

City of Brisbane

Agenda Report

TO: Honorable Mayor and City Council

FROM: Community Development Director via the City Manager

SUBJECT: **Appeal- Planning Commission Denial of Time Extension for Sierra Point Opus Office Project; 3000-3500 Marina Boulevard; Cases Design Permit DP-2-11, Use Permit UP-7-11 and Variance V-2-11**

DATE: Meeting of July 18, 2011

Purpose:

For the City Council to consider the applicant's appeal of the Planning Commission's denial of requested time extensions for the above-noted cases.

Background:

On June 23, 2011 the Planning Commission by unanimous vote (4-0) denied time extensions for the above-referenced cases to implement an office project at Sierra Point consisting of 438,104 square feet of office space in 2 buildings and 1,388 parking spaces including a 5-level parking structure on approximately 8.87 vacant acres on the northwest side of Marina Boulevard east of Highway 101. The project was originally approved by the Planning Commission in 2009, and this approval was upheld by the City Council upon appeal. No changes have been proposed to the project in conjunction with the time extension, and no changes to City ordinances or regulations relevant to the 2009 approval have been adopted. Staff recommended that the Planning Commission approve the requested time extensions.

The applicant has appealed the action of the Planning Commission in denying the time extensions and their appeal letter is attached. A detailed project description and analysis is included as an attachment to this report, along with the Planning Commission's resolution of denial, meeting minutes, and staff reports.

Discussion:

As noted in attached Planning Commission Resolution DP-2-11/UP-7-11/V-2-11 denial was based on the Planning Commission's finding pursuant to Section 17.40.060.B of the Municipal Code that the project would be "...detrimental to the health, safety, comfort and general welfare of persons...working in the neighborhood...[and] injurious or

detrimental to...the general welfare of the City.” As noted in the attached meeting minutes, specific concerns were raised regarding the personal safety of parking structure users, changed circumstances, and the desire for the project to generate additional renewable energy beyond what was specified in the previously approved conditions of approval.

The applicant’s appeal letter asserts that the proceedings of the Commission were deficient in a number of substantive ways, including a lack of findings and supporting evidence to support the Commission’s decision.

Fiscal Impact:

Denial of the time extension would eliminate a condition of approval previously imposed with the developer’s concurrence to provide \$360,000 to be used at the City’s discretion for a City-sponsored alternative energy generation project.

Measures of Success:

That the City Council make a final determination on this appeal as required pursuant to the Municipal Code.

Attachments:

Appeal Letter

Planning Commission Appeal Report, Minutes and Staff Reports


Community Development Director


City Manager

Date Submitted: 7/1/11
Fee: \$1,448.00
Receipt No.: 7758

A P P E A L

I/We hereby appeal the action by the

☒ Planning Commission
☐ Zoning Administrator
☐ Planning Director

regarding Application No. Design Permit DP-2-11; Use Permit UP-7-11; Variance V-2-11

for Sierra Point Office Project

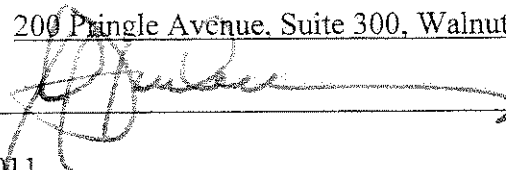
at 3000-3500 Marina Boulevard

The reasons for the appeal are: The factual and legal grounds for this appeal of the Planning Commission's denial of the above-described Applications on June 23, 2011 include without limitation the following: (1) The Commission proceeded without or in excess of its jurisdiction; (2) There was not a fair or impartial proceeding; (3) The Commission prejudicially abused its discretion; (4) The Commission did not proceed in the manner required by state or local law; and (5) The Commission's decision was not supported by the findings, and the findings were not supported by substantial evidence in the record. We shall provide additional materials in support of this appeal prior to the appeal hearing date.

Name(s): Michael Patrick Durkee

Phone Number: (415) 273-7455; (510) 918-5873

Mailing Address: 200 Pringle Avenue, Suite 300, Walnut Creek, CA 94596

Signature(s): 

Date: June 29, 2011

City of Brisbane

Report from the Planning Commission

TO: Honorable Mayor and City Council

FROM: Planning Commission

DATE: July 14, 2011

SUBJECT: **3000-3500 Marina Boulevard;** Appeal of the Planning Commission's Denial of Design Permit DP-2-11, Use Permit UP-7-11 and Variance V-2-11; Time Extensions for Design Permit DP-5-07 Approving Two Office Buildings and a Parking Structure with Related Site Grading, Use Permit UP-3-08 Accepting 1,373 Parking Spaces Including 1,175 "Universal" Spaces Located Off Site within the Parking Structure, and Variance V-1-08 for the Parking Structure's Lot Coverage and East Side Setback; Don Little, Don Little Group, applicant & appellant; Sierra Point LLC, owner; APN 007-165-020

This report, in response to the appeal of the Planning Commission's denial of the above referenced application, is hereby presented to the City Council as required by Brisbane Municipal Code Section 17.52.030.

The facts pertaining to the decision of the Planning Commission are as stated in the attached materials and testimony submitted to the Planning Commission at and prior to its meetings of May 26 and June 9 & 23, 2011.

The reasons for the Planning Commission's action are as stated in the attached Resolution DP-2-11/UP-7-11/V-2-11, including the findings, and as expressed in the attached Minutes.



JAMEEL MUNIR
Planning Commission Chairman

Attachments:

Resolution DP-2-11/UP-7-11/V-2-11
Planning Commission Minutes (Excerpts) for the Meetings of 5/26/11, 6/9/11 & 6/23/11
Planning Commission Agenda Reports for 5/26/11 & 6/23/11 Meetings

3000-3500 Marina Boulevard

7/14/11

Page 2

Attachments (continued):

5/26/11 Email from Tim Tune

5/31/11 Email from Don Little

6/23/11 Letter from Dana Dillworth

Shadow Analysis Submitted by Tom Heinz 6/23/11

Photos of Staff's Model Presented 6/23/11

RESOLUTION DP-2-11/UP-7-11/V-2-11

A RESOLUTION OF THE CITY OF BRISBANE
PLANNING COMMISSION DENYING EXTENSION OF THE PREVIOUSLY APPROVED
DESIGN PERMIT, USE PERMIT AND VARIANCE FOR THE SIERRA POINT OFFICE PROJECT

WHEREAS, Don Little, the applicant, applied to the City of Brisbane for extension of the approval of an office project totaling approximately 438,104 square feet in 2 buildings, a 5-level 1,175-space parking structure and 211 surface parking spaces on approximately 8.9 vacant acres located on the northwesterly side of Marina Boulevard, easterly of Highway 101 at Sierra Point, such approval including a design permit and related grading, parking modification use permit, and variance, such extension applications being identified as Design Permit DP-2-11, Use Permit UP-7-11 and Variance V-2-11; and

WHEREAS, on May 26 and June 9 & 23, 2011 the Planning Commission conducted public hearings of the applications, at which time any person interested in the matter was given an opportunity to be heard; and

WHEREAS, the Planning Commission reviewed and considered the agenda reports relating to said applications, the plans and photographs, the written and oral evidence presented to the Planning Commission in support of and in opposition to the applications; and

WHEREAS, a Mitigated Negative Declaration for the project had been adopted by the Planning Commission on February 26, 2009, and affirmed by the City Council on April 20, 2009.

NOW THEREFORE, based upon the findings set forth in the hearing record, the Planning Commission of the City of Brisbane, at its meeting of June 23rd, 2011, did resolve as follows:

Design Permit Application DP-2-11, Use Permit UP-7-11 and Variance V-2-11 are denied, because the Planning Commission found that "the establishment, maintenance or operation of the use applied for will, under the circumstances of the particular case, [will] be detrimental to the health, safety, comfort and general welfare of the persons ... working in the neighborhood of such proposed use, [and it] will it be injurious or detrimental to property and improvements in the neighborhood or the general welfare of the city," as required by Brisbane Municipal Code Section 17.40.060.B.

ADOPTED this 23rd day of June, 2011, by the following vote:

AYES: Cunningham, Do, Parker Munir
NOES: None
ABSENT: Reinhardt


JAMEEL MUNIR
Chairman

ATTEST:

JOHN SWIECKI, Community Development Director

excerpt
BRISBANE PLANNING COMMISSION
Action Minutes of May 26, 2011
Regular Meeting

NEW BUSINESS

1. **PUBLIC HEARING: 3000-3500 Marina Boulevard;** Design Permit DP-2-11, Use Permit UP-7-11 and Variance V-2-11; Time Extensions for Design Permit DP-5-07 Approving Two Office Buildings and a Parking Structure with Related Site Grading, Use Permit UP-3-08 Accepting 1,373 Parking Spaces Including 1,175 “Universal” Spaces Located Off Site within the Parking Structure, and Variance V-1-08 for the Parking Structure’s Lot Coverage and East Side Setback; Don Little, Don Little Group, applicant; Sierra Point LLC, owner; APN 007-165-020

Senior Planner Tune presented the agenda report. He proposed that recommended Condition of Approval U be revised as requested by the applicant, with the City Attorney’s concurrence. At Chairman Munir’s request, he confirmed that no changes are proposed to the project as previously approved.

Chairman Munir opened the public hearing.

Don Little, applicant, explained that due to the economy, the project was not able to proceed. He confirmed that no design changes were proposed, because the approved design fit the site and the needs of the project’s expected customers.

In response to Commissioner Parker’s dismay with the previously approved garage, Mr. Little noted that through appropriate colors and tree plantings, it could be downplayed as a secondary element of the overall project design. He added that the garage could help to serve as a sound buffer to the freeway noise.

The Commissioners expressed concerns about personal safety in such a large parking structure and the need for a security system.

Mr. Little responded to Commissioner Cunningham comments regarding protecting the adjoining wetlands during grading and construction. He also responded to questions from Commissioner Reinhardt regarding how providing photovoltaic panels and additional public space would affect the project’s LEED rating.

Chairman Munir inquired as to where wind-sheltered public space could be accommodated. Mr. Little noted the site plan constraints, pointing out that the parking structure may help serve as a wind buffer for the outdoor spaces proposed.

Chairman Munir asked about whether the project would deal with municipal landfill issues of differential settlement, methane gas and clay cap maintenance. Mr. Little recounted the property owner’s experience with a number of existing buildings constructed at Sierra Point. Community Development Director Swiecki noted the County Environmental Health Division’s responsibilities regarding these matters.

Commissioner Parker questioned why the parking garage wasn't designed as two structures that could be split with the two office buildings. Mr. Little explained that a single larger structure could be designed with multiple entries, interior lighting, bright colors and security measures to address personal safety concerns. He noted that the proposed design and location were the efforts to maintain a low profile for structured parking that would avoid impacting the shoreline, provide a wind buffer without detracting from a sense of entry for the entire project.

Chairman Munir suggested using screening for the parking structure similar to that used for the Centennial Towers development in South San Francisco to avoid the look of a typical parking garage. Mr. Little stated that muted coloring would be the most important aspect, with landscaping taking more time to provide screening. Director Swiecki pointed out that the north end of the structure facing the shoreline warranted special treatment. He also noted that using a top band of dark blue facing the freeway would be more effective than attempting to use articulation on such a long elevation.

Director Swiecki explained how Condition of Approval V was added by the City Council to provide the applicant renewable energy options, based upon the approach that was taken with the Sierra Point Biotech Project.

Tom Heinz addressed the Commission. He questioned the accuracy of the submitted renderings and the adequacy of the proposed findings, especially in regards to the numerous variances requested. He suggested that reducing the size of the office buildings would mean a smaller parking structure and more room for the Bay Trail. He opposed subdivision of the site.

Chairman Munir raised the issue of emergency egress at Sierra Point. Mr. Little explained that this was addressed by a condition of approval that will be fulfilled prior to issuance of building permits for the project.

The Commissioners and the applicant discussed whether the feasibility of photovoltaic panels could be determined at the present time. Chairman Munir suggested basing the square footage of the panels upon a percentage of the project's projected energy consumption. Mr. Little responded that the project fully complies with adopted requirements, which Condition V goes beyond, but that he was willing to work with the City on the issue so long as he did not get painted into a corner.

Commissioner Parker moved to close the public hearing. The motion was seconded by Commissioner Cunningham and approved 4-0 (Commissioner Do absent).

The Commissioners discussed the options provided by Condition V and whether photovoltaic panels could be required based upon percentage of energy consumption.

Director Swiecki noted that Condition V was adopted by the City Council, that there had been no changes in the City's green building ordinance since, and that the in-lieu fee option was provided to fund a renewable energy project at a better location that would

serve the greater good. He also explained how the use and maintenance of the parking structure would be shared by the two office buildings.

Commissioner Cunningham made the motion to continue the public hearing to the June 9th meeting, which was seconded by Commissioner Parker and approved 4-0 (Commissioner Do absent).

excerpt
BRISBANE PLANNING COMMISSION
Action Minutes of June 9, 2011
Regular Meeting

OLD BUSINESS

1. **PUBLIC HEARING: 3000-3500 Marina Boulevard;** Design Permit DP-2-11, Use Permit UP-7-11 and Variance V-2-11; Time Extensions for Design Permit DP-5-07 Approving Two Office Buildings and a Parking Structure with Related Site Grading, Use Permit UP-3-08 Accepting 1,373 Parking Spaces Including 1,175 “Universal” Spaces Located Off Site within the Parking Structure, and Variance V-1-08 for the Parking Structure’s Lot Coverage and East Side Setback; Don Little, Don Little Group, applicant; Sierra Point LLC, owner; APN 007-165-020

The Commission granted the applicant’s written request that the item be continued to the meeting of June 23, 2011.

excerpt
BRISBANE PLANNING COMMISSION
Action Minutes of June 23, 2011
Regular Meeting

OLD BUSINESS

1. **PUBLIC HEARING: 3000-3500 Marina Boulevard;** Design Permit DP-2-11, Use Permit UP-7-11 and Variance V-2-11; Time Extensions for Design Permit DP-5-07 Approving Two Office Buildings and a Parking Structure with Related Site Grading, Use Permit UP-3-08 Accepting 1,373 Parking Spaces Including 1,175 "Universal" Spaces Located Off Site within the Parking Structure, and Variance V-1-08 for the Parking Structure's Lot Coverage and East Side Setback; Don Little, Don Little Group, applicant; Sierra Point LLC, owner; APN 007-165-020

Senior Planner Tune presented the agenda report.

In response to questions from Chairman Munir, Senior Planner Tune and Community Development Director Swiecki explained the City Attorney's advice regarding attempting to impose more requirements upon the project than provided for in the Municipal Code. Chairman Munir and Commissioner Cunningham expressed dissatisfaction with the City's current standards regarding on-site energy generation.

Chairman Munir reopened the public hearing.

Don Little, applicant, noted that no changes in the previously approved project were being proposed and thus requested extension of those approvals.

Michele Salmon recommended denial of the request, in which case a reapplication could be subject to new requirements.

Dana Dillworth noted the changes in circumstances she had referenced in her correspondence to the Commission were dying trees at Sierra Point and global climate change.

Tom Heinz spoke in opposition to the requested extension. He presented the Commission his shadow study to show how the project would impact the adjoining wetlands. He recommended that the project be redesigned with smaller buildings that would better fit the site.

Terry O'Connell stated that the freeway visibility of this site demanded more of this project.

Mike Durkee, as attorney for the applicant, said that the Commission must comply with the rule of law. He noted that his client had already agreed to more than what the City's ordinances require, and the City cannot force him to agree to a development agreement.

Andrew Diamond spoke in favor of the project, saying that it would be an improvement over the existing eyesore of a vacant lot and would bring new business to Sierra Point. He acknowledged the concerns raised by others, but asked them to consider the bigger picture.

Ms. Salmon reminded the Commission that it had the right to deny the project.

There being no one else wishing to speak, the public hearing was closed on a motion by Chairman Munir, seconded by Commissioner Cunningham and approved 4-0 (Commissioner Reinhardt absent).

Chairman Munir wanted stronger language in the condition of approval regarding emergency vehicular access to Sierra Point.

Commissioner Do reviewed the changes in circumstances raised by Ms. Dillworth. Director Swiecki noted that the project had been previously reviewed by the Department of Fish & Game, which noted no significant impacts to the adjoining wetlands.

Commissioner Parker expressed concerns about the size of the parking garage. She said that providing more renewable energy would make the project more competitive, given the precedent set by the Sierra Point biotech project.

Commissioner Cunningham characterized the proposed extension as a step backwards in time. Commissioner Do added that the changing times are a change in circumstance

Commissioner Parker made the motion to deny the proposal. The motion was seconded by Commissioner Cunningham and approved 4-0 (Commissioner Reinhardt absent). It was clarified that the inability to find that the project would not be detrimental to health, safety and general welfare of the public was the rationale for the denial.