

**FINAL**

**MEETING OF THE  
CITY OF CONCORD PLANNING COMMISSION  
COUNCIL CHAMBER, 1950 PARKSIDE DRIVE  
CONCORD, CALIFORNIA  
June 2, 2010**

A regular meeting of the Planning Commission, City of Concord was called to order by Chair Robert Hoag at 7:00 P.M., Wednesday, June 2, 2010, in the City Council Chamber.

**ROLL CALL**

**COMMISSIONERS PRESENT:** Chair Robert Hoag; Commissioner Kevin Costa; Commissioner Ron Leone; Commissioner John Mercurio; and Commissioner Gene Sylls

**COMMISSIONERS ABSENT:** None

**STAFF PRESENT:** Cathy Munneke, Principal Planner; Frank Abejo, Senior Planner; Daniel Sequeira, Acting Assistant City Engineer; Katy Wisinski, Deputy City Attorney

**PLEDGE TO THE FLAG:** After a moment of silence in recognition of Memorial Day and in honor of those who had lost their lives, the pledge was led by Commissioner Costa.

**PUBLIC COMMENT PERIOD**

There were no comments from the public.

**ADDITIONS / CONTINUANCES / WITHDRAWALS**

There were no additions, continuances or withdrawals.

**CONSENT CALENDAR**

**A. May 19, 2010 Meeting Minutes**

**MOTION:** Commissioner Sylls moved to adopt the Consent Calendar, as submitted. Commissioner Leone seconded the motion. Commissioner Costa abstained.

**AYES:** Sylls, Leone, Hoag, Mercurio  
**NOES:** None  
**ABSTAIN:** Costa

ABSENT: None

### **PUBLIC HEARINGS**

1. **Pop's Bingo World Appeal (AA 10-010, AP 10-001)** – Appeal of an approval of the Administrative Application for Pop's Bingo World at 1505 Willow Pass Road. The General Plan designation is Downtown Mixed Use; Zoning classification is PD (Planned District); APN 126-300-036. **Project Planner: Frank Abejo @ (925) 671-3128.**

Chair Hoag advised of the public process for an appeal where after the staff report the appellant and the applicant would be given equal opportunity to speak.

Senior Planner Frank Abejo presented the staff report dated June 2, 2010 for the appeal of an approval of the Administrative Application for Pop's Bingo World to lease space at 1505 Willow Pass Road to non-profit organizations to conduct bingo games to raise money for the charities. As part of the lease, the applicant would provide the equipment needed for the games, security cameras, and would train volunteers from each non-profit group on how to conduct the bingo games. A manager would assist the non-profit groups with any issues regarding the facility or equipment but would have no role in actually conducting the bingo games.

Mr. Abejo referred to Exhibit B to the staff report and reported that upon receiving the application submitted by the applicant, staff administratively approved the project on April 16, 2010, subject to conditions, identified as Exhibit C to the staff report.

Mr. Abejo explained that the approval had been based on the project's consistency with the General Plan's Downtown Mixed Use designation and policies encouraging entertainment uses to be located in Central Concord, the project's consistency with the Planned District zoning, and consistency with commercial recreation uses which had occupied the site since 1978. He referenced the original Use Permit for the conversion of a theater to a health club facility in 1978, and an administrative approval for Velocity Sports in 2004.

Mr. Abejo advised that the administrative approval had been appealed by Andersen, Bonnifield & Roscha representing the Blue Devils, on April 26, 2010, although the grounds for the appeal had not been specified. Staff did not believe that there was a legitimate basis for the appeal and recommended that the Planning Commission deny the appeal and uphold the administrative approval of the application, subject to the findings in the draft resolution.

Mr. Abejo referred to two documents that had been benched, including a supplement to the staff report clarifying the relationship of the Preliminary Development Plan (PDP) for the office development surrounding the property, and a letter dated June 1, 2010 from the Community Youth Center (CYC) in support of the application.

With respect to the supplemental information, Mr. Abejo clarified that the PDP approval did not include the subject site, and that the project would be consistent with the Use Permit approved for the site in 1978 for a commercial recreation use. He explained that this information had been submitted as a clarification of information discussed in the staff report, and was not new information. Mr. Abejo further explained that a revised resolution was also benched amending the finding No. 4 consistent with the supplemental information.

Commissioner Leone asked for clarification as to why the supplemental information had been submitted at this time, to which Mr. Abejo stated that the staff report mentioned that the PDP for the office development had included the subject site, but that statement was in conflict with the description of what was approved as a part of the PDP since the PDP did not include the site. The information was intended to clarify that the project was consistent with the Use Permit approved in 1978 and that the subsequent PDP did not apply to the site.

Chair Hoag clarified therefore that the supplemental information did not represent a material change to what had been represented related to the use of the property and the approved use of the property.

Deputy City Attorney Katy Wisinski verified that there had been an error in the initial report as to the relationship of the Use Permit and the PDP. She stated that the supplemental information, a four-paragraph document, had corrected that error.

#### PUBLIC HEARING OPENED

BRETT RIOS, Director of Operations for the Blue Devils, now called BD Performing Arts, noted that their representative was not in attendance at this time. He stated that there was a list of questions that had been unanswered and he urged the Commission to take this into consideration prior to making any final decision on the permit.

Mr. Rios clarified, when asked by Commissioner Costa, that the corporate name for the Blue Devils had been changed in 2009 to BD Performing Arts, although the dba (doing business as) was still the Blue Devils. Nothing else had changed but the corporate name.

AUSTIN WEAVER, of Andersen, Bonifield & Roscha, Attorneys at Law, Concord, arrived thereafter to represent the Blue Devils. Mr. Weaver apologized for being late. He stated that he had received an e-mail at 4:17 P.M. that afternoon, whereby he and his client learned that their understanding of the entitlements governing the subject property, as represented in the staff report issued the prior week, were incorrect, in that it was not the PDP but the earlier Use Permit that governed the subject property.

Mr. Weaver stated that he had received a number of documents last week from a public records request in his effort to determine what was governing approval for the project

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given his belief that the use was not a permitted or consistent use with the zoning or with the entitlements. He added that he had confirmed that fact to this belief through conversations with the City Attorney's Office and with Mr. Abejo, though he clarified that the City Attorney's Office had not actually provided an answer as to this issue. He had then received the staff report further confirming his notions and according to which he had built his argument. As a result, he had spent the last two hours trying to revise his argument to somehow make it relevant to the subject hearing.

Mr. Weaver added that he had sent an e-mail followed by a telephone conversation to Mr. Abejo after receipt of the supplemental information which he considered to be new information. He therefore felt inadequately prepared to address the issue and needed to recalibrate his position based on this new information. He asked for the appeal to be continued to the next Planning Commission meeting to allow him the opportunity to address what he considered to be new information.

Commissioner Costa commented that he had received the supplemental staff report at the same time as the applicant and had been able to read that supplemental report and become familiar with it. He noted that the rest of the Commission had the same time to review the information. He also noted that prior to Mr. Weaver's arrival there had been a staff report to clarify that information.

Chair Hoag added that the supplemental information clarified the fact that the PDP did not apply to the property while the Use Permit did, and there was no material or significant change to the staff report. He acknowledged Mr. Weaver's request for a continuance.

Mr. Weaver stated that the California Environmental Quality Act (CEQA) and the impacts of the use were two relevant topics and that the environmental review would be different with respect to a PDP versus a Use Permit. He stated that there was a litany of issues that would fall after the change of the information related to the guiding document.

When asked to respond to the request for a continuance, PAUL LOPEZ, BI Technologies, Concord, representing the applicant, did not support a continuance, suggesting that the appellant had ample opportunity to prepare the arguments and attend a properly noticed meeting on time and to be prepared. He was not inclined to allow a continuance of an issue that was clearly a clarification. He expressed the willingness to show the appellant a map of the property to clarify what he characterized as a misunderstanding with respect to the application.

On the request for a continuance, Commissioner Leone stated that he was bothered by the receipt of information at the last minute. He understood the concerns being expressed. While staff had indicated that there was no material change involved, Commissioner Leone recognized that the appellant had indicated that there was a material change.

**MOTION:** Commissioner Costa moved to deny the request for a continuance of Pop's Bingo World Appeal (AA 10-010, AP 10-001). Commissioner Sylls seconded the motion.

AYES: Costa, Sylls, Hoag, Mercurio  
 NOES: Leone  
 ABSTAIN: None  
 ABSENT: None

Mr. Weaver argued that the administrative approval had been based on the 1979 PDP, consistency with the General Plan, zoning and other items. He added that the staff report clearly stated that in determining that the administrative approval was valid and consistent with the PD zoning, staff had relied on the 1979 PDP. Just today, he contended, that had been determined to be in error, which was a necessary component for approval in determining whether or not the zoning on the lot was erroneous. He suggested that the determination had been made on false evidence since the document controlling the parcel was the Use Permit. Mr. Weaver stated that the decision to approve the application was made based on a land use entitlement that was not determined to be applicable at the time of appeal. If the PDP did not touch the parcel, he questioned how it could be valid with a decision based upon a zoning determination that was incorrect.

Mr. Weaver objected to the statement that the supplemental staff report did not represent a material change to the prior decision to approve the project. He did not see how it could be viewed as a minor clarification since it was an entirely different governing document.

Commissioner Costa stated that the use followed clearly the recently approved City General Plan. He asked Mr. Weaver to clarify the problem and what was being appealed.

Mr. Weaver stated that he would submit correspondence outlining his concerns.

Principal Planner Cathy Munneke referred to the fourth paragraph of the fourth page of the staff report which spoke to the reason for the administrative approval and finding that this was a minor non-controversial matter. She noted that the basis for the rationale for the administrative approval was the earlier approval of a commercial recreational use, i.e., the health club facility approved in the 1978 Use Permit. The staff report had erred in linking that use approval to the PDP, when it should have stated that the health club facility use was actually contained in the 1978 Use Permit. This was the correction that had been made during the staff report presentation. She stated therefore that the rationale used in the staff report to support the application was correct.

Mr. Weaver suggested that CEQA had not been adequately addressed as part of the application.

Commissioner Sylls disagreed, stated that the argument was not substantial, and strongly objected to the statement that CEQA had not been addressed.

Chair Hoag concurred that CEQA had clearly been covered in the staff report and clarified that a change of a health facility to a bingo operation which required no change to the building would be categorically exempt, as had been reviewed by the City's legal staff. CEQA therefore did not apply.

Mr. Weaver reiterated that he would submit his position in writing on that issue. He again noted his concern with CEQA in terms of potential impacts. He otherwise was open to answer any questions of the Planning Commission.

Chair Hoag reiterated that the staff report had already responded to many of the issues Mr. Weaver had raised. He stated that the Commission had determined that the staff report was complete enough to make a decision unless there was some very material items that staff and the City Attorney's office had missed. He did not see that was the case at this time. He invited Mr. Weaver to submit a written report that staff and the City Attorney could respond to accordingly.

Mr. Weaver stated that he had spoken with Mr. Abejo and had commented on his opinion that, under the Government Code, receiving the supplemental information a couple of hours prior to the hearing had a prejudicial impact on the appellant. He stated that he would submit letters to the City Clerk for the record as well as his e-mail related to the timing and receipt of the supplemental information.

Chair Hoag reiterated that the Commission had not yet made a determination on the issue other than to find that the staff report was complete.

There were no other comments from BD Performing Arts.

Ms. Wisinski asked Mr. Weaver about the Government Code section that he had referenced for the City's notes. Mr. Weaver stated that he would have to submit that information to the City after his return to his office.

Mr. Lopez explained that the applicant had started the process by submitting an application to the City after meeting with City staff and reviewing a number of issues. The application had been reviewed by staff, the City Attorney, along with the Police Department and many other City agencies.

Mr. Lopez found that the application had been thoroughly reviewed. He concurred with the recommendation of the staff report, that the appeal be denied and that they be allowed to move forward with the administrative approval.

When asked, Mr. Weaver provided Mr. Lopez with two documents; one dated June 2, 2010, outlining the appeal points and a copy of e-mails between he and staff dated June 2,

2010. The documents were also provided to the Recording Clerk, members of the Commission, and staff.

CHUCK LESSIN, Richmond, VA, representing Pop's Bingo World, reported that he had been involved with charitable bingo for over 28 years at different levels representing charities, conducting the games, representing building owners, supply and distribution of materials for bingo, lobbying efforts across the country, and helping charities to understand the local building codes. He noted that they were very excited to bring a Pop's Bingo World to Concord. He stated that the firm had been in serious discussion with a number of local charities, including Community Youth Center (CYC) and Sister Mary Grace of East Bay Services, had met with the Mt. Diablo Athletic Association, and many other smaller charities in the region. He stated that the firm had a tremendous amount of experience, would act as the landlord, and the building would be fit to operate charitable bingo as permitted by State and local requirements.

Mr. Lessin described the proposal as a turnkey operation for those charities that would like to conduct the games as a significant source of fundraising. He noted that the charities would like the same opportunities that existed within the Blue Devils facility and they would like to offer that opportunity. He emphasized that his firm would provide the space, as well as assistance with requested or desired training, but had no intention or desire to participate in the conduct or management of any of the individual bingo games. The firm would bring a certain level of expertise to charitable bingo, all of which would operate under the Penal Code and local City ordinances.

At the request of Commissioner Sylls, Chair Hoag declared a recess at 7:44 P.M. to allow Commissioners to review the documents provided by Mr. Weaver. All Commissioners remained at the dais. The meeting reconvened at 7:49 P.M.

In response to the Chair, Ms. Wisinski stated that the City Attorney's Office had requested the appellant notify them of the nature of their concerns last week, so the City Attorney's Office would be more prepared to advise the Commission in the event there were any material issues raised. After reviewing the information just provided by Mr. Weaver, she did not see anything that would change the recommendations that had been provided to date.

Chair Hoag stated that the appellant had spoken and if there were no other public comments, the public hearing would be closed.

#### PUBLIC HEARING CLOSED

Commissioner Sylls expressed his disappointment with the fact that Mr. Weaver had arrived late to the meeting, while objecting to a late e-mail, and had come in with late letters and reports and then requested a continuance, a ploy and tactic he strongly opposed. He objected to the waste of time on non-issues which could possibly result in a project being denied that would have produced revenue to the City, particularly at a time

when the City needed all potential revenue opportunities. He did not see anything that would make him support anything that Mr. Weaver had presented. He favored the denial of the appeal.

Commissioner Leone asked Ms. Wisinski if there was any basis in which she believed that the Planning Commission could support the appeal based on her understanding of the issue.

Ms. Wisinski stated in an appeal such as this it would be the appellant's burden to convince the Commission that the action undertaken by staff was in error and to give evidence in support of that. The Commission would have to weigh the evidence in terms of documents presented, testimony given, and authorities cited to determine whether or not there were any land use or other legal issues that would cause the Commission to question the appropriateness of the staff determination. Based on the City Attorney's Office review of the documents, she did not believe there were grounds to uphold the appeal.

Commissioner Mercurio advised that he had heard nothing that would cause him to support the appeal.

Chair Hoag thanked those present to speak to the item as part of a process that made the City work. He commended staff's thorough and vigilant work, stated that the Commission had taken its responsibility very seriously, and recognized an appellant with strong desires to present their position and an applicant who would like to move forward. He noted that all entities had been given the opportunity to express themselves and present materials. Based on the thorough analysis of the Police Department, the documentation presented by staff, and all the relevant information presented to the Commission, and the new materials handed out at this time, in his opinion the appellant had made some points, although they were not of a material nature sufficient to grant the appellant's request to deny the administrative approval made by the Planning Division. He felt that all of the issues had been addressed thoroughly and completely by staff, and the Deputy City Attorney. He noted that the appellant had the opportunity to make his case, although Chair Hoag did not believe it was material enough to grant the appeal.

Commissioner Costa understood the issue that sometime in the last eighteen months BD Performing Arts had leased a building, which was costly, and did not pursue another facility. He understood that the organization had spoken with Mr. Lopez and his family for the use of their facility. The Lopez family took the idea of charitable bingo and pursued it.

Commissioner Costa noted that he and Commissioner Sylls worked on the Community Services Commission, which dedicated Community Development Block Grant (CDBG) funds to City projects. In today's economy when CDBG funds had been reduced more and more, and school and program budgets were being cut more and more, he did not see how the proposal was a bad thing. He suggested that the proposal was the right thing for

Concord. He suggested that every charity could get involved and do something like this. For someone to make a long-term investment and to create a positive situation for the City was a good thing, he said.

Commissioner Costa recognized that the Blue Devils brought a lot of pride to the City, which was also a good thing, but the issue should never have gone this far. He applauded them for what they were doing and applauded BD Performing Arts for what it was doing but suggested that they needed to eliminate the lawyers and settle the issue.

Commissioner Costa supported moving forward to allow something positive to happen in the City.

**MOTION:** Commissioner Costa moved to adopt Resolution No. 10-10PC denying an appeal of the approval of Pop’s Bingo World Administrative Application (AA 10-10), including all benched items attached to the staff report and those submitted on June 2, 2010. Commissioner Mercurio seconded the motion.

AYES: Costa, Mercurio, Hoag, Leone, Sylls  
 NOES: None  
 ABSTAIN: None  
 ABSENT: None

Ms. Munneke advised that the Planning Commission action was appealable to the City Council within ten calendar days. Applications for appeal may be picked up in the Permit Center located behind the Council Chambers.

Chair Hoag expressed his appreciation to all those who had participated in the discussion.

**COMMISSION CONSIDERATIONS**

1. **CIP and TIP General Plan Consistency** – Review of the proposed 2010-2011 Fiscal Year (FY) Capital Improvement Program (CIP) and Transportation Improvement Program (TIP) for consistency with the adopted General Plan pursuant to Government Code Section 65401. **Project Engineer: Alex Pascual @ (925) 671-3470.**

Acting Assistant City Engineer Daniel Sequeira presented the staff report dated June 2, 2010 for the proposed 2010-2011 FY CIP and TIP for consistency with the adopted General Plan pursuant to Government Code Section 65401.

Mr. Sequeira presented a PowerPoint presentation showing the completed projects for FY 2009-2010. He reported that the City of Concord had received two federal stimulus grants in the past year and received numerous grants from the East Bay Regional Park District (EBRPD) Measure WW grants. He identified the carryover projects that had been designed in the current or previous years that were now under construction. He

explained that Local Streets and Road projects that were coming up in the next fiscal year would be partially funded through Redevelopment Agency (RDA) funds. None of the projects were funded by the General Fund.

Mr. Sequeira identified additional pavement, rehab, bikeway, building, seismic retrofit, Americans with Disabilities Act (ADA) projects and their funding sources, including the grants the City had received over the past fiscal year and what the grants would be funding. He pointed out other grant opportunities being pursued by the City.

Commissioner Leone commended the City for its pursuit of grants. With respect to the balance of the funds, he asked where the balance would come from, reported by Mr. Sequeira to be other funds such as gas tax, Measure C, Measure J, RDA funds, CDBG funds, and the like, depending on the project and the grant. He emphasized that no General Fund money would be used for the identified projects.

Commissioner Mercurio commended the presentation. He asked of the intent of the intersection projects that had been done by the City along Clayton Road.

Mr. Sequeira explained that the four intersections along Clayton Road that had been repaired involved pavement failure. Typical asphalt had been used on the repair work.

Commissioner Mercurio referred to the references in the presentation to certain buildings, such as the CitiArts Building, and suggested that precise locations and addresses would have been helpful to include in the presentation. With respect to the Whitman Road project, he clarified with staff that the project design was nearly complete, with the project almost ready to be put out to bid, and with construction this year.

Commissioner Mercurio encouraged the City to consider the opportunity to make changes in the striping along many of its roadway projects to make the roadway better able to accommodate bicycles, citing Whitman and Pine Hollow Roads as examples. He also requested better names for some of the projects.

Mr. Sequeira expressed the willingness to review the Whitman Road project and the existing bike lane configuration. He noted that projects typically sought consistency with the Trails Master Plan adopted in April 2003 to ensure that what was being proposed was consistent with the adopted plan, although he pointed out that the City had a number of right-of-way issues. The Monument Corridor Project, as an example, had considered bicycle lanes, although there was not enough room and narrowing the lanes was not feasible. He added that the names of the projects were often chosen to appeal to the grantor.

Commissioner Costa stated that it was interesting to see what was being accomplished and he was truly appreciative of those working so hard to get money to get things done. He suggested at some point when the economy improved the General Plan had plans for

roads, bridges and trails and he thanked staff for pressing on and doing such a good job, to see money well spent and to see new money being secured.

Commissioner Sylls concurred and stated it was impressive that more than 70 percent of the funds were grant funds.

**PUBLIC HEARING OPENED**

There were no comments from the public.

**PUBLIC HEARING CLOSED**

**MOTION:** Commissioner Costa moved to report to the City Council the determination that the proposed 2010-2011 Fiscal Year Capital Improvement Program (CIP) and Transportation Improvement Program (TIP) are consistent with the adopted General Plan. Commissioner Sylls seconded the motion.

AYES: Costa, Sylls, Hoag, Leone, Mercurio  
NOES: None  
ABSTAIN: None  
ABSENT: None

**STAFF REPORTS / ANNOUNCEMENTS**

There were no staff reports or announcements.

**COMMISSION REPORTS / ANNOUNCEMENTS**

Given the change in Commission membership, Commissioner Costa requested a Study Session one half-hour prior to the next meeting scheduled for June 16, to review and update the Planning Commission on rules, responsibilities and conduct of members of the Planning Commission.

**FUTURE PUBLIC HEARING ITEMS**

Ms. Munneke stated that on June 16, the Concord Community Reuse Redevelopment Project General Plan consistency determination would be scheduled for consideration. No other items had been scheduled.

Commissioner Leone requested that given the Fourth of July holiday, the items that had been scheduled for the Planning Commission meeting on July 7 could be placed on the following meeting agenda.

Ms. Munneke stated that the Housing Element would be rescheduled due to other considerations. The other item was the General Plan Annual Report and there was no urgency for consideration. The meeting could therefore be moved to July 21.

Commissioner Mercurio advised that he would not be present for the July 21 meeting.

Chair Hoag suggested it would make more sense to hold the meeting on July 21.

**ADJOURNMENT**

BY ORDER OF THE CHAIR THE MEETING WAS ADJOURNED AT 8:34 P.M.

APPROVED:

  
\_\_\_\_\_  
Cathy Munneke  
Planning Commission Secretary

Transcribed by Anita Tucci-Smith