



## STAFF REPORT

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**To:** Planning Commission  
**From:** Community Development Director  
**Date:** February 15, 2005  
**RE: PC 03-40**

Continued from January 18, 2005 meeting. Amendment of Conditional Use Permit (CUP) for phased development of Sayaji U Ba Khin Vipassana Foundation meditation center, increasing scope of development with addition of five modular buildings in Phase One, increasing floor area by 8,448 square feet, southwest corner of Twentynine Palms Highway and Mantonya Road. (APN 613-071-03)

**RECOMMENDATION:** Conduct the continued Public Hearing and approve the CUP Amendment subject to the additional Conditions of Approval.

**BACKGROUND:** This matter was presented to the Planning Commission at the January 18, 2005 meeting. At the request of the applicant, the public hearing was continued.

Please ensure that you have the January 18, 2005 staff report and attachments with you for the meeting. If you do not have these materials, please contact staff before February 15<sup>th</sup> so that we can get them to you.

In requesting the continuance, the applicant wanted an opportunity to address the visual impacts discussed at the January 18<sup>th</sup> meeting and wanted an opportunity for additional discussion with staff regarding required street improvements.

### Visual Impacts

The Planning Commission expressed concern regarding the visual impact of the additional modular units. In response to the Commission's concerns, the applicant proposes to relocate the one unit, identified as the female long-term server residence, to be farther from Twentynine Palms Highway; this is depicted on the *Conceptual Draft Landscape Plan*. Additionally, all of the units are lowered to about six inches above ground level instead of the earlier proposal, presented January 18<sup>th</sup>, in which they were three feet above grade. The landscape plan indicates that oleanders, Italian stone pine and Fremont cottonwoods will be planted. Reference is also made to Mexican palo verde and catclaw acacia as available options.

Staff consulted with two local landscape professionals who express concern regarding the root systems for these types of plants. Staff then passed the comments along to the applicant who has submitted an addendum (dated February 3, 2005) to the landscape plan.

### Attachments

- February 1, 2005 letter from applicant Philip Block
- Conceptual Draft Landscape Plan (and site plan)
- Applicant's addendum to landscape plan
- Staff's recommended addendum to Conditions of Approval
- "Let's Go Native" landscape guide

Based on comments received, staff is recommending that the applicant be required to place a deep root system for any planting located within ten (10) feet of a public sidewalk. The deep root system is designed to contain the lateral growth of the roots.

If the Commission is concerned with the types of plants proposed, the applicant states they are willing to replace them with either blue palo verde or Mexican palo verde. They note that neither species of the palo verde will provide as dense a visual shield as will the oleander. Other types of vegetation that could be considered are honey mesquite or desert willow.

The landscape plan provides information regarding the ultimate height of the trees to be planted but does not include information regarding the size of the trees to be planted or the watering system detail. This is relevant because they will be factors in determining how long it takes for the plantings to provide the required screening mitigation. In the landscape plan *addendum*, the applicant states that plant sizes are one-gallon and five-gallon specimens and that the plants will be eight to ten feet in height after two years.

To ensure that adequate visual mitigation results in a timely manner, staff is recommending a condition to require that the applicant provide a watering system and watering schedule that will result in the trees reaching a minimum of eight feet in height within two years.

Staff and the applicant have relied on the “Let’s Go Native” landscape guide, prepared by local citizens, in preparing the proposed landscape plan. To assist the Planning Commission in evaluating the landscape plan, staff has included a copy of the guide in the attached materials.

### **Street Improvements**

The October 21, 2003 approval for this project includes conditions for street improvements per standards established in the General Plan. Subsequent to the approval, the applicant had discussions with the City Manager regarding deferral. Staff’s understanding at the January 18, 2005 meeting, was that the deferral agreement had been executed. Therefore, staff recommended on January 18<sup>th</sup> the existing Conditions of Approval with the deferral incorporated into the previously approved Conditions. However, the applicant states that only preliminary discussions regarding deferral were held and that the process was not finalized. Given these facts, staff is recommending that the Commission determine what additional conditions are necessary, leaving the existing Conditions of Approval intact, and approving an addendum to the October 21, 2003 Conditions of Approval. Draft Conditions, as an addendum to the original Conditions, are attached.

### **Summary**

If the Commission is satisfied with the proposal, staff recommends approval subject to the additional Conditions of Approval. If approved in this way, the applicant could request a deferral of public improvements from the City Manager who is the approval authority for such requests pursuant to Development Code Chapter 19.85.



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**To:** Planning Commission  
**From:** Community Development Director  
**Date:** February 15, 2005  
**RE: PC 04-62**  
Review of Chapter 19.36, Home Occupation Permits

**RECOMMENDATION:** Formulate a recommendation to the City Council.

**BACKGROUND:** Per the City's Development Code, certain types of businesses can be operated under a Home Occupation Permit in a residential land use district. Typically these are businesses that do not generate significant amounts of traffic and, because impacts are minimal, they exist without diminishing the quality of residential areas. The regulation of home-operated businesses is contained in Chapter 19.36 of the Development Code, *Home Occupation Permits*. This Chapter was originally adopted by the Council as Ordinance No. 73 on January 23, 1990 and has since been codified into the Development Code as Chapter 19.36.

### Attachments

- Development Code Chapter 19.36
- Summary of other Cities Business License fees and attachments

At the January 25, 2005 meeting, Council reviewed operating standards contained in Section 19.36.070 of the Development Code and requested that the Planning Commission consider amendment to the section. Per subsection D of this section, all equipment used in conjunction with a home occupation must be screened from public view. Council requests consideration of an amendment to, 1) allow vehicles that are licensed by the state to be parked in residential areas, and/or 2) require such vehicles to be parked on private property (as opposed to on a public street.)

Additionally, Council expressed concern regarding the fee paid by home occupation licensees. Fees are charged for services provided by the City per a fee schedule adopted by Council each June, for the ensuing fiscal year. Per state law, the fee cannot exceed the City's cost in providing the service for which the fee is charged. The current fee for a Home Occupation Permit is \$50 for the initial application and \$10 per year for renewal. The higher fee for the initial application is to cover the cost of notifying adjacent residents of the proposed home occupation. The \$10 annual fee is charged for maintaining the file, mailing renewal notices, reviewing the renewal application, and printing, mailing and issuing the license.

Under the current code, a home-based business is also required to have a business license (in addition to the Home Occupation Permit.) The fee schedule adopted by Council specifies that the fee for the Business License is \$50 for the initial application and \$10 for each renewal. Because a home-based business requires both licenses, the operator pays more than does a business in a

commercial area. Council requests that the Planning Commission consider this and provide a recommendation.

When a Business License application is submitted, staff routes it to all agencies and City departments for review and comment. The initial \$50 fee for the Business License application covers the staff time. When a Home Occupation Permit application is submitted, staff is required to notify all adjacent property owners. The \$50 fee for the initial HOP covers the staff time for this review. Therefore, staff believes that, because of the additional review necessary for a home based business, the additional cost for the initial application is justified.

However, the City currently charges a renewal fee of \$10 for each of the required licenses. For a home-based business, the annual renewal is \$20 and for a business in a commercial location, the fee is \$10. Fees are to offset the cost of providing the service; because the staff time necessary to renew a license for a home-based business is the same as the staff time necessary to review a commercially based business, the fee for renewal of both should be the same. Therefore, staff recommends consideration of deleting the fee for the annual renewal of a Home Occupation Permit.

To assist in the Planning Commission's analysis of this matter, staff has provided an overview of what eight other cities charge for licensing of home-based businesses and whether these cities require both licenses for a home-based business. All of the eight cities do require that home-based business have both licenses; some of them charge more for a home-based business than they do for a commercially based business, and others do not.

All the cities contacted charge more for this service than does the City of Twentynine Palms.

The Planning Commission should consider the matters as requested by Council and provide direction on possible amendments to Chapter 19.36 and/or the fee schedule.



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**To:** Planning Commission  
**From:** Community Development Director  
**Date:** February 15, 2005  
**RE: PC 04-53**  
Review of right-of-way dedications

**RECOMMENDATION:** Conduct the hearing and provide a recommendation to the City Council.

**BACKGROUND:** Councilmembers Cole and Spear were selected by Council to serve on a Circulation Subcommittee. The Subcommittee met on November 1, 2004 to review circulation issues. Following the discussion, the Subcommittee requested that staff present the road dedications issue to the Planning Commission for consideration and recommendation.

### Attachments

- City Attorney Memo
- Staff summary of other cities policies

The Planning Commission reviewed the issues as requested by the Subcommittee at their November 16, 2004 meeting. After discussing the issue in Study Session, the Planning Commission recommended that dedications be a requirement for issuance of a residential building permit if the permit is for a change of footprint of 200 square feet or more. For commercial, institutional or industrial uses, the requirement is triggered by any expansion of footprint or as a condition of approval for a Minor Use Permit or Conditional Use Permit.

Council considered the Planning Commission's recommendation at their January 25, 2005 meeting. After discussion, Council directed staff to resubmit the matter of road dedications to the Commission, with the following directives:

1. That the Planning Commission reword all references to right-of-way dedications. Specifically, that references to square footage be removed, that references to Conditional Use Permits, Minor Use Permits, and Temporary Use Permits be removed, and
2. That the triggering mechanism for right-of-way dedications be linked to a completed traffic study that definitely establishes that the proposed project at an existing structure will affect traffic in the project area, and
3. That all new construction on any and all vacant lots shall comply with the circulation element and proper setbacks shall be complied with in order to facilitate future construction.

The Planning Commission should reconsider their November 16, 2004 recommendation within the framework provided by Council and formulate a revised recommendation.

Commissioner Masterson requested that staff research how other cities handle such requests. Responses from six jurisdictions are provided in the attachment to the following questions:

What is the threshold for requiring road dedications for an existing residence when an increase in footprint is proposed if there is currently no public access?

What is the threshold for requiring road dedications for an existing residence if an increase in footprint is proposed and there is substandard public access (for example, a 30' half-width is established but the standard is 52')?

What is the threshold for requiring road dedications for vacant residential land when a new dwelling unit is proposed and there is currently no public access?

What is the threshold for requiring road dedications for vacant residential land when a new dwelling unit is proposed and there is public access but it is substandard?

Are road dedications required as a condition of approval for a CUP, is there a threshold or is it always required?

## **Background**

Road dedications are the legal means through which the City ensures legal access to properties. As land is divided through the subdivision process, the developer is required to provide road dedications per the established standards. Numerous properties in our city were created prior to incorporation without the necessary road dedication. In other cases, a road dedication exists but it is not the width established by the Council as the standard for the road.

To secure rights-of-way, Council has adopted policies in the General Plan and Development Code that staff implements as subdivisions are proposed and as development occurs on existing properties. While this does not solve all existing problems—that is, it does not create the needed rights-of-way throughout the City—it does secure the rights-of-way one property at a time (as development occurs) and prevents structures from being built in a future right-of-way or in a manner that is not consistent with the General Plan. Roadway development standards are found in Exhibit D on pages II-14 and II-15 of the General Plan. This exhibit shows the required width of road dedications and the width of the actual road when constructed. The Circulation Plan also classifies all roadways in the City; the classifications are Expressway, Arterial, Collector, and Local.

Per Section VII on page II-25 of the City's Circulation Plan in the General Plan, adopted by Council on May 25, 2004, rights-of-way are to be secured for new development and for intensifications of existing development. The section states:

### **SECURING RIGHT-OF-WAY**

The inconsistent securing of adequate right-of-way prior to development can result in irregular paved road widths, reduction in roadway capacities, and limitations of the long-term viability of road segments. As the City plans for future growth, securing adequate right-of-way is a priority. For all new development and intensifications of existing development, right-of-way needs and solutions shall be pursued in accordance with the Circulation Plan.

This requirement is also reflected in Goal #1 on page II-47 of the Circulation Plan of the General Plan. The #1 Circulation Plan goal is:

A circulation network to safely move people and goods to and through the City.

The stated purpose of Goal #1, as adopted by Council, is the safety of all residents and visitors. As required by State law, the General Plan contains policies and programs to implement the goals established in the General Plan. Policy #1.2, under Goal #1 is:

Quality standards will be applied to all new and reconstructed roadways as development occurs.

The policy is implemented through programs identified in the General Plan. Per Circulation Plan Program 1.2.1:

Streets will be constructed per standards established in the Circulation Plan when new projects are constructed or existing uses are intensified.

The above policy is also reflected in each of the zoning chapters of the Development Code. Chapters 19.07, 19.08, 19.09, 19.10, 19.12, 19.14, and 19.15, adopted by Council October 14, 2003, cover all land within the City. The Development Code sections are entitled, “Street Dedications and Improvements” and they state, in part:

Before building permits are issued for the construction of a structure or improvement which would result in an increase or change in vehicular and/or pedestrian traffic, the dedication of additional right-of-way and construction of required street improvements shall be required in accordance with the General Plan Circulation Element.

The Development Code also has text regarding the requirement for road dedications in cases where a property is intensified, whether or not a building permit is required for the development. (For a definition of *Intensification of Use*, see page 06-17 of the Development Code). An intensification of use can occur in the case of a new use being introduced to an existing building. Additionally, the Approval Authority—either Planning Commission or City Council—is required to make specific findings before approving a use permit such as a Minor Use Permit, Conditional Use Permit or Site Plan Review. Section 19.30.060 of the Development Code, for example, provides the required Findings for Approval for Conditional Use Permits. The section states, in part:

Prior to approving a Conditional Use Permit as prescribed by this Chapter, the Planning Commission shall make the following findings:

- A. That the proposed design and location of the conditional use and the conditions under which it will be operated are in accordance with the purpose of this Development Code, the zoning regulations applicable to the site, the City of Twentynine Palms General Plan, and other applicable development policies and standards of the City; and
- B. That the proposed design and location of the conditional use and the conditions under

which it will be operated will not be detrimental to the public health, safety, or welfare, or materially injurious to uses, properties or improvements in the vicinity...

Based on the text in the General Plan and Development Code, staff has historically required a property owner to provide a road dedication when, 1) land is divided therefore creating new lots, 2) new development is proposed and the new development requires a building permit, or 3) a change of the use of a property is proposed that meets the definition of intensification as contained in Chapter 19.06 of the Development Code.

### **Legal Issues**

The courts have upheld a city's requirement for road dedications so long as there is a nexus between the requirement and the development and there is a rough proportionality or reasonableness with regard to what is being required. Per the City's existing policy, the road dedication requirement is triggered by either development or intensification.

Development could be a new structure or expansion of an existing structure. A garage or carport, for example, provides for additional vehicles. The addition of a room to a home increases the potential occupancy. Because there is a nexus, the requirement can be defended if challenged.

We are also required to ensure that there be a reasonable relationship between what is being required and the actual development. For example, we could not require a citizen to build a portion of a major roadway just because they came in to get a building permit for a garage. If, on the other hand, they were proposing to establish a trucking business in an existing location, the City could require development of the adjacent streets because a reasonable argument can be made that there is not only a nexus (improved street to accommodate newly induced truck traffic) but also that there is a reasonable relationship, with regard to cost, between what is being proposed and what is being required to facilitate the new traffic.

Prior to adoption of the Development Code and General Plan, the City Attorney reviewed the policies stated above and concurred with the policy that eventually was adopted. As a result of the interest that has been expressed in this policy, the City Attorney has revisited the issue and recommends that the City perform a case-by-case analysis to ensure that the requirement for a road dedication meets the requirements of nexus and rough proportionality. A detailed discussion on this is contained in the City Attorney's attached memo.

The Planning Commission's November 16, 2004 recommendation was formulated prior to staff receiving the City Attorney's recommendation that a case-by-case analysis be conducted. Therefore, when staff presented the Commission's recommendation to Council, staff recommended adding the City Attorney's recommendation of a case-by-case analysis to the Planning Commission's recommendation.

### **Summary**

Staff recommends that the Planning Commission revisit this issue and revise their recommendation per Council's January 25, 2005 directive.