



**BENICIA PLANNING COMMISSION
CITY HALL COUNCIL CHAMBERS
REGULAR MEETING MINUTES**

**Thursday, October 14, 2010
7:00 p.m.**

I. OPENING OF MEETING

A. Pledge of Allegiance

B. Roll Call of Commissioners

Present: Commissioners Richard Bortolazzo, Don Dean, Lee Syracuse and Chair Dan Healy

Absent: Commissioners Rick Ernst, Rod Sherry and Brad Thomas (all excused)

Staff Present: Lisa Porras, Senior Planner
Melissa Morton, Land Use and Engineering Manager
Kat Wellman, Contract Attorney
Kathy Trinique, Administrative Secretary

C. Reference to Fundamental Rights of Public - A plaque stating the Fundamental Rights of each member of the public is posted at the entrance to this meeting room per Section 4.04.030 of the City of Benicia's Open Government Ordinance.

II. ADOPTION OF AGENDA

On motion of Commissioner Bortolazzo, seconded by Commissioner Dean, the agenda was adopted by the following vote:

Ayes: Commissioners Bortolazzo, Dean, Syracuse and Chair Healy

Noes: None

Absent: Commissioners Ernst, Sherry and Thomas

Abstain: None

III. OPPORTUNITY FOR PUBLIC COMMENT

A. WRITTEN

None.

B. PUBLIC COMMENT

None.

IV. CONSENT CALENDAR

- A. Approval of Minutes of September 8, 2010**
- B. Approval of 2011 Planning Commission Meeting Schedule**

Approval of minutes from the September 8, 2010 Planning Commission Meeting (Item A) was pulled by Commissioner Dean. Commissioner Dean asked that some modifications be made to the minutes, under Item VA. Staff will amend the minutes as requested and schedule them for the Commission's approval at the next meeting.

On motion of Commissioner Dean, seconded by Commissioner Syracuse, the 2011 Planning Commission Meeting Schedule was adopted by the following vote:

- Ayes: Commissioners Bortolazzo, Dean, Syracuse and Chair Healy
- Noes: None
- Absent: Commissioners Ernst, Sherry and Thomas
- Abstain: None

V. REGULAR AGENDA ITEMS

- A. USE PERMIT FOR 257 ESSEX WAY, MODIFICATIONS TO AN EXISTING T-MOBILE WIRELESS COMMUNICATION FACILITY**

PROPOSAL:

The proposed modifications to the wireless facility include installation of three (3) new equipment cabinets that measure approximately 18" x 18" each within the equipment enclosure of the existing wireless communication facility adjacent to the existing water tanks at 257 Essex Way. The purpose of this request is to provide fiber optic cable to enhance service for customers. The Ciena, UAM, and NEMA boxes will be mounted on an H-frame and painted to match the existing equipment. The Benicia Municipal Code requires a Use Permit for installation of all wireless communication facilities in all zoning districts

Recommendation:

Approve the Use Permit (10PLN-00048) to install three (3) new equipment cabinets that measure approximately 18" x 18" each within the equipment enclosure of the existing wireless communication facility adjacent to the existing water tanks at 257 Essex Way based on the findings, and subject to the conditions listed in the proposed resolution and as discussed during the public hearing.

Lisa Porras, Senior Planner, gave an overview of the project and staff's recommendation.

The applicant from T-mobile was present to answer technical questions concerning the proposed project.

The public hearing was opened. No comments were received.

Commissioner Syracuse asked if a 6-foot high fence was high enough.

Ms. Porras checked into the code regarding fencing requirements. She stated that the wireless communication ordinance requires screening. The fence height should be consistent with the height of the equipment.

On motion of Commissioner Dean, seconded by Commissioner Syracuse, the Planning Commission approved the use permit for 257 Essex Way, modifying an existing T-Mobile Wireless Communication Facility by the following vote:

Ayes: Commissioners Bortolazzo, Dean, Syracuse and Chair Healy

Noes: None

Absent: Commissioners Ernst, Sherry and Thomas

Abstain: None

B. APPEAL OF THE DECISION OF RECORD OF THE PUBLIC WORKS AND COMMUNITY DEVELOPMENT DIRECTOR DENYING AN APPEAL OF THE LOCATION OF A SECOND LOADING SPACE AT ROSE CENTER

PROPOSAL:

On July 16, 2010, Mary Wika filed an appeal of the approval by Planning Division staff of the location of a second loading space at Rose Center pursuant to Condition #5 of City Council Resolution No. 10-63. Condition #5 of the resolution required that Rose Center maintain a total of 146 parking spaces and add one new loading zone. The appeal was heard on August 11, 2010 by the Public Works and Community Development Director, and the decision of record was made on August 16, 2010 denying the appeal of the location of the second loading space. On August 26, 2010 Mary Wika filed an appeal of the decision of record denying the appeal of a second loading space at Rose Center, 2100 –2158 Columbus Parkway.

Recommendation:

Adopt a resolution to deny the August 16, 2010 appeal of the Decision of Record of the Public Works and Community Development Director of the City of Benicia denying the July 16, 2010 appeal of the location of a second loading space at Rose Center, located at 2100 - 2158 Columbus Parkway.

Melissa Morton, Land Use and Engineering Manager, presented a history of this item, including the background behind the decision of record and the appellants main points. She read staff's recommendation for the Commission's consideration.

Chair Healy asked for clarification of what is being appealed.

Ms. Morton responded that the second loading zone is the only item before the Commission.

Kat Wellman, Contract Attorney, explained the procedure for appeal hearings.

Colette Meunier, representing the appellant, Mary Wika, presented the following issues: Three parking spaces to the south of CVS were not included on the plans for approval in 2006. When it came back before the City, they were included on the revised site plan. Colette provided staff and the Commission with 2 exhibits for review. The area behind the CVS does not accommodate standard parking spaces, so they must be considered compact spaces. With the addition of these 3 compact spaces, the project is no longer in compliance with the 30% maximum compact spaces requirement. Furthermore, the additional spaces are angled, it restricts exit options for vehicles. Ms. Wika wants this project to comply with all the City's codes and standards.

Mary Wika, appellant, provided the background on her appeal and concerns about this project as follows: the staff report and media reports used smoke and mirrors to minimize the Community Development Director's error in an attempt to make her look wrong when she was right all along. The development is not in compliance with the Zoning Ordinance. The use permit should be vacated. There should be 146 spaces with no more than 43 compact spaces. This appeal was filed due to the addition of the loading zone and the lack of conformity it created with the City's development standards. The City did not measure the parking spaces.

Chair Healy asked for clarification of the appeal – is it with the area of the 3 parking stalls near the second loading zone and is the issue that the measurements of these spaces don't comply? Is it also that the number of compact spaces exceed the code ratios?

Ms. Wika stated that in order to make room for the required loading zone, 3 full size parking spaces were converted to compact spaces, violating the City's 30% maximum compact space requirement.

Chair Healy stated that the Planning Commission may only consider what issues came before Mr. Knox when he made his decision. He asked if the second issue is that the developer didn't comply within specified time limits. If Ms. Wika is appealing a lack of

punitive action toward Mr. Fulton, the Planning Commission can't act on the lack of punitive action imposed.

Tom Carey, Attorney for Dirk Fulton, presented his response as follows: The issue is compliance with condition #5 of the City Council resolution, adding a second loading zone. There have been no complaints with parking or traffic at this development. The site plan was approved within the sixty-day limit and complies with the City's code. The issue is whether City standards were met as outlined in condition #5. The plans were approved by a registered engineer and approved by the Fire Department.

The Commission held a discussion concerning compact parking spaces and non-complying parking spaces; whether the plans match the as-builts; the ratio of compact spaces to full size; the validity of the site plan versus the loading zone and 3 parking spaces. This matter is more appropriately addressed by code compliance since it affects development standards other than the loading zone requirement.

Dirk Fulton, property owner, outlined his response as follows: the 3 parking spaces by CVS have been there since the shopping center was built. What is the issue is the location of the second loading zone. He worked with Mark Rhoades, the acting Land Use and Engineering Manager, to remain in compliance with City codes. Drawings were made and submitted to the City. The tree wells have now been reduced in size and completed by October 5. This is the 8th year of controversy and the 14th public hearing the City has held on the shopping center. Enormous City resources have been poured into these hearings. The compact parking spaces are a code compliance issue.

Colette Meunier responded that when the site plan was approved in 2006 there were no parking spaces shown behind the CVS. Yet, three standard parking spaces had been built, which have now been reduced to compact spaces. Ms. Meunier pointed out that it may be a matter of code enforcement. When the spaces changed from standard to compact, they became out of compliance. It is not a matter of interpretation.

Chair Healy asked how many parking spaces are in question.

Ms. Wika responded that there are 146 spaces required, 143 without counting the 3 spaces behind the CVS store. The ratios are not in compliance. The appeal is not about the dimensions of the loading zone, but about the required regular parking spaces to compact spaces ratio. The developer is not allowed to add 3 more compact spaces, per the Benicia Code.

Public hearing opened. No comments received.

Commissioner Bortolazzo asked if the 3 spaces behind CVS were added for compliance with the parking reduction. Were they added as full size and are do they measure as full size?

Ms. Morton responded that because of the 2-foot overhang allowed under the code, they are in compliance as full size spaces. She went out and measured them before the meeting. The drive aisle measured 21 feet. These spaces were added in 2009. She responded to Ms. Wika's questions concerning the spaces by the light standards. The spaces highlighted in pink on the diagram are full size spaces. The parking lot is in compliance.

Ms. Meunier suggested that the Commission call a recess, and everyone go out to the site and measure the parking spaces.

Chair Healy stated that this is the time for the hearing, not a field visit.

Ms. Morton pointed out to the Commission that the resolution for their consideration tonight is the one that was distributed at tonight's meeting rather than the one in the packet. Ms. Wellman made a minor change regarding the standard of review and that was the only change to the resolution.

Chair Healy's closing comments included that when the City adopts rules and regulations for compliance, the City should consider using less numerically restricted regulations to avoid these types of issues and use common sensibilities.

Commissioner Dean stated that the loading space appears to work. If staff supports the transformation of standard parking spaces to compact spaces, then it ends the question for him.

On motion of Commissioner Bortolazzo and seconded by Commissioner Dean, the Planning Commission adopted the resolution to deny the August 16, 2010 appeal of the Decision of Record of the Public Works and Community Development Director of the City of Benicia denying the July 16, 2010 appeal of the location of a second loading space at Rose Center, located at 2100-2158 Columbus Parkway by the following vote:

Ayes: Commissioners Bortolazzo, Dean, Syracuse and Chair Healy

Noes: None

Absent: Commissioners Ernst, Sherry and Thomas

Abstain: None

VII. ANNOUNCEMENT FROM STAFF

None.

VIII. COMMUNICATION FROM COMMISSIONERS

Commissioner Dean provided clarification to staff on that the Commission's general comments, not the formal conditions, should be shown within item V.A. in the minutes from the September 8, 2010 minutes.

IX. ADJOURNMENT

Meeting was adjourned at 8:15 pm.