

# MINUTES

## Regular Meeting of the Planning Commission

**MONDAY, MARCH 19, 2018**

City Council Chambers  
1 Civic Center Drive, San Marcos, CA 92069

**CALL TO ORDER**

At 6:31 p.m. Chairman Norris called the meeting to order.

**PLEDGE OF ALLEGIANCE**

Led by Commissioner Jacoby.

**ROLL CALL**

PRESENT: COMMISSIONERS: FLODINE, JACOBY, MAGEMENEAS, MINNERY, MUSGROVE, NORRIS, OLEKSY

ALTERNATE COMMISSIONERS IN AUDIENCE: CARROLL

ABSENT: COMMISSIONERS: MATTHEWS

ALSO PRESENT: Planning Manager Karen Brindley; Deputy City Attorney Avneet Sidhu, Principal Civil Engineer Kuey, Principal Planner Joseph Farace; Associate Planner Norman Pedersen; Senior Office Specialist Sandra Gallegos.

**ORAL COMMUNICATIONS**

None.

**CONSENT CALENDAR**

**1. APPROVAL OF MINUTES, 3/5/18**

**COMMISSIONER JACOBY MOVED TO APPROVE THE CONSENT CALENDAR; SECONDED BY COMMISSIONER FLODINE AND CARRIED BY A MAJORITY VOTE.**

**PUBLIC HEARINGS**

**2. Project No:** MFSDP 17-0003 MULTI FAMILY SITE DEVELOPMENT PLAN (The Marc)

**Applicant:** DAVIA WEST DEVELOPMENT, DAVIA EAST DEVELOPMENT, INTRACORP COMPANIES

**Request:** The applicant is requesting a modification to a condition of approval to the Davia Village (The Marc) Multi-family Site Development Plan (MFSDP) to remove the occupancy limitation of 885 occupants specified within the Multifamily Site Development Plan Resolution. This item was continued from the March 5, 2018 Planning Commission Public Hearing.

**Environmental Determination:** An Addendum to the previously adopted Mitigated Negative Declaration (MND13-003 - State Clearinghouse No. 2013061059) was prepared for the project pursuant to the California Environmental Quality Act (CEQA).

**Location of Property:** The project site is located 1001 Armorlite Drive and 130 Bingham Drive, more particularly described as All or Portions of Lots 5 AND Lot 6, Block Number 85 of Rancho Los Vallecitos De San Marcos, in the City of San Marcos, County of San Diego, State of California, according to map thereof No. 806 filed in the office of the County Recorder of San Diego County. APN: 219-163-63-00 and 219-163-64-00.

**PC AGENDA ITEM #1**

**Principal Planner Farace** presented the staff report.

**Commissioner Minnery** asked why was the stipulation on the number of residents put in initially.

**Principal Planner Farace** stated they came in with a General Plan Amendment; they increased the number of dwelling units from 356 to 416. As part of that they did a study which indicated they would have the same number of bedrooms regardless of the room density count which resulted in a greater number of one bedroom units. Based on the density increase there was a possible perceived issue with the change in density and as a result of that the City worked with the applicant at the time to go ahead and include an occupancy cap to address the increased density and the additional number of one bedroom units.

**Commissioner Minnery** stated there was an indication from staff there would not be parking spots eliminated with the increase in the number. He asked if there are going to be any added.

**Principal Planner Farace** replied there will not be any added. Parking was based on the bedroom unit count and that hasn't changed.

**Commissioner Oleksy** asked why are we removing it completely and not amending it to a higher number, what prevents the owner from having 3,000 people live there, and how does that get managed?

**Principal Planner Farace** stated that is an option and typically in the past when the City has approved multi-family projects there has not been a cap. At this time staff didn't think that a hard number was in fact needed but rather it could be treated consistently with other multi-family projects in the city.

**Planning Manager Brindley** added that on a citywide basis as the City evaluates potential projects whether it's a single family or a multi-family project they traditionally do not look at the population as it relates to limiting the amount of persons per project. They evaluate projects based on conformance with the City's ordinances in place as well as potential CEQA related impacts. This project does conform with the CEQA related impacts that were evaluated at the time. With the lifting of this residency cap, no additional new impacts were identified.

**Commissioner Magemeneas** asked how that \$2,000 fine was determined, is that enough of a deterrence, and is there any history of enforcing policies like this in the city.

**Principal Planner Farace** stated that the \$2,000 fee was determined as part of the negotiations and discussions with the property owner at the time when the cap was being built with the understanding that that would be a deterrent to the 885. The \$2,000 fee is based per person. Based on the monitoring activity and the yearly report that would take place it was determined that the \$2,000 fee per person would be a deterrent to assure that property management was keeping the overall occupancy of the site at that 885 level. In terms of enforcement and history of enforcement, there are building code provisions that do have limitations to the number of people per unit which is based on one person per 200 square foot building permit code requirements. Other type of enforcement activities, especially if there's health and safety concerns with occupancy and overcrowding, are typically handled through the County of San Diego's Department of Environmental Health.

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**Commissioner Magemeneas** asked if there is any precedent in the city or in other communities of this type of policy to draw from.

**Principal Planner Farace** replied we don't have any other examples of this similar policy within the City of San Marcos. Whether it's been applied elsewhere, he's not certain.

**Commissioner Minnery** asked how the population count is monitored.

**Principal Planner Farace** answered it's handled through the property manager. They do counts and provide a yearly report and submit leases to the City which the City reviews. Based on that a determination is made on whether they are in compliance or not.

**Commissioner Musgrove** said he wanted to be certain we're discussing ending that relationship and the whole point of auditing and head counts would be negated if this is passed.

**Principal Planner Farace** replied that is correct.

**Commissioner Musgrove** asked if in terms of the number of vehicle trips, was the CEQA analysis based on the 1,256 potential occupancy and not on conditions the City put in place.

**Principal Planner Farace** stated that the traffic, like other traffic studies, was based on the number of units, 416 units, and not on occupancy.

**Commissioner Musgrove** indicated that occupancy would have some impact on daily trips. There has to be some standard, and that standard is the number of units.

**Principal Planner Farace** stated that it wasn't based specifically on the 885 cap or the 1,256 occupancy count that's mentioned in the 2013 CEQA document.

**Commissioner Flodine** asked 1) does the property manager reside on site, 2) expand further on the claim that this provision violates fair housing laws, and 3) does the lease that the renters of The Marc sign have occupancy restrictions in terms of number of people.

## PUBLIC HEARING OPENED

**Jason Simmons**, applicant representative, answered Commissioner Flodine's questions: 1) there is a property manager on site; 2) it's their understanding from their attorney that this is why you don't see it anywhere else is that it could be perceived as a violation of fair housing laws to restrict the occupancy in this way; 3) yes.

**Commissioner Musgrove** asked if the number of occupants is per unit or is there an overall number within every lease agreement that says occupancy will not exceed a certain amount.

**Jason Simmons** replied that it's per unit.

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**Commissioner Oleksy** asked the applicant to explain how going from 885 people to 1,256 or more people is not going to have an effect. That's close to 400 people were adding in that area.

**Jason Simmons** stated those are numbers based on what would be perceived. The 1,256 is not a cap either. It wasn't a CEQA number that was used to say that needs to be the cap. It's a number that's in there as the potential number of residents, 3 per household. That's what San Marcos' average is, around 3 and that average includes single family residences. With these many one bedroom units there's no way they're ever going to hit 1,200.

**Principal Civil Engineer Kuey** stated that from a CEQA perspective traffic generation rates are based upon the SANDAG guidelines which are based on units; it's not based on occupancy. That's why from a CEQA perspective, the traffic is not going to change.

**Commissioner Oleksy** stated they went from 354 dwelling units to 416. The argument was it's the same number of bedrooms. Now he's hearing they don't calculate it on the bedroom, they calculate it on the number of dwelling units. There was a reason that this was put into place. This is not an arbitrary number. It was calculated out. They decided to come back after this was approved a mere 4 years later and say they want to take it out. He would be much more in favor of raising the cap. He doesn't see how you could have a decent quality of life in that area with any more than 2 people per bedroom. His concern is this is very close to Palomar College and a few stops away from Cal State San Marcos. He does not want to see this become de facto dorms or offsite dorms. He understands and sympathizes with students and parents because college towns like ours have a housing problem. It's difficult for students to find affordable housing but on the other hand he doesn't think the residents and the businesses around that area should be bearing the burden of this failure to provide housing for students.

**Jason Simmons** stated that Palomar Station has been operating several years before this project and they have not had any dorm issues. He appreciates Commissioner Oleksy wanting to avoid that. He doesn't feel that this restriction or not will avoid that or not. This is predominantly 1 and 2 bedroom, slightly different demographic, and the higher price points based on that are more difficult for college students to afford.

**Commissioner Magemeneas** said the applicant indicated the lease language has a provision that states maximum occupancy. He asked how that is enforced and what is the vehicle to deter from that situation occurring.

**Jason Simmons** replied that the number one deterrent from a marketing standpoint is that the owners won't allow it because it doesn't make for good policy for them. It's not good practice for the operators and owners to allow multiple people to live in a one bedroom and also to ensure they can lease out the next spot for the highest return possible. This was a Transit Oriented Development (TOD) designed exactly for this reason to have higher density. They went for the higher density based on the fact this is the right spot in the city for this type of development. This is not going to necessarily work when you're far away from TOD. From an enforcement standpoint, the City has occupancy regulations and the mini dorm ordinance to ensure they don't have an occupancy violation down the line.

#### **PUBLIC HEARING CLOSED**

#### **PC AGENDA ITEM #1**

**Commissioner Musgrove** commented there's a push in Sacramento to increase high density housing especially along transit corridors and he believes there's also an enforcement aspect. He asked if the City stands any liability by putting artificial caps on density within multi-family housing.

**Deputy City Attorney Sidhu** replied she didn't know specifically what laws or statutes Commissioner Musgrove was referring to but generally any restriction that's tied to people, courts tend to not uphold. Any restriction that's tied to an activity or a nuisance or an impact makes sense it is held to be reasonable such as parking, noise complaints or building code violations. That's why the building code that has a restriction on the number of people per unit has been upheld because that's tied to use not the person. Generally that's what laws are allowed to do; they are allowed to regulate use and activities, not people.

**Commissioner Musgrove** said that was also his understanding in reading through the information. There doesn't seem to be anything in the original Council decision other than we want to restrict the number of people that are living here.

**Deputy City Attorney Sidhu** said that if he was referring to the 885 cap that was correct. It was her understanding that was an agreement that the owner at the time agreed to that cap. It wasn't something that was imposed by law or operation of the municipal code.

**Commissioner Musgrove** asked for clarification that it was not a unilateral decision and that it was a business agreement between the original owner and the City and now the new owner was looking to vacate that decision.

**Deputy City Attorney Sidhu** said she would let staff clarify but it was her understanding the applicant might have even agreed to that at the hearing.

**Principal Planner Farace** replied that was correct. The record shows there was a coordinated effort between the City and the applicant and an agreement between the City and the applicant to place the residency cap on the project.

**Commissioner Flodine** asked if this was the only apartment community in the city to have an occupancy cap.

**Principal Planner Farace** replied yes.

**COMMISSIONER JACOBY MOVED TO APPROVE RESOLUTION PC18-4698 AS AMENDED BY THE STAFF MEMO DATED 3/19/18. SECONDED BY COMMISSIONER FLODINE AND CARRIED BY THE FOLLOWING ELECTRONIC VOTE:**

AYES: COMMISSIONERS: FLODINE, JACOBY, MAGAMENEAS, MINNERY, MUSGROVE, NORRIS  
NOES: COMMISSIONERS: OLEKSY  
ABSTAIN: COMMISSIONERS: NONE

3. **Project No:** CUP17-0008, EX18-006

**PC AGENDA ITEM #1**

**Applicant:** Jonathan Bernetskie (Captain Jack's Shellfish Company)

**Request:** A Conditional Use Permit to allow the processing of fresh shellfish within a 780 square-foot suite in an existing industrial park in the Light Industrial (L-I) Zone.

**Environmental Determination:** Categorically Exempt (EX18-006) pursuant to Section 15301 Class 1 of the California Code of Regulations (CCR) in that this is an existing facility with no expansion.

**Location of Property:** 2930 Norman Strasse Road, Suite 103, more particularly described as Lot 17, Tract No. 4557, of Map No. 11661, filed in the Office of the County Recorder of San Diego County, December 3, 1986. Assessor's Parcel No.: 217-560-28-00.

**Associate Planner Pedersen** presented the staff report.

## PUBLIC HEARING OPENED

Commissioners asked questions of the applicant about the product, where it will be sold, and how he chose San Marcos.

**Jon Bernetskie**, applicant, responded that it will be strictly shellfish – oysters, clams, and mussels. The shellfish will not be frozen; it will be kept in a walk-in cooler. Once he is more established and can afford a combination walk-in freezer/cooler, he will add shrimp. He stated that spoiled shellfish doesn't have any order. Any shellfish that does spoil will be double bagged in contractor bags. He has not reached out to the trash company about extra service; he was planning to get rid of any spoiled product on the regularly scheduled collection days. The product will come from San Diego Seafood and Santa Monica Seafood. Once he's able to turn over 1,000 pounds of shellfish a week, he will be able to get it directly from British Columbia and Washington. The shellfish will be sold at farmers markets, and also to grocery stores and restaurants. He lives in Escondido, graduated from Cal State San Marcos 5 years ago and plays softball in San Marcos once a week. San Marcos is his home away from home.

**Commissioner Dimitris** thanked the applicant for locating San Marcos and wished him much success. He added that Mr. Bernetskie is an embodiment of what they're trying to achieve here in San Marcos which is to educate our young people and have them get established here.

**Chairman Norris** asked if there is a backup generator to make sure the product doesn't spoil.

**Jon Bernetskie** replied he hasn't looked into that yet. If he keeps the cooler closed, it should stay relatively cool for a short period of time until he can get blocks of ice in there and get the cooler repaired.

**Chairman Norris** also thanked Mr. Bernetskie for choosing San Marcos and wished him well. He asked if any customers will be coming to this location.

**Jon Bernetskie** replied that customers will not be coming to this location.

## PUBLIC HEARING CLOSED

**COMMISSIONER OLEKSY MOVED TO APPROVE RESOLUTION PC18-4699. SECONDED BY COMMISSIONER MAGEMENEAS AND CARRIED BY THE FOLLOWING ELECTRONIC VOTE:**

**PC AGENDA ITEM #1**

AYES: COMMISSIONERS: FLODINE, JACOBY, MAGAMENEAS, MINNERY, MUSGROVE, NORRIS, OLEKSY  
NOES: COMMISSIONERS: NONE  
ABSTAIN: COMMISSIONERS: NONE

**PLANNING COMMISSIONERS COMMENTS**

The April 2, 2018 Planning Commission meeting has been canceled and a meeting is tentatively scheduled for April 16, 2018.

**ADJOURNMENT**

Chairman Norris adjourned the meeting at 7:39 p.m.

KEVIN NORRIS, CHAIRMAN  
CITY OF SAN MARCOS PLANNING COMMISSION

ATTEST:

SANDRA GALLEGOS, SENIOR OFFICE SPECIALIST  
CITY OF SAN MARCOS PLANNING COMMISSION

**PC AGENDA ITEM #1**