

**CITY OF LOVELAND
PLANNING COMMISSION MINUTES
March 12, 2012**

6 A meeting of the City of Loveland Planning Commission was held in the City Council Chambers on
7 March 12, 2012 at 6:30 p.m. Members present: Chairman Meyers; Vice Chairman Middleton; and
8 Commissioners Dowding, Crescibene, Leadbetter and Molloy. Commissioners Krenning and Ray
9 were absent. City Staff present: Robert Paulsen, Current Planning Manager; Judy Schmidt, Deputy
10 City Attorney.

12 These minutes are a general summary of the meeting. For more detailed information, audio and
13 videotapes of the meeting are available for review in the Community Services office.

COMMISSIONER COMMENTS

17 There were no comments.

STAFF MATTERS

21 **Robert Paulsen, Current Planning Manager**, reported as requested by the Planning Commission,
22 that City Manager Bill Cahill would be attending the Planning Commission Meeting on April 23,
23 2012 to discuss the City's long-range land use objectives and priorities. This information would be
24 provided in a study session format. Mr. Paulsen added that Mr. Cahill would also be providing some
25 basic training Board and Commission training in the study session.

COMMITTEE REPORTS

29 **Mr. Paulsen** reported that a Title 18 Committee meeting would be held on Thursday, March 15th;
30 the topic of discussion would be Title 16 the requirements relating to the installation of public
31 improvements on development sites.

33 **Chairman Meyers** stated he and Vice Chairman Middleton attended the 2012 Boards and
34 Commission Summit held at the Rialto facility. He stated they had a discussion with the
35 Transportation Commission regarding the 402 Corridor and stated they would like to hold a joint
36 meeting with the Transportation Commission in April to meet to discuss what they are working on
37 making sure that everyone was in alignment.

39 Vice Chair Middleton thanked City Council for hosting the recent Boards and Commission Event.

1 **REGULAR AGENDA**

2

3 **1. Kum & Go Appeal SR #896.**

4

5 This is a public hearing matter involving an appeal of the Planning Division's approval of a Special
6 Review for a proposed Kum & Go gas station and convenience store at the SW corner of Eisenhower
7 Boulevard and Boise Avenue. The appellant is Kevin Borchers who represents Champion K&K
8 Enterprise, LLC, the owner of the Sylmar Mobile Home Park; this mobile home park is located
9 immediately south of the subject site. Mr. Borchers contends that noise from the proposed business
10 will have a detrimental impact on residents of the Sylmar Park and that the proposed 8 foot high
11 noise mitigation wall will not sufficiently mitigate noise impacts. A 12 foot high noise mitigation
12 wall is desired by the applicant.

13

14 **Robert Paulsen, Current Planning Manager**, commented for the record that this project has
15 been managed by a series of planners. The original planner was Brian Burson who suffered a
16 severe health crisis and then the project was given to Troy Bliss who has resigned and taken a
17 position in South Carolina. He stated the process for the hearing is as follows:

18 • Explanation (overview) of the appeal by staff
19 • Appellant's presentation
20 • Presentation by staff and other parties, including the applicant
21 • Public comment
22 • Rebuttal by appellant
23 • PC discussion, motion & vote

24

25 **Mr. Paulsen** stated that staff is requesting the Commission adopt a motion to recommend
26 approval the project as designed.

27

28 **Mr. Paulsen** reviewed slides depicting the vicinity of the subject property and indicating the
29 proposed development on the site and the proposed access to the site. He indicated that the
30 applicant is responsible for mitigation of the on-site noise and commented a noise study was
31 submitted by the applicant. Mr. Paulsen reported the appellant and residents who attended a
32 neighborhood meeting in November supported a 12 foot wall which was presented by the
33 applicant. He stated that staff, at the time of the neighborhood meeting, was amenable to that
34 suggestion. He noted that Preliminary Findings were posted after that meeting, indicating there
35 would be a 12 foot wall. He stated that after further staff review and discussion, staff contacted
36 the applicant and inquired as to whether there were other ways to mitigate noise from the site
37 other than using a 12 foot wall, which is significantly in excess of the 6 foot 3 inch height limit
38 on perimeter walls included in the Loveland Municipal Code. He reported the applicant
39 reviewed the noise study and it was determined that an 8 foot wall would provide adequate noise
40 mitigation to the Sylmar Park residents. He stated Final Findings for the Special Review were
41 posted in February and that the Final Findings indicated that noise mitigation was being remedied

1 with an 8 foot wall. Mr. Paulsen further indicated that the height of the wall is the focus of Mr.
2 Borchers' appeal.

3

4 **Mr. Paulsen** clarified that a Special Review use can be administratively approved by the issuance of
5 a Type 2 zoning permit. He stated when the administrative issuance of a Type 2 zoning permit is
6 appealed to the Planning Commission; the Commission must determine whether to approve the
7 Special Review by issuance of a Type 3 zoning permit—as specified by the zoning code.

8

9 **Kevin Borchers, appellant and owner of Sylmar Park**, reported he was appealing the Final
10 Findings (staff approval) for the Kum & Go because of the location of the driveway entrance from
11 Boise and the city approval of an 8 foot wall. He stated that the wall would not protect residents of
12 the mobile home park from a 24/7 business and stated that the entrance to the site was 17 feet from
13 the fence of one home. He gave a timeline of events, noting at the February meeting concerns
14 regarding the driveway were raised and at the neighborhood meeting in November that there was an
15 agreement that a 12 foot wall along the back of the property and an 8 foot wall down Boise to the
16 park entrance would meet the needs of the neighborhood.

17

18 **Mr. Borchers** commented that someone in the city did not like a 12 foot wall, stating that it would
19 create an undesirable precedent for other businesses to build 12 foot walls. He commented he was
20 told that there were concerns regarding how the wall would look to tourists. He stated he was upset
21 that the city made a decision that would place an intersection 17 feet from his property and not
22 protecting them from a 24/7 business. He believed that this project, as an owner of the Sylmar Park
23 community, would cause him a loss of income and diminish the home values. He stated the issue
24 was not the height of the wall but the placement of the driveway.

25

26 **Commissioner Molloy** questioned if Mr. Borchers knew what the noise levels are at night, and is it
27 constant.

28

29 **Mr. Borchers** stated that currently the noise is a constant hum.

30

31 **Staff Rebuttal**

32

33 **Mr. Paulsen** stated the purpose of the special review is to determine if there is compatibility
34 between the proposed use and surrounding uses, and when necessary to require conditions to ensure
35 compatibility. With the Kum & Go proposal, the primary issue concerns noise projected to be
36 generated by the Kum & Go use. He explained that the noise from the Kum & Go use needs to be
37 mitigated in order to conform with the City's noise ordinance levels. Mr. Paulsen again showed the
38 right-in right-out entrance from Eisenhower and commented the applicant has agreed to the
39 landscape buffer. He stated that staff understands that a 12 foot wall would provide a greater noise
40 buffer, but clarified an 8 foot wall would meet the City's noise standard requirements.

1 **Mr. Paulsen** stated that the reason that for reconsidering the height of the wall was that the city
2 height standard is 6 feet 3 inches and after consultation and discussion with numerous staff members
3 there was the consensus that a 12 foot wall was too great a deviation from the standard to approve
4 administratively. He stated that staff was comfortable with the recalibrated noise study, stating the
5 study was revised to reflect lower night time traffic volumes that would occur on the site. The
6 revised study lowered the projected traffic volumes from a peak hour level by 40% --a level staff
7 believes is a reasonable reduction based on typical traffic patterns. He reiterated that staff is
8 supportive of the project and believes the applicant has done everything that has been asked of them.
9

10 **Commissioner Dowding** asked if the access from Boise Avenue was the minimum safe distance
11 from the intersection.

12 **Jeff Bailey, Transportation Development Review**, stated that LCUASS requires accesses be
13 moved as far from intersections as possible. He clarified that the access onto Boise would line up
14 with Topez Drive as much as possible, which the applicant has done, and due to the turn radius the
15 location of the drive could not be perfectly aligned. He clarified that staff was confident this drive
16 was a safe distance from the intersection.
17

18 **Mr. Bailey** also responded to a question from Chairman Meyers about the revisions to the noise
19 study based on reduced nighttime traffic volumes, stating that with a convenience store, the peak
20 traffic hours are consistent with peak hours for the adjacent roadway. While Mr. Bailey indicated
21 that his office does not review noise studies, he believed that the reduction in nighttime traffic
22 volumes is potentially more than 40% and felt the revised traffic study was very conservative.
23

24 **Applicant**

25 **Phil Hoey, representing the applicant**, clarified they have held 4 neighborhood meetings for this
26 project. He clarified that the noise study was independent to this site and not taken from the store on
27 Highway 287. He stated the original traffic study was based only on peak traffic hours and did not
28 provide a realistic projection of traffic noise at night. With the reduction in nighttime traffic
29 volumes, the wall height was able to be reduced to 8 feet and still meet City standards for noise. He
30 clarified city setback requirements can and have been met, and the location of the driveway has been
31 addressed by Mr. Bailey. Mr. Hoey stated there was a discussion with the neighbors regarding the
32 parking area on the east side of the building being noisy and they have determined that location
33 would be reserved for employee parking to reduce the noise impact. He added that deliveries would
34 be made only during normal business hours. He stated that the noise level in the Sylmar Mobile
35 Home Park would be less when the project is built than what is heard currently.
36

37 **Josh Erramouspe, Olsson and Associates**, reemphasized that parking on the eastside of the
38 convenience store building would be for employees only and signage will be installed identifying
39 that. He spoke of the significant landscape features to screen the property from Boise Avenue and
40

1 Eisenhower Boulevard as well as substantial landscaping on the right side of the building. He stated
2 at the request of staff, they have agreed to plant in the utility easement and also make any landscape
3 repairs if there is a need to access the utilities in the easement.

4
5 **Mr. Erramouspe** commented that the biggest concern from the neighbors, as expressed at the
6 neighborhood meetings, was noise. He reported that prior to conducting the noise study their
7 engineers went to the site and measured the ambient noise.

8
9 **Commissioner Dowding** asked why they are constructing a precast concrete wall and asked if they
10 had looked at alternative materials such as a "whisper wall" which is constructed of recycled tire
11 based a sound barrier that absorbs sound rather than reflecting it.

12
13 **Mr. Hoey** stated that the wall would be constructed in an easement and it would be easier to move a
14 precast wall should wall removal be necessary due to maintenance or other issues.

15
16 **Chris Rolling, Olsson Associates**, responded to Commissioner Dowding stating the HUD
17 calculations in appendix C were prepared prior to the revised wall height.

18
19 There was a discussion regarding what the wall would look like and Commissioner Dowding asked
20 if there would be something that would relieve the vast blankness of the wall. **Mr. Hoey** stated that
21 there would be some type of pattern on the wall, clarifying that it would not be a large blank slab of
22 concrete. He clarified that the wall company he has been working with usually pre-casts the wall
23 panels in 4-foot increments, but they could do any height.

24
25 **Commissioner Middleton** asked how large and how many HVAC units there would be and if they
26 were rooftop or ground units.

27
28 **Mr. Erramouspe** clarified there would be four rooftop HVAC units. He described the screening
29 that would be done to block the sound. He clarified they conducted a noise study on a property with
30 the same number of units in the same area and that the noise levels satisfied city standards.

31
32 **Vice Chair Middleton** stated that a general calculation for each unit is approximately 30 decibels
33 per 30 ton unit and stated that there was a condition that states the units would be at ground level.

34
35 **Mr. Erramouspe** stated that information is from the Preliminary Findings, the Final Findings
36 identify that the units would be rooftop units and surrounded by a parapet wall. They discussed the
37 screening of the rooftop units.

38
39 **Vice Chair Middleton** suggested that a 12 foot wall would create a snow fence and believed it could
40 be an issue. He questioned maintenance of the landscaping between the wall and the building. **Mr.**
41 **Erramouspe** stated the applicant would be responsible for the landscaping which will be in the

1 right-of-way and commented the neighbors asked for a retaining wall on the south side of Boise for
2 their protection.

3
4 **Commissioner Molloy** expressed concerns regarding noise and questioned where the noise would be
5 more predominate with respect to the homes that back up to the fence, commenting most mobile
6 homes have their bedrooms in the rear of the home.

7
8 **Mr. Rolling** stated the noise study addressed the shadow effect of the wall as well as the distribution
9 of sound moving further away, stating that the further away from the wall the sound is it should be
10 lessened.

11
12 **Mr. Erramouspe** stated the neighbors expressed concerns about the potential for noise of the
13 eastside of the property. He passed out a proposed condition of approval from Kum & Go which
14 states if the appellant does not grant the necessary easements to build and maintain the noise wall as
15 shown on the current application, the applicant proposes that the wall be relocated to what is shown
16 on Exhibit A (**Applicants Exhibit A**). This location would align with the rear of the building and
17 would be moved in from the property line. He clarified the noise study only addressed the noise
18 generated from the Kum & Go use, not noise from the surrounding roads or businesses.

19
20 **Commissioner Crescibene** stated that more emphasis has been placed on the wall and felt the issue
21 was the driveway.

22
23 **Chairman Meyers** commented that on the Applicant's Exhibit A, moving the wall to its original
24 location would create a risk for both the neighbors and the employees and customers. He believed
25 that locating the wall along the property line (as proposed) was more appropriate.

26
27 **Mr. Hoey** stated the reason the wall location was moved to the property line was due to the input
28 from staff and the neighbors.

29
30 **Chairman Meyers** stated then it would not be reasonable that the wall would be moved.

31
32 **Mr. Hoey** stated that after speaking with the Police Department they would still support moving the
33 wall.

34
35 **PUBLIC COMMENT**

36
37 **Cynthia Ward, 1519 Sylmar**, spoke in support of a 12 foot wall but expressed concerns regarding
38 noise, wall height and noise generated by the HVAC units.

38
39 **Russ Gabbia, owner of the 7-11 Store**, spoke of his customer flow and the increase in customers
40 during the summer. He stated the Kum & Go Store would have a negative impact on his store. He

1 urged the Commissioners to consider the impact the project would have on the residents of the
2 mobile home park.

3
4 **Tim Ward, 1519 Sylmar**, stated he lived 22 feet from the driveway which provides access into the
5 Kum & Go site. He spoke of how the sound waves bend. He expressed concerns regarding wall
6 height, gas fumes, and light pollution and security issues for people in the mobile home park. He
7 supported the 12 foot wall and stated that he urged the Commission to approve the originally
8 proposed 12 foot wall for the protection of the mobile home park residents.

9
10 (Secretary's Note: **Commissioner Crescibene** excused himself at 8:38 p.m.)

11
12 **Commissioner Fancher** stated that the applicant does not want to move the wall back, but would
13 have to if they cannot obtain an easement from Sylmar 3rd Addition.

14
15 **APPELLANT REBUTTAL**

16
17 **Mr. Borchers** stated that he believed that the traffic study was taken by a book count and did not
18 take into consideration that people live in the Park. He stated that it would be quieter in the park
19 with the wall and still expressed concerns with the traffic that would be coming in and out of the site.
20 He stated they would rather look at a 12 foot wall than the gas station. He stated that the easement
21 (where the wall was to be located) was created by an attorney, at his expense, and when an
22 agreement is reached regarding the project, he will sign the easement. He reemphasized he would
23 still prefer a 12 foot wall.

24
25 **Commissioner Dowding** asked Mr. Borchers if he would sign the easement if the wall stays in the
26 location as proposed.

27
28 **Mr. Borchers** commented he would sign, but emphasized his desire for a 12 foot wall. He reported
29 that he was responsible for obtaining a variance for the 8 foot wall on Boise Avenue since it was
30 over 6 foot 3 inches.

31
32 **Commissioner Dowding** requested that Mr. Borchers clarify his concerns.

33
34 **Mr. Borchers** stated that he wanted the wall to be located along the property line, and also wanted a
35 "turn down" wall to extend southward along Boise and that the turn down wall should be taller than
36 8 feet.

37
38 **COMMISSIONER COMMENTS**

39
40 **Commissioner Dowding** stated she did not believe an 8 foot wall was sufficient and supported a 10
41 foot wall and stated that if someone wanted to climb over the wall and get into the mobile home

1 park, the height of the wall would not be a factor. She commented that whatever height the wall is
2 will substantially mitigate the current noise levels.

3
4 **Commissioner Molloy** was opposed a 12 foot wall stating it sets a precedent and was not
5 aesthetically pleasing. He stated the applicant has conducted a noise study and determined that an 8
6 foot wall would be sufficient to mitigate the sound and as well as comply with the city's noise
7 ordinance. He supported an 8 foot wall.

8
9 **Vice Chair Middleton** thanked the applicant for their presentation and thanked the residents of the
10 Mobile Home Park for raising their concerns. He commented that there was an early agreement for a
11 12 foot wall and that is what he supports. He stated that the HVAC units would be a noise issue for
12 the residents.

13
14 **Commissioner Leadbetter** concurred with Commissioner Molloy that an 8 foot wall was sufficient
15 but would recommend the applicant be responsible for obtaining the variance for the wall along
16 Boise Avenue.

17
18 **Commissioner Fancher** concurred with Commissioner Leadbetter and supported an 8 foot wall.

19
20 **Chairman Meyers** stated he supported a 12 foot wall and that was what was originally agreed on.

21
22 *Commissioner Fancher made a motion to deny the appeal and uphold the determination of the
23 Current Planning Manager to approve a Special Review and issue a Type 3 Zoning Permit for a
24 proposed Kum & Go gas station/convenience store based on the findings specified in Section IX
25 and subject to the conditions as specified in Section X of the March 12, 2012 Planning
26 Commission staff report, as modified on the record. Upon a second by Commissioner Molloy the
27 vote was as follows: Yeas: Commissioners Leadbetter, Molloy and Fancher. Nays:
28 Commissioners Dowding, Meyers and Middleton. The motion failed.*

29
30 *Commissioner Dowding made a motion to approve the appeal and to deny the determination of
31 the Current Planning Manager to approve a Special Review and issue a Type 3 Zoning Permit for
32 a proposed Kum & Go gas station/convenience store based on the findings specified in Section IX
33 and subject to the conditions as specified in Section X of the March 12, 2012 Planning
34 Commission staff report, as modified on the record. Upon a second by Commissioner Middleton
35 the vote was as follows: Yeas: Commissioners Dowding, Meyers and Middleton. Nays:
36 Commissioners Leadbetter, Molloy and Fancher. The motion failed.*

37
38 **Chairman Meyers** stated that he would like to continue the hearing and ask that Commissioner
39 Crescibene review the materials in detail, including the video of the meeting, and continue the
40 discussion at a special meeting on March 19, 2012.

1 *After a brief discussion, Commissioner Dowding made a motion to continue the hearing to a
2 special meeting to be held on March 19, 2012 at 6:30 p.m. in the Council Chambers. Upon a
3 second by Commissioner Middleton the motion was adopted 4-2. Yeas: Commissioner Meyers,
4 Dowding, Middleton, Leadbetter. Nays: Commissioners Fancher and Molloy.*

5 **ADJOURNMENT**

6 *Commissioner Middleton made motion to adjourn. Upon a second by Commissioner Fancher
7 the motion was unanimously adopted.*

8 _____
9 Buddy Meyers, Chair

10 _____
11 Vicki Mesa, Secretary