

**REGULAR MEETING OF THE CITY OF  
COSTA MESA PLANNING COMMISSION**

**April 11, 2005**

The Planning Commission of the City of Costa Mesa, California, met in regular session at 6:30 p.m., April 11, 2005 at City Hall, 77 Fair Drive, Costa Mesa, California. The meeting was called to order by Chairman Perkins, followed by the Pledge of Allegiance to the Flag.

**ROLL CALL:**

Commissioners Present:

Chairman Bill Perkins

Vice Chair Donn Hall

Eleanor Egan, James Fisler, and Bruce Garlich

Also Present: R. Michael Robinson, Secretary

Costa Mesa Planning Commission

Tom Duarte, Deputy City Attorney

Ernesto Munoz, City Engineer

Mel Lee, Senior Planner

Wendy Shih, Associate Planner

**MINUTES:**

The minutes for the meeting of March 28, 2005 were accepted as distributed.

**PUBLIC COMMENTS:**

In response to a question from Anne Hogan Shereshevsky, 2152 Elden Avenue, Costa Mesa, regarding the General Plan in a simplified form because she was interested in the density of the City, Planning Commission Secretary R. Michael Robinson explained that the City has the General Plan in full text, the General Plan Land Use Element and Map separately, and the General Plan Goals, Objectives and Policies are bound separately. He also explained there are no current plans to update the General Plan.

**PLANNING COMMISSION  
COMMENTS/SUGGESTIONS:**

Commissioner Fisler announced that this Saturday at 9 a.m. is the Third Annual Earth Day at Fairview Park and he invited the public to attend for clean-up; free coffee, juice and donuts in the morning with prizes for the most trash collected; demonstrations by the Harbor Soaring Society, and free train rides.

**CONSENT CALENDAR:**

On a motion made by Commissioner Garlich, seconded by Chair Perkins and carried 5-0, the following item on the Consent Calendar received the action below.

**VACATION OF EXCESS PUBLIC  
RIGHT-OF-WAY**

Vacation of Excess Public Right-of-Way for 279 E. 17<sup>th</sup> Street (westerly of Santa Ana Avenue). Environmental determination: exempt.

Adopted Planning Commission Resolution PC-05-21 finding that the vacation of excess public right-of-way is in conformity with the City of Costa Mesa 2000 General Plan, based analysis and information in the Planning Division staff report and the description as shown on the Street Vacation Exhibit.

**PUBLIC HEARINGS:**

**GENERAL PLAN AMENDMENT  
GP-05-01 AND REZONE  
PETITION R-05-01**

City

The Chair opened the public hearing for consideration of General Plan Amendment GP-05-01 and Rezone Petition R-05-01 for a 5-acre portion of the Fairview Developmental Center located at 2501 Harbor Boulevard; a general plan amendment to change the land use designation from High-Density Residential to Medium-Density Residential and a rezone from PDR-HD (Planned Development Residential-High Density) to PDR-MD (Planned Development Residential-Medium Density). Environmental determination: Negative Declaration.

Planning Secretary R. Michael Robinson reviewed the information in the staff report and gave a presentation. He said staff is recommend-

ing Planning Commission recommend to City Council, approval of the initial study/negative declaration and adoption of the proposed general plan amendment and rezone, by adoption of Planning Commission resolution.

He further explained that this application before the Commission affects only the General Plan designation of the property and the zoning; it does not approve any type of project in terms of specific number of units or the type of units. He said those decisions will be made at a subsequent application because the Planned Development zoning requires a master plan to be submitted to, and approved by the Planning Commission. Also, if these are to be ownership units, a tract map will also be required.

In response to a question from the Chair, Mr. Robinson stated that there has been no written communication with the state but there have been a couple phone calls; nothing in writing as of this date.

Carol Hoffman, 230 Newport Center Drive, Newport Beach, conveyed that they are actually representing the buyer of the property and that they would be very willing to work with the City with a future application towards a development plan as a separate action. She said they support the action of the Planning Commission to approve this evening.

No one else wished to speak and the Chair closed the public hearing.

MOTION:  
GP-05-01/R-05-01  
Recommended to City Council

A motion was made by Commissioner Garlich, seconded by Commissioner Egan to recommend to City Council, approval of the initial study/negative declaration and adoption of the proposed general plan amendment and rezone, by adoption of Planning Commission Resolution PC-05-22, based on information and analysis contained in the Planning Division staff report and findings contained in exhibit "A."

In response to the Chair, Mr. Robinson stated that this would go to the City Council agenda of May 3, 2005.

PARCEL MAP PM-05-109  
BKM Development/Varga

The Chair opened the public hearing for consideration of Parcel Map PM-05-109 for Rene Varga, authorized agent for Steve Christie/BKM Development, to subdivide a property into two lots for condominium purposes, in conjunction with a minor conditional use permit for shared driveway access between the lots, located at 3184-3188 Pullman Street and 3189-3193 Red Hill Avenue, in an MP zone. Environmental determination: exempt.

Associate Planner Wendy Shih reviewed the information in the staff report and gave a presentation. Ms. Shih said staff was recommending approval by adoption of Planning Commission resolution, subject to conditions. However, staff is also recommending a condition that the addressing be reviewed and approved by the Planning staff per the addressing policy.

In response to question from the Chair regarding the addressing plan that staff would recommend, Ms. Shih confirmed Plan "C." In response to the Chair regarding the police and fire problems (Plan "A"), Ms. Shih stated that there are duplicate numbers on the same property, and the problem with Plan "B" is that the range of numbers is inconsistent with others in the area.

Vice Chair Hall and Ms. Shih discussed other options that staff might consider. Vice Chair Hall asked staff to consider Parcels 6 and 7 actually facing Pullman and should be addressed as such. Ms. Shih explained that the "main" street for this parcel would be the Red Hill address although it takes its access from Pullman (in the north/south direction). Vice Chair Hall also pointed out that one side of the street is a Pullman address while the other side is a Red Hill Avenue address. He said if someone were to respond to

an emergency on Pullman, you must tell them to make sure that you are not on the south side of Pullman because that's a Red Hill address which is more confusing than the fact that you have Red Hill addresses on Pullman. Ms. Shih agreed that this is something they could discuss with the Police and Fire Departments. She said their main concern is consistency and what the emergency response team is already familiar with in the area.

The Chair said he did speak to a member of the Fire Department and a member of the Police Department and they both indicated they would probably be confused with the applicant's proposal.

Vice Chair Hall responded that the 3200 addressing is on the other side of the freeway. He also noted the many streets that suddenly change to a totally different name partway through the street (Fair Drive/Del Mar) but because the Fire and Police Departments are familiar with this City, he felt that if this is the only place in the City they didn't know about, with a 2-3 minute orientation, everybody would know about it. Ms. Shih agreed.

Brian Malliet, BKM Development, 1945 Placentia Avenue, owner of the property, did not agree to the conditions of approval. Mr. Malliet submitted photographs of the different addresses with inconsistent addressing. He said they preferred individual addressing for each suite in the building as do some addresses down the block as shown in the photographs, and that it is not inconsistent with the area.

He said that he and staff have worked together to find a solution but he felt there was always indifference with what is consistent in the area. He decided to drive down the street and take a look at what Red Hill is, and once it gets into the new city, it's very different from north/south to east/west, as mentioned previously and also as it relates to getting over to the 3200 block. He agreed that the Police and Fire Departments say that block is something that's on the other side of the freeway, but he is also sure they know that the other side isn't the City anymore. He currently has 9 owners all within the City of Costa Mesa that are tenants coming out of buildings across the street into this property to buy their own facility; that's why it's so important for them to have their own addresses. He does not want "A, B, C" or suite numbering, and does not know how that can be easier for the Police Department or the Fire Department to figure out. He felt if you own your own property, you should have your own address.

No one else wished to speak and the Chair closed the public hearing.

In response to Commissioner Egan regarding staff comments on the photographs submitted by the applicant, Mr. Robinson said it was difficult to tell from this series of photographs if these are all individual buildings on the same lot line. He said the project contains 31 tenants or 31 portions to each end of the building.

MOTION:  
PM-05-109  
Failed for lack of a second

A motion was made by Vice Chair Hall, to approve Parcel Map PM-05-109 based on the findings in exhibit "A", subject to conditions in exhibit "B" with the following additional condition: Staff shall work with the applicant to resolve the issue of addressing so that each unit may have their own individual address. The motion failed for lack of a second.

MOTION:  
PM-05-109  
Approved

A motion was made by Commissioner Garlich, seconded by Chair Perkins, and carried 5-0 to approve by adoption of Planning Commission Resolution PC-05-23, based on information and analysis in the Planning Division staff report and findings in exhibit "A, subject to conditions in exhibit "B."

During discussion on the motion, Commissioner Garlich explained that his reason for leaving the conditions as they are written, they

can probably fill Vice Chair Hall's desire because Planning Commission cannot assign addresses, and that staff will assign the addresses. He said if he has to make a choice between the Fire and Police Department, and some other desire, he said he would side with the Fire and Police Department every time. If in the interim, there is a solution that we haven't seen here tonight and that can be found to take care of everyone's concerns because of the way this condition (#6) is written, staff can still try to find resolution.

Chair Perkins agreed with Commissioner Garlich's assessment to weigh on the side of public safety.

The Chair explained the appeal process.

PLANNING APPLICATION  
PA-04-48

Torres/Sutherland

The Chair opened the public hearing for consideration of Planning Application PA-04-48 for James Sutherland, to allow a maximum 16-bed residential care facility for the elderly, located at 191 23<sup>rd</sup> Street, in an R2-MD zone. Environmental determination: exempt.

Associate Planner Wendy Shih reviewed the information in the staff report and gave a presentation. She said the design of the home is consistent with Residential Development Design Standards, Development Standards and Code Requirements. Ms. Shih said staff was recommending approval by adoption of Planning Commission resolution, subject to conditions. Ms. She said there is also a modification changing the minimum age to 60.

James Sutherland, 26882 Highwood Circle, Laguna Hills, agreed to the conditions of approval.

The following people opposed the project: Donn & Ann Knipp, 247 23<sup>rd</sup> Street; Steve & Sue Sheflin, 227 23<sup>rd</sup> Street; Brian & Lisa Henke, 287 23<sup>rd</sup> Street; Steve LeGere, owner of 2295 and 2297 Orange Avenue; Jan Morris, 2293 LaMer Court; Jeanne Tarazevits, 263 23<sup>rd</sup> Street; Thomas Tarazevits, 263 23<sup>rd</sup> Street, Paul Steiner, 2334 Westminster Avenue, and Gregg White, 181 Albert Place, Costa Mesa. They made the following comments: (1) They generally said they do not dispute the need for elderly care facilities but saw it as a commercial venture in a residential area; (2) There is a "half-way house" located next to the children's play area at Lindbergh Park. When they turned their garage into sleeping quarters, Costa Mesa Code enforcement was asked to look into the situation several times, but there was no response; (3) At 272 23<sup>rd</sup> Street, there is a facility that houses mentally retarded men and the residents in the area feel they can be very intimidating to children when wandering around the neighborhood and Lindbergh Park; (4) a lot of this area has building going on with many residences being rehabilitated and with the many facilities that are so concentrated in this area, it is difficult to keep values from falling. In this case, the state mandates residential care facilities for 6 or fewer persons so it should be scaled down substantially to about 10. (5) There will be emergency vehicles coming and going; there will be 2 parking places for guests to visit the people who will live there; 2-3 caretakers; a nurse; a nighttime staff of 2; an administrator; food service people; deliveries; etc., and parking could very well turn out to be a big issue; (6) There were also comments made that the setbacks were being compromised, and that the people who moved into the facility would need parking spaces, a suggestion was made to build a 9-foot fence so an adjacent resident didn't have to look at the project even though he said he didn't mind having the facility next door; (7) While the design appears to be lovely and even in keeping with some of the upgrades that are being seen on this street, the community has been changing for the better with some teardowns, some new construction, upgrades and its been nice to walk there during the day. The increasing number of facilities in that neighborhood only serves to break down the neighborhood again and it is frustrating for residents to be forced to put up with problem facilities over and over; (8) This commercial, medical enterprise is going to be built in the center of single-family housing when this neighborhood is already

overburdened with facilities; (9) This area is a great family area and this project is not consistent with the vision of the residents.

During the above testimony, Deputy City Attorney Tom Duarte stated that there is no State mandate for facilities of 6 or fewer persons. What the Health and Safety Code says about 6 or fewer, is that persons at a residential care facility for the elderly, must be treated as if it's another family residence in that area and can exist as a "matter of right" and it does not come before Planning Commission and/or City Council for a Conditional Use Permit.

Commissioner Garlich explained that several speakers have raised parking questions and he wanted to make sure everyone knows that condition of approval #5 states that senior residents shall be prohibited from parking their own vehicles at the site. So none of the people who stay there will be able to park their vehicles there even if they are able to drive.

The following people spoke in favor of the project: Anne Hogan-Shereshevsky, 2152 Elden Avenue; Jacqueline Dupont, 2533 Costero Magestooso, San Clemente, Robert Rosenberg with the United States Elder Care Referral Agency at 1525 Mesa Verde East, Suite #210, Costa Mesa; Winifred Wilson, 138 East 18<sup>th</sup> Street,

These people made the following comments in favor of the proposed project: There is a need for "elderly care facilities" in Costa Mesa and there are 3 affordable housing locations here (St. Johns Manor on Bay Street has 35 to 40 units, Casa Bella has 75 units; Dephatellis has 270 units), and they are not equipped to have assisted living. There is not enough senior affordable housing (low income) for the vastly growing population of elderly people and the City should consider this as a matter of need "now."

During the above testimony, the applicant was asked to address whether there is an elevator in the building. James Southerland stated there would be a "dumb waiter" only for food, but no elevator would be used by residents because no residents will be living above the first floor.

Ms. Dupont said its very unfortunate that this neighborhood has had circumstances with other adult residential care facilities or MI facilities, but older adults are wonderful neighbors and do not cause the problems the residents think they would; they do not accost people, they're definitely not a problem to a neighborhood and the ageism that exists in America is a result of tonight. She said we don't need to isolate our seniors and put them on Newport Boulevard. She said this is not a skilled nursing facility – it's a residential care facility that will provide assisted living. That means, that all of their activities of daily living will be met. They will not be driving with a cognitive impairment or physical impairment because they wouldn't be placing themselves in such an environment. There are shift changes, but live-in staff, as Mr. Sutherland will have, do not have a car and it's very rare. She said of the 16 facilities she owns, 10% have a car. She asked the Commission to consider that the older adult population is aging at a rapid rate and in 5 more years almost 30% of the population will be over 60 years of age. They need a place to live and that's important.

Mr. Rosenberg stated that it is not a medical or health care institution. He said when James Southerland was designing this facility, he actually contacted him. He said the agency is a private non-profit organization and they handle a little over 600 inquiries per month on a 22-day basis, Monday through Friday. These referrals are primarily for Orange County (about 47 cities) and there are around 705 with 2 facilities in Costa Mesa (14 and 15-bed), and maybe 2 others, 1 in Anaheim that's around 18 beds, and another 36 bed also in Anaheim. Family members are looking for a me-

dium-size facility. They don't want the commercial institutional look but something larger than 6 or 7 people per the increase of socialization, interaction and camaraderie. Community Care Licensing which governs this trade in the State of California recommends these facilities be designed for residential neighborhoods and not for commercial streets such as Newport Boulevard. He discussed the 2 elderly care facilities in Costa Mesa and compared them with Mr. Southerland's current plan.

Ms. Wilson, stated that she has a residential facility on 18<sup>th</sup> Street in Costa Mesa, and she has had several in the area and has never encountered some of the problems that have been attested to by the opposition this evening, however, she has encountered no problems from the neighbors and no problems from parking. The only problem she does have is that she has to turn away people who apply because she is full and this is true of many facilities in Costa Mesa. She said there has been no focus on the nursing homes and they do not get the individual attention they need as in a home like family where people care. Once people come in, they usually stay 4, 5, or 6 years and says she doesn't have problems with sirens because if she has to call in the middle of the night to report someone has passed away; they do not turn on the sirens but maintain them silently.

The Chair said there were several comments about the group home on 23<sup>rd</sup> Street, as well as the other care facility. He said there was a letter from the Police Department on how they would like to see the project built. He asked if there were any communications of concern from Code Enforcement or Police Department in reference to criminal activity or with the group home. Ms. Shih state that those questions were not asked of the Police Department. Code Enforcement had no open cases on those homes.

The Chair asked if the location would be secured so they don't wander off. Mr. Sutherland stated that all gates to the exterior (2 on each side) and the front will be re-gated and alarmed and it will be hardwired; all the inside exits to the side yard will all be alarmed. In response to the possible absence of authorized staff, how would the gates be disarmed in case of emergency, Mr. Southerland said there would always be somebody on staff there to open the door from the interior.

In response to a question from Commissioner Fisler regarding recreation and open space, Mr. Southerland stated that for activities and exercise, there is the dining room and combination foyer area in the center, and a patio in the back. Commissioner Fisler also asked if there is a demand for a lot of open space outside. Mr. Southerland stated that usually they would stay inside or go out into the patio area with the exercise program that's given over the years. There is plenty of walking, and in-house, in-place exercises within the facility. In this building, that space was created in the middle so they could have access to a larger space and can do things as a group more than one-on-one.

In response to questions from Commissioner Fisler, regarding parking, Mr. Southerland explained that there would be no parking on the curb at all in the front of the structure; staff will only park within the garage, and he confirmed that no seniors will be allowed to have a cars. In response to visitor parking, he said visitors can park within the garage or they can park in front.

Commissioner Egan said the letter from some of the neighbors to the Planning Commission regarding the proposed facility caused her to think about the geographic concentration of group homes in Costa Mesa as compared to those in surrounding cities. She said using figures provided by the Planning Division for the state-

licensed group homes in Costa Mesa, Fountain Valley, Irvine, Santa Ana, Newport Beach and Huntington Beach, and using the figures from the websites of those cities for their respective sizes in terms of area, except for Fountain Valley's which were obtained from the 2000 census, she learned that the concentration of group homes is far higher in Costa Mesa than in any of the other cities, except for a near tie with Fountain Valley. She also learned that Costa Mesa's total of non-licensed group homes is equal to the number of state licensed group homes, however, she limited the comparison with other cities to state licensed facilities in order to compare "apples with apples." Newport Beach has 0.33 group homes per square mile; Irvine has 0.47; Huntington Beach has 1.62; Santa Ana has 3.75; and Costa Mesa and Fountain Valley have respectively, 4.25 and 4.33. However, Fountain Valley has only a total of 39 state licensed facilities, while Costa Mesa has 68. This is a problem because not only are group homes unduly concentrated in Costa Mesa, but also the operators find it more profitable and convenient to buy up one property after another in the same neighborhood to cluster multiple service facilities close together. She said this threatens to destroy the residential character of those neighborhoods, which is exactly the opposite of what the state intended when it decided that smaller group homes should be located in residential neighborhoods. The Costa Mesa General Plan Objective LU-1F includes maintaining the integrity of stable residential neighborhoods and protecting existing stabilized residential neighborhoods from the encroachment of incompatible, or potentially disruptive land uses and/or activities. However, the City has allowed many service facilities in some neighborhoods so that some established residential neighborhoods are in danger of changing from family areas to institutional districts.

Commissioner Egan said she has eagerly awaited the City Attorneys opinion regarding the extent of City's authority to limit the concentration of the larger facilities (housing 7 or more persons receiving services). She urged the City Council to do all it can to protect established residential neighborhoods from over-concentration of residential care facilities and other institutional uses.

She said for a facility having 6 or fewer residents receiving services, the state has preempted all local authority and they must be treated the same as any ordinary family in an R1 zone, or any residential zone. The City's code specifies that the larger facilities need a conditional use permit for 7 or more, but they are allowed "only" in R2 and R3 zones. They cannot go into commercial zones under code. The Commission is limited to what it can do for the facility before the Commission this evening. She pointed out that the Commission is comprised of appointed persons with limited authority given by the City Council through the Municipal Code and other formally adopted policies. There is nothing in the law that governs this body that allows the Commission to consider over-concentration and this why she is asking the City Council to take a look at it. She said the Commission needs to look at this facility tonight, and see whether it fits with the criteria currently in the Municipal Code.

No one else wished to speak and the Chair closed the public hearing.

MOTION:  
PA-04-48  
Denied

A motion was made by Vice Chair Hall, seconded by Commissioner Egan and carried 5-0 to deny this application by adoption of Planning Commission Resolution PC-05-24, based on public testimony, information and analysis provided in the Planning Division staff report, supplemental information memorandum dated April 5, 2005, and findings contained in exhibit "A" as follows:

Findings: Replace "A" & "B" with the following:

- A. The information presented does not substantially comply with section 13-29(g)(2) of the Costa Mesa Municipal Code in that a residential care facility for the elderly is not compatible or harmonious with the surrounding areas, particularly with the single-family homes, because it is an imposition in size and magnitude over those homes. The concentration of group homes in Costa Mesa far exceeds that of any other city in the area; further, this list does not include the number of facilities that the County has in Costa Mesa for probationers, parolees, etc., therefore, with the over-concentration of group homes, care facilities, and the magnitude of this home, it does not fit in with the surrounding area. There is also inadequate parking, which may inevitably cause undue impacts on the surrounding neighborhood.
- B. The proposed development or use, a 16-bed residential care facility, is not substantially compatible with developments in the same general area and would be detrimental to other properties within the area, in that there are already two group homes in the next block, and Costa Mesa's experience has shown that too many residential care facilities in a neighborhood encourage further concentration of similar facilities in the immediate neighborhood, ultimately tending to undermine the residential character of the neighborhood.

During discussion on the motion, the Commission generally felt that the need for elderly care facilities is well known, however, because group home facility figures for surrounding cities (Fountain Valley-39, Huntington Beach-45, Irvine-26, and Newport Beach-5, except for Santa Ana-102), showed that Costa Mesa has 68 group homes; 35 of which are elderly homes and far beyond that of surrounding cities, and they should share in the development and approval of additional group homes in their cities, such as the elderly.

Vice Chair Hall opposed a facility that is almost 3 times the size of the single-family residence and felt it was an imposition on the residents of the area. He agreed with Commissioner Egan that this Commission, and Council, need to recognize the needs of the residents of our community. He said he saw no need to impose a facility of this size and magnitude onto our citizens here.

Commissioner Fisler said this was not a tough issue for him and that these care homes for seniors are needed because the elderly are our parents, and grandparents, etc., but he felt this particular facility was just too large for the neighborhood and it was not acceptable. He supported Vice Chair Hall's motion.

Commissioner Garlich stated that everybody agrees we need these facilities but nobody wants them in their backyard, yet they are "residential" care facilities in "residential neighborhoods." He said he shared the concern with the size of these facilities, the number of guests/tenants that it might attract and even though the code provides no parking requirement for the facility, it is hard to say, except judgmentally, whether the parking is adequate. He said he will support the motion, but requested that *separate* from the motion, through staff, that the issue of how to deal with this going forward be taken on by staff and taken to the Council with a request that if Council is concerned about this, to give it back to Planning Commission, so that with staff, Commission can do the proper studies of the issue and see if something can be done to determine what the City does and does not want, where these care facilities are concerned.

Commissioner Egan questioned why this City is bearing the burden and other cities are not. She felt it would be a good idea for Coun-



cil to investigate.

Vice Chair Hall stated that group homes have been an ongoing subject of discussion in this community for almost 30 years. He recalled when state legislation was originally proposed by a member of the County of Orange Mental Health Committee, which he fought vehemently because it put such a tremendous burden on the residents of our community. He said the typical answer from City Council is that “we can’t do anything about it because it’s state law.” He felt it was time that City Council told the state they want this legislation changed because they are tired of being imposed upon and fight it.

Chair Perkins agreed there is a tremendous need for senior care facilities even though there are several of them. However, the numbers as pointed out by Commission Egan, and contained in the staff report, and the size of the structure does not warrant it being constructed in the middle of 23<sup>rd</sup> Street. Lastly, he said he has great concern for the residents who spoke in opposition of the project and referenced one of the two group homes in their area.

The Chair explained the appeal process.

The Chair called a recess and the meeting resumed at 8:15 p.m.

The Chair opened the public hearing for consideration of Conditional Use Permit PA-04-49 for Norman Dias, authorized agent for Michael D. Faulkner, to allow a general contractor business with outdoor storage, located at 814 W. 19<sup>th</sup> Street, in a C1 zone. Environmental determination: exempt.

Senior Planner Mel Lee reviewed the information in the staff report and made a presentation. He said the question regarding approval with a condition requiring a signed agreement when or if redevelopment takes place within the area, the applicant would voluntarily agree to abandon the conditional use permit (CUP) at that point, has been researched by the City Attorney’s Office as requested by Commission and he asked Mr. Duarte to explain.

Deputy City Attorney Tom Duarte stated that research revealed there was no legal authority for any terminating clause attached as a condition to the CUP or any ancillary or collateral agreement that would in effect, be tantamount to a terminating clause.

Mr. Lee stated that at the March 14<sup>th</sup> meeting, another issue was raised referring to, if the use is considered “office only”, would a conditional use permit still be required for that use. Staff researched this issue and concluded that regardless of whether it is an “office only,” or a use in which storage is proposed, either inside or outside of the building, code would still require a CUP for the use because of the zoning of the property which is C1.

Norm Dias, 203 Susannah Place, Costa Mesa, agreed to the conditions of approval should his application be approved. Mr. Dias stated that currently the property is occupied by a high-traffic, noisy, and environmentally polluting business that would be replaced (assuming this use is approved), with minimal parking, traffic, no noise, and no pollution type of business. He also felt that there were no compatibility issues with the neighbors; the adjoining businesses, save the upholstery shop, are evening and nighttime uses and his is strictly daytime.

Commissioner Garlich commented that he and Mr. Dias have spoken over the phone and he was questioned at that time whether he would consider dropping his request for outside storage and he said he would consider it. Mr. Dias stated that he was still willing to consider it if the Commission is making that the deciding factor.

Commissioner Fisler stated for the record that he also had a phone

*BREAK:*

CONDITIONAL USE PERMIT  
PA-04-49

Faulkner/Dias

conversation with the applicant and he wished to clarify that tools would be stored inside and workers would be coming by to pick them up. Mr. Dias stated that should they need something that the company owns, they notify the office and he delivers to them. He said he has a staff of 9 fulltime construction-type employees who do not come to the office, and a staff of one fulltime secretary and one part-time bookkeeper who will park at the facility (2 parking spaces, plus his own). In further response to Commissioner Fidler regarding the other 9 employees, Mr. Dias stated that they own their own vehicles and go directly to the job sites everyday.

Commissioner Egan said she has also spoken by phone with Mr. Dias and did not receive any information that is not already in the record.

Vice Chair Hall said he spoke with Mr. Dias via phone about a month ago and had no questions at that time. He said the Commission has had discussion about the CUP running with the land and concerns were stated regarding what happens when that area is re-developed. At this point, on each side of this proposed business is a bar. He indicated that he wanted to propose a condition after the public was invited to speak.

Commissioner Egan wished to confirm that under current code, Mr. Dias' proposed business does not meet current parking requirements. Mr. Lee explained that because the building is so small, code specifies that any development regardless of the building square-footage has to provide a minimum of 6 parking spaces. He said in the case of this particular development, because it has existed for a very long time, it is considered to be "legal nonconforming." Commissioner Egan said she felt for that very reason, it should be brought up to code.

Kathleen Eric, Westside resident commented that she felt this was an industrial use in a commercially-zoned area and was also concerned about City Council's intention to adopt a plan to improve the Westside and how this project fits in with those improvements.

Jerry Brooks, a broker with Unique Real Estate representing Mr. Faulkner, owner of the property, stated that the property needs a lot of help and has been subjected to neglected maintenance by the former tenants for a very long time. He spoke on behalf of Mr. Dias who is the purchaser of the property that is presently in escrow. He stated that Mr. Dias plans to do a major renovation with an office in the front, and at the most, with 2 employees. His plan creates very little traffic, noise, or pollution, and has no pedestrian or vehicular traffic other than mentioned. He said the neighboring owners are looking forward to the improvements on this property. Mr. Brooks asked the Commission to approve the proposed project because all requirements have been met; it is compatible and conforming.

No one else wished to speak and the Chair closed the public hearing.

In response to Commissioner Garlich, Mr. Dias explained that his business is residential remodeling and repair work exclusively. The time it takes to complete job is dependent upon the needs of the project.

Vice Chair Hall, the applicant and Deputy City Attorney Tom Duarte discussed a possible condition of approval relating to the relinquishment of the CUP under certain circumstances. Mr. Duarte advised the Commission that an expressed "terminating clause" has no legal authority, or an implied one, wherein the affect terminates the CUP and further, that it not be attached to this CUP as a condition. Vice Chair Hall withdrew his request to add this as

MOTION:  
PA-04-49  
Approved

a condition.

A motion was made by Vice Chair Hall, seconded by Commissioner Garlich and carried 4-1 (Egan voted no) to approve by adoption of Planning Commission Resolution PC-05-25, based on information and analysis in the Planning Division staff report and findings in exhibit "A, subject to conditions in exhibit "B" with the following modifications:

Conditions of Approval:

4. The use shall be limited to the type of operation described in the staff report, i.e., a construction contractor's business with no outdoor storage. Any change in ....

Findings:

- B. ...The property is not adjacent to any residentially-zoned properties. ~~The applicant will be required to comply with code so that the outdoor storage does not interfere with required parking or vehicle circulation, and will be screened from view of the street and surrounding properties.~~

During discussion on the motion, Vice Chair Hall pointed out that in order for this site to be completely compatible, it would take one more bar but there are a too many bars in this area already. He recalled the how the previous business grew and that the exterior of the property has not been maintained very well. He felt what Mr. Dias has in mind would make this property look much better and based on the fact that he believed this would be an improvement to the Westside, he made the motion.

There was discussion between the Vice Chair and Commissioner Garlich regarding the elimination of outdoor storage. Commissioner Garlich said there is no question in his mind, and as Vice Chair Hall has said, that this would improve that property over the lawn mower business. He said deleting the outside storage takes away the perception that this is a brick and mortar hauling, dump truck operating, kind of business. He said the way he sees revitalization happening on the Westside, and particularly, on 19<sup>th</sup> Street, is not through individual businesses being transformed into businesses they would rather see, but by the purchasing of entire parcels along west 19<sup>th</sup> Street, and the development of other kinds of mixed use businesses and/or shopping centers, and/or things that will consume not just individual parcels, but multiple parcels in the process of doing that. He did not see that allowing this kind of a use particularly, in light of the fact that staff has concluded that it meets all the requirements, as a threat to the revitalization of the Westside, or he would not support it.

Commissioner Egan said it was important to realize that the CUP runs with the land and regardless of the specific characteristics of this particular owner, and this particular operation, what the Commission would be approving tonight, is a permit, permanent in character to allow any construction business on that property. The deletion of the outdoor storage is an item, but it still allows a "brick and mortar operation" with trucks starting up at 6 a.m. or any other time. She displayed the WROC implementation plan area, which was approved by City Council on March 15<sup>th</sup>. She pointed out the location of the site, which she said Council has decided ought to be mixed use commercial and residential. Putting in a construction business is contrary to what the Council approved on March 15<sup>th</sup>. She said she could not support the motion. Furthermore, under current code, it has inadequate parking for the use. If he gets the CUP, he is entitled to operate with only the 4 parking spaces, however, if we are upgrading the area, the parking should be brought up to code rather than worsening an existing parking shortage. By grant-

ing this CUP, we are making permanent a nonconforming site development, and that is contrary to all the basic principles of good planning.

**SUBSTITUTE MOTION:**

PA-04-49

Failed for lack of a second

A substitute motion was made by Commission Egan to deny the proposed project. The motion failed for lack of a second.

**SUBSTITUTE MOTION:**

PA-04-49

Failed to carry

The original motion was then called which carried 4-1 (shown above)

A substitute motion was made by Chair Perkins, seconded by Vice Chair Hall to approve PA-04-49 as originally set forth by staff and adding a condition to ensure 5 parking spaces and certain areas for storage. The motion failed to carry 2-3 (Egan, Garlich and Fisler voted no). The original motion was then called (as shown above) and was approved by 4-1 (Egan voted no).

The Chair explained the appeal process.

**REPORT OF THE DEVELOPMENT SVS. DEPARTMENT:  
ITEM #1: BYLAWS**

Planning Commission Secretary R. Michael Robinson briefly reviewed the amendments and said staff was recommending that Planning Commission adopt the resolution adopting the proposed amendments as shown below in Article II-Officers, Elections and Vacancies; Article III-Meetings and Procedures; and Article V-Order of Business. There was discussion by the Commission to determine how they would vote on the items. They determined that each item would be voted upon separately as follows, by adoption of Planning Commission Resolution PC-05-26:

**BYLAW MOTIONS**

Planning Commission Bylaws

Article II-Officers, Elections and Vacancies

Section 3 (Election and Vacancies): The proposed amendment would change the terms of office from one to two years to coincide with the change in the term of the Mayor approved by City Council.

1. The Commission shall hold the election of officers at the first regular meeting in March of each odd-numbered year.

**MOTION:**

Section 3, Item 1

Approved

A motion was made by Chairman Perkins, seconded by Commissioner Garlich and carried 5-0 to approve Item #1 as shown above.

Article III-Meetings and Procedures

Section 1 (Meetings): Three primary amendments are proposed. One reflects the previous Council actions and directive to cancel the second Council and Commission meetings in December. The second amendment changes the current schedule of Planning Commission Study Sessions: (a) eliminates the regularly-scheduled study sessions now held on the first and third Mondays of each month; (b) officially recognizes the move of the "dinner" study session to Conference Room 1A; and (c) study sessions, in addition to special meetings, may be called by the Chairperson. They may be called to receive policy direction from the Commission, or to address City- or area-wide issues that impact more than one parcel or application.

A motion was made by Commissioner Garlich, seconded by Chair Perkins and carried 5-0 to approve the changes as shown in Item #1.

**MOTION:**

Section 1, Item 1

Approved

1. Regular meetings of the Commission shall be held at 6:30 p.m. on the second and fourth Mondays of each calendar month except December, in the Council chambers. In December, only one meeting shall be held on the second Monday of the month.

**MOTION:**

Section 2, Item 2

Withdrawn

A motion was made by Eleanor Egan, seconded by Commission Fisler to make the following changes to Item No 2. *The motion was later withdrawn for a new motion.*

2. Regular Study Sessions shall be held in ~~the Conference room~~ Room 1A adjoining the Council chambers at 6:30 p.m. on first and third Mondays of each month. An additional study session shall be held at 5:30 p.m. before each regular meeting, for the purpose of receiving and reviewing last-minute additions to the Staff Reports.

During discussion on the motion, Commissioner Garlich requested from staff, background on the basis for the recommended change in

Article III, Section 1, Item #2. Deputy City Attorney Tom Duarte responded that his understanding is, that the intent of this amendment was to bring the Planning Commission meetings consistent with other Commissions and City Council. Commissioner Garlich said if the Commission were to do that as written, how would the Commission go about accomplishing the same ends? The Commission has had nothing provided to them regarding the distribution of meeting packets and staff reports and procedures for the revised meeting format. He said at the present time, on the Thursday before study session, they receive fully developed staff reports. Study sessions take place the following Monday to receive updates and clarifications and/or to hear questions from applicants. Then the following Thursday, the Commission receives any appropriate updates as received this evening in the form of supplements and the following Monday there is a hearing on the same items. Commissioner Garlich said that if they didn't have those study sessions as they do now, he presumed they would have to meet individually, and in no more than numbers of two with the staff to conduct the same kind of inquiry the Commission might have about any clarification. Mr. Duarte confirmed this was correct. Commissioner Garlich stated they would have a minimum of 3 meetings and perhaps as many as 5 in order to accomplish that with fully developed staff report 10 days before the meeting. He pointed out that none of this was written down and asked if it is not correct, what does the Commission do instead.

In response to Commissioner Garlich, Mr. Robinson explained that Planning Division has been working on some revised procedures and 11 days prior the Commission's staff meeting, they will receive a full meeting packet (agenda, Planning Division staff reports, and any communications received up to that date). The following Thursday, 3 days before the meeting, the Commissions' agenda packet will contain the minutes from the previous meeting; any supplemental memos that are the result of the individual meetings with staff, and any communications received to that point.

Commissioner Garlich asked if the Commission has requests from applicants to meet with them, they would have to do that within a minimum of 3 meetings with the applicant, and potentially as many as 5 and when would that have to be done if it would cause any bearing on the supplementals such as by the following Tuesday of the first packet. Mr. Robinson said he would say that any individual meetings with Planning Commissioners, any individual meetings with applicants and Planning Commissioners where you need additional information from staff, Planning would need to have that completed by the Monday that would have normally been the study session. Mr. Robinson stated that study sessions would be confined to citywide issues not affecting a single property so the study sessions if we go forward with them will not be the study sessions as they were in the past.

Commissioner Garlich stated that he was trying to figure out what the Commission is expected to do with the information received without the traditional study sessions, with applicants and not just with staff.

Commissioner Egan stated that her concern is that the Commissioner's regularly scheduled study sessions would be replaced by private meetings in ones and twos with staff, developers, and other interested persons, and the public would be excluded from them because they wouldn't have a quorum present. Currently, the Commission meets together; receives the same information at the same time, and the public can be there and hear what happens, and observe and know that nothing secret is going on. If they are eliminated, and substitute "ones and twos" meetings with developers,

staff and others, and nobody's watching, it's not right.

Chair Perkins said it was his understanding, as Commissioner Garlich previously stated, that there is going to be a "huge learning curve" in how we handle paperwork, and how information can be obtained without the study session. Personally, he felt that since he has a standing Monday afternoon agenda review meeting with Mr. Robinson and he takes calls from applicants and would be happy to meet with any applicant at any time, and that is sufficient. Now we have to disclose that a little more which is good. Chair Perkins said his concern lies in how the study sessions have been handled in the past. We have had situations before where a study session agenda item that should have lasted a few minutes and ended up taking well over an hour or two. He said at the last meeting where City Attorney Kimberly Barlow and Deputy City Attorney Tom Duarte attended, he learned that the Commission couldn't just speak their mind as much as they would like to and need to keep things in specific order. Further, Chair Perkins said the study sessions have gotten a little bit "over the top" and he could not say that any changes are always good, but this change is going to take a "huge learning curve." He said before we say we don't want this and we're not going to change, we haven't heard from the Council directly. He suggested the Commission table this portion of Article III, until Commissioner Garlich's questions are answered. He also felt a little more research from the City Manager's and the City Attorney's Offices including the City Council could be obtained. He felt it was a noble request and the Commission just needs to work through it.

SUBSTITUTE MOTION  
Article III, Section 1, Item 2  
Withdrawn

A motion was made by Chairman Perkins, seconded by Commissioner Garlich, to table Article III, Section 1, Item 2 until the Commission can get further staff input, for 30 days from tonight's meeting to obtain additional information from the City Manager's Office, City Attorney and City Council, if possible. He also confirmed that the questions from Commissioner Garlich regarding procedures were included in this request. Chairman Perkins also amended his motion to be continued instead of tabled. *The motion was later withdrawn by Chair Perkins.*

Commissioner Perkins said he could support that motion because there are things that Commission does not have in front of them now that would lead in one direction or the other. It would be better to have that information before taking a vote on the proposed changes and would be more prudent.

Vice Chair Hall said if the Commission should continue this part of the motion, that we will continue on with our present course of having study sessions. Chairman Perkins confirmed the study sessions would continue for the next 30 days.

Commissioner Egan said she could go along with the tabling but not with a continuance of the item because this is such a drastic thing to do, to exclude the public from our gathering information that she would definitely like to hear from City Council, but did not want to put pressure on City Council to act within 30 days. They have had a lot on their plate lately; they've had the closing of the job center; the WROC report, and a lot of other things and it would be easy for this thing to slip off their radar screen. She proposed the Commission simply table the matter until they have heard from City Council, as well as getting all those procedural issues ironed out. At that time, staff can bring it back and we can remove it from the table and act on it at that time. In the meantime, go on as we have been.

In response to the in Commission Deputy City Attorney Duarte said procedurally, the Commission can make as many substitute motions as they wish because this is not a public hearing, however,

as a matter of keeping the record clean, he suggested they could vote on the original motion and noted that the substitute motion was also undecided.

Chairman Perkins withdrew his substitute motion.

Commissioner Egan withdrew her original motion.

MOTION:  
Article III, Section 1, Items 2 & 3  
Approved

A motion was made by Commissioner Egan, seconded by Vice Chair Hall and carried 5-0 to table any changes to Article III, Section 1, Item 2, and other than the location of where study sessions are held, until such time as staff has been able to clarify the procedural issues raised by Commissioner Garlich, and Planning Commission has received specific direction from the City Council telling the Commission they want them to discontinue the study sessions and obtain information from staff in groups of less than a quorum.

2. Regular Study Sessions shall be held in the Conference Room Room 1A at 6:30 p.m. on first and third Mondays of each month. An additional study session shall be held at 6:30 p.m. before each regular meeting, for the purpose of receiving and reviewing last-minute additions to the Staff Reports.

During discussion on the motion, in response to Chair Perkins question about how much time it would take before City Council would take action on this, Mr. Robinson stated that he would rather not try to specify a date because that is the reason for the recommendation to table it, and that staff would it bring it back when ready.

Commissioner Perkins made the following comments. He said he believed he and the Commission are both going in the same direction, however, he's not the type of person that likes to wait around and have some form of authority figure reminding him of what needs to be done. He agreed with Commissioner Egan that we need to continue this item for some time, but he did not feel getting direction from Council, if in fact they were to act this evening, and the Commission did say, "no more study sessions." If the Council did not like that, they could call it up and say let's make some changes or give direction. He said he would be making another motion to continue this item if it does not carry.

Commissioner Garlich said he was confused by the Chair's comments because for the most part, Commissioner Egan just made the motion that was his substitute motion. He further explained that would not be imposing the Commission's will on the Council, and allow the Council to decide. The Chair said he would rather get it done as quickly as possible. Commissioner Garlich felt he could support the motion as stated because he believed it leaves it to the Council.

In response to the Chair concerning the adjournment to the meeting of April 25, 2005 as written on the agenda, Mr. Robinson explained that it can be adjourned to the study session of April 18<sup>th</sup> but deferred to Mr. Duarte. Mr. Duarte explained that an agenda can be posted 72 hours in advance. The items set for the April 25<sup>th</sup> meeting cannot be discussed at the study session because notices have already been sent out.

In response to Commissioner Egan's question as to why, Mr. Duarte explained that the study session date was not included on those notices as it always has been. In further response, Mr. Robinson stated that there is one agenda item that the Commission may discuss which is the review of the Capital Improvement Program for consistency of the General Plan. Mr. Robinson said the Commission could also have further discussion on their Bylaws.

Commissioner Hall felt that it would totally inappropriate to schedule further discussion of the Bylaws relative to whether study ses-

sions will continue until the Commission has heard from the City Council. It has been tabled and nothing that needs to be studied.

At this point, the Chair called the motion, which was carried 5-0 as shown above.

In response to a question from Commissioner Garlich regarding Article III, Section 1, Item #3, Mr. Duarte explained that this particular item referred on to “special meetings and other study session” and does not reference the regular 1<sup>st</sup> and 3<sup>rd</sup> study session of each month and therefore, does not interfere with tabled Item #2.

MOTION:  
Section 1, Items 3, 4, 5, & 6  
Approved

A motion was made by Chairman Perkins, seconded by Vice Chair Hall, and carried 5-0 to approve the balance of Article III, Section 1, Items 3, 4, 5, and 6 as follows:

3. Special meetings and study sessions may be called by the Chairperson. Each member shall be notified of such Special Meeting or Study Session by the Secretary at least twenty-four (24) hours prior to the time set for same by the Chairperson. The Notice for any Special Meeting or Study Session shall specify the Agenda items to be considered, and no matter shall be considered which is not specified in the notice.
4. Any regular meeting or Study Session falling on a legal City holiday shall take place the following day unless otherwise scheduled by a majority vote at a regular or special meeting. No change.
5. All meetings and study sessions shall be open to the public.
6. No action shall be taken at any Study Session.

Article III, Section 2

The third amendment moves current provisions from *Section 2* (Meeting Procedures) to *Section 1* (Meetings) and becomes Item 5 and Item 6 as shown above. The first indicates that all Commission meetings are open to the public, while the second notes that no action can be taken at study sessions.

MOTION:  
Article III, Section 2, Paragraph #3  
Approved as shown

A motion was made by Commissioner Garlich, seconded by Chair Perkins and carried 5-0 to delete Paragraph #3 of Section 2 (top of page 4 as follows:

~~Section 2, Paragraph #3: No official action shall be taken at any study session. The participation of the public in a study session shall be subject to the discretion of the presiding officer, but all meetings and study sessions shall be open to the public.~~

Article V-Order of Business:

*Order of Business:* This proposed amendment changes the title of the “Report of the Assistant City Attorney” to the Report of the City Attorney’s Office” to coincide with the recent changes in the City Attorney’s Office.

MOTION  
Order of Business-Item 9  
Approved

A motion was made by Commissioner Garlich, seconded by Chair Perkins and carried 5-0 to approve the following changes:

9. Report of the Assistant City Attorney’s Office

**ITEM #2: DESIGN AWARDS SELECTIONS**

Planning Commission Secretary R. Michael Robinson announced that the Design Awards Selection(s) no nominations were submitted by the Commission at this time and that the next eligible projects are those that were finalized in the first six months of this year would be brought forward to the Commission in July of this year.

**REPORT OF THE CITY ATTORNEY’S OFFICE:**

None.

**ADJOURNMENT:**

There being no further business, Chairman Perkins adjourned the meeting at 9:34 p.m. to the Planning Commission study session of Monday, April 18, 2005.

Submitted by:



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R. MICHAEL ROBINSON, SECRETARY  
COSTA MESA PLANNING COMMISSION