



# CITY COUNCIL AGENDA

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MEETING DATE: JANUARY 19, 2010  
TO: CITY COUNCIL / CITY MANAGER  
FROM: COMMUNITY DEVELOPMENT DEPARTMENT  
SUBJECT: SCOPE OF PLANNING COMMISSION CONSIDERATIONS

Approved for Agenda:

  
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City Manager's Office

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## SUMMARY

A request to affirm or clarify the Planning Commission scope of considerations when deliberating or making decisions on a proposed development.

## RECOMMENDATION

That the City Council:

1. Receive and file letter from Planning Commission Chair Dexter R. Savage;
2. Provide direction as to whether the Planning Commission should include economic feasibility, beyond what has previously been advised, in the Planning Commission scope of considerations when deliberating or making decisions on a proposed development.

## PROPOSED COST

None

## DISCUSSION

At a number of Planning Commission meetings in the past, an issue has been raised on the appropriateness of Commissioners to consider the economic feasibility or financing of a project when making decisions. Most recently at its November 18, 2009, meeting, the Planning Commission again debated this issue during a hearing for the Olson Urban Housing/Richman West project (PRJ09-00005). As a follow-up to the Planning Commission's November meeting, Chair Dexter R. Savage prepared a letter dated December 14, 2009 (Attachment 1) to the City Council asking concurrence with or alternative direction to the following scope of the Planning Commission when deliberating or making decisions on a proposed development:

The Planning Commission, when deliberating or making decisions on a proposed development, shall not consider the financing or economic feasibility of the project. Rather, the Planning Commission's considerations shall be limited to consistency with the General Plan, Zoning Code, other laws, and community standards.

Staff has consulted with the City Attorney on this matter who offered the following important exceptions where some level of economic discussion is necessary:

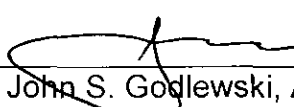
1. "Under CEQA, if a project causes significant environmental impacts, all "feasible" mitigation measures must be incorporated to reduce those impacts to an "acceptable" (i.e., less than significant) level. The term "feasible" in this context means "capable of being accomplished in a successful manner within a reasonable period of time, taking into account *economic*, environmental, legal, social, and technological factors." (Section 15364 of the State CEQA Guidelines; emphasis added.) Thus, economic and financial issues enter into the decision-making process. The Planning Commission has to address this "feasibility" issue from time to time (e.g., it's often a primary consideration when considering whether there are feasible alternatives to the demolition of a historic building).
2. The Planning Commission is required to make a recommendation to the City Council on Development Agreements. DAs often have financial/economic provisions in them—e.g., a developer agreeing to pay "development agreement fees" or provide extraordinary overriding public benefits in consideration for the granting of the "vesting rights" in a DA. In order for the decision-makers (City Council, assisted by the Planning Commission) to make an informed judgment on what level of extraordinary public benefits it's fair or appropriate to ask a developer to provide, it may well be appropriate for them to have an understanding as to the profitability of the project, which requires that they understand (at least to some extent) the project economics. There is no rule I am aware of that says only the Council can review this sort of information and not the Planning Commission.

3. When considering variances, the economic feasibility of a property owner being able to comply with existing code provisions enters into whether a "hardship" exists that justifies approval. For example, if a developed site doesn't have adequate off-street parking, should a parking variance be approved or should the owner be required to demolish and rebuild a smaller project (or construct structured or underground parking)?
4. This may go beyond the scope of the question, but economics play a significant role in deciding the amount and distribution of various land uses, particularly when the City is considering how properties should be general planned or zoned. Is there a market for more of a particular kind of office or commercial retail use?
5. At the extremes, if the City downzones land so severely that the owner is denied "all reasonable and economic use" or the owner's "reasonable investment-backed expectations" are interfered with (these are phrases that come out of court decisions); the City's action may amount to inverse condemnation for which the owner is entitled to recover damages. Determining when the City's regulations have gone "too far" and become inverse condemnation necessarily involves an evaluation of the economic burden that the regulations impose on the owner.



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Al Zelinka, AICP  
Planning Manager



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John S. Godlewski, AICP  
Director Community Development  
Department

Attachments

Attachment 1 – Letter dated December 14, 2009 to the City Council from Planning Commission Chair Dexter R. Savage



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Community Development Department

December 14, 2009

Mayor Don Bankhead  
Mayor Pro Tem Pam Keller  
Council Member F. Richard Jones, M.D.  
Council Member Shawn Nelson  
Council Member Sharon Quirk-Silva

Dear Honorable Mayor Bankhead and City Council Members:

I am writing to receive your concurrence with or alternative direction on the following dimension of the scope of considerations by the Planning Commission when carrying out its responsibilities per FMC §2.18.080 (Planning Commission, Powers and Duties).

Per previous direction received from City staff and the City Attorney, the Planning Commission, when deliberating or making decisions on a proposed development, shall not consider the financing or economic feasibility of the project. Rather, the Planning Commission's considerations shall be limited to consistency with the General Plan, Zoning Code, other laws, and community standards.

Please transmit your concurrence with or alternative direction concerning this issue to the Planning Commission.

Sincerely,

A handwritten signature in black ink, appearing to read "Dexter R. Savage".

Dexter R. Savage, Chair  
City of Fullerton Planning Commission

*THE EDUCATION COMMISSION*

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