

**LODI PLANNING COMMISSION
SPECIAL COMMISSION MEETING
HUTCHINS STREET SQUARE
CHARLENE POWERS LANGE THEATRE
125 S. HUTCHINS ST.
LODI, CALIFORNIA
WEDNESDAY, APRIL 8, 2009**

1. CALL TO ORDER / ROLL CALL

The Special Planning Commission meeting of April 8, 2009, was called to order by Chair Kiser at 6:05 p.m.

Present: Planning Commissioners – Cummins, Heinitz, Hennecke, Kirsten, Olson, and Chair Kiser

Absent: Planning Commissioners – Mattheis

Also Present: Community Development Director Konradt Bartlam, Deputy City Attorney Janice Magdich, Senior Planner David Morimoto, Assistant Planner Immanuel Bereket, Outside Council for the City of Lodi Jonathon Hobbs, and Administrative Secretary Kari Chadwick

Chair Kiser made a brief statement regarding the rules of conduct for the meeting.

2. PUBLIC HEARINGS

- a) Notice thereof having been published according to law, an affidavit of which publication is on file in the Community Development Department, Chair Kiser called for the public hearing to consider the request of Browman Development Company and Wal-Mart Real Estate Business Trust to approve Use Permit U-02-12 to allow the construction of a commercial center in a C-S, Commercial Shopping District, and allow the sale of alcoholic beverages at the Wal-Mart Supercenter; and approve Vesting Tentative Map 03-P-001 to create 12 parcels for the project; and site plan and architectural approval of a new retail building to be constructed at 1600 Westgate Drive. In addition, the Planning Commission will consider adopting the findings and statements of overriding considerations pursuant to the California Environmental Quality Act.

Director Bartlam gave a PowerPoint presentation based on the staff report. There are three actions being presented to the Commission this evening specifically; Vested Tentative Map, Use Permit, and Site Plan and Architectural Review Committee (SPARC). Staff feels that based on the action made by the City Council to certify the EIR the Planning Commission should make the findings presented in the resolution.

Vice Chair Cummins asked if the Commission was looking at any part of the EIR. Director Bartlam stated there is a set of findings and a statement of overriding considerations that is part of the resolution for those impacts that were unable to be mitigated, Cumulative Air Quality and Agricultural Resources. The statement basically says that the benefits of the project outweigh the impacts.

Commissioner Olson asked if the Commission can separate the resolution into the different areas. Director Bartlam stated that it has been presented as one action, but the Commission is welcome to parcel it out.

Hearing Opened to the Public

- Darryl Browman, Applicant, came forward to state his agreement with the conditions placed in the resolution. Mr. Browman thanked staff for all the time and effort put into this project. One of the benefits of having a project go for this long is the amount of public input it receives. There have been a lot of features added to the project to try to minimize the scale of the building. Mr. Browman added that the concerns that the Commission expressed at the meeting back in October regarding the energy consumption/efficiency of the project

have now been added as conditions in the resolution. He then listed the items that will reduce the carbon footprint of the project and the Wal-Mart building itself.

- Brett Jolley, opponent to the project on behalf of Lodi First, came forward to oppose the project. The letters and studies that have been submitted by the applicant are just paper. The statement of overriding considerations must be made per CEQA guidelines if the Commission wants to approve any part of the project. The findings can be found on page 34, Exhibit A of the draft resolution. There are six findings; 1) tax generation, 2) employment creation, 3) municipal infrastructure development, 4) plan implementation, 5) high quality design, and 6) energy saving features. Mr. Jolley stated that the latter four relate only to the project and do not necessarily confer any additional benefit to the City. He added that there are several reports that have been submitted that have contradicting information regarding tax generation. Mr. Jolley stated a few reasons for not approving the project focusing on the various reports showing the tax revenue figures and additional job figures inconsistencies. He would like to have a fiscal impact report done by the City of Lodi.
- Commissioner Kirsten asked about the quote regarding the tax increase. Mr. Jolley stated that in his opinion the various reports do not account for lost revenue from other businesses closing. Kirsten asked if requiring an independent analysis is typical in this situation. Mr. Jolley stated that yes it is. Many cities have recently adopted Big Box Ordinances that require a fiscal impact report to be prepared that would address the impacts made by that store opening. Kirsten asked about the expected increase in job figures and should those be measured as part of the entire project build out. Mr. Jolley stated that it would be relevant for the analysis. Kirsten asked if it was likely that if the Super Wal-Mart project did not get built a shopping center would still be built in this location generating the jobs stated in the reports even without the Wal-Mart. Mr. Jolley stated that that is correct.
- Don Mooney, opponent of the project on behalf of Citizens for Open Government, came forward to address the statement in the resolution on page three that states that the Commission is exercising its own independent judgment. The Commission has already stated that they do not agree with the environmental portion of the project and the statement of overriding consideration that must be made tonight is directly related to that document. Mr. Mooney encourages the Commission to take a long look at the uncertainty of the current economic situation and ask questions of staff regarding the recommendations. He is also concerned about the alternative analysis portion of the staff report where staff states that there is little discretion in regards to what can be approved. He argues that a No Project alternative could be adopted.
- Commissioner Kirsten asked about the No Project option. Mr. Mooney stated that the No Project option is generally used as a baseline to determine the environmental impacts. If the Commission does not agree with the findings the No Project option is a viable alternative for adoption.
- Alexis Pelosi, Attorney with Sheppard Mullin Richter and Hampton representative for the applicant, came forward to rebut comments made. The reports that have been submitted to the Commission have been done by experts. They do offer substantial evidence to make the CEQA findings and to adopt the overriding considerations. There was a fiscal impact analysis done by Bay Area Economics (BAE) as part of this project and based on comments received at the October 2008 meeting regarding the EIR, Wal-Mart had a CB Richard Ellis Report done. The report goes over the net tax gain or net tax revenue for this project as well as the job gain.
- Chair Kiser asked why there are so many conflicting figures that have been presented at past meetings regarding the revenue generation figures. Ms. Pelosi stated that the BAE analysis used a larger sales figure (55 million) to estimate the net tax revenues and ADE used a lower figure (36.2 million) to do their estimates. Chair Kiser asked if the sales figures for Wal-Mart are up or down from the 2007 figures. Ms. Pelosi stated that if you follow the news reports Wal-Mart has continued to do very well during these economic times.

- Commissioner Kirsten commented on the fact that he would have liked to have had the information submitted by Ms. Pelosi for the meeting tonight a little sooner. It is difficult to process the valuable information presented on such short notice. Ms. Pelosi apologized to the Commission for not being able to get the information to them sooner.
- Darryl Browman stated that there has been a substantial amount of evidence presented to the Planning Commission that supports a positive project for the area. This project will turn the four corners area into what it was intended to be. A successful retail intersection. Mr. Browman stated that every time he has built one of these developments it has brought a prosperous project. He used the store in Riverbank as an example.
- Commissioner Heinritz asked about the dynamics of the four corners once this project is built and the current building sits empty and the food 4 less and Safeway stores are effective in a negative manner. Mr. Browman stated that he is looking forward to the challenge and is committed to making it work. Over the time spanned by this project there have been several potential tenants for the current space, but because of the time span and the lack of being able to give a tenant a move-in date the tenants were lost.
- Commissioner Olson stated that this project is different than the project in Riverbank. Mr. Browman stated that the only comparison that he meant to make was that when a retail store of this magnitude is placed at this corner it will create a synergy and draw from a much larger consumer base.
- Commissioner Kirsten asked about the time line for the project. Mr. Browman stated that the demand for the spaces was based on the market 7 years ago, but there shouldn't be much of a delay even in the current market. 7-9 months first phase, ground work and Super Wal-Mart, and the rest of the phases should go up in 4-6 months in three to four different phases, but understand that this project still needs to go back to court and probably another year or two before anything is put on the site.
- Commissioner Heinritz asked if there are any solid commitments for any of the spaces at this time. Browman stated that there are 4 or 5 solid tenants and if this project had not been delayed to this extreme they would all be filled. Commissioner Heinritz expressed concern over the new spaces being filled prior to the current space being re-tenanted. Mr. Browman stated that the junior anchors in the project will not get filled until the old building is re-tenanted.
- Chair Kiser asked Mr. Browman if he was comfortable with the part of the conditions that states that prior to the issuance of a building permit for the anchor project 50% of the existing Wal-Mart will need to have been leased. Mr. Browman stated absolutely. Chair Kiser then asked what will make tenants lease from Browman Development before leasing across the street in the currently empty retail sites. Mr. Browman stated that the sites on the Geweke property are only about 12,000 square feet and this project site will be attracting the retailers that are interested in 25,000 to 120,000 square foot space range.
- Brett Jolley came forward to offer a rebuttal to the opponent's comments. Mr. Jolley stated his disagreement with the statement by Ms. Pelosi regarding the Commission having enough substantial evidence to support the project. He also stated that BAE may be biased in their analysis since they have gone on record, when asked, that they have done at least eight Wal-Mart Supercenter economic analysis' and thinks that staff should do an independent analysis of their own. Mr. Jolley added that the synergy that this project will create could hurt the rest of the City.
- Commissioner Hennecke asked about the numbers showing positive jobs and revenues for the project. Mr. Jolley stated that they are positive for this project. Commissioner Hennecke then asked if the Commission is supposed to still vote against the project even though there will be positive tax revenues and job increases, at what point is the increase not enough. Mr. Jolley stated that he didn't know if there was a specific amount that needed to be reached, but the Commission should have all the credible information made available to them so you can make that decision.

Chair Kiser called for a brief recess.

- Chris Podesto came forward to comment against the project. Mr. Podesto stated that he is here tonight to speak not only as the Director of Marketing for Food-4-Less and Rancho San Miguel but as a City of Lodi resident. He is very concerned with the effect that the project will have on the Food-4-Less store. The effect on the local businesses of the Super Wal-Mart Store in combination with the economy is going to be worse than the EIR indicated.
- Commissioner Heinitz asked if Mr. Podesto owned the building the food-4-less currently occupies. Mr. Podesto stated they lease the space from Mr. Browman. There are 7 or 8 years left on the lease. Commissioner Heinitz asked what will happen in 7 or 8 years when this project is built and business is lacking for the Food-4-Less. Mr. Podesto stated that the EIR indicates they lose 40% of their business and if that happens they will not renew the lease.
- Commissioner Kirsten asked how many employees currently work at the Food-4-Less. Mr. Podesto stated that there are approximately 140. Commissioner Kirsten asked what the estimated sales tax revenue is currently. Mr. Podesto stated that the sales tax figures are based on a high percentage of grocery as well as some taxable grocery, but he didn't have the number with him. He could provide the Commission with that information if they wish. Commissioner Kirsten asked if the Rancho San Miguel store would be impacted by this proposed Supercenter. Mr. Podesto stated that based on the demographics of the customer base for Wal-Mart stores there is no question that the store will be affected. He added that with the Supercenter there won't be a huge jump in tax revenues because the additional component is for groceries. Kirsten asked for clarification as to the main impact of the project being jobs. Mr. Podesto stated that was correct. It would be a redistribution of jobs.
- Vice Chair Cummins asked how old the Rancho San Miguel store is. Mr. Podesto stated 5 years. Vice Chair Cummins asked if the opening of the store drop the revenue at Food 4 Less. Mr. Podesto stated that yes it did.
- Chair Kiser stated that the San Miguel store gave the east side a grocery store which it was lacking. The two stores pull from both the east and west side isn't that correct. Mr. Podesto stated that the Food 4 Less store is a price-impact store similar to Wal-Mart. The Rancho San Miguel store acts more like a neighborhood ethnic store but it doesn't have the draw like the Food 4 Less or Wal-Mart.
- Commissioner Olson stated her appreciation to Mr. Podesto for all that Food-4-Less does for the community. Is the issue behind opposing the project because it is an outsider company coming in and usurping a local? Mr. Podesto stated that that is not the reason. There is a blight condition that already exists on the east side and by bringing one more draw to the west side it will only perpetuate that situation.
- Commissioner Hennecke asked about the Reynolds Ranch project being on the east side. Mr. Podesto stated that yes that project is on the east side. The difference is that Lodi doesn't already have a Costco and as a citizen and consumer he believes it's a good idea to bring one to Lodi. The problem as Mr. Podesto sees it is that Lodi already has a Wal-Mart and placing a fifth grocery store on this corner is not good planning. Hennecke asked if a Costco tries to move into the Reynolds Ranch Center would that pose the same problem for Food 4 Less as the Supercenter. Podesto stated that it would not and reiterated that Lodi does not have a Costco, but does have a Wal-Mart. He would not oppose a Costco at all.
- Rodger Oster, Lodi resident, came forward to support the project and complain about the discussion being about the EIR and not the project items. He stated that he feels that Food 4 less will probably be hurt by this, but there is no way to know just how much until the store is built. Mr. Oster stated his belief that Mr. Browman will be able to fill the empty store once the new one is built, unlike all the new buildings going up around town that are sitting empty.
- Leo Duncan, Lodi resident, came forward to support the project. He objected to the length of time this process has taken for this project.

- Ann Cerney, Lodi resident and representative for Citizens for Open Government, came forward to oppose the project. She stated her agreement with the statement made regard the lack of information that has been made available to the Commission so that they could make an informed decision.
- Mark Anaforian, Lodi resident, came forward to oppose the project. Mr. Anaforian stated some unemployment figures during the period from when the La Quinta Supercenter opened in 2004 through 2007. The same argument was made regarding the loss of jobs back when the current store went in and Longs Drugs ended up losing 30 percent in sales the first year. That number did eventually rise again, but it was still a loss of about 18 percent. This in turn caused layoffs and good paying jobs with benefits were lost. Mr. Anaforian also stated that according to the Lodi News Sentinel there were 507 Police calls for Wal-Mart with only 123 for Target and 198 for K-Mart. He pointed out the additional store space is going to be used for groceries and most groceries are non-taxable.
- Commissioner Kirsten asked where Mr. Anaforian got his figures regarding the number of police calls at the existing Wal-Mart site. Mr. Anaforian stated that he got the figures from Police Captain David Main and the unemployment figures for La Quinta came from their website.
- Brad Clark, Lodi resident, came forward to oppose the project. Mr. Clark is concerned with the possible job losses to the community that another grocery store will create. He also stated that as people lose jobs and income is lost in the household people will stop spending what money they are bringing in on all the extras. Lodi needs new retailers to come to town not the same retailers enlarging and adversely affecting the other current retailers in the area. When the Wal-Mart closed in Stockton so the Supercenter could move in across the street the owners of the old building tried to re-tenant the space and did, but then that business closed and now it's been split into two separate retail spaces. When you drive by the parking lot there is anywhere from 10 to 15 cars in it and it holds 1500.
- Commissioner Kirsten asked what business Mr. Clark is in. Mr. Clark stated that he is associated with Food 4 Less, Rancho San Miguel. Kirsten asked if he felt that his business would be directly affected by the Supercenter. Mr. Clark stated absolutely.
- Commissioner Hennecke asked if Mr. Clark expects the Commission to regulate commerce and free trade as it relates to grocery stores coming into the City. Mr. Clark stated that is not what he expects, but putting three grocery stores on one corner, two of which are price-impact, isn't good planning. Hennecke then asked which grocery store was the last one to move in on that corner. Mr. Clark stated that it was Safeway. Hennecke asked if he protested when they moved in. Clark stated no. Safeway takes care of their employees with good benefits and good pay. Hennecke then asked if the Commission was supposed to enforce work policies along with commerce. Mr. Clark stated no. Hennecke asked if job loss could be caused by other external forces such as the economy. Clark stated not to the extent of this project.
- Stan Finberg, Owner and Manager of Cherokee Plaza shopping center in Lodi, came forward to oppose the project. Mr. Finberg has been trying to keep his tenants, but it isn't easy. He wants to know why there hasn't been more talk about beautifying the east side. All the focus is on this one intersection. Commissioner Kirsten asked how the proposed Costco would affect the business in the Cherokee plaza. Mr. Finberg stated that once you get a one stop shop people stop shopping at the little stores. He mentioned that the Consumer Digest did a study of stores and Wal-Mart was at the bottom of the list with Raley's at the top.
- Cheryl Nitschke, Lodi resident, came forward to support the project. She wants to know why this project is being picked on. Ms. Nitschke stated that she found that Food 4 Less sold their canned goods cheaper than Wal-Mart, so Wal-Mart isn't always cheaper and people will figure that out.

- Sean Reilly, Lodi resident, came forward to support the project. He would like to see the Supercenter built, so that he can keep his tax dollars in Lodi. Wal-Mart sells more than just groceries, so people will only go there when they need to buy a variety of items. Food 4 Less should be more concerned with a Costco moving in and taking their business away, not Wal-Mart.

Public Portion of Hearing Closed

- Commissioner Kirsten disclosed that he spoke with Chris Podesto, Steve Herum, Brett Jolley, and Darryl Browman regarding this project.
- Chair Kiser disclosed that he spoke with Darryl Browman and Steve Herum regarding this project.
- Vice Chair Cummins disclosed that he spoke with Darryl Browman regarding this project.
- Commissioner Hennecke disclosed that he spoke with Darryl Browman and Chris Podesto regarding this project.
- Commissioner Olson disclosed that she spoke with Steve Herum regarding this project.
- Commissioner Kirsten asked if the Commission has the authority to vote for a no project scenario. Mr. Bartlam stated that that is not an option for the Commission tonight, but denying the project has the same affect. Kirsten asked if the Commission could ask for more information. Mr. Bartlam stated that the Commission can ask for more information if you believe it will help you to make a decision. Kirsten stated that he has heard a range in tax revenue to be \$130,000 to \$1.3 million and having a study that narrows those numbers down would help him to make a more informed decision. Jonathan Hobbs added that the project must be acted on by April 30, 2009 based on CEQA guidelines. Bartlam stated the possible sequence of events if the Commission decided to ask for more economic analysis.
- Commissioner Hennecke asked who hired BAE. Mr. Bartlam stated that the City hired BAE.
- Chair Kiser asked who hired CB Richard Ellis. Mr. Bartlam stated that Wal-Mart hired them. Kiser stated that the CB Richard Ellis' report had conflicting numbers in it and that raises questions. Mr. Bartlam stated that every economic report that has been submitted to the City to date for this project has had a different set of numbers and if you were to instruct staff to get another report done it too would have a whole new set of numbers.
- Discussion among the Commission took place. Mr. Bartlam stated that the data is there for the potential jobs and revenue, what is disputed is the potential losses. The information regarding those losses will change and be different every time an analysis is done.
- Vice Chair Cummins asked if the Commission can take the items individually or in one lump sum. Mr. Bartlam stated that is at the Commission discretion.

The Public portion of the hearing was re-opened to the public at Mr. Browman's request

- Mr. Browman asked whether it is yes or no for a decision to be made tonight.
- Commissioner Kirsten asked if the applicant(s) would appeal a decision by the Commission asking for more information. Mr. Browman stated they would.
- Brett Jolley came forward to respond to the comments made. Mr. Jolley argued that the 50-day time period does not apply in this case. There are several components to certifying an EIR. One is the adoption of the mitigation measures which the Commission is being asked to do tonight.

The Pubic Hearing is Re-Closed

Mr. Bartlam addressed the comments made regarding the ability of staff to do an economic analysis for this project by simply stating that with a five minute break he could pull this information out of the documentation that has been provided. He also added that he would not suggest that staff could or would make the assumption that would be necessary to get the net effect. Mr. Hobbs stated that according to CEQA the City Council has certified the EIR. The mitigation measures are a separate item and not a part of the EIR certification. Mr. Bartlam added that in the worst case scenario the Commission does not act on the project in the allotted 50 days, the Tentative Map would then be approved by inaction. The other parts of the project

Continued

(Use Permit and SPARC) have 180 days to be acted upon and if the Commission asks for another analysis to be done that time period would probably elapse.

Commissioner Hennecke asked for a ten minute break to allow Mr. Bartlam to pull out some figures. The other Commissioners stated that they did not need the extra figures to make a decision.

MOTION / VOTE:

The Planning Commission, on motion of Vice Chair Cummins, Hennecke second, to approve the request of Browman Development Company and Wal-Mart Real Estate Business Trust to approve Use Permit U-02-12 to allow the construction of a commercial center in a C-S, Commercial Shopping District, and allow the sale of alcoholic beverages at the Wal-Mart Supercenter; and approve Vesting Tentative Map 03-P-001 to create 12 parcels for the project; and site plan and architectural approval of a new retail building to be constructed at 1600 Westgate Drive. In addition, the Planning Commission will consider adopting the findings and statements of overriding considerations pursuant to the California Environmental Quality Act.

Ayes: Commissioners – Cummins, Hennecke, and Olson
Noes: Commissioners – Heinitz, Kirsten, and Chair Kiser
Absent: Commissioners – Mattheis

Mr. Bartlam stated that a tie vote is a denial of the project.
Commissioner Kirsten asked if that concluded the matter. Chair Kiser stated that it did and a denial is issued. Mr. Bartlam stated that is correct.

3. COMMENTS BY THE PUBLIC

None

4. COMMENTS BY STAFF AND COMMISSIONERS

None

5. ADJOURNMENT

There being no further business to come before the Planning Commission, the meeting was adjourned at 9:00 p.m.

ATTEST:

Konradt Bartlam
Planning Commission Secretary