

Agenda Report

TO: CITY COUNCIL

DATE: OCTOBER 15, 2001

FROM: CITY MANAGER

SUBJECT: ADDENDUM TO STAFF REPORT – APPEAL OF SUBDIVISION
COMMITTEE DECISION FOR 3202 E. FOOTHILL BOULEVARD

This report is an addendum to the staff report dated October 8, 2001, for the above appeal. The applicant's attorneys have responded to the staff report dated October 8, 2001. Staff has prepared this addendum to clarify some of the issues raised in their letter.

Applicant Comment 1 – *The attorney's state that "Although the City's conclusion that a "large scaled retail use" is inconsistent with both the specific plan and general plan, it ignores its previous acknowledgement that: (1) Objective 10 of the General Plan seeks a "Diverse Economy"; (2) Specific plan area d2 allows for supporting retail/commercial development; (3) Policy 10.6 states "recruit new businesses to provide retail and other services Accordingly, the conclusion that the "project is inconsistent" is based on piece-meal interpretation of the Specific and General Plans, which is contrary to law".*

Both the Government Code section 6647 and the Pasadena Municipal Code, section 16.20.170 require the decision making body to make finding that the Subdivision and its improvements are consistent with the General Plan and Specific Plan. Attachment D is an analysis of the General Plan, its Objective and Policies as they relate to the proposed project and Vesting Tentative Parcel Map. Attachment E is the analysis of the East Pasadena Specific Plan objectives for Sub-area d2 as they also relate to the proposed project. As indicated in the attachments, it is clear that the proposed project is not consistent with either the General Plan or the East Pasadena Specific Plan.

Applicant Comment 2 – *In this comment the applicant states that the city cannot apply the development standards of the East Pasadena Specific Plan because it had not been codified.*

Government Code section 66474.2 allows the City to apply the development standards of an adopted, but not codified specific plan, as long as the applicant had notice of the proposed specific plan.

Applicant Comment 3 – *In the applicants comments they allude to the fact that they did not receive actual or constructive notice of the development standards contained within the East Pasadena Specific Plan.*

The applicant, Mr. Oltman was a participant of the East Pasadena Specific Plan Steering Committee and participated in the discussions developing the plan. In addition, he received copies of the early draft copies of the plan as well as the final draft plan. He received notices of the public meetings through the mail, as did other property owners in the specific plan area. Both applicants attended the Planning Commission meetings as well as the City Council hearing on October 23, 2000.

Applicant Comment 4 – *“ Staff’s unilateral decision in August to refuse to proceed with the CUP process, including their minimum mandatory duty to perform an initial study concerning the project under the California Environmental Quality Act (CEQA) Public Resources Code section 21000 et. seq. CEQA abdicates their responsibility to analyze the Project prior to the Board rendering a decision, which they originally agreed to perform a their original June 27, 2001 hearing.” Thus, Attachment A, the Subdivision Staff Report, conclusions with respect to the particular use, high volume retail is not supported by any information supplied by the Applicant amounts to a predetermination of denial which has further delayed processing the Project.”*

In conjunction with the Initial Study, the applicant was requested to submit a traffic study prior to the continued Subdivision Committee hearing date of August 8th. The applicant hired a traffic consultant to prepare the traffic study, and a scope of work for the study was submitted to the city, and a draft traffic study was prepared.

The decision not to proceed with the preparation of an Initial Study was based on Section 15270 of the California Environmental Quality Act (CEQA), which provides that initiation of the CEQA process is not triggered when a proposed project cannot be approved. Even though the discussion regarding an application for a Conditional Use Permit (CUP) for the project occurred at the June 27th Subdivision Committee Meeting, the CUP application was not submitted until August 2, 2001 (3 working days prior to the August 8th Subdivision Committee Hearing). The application was reviewed by staff and deemed incomplete. A letter was sent to the applicant’s representative on August 22, 2001 outlining the missing items from the application. The City has received no further submittal information.

For further clarification, even though the CUP had not been submitted and the traffic study had not been prepared, staff did initiate preparation of an Initial Study. However, the first question in the Initial Study asks: Would the proposal (a) conflict with the General Plan or Zoning; and (b) Conflict with applicable environmental plans, or policies adopted by agencies with jurisdiction over the project. As has been previously argued,

the proposed project associated with the Vesting Tentative Parcel Map is inconsistent with the General Plan, consistent with the Zoning of the area, and inconsistent with the adopted East Pasadena Specific Plan.

Based on the answer to these questions, it was determined that it was not possible to go forward with the preparation of an Initial Study, and that the traffic study would not be required. Therefore, in order to prevent the applicant from incurring additional costs associated with the preparation of a traffic study, the property owner was informed of the staff decision by phone (message); and e-mail and letter to the traffic consultant.

Applicant Comment 5 – “*Staff’s June 27th Engineering report actually recommends approval with 27 conditions.....*”

The Engineering Department is charged with the task of providing the technical requirements for a project if it is approved. It is not within their purview to determine zoning or planning issues.

Applicant Comment 6 – “*Public Works without explanation returned the Traffic Study submitted by the applicant after Staff and the Committee requested such a the original hearing on June 27, 2001.*”

See response to Applicant Comment no. 4.

Applicant Comment 7 – “*Staff’s original and only Report was conceded to be incomplete when Staff agreed to perform additional analysis at the June 27th hearing.*” *Requesting a CUP application, as well as Traffic Study, which was never accomplished.*” “*Reliance on “advice of counsel” does not overcome the city’s obligation to make and render findings specific to the project in question [“where no findings, formal or informal are made... and where the action of the administrative agency may be on any one of several bases, failure to make findings is prejudicial”] . Therefore, even if the City wanted to deny the application to reduce the number of lots from 17 to 4, presently there are no findings to support this decision.*”

The issue is not the reduction of lots from 17 to 4; the applicant can accomplish this goal with a lot line adjustment, or Certificate of Appropriateness. However, by choosing the route of a Vesting Tentative Parcel Map, the Subdivision Map Act requires the applicant to provide a project associated with the VTPM and a General Plan Consistency Finding is required.

In reading the transcript of the June 27th, 2001 Subdivision Committee hearing it appears that Planner Brian League states “that it would be wise to go through the CUP process prior to a decision on (sic) this Board...” The interpretation of the Subdivision Committee, which is not expressed in the brief, is that the applicant is putting the “cart” (the subdivision request) prior to the horse (the CUP process). The CUP review process is the more appropriate first step with the Subdivision Committee hearing the last approval. At this meeting, the applicant’s representative Bob McClellan indicated that he

would be submitting the CUP application soon, even possibly that afternoon. Therefore, at this time, the statement that staff would look at the CUP and prepare an initial study was appropriate. As mentioned earlier in Comment 4, the CUP application was not submitted until August 2, 2001, 3 working days prior to the August 8th Subdivision Committee hearing.

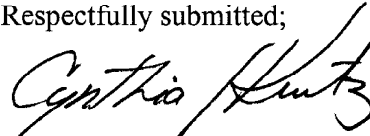
***Applicant Comment 8** – The City's action amounts to a regulatory taking and there were no findings to support the decision.*

See Comment No. 4

Conclusion

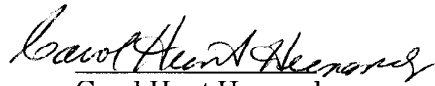
The finding that the proposed use for the site is inconsistent with the General Plan does not prohibit the applicant from applying for other uses that are consistent with the General Plan and the zoning for this area.

Respectfully submitted;



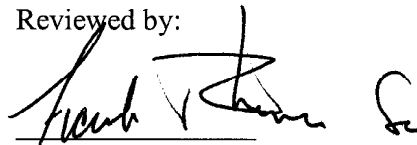
Cynthia J. Kurtz
City Manager

Prepared by:



Carol Hunt Hernandez
Planner

Reviewed by:



Maribel S. Medina
Assistant City Attorney

Approved by:



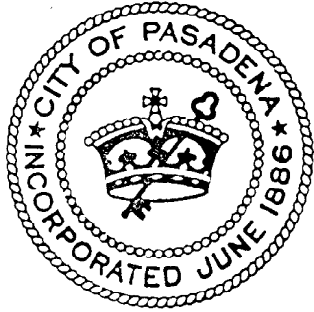
Richard Bruckner
Director of Planning & Development

Attachments

Attachment D – Project and General Plan Consistency Analysis

Attachment E – Project and East Pasadena Specific Plan Consistency Analysis

Ccappealaddendum1015



Agenda Report

TO: CITY COUNCIL **DATE:** OCTOBER 8, 2001
FROM: CITY MANAGER
SUBJECT: APPEAL OF SUBDIVISION COMMITTEE DECISION FOR 3202 E. FOOTHILL BOULEVARD

RECOMMENDATION: It is recommended that after a public hearing, the City Council:

1. Confirm the following environmental determination: CEQA Guidelines Sect. 15270 – Projects Which are Disapproved are not subject to CEQA. Title 14 California Code of Regulations Chapter 3 Guidelines for Implementation of the California Environmental Quality Act (CEQA).
2. Find that the proposed “High Volume Retailing” use is inconsistent with the Comprehensive General Plan and the adopted East Pasadena Specific Plan;
3. Deny the project based on the findings contained in Attachment A.

SUBDIVISION COMMITTEE RECOMMENDATION

On August 8, 2001, the Subdivision Committee recommended denial of the proposed subdivision at 3202 E. Foothill Boulevard.

EXECUTIVE SUMMARY

The proposed project is a Vesting Tentative Parcel Map to merge 17 parcels into 4 parcels at 3202 E. Foothill Boulevard (Space Bank). Presently the site consists of industrial, office and storage facilities. When a Vesting Tentative Map (VTPM) is submitted the applicant must also provide a description of the proposed project associated with the map. The proposed project associated with this map is: Several structures will be demolished, and one building of 149,516 square feet with 839 parking spaces will be built. The proposed use is a Costco. In addition to approval of VTPM, the project will require a Conditional Use Permit for projects over 25,000 square feet. The General Plan designation for this area is Specific Plan, “East Pasadena Specific Plan Sub-Area

MEETING OF 10/15/01
10/08/2001

AGENDA ITEM NO. 6.A. (8:00 P.M.)

d2 – Foothill, Rosemead, Sierra Madre Villa.” The staff recommendation of denial is based on the proposed use for the site, which is inconsistent with the Land Use Element of the General Plan and the East Pasadena Specific Plan. The General Plan states: “Until completion of the Specific Plan (East Pasadena Specific Plan), discount retail/big box will not be considered in this area. “Transit oriented development will be encouraged around the proposed light rail station at Sierra Madre Villa and the 210 Freeway.” Based on this direction, the East Pasadena Specific Plan was developed to encourage transit-oriented development in this area and the type of use proposed by the applicant was prohibited in this sub-area. In order to further emphasize this direction, the Specific Plan prohibits “Big Box Retail” which is generally not a transit supportive use, nor ancillary to industrial uses.” The Specific Plan also contains a definition of “Big Box Retail.” - “A retail or wholesale store over 75,000 square feet, with centralized cashiering”. The Subdivision Committee denied the project on August 8, 2001.

BACKGROUND

On May 21, 2001, McClellanHunter Architects submitted an application for a Vesting Tentative Parcel Map. According to Section 66452.2 of the Subdivision Map Act a public hearing must be held within 50 days after receipt of the application. A public hearing was held before the Subdivision Committee on June 27, 2001.

In addition to the information for the proposed subdivision, Chapter 16.22.060 (Filing and Processing) of the Pasadena Municipal Code requires an applicant to do the following: “the sub divider shall also supply specific information on the proposed project including” height, size, location, uses and architectural plans. Also the application shall contain a written statement showing the manner in which the planned uses are consistent with the comprehensive general plan, applicable specific plans....”. The proposed project is a 149,516 square foot retail building with over 839 parking spaces. The proposed use for the site is a Costco. The City’s Municipal Code (Subdivisions), Chapter 16.22.030 Consistency requires that: “No land shall be subdivided and developed pursuant to a vesting tentative map for any purpose which is inconsistent with the comprehensive general plan or its goals, objectives, policies, general land uses and programs, or any applicable specific plan, or any applicable interim study districts, including guidelines and standards therefore, or for any purpose which is not permitted by the revised zoning ordinance or other applicable provisions of the Pasadena Municipal Code.”

The staff report for the June 27th, Subdivision Committee meeting included a Consistency finding prepared by the Community Planning staff. This finding determined, based on the information provided by the applicant, the proposed project associated with the Vesting Tentative Parcel Map is inconsistent with the applicable General Plan and the adopted East Pasadena Specific Plan. The staff report also included comments from the Public Works and Transportation Department and the Pasadena Water Division.

At their June 27, 2001 meeting, the Subdivision Committee expressed concern that there was insufficient information to make a determination for denial based solely on an inconsistency finding and requested more information from staff. At this meeting the

applicant's representative indicated that he would be submitting a Conditional Use Permit for the proposed project later that afternoon, or soon thereafter. Based on this information, staff indicated that an Initial Study could be prepared to provide further information to the committee. The applicant was requested to prepare a traffic study to be included in the preparation of the Initial Study. A second meeting before the Subdivision Committee was scheduled for August 8, 2001. At this meeting, the Subdivision Committee recommended denial of the project.

ANALYSIS

The applicant is requesting to subdivide 17 parcels into 4 parcels. Associated with the subdivision is a proposal for a 149,516 square foot Costco and parking for 839 vehicles. In addition to the Vesting Tentative Parcel Map, the applicant is required to submit for a Conditional Use Permit for development over 25,000 square feet.

The basis of the appeal by the applicant includes arguments that are summarized here for discussion purposes. For the complete text of each comment see Attachment B.

Applicant Comment No. 1

The denial based on findings contained in staff report of June 27th and August 8th to the Subdivision Committee present arguments unsupported by any applicable legal authority and misrepresent either the facts involved or the law applicable to City.

Response No. 1

The staff report for the Subdivision Committee contains a consistency analysis prepared by the Community Planning Section. This inconsistency finding is based on both the City's Comprehensive General Plan and the adopted East Pasadena Specific Plan. Attachment A is the Subdivision Committee Staff report of June 27, 2001.

The State of California *General Plan Guidelines* provides a general rule for consistency determination as follows:

“An action, program or project is consistent with the general plan, if considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment.”

The Seven Guiding Principles of the City of Pasadena's General Plan provide a structure for evaluating the consistency of the proposed project with the General Plan. However, the General Plan does not explicitly give greater weight to any policies and objectives over others. Staff's approach to general plan consistency issues has focused on weighing the feasibility of achieving the various citywide principles, objectives and policies, informed by project impacts and existing conditions, to determine how a project can best strike a reasonable and feasible balance among them.

Section 66473.5. "Subdivision must be consistent with general plan or specific plan." States that a "A proposed subdivision shall be consistent with a general pl or a specific plan only if the local agency has officially adopted such a plan and the proposed subdivision or land use is compatible with the objectives, policies, general land uses, and programs specified in such a plan."

In addition, Section 16.22.030 "Consistency" of the Pasadena Municipal Code requires consistency with applicable ... general plans or its goals, objectives, policies, general land uses and programs or any applicable specific plans.....and in approving a vesting tentative map, findings must be made showing that the planned uses are consistent with these plans. ...

The East Pasadena Specific Plan was adopted by the City Council on October 23, 2000. Based on staff's analysis of the proposed project, and using the above guidelines, the project was found inconsistent with both goals and policies of the General Plan and the East Pasadena Specific Plan.

Applicant Comment No. 2

Attachment "A" analyzes the project under the Specific Plan, which although approved, has yet to be implemented with consistent zoning.

Response Comment No. 2

As indicated, partial analysis of the proposed project is based on the adopted East Pasadena Specific Plan, which was adopted by the City Council on October 23, 2000. The applicant further argues that because the completion of the implementation ordinance for this site is not in effect, the zoning for this site is IG (Industrial District) and the proposed use "retail sales" and "wholesaling, distribution and storage" are permitted uses and thus are allowed. The zoning for this site under the East Pasadena Specific Plan Ordinance is EPSP-d2-IG. Even with the new designation, the base-zoning district remains the same – Industrial. "General Plan Policy 10.5 – Industrial Businesses: Promote industrial development by protecting existing industrial districts and encouraging new industrial employers, and by restricting Industrial (IG) zoning districts to industrial businesses and ancillary retail and service activities, including but not limited to restaurants and child care." A 149,516 square foot retail building is not considered an ancillary use to the primary use of industrial uses.

Applicant Comment No. 3

The City's June 7, 2001 determination that the submitted application was complete activates Government Code Section 66498.9(b), which provide once a vesting tentative map application is deemed complete, ordinances, polices and standards in effect at the time are frozen in place for use by the subdivider.

Response Comment No. 3

Section 66474.2 - "Tentative map approval can only be based on standards in effect when the application is complete; exceptions". This section provides for local agencies to review projects based only those ordinances, policies and standards in effect at the time the application has been deemed complete, except when: the local agency has initiated proceedings by way of ordinance, resolution or motion and has published a notice containing a description sufficient to notify the public of the nature of the proposed change in the applicable general or specific plans. The East Pasadena Specific Plan was adopted by resolution on October 23, 2000, eight months prior to the applicant's submittal for a vesting tentative parcel map. Notices were published in the Star News for the City Council meeting of October 23, 2000.

Applicant Comment No. 4

Staff's unilateral decision in August to refuse to proceed with the CUP process, including their minimum mandatory duty to perform an initial study concerning the project under the California Environmental Quality Act, Public Resources Code section 21000 et. Seq.

Response Comment No. 4

Based on discussions with legal counsel, it was determined that the recommendation for denial of the proposed subdivision would stand, and staff would not continue with the preparation of an Initial Study.

Applicant Comment No. 5

Staff's June 27th engineering report actually recommends approval with 27 conditions. However, the analysis does not comply with Government Code section 65913.2 which requires a city or county to set forth general standards and criteria for improvements prior to imposing specific conditions on a property.

Response Comment No. 5

The Engineering report actually says, "If this vesting tentative parcel map is approved, the following conditions are recommended:" it does not say it recommends approval.

Applicant Comment No. 6

Public Works without explanation returned the Traffic Study submitted by applicant after staff and the Committee requested such at the original hearing on June 27, 2001.

Response Comment No. 6

Based on discussions with legal counsel it was determined that the recommendation for denial of the proposed subdivision would stand, and staff would not continue with the

preparation of an Initial Study. Therefore, a letter was sent to the applicant's traffic engineer informing him that a traffic study would not be required.

Applicant Comment No. 7

Staff's original and only report was conceded to be incomplete when staff agreed to perform additional analysis at the June 27th hearing requesting a CUP application, as well as Traffic Study, which was never accomplished.

Response Comment No. 7

Based on discussions with legal counsel it was determined that the recommendation for denial of the proposed subdivision would stand, and staff would not continue with the preparation of an Initial Study. Therefore, a letter was sent to the applicant's traffic engineer informing him that a traffic study would not be required.

Applicant Comment No. 8

The applicant has been subjected to a regulatory taking when Planning staff stated at the August 8, 2001 hearing that although they had been requested by the Committee at its June 26, 2001 meeting to complete the environmental analysis of the project under CEQA and to secure traffic study, they had been instructed not to complete these matters.

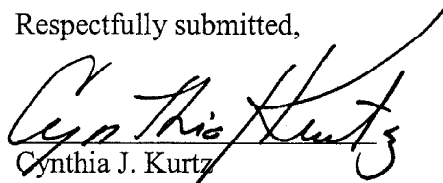
Response Comment No. 8

Based on discussions with legal counsel it was determined that the recommendation for denial of the proposed subdivision would stand, and staff would not continue with the preparation of an Initial Study.

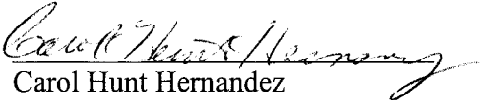
CONCLUSION

Both the Subdivision Map Act and Chapter 16 – "Subdivisions" of the Municipal Code require a proposed subdivision to be consistent with the General Plan and any applicable specific plans. Therefore based on the above requirements for consistency, the proposed 148,516 square foot retail project at 3202 E. Foothill Boulevard is inconsistent with the General Plan and the East Pasadena Specific plan.


Respectfully submitted,


Cynthia J. Kurtz
City Manager

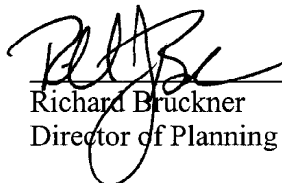
Prepared by:


Carol Hunt Hernandez
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Reviewed by:


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Assistant City Attorney

Approved by:


Richard Bruckner
Director of Planning & Development

Attachments

- Attachment A – Subdivision Staff Report June 27, 2001
- Attachment B – Appeal application
- Attachment C – Location Map of Vesting Tentative Parcel Map