



**CITY OF MONTCLAIR  
PLANNING COMMISSION MINUTES**

**REGULAR ADJOURNED MEETING  
Monday, February 27, 2006**

**CITY COUNCIL CHAMBERS  
5111 Benito Street, Montclair, California 91763**

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**CALL TO ORDER**

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

**PLEDGE OF ALLEGIANCE**

Commissioner Vodvarka led those present in the salute to the flag.

**ROLL CALL**

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

**MINUTES**

The minutes of the February 13, 2006 Planning Commission meeting were presented for approval. Vice Chairman Lenhert commented that the last paragraph on page 21 misidentifies him as the Chairman. Commissioner Johnson commented the pre-zone item that is being forwarded to the City Council for consideration states there are modifications and she would like to have the modifications outlined. Commissioner Johnson moved to approve, Vice Chairman Lenhert seconded, there being no opposition to the motion, the minutes were approved 5-0, as amended.

**ORAL AND WRITTEN COMMUNICATIONS**

None.

## AGENDA ITEMS

### 6.a PUBLIC HEARING – CASE NUMBER 2006-7

Project Address: 8700 block Monte Vista Avenue  
Project Applicant: City of Montclair Redevelopment Agency  
Project Planner: Carol Frazier-Burton, Associate Planner  
Request: Tentative Parcel Map No. 17667 to subdivide an existing 3.42-acre parcel into two parcels  
Staff Recommendation: Approve Tentative Parcel Map and recommend City Council approval

Vice Chairman Lenhart recused himself from participating on this item because of a conflict of interest.

Associate Planner Frazier-Burton reviewed the staff report.

Commissioner Vodvarka asked if they drill a hole in the ground and do not find water, will it be plugged satisfactorily so that nothing will fall into it later on? Director Clark stated that if they did not find water, they would pour concrete into it; however, they have found water at this location. The Habitat for Humanity house on Fremont Avenue was a well site that was capped and sealed and went through the process of the closing off of the well, which is quite a process to do.

Commissioner Sahagun asked whether the well sites were pressurized or pumped. Director Clark replied they are pumped.

Chairman Flores congratulated the City Engineer for obtaining most of the things we wanted on the maps, the standard size the County is looking for and he felt they should also include a soils analysis on the tentative parcel map and there should be some kind of conceptual draining, at least a couple arrows to let us know. A map should stand on its own; we shouldn't have to ask any questions, all the information should be here and if everyone thinks that it is a good idea, he wanted a consensus on that. Commissioner Johnson commented that it made sense to her. Chairman Flores stated that this map needs to be done so that the parking lot will be on its own parcel.

Chairman Flores opened the hearing to the public. There being no members of the public wishing to address the Commission on this item, Chairman Flores closed the hearing and brought the item back to the Commission.

Commissioner Sahagun asked if the Army Corps of Engineers had any comments on this. Director Clark replied not that he was aware of.

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 subdivision, including a DeMinimis finding of no effect on fish or wildlife, and a Negative Declaration has

been prepared, Commissioner Sahagun seconded, there being no opposition to the motion, the motion passed 4-0.

Commissioner Johnson moved to approve Tentative Parcel Map No. 17667 creating two legal, conforming lots per the submitted map, subject to the 34 conditions, and forward a recommendation to City Council for approval, seconded by Commissioner Sahagun, there being no opposition to the motion, the motion passed 4-0.

1. **Agreement to Sell and Purchase.** Agency agrees to sell to District, and District agrees to purchase from Agency, upon the terms and for the consideration set forth in this Agreement, an undeveloped parcel of real property which is located west of Monte Vista Avenue and north of the prolongation of Richton Street in the City of Montclair, County of San Bernardino, State of California, and which is further described in the Legal Description attached hereto as Exhibit "A" and incorporated herein by reference (the "Property").
2. **Property Access License.** District proposes to purchase the above-described Property to drill, install, and operate a groundwater production well to enhance the District's water production capability. Prior to the formal initiation of escrow, pursuant to Section 6 of this Agreement, the Agency agrees to issue a written license granting the District the right to drill a well-pilot hole on the Property to determine that the well will produce water in an amount and quality that the District deems sufficient to proceed with complete development of a groundwater production well subject to the following terms and conditions:
  - a. The District shall pay the Agency an access license fee in the amount of \$10,000.
  - b. District shall name Agency as an additional insured under its general liability policy through its insurance carrier, Special District Risk Management Authority.
  - c. District agrees to protect, defend, hold harmless and indemnify Agency, its elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, damages of any nature or for liens against the Property as a result of District's entry and drilling pursuant to Section 2 including reasonable attorneys fees, for injury or death of any person, or damage to property, resulting there from, arising out of, or in any way connected with the performance of this Agreement and District's license to enter onto the property for the purpose of drilling a test well thereon caused by District, its employees, contractors, and agents. The only exception to District's responsibility to protect, defend, indemnify and hold harmless Agency, is that the claims, liabilities, expenses and damages are due to the sole negligence of Agency or any of its elective or appointive boards, officers, agents, or employees. The indemnity set forth in this Section 2.3 shall survive the termination of this Agreement and the close of escrow for the conveyance of the Property to District.

- d. Upon receiving written license and permission by Agency to enter the proposed well site with drilling equipment, supplies, and necessary personnel, District, its contractors, employees, and agents shall promptly commence and complete the drilling of the well-pilot hole and related activities within one hundred twenty (120) days or such other extended period of time as the parties may agree.
  - e. District, its contractors, employees and agents shall carry out all activities connected with the well-pilot hole drilling in a workmanlike manner that will minimize disruption to Agency and adjacent property owners.
  - f. If the well-pilot hole produces an insufficient amount of an acceptable quality of water to justify, in District's sole opinion, the completion of a groundwater production well, District shall provide to the Agency a written notice of termination of this Agreement, and within 30 days following the delivery of such notice the District shall restore the Property to a condition that is equal to or better than the condition District found the Property upon entering and commencing drilling upon the Property. District will fill and cap the well-pilot hole, pursuant to Department of Health Services' requirements and any other applicable governmental regulations, and the District's remaining obligations under this Agreement shall be terminated.
  - g. If the well-pilot hole indicates that the well will produce water in an amount and quality that the District deems sufficient to proceed with complete well development, the District will promptly complete the purchase of Property as provided herein and will without delay complete the drilling and equipping of the well. Pursuant to the provisions of the City of Montclair Municipal Code, and the North Montclair Specific Plan, the District shall submit and obtain City approval of landscape, perimeter wall and chlorination building plans for the well project and shall submit and obtain the City's approval of a parcel map to establish the Property as a separate parcel.
3. **Purchase Price.** The total purchase price for the Property shall be the sum of One Hundred Sixty One Thousand, Five Hundred Eighty Six Dollars (\$161,586) (the "Purchase Price"). The Purchase Price shall be payable through the deposit into the Escrow of the entire Purchase Price in immediately available funds, in cash, cashier's check or through wire transfer of funds.
4. **Conveyance of Title.** Agency agrees to convey by Grant Deed to District marketable fee simple title to the Property, free and clear of all recorded and unrecorded liens, encumbrances, assessments, easements, leases, and taxes except such matters which are reasonably acceptable to the District, following District's review of the preliminary title report as provided in this Section 3. Within five (5) days after the date of this Agreement, Agency shall cause a title company mutually agreeable to both parties (the "Title Company") to deliver to District a standard CLTA preliminary title report (the "Report") with respect to the title to the Property, together with legible copies of the exceptions

("Exceptions") set forth in the Report. District shall have ten (10) days from its receipt of the Report within which to give written notice to Agency of District's approval or disapproval of any of such Exceptions. District's failure to give written approval or disapproval of the Report within such time limit shall be deemed approval of the Report. No deeds of trust, mortgages or other liens, except for the lien of property taxes and assessments not yet due, shall be approved Exceptions. If District notifies Agency of its disapproval of any Exceptions in the Report, or is deemed to have disapproved the Report, Agency shall have the right, but not the obligation, to remove any disapproved Exceptions within ten (10) days after receiving written notice of District's disapproval or provide assurances satisfactory to District that such Exception(s) will be removed on or before the Closing. If Agency cannot or does not elect to remove any of the disapproved Exceptions within that period, District shall have five (5) days after the expiration of such ten (10) day period to either give the Agency written notice that District elects to proceed with the purchase of the Property subject to the disapproved Exceptions or to give the Agency written notice that the District elects to terminate this Agreement. The District shall have the right to approve or disapprove any Exceptions reported by the Title Company after District has approved the condition of title for the Property. Agency shall not voluntarily create any new Exceptions to title following the date of this Agreement.

5. **Title Insurance Policy.** Escrow Agent shall, following recording of the Grant Deed, provide District with a CLTA (or ALTA, at the request of the District) policy of title insurance in the amount of the Purchase Price, issued by the Title Company, together with any endorsements reasonably requested by the District showing fee simple title to the Property vested in District, subject only to the Exceptions set forth in Section 3 and the printed exceptions and stipulations in the policy. The Agency shall pay for the premium charged for such title policy and endorsements.
6. **Escrow.** Within fourteen (14) days of the District determining that it will proceed with complete well development, pursuant to Section 2.7 of the Agreement (Condition No. 2.f herein), the Agency and District shall open escrow (the "Escrow") with Fidelity National Title Insurance Company or another escrow company mutually agreeable to both parties (the "Escrow Agent"). This Agreement, together with the escrow instructions prepared by Escrow Agent and executed by Agency and District, constitutes the joint escrow instructions of Agency and District, and Escrow Agent to whom these instructions are delivered is hereby empowered to act under this Agreement. The parties hereto agree to do all acts necessary to close this Escrow within sixty (60) days from the date it is opened. If the escrow is not closed within 60 days through no fault of the District and due to reasons beyond the control of the District, Agency shall agree to a reasonable extension of time to close the escrow without penalty or forfeiture to District so that the escrow may be successfully closed.
  - a. **Grant Deed.** Agency shall execute and deliver into the Escrow a Grant Deed (the "Grant Deed") to District, in the form of the Grant Deed which

is attached to the Agreement as Exhibit "B". District will deposit into the Escrow a Certificate of Acceptance to the Grant Deed. District agrees to deposit the Purchase Price upon demand of Escrow Agent. Agency and District agree to deposit with Escrow Agent any additional instruments as may be necessary to complete this transaction.

- b. **Insurance.** Insurance policies for fire or casualty are not to be transferred, and Agency will cancel its own policies after close of escrow.
  - c. **Escrow Account.** All funds received in the Escrow shall be deposited with other escrow funds in a general escrow account(s) and may be transferred to any other escrow trust account in any state or national bank doing business in the State of California. All disbursements shall be made by check from such account.
7. **Tax Adjustment Procedure.** Escrow Agent shall pay and charge Agency for all unpaid delinquent property taxes and/or penalties and interest thereon, if any, and for any delinquent assessments or bonds against the Property. Escrow shall prorate property taxes and assessments for the current fiscal year, if any.
8. **Escrow Agent Authorization.** Escrow Agent is authorized to, and shall:
- a. **Escrow Fees and Charges.** Buyer and Seller, respectively, shall deposit such instruments and funds as are necessary to timely close escrow and consummate the sale and purchase of the real property in accordance with the terms and provisions of this Agreement. (1) Seller shall pay the premium cost of a CLTA owner's policy of title insurance issued by Fidelity National Title Insurance Company; (2) Seller shall pay any required documentary transfer taxes; (GRANT DEED IS ATTACHED)(3) all escrow fees and costs shall be apportioned between and paid one-half by Seller and one-half by Buyer; and (4) Buyer shall pay for any costs of the title policy which exceed the amount payable by the Seller pursuant to the foregoing, including the additional cost of an ALTA policy and the costs of any requested endorsements.
  - b. **Disbursement.** Escrow Agent shall disburse funds to Agency, record the Grant Deed and Certificate of Acceptance, and deliver the title policy to District when conditions of the Escrow have been fulfilled by Agency and District.
  - c. **Close of Escrow.** The term "Close of Escrow," if and where written in these instructions, shall mean the date the Grant Deed and other necessary instruments of conveyance are recorded in the office of the San Bernardino County Recorder. Recordation of instruments delivered through this Escrow is authorized, if necessary or proper in the issuance of the policy of title insurance pursuant to Section 4 hereof.

- d. **Time Limits.** All time limits within which any matter specified is to be performed may be extended by mutual agreement of the parties. Any amendment of, or supplement to, any instructions must be in writing.
- e. **Time of the Essence.** TIME IS OF THE ESSENCE IN THESE INSTRUCTIONS AND ESCROW IS TO CLOSE WITHIN 60 DAYS OF THE DATE IT IS OPENED UNLESS OTHERWISE EXTENDED BY AGREEMENT OF THE PARTIES, PURSUANT TO SECTION 6 OF THIS AGREEMENT.
- f. **Escrow Agent Responsibility.** The responsibility of the Escrow Agent under this Agreement is expressly limited to Sections 1, 2, 3, 4, 5, 6, 7, 8, 11, and 12 of this Agreement and to its liability under any policy of title insurance issued in regard to this Escrow.
- g. **Tax Requirements.** Escrow Agent shall prepare and file with all appropriate governmental or taxing authorities a uniform settlement statement, closing statement, tax withholding forms including an IRS 1099-S form, and be responsible for withholding taxes, if any such forms are provided for or required by law.

9. **Conditions Precedent to Close of Escrow:**

- a. **District's Conditions Prior to Closing.** The obligation of the District to complete the purchase of the Property is subject to the satisfaction of the following conditions:
  - i. Agency shall deliver through Escrow an executed and recordable Grant Deed sufficient to convey fee title to the District as set forth in Section 6.1 (Condition No. 6.a herein).
  - ii. Agency shall deliver through Escrow such other documents as are necessary to comply with Agency's obligations under this Agreement.
  - iii. Agency shall not be in default of any of its obligations under the terms of this Agreement, and all representations of Agency herein shall be true and correct.
  - iv. District shall have approved the condition of title to the Property and Escrow Agent shall have committed to deliver to District a title insurance policy as required by Section 4 hereof.
  - v. The District shall not have terminated this Agreement, pursuant to Section 2.6 (Condition No. 2.f herein).
  - vi. The condition of the Property shall be reasonably satisfactory to the District and in the condition required by this Agreement.

- b. **Agency's Conditions Precedent to Closing.** The obligation of Agency to complete the sale of the Property is subject to the satisfaction of the following conditions:
  - i. The District shall not be in default of any of its obligations under the terms of this Agreement, and all representations of the District herein shall be true and correct.
  - ii. The District shall have deposited with the Escrow Agent immediately available funds in an amount equal to the Purchase Price and the District's share of costs described herein.
  - iii. The District shall obtain City approval of a parcel map which creates the Property as a separate legal parcel.
- 10. **Rental and Occupancy of Property.** Agency agrees not to rent any portion of the Property prior to the Closing, without the approval of the District. The Agency shall be responsible for the payment of any relocation benefits, assistance and/or payments under California Government Code Section 7260, *et seq.* to any tenants or other occupants of the Property, or current or former occupants, which may be required under applicable law. No relocation benefits shall be payable to District, as provided in Section 18 hereof.
- 11. **Permission to Enter on Property.** Agency hereby grants to District, or its authorized agents, permission to enter upon the Property at all reasonable times prior to close of Escrow for the purpose of making necessary or appropriate inspections. Within 60 days of District's execution of this Agreement, District at its expense may (but is not required to) perform such tests of the soils, groundwater and/or improvements on the Property as District shall deem appropriate (the "Tests"). District acknowledges that Agency has not conducted and shall not have any obligation to conduct any investigation to discover or ascertain what Hazardous Materials (as defined in Section 16.1 hereof [Condition No. 16.a herein]), if any, may have been used, disposed of, manufactured and/or released upon or from the Property or any part thereof, and that Agency has not investigated or reviewed (nor shall Agency have any obligation to ascertain or discover) what any such laws, rules or regulations may provide.
- 12. **Counterparts.** This Agreement may be executed in counterparts, each of which when executed shall, regardless of the date of its execution and delivery, be deemed an original, and all counterparts together shall constitute one and the same instrument.
- 13. **Closing Statement.** Agency instructs Escrow Agent to release a copy of Agency's closing statement to District.
- 14. **Loss or Damage to Personal Property.** Excepting the improvements undertaken by the District during the drilling of a well-pilot hole pursuant to Section 2 of this Agreement, loss or damage to the Property, by fire or other

casualty occurring prior to the recordation of the Grant Deed, shall be at the risk of Agency. In the event that loss or damage to the Property, by fire or other casualty, occurs prior to the recordation of the Grant Deed, District may elect to require that the Agency pay to District the proceeds of any insurance policy or policies which may become payable to Agency by reason thereof, or to permit such proceeds to be used for the restoration of the damage done, or to reduce the Purchase Price by an amount equal to the diminution in value of the Property by reason of such loss or damage or the insurance proceeds payable to Agency, whichever is greater.

15. **Possession and Disposition of Personal Property.** Agency shall, prior to the close of Escrow, remove or otherwise dispose of all personal property owned by the Agency which is located on the Property. All personal property owned by Agency remaining on the Property after the Closing shall become the property of the District and District may dispose of same without liability as it alone sees fit, and Agency shall be liable for the costs of removal which are incurred by the District. District shall not be liable for any loss of or damage to the Agency's personal property remaining on the Property, regardless of when loss or damage occurs.
16. **Warranties, Representations, and Covenants of Agency.** Agency hereby warrants, represents, and/or covenants to Agency that:
  - a. **Pending Claims.** To the actual knowledge of the employees of the Agency who have participated in the negotiations of this Agreement and management of the Property, with no duty of investigation, there are no actions, suits, claims, legal proceedings, or any other proceedings affecting the Property or any portion thereof, at law, or in equity before any court or governmental agency, domestic or foreign.
  - b. **Encroachments.** To the actual knowledge of the employees of the Agency who have participated in the negotiations of this Agreement and the management of the Property with no duty of investigation, there are no encroachments onto the Property by improvements on any adjoining property, nor do any buildings or improvements located on the Property encroach on other properties.
  - c. **District's Title.** Until the close of Escrow, Agency shall not do anything which would impair District's title to the Property.
  - d. **Conflict with Other Obligations.** To the best of Agency's knowledge, neither the execution of this Agreement nor the performance of the obligations herein will conflict with, or breach any of the provisions of any bond, note, evidence of indebtedness, contract, lease, covenants, conditions and restrictions, or other agreement or instrument to which Agency or the Property may be bound.
  - e. **Change of Situation.** Until the close of Escrow, Agency shall, upon learning of any fact or condition which would cause any of the warranties

and representations in the section not to be true as of the close of Escrow, immediately give written notice of such fact or condition to District.

- f. **Authority.** Agency is the owner of and has the full right, power, and authority to sell, convey, and transfer the Property to District as provided herein and to carry out Agency's obligations hereunder.
- g. **Bankruptcy.** Neither Agency nor any related entity are the subject of a bankruptcy proceeding, and permission of a bankruptcy court is not necessary for Agency to be able to transfer the Property as provided herein.
- h. **Governmental Compliance.** Agency has not received any notice from any governmental agency or authority alleging that the Property is currently in violation of any law, ordinance, rule, regulation or requirement applicable to its use and operation. If any such notice or notices are received by Agency following the date this Agreement is signed by District, Agency shall, within ten (10) days of receipt of such notice, notify District; Agency then, at its option, may either elect to perform the work or take the necessary corrective action prior to the close of Escrow or refuse to do so, in which case Agency shall notify District of such refusal and District shall be entitled to either close Escrow with knowledge of such notice(s) or terminate this Agreement.
- i. **Right to Possession.** No person, firm, partnership or corporation has the right to possess the Property or any portion of it, as of the date of this Agreement.

17. **Hazardous Materials.**

- a. **Hazardous Materials.** As used in this Agreement; the term "Hazardous Materials" shall mean any substance, material, or waste which is or becomes, regulated by any local governmental authority, the State, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law)), (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) friable asbestos, (vii) polychlorinated biphenyls, (viii)

methyl tertiary butyl ether, (ix) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Code of Regulations, Division 4, Chapter 20, (x) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317), (xi) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, *et seq.* (42 U.S.C. § 6903) or (xii) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U. S. C. §§ 9601, *et seq.*

- b. **District's Environmental Contingency.** As soon as practicable after the completion of any Tests which may be conducted pursuant to Section 10 hereof, if any, District shall provide Agency with a written report (the "Report") describing (i) the results of any such Tests and (ii) any repairs or remedial measures (the "Remedial Measures") proposed to be undertaken to comply with all federal, state and local legal requirements applicable to the conditions disclosed by such Tests, including, but not limited to, any legal requirements relating to Hazardous Materials. If Remedial Measures are deemed necessary, Agency and District shall each have the right to terminate this Agreement, in which event no party shall have any further liability to the other. Within ten (10) days after receipt of District's notice to terminate, Agency shall have the option to undertake the Remedial Measures in accordance with a remediation plan which is approved by all appropriate governmental authorities and approved by District (the "Remediation Plan"), in which event, the District's termination shall be revoked and this Agreement shall close as set forth herein, provided, however, District shall have no obligation to close unless and until Agency shall have delivered to District a letter or certificate (the "Certificate") from one or more governmental entities with jurisdiction over the Property stating that no further action is required with respect to the environmental condition of the Property. Should Agency elect to undertake Remedial Measures, it shall, in consultation with the appropriate governmental agencies, promptly initiate at its cost and expense such Remedial Measures in a timely manner. In the event the Remedial Measures are not complete and Agency has not delivered the Certificate to District within three (3) months from the date hereof, District shall have the further right to terminate this Agreement, in which event no party shall have any further liability to the other hereunder.
18. **Contingency.** It is understood and agreed between the parties hereto that the completion of this transaction, and the Escrow created hereby, is contingent upon the specific acceptance and approval of the District herein. The execution of these documents and the delivery of same to Escrow Agent constitute said acceptance and approval.
19. **Full and Complete Settlement for Fee Interest.** The total compensation to be paid by District to Agency is in consideration for all of Agency's interests in the

Property and any rights or obligations which exist or may arise out of the acquisition of the Property for public purposes, including without limitation, Agency's fee interests in the land and any improvements and fixtures and equipment located thereon, improvements pertaining to the realty (if any), severance damages, relocation assistance, any alleged pre-condemnation damages, loss of business goodwill (if any), costs, interest, attorney's fees, and any claim whatsoever of Agency which might arise out of or relate in any respect to the acquisition of the Property by the District. District fully releases and discharges Agency from all and any manner of rights, demands, liabilities, obligations, claims, or cause of actions, in law or equity, of whatever kind or nature, whether known or unknown, whether now existing or hereinafter arising, which arise from or relate in any manner to (i) the relocation of Agency's business or governmental operations or the relocation of any person or persons, business or businesses, or other occupant or occupants located on the Property, including the specific waiver and release of any right to any relocation benefits, assistance and/or payments under California Government Code Section 7260, *et seq.*, notwithstanding that such relocation assistance, benefits and/or payments may be otherwise required under said sections or other state or federal law; and (ii) compensation for any interest in the business operations or the Property including, but not limited to, land and improvements, fixtures, furniture, or equipment thereon, goodwill, severance damage, attorneys' fees or any other compensation of any nature whatsoever. It is hereby intended that the release contained above relates to both known and unknown claims that the District may have, or claim to have, against the Agency with respect to the subject matter contained herein or the events relating thereto. By releasing and forever discharging claims both known and unknown which are related to or which arise under or in connection with, the items set out above, the District expressly waives any rights under California Civil Code Section 1542, which provides:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

20. **Broker's Commission.** District and Agency agree to and do hereby indemnify and hold the other harmless from and against any and all costs, liabilities, losses, damages, claims, causes of action or proceedings which may result from any broker, agent or finder, licensed or otherwise, which it has employed in connection with the transaction covered by this Agreement.
21. **Waiver, Consent and Remedies.** Each provision of this Agreement to be performed by Agency and District shall be deemed both a covenant and a condition and shall be a material consideration for District's and Agency's performance hereunder, as appropriate, and any breach thereof by Agency or District shall be deemed a material default hereunder. Either party may

specifically and expressly waive in writing any portion of this Agreement or any breach thereof, but no such waiver shall constitute a further or continuing waiver of a preceding or succeeding breach of the same or any other provision. A waiving party may at any time thereafter require further compliance by the other party with any breach or provision so waived. The consent by one party to any act by the other for which such consent was required shall not be deemed to imply consent or waiver of the necessity of obtaining such consent for the same or any similar acts in the future. No waiver or consent shall be implied from silence or any failure of a party to act, except as otherwise specified in this Agreement. All rights, remedies, undertakings, obligations, options, covenants, conditions and agreements contained in this Agreement shall be cumulative and no one of them shall be exclusive of any other. Except as otherwise specified herein, either party hereto may pursue any one or more of its rights, options or remedies hereunder or may seek damages or specific performance in the event of the other party's breach hereunder, or may pursue any other remedy at law or equity, whether or not stated in this Agreement.

22. **Attorney's Fees.** In the event any declaratory or other legal or equitable action is instituted between District, Agency and/or Escrow Agent in connection with this Agreement then as between Agency and District, the prevailing party shall be entitled to recover from the losing party all of its costs and expenses, including court costs and reasonable attorneys' fees, and all fees, costs and expenses incurred on any appeal or in collection of any judgment.
23. **Notices.** Any notice, request, demand, consent, approval or other communication required or permitted hereunder or by law shall be validly given or made only if in writing and delivered in person to an officer or duly authorized representative of the other party, or deposited in the United States mail, duly certified or registered (return receipt requested), postage prepaid, or delivered through another reasonably acceptable method, and addressed to the party for whom intended, as follows:

If To District: Monte Vista Water District  
10575 Central Avenue  
Post Office Box 71  
Montclair, California 91763  
Attention: General Manager

If To Agency: City of Montclair Redevelopment Agency  
5111 Benito Street  
Post Office Box 2308  
Montclair, California 91763  
Attention: Executive Director

Any party may from time to time, by written notice to the other, designate a different address which shall be substituted for that specified above. If any notice or other document is sent by mail as aforesaid, the same shall be

deemed fully delivered and received forty-eight (48) hours after mailing as provided above.

24. **Default.** Failure or delay by either party to perform any covenant, condition or provision of this Agreement within the time provided herein constitutes default under this Agreement. The injured party shall give written notice of default to the party in default, specifying the default complained of. The defaulting party shall immediately commence to cure such default and shall diligently complete such cure within thirty (30) days from the date of the notice or such longer period if the nature of the default is such that more than thirty (30) days is required to cure such default. The injured party shall have the right to terminate this Agreement by written notice to the other party in the event of a default which is not cured within the time set forth herein.
25. **Gender and Number.** In this Agreement (unless the context requires otherwise), the masculine, feminine and neuter genders and the singular and the plural shall be deemed to include one another, as appropriate.
26. **Entire Agreement.** This Agreement and its exhibits constitute the entire agreement between the parties hereto pertaining to the subject matter hereof, and the final, complete and exclusive expression of the terms and conditions thereof. All prior agreements, representations, negotiations and understanding of the parties hereto, oral or written, express or implied, are hereby superseded and merged herein.
27. **Captions.** The captions used herein are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions hereof.
28. **Governing Law.** This Agreement and the exhibits attached hereto have been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California.
29. **Invalidity of Provision.** If any provision of this Agreement as applied to any party or to any circumstance shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way affect (to the maximum extent permissible by law) any other provision of this Agreement, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of this Agreement as a whole.
30. **Amendments.** No addition to or modification of any provision contained in this Agreement shall be effective unless fully set forth in writing by Agency and District.
31. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

32. **Time of Essence.** Time is of the essence of each provision of this Agreement.
33. **Binding Upon Successors.** The terms and conditions, covenants, and agreements set forth herein shall apply to and bind the heirs, executors, administrators, assigns and successors of the parties hereof.
34. **Reimbursement for Improvements.** The District shall reimburse the Agency or City for the cost of curb, gutter, sidewalk, and half street improvements through the Richton Street frontage of the Property at such time as the Agency or City determines there is a need to extend Richton Street from Monte Vista Avenue to and/or across the San Antonio Channel. This requirement shall remain in effect after the close of escrow for the conveyance of the Property to the District.

**6.b WORKSHOP – DOWNTOWN SPECIFIC PLAN**

Project Address:	North Montclair Downtown Specific Plan
Project Applicant:	City of Montclair
Project Planner:	Planning Division staff / Moule and Polyzoides Architects and Urbanists
Request:	Consider presentation of most recent draft of the Downtown Specific Plan
Staff Recommendation:	Provide comments and direction to staff and consultant

City Planner Lustro reviewed the staff report. He advised that the item was brought to this meeting to solicit questions and comments and is scheduled to be brought back to the Commission at its March 13, 2006 meeting for formal consideration and recommendation to City Council for adoption.

Alan Loomis, Moule and Polyzoides Architects and Urbanists, attended the meeting to provide a PowerPoint presentation update on the Downtown Plan and answer questions. Mr. Loomis thanked the Commission for its time and consideration and reviewed his presentation by going through the process of what led to the plan and explain the details of the final draft.

The focus area is comprised largely of vacant lots or vacant businesses and there is a considerable amount of land that is underutilized for commercial development and even more when the Metrolink parking lots are included. The way they began this project was by doing a series of diagrams to show a pattern of open space. There currently are not many inviting open spaces. We then took the diagram and compared it to a number of pedestrian-oriented places that were nearby or that staff had suggested, including the Claremont Village, Birch Street in Brea, Victoria Gardens, and Old Pasadena. Both the Claremont Village and the Birch Street area, which is one of the premier examples of placing pedestrian-oriented retail and housing into a suburban setting, are quite small in size by comparison to North Montclair. Likewise, Victoria Gardens is about half the size of North Montclair. Old Pasadena, which is quite the economic powerhouse of the San Gabriel Valley, is about the same size as our study area.

With that in mind, we started the project with developing a series of principles of what it would take to create a pedestrian-friendly environment. First, we need to make great public places, such as a public square or public park or some sort of environment that was a key public place. It was also important to make great streets; streets geared towards pedestrians, especially in areas where you want to focus pedestrian-oriented retail. That means slow traffic, wide sidewalks, street trees creating plenty of shade and plenty of things to look at adjacent to the sidewalk in terms of storefronts and street dining. The next principle was that there needs to be a variety of buildings and architectural styles, a real mix of functions and building types as well as a mix of retail tenants, both in terms of their focus and size. Next is to create a variety of housing options, such as live-work units, condos, townhomes, and courtyard arrangements, including for-sale and rental products. One of the problems with any kind of urban environment is moving cars in and out and getting the right balance of cars to pedestrians. Parking needs to be in the right location, but not too close or too far from your destination. Another goal is “getting the retail right” with the right mixture of local versus national retailers, chain retailers and a good mix of large and small regional-serving retail.

Different types of intensities of place were created. The most intense is the Town Center. Corridor Residential is almost all residential, but with provisions for small scale retail. The next category, Neighborhood Residential, is the residential environment most people are familiar with - mostly single-family homes but also inclusive of buildings that look like single-family homes. In the series of workshops that were conducted, several design concepts were created. After four public meetings, we settled on a preferred scheme that includes the Town Center and two different residential zones.

The intense Town Center mixed-use and retail environment is concentrated around the intersection of Arrow Highway and Fremont Avenue, also extending north to the Transcenter. A pedestrian tunnel will begin construction this year to link the north and south sides of the tracks. It is anticipated that the retail uses in this area would be primarily neighborhood-serving. Timing for development of this retail area will be dependent upon how quickly the residential components are built and also when the Gold Line is completed. In the area around the Transcenter there might be a market for a grocery store once there is a significant amount of residential developed.

We expect that the former Sam’s Club property will probably develop as residential in the first phase, along with the former Western Rock site on Arrow Highway. Phase 2, which would probably get going in about ten years when the Gold Line arrival becomes more certain, would include a mixture of three, four, and maybe even five-story buildings that would have retail on the ground floor and apartments and lofts on the upper floors. This would really become viable after there is a significant number of rooftops surrounding the site. Once the Gold Line arrival is more imminent, there will be more motivation and likelihood for developers to come in and make this plan happen. We also included a number of sites for parking garages to accommodate the demands for parking as well as replacement parking for the Transcenter. In Phase 3, well after the Town Center area takes off and develops north into the Transcenter parking lots, the area extending west of Monte Vista Avenue will become extremely attractive for residential because of the proximity to the amenities in North Montclair as well as Claremont Village, and the ease of accessing rail to Pasadena and downtown Los Angeles.

We also began to sketch out how Montclair Plaza could expand to the north, with a new street that would connect to a public park and the Transcenter. This includes the area comprising the existing big box retail and the North Plaza. There is a lot of opportunity to redesign that area and integrate it in with the other plans, but there are a whole variety of reasons why this will probably not happen soon. While we have outlined four phases of development based on what we believe is realistic in terms of what land is available and the way the market is behaving, we look at the part of the project north of Montclair Plaza as "Phase X" because there are so many variables, including interest and cooperation from General Growth Properties. They thought at some point it is going to be very viable and desirable for development there but not for quite some time.

Commissioner Vodvarka commented that the plan looked like one big dream and he hoped that it is something that can at least partially come true.

Vice Chairman Lenhart commented that he does not believe a grocery store will work at the west end of the John's Incredible Pizza building because of a lack of parking. He added that the Monte Vista Water District might be interested in partnering with the City to create a water feature in one of the proposed street medians.

Commissioner Sahagun commented that he did not see a lot of parking for the transit-oriented development. Mr. Loomis stated that there are three proposed parking structures at five stories each. They would be quite large and one of the things they proposed is to place them up against the tracks because there is about a one-story drop in elevation from the tracks to Arrow Highway, so putting them against the tracks and wrapping them with ground-floor retail uses would help mitigate their scale, mass and appearance.

Commissioner Vodvarka commented that he found it interesting that we are planning everything around the Transcenter and wondered where we stand at this point with regard to acquiring the property. Director Clark replied that staff has had recent discussions with Caltrans and they have agreed not to sell the property unless they offer it to the City. They have declared the property surplus due to previous discussions and they were simply going to transfer it to us. Their actions are constrained by the California Transportation Commission and Surplus Property Division of Caltrans. Surplus property needs to be appraised and then offered for sale to the City. By adopting this Specific Plan, the City will designate this area as a transit village and by doing that under state law, if they are ever to sell it, they must offer it to the City to continue the operation of the transit facility. It is very secure and through staff's discussions with them, they have agreed to take it off the surplus property list and maintain it until such time that the City may be able to negotiate for it.

Commissioner Johnson asked about green space; she saw three park-type green spaces that looked very miniscule and she recalled that during the workshops, there was discussion regarding centers for art or waterways and she did not see them. She also asked for clarification that the time line from the time we start until the time we finish is going to be about 10 years. Mr. Loomis stated that the timeline is really going to be dictated by the market and how quickly properties become available and developers move forward to acquire and build. The expectation is that the Town Center around the Transcenter is not likely to happen until there is more certainty about the Gold Line timeline. It will probably take some time for the entire plan area to build out, possibly as long as 15 years. If the market is really

strong, it could happen in a shorter period of time. In terms of park space, there are three areas. South of Arrow Highway they are showing two neighborhood greens/neighborhood squares, the largest is roughly 300 feet by 500 feet, which is quite significant in size, and there is a similar sized space south of the Transcenter. There is a larger open space to the north. Another space we are looking at is the former Pacific Electric right-of-way in the center of Huntington Drive, which could become a park or recreation trail. We purposely did not include extremely large open spaces for sports activities, because we believed that those types of facilities belong on the edges of a dense/mixed use environment, not in the center. In terms of the actual standards for open space, they would defer to the City's existing standards for open space as development comes forward. Director Clark advised that the ballet company has discussed with the City the possibility of building a multi-story structure adjacent to the Transcenter that would be a performing arts center or potential mixed-use that would include the ballet studio, a banquet facility, and maybe some residential units to make it self-sustaining. The ballet group feels fairly confident about receiving some large grant funding that is available and directed to the Inland Empire. We began the Specific Plan process with a marketing plan that told us what to expect in the way of the market, what could be absorbed into this plan, and the plan was built around that so it was very much reality-based. Surprisingly, it is very accurate as the interest is coming forward. It said that you can expect that the residential builders will come here first and once that market is here, you will have enough built-in population to mature the commercial uses. The Sam's Club property has been demolished in anticipation of this plan being acceptable to the Planning Commission and City Council. The property is in escrow, the buyers are very committed with substantial amounts of non-refundable money. There are another couple of sites just north of the existing single-family subdivision that are very interested and committed for the cement plant and that property is in escrow with a primary residential builder. The Vulcan industrial asphalt property is on the market so there is a lot of activity that could start to move forward.

Commissioner Sahagun asked how many units would be developed on the Sam's Club property. Director Clark advised that the plan would permit up to 400. The way the designs are coming forward to us now, there would be approximately 275. Commissioner Sahagun asked if any would be three-story. Director Clark replied that some along the edges could be.

Commissioner Vodvarka inquired about the Huntington Drive median. He commented that, according to the information in the Specific Plan, the Huntington Drive right-of-way actually covers three cities – Claremont, Montclair and Upland. How is that going to affect the plan being developed. Director Clark replied that we can control it because the connections can be made through Montclair to the south side of Huntington Drive, which leads to the intersection in Claremont that is already in place. Commissioner Vodvarka asked where the City boundary is in relationship to Huntington Drive. Director Clark stated that it is in the center of the dirt path that is the vacated rail right-of-way.

Chairman Flores thanked everyone for the presentation. He thought it was very good, but was lacking on discussion of the parking. He also commented that the City needs another grocery store, but felt the location next to John's Incredible Pizza would not work due to congestion.

## INFORMATION ITEMS

Commissioner Sahagun commented there are two or three sprinkler valve covers missing at the Saratoga Park baseball fields.

Commissioner Sahagun received a comment from two Montclair business owners regarding the bushes being too high and obstructing sight visibility at a left-turn pocket on Holt Boulevard, but when he visited the property, he did not observe what they were commenting on.

Commissioner Sahagun said that the automobile businesses just east of Montclair Gas and Wash (5500 block Holt Boulevard) has a vehicle in almost every parking space, cars parked with flat tires, abandoned vehicles, and it is looking bad because they are collecting a lot of cars in their parking lot, they are not maintaining the areas behind their buildings.

Commissioner Vodvarka asked what happened to the property on Huntington Drive where a house was going to be built on the rear portion of the property. He visited the property and found a trailer and a truck with weeds growing right through it and spider webs, etc. and the property needs cleaning up.

Commissioner Johnson commented that someone who does not live in the City asked her about the viability of the Montclair Plaza. She (Commissioner Johnson) noticed that there were not any vacant spots as well as all the kiosks looked full. She wondered what will happen to the Robinsons-May space once they have actually left. City Planner Lustro replied that all that staff knows at this time is that Macy's will be moving into the Robinsons-May building and it is the Macy's building that will be vacated, at least for the time being. It is still undetermined if the Macy's building will stay or be demolished and replaced with a new building. Director Clark stated that the Montclair Plaza is very viable if you look at sales tax receipts because it is doing quite well. The Plaza sales are flat or decreased slightly, but they haven't decreased anywhere close to the degree predicted as a result of the opening of Victoria Gardens.

Chairman Flores adjourned the meeting at 8:18 p.m.

Respectfully submitted,

Laura Berke  
Recording Secretary