

**PLANNING COMMISSION MINUTES
OF THE JULY 11, 2005 MEETING
HELD IN THE COUNCIL CHAMBER
OF THE MONTCLAIR CIVIC CENTER
5111 BENITO STREET, MONTCLAIR**

CALL TO ORDER

Chairman Lenhert called the meeting to order at 7:00 p.m.

PLEDGE OF ALLEGIANCE

Chairman Lenhert led those present in the salute to the flag.

ROLL CALL

Present: Chairman Lenhert, Vice Chairman Flores, Commissioners Johnson and Vodvarka, Community Development Director Clark, City Planner Lustro, Associate Planners Frazier-Burton and Lai, and City Attorney Robbins

Excused: Commissioner Sahagun

MINUTES

The minutes of the June 27, 2005 Planning Commission meeting were presented for approval. Vice Chairman Flores moved to approve, Commissioner Johnson seconded, there being no opposition to the motion, the minutes were approved 4-0.

ORAL AND WRITTEN COMMUNICATIONS

AGENDA ITEMS

1. PUBLIC HEARING - CASE NUMBER 2004-49
(Continued from the June 13, 2005 meeting)
121 +/- acres bounded by State Street, parcel lines east of Fremont Avenue, Mission Boulevard and parcel lines south of Howard Street, and parcel lines and Monte Vista Avenue
Emil Hashiman
Request for pre-zoning associated with Annexation No. 26

City Planner Lustro reviewed the staff report and pointed out that, at the request of the Commission, staff provided some additional background information in the staff report. Starting on page 1-3, it explains the pre-zone classifications that are being recommended by staff to the Commission and how they relate to the existing land use designations in the

County in that particular area. On pages 1-4 and 1-5 of the staff report, staff responded and commented on the major points that were brought up during the June 13 meeting. Also in the packet, at the request of the Commission and the public, staff has provided a current land use map of the County area. Since the June 13 meeting, staff has received two phone inquiries from one property owner who called to inquire about the process of pre-zoning and annexation.

Vice Chairman Flores asked, percentage-wise, how many parcels are proposed to be changed drastically from their current County designations. City Planner Lustro replied that it is difficult to define "drastically;" however, one of the areas discussed at the last meeting was the north side of Mission Boulevard, which is designated Service Commercial and General Commercial. Most of the existing uses in that area fit into those categories. The pre-zone designation that is recommended along that stretch is MIP, which is an industrial park/business park designation. However, the MIP zoning does make provisions for commercial uses as well. It is not a drastic departure from what is there now. If annexation were to move forward and ultimately take place, all of the businesses within the entire area would be grandfathered in and would not be required to change, they could continue to operate. That still stands. The only parcel that would drastically change would be the one parcel on the south side of Mission Boulevard that is about 4.6 acres, the former Catalina's Market, just east of Monte Vista Avenue. The front portion is currently designated General Commercial and the rear portion is Neighborhood Commercial. The rear portion is currently being used as a plant nursery and the front portion is being used for commercial uses. It is staff's belief that it would not be practical to develop that entire parcel as a commercial use because it is isolated and has limited access; it has one major street frontage along Mission Boulevard, and the street frontage does not extend over to Monte Vista Avenue. The rear portion of the property would be better designated as residential to be compatible with the existing uses that surround it on three sides. That is not to say that at some point in the future, if this area were to be annexed and someone came along with a proposal that possibly took in additional parcels that made that site larger and it looked like it made sense to do a large commercial project there, there would always be that possibility. This does not lock in the residential pre-zone into perpetuity.

Chairman Lenhart clarified that the pre-zoning is pretty close to what is there right now and there will be no changes unless future development is proposed. City Planner Lustro answered that staff's intent was two-fold: (1) apply designations that were reasonably consistent and compatible with the existing uses that are within the area because they recognize that most of the businesses are long-established and will probably continue to operate, and (2) recommend designations that are a reasonable reflection of how the character and land uses on Mission Boulevard have changed and are expected to continue changing in the near future.

Patrick Smith, 5059 State Street, Ontario, stated that the proposed annexation is similar to efforts that have been proposed in the past and each time annexation comes up, the majority of the landowners in the proposed area are opposed to the project. In 2002, City Planner Lustro, acting on behalf of a few residents in an unincorporated area in Montclair's sphere, proposed Ordinance No. 02-820 to annex approximately 22 acres. The proposal was withdrawn due to the opposition of the majority of residents. It seems as if this proposal is on behalf of one resident, and before it goes any further there should have been a survey of all property owners in the area to see if there is sufficient interest. This meeting is to consider

the application for a proposal in the City of Montclair. He asked the Commission to turn down the application due to the opposition of the residents. Attached to his statement, which he commented would be provided to Mr. Lustro, were signatures from a number of residents in and around the proposed area as well as the comment that his wife gave at the last meeting. He appreciated the fact that there would not be any major changes to the zoning, but what about taxes and regulations. Chairman Lenhart replied that taxes are set by the County. Mr. Smith asked if there was a car tax if he is a resident of Montclair. He knows it is minimal, but is there a tax if he purchased a car. Chairman Lenhart replied that there is a utility tax and that is all. Mr. Smith asked if that is typical in most other cities because he thought that was something very recent and it is those types of things that he is concerned about for the future. City Planner Lustro stated that the City does not have a "car tax" per se. If you live in the City and you own a car, there are no additional taxes on your vehicle or license fees, etc., but the City does impose a utility tax, which the City is very open about and which helps the City provide an acceptable level of service to its residents and businesses. The current utility tax is 3.89%, which is lower than most other cities that impose utility taxes. Not all cities do, but those that do have varying rates depending upon their needs. The goal of the City Council has been to adjust the tax downward when City revenues allow for it. It was reduced a few years ago and the Council has gone on record as desiring to eliminate it in the future. Mr. Smith commented that it is 3.89% higher than the County area. Director Clark confirmed that the County area does not have a utility tax at this point, but there are a couple of other items he wanted to address. The City does have a business license tax and he did not believe the County did. The City has an 8% sales tax rate whereas the balance of the County has a 7.75% sales tax so if you sell a product or if you were a resident buying a car that you registered in Montclair, you would pay the 8% tax rather than the 7.75% tax. As far as property tax, that is done by the County Assessor and there is not a re-appraisal or re-assessment if annexation occurs.

Jack Gingold, 10736 Fremont Avenue, Ontario, stated that he spoke the last time the annexation came before the Commission and was still quite perturbed by it. He is totally against the annexation. He stated that he did not understand how a meeting could be held without notices having been sent out to every landowner in the proposed area to compare what the differences are between the County and what the City is proposing. They did not receive anything. He could not believe that a meeting could be held without sending out another notice to all of the landowners that are in the proposed area. He did not know what the difference between Limited Manufacturing and Community Industrial or General Commercial and Manufacturing Industrial Park were and stated that he could not argue that it should or should not be those designations. The City can impose more taxes if the City deems necessary. Most of the landowners in the proposed area are opposed to the annexation.

Director Clark acknowledged that it is clear that Mr. Gingold is opposed to the annexation. The proposal being discussed is not about annexation, but pre-zoning property prior to consideration of annexation. With regard to the notice, staff complied with the law by providing written notice to all the property owners within the subject area and within 300 feet of the boundary area and also, legally, continued the meeting from June 13 to July 11. The legal requirements for noticing have been met. The City is not obligated to send the staff report whether they are interested or not. If a party is interested, they follow-up and get the information that is available either from staff or from the website. The point about being uninformed about the current zoning and restrictions of the City's zoning is very similar to his

previous comment, staff is present and available to give the information and the City's zoning is available to the world on the Internet on the City's website. The City's website is www.ci.montclair.ca.us That is a way for people to become informed as to what their limitations for running their business are now versus under the City. The previously-mentioned utility user's tax and the transaction tax were voter-approved taxes by a wide majority. Those taxes required a two-thirds vote by the public, so the City Council did not just decide that they needed more money and imposed a new tax; it is not legally possible in the State of California for cities to do that anymore. He understood that people are opposed to paying any fees and costs such as a business license; it is not a huge revenue-generating fee for the City, but it is a source of revenue that helps provide City services.

Vice Chairman Flores commented that he understands that many residents are opposed to possible annexation, but the request was generated by a property owner who has interest in coming into the City. City Planner Lustro advised that, after some discussion with the property owner and submission of the application, staff contacted LAFCO to discuss the proposal. As indicated in the staff report, LAFCO is very supportive of cities in San Bernardino County closing up completely and substantially surrounded County islands within their spheres of influence. The property owned by the applicant lies within the 121 acres. Staff drew the boundaries with the concurrence of LAFCO saying that is a logical boundary for this particular annexation. The subject area qualifies to be considered under the provisions of Senate Bill 1266, which is the modification to the island annexation law. Again, LAFCO supports this type of action by the City. The first step in the process is to pre-zone the area and staff is asking the Commission's approval of the pre-zone designations. If the Commission approves the recommended designations, it then moves on to the City Council. Staff would do another written notification to all of the property owners within the subject area, mailed from the County Assessor's most current mailing list. His recollection is that from the mailing that was done for the June 13 public hearing, only one envelope was returned. Staff will mail another notice because it will be a public hearing by another body and will include all the information that they have created and assembled thus far. The property owners will get another opportunity to attend the City Council meeting to express their comments, pro or con. The Council can approve the pre-zone designations as proposed by staff, they can make modifications, they can send it back to staff for changes, they can send it back to the Planning Commission for further consideration or they could decide not to pre-zone the area and the proposal would die at that point. If the Council decides to move it beyond the pre-zoning, then the Council would be asked to adopt a resolution directing staff to submit an application to LAFCO for annexation. If this item moves forward from the Commission to the Council, there are two more public hearings that need to take place and gain the support of the Council before staff submits an application to LAFCO.

Director Clark stated that one of the property owners commented that he did not receive notice and asked that property owner to provide his name and address to staff to be sure that future notices are mailed to a correct address. (Staff later determined that the property owner in question was mailed a notice at the correct address.)

Marilyn Smith, 5059 State Street, Ontario, asked about businesses being grandfathered. She was unclear on the issue of having a residence on her property. If the zoning is manufacturing, would she still be able to maintain the residence? City Planner Lustro replied that yes she could. If she currently has a residence on her property, it is a non-conforming use based on County land use designations. There is no residential zoning north of Mission

Boulevard. If the property is continually used as a residence, she could sell the property and it could continue to be used as a residence. The business could remain as well. She stated that she was under the impression that without pre-annexation agreements, grandfathering does not guarantee that she would be able to sell it as a residence and business non-conforming. City Planner Lustro replied that that is not true. She asked about the business portion because it is a service business and she would be selling it as something against what it is zoned. City Planner Lustro replied that she would be permitted to do that because it is a legal non-conforming use. For example, if she sold the property and the uses continue as they are now, a residence and a business operating on the property, and she sold the property that way and the buyer continues for a time to use the property in the same way, the property continues as legal non-conforming. If the buyer abandons the residential use in the future and converts it, say, to an office, it could not be returned to residential use again. The County has the same restrictions. She stated that she was told that if everything was re-zoned, without pre-annexation agreements she could not sell it. For instance, if she sold the property as a kennel versus as commercial property, would she have a choice as to how it would be sold and used or would someone not be able to buy it as a kennel. Director Clark commented that the grandfather clause rides with the land and not with the owner, so you do not lose the privilege at sale. For example, if she found a buyer that wanted to continue the exact same operation she had, they could do that. She asked about the $\frac{3}{4}$ -acre portion that has no improvements on it at this time, but what if she wanted to put in modifications later. Director Clark replied that the City allows modifications to non-conforming uses through a Conditional Use Permit process. Based on her description, she would be adding a relatively minor amount of value or improvement to a business. It becomes a balancing act of would you let someone put dollars of improvements into the property, which is an extreme example with the expectation that they are only going to get to use it for the next ten years or some other time limitation. She asked whether that would be up to the property owner to decide what they want to do instead of the City. Director Clark answered that it would be the same whether it was the County or the City because her business is already non-conforming in the County now. The governing agency would try to balance whether you continue something with a significant amount of improvements and the time that the property owner should get to amortize the investment back out of the property. Director Clark stated that it becomes a decision of the Planning Commission and City Council or, at the County, it is the County Planning Commission and Board of Supervisors. She stated that she could see hundreds of reasons why this would be an advantage to the City and was trying to find one reason why it would be an advantage to the property owners.

Commissioner Johnson expressed her appreciation for the residents who attended the meeting. She looked through the potential zones that would be available and found minimal change, everything is being grandfathered in. Please note that every effort has been made to make sure that if the annexation happens, it would be a smooth transition for the property owners.

Mr. Gingold asked if it was true that the one man that owns the 3.6 acres could make this annexation go forward with 121 acres. City Planner Lustro stated that LAFCO does not allow single parcel annexations as was generally the case in the past. As the Commission and Council are aware, LAFCO's policy used to be different and that is why the City boundary looks like it does south of State Street. Their objective now is to try to get that cleaned-up so whenever an application comes to staff, staff discusses with LAFCO what would be acceptable and be supported by LAFCO with regard to their current policies and the direction

of their Commission. Together with the island annexation law, the decision was a joint decision between City staff and LAFCO to expand the boundaries to what is being presented. It was not the decision of the property owner that initiated the application.

Emil Hashiman, 5025 State Street, Ontario, the applicant, wanted to explain to the audience and the Commission what he went through over two years when an annexation that would have affected his property was being proposed. He was part of the group opposing the annexation because he did not want to have to be policed or have Code Enforcement coming down on him. One of his neighbors called County Code Enforcement who came down hard and actually abandoned some of the land use rights on his rental units. When they found some code violations, they abandoned their use permit. The County did not have any records, he showed them records of the buildings being built in 1975, it was conforming, but the County said no, it is abandoned and you have to get a Conditional Use Permit or abandon the use and some of his buildings cannot be rented anymore. He was forced to develop the property and get rid of the old use and do something different. He did not create the issue, one of the neighbors called code enforcement. As he bought the property, all the rental units would have been renting with an M-1 or M-2 designation, which started out in 1975 and then turned into IC in 1989. None of the records were available to the County so they did not help him. He then went and proposed different types of projects on his property and the County said that Montclair would be the sphere of influence that would make the decisions for future development. Basically, the County became the middleman. Whatever application for anything he wanted to submit; they would collect the fees and then send it to the City. Therefore, he came to the City to find out what they would like instead of having to go to the middleman and getting second-hand stories. It made more sense for him to develop the property and he would rather deal with the City than the County. The County has no staff for that area, has no idea what they want in that area, they do not want to meet with anyone with regard to that area. The only difference he saw was that businesses would have to get a City business license and the utility tax. He would rather have the policing of his tenants done by City code enforcement rather than himself.

Commissioner Vodvarka moved that, based on the evidence submitted, a finding is made that there will be no significant environmental impact as a result of the proposed pre-zoning designations associated with Annexation No. 26, including a DeMinimis finding of no effect on fish or wildlife, and adopt a Negative Declaration, seconded by Vice Chairman Flores, there being no opposition to the motion, the motion passed 4-0.

Commissioner Johnson moved to approve the following pre-zone designations located in unincorporated County territory generally bounded by State Street on the north, parcel lines east of Fremont Avenue on the east, Mission Boulevard and parcel lines south of Howard Street on the south, and parcel lines and Monte Vista Avenue on the west, as depicted in Exhibit "A" by adopting Resolution No. 05-1607, and forward to the City Council for its consideration, seconded by Chairman Lenhart, there being no opposition to the motion, the motion passed 4-0.

- ❑ M-1 (Limited Manufacturing) – 52.53 acres
- ❑ MIP (Manufacturing Industrial Park) – 41.92 acres
- ❑ C-2 (Restricted Commercial) – 4.31 acres
- ❑ R-1 (Single-Family Residential) – 22.29 acres

2. CASE NUMBER 2005-25
9442 Exeter Avenue
Jessie W. Mauck
Request for Precise Plan of Design for a second story addition

Associate Planner Lai reviewed the staff report.

Commissioner Johnson asked if any of the neighbors have come forward to comment regarding the project. Associate Planner Lai commented that the four neighbors abutting this project were sent a notice and staff has not received any questions or comments.

Commissioner Vodvarka asked if the addition would require a fire sprinkler system. City Planner Lustro stated that during the plan check process, if the Fire Department determines that it meets their threshold for a building addition based on the existing size of the residence, they would place that into plan check as a required condition of approval.

Vice Chairman Flores asked if there would be more water with the extra and new roofline coming off of there than usual; would there be any problems with the extra water and the existing flow lines overflowing. Associate Planner Lai replied that there are no anticipated problems.

Commissioner Vodvarka moved that, based on the evidence submitted, a finding is made that the project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA), pursuant to Section 15301(e)(2), Class 1, in that the project involves the addition of less than 10,000 square feet in an area where all public services and facilities are available to allow for maximum development permissible in the General Plan, and the project site is not located in an environmentally sensitive area, seconded by Commissioner Johnson, there being no opposition to the motion, the motion passed 4-0.

Vice Chairman Flores moved to approve the Precise Plan of Design request for the site plan, elevations, colors and materials for a two-story, 661 square-foot addition to the existing single-family residence per the submitted plans and as described in the staff report, subject to the 12 conditions, seconded by Chairman Lenhert, there being no opposition to the motion, the motion passed 4-0.

1. This Precise Plan of Design (PPD) approval is for a second story, 661 square-foot building addition over the existing attached garage at 9442 Exeter Avenue, in the R-1 (Single-Family Residential) zoning district, subject to meeting all building setbacks, height and lot coverage requirements.
2. Precise Plan of Design (PPD) approval shall be valid for a period of one year and shall automatically expire on the anniversary date of Planning Commission approval, unless the applicant is diligently pursuing building plan check toward eventual construction of the project. The applicant and/or property owner shall be responsible to apply for a time extension at least 30 days prior to the approval's expiration date. No further notice from the City will be given regarding the project's PPD expiration date.

3. The applicant and/or property owner shall ensure that a copy of the Planning Commission approval letter, including all conditions of approval, be reproduced on the first page of the construction drawings and shall be distributed to all design professionals, contractors, and subcontractors participating in the construction phase of the project.
4. Applicant shall commence construction of the approved second-story project within 180 days of the issuance of a building permit and shall diligently complete the construction within 180 days from permit issuance date unless an extension is granted by the Community Development Director in the event of unavoidable circumstances.
5. Prior to issuance of a building permit, the applicant shall:
 - a. Submit five complete sets of architectural plans for the project, including building elevations, colors and materials, electrical, plumbing, mechanical, landscaping, lighting, and accessibility details, plus two sets of soils, structural and Title 24 calculations for review and approval by the Building and Planning Divisions. Contact Rudy Gomez, Senior Building Inspector, at 909/625-9437 for an appointment to submit plans.
 - b. Submit revised building elevations illustrating the following:
 - c. The proposed addition shall incorporate a 2"x 6" plant-on horizontal belt course on the east and north sides to mitigate the flat, two-story wall plane. Windows and sliding doors on the east, south and north elevations shall be enhanced with projecting moldings, surrounds, shutters or similar enhancement.
 - d. Exterior colors and materials, including roofing on the proposed addition shall be consistent with the existing dwelling.
 - e. Pay all required Montclair Fire Department fees.
 - f. Pay all required school fees directly to the Ontario-Montclair School District and the Chaffey Joint Union High School District.
6. Any new air conditioning condenser units shall be located on the ground in the rear yard of the residence. All rooftop exhaust vents shall be painted to match as closely as possible the color of the roofing material on the residences.
7. Applicant shall maintain minimum 21' x 20' inside dimensions for the garage, excluding the staircase. Remote garage door opener shall be provided.
8. The applicant/developer is responsible for reasonable periodic clean up of the construction site to avoid hazardous accumulation of combustible trash and debris.

9. A final inspection is required prior to occupancy of the residential addition. A final approval by the Building Official shall be contingent upon Fire Department inspection and approval of all conditions.
10. Prior to approval of a final inspection for the addition, the applicant shall submit to the Building Division electronic images of all plans and records for the purpose of obtaining a building permit. Electronic images shall comply with the City's Electronic Archiving Policy.
11. To ensure compliance with the provisions of this Planning Commission approval, a final inspection is required from the Planning Division when work has been completed. The applicant shall inform the Planning Division and schedule an appointment for such an inspection.
12. The applicant shall agree to defend, at its sole expense, any action brought against the City, its agents, officers, or employees because of the issuance of this approval; or, in the alternative, to relinquish such approval. The applicant shall reimburse the City, its agents, officers, or employees for any court costs and attorney fees that the City, its agents, officers, or employees may be required by a court to pay because of such action. The City may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve applicant of its obligations under this condition.

INFORMATION ITEMS

City Planner Lustro commented that the Commission has been asked to reserve Monday, August 1, to attend a 5:45 p.m. study session for the purpose of discussing the design of the City's 50th anniversary logo and celebration slated for next year. It will be a joint City Council, Planning Commission and CAC meeting.

City Planner Lustro stated that due to vacations and staffing, the August 22 Planning Commission meeting was cancelled.

Vice Chairman Flores commented about the demolition of the building at the northeast corner of Moreno and Monte Vista and asked what would be going at that location. City Planner Lustro replied that staff received two phone calls asking the same question. The Sam's Club property is about 14 acres and it is within the boundaries of the proposed North Montclair Downtown Plan. The property is currently in escrow and is supposed to close in a couple months and the buyer has placed a requirement on the seller that they deliver a piece of land with no buildings on it. So, the seller is obliging and is in the process of demolishing all of the buildings on the property. There will be some activity out there over the next few weeks. There is no proposal that has been submitted yet for the property; however, the buyer is aware of the Downtown Plan and is very interested in developing a proposal that will fit within its scope.

Vice Chairman Flores asked about the grading activities going on at Freedom Park near the caboose. City Planner Lustro replied that a new parking lot is being constructed.

Commissioner Johnson commended Code Enforcement; she observed a street vendor Sunday on Holt Boulevard selling sports mirrors and Code Enforcement took care of the situation.

Commissioner Johnson noticed graffiti at I-10 and Monte Vista.

Commissioner Vodvarka commented that he hired the Pomona Valley Workshop to do landscape work at his residence and he has never seen his yard look this great and highly recommended them.

ADJOURNMENT

Chairman Lenhert adjourned the meeting at 8:15 p.m.

Respectfully submitted,

Laura Berke
Recording Secretary