials that could taint the City's procedures, and in fact the Planning Commission has previously asked staff if any of its members may have a conflict of interest due to proximity or other factors related to the church's project.

Since the church's proposed development seeks to use existing on-street public parking spaces as well as off-street public and private parking lots to satisfy the City's codes as to on-site parking requirements, staff sought and received instruction from several sources as to the true boundaries of the submitted project. The input has resulted in a determination by staff the church's project boundary must of necessity incorporate those outlying and off-site areas it wishes to count for its parking requirements, since they are inextricably linked to the project's use, operations and impacts.

Within that context, the City Attorney considered known land ownership and business leases of current City officials within the project boundary area and has prepared the attached Conflict of Interest Memorandum (5 pp.). To facilitate awareness of project boundary, I further copied and attached a color page from the church's submitted application indicating the locations of public and private parking spaces it desires to count to satisfy the City's parking standards.

For any City official that may indeed have a Conflict of Interest, we encourage you to seek and receive a formal written opinion regarding your status from the Fair Political Practices Commission (FPPC) in a timely manner such that the City may convene its public processing of the church's application without these unknowns being questioned.

Thank you.

Gary A. Napper
 City Manager
 6000 Heritage Trail
 Clayton, CA 94517
 925.673-7300
gnapper@ci.clayton.ca.us

MEMORANDUM

Received

DEC 10 2010

City of Clayton

To: Gary Napper, City Manager

Date: December 9, 2010

From: Dan Adams, City Attorney

Re: Conflict of Interest Analysis Regarding Clayton Community Church Application

You have asked me to analyze whether there are anticipated possible conflicts of interest for the decision makers related to the Clayton Community Church land use application presently working its way through the Community Development Department process. I understand the Planning Commission has inquired as to potential conflicts in the decision making process, if and when, the Church's application is before it. Acknowledging the application must ultimately come before the City Council, I also address this issue as it relates to the City Council. In analyzing the issue, I am mindful of the Church's application and in particular Table 5-1 provided in compliance with the provisions of the Clayton Municipal Code. For your convenience, I attach a copy of that Table in which the Community Church identifies the types of activities, days/hours of operation, and number of persons that it anticipates will be patronizing its proposed development. My analysis is as below:

A. Planning Commissioner Ted Meriam

I understand that Commissioner Meriam is the owner of a residence within 300 feet of the boundary of the project area which for purposes of this analysis includes the Community Church's proposed use of public parking spaces on the street and in various parking lots throughout the Town Center.

Generally, this real property, located within 300 feet of the project would be defined as *directly* involved for the purposes of the FPPC eight step analysis. However, FPPC Regulation 18704.2 provides an exception if the decision solely concerns the amendment of an existing zoning ordinance or other land use regulation in which case the real property is deemed *indirectly* involved. The effect of indirect involvement is that the interest is presumed to be "*not material*" and unless this presumption is rebutted, Mr. Meriam may participate in the decision making process. The presumption is rebutted by proof that there are specific circumstances regarding the governmental decision, its financial effect, and the nature of the real property in which the public official (Mr. Meriam) has an economic interest such that it is reasonably foreseeable (substantially likely) that the decision will having material financial effect on his real property. Examples of specific circumstances that are considered in evaluating whether the

presumption is rebuttable include among others, the character of the neighborhood including, but not limited to *substantial effects on traffic, parking, view, privacy, intensity of the use, noise level, air emissions or similar traits*.

Analyzing the Community Church's Application and in particularly Table 5-1, I believe that there is a likely potential that the presumption may be rebutted. The activities enumerated in Table 5-1 encompass circumstances that may have a material financial effect on his real property. Specifically, the activities described in Table 5-1 may have substantial effects on traffic, parking, noise levels, and privacy, among others in the character of the neighborhood and hence a material financial effect on his real property. While I am unfamiliar with his residence and not in a position to opine whether Mr. Meriam will ultimately be able to participate in the decision making process, I strongly encourage him to contact the FPPC and request a written opinion from them before participating in any decision making process regarding the Church's Application. As you know such a written opinion is necessary in order for him to be protected from an asserting that he has a conflict of interest. The FPPC may be contacted at (866) 275-3772.

B. Councilman Joe Medrano

We understand Councilman Medrano has an interest in a business lease within the project area. Assuming it is or has not evolved into a "month-to-month tenancy" and the lease has a fair market value of at least \$2,000, conflict analysis under the FPPC rules regarding ownership of real property will be required if this application ultimately comes before the City Council. We believe that an analysis similar to the one above regarding Mr. Meriam applies to Mr. Medrano. Specifically FPPC Regulation 18704.2 would apply and a fact specific analysis as to the effect on Mr. Medrano's economic interest would be required in order to determine whether the presumption is rebutted. This would include an analysis of the project's impacts on his business operations at the leased premises. I am not familiar with the degree to which Mr. Medrano's business operations require customer access and/or competing parking needs, but if they do, there is a likely possibility that the presumption may be rebutted.

Because Mr. Medrano's business is located within the project area, further analysis is required related to the impact on the business itself. It is a conflict of interest for a public official to make, participate in or to use his or her official position to influence a governmental decision which the public official knows or has reason to know will have a reasonably foreseeable material financial effect on, among other things, a business entity in which the public official has a direct or indirect investment of \$2,000 or more or is a director, officer, partner, trustee, employee or holds a position of management. In the instant case, Mr. Medrano's economic interests (his business interests) are not the subject of the decision regarding the Church's application, but may nevertheless be affected by the decision, his involvement is deemed "*indirect*" under the FPPC Regulations. Applying the FPPC's materiality's standards, the financial effect of his decision is immaterial unless the annual impact to Mr. Medrano's business by the decision on the Church's application would

be \$20,000 in gross revenues, \$5,000 in expense, or \$20,000 in assets or liabilities. The standard for determining annual impact is whether it is reasonably foreseeable (substantially likely) that the decision will have an impact of at least the amounts set forth above. The question is therefore raised as to whether the activities described in Table 5-1, and in particular the Church's demand to assign all available on-street, off-street and private parking spaces and lots and/or access to each for its private land use, will impact his business at or above the stated levels. As with Mr. Meriam, I would strongly encourage Mr. Medrano to contact the FPPC and request a written opinion before participating in any such decision making process in order that he is fully protected. As stated above, the FPPC may be contacted at (866) 275-3772.

JDA:lac

Clayton/Conflict Int.:Memo to City Mgr 101209

5 USE PERMIT APPLICATION

All projects that propose mixed use development on a parcel of 15,000 square feet or greater and are zoned as "Planned Development" within the City of Clayton are required to submit a Land Use Permit Application (Clayton Municipal Code §17.28.050).

The Land Use Permit application requires a written statement of operation that identifies the types of activities, days/hours of operation, and the number of persons involved. Operations have been divided into three (3) categories: Regular Operations, Special Events, and Future Events. A table for each category is provided.

Table 5-1: Regular Operations

<i>Day of Week</i>	<i>Time of Day</i>	<i>Usage Description</i>	<i>Approximate Attendance</i>
Monday	AM	Bible Study	10 to 40
	AM	Office Staff	14
Tuesday	AM	Office Staff	14
	PM	Rehearsal	15
	PM	Leadership Council	15
	PM	Prayer Gathering	50
	PM	Worship Team	10 to 15
Wednesday	AM	Office Staff	14
	9 to Noon	Woman's Bible Study	50 plus 30 children
		Summer Program	100 Children
	Evening		30 to 40
Thursday	6:30 AM	Men's Bible Study	35 to 50
	PM	High School	35 to 50
	AM	Office Staff	14
Friday	AM	Office Staff	14
	8:30 PM	Summer Movie Night	500
Saturday	8 to 10 AM	Men's Breakfast	50
	6 PM to 8	Sat Night Services	200
Sunday	8:45 to 1:00 AM	Gathering	Adults 300 Children 80 Youth 30 Junior High School High School 40 College 15-20
	Occasional	Gathering	10 to 50
	PM	AA Group	20

Table 5-2: Special Events

<i>Month or Day</i>	<i>Time of Day</i>	<i>Usage Description</i>	<i>Approximate Attendance</i>
August - September	7 until done	Soap Box Derby	1000
December	Christmas Eve	Gathering	600 to 700
		Youth Celebration	100
February		Super Bowl Party	30
		Daddy/Daughter Dance	150
March - April	All Day	Easter Gathering 9AM	1000
		Easter Gathering 11 AM	1000
April	PM	Church Banquet	900 to 1000
May	PM	Spring Formal	100

Table 5-3: Future Events

<i>Month or Day</i>	<i>Time of Day</i>	<i>Usage Description</i>	<i>Approximate Attendance</i>
First Wed of Month	3PM to 5	Kids Worship	20
Various		Concerts	300 to 400
Various		Community Theater 1. Drama Mama 2. High School	
Various		Weddings & Funerals	

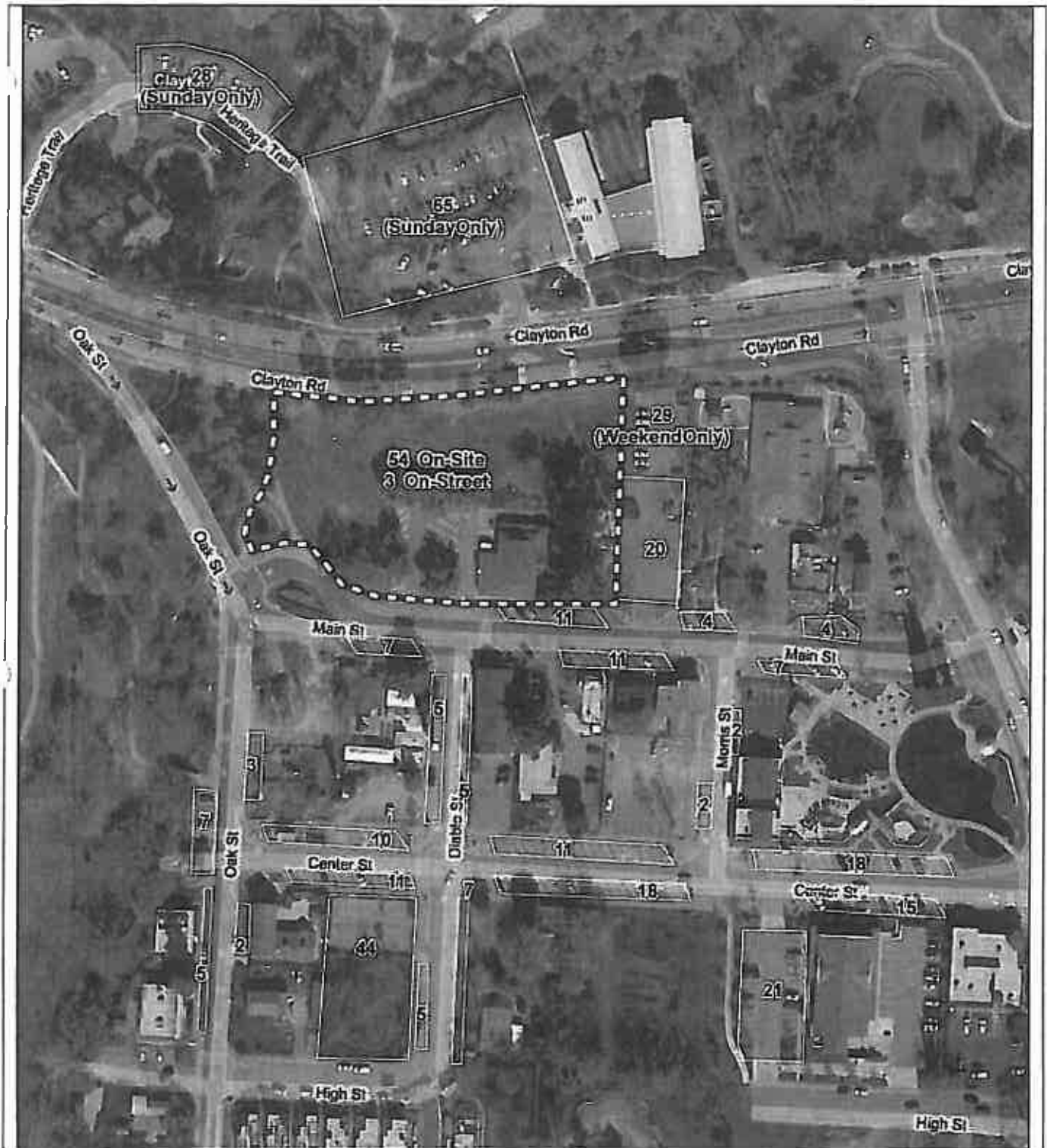
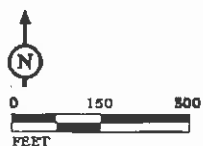


FIGURE IV.B-7

LSA



-  Project Site
-  Public Parking
-  Shared Parking

	Parking Spaces	
	Weekday	Sunday
Project Site	57	57
Public Parking	255	348
Shared Parking	-	29
Total	312	434

Clayton Community Church Project EIR
Parking Supply

SOURCES: BING MAPS, LSA ASSOCIATES, INC., 2010.

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