MINUTES
HUNTINGTON BEACH PLANNING COMMISSION

WEDNESDAY, SEPTEMBER 9, 2009
HUNTINGTON BEACH CIVIC CENTER
2000 MAIN STREET, HUNTINGTON BEACH, CALIFORNIA 92648

4:00 P.M. – COUNCIL CHAMBERS

CALL PLANNING COMMISSION MEETING TO ORDER

	P	*A*	*P*	*A*	*P*	*P*	*P*
ROLL CALL:	***Speaker,***	***Mantini,***	***Farley,***	***Shier Burnett,***	***Scandura,***	***Livengood,***	***Delgleize***

Chair Shier Burnett arrived at 4:10 PM; Commissioner Mantini arrived at 4:55 PM

AGENDA APPROVAL

A MOTION WAS MADE BY LIVENGOOD, SECONDED BY DELGLEIZE, THAT STUDY SESSION ITEM NO. B-1 BE MOVED AFTER STUDY SESSION ITEM NO. A-2, BY THE FOLLOWING VOTE:

AYES:	**Speaker, Farley, Scandura, Livengood, Delgleize**
NOES:	**None**
ABSTAIN:	**None**
ABSENT:	**Mantini, Shier Burnett**

MOTION APPROVED

THE MINUTES WILL REFLECT ITEMS IN THEIR ORIGINAL ORDER.

A. PROJECT REVIEW (FUTURE AGENDA ITEMS)

A-1. TENTATIVE TRACT MAP NO. 17296 (HUNTINGTON SHOREFLIFFS MOBILE HOME PARK RENTAL TO OWNERSHIP) – Rami Talleh, Senior Planner

Rami Talleh, Senior Planner, gave a brief overview of the proposed project.

Commissioner Livengood asked if staff was recommending that the number of lots remain at 304. Mr. Talleh indicated that staff would present recommendations at the public hearing on September 22, 2009 and that the staff report did include suggested recommendations for the Planning Commission. Commissioner Livengood asked for the location of the proposed five lots and Mr. Talleh indicated that the proposed lots would replace the existing office building. Commissioner Livengood asked for clarification on the possible Public Works Department condition for a drain pipe on the site. Mr. Talleh noted that the site does have drainage flow issues and indicated on the site plans the route of the

current surface drainage system. Steve Bogart, Acting Principal Civil Engineer for the Public Works Department, reviewed the current drainage system on the site, which surface flows through the gutters. Commissioner Livengood asked if the Public Works Department would be willing to look at permitting the water to drain to Delaware Street. Mr. Bogart indicated that the Public Works Department suggested conditions of approval require a hydrology analysis to explore the effects of the drainage. He noted that any drainage improvements must be constructed and adhere to the 2005 Master Plan of Drainage. He advised the commission that the master plan does include the underground route that Public Works has recommended. He explained that the hydrology analysis would allow a review of other possible routes for the drainage system.

Commissioner Livengood asked staff why the landscape planter on Beach Boulevard is a requirement. Mr. Talleh stated that the Subdivision Map Act allows the city to condition frontage improvements to address health and safety. He indicated that the terrain and sidewalk needed to be addressed for those reasons and that the landscape planter was a product of those issues. He noted that the Zoning Ordinance requires a 10 foot landscape planter. Commissioner Livengood asked if that particular area belonged to the state and Mr. Talleh stated that the portion of the land to be improved is CalTrans right-of-way along with approximately nine feet of the mobile home park property.

Commissioner Scandura encouraged his fellow commissioners to review the court case included in Attachment No. 9. He indicated that he would like more information on the economic impact to the residents. He asked if there was any additional information from the residents' survey and whether staff had received the ballots. Mr. Talleh indicated that staff had received the results of the survey but not the ballots. Commissioner Scandura requested that information be provided to the Planning Commission.

Leonie Mulvihill, Senior Deputy City Attorney, stated that it was reasonable that in order to ensure that the survey met the applicable requirements that additional information, such as access to the ballots, could be requested.

Commissioner Scandura questioned the focus of the economic impact report. He stated that it was primarily concerned with the impacts to renters and not owners. He asked if more information could be provided. Mr. Talleh stated that staff would be addressing that at the public hearing. Commissioner Scandura indicated that he saw three types of tenants: owners, renters, and those who would relocate.

Commissioner Scandura asked for clarification on what the Commission was allowed to require per the Subdivision Map Act and, in particular, if a soil analysis could be required. Ms. Mulvihill stated that there is a great difference of opinion between city staff and the applicant regarding the interpretation of the requirements found in the Subdivision Map Act. She stated that the application was looked at as a conversion and not necessarily a change in use that constituted new development.

Commissioner Scandura asked if the application being designated as a conversion was what prompted staff not to require a soil analysis. Mr. Talleh confirmed this. Commissioner Scandura asked if the Planning Commission retained the ability to require the soil analysis. Ms. Mulvihill stated that the City

Attorney's office would provide guidance on what the law requires but indicated that staff had decided that a soil analysis was not necessary.

Mr. Talleh noted that the application was for a tentative tract map and that the information Commissioner Scandura was requesting was for a final tract map. Commissioner Scandura asked if the Planning Commission could make a soil analysis a condition of approval. Mr. Talleh stated that adding that condition would be at the Planning Commission's discretion but that staff was not recommending it. He noted that the final tract map would be reviewed and approved by Public Works Department.

Commissioner Speaker noted that the map lists 309 spaces and asked if a new map would be required if only 304 spaces were approved. Mr. Talleh stated that the application was for 309 spaces and that if the request were revised then staff would expect a new map be submitted and would restart the review process.

Vice-Chair Farley asked if there is a Home Owners' Association (HOA). Mr. Talleh stated that there is and that they have submitted a letter questioning the validity of the residents' survey. He noted that the applicant contends that the survey was performed prior to the formation of that HOA but that staff has not been provided any evidence of that fact.

Commissioner Scandura stated that he supports converting mobile home parks from tenant lease to ownership in order to ensure the long term viability and stability of the mobile home park. He stated that he did have concerns with this particular application, noting the age of the park. He stated that this mobile home park was built to outdated building codes. He stated that the mobile home park is located on a historic wetland with a high water table and a nearby earthquake fault. He expressed concern over the current drainage system, noting that many of the streets are higher than the lots and that adjacent lots are not the same height; leading to flooding. He stated that he felt the drainage issues need to be addressed prior to converting the park.

Commissioner Scandura stated that he was concerned that the economic impact survey did not address the impact to those tenants who become owners. He stated that he felt prospective buyers should be made aware of prospective closing costs, taxes, fees, and liability. He also noted that the maintenance and modernization of the infrastructure might fall to the tenants.

A MOTION WAS MADE BY LIVENGOOD, SECONDED BY DELGLEIZE, THAT PUBLIC COMMENTS BE MOVED AFTER STUDY SESSION ITEM NO. B-1, CLOSED AND THEN REOPENED AFTER STUDY SESSION ITEM NO. A-3, BY THE FOLLOWING VOTE:

AYES:	**Speaker, Farley, Shier Burnett, Scandura, Livengood, Delgleize**
NOES:	**None**
ABSTAIN:	**None**
ABSENT:	**Mantini**

MOTION APPROVED

THE MINUTES WILL REFLECT ITEMS IN THEIR ORIGINAL ORDER.

A-2. ZONING TEXT AMENDMENT NO. 09-001 (FLOOD ORDINANCE) – Ricky Ramos, Senior Planner

Ricky Ramos, Senior Planner, gave a brief overview of the proposed project.

Commissioner Speaker asked staff for clarification on Nos. A-1 and A-2 in Attachment No.1.16. Mr. Ramos stated that the Federal Emergency Management Agency (FEMA) is requiring houses in the flood zone to have the lowest floor be at least one foot above the base flood elevation, and if this requirement elevates the house above the 30 foot height limit, then a conditional use permit can be issued for up to 35 feet and a variance must be obtained for anything beyond that. He noted that this was simply another set of recommendations that a developer would need to comply with.

Commissioner Scandura asked staff which sections of the ordinance changed the most dramatically. Mr. Ramos stated that the most significant change was to the section addressing substantial improvements. He noted that if the ordinance does not follow FEMA recommendations then it is likely that the ordinance will be deemed non compliant and need to be amended and be brought back before the Planning Commission.

Commissioner Delgleize asked staff if the proposed amendments are standard per FEMA. Mr. Ramos confirmed this and stated that the amendments were based on a FEMA model ordinance that was approved for the state of California.

Commissioner Delgleize asked if the city would be required to send FEMA plans of any new development. Mr. Ramos indicated that the city would need to provide FEMA with the technical specifications of that development. Commissioner Delgleize asked if it was conceivable for FEMA to rule to remove the flood insurance requirement should a proposed development improve the surrounding area. Mr. Ramos indicated that a project could conceivably improve the flood plan area and benefit particular neighbors by negating their need to buy flood insurance.

Chair Shier Burnett and Commissioner Speaker recused themselves from the discussion on Item No. A-3 and left the room.

A-3. ENVIRONMENTAL IMPACT REPORT NO. 08-001 (DOWNTOWN SPECIFIC PLAN UPDATE) – Jennifer Villasenor, Associate Planner

Jennifer Villasenor, Associate Planner, reviewed the items distributed to the Planning Commission. Diane Bathgate, consultant with RM, gave a brief overview of the draft EIR.

Commissioner Livengood noted that land use planning and population are included in the appendices but had not been reviewed in the presentation. Ms. Bathgate stated that those items were listed in the notice of preparation which went out as part of the initial study. She stated that both items are reviewed in the EIR but that the land use planning does not have any mitigation measures because the project will include amendments to the General Plan. Commissioner Livengood asked if those items had been reviewed and are covered in the documents. Ms. Bathgate confirmed this. Ms. Villasenor indicated that it was determined that land use and planning and population would have no impacts or

less than significant impacts. This is similar to agricultural and mineral resources but that land use and planning and population were studied for the EIR before that determination was made.

Commissioner Scandura expressed concern that the analysis does not discuss the dimensions of the Main Street Library and ancillary structures, particularly in comparison to the cultural arts overlay. He stated that there would likely be aesthetic impacts even with design mitigation measures. Vice-Chair Farley asked if a project for the cultural arts overlay would require a separate CEQA analysis or if the program level analysis would be sufficient. Ms. Villasenor stated that any project proposed for the cultural arts overlay would require a CEQA analysis. She stated that the EIR does not analyze the existing building height of the library, but it does analyze the existing allowable height under the current specific plan versus the proposed allowable height under the proposed specific plan.

Commissioner Scandura noted that there are mitigation measures for short term construction impacts but none listed for long term construction impacts. He indicated that he may propose mitigation measures. He also indicated that he might propose further mitigation measures to reduce greenhouse gases.

Vice-Chair Farley noted that current air quality levels are already being exceeded. He asked staff if future projects would be grandfathered in or make them subject to further regulations. Ms. Bathgate stated that projects will be evaluated against the EIR and if the project exceeds the intensity, then additional mitigation measures will be required. Vice-Chair Farley asked Ms. Bathgate to elaborate on the mitigation measures being proposed to reduce trip traffic. Ms. Bathgate indicated that alternative modes are being proposed and noted that the air quality section of the EIR does have the greatest number of proposed mitigation measures. Vice-Chair Farley expressed concern that not all mitigation opportunities were being explored. Ms. Villasenor stated that in Attachment Nos. 4.7 and 4.8 there is a mitigation measure that addresses reductions in emissions, as well as measures that require identification of the locations of alternative modes of transportation. She noted that traffic impacts are not shown to be significant and unavoidable. Ms. Bathgate stated that it is not uncommon for projects to exceed some aspect of air quality thresholds. Vice-Chair Farley asked staff to explore additional mitigation options, noting that he was concerned about the possibility of state air quality thresholds being lowered in the future and the Downtown Specific Plan Update not being in compliance.

Commissioner Mantini asked for clarification on whose obligation it is to provide the transportation demand mitigation measures – the developer, the property owner or the Public Works Department - and what the timeline would be. Ms. Mantini stated that she has concerns with the timelines being open-ended regarding the addition of dedicated turn lanes and traffic signals. Ms. Bathgate stated that a combination of public and private entities would be responsible for mitigation and that she would clarify that in the report.

Commissioner Livengood asked if the Main Street Library and the Main Street Post Office are included in the Huntington Beach General Plan list of Historic and Cultural Resources Element. Ms. Villasenor stated that those buildings were included on the list. Commissioner Livengood asked if those buildings will be included under the Cultural Resources mitigation measures and Ms. Villasenor stated that they will.

Commissioner Livengood asked for clarification as to whether a net new development threshold is proposed. Bill Dvorak, consultant with Kimley-Horn & Associates, stated that there is a level of intensity, which serves as a cap, listed in the build out summary that is being evaluated by the CEQA analysis.

Commissioner Livengood asked if the Floor Area Ratio (FAR) is a consideration in the EIR. Mr. Dvorak indicated that an FAR regulation development standard was only applied to certain districts. Commissioner Livengood asked how that affects the EIR evaluation. Mr. Dvorak stated that the EIR looks at the amount of development that is presented in the build out summary of the gross amount of intensity. Commissioner Livengood asked if Pacific City is included in that and Mr. Dvorak stated that it is not, and noted that no previously approved projects had been included. Commissioner Livengood asked staff to include the total square footage for both previously approved projects and net new development. Ms. Villasenor stated that the EIR analyzed net new development potential and that Pacific City is included in the cumulative projects list and is considered in the cumulative impact analysis. She stated that the EIR analyzes impacts from the net new development as well as cumulative project, such as Pacific City.

Commissioner Scandura asked staff to include the total square footage that currently exists, that has been approved, and the net new development potential.

Vice-Chair Farley asked staff if the EIR allows for any additional square footage for projects like Pacific City and the Strand, since those projects are included under cumulative square footage. Ms. Villasenor stated that the potential net new development can occur anywhere within the specific plan, but that Pacific City and The Strand are not expected to have any significant additions. Vice-Chair Farley clarified that the EIR does not include a cap on net new development. Ms. Villasenor confirmed this, but stated that any square footage above what the EIR analyzed would require an additional CEQA analysis. Mr. Fauland stated that any subsequent projects would be analyzed against the program level EIR and if the project does not fall within the thresholds of the EIR, subsequent environmental review would be required.

Vice-Chair Farley asked if it is typical to perform a CEQA analysis by market demand instead of actual potential build out. Mr. Dvorak stated that the build out scenario analyzed by the EIR was comprised of various factors including the market demand and carrying capacity. He stated that he believed the EIR to be a realistic assessment of the potential net new development.

Vice-Chair Farley asked staff to address the total square footage in Table 3.3.1 for comparison.

Commissioner Scandura stated that the Noise Impacts section analyzed the conventional noise impacts thoroughly but did not adequately address the impacts of bar and restaurant patrons. Ms. Bathgate stated that the EIR does address some of those impacts and includes additional mitigation measures to address those impacts. She noted that individual projects would be studied to insure compatibility with the surrounding area and to address potential impacts through hours of operation and door orientation.

Commissioner Scandura noted that additional Police and Fire staff is being recommended to account for the potential population increase but that there is nothing listed for the retail increase. Ms. Villasenor stated that any increases could be absorbed through the Police Department's existing staffing but that the impact to the Fire Department is unknown and therefore is classified as a significant impact. She noted that projects will be unable to go forward without review and approval from the Fire Department. Bill Reardon, Fire Division Chief, stated that the General Plan response objective for the Fire Department is a five minute incident response time. He stated that the downtown unit is currently at capacity for meeting that response time. He also said that the required increases for the proposed DTSP are difficult to predict at this time but will likely involve an increase in facilities and personnel.

Mr. Hess stated that the City Council recognized the potential impacts to the Police Department and had directed staff to recommend a standard list of conditions for restaurants with live entertainment and/or alcohol sales. He indicated that the retail impacts are being addressed.

Commissioner Mantini noted that some of the mitigation measures for transportation and parking do not go into effect until 2020 and that some potential mitigation measures, such as a trolley system, are not included and asked staff to clarify. Serine Ciandella, consultant with Kimley-Horn and Associates, stated that the use of a trolley system was included in the list of assumptions when addressing traffic and traffic patterns but that she could not speak to the implementation timeline. She stated that particular measures, such as improved traffic signal timing, are public projects and not tied to a specific development.

Vice-Chair Farley asked if Pacific City is considered an existing or future condition. Ms. Ciandella stated that, for the purposes of the traffic analysis, Pacific City is considered a part of the cumulative projects list, which includes approved and pending projects.

Commissioner Livengood asked if the proposed DTSP includes the proposed 6th Street realignment. Ms. Ciandella confirmed that it does. Mr. Dvorak clarified that the 6th Street realignment is included as an option and is listed in Book II.

Commissioner Delgleize noted that upgrading bicycle spaces is included but asked if there is any recommendation for a new parking garage. Ms. Ciandella stated that the EIR touches briefly on parking recommendations but that there are separate parking studies being completed that go into greater detail. Ms. Villasenor stated that a copy of the parking study was submitted to the Planning Commission in July 2009. She stated that an updated version will be submitted to the commission but that staff's recommendations will not change. Commissioner Delgleize noted that staff had been previously asked to provide information about a parking in-lieu fund and Ms. Villasenor indicated that the information would be included in the staff report.

Commissioner Scandura asked staff to explain why the intersection of Orange Avenue and Lake Street changes from Level C to Level F between 2020 and 2030. Ms. Ciandella stated that it is an unsignalled intersection which provides through traffic in both directions and is sensitive to increased traffic.

Commissioner Scandura noted that there are several four way stops along Main Street with heavy pedestrian traffic and asked how that is addressed through the EIR. Ms. Ciandella stated that they have worked with Public Works staff to address those concerns and has provided options to staff but that those options would need to be tested in order to ascertain the effectiveness.

Commissioner Mantini noted that there are no mitigation measures listed for parking. Ms. Ciandella stated that the traffic study in question was a traffic impact study and that there is a comprehensive parking study that addresses potential mitigation measures for parking.

B. STUDY SESSION ITEMS

B-1. SIX-MONTH REVIEW OF CONDITIONAL USE PERMIT NO. 08-009 (METRO Q RESTAURANT) – Tess Nguyen, Associate Planner

Tess Nguyen, Associate Planner, gave a brief overview of the project.

Vice-Chair Farley asked if neighboring residents would receive notification of this action. Ms. Nguyen stated that they would not.

Commissioner Scandura asked staff if the item could be approved at this meeting. Ms. Nguyen stated that the item was intended for action at this meeting.

Commissioner Scandura noted that when this permit was initially approved he had concerns regarding possible noise and nuisance problems at the parking lot. He asked staff if there had been any concerns or complaints. Ms. Nguyen stated that staff has not received any complaints. Police Captain Chuck Thomas stated that there had been minimal complaints about the site and none for that particular area. Planning Director Scott Hess stated that Code Enforcement staff had worked with the property owner to the north to upgrade the signage and commended Code Enforcement staff and the property owner for their work to help monitor and regulate that area.

Commissioner Scandura asked staff if they would recommend another six-month review. Planning Manager Herb Fauland stated that the Planning Commission is obligated to do a second six-month review.

Vice-Chair Farley asked if the dates of review are based on the completion of the certificate of occupancy or the actual beginning of restaurant operations. Ms. Nguyen stated that the review dates are based upon the first date that the restaurant was allowed to operate and noted that the restaurant opened two days after the certificate of occupancy was issued.

Vice-Chair Farley asked if it was standard procedure not to notify residents of the action taken on this six-month review. Mr. Fauland stated that this was typically driven by the conditions of approval and that this item had no requirement for additional public notification. Mr. Fauland noted that staff has not received any complaints from neighboring residents.

A MOTION WAS MADE BY SPEAKER, SECONDED BY SCANDURA, THAT THE SIX-MONTH REVIEW OF CONDITIONAL USE PERMIT NO. 08-009 (METRO Q RESTAURANT) BE RECEIVED AND FILED AS ADEQUATE, BY THE FOLLOWING VOTE:

AYES:	**Speaker, Mantini, Farley, Shier Burnett, Scandura, Livengood, Delgleize**
NOES:	**None**
ABSENT:	**None**
ABSTAIN:	**None**

MOTION APPROVED

C. PUBLIC COMMENTS

Scott Steeper, President of the Huntington Shorecliffs Home Owners Association, spoke regarding Item No. A-1, citing concerns with the economic impact and the residents' survey.

Rob Coldren, Hart, King, and Coldren, spoke in favor of Item No. A-1. He expressed frustration with Planning Department staff and the City Attorney's office staff. He asked that the Planning Commission refrain from using this subdivision to do city planning and asked that they accept amended maps that contain only 304 proposed lots.

Mary Landin, resident, spoke regarding Item No. A-1, citing concerns with the current property management, the economic impact, and water drainage issues.

Harold Lyone, resident, spoke regarding Item No. A-1, citing concerns with the current property management and the economic impact.

Sharon Dana, resident, spoke regarding Item No. A-1, citing concerns with the current property management and the economic impact.

Jim Jordan, resident, spoke regarding Item No. A-1, citing concerns with the current property management and water drainage issues.

Majel Miller, resident, spoke regarding Item No. A-1, citing concerns with the current property management, the economic impact, and water drainage issues.

Richardson Gray, resident, spoke regarding Item No. A-3 (Downtown Specific Plan Update), citing concerns with the preservation of the Main Street Library and surrounding public space, and the proposed redevelopment of the area known as Triangle Park.

Richard Plummer, resident, spoke regarding Item No. A-3 (Downtown Specific Plan Update), citing concerns that the current occupancy rate was not taken into consideration in the parking and traffic analysis.

Mr. Hess stated that the application for TTM No. 17296 was submitted and deemed complete and that the Subdivision Committee had reviewed the application and recommended denial. He noted that the mandatory processing time for a subdivision tract map is 50 days and that the applicant was advised that revising the plans would constitute a new application and restart the processing time. He indicated that should the

applicant wish to withdraw his existing plans and submit revised plans, then staff would restart the processing timeline. He stated that as of this date staff had not received any revised plans or a letter indicating the withdrawal of the existing plans.

Chair Shier Burnett noted that it was clarified at the Subdivision Committee meeting that only the existing plans were acted on.

Commissioner Scandura asked if the Planning Commission could chose to remove four lots from the existing map or vote to accept a revised map. Mr. Hess stated that staff has recommended that the Planning Commission vote on the map that has been submitted. Commissioner Scandura asked if the Planning Commission could change the number of parcels. Ms. Mulvihill stated that the City Attorney's office is available for any commissioner questions. She also noted that the City Attorney's office has repeatedly verbalized its disagreement with the applicant's attorney regarding the interpretation of the Subdivision Map Act.

Commissioner Livengood noted that the lot noted as an office on the map is actually a swimming pool. He asked if the applicant was able to submit changes with an extension.

Chair Shier Burnett asked staff to clarify the submittal process. Mr. Hess reviewed the application process and stated that the 50 day processing timeline would restart when the applicant submitted new plans that were deemed complete. He noted that staff would need to do a complete plan check for any new submitted plans.

Chair Shier Burnett thanked the public speakers and encouraged them to attend the upcoming public hearing for the items they spoke on.

D. AGENDA REVIEW (UPDATE ON ALL AGENDA ITEMS) – NONE

E. PLANNING COMMISSION COMMITTEE REPORTS

VICE CHAIR FARLEY TABLED STUDY SESSION ITEM NO. E (PLANNING COMMISSION COMMITTEE REPORTS) AFTER PLANNING COMMISSION ITEM NO. F-1 (PLANNING COMMISSION REQUEST ITEMS).

THE MINUTES WILL REFLECT ITEMS IN THEIR ORIGINAL ORDER.

Commissioner Delgleize stated that she was unable to attend the most recent Environmental Board meeting but was aware that the Board was discussing a possible change in name.

Commissioner Scandura stated that the Subdivision Committee recently met regarding the Huntington Shorecliffs Mobile Home Park.

F. PLANNING COMMISSION COMMENTS - NONE

7:05 PM – RECESS FOR DINNER

7:30 P.M. – COUNCIL CHAMBERS

CALL PLANNING COMMISSION MEETING TO ORDER

PLEDGE OF ALLEGIANCE – Led by Commissioner Livengood

	P	P	P	P	P	P	P
ROLL CALL:	*Speaker,*	*Mantini,*	*Farley,*	*Shier Burnett,*	*Scandura,*	*Livengood,*	*Delgleize*

AGENDA APPROVAL

A MOTION WAS MADE BY SPEAKER, SECONDED BY SCANDURA, TO MOVE PUBLIC HEARING ITEM NO. B-2 BEFORE PUBLIC HEARING ITEM NO. B-1, AND TO APPROVE THE PLANNING COMMISSION AGENDA OF SEPTEMBER 9, 2009, BY THE FOLLOWING VOTE:

AYES: Speaker, Mantini, Farley, Shier Burnett, Scandura, Livengood, Delgleize
NOES: None
ABSTAIN: None
ABSENT: None

MOTION APPROVED

THE MINUTES WILL REFLECT ITEMS IN THEIR ORIGINAL ORDER.

A. ORAL COMMUNICATIONS - NONE

B. PUBLIC HEARING ITEMS

B-1. CONDITIONAL USE PERMIT NO. 09-018 (BJ'S RESTAURANT EXPANSION) **Applicant:** Jeff Bergsma, Team Design **Request:** To permit a) an expansion of an existing restaurant with alcohol sales by occupying approximately 986 sq. ft. of the adjacent existing retail suite; b) to participate in the Downtown Parking In-Lieu Fee Program for 5 parking spaces; and c) to permit up to 400 sq. ft. of outdoor dining area with alcohol sales on private property. **Location:** 200 Main Street, Suites 101 and 102, 92648 (east side of Main Street, between Olive Avenue and Walnut Avenue – Main Promenade Building, Downtown) **Project Planner:** Ethan Edwards

STAFF RECOMMENDATION: Motion to: "Approve Conditional Use Permit No. 09-018 with findings and suggested conditions of approval (Attachment No. 1)."

The Commission made the following disclosures:

- Commissioner Speaker has attended the Design Review Board (DRB) meeting, attended study session, visited the restaurant as a patron, and walked the site.
- Commissioner Mantini has visited the restaurant as a patron.
- Vice Chair Farley has attended the study session and visited the restaurant as a patron.
- Chair Shier Burnett has visited the restaurant as a patron.
- Commissioner Livengood has attended the study session, walked the site, and eaten at the restaurant

- Commissioner Scandura has eaten at the restaurant, spoken to staff and walked the site.
- Commissioner Delgleize has attended the study session, eaten at the restaurant, and walked the site.

Ethan Edwards, Associate Planner, gave the staff presentation and an overview of the proposed project. Mr. Edwards stated that the applicant would like to amend the operating hours to an 8:00 am opening on weekends to allow for a breakfast menu. He noted that the Police Department and the Economic Development Department are aware of and approve this requested modification. He stated that staff is recommending an additional suggested condition of approval to clarify the payment schedule of the in-lieu parking fees. Mr. Edwards stated that staff has received no public comments regarding this project.

Mr. Fauland recommended a minor modification to Suggested Condition No. 3 to allow payment of the in-lieu fee to be made prior to the issuance of the final building permit or certificate of occupancy.

Commissioner Scandura asked if the additional suggested condition regarding the in-lieu fee payment schedule would be a separate condition or part of Condition No. 3. Mr. Fauland stated that staff is agreeable to either option and noted that staff felt Condition No. 3 did not clearly define the payment schedule as originally presented.

Vice-Chair Farley asked for clarification on the recommendations made by DRB. Commissioner Speaker stated that DRB recommended the black trim, the paint around the windows, and modifying the railing. Vice-Chair Farley asked staff if the intention is to allow each new suite to select the color choice or if this project is setting the design scheme for the entire building. Commissioner Speaker stated that the DRB's intention is to continue the design scheme through the entire building.

Commissioner Speaker stated that he would like the entrance to the old vitamin shop be converted into an emergency exit for the restaurant expansion. He expressed concern about emergency access if the door is eliminated. Mr. Edwards stated that the applicant has requested to keep that door.

Commissioner Delgleize asked staff if the Fire Department felt the current site plan had adequate emergency access.

Chief Reardon stated that the Fire Department worked with the Building and Safety Department to assess the emergency access and that the site plans do show adequate emergency access. He stated that he would be agreeable to allowing the additional door to remain as an emergency exit. Mr. Edwards noted that the site is not required to have an additional exit until the occupancy reaches 500 people.

THE PUBLIC HEARING WAS OPENED.

Jeff Bergsma, applicant, stated that the site plan has been reviewed by the Building Department and the Fire Department for compliance. He stated that he is interested in changing the windows along the front into glass doors and requested he be given the option to pursue that design. He stated that the

building is scheduled for repainting in the next year or two and that this site is the first part of the building to be repainted.

Commissioner Delgleize noted that there is a piece of framing missing along the building and Mr. Bergsma stated that it was a foam detail on the parking structure and would be addressed during the repainting of the building.

Commissioner Speaker clarified that Mr. Bergsma is requesting folding doors instead of windows. Mr. Bergsma confirmed this and stated that he felt this would provide more egress.

Mr. Bergsma asked for clarification on the in-lieu fee payment schedule. Mr. Fauland stated that payments would begin prior to the issuance of a final building permit or a certificate of occupancy. Leonie Mulvihill, Senior Deputy City Attorney, stated that the draft in-lieu parking agreement requires that payment be made within 30 days of the issuance of the certificate of occupancy.

Joan Leguay, BJ's Restaurant, stated that she was willing to answer any questions.

WITH NO ONE ELSE PRESENT TO SPEAK, THE PUBLIC HEARING WAS CLOSED.

Commissioner Scandura stated that he supports the modified conditions of approval. He proposed eliminating Condition No. 6, which requires a conditional use permit for live entertainment, as he felt it conflicts with the code requirement that live entertainment would require an entertainment permit. He indicated that he would also accept a modification to Condition No. 6 to clarify. Mr. Edwards noted that the code requirements letter did include a notation that an additional conditional use permit would be needed for live entertainment. He also proposed modifying Condition No. 6 to state that a conditional use permit and an entertainment permit would be required for live entertainment. Commissioner Scandura agreed to that modification. Police Captain Chuck Thomas stated that the modification was consistent with code requirements.

Commissioner Scandura stated that he would support a condition to allow the folding doors. Chair Shier Burnett asked staff if that would be a condition or if it is optional for the applicant. Mr. Fauland recommended not adding a condition since the intent is clear to both parties, but a condition that is either too vague or cannot be met by the applicant might result in the need for an entitlement plan amendment. He stated that staff would continue to work with the applicant on the matter.

Vice-Chair Farley stated that he was pleased that the design would be carried over throughout the building as he felt the current building design appears out of date. He stated that improving the look of that building is important to the downtown area. He commended BJ's Restaurant for being a well run operation and stated that he did not have any concerns.

Chair Shier Burnett stated that BJ's Restaurant was an asset to the community and thanked them for their operation.

Commissioner Speaker reiterated his request for additional exits and encouraged staff to follow up with the applicant on that matter.

A MOTION WAS MADE BY LIVENGOOD, SECONDED BY FARLEY, TO APPROVE CONDITIONAL USE PERMIT NO. 09-018 WITH FINDINGS AND REVISED CONDITIONS OF APPROVAL, BY THE FOLLOWING VOTE:

AYES:	**Speaker, Mantini, Farley, Shier Burnett, Scandura, Livengood, Delgleize**
NOES:	**None**
ABSENT:	**None**
ABSTAIN:	**None**

MOTION APPROVED

FINDINGS AND CONDITIONS OF APPROVAL

CONDITIONAL USE PERMIT NO. 09-018

FINDINGS FOR PROJECTS EXEMPT FROM CEQA::

The Planning Commission finds that the project will not have any significant effect on the environment and is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to section 15301, Class 1, of the CEQA Guidelines, which states that operation and minor alteration to existing structures involving negligible or no expansion are exempt from further environmental review.

FINDINGS FOR APPROVAL - CONDITIONAL USE PERMIT NO. 09-018:

1. Conditional Use Permit No. 09-018 to permit an approximately 986 sq. ft. expansion of an existing restaurant with alcohol sales by occupying the adjacent existing retail suite within District 5 – Mixed-Use, of the Downtown Specific Plan; to participate in the Downtown Parking In-Lieu Fee Program for 5 parking spaces; and, permit up to 400 sq. ft. outdoor dining area will not be detrimental to the general welfare of persons working or residing in the vicinity or detrimental to the value of the property and improvements in the neighborhood. The proposed project complies with parking requirements in the downtown via participation in the Parking In-Lieu Fee Program. In addition, the project is consistent with the future development potential identified for the subject building in the Downtown Parking Master Plan; and, expanded outdoor dining will enhance the use and provide enjoyment for patrons of the restaurant.

2. The proposed restaurant expansion with alcohol sales and outdoor dining will be compatible with surrounding uses because it is proposed in a Specific Plan area designated for mixed-use pedestrian-oriented development. The restaurant is surrounded by commercial, office, and restaurant uses and therefore will be compatible to its surroundings. The use will be required to comply with conditions of approval pertaining to hours of operation to assure that any potential impacts to the surrounding properties are minimized. The expanded outdoor dining area will be located within private property and is primarily intended to enhance the dining experience for patrons and will not negatively impact adjacent properties. Additionally, the use is subject to noise regulations to further ensure compatibility with surrounding properties.

3. The proposed expansion will comply with the provisions of the base district and other applicable provisions in Titles 20-25 of the Huntington Beach Zoning and Subdivision Ordinance and any specific condition required for the proposed use in the district in which it will be located. The proposed project as conditioned complies with the base district and other applicable provisions including parking. There is no physical expansion that includes additional floor area to the existing building as part of this request and the use will comply with all building occupancy/exiting requirements.

4. The granting of the conditional use permit will not adversely affect the General Plan. It is consistent with the Land Use Element designation of Mixed Use Vertical on the subject property. In addition, it is consistent with the following goals, policies, and objectives of the General Plan:

A. *Land Use Element*

Goal LU 7: Achieve a diversity of land uses that sustain a City's economic viability, while maintaining the City's environmental resources and scale and character.

Policy LU 7.1.1 Accommodate existing uses and new development in accordance with the Land Use and Density Schedules.

Objective LU 7.1 Accommodate the development of a balance of land uses that (a) provides for the housing, commercial, employment, cultural, entertainment, and recreation needs of existing and future residents, (b) provides employment opportunities for residents of the City and surrounding subregion, (c) captures visitor and tourist activity, and (d) provides open space and aesthetic relief from urban development.

Goal LU 11 Achieve the development of projects that enable residents to live in proximity to their jobs, commercial services, and entertainment, and reduce the need for automobile use.

Policy LU 15.2.2 Require that uses in the Pedestrian Overlay District be sited and designed to enhance and stimulate pedestrian activity along the sidewalks. Assure that areas between building storefronts sand public sidewalks are visually and physically accessible to pedestrians.

The proposed expansion of the existing restaurant is consistent with the Land Use Density Schedules for the Downtown and increases the economic viability of the establishment by providing a larger dining area to accommodate more patrons. This expansion allows for additional employment opportunities and captures visitor and tourist activity within the downtown; and, the increased outdoor dining will further stimulate pedestrian activity along Main Street. The site is located in a mixed-use district of the downtown area and within walking distance of several downtown-parking facilities as well as residential uses thus reducing the need for automobile use. The proposed outdoor dining area is designed to provide the minimum code required eight-foot wide sidewalk to ensure that the area is physically accessible to pedestrians which is consistent with the remainder of the second block of Main Street.

B. *Coastal Element*

Policy C 3.2.3 Encourage the provision of a variety of visitor-serving commercial establishments within the Coastal Zone, including but not limited to, shops, restaurants, hotels and motels, and day spas.

The proposed use will promote commercial establishments in the Downtown and will expand the available visitor-serving commercial uses within the Coastal Zone.

LCP / DTSP Main Street should be a lively, active commercial district at the street level. The first floor of developments along Main Street should be commercial, with open-air establishments encouraged.

The proposed expansion including outdoor dining area increases the commercial viability of the existing restaurant by allowing for its continued success within the Downtown while expanding its available amenities to its patrons. The expanded outdoor dining will create a more lively pedestrian oriented use and is consistent with the other outdoor dining uses along Main Street. The provision of meeting the parking requirement by participation in the In-Lieu Fee Parking Program will not impact the Downtown Parking Master Plan, Downtown Specific Plan, or coastal resources because it is found to be consistent with the adopted Coastal Element.

CONDITIONS OF APPROVAL - CONDITIONAL USE PERMIT NO. 09-018:

1. The site plan, floor plans, and elevations received and dated August 7, 2009 shall be the conceptually approved design with the following modifications:
    a. Provide a Walnut Street elevation view to ensure that the proposed paint scheme continues and terminates at the existing entry to the stairwell. (DRB)
    b. The existing globe lights and indirect lighting on the Main Street/Walnut Street (corner) elevation shall be removed. (DRB)
    c. All existing patio railing shall be replaced with new railing as proposed. (DRB)
    d. Depict all existing and proposed planter curb alignments. (DRB)
    e. Depict the additional outdoor dining area to be covered with pavers to match existing. (DRB)
    f. Depict a minimum 18" high solid shrub within the existing landscaped planter to prevent pedestrian trespassing. (DRB)

2. Prior to the installation of new signage, the glass block located on the building's façade shall be patched with stucco and painted to match existing. (DRB)

3. The final building permit(s) cannot be approved until the property owner has submitted an In-Lieu Parking Fee Participation Agreement to the Planning Department for the $86,489.30 total in parking fees. The agreement shall be reviewed and approved by the City Attorney as to form and content and, when approved, shall be recorded in the Office of Orange County Recorder. The recorded agreement shall remain in effect for the term specified, except as modified or rescinded pursuant to the expressed written approval of the City of Huntington Beach.
    a. The property owner shall be responsible to make the lump sum payment, first installment payment, and any subsequent installment payment. Initial payment shall be made prior to issuance of Certificate of Occupancy or Final Building Permit inspection. Subsequent installment payments shall be received prior to the anniversary date of the initial payment.

4. All areas where the sales, service, and consumption of alcoholic beverages will be permitted shall be sufficiently illuminated to permit the identification of patrons. **(PD)**

5. Alcoholic beverages shall be served in a distinctive container different from non-alcoholic beverages. **(PD)**

6. Live entertainment shall not be permitted unless a conditional use permit and an entertainment permit has been applied for and approved. **(PD)**

7. Food from the regular full menu shall be available up to one hour prior to the scheduled closing time. **(PD)**

8. The hours of operation for the restaurant including outdoor dining and alcohol service shall be between 11:00 AM and 12:00 AM (midnight), Monday through Thursday; between 11:00 AM and 1:00 AM, Friday; between 8:00 AM and 1:00 AM, Saturday; and, 8:00 AM and 12:00 AM (midnight), Sunday.

9. The development services departments (Building & Safety, Fire, Planning and Public Works) shall be responsible for ensuring compliance with all applicable code requirements and conditions of approval. The Director of Planning may approve minor amendments to plans and/or conditions of approval as appropriate based on changed circumstances, new information or other relevant factors. Any proposed plan/project revisions shall be called out on the plan sets submitted for building permits. Permits shall not be issued until the Development Services Departments have reviewed and approved the proposed changes for conformance with the intent of the Planning Commission's action. If the proposed changes are of a substantial nature, an amendment to the original entitlement reviewed by the Planning Commission may be required pursuant to the provisions of HBZSO Section 241.18.

INDEMNIFICATION AND HOLD HARMLESS CONDITION:

The owner of the property which is the subject of this project and the project applicant if different from the property owner, and each of their heirs, successors and assigns, shall defend, indemnify and hold harmless the City of Huntington Beach and its agents, officers, and employees from any claim, action or proceedings, liability cost, including attorney's fees and costs against the City or its agents, officers or employees, to attack, set aside, void or annul any approval of the City, including but not limited to any approval granted by the City Council, Planning Commission, or Design Review Board concerning this project. The City shall promptly notify the applicant of any claim, action or proceeding and should cooperate fully in the defense thereof.

B-2. **CONDITIONAL USE PERMIT NO. 09-017/ENTITLEMENT PLAN AMENDMENT NO. 09-005 (AMENDMENT TO CONDITIONAL USE PERMIT NO. 93-006 – COACH'S RESTAURANT EXPANSION)** **Applicant:** Jeff Bergsma, Team Design **Request:** **CUP**: To permit a) an expansion of an existing restaurant with alcohol sales by occupying approximately 400 sq. ft. of the adjacent existing retail suite; b) to participate in the Downtown Parking In-Lieu Fee Program for 2 parking spaces; and c) to permit live entertainment consisting of belly dancing performances and live music. **EPA:** To amend Condition No. 2 of Conditional Use Permit No. 93-006, extending the approved hours of operation from between 11:00 AM to 10:00 PM, Sunday through Thursday, and 11:00 AM to 12:00 AM (midnight) Friday through Saturday, to between 10:00 AM and 2:00 AM daily. **Location:** 200 Main Street, Suite 105, 92648 (east side of Main Street, between Olive Avenue and Walnut Avenue – Main Promenade Building, Downtown) **Project Planner:** Ethan Edwards

STAFF RECOMMENDATION: Motion to: "Continue Conditional Use Permit No. 09-017/Entitlement Plan Amendment No. 09-005 to a date uncertain at the applicant's request."

Herb Fauland, Planning Manager, gave the staff presentation and noted that the applicant is requesting a continuance to a date uncertain.

THE PUBLIC HEARING WAS NOT OPENED.

A MOTION WAS MADE BY LIVENGOOD, SECONDED BY SPEAKER, TO CONTINUE CONDITIONAL USE PERMIT NO. 09-017/ENTITLEMENT PLAN AMENDMENT NO. 93-006 TO A DATE UNCERTAIN AT THE APPLICANT'S REQUEST, BY THE FOLLOWING VOTE:

AYES:	**Speaker, Mantini, Farley, Shier Burnett, Scandura, Livengood, Delgleize**
NOES:	**None**
ABSENT:	**None**
ABSTAIN:	**None**

MOTION APPROVED

B-3. **ZONING TEXT AMENDMENT NO. 09-003 (MASSAGE ESTABLISHMENT CODE AMENDMENTS)** **Applicant:** City Initiated. **Request:** To amend Chapter 204 Use Classifications and Chapter 212 Industrial Districts of the Huntington Beach Zoning and Subdivision Ordinance to incorporate recent changes pursuant to (SB 731) establishing guidelines and regulating massage businesses and massage establishments. **Location:** Citywide. **Project Planner:** Rosemary Medel

STAFF RECOMMENDATION: Motion to: "Approve Zoning Text Amendment No. 09-003 with findings for approval and forward Draft Ordinance to the City Council for adoption."

Rosemary Medel, Associate Planner, gave the staff presentation and an overview of the proposed project.

Vice-Chair Farley asked Police Department staff how adult oriented massage can be prevented from taking place if the adult oriented services category is eliminated. Captain Thomas stated that the Police Department would be relying on state law, which prohibits prostitution. He noted that under this new ordinance there is a provision which prohibits violation of prostitution laws and that the Police Department would continue to investigate those types of activity.

Commissioner Scandura asked staff if Attachment No. 5 would go straight to City Council if approved by the Planning Commission. Ms. Medel confirmed this and noted that staff included the attachment because it is referenced in the Zoning Code.

Vice-Chair Farley asked staff if the certification process for massage service providers includes an internship which would allow for training. Ms. Medel stated that she has not reviewed the criteria for internships. She stated that the certification process does have two designations: massage therapist, which requires 250 hours of classroom and practical experience, and practitioner, which requires 50 hours. She stated that the training process is regulated by the Massage Therapy Council, not the city.

Chair Shier Burnett asked staff if the city still offers a fingerprinting service. Captain Thomas confirmed this.

THE PUBLIC HEARING WAS OPENED.

WITH NO ONE PRESENT TO SPEAK, THE PUBLIC HEARING WAS CLOSED.

A MOTION WAS MADE BY SCANDURA, SECONDED BY DELGLEIZE, TO APPROVE ZONING TEXT AMENDMENT NO. 09-003 WITH FINDINGS FOR APPROVAL AND FORWARD DRAFT ORDINANCE TO THE CITY COUNCIL FOR ADOPTION, BY THE FOLLOWING VOTE:

AYES:	**Speaker, Mantini, Farley, Shier Burnett, Scandura, Livengood, Delgleize**
NOES:	**None**
ABSENT:	**None**
ABSTAIN:	**None**

MOTION APPROVED

FINDINGS AND CONDITIONS OF APPROVAL

ZONING TEXT AMENDMENT NO. 09-003

FINDINGS FOR APPROVAL - ZONING TEXT AMENDMENT NO. 09-003 :

1. Zoning Text Amendment No. 09-003 amending Chapters 204 Use Classifications and 212 Industrial Districts is consistent with the objectives, policies, general land uses and programs specified in the General Plan and any applicable specific plan in compliance with State Law pursuant to Senate Bill 731 establishing certification criteria for Massage Therapy Professionals.

2. In the case of a general land use provision, the zoning text amendment is compatible with the uses authorized in, and the standards prescribed for, the zoning district for which it is proposed because the State recognizes that a massage business is in the same service oriented business classification as other service oriented personal services, and therefore, the State assumes the responsibility of the licensing and regulating process for massage professionals throughout the State.

3. A community need is demonstrated for the change proposed because the certification process recognized by zoning text amendment will enable consumers to identify credible professionals having obtained the appropriate training, licensing and testing to be designated as a certified massage therapist or practitioner.

4. Its adoption will be in conformity with public convenience, general welfare and good zoning practice. The text amendment would recognize current State law and facilitate a standardization throughout the city. The certification process recognized by the zoning text amendment will enable consumers to identify credible professionals having obtained the appropriate training, licensing and testing to be designated as a certified massage therapist or practitioner.

The Planning Commission finds that the project will not have any significant effect on the environment because the proposed ZTA No. 09-003 is categorically exempt pursuant to City Council Resolution No. 4501, Class 20, which supplements the California Environmental Quality Act.

C. CONSENT CALENDAR - NONE

D. NON-PUBLIC HEARING ITEMS - NONE

E. PLANNING ITEMS

E-1. CITY COUNCIL ACTIONS FROM PREVIOUS MEETING
Herb Fauland, Planning Manager- reported on the items from the previous City Council Meeting.

E-2. CITY COUNCIL ITEMS FOR NEXT MEETING
Herb Fauland, Planning Manager – reported on the items for the next City Council Meeting.

E-3. PLANNING COMMISSION ITEMS FOR NEXT MEETING
Herb Fauland, Planning Manager – reported on the items scheduled for the next Planning Commission Meeting.

F. PLANNING COMMISSION ITEMS

F-1. PLANNING COMMISSION REQUEST ITEMS – NONE

F-2. PLANNING COMMISSION COMMENTS

Vice Chair Farley expressed disappointment that the City Council did not follow the Planning Commission's recommendation to require LEED (Leadership in Energy and Environmental Design) certification for the proposed Senior Center.

Commissioner Scandura wished happy birthday to Commissioner Delgleize and Administrative Secretary Kimberly De Coite. He also commended staff, particularly Rami Talleh and Jennifer Villasenor, for their work on the items presented tonight.

Commissioner Livengood distributed the Downtown Business Directory, which includes a map of the downtown businesses, and stated that he thought his fellow commissioners might find the directory helpful and informative.

ADJOURNMENT: Adjourned at 8:30 PM to the next regularly scheduled meeting of Tuesday, September 22, 2009.

APPROVED BY:

Scott Hess, Secretary

Elizabeth Shier Burnett, Chairperson