

III. NEW ITEM:

ACTUAL TIME: 1:06 P.M.

APPLICATION OF THE PARKER FAMILY FOR 433 EAST CABRILLO BOULEVARD (WATERFRONT HOTEL), APN 017-680-009, ZONING DESIGNATION: HOTEL AND RELATED COMMERCE/ PARK PLAZA SPECIFIC PLAN/ COASTAL ZONE OVERLAY (HRC-2/SP-1/SD-3), GENERAL PLAN DESIGNATION: OCEAN-RELATED COMMERCIAL/ MEDIUM HIGH RESIDENTIAL, LOCAL COASTAL PLAN DESIGNATION: HOTEL AND RELATED COMMERCE; AND 103 SOUTH CALLE CESAR CHAVEZ (HOTEL PARKING LOT), APN 017-113-020, ZONING DESIGNATION: OCEAN-ORIENTED LIGHT MANUFACTURING/ COASTAL ZONE OVERLAY (OM-1/SD-3), GENERAL PLAN DESIGNATION: OCEAN-RELATED INDUSTRIAL, LOCAL COASTAL PLAN DESIGNATION: OCEAN ORIENTED INDUSTRIAL (MST2013-00371)

On August 15, 1995, City Council adopted Ordinance 4920, which included a Development Agreement (DA) and associated conditions of approval for development of the Chase Palm Park expansion, the Waterfront Hotel (433 East Cabrillo Boulevard), and a youth hostel. The DA allowed the Chase Palm Park expansion project to commence immediately and provided the property owner, American Tradition, 12 years to construct the hotel and hostel. In 2007, the City issued building permits for both the 150-room Waterfront Hotel and associated parking lot, and the youth hostel. While the hostel (12 E. Montecito St.) has since been completed, the hotel project has stalled. In order to maintain the existing development rights for the approved hotel and establish the potential and associated process for a revised project, a new DA is being considered. As such, the proposed DA includes the following major components:

- Establishment of a new ten-year term for the DA.
- Acknowledgment of the approved status of the 150-room hotel project, including parking lot, which could continue to be constructed without further discretionary review.
- A provision that all current Building and Public Works permits for the hotel project would expire upon the effective date of the DA, and new ministerial permits (consistent with current codes) for the approved project must be issued within five years of the effective date of the DA.
- A provision that if the approved 150-room hotel project is abandoned and a revised hotel project is pursued at any time during the term of the DA, the project would be subject to policies, ordinances, resolutions, codes, rules, regulations and official policies governing development of the site(s) in effect as of the effective date of the DA.

- If a revised hotel project is approved during the term of the DA and it results in less than the currently approved 150 hotel rooms, the Applicant has the ability to propose the transfer of excess rooms or square footage to the Fess Parker DoubleTree Hotel site (633 E. Cabrillo Blvd.) or another parcel, consistent with applicable City ordinance provisions and processes for doing so.

Note: A Development Agreement and Ordinance Amendment require City Council approval at a subsequent public hearing to be scheduled. The purpose of this January 7th hearing was for the Planning Commission to consider the proposed request and environmental document prepared for the project and provide a recommendation to City Council on the following:

1. A Development Agreement to allow an additional ten (10) years to construct the approved 150-room hotel and parking lot or a revised project within this time period (Council Resolution 89-120); and
2. A Zoning Ordinance Amendment (SBMC Chapter 28.95 - Transfer of Existing Development Rights) to defer to the Waterfront Hotel Development Agreement for provisions allowing the applicant to propose the transfer of excess (approved but undeveloped) hotel rooms from the Waterfront Hotel site.

An Addendum to the 1993 Final Environmental Impact Report (EIR) has been prepared in accordance with California Environmental Quality Act (CEQA) Guidelines Section 15164 to address minor changes to the project and EIR analysis. The Planning Commission will consider the Addendum together with the previously certified Final EIR, and consider a recommendation to City Council regarding the adequacy of the environmental review pursuant to CEQA Guidelines Section 15090.

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Allison DeBusk, Project Planner, gave the Staff presentation.

Eli Parker, Parker Family representative, made introductory comments and introduced his team of Mike Caccese, MAC Design Associates; Graham Lyons, Attorney, Mullen & Henzell; and Suzanne Elledge, Suzanne Elledge Planning and Permitting Services, Inc. who were all available to answer any of the Commission's questions.

Chair Campanella opened the public hearing at 1:18 P.M.

The following people spoke in opposition to the project or with concerns:

1. Tom Rejzek, Santa Barbara County Environmental Health, provided a presentation on mitigation of hazardous material issues for soil and ground water contamination on the project site.
2. Hillary Hauser, Executive Director, Heal the Ocean, submitted a letter with concerns and offered her support to resolution of contamination issues before the project is developed.

3. Kira Redmond, Santa Barbara Channel Keeper, expressed concern over pollution resulting from a future construction site and compliance with the storm water ordinance. The site is adjacent to East Beach, where runoff of sediment could impact a popular public beach and public health. Soil erosion and contamination remain a concern.

With no one else wishing to speak, the public hearing was closed at 2:10 P.M.

Commissioner Campanella called for a recess at 4:30 P.M. and reconvened the meeting at 4:45 P.M.

Commissioner's comments:

Commissioner Jordan:

- Use is consistent with the location and surroundings, consistent with the General Plan, the Local Coastal Plan, Specific Plan, and any zoning ordinances. Agrees with Staff's Addendum with impact analysis of the EIR that finds no changes. Part of the agreement contains a few pages that spell out all the resources and money that Parker family has given the City. Clear that the City is way ahead in this relationship. City also has unique role of being a 12% partner in the revenue stream that goes into the General fund that provides many services to the community. Can support the recommendations with Staff's changes to the Development Agreement that further clarifies the storm water management plan details and further clarifies the process for Substantial Conformance Determination that brings it back to the Planning Commission.
- Issues: 1) Management of storm water runoff: Appreciates that the Parker Family will be addressing storm water management at both sites. And 2) The 20-year perceptual degradation on the mitigation concerning the youth hostel. What is in place there today is not what was talked about in the mid 1990's before the Planning Commission and the Coastal Commission. Recognizes that it was sold and the concept changed.

Commissioner Higgins:

- In viewing the youth hostel situation, finds that this is a lesson for our city and other cities about exotic conditions in the market place.
- Supports the project, as is, with the conditions that Commissioner Jordan mentioned.
- Supports applying credits to mitigation fees. Hotel rooms can be tied back to trip counts that can be tied to mitigation fees.
- Supports the project continuing on to City Council with a level 4 Substantial Conformance Determination. If the Applicant needs to transfer anything before the building permit is issued, he only supports a transfer as it relates to a completeness determination.

Commissioner Pujio:

- Supportive of the Development Agreement in concept, including the transfer of hotel rooms.
- Supports the concept, but when it comes to a Development Agreement, it is really about the specific terms. This is not standard zoning.
- Needs to see the second draft before she is comfortable with it. We will be living with this for ten years. In terms of revisions to be made, she would like to see:
 - 1) Storm Water Management plan clarification
 - 2) Level 4 SCD
 - 3) Discussions held on vesting and building permit extensions – wants to know what this means when we reference building permits, and what does it do to the DA when they expire. Clarification is needed.
 - 4) The terms ‘luxury hotel’ and ‘low cost hostel’ are in the documents and were not defined. To support the project now or when revised, need to see those portions of the document modified to take the ‘luxury’ and ‘youth hostel’ language out. “Whereas” and “Therefore”s cannot perpetuate a myth. We did not get a hostel.
- On Page 2, Item F, “Whereas the Parkers have constructed a public parking lot...in front of the Fess Parker Hotel” needs to be revised to include the reference to the 17 parking spaces, including the location that Suzanne Elledge described to where they are physically.

Commissioner Lodge:

- Would like to see the proposal move ahead.
- Does not see the project entirely as a benefit. There will be a lot of low wage employees that will need affordable housing that is not available; and additional traffic, etc.
- Could not support the Development Agreement.
- Noted on Page 3, section L, the statement “Whereas on May 28, 1998, Chase Palm Park opened as the City’s largest waterfront park” is not accurate and would like to see it corrected to read “Whereas on May 28, 1998, with the addition of the park area north of Cabrillo jointly developed by the City Redevelopment Agency and the Parker Family, Chase Palm Park became the City’s largest waterfront park”.
- Does not approve of the many references highlighting the Parker’s contributions when they were in response to mitigation measures and not voluntarily. Does not feel that we owe the Parker family anything.
- Does not see a need for a change to the zoning ordinance and the transfer of existing development rights. The Parker Family can transfer development rights as it is written now and if they want to put them where the existing hotel is, they can propose a project and it will be reviewed even with the addition. Does not want to give a sense of entitlement to the developers.

Commissioner Schwartz:

- Defers to Staff as to whether the 10-year term is appropriate and will support the 10 years for Development Agreement. With the market turning around and lending being more favorable, she hopes that the Parker family can do something.
- Supports clarification and inclusion in the Development Agreement on the issue of construction and what has been done on the property.
- Agrees with Commissioner Pujo on wanting to see a revised draft of the Development agreement, due to its complexity and detail, before it goes to City Council.
- Would like to see Page 7, No. 5, Amendment to Agreement, include language that “any changes to the project will result in a Level 4 Substantial Conformance Determination review and automatically require Planning Commission review”.
- Referenced page 9, No. 8.3, Provision of Low-Cost Visitor Accommodations, stating that the Youth Hostel was a requirement of the California Coastal Commission with specific intentions. The Wayfarer may be a beautiful building, but in no way fulfills the intentions of the CCC and the mitigation that was required. This was a lesson learned for the city. She has ongoing concerns that we are fast losing the opportunity in the general waterfront and funk zone to provide visitor serving opportunities for moderate and low income accommodations. Coastal access for the general public, including lodging, is of critical importance to the City.
- Is concerned about being asked to provide any relief in Storm Water Management when this is the most enlightened important environmental decision that the Planning Commission can make, along with State and Federal Laws. She feels strongly about the ordinance and only having partial compliance.
- Agrees with Commissioner Lodge on the Transfer of Existing Development Rights and wonders why we would make an exception, and modify an ordinance for a single applicant. The bar would have to be so high for the defensibility. Did not hear an acceptable explanation to warrant an amendment.
- Inclined to suggest that a transfer be the square footage. Does not support the transfer of rooms, especially to the Fess Parker Hotel. Does not understand with the controversial legal issues/history, why the Parker family want to do this. But if the Council wants to grant that, then it is the Parker Family’s purgative.

Commissioner Thompson:

- Wants to see the project moved along.
- There is room for adjustments to the draft proposed Development Agreement and agrees with seeing a revised draft. He will leave it to Staff to provide a revised draft that includes storm water management discussion, Substantial Conformance Determination process, and a review of what has been completed at the site to date.
- Remains skeptical about the need to include provisions for a room-by-room transfer in addition to the standard Transfer of Existing Development Rights process that the city already has.

Commissioner Campanella:

- Wants to see the project move forward.
- Likes the concept of the Development Agreement to insure that both parties, the municipality and the applicant, know their rights going forward.
- Likes the flexibility in the transfer of square footage, although it is hard to find places to put it because unless someone has an approved project, you cannot place it. There is a lot of work involved, but there is enough out there before having to go to the hotel room option. Supports the square footage option.
- Would like to see the promotional “Whereas” statements removed from the Development Agreement and just stick to facts that relate to findings. Promotional statements are not findings.
- Supports providing assurances to the developer but does not support the language on Page 13 of the Staff Report, relative to findings in the Development Agreement, B.3. that reads “...and delay of private improvements will provide for more orderly and timely mitigation of traffic and air quality impacts.” He does not feel comfortable making a judgment to that effect and recommends removal of the language in the findings.
- Thinks there has been fairness on both sides over the years. This is not a standard document and he thanked Staff, the applicant, and the Planning Commission for going through all the documents, especially during the holidays.
- Supports moving forward with comments made by Commissioners on Level 4 Substantial Conformance Determination and Storm Water Management.
- Recommends that the Commission review a redraft or move forward today.

Straw Poll

Review a redraft of the Development Agreement, with modifications made by Staff, before going to City Council

Ayes: 5 Noes 2 (Jordan/Higgins)

MOTION: Pujó/Thompson

Continue the item to a future agenda for a revised draft with a discussion of how the revised draft meets the Commission’s expectations, Transfer of Development Right questions on the transfer on number of beds, and also the findings.

Scott Vincent, Assistant City Attorney, asked for direction on what was being asked of Staff and summarized what he understood requested as being:

- Clarification of Section 10.1 on Page 11 of the Development Agreement, specifically how the three types of potential projects will be addressed with respect to the Storm Water Management Ordinance.
 - A return of the 150-room approved hotel
 - A Substantial Conformance Determination, or
 - A new project that does not qualify for Substantial Conformance Determination.

In all three cases, he has heard that the applicant will comply with the construction and best management practices of the SWM. In all cases, the parking lot will comply with the SWM. The hotel parcel will comply with the treatment provisions of the SWM Ordinance, but cannot comply with the detention requirements of the SWM. The Substantial Conformance Determination or a new project would comply with the Storm Water Management Ordinance.

- Inclusion of the request for Level 4 Substantial Conformance Determination. He would recommend that it be placed in the second paragraph of Section 10.1 on Page 11 and read “Any request by the Parker Family for an Substantial Conformance Determination (SCD) shall be processed by the City in conformance with the SCD guidelines as a Level 4 review and shall be considered in relationship to the September 2007 hotel plans.” Any Substantial Conformance Determination will be a Level 4 SCD.
- Inclusion of a “Whereas” statement that delineates the construction on the site as of today.

Graham Lyons, Attorney, Mullen & Henzell, did not see a need to return to the Commission on consent for a full discussion when the revisions to the Development Agreement were understood and did not meet resistance from the applicant.

As the motion maker, Commissioner Pujo, clarified that her motion was also looking to include points that she had brought up earlier that included the removal of ‘luxury hotel’ and ‘low cost hostel’ language; inclusion of the 17 parking spaces; and building permit clarification. She wanted more than just a few lines in the revised document and wanted more clarity in the document when it returns.

Mr Vincent and Mr. Lyons both expressed a need to hear specifically from the Commission what revisions were being requested.

Mr. Vincent stated that during the course of the meeting he did not hear that a paragraph by paragraph review was being asked. The discussion had been predominately about the Transfer of Existing Development Rights and Storm Water Management, all primarily related to two pages within the Development Agreement. He providing clarification that revisions on these two topics would be a few paragraphs, not a page by page review. Mr. Vincent agreed to add language on the 17 parking spaces to Page 2, paragraph F.

Commissioner Schwartz did not want to see this return for a long discussion and suggested that it would be helpful for the revised draft to contain strikeout language so that the Commission could identify the changes made.

Commissioner Pujo further clarified that the intent of the motion was to have Staff highlight the sections of the draft agreement that refer to the TEDR and that a decision is then made at the continued hearing.

Commissioner Thompson withdrew his support to second the motion. There is no to discuss this at another meeting. The Commission needs to make a decision and give Staff direction

for bringing back a revised document that returns to the Commission. This motion then failed for lack of a second.

MOTION: Pujo/Schwartz:

Continue item for Staff to incorporate comments made by the Commission and Mr. Vincent which include: All items previously listed by Mr. Vincent.

2. Clarification in Development Agreement defining ‘new building’ and when it is vested/when it is not.
3. Removal of the terms ‘luxury hotel’ and ‘low-cost hostel’ from Sections M and N on Page 3 of the document.
4. Inclusion of the 17 public parking spaces.
5. Review of the document to include consistency through document of any changes made, such as Page 6, after “Now, therefore....”.

Mr. Lyons stated that the term ‘luxury’ is consistent with the Specific Plan and needs to remain in the Development Agreement or they would not be in compliance with the Specific Plan.

Commissioner Pujo replied that if the language terms ‘luxury’ and ‘low-cost’ were consistent with what is in the Specific Plan, then that is acceptable to her, otherwise the language is not acceptable to her in the document. The revised document should not contain embellishment and the terms in question should be recognizable as a quote from a prior document and not reflected as an opinion of the Planning Commission in the new document.

This motion carried by the following vote:

Ayes: 4 Noes: 3 (Lodge/Higgins/Jordan) Abstain: 0 Absent: 0

Commissioner Higgins cannot support the motion. There are statements of fact imbedded in the document, whether or not they are appreciated or implemented or not, we cannot go back in time and change. References to vesting rights are also statements of fact that should not be removed from the agreement.

MOTION: Lodge/Thompson

Not concur with the recommendation of an amendment to the Zoning Ordinance, Chapter 28.95 related to the Transfer of Existing Development Rights (TEDR), and remove references to the TEDR in the Development Agreement, leaving conditions as they are under the existing Ordinance.

Commissioner Lodge amended her motion to read:

Recommend an approval of an amendment to the Zoning Ordinance, Chapter 28.95 related to the Transfer of Existing Development Rights (TEDR), allowing the TEDR in square footage form or in the form of room-for-room.

Commissioner Higgins seconded the amended motion.

Planning Commission Secretary Julie Rodriguez interjected that Commissioner Higgins could not second a motion because there was already a motion on record that was seconded by Commissioner Thompson and only being clarified with an amendment. He could only second if Commissioner Thompson withdrew his support.

Commissioner Thompson asked for clarification of the amendment motion and withdrew his second based on removal of references to the transfer to the Fess Parker Hotel Parcel.

Commissioner Higgins withdrew his offer to second the motion for the same reason as Commissioner Thompson.

The motion died for lack of a second.

MOTION: Higgins/Jordan

Continue the Development Agreement for a revised draft and keep the Transfer of Existing Development Rights in the Development Agreement ~~with regard to hotel room unit by unit transfers in addition to square footage and that the Zoning Ordinance be amended to accommodate hotel room unit by unit transfers from that property to other properties in the City and keep~~ as stated in section 11.1.

This motion carried by the following vote:

Ayes: 4 Noes: 3 (Thompson, Lodge, Schwartz) Abstain: 0 Absent: 0