

City of Brisbane

Planning Commission Agenda Report

TO: Planning Commission For the Meeting of 2/25/10

FROM: John Swiecki, Principal Planner, via William Prince, Community Development Director

SUBJECT: **Freeway 101 at Beatty Avenue;** Use Permit UP-1-10, Interim Use Permit for Existing Billboard to Remain for 5 Years; Robert Hatton, Clear Channel Outdoor, applicant; Oyster Point Properties (Universal Paragon Corporation), owner; APN 005-340-050

Request: The applicant requests approval of an Interim Use Permit for an existing billboard (“nonappurtenant advertising structure” per Brisbane Municipal Code Section 17.36.020.A.14) to remain for an additional five years. The structure, oriented to Highway 101, is located approximately 100 ft. south of Beatty Avenue at Hwy 101. The structure consists of two illuminated 23 ft. by 60 ft. faces, each at a 65-degree angle to the freeway with a total height of 55 ft. The requested approval would extend the previously approved Use Permits UP-4-82, UP-12-89, UP-5-94, UP-17-99 and UP-20-04.

Recommendation: Conditionally approve Use Permit UP-1-10 per the staff memorandum with attachments, via adoption of Resolution UP-1-10 with Exhibit A containing the findings and conditions of approval.

Environmental Determination: Existing off-premise signs are categorically exempt from the provisions of the California Environmental Quality Act per Section 15301 of the State CEQA Guidelines. The exceptions to this categorical exemption referenced in Section 15300.2 do not apply.

Applicable Code Sections: The existing billboard is a “nonconforming sign” per Brisbane Municipal Code Sections 17.36.020.A.15 & 17.36.030.C, which is allowed to remain per BMC Section 17.36.080. BMC Chapter 17.41, adopted June 10, 1996, establishes the process for approving interim uses in the Baylands subarea.

Background: On February 28, 1983, as part of a legal settlement of a lawsuit concerning enforcement of the City’s billboard prohibition, 6 existing billboards along Bayshore Boulevard were removed and the City Council conditionally approved Use Permit UP-4-82 for a billboard located at the southwesterly corner of the 101 Freeway at Beatty Avenue. As detailed in the attached original conditions of that approval, the original use permit was granted for a term of six years, and the applicant was allowed to apply for additional extensions. In regard to subsequent

extensions, the original permit specified that "in considering [the owner's] application for such extension, Brisbane will give due consideration to the character of the neighborhood and environs in which the structure is located and whether there has been a material change therein such that the structure is no longer compatible with the character of said neighborhood."

Analysis and Findings:

BMC Section 17.02.060 requires a finding of consistency with the general plan and any applicable specific plan adopted by the City Council for approval of use permits. BMC Sections 17.41.060.A-F require findings that the interim use will not be detrimental to the public health, safety or welfare, or injurious to nearby properties or improvements; that the interim use will not create any significant environmental impacts; that the interim use will not obstruct redevelopment; that all required public utilities and other infrastructure are or will be available; and that the use will be a benefit to the property and/or the public.

Consistent with General/Specific Plan--General Plan Policy 332 provides for approval of interim uses in the Baylands Subarea. BMC Section 17.41.020 defines "interim use" as one that is not expressly authorized under the redevelopment plan, any specific plan or the zoning regulations, provided that the use is not expressly prohibited in the General Plan or BMC Section 17.41.030. General Plan Program 35f states, "Prohibit new commercial billboard sites and seek to remove those currently in place." The lawsuit settlement discussed above resulted in the removal of six billboards, and established terms for evaluating future extensions of the billboard in question, and these terms still apply. In evaluating the extension there has not been a material change in the character of the Baylands subarea such that the billboard is no longer compatible with the uses of the immediately surrounding neighborhood. No specific plan for the Baylands has yet been adopted as required for development under the PD-TC Planned Development-Trade Commercial General Plan land use designation, and no changes in the character or uses in the vicinity have taken place.

Not Detrimental or Injurious to Neighborhood or City—With no material changes having occurred in the Baylands subarea, allowing the billboard to remain for an additional 5 year term would not appear to be detrimental to the neighborhood.

No Significant Environmental Impacts—Extension of the permit will not result in any physical changes to the existing structure. The operation of existing facilities are categorically exempt under California Environmental Quality Act per Section 15301 of the State CEQA Guidelines.

No Obstruction to Redevelopment-- In considering approval of the Interim Use Permit, the Planning Commission must find that the use "...will not obstruct, interfere with, or delay the intended redevelopment of the property..." (BMC Section 17.41.060.C). The billboard is located within the Brisbane Baylands Specific Plan area, in proximity to the planned Hwy 101/Geneva Ave interchange. Based on preliminary interchange design work undertaken to date, the existing billboard could potentially be impacted by future interchange improvements and/or related grading. However, design work has not been completed so an element of uncertainty remains. Even if the sign location conflicts with the interchange design, there is no funding source nor established schedule the construction of interchange improvements. Final interchange design, funding and construction would involve a multi-year program, and it appears highly unlikely that

allowing the sign to remain for the next five years would interfere with a future interchange project. However, to ensure that the sign will not interfere with the interchange project in the unlikely event it proceeds during the term of the interim use permit, it is recommended that a condition of approval be applied that the applicant acknowledge and agree in writing to remove the sign if it is identified as an obstacle to public improvements.

Availability of Required Utilities and Infrastructure—The site is adequately served, given the use's limited needs.

Benefits to the Property and the Public--BMC Section 17.41.060E requires that the use will provide a benefit to the property, such as the elimination of blight or hazardous conditions, and/or a benefit to the public, such as jobs, revenues, needed goods or services. In this case, the benefit provided to the public is the payment of an annual business license fee to the City of Brisbane. The business license fee rate is 8% of the sign's annual gross receipts. According to the City Finance Department, the annual business license fee has varied between \$50,000-\$80,000 since UP-2-04 was granted in 2005. A local employment program per BMC Section 17.41.060.F is not feasible for this type of use.

Attachments: Applicant's Plans & Photos
Draft Resolution UP-1-10
Original Conditions of Approval- UP- 4-82

RESOLUTION UP-1-10

A RESOLUTION OF THE PLANNING COMMISSION OF BRISBANE CONDITIONALLY APPROVING INTERIM USE PERMIT UP-1-10 TO PERMIT BILLBOARD (NONAPPURTENANT ADVERTISING STRUCTURE) TO REMAIN AT THE SOUTHWEST CORNER OF THE 101 FREEWAY AND BEATTY AVENUE

WHEREAS, Clear Channel Outdoor, the applicant, applied to the City of Brisbane for Use Permit approval for an existing billboard along the 101 Freeway at Beatty Avenue, such application being identified as Use Permit UP-1-10; and

WHEREAS, on February 25, 2010, the Planning Commission conducted a hearing of the application, 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 staff memorandum relating to said application, the plans and photographs, the written and oral evidence presented to the Planning Commission in support of and in opposition to the application; and

WHEREAS, the Planning Commission finds that the proposed project is categorically exempt from the provisions of the California Environmental Quality Act; and

WHEREAS, the Planning Commission of the City of Brisbane hereby makes the findings attached herein as Exhibit A in connection with the Use Permit.

NOW THEREFORE, based upon the findings set forth hereinabove, the Planning Commission of the City of Brisbane, at its meeting of February 25, 2010, did resolve as follows:

Use Permit Application UP-1-10 is approved per the conditions of approval attached herein as Exhibit A.

ADOPTED this twenty-fifth day of February, 2010, by the following vote:

AYES:

NOES:

ABSENT:

Theresa Maturo
Chairman

ATTEST:

WILLIAM PRINCE, Community Development Director

EXHIBIT A

Action Taken: Conditionally approved Use Permit UP-1-10 per the staff memorandum with attachments, via adoption of Resolution UP-20-04.

Findings:

1. Approval of the use permit is consistent with the general plan and any applicable specific plan adopted by the city council, specifically General Plan Policy 332 and Program 35f, in that a condition of approval of the Interim Use Permit seeks to remove the billboard pursuant to the 1983 legal settlement agreement;
2. The proposed interim use and the conditions under which it would be operated will not be detrimental to the public health, safety or welfare, or injurious to properties or improvements in the vicinity, in that there has been no material change in the character of the environs of the billboard such as to necessitate its removal, as detailed in the staff memorandum;
3. The proposed interim use will not create any significant unmitigated adverse environmental impacts, as detailed in the staff memorandum;
4. The proposed interim use will not obstruct, interfere with, or delay the intended redevelopment of the property in accordance with the uses anticipated in the General Plan or any adopted specific plan applicable to the site, in that redevelopment of the project site under any Specific Plan that might be approved by the City Council is not anticipated to begin within the requested term of the Interim Use Permit;
5. All public utilities and other infrastructure improvements required in order for the interim use to be conducted in a safe, sanitary, and lawful manner are either available at the site or shall be installed by the applicant, prior to occupancy, in a manner approved by the City Engineer, given the conditions of approval, as detailed in the staff memorandum;
6. The use will provide either or both of the following benefits: (a) A benefit to the property, including, but not limited to, the elimination of blight or unsightly or hazardous conditions, or the installation of improvements that will facilitate redevelopment of the property; (b) A benefit to the public, such as the creation of jobs or revenues or the provision of needed goods or services, in that outdoor advertisements businesses pay an annual business license fee, based upon reported gross receipts, of at least \$18,000;
7. Given the type of use, it is not reasonably possible to establish a program to encourage employment of Brisbane residents in the construction and operation of the use.

Conditions of Approval:

- A. The Use Permit shall be valid for a term of five (5) years, and shall expire February 24, 2015.
- B. An agreement in a form acceptable to the City Attorney shall be recorded that will require the applicant to remove the sign, at their own expense, if the City determines that the sign will interfere with or obstruct any planned public improvements that require use of the site. Removal shall be completed within thirty (30) days after written notice to remove is given by City to the applicant.
- C. Prior to the expiration of the five (5) year term, the owner of the sign structure may apply for an extension of the Use Permit, and in considering the application for such extension, the City of Brisbane will give due consideration to the character of the neighborhood and environs in which the structure is located and whether there has been a material change therein such that the structure is no longer compatible with the character of said neighborhood.
- D. The right to apply for an extension of the Use Permit, as set forth above, shall not be deemed to establish a vested right in the owner with respect to the Use Permit or the structure therein authorized.
- E. At the expiration of the Use Permit or its extension, the owner of the sign structure shall cause the structure to be removed at the sole cost and expense of the owner of the structure.

Original Conditions of Sign Approval (UP-4-82)

- a. The use permit shall be valid for an initial term of six (6) years, commencing ninety (90) days from issuance of the condition use permit or from the date construction of the sign commences, whichever is sooner.
- b. During the initial six (6) year term, removal of the structure can be required by Brisbane if it determines that there has been a material change in the character of the neighborhood such that it is no longer compatible with the uses of the immediately surrounding neighborhood. If Brisbane requires removal before the end of such six (6) years, Brisbane will pay [the owner of the structure] the sum of \$694.44 for each full month remaining in the six (6) year period following the date of removal (1/72 of the \$50,000 amortization).
- c. ...At the expiration of the term of the conditional use permit, said expiration shall be without prejudice to [the owner's] right to apply for an extension of the term for successive like periods, and in considering [the owner's] application for such extension, Brisbane will give due consideration to the character of the neighborhood and environs in which the structure is located and whether there has been a material change therein such that the structure is no longer compatible with the character of said neighborhood.
- d. The right to apply for an extension of the Conditional Use Permit, as set forth... above, shall not be deemed to establish a vested right in [the owner] with respect to the Conditional Use Permit or the structure therein authorized.
- e. At the expiration of the initial term or extension thereof, [the owner] shall cause the structure to be removed at the sole cost and expense of [the owner of the structure].