

**MINUTES
WHITTIER CITY COUNCIL
WHITTIER REDEVELOPMENT AGENCY
WHITTIER UTILITY AUTHORITY
JOINT MEETING
CITY COUNCIL CHAMBER, 13230 PENN STREET
MARCH 8, 2011**

1. CALL TO ORDER:

The Whittier City Council met in regular session on March 8, 2011, in conjunction with the Whittier Redevelopment Agency and the Whittier Utility Authority. Mayor Nordbak called the joint meeting to order at 6:30 p.m. in the Council Chamber of Whittier City Hall, 13230 Penn Street, Whittier, California.

2. ROLL CALL:

**COUNCIL MEMBERS/AGENCY
MEMBERS/AUTHORITY
DIRECTORS PRESENT:**

Joe Vinatieri, Council Member/Agency
Member/Authority Director
Owen Newcomer, Council Member/Agency
Member/Authority Director
Bob Henderson, Council Member/Agency
Member/Authority Director
Cathy Warner, Mayor Pro Tem /Vice
Chair
J. Greg Nordbak, Mayor/Chair

OTHER OFFICIALS PRESENT:

Stephen W. Helvey, City Manager/Executive
Director
Richard D. Jones, City Attorney/Authority
Counsel
James Markman, Redevelopment Agency
Counsel (1:40 a.m. on March 9, 2011)
Kathryn A. Marshall, City Clerk-Treasurer/
Secretary-Treasurer

3. PLEDGE OF ALLEGIANCE:

Richard Fierro led the Pledge of Allegiance.

4. PRESENTATIONS:

Mayor Nordbak announced the City Council was seeking applicants for annual vacancies on the Board of Library Trustees, Cultural Arts Commission, Historic Resources Commission, Personnel Board, Planning Commission and Social Services

Commission, and was seeking applicants for an unexpired term on the Parking and Transportation Commission.

5. RECESS REDEVELOPMENT AGENCY AND UTILITY AUTHORITY MEETINGS:

Mayor Nordbak recessed the Redevelopment Agency and Utility Authority meetings at 6:31 p.m.

Dean Harako, Whittier Area Chamber of Commerce President, thanked the City Council for attending the Silver Shield Awards Banquet and announced the following events: Wake-Up Whittier, March 9, 2011; Business Seminar, March 17, 2011; Business Expo, March 24, 2011; and Tasty Tuesday Networking Lunch, March 29, 2011. He said the Chamber provides services to over 600 businesses and that its Board had voted to support the 7-Eleven business proposed to locate on Beverly Boulevard.

Richard Fierro, Consolidated Disposal Service, said the City is right on target in its AB939 reporting. He advised the State is considering legislation mandating commercial recycling, an issue his company will work with staff to address.

6.A PUBLIC HEARING – PROPOSED 7-ELEVEN AT 10737 BEVERLY BOULEVARD, DRP10-070, VAR10-003, AND CUP10-014

Mayor Nordbak announced it was the date and time set and duly noticed for a de novo public hearing for review of the Planning Commission recommendation to approve Development Review No. DRP10-070 to construct a new convenience market (d.b.a. 7-Eleven); Conditional Use Permit No. CUP10-014 for the operation of a new convenience store, 24-hour operation and the on-site sale of beer and wine under a Type 20 alcohol license for off-site consumption; and Variance No. VAR10-003 to allow partial intrusion of the building and parking area into the required front and street setbacks and reduce the required driveway throat at the property addressed as 10737 Beverly Boulevard; (Applicant: Cadence Capital Investments, Terri Dickerhoff; Owner: Sami Othman). He read staff's recommendation that the City Council conduct the public hearing and direct staff to return with implementing resolutions reflecting the consensus of the City Council; and explained how the hearing would be conducted.

Planning Manager Adams reviewed material distributed to the City Council since the packet was issued: 1) a map showing a one-mile radius around the project site; and 2) a chart of businesses in that area which sell alcohol, whether or not they have a conditional use permit, and their hours of operation.

City Manager Helvey also introduced into the record a letter from Assemblyman Charles Calderon, an email from Marilyn Petruzzi, an email from the property owner Sami Othman, and an email from Lou Smaldino.

Planning Manager Adams responded to questions from Council Members and stated the applicant submitted the application last year and went through a number of revisions, the project was heard by the Planning Commission on December 20, 2010 and continued to January 18, 2011 when it was approved on a three-two vote with Vice Chair McDonnell and Chair Hernandez dissenting, then on January 20, 2011 Council Member Newcomer requested City Council review of the project; explained the California Department of Alcohol Beverage Control's (ABC) regulation of alcohol beverage sales and hours of operation; advised the project's hours could be 6:00 a.m.- 2 a.m. under ABC regulations but alcohol sales are proposed to end at midnight; referenced report Exhibit 10 depicting four ABC licenses in the project census track, two in the City and two in the County, said the 4th license put the area in an overconcentration condition but the City could make findings to permit overconcentration and allow a 5th business selling alcohol, advised the Mobile station which previously operated at the subject location had an ABC license; said staff recommended the project with alcohol sales in the overconcentration area because the County locations are approximately a mile away, beyond the convenience store draw; said he did not know how many census tracks in the City had an overconcentration of ABC licenses, there are four 7-Elevens in the City, all open 24 hours a day selling alcohol until 2:00 a.m.; and pointed out that Attachment I which shows the calls for police service for convenience stores, may reflect activity at the location or use of the address as a reference point only.

Council Member Henderson submitted a copy of Planning Commission Resolution No. PC89-62 for the record, and said it included a finding that alcohol sales are incompatible with the existing land uses surrounding the subject site in view of the numerous locations where alcoholic beverage can be purchased and would have a negative impact on the surrounding residential properties. He asked if staff was aware of a later amendment to the CUP. Planning Manager Adams said his information on the subject did not come from the history.

Mayor Nordbak opened the public hearing at 6:53 p.m.

Lucy Dinneen, Cadence Capital Investments, stated her firm wanted to construct a 7-Eleven building at the subject site and bring economic development to the City in line with the City's economic development program; requested approval of the CUP, Development Review application and Variance, and said she believed they would all be needed for any development on the site; said the development will generate revenue for the community, be attractive architecturally not a franchise design, and have over 30% of the property landscaped; and said the project will provide residents with a wide range of valued goods.

Terri Dickerhoff, Cadence Capital Investments, said the project site has commercial businesses on all four corners, the previous use included a gas station with convenience store and service bays, the now vacant site is an irregular 15,000 square

feet lot with a 6 foot grade change, and roadway access on three sides; the proposed site plan resulted from extensive work with City staff, has been approved with conditions, features extensive landscaping which she displayed on poster board and described, noting ingress and egress and pedestrian path providing for efficient and safe use of the property; displayed documents identifying the size, shape and grade change parameters of the lot warranting a variance, the parking plan, loading zone and reduced driveway throat, setback encroachment which is offset by bermed landscaping; and displayed boards of the California Craftsman design she said was created for this site with regard to function and scale, including a tower and trellis to create a focal point for the corner.

Ms. Dinneen said her company is representing 7-Eleven; displayed photographs of store interiors; said the market carries grocery, fresh food items, water, and gourmet coffee and a limited selection of beer and wine; displayed a half mile radius ring around the site, reviewed the role the new business would play in the area and the lack of competition it would pose for existing businesses; said the City can determine there is a public convenience and necessity for an overconcentration of ABC licenses, the four surrounding census tracts are residential with no liquor licenses; and said 7-Eleven is looking forward to opening its first new store in Whittier in 24 years.

Monica Krueger, 7-Eleven Corp., said her company wants to integrate into and support its communities and partner with schools, police and fire departments; said the photographs displayed of store layouts are similar to the design planned for Whittier including a fresh food open air design, coffee and cappuccino bar, fresh bakery items, fresh fruit, deli items prepared on demand, fresh sandwiches, sushi, burritos, upgraded floor and ceiling tiles; displayed photographs of new store designs in other cities from upscale to working communities; reviewed their state-of-the art DVR security systems with buttons in the furnishings and on employees which are used for store incidents or incidents involving nearby customers or businesses; said businesses do not open without the security system being installed; the location at Whittier and Redman which had many incidents last year was owned by an elderly, ill man running the business as an absentee owner, he has been replaced with a new franchisee who is currently being trained; they install computer-based training at each store for employee safety, ABC, and procedure training; training is conducted twice a year, meets ABC guidelines, and is documented to ABC.

Ms. Dinneen said the subject site is surrounded by commercial developments; they are locating their building to maintain visibility of the adjacent motorcycle shop to the intersection, will add lighting shining into the adjacent parking lot if the property owner desires, there will be a shared access driveway with an improved turning radius; the development will improve the corner and increase pedestrian safety; their outreach included conducting a neighborhood meeting which no one attended, requesting a meeting with the adjacent property owner which was declined, sending out notices to a 1,000-foot radius which was attended by 20-30 people with an additional 20 people picketing, and meeting with the neighborhood watch captain who offered to share

project information with the neighborhood; they have the support of planning staff, the Chamber of Commerce, and the Planning Commission; she referenced Assemblyman Calderon's letter of opposition and said land use decisions belong at the local level; said as a consequence of the outreach effort their client agreed to limit alcohol sales beyond City standards by agreeing to no sales after midnight, no more than 180 feet of store space for alcoholic beverages, no single can sales, no malt liquor, and they will not advertise liquor; said police findings do not indicate the use would increase crime more than another use and may deter it; it is a difficult site, the project is a convenience market not a liquor store, with a beautiful design which meets the City's objectives. She requested approval of the project and submitted an affidavit of mailing community meeting flyers.

Ms. Krueger responded to questions from Council Members and said they will meet with the police department regarding their security plan; delivery hours will be between 7:00 p.m. and 5:00 a.m.; they anticipate liquor sales will be 10% of the business income; this is the second location in five years in which she has encountered public resistance, their practice is to reach out to stakeholders and move forward in a positive manner; this will be a franchise store but they will maintain 50% ownership of the store so will have a vested interest in the owner and operation of the business.

Jeff Straightor, 7-Eleven Corp. Regional Operations Manager, responded to a question from Mayor Pro Tem Warner and said franchisees provide schools with slurpee coupons, they meet with school representatives in new service areas to identify ways to provide recognition; they have an internal monitoring program which includes auditing stores, weekly store visits, and third party audits of alcohol sales.

Ms. Dinneen responded to questions from Council Members and said the reciprocal access agreement for the driveway property, which is owned 50-50 with the owner of the motorcycle shop property, is not done; they made calls and personal visits to the motorcycle business in an effort to review the proposal; her company is open to securing and maintaining the driveway, which both businesses need for access to their lots; and said they will hold the franchisee accountable for compliance with the CUP conditions including landscaping maintenance.

The following individuals spoke in favor of the proposal and addressed these points: it is a vacant lot which is difficult to develop and an eyesore at the entrance to the City, the business will bring sales tax revenue and jobs to the City, it is a viable company making the proposal, the design fits the character of the City and will be a positive addition to the neighborhood, having a business at the location will reduce graffiti and improve security in the area.

Sue Dean, representing the Whittier Area Chamber of Commerce

Janice Cavanaugh, Whittier, representing the Neighborhood Watch group which had a split vote

Joe Marsico, Whittier, said he was neutral on the project, recommended the residents meet with the 7-Eleven representatives to work out their differences, and said the residents could sign a petition agreeing not to shop at the store.

Mayor Nordbak recessed the meeting at 8:02 p.m. At 8:18 p.m. he reconvened the public hearing with all Council Members present.

The following individuals spoke against the proposal and addressed these points: majority of people who attended the 2nd outreach meeting signed a petition against the project; there are approximately 300 signatures on a petition against the project; the previous business did not have a Type 20 ABC license or sell beer or wine; the existing CUP for the property says alcohol sales would be detrimental contrary to what Planning Commissioners said; 10 7-Elevens with Whittier addresses have loading time and area violations; the *Los Angeles Times* said 47% of 7-Eleven's sales are tobacco and alcohol; 7-Eleven is an out-of-state corporation so the profits will not be spent locally; Cadence Capital will not operate a store without alcohol sales; the public interest finding necessary for a variance has not been made; the property is blighted and has not been maintained by the owner the past four years; Cadence Capital should invest in and improve its current businesses in the City if it interested in a local investment; project supporters have financial interest in the project vs. public safety and necessity in mind; planning staff was resistant to requests to see the project plans; Cadence Capital projected \$1.4 million in sales and tried to sway the Planning Commission with sales tax revenue; no buffer between the proposed building and adjacent property; trees Metro PCS put in the planter on the property line will be removed; eliminating three of the five current driveways for the lot is unacceptable; the applicant has not submitted a reciprocal driveway agreement as required by the CUP; the project configuration will make it difficult for delivery trucks to access; delivery tractor trailers will make dangerous u-turns on Beverly Boulevard which will impede traffic; trucks will take-up parking spaces when making deliveries; 24-hour operation is undesirable for that area; no confidence in limiting alcohol beverage sales; Starbucks runs a jack hammer at 1:30 a.m.; will lower property values; police do not respond to calls relating to neighborhood watch program or illicit activity; the driveway easement is not reflected on County records; a traffic study has not been done; the proposed business will increase traffic which is already significant at the intersection due to the Rose Hills Cemetery, Rio Hondo College, warehouse business across from the College, 605 Freeway access, and the presence of a bus stop; noise will increase and could be like the Ranch Market with delivery truck engines and refrigeration running, horns beeping, customer car alarms going off and people playing music loudly; the number of businesses on the corner has increased from seven to 30 over the years and is enough; parking in front of Norwalk Boulevard homes has been eliminated to accommodate traffic from the Norwalk and Workman Mill intersection; if approved, stop deliveries at 7:00 p.m.; only Wienerschnitzel and Domino's Pizza are open after midnight to 1:00 a.m., so a 24-hour business is not conducive to the area; neighbors have filed a formal protest to Cadence Capital's application for Type 20 license with the

ABC; there are 13 liquor licenses within a one mile radius of the property, no more are needed; 10719 Beverly Boulevard is within 100 feet of the subject property which ABC guidelines indicates prohibits the issuance of a ABC license; consider the interests of the residents in evaluating justification for an ABC license in an area of overconcentration; the services provided by 7-Eleven are available from another business in the intersection's shopping centers so there is no basis of an ABC license finding of necessity or public convenience; CUP condition 37 provides for review of CUP compliance after one year after which conditions put in place to address residents' concerns could be deleted; Chamber of Commerce based its position on misinformation that only Whittier Ranch Market opposed the project; Mobile Oil's 1989 application for an off-site beer and wine sales was denied; the Planning Commission was mis-lead at its January meeting because they believed subject site had a liquor license; a 7-Eleven in the County area sold an individual beer contrary to its operating conditions; the building's appearance does not warrant a variance; question what additional information was missing from Planning Commission's consideration since planning staff does not know the history of the site; Police Community Relations Officer said loitering laws are difficult to enforce in connection with convenience markets; concerned loitering, urination on property, and drunkenness will be associated with the business; Google search of crime and liquor store brought-up many pages vs. crime and doctor's office which is evidence that convenience stores attract more crime than other businesses, particularly because it is close to the 605 Freeway; the murder at the Subway was done by people from Los Angeles due to close freeway access; and do not want this crime-potential business near Greenway Trail.

Rob Robertson, 10725 Beverly Boulevard, owner of adjacent property and Vance and Hines Motorcycle Center, said he owns 38 of the 50 foot common driveway on Beverly Boulevard; reported he declined the developer's offer to put his business logo on their corner sign in exchange for use of the driveway; a 1966 easement between the previous owner of his property and the Mobile Oil Corp. provided for shared access to the lots, Mobile Oil paid a fee to the adjacent property owner, Mobile Oil said the agreement terminated in 2007; he submitted a copy of an Agreement for Common Driveway; the project will interfere with his enjoyment and use of his property, and he will not give Cadence Capital access to his property for a shared driveway. He responded to questions from Council Members and said he believes the project will impact the value of his property because surrounding uses will affect the sale of his property; Metro PCS has a cell tower on his property from which he receives income; and denied he is opposing the project because he was unsuccessful in buying the property.

Don Reese, 10849 Beverly Drive, Whittier, submitted Traffic and Safety data

Sergio Bermudes, Whittier, Los Angeles County Title Examiner, submitted a title insurance document relating to the subject property. He responded to questions from Council Members and said the title report was prepared at the time Mr. Othman purchased the property, he researched the property from the sale date forward and did not find an easement, the expired agreement did not grant an easement.

Luciano Garcia, 5410 Adele, Whittier

Darlene Smallcomb, 5414 Rockne, Whittier, 30 years ago her husband and daughter were held hostage at gunpoint in a market, it could happen again at a 7-Eleven.

Donna Robertson, 10725 Beverly Boulevard, owner adjacent property, submitted documents relating to alcohol licenses and hours of operation for the subject site and other regional businesses, and displayed a list of surrounding 7-Eleven locations and their alcohol sales which differed from Cadence Capital's data.

Danny Vega, 10719 Beverly Boulevard, Whittier

Corina Rozso, Whittier

Ken Bodger, 5805 Comstock #4, Whittier

Fernando Saavedra, 5409 Adele, Whittier

Mayor Nordbak recessed the meeting at 9:57 p.m. At 10:17 p.m. he reconvened the meeting with all Council Members present.

Speakers against the project continued and spoke on the following: the building design is not something unique to Whittier, the company has moved away from a corporate design; Cadence Capital has a goal of building 600 additional stores to save money on rent during the economic decline; Police Lt. Davis said the CUP conditions are standard requirements, not specific to 7-Eleven; the developer tried to push through approval of the project five days before Christmas; the federal government has established guidelines for local government to follow in establishing conditions for safe convenience store operation; some cities establish convenience store crime task forces; the second most dangerous job is convenience store operation; reviewed agenda report Exhibit I calls for service to convenience stores data; at least one 7-Eleven robbery netted \$10,000 not the \$50 reported by the developer; 155 crimes occurred in the subject area in a 30-day period, 113 of which were quality of life crimes vs. major crimes; the best crime prevention would be not approving the business; it only takes 42 seconds to drive to the 605 Freeway from the site; 7-Eleven has not given the East Whittier School District assistance or slurpee coupons; the store's demographic is sales to men for immediate consumption, a use which will not benefit families; Deveroe does not have street lights so a criminal could easily hide on the street; there are eight 7-Elevens within three miles of the subject site; people would not shop for fresh groceries at 7-Eleven; consider how the community came together and invested time to oppose a corporation; referenced the Undercover Boss program which showed 7-Eleven's owner finding a business with unaddressed safety issues; the applicant's comments about an elderly ailing owner vs. a young vibrant owner reflects possible age discrimination; 24-hour convenience stores undermine the family and impact children's lives; 7-Eleven raised prices in their stores following the Northridge earthquake; the property owner is not taking care of the property resulting in disabled people walk in the street; obesity is a national issue not helped by convenience stores; delivery trucks coming to the intersection are violating the law due to weight restrictions, make u-turns on Norwalk Boulevard, and some park in traffic lanes on Workman Mill Road and Norwalk Boulevard to make deliveries; the short throat on the driveway would be a traffic hazard; oppose junk food being available 24 hours a day, seven days a week; soil is

contaminated by Mobile Oil's use, project would require relocation of monitoring wells, require clean-up before the site is developed; and the majority of after hour calls for fire departments relate to liquor or convenience stores for stabbing, mugging, assault, vagrants or shooting.

Carl Grilli, 5503 Rockne, Whittier, submitted loitering and vagrant information, *Denver Post* article regarding 7-Eleven stores, and U.S. Department of Justice Office of Community Oriented Policing Services *Robbery of Convenience Stores* guide.

Kimberli Stinson, 10520 Deveron Drive, Whittier

Marta Borbon, 5228 Glennon Drive, Whittier

Mike Holland, representing Assemblyman Calderon, referenced the letter of opposition submitted by the assemblyman

Priscilla Flores, 5312 Davidson Drive, Whittier, own Weinerschnzel at Beverly and Norwalk Boulevards

Petrina Gooch, 5301 Davidson Drive, Whittier, she responded to a question from Mayor Pro Tem Warner and said the market is open until 9:00 p.m. and has cold medicines.

Esteban Morales, 5436 Norwalk Boulevard, Whittier

Ted Snyder, 5004 Tierra Antigua Drive, Whittier

Mayor Nordbak interjected that Council Members would take individual breaks to allow the public hearing to go forward.

(Council Member Warner was absent from the meeting from 11:11 p.m. to 11:13 p.m.)

Omar Villanueva, 5323 Workman Mill Road, owner of El Camino Mexican Grill at 5331 Workman Mill Road, Whittier, experienced two crimes in the past year

Mary Anne Paton, 10849 Beverly Drive, Whittier

Ernest Limon, 10247 Lyle Street, Whittier

(City Attorney Jones left the meeting at 11:21 p.m., Council Member Vinatieri left the meeting at 11:22 p.m.)

City Manager Helvey responded to a question from Council Member Newcomer and advised delivery trucks are permitted to drive through to their destination even if it means driving on a weight limited street.

Adela Vermontes, 10813 Beverly Boulevard, Whittier

(Council Member Vinatieri returned to the meeting and Mayor Pro Tem Warner left the meeting at 11:25 p.m.)

Luna Prear, 10310 Starka Avenue, Whittier

(Mayor Pro Tem Warner returned to the meeting at 11:29 p.m.)

Anthony Martinez, Whittier

(City Attorney Jones returned to the meeting at 11:32 p.m.)

George Poochigian, Whittier
Ralph Marsico, Whittier
Gary Izquierdo, 5433 Ben Alder, Whittier

The City Council determined to proceed with deliberations on the matter rather than continue the public hearing.

(Mayor Pro Tem Warner left the meeting at 11:43 p.m. and returned at 11:59 p.m. Council Member Henderson left the meeting at 11:59 p.m. and returned at 12:02 a.m. on March 9, 2011.)

Ms. Dinneen said the proposal is a quality project for the site, they tried to reach out to the community, the Chamber of Commerce spoke for itself and some of its membership are in the shopping center; they will go through the ABC process to obtain a liquor license; she displayed a chart of ABC census tracts, described the ABC process of determining the number of licenses permitted in a tract, noted there is some concentration of licenses on Whittier and Beverly Boulevards which is not atypical, said communities have the ability to allow overconcentration on the basis of either necessity or convenience; advised nothing in their research indicated Whittier was a high crime area; said 7-Eleven believes alcohol sales will be 10% of their income for this store; they did not review the 1989 CUP in preparing this project; delivery trucks are 24 feet in length so the site will work; the reciprocal easement for the driveway is required before construction not before approval of the project but, if it were not approved, they would redesign their access; they called the adjacent property owner at least 10 times and could have resolved the planter and other concerns if he would have met with them; Exxon Mobil is still responsible for clean-up of the property, they have an access agreement with Mobil so Mobil can continue its remediation plan.

Ms. Krueger said 10 of their stores are in the City or South Whittier; reported she had reviewed every criminal incident associated with the stores over a 14 month period to determine how many incidents involve robbery; said the \$10,000 robbery mentioned by a speaker was for a bank not a 7-Eleven; businesses can use an armored service for added security; she summarized incidents at various stores, three of which were a robberies. She responded to a question from Mayor Nordbak and agreed the amount of money lost is not the only issue, it is important to prevent the robberies which they do through policies, procedures, equipment, and training to protect employees and the community.

Mr. Straightor said they can adjust delivery schedules and routes into a business to meet CUP requirements and adapt to neighborhoods; and they have a toll-free number for customer complaints. He responded to questions from Council Members and confirmed their independent vendors would be included in their delivery parameters, the store would have approximately four deliveries per day, and he would evaluate the ability to limit delivery trucks to a 24-foot length.

Ms. Dinneen said the practice of keeping accessible cash flow has dramatically reduced crime at the stores. She responded to questions from Council Member Vinatieri and confirmed a reciprocal access agreement with adjoining party will need to be provided following approval of the CUP or her firm would work with Public Works to realign its access which may include relocating a street light and bus stop.

There being no further testimony to be presented, it was moved by Council Member Newcomer, seconded by Council Member Vinatieri, and carried unanimously to close the public hearing at 12:20 a.m. on March 9, 2011.

Assistant Public Works Director Magdosku responded to questions from Council Members and said he had not seen the reciprocal access agreement; the bus stop at the subject property is an extra stop which could be eliminated because there is another stop at the Hoover Fountain; the street light could be moved to allow for a modified access plan although the landscaping would also be impacted; the school bus is one stop in the afternoon; approximately 800 trips per day were projected for the project but he believed that was high, some of those would be drive-by only; most customer traffic would come from Workman Mill Road; a traffic study was not recommended because the intersection had been studied by Rio Hondo College and through the Uptown Specific Plan; the intersection already operates at level F in the morning and level D in the evening; the Statement of Overriding Consideration adopted by the City Council through the Uptown Specific Plan includes widening Norwalk Boulevard and Workman Mill Road because of traffic impacts in the area; if the applicant had conducted a traffic study which included a fair share analysis for contribution to make improvements, the City would not be able to use the funds because the intersection is in a saturated condition.

City Attorney Jones responded to a question from Council Member Newcomer, confirmed with Planning Manager Adams that the closest residential property is 127 feet from the subject property, and advised a quick review of the ABC regulations submitted by Mrs. Robertson indicated that, if there were a residential property within 100 feet of the project, the City Council could making a finding of overriding considerations and approve the CUP with alcoholic beverage sales permitted.

Acting Police Captain Ellis responded to questions from Mayor Pro Tem Warner, said the police department looks at each CUP application separately to review issues such as lighting, security measures, staffing, and turn styles; and advised residents are encouraged to speak with officers but when they obtain information from them vs.

through the department on a formal basis they may not receive statistical data, they may only hear what the particular officer experienced.

City Attorney Jones responded to questions from Mayor Pro Tem Warner and Council Member Henderson and said he does not know of any incompatibility of the variances with the General Plan; variances are permitted if the City Council makes the required findings relating to topography and uniqueness of the property; public safety is always a consideration when granting a CUP; the City Council can include conditions relating to time and security measures to reflect its findings and experience with the proposed use; under ABC regulations the City Council will need to make a finding of public necessity or convenience to allow the overconcentration of liquor licenses for this project; a variance can allow a reduced set-back with an adjacent property and permits the City Council to condition the variance; the City Council should make findings to either approve or deny the project; findings which are based on the project's unique conditions will not be applicable to another project, those which address broader issues could be argued to create a precedence; this project has so much discretionary approval, it would be very difficult for someone to prove a "taking" of the property if the property owner decided not to proceed with the project.

Council Member Vinatieri advised he walked the property the previous weekend; said the property is blighted and an irregular shape and topography, is at a key location so having it look good would reflect on the community, property owners should be able to do what they want with their property within reason, he likes the design, accepts the assessment of traffic and safety impacts, would like the additional jobs and tax revenue, competition is good for an area, and he appreciated the applicant's extra outreach to the community; but he did not see the necessity a third alcohol establishment within 400 feet, so would not support further overconcentration of alcohol sales; if the applicant wanted the project without alcohol, he would approve it but would not support the CUP if it included beer and wine sales.

(City Manager Helvey left the Council Chamber at 12:45 a.m.)

Council Member Newcomer said he was concerned about safety and alcohol sales but was persuaded there is a good plan to address those issues through the security plan, limited alcohol sales and no advertising of alcoholic beverages; he supported limiting delivery trucks to 24 feet and restricted delivery hours; said the proposal fits the General Plan and the economic development plan, architectural standards, and landscaping; he did not believe 7-Eleven would add to the traffic problem; the project meets the public convenience standard for a finding to obtain the ABC license; the configuration of the lot justifies the variances; the CUP protects the community; and he supports the project.

Council Member Henderson spoke regarding the history of development in that area which was under-parked, created traffic congestion, and resulted in safety issues which have since been controlled through CUPs for convenience stores; he reviewed

calls for police service at convenience stores and the overconcentration of ABC licenses; said he believed this business would be a re-distribution of revenue; he could not make a finding of convenience or necessity for additional overconcentration of alcohol licenses; did not see the need for the variances, it is a request to accommodate a specific store; he noted the neighborhood's concerns with traffic, overconcentration of alcohol, and adequate provision of the proposed services in the area and said it is not an appropriate location for the business.

(City Manager Helvey returned to the meeting at 1:02 a.m.)

Mayor Pro Tem Warner addressed some of the process issues raised by speakers, said she believes the breakdown of the family is a societal issue not limited to access to convenience stores; nutritional issues are important but are the responsibility of the family; the City will revoke CUPs if warranted so conditions are enforced. She said if the project were approved delivery time should be restricted from 7:00 a.m. to an early evening time, with only one delivery truck on site at a time; the hours of operation should be 6:00 a.m. to midnight; a setback for the adjoining property with regard to the planter should be addressed; and alcohol sales should not be permitted due to existing overconcentration in the area.

Mayor Nordbak said he supports the new store policy with fresh fruit but believed the business would present more problems than solutions at the location; suggested 7-Eleven re-invest in existing stores in the City by cleaning them up and adding the fresh fruit and other features; said he was not comfortable without an operator being in place; the alcohol proposal is acceptable; reported his experiences being held-up while operating a convenience store; said he appreciated the community outreach effort yet only received two communications in favor of the project; it is a poor location for convenience store because of short distance to freeway in the event of a crime; he did not support the variance or zero lot line; said the applicant may have a problem with the access easement; a 24-hour operation does encourage panhandling; therefore he would not support the project.

Ms. Dinneen responded to a question from Council Member Newcomer and said her tenant's business is a 24-hour use and cannot compete without alcohol sales.

Mr. Straightor responded to a question from Mayor Pro Tem Warner and said each store is evaluated for its return on investment and, unlike their Rowland Heights store, this location will not meet its return goal without alcohol sales.

It was moved by Council Member Henderson, seconded by Council Member Vinatieri, and carried with Council Member Newcomer dissenting and Mayor Pro Tem Warner abstaining, to deny the application and direct staff to return with implementing resolutions including the appropriate findings reflecting the consensus of the City Council.

Mayor Nordbak recessed the meeting at 1:25 a.m. At 1:38 a.m., he resumed the meeting with all Council Members present.

6.B PUBLIC HEARING – 2011-2012 HUD ACTION PLAN AMENDMENT NO. 1

At 1:39 a.m., Mayor Nordbak opened the Public Hearing to consider approval of Amendment No. 1 to the Department of Housing and Urban Development (HUD) 2011-2012 Action Plan.

There being no one wishing to testify before the City Council, it was moved by Council Member Newcomer, seconded by Council Member Vinatieri, and carried unanimously to close the Public Hearing.

It was moved by Council Member Newcomer, seconded by Mayor Pro Tem Warner, and carried unanimously by roll call vote, to approve Amendment No. 1 to the 2010-11 HUD Action Plan, direct staff to forward Amendment No. 1 to HUD; and that Resolution No. 8355 entitled, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WHITTIER, CALIFORNIA, AMENDING THE FISCAL YEAR 2010-11 BUDGET FOR THE PURPOSE OF REPROGRAMMING UNEXPENDED COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS AND HOME FUNDS", be read by title only, further reading be waived, and it be declared adopted.

Agency Counsel Markman joined the meeting at 1:40 a.m. on March 9, 2011.

NEW BUSINESS – ITEM 11.B

City Manager Helvey said some actions had arisen since the posting of the agenda which he believed the City Council/Agency Board would wish to consider.

Agency Council Markman advised the Governor had proposed legislation which would dissolve redevelopment agencies; because the Whittier Redevelopment Agency has a number of obligations and the City of Whittier is engaged in providing services as Agency staff, it would be prudent to document those obligations before the pending legislation is enacted to improve the Agency and the City's opportunity to complete the projects. He said because the timing for enacting the legislation is unknown and could occur before the next regular meeting, he recommended the City Council and Agency Board consider adding the following items to the agenda: Approving resolutions authorizing an advancement and reimbursement agreement between the City and the Agency; adopting an Agency resolution amending the Budget to reflect those actions; approving a City and Agency staff services agreement that reflects staffing services needed in future years; and adopting an amended memorandum of understanding (MOU) with Brookfield Homes for development of the Nelles property to address the use of anticipated tax increment revenue.

It was moved by Mayor Pro Tem Warner, seconded by Council Member Newcomer, and carried unanimously, to approve staff's recommendation and add the items to the agenda.

(See Page 20 for action on these items.)

7. RECONVENE REDEVELOPMENT AGENCY AND UTILITY AUTHORITY MEETING IN JOINT SESSION WITH CITY COUNCIL:

Mayor Nordbak reconvened the Redevelopment Agency and Utility Authority in joint session with the City Council at 1:44 p.m.

8. ORAL COMMUNICATIONS:

Ralph Marsico, Whittier, spoke regarding be evicted from his home and the City's role in that action; said he was trying to put his family back together and spoke about his brother being commemorated at the Civic Center.

Arthur Rock, Whittier, spoke regarding Amelia Vogel's service to others and encouraged people to support the United States' military.

Roberta Reed, Fullerton, said there is a sign at First Street and Lambert Road which needs attention because it cannot be read; complimented the City on the flowers at the Civic Center and the new police facility; said there are still two trees marked for removal at the Senior Center which she did not want removed, and that she did not support service on the City Council being a career.

Anthony Martinez, Michigan Avenue, Whittier, said he was opposed to the oil project and that the new light poles on the east side of the City have water in the glass and 20 of them do not light up at all.

Joe Marsico, Whittier, asked Council Members to call him to discuss the plight of the poor, and acknowledged the passing of Amelia Vogel.

9. CITY COUNCIL/REDEVELOPMENT AGENCY/UTILITY AUTHORITY JOINT CONSENT CALENDAR:

City Manager Helvey introduced the Consent Calendar and recommended its approval; noted Mayor Nordbak and Council Vinatieri had conflicts of interest with Item 9.E; requested Item 9.L be approved with the additional provision that he be permitted to make minor changes to the Branch Library Project Request for Qualifications (RFQ); and noted that Item 9.I had received a late protest, which should be addressed in the City Council's action.

Public Works Director Pelsler reviewed the bid protest for Item 9.I, the City Hall Window Replacement Project, and reported that Tandem West, one of the bidders, protested Crabtree Glass Company's bid. He explained the two points of contention, reviewed staff's analysis; and concluded with a recommendation that the City Council's action on 9.I include acknowledging and overruling Tandem West's bid protest.

City Manager Helvey responded to a question from Mayor Nordbak regarding Item 9.E, Issuance of Health Facility Bonds for Presbyterian Intercommunity Hospital, and advised that the Hospital's bond counsel had a strong preference for ratification of the City Council's February 22, 2011 approval with a vote from Council Members who do not have a conflict of interest, noting that on February 22, Council Member Vinatieri had participated in deliberations due to Council Member Henderson being absent.

City Attorney Jones noted for the record that Council Member Henderson had reviewed the Hospital bond hearing record so he could vote on the matter tonight.

It was moved by Council/Agency Member/Director Henderson and seconded by Mayor Pro Tem/Vice Chair Warner to approve the Consent Calendar, including the additional action for 9.I outlined by the Public Works Director and authorizing the City Manager to make non-substantive changes to the RFQ in Item 9.L.; and that Resolution Nos. 8356 (Item 9.D), 8357 (Item 9.E), 8358 (Item 9.F), 8359 (Item 9.H), 8360 (Item 9.K), 8361 (Item 9.M), and WUA-11-01 (Item 9.G) be read by title only, further reading be waived, and they be declared adopted. The motion carried unanimously by roll call vote, with the exception of Item 9.E, from which Council Member Henderson and Mayor Nordbak abstained.

- 9.A** The City Council denied claims filed by Neil Coward, Peter Gavrilou, Nicholas Campuzano, and Arturo Villanueva.
- 9.B** The City Council, Agency Board and Board of Directors approved the Minutes of the Regular Meeting of February 22, 2011.
- 9.C** The City Council received and filed the following Planning Commission actions:
 - 1. Approval of Development Review No. DRP10-076 to construct a new 21-unit multi-story residential development including a waiver to allow intrusion of parking stalls into a portion of the required side yard setback for property located at 12524 Philadelphia Street; Applicant: LINC Community Development Corporation; Owner: William F. Bowermaster.
 - 2. Approval of Development Review No. DR07-592 to reduce the density requirement for the construction of two detached 1,094 square-foot multi-family units with attached 485 square-foot two-car garage for each unit; and Variance No. 08-005 to reduce the front yard setback

and the vehicle back up distance between the garages for property located at 13423 Franklin Street; Applicant/Owner: Jagdish Mehta.

3. Approval of Conditional Use Permit No. CUP 10-011 to permit the operation of an additional wireless telecommunication facility in conjunction with new ancillary equipment and Development Review No. DRP10-079 to co-locate an additional wireless telecommunication facility on an existing telecommunication facility in conjunction with new ancillary equipment cabinets for property located 6031 Citrus Avenue (Founders Park); Applicant: Royal Street Communications; Owner: City of Whittier.
 4. Approval of Conditional Use Permit No. CUP 10-009 to allow for the operation of a new tattoo parlor (d.b.a. Ink Fiends) located within an existing commercial center at 13433 Lambert Road, Suite A; Applicant: Sandra Pasillas; Owner: Joan F. Allison.
- 9.D** The City Council adopted Resolution No. 8356 entitled, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WHITTIER, CALIFORNIA, MODIFYING POLICE DEPARTMENT VOLUNTEERS DUTIES TO INCLUDE ISSUANCE OF PARKING CITATIONS TO VEHICLES PARKED ILLEGALLY IN HANDICAP STALLS."
- 9.E** The City Council adopted Resolution No. 8357 entitled, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WHITTIER, CALIFORNIA AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF CERTAIN REVENUE BONDS TO FINANCE CERTAIN HEALTH FACILITIES FOR THE BENEFIT OF INTERHEALTH CORP., PRESBYTERIAN INTERCOMMUNITY HOSPITAL, INC. AND IHC MANAGEMENT CORP., THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS AND CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH AND RESCINDING RESOLUTION NO. 8354."
- 9.F** The City Council adopted Resolution No. 8358 entitled, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WHITTIER, CALIFORNIA, SUPPORTING A RESOLUTION ADOPTED BY THE LEAGUE OF CALIFORNIA CITIES, LOS ANGELES DIVISION, CALLING FOR REASONABLE, PRACTICABLE, AND ECONOMICALLY ACHIEVABLE TOTAL MAXIMUM DAILY LOAD AND MUNICIPAL NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT REQUIREMENTS."
- 9.G** The City Council and Board of Directors took the following actions regarding the La Cuarta Street Reconstruction from Whittier Boulevard to College Avenue Federal Project No. ESPL-5111 (054):
1. Awarded the construction contract to Nobest, Inc., in the amount of \$1,022,001;

2. Rejected all other bids;
 3. Adopted Resolution No. WUA-11-01 entitled, "A RESOLUTION OF THE BOARD OF DIRECTORS OF THE WHITTIER UTILITY AUTHORITY AMENDING THE 2010-11 FISCAL YEAR BUDGET TO FUND ADDENDUM 1 OF THE LA CUARTA STREET RECONSTRUCTION FROM WHITTIER BOULEVARD TO COLLEGE AVENUE," in the amount of \$65,000; and
 4. Authorize the City Manager to execute the contract.
- 9.H** The City Council took the following actions regarding the Central Library Mechanical Equipment Replacement Project:
1. Overruled the Letter of Protest by C. R. Hickman;
 2. Accepted the Letter of Protest by Pardess Air Incorporated;
 3. Awarded the construction contract to Pardess Air, Inc., in the amount of \$326,000;
 4. Rejected all other bids;
 5. Authorized the City Manager to execute the contract; and
 6. Adopted Resolution No. 8359 entitled, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WHITTIER, CALIFORNIA, AMENDING THE FISCAL YEAR 2010-11 BUDGET FOR THE EXPENDITURE OF CENTRAL LIBRARY MECHANICAL EQUIPMENT REPLACEMENT," in the amount of \$199,128.
- 9.I** The City Council took the following actions regarding the City Hall Window Replacement Project:
1. Authorized staff to update the appropriate Energy Efficiency and Conservation Block Grant activity worksheets and budget information documents;
 2. Awarded the construction contract to Crabtree Glass Company in the amount of \$104,960;
 3. Approved the issuance of Contract Change Order No. 1 to Crabtree Glass Company in the amount of \$110,010;
 4. Rejected all other bids; and
 5. Authorized the City Manager to execute the contract.
 6. Acknowledged and overruled the protest by Tandem West.
- 9.J** The City Council accepted the work performed by Christopher R. Morales, Inc. for the Painter Avenue and Ramona Drive Street Lighting Improvements Project; and authorized the City Clerk-Treasurer to record the Notice of Completion.

- 9.K** The City Council adopted Resolution No. 8360 entitled, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WHITTIER, CALIFORNIA, WAIVING THE FEE FOR CLARIFICATION OF REGULATIONS REGARDING OUTDOOR DISPLAY OF MERCHANDISE," in the amount of \$619.
- 9.L** The City Council directed staff to proceed with the Whittwood Branch Library expansion and other improvements using the Construction Manager Multi-Prime (CMMP) construction delivery method; and authorized staff to issue a Request for Qualifications for a Construction Manager for the CMMP.
- 9.M** The City Council adopted Resolution No. 8361 entitled, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WHITTIER, CALIFORNIA, AMENDING THE FISCAL YEAR 2010-2011 BUDGET TO ACCEPT A GRANT FROM CALIFORNIA STATE LIBRARY," in the amount of \$15,000 to create a digital "Story Station" at the central Library to display historic photographs of the City.
- 9.N** The City Council approved the City Manager's appointment of Jeff Piper as Chief of Police.

10. RECESS UTILITY AUTHORITY MEETING:

Mayor Nordbak recessed the Utility Authority meeting at 2:05 a.m.

11.A LINC OWNER PARTICIPATION AND LOAN AGREEMENT FOR 12524 PHILADELPHIA STREET.

It was moved by Council/Agency Member Newcomer, seconded by Council/Agency Member Henderson, and carried unanimously by roll call vote, that the City Council re-certify LINC Community Development Corporation as a Community Housing Development Organization (CHDO) under the HOME Program; Agency Board adopt Resolution No. WRA-11-01 entitled, "A RESOLUTION OF THE BOARD OF THE WHITTIER REDEVELOPMENT AGENCY AMENDING THE FISCAL YEAR 2010-11 BUDGET FOR THE PURPOSE OF FUNDING A LOAN FROM THE LOW- AND MODERATE- INCOME HOUSING SET-ASIDE FUND TO LINC COMMUNITY DEVELOPMENT CORPORATION UNDER AN OWNER PARTICIPATION AND LOAN AGREEMENT" in the amount of \$2,803,254; and that the City Council and Agency Board approve the Owner Participation Agreement with LINC Community Development Corporation for development of a 21-unit affordable housing complex located at 12524 Philadelphia.

11.B CITY/AGENCY FUNDING AND SERVICES AGREEMENT AND NELLES PROPERTY MOU

(See action adding item on page 15.)

It was moved by Council Member Newcomer and seconded by Mayor Pro Tem Warner to approve a Memorandum of Understanding (MOU) regarding Fred C. Nelles property with the Whittier Redevelopment Agency and Brookfield Southland, Inc.; approve staff services agreement with the Whittier Redevelopment Agency; and that Resolution No. 8362 entitled, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WHITTIER, CALIFORNIA, APPROVING AN AGREEMENT WITH THE WHITTIER REDEVELOPMENT AGENCY FOR THE PAYMENT BY THE AGENCY FOR THE VALUE OF THE LAND FOR AND THE COST OF INSTALLING AND CONSTRUCTING IMPROVEMENTS, MAKING FINDINGS IN CONNECTION THEREWITH," be read by title only, further reading be waived and it be declared adopted.

Following discussion, the maker and seconder of the motion amended the motion to include approval of the MOU with Section E.4 modified to incorporate a \$1.5 million per year value in place of the \$1 to \$2 million figure in the proposed agreement. The amended motion carried unanimously by roll call vote.

A motion was made by Agency Member Henderson, seconded by Agency Member Vinatieri, and carried unanimously by roll call vote to approve the MOU regarding Fred C. Nelles property with the City of Whittier and Brookfield Southland, Inc.; approve the agreement for staff services with the City of Whittier, and that Resolution No. WRA-11-02 entitled, "A RESOLUTION OF THE BOARD OF THE WHITTIER REDEVELOPMENT AGENCY APPROVING AN AGREEMENT WITH THE CITY OF WHITTIER FOR THE PAYMENT BY THE AGENCY FOR THE VALUE OF THE LAND FOR AND THE COST OF INSTALLING AND CONSTRUCTING IMPROVEMENTS, MAKING FINDINGS IN CONNECTION THEREWITH," and WRA-11-03 entitled, "A RESOLUTION OF THE BOARD OF THE WHITTIER REDEVELOPMENT AGENCY AMENDING THE FISCAL YEAR 2010-11 BUDGET FOR THE PURPOSE OF FUNDING MULTIPLE REDEVELOPMENT ACTIVITIES," be read by title only, further reading be waived and they be declared adopted.

12. RECONVENE UTILITY AUTHORITY MEETING IN JOINT SESSION WITH CITY COUNCIL AND REDEVELOPMENT AGENCY:

Mayor Nordbak reconvened the Utility Authority meeting in joint session with the City Council and Redevelopment meetings at 2:19 a.m.

13. COUNCIL/AGENCY MEMBER/DIRECTOR COMMENTS AND CONFERENCE REPORTS:

No conference reports or comments requiring follow-up were made.

14. ADJOURN REDEVELOPMENT AGENCY AND UTILITY AUTHORITY MEETINGS:

15. CITY COUNCIL CLOSED SESSION:

City Manager Helvey advised there was no need for the Closed Session listed on the agenda.

15.A City Council – Government Code Section 54956.9(a) to discuss one case of litigation; Case No. BS128995, Open Space Legal Defense Fund, a non-profit organization; Heriberto Diaz and Daniel Duran vs. City of Whittier, et al.

16. RECONVENE IN OPEN SESSION:

17. CLOSED SESSION REPORT:

18. ADJOURNMENT:

Mayor Nordbak adjourned the meeting at 2:22 a.m. on March 9, 2011.

Respectfully submitted,

Kathryn A. Marshall
City Clerk-Treasurer/
Secretary-Treasurer