

MINUTES

**CITY OF PACIFICA
PLANNING COMMISSION
COUNCIL CHAMBERS
2212 BEACH BOULEVARD**

May 18, 2015

7:00 p.m.

Chair Brown called the meeting to order at 7:02 p.m.

ROLL CALL: Present: Commissioners Vaterlaus, Cooper, Gordon, Campbell, Evans, Nibbelin and Chair Brown
Absent: None

SALUTE TO FLAG: Led by Commissioner Evans

STAFF PRESENT: Planning Director Wehrmeister
Assist. Planner Farbstein
Assist. Planner Murdock
Public Works Director O'Campo

APPROVAL OF ORDER OF AGENDA Commissioner Gordon moved approval of the Order of Agenda; Commissioner Cooper seconded the motion.

The motion carried **7-0**.

Ayes: Commissioners Cooper, Gordon, Campbell, Evans, Nibbelin, Vaterlaus, and Chair Brown
Noes: None

APPROVAL OF MINUTES: MARCH 16, 2015 Commissioner Evans moved approval of minutes of March 16, 2015; Commissioner Cooper seconded the motion.

The motion carried **4-0-3**.

Ayes: Commissioners Cooper, Evans, Campbell, and Nibbelin
Noes: None
Abstains: Commissioners Vaterlaus, Gordon, and Chair Brown. Chair Brown was present at the meeting of March 16, 2015, but did not record a vote during approval of the minutes.

APPROVAL OF MINUTES: APRIL 20, 2015 Commissioner Gordon moved approval of minutes of April 20, 2015; Commissioner Vaterlaus seconded the motion.

The motion carried **5-0-2**.

Ayes: Commissioners Vaterlaus, Cooper, Gordon, Campbell and Nibbelin
Noes: None
Abstains: Commissioners Evans and Brown

APPROVAL OF Commissioner Vaterlaus moved approval of minutes

**MINUTES:
MAY 4, 2015**

of May 4, 2015; Commissioner Gordon seconded the motion.

The motion carried **4-0-3**.

Ayes: Commissioners Vaterlaus, Campbell, Gordon, and Chair Brown
Noes: None
Abstains: Commissioners Nibbelin, Cooper and Evans

CONSENT ITEMS:

None.

PUBLIC HEARINGS:

- 1. PSD-791-15 UP-41-15 SP-150-15 SITE DEVELOPMENT PERMIT, PSD-791-15, USE PERMIT 41-15, AND SITE PLAN SP-150-15, filed by Russ Orsi of Smith Development & Construction Company, agent for 7-Eleven, Inc., to demolish an existing 1,856 square feet service station building and canopy and to redevelop the site with a new 2,480 square feet 7-Eleven convenience store and service station canopy with alcohol sales at 700 Hickey Boulevard (APN 009-540-030). Recommended California Environmental Quality Act (CEQA) status: Categorical Exemption.**

Asst. Planner Murdock presented the staff report.

Commissioner Nibbelin was having trouble understanding the signage and asked for a walkthrough.

Asst. Planner Murdock acknowledged that the signage plan was not that easy to understand and explained that the free standing or monument sign at the corner of Gateway and Hickey would be renovated to match the new convenience store building; two signs on the SW corner of building are internally illuminated and will be on the NW tower element; along the building façade are two window signs for a Citibank ATM and a striped window decal; only two signs on the fueling canopy, one on Hickey frontage and the other on the Gateway frontage along the trim of the fueling canopy.

Commissioner Cooper asked for an explanation of the height as far as the adjacent building and the height of the opposing station on the opposite corner.

Asst. Planner Murdock stated that he didn't have the exact figures for the height of adjacent apartment buildings but they are taller than the proposed building as they are two-story and the proposed development is one-story. He stated that the Shell station will be smaller because it doesn't have the notable tower element as in this proposal. He didn't have the exact specifications but the applicant may have that information.

Commissioner Cooper stated that he thought the report mentioned the current height was 16 feet and the applicant was proposing 27 foot, 8 inches.

Asst. Planner Murdock confirmed that the figure was correct to the top of the tower element, but the bulk of the building will be much lower.

Commissioner Nibbelin noted that the proposal was for a 24 hour operation and he was curious about the current operating hours for the present station on site and maybe the Shell station also.

Asst. Planner Murdock stated that the Shell station was a 24-hour operation, and the subject gas station does not operate 24 hours, but was open Monday-Thursday, 6:00 a.m. to 11:00 p.m., Friday and Saturday, 6:00 a.m. to midnight and Sunday 7:00 a.m. to 11:00 p.m., concluding that the difference would be between 11:00 p.m. or 12:00 a.m. and 6:00 a.m.

Commissioner Evans asked confirmation if the present convenience store was selling beer and wine.

Asst. Planner Murdock stated that it has a type 20 license which allows the sale of beer and wine but not liquor. When he visited the store, he only noticed beer on sale.

Commissioner Evans asked if they do service on vehicles now.

Asst. Planner Murdock stated that he didn't know the extent of service work. They do smog testing, and possibly lube and oil change, but not a full blown auto repair shop.

Commissioner Evans concluded that 7-Eleven will not be doing any sort of repairs or smog work, just convenience store and gas station.

Asst. Planner Murdock responded affirmatively, adding that they may sell motor oil and will have air and water station, but no commercial vehicle repair services.

Commissioner Evans mentioned that currently, they have air and water next to the fence of the neighboring fence line, and he knew there was a limit from 10:00 p.m. to 7:00 a.m. on running the air compressor, but he thought moving it to the other side it would be quieter. He thought he would just ask the applicant.

Asst. Planner Murdock agreed that the applicant would be best to determine feasibility to relocate that. He thought it could present challenges in terms of providing a parking space.

Chair Brown pointed out Condition 18 which referred to repair or service of vehicles at the site other than normal maintenance of fluids at the pump island or filling tires was prohibited.

Commissioner Evans stated that he saw that but wanted to confirm it publicly.

Commissioner Cooper thought they don't have any leeway on some of zoning of heights for the signs, but he asked if there were any restrictions on illumination they are able to use in lighting of the area.

Asst. Planner Murdock responded that the zoning code does not have an explicit quantitative standard for lighting, just in preventing light pollution and spilling across property lines, etc. That would be up to the Commission as part of the application, if they felt there was an appropriate value to limit, to specify it in the terms of approval.

Commissioner Evans referred to mention of amplified audio of any kind will not be allowed, but they currently have a radio on the pumps. He asked if it will be the same on the proposed pumps.

Asst. Planner Murdock stated that the condition was intended to regulate that type of activity, adding that some are getting louder and more persistent, thus, staff felt it was appropriate to prohibit that but the Commission could modify or remove it if appropriate.

Commissioner Evans assumed there won't be any of that on the pumps for the proposed project.

Asst. Planner Murdock stated that was the intent of the condition to prohibit those audio advertising at the fuel pumps.

Commissioner Vaterlaus stated that they currently show an exit at the first portion of Hickey and an entry further up on their plan, adding that now you can go in or out either one of them, and she asked if it would present a problem for people who are used to going in there.

Asst. Planner Murdock thought there may be a learning curve and assumed the applicant would address that with appropriate signage during the transition period. He assumed the applicant could explain more about it.

Commissioner Vaterlaus thought people speed up more as they get further along on the road and it was harder to turn in at that point.

Asst. Planner Murdock stated that they tried to balance to bring it into conformance with the zoning standards, and it did require manipulation to allow their truck to make the fuel deliveries and entering and exiting properly, and assumed that was why they made that an exit only.

Katy Schardt, 7-Eleven representative, thanked the Commission for consideration of the project. She stated that there were several individuals from 7-Eleven and Smith Development Company present to address questions. She described the upgrades in the project's landscaping, architectural designs, not found in any other 7-Eleven, etc., to meet new state codes. She mentioned the store would be featuring more fresh products. She stated that they were requesting 24 hour service and would continue beer and wine sales which have been in effect since 1983. They were in agreement with all the conditions of approval in the staff report. She concluded that they were available to answer any questions.

Commissioner Nibbelin asked about the number of jobs they will create.

Ms. Schardt stated that there are typically 8-10 jobs at a 7-Eleven. She stated that they were a franchise system and the operator was a local Pacifica resident who will be operating the store.

Commissioner Cooper referred to a condition not authorizing any outdoor display or sale of merchandise and he asked if that included rental, mentioning the Netflix machines, etc. He asked if they intend to do that or did they feel it was covered under Item 17.

Ms. Schardt stated that they requested a Redbox movie rental to be placed in front of the store, and she thought it was in the plan.

Commissioner Cooper asked staff's feelings on that.

Asst. Planner Murdock stated that staff requested that they remove that from its application and the applicant said it was an important part of their business model, and staff felt it was difficult to control. The code required a permit for outdoor commercial activity and, if the Commission wanted to allow that type of use, they should amend or remove that condition, and express the specific intent they were authorizing.

Commissioner Evans reiterated his question about the air compressor and hose as to whether it could be moved to the vicinity of the parking area and not be as noisy for neighbors.

Ms. Schardt stated that they were agreeable to relocating the air and water.

Mr. Jesse Kent, Smith Development, responded that it was certainly a possibility. They tried to balance things, and staff brought up the subject of visibility and beautification and they would definitely take a look at it. If everyone was amenable that it was the better option, it could happen.

Commissioner Evans understood that the main use was during the day, but he was in that field and knows how noisy an air compressor can be, mentioning that the units were low and the aesthetic value might not be an issue, especially with the landscaping around the corner and moving the canopy away from the fence line would allow another parking spot.

Mr. Kent appreciated them taking a look at the revised plan, and stated that it was an internal decision made by corporate headquarters in Dallas, who stated that they were not happy with the proximity of the canopy to the neighboring property or the width of the drive aisle. He referred to the question on access on site, and they were balancing the on site access and keep people moving through, applying off site parking, etc. They would be willing to take a look at access, and thought it could be facilitated.

Commissioner Cooper stated he was a grunge with the lighting aspect, and he thought the illuminated sign on the high roof was annoying. He understood the importance of it, but wasn't sure it fits in with the community. He asked if they had ever not illuminated the signs or done something different.

Mr. Kent stated that they had a company that specializes in signage, and they typically have a nighttime sensor that turns down the illumines after a period of time. He stated that they would be happy to provide the information because it was about the reality of it and hopefully come to terms with it. He didn't know of any of their sites that go dark completely.

Commissioner Cooper asked if he had signs that weren't illuminated at all at that height.

Mr. Kent responded that they did not at that height. He asked if he could talk about lighting in general. He acknowledged key concerns about the proximity to residential and they were trying to meet their needs but also be good neighbors. He mentioned that staff asked them to move the

building off the property line to provide a maintenance alley around the building, but they wanted to balance that with safety and security.

Commissioner Cooper commented that 7-Eleven draws a lot of foot traffic, and asked if they provide any additional painting, cross walks that would assist in that area.

Mr. Kent stated that they will be trenching into the road, and the verbiage was to replace in kind, and whatever street markings were there they would replace, although there was no mention about pedestrian traffic or changing routes in the public right-of-way. He mentioned that they have been asked to put in a sidewalk end sign at the end of Hickey and they were told that the traffic engineer will dictate red parking paint on curb and gutter that was replaced.

Chair Brown opened the Public Hearing.

Dan Stegink, Pacifica, thanked everyone for listening to them. He was not familiar with 7-Eleven and spent the last 24 hours looking at five 7-Elevens and stated that, if they have not been at the stores in Clarendon and Manor, he suggested that they visit them. He concluded that 7-Eleven was a bad neighbor, stating that the Clarendon store has all kinds of unapproved signage, mentioning some specifics. He felt this was a major push into Pacifica. He felt this didn't qualify for a Class 32 exemption from CEQA. He felt traffic and noise will be affected because of 24 hours and getting rid of 3 smog licenses. He felt it needed an EIR and CEQA. He also thought the signage was enormous. He felt this was a bad idea and it should not be allowed.

Betty Duran, Pacifica, stated that she was present with many neighbors. She thought Aldo and Loreen Cuneo, who live on Hickey, were the closest home to the proposed 7-Eleven and she would be the next closest neighbor. She was confused on the process with this particular property and the proposed 7-Eleven. She added that, but for the Cuneos, she would not know about the meeting as she received no notice of the proceedings. She stated that she had a petition signed by over 50 residents of Fairmont expressing concern about the proposed 7-Eleven with less than one week's notice, mentioning how many signatures they could have obtained with adequate time. She mentioned that they sent a petition to ABC objecting to a liquor license for 7-Eleven and she felt the store would be detrimental to the neighborhood, such as increased crime, noise, pollution, etc. She referred to the Shell station which, while being open 24 hours, they have no beer and wine license. She referred to all the other businesses in Fairmont that sell liquor and their hours. She reiterated the residents' concern about the various conditions that would be detrimental to the residents of the neighborhood. They hoped the leaders would act in the best interest of the community.

Loreen Cuneo, Pacifica, stated that they have lived in the area since 1964, and they didn't work to have a 7-Eleven destroy the neighborhood. She mentioned that, while they will put in landscaping, etc., once they are in, they do what they want. She stated that she has looked at all the 7-Elevens and she has not seen one that she would want in her neighborhood. She was strongly against 7-Eleven being in their neighborhood.

Cristine Mixon, Pacifica, gave the Commission pictures and stated that she wasn't upset having a gas station behind her home, but her concern was for the safety of the community at the intersection at Hickey and Gateway. She referred to the pictures which showed the present problem for pedestrians and stated that the community did not want any increase in traffic until the traffic flow problems are addressed and access to Fairmont Center upgraded. She added that

the homes around the present station did not want to have the added noise, light and problems with personal safety.

Chair Brown closed the Public Hearing.

Commissioner Nibbelin stated that there were significant concerns expressed regarding the maintenance of the various components in the project that were required, and he asked staff what tools exist for the city to address those concerns.

Asst. Planner Murdock stated that the city had a number of tools at its disposal. He referred to the issues of the other sites, stating that many were developed in the past where site planning and use permits were not necessarily as detail-oriented with a list of conditions. He felt that this approval, if granted, will set them up with a better framework and the tools that would put the applicant on notice, such as a condition to maintain the site in conformance with the property maintenance plan requested by staff. Staff also has nuisance abatement tools as it does with any property in the city, and the plan requires that it be maintained in substantial conformance with the approved plan.

Commissioner Nibbelin asked if there was a process that was theoretically possible to revoke a use permit in the context of failure to comply with the various conditions of the permit.

Asst. Planner Murdock stated that there was in the code a process for revocation which requires a public hearing before the Commission. He stated that, in an egregious case of disregarding the conditions and lack of response to the normal enforcement process, that was a tool the city has.

Chair Brown asked the applicant if they would like to address some of the concerns raised by the public.

Ms. Schardt made a list of concerns and will address them. She agreed that Asst. Planner Murdock was correct in that the newer stores with conditions of approval have stricter guidelines for maintenance of the property and the conditional use permits can be revoked if the operator does not comply with the conditions, which included the property maintenance plan submitted by 7-Eleven. The plan went into detail regarding picking up of garbage, litter, etc., and corporate has that information when they are hiring so that the operators understand the conditions of operation. She stated that the traffic analysis indicated that the use is from Gateway and Hickey. She stated that 7-Elevens were not destination stores and would not bring additional traffic. With the few pumps, there might even be less traffic. She stated that there will not be amplification of noise, such as TVs or speakers for music.

Mr. Kent referred to choosing the location. They consider a capture of current traffic versus a destination. He stated that with the site being an existing gas station, it lends itself to their type of business. They feel it is almost a like for like replacement. He thought this pump and go was fairly similar to the service station if not less of a noise issue. He acknowledged that there was a lot of traffic, and they think they have done a better job of reducing potential traffic impact issues by closing the entrance on Gateway.

Chair Brown stated that he would like to understand the stricter conditions for this new operation in the context of the existing 7-Elevens and the points raised regarding signage and cleanliness. He asked if the stricter conditions were not applicable to the existing 7-Elevens in Pacifica.

Mr. Kent asked what he meant in reference to the signage.

Chair Brown stated that there was signage nailed to a telephone pole.

Mr. Campbell assumed he meant advertising signage. He stated he was not familiar with the conditions of approval at the other existing sites or what they have been asked to do by Pacifica. He was getting more familiar with the signage ordinance and he thought it was not welcomed. He thought the end game in talking to franchisees, the operation that works is that real estates and development teams put pressure on franchisees to stay within the bound of conditions of approval. He cannot speak to whether those are violating anything but, if they are, they want to know about it.

Commissioner Gordon thanked the members of the public who spoke. He checked the website and agreed that the pictures backed up the comments of the public of the problems such as garbage, signage, etc., and it was a legitimate concern that it was going to happen more. He asked how the property maintenance plan would deal with overflowing garbage cans. He asked if the property maintenance plan was in their materials.

Asst. Planner Murdock stated that it was the final attachment in the agenda packet. He stated that the property maintenance plan does not have an hourly schedule for activities but generally describes the daily walk the property owner will do for outdoor maintenance and, if the Commission thinks that was inadequate, they could specify a more rigorous maintenance routine or other performance standards for staff to supervise and the property owner to implement.

Commissioner Gordon asked if they were talking about a daily garbage pickup.

Asst. Planner Murdock stated that was the minimum that the property maintenance plan commits to. He thought it may happen more regularly but that was not specified.

Commissioner Gordon stated that the excessive signage at the other 7-Elevens was abominable. He asked if there was something in the conditions of approval to make sure that doesn't happen.

Asst. Planner Murdock stated that they have a specific sign plan that the applicant was committing to, and the Commission may consider approving.

Commissioner Gordon stated that it wasn't signage but advertising.

Asst. Planner Murdock understood, adding that it was an ongoing cat and mouse game between the city and commercial operators. He felt that some were good actors, some less so. He stated that the city does its best to respond to the complaints that are submitted. It prioritizes the complaints and addresses as adequately as possible with available staffing. He stated that signage was an ongoing issue and a battle that will not end soon.

Commissioner Gordon asked if there was something in the conditions that addresses that excessive promotional signage.

Asst. Planner Murdock stated that he would have to look at all the conditions to see if there was something specifically on that type of signage, mentioning that Condition 16 talks about property

maintenance and maintaining the site in a condition that does not constitute a public nuisance. He thought it was possible for excessive signage that does not comply with the city's ordinance to constitute a nuisance and that may be one avenue should it come to any standard enforcement process not being sufficient.

Planning Director Wehrmeister would consider signage to be signage and additional promotional signage is not permitted and would be conditioned on the signage program being approved.

Mr. Kent referred to the maintenance plan and, per their ordinance, it was part of their operation, such as anti-vandalism, and he stated that they have a computer system inside that was secure networking and used for 7-Eleven attendants to do sales, gas, etc. and they have an option that goes directly to a regional contractor. He thought, on a monthly basis, if a light goes off in the parking lot, that was an unsafe situation and they need to get the light repaired. He thought the staff's original question of making the maintenance alley, and they can get that in their queue and they can service those things.

Commissioner Campbell referred to No. 28, which talks about the use permit may be revoked if any of the conditions or terms of such permit are violated or any law is violated, and he looked at the code process which would ultimately be brought to the Commission for revocation. He asked how it would get to the Commission.

Planning Director Wehrmeister stated that they would have a code enforcement complaint, history of actions that have not been resolved, and staff would bring it to the Planning Commission for revocation at that point.

Commissioner Campbell asked how many complaints it would take to get it before the Commission.

Planning Director Wehrmeister didn't think there was anything codified but, as far as the commercial neighbors, they would expect them to be pretty responsive if there were complaints about excessive signage that didn't comply with conditions of approval, etc., but she didn't have an answer for exactly how many complaints. She felt it would be on a case by case basis, giving an example of a site with a lot of trash because of the wind and other uses around it. She thought, if they were responsive and clean it up when they tell them to do it, they may not bring that back to them, but if it was egregious and they are the problem and not responding to staff, they would bring it back.

Commissioner Campbell wondered if there would be like a three strikes and you're out.

Planning Director Wehrmeister stated she could offer a condition for an annual review and if there were one or two reviews where they were performing fine, the Commission could decide to cut them off, but for now, if they would like that, it was an option for a condition of approval.

Commissioner Campbell thought it was a great idea and he thanked her for the suggestion.

Chair Brown asked if there has been a history of complaints regarding the other 7-Elevens that staff is aware of.

Planning Director Wehrmeister stated that she would have to look because she didn't know off the top of her head.

Chair Brown referred to the traffic issues raised by Ms. Mixon and he asked if there was any plan outside of this project to address some of those, specifically regarding disabled access.

Planning Director Wehrmeister stated that representatives from the Public Works Department were present and they can best answer that question.

Chair Brown asked if they could answer that question. He took a look at the photos and he thought it was quite difficult for a disabled person to navigate that area safely.

Asst. Planner Murdock stated that the question was regarding accessibility in the right of way in the vicinity of the subject site for people with disabilities.

Public Works Dir. O'Campo stated that they just did a recent project there and all the handicapped accessibility ramps at the corners were changed to comply with the current standards. He stated that they normally do that as part of any paving projects, because all of them are mostly through grants, and federal grants require that, with overlay projects, you are supposed to install handicapped ramps at the intersections. The answer is that they do that, and at the crosswalks and corners of Hickey, the handicapped ramps were all updated recently.

Chair Brown asked if the fire hydrant that appears to be in the middle of the sidewalk was moved.

Public Works Dir. O'Campo stated that the fire hydrant mentioned earlier was exactly in front of the Shell station and not in front of this location, towards the back 25% of the width of the sidewalk.

Chair Brown stated that it was still in sidewalk.

Public Works Dir. O'Campo agreed.

Commissioner Nibbelin stated that he would be interested in knowing if there was a history of complaints with respect to the current operations at Chevron or Shell.

Asst. Planner Murdock stated that they routed this application to the Chief of Police and during his review, he indicated no concerns about the proposed operation and did not comment on any possible history with the existing operator.

Commissioner Nibbelin asked 7-Eleven if there were any pro forma assumptions they can share regarding what they expect in terms of the number of customers after the later hours of the night. He then stated that he was concerned about the property maintenance plan in that it was generic and looked like it was a maintenance plan that pertains to the 7-Eleven region. He would be more comfortable with a plan that was more explicit as to the number of times a day than requiring that things be done on a regular basis periodically. He wasn't convinced that it was specific enough to be reasonably enforceable.

Asst. Planner Murdock understood that, adding that the Commission could consider that as part of their motion of approval to require the applicant to submit a more detailed property maintenance plan for the Planning Director's review and approval.

Commissioner Nibbelin reiterated his request regarding the volume of business expected in the later hours and its impact.

Ms. Aparna Joneja with 7-Eleven stated that they didn't have specific counts for nighttime activity but they know it was very low. She would have to go back and get data which she didn't have at this time.

Commissioner Evans asked if he heard correctly that the Shell convenience store was open 24 hours but the Chevron was not.

Asst. Planner Murdock responded affirmatively.

Chair Brown stated that he was bringing it back for Commission discussion, adding that he had a sense of discomfort with this. He commented that a lot of what comes before the Planning Commission required them to make a determination as to whether something is in keeping with the neighborhood and consistent with the General Plan. He felt it was tough for him to say this was consistent with being a good neighbor. He stated that they heard the use permit can be revoked or given an annual review, but he felt the requirement happens when a new project from an established vendor comes before them for another store and the existing sites don't seem to be keeping up the practices of a good neighbor. On previous projects, he was proud of the owners for improving upon what existed before and investing in Pacifica. He would like to see a project like that and reward those who are being a good neighbor. He was not there yet with this. He agreed with Commissioner Nibbelin that the existing 7-Elevens existed with rather vague conditions that don't seem to be enforced. He wasn't sure he wanted more of that. He also thought a 24 hour convenience store selling alcohol that close to homes didn't seem to be consistent with what the neighborhood was about.

Commissioner Cooper agreed with him on his comments. He was trying to weigh both sides of this issue, adding that the current store didn't reflect what he likes to see in Pacifica. He thought there were flip sides, such as environmental issues in replacement of gas tanks and energy efficiency of the new building plays somewhat into enhancing Pacifica. He asked what other use there was for that property. He asked himself if it was an enhancement to Pacifica and whether we really need another convenience store. He didn't agree with selling alcohol 24 hours a day even though he sometimes buys it 24 hours a day. He didn't think our kids needed what they sell. He also felt the intersection was not the best location for a foot traffic area, and it will get foot traffic. He would like to hear about any other concerns the commissioners had.

Commissioner Nibbelin thought both commissioners have done a good job of encapsulating the conundrum. He agreed that there were legitimate concerns regarding the current operation of other 7-Elevens but his perspective was that, subject to appropriate controls, this could be a net plus. He wasn't pleased with the appearance of the site now, and if it was maintained in a manner that they could make happen would be a net plus. The addition of jobs was a good thing to consider. He thought they had a maintenance plan that was more robust and specific, he could get to a place to be comfortable supporting what was proposed. He thought an annual review was a good idea and it should come back for them to ensure that they were comfortable that things

were moving in the right direction. He agreed with Commissioner Cooper that he didn't think there was a need for selling alcohol 24 hours a day. Based on what the law allows, they should limit alcohol sales to a period of time such as 11:00 p.m.

Asst. Planner Murdock stated that state law already limits alcohol sales 7 days a week to the hours 6:00 a.m. to 2:00 a.m., but the Commission does have the leeway to establish more restrictive hours should it see the need to do that or consider doing it on an interim basis until several annual reviews have gone by and they can gauge the operation of the site.

Commissioner Vaterlaus thought, aesthetically, this was a much nicer project than what was currently there. She mentioned that they have additional parking spots they didn't have and now that they have changed the gas station bays, there are less cars in the gas stations than they are in the existing one. She referred to the condition that states they will not sell individual bottles of beer in small volumes. She then referred to the garbage issue and she works next to a public garbage can and you can go by the can and it is empty and a half hour later it can be pouring out, explaining that people often take their garbage and put it in public garbage cans and it wasn't always in control of the merchants. She thought, with code enforcement, they could monitor a lot of the items that people have issues with.

Commissioner Evans agreed with everything that has been said so far. Referring to alcohol sales, he would consider less hours and he understood the concern for increased traffic but by decreasing the amount of gas pumps to one-half of the current number, he felt that said a lot to traffic control. While he thought there would be an increase with the convenience store, there would be a decrease in the fueling traffic. He would still like to see the air compressor moved to the street side. He was in agreement to no more signage, adding that he might even have a problem with the Redbox thing but would go along with the rest of the Commission. He would like them to agree with the maximum signage mentioned in the plan now. He felt it was a major improvement over what it was currently, but they need the tools to maintain the appearance in the proposed plan. He has seen the improvements for the handicapped access, although he questioned whether a wheelchair could get around the fire hydrant. He reiterated that he liked the idea but didn't like the signage.

Commissioner Gordon senses the consensus growing and he was on board with that consensus. He thought this application was suffering from the sins of the other franchisees and is probably a good message for corporate to absorb. He thought this project could be approved but has to be on a tighter leash. He would be interested in hearing more from the Planning Director about the annual review she discussed.

Planning Director Wehrmeister stated that they would annually review the project and they would time the annual review from the point that the building permit was finalized and it was actually under operation and the planning permit has been acted upon. They would then have annual reviews, publicly noticed so the neighbors would have an opportunity to let them know if they feel the conditions are not being met. The Commission would review the operations and have the ability to adjust or modify conditions of approval at that time or, where things have gone terribly wrong, they would have the opportunity to potentially revoke the use permit.

Commissioner Gordon thought the annual review would be before the Commission.

Planning Director Wehrmeister responded affirmatively.

Commissioner Gordon thought that would have teeth and regarding the timing of the alcohol sales, he assumed there were other vendors in the area that sell alcohol.

Asst. Planner Murdock stated that Rite Aid sells beer, wine and liquor as does the Lucky supermarket and neither of them are open beyond midnight.

Commissioner Gordon stated that he would be in favor of a condition cutting off sales of alcohol as of midnight.

Asst. Planner Murdock stated that the Rite Aid closes at 10:00 p.m. seven days per week, and Lucky's closes at midnight seven days per week.

Commissioner Gordon stated that he would be comfortable with any time between 11:00 pm and 12:00 am. He felt they should stand firm on no Redbox outside, adding that with the other franchisees it has been a slippery slope and a firmer hand was in order. He thought the complaints about garbage could be picked up in an annual review if there was a pattern of bad behavior. He didn't know what a stricter property maintenance plan would look like but was open to ideas.

Asst. Planner Murdock thought a more specific property maintenance plan would give a measurable set of criteria that were quantitative if they were not performing the checks three or four times a day and it was an easy standard to measure against rather than simply stating regular maintenance of the site. Something more specific could be helpful to give them something from which to measure on the annual reviews.

Commissioner Gordon thought that was a great idea.

Chair Brown stated that there were a couple of actions they were discussing to put a tighter leash on this project, inclusive of a more robust maintenance plan, annual review that would come before the Planning Commission and restricted liquor selling hours and no Redbox outside. He supported that but he thought the time to do this is not in the future but now. He stated that they have evidence that the existing franchisees are not operating in something that makes Pacifica proud and he wasn't sure why they would offer the franchisees another shot until they see that some of those things are addressed.

Commissioner Campbell appreciated Chair Brown's comments. He would support no Redbox, support liquor not being sold past midnight which is consistent with the neighborhood and he would support the annual review. He thought it does have teeth and he would be interested if that annual review had all the citizen complaints, photos, everything they saw and he thought, considering the history, this 7-Eleven would be on a short leash. He thought a big reason is because it is a 24-hour facility, adding that the present gas station closes at 11:00 p.m.

Asst. Planner Murdock stated that it varies between 11:00 p.m. and 12:00 a.m.

Commissioner Campbell thought it was a huge difference for the residents living around the site. He thought, if he were living next door to this, he would be in the audience now arguing against it. He didn't know if there was any way to limit the hours.

[A power outage interrupted the meeting from 8:22-8:23 pm. After power was restored, a Pacific Coast TV recording staff member requested that the Commission take a break because the power outage caused the recording equipment to restart. The equipment needed more time before it was ready for operation.]

Chair Brown called a brief recess and then reconvened the meeting once the television cameras were operational.

Commissioner Campbell thanked the other commissioners for their comments. He stated that he was in support of no Redbox, reducing liquor sales to midnight consistent to the other stores, the annual review including photos and any complaints by nearby residents. He felt that, because of the 24 hour nature, the owners would be on a short leash because it was a big change in use. He reiterated that, going from closing at 11:00 p.m. to being open 24 hours, as a resident he would be upset with that change. He didn't know if there was a way to limit the hours to something close to 7:00 a.m. to 11:00 p.m., adding that he didn't know if it was close to their business model plan and would like to hear a response from them on that.

Commissioner Cooper stated that he has been listening to some of the requests and he would add requiring a more detailed maintenance plan which includes removal trash at a minimum of two times per day or when full or curative maintenance within 24 hours of reporting, dimming of lights 9:00 p.m. to 6:00 a.m., annual review of permit from time of certificate of occupancy with the ability to modify the conditions of approval, letter to corporate of existing stores, prohibiting alcohol sales from midnight to 6:00 a.m., modify Provision #17 regarding display, sale or rental of merchandise.

Chair Brown stated that one of his concerns about an annual review was that he thought there didn't seem a way to capture complaints to see statistics over time.

Planning Director Wehrmeister stated that they take in complaints at code enforcement and log them. They then prioritize their actions. She stated that, if they approve the project and bring back an annual review, they would be able to bring that information to Commission, as well as communicate with other departments such as the police to see if there are any calls to report.

Chair Brown thought that was good to hear. He asked if it was clearly posted on the Planning Commission website on how citizens can complain about issues such as those raised at this time regarding signage, etc.

Planning Director Wehrmeister stated that there was information on the website on how to contact Planning and code enforcement division, adding that they were updating the website and there were a few things that could be clearer.

Commissioner Gordon stated that he was struck by Chair Brown's comments regarding the other franchisees not being good neighbors. He understood that they were separate franchisees, but the same corporation and asked if there was any way to address complaints or bad acts at the other stores or was it a separate "ball of wax."

Planning Director Wehrmeister stated that they would not be able to add conditions to other sites through this process.

Chair Brown thought they had a robust discussion and asked for a possible motion.

Commissioner Cooper moved that the Planning Commission find that the project is exempt from the California Environmental Quality Act; **APPROVE** Specific Plan SP-150-15 and Use Permit UP-41-15, by **ADOPTING** the attached resolution, including conditions of approval in Exhibit A as modified shortly; and incorporate all maps and testimony into the record by reference, with additional requirements being 1) require more detailed maintenance plan to include removal of trash a minimum of two times per day or when full, 2) cure maintenance/trash complaints within 24 hours, 3) provide a dimming light system from 9:00 p.m. to 6:00 a.m. on the tower signage, 4) require annual review of permit/project from time of issuance of the certificate of occupancy with the ability to modify the conditions of approval, and to evaluate continued operation of the permit reported annually, 5) require a letter to corporate from the existing developer emphasizing the need to get corporate involved in all 7-Eleven stores in Pacifica, 6) prohibit alcohol sales from midnight to 6:00 a.m., 7) modify Condition 17 to read in the “areas of display, sale, or rental of merchandise,” 8) provide during the first year of operation in a conspicuous place within the store a notice with information identifying the place and location to file a complaint with the City of Pacifica. Commissioner Vaterlaus seconded the motion.

The motion carried **6-1**.

Ayes: Commissioners Vaterlaus, Cooper, Gordon,
Campbell, Evans, and Nibbelin.
Noes: Chair Brown

CONSIDERATION:

2. Continuation of Adoption of Resolution Determining that the 2015-2020 Capital Improvements Program is Consistent with the General Plan (continued from May 4, 2015).

Planning Director Wehrmeister presented the staff report. She then stated that Public Works Dir. O’Campo would discuss the capacity question.

Public Works Dir. O’Campo continued presentation of the staff report.

Chair Brown pointed out that the Planning Commission’s role was limited to reporting on the consistency of the Capital Improvement Program with the General Plan and does not constitute approval of the CIP or the approval or disapproval of any particular project within the CIP.

Commissioner Gordon thanked them for the presentation. He then referred to mention of Rockaway Beach Specific Plan as well as the General Plan and Local Use Plan, which discuss the widening of the highway, stating that we were about to embark on the discussion, and he would like to agree on specific terminology. He felt widening was too broad for him, and they needed to distinguish between adding through lanes versus widening the shoulders, expanding the median strip, widening the existing lanes. He felt all those aspects are discussed in the plan documents and he wants to be more specific when talking about widening which was too vague. He suggested that, instead of saying “widening the highway,” they refer to the specific modifications which widen the highway without adding through lane.

Planning Director Wehrmeister added that, for this discussion, they were specifically discussing the project description that was in the CIP.

Commissioner Gordon commented that they were discussing that in terms of its consistency with the General Plan, and the General Plan has language that discusses modifications to the highway that will result in widening the highway but very different modification proposals. He then referred to mention of capacity and he asked if they were defining capacity as changes in the flow rate through the highway between the borders of Pacifica versus changes in the flow rate on the highway at the two intersections.

Public Works Dir. O'Campo stated that the project was talking about a through-put type of capacity increase and allows for more cars to go through the bottleneck between the intersections of Fassler Avenue and Reina del Mar.

Commissioner Gordon agreed, but referred to his comment that it doesn't result in an increase in capacity as measured in terms of the through put from the start of Pacifica on one end and the end of Pacifica on the other. He asked if he was following what he said or did he misunderstand him.

Public Works Dir. O'Campo stated that the final EIR produced by CalTrans for this project said there was an increase in capacity over the segment of the site being improved, adding that it still remains two lanes to the north and two lanes to the south and does not increase the capacity of state route #1 overall.

Chair Brown asked if anyone had a copy of the actual CIP language. He stated he wanted to read it for the public record, reading a portion of it.

Commissioner Evans asked staff regarding the status of the lawsuit to stop this.

Planning Director Wehrmeister stated that there had been a decision in the lawsuit in favor of the project, but the decision was not final.

Commissioner Evans concluded that it hasn't been dismissed or decided upon but still up in the air.

Planning Director Wehrmeister thought the judge made a decision but it has not been finalized.

Commissioner Cooper asked if it was a tentative decision pending further briefing or another reason.

Planning Director Wehrmeister was not able to clarify.

Public Works Dir. O'Campo was also going to state that there was a ruling except that it hasn't been finalized.

Commissioner Evans reiterated that they were still unclear as to the status.

Public Works Dir. O'Campo also reiterated that one would say that as they did not have anything finalized.

Commissioner Cooper said he has been reading past local coastal plans which anticipate quite a bit of development in the Rockaway area and the quarry and Highway 1, mentioning that in 1985 it stated that the highway was at capacity during commuter peak hours so this was not new. He thought, if they were to take out the Calera Creek project, it would be inconsistent with the plan and thought it was a part of a land use plan. He thought ignoring it was not doing it justice.

Commissioner Campbell asked staff to point him to anywhere in the General Plan or local use plan where they talk about adding lanes. That was the operative language in the CIP and again he wondered where the General Plan or local land use plan talk about adding lanes.

Planning Director Wehrmeister stated that she cannot point to a section where it says that.

Commissioner Cooper responded with C48.

Commissioner Campbell asked where that was.

Chair Brown stated that it was in attachment 4, City of Pacifica Local Coastal Land Use Plan dated March 24, 1980.

Commissioner Campbell read a comment regarding care being taken on widening the highway along the Rockaway Beach frontage.

Commissioner Cooper stated that the whole page addresses it, reading a portion of it, and stating that they talk about an overpass, a frontage road, etc.

Commissioner Campbell gets that they talk about increasing the frontage road and a local roadway and overpass.

Commissioner Cooper stated that the fourth paragraph mentions that care should be taken in widening the highway along the Rockaway Beach frontage, etc.

Commissioner Campbell thought that was in regard to the frontage road, and all they are talking about was increasing the shoulder width. He thinks that was what Commissioner Gordon was getting at. He then referred to another section, C-112, where it talks about improvements to Highway 1, and stated that it was talking about widening the shoulders to deal with safety improvements, but not additional lanes. He thought the only addition lane mentioned was the frontage road to the quarry. He stated that, when you look at the General Plan, Pacific circulation map of proposed streets, it looks to be a frontage road through the quarry. He stated that it mentions the limited capacity of Highway 1 in peak commute and beach use periods, and that a service road shall be provided for better coastal and emergency access, etc., parallel to the west side of the highway from Fairway Park to Rockaway Beach. His question was if there was anywhere in the General Plan and local land use plan where they talk about widening to mean additional lanes.

Planning Director Wehrmeister stated that she can't point to specific language where it says there will be additional lanes, but she can point to the analysis provided in the appeal sent to City Council. In that staff report, there were several different policy items in which the widening project would further the policies of the General Plan. She stated that the General Plan didn't limit the city in terms of projects to be considered to implement the policies within the General

Plan. She thought the city brought authority to determine that this project does implement the policies of the General Plan and was consistent.

Commissioner Campbell saw the other policies with increase of various types of lanes, but he asked if the City's position was to ask for the two lane expansion because it was scenic in riding bike lanes. He didn't think that was the real purpose of this. He thought, if it was safety, the General Plan was requesting to increase the size of the shoulders. He didn't get it. He stated that, if a project incidentally hits the safety scenic and bike elements, they could justify a six-lane freeway through Pacifica. He asked if it created a loophole.

Planning Director Wehrmeister stated that staff's recommendation was that this was consistent with the General Plan. The Planning Commission will need to consider that in making a determination.

Commissioner Vaterlaus referred to C112, reading a portion of it regarding widening the shoulder and moving lanes.

Commissioner Campbell acknowledged that it was moving lanes but not adding lanes.

Commissioner Vaterlaus agreed, but clarified that moving lanes are lanes. She thought it depends on how you interpret what moving lanes are.

Commissioner Gordon did not think that was what that meant.

Chair Brown thought that was a good point as a lot of it was boiling it down to semantics, which was why it comes before the Planning Commission. At the end of the day, they have to take the current request to see if it was consistent with a 30-year-old vision where people documented the kind of city they would want to have. He commented that nobody was perfect and thus they have questions regarding widening.

Chair Brown opened public comments.

Peter Loeb, Pacifica, stated that he participated in the General Plan workshops that led up to the 1980 General Plan and remembered sitting with a large group of people who talked at length about a frontage road in the space between Rockaway and Vallemar, which was why it ended up being specifically in the General Plan. He stated that the plan calls for a frontage road, and all the language they have been quoting has to do with the frontage road, not with the highway. He stated that the moving lanes was there because they envisioned moving the highway over to make room for a frontage road. He stated that the improvements to the highway should not result in an increased capacity. He clarified that the point was to say that the capacity of that stretch of the highway should not be expanded. He stated that, with due respect to the Public Works Director, the issue was increasing the capacity of that stretch which he acknowledged that the Calera Parkway Project would do and was in conflict with the intent of the language in the General Plan. He also mentioned that he was on Council from 1982 to 1990, and in 1986 he came up with several alternatives to the frontage road plan and the Calera Parkway was in conflict with that 1980 General Plan which is in operation.

Ron Maykel, Pacifica, congratulated Commissioners Gordon and Evans for their reappointment, adding that he would have made the same choice. He was glad to be talking about the highway

because he felt it should have been brought before the public many years ago, adding that the new planning staff members have inherited a real controversial issue. He had a copy of the Capital Improvement Program ending in 2012, and referred to mention that the San Pedro Headland was completed at \$252,000 and the current information said it wasn't completed and would cost \$6.3 million. He was annoyed that this didn't come before the Planning Commission years ago and they could have saved the city a lot of time and money. He hoped that this comes before them as they are an important part of it.

Mary Keitelman, Pacifica, stated that she felt the Calera Parkway Highway widening was not consistent with the General Plan and the local coastal land use plan. She felt that either the Calera Parkway should be removed from the CIP or the Planning Commission should not adopt the finding that the CIP is consistent with the General Plan. She didn't think alternatives have been considered and the project has not come to public conversation. She stated that there was lip service that alternatives were considered but when assessed there was no realistic address of alternatives. She mentioned that the state and federal governments were using intelligent transportation system on 280, etc., and a fraction of the cost with none of the massive cement of Calera Parkway which will take almost five acres of the quarry if approved. She felt this was a controversial project that the country does not approve that the most recent election put in a candidate no one heard of and gave an incumbent the most vote ever based on this issue. She asked that they remove Calera Parkway from the CIP, adding that she didn't think they can plan for funding for a project that was controversial and vague. She referred to Commissioner Gordon's initial comments to point out how vague the project was.

Hal Bohner, Pacifica, stated he had submitted a lot of documents and it was impossible to summarize in 3 minutes what they said was impossible. He asserted that the Calera Parkway project was inconsistent with the local coastal land use plan and the General Plan and the Rockaway Beach specific plan. Since the Commission did not have the Rockaway Beach documents, he suggested when they get it, he asked that they look at page 27 to see a diagram that was very instructive and did not show a third lane north or south. He asked them that, if they have specific questions, ask him and he would be happy to answer. He also recommended that they ask Peter Loeb to come back as he has a lot of information about this subject and what he has to say is important. He stated that there are many who are opposed to the Calera Parkway project.

Chaya Gordon, Pacifica, stated that the question was whether the Capital Improvement Plan was consistent with the General Plan and local use plan. She stated that the problem was that it includes the Calera Parkway project however, the Calera Parkway project was inconsistent with both plans in a number of ways, mentioning the specifics connected with the 1980 General Plan, the 1986 Rockaway Beach specific plan, and the existing General Plan and local plan. She felt these were big changes, adding there are more examples. She then mentioned California law addressed that you must follow the General Plan in effect. She suggested that they perform due diligence, adding that so far it was not in accordance with the law and promotes a plan that Pacificans do not want.

Dan Stegink, Pacifica, apologized for taking up their time, then stated that the Highway 1 improvement fee, PMC 8-15-04, charges everyone south of Sharp Park three times the building inspection permit fees of everyone north of Sharp Park and he felt it was an inequitable tax. He mentioned a CalTrans 20-foot easement on the dry side of Cabrillo Highway from south to north

and would prevent building any buildings within 20 feet of Cabrillo Highway on the dry side. He thought Commissioner Cooper was referring to that language.

Chair Brown stated that it was not a waste of their time to hear his opinion and was appreciated.

Cynthia Kaufman, Pacifica, stated she was impressed with their deliberation earlier and appreciated the democratic process that happens in Pacifica, and were not rubber stamping things but listening to the public and taking what they say seriously and deliberating thoughtfully. She asked that they do that with this project. Without repeating what was already mentioned, she wanted to state that the highway widening project was inconsistent with the General Plan which was the “constitution” under which the city was functioning at this moment. She mentioned concerns about what Mr. Ocampo said about the highway not increasing capacity, stating she thought that was ludicrous. She stated that the point of that project was to increase the highway capacity. She was concerned about the tremendous amount of inertia behind the project, mentioning that those working on the climate action plan felt this project would increase greenhouse gas emissions in Pacifica and were directed by the previous city manager to not include the project in the climate action plan, and they went along with that because they felt they had to. She felt there was a tremendous amount of inertia in the old staff to have this project happen, but Pacificans have stated that they do not want this project, clearly seen in the last election. She was excited about the new Planning Director and have had good changes in staff. She wants them to take this seriously and, as our representatives, really look at this project and if it was consistent. She realized safety was not the issue, but she wanted to assert that there was nothing safe about her 12-year-old child crossing six lanes of traffic, adding that Caltrans specifically stated it was not designed for safety. She thought the frontage road would probably help with safety but this project was tremendously unsafe.

Stan Zeavin, Pacifica, stated that Leo Leon was out of town and he asked him to read the following message for consideration in deliberating the Calera Parkway issue, then proceeded to read it, which specifically gave his reasoning on why the Calera Parkway project was not consistent with the General Plan and the Rockaway plan, concluding that, following this information and comments of others, they must decide that the best option was to conclude that the Caltrans Calera Parkway plan was not consistent with the 1980 General Plan and the 1986 Rockaway Beach specific plan.

Suzanne Johnson, Pacifica, stated she was on the Board of Directors for the Chamber of Commerce and a local business person, and was present on their behalf to urge the Commission to keep Highway 1 improvement as part of the capital improvement program of the General Plan. She mentioned the traffic problems her daughter has commuting from Pedro Point to the shopping center and to her job in Fairmont, as well as many Pacificans in the northern end of Pacifica who will avoid Linda Mar because of the congestion, so she urged the Commission to keep Highway 1 improvement as part of the Capital Improvement Program for the General Plan.

Darlene Gonzalez, Pacifica, stated she was president of the Pacifica Chamber of Commerce Board of Directors and has been a resident for 45 years and does residential lending in the community for over 26 years. She referred to the Commission considering removing the Highway 1 improvement from the Capital Improvement Program of the General Plan and the Chamber recommended that they keep it included as part of the General Plan since it has been part of the plan since 2004. They felt they needed to do something to help with the congestion on the highway as the intent was not to increase capacity but decrease congestion. She reported that

the congestion from Sharp Park to Devil's Slide was so congested that her clients won't come to Pacifica during the commute hours or weekends due to the traffic. She felt it impacted residents as well as visitors who would be spending dollars in Pacifica. She read some of the concerns mentioned in a letter to the SM County Transportation Authority in 2006 by former Mayor DeJarnett, and stated that many professionals came to the conclusion that Calera Parkway was the only viable solution. She stated that the members of the Chamber urged them to keep Highway 1 improvement as part of the General Plan.

Jill Allen, Pacifica, referred to the two previous speakers regarding the congestion near Linda Mar and she lived in the area and felt the congestion was due to the bridge construction. She stated that, with the lanes blocked off, going towards Half Moon Bay was a nightmare.

Chair Brown closed public comments.

Chair Brown stated that we were fortunate to have so many citizens who are well informed and passionate. He thought there was a lot of information to consider, but he didn't think they have everything that was referenced. He stated that it would be helpful to get the materials earlier than Thursday before a Planning Commission meeting. He stated that he didn't feel as qualified as the rest of the commissioners in terms of experience and professional expertise. He stated that he relies on reading the materials and talking to the public to be informed on these matters. He apologized that, when he commented on "semantics," he didn't mean to trivialize anything. He felt it was a complicated issue and they were being asked to see if something was consistent and, if they focus on specific words, they might get tripped up. He felt they have to address the intent of the plan in its entirety. He referred to the local coastal land use plan of 1980 which stated that Highway 1 was Pacifica's lifeline and its appearance and safety were critical to the city's future. He then referred to one aspect they were asked to address which was street improvement standards without violating safety or character. He didn't see how turning this into a six-lane highway, with all that concrete, etc., was consistent with the General Plan for Pacifica.

Commissioner Gordon thanked the public who spoke and have been dedicated to this issue. He appreciated that they have educated him. He stated that the only question before them was whether the CPP was consistent with the General Plan which includes Rockaway specific plan and local coastal land use plan. He stated that all the documents were drafted in the 80s and he thought it was odd that they have to make a decision at this meeting about whether this proposed project was consistent with a plan drafted so long ago. He mentioned that because the staff report repeatedly references documents from the 1980s. He asked the question of whether they were bound by that document and concluded that they were until they amend or pass a new one. He stated that a General Plan was general, and a well-drafted plan should not handcuff the city for future planning purposes, but merely guidelines. He also concluded that, to say the project was inconsistent with the General Plan, he has to see something in the General Plan that concludes it is inconsistent. He felt it had to be more specific and not "on the fence." He felt there were problems. He stated that the General Plan acknowledged congestion issues on Highway 1 and the favored approach was to address it by having a two lane frontage road from Rockaway to Fairway, adjacent to the quarry. He added that it definitely contemplated improvements to Highway 1 which were laid out in C112, and read some of the specifics mentioned. He concluded that this was the key language for his analysis. He felt it was specific about improving Highway 1 and did not include adding through lanes. He asked engineering regarding their interpretation capacity. It seemed they were interpreting it as the overall capacity of the highway, and above and below the proposed improvements, but it would still stay two lanes. He thought

that was one interpretation of capacity. If they interpret that the language is to not to increase the capacity at the intersections, he felt there was no way they could find that the General Plan was consistent with this document. He thought there was a high burden to be met to find inconsistency but, if they interpret capacity as being segment capacity, he thought the burden was met and wasn't even a close call. He also thought you could interpret capacity as Public Works Dir. Ocampo explained it, and they were saying that you can make all the improvements to Highway 1 as long as they were not increasing the overall movement of traffic through Pacifica on Highway 1. In that broad perspective, they could be improving the flow rate through the intersections and isn't increasing overall capacity. For him, that was the nub of the question. He referred to how to resolve the ambiguity and concluded that you have to look at the historical record to find out what people were thinking about when they wrote the ambiguous language which was why he was paying close attention to what Peter Loeb was saying and was interested in delving more into the historical record and finding out what the drafters meant when they said Highway 1 improvements should not increase capacity. He thought the analysis turns on whether you interpret that as no increased capacity at the improvement areas or no increased capacity in the bigger picture.

Chair Brown thought one thing that gets to the intent was on C113. He mentioned Mr. Loeb's comments on the service road, and referred to the document stating that a service road shall be provided, reading some specifics, such as mentioning "softening the sense of paving through the area." He felt that meant they had to be careful about adding more concrete between us and the beach.

Commissioner Evans appreciated all the information which was overwhelming. He was not a lawyer, but he keeps going back to what happens if they approve this and they rule in favor of the appeal. He asked if anyone could answer that question.

Planning Director Wehrmeister stated that she can't answer it specifically but did know that the City Attorney's office was not concerned about this action impacting or being impacted by the judge's ruling.

Commissioner Evans thought Commissioner Gordon had a lot of good points. He was torn. He acknowledged that there were problems with the two intersections, but the one thing in front of them was whether it meets the standards of the General Plan. Even if the judge rules in favor of the appeal, he didn't know if it meets the standards of the General Plan and he was torn. He was torn on how it could not be an issue if the courts rule in favor of the appeal. He stated that he was more confused now than before.

Commissioner Campbell thanked the public for staying late. He stated that legally, when they are looking at ambiguity regarding something written in the past, one thing they would consider was specificity in language and if someone drafting something has the opportunity to be more specific, they know how to do that. On looking at the General Plan and local land use plan, he thought the Council seemed to get specific about what it meant by widening, which was about the shoulders. He stated that they had specific maps, and talked about the quarry and a frontage road and how they deal with safety. He thought that, when drafting this, if they wanted to talk about adding additional lanes, they would have but they didn't. He also took a look at the Rockaway special plan from 1986, a few years later, and thought they would have had another opportunity to talk about Highway widening in the context of adding more lanes, but they didn't do that. He refers to a document mentioned by one speaker which they didn't have, but it supposedly dealt

with the widening but still with a two-lane highway but talks about eliminating landscaping and frontage businesses. He reiterated that he thought the widening was about the shoulders, and not adding another lane, as they never bring it up. He concluded that he cannot find any support for adding extra lanes.

Commissioner Nibbelin thought Commissioner Gordon did a “professorial” job of laying out the issue. He was impressed with his analysis, as well as everyone’s perspectives. He thought the analytic template was spot on. He appreciated some of the comments and thought they had some appropriate tools to use to figure out things in the context of ambiguous language as to the specificity of the language raised. He thought, in many instances, they took the opportunity to be specific, and that was a guide to figure out legislative intent. He mentioned that, in situations like this in administrative law when they are dealing with possibly reasonable constructions of ambiguous language, they try to figure out what it means. From his perspective, it was unreasonable to find this project consistent with the general plan, given the ambiguity that they all note exists. His inclination was probably to land in a different place.

Commissioner Cooper thought there were some very thoughtful arguments and thoughtful reactions behind the use of the General Plan. He agreed with all the commissioners that it needs to be flexible in a sense. He thought a plan was a guide. He stated that no one thought that the quarry would still be vacant. Referring to concrete paving, he thought, if you had a frontage road, you would have concrete paving and they were putting concrete paving on Highway 1 to solve this issue. He agreed with Commissioner Nibbelin that there was ambiguity and he thought the way the plan was written from the 1980s anticipates that something needs to be done. He acknowledged that they have heard from the community and the Chamber of Commerce that they have a problem with this highway. They look to other solutions, and were given examples of solutions in the old plans of possible solutions. However, he thinks the plan needs to be flexible. He was in favor of adopting the resolution in this circumstance because we have a problem to solve and he felt the plan was ambiguous but he was leaning towards reading it to say that there would be issues, we don’t have a frontage road, the quarry’s not built, we have an increasing population, new tunnel, new bridge, people want to get from north to south and they need to address the problems as a Planning Commission and was in favor of the resolution.

Commissioner Vaterlaus stated that by passing this she didn’t see that they were passing the specific Calera Parkway plan. She wondered, if they don’t pass it, whether they were eliminating any chance of having frontage roads. She stated this was about safety, less greenhouse gassing by allowing people to go through faster and not stopping for long time periods. She thought they haven’t gotten to the Calera Creek Parkway project yet. They could be talking exactly about what they were saying in the General Plan. She was in favor of going forward.

Commissioner Campbell thought their comments were well thought through, and he mentioned changing circumstances and being flexible. He stated that the General Plan and land use plan did talk about the tunnel and things they discussed. He acknowledged that the General Plan was from 1980, but he didn’t want to marginalize their work. He thought that they were talking about adding additional lanes, and he didn’t think the CIP was talking about the frontage road since it was talking about Calera Parkway which he didn’t think has to deal with the frontage road but the two additional lanes.

Chair Brown thought Commissioner Campbell's comment was about ample opportunity. He thought it highlighted the intent that went into the General Plan. He stated that he would like to hear Commissioner Nibbelin's argument one more time.

Commissioner Nibbelin didn't think it was an argument but an additional factor that he considered, which was the amount of deference staff's interpretation was entitled to with respect to what he considered ambiguous language. He questioned what was an appropriate reading of the General Plan, as well as the other plans which they were looking at in the context of this particular project, while recognizing that there were a lot of ways to resolve ambiguity.

Commissioner Gordon thought it was fair to evaluate staff's views on addressing the ambiguities in the General Plan. He wasn't aware that they addressed the ambiguities.

Commissioner Nibbelin thought it was focused specifically on the issue of what it meant to say they were increasing capacity.

Commissioner Gordon asked where he saw that analysis.

Commissioner Nibbelin thought he heard it in the conversation today.

Commissioner Gordon didn't think he was given enough information and he reiterated that the right way to resolve an ambiguity was to dig into it. He thought, if staff had dug into it, he would be on board with them about giving deference to them. He didn't see any analysis of the historical record by staff in terms of what was meant by capacity. He would love to bring all of them back from the 1980s and ask what was going on. He stated that he would be interested in finding out what kind of historical record there was from that time period as to what they had in mind. He stated that one thing that was clear was that Highway 1 improvements shall not increase capacity, and he felt that was important language. He stated that, to find inconsistency, it wasn't enough to look through all the language in the planned documents and find that they never talked about adding through lanes to Highway 1 wouldn't be enough for him. He didn't think it was there. He has asked staff, the City Attorney, etc., to find language that says a viable option was to add through lanes to Highway 1. He stated that it was not there, but for him, that wasn't enough to find inconsistency. He felt you did need to give deference to the flexibility of the General Plan. He felt it was important, not just for this project, but other projects that will come before them. He stated that this needs to be treated with a wide girth. He stated that, the lack of language that says "thumbs up" to adding through lanes was not enough. He stated that there has to be something affirmatively inconsistent with adding through lanes. He stated that, potentially there was, which was why he was focused on that language that says that the highway improvements were not intended to result in increased capacity. He felt that, if you look at it one way, that was the affirmative language necessary to find inconsistency. In terms of resolving the conflict, he thought he disagreed with Commissioner Nibbelin because he didn't think that staff has really looked into that sufficiently. He would be interested in having staff do that to find something in the historical record that could shed light on this question to resolve the ambiguity.

Commissioner Nibbelin asked the timeline with respect to acting on this resolution.

Planning Director Wehrmeister stated that they were hoping to get Planning Commission action at this meeting.

Commissioner Nibbelin understood that.

Planning Director Wehrmeister stated that they would need their decision prior to the CIP going before the City Council during the budget process which was scheduled for June 8.

Commissioner Nibbelin stated that they articulated some of the things that might be useful in connection with the analysis and the amount of time it would take to get that information versus the amount of value it would add to the dialogue they were having.

Chair Brown thought that was a good point. He asked if they approved everything else except this one item or did they have a continuance on the whole thing.

Commissioners responded that it was the whole thing.

Chair Brown asked if they approved everything except this one element, project 24. He didn't think it meant they were killing the project but merely saying spending money from the Capital Improvement Plan for the Calera Parkway was not consistent with the General Plan. If the "forces that be" decided this needs to move forward, he asked if there was a way for the Calera parkway project would move forward if they say no to including it at this time.

Planning Director Wehrmeister thought there were several options with the Commission, find the entire document consistent with the General Plan, revise language related to the Calera Parkway project, remove the project and find the remainder of the document consistent with the General Plan or find the entire document not consistent with the General Plan. They were asking for a decision now and it would be in front of the City Council on the 8th for a final decision.

Chair Brown thanked her for laying out the options. He reiterated that his question was, if they decide to move forward with the Capital Improvement Plan without the Calera Parkway project, what happens to the project, adding that they were only talking about \$6,000 requested for spending this year out of \$15 million. He didn't understand what not including it would do other than express to the City Council that they don't think the proposal was consistent with the General Plan.

Public Works Dir. O'Campo stated that what was before the Planning Commission was if the CIP was consistent, not to approve the budget.

Chair Brown understood that, but asked if it got extrapolated to something bigger.

Commissioner Campbell thought it was a good point by Commissioners Nibbelin and Gordon have raised about the ambiguity and giving deference. He stated that he had a slightly different take, and would agree, if the General Plan said nothing about adding additional lanes, that might not be enough. There needs to be something affirmative. He referred to C113, stating that the affirmative command by the City Council in 1980 saying, because of the limited capacity of the arterial portion of Highway 1 during peak commute and beach use periods, a service road shall be provided for better coastal and emergency access. He stated that "shall" would be the affirmative command that gets him over the hump and resolves the ambiguity. He didn't understand why it didn't get done, but that was the affirmative language that gets you past the ambiguities.

Commissioner Gordon stated that he will be a devil's advocate and he agreed that "you shall build a frontage road" was clear and unarguable. He asked if saying a frontage road shall be built was inconsistent with another option. He asked if it was inconsistent with adding lanes to Highway 1.

Commissioner Campbell stated that there was also a map which shows it and was another level of specificity and, if there was any consideration of throwing a double lane on Highway 1, they could have easily broken out the sharpie and thrown it in there, but they didn't.

Commissioner Gordon agreed that there was no contemplation in the 80s of adding two lanes to Highway 1. He talked with people from that time, and they have said it wasn't on the table. They weren't thinking about it. He still didn't think that was enough. He acknowledged that the maps show the frontage road and don't show the added lanes but he asked if that was enough. He felt that, if they didn't think of another way to handle it back in that day, he felt uncomfortable saying that rises to the level of inconsistency. He needs something that says no, which was why he was focused on the capacity issue. He felt, if Highway 1 improvements should not result in increased capacity, there was no way to reconcile adding lanes and not adding capacity. He felt those were irreconcilable concepts.

Commissioner Vaterlaus stated that, in 2014, this was appealed and she asked if that was the lawsuit that was not settled or was there something different. She asked if they lost the appeal in 2014 for the same item.

Planning Director Wehrmeister stated that this item was appealed to the City Council last year after the Commission found that the CIP was consistent with the General Plan and included the Calera Parkway project. The City Council upheld the Planning Commission's determination.

Commissioner Vaterlaus asked if the Calera Parkway and the consistency has been in the CIP since 2002.

Public Works Dir. O'Campo stated that it was since 2004.

Commissioner Vaterlaus acknowledged that it was not a new issue and has been considered consistent since 2004.

Commissioner Evans stated that, if the appeal was upheld, what was the litigation going on now.

Planning Director Wehrmeister stated that she could not speak to the litigation.

Commissioner Evans concluded that the litigation has not been decided.

Planning Director Wehrmeister stated that it was not pertaining to the CIP.

Commissioner Gordon stated that it was the same issue of consistency.

Commissioner Evans asked if it was pertaining to the consistency of the Parkway.

Commissioner Gordon added "with the General Plan."

Commissioner Gordon responded to Commissioner Vaterlaus' comment that this issue has been addressed in 2014 when the very same issue was appealed to City Council after the Commission had found that the CIP was consistent with the General Plan and it was appealed, following which the Council heard the appeal and decided against the appeal. He then referred to Commissioner Nibbelin's deference to the City in terms of their opinions on these matters. He stated that they have the transcript of the appeal hearing. He read it, adding that it was an interesting read. He thought the staff report had that attached. He felt it gets to his point that there was very little analysis by the Council on the ambiguities that they are dealing with now. He stated that there was very little in it regarding the ambiguities they were discussing. He felt it was hard to give deference where the matter wasn't properly vetted.

Commissioner Campbell stated that, after reading the transcript of the proceedings, none of the issues they were discussing at this time were discussed at any level of analysis as they were doing at this time. He felt it was really unclear what they were talking about when discussing widening. He got the sense that they were taking at face value that the General Plan, when it talks about widening, was actually talking about extra lanes and not shoulders. They also made fact that they had considered the issue before, but he stated that they really didn't consider it. It was in a hundred of pages CIP and they blew past it, and he concluded that they hadn't adequately considered. He felt it was now because they have all the material before them and this was the first time they considered it.

Chair Brown asked if anyone was ready to make a motion.

Commissioner Evans stated that he would make a motion to approve the CIP without the Parkway in it but he didn't know if anyone else would.

Commissioner Cooper didn't think he would be in favor of that motion. He stated that people were coming to them to look for an answer. He felt they have had opportunity to look through the documents. He felt the issue comes to the meaning and intent of the General Plan. He stated that we have a problem with the highway and they are asking them for a solution and the CIP anticipated this to be an issue for Pacifica, and he felt it addresses an option. He felt they needed to give deference to the General Plan and its ability to grow with their issues and the fact that the quarry was not built and we do not have a frontage parkway. He felt there were other ways to resolve this problem. He would make a resolution to adopt the plan but he would leave it up to the other two people.

Chair Brown was in favor of Commissioner Evans' motion. He respect his opinion, but he felt there was enough with respect to specificity, thoughtfulness and intent. He would love to know more and get firmer on the feeling, but he was convinced that the Calera Parkway was not consistent with the General Plan.

Planning Director Wehrmeister asked if there was a second on the motion.

Chair Brown stated that they were just talking about it. He couldn't second and Commissioner Cooper countered it, and he was trying to break that.

Commissioner Campbell would support Commissioner Evans' proposal. He thought there was enough in the record for him to be very comfortable that a two lane was not compatible with the General Plan in any way, shape or form and he didn't see the ambiguity or any place to provide

deference. He would knock it out of the CIP because it was not consistent with the General Plan. Other than that, he would vote yes.

Chair Brown stated that they have a motion and a second.

Commissioner Gordon stated that he was on an island, adding that he didn't have enough information to say whether the CPP is consistent with the General Plan. He concurs with Commissioner Evans' motion because he was not ready to approve the CPP as part of the CIP but he wouldn't characterize that as a statement that it was inconsistent. He would rather see that aspect be continued and be brought back with more information about the historical record as to whether it shed light on the ambiguity. He was sure he was the only one on that.

Chair Brown felt they were making a procedural mistake. He stated that, if they have a motion ...

Planning Director Wehrmeister stated that they need a second.

Chair Brown asked if they were allowed to have this conversation between the motion and the second.

Planning Director Wehrmeister stated that they needed a second for discussion.

Chair Brown stated that they started having a conversation about that motion.

Commissioner Campbell stated that he was sure he said second.

Commissioner Nibbelin thought there was a second.

Chair Brown knows there was a second. He asked if they were allowed to have a conversation between the motion and the second.

Planning Wehrmeister stated that they need a motion and a second for discussion.

Chair Brown said that now they had a motion and a second.

Planning Director Wehrmeister said a motion by Evans and a second by Campbell.

Chair Brown asked Commissioner Evans to repeat the motion and then they can have a discussion.

Commissioner Evans moved that the Planning Commission **ADOPT** the attached resolution entitled, "A Resolution of the Planning Commission of the City of Pacifica finding that the Proposed 2015-2020 Capital Improvement Program is Consistent with the General Plan and Local Coastal Land Use Plan" except for leaving out Calera Parkway.

Commissioner Nibbelin stated that he didn't support the motion but he was interested in what Commissioner Gordon just said. He thought, if there was a motion to continue either the item in its totality or at least the item as it pertains to the Parkway project, he would be interested in seconding such a motion.

Commissioner Gordon stated that it was not going to get enough votes.

Chair Brown stated that they have a motion on the table and, before they can put another motion on the table, he asked if there was any more discussion on what they have.

Commissioner Evans asked if he needs to amend his motion to add in that they will look at a later date.

Commissioner Nibbelin asked if he would accept a friendly amendment with respect to his motion to continue that particular aspect of it, that would be possible.

Commissioner Evans stated that he would rather keep the motion clean without that and maybe someone can make a motion after this to bring it back.

Chair Brown thought they had a motion and a second and had a good discussion. He asked that they vote.

The motion failed 3-4.

Ayes: Commissioners Campbell, Evans and Brown
Noes: Commissioners Nibbelin, Cooper, Gordon and Vaterlaus

Commissioner Gordon moved that Planning Commission approve the CIP with the exception of the CPP project, and with respect to the CPP project, that it be continued for the purpose of staff providing further information that could illuminate the relevant ambiguities as they discussed at the meeting; Commissioner Nibbelin seconded the motion.

Chair Brown would like more specificity on what additional information they were requesting. He would like to add the Rockaway Beach specific plan as one of the items. He asked if there was anything else the Commissioners would find helpful for additional information.

Commissioner Nibbelin stated that, if there were arguments that City Attorney or staff advanced in connection with the CEQA litigation that was filed in San Mateo County Superior Court before Judge Weiner or whomever had the case, he would be interested in knowing if there was anything in there that would be relevant to the conversation they were having now.

Commissioner Gordon asked if he was talking about the litigation that was filed.

Commissioner Nibbelin thought it was the writ of mandate. He wasn't 100% sure if there was anything in there or a lot that would be relevant to the conversation. If there was, he would like to see it.

Commissioner Gordon stated that he was interested, stating that there must have been workshops, just like they were trying to amend the General Plan now, which if amended, they would not have had to have this tortured exercise. He stated that there have been recent workshops and he was sure there was a written record of what was discussed and what was considered. He stated that this was done all the time when you have a statute and there is an ambiguity. There are services that will search the historical record with respect to that subject matter. He stated that the subject

matter wasn't the General Plan broadly speaking but specifically as it relates to addressing the congestion issue on Highway 1.

Chair Brown thought it would be helpful if additional lanes were considered and specifically not included. He appreciated the deference to the staff opinion and the legal argument made recently, but this plan was specific in a lot of areas. He wants to get to the intent and knowing what other options were considered and not specifically included would be helpful. He didn't think it means they need to change the motion, just flushed it out a bit.

Commissioner Nibbelin asked that he repeat it.

Commissioner Gordon moved that Planning Commission approve the CIP as being consistent with the General Plan with the exception of the CPP project, and with respect to the CPP project, that it be continued in terms of whether it was consistent with the General Plan to a further date to allow staff to provide them with more information regarding the historical record, whether adding lanes was ever considered but not included, the lawsuit that Commissioner Nibbelin was discussing.

Commissioner Cooper asked if they could set a date such as the next Commission meeting as he would like to see them do it before it goes to City Council.

Commissioner Gordon asked if that was possible.

Planning Director Wehrmeister stated that they will try their best.

The motion passed 7-0.

Ayes: Commissioners Vaterlaus, Cooper, Gordon,
Campbell, Evans, Nibbelin and Chair Brown
Noes: None

Planning Director Wehrmeister clarified that Leo Leon's comments were via email and it did have a link to the Rockaway Beach specific plan as there was some discussion as to whether or not that was given to them, and she stated that it was forwarded to all of them and she was putting it on the record.

Chair Brown thanked her for that factual correction.

3. Reorganization of the Planning Commission.

Chair Brown stated that they are reorganized annually and they will elect one member to serve as chairman and one as vice chairman and shall be rotated on an annual basis.

Commissioner Gordon stated that, typically, they go in order of seniority, with the most senior person becomes Vice Chair and the next year the Vice Chair gets elected to Chair and they keep rotating through fresh blood so that the most senior person is Chair until they are not and then the next most senior person becomes Chair, etc. He stated that the previous year they goofed because he was appointed Vice Chair and Commissioner Campbell was more senior by a year and he should have probably been appointed Vice Chair instead of him. He proposed that they fix that and Commissioner Campbell be nominated so he will nominate Commissioner Campbell for Chair and he will stay put at Vice Chair and bide his time. After that, the next person most senior, which he thought Commissioner Brown was the next senior to him but, because he just served, he was not going to be but one of the new folks because Commissioner Evans also just served. That was a broad overview and in a couple of years there will be all new faces and it won't matter. He stated that he cannot nominate himself for Vice Chair and he won't but he will nominate Commissioner Campbell for Chair.

Commissioner Evans was going old world and nominate the Vice Chair Gordon for Chair.

Commissioner Nibbelin nominated Commissioner Campbell for Chair and Commissioner Gordon for Vice Chair; Commissioner Cooper seconded the motion.

The motion carried 7-0.

Ayes: Commissioners Vaterlaus, Cooper, Gordon,
Campbell, Evans, Nibbelin and Chair Brown
Noes: None

Commissioner Campbell thanked them, adding that it was unsolicited by him and he appreciated it.

COMMISSION COMMUNICATIONS:

None

STAFF COMMUNICATIONS:

Planning Director Wehrmeister stated that she has heard a lot of comments about the timing of the packet coming out. She knew that previously there was the ability to provide the packet a week in advance but it was becoming very difficult because of how busy they were becoming. She stated that they prepare packets for not only the Planning Commission but also the City Council on the alternate Mondays. They also do the OSPAC Committee. She stated that one option was to change their meeting date to a date later in the week. They would still commit to getting the packet to them on Thursday but instead of a Monday, they could meet later in the week and give them a little bit more time. Giving it to them a week in advance was not something to which they can commit.

Chair Brown didn't think they can, but he thanked her for that and appreciated the constraints which they were under.

ORAL COMMUNICATIONS:

Ron Maykel, Pacifica, stated that they broke the Guinness Book of Records for the amount of time taken to approve a CIP. He mentioned that Oral Communications being the last item on the agenda. He used to be on the Commission and Oral Communications was up in the front. Then Council had a problem with a particular speaker who was very disruptive and it affected the psyche of the Councilmembers from the beginning of the meeting and they changed oral communications to later in the meeting. The Planning Commission then followed suit which probably wasn't necessary. He thought that, considering that they sometimes have lengthy meeting and they have to wait, they might want to consider giving people a chance to talk and get out of there.

ADJOURNMENT:

There being no further business for discussion, Commissioner Cooper moved to adjourn the meeting at 10:36 p.m.; Commissioner Vaterlaus seconded the motion.

The motion carried 7-0.

Ayes: Commissioners Vaterlaus, Cooper, Gordon,
Campbell, Evans, Nibbelin and Chair Brown
Noes: None

Chair Brown declared that anyone aggrieved by the action of the Planning Commission has ten (10) calendar days to appeal the decision in writing to the City Council.

Respectfully submitted,

Barbara Medina
Public Meeting Stenographer

APPROVED:

Planning Director Wehrmeister