

YUBA CITY PLANNING COMMISSION
AGENDA

TO ADDRESS THE COMMISSION
PLEASE STEP TO THE ROSTRUM &
STATE YOUR NAME & ADDRESS

Regular Meeting
September 26, 2007 - 7 p.m.
City Hall Council Chambers
1201 Civic Center Boulevard

Commissioner Satwant Takhar (Chair)
Commissioner Craig Starkey (Vice Chair) Commissioner John Sanbrook
Commissioner Preet Didbal Commissioner Mike Tomlinson
Commissioner John Dukes Commissioner Jose Flores

Closed Session 6:30 p.m.
Regular Meeting 7:00 p.m.

Closed Session 6:30 p.m. – Butte Room

Confer with legal counsel regarding existing litigation pursuant to Government Code section 54956.9(a), Roxy Yuba City Partners v. City of Yuba City, et al., Sutter County Superior Court, case # CVCS 07-1227.

Regular Session 7:00 – Council Chambers

Roll Call

Pledge of Allegiance

Approval of minutes from meeting held on August 22, 2007

Appearance of Interested Citizens*

Correspondence: - None

Public Hearings:

1. Development Plan #DP 07-03; Proposal to demolish an existing theater and construct a new 39,000 square foot, 12 screen, 2113 seat theater; located at the south side of Whyler, west side of Onstott; APN 58-070-050, 051, 58-120-012, 013, 58-130-033; Owner, Lanza Family Trust and Hust Brothers; Applicant, Aztec Developers.

Commission Consideration: - None

Commission Discussion: - None

Over

Other Business: - None

Report on Actions of the City Council

Adjournment

Persons dissatisfied with any decision of the Planning Commission may appeal such action to the City Council. Appeals, accompanied by a fee of \$620, must be filed with the City Clerk, 1201 Civic Center Boulevard, Yuba City, CA 95993 within 10 days of such action. If no appeal is filed within this time limit, the Commission action becomes final. The exception to this is rezonings--please check with the Planning Department, 1201 Civic Center Boulevard, Yuba City for the procedure. Mailed notices of the Council hearings will be accomplished in the same manner as the Planning Commission hearings unless additional notice is deemed necessary.

If you require auxiliary aids or services (e.g., signing services) to make a presentation to the Planning Commission, the City will be glad to assist you. Please contact the City offices (530/822-4601) at least 72 hours in advance so such aids or services can be arranged. City Hall TDD: 530/822-4732.

*Members of the public may address the Planning Commission on items of interest that are within the City's jurisdiction whether or not such items of interest are on the agenda for this meeting. Members of the Commission will respond as best as they can to public comments but cannot take action or enter into a discussion on items not contained on the agenda. Public comment on public hearing agenda items will be permitted during the hearing.



DATE: September 21, 2007
TO: Yuba City Planning Commission
FROM: Community Development Department
SUBJECT: Agenda Report – Meeting of September 26, 2007

PUBLIC HEARINGS

- PUBLIC HEARING: DEVELOPMENT PLAN DP 07-03 FOR CONSTRUCTION OF A 39,000 SQUARE FOOT, 12-SCREEN, 2113-SEAT MOVIE THEATER LOCATED AT 1410 WHYLER ROAD; ASSESSOR'S PARCEL NUMBERS: 58-070-050, 58-070-051, 58-120-12, 58-120-013, 58-130-033; APPLICANT: AZTEC DEVELOPERS; PROPERTY OWNER: LANZA FAMILY TRUST.**

Project Description:

The applicant, Aztec Developers, has submitted a Development Plan application for the construction of a 39,000 square foot, 12-screen, 2,113-seat movie theater. The project will result in the demolition of the existing 8-screen theater and other vacant structures on the project site.

Property Description:

The project site is located south of Whyler Road and west of Highway 99. The property is currently occupied by an 8-screen movie theater and related site improvements as well as three vacant structures. (See Attachment 1, Aerial Photo.)

General Plan Designation:

Community Commercial (east portion) – location of the proposed theater.
Low Density Residential (west portion) – location of the existing theater.

Zoning Classification:

C-2, Community Commercial District

Surrounding Land Use:

Right-of-way for the future extension of Oji Way and small-lot single-family homes (Victoria Village) are located to the west; Whyler Road and various commercial uses are located to the north; West Onstott Road and Highway 99 are located to the east; a mixture of uses, including a vacant lot, a video store, and single-family homes are located to the south along Kean Avenue. (See Attachment 1, Aerial Photo)

Previous Actions and/or Policies:

On February 6, 2007, the City Council adopted a finding that the proposed design concept currently before the Planning Commission is consistent with the City’s Movie Theater Ordinance. As a result of that action, the applicant has submitted the proposed project for Commission’s review and approval.

Environmental:

A Mitigated Negative Declaration (Exhibit A) was prepared for the project and is attached for Commission review and consideration. Mitigation measures to offset possible adverse impacts from demolition and construction are contained in the conditions of approval. Staff requests that the Planning Commission adopt the attached Mitigated Negative Declaration.

Staff Comments:

Provided below is an evaluation of the findings required to approve the development plan application. The required findings are italicized in bold font.

Development Plan DP 07-04:

Development Plan DP 07-04 is to construct a 39,000 square foot, 12-screen, 2113-seat movie theater along with associated parking and landscape improvements. As part of the construction of the new theater building the existing 8-screen theater and three vacant structures on the project site will be demolished. The Zoning Regulations require the Planning Commission to make three findings in order to approve an application for a development plan. Each of the required findings is listed below followed by staff’s analysis of the finding.

- 1. The site for the proposed use is adequate in size and shape to accommodate said use, public access, parking and loading, yards, landscaping, and other features required by this chapter.***

The proposed plans meet all requirements of the Zoning Regulations. The table below contains the development standards for the C-2, Community Commercial zoning classification and the corresponding proposal by the applicant:

Standard	Code Requirement	Proposed
Maximum Building Height	4 stories/52 feet	43 feet
Street Side Setback	10 feet	39.5 feet
Rear Setback	None/15 feet when adjacent to	15 feet

	residential	
Parking	528 spaces	538 spaces
Landscaping (Shade)	50% of parking area	50% +

As shown on the table above, the proposal meets or exceeds the development standards of the City’s Zoning Ordinance.

The site design for the project has three access points from Whyler Road and West Onstott Frontage Road into the parking lot much the same as the existing Movies 8. The driveway entrance from Whyler Way into the site has been moved to the west so that it lines up with the existing portion of Oji Way. The parking lot layout accommodates the future extension of Oji Way to the south along the western edge of the project site. A condition has been included for the irrevocable dedication of the right-of-way when it is required in the future. The masonry wall and landscaping along the eastern boundary of Victoria Village will act as a buffer between the project traffic and the residences. The layout of the parking lot also provides a circular pattern that will allow for easy drop off and pick up of movie patrons by parents and the Yuba-Sutter Transit buses.

2. The streets serving the site are adequate to carry the quantity of traffic generated by the proposed use.

The City contracted with Fehr and Peers Transportation Consultants to complete an update to a previously-completed traffic report for the expansion to the existing movie theater. The traffic report update considered the impacts associated with the proposed project, and re-evaluated the existing conditions on the surrounding streets. The report identified existing deficiencies in the vicinity of the project to which the project will slightly contribute. However, the project is not anticipated to generate a significant amount of traffic beyond that which is currently generated by the existing theater. The traffic report outlined two potential mitigation measures. To address one of these, Caltrans is currently widening State Route 99 at Bridge Street to accommodate dual left-turn lanes in the future. The other potential mitigation measure (construction of a second southbound left turn lane at the intersection of Highway 99 and Franklin Road) was not included as a mitigation measure or as a condition of approval for the proposed project because improvements to Highway 99 are included in the City’s AB 1600 program. The applicant will be responsible for the payment of the impact fees for the proposed project which will ensure that the project is contributing their fair share of the cost of constructing the improvements. The City has also added this intersection improvement to the Capitol Improvement Program.

3. The site design, design of the buildings, and the scale of the project will complement neighboring facilities.

The design of the site meet the requirements of the Zoning Regulations relative to the provision of adequate parking, shading and buffer landscaping. The building design adheres to the Commercial Design Guidelines with respect to building height, setbacks, materials, and all other aspects. Specifically, the building design incorporates a mixture of stone, stucco coloring and wood trellises to break the building up into segments. The roofline has multiple articulations with a cornice band that wraps the building. The designer has included equal treatment on all

four sides of the building to provide a pleasant and attractive view from all vantage points. The scale of the project, although it is larger than the theater that currently exists, is suitable on the large site.

Recommended Actions:

The Planning Division recommends that the Planning Commission take the following actions:

- A. Adopt the Mitigated Negative Declaration.
- B. Adopt the following three findings for Development Plan DP 07-03:
 1. The site for the proposed use is adequate in size and shape to accommodate said use, public access, parking and loading, yards, landscaping, and other features required by this chapter.
 2. The streets serving the site are adequate to carry the quantity of traffic generated by the proposed use.
 3. The site design, design of the buildings, and the scale of the project will complement neighboring facilities.
- C. Approve Development Plan DP 07-03 to construct a 39,000 square foot, 12-screen, 2113-seat movie theater and to demolish the existing 8-screen theater and other vacant structures on the project site subject to the following 59 conditions of approval:

General

1. Approval of Development Plan DP 07-03 shall be null and void without further action if construction of Development Plan DP 07-03 has not been substantially commenced within 2 years of the date of its approval, or on September 26, 2009.
2. The Conditions of Approval shall be attached to, and be made an integral part of, the improvement plans.
3. Development Plan DP 07-03 is approved as shown in Exhibits B and C and as conditioned herein.
4. The applicant shall be responsible for the payment all applicable development impact fees related to the project's construction.
5. A lot line adjustment combining the multiple properties into one parcel shall be completed prior to the issuance of a building permit for the movie theater's construction.
6. Prior to the issuance of a building permit for the demolition of any onsite structures and/or during the demolition phases of the project as may be applicable the applicant shall:

- a. Provide a copy to the Community Development Department of the fugitive dust control plan that was approved by the Feather River Air Quality Management District.
- b. Open burning of vegetative waste shall not be permitted.
- c. Proponent shall complete an asbestos evaluation in accordance with the Asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP) regulations.
- d. Proponent shall follow all regulations under Title 40, Code of Federal Regulations, Part 61, Section 61.145. (*Mitigation Measure*)

Planning Division

7. Should artifacts or unusual amounts of bone or shell be uncovered during demolition or construction activity, all work shall be stopped and a qualified archeologist shall be contacted for on-site consultation. Avoidance measures or appropriate mitigation shall be completed according to CEQA guidelines. The State Office of Historic Preservation has issued recommendations for the preparation of Archeological Resource Management Reports which shall be used for guidelines. If the bone appears to be human, California law mandates that the Sutter County Coroner and the Native American Heritage Commission be contacted. (*Mitigating Measure*)

Engineering Division

8. The project driveway onto Whyler Road shall line up with Oji Way.
9. The Developer shall prepare and submit improvement plans for the construction of improvements including water, sanitary sewer, storm drain facilities, roadway improvements, curbs, gutters, sidewalks, signing, striping and streetlights.
10. All design and construction shall conform to the latest edition of the City of Yuba City Standard Specifications and Details, State of California Standard Specifications for Construction of Local Streets and Roads (May 2006), AASHTO Policy on Geometric Design of Streets and Highways for local roads, and FHWA Manual on Uniform Traffic Control Devices for Streets and Highways (2003 edition).
11. Traffic control construction signs shall be installed/erected per City of Yuba City Standards and Details, CalTrans Standards and Details, and the Manual of Uniform Traffic Control Devices. The signs shall be maintained throughout the project duration.
12. All grading operations on the project shall be suspended as directed by the Feather River Air Quality Management District when winds exceed 20 miles per hour or when winds carry dust beyond the property line despite implementation of all feasible dust control measures. An operational water truck shall be onsite at all times to assist in dust control. (*Mitigating Measure*)
13. Onsite dirt piles or other stockpiled particulate matter shall be covered, wind breaks installed, and water and/or soil stabilizer employed to reduce wind blown dust emissions. (*Mitigating Measure*)

14. To help contain fugitive dust, construction sites shall be watered down during the construction of the project. *(Mitigating Measure)*
15. Temporary silt fencing shall be erected during construction so that transport of construction debris can be retained on-site. *(Mitigating Measure)*
16. To prevent track-out, wheel washers shall be installed where project vehicles and/or equipment exit onto paved street from unpaved roads. Vehicles and/or equipment shall be washed prior to each trip. Alternatively, a gravel bed may be installed as appropriate at vehicle/equipment site exit points to effectively remove soil buildup on tires and tracks to prevent/diminish track-out. *(Mitigating Measure)*
17. Paved streets shall be swept frequently (water sweeper with reclaimed water recommended; wet broom) if soil material has been carried onto adjacent paved, public thoroughfares from the project site. *(Mitigating Measure)*
18. If any hazardous waste is encountered during the construction of this project, all work shall be immediately stopped and the Sutter County Environmental Health Department, the Fire Department, the Police Department, and the City Inspector shall be notified immediately. Work shall not proceed until clearance has been issued by all of these agencies. *(Mitigating Measure)*
19. During construction, the Contractor shall be responsible for controlling noise, odors, dust and debris to minimize impacts on surrounding properties and roadways. Contractor shall be responsible that all construction equipment is equipped with manufacturers approved muffler baffles. Failure to do so may result in the issuance of an order to stop work. *(Mitigating Measure)*
20. The Developer's Superintendent/Representative shall be onsite when contractor is working and be available to the City's Inspectors assigned to the project. The Developer shall be responsible for making sure that the contractor is working from signed improvement plans and a signed storm water pollution prevention plan.
21. The Developer's Superintendent/Representative shall ensure that all private vehicles be either parked off-site or outside of construction areas. All vehicles, construction equipment, and construction material related to the project shall be organized in such a manner to provide emergency vehicle access to the entire project.
22. Sidewalks, within and adjacent to the construction area, shall be kept clean and remain accessible for American Disability Act compliance.
23. Storage of construction material is not allowed in the travel way.

Prior to issuance of Grading Permit

Engineering Division

24. On proposed developments that are larger than one acre, provide evidence that a Notice of Intent has been submitted and received by the local Water Quality Control Board for a General Construction Activity Storm Water Permit. Two copies of the project Storm Water Pollution Protection Plan shall be provided to the City.
25. The improvement plans for the development of the subject property shall include all measures required to ensure that no drainage runoff resulting from the development of the property flow onto the adjacent residential or agricultural lands or impede the drainage from those properties. If retaining walls are required they shall be constructed of concrete or masonry block.
26. Existing and proposed grade elevations at perimeter of the proposed land development shall be shown on the grading plan. The Engineer of Record shall designate on the plans as to where any retaining walls are required and provide details of all proposed retaining walls. The retaining wall is required where grade differences between the proposed development and the surrounding land is greater than 6” (inches). The use of any type of wood as the retaining wall is not permitted.
27. The Developer shall be responsible for implementing the Storm Water Pollution and Prevention Plan (SWPPP) through the use of Best Management Practices (BMP). The Developer shall be responsible for maintaining the SWPPP. The SWPPP shall conform to the provisions in Section 7-1.01G, "Water Pollution," of the Caltrans Standard Specifications for construction of streets and local roads dated May 2006, the requirements in the Manuals, and the requirements of the Permits. The Developer shall be responsible to include provisions for SWPPP requirements on the contract documents for the work under the proposed development. These provisions shall direct the successful contractor to develop a SWPPP document per the directions on the Caltrans website at <http://www.dot.ca.gov/hq/construc/stormwater/stormwater1.htm>. The Contractor shall submit the SWPPP document within the time lines set forth on the development’s special provisions and allow 15 days for the City of Yuba City to review and approve or return the document for revisions. *The developer/Contractor shall not start any work until the SWPPP document has been approved by the City of Yuba City.* Should the Developer fail to ensure satisfactorily compliance with the SWPPP, the City Inspector may issue a stop work order until compliance is achieved.
28. The following minimum Best Management Practices (BMPs) shall be required during construction:
 - a. Construction crews shall be instructed in preventing and minimizing pollution on the job.
 - b. Stabilize construction entrance/exit to prevent tracking onto roadway. Only one stabilized construction entrance/exit will be allowed per site. Vehicles entering and leaving construction sites spread pollutants such as sediment, gravel, and other loose particles onto adjacent roads. Pollutants are washed into roadside ditches and are a nuisance to drivers and may cause damage to vehicles.

- c. Protect exposed slopes from erosion through preventative measures. Cover slopes to avoid contact with storm water by hydro-seeding, mulch, use of plastic sheeting or other approved means.
- d. Use brooms and shovels when possible to maintain a clean site. Use of a hose is not recommended. Introducing water as a cleanup method adds to water pollution.
- e. Designate a concrete washout area, as needed; to avoid wash water from concrete tools or trucks from entering storm drain systems. Maintain washout area and dispose of concrete waste on a regular basis.
- f. Establish a vehicle storage, maintenance, and refueling area, as needed, to minimize the spread of oil, gas, and engine fluids. Use of oil pans under stationary vehicles is strongly recommended.
- g. Protect drain inlets from receiving polluted storm water through the use of filters such as fabrics, gravel bags or straw wattles.
- h. Be prepared for rain and have the necessary materials onsite before the rainy season.
- i. Inspect all BMPs before and after each storm event. Maintain BMPs on a regular basis and replace as necessary, through the entire course of construction.

Building Division

- 29. Prior to beginning construction, the applicant shall obtain a demolition permit from the City for removal of all existing structures on the site.
- 30. All existing well(s), septic tank(s), and service lines shall be destroyed in accordance with the requirements of the Sutter County Environmental Health and Yuba City Building Departments, respectively.

Prior to Issuance of Building Permit

- 31. Cross easements shall be reserved in deeds for properties that share underground utilities, ingress and egress, parking, drainage, landscaping, and the maintenance thereof to the benefit of all parcels involved.
- 32. Owner shall provide an irrevocable offer of dedication for the future extension of Oji Way from Whyler Avenue to the south project limits. A public utility easement shall be dedicated over the entire width of the future Oji Way extension to provide for the public utilities placed to serve the project.

Prior to approval of Improvement Plans

Engineering Division

- 33. A water line shall be extended down the future Oji Way alignment and include a connection to the existing water line in West Onstott Frontage Road to provide a

“looped” system. Water lines shall be designed to provide adequate fire flow and a fire hydrant shall be installed at the south end in order to flush the system.

34. The contractor shall obtain an Encroachment Permit from the City prior to performing any work within public rights of way.
35. Where an excavation for a trench and/or structure is 5 feet deep or more, the contractor shall conform to O. S. H. A. requirements. The contractor shall provide a copy of the approved O.S.H.A. permit, and shoring details and calculations prepared by California licensed structural engineer to the Public Works Department.
36. Improvement plans shall be approved by the Yuba City Fire Department.
37. All service laterals (water, sewer, irrigation, fire suppression), along with required meters, are to be shown on the improvement plans.
38. The fire suppression system(s) that will be servicing the property shall tie-in directly to the City water main. Hot tap fees shall apply.
39. All domestic, landscape, and fire service lines shall have reduced pressure backflow preventers.
40. The Developer shall be responsible for preparation of a street tree and irrigation plan that is deemed acceptable by the Director of Parks.
41. The street landscape planters, the street trees, and street lighting are public improvements which shall meet the Parks Division Planting Standards and Yuba City Standard Details and be included in the improvement plans and specifications when the improvement plans are submitted for the first improvement plan check.
42. The street trees proposed by the Developer shall be a minimum of 15 gallon in size with a one-inch dbh (diameter at breast height). The tree specie(s) shall be a shade type approved by the City Arborist and the Community Development and Public Works Departments. Only one tree specie shall be planted on any street.
43. The final improvement plans shall reflect street tree placement so that no interference with streets, streetlights, and driveways will occur to the satisfaction of the Public Works Department.
44. All onsite landscaping shall be irrigated. A separate meter shall be installed on the landscape service. More than one meter may be required. The Developer shall pay all applicable fees.
45. Special drop inlet frames and grates shall be installed at all drop inlets and junction drop inlets throughout the development area. Cast into the curb back shall be a message “Dump No Waste – Drains to River”. If casting cannot be found that fits the City’s standard drop inlet, then designated markers, approved by the City, shall be installed to the manufacturer’s specifications on the top of curb, or at an appropriate alternative

nearby location when no curb is available, at all storm drain inlets in the development area.

46. Required Improvement Plan Notes:

- a. "Any excess materials shall be considered the property of the contractor/owner and shall be disposed of away from the job site in accordance with applicable local, state and federal regulations."
- b. "The Contractor(s) shall be required to maintain traffic flow on affected roadways during non-working hours, and to minimize traffic restriction during construction. The Contractor shall be required to follow traffic safety measures in accordance with the CalTrans "Manual of Traffic Safety Controls for Construction and Maintenance Work Zones." The City of Yuba City emergency service providers shall be notified, at least two working days in advance, of proposed construction scheduled by the contractor(s)."
- c. "Soil shall not be treated with lime or other cementitious material without prior express permission by the Public Works Department."

Prior to acceptance of Public Improvements

Engineering Division

47. Prior to paving, the Developer shall vacuum test all manholes to ensure no leakage will occur.
48. Where soil or geologic conditions encountered during grading operations are different from those anticipated in the geotechnical investigation, or where such conditions warrant changes to the recommendations contained in the original soil investigation, a revised soil or geologic investigation shall be submitted for approval by the Public Works Department. It shall be accompanied by an engineering and geological opinion as to the safety of the site from hazards of settlement and seismic activity.
49. The contractor shall maintain record drawings of the improvements and keep them on site at all times. When the project is complete, the contractor shall deliver a marked set of plans to the Engineer of Record. The Engineer of Record shall update the improvement plans with the record information. Once the changes have been added to the plans, the Engineer of Record shall submit both an electronic copy (AutoCad version 2000 or newer) and hard copy (on mylar) to the City. The City will not accept the completion of the improvements until the electronic copy and hard copy have been submitted.

Prior to Certificate of Occupancy

Engineering Division

50. The property shall petition for formation of a Zone of Benefit of the Yuba City Landscaping and Lighting District for the purpose of maintaining the street lights.
51. All street lighting shall be dedicated to the City of Yuba City.
52. A public utility easement shall be provided along the street frontage of West Onstott Frontage Road extending 12 feet behind the back of the sidewalk.
53. All street lighting shall be energized.
54. Prior to the issuance of any certificate of occupancy the curb, gutter, and sidewalk, shall be inspected and approved by the City. Any curb, gutter and sidewalk which is not in accord with City standards or is damaged before or during construction, shall be replaced. In addition, any concrete with cracks, chips, blemishes, and spalling greater than an inch in diameter shall be replaced from control joint to control joint.
55. Prior to the issuance of a certificate of occupancy, all reduced pressure backflow preventers shall be tested and a backflow preventer certification performed by an AWWA licensed tester shall be submitted to the Public Works Department.
56. Prior to the issuance of a certificate of occupancy, the Developer's Superintendent/Representative shall submit three sets of Pacific Gas and Electric approved utility plans showing joint trench locations and distribution lines.
57. The City reserves the right to direct the Developer to hydroflush the storm drain and sewer lines if any construction debris is found in the lines.
58. Prior to issuance of any issuance of any certificate of occupancy, all existing overhead utilities (of 26,000 volts or less) and proposed utilities, both onsite and along the West Onstott Frontage Road project frontage shall be placed underground. The undergrounding shall go from the next post beyond the project frontage, across the frontage and then to the next post beyond the project boundary. This does not include surface mounted transformers, pedestal mounted terminal boxes and meter cabinets appropriate easements shall be obtained by the Developer to facilitate these installations.
59. Prior to issuance of any certificate of occupancy, all underground utilities, public improvements, and site improvements, including rough grading, shall be completed.

YUBA CITY PLANNING COMMISSION
MINUTES

Regular Meeting
September 26, 2007
City Hall Council Chambers

The meeting was called to order by Chairman Takhar at 7:00 p.m. Members present were as follows:

PRESENT

Chairman Satwant Takhar
Commissioner Preet Didbal
Commissioner Jose Flores
Commissioner John Sanbrook
Commissioner John Dukes

ABSENT

Commissioner Craig Starkey (*excused*)
Commissioner Mike Tomlinson (*excused*)

Also present were Aaron Busch, Community Development Director; Katie Ertmer, Associate Planner; Diana Langley, Senior Engineer; Paulla Hyatt-McIntire, Deputy City Attorney; and Roberta Kyle, Recording Secretary.

The Pledge of Allegiance was led by Commissioner Dukes.

The meeting minutes of August 22, 2007, were approved with one correction, with Chairman Takhar abstaining from the vote.

Appearance of Interested Citizens: - None

Correspondence: - None

Public Hearings:

1. **PUBLIC HEARING: DEVELOPMENT PLAN DP 07-03 FOR CONSTRUCTION OF A 39,000 SQUARE FOOT, 12-SCREEN, 2113-SEAT MOVIE THEATER LOCATED AT 1410 WHYLER ROAD; ASSESSOR'S PARCEL NUMBERS: 58-070-050, 58-070-051, 58-120-12, 58-120-013, 58-130-033; APPLICANT: AZTEC DEVELOPERS; PROPERTY OWNER: LANZA FAMILY TRUST.**

Katie Ertmer, Associate Planner, presented a staff report.

Ms. Ertmer mentioned two letters that came in before the meeting started which were given to the Planning Commissioners, which raise issues pertaining to the environmental document for the proposed project, and stated that staff has not had time to address those issues as of yet, but intends to prepare a detailed response to both letters.

Commissioner Dukes moved to continue #DP 07-03 until the October 10, 2007 meeting, and open the public hearing for comment.

Ms. Ertmer made two clarifications. The first being that the General Plan designation is Community Commercial on the ENTIRE site (amendment adopted by Council 4-06). The second was that the elevation with the stairs is the WEST elevation, and the elevation with the trellis and signage is the side visible from Highway 99.

Commissioner Sanbrook stated that in March of 2006, a general plan amendment was considered for the west portion of the site which was then designated as Low Density Residential which was not in conformity with the actual land use on that site, and at that time did take into consideration the traffic impacts that the general plan amendment would have, and asked if he was correct.

Ms. Ertmer stated she believes that is correct and stated that the land use has been a theater for 20 years and that the General Plan designation was also inconsistent with zoning on the entire site (C2), and that the General Plan Amendment brought the General Plan into conformance with the zoning and the pre-existing land use.

Commissioner Sanbrook stated that was an advisory recommendation the Planning Commission made to the City Council and at the time the Planning Commission adopted a negative declaration in connection with that project i.e. the General Plan Amendment.

Ms. Ertmer stated it was mitigated negative declaration, and said it went to the Planning Commission in March of 2006 and to the City Council in April of 2006 at which time it was approved by the Council.

Commissioner Sanbrook asked if there was in fact a traffic study done in connection with that project, mainly the General Plan Amendment.

Ms. Ertmer stated that she believes that is the case, and offered to research that for Commissioner Sanbrook.

Commissioner Dukes stated that in light of the letters that have come forward and to give staff time to review and respond to these letters, he recommends that #DP 07-03 be continued to the October 10, 2007 meeting.

Commissioner Sanbrook suggested the public hearing be opened in order to hear what the public has to say, and make a motion after the public hearing is closed.

Commissioner Dukes agreed, and the motion was tabled.

Chairman Takhar opened the public hearing.

Bob Barkhouse, 1380 Kelleen Drive, feels the theater needs to be approved so the community doesn't have to go out of town to see good movies.

Eric Helberg, 484 St. James Court, said he and Bob had spent four or five years on this project, some things were done right, and some things were done wrong, and now there is an opportunity to move ahead on this project, and said that the other project is obviously never going to move ahead, and that the other

theater would cause tremendous traffic problems down at the 5th Street bridge which a lot of us realize. Mr. Helberg said he is sorry to hear that this meeting is being continued to later on, but hopes everyone sees the true impact for this community. Mr. Helberg stated he personally feels this is the last chance to get a first class theater here, and said anyone else who might be interested will walk away, and he can't blame them, and said he can't believe that Cinemark didn't walk away.

Bette Newton, 1410 Delone Drive, feels if you want a first class downtown the Roxy Theater should be allowed there. Ms. Newton talked about several downtowns in different cities that have died and what brought them back was a new theater which also brought in restaurants and stores. Ms. Newton also stated that there will not be enough parking, as there is already a parking problem with the existing theater. Ms. Newton said that Cinemark doesn't contract for first rate movies, and says there will only be movies that cater to the younger generation which contain too much sex and violence.

Jim Vaughn, 2815 Townsgate Road, Suite 330, Westlake Village, CA, representing the Citizens Against Gridlock. Mr. Vaughn stated he had sent a letter earlier in the day advising the Commission of his clients concerns about the proposed project. Mr. Vaughn went on to refer to CEQA in regards to when an environmental report is required, and said that any time there is evidence in the record that a project may have a significant adverse effect, an EIR must be prepared. Mr. Vaughn said the negative declaration that was prepared is a shortcut to the environmental review process and that the evidence is overwhelming that there will be significant and unmitigated traffic impacts. Mr. Vaughn referenced the traffic report stating that the project will generate 220 new peak hour trips, and that the project will be more than twice as large as the existing theater. Mr. Vaughn also noted that the traffic report identifies what would constitute a significant impact, and also pointed out some of the impacts and improvements that he feels need to be made. Mr. Vaughn said there is nothing in the report that states the improvements will be done or that the impacts will be mitigated. Mr. Vaughn stated that if impacts cannot be mitigated, an EIR should be prepared, which is the legal standard that has not been met by this project. Mr. Vaughn said that the initial study that was prepared for this project completely ignores the impacts this project will have, and urged staff to do a complete EIR before this project moves forward.

Commissioner Sanbrook noted the letter from Mr. Vaughn and pointed out a discrepancy on page 4 of the letter, number (1) under General Plan Inconsistencies, regarding the general plan designation, stating that the statement is incorrect, and went on to say that in March of 2006, the area that was designated as Low Density Residential was changed with a general plan amendment to Community Commercial.

Mr. Vaughn said he based that statement on a comment on page 20 of the Initial Study for this project, dated September 6, 2007.

Russ Clark, 631 Daniel Drive, spoke about the General Plan being followed regarding Oji Way, and spoke about the current traffic problem, and the problems that will be caused from an increase in vehicles if the new theater is built. Mr. Clark stated Bridge Street is the only entrance and exit to the theater, and asked that Oji way be extended through to Franklin Road as shown in the General Plan. Mr. Clark also spoke about the current screen times of the existing theater and the traffic it causes.

Commissioner Sanbrook stated that one of the conditions suggested by staff if the project were to be approved, would be to require the developer to dedicate across the entire site, the necessary right-of-way for Oji Way to be extended when needed.

Mr. Clark said that dedication of land doesn't help the traffic problem, and said that Oji Way needs to be

extended and open before the theater opens its doors. Mr. Clark said it will help improve the entire area and help the congestion that is there now, because the area is already gridlocked.

Mr. Dhami, Sacramento, business located in Yuba City at 1400 Whyler Avenue (Jimmy's Restaurant), said he has no problem with Cinemark, but stated there is a problem with there not being enough parking, and said that on the evenings and weekends there is not enough parking for his restaurant. Mr. Dhami said he agrees with Mr. Clark's statements.

Jagtar Kang, 1341 Kean Avenue, stated that commercial development should not be so close to residential development. Mr. Kang said if the Planning Commission wanted a petition he would get one together and bring it the next time.

Eric Helberg asked the clerk for an opportunity to address some of the earlier comments.

Mr. Helberg said he feels that after 36 years of living in this city, he thinks that people like Russ Clark and the other local gentlemen have a right to say what they feel and believe about the project, whether he agrees with it or not. Mr. Helberg noted that Oji Way was slipped into the General Plan in 2004 unbenounced to the Council or anybody else, but it's there and said if it can be used, it should be. Mr. Helberg raised questions about the background and intentions behind Mr. Vaughn's attendance at the meeting.

Mr. Vaughn responded that his client, Citizens Against Gridlock asked him to come up here.

Mr. Helberg expressed his displeasure about receiving opposition to the project from non-local residents.

Bette Newton talked about the traffic by Raleys and Hwy. 99, and said it is gridlocked. Ms. Newton asked how a theater was ever built there in the first place, and said most theaters are built along the main drag, and said it looks like a slum area with old beat up houses.

There being no further testimony, Chairman Takhar closed the public hearing.

Commissioner Dukes asked staff if when the traffic report was prepared, was it taken into consideration the times of operation, and the peak traffic that would be created from the proposed theater, as opposed to the 3:00-5:00 time that normally has gridlock.

Ms. Ertmer said Diana Langley, Senior Engineer was available to answer questions.

Diana Langley, Senior Engineer stated that what was analyzed was PM peak hours on Friday afternoon between 5 and 6 p.m., and said that this is the PM peak for people going home from work which also coincides with the time when you would have the most impact on your roadway system from a movie theater. Ms. Langley said the report does not look at Monday thru Thursday or Saturday and Sunday, its Friday from 5 to 6 p.m.

Chairman Takhar stated there was a motion on the table by Commissioner Dukes to continue #DP 07-03 to the October 10, 2007 Planning Commission meeting, which was seconded by Chairman Takhar, and by a voice vote, the motion passed.

Commission Discussion: - None

Other Business: - None

Report on Actions of the City Council:

Mr. Busch reported that the three General Plan and Rezone proposals that were approved by the Planning Commission on August 22, 2007, went before the City Council on September 18th, but due to the lack of a quorum, the items were continued to the next meeting of October 2, 2007. Mr. Busch said he will be able to give a report at the next Planning Commission meeting.

Adjournment: There being no further business, the meeting was adjourned at 7:36 p.m.

Respectfully submitted,

Roberta Kyle, Secretary
YUBA CITY PLANNING COMMISSION