

**9. PUBLIC HEARING**

**B) Design Overlay Review No. 1586-15, Conditional Use Permit No. 987-15, and Tentative Parcel Map No. 73914**

Applicant's Request:

The applicant, Davita Health Partners, LLC, is requesting to construct a new dialysis clinic with approximately 11,500 square feet of floor area on a 0.74-acre parcel within the ML-D (Manufacturing, Light with a Design Overlay) zone. The property is located at 20920 Chico Street.

Staff Report and Recommendation:

Senior Planner Rojas presented staff report and the recommendation to adopt Resolution No. 16-2589, approving Design Overlay Review No. 1586-15, Conditional Use Permit No. 987-15, and Tentative Parcel Map No. 73914 for development of a medical dialysis clinic to be located at 20920 Chico Street. He advised that Condition No. 80 will be added to the project: "The City is in the process of developing and adopting Development Impact Fees (DIF) on new developments. DIF are routinely collected by other cities to pay for impacts of a project on the City's infrastructure including, but not limited to, streets, sidewalks, bikeways, parkways and median landscaping, parks, police, fire, sewer, libraries, and reclaimed water. The proceeds from DIF will be used by the City to pay for capital improvements necessary to accommodate new developments. By accepting this condition, the applicant and/or the property owner and their successors (Parties) agree not to object to future payment of the adopted DIF as it relates to this project. The City's DIF will be developed to demonstrate that there is a reasonable relationship between the specific amount of the fee imposed, the particular development project and the cost of the public facility attributable to the project. After the adoption of the DIF, the City will issue a letter to the Parties detailing the amount of the DIF due to the City. The Parties shall pay the DIF in full within 30 days from the date of the letter requesting the DIF payment. If payment is not received by the due date, the City will take further action for collection."

Commissioner Guidry asked if a sidewalk exists on the perimeter of the existing building on the corner.

Senior Planner Rojas indicated no.

Commissioner Guidry expressed her belief that it is not a good use of money to put in a perimeter sidewalk that leads to dirt, highlighting the dirt path along the Shell property. She added that there is no parking, no stopping, or drop-offs permitted on Chico Street.

Planning Manager Naaseh explained that staff has been in ongoing discussions with Shell to develop their property in the future, wherein perimeter sidewalks will be required to be installed by Shell.

Senior Planner Rojas noted for Commissioner Post that this project will have the required four handicapped parking stalls.

Chairman Diaz opened the public hearing.

Marshal Shuman, applicant's representative, advised that there is a front entrance loading/unloading area for their customers in the parking lot, noting that a third of their clients will typically drive to this facility, a third will be dropped off, and a third will be delivered by ambulance. He noted his concurrence with the conditions of approval with the exception of the requirement for a perimeter sidewalk, noting that they have been working with staff and the county on this project for almost two years and that this requirement came up only a week ago; and pointed out there is no parking allowed on Chico Street. He added that they are opposed to agreeing to "unknown" Development Impact Fees (DIF), expressing his belief the City is double-dipping because the DIF language already includes sidewalk improvements; and stated that they only found out about the DIF requirement just before this evening's meeting.

Planning Manager Naaseh advised that the City has recently hired a consultant who will undertake an approximate 12-month comprehensive/precise study to determine what the impact fees will be for each development and that at this time, it is not possible to give the applicants any idea of how much those impact fees may be; and he added that the fees will be based on land use. He added that sidewalks should not be a part of the DIF, that they are usually improvements imposed through the tentative map process. He added that staff will begin to include in this study process all the developers who have these imposed DIF so there are no surprises when the final study goes before the City Council for consideration/adoption.

Commissioner Guidry noted her concern that the City is asking these applicants to agree to pay an unspecified and yet-to-be-determined amount of money for these impact fees, expressing her belief this is fundamentally unfair to the applicants. She asked for confirmation from staff that the sidewalk condition was only imposed as of last week, as reported by the applicant.

Planning Manager Naaseh stated that is correct.

Commissioner Guidry expressed her belief this is also not fair to the applicants who have worked with staff on this project for almost two years, that it should have been discussed early in the planning process. She expressed her belief that currently, a sidewalk leading to the dirt path would be useless; and questioned whether this condition could be delayed until Shell actually does implement development of their site; and that if Shell does not go forward with a project, then this applicant would not need to install that sidewalk.

Vice-Chairman Madrigal agreed that the condition to install the perimeter sidewalk either be eliminated or postponed until Shell actually commences development of their site.

Planning Manager Naaseh explained that it is typical for cities to make incremental area improvements.

Commissioner Guidry stated she agrees with incremental area improvements; she reiterated that vehicles are not allowed to stop on Chico Street; that the street is not capable of being widened; noted her opposition to the late-hour addition of this sidewalk

condition; and stated this condition should be delayed when/if Shell decides to develop their property.

Commissioner Post asked when Shell is planning on undertaking the improvement of their site.

Planning Manager Naaseh stated that while discussions are ongoing, no date for future improvements has been set; and added that once Shell undertakes those improvements, it will have a finished look to that area.

Mr. Shuman stated they would be supportive of a postponement with the sidewalk installation if/when Shell commences a project on their site. He reiterated that the DIF condition includes improvements to streets, sidewalks and bikeways.

Staff stated that if the Commission is considering deferring the sidewalk improvement, they would recommend language to require the applicant to pay an in lieu fee for the future sidewalk, separate from the DIF.

Chairman Diaz asked what is the difference.

Planning Manager Naaseh explained it is based on construction costs, paying now rather than later.

Commissioner Guidry stated that those in lieu fees equate to the same thing as them having to pay for the installation of the sidewalks now.

A.J. Whittaker, project civil engineer, advised that the design team has been working with staff over a year with several predevelopment meetings to lay the design of the project and to address the rules to develop this project, noting this is an important part of the development process; advised that they had the project conditions in their hands two months ago and took it from there to budget the project and get the approval for the engineering drawings; advised that they have since completed two cycles of plan review comments on this project both with the City and the county; and expressed his concern that up until last week, this new offsite sidewalk improvement along Chico was never required in all that time, and pointed out that staff report also indicates sidewalks are not required per engineering staff. He stated this proposal is for this subdivision, a simple two-lot parcel map for an existing development; that there are already full improvements on that portion; and that they are only proposing to develop the back portion of the lot. He added that with the installation of 344 linear feet of sidewalk along the frontage of Chico Street, three existing mature street trees would have to be removed; and he advised that they will not be leaving dirt in this location, that there's full landscaping within the right-of-way adjacent to their site as well as full pedestrian access. He stated that there is a patient drop-off and pick-up area on site, noting there is no stopping permitted on Chico Street.

Mr. Whittaker pointed out that the offsite sidewalk improvement along Chico is based on a draft pedestrian master plan which has not yet been approved; and that the applicant is being asked to provide for this improvement based on a Shell site improvement that may or may not happen in the future and a pedestrian master plan that may or may not be approved in the future, expressing his belief this is not fair to the project or the

developer. He stated that he does understand the DIF being a logical way to address the issue of budgeting for future public improvements; but pointed out that this is not a capital improvement project; that it is an infill project providing a much needed business within the community; and expressed his belief this is an unreasonable burden to not only place a sidewalk adjacent to the developer's project, but also to remove existing improvements and put in an offsite sidewalk and pedestrian access ramp at the corner which has no other connection to the crosswalks or ramp.

In response to Vice-Chairman Madrigal's inquiry regarding precedence, Planning Manager Naaseh advised that this DIF condition will be imposed on other developments, noting it has already been imposed on others in the past couple of months.

Mr. Whittaker asked why they are just now hearing about this condition just before the meeting if it has been in place for the past couple of months.

Senior Planner Rojas stated he responsible for bringing this condition forth this evening, but agreed that other developments have been included in this plan; explained that the City has limited resources for improvements and believes this is an opportunity for this segment of Chico Street to be improved.

William Coons, resident, stated that he rides his bike on Chico Street and that he is in support of placing sidewalks along this stretch of the street, noting he has to ride around pedestrians walking on this street. He asked if an EIR was done for this project given its close proximity to the Shell tank farm (no response was given).

Mr. Shuman stated that there is a sidewalk on the west side of Chico Street from 213<sup>th</sup> Street to Dominguez Street; advised that they are familiar with developer fees and that they support them, but pointed out his opposition to agreeing to pay an open-ended sum of money because it makes it difficult to gauge project costs, rents, and patient treatment costs. He advised that they are ready to start construction as soon as possible; noted that once the parcel map process is complete, the property will be sold to them; and that they estimate nine months for construction. He stated that if they start construction now, the completion of this future DIF study will likely not be completed/approved by the time the dialysis clinic is up and running; and that this unknown fee will make it difficult to do business and is not fair to everyone involved.

Planning Manager Naaseh indicated for Vice-Chairman Madrigal that the DIF payment is a one-time fee.

Commissioner Guidry asked what is the possibility of the Commission approving or conditioning the unknown DIF amount with the ability for the applicant to challenge the amount of the fee if they believe it is unreasonable/excessive. She pointed out that this developer seems to be in support of an impact development fee, but they should be able to appeal it before the Planning Commission should they disagree with the amount.

Assistant City Attorney Gerli stated that due process would allow an applicant the ability to challenge the amount of this DIF.

There being no further input, Chairman Diaz closed the public hearing.

Planning Commission Decision:

Vice-Chairman Madrigal moved, seconded by Commissioner Post, to approve the applicant's request; to exclude the condition requiring the perimeter sidewalk, deleting Condition No. 33, and renumber accordingly; and to amend the language for the DIF to include the ability for an applicant to challenge the amount of the final DIF: "The City is in the process of developing and adopting Development Impact Fees (DIF) on new developments. DIF are routinely collected by other cities to pay for impacts of a project on the City's infrastructure including, but not limited to, streets, sidewalks, bikeways, parkways and median landscaping, parks, police, fire, sewer, libraries, and reclaimed water. The proceeds from DIF will be used by the City to pay for capital improvements necessary to accommodate new developments. By accepting this condition, the applicant and/or the property owner and their successors (Parties) agree not to object to future payment of the adopted DIF as it relates to this project. The City's DIF will be developed to demonstrate that there is a reasonable relationship between the specific amount of the fee imposed, the particular development project and the cost of the public facility attributable to the project. After the adoption of the DIF, the City will issue a letter to the Parties detailing the amount of the DIF due to the City. The Parties shall pay the DIF in full within 30 days from the date of the letter requesting the DIF payment. If payment is not received by the due date, the City will take further action for collection. Any such appeal must be provided in writing to the City Clerk no later than 20 days following the date of notification of the amount from the Planning Department, stating the reasons for the appeal and including all the relevant evidence in support thereof. The City Clerk shall set the appeal for public hearing before the Planning Commission"; and moved to adopt Resolution No. 16-2589. Motion carried, 7-0 (absent Fe'esago, Mitoma, Thomas).

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10. **MANAGER'S REPORT** None

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11. **COMMISSIONERS' REPORTS**

Commissioner Cinco wished Commissioner Post a happy birthday. The Commission echoed those happy birthday sentiments.

Vice-Chairman Madrigal thanked everyone for their well wishes and prayers during his recovery.


Chairman Diaz welcomed Planning Manager Naaseh back from his vacation; and he wished everyone a happy Thanksgiving.


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12. **ADJOURNMENT**

At 8:05 p.m., the meeting was adjourned to Tuesday, December 13, 2016, 6:30 p.m., Helen Kawagoe Council Chambers.

Attest By:

  
Secretary

  
Chairman