



# **CITY COUNCIL AGENDA REPORT**

MEETING DATE: SEPTEMBER 7, 2010

ITEM NUMBER:

SUBJECT: APPEAL OF PLANNING APPLICATION PA-10-15  
3183 RED HILL AVENUE

DATE: AUGUST 20, 2010

FROM: DEVELOPMENT SERVICES DEPARTMENT

PRESENTATION BY: MINOO ASHABI, SENIOR PLANNER  
KIMBERLY BRANDT, DIRECTOR

FOR FURTHER INFORMATION CONTACT: MINOO ASHABI, (714) 745-5610

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## **RECOMMENDATION:**

Uphold or Reverse the Planning Commission's decision to approve the project.

## **BACKGROUND:**

On August 9, 2010, the Planning Commission approved the proposed project with the exception of the off-site parking on a 4-1 vote (Commissioner Fitzpatrick voting no). The Planning Commission staff report is attached in its entirety (Attachment 4).

## **ANALYSIS:**

### ***Planning Application PA-10-15 for Conditional Use Permit***

The proposed "Center for Spiritual Living" Church is a permitted use in the MP (Industrial Park) zone. The Conditional Use Permit application involved two components:

#### ***1. After School Program***

A conditional use permit is required to establish an after school program (The Discovery School of Arts and Sciences) as an ancillary use within a new church facility at 3183 Red Hill Avenue.

The applicant is proposing to offer after school classes to a maximum of 150 intermediate students (6-8 grades) within six classrooms. The students will be picked up by a shuttle service from various schools and dropped off at the facility in the afternoon. A loading/unloading area located along the main entrance is identified on the site plan (Attachment 4). The classes will be held from 3:30 p.m. to 6:30 p.m. Monday through Thursday.

## **2. Off-site Parking**

A conditional use permit is required for **potential** off-site parking for church use, with weekend and one weeknight worship services requiring greater than 300 seats in the sanctuary.

Please note: The August 9<sup>th</sup> Planning Commission staff report makes references to potential off-site parking at 3187 Red Hill Avenue. The CUP request was revised after the publication of the staff report to not identify a specific property for potential future off-site parking at this time.

### ***Analysis related to Appeal***

The appellant's letter referred to the following concerns:

#### **1. Decrease the number of seats to 258 seats**

*The appeal letter indicated that the maximum number of seats accommodated by on-site parking is 258 seats.*

There are 86 on-site parking spaces. The church sanctuary is physically able to accommodate about 600 fixed seats. Code requires 1 parking space for every 3 fixed seats in the sanctuary. In this case, if this parking standard is strictly calculated, 86 parking spaces/258 fixed seats would be allowed.

Planning Commission applied flexibility in the interpretation of required parking. Condition of approval No. 2 allowed a maximum of 300 fixed seats (and not strictly 258 fixed seats) for the church because the strict application of the parking requirement did not reflect the anticipated parking demand due to the church's unique operations. The current church membership is about 300 members, and the church will have three different services throughout the week (Saturday, Sunday, and one weeknight). One weekday worship service is proposed which will be held at 7:00 p.m. after school hours.

City Council may decide that the numeric parking requirements should be strictly applied irrespective of the church's operational characteristics, if that were the case, Council may uphold the Planning Commission's approval of the CUP limit – with a **modification** to Condition No. 2 to restrict seating to a maximum of 258 seats (Resolution, Attachment 1).

Please note that the Planning Commission did not approve potential off-site parking as part of the conditional use permit. Therefore, the applicant is required to submit an off-site parking agreement with a neighboring property if more sanctuary seating is required.

#### **2. Potential Environmental Impacts**

*The appeal letter indicated that the project has potential environmental impacts that do not fall under the categorical exemptions of California Environmental Quality Act (CEQA).*

The proposed church use is consistent with the City's Zoning Code that allows church use within MP zones and the City's General Plan. Under CEQA, the project qualifies for a Class 1 exemption for Existing Facilities in that it involves the permitting of an existing private structure; the project is in an area where all public services and facilities are available to allow for maximum development permissible in the General Plan; and the area in which the project is located is not environmentally sensitive. The traffic and parking impacts associated with the church use and the after school program are similar to use of the existing 31,779 square-foot building occupied with an office use or a light industrial use.

In addition, Transportation Division staff evaluated the trip generation for the church use. Staff considered that the operations primarily occur during non-peak hours and concluded that the proposed church, including the after school program, would not have a significant impact on the circulation system. The Transportation Division calculated the traffic impact fee at \$12,308 to be remitted prior to issuance of a building permit.

### **ALTERNATIVES:**

The City Council has the following alternatives:

1. Uphold the Planning Commission's decision to approve PA-10-15 for the after-school program. The project approval may include any modifications to the project, including a reduction in the maximum allowable sanctuary seats from 300 seats to 258 seats. The after-school program could be established, subject to recommended conditions of approval.
2. Reverse the Planning Commission's decision and deny PA-10-15. If the project were denied, the after-school program could not be established. The church as a permitted could be established by right but limited to 258 seats.

### **LEGAL REVIEW:**

The City Attorney's office has approved the attached resolution as to form.

### **CONCLUSION:**

Planning Commission expressed concerns regarding taking any action on the off-site parking requirement without having any approval from an adjoining property owner. Commission limited the CUP approval to the after-school program for a new church with 300 fixed seats. The church use is a permitted use in the MP zone and does not require any discretionary land use approval, provided there is adequate on-site parking.

  
MINOO ASHABI, AIA  
Senior Planner

  
KIMBERLY BRANDT, AICP  
Development Services Director

cc: City Manager  
Assistant City Manager  
City Attorney  
Public Services Director  
City Engineer  
Transportation Svs. Manager  
Fire Protection Analyst  
Staff (4)  
File (2)

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- Attachments:
1. Approval Resolution
  2. Denial Resolution
  3. Appeal Letter/ Form
  4. 08/09/10 Planning Commission Report
  5. Excerpt Minutes Planning Commission Meeting
  6. Additional Correspondence not included in the original staff report

File: 090719PA1010Appeal

Date: 081910

Time: 9:00 a.m.

## RESOLUTION NO. 10-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA TO UPHOLD THE PLANNING COMMISSION'S DECISION AND APPROVE PLANNING APPLICATION PA-10-15 FOR 3183 RED HILL AVENUE**

THE CITY COUNCIL OF THE CITY OF COSTA MESA HEREBY RESOLVES AS FOLLOWS:

WHEREAS, an application was filed by Scott vanKaenel, authorized agent to the property owner of real property located at 3183 Red Hill Avenue for a conditional use permit for the following:

- After school program (The Discovery School of Arts and Sciences) as an ancillary use within a church facility at 3183 Red Hill Avenue.
- Seating in the main sanctuary in excess of 300 seats, and up to a maximum of 600 seats, which will require off-site parking.

WHEREAS, the worship services shall occur as follows: Saturday and Sunday from 8:00 a.m. to 1:00 p.m. and one weeknight from 7:00 p.m. to 11:00 p.m.;

WHEREAS, a duly noticed public hearing was held by the Planning Commission on August 9, 2010;

WHEREAS, City Council conducted a review of the Planning Commission's decision to approve the project at a duly noticed public hearing on September 7, 2010;

BE IT RESOLVED that, based on the evidence in the record and the findings contained in Exhibit "A", the City Council hereby **UPHOLDS** the Planning Commission's decision and **APPROVES** Planning Application PA-10-15, with exception to (exclusive of), the request for sanctuary seating in excess of 300 seats which will require off-site parking, with respect to the property described above.

BE IT FURTHER RESOLVED that the Costa Mesa City Council does hereby find and determine that adoption of this Resolution is expressly predicated upon the activity as described in the staff report for Planning Application PA-10-15 and upon applicant's compliance with each and all of the conditions contained in Exhibit "B" as well as with compliance of all applicable federal, state, and local laws. Any approval granted by this resolution shall be subject to review, modification or revocation if there is a material change that occurs in the operation, or if the applicant fails to comply with any of the conditions of approval.

## EXHIBIT "A"

**FINDINGS – APPROVAL (PA-10-15)**

- A. The proposed project complies with Costa Mesa Municipal Code Section 13-29(e) because:
1. The proposed use is compatible and harmonious with uses on surrounding properties.
  2. Safety and compatibility of the after school classes with the adjacent commercial uses, parking areas, landscaping, and other site features including functional aspects of the site development such as automobile and pedestrian circulation have been considered.
  3. The project, as conditioned, is consistent with the General Plan.
  4. The planning application is for a project-specific case and does not establish a precedent for future development.
- B. The information presented substantially complies with Costa Mesa Municipal Code Section 13-29(g)(2) in that the proposed after school classes are substantially compatible with developments in the area and would not be materially detrimental to other properties within the area since the proposed hours of operation for the church services and classes are during times that neighboring businesses are not operating. The proposed number of students can be accommodated within the existing building and the on-site parking available on 3183 Red Hill Avenue. In addition, the student shuttle drop-off and pick-up area is within the private property and located more than 100 feet from the McCormick Avenue and it is not anticipated to impact the traffic and circulation around the site. The approval of Planning Application PA-10-15 applies to the proposed after school program and does not include authorization of off-site parking.
- C. The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines; and the City environmental procedures, and has been found to be exempt from CEQA under Section 15301, Class 1, for Existing Facilities in that it involves the permitting of an existing private structure; the project is in an area where all public services and facilities are available to allow for maximum development permissible in the General Plan; and the area in which the project is located is not environmentally sensitive.
- D. The project is exempt from Chapter IX, Article 11, Transportation System Management, of Title 13 of the Costa Mesa Municipal Code.

EXHIBIT "B"CONDITIONS OF APPROVAL (PA-10-15 for 3183 Red Hill Ave.)

- Plng. 1. The afterschool classes shall be provided to a maximum of 150 mid school students (grades 6-8) from 3:30 p.m. to 6:30 p.m. Any increase the number of students, and or any change in the hours of operation the church, school and shuttle services that increases or intensifies the approved uses would require amendment of the conditional use permit the Planning Commission.
2. Approval of Planning Application PA-10-15 exclusively relates to the proposed after school program as described in the Planning Commission staff report for the August 9, 2010 meeting. Applicant shall apply and obtain approval of a conditional use permit for any off-site parking from the Planning Commission.
3. The uses shall be conducted, at all times, in a manner to allow the quiet enjoyment of the surrounding neighborhood. The applicant shall institute whatever operational measures necessary to comply with that requirement.
4. If parking shortage or other parking-related problems arise, the applicant shall institute whatever measures necessary to minimize or eliminate that problem, including but not limited to reducing the number of students at church services.
5. There shall be no loitering of students within the open parking area during class hours. The number of students on the playground at any one time; the hours of recess and outside play; the design and precise location of the outside play areas; shall be subject to review and approval by the Development Services Director. Also, the Development Services Director may limit the number of students that may be engaged in outside play if it finds that outside play is causing a noise nuisance for the neighboring businesses. The outdoor play area is subject to the exterior noise standards of the City of Costa Mesa as set forth in Section 13-21 of the zoning code.
6. All nighttime school activities in the outdoor play yard areas shall be subject to review and approval by the Development Services Director.
7. The outdoor play area shall be enclosed with a six-foot high fence or wall with a lock or latching device that is not accessible to children. All fences or walls shall provide for safety with controlled points of access.
8. The applicant shall maintain and monitor all their activities within the parking lot so that none of the parking spaces on the adjacent properties are used by church members or after school program.
9. The landscape setback areas along Red Hill Avenue and McCormick Avenue shall be rehabilitated. All unhealthy or dead trees, shrubs, and ground cover shall be replaced with equal or larger size and similar species subject to review and approval of the Development Services Director. A landscape plan shall be submitted for approval and new landscaping installed within 90 days of approval of the CUP or prior issuance of a building permit for any building alterations, whichever occurs first.

RESOLUTION NO. 10-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA TO REVERSE THE PLANNING COMMISSION'S DECISION AND DENY PLANNING APPLICATION PA-10-15 FOR 3183 RED HILL AVENUE**

THE CITY COUNCIL OF THE CITY OF COSTA MESA HEREBY RESOLVES AS FOLLOWS:

WHEREAS, an application was filed by Scott vanKaenel, authorized agent to the property owner of real property located at 3183 Red Hill Avenue for a conditional use permit for the following:

- After school program (The Discovery School of Arts and Sciences) as an ancillary use within a church facility at 3183 Red Hill Avenue.
- Seating in the main sanctuary in excess of 300 seats, and up to a maximum of 600 seats, which will require off-site parking.

WHEREAS, a duly noticed public hearing was held by the Planning Commission on August 9, 2010;

WHEREAS, City Council conducted a review of the Planning Commission's decision to approve the project at a dully noticed public hearing on September 7, 2010;

BE IT RESOLVED that, based on the evidence in the record and the findings contained in Exhibit "A, the City Council hereby **REVERSES** the Planning Commission's approval of the project and **DENIES** Planning Application PA-10-15 with respect to the property described above.

**PASSED AND ADOPTED this 7th day of September, 2010.**

\_\_\_\_\_  
ALLAN R. MANSOOR  
Mayor of the City of Costa Mesa

APPROVED AS TO FORM:

ATTEST:

\_\_\_\_\_  
City Clerk of the City of Costa Mesa

\_\_\_\_\_  
City Attorney



**EXHIBIT "A"**

**FINDINGS –(DENIAL)**

- A. The proposed project does not comply with Costa Mesa Municipal Code Section 13-29(e) because:
  - 2. The project is not compatible and harmonious with uses on surrounding properties.
  - 3. The project is not consistent with the General Plan.
  - 4. The planning application is for a project-specific case and does not establish a precedent for future development.
  
- B. Granting the conditional use permit will be materially detrimental to the health, safety and general welfare of the public or otherwise injurious to property or improvements within the immediate neighborhood.
  
- C. The Costa Mesa City Council has denied Planning Application PA-10-15. Pursuant to Public Resources Code Section 21080(b)(5) and CEQA Guidelines Section 15270(a), CEQA does not apply to this project because it has been rejected and will not be carried out.

RECEIVED  
CITY CLERK

Allen Matkins

2010 AUG 16 PM 1:45

CITY OF COSTA MESA

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 Direct Dial: 949.851.5453 File Number: 370865-00002/OC907758.03

Via Hand Delivery

August 16, 2010

Ms. Julie Folcik, City Clerk  
 City of Costa Mesa  
 City Hall  
 77 Fair Drive  
 Costa Mesa, CA 92628

**Re: Planning Commission Resolution PC-10-26, Approving PA-10-15,  
 3183 Red Hill Avenue, Costa Mesa (the "Property")**

Dear Ms. Folcik:

We represent Weir Canal LLC ("Weir Canal"), the owner of a property located at 3187 Red Hill Avenue, in the City ("Weir Canal Property") concerning the Project. The Weir Canal Property is located next door to the Project (defined below). By this letter, Weir Canal appeals the Planning Commission's approval of PA-10-15, which authorizes a conversion of an industrial building into a church, with a 300-seat sanctuary, and a school ("Project").

As required under Costa Mesa Municipal Code ("CMMC") section 2-303, Weir Canal has standing, and an interest, to file this appeal. The City Council has the authority to hear this appeal pursuant to CMMC section 2-309.

On August 9, 2010, the City Planning Commission approved the Project. At the hearing, Weir Canal and its tenants raised objections to the Project. Attached as Exhibit 1 to this letter is a copy of our August 9, 2010 letter to the Planning Commission, which is hereby incorporated as part of Weir Canal's appeal.

Weir Canal appreciates the Planning Commission's efforts to address Weir Canal's concerns, primarily related to parking at the Project. However, although the Planning Commission decreased the allowable maximum number of seats in the sanctuary due to a shortage of parking spaces on the Project site, the Planning Commission should have, at a maximum only allowed 258 seats. According to the July 28, 2010 Planning Commission staff report ("Staff Report"), the Project only has 86 parking spaces, which under the CMMC, requires that the sanctuary can only consist of 258 seats. Staff Report at 5.

Allen Matkins Leck Gamble Mallory & Natsis LLP  
Attorneys at Law

Ms. Julie Folcik, City Clerk  
City of Costa Mesa  
August 16, 2010  
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Aside from parking considerations, Weir Canal is also concerned about other potential environmental impacts. The City determined that the Project is exempt under CEQA, as an "existing facility." Staff Report at 5. However, this determination is incorrect. This exemption applies only to activities involving "negligible" or "no expansion of previous use beyond that existing at the time of the lead agency's determination." 14 Cal. Code Regs. § 15301. While the exemption includes several examples, none of which is remotely comparable to the Project, the "key consideration is whether a project involves negligible or no expansion of an existing use." *Id.* According to the Staff Report, the Project site land uses were limited to industrial and manufacturing uses. Staff Report at 2. Industrial and manufacturing uses have drastically different impacts from churches and schools. The Project site has not been used as a church or a school, and therefore impacts associated with the proposed uses must be addressed before the Project can be approved. The City Council, and the public, are entitled to understand the Project's environmental impacts before Project approval and the exemption cannot be used to subvert CEQA's protections where there is any reasonable possibility that a project or activity may have a significant effect on the environment. *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal. App. 4th 1165, 1191-93.

Therefore, for these reasons, Weir Canal requests that the City Council rescind the Planning Commission's approval of the Project, and direct City Staff to undertake a full CEQA analysis before the Planning Commission reconsiders the Project.

Thank you for your cooperation in this matter.

Very truly yours,



Matthew R. Fogt

MRF:ld  
Enclosure

EXHIBIT "1"

August 9, 2010 Letter to the Planning Commission

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# Allen Matkins

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## Via Electronic Mail and Hand Delivery

August 9, 2010

Commissioner James Righeimer, Chair  
Commissioner Jim Fitzpatrick, Vice Chair  
Commissioner Sam Clark  
Commissioner Colin McCarthy  
Commissioner Stephen Mensinger  
Costa Mesa City Hall  
77 Fair Drive  
Costa Mesa, CA 92628

**Re: Opposition to the Proposed Conditional Use Permit for an After School Program and Potential Off-Site Parking for 3183 Red Hill Avenue (PA-10-15)**

Dear Honorable Commissioners:

We represent Weir Canal, LLC. ("Weir Canal"), the owner of the property located at 3187 Red Hill Avenue, in the City of Costa Mesa, California ("Weir Canal Property"), concerning Application No. PA-10-15. The Application is for a conditional use permit for an after school program and potential off-site parking relating to a proposed church ("Proposed Project") on an adjacent property located at 3183 Red Hill Avenue ("Proposed Site"). We understand that the Proposed Site contains 86 parking spaces and a 31,776 square foot single story building that was historically used by two businesses that manufactured circuit boards until 2007. The Proposed Project is scheduled to be heard at tonight's Planning Commission Meeting.

We apologize for the timing of our letter, but Weir Canal only learned of the Proposed Project on Wednesday of last week.

For the following reasons, each of which is discussed in detail below, Weir Canal requests that the Planning Commission deny or continue this matter until the impacts from the Proposed Project can be fully analyzed and mitigated:

- Approval of the Proposed Project would violate CEQA
- The City's Municipal Code requires that all required parking be provided at the time of approval

City of Costa Mesa

August 9, 2010

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- Stronger enforcement rights are necessary to ensure compliance with the seat limits
- The CC&Rs do not authorized the parking contemplated by the Proposed Project
- The Proposed Project will have significant impacts on the Weir Canal Property and its tenants
- Approval of church use might also require a conditional use permit

This letter shall constitute Weir Canal's request to appear at tonight's meeting. Weir Canal also intends this letter to constitute its objections to the Planning Commission's approval of the Proposed Project, and requests that this letter be included in the administrative record for the Proposed Project. Weir Canal reserves the right to make further and different objections before and at the hearing.

Weir Canal has the following concerns about the Proposed Project:

1. **The Commission's Approval of the Project Would Violate CEQA.** The Commission's approval of a conditional use permit is, of course, a discretionary approval requiring CEQA review. According to the staff report recommending approval of the Proposed Project, the City is relying for the existing facilities exception set forth in Section 15301 of the CEQA Guidelines ("Section 15301"). Section 15301 exempts from CEQA review the "operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features; involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination." The Proposed Project does not qualify for the existing facilities exception as it is a major change in use and the change is not negligible and does not constitute an expansion of Proposed Project's prior use. The church and school uses will have vastly different impacts than the circuit board manufacturers that occupied the Proposed Site for several years.

As the Proposed Project is not exempt from CEQA, the City needs to analyze impacts such as air quality, aesthetics, traffic circulation, land use and planning, noise, climate change, and public services. Specifically, the Proposed Project will add numerous peak time traffic trips resulting from parents picking up 150 students every evening at 6:30 with church services starting at 7:00. It is unclear how the small parking lot on the Proposed Site can accommodate all of the cars, not to mention the intersections in the area during the evening rush hour. The introduction of 150 youth to an otherwise industrial area will create additional noise, safety, and security issues for adjacent properties that should be analyzed.

The changes discussed above likely require at least the preparation of a mitigated negative declaration; at a minimum, the City is required to prepare an initial study to address these issues before proceeding. (See CEQA Guidelines, § 15063.)

2. **Pursuant to the City's Code, the Commission Cannot Approve the Change of Use Unless Sufficient Parking is Provided at the Time of the Approval, and There is Presently Insufficient Parking Available.** Section 13-89(c) of the City's Municipal Code provides that the minimum amount of off-street parking required by the Code must be provided at the time a specific use is proposed for a site or an existing use is changed to one which requires additional parking. Both of the foregoing provisions apply to the Proposed Project. As such, the Commission cannot approve the Proposed Project without ensuring that adequate parking is provided at the time of approval.

The Staff Report notes that there is only enough parking on the Project Site to accommodate 258 seats, but goes on to recommend approval for up to 300 seats. To the extent partial or conditional approval is granted, the approval should be limited to 258 seats, not 300 seats. Additionally, the Staff Report recommends that proof of parking is required prior to expanding beyond 300 seats. However, enforcement of the 300-seat cap appears to be problematic. As the sanctuary is built to accommodate 570 fixed seats with 200 overflow seats, the Proposed Project should not be approved for the Project Site without proof of permanent access to sufficient parking for at least 570 seats, if not the entire 770. The Commission cannot approve the CUP until adequate and acceptable parking rights have been secured.

3. **Stronger Enforcement Rights Are Necessary to Ensure Compliance With the 300 Seat Limit.** The proposed conditions of approval are insufficient to ensure compliance with the 300 seat limitation. As the sanctuary can accommodate additional seating, the church can simply roll out additional seats at the last minute to accommodate large crowds. Without having parking rights in place, there is no way to ensure adjacent property owners and businesses will not be impacted by the onslaught of church visitors seeking parking. Planning Condition of Approval No. 2 vests the authority to enforce the parking and expansion beyond 300 seats to the Development Services Director. As the Municipal Code requires parking to be provided at the time of approval, the Proposed Project should either be denied or continued until sufficient parking is procured or the Proposed Project should be required to be heard again by the Planning Commission at the time approval for more than 258 seats is sought. Allowing the church to locate on the Proposed Site before parking is secured leaves the City in the uncomfortable (and politically difficult) position of strictly enforcing the parking provisions against the church at a later date.

Further, due to the proposed size of the sanctuary, which is built to accommodate 570 seats with 200 overflow seats, Weir Canal is concerned that even if the Planning Commission imposes the Staff-recommended restriction of only 300 seats, it will be extremely difficult for the City to enforce this restriction. Will the City make regular site inspections to insure that only 300 seats are present? This could be especially difficult due to the multiple services that are proposed to occur each week.

4. **The CC&Rs Do Not Authorize the Parking Contemplated by the Proposed Project.** The Proposed Site and the Weir Canal Property (collectively, "Properties") are allegedly subject to recorded covenants, conditions, and restrictions dated March 8, 1985 ("CC&Rs"). The CC&Rs, which contemplate reciprocal parking between the Properties and the joint maintenance of all areas of the Properties other than the buildings constructed thereon, have apparently been completely disregarded by the owners of the Properties since the original owner that recorded the CC&Rs conveyed the Properties to separate owners shortly after the recordation of the CC&Rs. For example, the CC&Rs contemplate the contribution by the owners of each Property to the joint maintenance of the Properties. However, we understand that the owners have each separately maintained their respective properties the entire time.

Additionally, the CC&Rs contemplate reciprocal parking on occasion. However, we understand that the owners and tenants have never exercised the reciprocal parking rights. The reciprocal parking provision also contemplates industrial use, which has one of the least intensive parking requirements of all uses, and was never designed to enable reciprocal parking of more intensive uses. The extent of use of an express easement is governed by the initial use and such use cannot be unreasonably increased. *Colegrove Water Co. v. Hollywood* (1907) 151 Cal. 425. To now permit a more intensive use to claim most, if not all, of the available parking at certain times of the day under rights that never contemplated such intensity creates a significant, unfair, and unlawful burden on Weir Canal Property and its tenants. The parking contemplated by the Proposed Project is completely inconsistent with the reciprocal parking rights.

5. **The Proposed Project Will Have Significant Impacts on Weir Canal.** Weir Canal recently acquired its property and has been diligently leasing the building that was previously less than half occupied. Every one of its tenants requires access at all times, not access only during normal business hours. The tenants are primarily technology and distribution companies and frequently work outside the 9-5 workday. The church, which at a minimum, would be under-parked on-site by 14 parking spaces, would have a significant impact on Weir Canal's ability to complete the leasing of its building and retain tenants. Additionally, the crush of cars at 6:30 every evening, especially in combination with the 7:00 evening service, will create significant impacts to the two main entrances shared by both properties. The church is an inconsistent use for the Project Site and area and will have significant impacts on Weir Canal and other businesses and owners in the vicinity of the Project Site.

6. **The Church Use May Require a CUP Under the City's Zoning Code.** The version of the zoning matrix under the "Municipal Code" link on the City's website shows that church use requires a CUP in the applicable zone. Another land use matrix found elsewhere on the City's site shows church use is a permitted use in the applicable zone. The City has assured us that church use is a permitted use in the applicable zone and the Staff Report reflects this position. However, the City should verify whether church use is truly permitted by right in the Manufacturing Park zone and if so, correct the version of the municipal code accessed through the City's website.

Allen Matkins Leck Gamble Mallory & Natis LLP  
Attorneys at Law

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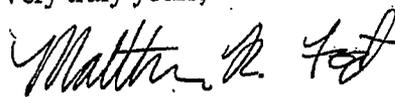
To the extent church use is not permitted by right in the applicable zone, the Proposed Project would require a CUP for church use.

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CONCLUSION

For the reasons set forth in this letter, Weir Canal respectfully requests that the Commission continue or deny the Proposed Project.

Very truly yours,



Matthew R. Fogt

MRF

cc: Ms. Diana Lin, Weir Canal, LLC.  
Ms. Claire L. Flynn, AICP  
Ms. Mino Ashabi, AIA  
(via electronic mail only)



# PLANNING COMMISSION AGENDA REPORT

VI. 4

MEETING DATE: AUGUST 9, 2010

ITEM NUMBER:

**SUBJECT:** PLANNING APPLICATION PA-10-15 FOR A CONDITIONAL USE PERMIT FOR AN INTERMEDIATE AFTER-SCHOOL PROGRAM IN CHURCH FACILITY AT 3183 RED HILL AVENUE AND FOR POTENTIAL OFF-SITE PARKING AT 3187 RED HILL AVE.

**DATE:** JULY 28, 2010

**FOR FURTHER INFORMATION CONTACT:** MINOO ASHABI, SENIOR PLANNER  
(714) 754-5610 or [mashabi@ci.costa-mesa.ca.us](mailto:mashabi@ci.costa-mesa.ca.us)

## DESCRIPTION

The applicant is requesting approval of the following:

- A conditional use permit to establish an after school program (The Discovery School of Arts and Sciences) as an ancillary use within a new church facility at 3183 Red Hill Avenue.
- A conditional use permit for **potential** off-site parking for church use (Center for Spiritual Living) with weekend and one weeknight worship services requiring greater than 300 seats in the sanctuary, pursuant to a reciprocal shared access/parking agreement with 3187 Red Hill.

## APPLICANT

The applicant is Scott vonKaenel on behalf of the owner of the property.

## RECOMMENDATION

Adopt resolution to approve the Conditional Use Permit (including afterschool program and potential off-site parking), subject to conditions.

MINOO ASHABI, AIA  
Senior Planner

KHANH NGUYEN  
Asst. Development Services Director

**BACKGROUND:*****Project Site***

The property is located at 3183 Red Hill Ave., at the northwest corner of Red Hill Ave. and McCormick Ave. The property is zoned MP (Industrial Park) and has a General Plan Designation of Industrial Park (Attachment 3).

The property contains a 31,779 square-foot single story industrial building with shared parking and common access on McCormick Ave. with another office building located at 3187 Red Hill Ave. The parcel contains 86 parking spaces that are not separated from the adjacent property. There are 413 parking spaces provided on the two properties (Attachment 6).

The property was previously occupied by two businesses that manufactured circuit boards from 1996 to 2007. The applicant submitted an environmental assessment report prepared in 2010 that concluded no evidence of Recognized Environmental Condition (REC) associated with the previous uses. The last tenant submitted a closure plan including a subsurface investigation that was accepted by the Orange County Health Care Agency. The full environmental assessment report is available in the project file.

**ANALYSIS*****Project Description***

The Center for Spiritual Living is a church organization with approximately 300 members established in Costa Mesa. The church currently holds their worship services at the Costa Mesa Senior Center (695 W. 29<sup>th</sup> Street).

The proposed church facilities at 3183 Red Hill Avenue include the following:

- A sanctuary with 570 seats  
(On-site parking for 258 seats / Off-site parking for any additional demand or seats)
- A social hall with 200 seats
- Six classrooms
- Seven offices and a conference room
- Kitchen, storage and restroom facilities
- A chapel
- A multi-purpose room
- A mezzanine with two storage areas (2,724 SF)
- An outdoor play area approximately 5,500 SF

The church is a permitted use in the MP zone subject to parking compliance; however, the proposed after school classes and off-site parking are subject to a conditional use permit. The church operations are summarized as follows:

**Table A**  
**Summary of Proposed Church Operations**

Room	Area - SF	Days	Hours	Parking
Sanctuary	7,124	Sat. & Sunday One weeknight	8:00 a.m. to 1:00 p.m. 7:00 p.m. to 11:00 p.m.	300 seats, and up to potential 570 seats 1/3 seats = 190 spaces
Social Hall	1,803	M-F Sat. & Sunday One weeknight	9:00 a.m. to 2:00 p.m. 8:00 a.m. to 1:00 p.m. 7:00 p.m. to 11:00 p.m.	Potential 200 seats Ancillary to church use
Classrooms 150 students	5,028	M-Thurs Sunday School	3:30 p.m. to 6:30 p.m. 8:00 a.m. to 1:00 p.m.	10/1000 = 51
Multi-purpose Rm.	530	M-F	9:00 a.m. to 2:00 p.m.	Ancillary to church use
Admin. Offices	3,455	M-F	9:00 a.m. to 2:00 p.m.	Ancillary to church use
Kitchen	1,330	M-F Sat. & Sunday	9:00 a.m. to 5:00 p.m. 6:00 a.m. to 2:00 p.m.	Ancillary to church use
				Total required = 190 spaces (86 provided on-site)
				Provided = 413 Combined parking for 3183 and 3187 Red Hill Ave.

***Planning Application PA-10-15 for Conditional Use Permit***

The Conditional Use Permit request involves two components:

***1. After School Program***

The applicant is proposing to offer after school classes to a maximum of 150 intermediate students (6-8 grades) within six classrooms. The students will be picked up by a shuttle service from various schools and dropped off at the facility in the afternoon. The site plan refers to the shuttle's ingress and egress route to and from the project site (Attachment 5). The classes will be held from 3:30 p.m. to 6:30 p.m. Monday through Thursday.

Upon completion of the classes, the students are picked up by the parents by the same route. A loading/unloading area located along the main entrance is identified on the site plan.

***2. Off-site Parking at 3187 Red Hill Avenue***

The number of parking spaces required by code is 1 space for every 35 square feet of sanctuary area or 1 space per 3 seats when fixed seats are proposed. As a result, 190 parking spaces would be required for the sanctuary which is the most intensive use for parking. Other uses are considered ancillary to the church uses. The project site contains 86 parking spaces and a total of 413 parking spaces are available through a reciprocal parking agreement with 3187 Red Hill Ave. The required parking for the classroom is 51 spaces, which can be accommodated on-site. However, worship

services of more than 300 and up to full capacity of the sanctuary (570 seats) require up to 190 parking spaces, 104 spaces in excess of spaces provided on-site.

It should be noted that worship services are proposed mostly on the weekends when most businesses are not operating with potentially the greatest impact on the surrounding area in terms of traffic, noise and parking. Only one weekday worship service is proposed which will be held at 7:00 p.m. after school hours. The church currently holds about 300 members which can be accommodated with on-site parking and the maximum number of 770 seats is proposed for special gatherings that may occur a few times a year. The additional spaces could be accommodated on 3187 Red Hill Avenue which is located on the adjoining property during non-peak hours and subject to approval of the property owner. The current reciprocal access and parking agreement was executed in 1985 when both properties were developed with light industrial office uses and does not specify extensive use of the parking lot during non-peak hours.

### ***Justification for Approval of Planning Application PA-10-15***

Staff supports approval of the application for the following reasons:

- *The proposed after school program would not negatively impact parking or the surrounding properties.* The building will be occupied by a single tenant with exclusive use of the building and the immediate parking area. The students are dropped off by shuttle service on private property that will reduce traffic impacts. In addition, during the instructional hours of 3:30 p.m. to 6:30 p.m., no congregation services or social hall activities will take place. The church holds one nightly service that will be offered at 7:00 p.m. after school hours.

Condition of approval #13 requires that all loading and unloading occur on-site to provide safety to the youth with no disruption to vehicles on the public streets. The applicant will also be required to ensure no loitering occurs in the parking lot during class sessions with outdoor activities being restricted to the outdoor play area located on the east side of the building facing Red Hill Ave.

Condition of approval #11 requires that no congregation services or social hall activities be conducted during the hours of 3:30 p.m. to 6:30 p.m. when classes are in session.

*The proposed use would provide after school classes for the benefit of the community.* The classes are offered after school hours and with private transportation by a shuttle service that will be accommodating to working parents in the community. Condition of approval #10 requires submittal of a clearance from the Orange County Environmental Health Services before certificate of occupancy for the classrooms.

- *The proposed use will be ancillary to the church use which is a permitted use in MP zone.* The congregation includes approximately 300 members and holds regular services in Costa Mesa Senior Center with their offices at another location. This new location will contain all functions of the church within one facility.

- The availability of off-site parking is still subject to concurrence by adjacent property owner. There are 86 available on-site parking spaces at the 3183 Red Hill Avenue property. This accounts for 258 seats in the sanctuary (258 seats @ 1 parking spaces/3 fixed seats = 86 spaces). The existing church membership is about 300 members. The church is a permitted use, and given that there are multiple church services and that all services may not be fully attended, staff believes that there would be adequate on-site parking for 300 seats in the sanctuary.

However, potential off-site parking on the abutting property located at 3187 Red Hill Avenue may be available. A 1985 reciprocal access/parking agreement and CC&Rs were recorded to allow common ingress, egress, and parking of motor vehicles on both properties in perpetuity. The applicant indicated that there are no amendments to this 1985 agreement (Attachment 6).

Condition of approval #2 requires a signed memorandum of understanding (or other documentation as deemed appropriate by the Development Services Director) between the property owners of 3183 and 3187 Red Hill Avenue for off-site parking for more than 300 seats. The zoning authorization for off-site parking for services with more than 300 seats is not activated until this documentation is approved to the satisfaction of the Development Services Director. The agreement shall clearly specify the parking arrangements, including total number of additional off-site parking spaces available for the additional seating in the sanctuary, location of the parking spaces, and the specified timeframes (days/times) for required off-site parking.

Given that this request includes the potential for off-site parking to accommodate the growth of the church membership, compliance with this condition will be determined by the Development Services Director, and no further review by the Planning Commission is required.

## **ENVIRONMENTAL DETERMINATION**

If approved, the use would be exempt from the provisions of the California Environmental Quality Act under Section 15301 for Existing Facilities. Denial of the request would be subject to statutory exemption from CEQA under Section 15270 for projects that are disapproved.

## **GENERAL PLAN CONFORMITY**

Approval of the application for after school classes and potential off-site parking would be consistent with the General Plan, which permits educational uses if they are determined to be complementary to the industrial area. Based on the proposed schedule of classes, the institutional use will not generate significantly more vehicle trips to the site; however, the church use component of the project will generate a net increase of 68 additional trip ends that will be subject to the traffic impact fees.

**ALTERNATIVES**

The Commission has the following alternatives:

1. Approve PA-10-15 to establish afterschool classes and potential off-site parking subject to conditions and code requirements.
2. Deny PA-10-15 to establish afterschool classes and potential off-site parking. If the application is denied by the Planning Commission, the use would be prohibited on the property and the applicant could not submit a similar application for six months.

**CONCLUSION**

Staff supports approval of the proposed after school classes since the operational hours for the classes are during non-peak hours for the industrial uses; no parking impacts are anticipated and drop off services are provided by a shuttle during office hours of the adjacent properties. Staff recommends that the additional church services that would require off-site parking be subject to agreement from both property owners of 3183 and 3187 Red Hill Avenue. The applicant may also enter into an off-site parking agreement with neighboring properties to satisfy the additional off-site parking demand.

- Attachments:
1. Planning Commission Approval and Denial Resolutions
  2. Applicant's Request Letter
  3. Location Map
  4. Submitted Photos
  5. Submitted Plans
  6. CC&Rs for Shared Parking

cc: Development Svs. Director  
Deputy City Attorney  
Public Services Director  
City Engineer  
Transportation Svs. Manager  
Fire Protection Analyst  
Staff (4)  
File (2)

Scott vonKaenel  
Lundstrom and Associates  
2923 Pullman Street, Suite A  
Santa Ana, CA 92705-5818

David Spiegel  
Spiegel Development, Inc.  
22801 Ventura Blvd. Suite 111  
Woodland Hills, Ca 91364

**RESOLUTION NO. PC-10-**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY  
OF COSTA MESA APPROVING PLANNING APPLICATION PA-10-15  
FOR 3183 RED HILL AVE.**

THE PLANNING COMMISSION OF THE CITY OF COSTA MESA HEREBY RESOLVES AS FOLLOWS:

WHEREAS, an application was filed by Scott vanKaenel, authorized agent to the property owner of real property located at 3183 Red Hill Avenue for a conditional use permit for the following:

- To establish an after school program (The Discovery School of Arts and Sciences) as an ancillary use within a church facility at 3183 Red Hill Avenue.
- To allow potential off-site parking for church use (Center for Spiritual Living) with weekend and one weeknight worship services requiring greater than 300 seats in the sanctuary, pursuant to a reciprocal shared access/parking agreement with 3187 Red Hill Ave. or a neighboring property.

WHEREAS, the worship services shall occur as follows: Saturday and Sunday from 8:00 a.m. to 1:00 p.m. and one weeknight from 7:00 p.m. to 11:00 p.m.

WHEREAS, a duly noticed public hearing was held by the Planning Commission on August 9, 2010;

BE IT RESOLVED that, based on the evidence in the record and the findings contained in Exhibit "A", the Planning Commission hereby **APPROVES** PA-10-15 with respect to the property described above.

BE IT FURTHER RESOLVED that the Costa Mesa Planning Commission does hereby find and determine that adoption of this Resolution is expressly predicated upon the activity as described in the staff report for Planning Application PA-10-15 and upon applicant's compliance with each and all of the conditions contained in Exhibit "B" as well as with compliance of all applicable federal, state, and local laws. Any approval granted by this resolution shall be subject to review, modification or revocation if there is a material change that occurs in the operation, or if the applicant fails to comply with any of the conditions of approval.

**PASSED AND ADOPTED this 9<sup>th</sup> day of August, 2010.**

---

James Righeimer, Chair  
Costa Mesa Planning Commission



**EXHIBIT "A"**

**FINDINGS – APPROVAL (PA-10-15)**

- A. The proposed project complies with Costa Mesa Municipal Code Section 13-29(e) because:
1. The proposed use is compatible and harmonious with uses on surrounding properties.
  2. Safety and compatibility of the after school classes with the adjacent commercial uses, parking areas, landscaping, and other site features including functional aspects of the site development such as automobile and pedestrian circulation have been considered.
  3. The project, as conditioned, is consistent with the General Plan.
  4. The planning application is for a project-specific case and does not establish a precedent for future development.
- B. The information presented substantially complies with Costa Mesa Municipal Code Section 13-29(g)(2) in that the proposed after school classes are substantially compatible with developments in the area and would not be materially detrimental to other properties within the area since the proposed hours of operation for the church services and classes are during times that neighboring businesses are not operating. The proposed number of students can be accommodated within the existing building and the on-site parking available on 3183 Red Hill Avenue. In addition, the student shuttle drop-off and pick-up area is within the private property with more than 100 feet from the McCormick Ave. that is not anticipated impacting the traffic and circulation around the site.

With regard to the future growth of the church membership and services requiring more than 300 seats in the sanctuary, the off-site parking for the church use at 3178 Red Hill Ave. will be subject to agreement with the adjacent property owner or providing off-site parking on a neighboring property. The zoning authorization for potential off-site parking is not activated until compliance with all conditions of approval occurs.

- C. The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines; and the City environmental procedures, and has been found to be exempt from CEQA under Section 15301 for existing construction.
- D. The project is exempt from Chapter IX, Article 11, Transportation System Management, of Title 13 of the Costa Mesa Municipal Code.

EXHIBIT "B"CONDITIONS OF APPROVAL (PA-10-15 for 3183 Red Hill Ave.)

- Plng.
1. The afterschool classes shall be provided to a maximum of 150 middle school students (grades 6-8) from 3:30 p.m. to 6:30 p.m. Any increase in the number of students, and or any change in the hours of operation of the church, school and shuttle services that increases or intensifies the approved uses would require amendment of the conditional use permit by the Planning Commission.
  2. Seating in the main sanctuary is limited to 300 seats, until such time the applicant submits a signed memorandum of understanding (or other documentation as deemed appropriate by the City Attorney and Development Services Director) between the property owners of 3183 and 3187 Red Hill Avenue indicating that off-site parking is available to accommodate additional seating. The applicant may also enter into an off-site parking agreement with other neighboring properties to satisfy the additional parking demand.

The agreement shall clearly specify the parking arrangements, including total number of additional off-site parking spaces available for the additional seating in the sanctuary, location of the parking spaces, and the specified timeframes (days/times) for required off-site parking.

The zoning authorization for the conditional use permit for off-site parking is not activated until this documentation is approved to the satisfaction of the City Attorney and Development Services Director.

Given that PA-10-15 includes the request for potential for off-site parking to accommodate the growth of the church membership, compliance with this condition will be determined by the Development Services Director, and no further review by the Planning Commission is required.

3. The uses shall be conducted, at all times, in a manner to allow the quiet enjoyment of the surrounding neighborhood. The applicant shall institute whatever operational measures necessary to comply with this requirement.
4. If parking shortage or other parking-related problems arise, the applicant shall institute whatever measures necessary to minimize or eliminate the problem, including but not limited to reducing the number of students or church services.
5. There shall be no loitering of students within the parking area during class hours. The number of students on the playground at any one time; the hours of recess and outside play; the design and precise location of the outside play area; shall be subject to review and approval by the Development Services Director. Also, the Development Services Director may limit the number of students that may be engaged in outside play if it finds that outside play is causing a noise nuisance for the neighboring businesses. The outdoor play area is subject to the exterior noise standards of the City of Costa Mesa as

set forth in Section 13-280 of the zoning code.

6. All nighttime school activities in the outdoor play yard areas shall be subject to review and approval by the Development Services Director.
7. The outdoor play area shall be enclosed with a six-foot high fence or wall with a lock or latching device that is not accessible to children. All fences or walls shall provide for safety with controlled points of access.
8. All parking spaces shall be open and accessible at all times that the school and church are in operation to prevent parking on adjacent properties.
9. The landscape setback areas along Red Hill Avenue and McCormick Avenue shall be rehabilitated. All unhealthy or dead trees, shrubs, and ground cover shall be replaced with equal or larger size and similar species subject to review and approval of the Development Services Director. A landscape plan shall be submitted for approval and new landscaping installed within 90 days of approval of the CUP or prior to issuance of a building permit for any building alterations, whichever occurs first.
10. Prior to issuance of a Building Permit, the applicant shall submit clearance from the Orange County Environmental Health Care Agency for school occupancy.
11. The worship services shall occur after 7:00 p.m. on weekdays and not conflict with the hours of after school classes.
12. Hardscape plans for the outdoor play shall be submitted for review and approval of the Planning Division. All existing trees contained in the outdoor play area shall remain in place.
- Trans. 13. Student bus drop-off/pick-up shall only occur within designated area in parking lot. No staging or pick-up/drop-off shall occur on public right-of-way.

**RESOLUTION NO. PC-10-**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY  
OF COSTA MESA DENYING PLANNING APPLICATION PA-10-15  
FOR 3183 RED HILL AVE.**

THE PLANNING COMMISSION OF THE CITY OF COSTA MESA HEREBY RESOLVES AS FOLLOWS:

WHEREAS, an application was filed by Scott vanKaenel, authorized agent to the property owner of real property located at 3183 Red Hill Avenue for a conditional use permit for the following:

- To establish an after school program (The Discovery School of Arts and Sciences) as an ancillary use within a church facility at 3183 Red Hill Avenue.
- To allow potential off-site parking for church use (Center for Spiritual Living) with weekend and one weeknight worship services requiring greater than 300 seats in the sanctuary, pursuant to a reciprocal shared access/parking agreement with 3187 Red Hill Ave. or a neighboring property.

WHEREAS, a duly noticed public hearing was held by the Planning Commission on August 9, 2010;

BE IT RESOLVED that, based on the evidence in the record and the findings contained in Exhibit "A, the Planning Commission hereby **DENIES** Planning Application PA-1016 with respect to the property described above.

**PASSED AND ADOPTED this 9th day of August, 2010.**

---

James Righeimer, Chair  
City of Costa Mesa Planning Commission

**EXHIBIT "A"**

**FINDINGS –(DENIAL)**

- A. The proposed project does not comply with Costa Mesa Municipal Code Section 13-29(e) because:
  - 2. The project is not compatible and harmonious with uses on surrounding properties.
  - 3. The project is not consistent with the General Plan.
  - 4. The planning application is for a project-specific case and does not establish a precedent for future development.
- B. Granting the conditional use permit will be materially detrimental to the health, safety and general welfare of the public or otherwise injurious to property or improvements within the immediate neighborhood.
- C. The Costa Mesa Planning Commission has denied Planning Application PA-10-15. Pursuant to Public Resources Code Section 21080(b)(5) and CEQA Guidelines Section 15270(a), CEQA does not apply to this project because it has been rejected and will not be carried out.
- D. The project is exempt from Chapter IX, Article 11, Transportation System Management, of Title 13 of the Costa Mesa Municipal Code.



Wendy Shih  
Associate Planner  
City of Costa Mesa  
77 Fair Drive  
Costa Mesa, CA 92628

June 14, 20010

RE: Project Description

Dear Miss Shih,

We are pleased to introduce our design for the Center for Spiritual Living and The Discovery School of Arts and Sciences at 3183 Red Hill Ave. This project consists of a 31,776 s.f. single story tenant / site improvements with worship, educational and office uses.

This project is in an existing single story plus mezzanine concrete tilt-up warehouse building located at the Southwest corner of Red Hill Ave and McCormick Ave. The main sanctuary space will house worship services on weekends with one week night service with overflow seating on special occasions in the social hall. This social hall will also accommodate classes, conferences and business meetings to the local community. Additionally, the commercial kitchen will support the various functions throughout the week. The divisible classroom spaces support the after school program in an open classroom environment during the hours of 3:30pm to 6:30pm Monday thru Thursday. The secure play area facing Red Hill Ave. will also support the educational component of the program as required by the Title 22 CA Code of Regulations. The various uses will ensure a full time facility with a diverse program.

The project requires a conditional use permit (CUP) due to the educational component in the MP Industrial Park zone. The Discovery School of Art and Science is an intermediate after school program designed for grades 6-8 to awaken the student's passion for learning and expressing, to provide a place where life itself is a creative process and each student an artist. Here, students will receive and participate in an education for their whole self. The five integrated aspects of the school are academics, ethics, art, science, and math. This project is consistent with uses permitted in the general area by providing multiple services to the diverse local business community. The proposed uses would not be materially detrimental to the other properties in the area by the proper integration and coordination of the facility operations, hours and functions. The goal of the project is to provide a continuous-use program for a full functioning multi-purpose facility.

We look forward to working with you to achieve a successful project of which the City of Costa Mesa, the property ownership and the surrounding neighborhood can be proud. Please do not hesitate to contact me should you have any questions.

Sincerely,

Scott vonKaenel  
Associate, Lundstrom & Associates

## Location Map

PA-10-15  
3183 Red Hill Ave.



1027 Center for Spritual Living & Discovery School of Arts and Sciences - Costa Mesa

Photographs of Existing Exterior Building Elevations



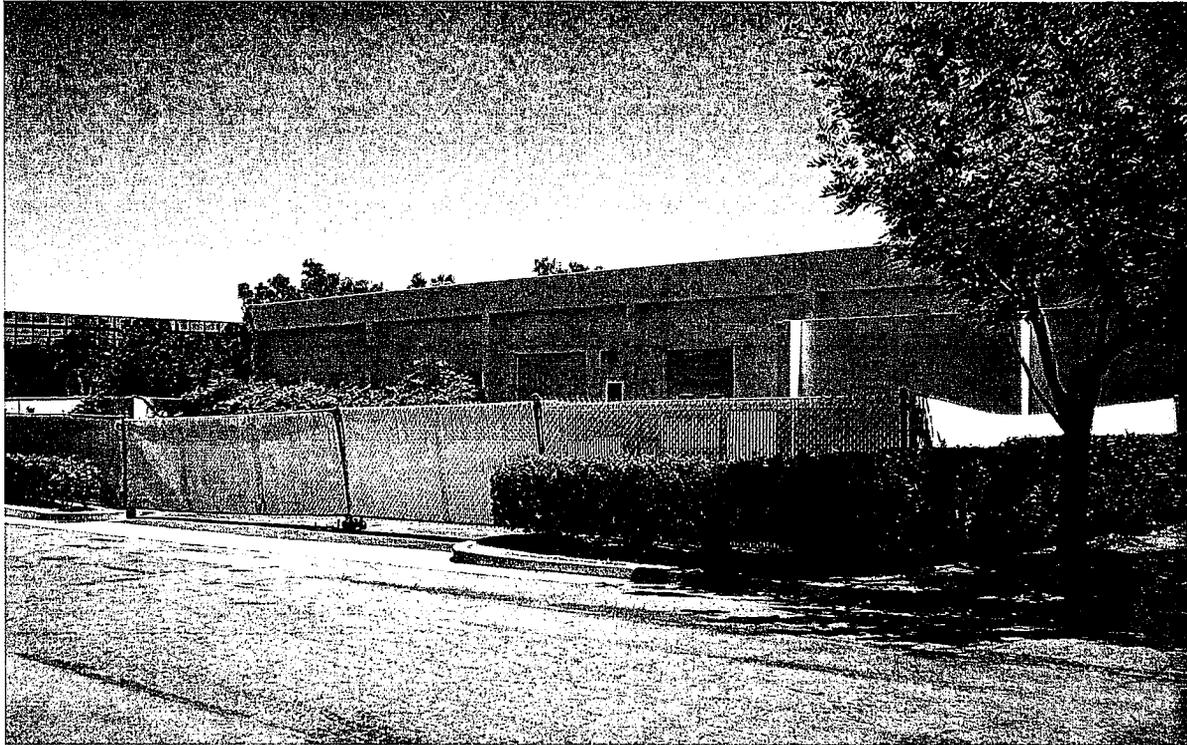
1. Right portion of southwest elevation showing existing building office entrances.



2. Left portion of southwest elevation showing warehouse.

1027 Center for Spritual Living & Discovery School of Arts and Sciences - Costa Mesa

**Photographs of Existing Exterior Building Elevations**



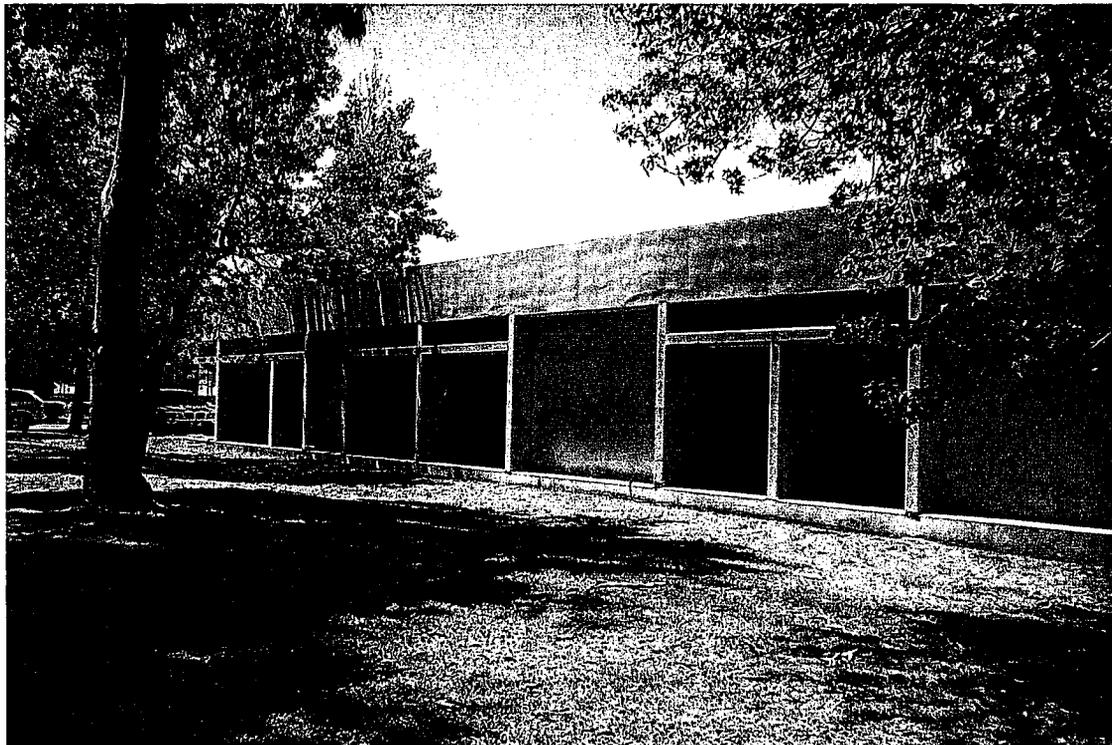
3. Northwest elevation showing warehouse loading / rear yard area.



4. Northeast elevation showing the warehouse portion of the building.

1027 Center for Spritual Living & Discovery School of  
Arts and Sciences - Costa Mesa

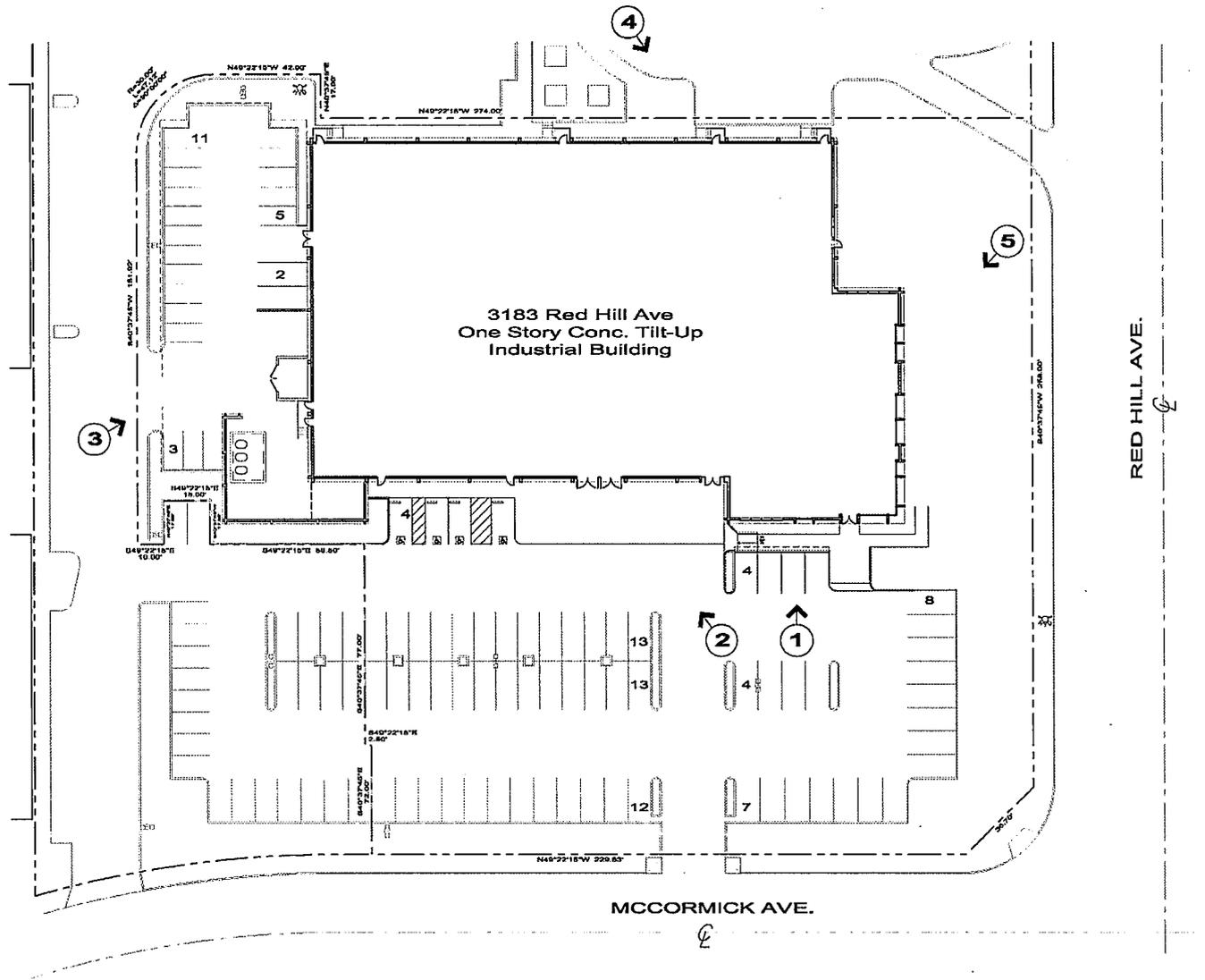
**Photographs of Existing Exterior Building Elevations**

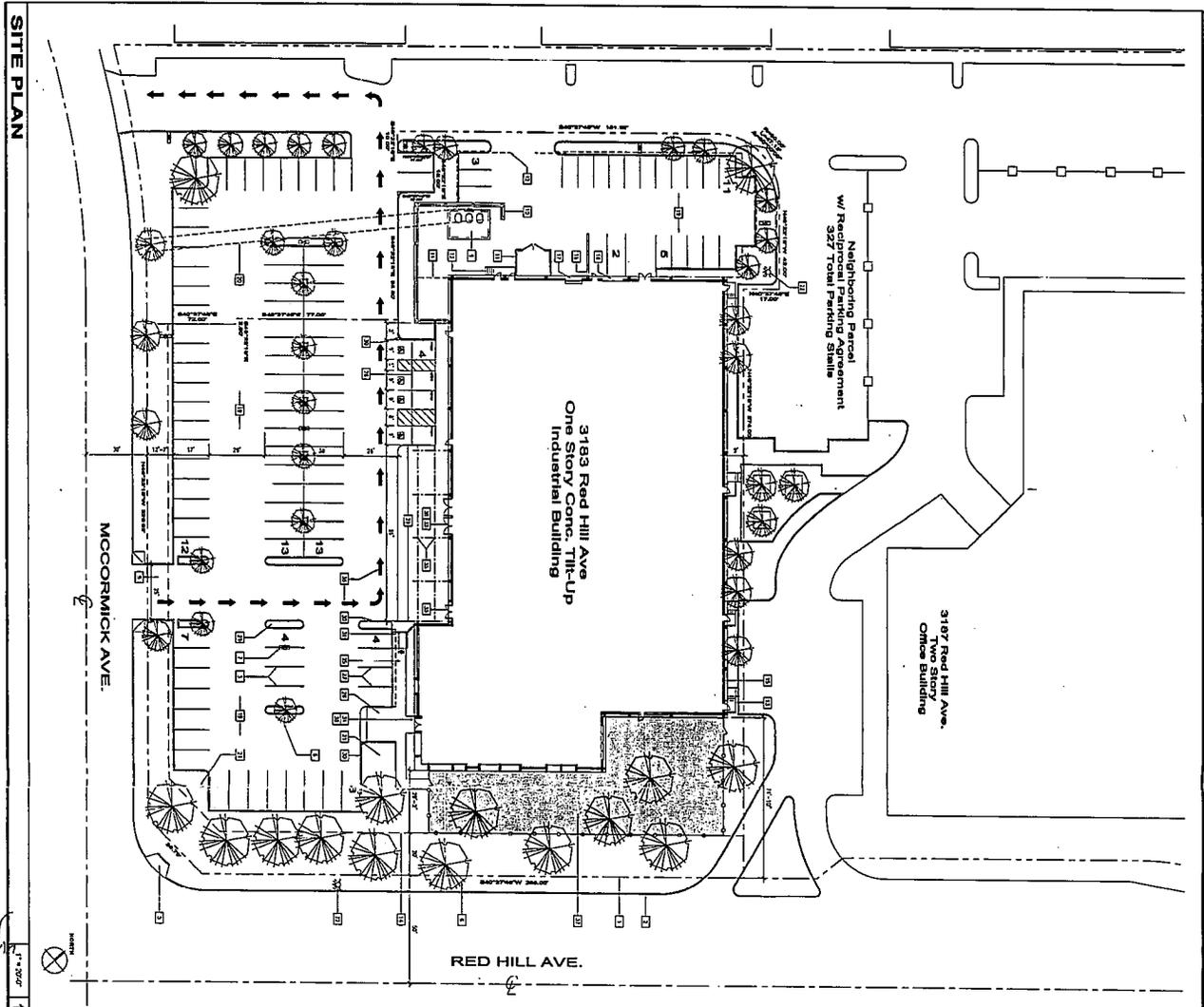


5. Southeast elevation facing Red Hill Ave.

# 1027 Center for Spritual Living & Discovery School of Arts and Sciences - Costa Mesa

## Photographs of Existing Exterior Building Elevations





**KEYNOTES**

1. 10' PROPERTY LINE, 10'
2. 10' CONC. DRIVE, 10'
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100. 10' CONC. DRIVE, 10'

**PROJECT DATA**

PROJECT NO. 2024-001  
 SHEET NO. 1 OF 1  
 DATE: 10/15/2024  
 PROJECT LOCATION: 3183 RED HILL AVE, COSTA MESA, CA 92626  
 CLIENT: NEWPORT MESA PROPERTIES, LLC  
 ARCHITECT: LUNDTROM & ASSOCIATES  
 ENGINEER: [Firm Name]

**PROJECT TEAM**

ARCHITECT: LUNDTROM & ASSOCIATES  
 ENGINEER: [Firm Name]  
 LANDSCAPE ARCHITECT: [Firm Name]

**SHEET INDEX**

1. SITE PLAN  
 2. [Other sheets]

**VICINITY MAP**

**PARKING ANALYSIS**

TYPE	AREA (SQ FT)	PERCENTAGE	COMMENTS
TOTAL	10,000	100%	
ASPHALT	8,000	80%	
CONCRETE	2,000	20%	

**LEGEND**

- 1. 10' PROPERTY LINE
- 2. 10' CONC. DRIVE
- 3. 10' CONC. DRIVE
- 4. 10' CONC. DRIVE
- 5. 10' CONC. DRIVE
- 6. 10' CONC. DRIVE
- 7. 10' CONC. DRIVE
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**Site Plan**

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PA-10-15





85-088494

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WHEN RECORDED MAIL TO:RECORDING REQUESTED BY  
TICOR TITLE INS. CO. OF CALIF.RECORDED IN OFFICIAL RECORDS  
OF ORANGE COUNTY, CALIFORNIA

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*Lee A. Branch* COUNTY  
RECORDER

DECLARATION ESTABLISHING PROTECTIVE COVENANTS, CONDITIONS  
AND RESTRICTIONS AND RECIPROCAL EASEMENTS

THIS DECLARATION, is made this 8<sup>th</sup> day of March, 1985, by Carver Development Partnership Three, a limited partnership, hereinafter referred to as "Carver", owner of the hereinafter described property.

W I T N E S S E T H:

WHEREAS, Carver is the owner of that certain real property located in the City of Costa Mesa, County of Orange, State of California, which is more particularly described in the attached Exhibit "A", and which is referred to as the "Property", which is composed of two separate parcels improved with separate buildings as shown on Exhibit "B" attached hereto. Exhibit "B" depicts the building footprints for the existing buildings presently constructed on the Property. The areas within these footprints as well as areas within the building footprints of any new buildings constructed on the Property are herein referred to as "Building Areas".

WHEREAS, Carver desires to hereby subject each and every portion of the Property to the covenants, conditions and restrictions hereinafter set forth and to establish the appurtenant easements hereinafter described so as to provide a general plan for the mutual benefit of the owners of any and all portions thereof and their respective heirs, successors, assigns, grantees, mortgagees and tenants.

NOW, THEREFORE, Carver does hereby establish the covenants, conditions and restrictions hereinafter set forth, and grant and establish the easements hereinafter described as follows:

ARTICLE 1 - COMMON AREA

The Property, other than the Building Areas as they now or may hereafter exist and loading dock areas as shown on Exhibit "B", is hereafter referred to as Common Area. Carver hereby grants and establishes reciprocal easements over and upon the Common Area portions of parcels 1 and 2 of the Property for the purposes hereinafter set forth. Said Common Area shall be used only for the following purposes (but in no event shall the following rights be construed as creating any rights for the general public):

(a) The ingress and egress and parking of passenger motor vehicles of the owners and occupants of any portion of the Property and their customers, suppliers, licensees, invitees, employees, officers, agents and representatives;

(b) The pedestrian movement of the owners and occupants of any portion of the Property and their customers, suppliers, licensees, invitees, employees, officers, agents and representatives;

(c) The installation, maintenance and operation of necessary utility services serving the Building Areas. All utility lines shall be underground unless prohibited by the utility supplier in which case they shall be 20 feet or more in height;

(d) The maintenance, repair and replacement of Common Area improvements including parking lot lighting facilities, planting areas, traffic islands, and sidewalks;

(e) The erection and maintenance of monument signs with appropriate underground electrical connections provided (1) any such sign shall in all respects be

subject to the absolute approval of all governmental agencies having jurisdiction of such sign, and (2) shall be subject to the approval of the Maintenance Director hereinafter named, as to size and specific location, which approval shall not be unreasonably withheld. In no event shall any such monument sign be approved if as a condition to the granting of governmental approval thereof the applicable governmental agency requires a reduction in the number and /or size of other monument signs previously approved for the Property.

Notwithstanding the limitations on the use of the Common Areas as herein provided, it is expressly understood and agreed that the owners of the Property may encroach upon said Common Area for sidewalks and walkways, lighting and standards, planters, loading docks and rubbish and service areas at the rear of Building Areas. No charge, fee, toll, levy or expense shall ever be required, laid, assessed, or made to or received from any business guest, invitee, licensee, visitor, customer or patron of any business conducted on the Property without the written consent of all of the owners thereof unless such charges be ordered by a appropriate governmental authority, the cost and expense of the operation, management, maintenance and repair of the Common Area being borne and discharged only as provided for herein. To the extent permitted by the governmental authority any charge ordered by such governmental authority shall be pro rated to the occupants of the Property, but if the governmental authority does not permit such a treatment of the charge, but instead requires that it be collected directly from customers for the privilege of using the Common Area, then the Maintenance Director hereinafter described shall collect such charges and shall credit the amount received from customers, less collection expenses, against the operation and maintenance expense which is otherwise pro rated to the owners of the Property as provided hereinafter.

#### ARTICLE 2 - MAINTENANCE OF COMMON AREAS

A. Carver shall initially assume the role of Maintenance Director. So long as Carver owns any portion of the Property it shall be the Maintenance Director. In the event Carver no longer owns a portion of the Property the Maintenance Director shall be chosen by the owners of the Property by their unanimous agreement. In the absence of such agreement the Maintenance Director shall be the owner of Parcel 1 shown on Exhibit "B". The Maintenance Director shall maintain and repair the entire Common Area shown on Exhibit "B", (except loading docks which shall be the responsibility of the owner of the parcel upon which such facilities are located). The obligation of the Maintenance Director to maintain said Common Area in good condition and repair shall, without limiting the generality hereof, include the following:

- (1) Maintaining and repairing the surfaces in a level, smooth and evenly-covered condition with the type of surfacing and striping originally installed as shall in all respects be equal in quality, use and durability;
- (2) Removing all papers, debris, filth, and refuse and washing or thoroughly sweeping the Common Areas to the extent reasonably necessary to keep said areas in a neat, clean and orderly condition;
- (3) Placing, keeping in repair, and replacing any necessary appropriate directional signs, markers and lines; and operating, keeping in repair and replacing when necessary, such artificial lighting facilities as shall be reasonably required or originally installed;
- (4) Maintaining any perimeter walls in a good condition and state of repair;
- (5) Maintaining all landscaped areas making such replacement of shrubs and other landscaping as is necessary, and keeping said areas at all times adequately weeded, watered and fertilized.

B. As part of said operation, the Maintenance Director shall obtain and maintain general public liability insurance insuring and naming as insureds all persons who now or hereafter own or hold portions of the Property or any leasehold estate or other interest therein as their respective interests may appear, provided the Maintenance Director is notified in writing of such interest, against claims for personal injury, death or property damage occurring in, upon or about the Common Area; such insurance shall be written with a reputable insurance carrier licensed to do business in the State of California. The limits of liability of all such insurance shall be not less than One Million Dollars (\$1,000,000.00) combined single limit for personal injury and property damage.

C. Each and every owner of the Property or any portion thereof shall pay to the Maintenance Director its pro rata share of the expense of maintaining the Common Area which such share shall be determined by the ratio that the gross square footage of buildings constructed on such owner's parcel as shown on Exhibit "B" hereto bears to the total gross square footage of all buildings constructed on the Property.

D. The Maintenance Director is hereby authorized to contract for and pay for, on behalf of the owners of the Property all of the items enumerated as maintenance expense in paragraph (A) herein plus a service charge of fifteen percent (15%) of all such expenses (which shall include all capital and replacement items) to cover administration costs.

E. The fee owners of the Property shall be billed monthly for their pro rata share of repairs and maintenance costs. The Maintenance Director is authorized to estimate the amount of such expenses to be incurred during each year and to bill such estimates on a monthly basis to the owners of the Property. Said owners agree to reimburse the Maintenance Director for their pro rata share of such expenses within ten (10) days of receipt of billing. Such fee owners may be billed for their pro rata share of any capital expenses prior to the Maintenance Director's payment for such expenses.

F. In the event any owner fails or refuses at any time to pay his or its share of any of such maintenance costs or expense when due, then, after written demand, legal action may be instituted against the defaulting owner for reimbursement plus interest at the maximum rate permitted by law as well as a late charge equal to the greater of \$100.00 or 10% of the amount of the delinquent owner's share of the expenses billed. If any owner defaults under this Agreement, any other owner may institute legal action against the defaulting owner for specific performance, declaratory relief, damages or other suitable legal remedy. In addition to recovery of the sum or sums so expended in behalf of the defaulting owner the prevailing party shall be entitled to receive from the losing party such amount as the court may adjudge to be reasonable attorney's fees for the services rendered to the prevailing party in any such action.

G. It shall be lawful for any person or persons owning or holding any portion of the Property to prosecute any proceedings at law or in equity against any person violating, or attempting to violate, any of the covenants, conditions and restrictions herein and either prevent it, him or them from so doing and to recover damages from or on account of such violation.

H. The Maintenance Director may from time to time enact reasonable rules and regulations for the orderly and proper operation of said Common Area; such rules shall take into consideration the occupants of all Building Areas and may include but not be limited to the following:

- (1) The restricting of employee parking to limited or designated areas; and
- (2) The regulation of the removal, storage or disposal of refuse and other rubbish at the sole cost and expense of the fee owner of the property involved therein; and
- (3) The establishment of exclusive parking areas for the exclusive use of the occupants of a building on the Property and their licensees, customers, invitees, officers, agents and representatives.

### ARTICLE 3 - REALTY TAXES AND ASSESSMENTS

It is intended that all real estate taxes and assessments relating to any portion of the Property or improvements thereon, or the ownership thereof, shall be paid prior to the delinquency by the respective fee owners thereof, and if not so paid may be paid by any other owner of the Property or any portion thereof and shall constitute a lien and charge on the property hereinabove described of the defaulting owner, subject and subordinate, however, to any bona fide mortgage or deed of trust made in good faith and for value then or thereafter outstanding against said property.

In the event any owner of the Property or portion thereof fails at any time to pay before delinquency its taxes or assessments on any portion of the Property described herein of which said owner owns a fee interest, and which may become a lien on any of the Common Area, except while the validity thereof is being contested by

judicial or administrative proceedings, then any other owner of any portion of the Property may pay such taxes and/or assessments, together with interest, penalties and cost, and in any such event the owners obligated to pay such taxes and/or assessments shall promptly reimburse such other owner for all such taxes and/or assessments, interest, penalties, and cost and other charges and until such reimbursement has been made the amount thereof shall constitute a lien and charge on the property hereinabove described of the defaulting owner, subject and subordinate, however, to any bona fide mortgage or deed of trust made in good faith and for value then or thereafter outstanding against said property.

#### ARTICLE 4 - INSURANCE MAINTENANCE

Each owner of any portion of the Property shall maintain extended coverage fire insurance, with full replacement cost endorsements, on improvements located on such portion of the Property. Each owner of the fee title to any portion of the Property shall maintain any buildings and other improvement on such owner's property (other than improvements required to be maintained by the Maintenance Director as herein provided) in good condition and repair and shall promptly repair or restore any improvement (i) damaged or destroyed by a casualty normally covered under an extended coverage policy of fire insurance in the State of California provided insurance proceeds are made available therefor (and if not such owner shall demolish the improvements and blacktop the Building Area thereof as hereinafter provided); or (ii) damaged or destroyed by any other casualty if the cost thereof does not exceed ten percent (10%) of the full replacement value of such improvements. If the cost in such latter event does exceed ten percent (10%) of such replacement value such owner shall have the option of either rebuilding such improvement or demolishing the same and placing the Building Area thereof in a neat and attractive condition by blacktopping or landscaping said area.

#### ARTICLE 5 - MISCELLANEOUS PROVISIONS

A. Each and all of the foregoing covenants, conditions and restrictions run with the land and shall apply to and bind each of the owners of any and all portions of the Property and each and all of their respective heirs, successors, assigns, grantees, mortgagees, tenants, and sub-tenants; and the same and each of them are hereby imposed pursuant to a general plan for the improvement and use of the Property and are designed for the mutual benefit of said owners, tenants and occupants of any and all portions thereof; and the same shall obligate, inure to and pass with each and every portion thereof.

B. Breach of any of the covenants or restrictions contained in this Declaration shall not defeat nor render invalid the lien of any mortgage or deed of trust made in good faith and for value as to the Property or any part thereof; but all of the foregoing provisions, restrictions, and covenants shall be binding and effective against any owner of any of the Property or any part thereof, whose title thereto is acquired by foreclosure, trustee's sale, or otherwise;

C. The covenants, conditions and restrictions herein contained and the easements herein established shall be perpetual;

D. Invalidation of any one of the covenants, conditions, restrictions or other provisions herein contained by judgment or court order shall in no way affect any of the other covenants, conditions, restrictions or provisions thereof, and the same shall remain in full force and effect:

E. In the event of condemnation by any duly constituted authority for a public or quasi-public use of all or any portion of the Property, that portion of the award attributable to the value of the land within the Common Area so taken shall be payable only to the owner in fee thereof and no claim thereon shall be made by other owners of any other portion of the Property, provided, however, that all other owners and lessees of the Property may file collateral claims with the condemning authority over and above the value of the land of the area so taken provided they do not diminish the owners' award and provided, further, however, that the owner of the fee of each portion of the Common Area so condemned shall promptly repair and restore the remaining portion of the Common Area so owned by such owner as near as practicable to the condition of the same immediately prior to such condemnation to the extent such award allows, and without contribution from any other owners;

F. In the event that suit is brought for the enforcement of this Declaration or as a result of any alleged breach thereof; the successful party or parties to such suit shall be entitled to be paid reasonable attorney's fees by the losing party or parties, and any judgment or decree rendered shall include an award thereof;

G. This Declaration may be amended or terminated only by written agreement of the fee owners of the Property, consented to in writing by any holder of a First Mortgage or First Deed of Trust encumbering the property. The consent of any such holder shall not be unreasonably withheld or delayed. Any such Amendment or Termination Agreement must be recorded in the Office of the County Recorder of Orange, California;

H. This Declaration shall create privity of contract and estate with and among all owners and grantees of all or any part of the Property, and their respective heirs, executors, administrators, successors and assigns. In the event of a breach, or attempted or threatened breach, by any owner of any part of the Property, of any of the terms, covenants and conditions hereof, any one of all such owners of the Property, and any one or more beneficiaries under a deed or deeds of trust covering any part of the Property shall be entitled forthwith to full and adequate relief by injunction and all other available legal and equitable remedies from the consequences of such breach. All costs and expenses of any suit or proceedings, including attorney's fees, as hereinafter provided, shall be assessed against the defaulting owner and shall constitute a lien against the real property of the defaulting owner until paid, effective upon recording notice thereof in the office of the county in which the Property is located, but any such lien shall be subordinate to any bona fide first mortgage or first deed of trust covering any portion of the Property, and any purchase at any foreclosure or trustee's sale (as well as any grantee of a deed in lieu of foreclosure or trustee's sale) under any such mortgage or deed of trust shall take title free from any such lien, but otherwise subject to the provisions hereof. The remedies permitted by law or equity of any one or all such owners specified herein shall be cumulative as to each and as to all.

#### ARTICLE 6 - TRANSFER OF INTEREST, RIGHTS, POWER AND OBLIGATIONS

A. In no event shall the powers conferred upon any fee owner pursuant to this Declaration be at any time transferred or assigned by any of such owner, except through a transfer of its interest in the Property, and then only to the extent hereinafter provided;

B. In the event of the conveyance of the whole of the interest of such owner in and to the property without retaining any beneficial interest other than under the terms of a deed of trust or mortgage, or without simultaneously acquiring a new interest by way of leasehold, life estate or any other similar interest, then the powers conferred upon and obligations of such owner shall be transferred and assigned with its interest.

C. In the event that the whole of the interest of a fee owner in and to the Property be transferred or conveyed but a new interest is created in such party simultaneously with the conveyance of such interest by way of leasehold or other similar arrangement, or in the event that such owner shall convey its interest in the Property, or any part thereof, by deed of trust or other security instrument as security for any obligations or indebtedness, then none of the powers conferred upon or obligations of such party pursuant to this Declaration shall be transferred or assigned with the transfer or conveyance of the interest transferred or conveyed by such owner, but all of the powers and obligations herein referred to shall remain in such owner, so long as it retains any interest in and to the Property other than as beneficiary under the terms of a deed of trust or mortgage. In the event that the interest of such owner referred to in this Section 6(C) shall terminate, then upon such termination, the powers and obligations of such owner shall vest in accordance with Sections 6 (B) or 10 (D) hereof, whichever is applicable as if said new interest created in such owner had never existed.

D. In the event that any fee owner shall transfer or convey its interest in the Property, or a portion of such interest, in such manner as to vest ownership of such interest in more than one person or entity, then and in the event, the several owners of such interest involved in such transaction shall designate one of their number to act on behalf of all such owners in the performance of the provisions of this Declaration. Any such designation must be in writing and served upon the Maintenance Director by

registered or certified mail. In the absence of any such written designation, the acts of the owner whose interest is to be divided, with respect to the performance of the provisions of this Declaration shall be binding upon all of the owners of such interest, whether or not said owner hereto retains any interest in the Property, until such time as written notice of such designation is given as herein provided.

E. Wherever the powers conferred upon and obligations of any of the owners of the Property are vested in or transferred to another owner pursuant to the provisions of Sections 6 (B), 6 (C) or 6 (D) above, the transferor shall be released and discharged from the obligations thereafter accruing under the terms of this Declaration and the transferee of such interest, shall be bound by the covenants and agreements herein contained.

IN WITNESS WHEREOF, the undersigned has executed this Declaration as of the date first written above.

<sup>27</sup> CARVER DEVELOPMENT PARTNERSHIP THREE  
a California Limited Partnership

By: Leroy L. Carver, III  
Leroy L. Carver, III

/bp-III

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF ORANGE )

On March 8, 1985, before me, the undersigned, a Notary Public in and for said State, personally appeared Leroy L. Carver, III known to me to be the general partner of Carver Development Partnership Three, the partnership that executed the within instrument and acknowledged to me that such partnership executed the same.

WITNESS my hand and official seal.

Bonnie F. Peake  
Notary Public



ILLEGIBLE NOTARY SEAL DECLARATION

GOVERNMENT CODE 27361.7

I certify under penalty of perjury that the notary seal on the document to which this statement is attached reads as follows:

Name of Notary Bonnie F. Peake  
Date Commission Expires 6-14-85  
County where bond is filed Orange  
Place of Execution of this Declaration Santa Ana, California  
Date 3/13/85

M. L. Smith  
Signature (firm name if any)

85-088494

EXHIBIT "A"

Description:

Lot 1 of Tract No. 6368, in the County of Orange, State of California, as per map recorded in Book 233 Pages 18 and 19, of miscellaneous maps, in the office of the County Recorder of said county.

Except all oil, oil rights, minerals, mineral rights, natural gas, natural gas rights, and other hydrocarbons by whatsoever name known that may be within or under the parcel of land hereinabove described, together with the perpetual right of drilling, mining, exploring, and operating therefor and storing in and removing the same from said land or any other land, including the right of whipstock or directionally drill and mine from lands other than those hereinabove described, oil or gas wells, tunnels and shafts into, through or across the subsurface of the land hereinabove described and to bottom such whipstocked or directionally drilled wells, tunnels and shafts under and beneath or beyond the exterior limits thereof, and to redrill, retunnel, equip, maintain, repair, deepen and operate any such wells or mines, without, however, the right to drill, mine, store, explore, and operate through the surface of the upper 500 feet of the subsurface of the land hereinabove described, as reserved in the deed from Irvine Industrial Complex, a California corporation, recorded June 21, 1971.

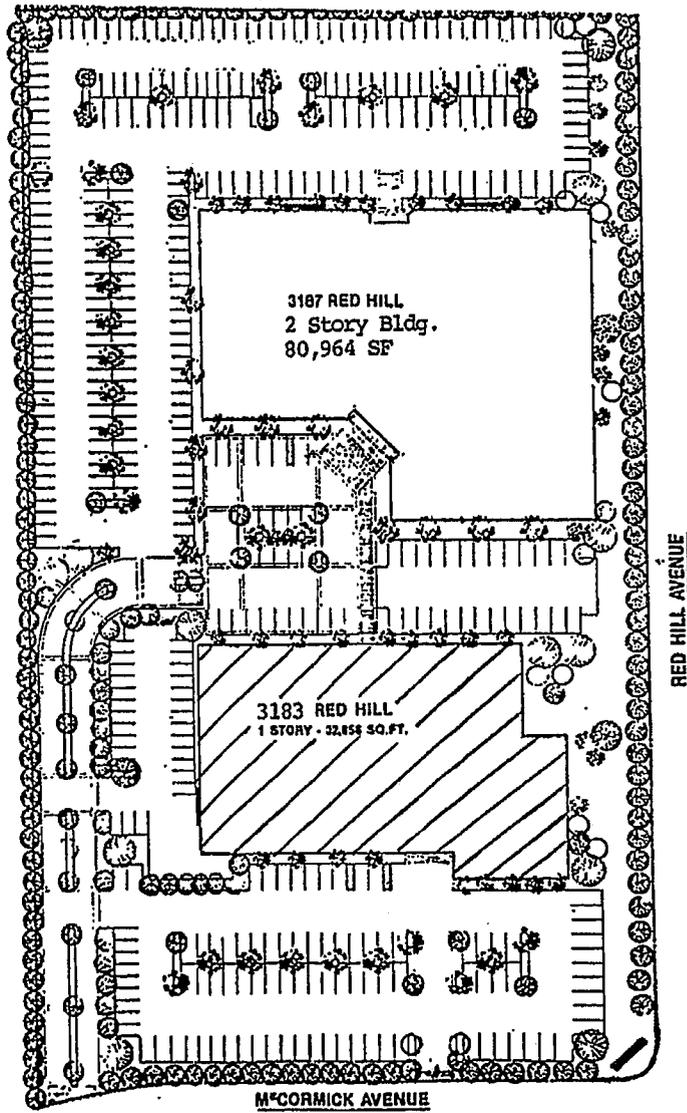


EXHIBIT "B"



**LINCOLN**  
**A. BARRON**  
 ARCHITECTS  
 1000 N. 10TH ST.  
 SUITE 100  
 LINCOLN, NE 68502  
 PHONE: (402) 441-1111  
 FAX: (402) 441-1112  
 WWW.LINCOLNARCHITECTS.COM

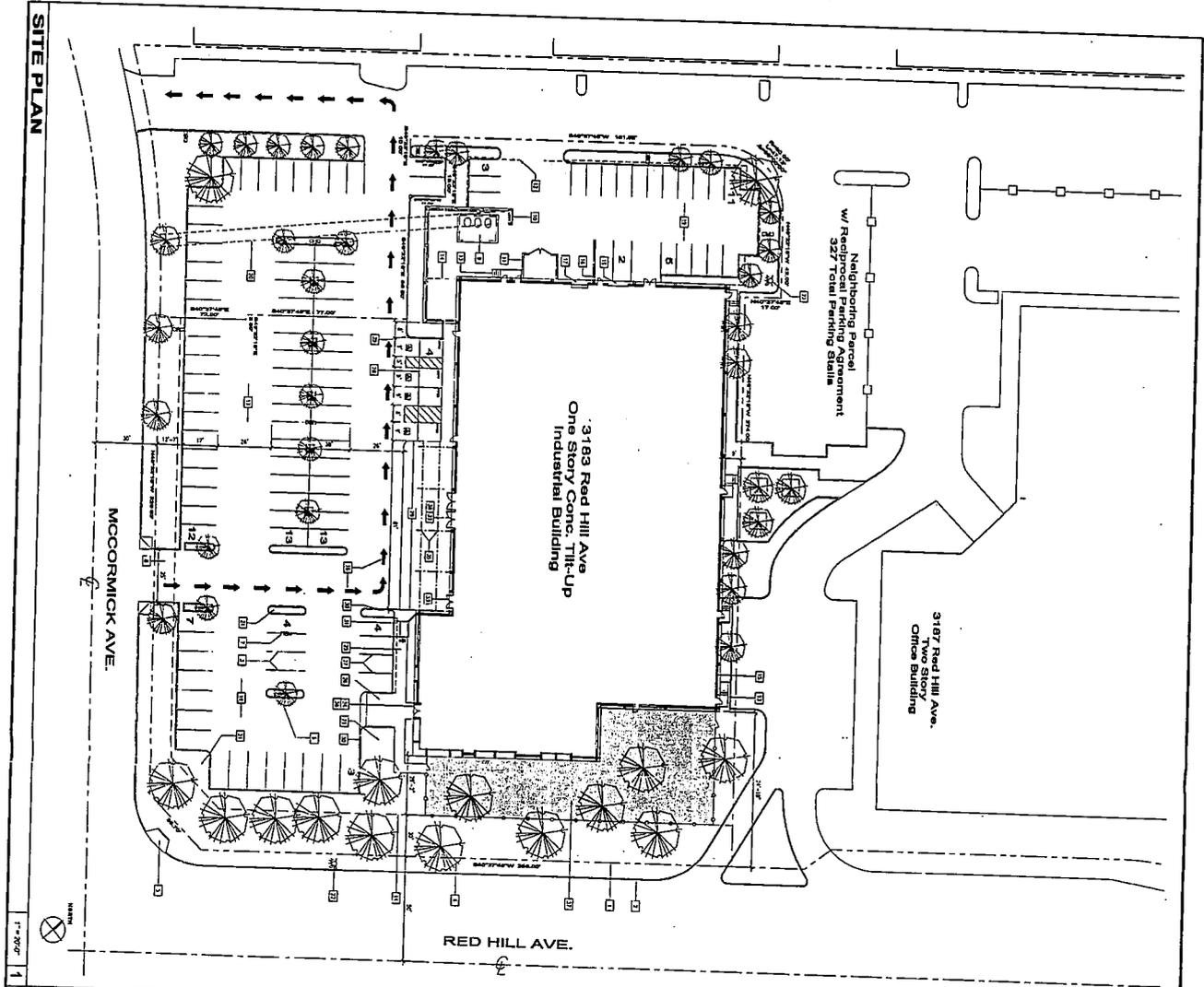


**NEWPORT MESA**  
**PROPERTIES, LLC**  
 3000 N. 10TH ST., SUITE 100  
 LINCOLN, NE 68502  
 PHONE: (402) 441-1111  
 FAX: (402) 441-1112  
 WWW.NMPS.COM

**CENTRAL FOR**  
**DISCOVERY**  
**SCHOOL OF ARTS**  
**AND SCIENCES**  
**COSTA MESA**  
 1000 N. 10TH ST.  
 LINCOLN, NE 68502

Site Plan  
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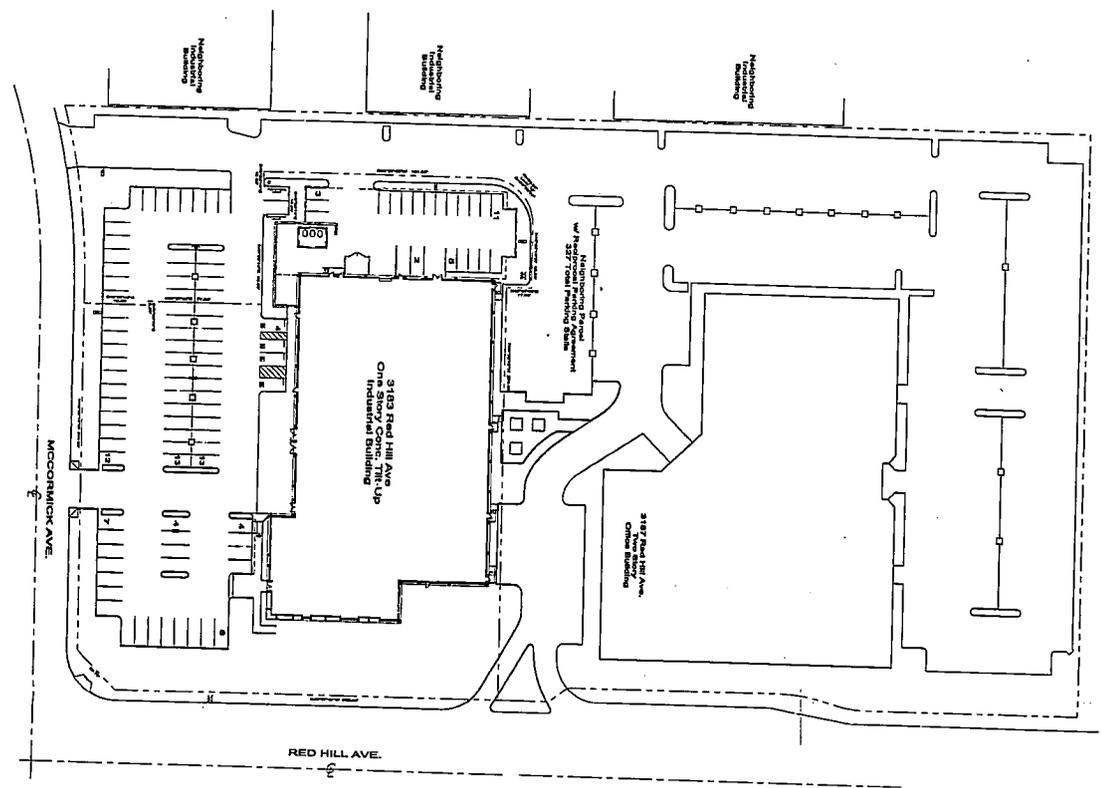
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**KEYNOTES**

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**RECIPROCAL PARKING AGREEMENT SITE PLAN**



1" = 200'  
1

**LEGEND**  
City of Costa Mesa  
 City of Newport Mesa  
 City of Park Forest



**LUMBERTSON & ASSOCIATES ARCHITECTS**  
 10000 N. 10th Street, Suite 100  
 Park Forest, IL 60466  
 Phone: (708) 581-1111  
 Fax: (708) 581-1112  
 www.lumbertson.com



**NEWPORT MESA PROPERTIES, LLC**  
 20000 Newport Mesa Blvd.  
 Newport Mesa, CA 92658

**OWNER FOR SPRING LIVING & DISCOVERY AND SOL OF ARTS AT COSTA MESA**  
 20000 Newport Mesa Blvd.  
 Newport Mesa, CA 92658

NO.	DATE	DESCRIPTION
1	11/11/11	PRELIMINARY
2	11/11/11	REVISED
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**Reciprocal Parking Agreement Site Plan**

**A1.1**

## 08-09-10 PC Minute Excerpt for PA-10-15 - Unofficial Until Approved

4. Application No.: PA-10-15  
Site Address: 3183 Red Hill Avenue  
Applicant: Scott vonKaenel  
Zone: MP  
Proj. Planner: Minoo Ashabi  
Environmental  
Determination: Exempt

Description:

Conditional use permit for the following: (1) potential off-site parking pursuant to a reciprocal access and parking agreement with 3187 Red Hill Avenue; and (2) intermediate after-school classes/programs for up to 150 students at the church facility (The Center for Spiritual Living).

Deputy City Attorney Richard Adams noted he received correspondence late today from Allen Matkins Attorneys at Law and could not review it in time for this meeting.

Scott vonKaenel of Lundstrom and Associates, applicant, made a presentation.

Reverend Jim Turell of the Center for Spiritual Living gave a brief overview of the after-school program proposed.

Stephen Lam, representing Weir Canal, LLC, the property owner of 3187 Red Hill Avenue, opposed the application citing inadequate parking and the impact on traffic.

Matthew Fogt of Allen Matkins, representing Weir Canal, presented issues relating to parking/traffic.

David Coulter, neighboring tenant, opposed the application and expressed concern regarding parking, traffic, and the speed of the traffic.

Kathe Morgan of Lee & Associates, representing the applicant, noted that services are provided on Sunday and Wednesday evenings, and commented on the neighboring building being on the market.

Diana Lin, representing Weir Canal, said the previous statement made by Ms. Morgan was false concerning their building being on the market.

Synthia Neyland, Costa Mesa, commented on other CC&R's applicable to this site and the church and school uses in the same industrial area.

Jon Lundstrom, Lundstrom & Associates, noted the emphasis on safety for the students and said there is ample room for traffic/queuing in addition to using alternative routes.

**MOTION: Approve Planning Application PA-10-15, excluding the request for sanctuary seating in excess of 300 seats which requires off-site parking, by adoption of Planning Commission Resolution PC-10-26, based on the evidence in the record and the findings contained in Exhibit "A", with a modification to Finding "B", and subject to conditions in Exhibit "B" of the supplemental memo dated August 5, 2010, and with modifications to Conditions Nos. 2 and 8 as follows:**

**FINDINGS**

**B. The information presented substantially complies with Costa Mesa Municipal Code Section 13-29(g)(2) in that the proposed after school classes are substantially compatible with developments in the area and would not be materially detrimental to other properties within the area since the proposed hours of operation for the church services and classes are during times that neighboring businesses are not operating. The proposed number of students can be accommodated within the existing building and the on-site parking available on 3183 Red Hill Avenue. In addition, the student shuttle drop-off and pick-up area is within the private property with more than 100 feet from the McCormick Ave. that is not anticipated impacting the traffic and circulation around the site.**

The approval of Planning Application PA-10-15 applies to the proposed after school program and does not include authorization of off-site parking.

**CONDITIONS OF APPROVAL**

**2. Approval of Planning Application PA-10-15 exclusively relates to the proposed after school program as described in the Planning Commission staff report for the August 9, 2010 meeting. Applicant shall apply and obtain approval of a Conditional Use Permit for any off-site parking from the Planning Commission.**

**8. The applicant shall maintain and monitor all their activities within their parking lot so that none of the parking spaces on the adjacent properties are used by church members or after school program.**

**Moved by Commissioner Colin McCarthy, seconded by Chair James Righeimer.**

During discussion on the motion, the Chair asked for additional language relating to no parking on the neighboring property. The maker of the motion agreed.

Commissioner Fitzpatrick asked that the applicant be allowed another 30 days prior to the Planning Commission making a decision on this application. There was no response.

The motion carried by the following roll call vote:

Ayes: Chair James Righeimer, Vice Chair Sam Clark, Commissioner Colin McCarthy, and Commissioner Stephen Mensinger

Noes: Commissioner Jim Fitzpatrick

Absent: None.

# WEIR CANAL LLC.

(REDHILL CENTRE)

3187 REDHILL AVENUE 211  
COSTA MESA, CA. 92626

August 6, 2010

**CITY OF COSTA MESA  
BUILDING AND PLANNING DEPT.**

Attn: Ms. Claire Flynn

Personal Delivery

**Re: 3183-3187 Redhill Ave., Costa Mesa, California  
Planning Application PA-10-15 for a Conditional Use**

Dear Sirs:

Please be advised that this memorandum is sent on behalf of the owners of 3187 Redhill Ave., and in regards to the proposed establishment of a church at 3183 Redhill Ave.

There are two (2) issues we are concerned with, and both require the refusal of this proposed use. The first issue is obvious. There isn't enough parking.

Staff has currently referenced a set of CCR's providing for complimentary use of both parking lots by each owner; however, staff has not addressed the fact that both properties (combined) are grossly inadequate to meet the absolute minimum of parking requirements set by the city.

3187 Redhill has 327 spaces and has a legally mandated need for 324 spaces. Staff is required to follow the city's own zoning laws and standards. Unless the city amends its laws, 3187 is required to have and maintain, 324 spaces. This only leaves three (3) potential open spaces which could be assigned to a church function.

I believe staff may have added all of the spaces and determined they were adequate for the church without concern that 324 of those spaces are already dedicated for the use of 3187 Redhill. In essence, you have double counted our parking.

Likewise, the CCR's which staff is relying on are "stale". The parties haven't used or recognized the actual CC & R provisions for years and there are material changes

Page Two  
August 6, 2010

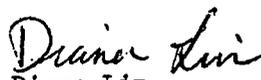
in the position of these parties based on that. Staff is engaged in a giant leap of faith to assume that the CC&R's are enforceable when they aren't being observed.

A second point for consideration is the proposed school use. This is an industrial-commercial area and is totally unsuitable as a child care/school setting. One of the purposes of our zoning require is to segregate non-compatible uses, not "rubber-stamp" bad applications.

In short, when staff is looking at two (2) properties, and their parking requirements, staff should add all of the parking require of each, and compare it to all of the available parking. Since there is an existing, city approved, use of 324 of those spaces, staff must not count them "again" for the second, newer proposed use.

It is our sincere desire that your office re-visit this issue. We believe you are legally wrong and that you are violating your own guidelines and city law. If the matter were to be forced through to the conclusion proposed by staff, we would be compelled to review our legal options. We certainly don't desire any sort of confrontation with Costa Mesa, and hope you will look at this again.

Sincerely yours,



Diana Lin  
Weir Canal LLC

VLH  
PA-10-15

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**From:** Mary [mailto:merry8888@gmail.com]  
**Sent:** Monday, August 09, 2010 12:31 PM  
**To:** FLYNN, CLAIRE; ASHABI, MINOO  
**Subject:** 3183 adn 3187 Red Hill, Costa Mesa, Ca.

Dear Ms. Flynn and Ms. Ashabi:

Enclosed please find letters from my tenants on 3187 Red Hill, Costa Mesa. Please note these letters are to be included, in addition to the letter that we sent last Friday, within the public record for the matter at tonight's hearing. Thanks !

Yu Kao  
WEIR CANAL LLC.

08/09/2010

60

We, the tenants and on-site users of 3187 Redhill Ave., Costa Mesa, and adjacent, wish to register and make known our objection to the proposed establishment of a church as 3183 Redhill. Our objections are founded on the following:

1. There is insufficient parking for both the properties (3183 and 3187) at the site(s). In fact, the proposed church with its required parking will be in violation of city parking minimums when both properties are considered together.
2. There are only three (3) excess parking spots at 3187. It would be a nightmare to police the church's use of the property and will lead to continuous and substantial interference of the existing tenants.
3. An afternoon school is incompatible with the existing uses of the area, which are commercial and industrial. Large numbers of children moving around the property and parking areas will create severe parking problems, difficulty for 3187 tenants to ingress and egress (particularly since the proposed afternoon school will coincide with people arriving, and employees getting off work), and will be a hazard to the children.

It is the duty of zoning to segregate these incompatible uses.

4. The disruption in traffic, parking, and use patterns will make it difficult to maintain commercial businesses at the 3187 property, exactly the wrong thing for Costa Mesa to be doing in these trying economic times.

Pathway Data  
3187 Redhill Ave, Suite 100  
Costa Mesa, CA 92626

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\_\_\_\_\_  
David B. Carter  
\_\_\_\_\_  
C.E.G.  
\_\_\_\_\_

We, the tenants and on-site users of 3187 Redhill Ave., Costa Mesa, and adjacent, wish to register and make known our objection to the proposed establishment of a church as 3183 Redhill. Our objections are founded on the following:

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Horizon Sales  
3187 Redhill Ave, Suite 125  
Costa Mesa, CA 92626



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Jack Taylor

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CEO

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8/5/10

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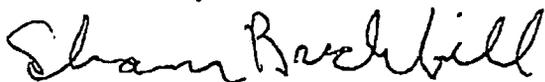
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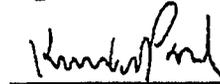
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AMX  
3187 Redhill Ave, Suite 150  
Costa Mesa, CA 92626

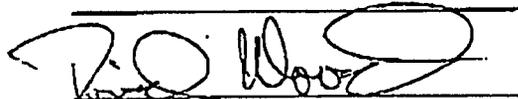


8/5/10











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SpeakTECH  
3187 Redhill Ave, Suite 200  
Costa Mesa, CA 92626



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**Received**  
City of Costa Mesa  
Development Services Department

Haley & Aldrich, Inc.  
465 Medford St.  
Suite 2200  
Boston, MA 02129-1400

AUG 9 2010

Tel: 617.886.7400  
Fax: 617.886.7600  
HaleyAldrich.com

**HALEY &  
ALDRICH**

9 August 2010

Minoo Ashabi  
Senior Planner  
City of Costa Mesa Planning Commission  
77 Fair Drive  
Costa Mesa, CA

Subject: Haley & Aldrich Inc., 3187 Red Hill Avenue, Suite 155 Costa Mesa, CA

To Whom it May Concern:

This letter is in reference to the Planning Application PA-10-15 for a Conditional Use Permit for an Intermediate After-School Program in Church facility at 3183 Red Hill Avenue and for Potential Off-site parking at 3187 Red Hill Avenue.

Haley & Aldrich, Inc. currently occupies Suite 155 in the 3187 building as provided for in the Standard Multi-Tenant Office Lease (hereinafter referred to as "Lease") dated January 2<sup>nd</sup>, 2007. Pursuant to Article 1.2b of Tenant's Lease, the Tenant is entitled to non exclusive use of 18 unreserved parking spaces at the Building.

It has come to our attention that there are proposed changes to the parking lot structure of both buildings and proposal to establish an afterschool program which does not coincide with the building's current zoning. The proposed use would not only affect Tenant's ability to conduct business but also would conflict with the existing use provisions in the immediate area.

Tenant would like to adamantly voice their displeasure and opinion that this matter not move forward. The proposed changes would adversely affect every Tenant of the building and would make it difficult for the Landlord to uphold its current legal obligations to the Tenants who currently occupy the 3187 building.

In closing, Haley & Aldrich strongly urges the City and Planning Commission to reconsider the application submitted and to not approve the proposed changes.

Sincerely yours,  
HALEY & ALDRICH, INC.

TEM



cc: Tim McNeany  
Mohr Partners, Inc.



VI.4  
PA-10-15

REC'D AUG - 9 2010 - Rec'd  
just prior  
to meeting.

August 9, 2010

City of Costa Mesa  
Building and Planning Department

Re: Parking at 3187 Redhill Ave., Costa Mesa, CA

To Whom It May Concern,

Horizon Sales has been a tenant at 3187 Redhill Avenue since 2003. The parking lot is utilized by all of the buildings tenants and is virtually full most days. Not only do all of our employees need access to the lot daily, so do the daily delivery drivers, and our clients and customers that visit our office regularly.

The parking lot is already a small lot with narrow aisles and spaces. To think that we may have additional cars in and out of this lot during working hours is an unwelcome consideration. It would be a hazard to our employees, as well as the parents and children of the proposed school and church, to attempt to navigate the parking lot during the afternoon hours when people are leaving for the day.

There are insufficient spaces to accommodate the proposed overflow that will occur should this Conditional Use Permit PA-10-15 be approved.

We hope you will consider the adverse effect the establishment of the church and the parking spaces required will have on our building and our business.

Sincerely,

Jack Taylor  
CEO  
Horizon Sales Corp.

Horizon Sales Corporation - 3187 Redhill Avenue, #125 Costa Mesa, CA 92626  
Phone: 714-979-4844 / Fax: 714-979-4955

Item VI.4

PA-10-15

## Allen Matkins

Allen Matkins Leck Gamble Mallory & Natsis LLP  
Attorneys at Law  
1900 Main Street, 5<sup>th</sup> Floor | Irvine, CA 92614-7321  
Telephone: 949.553.1313 | Facsimile: 949.553.8354  
www.allenmatkins.com

Matthew R. Fogt  
E-mail: mfoigt@allenmatkins.com  
Direct Dial: 949.851.5453 File Number: 888888-00988/OC907274.01

### Via Electronic Mail and Hand Delivery

August 9, 2010

Commissioner James Righeimer, Chair  
Commissioner Jim Fitzpatrick, Vice Chair  
Commissioner Sam Clark  
Commissioner Colin McCarthy  
Commissioner Stephen Mensinger  
Costa Mesa City Hall  
77 Fair Drive  
Costa Mesa, CA 92628

**Re: Opposition to the Proposed Conditional Use Permit for an After School Program and *Potential* Off-Site Parking for 3183 Red Hill Avenue (PA-10-15)**

Dear Honorable Commissioners:

We represent Weir Canal, LLC. ("Weir Canal"), the owner of the property located at 3187 Red Hill Avenue, in the City of Costa Mesa, California ("Weir Canal Property"), concerning Application No. PA-10-15. The Application is for a conditional use permit for an after school program and potential off-site parking relating to a proposed church ("Proposed Project") on an adjacent property located at 3183 Red Hill Avenue ("Proposed Site"). We understand that the Proposed Site contains 86 parking spaces and a 31,776 square foot single story building that was historically used by two businesses that manufactured circuit boards until 2007. The Proposed Project is scheduled to be heard at tonight's Planning Commission Meeting.

We apologize for the timing of our letter, but Weir Canal only learned of the Proposed Project on Wednesday of last week.

For the following reasons, each of which is discussed in detail below, Weir Canal requests that the Planning Commission deny or continue this matter until the impacts from the Proposed Project can be fully analyzed and mitigated:

- Approval of the Proposed Project would violate CEQA
- The City's Municipal Code requires that all required parking be provided at the time of approval

City of Costa Mesa  
August 9, 2010

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- Stronger enforcement rights are necessary to ensure compliance with the seat limits
- The CC&Rs do not authorized the parking contemplated by the Proposed Project
- The Proposed Project will have significant impacts on the Weir Canal Property and its tenants
- Approval of church use might also require a conditional use permit

This letter shall constitute Weir Canal's request to appear at tonight's meeting. Weir Canal also intends this letter to constitute its objections to the Planning Commission's approval of the Proposed Project, and requests that this letter be included in the administrative record for the Proposed Project. Weir Canal reserves the right to make further and different objections before and at the hearing.

Weir Canal has the following concerns about the Proposed Project:

1. **The Commission's Approval of the Project Would Violate CEQA.** The Commission's approval of a conditional use permit is, of course, a discretionary approval requiring CEQA review. According to the staff report recommending approval of the Proposed Project, the City is relying for the existing facilities exception set forth in Section 15301 of the CEQA Guidelines ("Section 15301"). Section 15301 exempts from CEQA review the "operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination." The Proposed Project does not qualify for the existing facilities exception as it is a major change in use and the change is not negligible and does not constitute an expansion of Proposed Project's prior use. The church and school uses will have vastly different impacts than the circuit board manufacturers that occupied the Proposed Site for several years.

As the Proposed Project is not exempt from CEQA, the City needs to analyze impacts such as air quality, aesthetics, traffic circulation, land use and planning, noise, climate change, and public services. Specifically, the Proposed Project will add numerous peak time traffic trips resulting from parents picking up 150 students every evening at 6:30 with church services starting at 7:00. It is unclear how the small parking lot on the Proposed Site can accommodate all of the cars, not to mention the intersections in the area during the evening rush hour. The introduction of 150 youth to an otherwise industrial area will create additional noise, safety, and security issues for adjacent properties that should be analyzed.

The changes discussed above likely require at least the preparation of a mitigated negative declaration; at a minimum, the City is required to prepare an initial study to address these issues before proceeding. (See CEQA Guidelines, § 15063.)

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August 9, 2010

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2. **Pursuant to the City's Code, the Commission Cannot Approve the Change of Use Unless Sufficient Parking is Provided at the Time of the Approval, and There is Presently Insufficient Parking Available.** Section 13-89(c) of the City's Municipal Code provides that the minimum amount of off-street parking required by the Code must be provided at the time a specific use is proposed for a site or an existing use is changed to one which requires additional parking. Both of the foregoing provisions apply to the Proposed Project. As such, the Commission cannot approve the Proposed Project without ensuring that adequate parking is provided at the time of approval.

The Staff Report notes that there is only enough parking on the Project Site to accommodate 258 seats, but goes on to recommend approval for up to 300 seats. To the extent partial or conditional approval is granted, the approval should be limited to 258 seats, not 300 seats. Additionally, the Staff Report recommends that proof of parking is required prior to expanding beyond 300 seats. However, enforcement of the 300-seat cap appears to be problematic. As the sanctuary is built to accommodate 570 fixed seats with 200 overflow seats, the Proposed Project should not be approved for the Project Site without proof of permanent access to sufficient parking for at least 570 seats, if not the entire 770. The Commission cannot approve the CUP until adequate and acceptable parking rights have been secured.

3. **Stronger Enforcement Rights Are Necessary to Ensure Compliance With the 300 Seat Limit.** The proposed conditions of approval are insufficient to ensure compliance with the 300 seat limitation. As the sanctuary can accommodate additional seating, the church can simply roll out additional seats at the last minute to accommodate large crowds. Without having parking rights in place, there is no way to ensure adjacent property owners and businesses will not be impacted by the onslaught of church visitors seeking parking. Planning Condition of Approval No. 2 vests the authority to enforce the parking and expansion beyond 300 seats to the Development Services Director. As the Municipal Code requires parking to be provided at the time of approval, the Proposed Project should either be denied or continued until sufficient parking is procured or the Proposed Project should be required to be heard again by the Planning Commission at the time approval for more than 258 seats is sought. Allowing the church to locate on the Proposed Site before parking is secured leaves the City in the uncomfortable (and politically difficult) position of strictly enforcing the parking provisions against the church at a later date.

Further, due to the proposed size of the sanctuary, which is built to accommodate 570 seats with 200 overflow seats, Weir Canal is concerned that even if the Planning Commission imposes the Staff-recommended restriction of only 300 seats, it will be extremely difficult for the City to enforce this restriction. Will the City make regular site inspections to insure that only 300 seats are present? This could be especially difficult due to the multiple services that are proposed to occur each week.

City of Costa Mesa  
August 9, 2010

Page 4

4. **The CC&Rs Do Not Authorize the Parking Contemplated by the Proposed Project.** The Proposed Site and the Weir Canal Property (collectively, "Properties") are allegedly subject to recorded covenants, conditions, and restrictions dated March 8, 1985 ("CC&Rs"). The CC&Rs, which contemplate reciprocal parking between the Properties and the joint maintenance of all areas of the Properties other than the buildings constructed thereon, have apparently been completely disregarded by the owners of the Properties since the original owner that recorded the CC&Rs conveyed the Properties to separate owners shortly after the recordation of the CC&Rs. For example, the CC&Rs contemplate the contribution by the owners of each Property to the joint maintenance of the Properties. However, we understand that the owners have each separately maintained their respective properties the entire time.

Additionally, the CC&Rs contemplate reciprocal parking on occasion. However, we understand that the owners and tenants have never exercised the reciprocal parking rights. The reciprocal parking provision also contemplates industrial use, which has one of the least intensive parking requirements of all uses, and was never designed to enable reciprocal parking of more intensive uses. The extent of use of an express easement is governed by the initial use and such use cannot be unreasonably increased. *Colegrove Water Co. v. Hollywood* (1907) 151 Cal. 425. To now permit a more intensive use to claim most, if not all, of the available parking at certain times of the day under rights that never contemplated such intensity creates a significant, unfair, and unlawful burden on Weir Canal Property and its tenants. The parking contemplated by the Proposed Project is completely inconsistent with the reciprocal parking rights.

5. **The Proposed Project Will Have Significant Impacts on Weir Canal.** Weir Canal recently acquired its property and has been diligently leasing the building that was previously less than half occupied. Every one of its tenants requires access at all times, not access only during normal business hours. The tenants are primarily technology and distribution companies and frequently work outside the 9-5 workday. The church, which at a minimum, would be under-parked on-site by 14 parking spaces, would have a significant impact on Weir Canal's ability to complete the leasing of its building and retain tenants. Additionally, the crush of cars at 6:30 every evening, especially in combination with the 7:00 evening service, will create significant impacts to the two main entrances shared by both properties. The church is an inconsistent use for the Project Site and area and will have significant impacts on Weir Canal and other businesses and owners in the vicinity of the Project Site.

6. **The Church Use May Require a CUP Under the City's Zoning Code.** The version of the zoning matrix under the "Municipal Code" link on the City's website shows that church use requires a CUP in the applicable zone. Another land use matrix found elsewhere on the City's site shows church use is a permitted use in the applicable zone. The City has assured us that church use is a permitted use in the applicable zone and the Staff Report reflects this position. However, the City should verify whether church use is truly permitted by right in the Manufacturing Park zone and if so, correct the version of the municipal code accessed through the City's website.

Allen Matkins Leck Gamble Mallory & Natsis LLP  
Attorneys at Law

City of Costa Mesa  
August 9, 2010  
Page 5

To the extent church use is not permitted by right in the applicable zone, the Proposed Project would require a CUP for church use.

**CONCLUSION**

For the reasons set forth in this letter, Weir Canal respectfully requests that the Commission continue or deny the Proposed Project.

Very truly yours,



Matthew R. Fogt

MRF

cc: Ms. Diana Lin, Weir Canal, LLC.  
Ms. Claire L. Flynn, AICP  
Ms. Minoo Ashabi, AIA  
(via electronic mail only)