

TUESDAY, FEBRUARY 6, 2007

A regular meeting of the Council of the City of Burbank was held in the Council Chamber of the City Hall, 275 East Olive Avenue, on the above date. The meeting was called to order at 6:37 p.m. by Mr. Campbell, Mayor.

Invocation The invocation was given by Pastor Ross Purdy, First Presbyterian Church.

Flag Salute The pledge of allegiance to the flag was led by Steve Ferguson.

ROLL CALL

Present- - - - Council Members Golonski, Gordon, Vander Borght, Ramos and Campbell.

Absent - - - - Council Members None.

Also Present - Ms. Alvord, City Manager; Mr. Barlow, City Attorney; and, Mrs. Campos, City Clerk.

406
Airport Auth.
Report Mr. Golonski requested the Airport Authority Report be postponed to a future date. The Council concurred.

301-1
National Teen
Dating Violence
Awareness and
Prevention Week Mayor Campbell presented a proclamation in honor of National Teen Dating Violence Awareness and Prevention Week to Marissa Gehley-Rosoff, Coordinator of School Safety for the Burbank Unified School District, and Steven Ferguson, Youth Board Chair.

301-1
Mayor's
Commendation -
Luis Lara Mayor Campbell presented a Mayor's Commendation to Luis Lara, owner and chef of Command Performance, and members of his family, for providing Thanksgiving Day meals to Burbank seniors who are on the Home Delivered Meals Program.

301-1
Mayor's
Commendation
Prov. St Joseph
Med Ctr. Mayor Campbell presented a Mayor's Commendation to Providence Saint Joseph Medical Center Food and Nutrition Services Department, represented by Joy Cantrell, George Rodriguez and Tan Nguyen, for providing Christmas Day meals to seniors on the Home Delivered Meals Program.

6:48 P.M.
1704-5
602
Public Hearing
Project No. 2006-
105,
Whole Foods Mayor Campbell stated that "this is the time and place for the hearing on the appeal of the Planning Board's decision denying Project No. 2006-105, a Variance request for the front, side and rear setbacks and a Conditional Use Permit for type 21, 41, and 42 alcohol licenses. The Variance was denied by the Planning Board on October 23, 2006."

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Meeting
Disclosures

Mrs. Ramos stated that she met with the project applicant and members of the community, and has family members who own property within the Rancho area.

Mr. Golonski stated that he met with Mr. Davies and Mr. Hastings after the Planning Board denial.

Dr. Gordon stated that he spoke with community members but did not meet with the applicant.

Mr. Vander Borgh reported on meeting with the applicant briefly and with some of the neighbors.

Mr. Campbell stated that he was born and raised in the Rancho area and his parents still live there. He noted that he met with Mr. Davies and Mr. Hastings, and with Mr. Gora, Ms. O'Carroll and Mr. Dyson.

Notice
Given

The City Clerk was asked if notices had been given as required by law. She replied in the affirmative and advised that the City Clerk's Office received 2,133 pieces of correspondence in favor of the project; 366 in opposition; 33 in general correspondence; a binder that contains articles from the Leader and a list of 71 names opposed to the project and 76 letters in opposition; and, a letter sent by Ms. O'Carroll.

Staff Report

Mrs. Forbes, Deputy City Planner, Community Development Department, requested the Council consider an appeal of the Planning Board's decision regarding a Whole Foods market proposed at 901 West Alameda Avenue. She reported that on October 23, 2006, the Planning Board (Board) denied the project with a 4-1 vote but subsequently, the applicant appealed the decision with modifications to the project. She stated that at the Board hearing, there were many speakers for and against the project, and following the hearing and request for appeal, staff and the Council have also received numerous comments from the public, some of which resulted in additional analysis being conducted. She added that traffic counts were taken on a Saturday for four of the nearby intersections and a full analysis was conducted on the additional impacts that a Whole Foods project would add on those weekend trips. She also reported that a study was conducted at the existing driveways along Alameda Avenue to determine the number of vehicles turning in and out of the left-turn lane and to confirm that enough space will be allocated for the Whole Foods project's driveways. Counts were taken on equestrians and pedestrians, mostly school children traveling through the Main Street and Alameda Avenue intersection,

additional analysis was done regarding air quality and the Mitigated Negative Declaration (MND) was revised to depict all the analyses that had been completed. She stated that the additional study and analysis led to revised and improved environmental documents, project changes such as increased queing in the garage, and modified Conditions of Approval such as requiring the developer to contribute to neighborhood protection programs for various local street improvements.

Mrs. Forbes noted that in order to approve the project, all findings for the various entitlement applications have to be made. She added that a resolution was made available to the Council and the public, including: six findings required for approval of the Conditional Use Permit for alcoholic sales; a finding that the public convenience is served by the availability of alcohol at the proposed market; four findings for approval of the Variance for setbacks; and, four findings for the approval of the Development Review, all of which staff had been able to make.

Mrs. Forbes stated that the Council must make the findings prior to approval, but if they cannot be made then the project should be denied. She recommended the Council uphold the appeal and approve Project No. 2006-105, a Conditional Use Permit, Variance, Development Review, and the MND related thereto, subject to the Conditions of Approval.

Applicant

Mr. Hastings, Principal of Direct Point Advisors, representing the applicant, requested the Council reverse the decision of the Planning Board and approve the proposed Whole Foods Market project at the corner of Alameda Avenue and Main Street. He gave a brief historic overview of the commercially-zoned site and the previous and current uses in the surrounding area. He also elaborated on the public outreach efforts made by the applicant, including two City-sponsored community meetings, two smaller home gatherings and numerous door-to-door, person-to-person informational meetings.

Mr. Davies, applicant, expressed hope that the Council would view the benefits of the project to the community and vote to approve it. He noted that the project meets the Zoning Code requirements and that the increase in traffic would not be significant. He added that Whole Foods has been looking for a site in Burbank for well over a decade and that the proposed site meets their requirements. He added that a detailed analysis has been conducted for each parcel on eight major streets in Burbank including Alameda Avenue, Burbank Boulevard, Glenoaks Boulevard, Hollywood Way, Magnolia Avenue, Riverside Drive and Victory Boulevard. He noted that of the 1,542 commercial parcels allowing grocery stores, 90 percent are too small or shallow for a grocer. He stated that

only the proposed site meets all the criteria for a Whole Foods Market in Burbank. He also explained the difference between a Whole Foods Market and other conventional grocers, in that the sales area of the store is derived after deducting the food preparation and warehouse areas. He stated that because a Whole Foods Market has to prepare many fresh foods on-site, their sales area is 10 to 15 percent smaller than a conventional grocery store. He reported that the proposed sales area will be approximately 39,000 square feet which is 6,000 square feet less than the Pavilions, and the store size is in line with other grocery companies within the industry. He noted that the existing buildings at Main Street and Alameda Avenue total 45,543 square feet and the proposed building is 13,997 square feet larger. He also stated that the proposed project is a one-story pedestrian-oriented market, served by two levels of subterranean garage which will provide parking in excess of Code requirements. He also noted the changes made taking into consideration community input such as providing a wider setback, widening Main Street, numerous off-site and street improvements, architectural changes, lowering the store floor to make it more pedestrian-friendly, funding neighborhood traffic calming measures, and additional project studies and reviews, costing well over \$2.3 million. He stated that much of the disapproval of the project was based on misinformation and commended staff for their work.

George Curry, Vice President Whole Foods Market, also reiterated that for over 10 years, Whole Foods has been looking for a suitable location in Burbank and this site meets all the criteria.

Mr. Hastings summarized that the facts contained in the staff report speak for themselves and that the proposed project is well planned, does not endanger the equestrians or the pick-up and drop-off of children at the schools, is environmentally friendly, community embracing, is a charitable business and will not have any significant traffic impacts. He also stated that the shopping carts will be equipped with electronic locking devices to keep them on the property. He mentioned that the project will be a great and healthy benefit to the neighborhood, Burbank residents as a whole and will have additional fiscal benefits to the General Fund. He also noted that the Whole Foods Company is listed in one of the top 15 companies to work for by Fortune Magazine.

Citizen
Comment

Appearing to comment in support of the project were: Nick Moran; Gail Just; India Penney; Linda Bass; Bobby Banks; Cheri Didear Loomes; John Penny; Aris Kakkis; Denise Taylor; Steve Taylor; Tony Cimolino; Karoly Fenyvesi; Susan Wolfson; Maria Fenyvesi; Russell Brown; Mike McCormick; Pat Gilhooly; Jeff Lulla; Doug Norris/Jennifer Drake; Gary Olson, Chamber of Commerce; Tom

Crowther; Jill Vander Borgh; Robert Dodds; Julie McGovern; Brian McGovern; Barbara Elliott; Butler Shaffer; Bill Toth; Lori Strauss; Leslie Smith; Mike Napolitano; Al Leifer; Scott Eberly; Denise Forlizzi; Kimberly Schrupp; Jason Pullman; Wendy Norman; and, Martine LeBlanc.

Commenting in opposition to the project were: Bobby Sherwood; Cheryl Cashman; Patrika Darbo; John Bresee; Lois Westphal; Ileana Miller; Sam Anam; Catherine Adamic; Elaine Franklin; Andreas Baygulova; Mara Baygulova; Sylvia Sutton; Patrick McHugh; Nancy Sherwood; Gaye Guilmette; Phil Berlin; Paul Dyson; Alan Franklin; Esther Barr, who also presented a petition with 1,037 names and eight letters in opposition; Rosalie Salvato, Elizabeth Bohn, Davida Oberman, Hilde Hakl, Phil Restivo, showing a 10-minute video in opposition; Emily Gabel-Luddy; Susan O'Carroll; Bill Smith; Marva-Lea Kornblatt; Darlene Anam; Gael McGregor Walsh; Roman Gora; John Chipman; Jim Sherwood; Cathy Cristel; Noreen Reardon; Michelle Feather; Bart Giovannetti; Carolyn Berlin; Janet Greenlin; Suzanne Thomas; Michael Donovan; Kandace Soderstrom; B.C. Cameron; Isabella Wiley; Howard Rothenbach; Shari Wendt; Jim Franz; Lou Antonio; Reverend James Hunter; Diana Hoch; David Kwok; Cat Still; Ron Bateman; Mark Stebbeds; Douglas Hill; Don Elsmore; Lisa Dyson; Sheila Harmer; Eden Rosen; David Piroli; Donna Stebbeds; Michael Scandiffio; LaVerne Thomas; Leah Brandon; Ivette Silberman; Donna Ricci-Watts; and, James Schad.

Rebuttal Comments

Bruce Ehrlich, Paul Hastings Law Firm, responded to public comment with regard to the appropriateness of the MND for the project.

Pat Gibson, Traffic Engineer with Kaku and Associates, Inc. responded to public comment with regard to the width of the sidewalks; stated that employee parking will be assigned on-site on the lower level of the parking lot; noted that trips and parking do balance in the peak hour and throughout the day; stated that the traffic report conducted is the same as would have been done for a MND, Negative Declaration, Focus Environmental Impact Report (EIR) or Full EIR; suggested changes to the horse lane; stated that traffic lanes at the Alameda Avenue and Main Street intersection will be widened to retain a Level of Service B; clarified that local streets and truck traffic were included in trip generation studies; and, the project meets all traffic rules and goals of the Council.

Mr. Hastings made clarification with regard to the mailers sent by the developer; stated that the size of the existing building is almost 45,000 square feet and the addition would be less than 15,000 square feet; made comparison with the Pavillions development which included several other businesses; noted the same fears

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surfaced during the Pavillions approval that the development would be a detriment to the neighborhood which never materialised; noted that 25 percent of grocery sales are taxable; setbacks on Main Street are 25 feet, including the street widening portion; stated there will be a landscape buffer between the sidewalk and patio; commented on the safety of children and noted that the developer and staff ran videos and found that few children and horses would potentially be endangered; and, added that a peer review of the traffic study was done by staff and came to the same conclusions that there are no significant impacts that will detrimentally affect the neighborhoods.

12:25 A.M.
Hearing
Closed

There being no further response to the Mayor's invitation for oral comment, the hearing was declared closed.

Council
Deliberations

Dr. Gordon stated that the market will attract customers from a certain radius; noted the contradictory statements in the MND; stated he cannot make findings for the Development Review approval, disagreed that there will not be any significant increase in traffic and that there may be a significant under-estimation of the traffic impacts; noted potential impacts from idling and delivery trucks, and removal of on-street parking with the proposed street widening; highlighted a disclaimer on the site plan indicating that the site plan shows the landlord's plan for the configuration of the shopping center as of the date of the site plan only and is not deemed to bind the landlord as to the size, space, configuration, location, floor area of any particular building depicted and is for reference purposes only; expressed concern with air quality impacts to sensitive receptors in close proximity to the proposed site; mentioned the potential for discovery of toxic substances during excavation for the subterranean parking as the site lies under a toxic plume and potential danger for flooding; and, noted the project's incompatibility with the General Plan and other potential impacts such as traffic and construction noise and vibrations.

Mrs. Ramos responded to comments regarding the Media District Specific Plan and the Neighborhood Protection Plan, and noted the significant input received from all residents. She acknowledged that the proposed project has desirable qualities and that Whole Foods is known to be a generous contributor to the communities wherein they are situated. She was also not concerned with the project's impacts on the Pavillions or Trader Joe's businesses. She noted that the underground parking promotes a pedestrian-friendly environment and had no concerns with regard to the alcohol

licensing issue. She acknowledged that the intent of the food specialty store/grocery store was not clear in the Rancho Masterplan but stated that the preservation of the uniqueness of the Rancho neighborhood is one of the most important things being considered, and how this project either enhances or detracts from it. She noted her responsibility to preserve the integrity of the neighborhoods and that granting the Variance defies the intent of the Rancho Masterplan and as such, could not make the findings.

Mr. Vander Borcht stated that the Planning Board did not deliberate the project's pros and cons but whether or not adequate review had been done with respect to traffic. He acknowledged that traffic has changed but change is inevitable and traffic for the most part consists of Burbank residents and not necessarily foreign individuals. He noted that two traffic studies clearly indicate that the impact does mean additional traffic, but not dramatic enough to determine that this is not the right project for this location. He stated that a corner lot qualifies for a Variance as two 25-foot setbacks would not be required on both sides fronting the street, and as such, a project on a corner lot with a 10-foot setback on one side and 25 feet on the other is typical and reasonable, and findings can be made to grant the Variance. As to the adequacy of the environmental review, he stated that an EIR does not need to be exhaustive or endless and he believed that the engineers with a project of this magnitude would figure out how to handle liquifaction issues. He added that to ask staff to do an exhaustive review seems unnecessary and goes over and beyond the scope of what any public body has the ability or right to do. He stated his preference to make compromises to find a project that the Council feels is responsive to the needs of the community. He expressed a need to increase the stacking distance on Alameda Avenue to 105 feet similar to Main Street and added that the widths of the driveways need to conform to the norm in surrounding area projects of 30 to 35 feet. He noted that there are other measures that could be discussed but only if the rest of the Council has the will to find a compromise.

Mr. Golonski noted the effort put into the MND analysis and stated that he was comfortable that the Revised MND is adequate. However, he expressed concerns with making the findings to grant the Variance and the justifications. He acknowledged that there is a tremendous desire for the project in the community and expressed a desire to make the project work as it would undoubtedly be a huge asset. He also expressed concern with the size of the project, noting that the size of the store is what is driving the concern about the impacts. He also noted the potential for traffic and circulation impacts and cut-through traffic in the neighborhood.

Mr. Campbell stated that the findings can be made for granting the

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Variance and noted that the Rancho Masterplan was not specific enough. He also stated that the environmental impacts laid out in the staff report are more than adequate. In terms of the traffic studies, he stated that the due diligence from the applicant has been made and made quite well. However, he expressed concern with the proposed project size and the potential impacts to the equestrian neighborhood and stated that proper mitigations must be put in place to ensure that the safety of the equestrian uses and children are not in harms way.

Mr. Vander Borght suggested a compromise for a 15-foot setback on Alameda Avenue, a plaza elevation of no more than 30 inches above the ground and a 25-foot setback on Main Street.

Mr. Golonski inquired of the applicant about the willingness to reduce the project size by a third and stated that he was willing to be flexible with the setback requirements.

Mr. Hastings responded that the applicant would be willing to make changes to the project and work with the Council to come up with a viable project. Mr. Davies stated that a reduction in square footage equates to a reduction in revenue, noted the challenge in reducing the square footage while maintaining the parking and land dedication, and added that a 40,000 square-foot project would not work.

Mrs. Ramos noted that reducing the project's size without maintaining the parking would not reduce the intensity of use and as such, would not accomplish the intent of the Rancho Masterplan.

Dr. Gordon stated that a grocery store use was not intended for the site in the Rancho Masterplan.

Mr. Vander Borght noted the need to make a compromise and suggested making the project comply with the setback requirements while maintaining the mitigation measures. He added that the proposed use is a food specialty store as indicated in the Rancho Masterplan.

2:15 a.m.
Recess

The Council recessed at this time. The meeting reconvened at 2:23 a.m. with all members present.

Continued
Council
Deliberations

Mr. Golonski suggested that the hearing be continued to allow the applicant an opportunity to revise the plans.

Mr. Campbell noted the potential implications of a by-right project which would have more impacts than the proposed project.

Mrs. Ramos expressed interest in receiving information on a comparison of the proposed project and projects that would be allowed per the Rancho Commercial Zone such as a drug store or paint store uses. She was willing to consider other options such as a 40,000-square foot project and meeting the Variance requirements, although her support was not guaranteed. She stated that she did not have enough information at this time to make a decision on the acceptable size of the project in an effort to meet the intent of the Rancho Masterplan and preserve the neighborhood. She also noted that the proposed project has a very intense use and was not sure that all impacts could be mitigated, especially on Valencia Avenue.

Mr. Vander Borght stated that Valencia Avenue has approximately 20 properties zoned for horse use, but currently there are only six horses in the area. He noted that funds are being set aside for mitigation measures on Valencia Avenue, preferably for a four- or five-year period. He also agreed that a reduced project size will still have the same intensity of use.

Motion
Dies

It was moved by Mr. Golonski that “the hearing be continued to provide the applicant an opportunity to revise the project in response to the Council’s discussion.” The motion died due to lack of a second.

Motion

It was moved by Mr. Vander Borght that “the following resolution be passed and adopted, subject to changes suggested including elimination of the setback Variance requirement, widening of driveways, lowering of patio height to 30 inches and extending the time period for the traffic mitigation measures from two years to five years.”

A RESOLUTION OF THE COUNCIL OF THE CITY OF BURBANK APPROVING CONDITIONAL USE PERMIT NO. 2006-105, VARIANCE, AND DEVELOPMENT REVIEW NO. 2006-105 AND ADOPTING A MITIGATED NEGATIVE DECLARATION RELATED THERETO (WHOLE FOODS MARKET).

Motion
Dies

The motion died due to lack of a second.

Motion

It was moved by Dr. Gordon and seconded by Mrs. Ramos that “the appeal be denied and staff be directed to prepare the appropriate resolution.”

Mr. McDougal requested clarification as to whether the denial

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would be without prejudice such that the Burbank Municipal Code does not bar the applicant from reapplying within a one- year period.

Amended
Motion
Fails

The motion was amended by Dr. Gordon and seconded by Mrs. Ramos that "the denial be without prejudice." The motion failed with Mr. Golonski, Mr. Vander Borght and Mr. Campbell voting no.

Motion

It was moved by Mr. Vander Borght, seconded by Mr. Golonski and carried with Dr. Gordon voting no that "the hearing be continued to February 20, 2007 to provide the applicant an opportunity to revise the project plans taking into consideration the Council's deliberation."

Initial Open
Public Comment
Period of Oral
Communications

Mr. Campbell called for speakers for the initial open public comment period of oral communications at this time.

Citizen
Comment

Appearing to comment were: Don Elsmore, on airport issues; James Schad, on the restroom sanitizer and Dink O'Neal, in support of two candidates for City Council.

Staff
Response

Members of the Council and staff responded to questions raised.

Agenda Item
Oral
Communications

Mr. Campbell called for speakers for the agenda item oral communications at this time.

Citizen
Comment

Appearing to comment were: Don Elsmore, on Airport issues; and James Schad, in support of the tobacco retailers ordinance.

Staff
Response

Members of the Council and staff responded to questions raised.

Motion

It was moved by Mr. Golonski and seconded by Mr. Vander Borght that "the following item on the consent calendar be approved as recommended."

1502

RESOLUTION NO. 27,417:

1st Amend to the PSA with Orsa Consulting Eng. A RESOLUTION OF THE COUNCIL OF THE CITY OF BURBANK APPROVING AND AUTHORIZING EXECUTION OF A FIRST AMENDMENT TO A PROFESSIONAL SERVICES AGREEMENT WITH ORSA CONSULTING ENGINEERS, INC.

Adopted The consent calendar was adopted by the following vote:

Ayes: Council Members Golonski, Gordon, Vander Borght, Ramos and Campbell.

Noes: Council Members None.

Absent: Council Members None.

Ordinance Submitted It was moved by Mr. Vander Borght and seconded by Mr. Golonski that "Ordinance No. 3714 be read for the second time by title only and be passed and adopted." The title to the following ordinance was read:

604 Tobacco Retailers Licensing Ord. ORDINANCE NO. 3714:
AN ORDINANCE OF THE COUNCIL OF THE CITY OF BURBANK ADDING ARTICLE 25 TO CHAPTER 8 OF THE BURBANK MUNICIPAL CODE ESTABLISHING LICENSING REQUIREMENTS AND PROCEDURES FOR ALL BUSINESSES WHO ENGAGE IN THE SALE OF TOBACCO PRODUCTS.

Adopted The ordinance was adopted by the following vote:

Ayes: Council Members Golonski, Gordon, Ramos, Vander Borght and Campbell.

Noes: Council Members None.

Absent: Council Members None.

Final Open Public Comment Period of Oral Communications There was no response to the Mayor's invitation for speakers for the final open public comment period of oral communications at this time.

3:04 A.M. Adjournment There being no further business to come before the Council, the meeting was adjourned at 3:04 a.m.

Margarita Campos, CMC

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City Clerk

APPROVED SEPTEMBER 18, 2007

Mayor of the Council
of the City of Burbank