



CITY OF MONTCLAIR
PLANNING COMMISSION MINUTES

REGULAR ADJOURNED MEETING
Tuesday, November 13, 2012

COUNCIL CHAMBER
5111 Benito Street, Montclair, California 91763

CALL TO ORDER

Chair Johnson 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: Chair Johnson, Vice Chair Flores, Commissioners Sahagun and Vodvarka, Community Development Director Lustro, City Planner Diaz, Assistant Planner Gutiérrez, and City Attorney Robbins.

MINUTES

The minutes of the October 8, 2012 regular meeting were presented for approval. Commissioner Vodvarka moved, Vice Chair Flores seconded, and the minutes were approved 3-0, Chair Johnson abstaining.

ORAL AND WRITTEN COMMUNICATIONS

None.

AGENDA ITEMS

- a. PUBLIC HEARING - CASE NUMBER 2012-16
Project Address: 9746 Central Avenue
Project Applicant: Montclair Town Center LLC
Project Planner: Silvia Gutiérrez, Assistant Planner
Request: Conditional Use Permit for a tattoo studio

Assistant Planner Gutiérrez reviewed the staff report.

Commissioner Sahagun asked how many tattoo studios the City currently has. Assistant Planner Gutiérrez replied there are four; three on Holt Boulevard and one on Moreno Street. Commissioner Sahagun asked if any of the previously approved establishments have closed. Assistant Planner Gutiérrez replied that one had closed and then changed ownership. Director Lustro added that two tattoo studios that were approved by the Commission have since closed and there have been new ones that have come in. The way staff reviews tattoo studios is how we would other types of businesses. The businesses that are well-run and offer a good product or service are the ones that survive. Whether they are shopping for a product or a service, people typically vote with their wallet to receive top notch service.

Commissioner Sahagun commented the subject property is very well maintained. He asked about the parking spaces in the shopping center and whether it included the pad buildings that are along the perimeter, and also the number of disabled-accessible spaces. Assistant Planner Gutiérrez stated that the applicants recently undertook maintenance of the parking lot surface and striping. Commissioner Sahagun commented the center has very well-maintained landscaping as well. Commissioner Sahagun asked if 640 parking spaces was the total number of spaces in the entire shopping center, including the pad buildings, along with the 21 disabled-accessible parking spaces. Director Lustro replied there are reciprocal-access parking agreements throughout the entire center, including the pad buildings along Central Avenue. Staff looks at that as all part of the Town Center.

Chair Johnson opened the public hearing.

James Rees, 9738 Central Avenue, Montclair, owner of ESI Insurance, stated ESI Insurance has been in Montclair since 1969. They were located on Holt Boulevard and moved from Holt Boulevard because of the negative atmosphere of prostitutes and shootings to where they are now located (in the Montclair Town Center). His complaint is not about the shopping center, as it is clean and well-run, but about what it's becoming. They now have a massage parlor and he has doubts as to what really happens there. Now, two weeks after hearing the center has a massage parlor, they are now going to have a tattoo parlor. It seems to him that everything is just moving from Mission and Holt up Central and that it is lowering the type of businesses they have. He cannot get out of his location because he has a lease or else he would move. He does not think his clients would come to a place that is between a massage parlor and a tattoo parlor. He did not think those businesses attract clients that his clients want to be around.

Brad Umansky, managing partner and co-owner of the Montclair Town Center, 3296 Guasti Road, Suite 110, Ontario, thanked staff for the report and appreciated Mr. Rees' comments. He spoke with him beforehand and wanted to offer a couple additional pieces of information. They have had numerous people ask them about doing a tattoo studio at the shopping center over the last decade and they have turned every one of them down. This was a unique situation where the applicant, after speaking with him about how he would operate the store, his background, the fact that he owned a studio in San José and was currently working out of a studio in Pomona and lives locally, and reviewing a plan of how the space was going to be improved, he felt it was going to be one of the most attractive interiors of any tenant space in the shopping center. They included in the lease that the tenant has to build it that way. The tenant is proposing attractive flooring and attractive counters and entryway. He felt it would be very well-done. They did have some apprehension about having this type of use in the center when it was first proposed. He contacted Director Lustro and asked if staff had any concerns because he wanted to be able to address them. It's different; the world of retail is changing and they have to adapt to the world and have to respect the conduct of other people and he felt it was really important to keep an open mind. He wanted to comment about the massage parlor in the center. The sign is going to say "Day Spa" and the space will have a wide open interior rather than a bunch of closed offices with a blocked-off front area. There will be some chairs in there for them to massage your feet and shoulders. He knows that Montclair is extremely sensitive to prostitution that sometimes takes place in these types of facilities so anyone will be able to walk in at any time, open the door and be able to see everything that is inside. He felt the Commission knows the (Town Center) ownership well enough to know they do not take any decision lightly and he would be very sad to see Mr. Rees leave if that is what he decides to do when his lease comes due. He was hopeful that the Commission's concerns will not come true and they will do everything they can to make sure they do not.

Mr. Rees commented that just this weekend a fire bomb was thrown into the computer store next to the store where the tattoo store will be. This is what is coming down. It was reported to the Police Department. Someone just opened the door and threw a fire bomb in there. He is concerned about the general area and was hoping the Commission would be concerned too.

Shawn Phillips, 17826 Pine Avenue, Fontana, owner of Rise Above Tattoo Company, was present to formally request to operate inside the Montclair Town Center. Rise Above Tattoo/Gallery specializes in all forms of contemporary art, but focuses on modern tattooing. He has been a professional body art practitioner since 2004 and has owned and operated his own facility since 2008. With the experience of his many years in the industry, he hoped to bring a different approach to the galleries and studios of the past. They want to be located in the clean, quiet, upscale area that is essential to how they would like to be perceived. The facility will be operated with the highest level of integrity and designed so that privacy and peacefulness will not be disturbed as with traditional tattoo shops of the past. Over the years, he has learned that a more private atmosphere is more pleasing and more comfortable for their clients as well as operating

in accordance with all City and State regulations. They are also regulated and certified in all OSHA requirements to practice body art and fully comply with California AB 300, the Safe Body Art Act. They are also licensed in San Bernardino County as body art practitioners and comply with all County regulations.

Hearing no other comments and no one else being present, Chair Johnson closed the public hearing.

Commissioner Vodvarka commented that as long as a business is being run honestly and in this case, with the medical background that is needed to do tattoos, that part of it is done right also, he had no problem with it. He added that he does not want to see loitering, hanging around, or people just standing around watching what is going on within the business. He was curious if they were going to have any type of security cameras. Mr. Phillips responded that, as with any business, it would be wise for them to install an alarm system. Cameras on the interior of the shop are not allowed as to keep their clients privacy and he did not think that the landlord of the center would want cameras posted on the outside. As far as an alarm system, like ADT, that has always been a requirement to keep the equipment safe.

Commissioner Sahagun asked for clarification on Mr. Rees' comment that he was going to be between the massage and tattoo establishments and if the businesses were immediately to either side of his business. Mr. Umansky replied that there are other tenant spaces between ESI Insurance and the massage business on one side, and other tenant spaces between ESI Insurance and the proposed tattoo studio on the other side, so Mr. Rees is not immediately adjacent to either business.

Chair Johnson asked what conditions address what people will see as they walk by the front of the shop or any signage. She wanted to make sure there would be nothing unappealing for passersby to see. City Planner Diaz stated there are several conditions in the Resolution. Condition Nos. 13 through 17 deal with the appropriate clothing for customers, window painting or tinting, and visibility obstruction. There are no building-mounted or monument signs included in this application; that would be reviewed separately. There is a sign program with which they would have to comply. That is covered in Condition No. 15. Condition Nos. 16 and 17 deal with banners and temporary signs. Condition Nos. 20 through 22 address the operation and maintenance of the business in terms of it being kept clean, discouraging loitering, and not allowing phones or other machines on the exterior. Chair Johnson stated that Condition Nos. 14 and 15 covered her concerns and Condition No. 21 seems like it would address Mr. Rees' concerns about loitering and conduct of patrons.

Commissioner Sahagun asked Mr. Umansky about the bomb throwing incident into the computer store. Mr. Umansky replied that this was the first he heard of it but would check into it the following day.

Commissioner Sahagun moved that, based upon evidence submitted, the project is deemed exempt from the requirements of the California Environmental Quality Act (CEQA). Further, the project qualifies as a Class 1 exemption under State CEQA

Guidelines Section 15301, because it is on a fully developed site and involves minor exterior and interior improvements and no changes to the site involving grading. As such, a DeMinimis finding of no impact on fish and wildlife will be prepared, seconded by Vice Chair Flores, there being no opposition to the motion, the motion passed 4-0.

Commissioner Vodvarka moved to approve a Conditional Use Permit under Case No. 2012-16, approving the proposed dermagraphics (tattoo) studio with art gallery and related tenant improvements at 9746 Central Avenue, per the submitted plans and as described in the staff report, subject to the conditions of approval in attached Resolution No. 12-1769, seconded by Commissioner Sahagun, there being no opposition to the motion, the motion passed 4-0.

b. PUBLIC HEARING - CASE NUMBER 2012-17

Project Address:	5483 Moreno Street
Project Applicant:	Moreno Street Property, LLC, for FlipNIt
Project Planner:	Silvia Gutiérrez, Assistant Planner
Request:	Conditional Use Permit to operate a consignment store

Assistant Planner Gutiérrez reviewed the staff report.

Commissioner Sahagun asked if something like this was approved in the North Montclair Specific Plan, would an amendment have to be done to the Specific Plan or General Plan. Assistant Planner Gutiérrez replied it requires a Conditional Use Permit under the North Montclair Specific Plan. With respect to the specific location, the way the building was originally designed, the surrounding uses and the fact that, despite economic conditions, over the last year the City has been successful in maintaining and attracting businesses to that area, such as Tuesday Morning and 911 Design, whose property was actually purchased outright by the business owner. So, with respect to that, we can still maintain the vision for that area. Staff wanted to give flexibility to the Commission and have the opportunity to present projects on a case-by-case and site-specific basis and staff does not feel this use is appropriate for this location. Staff has had discussions with the applicant and there are other locations that would be more appropriate and more suitable that staff could potentially support. However, the applicant is focused on this specific location. Director Lustro commented that while the North Montclair Specific Plan allows this type of use pursuant to approval of a Conditional Use Permit by the Planning Commission, there was more that staff looked at and that is outlined in detail in the staff report. Looking at the focus area along the south side of Moreno Street between Central Avenue and Benson Avenue, east of the Montclair East shopping center, starting with this particular property and continuing over to Benson Avenue, you have properties that are generally characterized by single-user buildings. 911 Design has multiple tenants, but in a single building with 911 Design as the anchor tenant. Staff looked at the land use objectives in the General Plan and how those objectives relate to the area around Montclair Plaza. Staff has a duty to look very carefully at that area, at particular uses, and how they may be synergistic with the Plaza and enhancing the economic vitality of the area around Montclair Plaza. He felt the findings made in the report are accurate, very detailed, and on point with respect to why staff cannot make the findings for this particular use at this particular location. It is not

to say that this use may not be appropriate for another location elsewhere in the C-3 zone in the North Montclair Specific Plan. As Assistant Planner Gutiérrez stated, the applicant is focused on this particular building so this is the application that was brought to the Commission and the one staff analyzed. If the same business were proposed in a different location, staff would analyze that one on its own merits and the recommendation may or may not be the same.

Commissioner Vodvarka said he had a couple of questions. First, what would happen in the unused portion of the building in the back if this store were to open? Second, by his reading of the staff report, we do not want anything used being sold in the North Montclair Specific Plan, so we better stop Giant RV and the car dealerships from selling anything that is used. He did not understand the idea of this store not being able to sell used products, why are we trying to stop them? Director Lustro said that he disagreed with Commissioner Vodvarka's interpretation of what staff has said in the report. We recognize that Giant RV sells used vehicles, but it is part of a larger operation and a full-service dealership that sells new and used RVs along with a full-service parts and service department. It is a vehicle retailer and a major regional draw for this particular area. Giant RV does not have a store in every community; Montclair is fortunate enough to have one of their dealerships. The proposed consignment store is a completely different use than the RV dealer. Commissioner Vodvarka said the other thing that gets him is that the hours of operation are seven days per week and no unsolicited drop-offs or donations would be accepted at the location and wondered how they would get stuff to sell. Director Lustro explained that because it is consignment, people are not simply bringing things in and dropping them off as they would at a thrift store that accepts donations. The example that comes to mind is Quality Thrift on Holt Boulevard. In this particular case, individuals would bring in items for consignment. Contact would be made with the owners of the store to bring in items, whether its clothing, furniture, or other durable goods so that an agreement can be crafted with the customer with respect to how much the items are going to be sold for, what the customers percentage is going to be if and when they are sold, names, addresses, and contact information. A consignment store operates differently than a thrift store, but at the end of the day, they are selling used merchandise. Staff does not have the ability to monitor the grade or quality of merchandise that would potentially be sold in this store or any other store. So, while the staff report states that there has been some conversation back and forth about this particular store dealing in high quality merchandise, and that may very well be their intent, the reality is that staff cannot monitor or control what comes in and out of the store.

Vice Chair Flores commented the report tells the Commission that staff finds the proposal inconsistent with the North Montclair Specific Plan and with the adopted General Plan and wondered what they were arguing about? Commissioner Sahagun stated the Commission is giving the applicant their due process.

Chair Johnson opened the public hearing.

Lance Worth, 30917 Loma Linda Lane, Temecula, stated he was hired by the owner of the property, Scott Bader, to facilitate the opening of this retail store. Scott owns the building and that is the reason they do not want to lease space elsewhere. From his

reading of the staff report, in order to make the City feel better about utilizing this building, they will occupy the entire 28,000 square feet of building; this will eliminate the worry staff has about making it possible to find a willing tenant to rent the southerly 17,000 square feet, into which they want to expand in the next 12 months anyway. They intended to use this as a showroom for larger furniture and a promotional area to display vehicles such as race and exotic cars, which Scott already owns. Since we intended to grow into this space within the year, we would have not leased the space to anyone anyway. According to the North Montclair Specific Plan, it clearly states that a consignment store is allowed with a CUP. A consignment store is not similar to a thrift store. The fact that both stores sell used merchandise is where the similarity ends. The words "thrift store" conjure up images of smelly, soiled, dirty clothing and household items that are chipped, broken and missing pieces. He asked how they would brand the name "FlipNIt," which is the store logo and name, if they intended on selling inferior quality merchandise? They simply wouldn't be able to do so and would go out of business if they sold that type of product. They are not in any way similar to a thrift store, although they will not just sell anything. It would not behoove them to sell junk. Their intention is to expand into a chain of stores or a franchise utilizing wholesale distributors to keep the store stocked with quality merchandise. The term "lease" is used frequently throughout the staff report. They will not be leasing this space as Scott Bader already owns it. The original proposal states they would be selling all types of products with an emphasis on certain types of items; however, they would sell all types of items, not being limited to the aforementioned items of clothing and small furniture, all the while adhering to Montclair's regulations and Municipal Code as to what they can sell. This was going to take more than three minutes so he stopped there and stated he was available to answer any questions the Commission had. Mr. Worth added that if they grow into a larger space, they will need more employees. He thought the Commission would be making a serious mistake to deny the Conditional Use Permit. Scott Bader owns 14 other retail and industrial buildings, including the one where he operates his safety supply and equipment clean-up company, called InLine Distribution, which just opened its eighth distribution center across the United States. He does \$60 million per year out of that company alone. He owns other retail stores, a slot car store in El Segundo, and a Hollywood collectibles store. He owns this building and it has been sitting empty for four years. The rejection letter mentions seasonal uses, as in plural. There has been one seasonal store, a Halloween store, which was allowed in there last month for 30 days; otherwise, the building has sat empty. Scott wants to put a retail store in there. They want to grow a chain of stores, which you want to come into Montclair, such as Wal-Mart, Kohl's, Target, and that is their intention, to grow into that. They already have an account with Cal-a-Vie Spa, which is the number one health spa company in the entire country, not a spa where you park your car and go in and get your nails done, but a retreat for rich and famous people. They have talked to them and they are already going to get their high-end \$300 per pair jeans, out-of-season and out-of-market merchandise, and they intend to contact others. They will be high-end because they want to open a store. If the Commission cared to see the logo they have designed for "FlipNIt" they were willing to change that to discount stores rather than consignment stores.

Director Lustro stated that Mr. Worth made a comment early in his presentation that seemed to indicate that they were interested in revising their proposal to occupy the entire 28,000 square feet. If that is the case, he certainly has the right to do that, but an amended application would need to be submitted for staff to consider and present to the Commission. If there is any additional information that he wants to provide to staff with respect to the operation, or if the operation is going to be changed as he described, or if the business is going to occupy a different square footage, then it would be staff's recommendation to the Commission, after it has received all the public hearing input, to continue this item.

Hearing no other comments and no one else being present, Chair Johnson closed the public hearing.

Commissioner Johnson stated she was somewhat enchanted by consignment stores because she has often been able to find little things she does not want to pay full price for like evening gowns and such. However, having said that, she was not sure that the kind of consignment store that she envisioned is consistent with either the North Montclair Specific Plan or with Mr. Worth's view. She would entertain any motion to continue or deny.

Commissioner Sahagun asked if the property has been put on the market with a broker to attempt to lease the property. Mr. Worth replied that yes they have. They have gone from 79 cents per square foot to 29 cents per square foot over the last four years.

Commissioner Sahagun asked about the type of merchandise that would be brought in. It sounds great, but he knew within the North Montclair Specific Plan we want to make sure it's high end, but he wasn't sure we would attract celebrity stuff at an expensive price. He has placed items on consignment at music stores, etc., and purchased items, but is it going to fit into our little community? Mr. Worth replied that they have already contacted and have catalogs from wholesalers across the planet; they will conjoin the brick and mortar store with the online aspect of it, and they will be quite the opposite of eBay. When a quality consigner comes in, someone they call a "flipper," they examine the merchandise to make sure it is of quality and they will not take missing buttons or torn items, etc. They then scan them in. They are having software specifically written so the items can be placed on their website and, after 14 days, the items will go down in price a certain percentage. The price will continue to go down, attracting more and more people. If you are familiar with eBay, it goes up, up, up and theirs will be going down. If you watch the item you want to get and you're just waiting to click when it gets to the price you want to get it at, then you do that. If the fear of the item getting purchased by someone else before it gets to the price you want, then you will lose that item. You can also pay for the item online and come pick it up and save the shipping charge. The software will immediately remove the item from the store if it sells online, a mailing label will print out, and they will pull the item from the floor. If it sells in the store, it is automatically removed from the website, the prices will come down, and they will keep the store stocked with quality merchandise. Although it is a consignment store, they are going to grow into a chain, a franchise. Scott Bader already owns eight

distribution centers across the country, so they are already looking at spaces in those cities to move into once they have established themselves.

Mr. Worth stated if the Commission would approve the 10,680 square-foot store, they will do whatever they need to do to extend or expand into the full 28,000 square feet; they would like to get started and further expand. Commissioner Sahagun stated that the applicant has fast-tracked everything and he understood they want to open for the holidays, but asked if staff is going to be available if the meeting is continued. Director Lustro replied that it is at the Commission's discretion if it would like to continue the item to allow the applicant to amend its application to use the entire building - that is one option available. There is no option available to approve the application at tonight's meeting because staff cannot make positive findings to approve the application. It would be the responsibility of the Commission to make positive findings as stated in the Code. If that is the Commission's desire, then the item could be continued. Action B brings it back to the Commission on a date certain, provided the Commission feels comfortable making positive findings to approve the application. Chair Johnson stated she felt the intent was to allow staff the opportunity to work with the applicant further; not necessarily at this site, whether it is expanded or not, if it is inconsistent with the North Montclair Specific Plan, but certainly she did not believe the Commission wants to just slam the door on any applicant who wants to do business in Montclair so she would like to have more discussion, but not as it has been presented. Assistant Planner Gutiérrez asked if the Commission was suggesting that staff work separately to help the applicant find a new location. Chair Johnson replied that she was suggesting that staff work separately with the applicant to find either a new location or some way to make this work, she just did not think it was going to work the way it was submitted because it was inconsistent with the North Montclair Specific Plan.

Commissioner Sahagun stated they would continue the meeting but wanted to make it clear that by continuing the meeting it did not guarantee they would approve it when it comes back, but wanted to give the applicant the opportunity to try to work out the details. City Planner Diaz stated that staff needed a little more direction on what the Commission means by doing something different that would change the analysis. As Director Lustro indicated earlier, a Conditional Use Permit is required for the resale of used items and just because it is listed in the types of land uses that can be conditionally approved, that does not mean it is an automatic approval. What staff tried to do was give some background that goes to the bigger picture of this property and how it fits into the land use goals of the General Plan as well as the North Montclair Specific Plan. If we change it, we need to make findings in the affirmative that support the reasons why the Commission thinks that it's consistent with the goals that staff laid out for it. Whether the whole building is used or only a part of the building is used, it still is not consistent. Assistant Planner Gutiérrez stated the analysis is not just hinging on that one point; staff's analysis was outlined for different reasons. That's just another element that staff incorporated to mention that it was not going to serve a regional nature, but that the simple use of the entire building is not going to solve the issue. The issue still was whether the applicant can meet the goals and intent of the General Plan for that specific site based on its ability to be a regional draw, its synergy with Montclair Plaza and the surrounding commercial properties, and in particular, its very strategic

location in the City that has freeway frontage and visibility. Simply expanding occupancy of the building does not address those issues and does not allow staff to make the legal findings to support the use. Chair Johnson asked as a point of clarification, if the Commission moved to approve Action A, would that put the application back at square one. Director Lustro replied if the Commission moved Action A from the staff report, it denies the application. Chair Johnson asked if the applicant could amend and come back with something else. Director Lustro stated that the applicant always has the opportunity to come back and re-apply pursuant to guidelines of the Municipal Code. He felt Mr. Worth was very clear that they were focused on this particular building because there was a business relationship with the owner and staff understands that and that is the reason they are not looking at alternative locations within the North Montclair Specific Plan. What Assistant Planner Gutiérrez and City Planner Diaz have explained is that the findings are in front of the Commission as to why staff cannot support this use in this particular location. Staff makes it a point to say in the report that only a portion of the building is proposed to be used because that is what was submitted for consideration. He agreed with the assessment that whether there is 10,680 square feet being used or 28,000 square feet being used, if the use is the same, staff's analysis is not going to change and we are still not going to be able to make positive findings for this particular use at this particular site.

Mr. Worth said the report states the City would like a large clothing retailer in there and that is what they are trying to become. It states in another letter they are not allowed, if this were to be approved, any kind of promotions indoor or outdoor, even vehicles, when 911 Design, right next door, has vehicles in their window. They want to become a large retail clothing store as well as other items. That is what they are trying to become. The owner will not find another location; he owns this location and cannot understand why the City keeps expecting them to lease another space when they already own this space.

Vice Chair Flores went back to his comment about the item being inconsistent with the North Montclair Specific Plan and General Plan and asked was there going to be something that the applicant could do to change those two comments or would it still apply. Director Lustro stated the simple answer to the question that if this applicant or another applicant came forward with a retail operation that was selling new merchandise and was a regional draw, because those are the two things that we identify in the staff report, then the negative findings that staff made in the staff report would go away. Assistant Planner Gutiérrez added that a Conditional Use Permit would not be required for that type of use. City Planner Diaz stated if they came in with a Harley-Davidson dealership or a major retail store like a Marshall's or a Kmart that would take full use of the property, be a major regional draw, and have some synergy with the mall, we probably would not be before the Commission because it would be a permitted use. Staff has had multiple discussions with the applicant and part of the problem going into this was the business description was a moving target with respect to what they were going to do and what promotional activities were going to happen, such as car sales and outdoor tent sales.

Commissioner Sahagun stated that the beauty is that the North Montclair Specific Plan allows different uses with a Conditional Use Permit approved by the Commission. Different uses are allowed, but the Commission is set up to approve or deny these types of uses throughout the City. It sounds like this particular case does not fit within the North Montclair Specific Plan.

Commissioner Sahagun moved to deny a Conditional Use Permit for the proposed consignment store at 5483 Moreno Street, subject to the discussion and findings for denial contained in the staff report and in attached Resolution No. 12-1771, seconded by Commissioner Vodvarka, there being no opposition to the motion, the motion passed 4-0.

Assistant Planner Gutiérrez stated the resolution number was duplicated so this was given a new resolution number, Resolution No. 12-1771, and has been included. There was also an omission in the square footage of the lease space in the third recital and that has been changed to 10,680 square feet in the Resolution, and the copy of the revised Resolution has been distributed to the Commission.

Director Lustro added that the item can be appealed to the City Council within 15 calendar days.

c. CASE NUMBER 2011-15

Project Address:	5165-5195 Bandera Street
Project Applicant:	AGS Construction, Inc.
Project Planner:	Michael Diaz, City Planner
Request:	Precise Plan of Design for a 5-unit condominium development

City Planner Diaz reviewed the staff report.

Director Lustro added that on page 6.c-5 of the staff report, there is a subsection entitled "General Plan and Specific Plan Amendment Status." Staff went back through the files because as the report was being prepared, it was discovered there was some inconsistency with the General Plan and Specific Plan designations for this particular property. However, there was some recollection that we at least started the process and staff thought we completed the amendments to the General Plan and Holt Boulevard Specific Plan back in 2004 when the 12-unit condominium was approved. Staff found that the Commission had taken an action on February 23, 2004, adopting two Resolutions recommending City Council approval of the General Plan amendment and Specific Plan amendment for not only the site where the 12-unit condominium complex was built, but also for this half-acre site next door because the ultimate intention was that there would be residential development on this property as well. So, the Commission, as part of the actions taken at that meeting, recommended Council approval of the General Plan and Specific Plan amendments; however, we could not find where those two recommendations went to City Council. Staff found the two City Council resolutions that had been crafted and numbered, but for unknown reasons, did

not move on to the City Council for consideration. So as indicated in the staff report, a condition of approval was included for this project that new Resolutions be brought back to this body for recommendation to the City Council and that we move the General Plan amendment and Specific Plan amendments on to the City Council and clean up this land use designation discrepancy. At some point in time, we will figure why this did not happen eight years ago, but right now we are at a loss as to why it did not happen. City Planner Diaz stated that the applicant has waited the meeting out and was present if the Commission had any questions for him.

Vice Chair Flores commented he liked the plans, but said the property is so flat that he recommended getting a good concrete man or there will be drainage problems.

Commissioner Vodvarka commented someone did a lot of homework on this because it is very well written.

Commissioner Sahagun voiced concern about the vehicular ingress-egress on Bandera Street. Staff replied it is 24 feet. Commissioner Sahagun asked if sidewalks, curbs and gutters were in because he would like to see them a little bit wider. Director Lustro commented that 24 feet is typical for a multi-family residential driveway. Chair Johnson asked if that was satisfactory for the Fire Department. City Planner Diaz stated that the Fire Department reviewed the plans for their required turning radii and such. They massaged it a bit and got it to work. One of the Fire Department requirements is that the drive aisles are designated fire lanes so there will not be any parking allowed.

Chair Johnson moved that, based upon evidence submitted, the project is deemed exempt from the requirements of the California Environmental Quality Act (CEQA). Further, the project qualifies as a Class 32 exemption under State CEQA Guidelines Section 15332, seconded by Vice Chair Flores, there being no opposition to the motion, the motion was approved 4-0.

Commissioner Vodvarka moved to approve a Precise Plan of Design for the site plan, floor plans, building elevations, landscaping and associated on- and off-site improvements for a five-unit Planned Residential Development at 5165-5195 Bandera Street as described in the staff report, and per the submitted plans, subject to the conditions of approval in attached Resolution 12-1770, seconded by Commissioner Sahagun, there being no opposition to the motion, the motion passed 4-0.

INFORMATION ITEMS

Director Lustro stated staff has reviewed its share of tattoo establishments over the past five or six years and Commissioner Sahagun asked if any of the previously approved ones have closed and he (Director Lustro) indicated that not all survived and wanted to point out that like many other businesses and to use an old adage, only the strong survive. He thought it applied in the case of tattoo establishments. It could potentially be argued that maybe we have more than our share and he did not know what the numbers are in the surrounding cities of Pomona, Ontario or Chino, but he felt staff's opinion was that the strong ones will survive and the ones that don't do as well or

operate their businesses as well are the ones that will naturally fall by the wayside. He felt that over the years staff has developed a pretty strong set of conditions of approval for tattoo establishments and those are the ones they bring to the Commission to help govern the operation of these particular establishments. The Police Department, as it indicates in the staff report, did not report any particular problems with any of the existing four tattoo establishments that are operating in the City right now, which seems to indicate to us the operators must be doing at least a satisfactory job of keeping a clean house. Just a reminder to the Commission that doesn't just apply to tattoo establishments but other land uses that you review from time to time is that the Commission's responsibility is to look at the land use and consider the analysis that staff provided and public input to make its decision. He knows it is difficult to not let your personal feelings weigh into some of the arguments but it is important to keep those to yourself, irrespective of how the ultimate vote goes or was perceived by an applicant, even if the vote does go their way.

He knew the second agenda item was a little bit difficult for the Commission because it was very rare that staff comes to the Commission with a recommendation for denial. So, staff agonized a bit in the preparation of the staff report. From his perspective, he believed it was a very strong staff report as to the way it was written and staff's rationale for arriving at the recommendation that it did. Staff does not like to be perceived as being anti-business; we heard plenty of that in the recently concluded Council campaign. It's an easy observation to be made from the outside. But again it is not whether we like or dislike a particular business; we need to look at the whole of the application and see how it fits in with the guidelines that have been adopted by your predecessors. While it was correctly stated during the public hearing by Mr. Worth that the North Montclair Specific Plan does allow thrift stores or second hand stores within the C-3 zone in the North Montclair Specific Plan, he felt if you looked at the staff report, the Commission would see that staff focused specifically on the site and the way it was developed and the building that it has developed on the site. The question came up during the public hearing would staff's recommendation necessarily have been the same if there was a different location within the C-3 land use district in the Specific Plan selected for this particular business? The answer is, "not necessarily." As Commissioner Sahagun correctly stated during that discussion, just because something is conditionally permitted, doesn't mean it would automatically receive a positive recommendation from staff. That was a very unusual application for staff and the Commission to deal with. Just for clarification, the subject property is located within the North Montclair Specific Plan, not to be confused with the North Montclair Downtown Specific Plan. The North Montclair Specific Plan was adopted 15 years ago and originally covered most of the area north of I-10, including the area around the Plaza and the area that has now been superseded by the North Montclair Downtown Specific Plan. Nevertheless, a lot of what is contained within that Specific Plan is still applicable today with respect to regional land uses and synergy with Montclair Plaza as indicated in the staff report, which was a big part of what was relied on in analyzing the application.

Commissioner Sahagun suggested a refresher course or a workshop for the Commission.

The Commission congratulated Council Members Carolyn Raft and John Dutrey on their re-election.

Commissioner Sahagun commented about the young female who was struck by a car on Orchard Street awhile back. He learned that Council Member Dutrey had asked City Engineer Hudson to look at what could be done at that intersection. He heard they were looking at installing flashing lights. Director Lustro stated that the item was on the agenda at the Public Works Committee meeting in October and there were a number of members of the public who attended the meeting associated with Montclair High School and expressing the same concerns. There has been an analysis done of the intersection of Orchard and Tudor and it appears likely that the solution will be a pedestrian signal installed similar to the one adjacent to Montera School with the pavement flashers and the pole with the flashing lights. The cost for installing a regular traffic signal is probably \$150,000 to \$200,000. There does not seem to be any indication from the school district that they would be willing to participate. The cost of installing the pavement flashers and associated equipment is considerably less than that. Staff will be researching funding options to do that installation. Staff is aware of the concerns and is trying to work expeditiously to take care of it soon. Chair Johnson commented that she has been driving around the City with her bright lights on if she is not on a major street because on two occasions within the last two weeks, she almost hit a skateboarder in the middle of Fremont Avenue south of Palo Verde. The children think they are invincible and ride their skateboards into the street. She felt the bigger issue was to find a way to educate children that you just can't whiz out in front of a car; she came within one foot of hitting one within the last two weeks. Director Lustro stated that one of the items of discussion associated with this particular agenda item at the Public Works Committee meeting last month was the education of the young children in particular. It just so happened that one of the attendees at the meeting was the principal of Monte Vista Elementary, which is just down the street from where these accidents happened. The idea of educating the elementary school children was discussed during the meeting.

Chair Johnson adjourned the meeting at 8:37 p.m. in honor of the veterans who so honorably serve our country.

Respectfully submitted,

Laura Berke
Recording Secretary