

**MINUTES
PLANNING COMMISSION REGULAR MEETING
NOVEMBER 6, 2012**

1.0 CALL TO ORDER

The Regular Meeting of the Planning Commission of the City of Highland was called to order at 6:00p.m. by Chairman Hamerly, in the Donahue Council Chambers, 27215 Base Line, Highland, California.

Present: Chairman Randall Hamerly
 Vice Chairman Trang Huynh
 Commissioners John Gamboa
 Richard Haller
 Milton Sparks
 Michael Willhite

Absent: Commissioner Michael Stoffel

Staff Present: John Jaquess, Community Development Director
 Lawrence Mainez, City Planner
 Sean Kelleher, Assistant Planner
 Linda McKeough, Administrative Assistant III

The Pledge of Allegiance was led by Chairman Hamerly.

2.0 COMMUNITY INPUT

There was none.

3.0 CONSENT CALENDAR

3.1 Minutes of October 16, 2012, Regular Meeting.

A Motion was made by Vice Chairman Huynh and seconded by Commissioner Gamboa to approve the Minutes of October 16, 2012, Regular Meeting, as submitted.

Motion carried on a 5 – 0 vote with the abstention of Commissioner Haller and Commissioner Stoffel absent.

4.0 OLD BUSINESS

There was none.

5.0 NEW BUSINESS

- 5.1 Appeal Application (APP-012-003) a request to overturn the Community Development Director's Determination requiring the Demolition of a Non-Conforming Single Family Residential Unit located within a Business Park (BP) Zoning District whose Use has been discontinued for a continuous period of 180 days or more pursuant to Section 16.08.150 (Non-Conforming Parcels, Uses, and Structures). The Property is located at 25480 Fourth Street, Highland, California. Assessor Parcel No.: 0279-185-30. Representatives: LLG Construction (Property Owner).

Chairman Hamerly identified the Item and asked for Staff's presentation.

Assistant Planner Kelleher gave the presentation from the Staff Report and PowerPoint presentation. He explained the historical background and the Appellant's request to the Commission. He indicated that the Appellant is in the audience and then concluded his presentation.

Chairman Hamerly asked if the Commission had any questions of Staff. Hearing none, he then opened the Public Hearing and asked if the Appellant would like to make a presentation.

Mr. Aldo Cally, 25480 Fourth Street, Highland, California, who is the Appellant's Representative of LLG Construction, addressed the Commission. He stated the Appeal is regarding the Demolition of property and found that the property is not in a deteriorated state that it needs to be demolished. He then explained how the property was owned through Fannie Mae and that there was nothing recorded that indicated to demolish the property and that is when the company (LLG Construction) purchased the property. Through the Title Search in 2011, there was a Substandard Non-compliance document that was recorded in Title against the property. The Substandard document which said to repair and/or demolish the Substandard Building and he said that in his profession, usually the property can be brought to life, rather than something that needs to be demolished. In his experience of fifteen (15) years in real estate, he had walked the property and had a meeting with the City Staff and found that there were missing windows, doors, etc.

A question was asked by Chairman Hamerly when Mr. Cally came across the designation of the Non-compliance was that in the Title Report or was that in Mr. Cally's due diligence searching for Zoning and Mr. Cally responded in due diligence.

Another question was asked by Chairman Hamerly if he was familiar with his experience with the non-compliance definitions and Mr. Cally responded affirmatively and is also familiar with substandard. However, reading through the Notice, it states repair and/or demolition of a Substandard Building and usually when a building is dilapidated to a point where it is falling down, that is when a City would take the initiative to require somebody to demolish. In this instance, it looks like the City has a Rezoning and that is why they want it demolished and he was unaware of that.

A question was asked by Chairman Hamerly regarding the status between the City's letter and the Staff Report, and how did the Appellant acquire the property. Mr. Cally responded that it was purchased in a bulk package of five to ten (5 – 10) properties through Fannie Mae and Fannie Mae was unable to provide the Appellant with any information. When he had contacted Fannie Mae regarding the issue that the City had for the demolition, Fannie Mae basically told the Appellant that they have the Appellant's money, do what you can and how there was no help at all with Fannie Mae, and to this day, there are still a couple of properties in that package that they are not helping the Appellant with.

Another question was asked by Chairman Hamerly who Mr. Cally is and Mr. Cally responded that he is the Appellant.

A question was asked by Commissioner Willhite when did the Appellant purchase the property package and Mr. Cally responded April 2012.

A comment was made by Vice Chairman Huynh that on Page 21 of the Staff Report in response to Question No. 4 regarding the Appellant stating why he is appealing and Vice Chairman Huynh read the Notice of Non-Compliance Substandard Property recorded and then how the Appellant had searched through the Title and then saw the document and if that was when he found that document. Mr. Cally responded affirmatively and stated that it started with the Non-Compliance / Substandard Property document and with his experience, unless the property is in very bad shape that the property needs to be demolished. Whenever he sees a Substandard recorded against a property, that it doesn't necessarily mean that the property needs to be demolished and can bring the property back to Code compliance.

A question was asked by Vice Chairman Huynh if the Appellant went to the City and asked City Staff what does he need to do to this house. Mr. Cally responded that normally, when he gets a package like that, we usually do a Title Search and do whatever they can and it's hard to get to all of the properties since they are not close by.

Another question was asked by Vice Chairman Huynh that the Appellant went ahead and purchased the package and that package included that house. Mr. Cally responded that he did, but when they purchased from Fannie Mae, they say that they bring forward whatever information that they have that might hinder us from making a smart / educated purchase on the properties. It is not that Mr. Cally is taking into consideration of what Fannie Mae says, and obviously he does what he can to ensure that he is purchasing something that does not have to be torn down, but when he went back to ask Fannie Mae for a little bit of help, and they say basically, sorry and the only people that can help us now is the Planning Commission and that there is nothing that he can go back and ask from Fannie Mae.

Chairman Hamerly asked if the Commission had any further questions of the Appellant.

A question was asked by Commissioner Willhite when purchasing the bulk packages, it's all or nothing and do not know which ones are good or bad. Mr. Cally responded affirmatively and gave an example of here are four (4) good one and five (5) bad ones and that he does enough homework to ensure that to protect his investment. None in the packages that he has ever purchased had needed to be demolished and had a Substandard recordation whether it being Los Angeles County, in Arizona, Texas, or here.

Another question was asked by Commissioner Willhite if anyone can bid on the property packages or if it's presented to a construction company or that no other companies can bid. Mr. Cally responded no and that several companies can bid and that the company has to be pre-qualified and he did not know how that would pertain to this particular issue. Commissioner Willhite said he was just trying to figure out if just construction companies can bid on these packages or really could anybody could bid on a package and Mr. Cally said that he would be happy to go into further detail after the Meeting.

Chairman Hamerly asked the Commission had any further questions of the Appellant. Hearing none, Mr. Cally then said thank you.

Chairman Hamerly then asked if anyone would like to speak on the item.

Mr. Kevin Bush, Fourth Street and Tippecanoe, Highland, California, who is a resident, addressed the Commission. He stated that he owns property three (3) doors down from the Appellant's property and he does not know the Appellant. Mr. Bush stated that he works in the City everyday and he knows that area is called the "Dead Zone". He believed that the City Council should abolish the "Dead Zone" and understands the Council's thinking. But if you look at the house the Appellant owns, the one next to his has caught on fire two to three (2 – 3) times. The Sheriff and Code Enforcement are down there all of the time in that area. Those houses could be flipped back into decent shape; maybe not the one on the end because it is too far gone, but the others could be put back in decent shape and be used again. He explained how he has bought one (1) property located on Fifth Street not long ago and had to sign a waiver indicating that he could not do any additions on it. But if it was permitted by the City, just because the time frame has gone by doesn't mean that it should not be used. When the property becomes vacant past that time, there are squatters, the property is trashed, drugs, fire, etc. and takes up more valuable time on the City. He understands taking it on a case-by-case basis for the building, if the buildings are valuable and be put back into use. He has some houses located there in the "Dead Zone" that should be torn down are the three (3) brown buildings. Mr. Bush said the more houses that come up missing, that becomes a more a blighted area. Mr. Bush reiterated the City Council needs to get rid of the "Dead Zone" and bring the property back up and will bring better people into the area and will bring less trauma for Code Enforcement, Fire Department and Sheriff and then thanked the Commission.

Chairman Hamerly asked if the Commission had any questions of Mr. Bush. Hearing none, he thanked Mr. Bush.

Mr. Mark Akin, 7485 Cunningham Street, Highland, California, who is a resident, addressed the Commission. He said that he owns the property that had burned located at the end of the street. He gave the historical background of boarding up the house, abating the property and started to remodel. Then Code Enforcement said the area was Zoned Commercial and how he had started to refurbish the property. He indicated that he does not live there and the structure had to be boarded up again. Mr. Akin said his only option is to probably tear down the Structure and Rezone back to a Residential Use and that he could build another house there on the property. Mr. Akin has no ideas for a business and hoping to get the area Rezoned to Residential and is in support of the Appellant and Mr. Bush.

Chairman Hamerly asked if anyone else in the audience would like to speak on the Item. Hearing none, he left the Public Hearing open and then opened the floor for further discussion amongst the Commissioners.

09-18-12.PC

A question was asked by Vice Chairman Huynh regarding the use being discontinued for 180 days and interpretation of the discontinuance and gave an example of house is in good shape and may set for ten (10) months and is unable to find a tenant for the house and that the 180 days is strict. City Planner Mainez responded the 180 day provision is strict and interpreted that provision in the Code to mean that they have abandoned the site, not changed in renters and have literally walked from the property and gave an example of having the utilities pulled and that is typically more than 180 days.

Chairman Hamerly said if the utilities are in constant service and even if the property may not be physically occupied would Staff consider that to be a continuity of use because that technically would not be abandoned if someone is still paying the rent. City Planner Mainez responded if that is within that six (6) months and a couple of months and Staff has allowed them to reoccupy because it is a change of ownership and have to use some common sense in some of these things. In taking the Code literally is pretty extreme. The counterpart is if abandoned the site for more than 180 days, and the utilities disconnected, house is in disrepair, and the banks foreclosed on the property and how the evidence has to build up to make a case.

A question was asked by Vice Chairman Huynh how the Appellant indicated that the City did not record the Substandard document that said that it could be demolished and his experience and interpretation, substandard means that something doesn't meet Code, but you can upgrade it to meet Code and is it correct that the document that was recorded did not say anything or wording in there that it could be demolished due to the Zone Change. City Planner Mainez responded that is correct and that there is no provision in there for demolition and indicated that this is a typical document that Code Enforcement files on every substandard property in the City whether it is commercial or residential.

A comment was made by Chairman Hamerly that is two (2) different issues being substandard and not inhabitable in its present form and the other issue is non-conforming and is a different category. City Planner Mainez said that is correct and that there are health and safety issues. Community Development Director Jaquess added Notice that is being referred to is a Code Enforcement Notice and how a structure is dilapidated / run down and not being maintained.

Chairman Hamerly said then it's a habitable / Code Enforcement issue and not the Planning issue. City Planner Mainez said right and added how Staff has tried to correct that in this area and how one of the speakers calling the area a "Dead Zone" and said that it is an area of transition and explained how the City had tried to put in place a form that the City could record and that there are a lot of legalities associated with that and time has passed and unable to do that and the

09-18-12.PC

City Attorney indicated that it would not be the correct procedure. The City has

tried to do and prepared letters in that area has had a lot of transactions in terms of who owns the property, bank; private party, etc. and turns around frequently. He indicated that there are approximately 200 - 500 units that have been identified that are about to lose the Non-Conforming Status or at some point, that they will, and the City tries to notify them the best that the City can and by having a file that someone can do the due diligence at City Hall, and go to the Code Enforcement Officer and pull a file and advise of the issue and either they would purchase the property right away or be aware that the property that they are interested in purchasing, that they may not be able to reoccupy.

A comment was made by Chairman Hamerly if Code Enforcement and Building & Safety person may / may not have access to the Planning records that would say that this is a non-conforming residence that has lost its non-conforming status. City Planner Mainez said that is right and added the City has a GIS System and with knowing all of the parcels, in that Staff from Planning, Building & Safety, Code Enforcement and Engineering will check the parcel status and inform the person of said status. He further explained that the Planning Technician has spoken to over 1,500 people within that area over the past couple of years and is an issue. He explained there were three to four (3 – 4) cases that have gone to City Council at certain points related to this Ordinance and are all different and explained what transpired with them (i.e. Sanchez, Thach, Raygoza) and the City Council action. At the last Appeal Hearing, the City Council indicated a desire that Staff re-evaluate the Ordinance as a Work Program Item. City Planner Mainez said that in a sense, the Ordinance is too strict when it comes to single family residential units and how the single family residential units are treated in that area and mentioned that to the Commission because it is in the record, and in the Minutes and told the other Appellant and will stay with Code Enforcement until we come to resolution on that Ordinance and see how this plays out with the Commission and City Council. This particular case tonight and informed the Appellant of the City Council decision. Unfortunately, the Appeal was submitted just about at the same time and proceeding with their administrative remedies and does not want to give up that right although they did have that right to withdraw the Appeal so it would not be on the Agenda tonight, but the Appellant wants the Commission to see that this is a unique situation, unlike the other cases, and want to elevate it so that it is in the Minutes and that Staff has something to work with in terms of a case study when Staff starts reviewing the Minutes to the Development Code in the “Dead Zone”.

A comment was made by Chairman Hamerly regarding clarification and how City Council has not even an authorized study at this point and Community Development Director Jaquess responded that it will be brought back to the City

09-18-12.PC

Council in December / January as a Work Program Item in the 2013 – 2014 Cycle and expect that it will be done quickly.

Another comment was made by Chairman Hamerly as it sits right now, the current Non-conforming Ordinance states the property vacant for 180 days and the Commission has to go through the process for the Findings based on what the Ordinance says right now in effect at the time. If the City Council wants to make revisions, then the Commission can make the Finding within the revised Guidelines, but it is not in effect at this time. City Planner Mainez responded that is true and the Work Program Schedule has not been yet set with the City Council and explained that the Commission can uphold Staff's recommendation without prejudice but inform to re-evaluate and close the loop and see what happens

A question was asked by Chairman Hamerly if that is vacating any rights of future Appeals and City Planner Mainez responded Staff will need to talk with the City Attorney.

A comment was made by Chairman Hamerly if the City Council gave direction to stay on any active demolition processes and Community Development Director Jaquess responded that Council not given Staff that form of direction. City Planner Mainez added they have not said that in the record, but there is a clear indication that the City Council wants to re-evaluate the Ordinance and have directed Staff to do that and Staff has a job to do and enforce the Code and recognize what the City Council directive is, Staff is letting people know that this is a Code that will be re-evaluated. City Planner Mainez said that he may be speaking out of turn with Community Development Director Jaquess, but if there should be a stay on this particular case until the matter is resolved.

Another comment was made by Chairman Hamerly that it is not a directive, at this point, from City Council and should be based on information that they have given Staff to re-exam this issue and while being re-examined, there should be a stay and Community Development Director Jaquess responded there is a difference of what the record says and what Staff understands to be the desire of the City Council and they have not officially given any direction to stop enforcement or anything else, but Staff understands that City Council verbally want Staff to look at that issue and that is why Staff is putting it on the Work Program.

A question was asked by Chairman Hamerly if there is an issue with the enforcement of the non-conforming use City-wide or the Designation of Business Park for this particular location of whether or not it is a viable Designation for this particular neighborhood. Community Development Director Jaquess responded the issue is specifically oriented to the non-conforming status of the houses in the

09-18-12.PC

Business Park District. Chairman Hamerly said then it is yes to both in that it is a Residential use within a Business Park and a non-conforming structure. Community Development Director Jaquess responded not looking at a City-wide other Zones issues, it's just within the Business Park District.

A question was asked by Vice Chairman Huynh if the Appellant's intention was to purchase the home and then fix it and asked if he would maybe increase its floor area or just fix the broken windows, broken items, etc. Mr. Cally responded that his intention was to bring it back conforming to the neighborhood and does not want to increase the home's square footage. When he received the Notice from the City stating how the house was falling down, his Assistant and he had walked the area and basically needs a rehab; windows, doors, flooring is okay, kitchen, need two (2) bathrooms, etc. and other than that, for him, it does not make financial sense to demolish a home that is in such good standing because at that point, he would be willing to turn it over to the City of Highland.

A comment was made by Vice Chairman Huynh if the Structure is demolished, and then the lot would set vacant unless it is developed as a commercial use and any commercial development can take place until there are more homes eventually being torn down. Community Development Director Jaquess responded that is right. City Planner Mainez added and Staff can look at as incentive program in the Code for people to consolidate lots. Community Development Director Jaquess stated how this was discussed at length in 2006 when the Zoning was changed for this neighborhood to implement this situation that is being dealt with and how City Council came up with this and then six (6) years later, and with the demise of the City's Redevelopment Agency, the San Bernardino International Airport has not evolved to the extent to the City thought that it would at this point in time and now there are some changes and circumstances that have now come up. City Planner Mainez for the record in not being argumentative with Community Development Director Jaquess, stated there was not a lot of discussion on this item briefly and why are we protecting the Single Family Residences in this area and just like that, we removed that provision from the Code and moved on. Remember, at that time, we were evaluating a lot of Code Sections in the Development Code Update and the General Plan was the first comprehensive update in years so there were a lot of items that were not analyzed in detail and this is one that is coming back and how it is implemented. City Planner Mainez said how Community Development Director Jaquess had said, how times have changed and how the City has lost resources, along with the loss of redevelopment funding, and with the economic downturn, homelessness and how there is an increase of Code Enforcement, and is not right and have a system that preserves that neighborhood, unless it transitions nicely, there are a lot of families that are suffering because they are adjacent to a burned out house, a vacant house, homeless people and have to come up with another way to supplement this loss of redevelopment and need to

09-18-12.PC

act quickly because this place is going down real quick.

Mr. Cally indicated that he is prepared to if the City allows, to pull Permits tomorrow and to get this back into order, and the longer that it takes, he is getting squatters and the City does not have enough resources to swing by that house every day and reiterated that he wants to bring the Property back up and hopefully take that into consideration to resolve quickly.

Chairman Hamerly asked if the Commission had any questions of Staff or the Appellant. Hearing none, he then asked if anyone else in the audience would like to speak on the Item. Hearing none, he then closed the Public Hearing and opened the floor for discussion amongst the Commissioners.

A question was asked by Commissioner Willhite that it is not a Procedure / Policy with the recording of the Notices at the Recorder's Office and City Planner Mainez responded no and that the only thing that is recorded is a Substandard Lien and the non-conforming loss issue is not something that is recorded and have not found a way to do that.

A comment was made by Chairman Hamerly that it places an unrealistic burden on the City and places now a whole new level of liability for issuing these Notices and ensure that they are properly recorded and the City is not in the business of being a Title Company and notifying whoever the current owner or entity is in holding the Title to the property is as far as you can go realistically with these types of matters, at this point, and City Planner Mainez said that is correct.

A comment was made by Vice Chairman Huynh, on the other hand, this is the way how he sees it. The issue an order to demolish the Structure and if the person has done due diligence, if we have the right to say this Structure needs to be taken down, his question is if we did do enough to notify them or record any document and in this case, we haven't. It is unfair to the owner or Applicant and the burden is on the Commission and it is not fair. In the City where he works, there is a Notice of Pendency document and is recorded in his City. It states if possible, shall not include demolition a structure, or whatever wording, when someone does a Title Search, they will see that document and will maybe go to the City and check it out and believed that there is a way to do it. He then explained how he has seen the two – three (2 – 3) cases and has been here for two (2) of them and there was some illegal additions. In this case, the Appellant wants to fix up the Structure. On the west side of the Freeway, there are a lot of homes, a lot of vacant lots there, and is not maintained and is a nuisance for the

09-18-12.PC

City. He understands that in this case, there is a requirement, and reiterated that in his opinion, we have not done enough and let the public know their options. The City Attorney can help us with recording of some kind of document against the Property and then remove the Notice of Pendency after the problem is corrected and explained that there is a process for that.

It was noted that Mr. Bush requested to provide some additional testimony.

Chairman Hamerly reopened the Public Hearing.

Mr. Bush said in 2006, with the San Bernardino International Airport and the economy and how the Appellant is trying to bring something back in this area. He lives and works in the area and to say no, that it is crazy and there is going to still have vacant lots, and the Structure is sound. At some point, the Airport is going to take off, some developer is going to rebuild that whole area and that it would be foolish not to sell and knows that everyone has lost redevelopment money. He requested the Commission not to demolish the Structure, but preserve what we have and not make it a ghost town where there is one (1) house and then there is all that vacant land and debris being dumped and then he thanked the Commission. Chairman Hamerly thanked Mr. Bush for his input and reclosed the Public Hearing.

A comment was made by Commissioner Haller that he is encouraged that the City Council is open to revisit the Ordinance since every one of these scenarios have been a challenge and there have been a lot of good comments made, but with the Ordinance that is in effect, the Commission's hands are tied, at this point.

There being no further amongst the Commissioners, Chairman Hamerly then called for the question.

A Motion was made by Commissioner Haller and seconded by Commissioner Willhite to Adopt Resolution 12-018 Upholding the Community Development Director's Determination requiring the Demolition of a Non-Conforming Single Family Residential Unit located within a Business Park (BP) Zoning District whose Use has been discontinued for a continuous period of 180 days or more pursuant to Section 16.08.150 (Non-Conforming Parcels, Uses, and Structures).

Motion carried on a 5 – 1 vote with Vice Chairman Huynh dissenting and Commissioner Stoffel absent.

09-18-12.PC

(Note: Assistant Planner Kelleher left the Chamber at 6:47pm)

Chairman Hamerly explained the Commission's decision can be appealed to the City Council and that the City Council has more latitude than the Commission has in handling these types of issues and wished the Appellant well in those proceedings.

5.2 MCA 011-007 - Land Use and Development Code Amendment related to Small and Large Recycling Facilities. The location is City-wide.

Chairman Hamerly identified the Item and asked for Staff's presentation.

City Planner Mainez gave the presentation from the Staff Report and PowerPoint presentation and explained the historical background, the proposed revisions and the City Council's Public Safety Subcommittee's directive to the Commission. Community Development Director Jaquess clarified for the record, there would be a limit restriction of one (1) Recycling Facility that could be in a Shopping Center and City Planner Mainez continued his presentation and indicated if the Commission is acceptable with the revisions and suggestions, the Code Amendment would be forwarded to the City Attorney for review and then concluded his presentation.

Community Development Director Jaquess clarified the Ordinance Amendment and the Moratorium that is currently in place in the City affects new Recycling Centers only and does not affect existing legally established Recycling Centers.

A question was asked by Chairman Hamerly if an Operator decides to vacate and a new Tenant takes over the existing operation within a Shopping Center within one (1) week if it would affect the new Tenant. Community Development Director Jaquess responded it's legal, but not a continuation and is not a new Facility. Chairman Hamerly then provided an new alcohol license scenario / use and is technically a new Permit and asked if there are any cases of those types of uses that are not in an area that is Zoned for General Business or Commercial and City Planner Mainez responded how the Recycling Facilities are concentrated along Base Line and there would be four (4) Facilities that would not be a part of a Shopping Center or Market. Chairman Hamerly said if the Facility is in an existing Shopping Center not in one (1) of those Zone Designations and may be a redundant requirement and City Planner Mainez said no and added that he wanted to ensure that there is a Shopping Center / Market in the General Commercial or Neighborhood Commercial Zone Designations.

A question was asked by Chairman Hamerly would not be an instance if there was a Neighborhood Market / Shopping Center that is not on something that is Zoned Commercial or Neighborhood Commercial and does not want to be

09-18-12.PC

caught with a non-conforming use if there is an existing Market located in a Multi-family Residential and Community Development Director Jaquess responded that could be that in that some small Markets around town that are not Commercially Zoned and that would not be allowed to have a Recycling Center on those properties.

A comment was made by Chairman Hamerly that there is a necessity for having to meet the Zoning plus the current use and Community Development Director Jaquess responded affirmatively.

Another comment was made by Chairman Hamerly that the other issue is that the people that are typically operating the Recycling Facility / Kiosks are not the Property Owner and might be a Sublessor of that location from a larger Tenant and if the Property Owner is responsible for the trash / upkeep rather than the Facility Operator and if the Facility Operator is typically absentee and City Planner Mainez responded the Operator / Property Owner are liable, but the Operator on a daily basis shall remove all recycling materials, clean up, etc. Community Development Director Jaquess added that it is a standard Code Enforcement practice and the Code Enforcement notifies the Property Owner and tries to notify the Operator, as well and City Planner Mainez then explained the Code Enforcement process to the Commission.

Chairman Hamerly asked if the Commission had any further questions of Staff.

A comment was made by Commissioner Haller regarding his concern that a Large Collection Facility is located close to a Residential area in that there is only 150 feet of separation and is an intense land use and he thought it would require an Enclosed Facility or increase the distance from the Residential area. Chairman Hamerly responded that the Enclosed Facility would be the best for quality of life and would not wanting cardboard or items blowing around in the City from the wind and so a large Warehouse type Facility might be the best in an Industrial Application and Commissioner Haller said that in the way that it is written, it is not required and would agree with Chairman Hamerly's comment and it would require an (Enclosed) Building everywhere. City Planner Mainez responded that it would be measuring the Facility a minimum of 150 feet from the property line if the lot Zoned is next to a Residential use, but then a person would have to read on and how it restricts the hours of operation, landscaping, and a noise restriction.

A question was asked by Community Development Director Jaquess if Commissioner Haller was talking about a Large Collection Facility and Commissioner Haller responded affirmatively.

09-18-12.PC

A question was asked by City Planner Mainez if Commissioner Haller was talking about a Processing Facility being inside a Structure and Commissioner Haller responded affirmatively and Chairman Hamerly stated that would reduce the potential for the debris to spread, reducing the noise impact if holding to the 150 feet distance on the adjacent Residential neighborhood. Community Development Director Jaquess said that it is allowed in the Industrial Zone District and is restrictive in the City today.

A comment was made by Chairman Hamerly in case if there are Single Family Residences that may / may not be directly adjacent to an Industrial area, and that there are already restrictions on Industrial uses and applications to protect adjacent usages and having something that would be consistent with those, whether to increase the distance or if the distance is not the issue, if the Facility is completely enclosed then the noise and debris spread would be mitigated. City Planner Mainez responded that is a good idea / suggestion and that it should be inside. Community Development Director Jaquess said that it provides an option in an enclosed building or within an area enclosed by an opaque fence and if Chairman Hamerly is suggesting in deleting the “or” from F.1.b. Chairman Hamerly responded that it is the building or the fence and that the fence is really not the issue because the fence or even a wall is not going to mitigate noise or debris from spreading offsite. Community Development Director Jaquess asked if Chairman Hamerly’s concern is within the 150 foot setback and what about if it is “500 feet” and Chairman Hamerly said that his immediate concern was piggybacking on Commissioner Haller’s comment about what would we do if this is adjacent to Residential and then thinking out loud if we are trying to improve not only the quality of life within the Residential areas of the City and the City in general would want to mitigate the chance for any debris to be blowing across the City so who would be responsible for chasing the cardboard boxes and would be mitigated by Right of Zone, and if a Large Facility has a high volume of material and is an Enclosed Facility, that would minimize the chance for the debris to spread and will also help out in noise. City Planner Mainez responded that it elevates the City’s Standards and Chairman Hamerly stated that it is correct and would be consistent.

A comment was made by Commissioner Willhite on Page 13 of the Staff Report that with G.1.f. regarding after-hours donations that it seems that fifty feet (50’) from residents is close and asked if that was a typographical error and Community Development Director Jaquess responded indicating that language is the same in both the Large Collection Facilities and Processing Facilities in all of the Sections. City Planner Mainez responded that was fifty feet (50’) was for containers. Commissioner Willhite stated how it says that it’s for after-hours use provided a scenario with a dump truck at fifty feet (50’) away at 3am.

09-18-12.PC

Chairman Hamerly stated with G.1.a. delete from “or within an area enclosed by a solid wood or masonry fence at least six feet in height.” And recommended in striking that last sentence and that would make some of the other issues go away i.e. setbacks less than 25 feet, and is acceptable with the landscape buffer, but the landscape buffer is to mitigate noise and nuisance from a non-compatible Zoned area that if it is within a building, that is self-mitigated and was unsure if that needs to be reconsidered or if you would still like to maintain that green zone between the building itself and the adjacent use.

Chairman Hamerly asked if the Commission had any questions of Staff. Hearing none, he then opened the Public Hearing and asked if anyone in the audience would like to speak on the Item.

Mr. Martinez, of the Amigos Recycling Facility, addressed the Commission. He asked about the difference between the Industrial and Residential and wanting to open up that green space for mitigation regarding the noise, debris spread and Chairman Hamerly responded kind of all of the above and if it is a Processing Facility, is completely within an enclosed structure, not within a fenced yard, what is the intent of Item “B” that says setbacks from property lines shall be those provided for the Industrial Zoning District , but if less than 25 feet, the Facility shall be buffered by a landscape strip at least ten feet (10’) wide along each property line and asked if that is creating a buffer for noise, a line-of-sight, etc. and if the need for Item “B’ if it done away with if it is within a completely enclosed structure. Mr. Martinez responded not in the Resolution and the Residential area is located north of the Wash and Commissioner Willhite stated that Mr. Martinez’s is an existing Facility, so then this does not apply to him and Chairman Hamerly said that is correct. Community Development Director Jaquess said the Sections that are being pointed out are existing Code language and are in place and complied when Mr. Martinez went in and Commissioner Willhite said okay.

A comment was made by Commissioner Haller on Page 12 of the Staff Report regarding F.1.b. would also delete “or within area enclosed by an opaque fence at least six feet in height with landscaping and shall meet all applicable noise standards in this Title.” Chairman Hamerly responded affirmatively.

A question was asked by Chairman Hamerly regarding what qualifies Item F with the Large Collection Facility is a Collection Facility within Shopping Center which occupies more than 500 square feet in area or is located on a separate parcel not associated with an existing Shopping Center with an existing Supermarket and may have a permanent structure so then it could be within a Shopping Center and does not have a Supermarket and is that the qualifier for the

09-18-12.PC

Shopping Center. Community Development Director Jaquess responded that is has to be in an Industrial Zone and there are no Shopping Centers within an Industrial and is not permitted in an Industrial Zone.

Another question was asked by Chairman Hamerly regarding how much of this language is unnecessary by Right-of-Zone because there are about three layers of stuff that he is trying to understand and put together as to what are the exceptions here and the simplest thing to do is to say if it meets the threshold of size requirements, as opposed to the volume of material that is processed, which is a different set of parameters. If we just say that the size is the determination of what constitutes a Large Collection Facility and say that it should be collected and housed in an Enclosed Facility or is an opaque fence enough to do it because it could go from 500 feet by 1,000 feet and then there are two (2) different issues. City Planner Mainez responded that 500 feet is the limit that Staff came up with to distinguish between Small versus Large Collection Facilities. Chairman Hamerly then asked if there were two (2) Shipping Containers and City Planner Mainez responded affirmatively and then it would be less than 500 square feet. Community Development Director Jaquess added Item C on top of Page 9 of the Staff Report. City Planner Mainez added that the Small Collection Facilities could be less than 500 square feet within a Shopping Center with the appropriate Zoning, and with Legal Counsel that wrote the Ordinance if it is greater than 500 square feet and is not within a Shopping Center, then it falls into the category of Standards. City Planner Mainez added that it sounds too ambiguous and will talk with the City Attorney and revise it so that it is clear that it is a stand alone Large Collection Facility in an Industrial Area in order to simplify it.

A comment was made by Chairman Hamerly that the Ordinance is trying to mitigate an intensity of use and it doesn't matter where it is located, if it is the intensity of use and is confusing with the qualifiers associated with existing Shopping Centers, with an existing Supermarket and may have a permanent structure and provided an example with the 500 square feet dimension, shipping containers located in a parking lot, beautification of parkways / medians, approach to the San Bernardino International Airport or one of the major arterials in Highland, even though it is in an Industrial Area, should consider what the use is going to have over the visual and functional impact on the surrounding area. City Planner Mainez responded that is an intensity of use and want it to be in an Industrial Area and that the Storage Containers have to be totally screened from Right-of-Ways so they cannot stick up above a fence, etc. and Chairman Hamerly has already made it clear that talking about Enclosed Buildings for any Collection or Recyclable Processing. Community Development Director Jaquess added the Enclosed Building will delete the shipping container. Chairman Hamerly said the shipping container is more than six feet (6') in height and asked about the landscaping beyond opaque barrier / wooden fence regarding the Item D Subsection. City Planner Mainez responded affirmatively and that this is one

09-18-12.PC

of the rare situations in our City that those types of containers are permitted and one of the possible Work Program Items will be to evaluate those in the City in the future and Chairman Hamerly said there is also a need attractive signage also. Chairman Hamerly asked if the Item should be continued to the next Meeting and City Planner Mainez then said regarding to continue the Item. Community Development Director Jaquess asked the Commission for some general direction on what the Commission would like Staff to bring back on some special recommendations and include them and return at another Commission Meeting. Chairman Hamerly responded that he would like to have a clean document to forward to City Council. City Planner Mainez added that the Commission has a lot of comments on the Large Processing and Staff had focused on the Smaller Facilities because that was the issue for the Moratorium.

A comment was made by Commissioner Willhite regarding the Kiosk Type Units on Page 10 of the Staff Report – E.1.c. indicated that ten (10) square feet and said that he has never seen them that small.

A question was asked by Chairman Hamerly what about the Goodwill Recycling Containers and Community Development Director Jaquess responded eliminate the Section of the Code by the Public Safety Subcommittee and not allow Kiosks because of an aesthetic issue for the City. Chairman Hamerly asked what about barriers and gave an example if the Goodwill Recycling Containers are full and someone drops off items and will be placed in the parking lot next to the Container and if these are allowed, it makes more sense to have something that is attractive and functional as opposed to what is commonly termed as an attractive nuisance and reiterated his example to Staff.

A question was asked by City Planner Mainez since he was not at the Public Safety Subcommittee Meeting if the Ordinance is taken literally and amend it further per the Commission's direction to limit one (1) Recycling Facility pre Shopping Center with a Supermarket, is pretty narrow and the Property Owner wants to have a Kiosk Type of Unit and nothing else and limits the number in the City significantly already.

A question was asked by Chairman Hamerly if the opposite would be true if the Property Owner has a greater chance of a Larger Collection Facility for Recycling generating a revenue as opposed to a Kiosk Type of Unit collecting donations and is not a revenue generator and the Property Owner would rather be financially compensated in renting that space and City Planner Mainez said right and that is a good point and economic perspective.

A comment was made by Commissioner Willhite for Staff to bring the Ordinance back to the Commission.

09-18-12.PC

A comment was made by Chairman Hamerly added as an overall directive is to try to have the overall goal is to maintain good quality of life / business / residential perspective and minimizing the nuisance factor, noise, making the Facilities as attractive as possible so even in an Industrial Area or within a Business Area, to be a good neighbor and will go a long way towards making this a better Ordinance.

A question was asked by Mr. Martinez regarding the hours of operation and City Planner Mainez responded that 7pm is the cutoff listed in the Ordinance.

A question was asked by Commissioner Sparks what is Mr. Martinez's hours of operation and Mr. Martinez responded 8am – 4:15pm and this afternoon, that he went by the Ninth Street / Victoria Avenue Facility and they were still operating in the dark with no lighting. City Planner Mainez added that particular Facility that Mr. Martinez spoke of is going to be modified slightly and will be redoing the parking lot, and there is a new Tenant going in there so all of that lighting will be taken care of in the future.

There being no further discussion amongst the Commissioners, Chairman Hamerly then called for the question.

A Motion was made by Chairman Hamerly and seconded by Commissioner Haller to continue this Item to the December 4, 2012, Planning Commission Regular Meeting.

Motion carried on a 6 – 0 vote with Commissioner Stoffel absent.

A question was asked by Vice Chairman Huynh if the Recycling Collection for Plastic Containers is less than 500 square feet but more than ten (10) square feet and Community Development Director Jaquess responded is less than 500 square feet, that it could qualify as a Small Collection Facility, but has to be in a Shopping Center with a Supermarket.

6.0 ANNOUNCEMENTS

Community Development Director Jaquess reminded the Commission that on November 17, 2012, of the City's 25th Silver Jubilee, to be held at the San Manuel Village Events Center starting at 5:30pm.

Community Development Director Jaquess explained there are no Items tentatively scheduled for the Commission's Regular Meeting for November 20,

09-18-12.PC

2012, at 6:00pm.

7.0 ADJOURN

There being no further business, Chairman Hamerly declared the Meeting adjourned at 7:22p.m.

Submitted by:

Approved by:

Linda McKeough, Community Development
Administrative Assistant III

Randall Hamerly, Chairman
Planning Commission

09-18-12.PC