



City of Santa Barbara
PLANNING COMMISSION
MINUTES
SEPTEMBER 17, 2020

1:00 P.M.

This Meeting was Conducted Electronically
SantaBarbaraCA.gov

COMMISSION MEMBERS:

Deborah L. Schwartz, Chair
Lesley Wiscomb, Vice Chair
Roxana Bonderson
Gabriel Escobedo
Jay D. Higgins
Sheila Lodge
Barrett Reed

STAFF:

Tava Ostrenger, Assistant City Attorney
Allison DeBusk, Senior Planner
Heidi Reidel, Commission Secretary

CALL TO ORDER

Chair Schwartz called the meeting to order at 1:00 p.m.

I. ROLL CALL

Chair Deborah L. Schwartz, Vice Chair Lesley Wiscomb, Commissioners Roxana Bonderson, Gabriel Escobedo, Jay D. Higgins, and Sheila Lodge

Absent: Commissioner Barrett Reed

STAFF PRESENT

Tava Ostrenger, Assistant City Attorney
Sarah Knecht, Assistant City Attorney
Allison DeBusk, Senior Planner
Kathleen Kennedy, Project Planner
Ellen Kokinda, Planning Analyst
Timmy Bolton, Associate Planner
Alelia Parenteau, Energy and Climate Manager
Tony Ruggieri, City TV Production Supervisor
Heidi Reidel, Commission Secretary

II. PRELIMINARY MATTERS

A. Requests for continuances, withdrawals, postponements, or addition of ex-agenda items:

No requests.

B. Announcements and appeals:

No announcements.

C. Review, consideration, and action on the following draft Planning Commission minutes and resolutions:

1. September 3, 2020 Planning Commission Minutes

MOTION: Higgins / Wiscomb

Approve the minutes as presented.

The motion carried by the following vote:

Ayes: 6 Noes: 0 Abstain: 0 Absent: 1 (Reed)

D. Comments from members of the public pertaining to items not on this agenda:

Public comment opened at 1:06 p.m., and as no one wished to speak, it closed.

III. **NEW ITEM**

ACTUAL TIME: 1:06 P.M.

APPLICATION OF TONY TOMASELLO, RRM DESIGN GROUP, AGENT FOR HUGHES LAND HOLDING TRUST, OWNER OF 635 E. GUTIERREZ STREET, APN: 031-293-012, ZONE: M-I, MANUFACTURING INDUSTRIAL; LAND USE DESIGNATION: INDUSTRIAL; (PLN2019-00522)

The project consists of a new one-story, 9,260-square-foot, 10-megawatt (MW)/40-megawatt hour (MWh) battery energy storage system (BESS) facility on a 14,713-square-foot (0.34-acre) lot at the corner of E. Gutierrez and N. Quarantina Streets. All existing structures would be demolished. The facility would contain lithium ion batteries stored on racks that would be seismically anchored to the building foundation and constructed with non-flammable aluminum and steel. The facility would contain medium voltage transformers and other electrical equipment. The facility would be unmanned and monitored remotely. The project includes a loading and turnaround area and no vehicular parking spaces. Grading quantities for the new facility include 6 cubic yards of cut and 1,040 cubic yards of fill. Connections to the Southern California Edison Substation located to the east would be required. The developer, esVolta, would operate the facility and Southern California Edison would purchase the stored energy from the developer over the life of the contract. Project requires approval of a Development Plan and Conditional Use Permit.

Kathleen Kennedy, Project Planner, gave the Staff presentation. Alelia Parenteau, Energy and Climate Program Manager was available to answer questions.

Tony Tomasello, RRM Design Group, gave the Applicant presentation, and was joined by Peter Zullo, esVolta; and Beth Collins, Outside Land Use Counsel, Brownstein Hyatt Farber Schreck.

Public comment opened at 2:17 p.m., and the following individuals spoke:

1. Gregory Young, Clean Coalition
2. Kendra Hartmann

Written correspondence from Clean Coalition was acknowledged.

Public comment closed at 2:24 p.m.

MOTION: Escobedo / Lodge

Assigned Resolution No. 009-20

Approve the project, making the findings for the Development Plan and Conditional Use Permit as outlined in the Staff Report dated September 10, 2020, subject to the Conditions of Approval as outlined in the Staff Report, with the following revisions to the Conditions of Approval:

1. Add condition B.7: An emergency contact number shall be provided on the building in a location visible to the public at all times, for so long as the current use is on the property.
2. Revise condition E.2 as follows: Project shall comply with the recommendations of the Report of Subsurface Soil, Groundwater, and Soil Vapor Investigation (TRAK, August 20, 2020) and direction from the Santa Barbara County Public Health Department, Environmental Health Services Division. The project shall excavate and dispose of all soil containing elevated concentrations of lead and other metals, and shall incorporate a vapor mitigation system into the development. Oversight of the project shall occur with EHS's Voluntary Remedial Oversight Program, the Central Coast Regional Water Quality Control Board, or the Department of Toxic Substances Control.

The motion carried by the following vote:

Ayes: 6 Noes: 0 Abstain: 0 Absent: 1 (Reed)

The ten-calendar day appeal period was announced.

*** THE COMMISSION RECESSED FROM 2:42 TO 2:55 P.M. ***

IV. CONTINUED ITEM: FROM AUGUST 27, 2020

ACTUAL TIME: 3:00 P.M.

APPLICATION OF PASEO NUEVO OWNER, LLC, AGENT FOR CITY OF SANTA BARBARA, OWNER OF 739 STATE STREET, PASEO NUEVO MALL, APN: 037-400-002, ZONE: C-G, COMMERCIAL GENERAL; LAND USE DESIGNATION: COMMERCIAL/ HIGH AND MEDIUM HIGH DENSITY RESIDENTIAL; (PLN2020-00202)

The proposal consists of a Development Agreement (Agreement) between the City of Santa Barbara ("City", owner and ground lessor of the property) and Paseo Nuevo Owner LLC ("PNO" and ground lessee of the property). PNO is committing to complete an investment of at least twenty million dollars (\$20,000,000) in renovation work in the Paseo Nuevo Mall. The Agreement provides certain assurances to PNO regarding the renovation work. The Agreement enhances the operation and maintenance requirements of the mall and shifts certain financial obligations contained in the existing lease from the City to PNO. At the end of the 45-year term of the Agreement, provided that PNO has performed all obligations under the Agreement, there has not been a material uncured default under the Agreement or the lease, and PNO timely provides notice of exercise, upon expiration of the ground lease, PNO will be entitled to a one-time

executory right to extend the term of the ground lease for 28-years. Proposal requires a Recommendation from the Planning Commission to City Council to adopt the Development Agreement.

Kathleen Kennedy, Project Planner; and Sarah Knecht, Assistant City Attorney were available to answer questions.

Public comment opened at 3:02 p.m., and as no one wished to speak, it closed.

Straw poll: How many Commissioners can support disapproval of the Development Agreement?
Ayes: 6 Noes: 0 Passed

MOTION: Higgins / Wiscomb

Disapprove the Development Agreement, on the basis that the findings, as set forth in Resolution No. 89-120, that the Development Agreement a) is consistent with the General Plan, b) is in substantial conformance with public necessity, convenience, general welfare and good zoning practices, and c) provides adequate consideration to the City, cannot be made.

The motion carried by the following vote:

Ayes: 6 Noes: 0 Abstain: 0 Absent: 1 (Reed)

*** THE COMMISSION RECESSED FROM 4:58 TO 5:03 P.M. ***

Straw poll: How many Commissioners can support the language change to Item #8 of the written supplemental Findings drafted by Commissioner Wiscomb?
Ayes: 6 Noes: 0 Passed

Straw poll: How many Commissioners can support the language change to Item #13 of the written supplemental Findings drafted by Commissioner Wiscomb, replacing "first class mall" with "first class retail and commercial center"?
Ayes: 6 Noes: 0 Passed

MOTION: Higgins/Bonderson

Supplemental findings made in denying the Development Agreement are as follows:

1. The Draft Development Agreement does not represent the best interests of the City and its citizens regarding the Downtown core and the efforts currently underway to revitalize downtown.
2. The Draft Development Agreement lacks the PNO's/Pacific Retail's commitment and requirement to work with the Downtown Revitalization Council Subcommittee and other interested and involved groups as a partner in developing an integrated plan to improve our Downtown.
3. The Draft Development Agreement does not provide "significant economic benefits" to the City while providing significant economic benefits to the Company through an unencumbered optional lease extension. (Reference Page 2, G. of Draft)
4. The Draft Development Agreement excludes the Ortega (Macy's) Building and therefore raises questions about the "Company's commitment to the balanced redevelopment plan for the Lease Premises." (Reference Page 3, N. of Draft)
5. The Draft Development Agreement lacks documented evidence of the "Company's commitment to the balanced redevelopment plan for the Lease Premises." The Commission

- further finds that the Ortega Building and Nordstrom Building, if applicable, should be included in any redevelopment plan. (Reference Page 3, N. of Draft)
6. The Draft Development Agreement lacks objective and measurable performance standards to “operate the Lease Premises as a first class retail and commercial center.” (Reference Page 15, 3.1.5 Use Covenant of Draft).
 7. The Draft Development Agreement does not expunge the City’s liability for the 1989 \$2 million loan plus 10% annual accrued interest at the end of the lease term in 2065, thereby prohibiting the City from ever collecting “participation rent” on the property.
 8. While the Commission appreciates the 2017, 2018, and 2020 “studies” and architectural schematics that the Company recently provided to the Commission on September 15, 2020, which include mixed-use with a residential component, the underlying legal documents, including the lease and “REA,” do not allow residential uses. Further, the studies, in general, are not representative of the special character of Santa Barbara.
 9. The Draft Development Agreement is not accompanied by a cost-benefit analysis that would be critical to evaluating the Agreement’s advantages / disadvantages to the City.
 10. The Draft Development Agreement does not include a market rate payment to the City during each and every year of the lease extension.
 11. Accompanying the Draft Development Agreement is a table provided by the Company entitled “Development Agreement Summary of One-Time Investments and Annual Payments to the City.” The Commission finds this table to contain mathematical errors and the representation of “Total Investment” as misleading since these payments are over 45 years and not a lump sum as shown. The Commission finds that the PBI Assessment does not represent the terms of the PBI Assessment in the Draft Agreement and further that the table inflates the value of said annual assessments. Further, the table sums up PNO’s “total investment” but some of these line items are “commitments” – not investments. (Reference Slide #67 of PNO’s Presentation)
 12. The Draft Development Agreement does not contain reference to or any requirement that Company make measurable efforts to adhere to policies EF4 and EF21 of the City’s General Plan that support both local and small businesses.
 13. The Draft Development Agreement contains grossly inadequate daily liquidated damages for Company’s failure to maintain the premises to the designated “first class retail and commercial center” standard. (Reference Page 15, 3.1.6 Maintenance Requirements of Draft)
 14. The Draft Development Agreement contains a City Profit Participation clause that disadvantages the City’s ability to ever participate in profits in the event of a lease sale. (Reference Page 24, 6. City Profit Participation of Draft)

This motion carried by the following vote:

Ayes: 6 Noes: 0 Abstain: 0 Absent: 1 (Reed)

Straw poll: How many Commissioners can support removing recommendation #2 from the written recommendations drafted by Commissioner Wiscomb?

Ayes: 6 Noes: 0 Passed

MOTION: Bonderson/Wiscomb

That if the City Council decides to approve the Development Agreement or renegotiate a new Development Agreement, Planning Commission recommends that City Council encourage PNO to work with the City Council Subcommittee and other organizations and developers with the goal of producing a balanced redevelopment plan for our downtown, including the Mall and

Ortega Building and the Nordstrom Building, if PNO is successful in obtaining the lease, before any Development Agreement is approved for this one small piece of the puzzle.

This motion carried by the following vote:

Ayes: 6 Noes: 0 Abstain: 0 Absent: 1 (Reed)

MOTION: Higgins/Escobedo

Acknowledge, appreciate, and support the effort by Vice Chair Wiscomb in preparing this matter for Council.

This motion was amended.

AMENDED MOTION: Higgins/Escobedo

Acknowledge, appreciate, and support the effort by Vice Chair Wiscomb *and Chair Schwartz* in preparing this matter for Council.

This motion carried by the following vote:

Ayes: 6 Noes: 0 Abstain: 0 Absent: 1 (Reed)

The ten-calendar day appeal period was announced.

V. ADMINISTRATIVE AGENDA

ACTUAL TIME: 6:25 P.M.

A. Committee and Liaison Reports:

1. Staff Hearing Officer Liaison Report

No report.

2. Other Committee and Liaison Reports

- a. Commissioner Wiscomb reported on the September 11, 2020 meeting of the Plaza De La Guerra Subcommittee.

VI. ADJOURNMENT

Chair Schwartz adjourned the meeting at 6:28 p.m.

Submitted by,

Heidi Reidel, Commission Secretary