

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

**April 24, 2006**

The Planning Commission of the City of Costa Mesa, California, met in regular session at 6:30 p.m., April 24, 2006 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

Kimberly Hall-Barlow, City Attorney

Ernesto Munoz, City Engineer

Peter Naghavi, Transportation Svs. Manager

Kimberly Brandt, Principal Planner

Willa Bouwens-Killeen, Principal Planner

Wendy Shih, Associate Planner

**MINUTES:**

The minutes for the meetings of March 27, and April 10, 2006 were accepted as corrected.

**PUBLIC COMMENTS:**

Martin Millard, 2970 Harbor Boulevard, Costa Mesa, stated that the only City not situated to the beach as you go along Pacific Coast Highway, is Costa Mesa. He suggested discussions should take place between the City of Newport Beach and Costa Mesa to encourage new boundary lines to include Costa Mesa at the beach. He also felt we could follow through with Vice Chair Hall's excellent idea of dredging near the Marina Highlands because there is no marina there.

**PLANNING COMMISSION  
COMMENTS/SUGGESTIONS:**

Commissioner Fisler announced that Fairview Park has scheduled a 2-hour Spring walk through the park for Saturday, April 22<sup>nd</sup> at 9 a.m. to enjoy the wild flowers and other plant life.

Vice Chair Donn Hall spoke about 2 small cities situated on the California/Oregon border. One was a dying city and the other was a beautiful, thriving city and is one-third the size of our present population of Costa Mesa and the infrastructure is amazing. When he finished, he said we should be very proud of some of the things we are doing, but we should also ask ourselves if we are driving people and businesses away. He felt we should look very carefully and make sure that what we do is for the citizens of our community.

Chair Perkins commented that the United Flight 93 film will be released this week and his connection with family members who have lost loved ones on this flight.

**CONSENT CALENDAR:**

On a motion made by Commissioner Garlich, seconded by Chair Perkins and carried 4-0 (Fisler abstained because of a conflict of interest), the *second item* on the Consent Calendar received the action below. The first item on the Consent Calendar was pulled for discussion.

GENERAL PLAN CONSIS-  
TENCY FINDING FOR ORANGE  
COUNTY DEPARTMENT OF  
EDUCATION TO LEASE SPACE  
FOR TEACHING

General Plan Consistency finding to allow the Orange County Department of Education to lease space in the building located at 1525 Mesa Verde Drive East, Suites 108 and 109, for one-on-one and small group teaching. Environmental determination: exempt.

City

The Planning Commission adopted Resolution PC-06-28 finding that the proposed use of the property at 1525 Mesa Verde Drive East, Suites 108 and 109, by the Orange County Department of Education is in conformity with the 2000 General Plan.

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

CONFORMITY RESOLUTION  
CAPITAL IMPROVEMENT  
PROGRAM 2006-07

City

A resolution of the Planning Commission of the City of Costa Mesa finding that the proposed 2006-07 Capital Improvement Program (CIP) is in conformity with the City of Costa Mesa 2000 General Plan. Environmental determination: exempt.

Planning Commission unanimously adopted Resolution PC-06-27 finding that the proposed 2006-07 Capital Improvement Program is in conformity with the City of Costa Mesa 2000 General Plan.

Before adopting the resolution, Commissioner Garlich pulled this item for discussion of the programs. He explained that two-thirds of this year's capital budget comes from Measure M funds and virtually all of the money that goes into street improvement comes from Measure M funds. He noted that the Measure M Extension would be on the ballot in November. He said that under the street improvement projects, the "free" right-hand turn on southbound Fairview Road and Adams Avenue is back with the funds to construct it. He said because it is one of the poorer performing intersections he is glad to see it in the program. He also commented that the Newport Boulevard/17<sup>th</sup> Street, and Newport Boulevard/19<sup>th</sup> Street improvements to improve the downtown area would move the traffic somewhat better. He said that the I-405 Improvement Project on Fairview Road that will add a 3<sup>rd</sup> southbound lane is also being constructed, and that money is being spent on what it was earmarked to do for that improvement. He also explained other items in the CIP that would improve the Westside Substation and the Senior Center. He said there was money there for the design phase of a second skateboard park and lighting for some of the athletic fields as well. Commissioner Garlich said he was very happy with the plan and commended staff for a robust Capital Improvement Plan.

Commissioner Fisler, stated he was thankful to see Item #10, (Broadway Sidewalks/Raymond Avenue to Irvine Avenue) being addressed in the CIP. He said there are many young families there with a lot of young children and he felt it is a dangerous situation for them to go down the street without the sidewalks; i.e., speeding cars.

Judy Berry, 2064 Meadow Lane, Costa Mesa, in regards to Item #20 (Canyon Park Slope Stability Study), felt this had been on the CIP list for the past 5 to 7 years. She said each time it rains a little more of the slope comes down into the bottom of the park and she questioned whether they could do something about those slopes before they are completely lost (especially, those over the retaining wall in Canyon Park). She said regarding Item #19 (athletic field lighting) she was aware the Parks and Recreation Division approved this to get the lighting on these fields. She said there were a lot of homeowners who were promised that when they opened up the park, they would only have 2 fields lighted and not the fields near the homes lighted. She said when it comes up for approval, the promises made to the homeowners several years ago, should be taken into consideration.

Martin Millard, 2970 Harbor Boulevard, Costa Mesa, felt that the City was doing nothing in their CIP Budget for Paularino Park, the arterial wall along Baker Street to give it a nicer appearance. He said there is nothing in the budget for these areas and he felt some things were actually "fluff". He felt instead of renovating the bathrooms at TeWinkle, perhaps the money would be better spent with consideration to areas in need such as the Mesa North area and the suggestions he just made.

The Chair said he was thankful to see Items #3 (Fairview/Adams Intersection Improvement), #4 (Fairview Road/I5 Interchange Improvement Project and #5 (Harbor Boulevard/I-405 to Sunflower Widening included in the CIP.

Commissioner Egan and City Engineer Ernesto Munoz discussed the tiles in TeWinkle Park restroom building that were hand-painted a few years ago, and Commissioner Egan's desire to save them. Mr. Munoz agreed to give Commissioner Egan a report on the feasibility of salvaging and/or incorporating the tiles into the new project, and the progress

of construction.

**PUBLIC HEARINGS:**

AN ORDINANCE REGARDING DEFINITION, REVIEW PROCEDURE AND REGULATION OF "ASSEMBLY USE"

City

The Chair opened the public hearing for consideration of an ordinance of the City Council of the City of Costa Mesa, California, amending Title 13 of the Costa Mesa Municipal Code regarding the definition, review procedure, and regulation of "Assembly Use." Environmental determination: exempt.

Principal Planner Kimberly Brandt reviewed the information in the staff report and gave a presentation. She explained that the proposed regulations for assembly uses are uses currently in the City's zoning code. They are not defined, nor are they treated consistently in the Land Use Matrix in terms of requiring a conditional use permit, a minor conditional use permit, or permitting a use by right. This ordinance does two things: (1) It defines assembly use (page 2 of the staff report). The definition specifically excludes sexually oriented businesses because there is an entire article in the zoning code devoted to that subject and includes all permitting requirements and specific location requirements and operational regulations for that use. (2) The zoning code, as part of its Land Use Matrix, would be modified so that the various types of assembly uses are treated consistently. She stated that this draft ordinance is not proposed to be retroactive, and would only apply to new assembly uses proposed within the City.

Ms. Brandt said staff was recommending, as a first option, that Planning Commission may: (1) Make modifications to the proposed ordinance and forward that recommendation to City Council; (2) Choose to provide direction to staff if they would like to see an alternative ordinance drafted for City Council consideration; or (3) Recommend that City Council not take any action on the proposed ordinance and retain the existing zoning regulations for assembly uses.

Commissioner Garlich said the intent of the ordinance is to treat assembly uses consistently. He said that alternative #3 (to retain current code), would not achieve consistency. He said the other alternative is to make everything "conditional." He felt if we made everything "permitted" (as an alternative), it would achieve the objective of consistency. Commissioner Garlich, however, felt there might be a possibility that the permitted process might result in some unintended consequences. Commissioner Egan discussed the possibility of allowing religious assembly uses in industrial zones.

City Attorney Kimberly Barlow briefly stated the goal is provide "consistency of treatment" and to "make this process easy to administer" from staff's perspective and uncomplicated for those seeking the required permits in the required zones. She felt an ordinance could be structured to allow certain types of assembly uses as a matter of right, in certain zones. Establishing a system that is fair and provides equal treatment, while addressing, secondary impacts of businesses (traffic, noise, kids screaming, smoke, alcohol, etc.), is desirable.

Ms. Barlow said to answer Commissioner Garlich's question regarding permitted uses only and consistency, they can draft an ordinance that attempts to do that. She felt City Council would want to hear from Planning Commission about all the available alternatives there are to accomplish these goals.

In response to Commissioner Egan, Ms. Barlow explained a religious assembly use, under current law, is protected, as are other types of first amendment-protected uses. Where that's the primary use, the secondary or ancillary uses are not protected.

Commissioner Egan asked if it would be treating religious assemblies unequally, if the Commission were to make them a "permitted" use in certain industrial zones, and a "conditional" use in commercial zones. In response, Ms. Barlow said it depends on whether there is a fair opportunity to locate in those different areas depending upon the different kinds

of uses.

In response to a question from Commissioner Garlich, Ms. Barlow said she would like to know from the Commission what uses they deem sufficiently different from assembly uses that don't have the kinds of secondary impacts.

In response to a question from the Chair regarding the contents of the letter received from Mr. Ed Fawcett of the Costa Mesa Chamber of Commerce, Ms. Brandt stated she had reviewed the letter and gave an overview of the concerns expressed in the letter.

There was discussion between the Chair and Ms. Barlow concerning the CUP's that run with the land, based on the operating characteristics of that particular business, and considerations related to that business. There was also discussion between the Chair and Ms. Barlow regarding enforcement issues and the potential for secondary impacts.

In response to questions from the Chair regarding standards, Ms. Brandt stated the City does have standard conditions of approval that are applied to different types of uses, including assembly uses and they are specific to the type of use.

Commissioner Fisler raised concerns about consistency with the treatment of sexually-oriented businesses.

In response to Mr. Fisler's comments, Ms. Barlow explained that the City is permitted to separately regulate, and in fact, be more restrictive with "sexually-oriented" businesses because of their demonstrated secondary affects in our City.

In response to the Chair regarding where the number of 300 square feet comes from, Ms. Brandt explained that the 300 square-foot threshold is already in place for restaurants and bars in terms of a threshold for requiring different parking requirements and it has been used by the City for years.

There was discussion between Commissioner Fisler and Ms. Brandt regarding the options, which would be designated in the Land Use Matrix, i.e., instead of listing out each type of assembly use, it would be listed as "assembly use with less than 300 square-feet", or more than 300 square feet"

There was discussion between the Chair and City Attorney Barlow regarding an increase of the 300 square feet. Mr. Robinson commented that the 300 square feet threshold is related to parking requirements for small restaurants with limited public seating area. He said before changing that requirement, staff would want to investigate impacts on parking assumptions and requirements.

There was discussion between the Chair and Ms. Barlow regarding the 300 square-foot threshold and singling out assembly uses such as religious or restaurant uses. Ms. Barlow said if the Commission was interested in allowing for larger thresholds "by right", parking standards could still be applied but would require some adjustments.

Commission Egan asked if there was a way to prevent problems with ancillary uses without litigation, etc., such as Buena Park's dilemma with the church providing lodging. Ms. Barlow stated there is no way to guaranty any process that can avoid litigation. She felt there is a way to try to do that, however, the state and federal governments have the right to supersede the City's regulations.

Commissioner Garlich said he does not support the proposed ordinance that would create conditional use permits for things that were previously permitted. He has been trying to determine what an alternative ordinance might need to address. In reference to Ms. Barlow's request, "what secondary uses are sufficiently different from existing uses", he has jotted down 3 ideas. They are uses that might be: (1) a threat to public safety; (2) that have a detrimental affect on other assembly uses in the same area; and (3) they have an undesirable impact on the quiet en-



joyment of adjoining property, due to noise, lighting, incompatible outdoor activity, etc. Ms. Barlow indicated it would be helpful to know if there is a use that has been included in the definition of assembly uses which does not properly belong there, or if the size requirements should be changes. She said if he is inclined to consider something along the lines of what Commissioner Egan has envisioned of allowing certain kinds of assembly uses, or even all assembly uses “by right” in industrial zones under certain circumstances, i.e., with certain operating conditions built in and then requiring permits. Or, allowing all of these kinds of assembly uses for their core functions “by right”, but requiring a use permit for ancillary functions.

Commissioner Garlich agreed with the objections summarized in Mr. Fawcett’s letter from the Chamber of Commerce. He said it is a giant step backwards to take permitted uses and make them conditional if there are reasonable alternatives to that approach. He added that the “300 square-foot threshold” should be left as is since he trusts staff’s judgment this matter.

Commissioner Fisler said he did not like going backwards and having every business get a permit, but his main concern is, what is the core function of a church? He is also concerned about the ancillary functions of those churches, specifically, the lodging and the job center, because when the job center.

Judy Berry, 2064 Meadow Lane, Costa Mesa, expressed concern about the previous closed session and asked for clarification about the use of an “exterior area.” Ms. Barlow said the “exterior area” in question, would have to be reserved for exclusive use of those public assembly uses. A portion of a parking lot that would be used sometimes for assembly and sometime for a parking lot would not fall within this exception.

Ms. Brandt also addressed the issue, explaining that the zoning code requires that all uses be conducted “under roof.”

Mike Berry, 2064 Meadow Lane, Costa Mesa, also expressed concerns about the closed session and asked how this would affect the “live/work” use about to be built on the Westside. He asked if there should be an allowance for that. Ms. Brandt explained that a “live/work” is not an assembly use by definition. Mr. Berry said he has received a number of calls about this and those people believe the City is creating an opportunity to bring the job center back.

Martin Millard, 2970 Harbor Boulevard, Costa Mesa, raised concerns regarding the proposed ordinance, and its relationship to the job center. He felt there must be some discretionary control on the part of Planning Commission and City Council. He felt the ordinance needed work and the definition of “assembly use” should be expanded.

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

In response to a question from Commissioner Fisler regarding job centers, Ms. Brandt explained that it is currently in the Land Use Matrix named “Employment Service Center” which is a permitted use in commercial zones. Assembly use has been defined in the proposed definition (page 2 of the staff report), as: “for the purpose of a civic, education, political, religious, or social function.”

In response to a question from Commission Egan regarding the definition of assembly use, “civic, educational, political, religious or social function” does cover things like motion picture theaters, etc. and felt it should be expanded. Ms. Barlow felt using function for the others and say, “or for social purposes” would probably address that concern.

There was discussion between the Chair and Ms. Barlow regarding “direction to staff” for modifications, etc. to the ordinance and whether it should be done by motion.

Vice Chair Hall stated that the decision between direction and a motion, he strongly believes that any direction that is given to staff be done by motion.

Commissioner Garlich stated his preference for an alternative to the current ordinance that would use the permitted approach as opposed to the conditional use approach to maintain consistency between assembly uses. And, to carry on a necessary dialogue with Ms. Barlow and Ms. Brandt to ensure the impacts have been articulated that would allow the differentiation between core uses.

Vice Chair Hall said he was inclined to make a motion to retain the current ordinance but he did not believe it would pass. In this case, he said there are so many alternatives raised by the Commission, Ms. Brandt and Ms. Barlow, that to try and put all those ideas into one motion would not happen.

MOTION 1:  
Assembly Uses Ordinance  
Withdrawn

A motion was made by Vice Chair Hall, seconded by Commissioner Fisler (later withdrawn for the substitute motion that follows), that the entire ordinance as presented to the Commission this evening, be carried forward to whatever number of study sessions are required to finalize details to come up with a comprehensive ordinance to recommend to the City Council.

There was discussion between the Chair and Vice Chair regarding the motion.

Commissioner Egan believed they might be able to pass a motion tonight that would allow staff to go back and provide the Commission with an alternate ordinance.

SUBSTITUTE MOTION:  
Assembly Uses Ordinance  
Continued

A substitute motion was made by Commissioner Egan, seconded by Commissioner Garlich and carried 5-0 to direct staff, to draft an alternative ordinance that allows a church or other place of religious assembly as a "permitted use", and that any ancillary use to the core function would require a conditional use permit or minor conditional use permit; and, continued this item to the study session of May 15, 2006, and to the Public Hearing of May 22, 2006.

During discussion on the motion, Commissioner Egan stated that doing the right thing to have an ordinance that's appropriate under existing law and what's likely to happen in the future. The reason she did not like the ordinance before Commission this evening, is partly because it is creating unnecessary burdens, and partly because she believes the first time a conditional use permit is denied for a first amendment use, the City will be litigating the first amendment issues.

Commissioner Garlich felt the Commission should allow a revised alternative ordinance to come back to the Commission, perhaps to a study session before another public hearing.

He felt Ms. Barlow's previous suggestion to try to work on the impacts and not the nature of the uses and the items he mentioned earlier: threat to public safety; detrimental affect on other assembly uses in the area, and an undesirable impact on the quiet enjoyment of adjoining properties due to variety of noise and lighting and incompatible activities, would at least be some of the things considered in crafting that alternative ordinance.

In response to Ms. Barlow's question about detrimental affects on other assembly uses in the area, Commissioner Garlich responded that it could be adjacent uses or those in the area. He said he would include other businesses in a commercial zone, and neighboring uses (in a different way than commercial).

There was discussion between the Chair and Ms. Barlow regarding the Chair's request for definition of the word "detrimental."

Vice Chair Hall noted, that Commissioner Garlich had indicated he would support Commissioner Egan's motion and would like to see it

come through a study session. He said if that is a part of the motion, he would also support it and felt it was a better motion than his. Commissioner Garlich said he would include it if staff is comfortable with it; Commission Egan also agreed.

Vice Chair Hall withdrew his original motion.

Commissioner Fisler agreed with the Chair in that he would also like to see “detrimental” defined in terms of the quality of life to the City, or detrimental to the adjoining business(es). He said it is his personal opinion that the job center is very detrimental to the City.

Ms. Brandt suggested the study session date certain be May 15<sup>th</sup> and followed by the May 22<sup>nd</sup> public hearing for the motion; the maker and second agreed.

The Chair concurred with the substitute motion. Said he did not want to see anything that would create a detrimental affect, i.e., the job center. He agreed with the majority of comments by the Commission and said he appreciated Mr. Fawcett’s letter. He said like Commissioner Garlich, they have to also consider not only residences, but the business community as well.

At this time, Ms. Barlow reminded Commissioner Fisler that he was to abstain from the following item; however, Commissioner Fisler realized he had made an error and said he should have abstained from Item #2 under the “Consent Calendar.” At this time, the previous vote for that item was withdrawn and a new vote was taken with Commissioner Fisler absent from the Chambers. *(As shown above – General Plan Consistency finding to allow the Orange County Department of Education to lease space in the building located at 1525 Mesa Verde Drive East, Suites 108 and 109- first item to be heard this evening and second item on the Consent Calendar).*

PARCEL MAP PM-06-106

Fiock/Burger

The Chair opened the public hearing for consideration of Parcel Map PM-06-106 for Thomas Burger, authorized agent for Rick Fiock, for a parcel map to facilitate a previously approved conversion of 3 apartments to airspace condominiums (PA-04-18), located at 151 Albert Place, 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 staff was recommending approval by adoption of Planning Commission resolution, subject to conditions.

Tom Burger, 1990 South Coast Highway, Laguna Beach, thanked Ms. Shih for her favorable presentation; he said they appreciated the wording for the drafted resolution; concurred with the findings, and agreed to the conditions of approval. He said they would also be happy to work with the Engineering Department to resolve any further concerns they may have.

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

MOTION:  
PM-06-106  
Approved

A motion was made by Commissioner Garlich, seconded by Vice Chair Hall, and carried 5-0 to approve Parcel Map PM-06-106, by adoption of Planning Commission Resolution PC-06-29, based on the information and analysis in the Planning Division staff report, and findings contained in exhibit “A”, subject to conditions in exhibit “B.”

The Chair explained the appeal process.

PLANNING APPLICATION  
PA-05-54

Carpenter/Levesque

The Chair opened the public hearing for consideration of Planning Application PA-05-54 for Suzanne Levesque, authorized agent for Dennis and Jeanne Carpenter, to convert 16 apartment units to a common interest development (airspace condominiums), located at 1940 Maple Avenue, in an R3 zone. Environmental determination: exempt.

Staff withdrew this item from the calendar.

APPEAL OF ZONING

Appeal of Zoning Administrator’s denial of a request to rebuild a non-

ADMINISTRATOR'S DECISION

Frink

conforming duplex (inadequate parking, open space, and setbacks) that has been demolished, located at 212 Ogle Street, in an R2-HD zone. Environmental determination: exempt.

Staff recommended a continuance of this item to the Planning Commission meeting of May 8, 2006.

**MOTION:**

Appeal/212 Ogle Street  
Continued

A motion was made by Commissioner Garlich, seconded by Chair Perkins and carried 5-0 to continue this item to the Planning Commission meeting of May 8, 2006.

**REPORT OF THE DEVELOPMENT SVS. DEPARTMENT:**

None.

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

None.

**ADJOURNMENT:**

There being no further business, Chairman Perkins adjourned the meeting at 8:12 p.m. to the meeting of Monday, May 8, 2006.

Submitted by:

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R. MICHAEL ROBINSON, SECRETARY  
COSTA MESA PLANNING COMMISSION