

REGULAR MEETING OF THE  
CITY OF CONCORD PLANNING COMMISSION  
COUNCIL CHAMBER, 1950 PARKSIDE DRIVE  
CONCORD, CALIFORNIA

WEDNESDAY, April 16, 2014

A regular meeting of the Planning Commission, City of Concord, was called to order by Chair Carlyn Obringer at 6:00 P.M., Wednesday, April 16, 2014, in the City of Council Chamber. All members were present.

STUDY SESSION  
6:00 PM Council Chamber

I. Study Session Item

1. CONCORD REUSE AREA PROJECT UPDATE

Michael Wright, Concord Reuse Project Director, made a presentation updating the status of the Concord Reuse Project. The presentation reviewed the process of soliciting interest from potential master developers and preparing for transfer of the property from the Navy to the City. He stated that one change since his last update was that the 120-acre site that had been set aside for transfer to the CalState University system would not take place. Funding is not available to develop a campus, and the CalState system has officially withdrawn their letter of interest. The area plan will continue to allow for a 4-year university or research and development facility. All other land uses will remain the same. The first transfer of land is anticipated at the end of 2015 or early 2016, and will include the public benefit conveyances, and an initial development parcel near the BART station. It will likely be 2025 or later before all the land is transferred.

Mr. Wright noted that the City is currently in the process of selecting a master developer. This is a three-step process beginning with solicitation of qualifications. The City received eight responses and is in the process of narrowing these down to a shortlist of four to five entities who will receive a request for proposals in July, which will be due in October. The top two will be selected to proceed on in the process to negotiate a development agreement. The selection process will be completed in Spring 2015 with the selection of the master developer.

Dahlia Chazan from ARUP provided an update on the PDA planning grant, which includes more detailed analysis of infrastructure requirements and availability and the development of a phasing strategy. The grant activities

also include evaluating the convenience standards in the area plan, and determining how best to phase those in as the area is developed.

II. PUBLIC COMMENT PERIOD

No public comments received.

XI. Recessed

Vice Chair Obringer moved to recess at 7:08 P.M.

REGULAR MEETING

Meeting reconvened at 7:15 pm - Council Chamber

I. ROLL CALL

All were present

COMMISSIONERS PRESENT:

Chair Carlyn Obringer  
Vice Chair John Mercurio  
Commissioner Ernie Avila  
Commissioner Robert Hoag  
Commissioner Tim McGallian

STAFF PRESENT:

Carol Johnson, Planning Manager  
G. Ryan Lenhardt, Senior Planner  
Frank Abejo, Senior Planner  
Susanne Brown, Senior Assistant City Attorney

II. PLEDGE TO THE FLAG

Commissioner Hoag led the pledge.

III. PUBLIC COMMENT PERIOD

No public comments received.

IV. ADDITIONS / CONTINUANCES / WITHDRAWALS

Staff reported there were no changes to the agenda.

V. CONSENT CALENDAR

APPROVAL OF MINUTES

Motion was made by Vice Chair Mercurio, and seconded by Commissioner McGallian to approve the meeting minutes of April 2, 2014 with benched correction to page 3. The motion was passed by the following vote:

AYES: Hoag, McGallian, Mercurio, Obringer  
 NOES: None  
 ABSTAIN: Avila  
 ABSENT: None

VI. PUBLIC HEARINGS

The notice of this public hearing was published in the Contra Costa Times and posted in the City’s posting cabinet on April 11, 2014.

1. DE LA SALLE ACADEMY PERMIT (PL 140040-UP)

Commissioner Avila recused himself from hearing items 1 and 2 due to the potential appearance of a conflict of interest.

G. Ryan Lenhardt, Project Planner, presented the staff report. In November 2013, Dennis Costanza submitted a Text Amendment to the Development Code to permit elementary, middle, and secondary schools within the West Concord Mixed Use (WMX) zoning district subject to a Use Permit. The project site has two existing buildings, an office and warehouse, with separate entrances. The academy is a division of De La Salle High School. The projected first year enrollment is 15 students in each of the 5<sup>th</sup> and 6<sup>th</sup> grades. Staff recommends the Commission adopt Resolution No. 14-10PC approving a Use Permit for De La Salle Academy.

The following are comments by the Commissioners and clarifications by Project Planner Lenhardt.

Vice Chair Obringer inquired if the applicant was in agreement with the conditions of approval regarding signage and the planting of trees. Planner Lenhardt stated the applicant confirmed their agreement with staff. Obringer asked a question about the crosswalk and Lenhardt replied the applicant will use existing crosswalk at the corner of Galaxy Way and Commerce. Commissioner McGallian asked whether a crosswalk should be located to allow for direct door to door access between the school and other facilities before it becomes a problem. Planner Lenhardt stated the Transportation Division felt the existing crosswalk is sufficient. McGallian would like to include the option to install an additional crosswalk if the applicant wishes to pursue one. Vice Chair Mercurio asked, exactly where is the crosswalk located.

Applicant appeared to address any questions from the Commissioners.

Dennis Costanza supposed traffic on Commerce may increase when it is extended. They would like to pursue the connection to Galaxy Court. Costanza stated the food would be prepared at the Big C and brought over to the school. The applicant indicated the hope is to accomplish breaking the cycle of poverty. This school will prepare the children for High School, so they can advance to college. Mike Figgins from Ratcliff Architect stated he was available for any questions.

**Public Comment**

Nathan Burkhardt, of Open Technologies, Inc. believes it is a great program. He inquired about the driving route and why it was chosen. Mr. Figgins replied a one-way loop for dropping off school children is usually recommended. Taking right turns is best and the safest so no traffic is being crossed.

Public Comment period closed

The following are discussions by the Commissioners.

Commissioner Hoag stated this was the most enjoyable staff report, accurate and thorough. He does not have formal education beyond High School. He was particularly sensitive to education. Vice Chair Mercurio dittoed the remarks of Commissioner Hoag and believed this was a great program. Commissioner McGallian appreciates Concord Youth Center and the new program. Chair Obringer said that last Tuesday at the Joint Study Session it was mentioned that schools might impair the ability to attract development; however, De La Salle Academy would help to provide a high quality educational option that could assist with this perception that Concord's schools are not high performing.

Motion was made by Vice Chair Mercurio and seconded by Commissioner Hoag to adopt Resolution No. 14-10PC approving De La Salle Academy Use Permit (PL140040-UP), subject to the Conditions of Approval set forth in Attachment A to Resolution 14-10PC. The motion passed by the following vote:

AYES:	Hoag, McGallian, Mercurio, Obringer,
NOES:	None
ABSTAIN:	None
ABSENT:	Avila

2. DE LA SALLE HIGH SCHOOL MASTER PLAN (PL131368-UP,DR)

Frank Abejo, Project Planner, presented the staff report. In 2005, the existing Use Permit was approved to allow for tree removal, demolishing and renovating existing facilities and to construct four new buildings including a student center, gymnasium, and science classroom and administration office. The Master Plan was to be constructed in four phases over 20 years. The Design Review approval was for the student center only. Phase 1 work was completed in 2006. The Approved Project Use Permit remains valid. De La Salle proposes to modify the scope and phasing of their Approved Project. The Modified Project reduces overall building square footage. Phase 2 is to construct a new STREAM (Science, Technology, Robotics, Engineering, Arts, and Math) building replacing the existing maintenance building. This was originally approved to be completed in Phase 3. Phase 2 pool relocation has been removed from the Master Plan. Phase 3 will replace the cafeteria with a gymnasium and high performance athletic center. Phase 4 proposal is to construct an addition to the existing theater (not a part of the Approved Project). The Approved Project Phase 4 proposal to replace the administration building has been removed from Master Plan. Staff requested the Commission adopt Resolution No. 14-07PC approving and adopting an Addendum to the 2004 Initial Study/Mitigated Negative Declaration and approving an application for Use Permit Amendment and Design Review (PL131368-UP, DR) for modifications to the De La Salle High School Master Plan.

The following are comments by the Commissioners and clarifications by Project Planner Abejo.

Commissioner Hoag questioned the sentence at the bottom of page three with regards to significant environmental effect. Planner Abejo explained the sentence is correct. Vice Chair Obringer confirmed that there were no letters or comments from neighbors. She asked if there were any issues or concerns. Planner Abejo explained there was a neighborhood meeting in February and there were some neighbors expressing concerns. De La Salle is working with an aggrieved neighbor whose home is located just south of the STREAM building.

Nadin Sponamore, of Sponamore and Associates, discussed the basis for an addendum, which include no substantial changes to the project, circumstances or new information. In the case of the De La Salle Modified Project, the result is a smaller project, and the conclusion is that no additional mitigation measures required.

The applicant, Mark DeMarco, President of De La Salle High School, appeared to address any questions from the Commissioners. In order to continue their standard of excellence, they are thinking forward and looking at the last buildable space on campus. The onsite parking is above minimal

requirements. The school has recently signed a new agreement with the Latter Day Saints Church for overflow parking.

Commissioner McGallian inquired about the time frame in terms of funding through the phases. Mr. DeMarco replied that the entire project capital campaign is fifty five million dollars. They will break ground in the summer, if approved. There is five million dollars already promised. Commissioner McGallian asked if this capital campaign would impact tuition. Mark DeMarco replied all this money is being raised from outside sources. They have also raised fifteen million dollars for a financial aid endowment. The goal is to have the project completed in three years. McGallian lastly questioned the location of the wrestling room. Mr. DeMarco stated the wrestling room would be at Concord Youth Center (CYC). Commissioner Hoag encouraged De La Salle to accommodate the neighbors. Vice Chair Obringer questioned the length of the Latter Day Saints parking agreement. Mr. DeMarco replied the agreement is long term. She also asked about large events and the applicant stated they coordinate with Carondelet.

Rob Williamson, Ratcliff Architect reviewed the project design.

#### Public Comment

Eric Frank of Walnut Creek stated that he lives across from the batting cage and wanted to know how the height of the tallest existing structure, and he inquired about the new location of the garbage cans. Rob Williamson replied that the existing gym is 32 feet; the new building will be 37 feet 4 inches. Currently they are studying where to enclose the garbage cans and mitigate noise from the garbage cans and the batting cage.

Public Comment period closed.

The following are discussions by the Commissioners.

Vice Chair Mercurio was impressed how De La Salle is using the available space. Commissioner Hoag promotes, supports and encourages higher education facilities. Chair Obringer appreciated the green elements and their work with the neighbors.

Motion was made by Commissioner McGallian and seconded by Commissioner Hoag to adopt Resolution No. 14-07PC approving and adopting an Addendum to the 2004 Initial Study/Mitigated Negative Declaration and approving an application for Use Permit Amendment and Design Review (PL131368-UP, DR), for modifications to the De La Salle High School Master Plan. The motion passed by the following vote:

AYES: Hoag, McGallian, Mercurio, Obringer

NOES: None  
 ABSTAIN: Avila  
 ABSENT: None

Commissioner Avila rejoined the meeting

3. FAST AUTO LOAN APPEAL (PL140098 –AP)

Carol Johnson, Planning Manager, presented the staff report. In January of 2014 a Business License Application was filed from Fast Auto and Payday Loans. The description was office use, car title loans and payday advance services. Based on the provided information staff advised that this would not be permitted in the CMX zoning district. A revised application was received with a new name and slightly altered description. After consideration, staff advised that the revised use would also not be permitted as it fell into the same land use classification as payday loans. The Planning Manager sent an official interpretation stating that auto loans are more similar to check cashing/payday loan companies than a bank, and therefore the proposed use was not allowed. The applicant appealed this interpretation and will present the basis for their determination that their use is most similar to a bank.

Ms. Johnson presented four possible actions. The Planning Commission may 1) uphold the interpretation and deny the appeal, 2) overturn the interpretation and grant the appeal, 3) find that car title loan businesses are more similar to another listed use, or 4) find that car title loan businesses are not similar to any other use, and are therefore not permitted.

Applicant Robert Reich appeared to provide a presentation to the Commissioners. He stated that Fast Auto Loans are fully amortized installment loans. They cannot make payday loans. Their operations are structured consistent with banks. The hours of operation are not like pay day loans. Fast Auto Loans is not open in the evening. Customers are one-third self-employed and small businesses, one-third households with low credit scores, and one-third renters. Income distribution for their customers is in the range of \$60,000 to \$75,000/household annually. Eighty percent of their customers do not have a visa or master card. They provide fifteen-day notice prior to the sale of a vehicle. They sell cars that are repossessed at public auction, and if there is a surplus from the sale it goes back to borrower.

Commissioner Hoag questioned the rates. Applicant Bob Reich answered, the rates are between 96%-108% set by Fast Auto Loan. Commissioner Hoag inquired about the percentage of delinquencies and Reich replied fifteen to twenty percent and confirmed a six percent repossession rate. Commissioner Hoag asked if the amount cars are sold for covers the loans. If there is a deficiency do they pursue collection? Mr. Reich responded they do not pursue deficiencies. They take a loss if cars are stolen or are in

accidents. Typically the sale of a vehicle covers two-thirds of the loan. The single largest reason for default on the loans is due to used car that has mechanical failure. There can be charges up to \$500.00 towards repossession collections. Commissioner Hoag asked if they do their own collections. Mr. Reich stated that they do their own collections.

Commissioner Avila had a question about Appendix E, from the applicant's report in regards to the household demographics. Mr. Reich stated Fast Auto Loans hires employees from within the community. He also stated they do not keep demographic information. Avila stated that banks are regulated by the FDIC, and asked who regulates Fast Auto Loans. Mr. Reich replied they post surety bonds with California Board of Business Oversight. They do not have deposits and operate different than banks or savings and loans. Vice Chair Obringer inquired if the graph for household income represents nationwide statistics. Mr. Reich replied yes. Obringer asked in how many states Fast Auto Loans operates. Reich replied 31 different states. She then asked whether they provide documentation, as well as an explanation from the loan officer, in native languages. Reich said they offer a reminder to the borrower in alternative languages. Legally, the loan documents may only be in English. Chair Obringer asked whether they are currently operating in Bay Area. Reich answered no, primarily in Southern California and the Central Valley. Obringer inquired what attracted Fast Auto Loans to Concord.

Dr. Charles Steele, Jr. from the Southern Christian Leadership Conference appeared on behalf of the applicant and stated that he was concerned with people in society who are hurting. People need to have access to capital.

Richard Norris, attorney for the applicant, stated that this is an odd situation arguing a legal point when the Planning Commission is charged with addressing land use issues. Mr. Norris stated the key question to be asked is, if this had been a mortgage loan office requesting a permit, would they have been denied. Fast Auto Loans is not a pay day lender or check cashing business. Mr. Norris asked that the Commissioners consider what the ordinance requires.

Senior Assistant City Attorney Susanne Brown stated that the Fast Autos Loans loan application requests information regarding hair, color, height, or race. Therefore she is unclear why they do not have demographic information as requested by Commissioner Avila. Ms. Brown asked what types of processing fees are on top of the actual interest rate. Mr. Reich replied by saying one single fee, which is for the Department of Motor Vehicle in order to file lien. The fee is between \$9.00 and \$18.00. Ms. Brown questioned what kinds of fees are associated with a repossession. Reich responded with a cost of up to \$500.00. Brown asked if the vehicles used for collateral are required to carry comprehensive insurance. The answer provided by Mr. Reich was no. Ms. Brown inquired about the typical interest rate. Mr. Reich

replied that the interest rate depends on the age of collateral. Mr. Reich also stated that loans greater than \$2,500 are not subject to cap rates and there is no cap for bank loans. Senior Assistant City Attorney Brown asked the applicant to explain his reference to a bank affiliate. Reich answered some are finance companies owned by banks and some affiliates are subsidiaries of the banks and operate under the bank's licensing structure. Mr. Reich stated that Fast Auto Loans would have a bank relationship and no onsite circulation of funds. Brown questioned if they receive cash payments; and Reich answered that they do receive cash payments. How long are the Installments, asked Brown? Response from Reich was 12 to 24 months, the loans are rarely renewed, and there are no pre-payment penalties. The interest is simple. Ms. Brown asked whether Dr. Steele has financial interest in Fast Auto Loans. Reich replied Mr. Steele is not paid, but they do have a foundation that supports his nonprofit organization.

Senior Assistant City Attorney Brown mentioned that Richard Norris indicated this is a legal rather than factual question. The Planning Commission looks at the usage characteristics. Mr. Norris refuted that the dispute has nothing to do with use; the real issue is what is the difference from a Wells Fargo Mortgage office. The conclusion of the staff report stated that Fast Auto Loan is a payday loan company and it is not a bank. The case of Towerline Property V. Los Angeles establishes that we cannot speculate when interpreting the law. Norris believes the Code expressly allows the proposed use as a bank.

Public Comments period was opened.

Ray Barbour supported staff's recommendations and findings. Planning Manager Johnson read an email from Nati Flores of the Monument Community Partnership stating that she is in support of the staff's recommendations.

Public Comment Period was closed.

The following are discussions by the Commissioners. Commissioner Hoag stated that because the applicant does one thing that is similar to what other financial institution do, does not mean that the use is the same. He agreed with Dr. Steele but does not see how we help by offering loans of 96%-108%. Hoag said the auto loan business is narrowly defined and does not fit any of the use categories. Commissioner McGallian responded that Fast Auto Loans does not circulate money the same way banks do. Commissioner Avila understood that Dr. Steele opened the fairness issue, but this proposed use is not permitted. Vice Chair Mercurio said that Commissioner Hoag brought up good points. Chair Obringer does not believe this would be helpful to the community or give them a leg up and she would be supporting the staff's recommendation.

Motion was made by Commissioner Hoag and was seconded by Commissioner Avila to hereby move that the Planning Commission deny the Appeal and find that a “car title loan business” is not like any known use listed in the Development Code, and is therefore prohibited. The motion passed by the following vote:

AYES: Avila, Hoag, McGallian, Mercurio, Obringer,  
 NOES: None  
 ABSTAIN: None  
 ABSENT: None

Planning Manager Johnson noted that since the Planning Commission’s decision was different than that contained in the resolution presented by staff, a new resolution would be drafted memorializing the decision of the Commission and it would be presented at the next Planning Commission meeting for adoption as a consent item.

VII. COMMISSON CONSIDERATIONS

There were no items to be considered.

VIII. STAFF REPORTS / ANNOUNCEMENTS

There were no items to be considered.

IX. COMMISSION REPORTS/ANNOUNCEMENTS

There were no items to be considered. Commissioner Hoag may be absent for the first meeting in May.

X. FUTURE PUBLIC HEARING ITEMS

Planning Manager Carol Johnson announced that on April 25, 2014 at 1:00 PM in the City Council Chambers there would be a presentation by the Urban Land Institute Technical Advisory Panel regarding their analysis of the most effective steps that could be taken to bring new development to Concord. She also stated that the next Planning Commission meeting would be held on May 7, 2014 and includes the Downtown Plan and another Clean Up Text Amendment to the Development Code.

XI. ADJOURNMENT

Commissioner McGallian moved to adjourn at 10:15 P.M. Vice Chair Mercurio seconded the motion. Motion passed by unanimous vote of the Commission.

APPROVED:

A handwritten signature in black ink, appearing to read "Carol Johnson". The signature is fluid and cursive, with a large loop at the end.

Carol Johnson  
Planning Commission Secretary

Transcribed by Toi Wells

