



# MINUTES

## PLANNING COMMISSION MEETING

### March 17, 2015

*The meeting of the El Cajon Planning Commission was called to order at 7:00 p.m.*

**PLEDGE OF ALLEGIANCE & MOMENT OF SILENCE**

**COMMISSIONERS PRESENT:** Darrin MROZ, Chairman  
 Paul CIRCO, Vice Chairman  
 Luis HERNANDEZ  
 Anthony SOTTILE  
 Jerry TURCHIN

**COMMISSIONERS ABSENT:** None

**STAFF PRESENT:** Anthony SHUTE, Planning Manager / Planning Commission Secretary  
 Barbara LUCK, Assistant City Attorney  
 Majed AL-GHAFRY, Assistant City Manager  
 Melissa DEVINE, Senior Planner  
 Patricia HAMILTON, Secretary

MROZ explained the mission of the Planning Commission.

**NON-PUBLIC HEARING ITEMS**

Anthony WAGNER, representing the San Diego County Alcohol Policy Panel, approached the podium. He commended both Chief REDMAN and Tony SHUTE for being instrumental in the leadership role with the City of El Cajon to address land use issues related to alcohol. The alcohol ordinance passed by the City Council is a win-win for the community. He further offered any help or support moving forward from the Alcohol Policy Panel.

**CONSENT CALENDAR**

**Planning Commission Minutes**

Motion was made by SOTTILE, seconded by CIRCO, to adopt the minutes of the Planning Commission meeting of March 3, 2015; carried 5-0.

**PUBLIC HEARING ITEMS**

<b>Agenda Item:</b>	<b>2</b>
<b>Project Name:</b>	<b>Ballantyne and Park Specific Plan</b>
<b>Request:</b>	<b>Amend General Plan Designation, Reclassify Zone, and Adopt Specific Plan</b>

<b>CEQA Recommendation:</b>	<b>Mitigated Negative Declaration</b>
<b>STAFF RECOMMENDATION:</b>	<b>RECOMMEND CITY COUNCIL APPROVAL</b>
<b>Project Number(s):</b>	General Plan Amendment No. 2012-02, Zone Reclassification No. 2311, and Specific Plan No. 525
<b>Location:</b>	Northeast corner of Ballantyne Street and Park Avenue
<b>Applicant:</b>	Cajon Valley Union School District (Scott Buxbaum); 619.588.3060; buxbaums@cajonvalley.net
<b>Project Planner:</b>	Melissa Devine; 619.441.1773; mdevine@cityofelcajon.us
<b>City Council Hearing Required?</b>	Yes   April 14, 2015
<b>Recommended Actions:</b>	<ol style="list-style-type: none"> <li>1. Conduct the public hearing; and</li> <li>2. MOVE to adopt the next resolutions in order recommending City Council approval of the Mitigated Negative Declaration, General Plan Amendment No. 2012-02, Zone Reclassification No. 2311 and Specific Plan No. 525</li> </ol>

DEVINE summarized the agenda report in a PowerPoint presentation.

The Commission had questions regarding leasing the site for residential, and if any other school districts had leased their properties.

MROZ opened the public hearing and invited any speakers to the podium.

Bill FISCHBECK, representing the applicant, spoke first. He said the property is excess property, and that the School District could enter into a ground lease with a developer to produce income for the District and that the City had suggested more dense residential at this site. A lease term of 35 to 55 years could be possible for this type of lease.

HERNANDEZ asked if the applicant was considering a sale of the property.

FISCHBECK responded that brokers and potential buyers recommend selling. Once the proposed new zoning is in place the District may be to go with a ground lease.

He advised that density would be consistent with the surrounding properties and then introduced Scott BUXBAUM.

Scott BUXBAUM, Cajon Valley Union School District Superintendent, added the district analyzed the property for many years and income to the district is important. They are aware of the sensitivity involved in future development of the property since it is next door to a school, and both the board and staff are in support of the project.

In answer to SOTTILE, he was not aware of any other school districts, other than Coronado, that have leased property to outside parties.

SOTTILE mentioned California Government Code Section 65852.9 and that unused school sites must be rezoned to a zone compatible with existing uses.

FISCHBECK introduced Wayne OETKEN, representing the Cajon Valley School District.

OETKEN added that large public school districts, such as San Diego Unified, have a lot of surplus property which is turned over to asset management for consideration. Revenues used from these properties are for education purposes. San Diego Unified is the largest in San Diego County and is now in the process of marketing developable excess property to generate revenue. The Kia dealership site is on a ground lease of 55 years. He summed up by requesting favorable consideration by the Planning Commission.

Motion was made by MROZ, seconded by CIRCO, to close the public hearing; carried 5-0.

HERNANDEZ believes it is more difficult to build a residential complex with a ground lease. His main concerns were: 1) density, and 2) compatibility.

TURCHIN does not like the density.

SHUTE added that architectural review is paramount and the quality of design is the most important factor.

CIRCO asked when the lease expires what happens to the buildings? If used for multi-family residential, the school could not reuse the structures. He wouldn't like to see well-built houses with families forced out in 55 years under a ground lease situation. His main concern was the ground lease with high density residential.

SOTTILE mentioned that El Cajon has plenty of residential units.

DEVINE added that whether rental or ownership project, staff reviews the same in terms of development review. The City would also not have control over how a developer desires to develop his own property and 55 years could be a useful life of a project.

HERNANDEZ said there was no development project presented during this meeting; therefore it was hard to make a decision. Also, commercial development is easier to remove or convert if the school decides it needs the site.

CIRCO was uncomfortable the Commission would not review a proposed project.

Motion was made by SOTTILE, seconded by HERNANDEZ, to DENY the Mitigated Negative Declaration, General Plan Amendment No. 2012-02, Zone Reclassification No. 2311 and Specific Plan Nol. 525; carried 3-2 (Circo and Mroz voted no).

The appeal period for this item ends on Monday, March 27, 2015 at 5:30 p.m.

<b>Agenda Item:</b>	<b>3</b>
<b>Project Name:</b>	<b>Main Street Residences</b>
<b>Request:</b>	<b>Mixed-Use Development Project with Reduced Parking, Setbacks, and increased Building Height</b>
<b>CEQA Recommendation:</b>	<b>Exempt</b>
<b>STAFF RECOMMENDATION:</b>	<b>CONTINUE TO APRIL 21, 2015</b>
<b>Project Number(s):</b>	Conditional Use Permit No. 2216
<b>Location:</b>	925-939 West Main Street
<b>Applicant:</b>	Affirmed Housing Group (Jimmy Silverwood); 858.386.5178;

	JAMES@AFFIRMEDHOUSING.COM
<b>Project Planner:</b>	Lorena Cordova; 619.441.1539; lcordova@cityofelcajon.us
<b>City Council Hearing Required?</b>	Yes   Noticed for April 14, 2015
	<ol style="list-style-type: none"> <li>1. Conduct the public hearing; and</li> <li>2. Receive public testimony; and</li> <li>3. Continue the public hearing to April 21, 2015</li> </ol>

SHUTE advised additional information was required from the applicant; therefore staff was recommending continuance of this item.

MROZ opened the public hearing and invited any speakers to the podium.

Donna BRANSTETTER, approached the podium and spoke in opposition of the project. She was adverse to seeing four-story low-income housing next to her home. This action would have a major effect on property values in the area. Also, she said only 25 homes were noticed surrounding the proposed project when there are at least 100 homes in the area. She also asked if the City Council date would be pushed forward in case of a continuance as well.

Laurinda SMITH, also spoke in opposition of the project. The parking reduced parking requirement would cause more parking on the street. Also, the four-story high rise units would not be a match for the neighborhood.

Jimmy SILVERWOOD, Affirmed Housing Group, spoke next in support of the project. Specifically, he mentioned the convenience of being located one-quarter mile from the transit center and he would be available to answer any questions from staff or guests.

SHUTE answered the question on the public mailings. Both the Planning Commission and City Council public hearings would be pushed out if the proposed project would be continued and the notices are mailed to all property owners with 300' of the proposed project site.

Motion was made by CIRCO, seconded by MROZ, to close the public hearing; carried 5-0.

Motion was made by CIRCO, seconded by MROZ, to continue the public hearing to April 21, 2015; carried 5-0.

<b>Agenda Item:</b>	<b>4</b>
<b>Project Name:</b>	<b>Sky Fuels - Deemed Approved Administrative Hearing - Review</b>
<b>Request:</b>	<b>Determine if the off-sale establishment has violated deemed approved performance standards</b>
<b>CEQA Recommendation:</b>	<b>Exempt</b>
<b>STAFF RECOMMENDATION:</b>	<b>REVOKE DEEMED APPROVED STATUS AND IMPOSE NEW ALCOHOL SALES CONDITIONS</b>
<b>Project Number(s):</b>	Conditional Use Permit (CUP) No. 526
<b>Location:</b>	1699 East Main Street
<b>Applicant:</b>	Planning Commission; 619.441.1742
<b>Project Planner:</b>	Anthony Shute; 619.441.1742; tonys@cityofelcajon.us
<b>City Council Hearing Required?</b>	No

<b>Recommended Actions:</b>	<ol style="list-style-type: none"> <li>1. Conduct the public hearing; and</li> <li>2. MOVE to adopt the next resolution in order REVOKING Sky Fuel’s Deemed Approved Status and adding new alcohol sales conditions to CUP No. 526</li> </ol>
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SHUTE opened by stating Barbara LUCK, Assistant City Attorney, would outline the Administrative Hearing process.

LUCK introduced the administrative hearing procedures and rules of order.

LUCK then commenced the hearing in the matter of **Sky Fuel**

LUCK then swore in all persons who planned to speak in this matter and asked SHUTE to present the evidence for the City.

SHUTE presented evidence for the City.

DAVIS explained the Police Department Minor Decoy Program and then proceeded to explain the details of minor decoy operations throughout the City and at Sky Fuel.

SHUTE added the Planning Commission is tasked with considering to suspend, revoke or modify the Deemed Approved status for Sky Fuel. Staff is recommending revocation of deemed approved status and impose operating standards and conditions. The list of conditions is attached to the proposed resolution.

TURCHIN asked why the process takes as much time as it does.

SHUTE explained it takes time to compile the facts before notification.

DAVIS added the Police Department visited 149 sites, including visits to several more than once. Only 15 had sold to minors, and of those, three sold to minors more than once.

SHUTE added that in Condition 3iii of the proposed resolution the stated volume should read, “greater than 24 ounces”, not “greater than 23.5 ounces”.

Bill ADAMS, attorney representing Sky Fuel, cross-examined the City’s witnesses. He asked DAVIS if the minor decoy procedure complied with ABC guidelines, if the clerk asked the age of the decoy, and was the minor decoy instructed in any way to display any type of characteristics.

DAVIS responded that the Police Department did follow the ABC guidelines, the clerk did not ask the age of the decoy.

Nash MAROKI and Mae GAPPY, respondents, provided documents to the Planning Commission marked as Exhibit “A”.

MAROKI testified that he has owned the business in El Cajon for 17 years, has been visited by the ABC numerous times and has been successful in their findings. He did say the clerk was not trained.

MAROKI said the employee sold incorrectly, so he trained all employees again. He stressed this was a serious matter for him, and if the situation occurs a second time, the employee would be fired. After the second incident, the employee was fired. His policy now is if there is a first violation an employee will be fired. He has since purchased a driver's license scanner, and added signs throughout the store as shown in Exhibit "A". All alcohol has been moved to the rear of the store and since the two violations they have passed all tests relating to the sale of alcohol. He requested the Commissioners consider probation versus revoking his ability to sell alcohol. He responded to the notice of violation within two days and assured the Commissioners he would do whatever it would take to be able to stay in business.

SOTTILE asked MAROKI who conducted the training of Mr. Abraham.

MAROKI responded that he trained all employees after his training by the ABC.

SOTTILE then asked if he was aware that under the Deemed Approved Ordinance training is required to be conducted by a third party.

MAROKI answered that he did not have knowledge of this until his meeting with City Staff. After receipt of the notice of violation, he called the City right away and met with Staff.

SHUTE asked if any employees had been scheduled for the Responsible Beverage Service (RBS) training.

MAROKI responded that he is now aware of the required RBS training, but no employees had received the training yet.

Dana STEVENS, Communities Against Substance Abuse (CASA), spoke next and mentioned that from what she was able to see, the license displayed in the store was outdated. She presented manual outlining instructions on how to check for identification and a manual put out by the Department of Motor Vehicles showing license identifications are now in portrait, not landscape format.

TURCHIN confirmed with STEVENS that the training is mandatory in accordance with the Deemed Approved Ordinance and there is no way to track completion since the RBS cards are issued to the person receiving the training. She added that any person who completes training does not qualify to train others.

Katherine WEBB, long time El Cajon resident, spoke next. She had an issue with the service station located at Greenfield and East Main Street. It is close to the freeway on-off ramp, therefore located conveniently for those who stop to purchase gas, not alcohol. With the employees not being trained, the owner's license could be in jeopardy and even though Sky Fuel has not had any repercussions since the two incidents there are three schools within walking distance.

ADAMS voiced an objection that public comment was not relative to land use issues currently before the Commission.

SHUTE made the rebuttal that Sky Fuel sold to a minor twice which allows the City to amend, suspend or revoke Sky Fuel's deemed approved status. Furthermore, the owner was notified in February of the administrative hearing and the violations. This was confirmed in a subsequent phone call. As of this time, no employees have been through the RBS training.

ADAMS responded that two business days was not enough time to review the situation before the hearing. MAROKI did not understand the gravity of the situation when he received the agenda package. ADAMS

stated conditions must be tailored to what was actually employed. He requested new conditions be offered or continue the meeting to a future date and was in opposition of the proposed revocation. In addition, the Deemed Approved conditions are not consistent with State law. Also, they were not disputing one clerk was in the wrong. In regard to the RBS training, MAROKI thought he was in compliance since he was RBS trained. He took steps both before and after the incidents and was not a person who intentionally would sell to minors.

MROZ ask if there was any correspondence with City Staff after the decoy incidents.

MAROKI responded that he was waiting for someone to come in and tell him what the next step would be and did not know at the time that all employees were required to go through the RBS training.

SOTTILE asked DAVIS that after the second violation if anything was sent to MAROKI to help him in the future.

DAVIS responded that after each decoy operation a letter is sent stating that the establishment was either successful or a violation was issued.

HERNANDEZ asked MAROKI when the last time was he received RBS training.

MAROKI responded he was trained multiple times but gave no specific date.

TURCHIN requested Chief REDMAN be sworn in.

LUCK proceeded to swear in Chief REDMAN as an additional participant to give testimony.

TURCHIN then asked if it was true that a person should know the rules and training required prior to operating a business.

REDMAN responded owners should know the rules and be held accountable when not following procedures.

ADAMS interjected that only one clerk was cited for selling to a minor, not because of the business practices of his client.

SHUTE presented in closing remarks that the selling of alcohol to minors warrants action. The Police Department Minor Decoy Program was a land use issue. RBS requirements were sent out to all establishments in November, 2013 and with information where all employees could obtain the training. Subsequently, the Notice of Violation letter was sent in February, which clearly outlined the violations and was discussed in a follow-up meeting with the business owner. No employees to date have obtained the RBS certificates.

MROZ confirmed with SHUTE that any new off-sale establishment would be subject to these conditions.

SOTTILE added the Deemed Approved Ordinance does not replace the ABC rules and that they were convened this evening to address land use issues only for the sale of alcohol.

HERNANDEZ mentioned that the proposal before the Commissioners was to revoke the Deemed Approved status and as long as the conditions were met the sale of alcohol could continue.

In closing remarks, ADAMS said there was a learning curve involved for review of the Ordinance, that the testimony presented under the circumstances was reasonable, and that MAROKI now was aware of what needed to be done. They only had two days after receipt of the evidentiary package to prepare for the hearing. Also one clerk was cited which does not constitute bad business practices overall. The Planning Commission has discretion in the conditions imposed and do not deal with the sale of alcohol to minors. MAROKI took measures both before and after the incidents and should be given a second chance. He added that the minor decoys learn how not to act like minors.

Discussion then commenced by the Planning Commissioners.

HERNANDEZ stated the applicant appeared honest in not being aware of the Deemed Approved performance standards. He has been made aware of what he needed to do from both the correspondence sent him and his conversations with Staff. So he did have the opportunity to take action. Also, he did not remember the last time he was trained and only he alone performed the training of his employees. HERNANDEZ was in support of the Police Department efforts to curb this activity.

SOTTILE said this is the first test of the Deemed Approved Ordinance and will set a precedent for all going forward. SOTTILE was in favor to approve the proposed revocation.

CIRCO summarized the Police Department use of decoys, that the same clerk was at fault, and the owner did implement secondary training. There were a lot of age verifications in place and after the second offense the clerk was fired. Without further instructions from either the City or Police Department to correct the conditions, the owner tried to fix himself. He did not see the owner as being at fault.

TURCHIN added that this was a serious case and the owner should have known the procedures. He believes there is no room for compromise and that the owner is responsible.

MROZ stated he has determined that about one-half of the conditions had been accomplished, and does not see that any conditions are out of line.

SOTTILE interjected that the Deemed Approved Status should be revoked and all conditions implemented. If conditions are ignored, then a \$2,000 fine should be assessed.

Motion was made by MROZ, seconded by HERNANDEZ, to adopt the next resolution in order REVOKING the Deemed Approved Status for off-sale beer and wine sales; carried 4- 1.

Motion was made by HERNANDEZ, seconded by SOTTILE, to adopt the next resolution in order amending adding off-sale alcohol conditions to Conditional Use Permit No. 526; carried 4-1.

The appeal period for this item ends on Monday, March 16, 2015 at 5:30 p.m.

**ADJOURNMENT**

Motion was made by CIRCO, seconded by MROZ, to adjourn the meeting of the El Cajon Planning Commission at 10:13 p.m. this 17th day of March until April 7, 2015, at 7:00 p.m.; carried 5-0.

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Darrin J MROZ, Chairman

ATTEST:

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Anthony SHUTE, AICP, Secretary