

Approved December 13, 2006



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**SCOTTSDALE PLANNING COMMISSION
CITY HALL KIVA
3939 NORTH DRINKWATER BOULEVARD
SCOTTSDALE, ARIZONA
NOVEMBER 29, 2006**

REGULAR MEETING MINUTES

PRESENT: Steve Steinberg, Chairman
James Heitel, Vice-Chairman
David Barnett, Commissioner
Kevin O'Neill, Commissioner
Jeffrey Schwartz, Commissioner
Steven Steinke, Commissioner

ABSENT: Eric Hess, Commissioner

STAFF PRESENT: Tim Curtis
Lusia Galav
Randy Grant
Phil Kercher
Frank Gray
Joe Padilla
Sherry Scott
Dan Symer
Don Meserve

CALL TO ORDER

The regular meeting of the Scottsdale Planning Commission was called to order by Chairman Steinberg at 5:10 p.m.

Chairman Steinberg noted that case 11-ZN-2002#2 had been moved to the regular agenda.

ROLL CALL

A formal roll call was conducted, confirming members present as stated above.

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MINUTES REVIEW AND APPROVAL

1. November 8, 2006 (including Study Session)

VICE-CHAIRMAN HEITEL MOVED TO APPROVE THE NOVEMBER 8, 2006 MINUTES INCLUDING THE STUDY SESSION. SECONDED BY COMMISSIONER SCHWARTZ, THE MOTION CARRIED UNANIMOUSLY BY A VOTE OF SIX (6) TO ZERO (0).

CONTINUANCES

2. 16-AB-2006 Windmill Plaza Revitalization

Request by owner to abandon a apportion of the alley north of Gold Dust Avenue to allow redevelopment of the site located at 10207 N. Scottsdale Road.

3. 13-AB-2006 Atalon

Request by owner to abandon the right-of-way, roadway easements and public utility easements on Parcel 16 and Parcel 17 located at 11753 E. Pinnacle Vista Drive.

VICE-CHAIRMAN HEITEL MOVED TO CONTINUE 16-AB-2006 TO THE JANUARY 10TH 2007 MEETING AND 13-AB-2006 TO THE DECEMBER 13, 2006 MEETING. SECONDED BY COMMISSIONER BARNETT, THE MOTION CARRIED UNANIMOUSLY BY A VOTE OF SIX (6) TO ZERO (0).

EXPEDITED AGENDA

4. 22-AB-2006 Eckholm Residence

Request by owner to abandon the General Land Office (GLO) easement on the north side of the property located at 10550 E. Sunnyside Drive.

COMMISSIONER BARNETT MOVED TO APPROVE 22-AB-2006. SECONDED BY COMMISSIONER STEINKE, THE MOTION CARRIED UNANIMOUSLY BY A VOTE OF SIX (6) TO ZERO (0).

REGULAR AGENDA

5. 11-ZN-2002#2 94 Hundred Shea

Request by owner to amend the existing circulation stipulations including, but not limited to access to Shea Boulevard on a 7+/- acre parcel located at 9325-9397 E. Shea Boulevard with Highway Commercial District, Planned Community District (C-3 PCD) zoning.

Mr. Curtis addressed the Commission. His presentation included an aerial photo of the site with the approved site plan superimposed, depicting the main driveway entrance onto Shea with no median break at the main driveway entrance. The

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proposal would allow left turn movements into and out of the site; Mr. Curtis presented examples of the proposed median.

In response to a request by Commissioner Steinke, Ms. Scott explained that the Transportation Department did not consider the requested median a new median break because the break in the median was previously approved in 2002; it was considered a modification. The Transportation Commission declined to make a formal recommendation on the matter.

Commissioner Steinke expressed concern about a left turn out across Shea, noting the City Council actually prohibited left out in 2002. He questioned what had changed for the better since 2002 in terms of traffic flow and movement of traffic in the area that would make having a left turn out more feasible than it was in 2002. Vice-Chairman Heitel commented that potential for danger may exist.

In response to an inquiry by Vice-Chairman Heitel, Mr. Kercher explained that the original request in 2002 would have provided access to both the north and the south sides of Shea giving access to the apartments. The apartment project has since converted to condominiums and their HOA board expressed a concern about cut-through traffic. Mr. Kercher noted that the HOA board supported the change and the proposed median configuration.

Commissioner Barnett asked why a traffic survey or traffic count were not included with the application. Mr. Kercher explained that a traffic analysis is typically only provided with a change in zoning this is a request for a change to the access. He noted the traffic analysis did address left-out turning movement. An accident analysis for the median to the west indicated a low number of incidents.

Mr. Kercher recalled that in 2002 staff's position was to limit the access and the number of conflict points to make the area safe. At that time negotiations with the Applicant resulted in an agreement to accept a left in situation; staff continues to oppose a median break or traffic signal at the location. Staff has had good experience with the "porkchop" median design in terms of operating safely and moving traffic and supported that option in this location.

In response to a comment by Commissioner Barnett regarding whether the median would be requested if the retail component was not present, Mr. Kercher agreed the staff position may be different. Commissioner Barnett opined that the underlying use should dictate what happens in the Transportation Plan. Mr. Kercher reiterated that the basis for supporting the request was the positive experiences resulting from the porkchop design.

Ms. Lynne Lagarde addressed the Commission. She reviewed the history of the site, stressing that customer access was necessary regardless of the use. The reason left turns were originally prohibited was in hopes that access would be acquired from the Mercado.

Ms. Lagarde reviewed the different options that were considered, noting that staff was not in favor of a full median break. This would be a deviation from the Shea Policy, which would require Transportation Commission consideration. Outreach

determined that neighbors felt that cut-through traffic would have a severe impact on their community. The "porkchop" median design was the most reasonable solution. She opined that the proposal would not be a deviation from the Shea Policy because it was a reconfiguration of an approved opening. She noted that the Transportation Commission participated in a brief discussion and did not feel it necessary to take a position on the subject.

In response to a question by Chairman Steinberg, Ms. Lagarde confirmed that the property to the east which is being encroached upon is being purchased by the Applicant.

Vice-Chairman Heitel commented that parcelization was creating part of the problem. Ms. Lagarde clarified that the parking lot was a leased area from the neighboring property; the site was always planned for commercial as a separate parcel.

Commissioner Steinke commented that a retail site to the west has only right out options, which does not preclude them from operating successfully. He opined that the City Council would need to revisit the original stipulation created in 2002 which intended to keep a handle on any additional cross access on Shea; that stipulation was punctuated with the policy that went into effect in 2003. He noted a fundamental problem with left-out access and remarked that he appreciated the challenges faced regarding ingress and egress issues.

Mr. Leary, Applicant, noted that the site was 100 percent landlocked except for access on Shea Boulevard and reviewed the only existing exit options. He confirmed that the property had gone through a lot split process and was not given access opportunities; the Mercado is unwilling to provide access. He opined that the porkchop median was a safer configuration than a full median break because it would provide a refuge lane.

In response to a question by Chairman Steinberg, Mr. Curtis noted that "porkchop" medians generally use pavers and do not have landscaping which may impair vision.

Vice-Chairman Heitel provided a sketch to be displayed of a "porkchop" design with an extended tail, which he opined would provide additional safety by allowing several cars to pull out into the median and preventing cars from shooting across the lanes of traffic. Mr. Kercher remarked that the restricted medians must be able to provide access for fire trucks. He opined that people do not generally shoot out across the lanes. Commissioner Schwartz agreed with Vice-Chairman Heitel's idea and suggested that the fire trucks be accommodated by narrowing the existing median to accommodate the width.

Commissioner O'Neill inquired whether the land had already been purchased from the neighbors. Mr. Leary clarified that it was an acquisition of an easement from the landowner to the east. He clarified that the property on the southwest corner was owned by the Mercado and they will not provide access.

Commissioner Barnett commented that he was uncomfortable with cases where he was not in favor of the solution, but there were no other possible options for solving the issue.

COMMISSIONER SCHWARTZ MOVED TO APPROVE CASE 11-ZN-2002#2 INCLUDING THE DIAGRAM THAT VICE-CHAIRMAN HEITEL DREW IN THE PACKET AS AN EXAMPLE TO AID STAFF IN WORKING WITH THE APPLICANT TO EXTEND THE "PORKCHOP" MEDIAN OUT TO A POINT WHICH WOULD PREVENT CROSS-OVER TRAFFIC WHEN MAKING A LEFT HAND TURN. COMMISSIONER BARNETT SECONDED THE MOTION.

Commissioner O'Neill suggested that another option would be using tubular markers as a visual deterrent, which may provide more width for the fire trucks. He agreed that a solution should be found to solve the problem, but was not sure it should be spelled out in the motion. Mr. Kercher noted that the tubular markers tend to be a maintenance problem. Another similar option would be dagmars (raised pavement markers), which the risk management department frowns upon.

Commissioner Schwartz clarified that his motion was intended only as a guide to try to extend the porkchop.

**THE MOTION CARRIED BY A VOTE OF FIVE (5) TO ONE (1).
COMMISSIONER STEINKE DISSENTED.**

6. Discuss and consider the potential reconsideration of the Scottsdale Estates 4 Neighborhood Historic District (9-ZN-2006/13-HP-2006)

Discuss and consider the potential reconsideration of the Scottsdale Estates 4 Neighborhood Historic District (9-ZN-2006/13-HP-2006) Planning Commission hearing held on November 8, 2006 where the Planning Commission voted 4:2 to recommend approval to rezone 124 lots located on the northwest corner of Oak and 74th Street (approximately 29 acres) from Single Family Residential District (R1-7) to Single Family Residential District, Historic Property (R1-7 HP) with an Historic Property overlay.

Commissioner Schwartz recalled that numerous debates had occurred regarding making sure proper notice is given during discussions and finalizations of Historic District Overlays, as well as for those buying properties in the future. He noted that the HP Overlays act as a guide similar to CC&Rs for these areas, most of which were annexed from the County.

Commissioner Schwartz clarified that his motion to approve the HP Overlay was made with the understanding that continued dialogue would take place to resolve the notification issue. He noted an unwillingness of the Historic Preservation staff to take Planning Commission suggestions and guidance in protecting future property owners of these subdivisions. It was suggested that stipulations requiring additional signage as well as providing effective notice after the zoning became effective be agreed upon and included in the application to City Council. The Historic Preservation representative was not interested in discussing any stipulations.

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Commissioner Schwartz opined that, as the maker of the motion, the situation put him in a precarious position, because Commissioners are appointed to serve and protect the community. He found it ironic and unconscionable that the Historic Preservation staff representative would not consider any form of option to notify future buyers in the historic areas. He chose to request a reconsideration in order to discuss how to deal with effective notice on this particular case.

Ms. Scott confirmed that Robert's Rules allowed for Commissioner Barnett to participate in a vote on this matter, even though he was not present for the original hearing.

Ms. Scott clarified that if the motion to reconsider passed, a new hearing date would be set and would be noticed as usual.

Noting sympathy for Commissioner Schwartz' frustrations, Vice-Chairman Heitel felt caution should be taken in revisiting a case that was previously approved based on policies hoped to be implemented in the future. He would like to explore issues brought up during study session in the hopes of developing a resolution for dealing with the Historic Preservation cases in the future.

Commissioner Steinke noted hesitation to recall a previously approved case. He opined that options discussed during study session could aid in development of a solution in the future.

In response to an inquiry by Chairman Steinberg, Mr. Gray clarified that a positive vote would postpone the case from going to City Council pending a new Planning Commission Hearing, during which a Historic Preservation presentation would be given.

Chairman Steinberg opined that Commissioner Schwartz' request was a reasonable, sensitive consideration and noted his support.

In response to a request by Commissioner O'Neill, Commissioner Schwartz reiterated his reasons for requesting a reconsideration. The case did not follow through with the merits, which he thought it would in trying to develop a solution for an effective notice policy.

Commissioner O'Neill found it surprising that the Historic Preservation staff did not act as an unbiased third party during the hearing and was promoting an agenda, as opposed to presenting a case. He opined that the Historic Preservation representative's behavior was very inappropriate. He noted his support of a reconsideration. Mr. Gray clarified that the representative was the designated Historic Preservation Officer for the City and that her role was as an applicant and advocate, not an evaluator, which is a different role than normally seen with City staff.

Commissioner Schwartz opined that regardless of what position she was taking she was still an employee of the City, which brings with it an obligation to serve and protect the community. He recalled that during the hearing he clarified with

the Historic Preservation Representative that the Commission was offering good, helpful guidance to protect everybody so the case could move forward; and it was evident that she was not interested.

Ms. Scott noted that because the item was moved to the consent agenda Ms. Abele decided to do a shorter presentation. In the future the Historic Preservation Commission Chair or a designated person will make presentations to the Commission.

Commissioner Barnett commented that the comments and suggestions seemed to be exactly the same every time an HP Overlay case is heard. He suggested that it would be the prerogative of the Planning Commission to call the Historic Preservation staff member in question to appear and justify their position; the Planning Commission could require certain steps be followed for each case in the future in order to have a possibility of an approval.

Vice-Chairman Heitel remarked that he appreciated the discussion and was sensitive to the issues being brought up, noting a similar experience with the same party several years ago. He opined that it would not be appropriate to bring back this specific case based on procedures and the lack of respect received by the Commission. He encouraged following through on recommendations for HP cases and notifying the public. He noted that he would not support a reconsideration because he did not want to hold up a case that appears to have neighborhood support.

COMMISSIONER SCHWARTZ MOVED TO RECONSIDER CASE 9-ZN-2006 AND 13-HP-2006. COMMISSIONER O'NEILL SECONDED THE MOTION.

Commissioner Barnett inquired whether Mr. Gray had any suggestions for solutions other than a reconsideration. Mr. Gray suggested either a study session with the HP staff or a study session with the Historic Preservation Commission discussing only this subject. He opined that whether the issue was staffing, attitude, or procedural, solutions should be sought through dialogue between the two Commissions.

CHAIRMAN STEINBERG, COMMISSIONER SCHWARTZ AND COMMISSIONER O'NEILL SUPPORTED THE MOTION. VICE-CHAIRMAN HEITEL AND COMMISSIONER STEINKE DISSENTED. COMMISSIONER BARNETT ABSTAINED.

In response to an inquiry by Ms. Scott, Commissioner Barnett clarified he abstained because he did not necessarily agree with the motion but wished for the motion to go forward. He opined that Robert's Rules of Order allows him to abstain, noting that there was still a majority on the vote. He noted that if legal staff was opposed to his abstention he would vote in favor, but his prerogative would be to abstain.

Ms. Scott stated that she had concerns about whether Commissioner Barnett could legally abstain from the vote on the basis that he did not want to state his opinion about the motion on the record.

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**THE MOTION CARRIED BY A VOTE OF FOUR (4) TO TWO (2).
VICE-CHAIRMAN HEITEL AND COMMISSIONER STEINKE DISSENTED.**

WRITTEN COMMUNICATION

None.

ADJOURNMENT

With no further business to discuss, the regular meeting of the Scottsdale Planning Commission adjourned at 6:25 p.m.

Respectfully submitted,
A/V Tronics, Inc.

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