

**MINUTES
PLANNING COMMISSION REGULAR MEETING
MAY 15, 2012**

1.0 CALL TO ORDER

The Regular Meeting of the Planning Commission of the City of Highland was called to order at 6:00p.m. by Chairman Hamerly, in the Donahue Council Chambers, 27215 Base Line, Highland, California.

Present: Chairman Randall Hamerly
 Vice Chairman Trang Huynh
 Commissioners John Gamboa
 Milton Sparks
 Michael Stoffel
 Michael Willhite

Absent: Commissioner Richard Haller

Staff Present: John Jaquess, Community Development Director
 Ernie Wong, City Engineer / Public Works Director
 Lawrence Mainez, City Planner
 Sean Kelleher, Assistant Planner
 Linda McKeough, Administrative Assistant III

The Pledge of Allegiance was led by Chairman Hamerly.

2.0 COMMUNITY INPUT

There was none.

3.0 CONSENT CALENDAR

3.1 Minutes of May 1, 2012, Regular Meeting.

A Motion was made by Vice Chairman Huynh and seconded by Commissioner Gamboa to approve the Minutes of May 1, 2012, Regular Meeting, as submitted.

Motion carried on a 5 – 0 – 1 vote with the abstention of Commissioner Stoffel and Commissioner Haller absent.

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4.0 OLD BUSINESS

There was none.

5.0 NEW BUSINESS

- 5.1 Revision to Engineering Conditions (REV 012-001) to certain Engineering Conditions of Approval related to a Landscaped Median for the Dairy Queen Fast Food Restaurant (CUP 009-006). The approximate 0.45 acre Site is located at the southwest corner of Base Line and Central Avenue. Representative: Mr. Young Shin, Applicant; Bernie Mayer with SITETECH Engineering

Chairman Hamerly identified the Item and asked for Staff's presentation.

City Planner Mainez gave a brief overview from the Staff Report and indicated that the Applicant and the Applicant's Representative are in the audience for any questions the Commission may have and then turned over Staff's presentation to City Engineer Wong.

City Engineer Wong gave the presentation from the Staff Report, inclusive of a historical background of the Project relative to the constructed Landscape Median, as well as maintenance, was Conditioned to be constructed with separate water irrigation systems so that the operation of the irrigation system could be done independently by the City by a Maintenance Contractor and not tie into the on-site private irrigation system and when the Landscape Median would be turned over to the City for maintenance and the Property Owner would be responsible for putting the Landscape Median into a Landscape Median District to offset the City's cost to construct the Median. The Project was also Conditioned to pay the City a one (1) year of maintenance cost of the Median landscaping so that the Assessment District for this Project would have some start up fund for the City to use and to do any necessary work in the early phase landscape maintenance would be implementing on this Median and how the RDA has agreed to pay for fifty percent (50%) of the initial cost for construction of the Median and is the first time the RDA has ever done this. He then explained how the Project did not install separate water meters and the system is tied into the on-site irrigation system and at this time, the City is unable to separate the cost for the water usage and the City does not have a way to take it over and have independent control over the maintenance operations of the Median. He then explained Staff's discussion with the Applicant and his Representative, Staff's recommended proposed revision of Engineering Conditions of Approval to the Commission and the City's rights and then concluded his presentation.

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City Planner Mainez explained Staff's recommendations regarding the Commission's options and the Applicant's request to the Commission.

Chairman Hamerly asked if the Commission had any questions of Staff.

A question was asked by Commissioner Willhite who owns the Median, the Applicant or the City and City Engineer Wong responded the Applicant (Dairy Queen) owns it and will maintain it.

Another question was asked by Commissioner Willhite if the City Attorney is okay with this with liability and having the Applicant's Contractor out in the middle of the street and City Engineer Wong responded how this has also been done by the EHR's Homeowners Association with their Medians and has required the Property Owner (Dairy Queen) Contractor to acquire a Permit from the City and how there is more landscape maintenance / irrigation than the curb itself and how landscaping can also block the line-of-sight if not maintained and that is why the City has the Contractor to have insurance.

A question was asked by Commissioner Willhite so if a car destroys the landscaping, the Applicant is responsible for it and City Engineer Wong responded that is correct.

A question was asked by Vice Chairman Huynh if this similar process has been done before and City Engineer Wong responded with EHR maintains their Medians, because they are a large enough organization, and he does not see a problem with that, but for a smaller Median project like this then the Condition is to have the City maintain the Median in an Assessment District, and how this is the first time for a smaller project and does not recommend future projects to be like this in the future since the Project has moved on and thought this was the best viable solution.

A question was asked by Vice Chairman Huynh what is the status of the Median construction in terms of the landscaping work; is it finished and City Engineer Wong responded affirmatively and that the landscaping was installed and believed to have been accepted by the Planning Division per the design approved by the DRB and that part is not an issue. It's just with the water is not on a separate independent water irrigation system

Another question was asked by Vice Chairman Huynh why didn't the inspector notice that there were no two (2) separate meters, where is it and why wait until the end now and then have to back track and City Engineer Wong responded he

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did not know when this was found out before the City issued a Certificate of Occupancy and discussed with the Applicant's people. Vice Chairman Huynh stated how this issue came up before the Commission and how the Commission discussed this issue at length.

A question was asked by Chairman Hamerly if the meter was shown on the Plans and City Engineer Wong responded affirmatively, and that separate meters were shown and approved and does not know if the Landscape Architect has communicated this issue with the Planning Staff yet or not. City Planning Mainez added that he did not know and City Engineer Wong stated that it was designed per Condition approval, it was just not constructed that way

A comment was made by Chairman Hamerly if accepted per Plans, it is not an additional expense to the Property Owner and had signed an agreement with the Irrigation Contractor that provides services, based on Plans that were bid on, so it would be the Contractor's responsibility to fulfill the terms of that agreement and City Engineer Wong responded that the Property Owner's Representative is here in the audience.

Another comment was made by Chairman Hamerly if the Conditions of Approval (COA) reverting back to the original COAs in the event and not City is satisfied with the Median maintenance performance, and then asked why if the original COAs would not be then re-enacted with the payment (seed money) of a one (1) year maintenance of the Landscape Median and the funds available to front the costs of the maintenance and City Engineer Wong responded that the "seed money" is to ensure the installation and Plans are done properly and that the plant establishment period that there is a higher level of failure of the system, but if it is continued to maintain it in years, the plants would have to be established and the systems functional and that the need for that extra money would diminish.

A question was asked by Chairman Hamerly if that is because of replacement cost versus manpower costs and City Engineer Wong responded that is correct and that it is mainly there for repairing the system, if it is not done properly in the beginning and proceeded to explain how with scenarios.

Another question was asked by Chairman Hamerly about the fifty percent (50%) RDA Funding reimbursement / cost sharing that has been committed to this Project and City Engineer Wong responded how the City's Finance Department has a "placeholder" on this Project and that the State's Department of Finance has been advised about that with this Project and believed that this has been done. Community Development Director Jaquess added that at this point in time, the State Department of Finance has not challenged the City's the contractual financial obligations.

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Chairman Hamerly asked if the Commission had any further questions of Staff.

A question was asked by Commissioner Sparks regarding if the Applicant fails to comply with the COAs, that it may cause the City to revoke the Temporary Certificate of Occupancy (C of O) and close the Restaurant. City Engineer Wong responded how the C of O was issued as a Temporary Certificate of Occupancy and then provided an example of non-compliance without occupancy. City Planner Mainez added and explained Staff's recommended Option No. 1 and if the Commission chooses to deny the Applicant's request, the Applicant has due process procedure and has the right to appeal up to City Council and how there is a process before the revocation of the CUP.

Chairman Hamerly asked if the Commission had any questions of Staff. Hearing none, he thanked City Engineer Wong and then opened the Public Hearing and asked if the Applicant would like to make a presentation.

Mr. Bernie Mayer, of SiteTech Engineering, 38248 Potato Canyon Drive, Oak Glen, California, who is the Applicant's Civil Engineer, addressed the Commission. He stated how he assisted the Applicant through the process and in getting the Project located here in Highland and added that there are no issues with the COAs and conceptually, how the Project was planned. There would be no issue with having the City assess the Landscape Median, from a conceptual standpoint and take care of that, and do not have a problem with that being on a separate electrical and water service that the City will control and that the City would pay for. What became clear while going through the construction process for a small Median like that, the Median is not a cost effective endeavor for the Applicant and then explained the Project's historical background with the Applicant's General Contractor's bid process, obtained Edison's fees to relocate the power poles; obtained the Water District's fees to provide water / sewer Commission, how it was not feasible for the Applicant to economically construct the Project. The Applicant then had then gone to different Contractors, the Water District and how the Water District had credited the Applicant for previous service to the property and not requiring payment of frontage fees and had cut their fees by eighty percent (80%) and how the City paid for the utility pole relocation and undergrounding the Edison utilities in order to construct the Restaurant. With regards to the Landscape Median, if he had to construct separate electrical and water services, to serve the few hundred square feet of Median, the infrastructure cost would have cost the Applicant approximately \$15,000 and a separate meter from the Water District, it would cost close to \$6,000 and a separate fee for Edison. If the City, in the future were to extend Medians and bring more Medians in that area and to be cost effective to tie the Median in front of the Dairy Queen in with an additional Median, he would support that. Mr. Mayer further explained

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this is an interim step and with more Medians installed, water and electrical services that would serve more median, and would become cost effective and could bring this system into what the City's perception is for landscaping of public areas. He further explained for the time being the infrastructure cost was not cost effective for the Applicant and is not cost effective for the City to bring in a Landscape Contractor to maintain that little bit of Median and that it is more costs effective for the Applicant's Landscape Contractor. The Applicant has to watch his operating costs and was successful in keeping the Dairy Queen located in the City and wants to be successful with operating his business. Mr. Mayer then said that he would be happy to answer any questions the Commission may have.

Chairman Hamerly asked if the Commission had any questions of the Applicant's Representative.

A question was asked by Chairman Hamerly regarding the provisions in order to tie in with future Medians and Mr. Mayer responded there is a separate control valve, where the Median could be tied into a new irrigation main and a new irrigation controller, and it is being served by the Building now, but that could be switched over.

A question was asked by Chairman Hamerly if that could be extended along the Parkway, as opposed to tying in directly down the Median and Mr. Mayer responded that the control valve is located in the Parkway and has a lateral that goes across the Median right now and could be done either way or a control valve could be installed and the Median could be tied in differently, but it is its own separate little system and could be readily converted over to another system.

Another question was asked by Chairman Hamerly about extended to the Property Line, as opposed to being in the middle of the current Street Frontage so the existing improvements do not have to be destroyed and Mr. Mayer responded no, that has not been done.

A comment was made by Vice Chairman Huynh how the Commission discussed the Median landscaping at length many months ago when we talked about this Project, and unfortunately, this issue is now before the Commission at the 11th hour when things need to be done and how someone should have come to the Commission weeks ago before the Applicant finished the Median. With regards to the Temporary C of O, the City can consider a time line that it could be thirty (30) days or it could be six (6) months, dependent on the issue that needs to be

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finished and that he has worked with that with another jurisdiction and understands the need to open the business. He then suggested what about the feasibility of Conditioning the Project for six (6) months from now, for the CUP Condition in order to allow the Applicant some time to get his business up and running and making some money and then have the Applicant take that money and finish how the Project is originally Conditioned.

A comment was made by Chairman Hamerly regarding a provision for performance to the Original COAs standards are in place with an Alternative Resolution, if the Applicant fails to perform.

A comment was made by Vice Chairman Huynh instead of leaving open, set a time line and give the Applicant six (6) months to have this finished and then provide the Applicant with a permanent C of O, rather than the Temporary C of O. Community Development Director Jaquess responded if the COA is amended, he is unsure of the status of all of the other issues that were part of the Conditions of the Temporary C of O, but believes that that they are pretty much resolved. If this Condition is met, then there would be a C of O issued for the Project and would not be a Temporary C of O anymore. There is a negotiated agreement with the Applicant and Staff and both parties are satisfied with the Revised Condition, as presented, and Staff is comfortable with that and it is still workable with the City. Mr. Mayer responded he is not opposed to the general concept of the landscaping on the discussion that we had several months ago on the landscaping with the Median. The landscaping and the Median are as it was approved and this is more of a cost effective issue and does not want the City to maintain the Landscape Median right now. When there is more landscaping installed, and the City is maintaining a larger area, it would be more cost effective and then the Applicant would be willing to go along and would relinquish maintenance to the City and cut off the services and make it a part of the City's system.

A comment was made by Vice Chairman Huynh that could be two to four (2 – 4) years down the road. City Engineer Wong responded having the Applicant maintain it and not revert it back to the City and explained there is a mechanism if the Applicant is doing a bad job, the City has the right to do a one-time assessment cost which would take care of the funding and that the liability can be taken care of by the Contractor providing the insurance coverage and is a workable solution at this time.

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A comment was made by Chairman Hamerly if in general, if an Applicant does a Median improvement and installs separate metering, in the future, would it be more cost effective to develop a Master Plan for the controls so that if there are narrow street frontage, not having separate meters / irrigation circuits installed so that the Master Plan in place that would handle that so there is no each individual property owner being responsible for a separate meter for water and electric. City Engineer Wong responded there is no Master Plan, at this time, for this particular case, and that the City's Landscape Architect indicated with a small Median, when the Median is extended to the west in the future, then it could be tied into the system.

A question was asked by Chairman Hamerly if the needs to have an added provision that is not directly tied to the performance of the maintenance with the Applicant and then provided examples with meters being installed / linked the Median improvements and being cost effective, if the City decides to annex the Median into the LMD in the future that would not be directly tied to performance. City Engineer Wong said there needs to have a mechanism in order to trigger this. Chairman Hamerly said what about having additional improvements within the Right-of-Way and City Engineer Wong responded that there had been some discussion with the Applicant and with future new development requires to tie into the Median in order to have meters installed and that the Median would benefit other future businesses.

A comment was made by Chairman Hamerly what about a clause for a triggering mechanism similar to a sunset clause, and explained if there were additional improvements that are developed within the Median at a future date, then the City would have that option. City Engineer Wong responded that he could see that and speak for the Applicant requires the Applicant to the system and allow the City to maintain and pay their share of maintenance cost and Mr. Mayer said that would be fine with him.

A question was asked by Chairman Hamerly what about adding a Finding of Fact or a Memorandum of Understanding and would be better to include that in the Resolution and City Engineer Wong responded that the Applicant has agreed to pay for future maintenance of the Median if it is taken over by the City and that would be part of the mechanism trigger.

A question was asked by Chairman Hamerly what about non-performance in that the City does not have a unilateral option that we are just going to do it and the only mechanism is if the Applicant fails to perform and wanting to make a clarification and that it would change the form of the Resolution or revise Engineering COA No. 24 to give the City the additional right for convenience to

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say that this is going to be combine this Median improvement with another one and City Engineer Wong responded that he can make the changes to the Condition to reflect that. Community Development Director Jaquess added that 3.a. and 3.c of the Resolution could be amended and could add a provision that says “or if the Median is expanded beyond the Property Boundary on Base Line” and as he understands it, the Applicant would be assessed to allow the City to install and asked if that was what Chairman Hamerly was addressing and Chairman Hamerly said that is correct. Community Development Director Jaquess then asked if that was acceptable to both Mr. Mayer and City Engineer Wong and they both responded affirmatively.

A comment was made by Chairman Hamerly there is no need with revising 3.c of the proposed Resolution and then there is no changing to the Findings or the Motion and then Modifying Engineering COA No. 24 and City Engineer Wong responded to add some additional language, “the Property Owner, or if the City determines that it is appropriate to incorporate this Median into the City’s Landscape Maintenance District when the Median has been extended on Base Line west of the Property.”

A comment was made by Chairman Hamerly then that would not affect Engineering COA No. 25 and City Engineer Wong responded that is correct in that it would not affect No. 25. Chairman Hamerly then asked if that was acceptable the Applicant and Mr. Mayer responded affirmatively. Chairman Hamerly asked if that was acceptable to the Commission and there appeared to be concurrence of the Commission.

Chairman Hamerly then asked if there was anyone in the audience who would like to speak on the item. Hearing none, he left the Public Hearing open and then opened the floor for discussion amongst the Commissioners.

A question was asked by Commissioner Willhite regarding Engineering COA No. 24 and when looking on 3.a. on Page 1 of the proposed Resolution with the verbiage regarding eliminating the require to provide a separate water meter, electrical meter, etc., when he goes to Attachment “A” which is the proposed Revised Engineering COA No. 24, the Applicant has to submit a ballot to the City agreeing to the annexation and amount of assessment and charge the Applicant a one-time assessment for installing a water / electric meters. City Engineer Wong responded affirmatively and explained the elimination of the requirement to have all of those things installed now, but the Applicant is going to be required to sign a ballot allowing the City to assess funding, if the City needs to install those items in the future. Another question was asked by Commissioner Willhite that the City is not going to assess the Applicant now and City Engineer Wong responded no and Commissioner Willhite said then that makes sense.

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A comment was made by Commissioner Gamboa how he agreed with Commissioner Willhite's comments, but also with Vice Chairman Huynh's comments, when this was discussed previously, this should have been brought to the Commission's attention, and not at the 11th hour and Chairman Hamerly responded so noted.

Chairman Hamerly asked if anyone else would like to speak on the item. Seeing none, and there being no further questions of the Applicant or his Representative, or Staff, or discussion amongst the Commissioners, he then closed the Public Hearing and called for the question.

A Motion was made by Commissioner Willhite and seconded by Commissioner Gamboa that the Planning Commission adopt Resolution No. 12-007 approving the Applicant's request to Revise certain Engineering Conditions of Approval related to the Landscaped Median (REV 012-001), as modified with the following:

Engineering Condition of Approval

24. Apply to the City to annex the Project into the City's Landscape Maintenance District (LMD) for maintenance of Parkway and Median landscaping. Submit a ballot to the City agreeing to the annexation and amount of assessment, which will include a one time assessment to install a water meter, an electric meter and pedestal, a backflow device and enclosure, and a controller and pedestal, and an on-going assessment for maintenance of parkway and Median landscaping. Parkway landscaping along the Project frontages and the Base Line Median Landscaping shall be maintained by the Property Owner. The City will maintain the Parkway landscaping along the Project frontages and the Base Line Median landscaping utilizing LMD revenue only if the City determines that adequate maintenance is not being provided by the Property Owner, or if the City determines that it is appropriate for the City to maintain the Median when the Median has been expanded on Base Line west of the Project.

Motion carried on a 5 – 1 vote with the Vice Chairman Huynh dissenting and Commissioner Haller absent.

City Engineer Wong had to excuse himself as he had to leave in order to attend another meeting at 7:00 p.m.

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6.0 ANNOUNCEMENTS

Community Development Director Jaquess explained the Items tentatively scheduled for the Regular Meeting for June 5, 2012.

A question was asked by Chairman Hamerly about the start time and Community Development Director Jaquess responded that 6:00 p.m. is fine.

7.0 ADJOURN

There being no further business, Chairman Hamerly declared the Meeting adjourned at 6:42p.m. He then announced that there would be a five (5) minute recess in order for Staff to set up for the Study Session.

(Note: The Commission recessed at 6:42p.m. and reconvened at 6:47p.m. with Commissioners Gamboa, Sparks, Stoffel and Willhite and Vice Chairman Gamboa and Chairman Hamerly present.)

Submitted by:

Approved by:

Linda McKeough, Community Development
Administrative Assistant III

Randall Hamerly, Chairman
Planning Commission

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