

**CITY OF CHICO PLANNING COMMISSION  
MINUTES OF THE REGULAR ADJOURNED MEETING OF  
February 18, 2016**

Municipal Center  
421 Main Street  
Council Chambers

Commissioners Present:           Toni Scott, Chair  
  John Howlett, Vice Chair  
  Cynthia Arregui  
  Bob Evans  
  Ken Rensink  
  Margaret Worley

Commissioners Absent:           Dale Bennett

Staff Members Present:           Mark Wolfe, AICP, Community Development Director  
  Brendan Vieg, Principal Planner  
  Jake Morley, Associate Planner  
  Mike Sawley, Associate Planner  
  Matt Johnson, Senior Development Engineer  
  Andrew Jared, Assistant City Attorney  
  Stina Cooley, Administrative Assistant

**1.     ROLL CALL**

Chair Scott called the meeting to order at 6:31 PM. Commission members and staff were present as noted.

**2.     EX PARTE COMMUNICATION**

Several commissioners acknowledged visiting the project sites recently or in the past.

**3.     CONSENT AGENDA**

**3.1    Minutes for Approval**

**Minutes** – Regular Meeting of February 21, 2013

**Minutes** – Regular Meeting of March 21, 2013

**Minutes** – Regular Meeting of April 4, 2013

**Minutes** – Regular Meeting of May 2, 2013

**Minutes** – Regular Meeting of June 6, 2013

**Minutes** – Regular Meeting of July 18, 2013

**Minutes** – Regular Meeting of August 21, 2014

**Minutes** – Regular Meeting of November 2, 2014

**Minutes** – Regular Meeting of August 6, 2015

**Minutes** – Regular Meeting of September 17, 2015

**Minutes** – Regular Meeting of December 17, 2015

*Motion by Commissioner Evan to approve the minutes as presented, seconded by Commissioner Worley. The minutes were approved 6-0.*

#### **4. PUBLIC HEARING ITEMS**

**4.1 Vesting Tentative Parcel Map PM 16-01 (Austin-Farson) 20, 30, 80, and 90 Jillian Lane; APNs 007-570-035 and -036** – A request to subdivide two parcels into four parcels. Each of the existing parcels contain two duplex structures with an intervening private street easement (Jillian Lane). The proposal would divide each of the parcels down the center of the private street such that each lot contains one duplex. No construction is proposed. The site is zoned R2-AOB2 (Medium Density Residential within Airport Overflight Zone B2) and designated Medium Density Residential by the General Plan. This project is exempt from environmental review pursuant to Section 15301 (Existing Facilities) of the California Environmental Quality Act (CEQA).

Associate Planner Sawley provided a project overview.

*Chair Scott opened the public hearing at 6:36 PM*

Mr. Gilbert addressed the Commission representing the applicant. He stated the project was straightforward and Mr. Sawley presented all of the pertinent information.

No other members of the public addressed the Commission regarding this issue.

*Chair Scott closed the public hearing at 6:38 PM.*

*Commissioner Howlett moved that the Planning Commission adopt Resolution No. 16-01 approving the parcel map based on the required findings and subject to the conditions contained therein. Commissioner Rensink seconded the motion, which passed (6-0).*

*Commissioner Evans Recused himself from item 4.2 due to a conflict of interest.*

**4.2 Development Agreement 15-01, Rezone/Neighborhood Plan Amendment 15-06 and Architectural Review 15-17 (Chico Scrap Metal) APNs 005-450-014, 005-450-030, 005-422-009, 005-422-013 and 005-422-017** A proposed rezone (text amendment), architectural review and development agreement for a 2.02 developed site in use by Chico Scrap Metal. The proposal includes 1) amendments to Title 19 of the Chico Municipal Code and the Chapman/Mulberry Neighborhood Plan removing amortization language, requiring amortization of Chico Scrap Metal use, 2) on-site improvements, including, but not limited to, new fencing along E. 20<sup>th</sup> and E.16<sup>th</sup> Street, customer and employee parking

lots, landscaping, façade remodels to existing structures, and lighting, 3) a Development Agreement which would govern operational standards and provide a timing mechanism for completion of proposed improvements. Parcels 005-422-009, 005-422-013, 005-422-017 and 005-450-030 are designated Neighborhood Commercial on the General Plan diagram and are located in the CN-PD-SD6 Neighborhood Commercial-Planned Development-Special Design Considerations 6 Overlay zoning district. Parcel 005-450-014 is designated Low Density Residential on the General Plan diagram and is located in the R1-SD6 Low Density Residential-Special Design Considerations 6 Overlay zoning district.

Associate Planner Morley provided a project overview.

Commissioner Worley asked for additional background information with regards to the non-conforming use status, amortization, and extensions granted.

Associate Planner Morley explained that in 2004 the Chapman Mulberry Neighborhood Plan was adopted which led to rezoning the property on which Chico Scrap Metal was operating. The rezone made the operations of Chico Scrap Metal a non-conforming use. The Neighborhood Plan included amortization language. He also stated that there had been two extensions on the timeline for amortization.

Commissioner Worley asked what had changed to prompt the applicant's request to discontinue the amortization.

Associate Planner Morley stated that the Neighborhood Plan suggested that the City would assist with Chico Scrap Metal's relocation, however, there are no resources to provide that assistance.

Community Development Director Wolfe also stated that amendments to the General Plan or a Neighborhood Plans may occur at any time.

Commissioner Howlett inquired when the residential housing was built, particularly the Habitat for Humanity houses.

Associate Planner Morley stated the houses were built approximately 4 years ago.

Chair Scott inquired if there was ever an agreement with the applicant to amortize.

Principal Planner Vieg stated there was never an agreement with the applicant. There was only the ordinance that was enacted by City Council that included the amortization of the

current use of the property. It also included the intent of the City and the County to assist the applicant in the relocation of the business.

Commissioner Howlett inquired if the County has offered any assistance with the relocation.

Principal Planner Vieg stated that neither the County nor the City has offered assistance with the relocation.

Community Development Director Wolfe added that City staff and the applicant have discussed possible sites for relocation.

Chair Scott asked for clarification on amortization in general and what would be the typical reasons for an amortization and if there are any examples of amortization in Chico.

Community Development Director Wolfe stated that typically an amortization would be utilized when there was a concern with nuisance factors. He stated that this particular amortization was added to hasten the redevelopment of the site with a specific type of land use that the City Council and Board of Supervisors at the time felt would be better for the neighborhood. The desired use was a mixed use neighborhood commercial area with a small store and laundry mat. Director Wolfe acknowledged it is very extraordinary for a city to amortize the use of a property. In his 30 years of planning this is the first one he has seen. Usually amortization is utilized to affect a physical change in the environment. For example, sometimes cities have amortization requirements when there is a change in a sign code. The existing signs would be allowed to remain until a certain date. He has never seen it utilized with a land use.

Commissioner Worley asked if there were other land uses in the City's ordinance that were amortized.

Principal Planner Vieg explained that the Chapman Mulberry Neighborhood Plan attempts to address areas in the County and the City. He stated that the original amortization language started with the County. The County enacted amortization to address specific uses that were well within the residential areas of the neighborhood and were clearly incompatible. Once that idea was introduced, the City decided it would be reasonable to utilize it for Chico Scrap Metal. When you look at a map of the area these uses were in the middle of the single family home areas. Chico Scrap Metal is located on a major corridor and in a light industrial area, so the situation was slightly different.

Chair Scott inquired about the lot that is fenced off and directly to the west of Chico Scrap Metal.

Associate Planner Morley stated that those lots are currently under contract with Habitat for Humanity for single family homes.

Commissioner Worley inquired when the last testing for contaminants was conducted.

Associate Planner Morley stated that the full toxicology study was concluded in 2012.

Commissioner Howlett inquired if the site was still listed on the Cortese list.

Associate Planner Morley stated that it is still listed, but once the Removal Action Work plan has been approved by the California Department of Toxic Substances Control, it will be removed from the list. There are multiple permits that the applicant operates under, and testing/monitoring are conducted on a regular basis.

***Chair Scott opened the public hearing at 6:53 PM***

Addressing the Commission in the following order were:

Kim Scott, the applicant, stated she had been working very diligently with staff to find a way for Chico Scrap Metal to stay in business.

Chair Scott asked why she hadn't started the process to relocate when the Chapman Mulberry Neighborhood Plan was first adopted.

Ms. Scott stated that her father was previously running the business. In 2009 she became aware of the ordinance and started working with Community Development Director Wolfe. This is the second time Chico Scrap Metal has been moved. The City enacted eminent domain 20 years ago and moved them to the current location. She believes it is a good fit in an industrial area.

In 2011 Chico Scrap Metal tried to find new locations and were then told there would be no financial assistance from the City. They found several locations but they were not financially feasible.

Ms. Scott stated that they were responsible business owners and active in the community. She said they host field trips to encourage recycling, and routinely give back to the community.

Angela Casler addressed the Commission in favor of the project. She stated that recycling is a very important part of sustainability and the City of Chico is very good at finding solutions and she believes one can be found that will be beneficial to all concerned.

Bud Caldwell, owner of Northgate Express, stated that Chico Scrap Metal is a wonderful neighbor, good business owners and good community member. He feels Chico Scrap provides good services and we need to keep businesses in our community.

Sharon Fritsel spoke in favor of the project. She stated that she was a long-time resident and she can remember when Chico Scrap Metal was the only recycler in town. Ms. Fritsel believes they do a great job of keeping trash out of our community and provide a valuable service.

Robyn DiFalco, representing the Butte Environmental Council, spoke in opposition of the project. She supports the services Chico Scrap Metal provides but dislikes the location. She is in favor of following the Neighborhood Plan. She believes Chico Scrap is creating toxins and believes it is only still there because it is in a low income neighborhood. She feels Chico Scrap Metal needs to be "held accountable".

Chris Nelson, a retired health nurse, spoke in opposition of the project. She believes there are high levels of lead in the air. She wants Chico Scrap Metal to move. She is concerned about airborne pollutants.

Laurel Heath spoke in opposition of the project. Ms. Heath stated her main concern was the proximity to the Chapman Elementary School.

Mary Redding addressed the Commission in favor of the project. She stated that she has been a long time resident of Chico. She has known the Scott family for a long time. She doesn't agree with the Chapman Mulberry Neighborhood Plan. She stated that she feels the design was not well thought out and had very little insight. Ms. Redding pointed out that the original site for Chico Scrap Metal was taken by the City by eminent domain and this site was chosen by the City. She doesn't believe they should have to move again. She stated that Chico Scrap Metal provides a valuable service to the community.

Adrienne Edwards, a neighbor, addressed the Commission in opposition to the project. She stated she lives one block away. She doesn't like Chico Scrap Metal bundling scrap metal. She believes the previous site was contaminated with heavy metals in the soil. Ms. Edwards stated that if we allow Chico Scrap Metal to continue to operate they will continue

to pollute the site. She is also concerned by the proposed remodel and the lack of new fencing on E. 16<sup>th</sup> Street.

Grace Marvin spoke in opposition of the project. She wants Chico Scrap Metal to move their operation. She was discouraged by the previous extension to the amortization and doesn't believe they should stay.

Karl Ory spoke in opposition of the project. He stated he was on the City Council when Chico Scrap Metal was moved the first time. Mr. Ory stated there was clean up from the containments left at the previous sight. He doesn't believe it would be appropriate to allow Chico Scrap Metal to operate any further as a non-conforming use.

Dr. Mark Stemen spoke in opposition of the project. He stated there were six businesses in the Chapman/Mulberry Neighborhood that were also required to move. He doesn't feel it is fair to allow Chico Scrap Metal to stay when the others moved.

Dan Everhart addressed the Commission in opposition of the project. He believes recycling is a great service but doesn't want it in his neighborhood.

Jon Luvaas addressed the Commission in opposition of the project. He stated he believed the matter was settled 10 years ago. He wants Chico Scrap Metal moved out of the neighborhood and wants more retail services in the area for economic development on E. 20<sup>th</sup> Street. He stated that the City of Chico assisted Habitat for Humanity in building houses in the neighborhood with the expectation of Chico Scrap Metal moving. He believes it would be an injustice to allow them to stay.

Victoria Birdseye spoke in opposition to the project. She expressed concerns regarding pollution and the proximity to Chapman Elementary School and other youth centers. She believes the site is ugly and unacceptable across from Sierra Nevada Brewery which she considers a destination.

Danielle Mootz spoke in favor of the project. She stated she felt it is unfair to force Chico Scrap Metal to move again. She stated that information opponents were utilizing was outdated. Ms. Mootz stated Chico Scrap Metal follows all of the industry standards for recycling and handling possible hazardous materials. They follow "best practices" and are monitored on a regular basis. She stated that Chico Scrap Metal provides a valuable service of recycling scrap metal. She asked if they are no longer in business, where is that metal going to go.

Dr. Alvin Greenberg spoke on behalf of the applicant. He is an independent contractor that is currently employed by Chico Scrap Metal. He is a Health and Safety Laws & Standards consultant. Dr. Greenberg stated that the only chemicals of concern that were found on the site were found to not be above “background” levels. He stated that you can find these chemicals in all areas of the community, their presence does not mean the site is contaminated and the levels are not a risk. There is no significant risk to any offsite location and on site they have proposed a geotechnical layer as an additional preventative measure.

Bart Simmons spoke on behalf of the applicant. He is an independent chemical consultant. He is currently employed by Chico Scrap Metal. Mr. Simmons reviewed all of the testing done at the Chico Scrap Metal site and the surrounding area. Mr. Simmons clarified the toxins found above acceptable residential levels were only found in a couple of areas on the Chico Scrap Metal site. There were no offsite levels above acceptable residential levels. He stated that Chico Scrap Metal utilizes “Best Practices” to reduce dust and there has been no evidence of water contamination.

Commissioner Howlett asked how “offsite” tests were conducted, what the radius of the testing was, and during which season it occurred. Mr. Simmons stated Chico Scrap Metal hired an outside laboratory to conduct all the testing. The laboratory uses energy dispersive X-ray fluorescence technology (ED-XRF) to measure levels. The samples were taken as far out as Chapman Elementary, and samples were taken throughout the year. He stated that metals in the soil remain and do not move with the seasons. He also stated the removal action work plan (RAW) testing was concluded in 2012.

Chair Scott asked how frequently other businesses test for pollutants. Mr. Simmons stated it is usually only one time. He also stated that only a small amount of contamination was found onsite. These levels were well within the industrial standards but above the residential acceptable levels. Mr. Simmons also pointed out that the areas that were found to be above residential levels were only in small areas on the property. Mr. Simmons stated that the proposed geotechnical layer is a voluntary additional safeguard, and not required.

Commissioner Scott asked about the clean-up of the site contaminants on-site and what the process would be. Mr. Simmons stated that would depend on who is determined to be responsible for the clean-up.

Therese Cannata, Counsel for Chico Scrap Metal, addressed the Commission on behalf of her client. Ms. Cannata stated there had been robust and extensive testing from 2007 –

2012. She stated the Department of Toxic Substances Control determined when the testing was conducted. The area has consistently tested below commercial levels on-site. The proposed containment system consists of a liner, rocks and cement. She stated it is a completely enclosed system. There is currently no concern of contamination, however, they want to “over protect.” The proposed liner is the “industry preferred” containment and provides an extra level of protection. Ms. Cannata addressed some of the questions brought up during public comment. She pointed out that the Development Agreement provides significant oversight over operations. Ms. Cannata went on to say that there has been no airborne pollutants found in the testing, but they do employ “Best Practices” to reduce any airborne nuisance. Ms. Cannata stated the Department of Toxic Substances Control is still reviewing the removal action work plan (RAW.)

Kim Scott addressed the Commission in the rebuttal phase of the public hearing. She stated that she has walked the neighborhood, talked to community members and the majority of the neighbors within a 500 foot radius support Chico Scrap Metal. She stated she has raised her children at the site and hosted field trips there, she would never put children in danger. Ms. Scott stated they are law abiding community business owners who are just trying to stay in business.

Chair Scott asked about the timeline for the business remodel provided in the Development Agreement. She wanted to know if there are penalties if they are not completed on time. Ms. Scott stated there are financial penalties if the remodel is not completed in the timeline proposed. She stated that they had recently missed a deadline due to her mistake and they had paid that penalty. She stated they had every intention to complete this project prior to the Development Agreement’s deadline.

***Chair Scott closed the public hearing at 8:05 PM***

***Commission recessed at 8:05 PM for a short break. The meeting reconvened at 8:16 PM and all members were present except Commissioner Bennett and Commissioner Evans.***

Chair Scott inquired if staff had received any communications from Habitat for Humanity. Associate Planner Morley explained that Habitat for Humanity, Chico Unified School District, and Sierra Nevada Brewery had all been notified regarding the hearing and staff had not received any letters, email or calls regarding the project. He said he had a conversation with a representative from Habitat for Humanity regarding a different project and Chico Scrap Metal was not mentioned. Associate Planner Morley went on to describe the notification process.

Associate Planner Morley explained that the current property was the site of an auto dismantler in the 1960s and a scrap yard in the 1970s. At the time that Chico Scrap Metal relocated there it was an industrial zone and no use permit was required. He also stated that within the Development Agreement, in Sections 3.3 and 3.4 there are restrictions, conditions, and limitations as to the operations and type of products that could be accepted and processed.

Commissioner Worley inquired if the City had been involved in the moving process during the previous relocation.

Principal Planner Vieg explained that the City had been involved in the initial move and at that time it was “the outskirts of town”. They were moved to an area that was zoned industrial. The issue arose when the City initiated the Chapman Mulberry Neighborhood Plan. The City Council at that time had a different vision for that area and wanted to create a “new” neighborhood center with a small market and localized services such as a laundry mat and such. Normally, when zoning is changed an existing use is considered a “legal non-conforming” use. The City Council at the time of the Neighborhood Plan adoption opted to proceed with an amortization ordinance to phase out the existing scrap metal use. Without the amortization ordinance the current use would be a legal non-conforming use.

Commissioner Howlett stated that the situation is complicated and communication seems to be an issue. He finds it difficult to go against the adopted plans and has a hard time supporting legalizing a non-conforming use when the community vision seems to be different.

Commissioner Rensink stated he is not convinced there is any significant pollutants or danger to the neighborhood. He stated it is a clash of two good goals- recycling vs. good planning. He said it is a shame that there will be losers on one side. Chico Scrap Metal moved to this location 21 years ago. Twelve years ago they knew this move was coming. They have been given 2 extensions, totaling 8 years to move. He is not in support of allowing them to stay.

Commissioner Worley stated she agrees with what Commissioner Rensink said. There was a lot of work and community input into the Chapman Mulberry Neighborhood Plan. She believes it is a worthy goal to recycle, but believes the community involvement should count for something. She did not see any findings in the General Plan to support Chico Scrap Metal remaining in the current location. She also noted the proposal did not seem consistent with goal LU-3 of the General Plan, therefore, she can't support it.

Commissioner Scott asked for clarification regarding the recommendation to pass the Development Agreement and if there were any plans to revise the General Plan.

Principal Planner Vieg stated if the amortization language is removed from the Neighborhood Plan and the Municipal Code, there is no reason to amend the General Plan.

**Commissioner Howlett moved that the Planning Commission direct staff to draft a resolution recommending that the City Council does not approve Development Agreement 15-01, Rezone/Neighborhood Plan Amendment 15-06, or Architectural Review 15-17. Commissioner Rensink second the motion which passed 3-2-1-1 (Arregui & Scott opposed, Evans recused, Bennett absent)**

**5. REGULAR AGENDA**

None.

**6. BUSINESS FROM THE FLOOR**

None.

**7. REPORTS & COMMUNICATIONS**

**7.1 Planning Update**

**Community Development Director Wolfe stated the next meeting will be March 17, 2016.**

**8. ADJOURNMENT**

There being no further business from the Commission, the meeting adjourned at 8:42 PM to the **Adjourned Regular Meeting of Thursday, March 17, 2016.**

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Date Approved

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Mark Wolfe, AICP  
Community Development Director /  
Planning Commission Secretary