

CITY OF FOUNTAIN VALLEY
REGULAR MEETING OF THE PLANNING COMMISSION

October 14, 2009

MINUTES

CALL TO ORDER

The Fountain Valley Planning Commission meeting was called to order at 7:00 p.m. in the City Council Chambers.

SALUTE TO THE FLAG

Commissioner Drilling led the salute to the flag.

ROLL CALL

Commissioners present: Drilling, Frank, Gaston, Proctor
Commissioners absent: Jensen, Walker
Staff members present: Andrew Perea, Planning Director; Steven Ayers, Planner;
Matt Jenkins, Assistant Planner; Doug Dare, Management Intern

APPROVAL OF MINUTES

Chair Drilling made a motion to approve the minutes of September 9, 2009.

Commissioner Gaston seconded the motion.

By a unanimous vote, the Planning Commission voted to approve the minutes of September 9, 2009.

Chair Drilling stated that it was customary for Commissioners to visit applicant sites; that unless any Commissioner had further disclosure statements at this time, it may be stated that no contact was made during the site visit with the applicant, his/her agent, or neighbors of the proposed project.

PUBLIC HEARINGS

1. ORANGE COUNTY SANITATION DISTRICT – CONDITIONAL USE PERMIT NO. 1684

Petition submitted by Orange County Sanitation District (OCSD) to construct a hydrogen fueling station for fuel cell vehicles adjacent to the existing compressed natural gas fueling station at 10844 Ellis Avenue.

Chair Drilling opened the public hearing.

Steven Ayers, Planner, presented the staff report.

Commissioner Frank asked for a clarification of a sentence on page 1-2, which states that "...will not significantly increase the noise levels."

Andy Perea, Planning Director, stated that staff visited a hydrogen fueling station in Irvine and that there was no sound made during the fueling process.

Commissioner Proctor stated that the project location is near the flood control area, and asked staff if that area had ever flooded.

Mr. Perea replied that he believes it may have flooded sometime in the 1960s, but with the improvements made to the Santa Ana River, has not flooded since then.

Steven Hoffman, representing Air Products, Inc., a partner in the hydrogen fueling station project at OCSD, gave a PowerPoint presentation to the Planning Commission. He gave a background of Air Products, Inc., and their role in this venture; stated that Air Products has constructed 90 hydrogen fueling stations and completed over 120,000 fuelings with no incidents; and discussed the nature of hydrogen as well as the difference between a gaseous fuel and a liquid fuel. He also stated that their partners in this venture include Air Products, Inc., Orange County Sanitation District, the California Air Resources Board, the South Coast Air Quality Management Board, the Department of Energy, and the University of California, Irvine; and that this is the first totally renewable hydrogen fueling station, as the hydrogen is produced as a byproduct of OCSD's digester tanks. He described the location of the site, stating that it is approximately 40-50 feet long and 35 feet wide with minimal equipment co-located with the existing compressed natural gas station and set back sufficiently from Ellis Avenue; that Air Products feels that safety is paramount and that Air Products works with different committees to draft safety guidelines; that they have both local and remote monitoring of the station and technicians that can be dispatched; and that their hydrogen fueling stations undergo monthly preventative maintenance.

Chair Drilling asked the applicant who would utilize the station.

The applicant stated that the station will be open to those who are trained to use it; that the companies producing hydrogen vehicles also train users of those vehicles; and that when the station opens, Air Products will hold a training class for OCSD and the first wave of users; and that the PIN for each user is a 7-digit number.

Commissioner Frank asked if the fueling process was user friendly enough such that a person could give their PIN to a friend and have them fill up their vehicle.

The applicant replied that they strongly encourage that users do not give their PIN out; that there are instructions posted on the dispenser and that it walks you through the process; and that if a user goes out of sequence, the fueling station won't allow the user to fill their tank.

Commissioner Frank asked if the periodic retraining was linked to the user's individual PIN number.

The applicant responded that they conduct periodic audits.

Commissioner Frank asked how long it would take for a technician to respond if there were a problem at the station.

The applicant responded that they would typically respond within 24 hours, and in the event of an incident, the station would lock the dispensers to prevent any other users from using the station until a technician has the opportunity to conduct an inspection.

Commissioner Proctor stated that the project sounds exciting, and asked the applicant what happens at the end of the three year program.

Mr. Hoffman deferred to Ed Heydorn, a commercial business manager with Air Products.

Mr. Heydorn stated that the main funding mechanism was provided by the Department of Energy and the California Air Resources Board; that the CARB funding is based upon three years of station operation; that all the agreements have been written upon that basis and that the plan is to fulfill that obligation and towards the end of the cycle, re-evaluate the viability of the station and the vehicles.

Commissioner Frank asked Mr. Heydorn what is the projected life cycle of the station, assuming unlimited funding and regular maintenance.

Mr. Heydorn said that all of the components undergo a maintenance schedule and that the process should be transparent to the users; and that the main focus

of this station is to test the viability of using the waste hydrogen from OCSD's digester tanks and that the fueling station provides an outlet for that.

Mr. Perea proposed that in order to address the three year operation of the fueling station, a condition be added that stipulates the equipment shall be removed and the site returned to its original condition upon termination of the project.

The applicant responded that their agreements are already written to that end.

Chair Drilling closed the public hearing.

Commissioner Frank made a motion to adopt Resolution No. 09-51, approving Conditional Use Permit No. 1684 to allow for the construction of a hydrogen fueling station on the OCSD campus at 10844 Ellis Avenue with the condition suggested by staff.

Chair Drilling seconded the motion.

By a unanimous vote, the Planning Commission adopted Resolution No. 09-51, approving Conditional Use Permit No. 1684 to allow for the construction of a hydrogen fueling station on the OCSD campus at 10844 Ellis Avenue.

2. ORANGE COUNTY SANITATION DISTRICT – VARIANCE NO. 273

Petition submitted by Orange County Sanitation District to allow for the placement of a monument sign within the 5 ft. setback area and for the construction of two directional signs and a second monument sign for the property located at 10844 Ellis Avenue.

Chair Drilling opened the public hearing.

Matt Jenkins, Assistant Planner, delivered the staff report.

Chair Drilling asked for a clarification regarding which signs were approved by the Sign Committee.

Mr. Jenkins replied that the main monument sign was approved, but that the variance request is to move that sign closer to the property line within the 5 ft. setback area.

Mr. Perea commented that the directional signs require approval of the variance as well.

Mr. Perea described the irregular property line as depicted on page 2-10, indicating that the landscape planter sticks out 2-3 ft. into the City's right-of-way.

Chair Drilling asked where the pedestrian signs lead.

Mr. Perea replied that they lead to the administrative area across from Bandilier Street.

Commissioner Frank asked if the signs impact the line of sight.

Mr. Perea replied that they do not.

Jeff Okamoto, of RBF Consulting, addressed the Commission. He stated that the pedestrian signs are for those who might attend a board meeting or other similar event at the OCSD campus; and that this project is intended to complement the City's sidewalk project.

Chair Drilling asked if they were going to wait until the sidewalk project was complete to put the signs in place.

Mr. Perea said that there is no link between the two projects and that the City is planning to go forward with the sidewalk project sometime in fiscal year 2010-2011.

Chair Drilling closed the public hearing.

Commissioner Frank made a motion to approve Resolution No. 09-52, approving Variance No. 273.

Commissioner Gaston seconded the motion.

By a unanimous vote, the Planning Commission adopted Resolution No. 09-52, approving Variance No. 273 to allow for the placement of a monument sign within the 5 ft. setback area and for the construction of two directional signs and a second monument sign for the property located at 10844 Ellis Avenue.

3. ANYTIME FITNESS – CONDITIONAL USE PERMIT NO. 1683
Petition submitted by Randin Construction on behalf of Clark and Paula Bevans to establish and operate a 4,700 sq. ft. 24-hour fitness gym at 9380 Warner Avenue.

Chair Drilling opened the public hearing.

Mr. Ayers delivered the staff report.

Clark Bevans, applicant for Anytime Fitness, addressed the Commission. He stated that he has fifteen years of experience in the health club industry,

including eleven years of ownership of a Gold's Gym; that he had previously owned and operated a 24-hour fitness facility; that Anytime Fitness has over 1200 locations worldwide; that according to an industry trade group website, Anytime Fitness has less complaints or reports of sexual activity than any other franchise; that their facility has a \$50,000 security system, monitored 24 hours per day by Provision Security; that they will keep copies of driver's licenses of all of their members on file; that sexual activity typically occurs in the steam room and the sauna room, neither of which will be at their facility; that if any of their members are suspected of illicit activity, that their membership would be terminated and their information forwarded to the Police Department; that they only expect 10% of their members to use the facility during the proposed unstaffed hours; that Anytime Fitness maintains a loss prevention division aimed at reporting invitations for sexual activity; that there are two panic buttons located inside the facility to alert 911; that each of their members will be issued a personal panic device; and that there is an anti-tailgating device that would alert the owners and the security company in the event of someone trying to sneak into the facility.

Chair Drilling asked if the facility would have a tanning bed.

Mr. Bevans replied that there would be a tanning bed; and that it is hooked to a user's membership card that won't allow them to use the tanning bed more than 12 minutes in a 24-hour period.

Chair Drilling asked if the facility had showers.

Mr. Bevans replied that they do have showers.

Commissioner Proctor asked if the tanning bed would be available for use during the unstaffed hours.

Mr. Bevans replied that it would not be available for use during unstaffed hours.

Commissioner Gaston asked why the applicant's business card gives 9394 Warner Avenue as the address even though the application lists the address as 9380 Warner Avenue.

The applicant responded that 9380 Warner Avenue was the address given to CompUSA, but Fresh and Easy took two-thirds of the building and the remaining one-third of the building was re-addressed as 9394 Warner Avenue.

Commissioner Frank asked where the statistics came from regarding the illegal sex activities.

The applicant responded that the International Health and Racquetball Association of America maintains statistics for the industry, and that 99.5% of illicit sexual activity occurs in sauna and steam rooms.

Commissioner Frank asked how responses to medical problems were handled and if the premises is equipped with an automatic electronic defibrillator.

The applicant replied that it is mandated that every health club in the State of California possess an automatic electronic defibrillator; that every manager on site knows how to use the device; and that most of the time it is not the staff that administers first aid, but instead a health care professional.

Commissioner Proctor asked if the upstairs rooms were to be open during the unstaffed hours.

The applicant responded that one room is for cycling and that the other is a functional training space to be utilized for yoga classes, pilates, and personal training.

Commissioner Proctor asked for clarification as to which rooms would be open during unstaffed hours.

The applicant responded that only the functional training space would be open during the unstaffed hours; and that the group room will be under lock and key and only to be accessed during an instructor-led class.

Commissioner Proctor stated that she saw three entrance points and asked the applicant to explain which entrance was the main entrance and if the remaining entrance points were to be used for emergency exits.

The applicant replied that the entrance closest to Fresh and Easy is the guest entrance and is to be open during manager hours so that anyone that comes in can preview the facility; that the entrance two-thirds of the distance to the rear of the building is an emergency-only exit; and that the member entrance is directly across from the day care is to be used during unstaffed hours.

Commissioner Proctor asked the applicant if he could comment regarding the incident in Topeka, Kansas, as mentioned in the staff report.

The applicant said that you could look at any large health club organization and find one or two bad apples in the bunch; that he is not certain what happened in regards to the aforementioned incident.

Commissioner Proctor asked staff if any other business in this center was open twenty-four hours per day.

Mr. Perea replied that he believes the Del-Taco is open twenty-four hours.

Rodney Rivani, property manager for the center, addressed the Commission. He stated that he has seven years of experience as a property manager with approximately 200 tenants; that he is extremely selective of his tenants; that he is impressed by the security measures that the club is proposing to take; that they recently spent \$100,000 updating the lighting at the complex that should be advantageous in terms of security; and that he feels it would be a great complement to the shopping center as it already possesses a tutoring center, a pre-school, and a Fresh and Easy grocery store.

Chair Drilling asked how power outages would be dealt with in a facility such as the one proposed.

The applicant stated that they have 12 major lights, five of which are on battery backup; that they have 32 additional lights, 12 of which are on battery backup; that they spent \$32,000 on lighting; and that their security system is on battery backup.

Chair Drilling asked the applicant how long the battery backup would last.

The applicant said twelve to fifteen hours, depending on usage.

Discussion ensued regarding the air conditioning of the unit.

Commissioner Proctor stated that Anytime Fitness is located in the elbow of the property near the freeway, and asked the applicant if they feel that they have adequate lighting in the southwest corner.

The applicant said that he feels that the corner mentioned is very well lit, even more so than the center of the shopping complex.

Mr. Rivani stated that the preschool is also located in the corner and that they have twenty-four hour surveillance cameras and lighting as well; and that there should be adequate parking spaces to allow visitors to the gym to park in the front of the building.

Commissioner Proctor asked if there was a chain link fence in place between the property and I-405.

Mr. Perea said that there is chain link fence between the property and I-405.

Commissioner Frank asked the applicant what would occur if power went out and if tenants in the shopping center would be notified if such an event occurred.

Mr. Bevans said yes; that they would know immediately based on their security monitoring; and that since they live a mile from the site, they would be able to respond quickly to the situation.

Commissioner Proctor asked the applicant if it was correct that he managed the Gold's Gym in Huntington Beach on Adams.

Mr. Bevans stated that he owned it for six years; that he bought it in poor condition and purchased the bar next door; that he closed the bar and expanded the facility; that he undertook a \$2.2 million renovation; that when he sold the gym, he had over 6,000 members; and that it was great to take something that nobody wanted and make it into a thriving business.

Chair Drilling stated that it is her understanding of Conditional Use Permits that if this tenant was to vacate, that the property would still be granted 24-hour access.

Mr. Perea said yes, but only if a gym were to open at the location.

Chair Drilling asked staff if the property was in harmony with the City's General Plan.

Mr. Perea said that the property is zoned C-1 and that gyms are a permitted use in a C-1 zone.

Commissioner Gaston stated that if the property was zoned to allow a 24-hour restaurant then a 24-hour fitness gym should also be allowed under that same criteria.

Mr. Perea stated that the concerns from the Police Department were due to the facility operating 24 hours and without staffing for a portion of those hours.

Chair Drilling closed the public hearing.

Commissioner Proctor asked staff if a condition could be placed on the permit to reduce the facility's hours or else make it staffed 24 hours should the use become a problem.

Mr. Perea said that it could be conditioned, but that they would look for a trigger such as a certain number of complaints being received by the Police Department in a given amount of time.

Commissioner Gaston asked staff how long a Conditional Use Permit was valid.

Mr. Perea replied that the Conditional Use Permit runs with the land.

Commissioner Gaston asked staff if it could be subject for review and reinstatement in a given period.

Mr. Perea replied that a Conditional Use Permit is a vested property right; that it cannot be revoked or amended unless there are problems occurring at the site; that if there were problems, it would have to go through a due process hearing; that the City would have to let the applicant and property owner know that there are concerns and that the City would be looking to amend, modify or revoke that Conditional Use Permit; that right now the burden of proof is on the applicant to demonstrate that his use would work in the community, that it is in harmony with the general plan, and that it will not be detrimental to the health and welfare of the public; and that once it is approved, the burden would be on the City to prove that there is a problem and that they would amend or revoke it to address those problems occurring on the site.

Commissioner Frank stated that Commissioner Gaston and Commissioner Proctor are taking two different approaches to the same conclusion.

Discussion ensued regarding the distinction between the review period as Commissioner Gaston suggested and having a trigger mechanism as Commissioner Proctor suggested.

Commissioner Frank suggested that the condition be worded such that if a number of complaints were received during unstaffed hours, then that would be grounds for a revocation hearing.

Commissioner Gaston said that he agrees.

Mr. Perea suggested that the public hearing be continued to allow staff to compose draft conditions that reflect the Commission's sentiments.

Commissioner Gaston inquired as to the possibility of having a roaming security guard at the shopping center.

Commissioner Frank stated that he believed that the applicant stated that they had undercover security.

Chair Drilling re-opened the public hearing to allow the applicant to speak.

Mr. Bevans stated that there is a loss prevention division through the Anytime Fitness Organization and that there is 24 hour security provided by Provision Security.

Commissioner Gaston asked the applicant if the security would respond or if they would notify police.

The applicant said that they would inform police immediately as well as him and his wife.

Chair Drilling made a motion to continue the public hearing to November 18, 2009.

Commissioner Frank seconded the motion.

By a unanimous vote, the Planning Commission voted to move this item to the November 18, 2009 meeting.

NEW BUSINESS

4. T-MOBILE – CONDITIONAL USE PERMIT NO. 1678 CONFIRMING RESOLUTION

Mr. Ayers presented the staff report. Additionally, he stated that there was a condition added and that it could be found in their red folder.

Mr. Perea said that the added condition simply states that the applicant had received prior approvals to install an antenna on the Edison tower but decided to not exercise that option; and that the item has been appealed and will be heard by City Council on November 3, 2009.

Commissioner Frank made a motion to adopt confirming Resolution No. 09-45, memorializing the denial of Conditional Use Permit No. 1678 to construct a wireless telecommunications facility at 8675 Blue Bird Avenue.

Motion seconded by Commissioner Gaston.

By a unanimous vote, the Planning Commission adopted confirming Resolution No. 09-45, memorializing the denial of Conditional Use Permit No. 1678 to construct a wireless telecommunications facility at 8675 Blue Bird Avenue.

5. MONTHLY VS. BI-MONTHLY PLANNING COMMISSION MEETINGS

Chair Drilling made a motion to move this item to the next Planning Commission as the proponent was not here to take part in the discussion.

Commissioner Proctor seconded the motion.

By a unanimous vote, the Planning Commission voted to move this item to the November 18, 2009 meeting.

6. SIGN COMMITTEE MEETING UPDATE

Sign Committee was dark as no new submissions were received.

UNFINISHED BUSINESS

None

STAFF COMMENTS

Mr. Perea reminded the Commission that the next meeting will occur on the third Wednesday instead of the second due to Veteran's Day falling on the second Wednesday; that the City has filed an annexation application for the South County Island and that the Commission will need to act on a pre-zoning application; that staff has been working on a mitigated Negative Declaration for the amendment to the Warner/Newhope Specific Plan in regards to the Los Caballeros project which should be seen before the Commission in December; that Mr. Ayers has been working on the AB 1881 water conservation ordinance and is tailoring the model ordinance developed by the Orange County Water District and the local municipalities and that it should be heard on the November 18th meeting; that staff believes they are close to receiving Housing Element approval from the Department of Housing and Community Development; that an Environmental Impact Report is being prepared for the Euclid/Slater intersection as some parking is going to be eliminated and that public review should occur during December and January; that City employees are now furloughing one day a month and flexing two days per month; and that as of Monday, the Building Division was moved from the Fire Department to the Planning Department.

Commissioner Proctor asked who contracted the City's building services.

Mr. Perea replied that Charles Abbott Associates has the contract for building services for the City.

Commissioner Frank asked if anything was going on with Orange Coast Memorial Medical Center.

Mr. Perea said that they are looking to get their temporary certificate of occupancy very soon.

Commissioner Proctor asked if the issue with the signs proposed for Chase Bank had been resolved.

Mr. Jenkins stated that a variance was submitted in as a part of the project and that it should be heard at the next Planning Commission meeting.

COMMISSION COMMENTS

Commissioner Frank stated that they had the Mayor's Ball coming up; and that the Taste of Fountain Valley event was coming up as well. He also asked if anyone had taken a look at the Fountain Valley Living magazine and stated that it was a great publication.

Mr. Perea reminded staff that there was a forum hosted by the Planning Director's Association of Orange County coming up; and that he will probably not be attending as it conflicts with a meeting of the California Redevelopment Association.

ADJOURNMENT

Commissioner Proctor made a motion to adjourn the Planning Commission meeting of October 14, 2009.

Chair Drilling seconded the motion.

By a unanimous vote, the Planning Commission voted to adjourn the Planning Commission meeting at 8:39 p.m. to the next scheduled Planning Commission meeting of November 18, 2009.

APPROVED:

Chairperson

Secretary