

MINUTES
REGULAR PLANNING COMMISSION MEETING
CITY COUNCIL CHAMBERS
1 CIVIC CENTER DRIVE
SAN MARCOS, CALIFORNIA
TUESDAY, JULY 6, 2010 - 6:30 PM

CALL TO ORDER

At 6:30 p.m. Chairman Kildoo called the meeting to order.

PLEDGE OF ALLEGIANCE

Commissioner Norris led the Pledge of Allegiance to the Flag.

ROLL CALL

The Secretary called the roll:

PRESENT: COMMISSIONERS: Kildoo, Kritzer-Jabara, Maas, Nelson, Norris, Wedge

ALTERNATE COMMISSIONERS IN AUDIENCE: None

ABSENT: Jacoby, Minnery, Schaible

Also present were: Planning Division Director, Jerry Backoff; Planning Secretary, Lisa Kiss; City Attorney, Helen Peak, Special Counsel, Randall Morrison; Emergency Preparedness Coordinator, Scott Hansen

ORAL AND WRITTEN COMMUNICATIONS

1. Presentation – Emergency Preparedness

Kildoo: Introduced Scott Hansen, City's Emergency Preparedness Coordinator.

Hansen: Also serves as Battalion Chief for Fire Department. Indicated he's always willing to speak to other groups. PowerPoint presentation shown. As Coordinator, he identifies risks and comes up with mitigation plans. City has done a "Hazard Mitigation Plan," where risks are ranked. Discussed various risks: The biggest risk for San Marcos is wildfire. Discussed "Community Wildfire Protection Plan," which analyzes neighborhoods, types of structures, access, fuel types. Ratings assigned (shown). Coronado Hills/Attebury is highest hazard area due to ingress-egress, structures, fuels, topography. Twin Oaks Valley/Cassou area is rated lower due to flat topography and good ingress/egress. Earthquakes are another concern. There could be man-caused impacts such as hazardous spills or terrorism-related. City has a transportation corridor and a few manufacturers where this could happen. Terrorism is a concern with colleges located in City. IRS is located in the City Hall building. Water shortage is a concern as

we live through droughts. City has some areas where flooding occurs. One of the biggest concerns is Avian and Swine flu. Avian flu has a 5% kill rate. Schools were closed during Swine flu outbreak. Discussed Mitigation: Emergency Preparedness Plans, Continuity of Operations Plan. If one of the events occurs, how does the City continue operating? Plans are updated on a regular basis. Currently working on Debris Management Plan to avoid what happened in San Diego after the fires. Discussed Vegetation Management Plan: fire prevention, brush clearing and code enforcement, Coronado Hills Drive. City tries to prepare its citizens by educating them and encouraging emergency survival kits. City workers are required by law to work during a disaster. Normal Fire staff consists of 24 personnel on duty, 4 engines, 4 ambulances, 1 truck and 1 battalion chief. Response time is normally less than 5 minutes. One of only 400 in the Country to have an ISO insurance rating of Class 2. City has well staffed, well trained & equipped department. During major disasters, most jurisdictions rely heavily on mutual aid. City's Fire Department will respond anywhere in CA when asked. Discussed Emergency Operations Center. On-going training of key City personnel takes place throughout year. All divisions have roles at EOC. City just received a mobile emergency operations center (MEOC) with satellite connectivity. Paid for with development, City, and 50% grant funds. Also have a Technical Rescue Unit. Senior volunteers and MetroNet (amateur radio network) assist City. Communications is the biggest problem in disasters. Discussed C.E.R.T. volunteers, public information: San Marcos AM 1610 radio station being tested with 90% coverage so far, Reverse 911, website, etc. City is being proactive, using a lot of grant funds and stretching dollars where they can.

Kildoo: Commented that this is another reason the City stands out.

Norris: Inquired if the Emergency Operations Plan is on website?

Hanson: Currently updating and will eventually be available.

Wedge: Inquired about fire rating for her area?

Hanson: Some information is on website. Property owners can contact Fire Dept. to look at their specific property. There are a lot of variables.

Nelson: Commented that everyone should be on CERT team and as a member, he feels better prepared.

Hanson: Free classes start in the fall, a shorter version consisting of four evenings.

Wedge: Thanked Fire Department for coming out when she had rattlesnakes.

Hanson: Yes, available 24/7.

CONSENT CALENDAR

Kildoo: Pulling #3 to discuss/approve separately.

2. APPROVAL OF MINUTES, 6/7/10

Action:

COMMISSIONER WEDGE MOVED TO APPROVE CONSENT CALENDAR AS PRESENTED; SECONDED BY COMMISSIONER NELSON AND CARRIED BY A UNANIMOUS VOTE.

3. APPROVAL OF ARCHITECTURAL ELEVATIONS
SP 03-44/TSM 445/R 03-122 (Arbor Ranch by Centex Homes)

Nelson: Asked if there are any single-story homes?

Backoff: No, the lots are fairly small.

Nelson: Inquired if they're actually going to proceed now?

Backoff: Moving forward.

Action:

COMMISSIONER WEDGE MOVED TO APPROVE CONSENT CALENDAR AS PRESENTED; SECONDED BY COMMISSIONER NELSON AND CARRIED BY THE FOLLOWING ELECTRONIC VOTE:

AYES: COMMISSIONERS: KILDOO, KRITZER-JABARA, MAAS,
NELSON, NORRIS, WEDGE

NOES: COMMISSIONERS: NONE

ABSENT: COMMISSIONERS: JACOBY

PUBLIC HEARINGS

4. **Case No:** CUP 08-769 / ND 10-796
Application of: Verizon Wireless (*continued from 3/1/10 & 4/5/10*)
Request: Conditional Use Permit to allow the installation and operation of an unmanned digital communications antenna facility on a mono-tree (designed to resemble a pine tree) at an existing single-family residence in the Residential Mobile Home Park (R-MHP) Zone.
Location of Property: 1324 Fulton Road, more particularly described as: Portions of Lots 3 and 4 in Block 16 of Map No. 581 and 806, Rancho Los Vallecitos de San Marcos. Assessor's Parcel No.: 224-052-24.

Kildoo: Announced that Item #4 was tabled with consensus from the Planning Commission.

Backoff: Taken off the calendar and will re-advertise once it comes forward again.

5. **Case No:** TA 10-62 / ND 10-802

Application of: City of San Marcos

Request: The proposed Ordinance Text Amendment would revise the existing San Marcos Sign Ordinance (Municipal Code Chapter 20.120), and would add Chapter 20.122 to the Municipal Code to address municipal property and rights-of-way. The proposed revisions to the regulations affecting signage on private and government property within the City of San Marcos address evolving standards relating to commercial and non-commercial speech as expressed in cases dealing with First Amendment issues.

Staff Presentation (Helen Peak):

Presenting to the Commission for consideration and recommendation to City Council an Ordinance that revises the City's sign regulations. It has been re-ordered and reconstituted into two new chapters of the Municipal Code. Red-line version was not easy to follow, so Commission was provided with a brand new version. Divided into two chapters – 20.120 addresses property within City's jurisdictional boundaries, and 20.122 is applicable to City property, which includes public rights-of-way, the City's properties it owns, in fee or properties it has rights or controls (easement interests). Staff Report does a pretty thorough job of describing changes made. The following types of changes were made: The ability to substitute sign messages with non-commercial message content, it was somewhat obscure in 20.120.050 D of existing ordinance. It was in there, but sort of buried. It now has higher profile in new ordinance. City wanted to start with the expression of the City's policy: Non-commercial messages may be substituted for a commercial message or existing non-commercial messages. It makes it easier to change signage, engage in free speech of the most protected kind, non-commercial. Message content intent is to be "content neutral," not favoring commercial speech over any other type of non-commercial speech, or favoring any protected non-commercial message over non-protected. City feels it's necessary to make them express. The basic policy of the message is neutrality with respect to non-commercial speech. City also removed provisions that could allow unfettered discretion. Unfettered discretion is always to be avoided in processing of sign permits or applications because of potential impact on protected speech. Added additional regulations in areas where we're allowed to do so, relating to non-communicative aspects of a sign: physical dimensions, size area, support systems. Issues added to dimensions, set back and height. Included size processing requirements, additional submittal requirements, and appeal & hearing rights. Some provisions were there but now in one place and more understandable. Included a new provision that prohibits digital conversions. Conversion of signage to digital is the next wave of what's coming in the sign industry. It's easier to prohibit them now and wait for someone to come with an application. They will suggest what they might need in terms of digital conversion regulation. We believe the law regarding digital conversions and the rights we have to regulate will become clearer. Temporary sign regulations have been made to be content neutral. Regulated by location, land use or function. No longer regulated by types of signs. Example is political signs. Not separately regulating political speech from any other type of speech. Temporary signs are prohibited on City property and rights-of-ways, except as expressly permitted. The proliferation of political signs in public rights of ways is not something we anticipate and is something we can do something about. It's still a prohibited activity. City property is separately regulated. Non-commercial signs that are personally held or attended and which meet display time and size regulations are permissible in the public rights of way. You can have non-commercial speech occurring on public sidewalks and City parks. There are basic time, place & manner types of regulations and commercial signage is not permitted in those

areas. The City is expressly accepted out from the prohibition. There is no indication that City wishes to engage in commercial activity in public rights of way or on City property, except City commercial property, upon which it engages in commercial speech. The City will have flexibility to engage in commercial speech if it chooses to do so. It's permissible under current case law. Provisions that remain the same include prohibition against new billboards, off-site commercial signage except for the City, mobile message boards, and general vehicle advertising and commercial mascots along public rights of ways. Pointed out two typo's on last round of revisions: Page 11, principle should be principal. Page 40, Subsection C., 20.120.80 H. H does not exist and should be F. Introduced Randall Morrison, City's Sign Law Special Counsel. He's an acknowledged expert in First Amendment issues on signs

Kildoo: Asked if any dimensions were changed on commercial signs making them less?

Peak: Dimensions carried over.

Backoff: Physical standards have not changed. Tonight's version will protect City from a constitutional standpoint. City is updating General Plan and Zoning Ordinance. In next ordinance, we'll potentially look at design and physical standards, but not effecting what we're doing tonight.

Kildoo: Asked for example of what commercial sign the City might do on their right-of-way?

Peak: City could advertise one of its premises in a commercial manner. Indicated she'd discourage the City treat itself differently in terms of commercial signage along public rights-of-way. Recommend City follows same rules. City is sovereign with respect to its property and should have some flexibility to engage in permissible forms of speech on City property.

Kildoo: Agree. Okay with Community events, 4th of July, etc.

Peak: City co-sponsor of event. It's government speech, not commercial in nature.

Kildoo: Asked if it would be easier to not give the City the right to do commercial on public right-of-way?

Peak: City is a landlord of a great number of properties. Wish to retain the flexibility for the future.

Kildoo: Understand, but other owners would want to do also. Why the difference?

Randall Morrison: If City decides to sponsor a Jazz concert series, selling tickets that would recoup costs and put money in coffer, would it be legally permissible? Yes. Would it be politically wise? That's for policy makers to decide. If City wants a certain district to have a Christmas in July sale, that's permissible. If City doesn't want commercial events on public rights-of-way, that is permissible. Why? It's historical. Up until mid 70's, commercial speech was considered outside the protection of the First Amendment, which was adopted initially to protect unpopular speech on topics of concern. In European history, there were several centuries where people could lose

their land, lives and liberty simply for expressing political and religious views. One of the underlying themes of the First Amendment is, that's going to end in the U.S. We will protect unpopular speech on these great debate topics. Because regular commercial advertising was considered beneath the dignity of classical debate, that's why the courts held that the First Amendment didn't apply to commercial speech. In the 70's, the U.S. Supreme Court decided sometimes commercial speech is important enough that it deserves a lower level of protection. That's the reason there are rules and concepts where in certain places you can discriminate between commercial and non-commercial. If someone wants to picket on the sidewalk saying they disagree with public policy, that's protected and they have a right to do this. Does the City have to open its sidewalks, parks or streets to commercial activity? No. Why the inconsistency? The First Amendment exists to protect private citizens against government action. It does not protect the government. There is no need or reason to protect the government. The Courts say it doesn't apply, it's irrelevant.

Peak: Not different than other commercial regulations on private property. They limit signage to on-premise advertising. That's what the City regulations say and continue to say under this revised Ordinance. It's an extension of the on-premise advertising scheme.

Kildoo: Indicated his concern is that the City owns a disproportionate large amount of land and leases it as a landlord, more commonly done with private ownership. If someone owned Grand Plaza, and wanted to run signs down the median, the City would say no. The City can take advantage of those medians and rights-of-ways. Could it happen and what makes that right?

Morrison: Won't address moral right or wrong, but can tell you what courts are ruling. In Los Angeles, the City entered into contract with private sign company allowing street furniture (bus shelters, public latrines) on City property, to sell advertising to cover costs of building them and pay rent to the City for using land. Over the course of the 25-year contract, it was expected to generate \$150,000 million for City of L.A. After 6 months of entering into contract, City passed new Ordinance saying no new offsite advertising in the City. It was later challenged by a company who provided similar advertising as the bus shelters. If City can do on their property, why can't private owners do the same? Went to 9th Circuit and unanimous 3-judge ruling said nothing wrong with it, City can do, First Amendment does not prevent monopolies by the City government as to what it can do on its property.

Kildoo: Asked if a change would cause a legal problem?

Morrison: City Council could allow commercial speech in specified times/places. It's a political question, not legal. It's City's option to allow, disallow or limit whatever it wishes.

Kildoo: We can't ask for or amend with provision that prohibits the City from doing commercial on its right-of-way?

Peak: Planning Commission can recommend whatever they choose. We don't recommend you limit City's flexibility. Majority of signs would be like 4th of July event, or fundraisers. If you prohibit, it would preclude all such activity. The chances the City will

engage in activity that is like that of a private party as opposed to government speech is quite unlikely.

Morrison: Another example, if you own a store and have a sign allotment. A friend comes by and wants item X on the ballot, or to support someone to be the new senator. You as owner of the store support and allow some of your sign space. Where are the levels of approval? Regulatory level is the City's law. Message substitution kicks in and that is fine with City. On second level, it is the owner's right to say yes or no. City also has property owner rights and we're trying to preserve as much as possible.

Kildoo: Satisfied.

Nelson: Asked if flag size is limited?

Peak: Currently regulated, don't recall any change to the size. Flags were permitted under temporary regulations. Added reference either temporary or permanent, you can't double the amount of flag area you have. Area remains the same, 40 square feet. Flags are flags whatever you put on them.

Nelson: Asked about Class A office space advertising?

Peak: Those signs often turn out to be more permanent than anyone wishes, but they are temporary.

Wedge: Inquired about blow up-type signs, and whether they're mascots?

Morrison: Can be considered Commercial Mascots. Generally they're limited to live persons or animals, dressed up as Uncle Sam, Little Caesar Pizza guy, etc. The others are called wind dancers or air crows. They fall under inflatable or wind-activated signs.

Wedge: Very distracting.

Morrison: Intended to be that way.

Norris: Inquired about City ballpark and if someone wanted to sponsor, put name on fence or kids shirts?

Morrison: Example given: DeLoreto vs. Downey School District. Had program for local boosters to buy advertising space on fence to raise money for uniforms. It went well with store names until one person wanted a bible quote. School got nervous, didn't want controversy and said commercial messages only. Went to 9th Circuit and ruling was, since its public property, fence is not the street, it is permissible to have this rule. There was a similar case in Phoenix involving advertising on City buses. City didn't want controversial abortion messages. City's can forbid non-commercial speech on these areas that are not traditional public forums.

Nelson: Asked about buses that come through town and mobile billboards?

Morrison: City doesn't have jurisdiction. Transportation authorities are created by state statute, and in most if not all, their advertising ability is outside the City's jurisdiction.

Peak: Consider NCTD as a little traveling sovereign district property that City regulations wouldn't reach. City regulates non-governmental, people and things that don't come under anyone else's regulations. City doesn't regulate school district.

Nelson: Asked about cabs?

Peak: Cab drivers are under City jurisdiction and we have had conversation with those drivers that have the A-frame ads on top.

Morrison: State lottery commission takes position that they're exempt from local sign rules.

Kildoo: With future developments we may see more mobile billboards in area.

Morrison: The main company in the area is called Auto Wraps. They were paying monthly payments to people to put their message on their private cars. Don't believe it's been litigated. There was a case in West Hollywood where City said they didn't want mobile billboards on their streets. Rule was upheld at the Court of Appeal.

Peak: Reminded Commission to include two typo's in motion.

Backoff: Asked Commission to use the most recent, highlighted resolution from Helen. Clarified that coverage ratio is 75% of display area. It's never been a provision of the old Ordinance but is comparable to what we see in sign programs today.

Peak: It's how much you can cover.

Nelson: Asked why you can't cover 100% of a sign?

Peak: It's not aesthetically pleasing.

Morrison: Asked if the sign face or window area?

Backoff: Sign or total display area.

Peak: Window display area is 25%.

OPEN PUBLIC HEARING

None.

CLOSE PUBLIC HEARING

Action:

COMMISSIONER WEDGE MOVED TO RECOMMEND APPROVAL TO CITY COUNCIL OF TA 10-62 AS SET FORTH IN RESOLUTION PC 10-4180; WITH MODIFICATIONS TO CORRECT TWO TYPO'S: 20.120.040 Definitions. Page 11, Mobile Messaging Sign: . . . on a vehicle, the principalle purpose of which is general advertising.; 20.120.090 Prohibited Signs. Page 40, C. General

Advertising on Vehicles. . . . or trucks as allowed under § 20.120.080 (F) H when such vehicles . . . ; SECONDED BY COMMISSIONER NELSON AND CARRIED BY THE FOLLOWING ELECTRONIC VOTE;

AYES: COMMISSIONERS: KILDOO, KRITZER-JABARA, MAAS,
NELSON, NORRIS, WEDGE

NOES: COMMISSIONERS: NONE

ABSENT: COMMISSIONERS: JACOBY

ABSTAIN: COMMISSIONERS: NONE

Kildoo: Thanked Counsel for earlier clarifications.

PLANNING DIRECTOR COMMENTS

None.

PLANNING COMMISSIONERS COMMENTS

Norris: Won't be available for August meeting.

ADJOURNMENT

At 7:39 p.m. Commissioner Kildoo adjourned the meeting.


Steve Kildoo, Chairman
SAN MARCOS PLANNING COMMISSION

ATTEST:


Lisa Kiss, Secretary
SAN MARCOS PLANNING COMMISSION