



MINUTES
REGULAR CITY COUNCIL
TUESDAY, JULY 28, 2009, 7:00 P. M.
COUNCIL CHAMBERS, 245 E. BONITA AVE.

PRESENT:

Mayor Curtis W. Morris
Mayor Pro Tem Denis Bertone
Councilmember Emmett Badar
Councilmember John Ebner
Councilmember Jeff Templeman

City Manager Blaine Michaelis
City Attorney J. Kenneth Brown
City Clerk Ina Rios
Assistant City Manager Ken Duran
Director of Development Services Dan Coleman
Director of Public Works Krishna Patel
Director of Parks and Recreation Theresa Bruns

ABSENT:

Assistant City Manager of Community Development Larry Stevens

1. CALL TO ORDER AND FLAG SALUTE

Mayor Morris called the meeting to order at 7:01 p.m. and led the flag salute.

2. ANNOUNCEMENTS

- Pui-Ching Ho, Librarian, San Dimas Library

Pui-Ching Ho, Library Manager, San Dimas Library, was unable to attend this meeting.

- 3. ORAL COMMUNICATIONS** (Members of the audience are invited to address the City Council on any item not on the agenda. Under the provisions of the Brown Act, the legislative body is prohibited from taking or engaging in discussion on any item not appearing on the posted agenda. However, your concerns may be referred to staff or set for discussion at a later date. If you desire to address the City Council on an item on this agenda, other than a scheduled public hearing item you may do so at this time or asked to be heard when that agenda item is considered. Comments on public hearing items will be considered when that item is scheduled for discussion. The Public Comment period is limited to 30 minutes. Each speaker shall be limited to three (3) minutes.)

a. Members of the Audience

1) **City Manager Michaelis** reported that Contract Cities met to review and recommend an agreement with a liability issue regarding who pays for felony sex crimes involving Sheriff Deputies. He said negotiations resulted in an agreement and the 40 cities recommended approval. The Board of Supervisors will consider this item at their August 11, 2009 meeting. He added that this information was distributed to the City Council prior to tonight's meeting.

Staff is asking that the City Council vote to add this item to the July 28, 2009 agenda as an emergency item as the need to act arose after the agenda packet was prepared.

It was moved by Mayor Pro Tem Bertone, seconded by Councilmember Badar, to add this item as an emergency item to the agenda. The motion carried unanimously.

2) **Ginny Phillips** reported that she and her husband were taken to court again because the City needs the completion date for the garage. She said they have a Writ of Mandamus and are entitled to build their garage. She asked for the City's expectations after the garage was completed.

3) **Mitch Crawford**, Chamber of Commerce, announced the City's 49th birthday celebration on August 7, 2009, from 5:00 p.m. to 10:00 p.m., in the Civic Center Plaza. He said the menu includes the deep pit barbecue, side dishes, plus hotdogs for the kids to be served between 5:30-7:30 p.m. He invited the community to the family event to enjoy lots of free fun activities including pony rides, a petting zoo, games, displays by public safety organizations, and music by The Answer. Food tickets are available at City Hall, San Dimas Senior Center and Chamber of Commerce - \$3 for kids, \$4 for seniors, \$5 for adults on a pre-sale basis and \$6 the night of the event.

4) **Darcel Woods**, La Verne, introduced herself and said she is forming a committee to explore running for the 59th Assembly seat. She provided a brief background and said she would like to meet with the Councilmembers about their concerns and would like to develop a relationship with the Council when she is elected.

5) **Bob Hardcastle** invited the community to attend a couple of events the San Dimas Rodeo is involved in this weekend: 1) Wednesday, July 29, 2009 is Concert in the Park, where they will be conducting their Second Annual Blood Drive between 2:00 p.m. - 7:00 p.m.; 2) Saturday, August 1, 2009, the Rodeo is hosting the first Annual Ride for Life, for the American Cancer Society, at the Pomona Fairplex, Event Arena inside Gate 12, off White Avenue, and hopes they have a successful event to raise additional funds to contribute to the Relay for Life. He encouraged participation in the two events.

6) **Mr. Hardcastle** said it's the Rodeo's 15th anniversary and they are still accepting sponsorships.

7) **Don Green** thanked City Manager Michaelis and city staff for supporting last year's blood drive.

4. CONSENT CALENDAR

(All items on the Consent Calendar are considered to be routine and will be enacted by one motion unless a member of the City Council or audience requests separate discussion.)

Councilmember Ebiner said Commissioner John Margis is listed at the bottom of page three of the Joint City Council/Planning Commission Minutes, and wondered if it should have been Commissioner John Davis.

City Clerk Rios confirmed that Parks and Recreation Commissioner John Margis asked the question answered by Assistant City Manager Stevens.

It was moved by Mayor Pro Tem Bertone, seconded by Councilmember Badar, and carried unanimously to accept, approve and act upon the consent calendar, as presented, as follows.

a. Resolutions read by title, further reading waived, passage and adoption recommended as follows:

- (1) **RESOLUTION NO. 09-35, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN DIMAS APPROVING CERTAIN DEMANDS FOR THE MONTH OF JULY 2009.**

- b. Approval of minutes for the regular City Council meeting of July 14, 2009, study session of July 14, 2009 and special meeting of July 14, 2009.
- c. Reallocation of \$20,000 in Fund 12 from fiscal year 2008-09 to 2009-10 for project completion of Softball Field improvements at Gladstone School.
- d. Authorization to waive formal bid process for the repairs of the sweeper and award to Nixon -Egli Equipment Company for the amount of \$32,000.

END OF CONSENT CALENDAR

5. PUBLIC HEARING

(The following items have been advertised and/or posted. The meeting will be opened to receive public testimony. Written or graphic evidence presented shall be retained by the City Clerk as part of the official record.)

Mayor Morris said the order would be reversed on the following public hearing items and 5B would be heard first:

- b. Appeal of Classification of Use 09-01 - Consideration to allow apartments as a permitted or conditional use in CG-3 Sub-Area B Zone.

City Manager Michaelis said there has been a change on this project. He invited applicant Jonathan Lonner to share his thoughts.

Jonathan Lonner, USA Properties Fund, Inc., requested the City Council consider continuance of the appeal of Classification of Use 09-01 to enable them to work with staff, and meet individually with the City Council and Commissioners to address concerns about the current design, density, parking, and subsidy. He explained that the State's tax credit allocation timeline does allow them to partner with the City in a project that could be a win/win for all parties.

Mayor Morris said the Classification of Use has been approved by the Planning Commission and is on appeal before the City Council. He inquired of City Attorney Brown if this item could be continued to an indefinite time in the future to be decided by the City Council.

City Attorney Brown asked Mr. Lonner if he would agree that the issue of appropriateness of apartments at that particular site that was appealed and scheduled for public hearing, would be continued to whatever date in the future that Mr. Lonner would present the City Council with a revised application. Mr. Lonner agreed to present in an unspecified future date a revised application on the issue of appropriateness of apartments or he could adhere to a timeline imposed by the City Council.

City Attorney Brown responded to Mayor Morris that at the time there is a revised application, the issue of appropriateness of apartments is an issue that would remain before the City Council in form of an appeal of that decision.

In response to Councilmember Ebner who asked if the applicant had the option of a Municipal Code Text Amendment to include or not include apartments in the zone versus a use determination, City Attorney Brown said it could be done if that is the desire of the City Council.

As maker of the appeal, Mayor Pro Tem Bertone suggested going with whatever staff considers is most appropriate and convenient for the City and the applicant, as long as the City Council has the opportunity to discuss appropriateness of apartments.

Mayor Morris said the decision tonight is to continue this matter indefinitely.

It was moved by Councilmember Badar, seconded by Mayor Pro Tem Bertone, to continue this matter with the understanding that there would be discussion some time in the future about the appropriateness of apartments. The motion carried unanimously.

- a. **Environmental Assessment and Tentative Tract Map No. 69609** – A request to subdivide 8.53 acres of land into 6 lots located at the northwest corner of East Bonita Avenue and San Dimas Canyon Road. APN: 8390-013-010, 8390-013-011, 8390-013-012.

Environmental Assessment and Development Plan Review Case No. 09-20 - A request to develop 19,969 square feet of retail, including a neighborhood market, on 2.24 acres of land at the northwest corner of East Bonita Avenue and San Dimas Canyon Road. APN: 8390-013-010, 8390-013-011, 8390-013-012.

Environmental Assessment and Development Plan Review Case No. 09-21 - A request to develop 156 apartments on 6.26 acres of land on the northwest corner of East Bonita Avenue and San Dimas Canyon Road. APN: 8390-013-010, 8390-013-011, 8390-013-012.

Environmental Assessment and Precise Plan No. 09-01 – Development plans for a mixed use project consisting of 19,969 square feet of retail on 2.24 acres of land, and 156 apartments on 6.26 acres of land, at the northwest corner of East Bonita Avenue and San Dimas Canyon Road. APN: 8390-013-010, 8390-013-011, 8390-013-012.

Environmental Assessment and Municipal Code Text Amendment 09-01 - A request to amend Specific Plan No. 26 to adjust the residential and retail areas, and related boundaries, for a mixed use development located on 8.53 acres of land at the northwest corner of East Bonita Avenue and San Dimas Canyon Road. APN: 8390-013-010, 8390-013-011, 8390-013-012.

Applicant: VCH-San Dimas Company, LLC
Environmental: Mitigated Negative Declaration

Director of Development Services Coleman summarized the proposed Bonita Canyon Gateway project, a mixed use development consisting of approximately 20,000 square feet of retail on 2.24 acres of land, and 156 apartments on 6.26 acres of land, at the northwest corner of East Bonita Avenue and San Dimas Canyon Road. He provided a brief background of the project that was approved by the City Council on May 27, 2008 and said Walgreens, one of the major anchor tenants, withdrew from the project. He reported that the Planning Commission conducted a public hearing on July 15, 2009 and recommended denial of the project.

Mr. Coleman responded to Council that although not required by the State, the developer will provide one single car garage space for every unit; it is unknown where the fire hydrants would be because there are construction plans for the residential portion of the project; the existing agreement with the developer to purchase affordability covenants for the project require them to build the retail portion of the project, however because the floor area is supposed to be reduced, the agreement would have to be changed, to also require construction of the retail portion of the project; the fire code is performance based and the Los Angeles County Fire department is willing to work with the developer and staff on solutions that would address their issues.

In response to Councilmember Ebner, Mr. Coleman replied that the extra 18 guest spots on the retail lot would be designated as strictly apartment visitor parking and the conditions proposed to the Planning Commission prohibit the project manager from leasing units to someone with more than two vehicles.

In response to Councilmember Templeman, Mr. Coleman said Building B is the tallest building on the site at approximately 54-feet high, and is raised on the podium above the underground parking garage.

In response to Councilmember Badar, Mr. Coleman replied that if the project is denied, the developer can still build the 120 apartments with 40,000 square feet of retail because the approvals are valid through April, 2010. If the current proposed project is approved, they can build 156 apartments with 20,000 square feet of retail. The existing agreement requires them to build all retail proposed in order to get set aside funding from the Agency. City Attorney Brown added that requirement is tied in to the \$2.4 million.

Mr. Coleman responded to Councilmember Ebner that there is a locked fire gate from Bonita Avenue with security control to provide access to the apartment tenants. He said the building coverage in the residential portion is approximately 30% with retail at about 20%, and a significant amount of the remainder is covered with parking, driveways, and there is quite a bit of landscaping in the project.

In response to Mayor Pro Tem Bertone, Mr. Coleman said that because a lot of time is spent dealing with preliminary conceptual drawings that do not have detail, the Fire Department recommends denial in every case.

Director of Public Works Patel said in several projects initially denied, the Fire Department ultimately approved the development because it met the codes and standards of the Fire Department.

In response to Councilmember Templeman, Mr. Patel said the Water Company provides certificates that states a flow test was conducted.

Mayor Morris opened the public hearing and invited the applicants to make their presentation.

Tom deRegt, Principal with Valley Community Homes, 100 Pasadera Drive, Monterey, CA 93940, said they appreciated the City's support when the project was approved in May 2008, and they moved forward to begin construction. He said unfortunately, after they began the demolition process, Walgreens pulled out, and they found themselves with a project they could not finance nor begin construction on. He said he and his partners gathered together as a team to look at the project to consider many alternatives in light of the volatile economy and brought forward one project alternative they feel they can finance and build in this market. He said there has been an ongoing debate how much commercial space this site can handle and the market is telling them what is an appropriate amount of commercial space for the site, which sat vacant before they acquired the property. He said Fresh & Easy is still committed to the location, and the construction documents have been through several plan checks and they are now ready to pull grading permits. However, without the zoning amendment, they cannot begin grading. He stated he is scheduled to sign loan documents on Wednesday which will provide the construction funds to build the Fresh & Easy store, 6,000 square feet of shops, and provide offsite infrastructure. He said the loan documents are based on appraisal of this project, but he cannot sign loan documents if he is in violation of the underlying zoning. He said it was frustrating that the Planning Commission focused on the policy issue of how much commercial space should be built on the project based on the underlying specific plan.

Mr. deRegt stated that he has underlying land financing extended for a three-year term and can move forward with the redesigned project that is before the Council tonight. He commented that he came forward with a request for 20% affordability to provide them with flexibility in taking out financing, but 15% affordability is acceptable. He said traffic counts demonstrate this intersection does not have the activity to generate enough demand for additional commercial space and confirmed that every unit in the complex will have a garage. He believes that, based on drive aisles and fire hydrants, they can address any Fire Department issues. He added that a high quality property management will monitor demarcated visitor parking spaces, occupancy, and use of spaces.

Mayor Morris asked the City Council if they had questions on the project.

Mr. deRegt responded to Council that the project has three types of parking spaces - garage with roll up doors, underground parking in Building B, and surface carports. He said every apartment would have a garage with a roll-up door. He added that six surface carports located in highly visible areas are being eliminated and added that those are extra spaces that work well not being covered.

In response to Council, Mr. deRegt replied that they are making a significant equity investment on the project to reduce leverage on the land and provide financing for the Fresh & Easy. He said they cannot sell any units or they would be in default of the agreement that requires them to start construction on the units within a set period of time and the City would have no obligation to invest any funds. He provided the timeline if the project were approved this evening and said Fresh & Easy is committed. He added they have plenty of parking and will have property management on the site.

Mayor Morris asked if anyone else wished to speak in favor of, or in opposition to, this item. There being no one else wishing to speak, Mayor Morris closed the public hearing.

Although Councilmember Templeman had concerns with the removal of the retail pad for apartments, he said this is a nice looking project and is not an inconsistent plan with the neighboring residential on Bonita. He is in favor of the project.

Councilmember Badar said he was impressed when he visited the San Jose project constructed by VCH and talked to the management. He, too, has concerns about the commercial site, however, this might be the time and place for this project.

Councilmember Ebiner opposed the project stating that the project cannot be considered a mixed use when the corner retail center is gated off completely from the residential and the completely gated apartment complex is isolated from the rest of the community. He felt VCH could do a better project with the same mix of residential and commercial.

Mayor pro Tem Bertone said this project will get rid of blight and is the appropriate area for increased housing to comply with State mandates. He expressed support for the project.

Mayor Morris said for years the City Council has taken the position that there should be more commercial in that area, however, circumstances change and the City Council changed its position. He said the Planning Commission made their decision on that long standing policy. He will vote in favor of the project.

It was moved by Mayor Pro Tem Bertone, seconded by Councilmember Badar, to direct staff to bring back for Council's consideration the necessary resolutions to approve the project. The motion carried 4.1; Councilmember Ebiner voted against the project.

6. SAN DIMAS REDEVELOPMENT AGENCY

Mayor Morris recessed the regular meeting at 8:50 p.m. to convene a meeting of the San Dimas Redevelopment Agency Board of Directors. The regular meeting reconvened at 9:14 p.m..

7. ORAL COMMUNICATIONS

- a. Members of the Audience (*Speakers are limited to five minutes or as may be determined by the Chair.*)

There were no comments.

b. City Manager

1) County-City Special Indemnity Agreement

- a. City Manager Michaelis reported that the Contract Cities and Los Angeles County have reached an agreement on the level of financial responsibility as it relates to the criminal conduct of deputies. He said through difficult negotiations, the proposal before the Council is for costs to be shared equally by Contract Cities and Los Angeles County. He added that if the City had its own police department, the City would be responsible for 100% of the claim costs.

Mayor Morris felt resolving this issue allowed us to move forward to provide public safety services to our communities. He added that the Contract Cities are recommending the shared cost to their cities and he concurs with the recommendation to approve the proposal.

It was moved by Mayor Pro Tem Bertone, seconded by Councilmember Badar, to approve the proposal to share costs equally with the County of Los Angeles for the criminal conduct of deputies. The motion carried unanimously.

- b. City Manager Michaelis said the Governor will be reviewing the work completed by the Assembly and Senate on the State budget. There are three concerns:
- 1) Pursuant to Proposition 1A, the budget borrows from local governments the maximum of \$2 billion in property tax funds. The State is required to repay the borrowed funds within three years and will pay an interest rate not to exceed 6%.
 - 2) The Senate approved \$1 billion statewide as a loan from local government Gas Tax Funds, to be repaid over ten years. However, the Assembly voted against this item and the seizure was not included in the budget, nevertheless, cities will now have to wait until the end of the year to secure the release of these funds.
 - 3) The final budget takes away over \$2 billion from Redevelopment Agencies, which is similar to the attempted take last year that was ruled unconstitutional. The Governor is expected to sign this bill that includes language that monies would be spent toward education inside redevelopment project areas. The California Contract Cities Association started proceedings to file a lawsuit and the matter will be considered by the judicial system.

c. City Attorney

There were no comments.

d. Members of the City Council

- 1) Councilmembers' report on meetings attended at the expense of the local agency.

There were no meetings attended at the expense of the local agency.

2) Individual Members' comments and updates.

Mayor Pro Tem Bertone requested an update on the return of Bravo Burger. City Manager Michaelis said three weeks ago an offer was made to Bravo Burger to consider the Bonita Avenue/Cataract site. Staff has not yet heard from Bravo Burger.

3) Appointment to Parks and Recreation Commission.

Mayor Morris stated that Commissioner Adam Phipps' term on the Parks and Recreation Commission expired on June 30, 2009 and he declined reappointment. Mayor Morris said he and Councilmember Ebner interviewed five candidates on Tuesday, July 21 and Thursday, July 23, 2009.

It was moved by Councilmember Ebner, seconded by Mayor Morris, to appoint José Martínez as Commissioner on the Parks and Recreation Commission with a term to expire on June 30, 2011. The motion carried unanimously.

4) Reappointment to Golf Course Advisory Committee.

Director of Parks and Recreation Bruns reported that the Golf Course Advisory Committee terms for Don Green and A. F. "Shorty" Feldbush will expire at the end of September, 2009. Each of them is eligible for and requested reappointment to the Committee.

It was moved by Mayor Pro Tem Bertone, seconded by Councilmember Ebner, to reappoint Don Green and A.F. "Shorty" Feldbush to the Golf Course Advisory Committee for a two-year term to expire September, 2011. The motion carried unanimously.

8. ADJOURNMENT

Mayor Morris adjourned the meeting at 9:35 p.m. The next meeting is on August 11, 2009, 7:00 p.m.

Respectfully submitted,

Ina Rios, CMC, City Clerk