

MINUTES
PLANNING COMMISSION REGULAR MEETING
August 17, 2021 – 6:00 P.M.

CALL TO ORDER

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

Present: Chair Randall Hamerly
 Vice Chair Chandra Thomas
 Commissioner Edward Amaya
 Commissioner Jarrod Miller

Absent: Commissioner Jessica Sutorus

Staff Present: Lawrence Mainez, Community Development Director
 Kim Stater, Assistant Community Development Director
 Angela Tafolla, Planning Technician II
 Gary Chambers, Code Enforcement Officer
 Barrie Owens, Code Enforcement Officer
 Justin Ramirez, Code Enforcement Officer
 Camille Goritz, Administrative Assistant III
 Shannon Wisniewski, Administrative Assistant III
 Scott Rice, City Landscape Architect

The Pledge of Allegiance was led by Chair Hamerly.

COMMUNITY INPUT (ITEMS NOT ON THE AGENDA)

None

CONSENT CALENDAR

1. Minutes from the August 3, 2021 Regular Meeting.

A MOTION was made by Commissioner Miller, seconded by Commissioner Amaya, to approve the minutes, as amended. Motion carried, 4-0, with Commissioner Sutorus absent.

LEGISLATIVE ITEM

2. Development Code Interpretation (DCI 21-001) requesting to establish a Non-retail Party Supply business within a vacant nonconforming structure in the R-1 Single Family Residential Zone [continued from the August 3, 2021, Planning Commission meeting].

Community Development Director Mainez presented the staff report.

Commissioner Amaya asked on average how long would that take to be approved?

Community Development Director Mainez stated it could take a couple weeks to get through the process.

Chair Hamerly stated that would be contingent on the property owner having the Certificate of Occupancy, completing the tentative improvements, and make all the construction modifications that they would need.

Community Development Director Mainez stated yes, that's a good point. You are bringing up the six-month provision on a non-conforming ordinance and certainly we will have to keep track of that. We will work with them closely and make sure that it's before the timeline ends in six months.

Chair Hamerly stated my biggest concern is the building has been vacant. At this point it is making sure that the existing business remains functional while they are doing the work depending on what it might be, because it could be a laundry list of improvements to make the structure habitable. On item 5 of the finding's states, it would not increase the intensity of use historically operating on the property and would be less of an impact on surrounding parcels. That's the part that I'm not sure we can reconcile that. It is not increasing the intensity of the use, but a vacant piece of property is going to have less impact on surrounding property than an inactive use property, so it's tough to make that finding. I don't think we have any problems saying the historic operating intensity, but it was the second part of that statement that I didn't see how we could make that finding.

Community Development Director Mainez stated I can remove that. I took that from the minutes to understand that it's not an auto repair, an outside activity or conditioning that everything be inside. It's not a lot of operation outside from a noise perspective and traffic, but I could strike it and have it more focused.

Chair Hamerly stated if you want to put a period after property and then say the proposed use would not have more of an impact on surrounding properties than the historic use or something like that.

Community Development Director Mainez stated we can make that change in the final written notice to the owner.

A MOTION was made by Commissioner Amaya, seconded by Vice Chair Thomas, to approve Finding of Facts listed herein as amended to support the re-use of legal non-conforming structure located at 7761 Sterling Avenue as a Non-retail Party Supply business. Motion carried, 4-0, with Commissioner Sutorus absent.

PUBLIC HEARING

3. A Public Hearing to declare the existence of a Public Nuisance in accordance with Title 8, Chapter 8.32, of the Highland Municipal Code, and authorize the abatement thereof, at the Properties generally located at 3rd Street & Central Ave., Highland, CA 92346, San Bernardino Tax Assessor's Parcel Numbers 1192-561-15-0000, 1192-561-16-0000, 1192-561-17-0000, 1192-561-18-0000, 1192-561-19-0000, 1192-561-20-0000, 1192-561-21-0000, 1192-561-11-0000.

Chair Hamerly opened the public hearing.

Community Development Director Mainez administered an oath to Code Enforcement Officer Gary Chambers and Property Owners Representative David Lurker.

Code Enforcement Officer Chambers presented the staff report.

David Lurker the Applicant's Representative, stated I represent the owner, which is a Limited Liability Company Descansando, and on behalf of the owners of the property we agree to remove the vehicles and tractor trailers from the property. The concerns we have is the timing and our request would be to continue this item to avoid a finding of public nuisance. While the property is not in compliance, it's fenced, relatively safe, and vehicles are not junk vehicles, the things that you usually would identify as a nuisance. We have started the process of removing the vehicles. We are asking for a period of 90-120 days to accomplish that, with the objective being full compliance with Code Enforcement and satisfying all violations. The difficulty is it takes time to relocate all the vehicles and find alternative places, particularly in these times with COVID-19, other restrictions, and issues with third parties.

Commissioner Amaya asked what would be the guarantee that the applicant would comply being that it has been since February 27th?

David Lurker stated I kind of anticipated that question and we would we realize that you may want assurances and my proposal was to create a penalty at that point for every month or period of time that we did not satisfy it. Now, the Community Development Director was concerned that you may not have authority to do that which I understand the issue, but from a practical matter we could enter contractual agreement with the city that we would pay some penalty if we were not able to do it within that time. At the time expires then assuming that you would just continue this hearing, then you would be able to do your finding at that time, and we'd be left with the the minimum 30 days that would apply.

Commissioner Amaya asked was that enforceable or is that a standard practice that the city has done in the past?

Community Development Director Mainez stated the owner's representative is correct. We did talk about this, and I explained that there is no authority in the code that limits some kind of fine each month. The process is what we're going through right now. The officer is aware, opened a case and try to work with the applicant. Due to noncompliance, we issued a citation. We're here tonight to declare this property a public nuisance. That is the process and I just want to point out in the letter from the property owner's representative, he is suggesting additional time which I do not recommend we continue the item. Section 7 and section 9.8 that states staff did suggest 30 days in the Resolution, but certainly you could consider tonight extending that another 60 days or whatever is reasonable. There is a due process after this. I suggest working with them on the timeline.

Vice Chair Thomas asked why was the additional enforcement, fines and citations given, when on April 3rd it said that he had 60 days?

Code Enforcement Officer Chambers stated I counted it from the first notice that I gave from the February 27th date.

Commissioner Miller asked what was the reason for not processing a Conditional Use Permit (CUP)?

David Lurker Applicants stated the entitlements are being processed for the development of the property. From a land use perspective would be a temporary CUP for this kind of use. We would be happy to process CUP if there was a reasonable expectation that would work and with the CUP you could have the typical requirements for fencing, gating, and safety. There was concern that the city would not be amenable to doing that.

Commissioner Miller asked were their inquiries or effort to understand the process of the applying for a CUP?

David Lurker stated I can't answer that question, but the ownership is aware of filing a CUP and they understand the process. Unless we have a CUP, we're going to need to phase out the operations.

Commissioner Miller asked is there a reason why a business license hasn't been obtained?

David Lurker stated I don't know the answer to that question.

Chair Hamerly stated what I have trouble with is you state that the property owner understands a CUP process. I'm sure they did their due diligence to understand what they could and could not do with the property before they spent a substantial amount of money to purchase the property. If the Highland Municipal Code (HMC) says these are the permitted uses, you have your answer before you ever tie up the property in escrow. The second is I'm not sure the city can issue a business license for an activity that is violating the HMC so that is kind of a self-fulfilling thing there if you're doing something that's indirect violation with Code Enforcement. You also wouldn't be able to obtain a business license because Code Enforcement would be sanctioning illegal activity and put the city at jeopardy. After the initial notices were issued it got worse, more buses and vehicles started showing up on site. After the owner was made aware that they were in violation although I think the city demonstrated good faith in giving you 30 days which continued for some time. The other side of that is I must question the ability to enforce those agreements if he's contractually obligating himself to perform services that he can't legally provide. He's allowing vehicles to be stored in violation of the HMC on the piece of property that's an issue for someone like yourself to sort out the legal ramifications of that, but the city has an obligation to enforce its HMC. The Code Enforcement department must take these steps and they must do it within certain timeframes, otherwise their ability to enforce is going to be perceived as arbitrary. I think they have demonstrated that they have gone extra mile now that we're now six months into this process. Why do we give the property owner an additional 120 days when it's already been well over that?

David Lurker stated if we had a CUP, we would be able to get a business license. The original understanding is that this was going to be grandfathered in so that it would be a pre-existing use that would be continued to be permitted. Ultimately that was determined by the city not to be the case, and at this point that's recognized, and we're prepared to respond accordingly.

Chair Hamerly asked does that grandfather predate 1987?

David Lurker stated I don't know the dates.

Chair Hamerly stated ok, because that is a critical piece of fact for this piece of property.

David Lurker stated I know the city has made the determination that it is not grandfathered in, but you asked what at the time of the acquisition that was assumed it would be grandfathered in. If the city is interested in doing a CUP, we'd be more than happy to process that and then that would help us to get the license and move forward in a legally conforming manner. What we can do to satisfy the city's concerns to discontinue the operations in a manner that is the least disruptive to the owners of the vehicles that are there currently, provide you assurances that we understand, and we're prepared to take action. The timing shouldn't be that critical if we achieve the compliance.

Vice Chair Thomas asked how many vehicles have you removed since February when this began?

David Lurker stated I don't have the answer to that.

Vice Chair Thomas stated you're asking us to give an extension of time to work with you guys, but you have had since February from the first notice which the property owner was informed with the violation. If we suspect that he's going to have the same behavior that he's had since February, more vehicles are going to continue to be added if that extension of time is granted.

David Lurker stated one of the things that we agreed to is not to add anymore vehicles and instead remove them. We have already started that, and we'll continue to do so. What we are contemplating is really a stipulated agreement between the parties.

Vice Chair Thomas asked Officer Chambers do you have an estimate of how many vehicles were still on the property, 10 or 20% of compliance?

Code Enforcement Officer Chambers stated It still looked full to me, so I wouldn't be able to get an approximate of what's been moved off properties.

Chair Hamerly asked approximately how many contracts are we talking about?

David Lurker stated the buses are one block and then there's a lot of individual ones. They're generally on very short-term agreements just for storage.

Chair Hamerly asked what is the time frame of the short-term agreements?

David Lurker stated most of them are going to require at a minimum 30 days prior notice, which would mean you need 30 days plus you have to give the notice and it typically would run a calendar month later, so you're talking 45 days minimum just on the notice requirements.

Vice Chair Thomas asked have you guys noticed them yet since we've had enforcement since February?

David Lurker asked I don't know the answer to that.

Chair Hamerly asked is there a different attorney that's handling the agreements with these companies?

David Lurker stated they're not being handled by legal counsel. We can agree to immediately give notices to everyone. The problem is whether they will comply or not within the time frame and we must give the notices as required under the agreements and then we've got to rely on them to be able to move their equipment.

Vice Chair Thomas stated it would have been best to issue those notices earlier on in the process. It has been several months now, so I have concerns because today you haven't taken those steps towards doing that yet. To me it doesn't look like there's been much compliance since February on this item.

David Lurker stated there have been buses that have been removed and they're in the process of removing the more, so that's a step in the right direction and there have been no new additions.

Chair Hamerly asked does the city have the ability or authority to start locking the site and shut the operation down? What type of authority does the city have to step in?

Community Development Director Mainez stated the authority is outlined in the process that we presented, and I summarized we are here tonight to adopt a declaration of public nuisance, and that gives the city and quite a bit of authority to go forward. If they miss that deadline whether it's 30, 90 or 120-days staff at this point is looking for direction. Once we get to that point, the next step is we will need to go to court. Everything we do as part of your training is due process and we will obviously try to go to court to get access to the property. Tonight, rather than trying to negotiate whether the property owner has this authority, the item really is to conclude that there is a violation on that property, and it's a public nuisance.

Chair Hamerly asked none of those next steps can occur until the declaration has been made, correct?

Community Development Director Mainez stated correct. In the in the resolution of section 7 and 9 we're stipulating a time frame and so whatever you come up tonight is part of your motion. We will make sure we amend those sections and then we'll have the chairman to sign the documents, and I'll make sure that the notice is sent to the property owner and the property representative. The timeline starts when they receive that notice.

Vice Chair Thomas stated I think we need to come to consensus on a time frame between us.

Community Development Director Mainez read into the record the changes that were made to the Resolution.

Chair Hamerly closed the public hearing.

A MOTION was made by Commissioner Amaya, seconded by Vice Chair Thomas, to adopt Planning Commission/Appeals Board Resolution No 2021-015 as modified with 60 days stipulated, and declaring the existence of a public nuisance on properties generally located at 3rd Street & Central Ave., Highland, California 92346, and order the abatement thereof. Motion carried 4-0, with Commissioner Sutorus absent.

RESOLUTION NO. 2021-015

A RESOLUTION OF THE PLANNING COMMISSION/APEALS BOARD OF THE CITY OF HIGHLAND, CALIFORNIA, DECLARING THAT A PUBLIC NUISANCE EXISTS ON THE PROPERTIES IDENTIFIED AS APN's 1192-561-15-0000, 1192-561-16-0000, 1192-561-17-0000, 1192-561-19-0000, 1192-561-20-0000, 1192-561-21-0000, 1192-561-11-0000, and 1192-561-18-0000, GENERALLY LOCATED AT THE NORTHWEST CORNER OF 3RD ST. AND CENTRAL AVE. AND ORDERING THE OWNERS OF THE PROPERTIES TO ABATE THE NUISANCE CONTAINED THEREON.

ANNOUNCEMENTS

The next Planning Commission meeting is scheduled September 7, 2021.

ADJOURN

There being no further business, Chair Hamerly declared the meeting adjourned at 7:04 p.m.

Submitted by:

Approved by:

Camille Goritz, Administrative Assistant III
Community Development Department

Randall Hamerly, Chair
Planning Commission