

CITY OF FOUNTAIN VALLEY
REGULAR MEETING OF THE PLANNING COMMISSION
FOUNTAIN VALLEY COUNCIL CHAMBERS

July 8, 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, Jensen, Walker,
Commissioners absent: Proctor
Staff members present: Andrew Perea, Planning Director; Steven Ayers, Planner, Matt Jenkins, Assistant Planner and Cyndee Alvarez, Planning Secretary.

APPROVAL OF MINUTES

The Planning Commission minutes of June 10, 2009, were approved as amended.

Chair Drilling stated that it is 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.

Commissioner Gaston stated that he was approached by Pastor McFarland while visiting the church, which is the site of the proposed cellular flagpole for T-Mobile.

PUBLIC HEARINGS

1. T-MOBILE – CONDITIONAL USE PERMIT NO. 1673 & ZONE CHANGE NO. 421 -
T-Mobile has submitted a request, on behalf of the First Methodist Church of Fountain Valley, to install and operate a freestanding flagpole wireless communication facility and change the zoning of the 2.383 acre parcel at 18225 Bushard Street from 'A-1 – Agricultural' to 'PI – Public Institutional'.

Steven Ayers, Planner, presented the staff report and stated that this item was being reheard before the Commission due to public noticing errors. He indicated that T-Mobile is proposing to install and operate a 50 ft. tall freestanding flagpole wireless communication facility that will be located at the front of the property on Bushard, 30 feet from the property line and will include two antenna rays within the flagpole that will not be exposed to public view; that the equipment cabinets will be located in an underground vault, with two 3 ft. tall vent stacks that will be concealed by vegetation; that the proposed location of the flagpole will comply with the minimum 100 ft. setback from residential property as required per the municipal code. He stated that per Telecommunications Act of 1996, local jurisdictions may not deny wireless communication facilities solely based on health concerns; that T-Mobile has stated they will comply with all regulations and licensing requirements of the FCC, FAA and CPUC as governed by the Act; that the project is categorically exempt from CEQA. He stated the applicant is requesting to rezone the property from A-1 to Public Institution as the property is currently out of compliance with the General Plan; that the A-1 designation was removed from the General Plan in 1995 and from the Zoning Code in 2001; that the property is currently legal non-conforming and any expansion or change of use requires a zone change; that the use and operation of the church will remain the same; and that the zone change should be adopted whether or not the proposed Conditional Use Permit is grant; and that staff supports the request as submitted.

Chair Drilling opened the public hearing.

Chair Drilling asked if the zone change has anything to do with the flagpole being installed on the property.

Andrew Perea, Planning Director, stated that the property should be rezoned to be consistent with the General Plan; that no changes can happen on the property without the zone change happening first.

Chair Drilling stated that the City wants to be consistent with the General Plan so even if T-Mobile was not here requesting the zone change, the City should still rezone the property.

Mr. Perea stated that there were approximately 300 parcels that were inconsistent with the General Plan; that zone changes have been completed on all of the publicly held parcels including school sites, city facilities, Sanitation District, and Edison right of way properties, and that about 100 privately held parcels still need to have zone changes. He stated that he has received additional correspondences in the form of a letter dated July 6, 2009 from Charles and Loni Platt, an email with attachments from Janet Walker, a statement of City compliance with the FCC and FAA, and a property value report provided by T-Mobile, and a packet from Janet Walker with a petition and additional attachments previously submitted.

Commissioner Gaston asked what usually triggers a zone change.

Mr. Perea stated that an applicant or property owner can request a zone change.

Commissioner Gaston asked if a zone change is arbitrary or if the City goes to property owners to advise them that a zone change is required of their property.

Mr. Perea stated that the City had 300 parcels to be rezoned, about 200 have been completed and the remaining parcels are privately held.

Commissioner Gaston asked if this property could have been rezoned without a pending action.

Commissioner Frank stated that he remembers several years ago when he was Chairman of the Commission that there were quite a few parcels that were brought into conformity without any other pending actions.

Mr. Perea stated that the rezone of the property would not change the use of the property; that uses like the churches, fire stations, hospitals, schools and city facilities could operate in Public Institution land; that the General Plan is the master planning document of the City and that the zoning code and zoning map are the tools to implement the General Plan; and that there are two issues, the first being the zone change which should occur to be in compliance, and the second issue is the request for Conditional Use Permit for the antenna.

Jin Park of Sequoia Deployment Services of One Venture, Suite 200, Irvine, CA, representing T-Mobile, stated that there is a growing need for the wireless communication facility due to the demand for wireless services in the area; that T-Mobile is creating new unmanned cell sites in locations where services are needed; that the equipment will be vaulted so there will be no noise or vibration and will not be visible; and that T-Mobile has taken careful consideration in the design and location of the flagpole to reduce the impact to the neighborhood.

Chair Drilling asked why a flagpole and not a monopole or some other type of antenna.

Mr. Park stated that alternate designs were discussed, but there is an existing flagpole onsite and the new one would replace the old one.

Commissioner Jensen asked how the location was determined.

Mr. Park handed out propagation maps created by T-Mobile engineers, one that show the current wireless coverage in the area and one that shows the anticipated coverage with the installation of the proposed flagpole.

Commissioner Jensen asked if it is the engineers that make a determination of where a cell tower needs to go in areas.

Mr. Park stated that the engineers do tests in the area to determine if coverage is adequate.

Commissioner Jensen asked if the site was chosen because coverage is needed in the area.

Mr. Park stated that coverage was needed.

Commissioner Frank asked where the existing flagpole is located.

Mr. Perea stated it is about 30 ft. from the front property line.

Mr. Ayers stated that the new flagpole would be in the same location as the existing flagpole.

Commissioner Frank asked what the diameter of the current flagpole is.

Mr. Park stated that he did not know.

Commissioner Frank asked what the height is of the existing flagpole.

Mr. Ayers stated that he believes it is 30 or 32 ft. tall.

Commissioner Walker asked if the flagpole was chosen by the owner or by Sequoia.

Mr. Park stated the owner chose the flagpole and T-Mobile believes it is a good design.

Commissioner Walker asked if any other designs were discussed, as some churches have erected a steeple.

Mr. Park stated that a mono-pine was discussed, but not chosen; and that it was decided that the steeple would not fit the scale of the building architecturally since the church is very low and would not have looked right with a large steeple.

Commissioner Walker asked if a cross was discussed.

Mr. Park stated that a cross was not discussed.

Chair Drilling asked if the flagpole had to be a certain height.

Mr. Park stated that yes the height is needed.

Mike Sedlak, 9460 Toucan Avenue, asked if the antenna would be visible or if it would be contained within the flagpole.

Mr. Perea stated that it would be contained within the 18 in. diameter of the pole.

Mr. Sedlak stated that he is concerned by the aesthetics of the flagpole since he can see the flagpole every time he steps out of his door; that he believes the notice of the meeting was not given to enough people since not everyone in the city received it, only those within 500 feet of the project received them; and that realtors must make a declaration to potential buyers that there is a cell site on or near the property so he believes that property value information has been understated since this could be a major deterrent to every home owner within the city.

Chair Drilling asked if he could see top of the existing flagpole from his home.

Mr. Sedlak stated that he could not see the flagpole because it is only 30 ft. tall but believes he would be able to see one that is 50 ft. tall.

Janet Walker, 9472 Toucan Avenue, stated that the pole should not be allowed in a residential area; that she has walked the neighborhood and every neighbor who opened their door signed a petition against the flagpole; that she provided a Virginia Beach decision to the Commission that provides a basis for a denial; that she believes the church just wants the money and are doing this just to make a profit. She then asked for everyone in the audience to stand who is with her and she stated that she can get hundreds of more signatures for the petition, if necessary.

Commissioner Frank asked if Mrs. Walker has a cell phone.

Mrs. Walker stated that she does not have a cell phone.

Commissioner Frank asked Mrs. Walker if she knows how many flagpoles are in the city.

Mrs. Walker stated that there are a lot of flagpoles. She stated that she is not opposed to all flagpoles but that the way the flag will be used is disgraceful; and that she stated that she does not believe FCC evidence regarding RF emissions; and that she does believe that property values will be lowered.

Commissioner Frank stated there is no evidence that shows property values are lower due to the proximity of a cell tower.

Chuck Platt, 18150 Redbud Circle, stated the Planning Commission has done a great job at keeping the other cell sites in commercial zones; and that he is opposed to the flagpole being allowed in residential zone.

Mark Rogers, 9473 Toucan Avenue, stated that he is a horticulturalist that resides within 100 feet of the tower; and he asked how the existing pole was measured as he does not believe it is 30 ft. tall; but that the two trees by the flagpole are about 50 ft. tall; and he asked if the vault will be installed in the location where the three trees were removed by the City.

Chair Drilling asked Mr. Rogers if he would find it obtrusive if the antenna was designed as a pine tree instead of a flagpole.

Mr. Rogers stated yes as they do not look like a real tree.

Loni Platt, 18150 Rosebud Circle, stated that there were several miscommunications regarding the meeting and the Project. She stated that the second meeting notification postcard was sent to residents with the wrong meeting date; that the report states that the Environmental Analysis is on file but that is not correct since the project is categorically exempt; that the Request for Planning Commission Action findings are not true as she believes this action is not compatible with other uses in the residential zone; that it may be compatible in commercially zoned areas; that it would be detrimental to the public as the flagpole is an eyesore; and that it would be detrimental to public health as many organizations including the World Health organization, the US Food and Drug administration and the International Association of Fire Fighters do not approve of these types of facilities being placed on fire stations.

Chair Drilling asked what she thought about a pine tree.

Ms. Platt stated that she has not seen a pine tree and that most of the installations are behind buildings; that she would be opposed to a pine tree. She asked for a copy of the propagation map provided by Mr. Park.

Beke Bello, 9449 Toucan Avenue, stated that she has seen a pine tree towers and they cannot be confused with a real pine tree as they are ugly; that she believes the cell tower will impact property values; that she has concerns with the studies on the health effects because they are too new and there are no long term records; that the church went to T-Mobile for money; and that she is trying to preserve her money in the value of her home.

Judy Sharp, real estate broker and manager of First Team Real Estate at 20100 Brookhurst, Huntington Beach, stated that real estate agents are required to disclose a cell tower antenna and that it could make a difference in a buying decision.

Chair Drilling asked what other items are required to be disclosed.

Ms. Sharp stated disclosures could include utility poles, close proximity to a golf course, if cable television does not work well in an area, crime, if anything is located on the property, and if a buyer asks what something is, or if the agent believes it could be a material fact, then it has to be disclosed; but that it is up to the potential buyer if it matters or not.

Mark Davia, 9448 Toucan Avenue, stated that he opposes a five story tower that someone will hang a flag on; that he is concerned with property values; that he believes the studies on property values are incorrect; and that a buyer does not disclose the positives in neighborhood so any disclosure could be detrimental. He asked if P-I is the only designation for a church; if the lack of coverage in the area is just for T-Mobile or are other carriers also affected; and he asked what the underground equipment does.

Chair Drilling asked what he thought about a pine tree antenna.

Mr. Davia stated that he thinks a pine tree would be less obtrusive than a bare pole; and that it should be located in a commercially zoned area not next to residential.

Richard Grogan; 9437 Toucan Avenue, stated that he is an architect and knows what a flagpole is and what a pine tree is; and that the proposed structure will be neither. He stated that he is \$110,000 negative in the value of his home; that the Assessor sent him a form to reduce his assessment; that he has concerns about RF emissions; that his children sleep 50ft. from the pole; that he has concerns that this should be commercially zoned since the church is no longer a non-profit organization since they are making money; that there are commercial sites in the

area that could be used; that the current flagpole is 24 ft. high and 5 in. wide and the new one will be 2 times higher and 3 times wider so it would not fit in with the scale of the existing building.

Commissioner Walker asked Mr. Grogan's address to determine how his children could sleep 50 ft. from the pole.

Mr. Grogan stated his address on Toucan and that he is 36 ft. from the property line.

Commissioner Walker stated that the report says there is a minimum 100 ft. setback from residential property.

Mr. Grogan stated that there is a material misstatement in the report; and that he is about 75 ft. from the pole.

Becky Fuhrman, 18226 Bushard Street, directly across the street from the church, stated that the United Methodist church is installing a pipe, putting a knob on top, hanging a flag on top of it, and calling it a flagpole; that she is concerned with the number of services and events conducted on-site; that she has questions about the underground equipment. She stated that the church does not have to pay property, sales or business taxes. She asked what monetary amount the City gets from the church and what monetary amount will she get from the church. She stated that she is 50 ft. from the flagpole and that she will get to look at the flagpole every time she opens her door or looks out her front window; and that the church employees can go home and not look at the flagpole, but it is almost in her front yard so she will get to look at the flagpole; and she stated that she would not like a fake tree either.

Dan Nehrbass, Pastor of Fountain Valley Methodist Church, stated that he lives about 600 ft. from the site; that the church chose a flagpole because they already had a flagpole and they were hoping to avoid controversy; that the church has signed a contract with T-Mobile that is irrevocable; that he believes philosophically it is the right thing to do as there is a need for church services; that they can assist in helping those in need of that service; and that they are open to other designs.

Commissioner Walker stated that he hoped there was a clause to get out of the contract if the action is not approved.

Mr. Nehrbass stated that the church did have discussions and they have decided that they would not go back to T-Mobile and say never mind.

Commissioner Walker stated that no one is questioning the religious good of the organization; and that the Commission is only discussing the flagpole.

Lee Edwards, 18107 Palmetto Circle, stated that he had concerns regarding the zone change, environmental impact report, the church contract, and the church changing its use from religion to conducting a business; that the church property is tax exempt; and that any money given by T-Mobile to the church would not be shown as a donation, so he is interested in knowing how the church can keep its tax exempt status.

Venilal Khatri, 9413 Toucan Avenue, stated he had concerns regarding zone changes creating a commercial island surrounded by residential properties.

Keri Bello, residing on Linden, stated that he grew up on Toucan and that he believes that the easiest way out of a telephone contract is to tell the carrier that you do not have coverage; that this is money for T-Mobile as well as for the church; that there is enough existing cell phone coverage. He asked if it have been thoroughly determined that this is the best location; that the fake pine and palm trees are hideous; and that he believes since the location is a route for children going to Fountain Valley High School and Fulton Middle school he has concerns that the vent boxes will be played with; and that he does not want to see such a large flagpole and hopes an alternate site is found.

Debra Hoffmeyer, currently residing in Newport Beach, stated that she is moving back to Fountain Valley, and that the use is not passive or innocuous; that she opposes the wireless communication facility, ground equipment, and 3 ft. vent pipes; that she does not agree with the FCC rulings regarding health impacts; that she opposes rezoning of the church; that she disagrees with the findings that property values are not impacted; and she stated that she found an article by a Dr. Carol McDonald that states the proximity of a cellular antenna does impact property values; and that she would not like the pine tree.

Melvin Weight, 9760 El Greco Circle, stated that he is not close to the antenna but wants to discuss commercial property in the city. He listed alternative commercial properties for the antenna. He stated that he is appalled that the church and T-Mobile would sign a contract without going before the Commission; that he is opposed to rezoning residential property for a commercial use; and that he is concerned if this goes through, what is stopping the city from taking the pieces of residential property in front of each residence by eminent domain.

Sarah Jones, 9472 Toucan Avenue, stated that once T-Mobile is allowed to install an antenna, there could be potential for many more additional antennas; that the City undergrounded all utilities but is now considering a 50 ft. tall pole; that the flag was not meant to be hung on a cell tower; that it is required that a flag get taken down nightly or have it illuminated; that the church leaves the flag up all night without a light on it, which is a violation; and that if this is approved, would a light be

required to illuminate the flag. She stated that she is concerned about sound or vibration from the equipment.

Mr. Park stated that engineers conducted a drive test, from the results it was determined there was poor coverage in the area, then the area was investigated and the location was chosen.

Commissioner Frank asked if other carriers needed that location could they co-locate there.

Mr. Park stated that it could be possible to collocate at that site.

Kelly Cross with Sequoia Deployment stated that there is a clause in the contract that it can be cancelled if the antenna is not approved

Mr. Park stated the vent stacks do not generate any sound or vibration.

Commissioner Walker asked if vaulted equipment is required to be vented.

Mr. Park stated that vaulted equipment must be vented; that above ground equipment generates more noise; and that the location was chosen because of the need in the area for T-Mobile coverage.

Vice Chair Jensen asked if T-Mobile approached the church.

Ms. Cross stated that T-Mobile gets calls from clients stating they do not have coverage in an area; that once it is determined that coverage is not adequate, T-Mobile assigns a "ring" in which to find a suitable property in the area; that this area is residential except for the church; that the other alternative is to install a pole in the public right of way, but that would be located in the front of someone's house; and that T-Mobile is required to provide adequate coverage just like SCE is required to provide adequate electricity.

Vice Chair Jensen clarified that T-Mobile approached the church.

Ms. Cross stated that it would be very hard to market a property to a carrier since the need may be as small as a two block radius; and that the site at Costco would not be able to provide the coverage needed.

For the record, Commissioner Walker stated that the property is not proposed to be commercially zoned.

Commissioner Gaston asked if the reason for lack of coverage in the area is due to the number of users in the area.

Ms. Cross stated that the network is being expanded; that each tower can only hold a certain number of calls at any given time; and that once capacity is reached, calls are dropped.

Chair Drilling asked if existing cell sites are reviewed to see if it is possible co-locate.

Ms. Cross stated that the first choice is co-location; that all carriers have a map of all other carrier sites; that it is more cost effective to co-locate; and that any taxes caused by the income received from the cell site is paid by T-Mobile and does not affect the church's tax basis.

Mr. Perea explained that on tax exempt property that have a commercial component, the Tax Assessor assesses a possessory interest tax for the commercial component of the property, but that it is the Tax Assessor who makes that determination.

Chair Drilling closed the public hearing.

Commissioner Walker stated that the only other flagpole approved by the Commission is in the same quadrant; and he thanked the neighbors for attending.

Chair Drilling also thanked everyone for attending. She stated that the zone change is separate from the CUP; that the zone change is required for consistency with the General Plan; that the property is proposed to be changed from Agriculture to Public Institution; that the zone change does have to go to City Council for final approval. She discussed the negative declaration process.

Mr. Perea stated there are four levels of environmental review: categorical exemption, Negative Declaration, EIR and ministerial exemptions; that ministerial exemptions include minor things like issuance of most building permits; that there is a list of types of actions under CEQA law that if the project falls within one of those categories, then it can be considered exempt; that if the project does not fit into one of those categories, and has an adverse effect on the environment, either a Negative Declaration is required, or if the impacts are so severe that they cannot be mitigated to the point of insignificance, then an EIR would be required.

Chair Drilling stated that the environmental process was conducted.

Mr. Perea stated that the project was found to be categorically exempt under CEQA law.

Chair Drilling stated that the project was reviewed in accordance with CEQA law. She also stated that the real estate agent, Judy Sharp, did not make a statement regarding property values; but that Ms. Sharp stated an antenna must be disclosed to potential buyers; and while there have been concerns regarding the health issues, the Commission is bound by the law to not take health issues into consideration.

Commissioner Gaston stated that there is a perceived loss of value.

Commissioner Walker moved to recommend City Council adopt Resolution No. 09-29 recommending approval of Zone Change No. 421 to change the zoning of the 2.383 acre parcel at 18225 Bushard Street from 'A-1 – Agricultural' to 'PI – Public Institutional' and table Conditional Use Permit No. 1673 until a decision on the zone change is made by City Council.

Vice Chair Jensen seconded the motion.

Commissioner Walker stated that the pole will not work; that Sequoia needs to do more public outreach; that at the last meeting there where 2 people and tonight there are about 30 people; there will probably be even more next time; and that the zone change has to happen to be consistent and the General Plan.

Vice Chair Jensen stated that she supports the motion because of all the neighbors that opposed this proposed project; and that the Commission needs to listen to them.

Chair Drilling stated that T-Mobile and the neighborhood should work on a design that may work better than a flagpole, palm or pine tree; and that she would like to see a representative from the neighborhood come to the table; and that if nothing works, there is a revocable clause in the contract.

Commissioner Gaston stated that the zone change is inevitable due to the General Plan inconsistency; that he believes there should have been more PR done with the neighborhood; that he looked at the flagpole at Magnolia and Talbert behind the carwash. He stated that from far away it looks like a flagpole, but at a close distance, it looks like a cell tower. He stated that for this proposed flagpole to be placed at the front of the property, it clearly does not belong.

By a vote of 4-0-1, Commissioner Frank abstaining, the Planning Commission approved the motion to recommend City Council adopt Resolution No. 09-29 recommending approval of Zone Change No. 421 to change the zoning of the 2.383 acre parcel at 18225 Bushard Street from 'A-1 – Agricultural' to 'PI – Public Institutional' and table Conditional Use Permit No. 1673 submitted by T-Mobile, on behalf of the First Methodist Church of Fountain Valley, to install and operate a

freestanding flagpole wireless communication facility at 18225 Bushard Street until a decision on the zone change is made by City Council.

2. PHO BANH MI & CHI CALI (PHO NOODLE HOUSE) – CONDITIONAL USE PERMIT NO. 1176M - Petition submitted by Phoche Cali to modify the existing hours of operation to 5:00 a.m. to 10:00 p.m. at the business located at 18122 Brookhurst Street, Suite D & E.

Chair Drilling opened the public hearing.

Mr. Ayers presented the staff report. He stated that the applicant is requesting to expand their hours of operation from 11:00 a.m. to 9:00 p.m. seven days a week to 5:00 a.m. to 9:00 p.m. Sunday through Thursday and 5:00 a.m. to 10:00 p.m. Friday and Saturday; that the business would continue to serve Vietnamese cuisine along with breakfast food during the morning hours; that staff supports the request, with a modification to revise the opening hours to 5:30 a.m. to match Big City Bagel located in the same center.

Lang Nguyet Ly, representing Pho Bahn Mi & Che Cali (Pho Noodle House) located at 18122 Brookhurst St. Suite D & E, stated that she took over the business on April 1, 2009 and the current hours are 11:00 a.m. to 9:00 p.m.; and that she is requesting the hours be extended to 5:00 a.m. daily so they can serve breakfast to customers.

Chair Drilling asked if there would be a problem for the applicant if they were allowed to open at 5:30 a.m. to be consistent with Big City Bagel.

Ms. Ly stated that it would be okay.

Commissioner Walker asked if she had read all of the conditions of the CUP with the change of opening from 5:00 a.m. to 5:30 a.m. and if she had any questions.

Ms. Ly stated she had read all conditions; that she had no questions; and that opening at 5:30 a.m. would be okay.

Commissioner Gaston stated that condition number 20 states that the rear door would not be able to be used between 10:00 p.m. and 7:00 a.m., but if the place opens at 5:30 a.m., then that condition should be revised to coincide with the opening of the business.

Commissioner Walker stated that there are residences directly behind the business; and that due to the noise, deliveries should not be allowed that early.

Commissioner Walker asked if the trash dumpster is in the back of the property.

Ms. Ly stated that the dumpster is in the front.

Commissioner Gaston asked if leaving the door closed during specified hours would be a hardship.

Ms. Ly stated that it would not be a problem.

Mr. Ayers stated there does not appear to be a rear door to the property.

Commissioner Gaston stated that Condition 20 can be removed.

Joe Ranieri, residing on Rustic Court, stated that he lives directly behind the business and that he shares the back wall with the business and has noticed more noise and walking traffic coming from the business in the last 90 days; and that there are more chairs outside than inside.

Chair Drilling asked if the common wall is behind the business.

Mr. Ranieri stated his back yard faces the common wall that is behind the business.

Chair Drilling asked if there was a walkway behind the business.

Mr. Ranieri stated the walkway begins by the business and goes all the way behind the adjacent businesses and it seems to be used for deliveries and to shuffle product; and that there are gathering of people making noise.

Chair Drilling asked if there is a gate that stops the traffic going behind the businesses.

Mr. Ranieri stated there is not a gate, and that he believes the noise is from employees of the business, not the general public.

Commissioner Walker asked if outdoor seating is allowed at the business and asked if tables would be allowed behind the building.

Mr. Perea stated that chairs and tables behind the building would not be allowed.

Mr. Ranieri stated that there is a patio area and chairs lined up all the way along the front of the business.

Vice Chair Jensen stated that there is a condition in the CUP that states outdoor seating and dining is prohibited.

Mr. Perea stated there are five locations throughout the complex that have been approved for outdoor seating through a precise plan for the center.

Chair Drilling asked if the approved seating identifies a number of seats.

Mr. Ayers stated that 7 tables with 4 chairs each have been approved.

Gary Hines, representing Juice it Up, located next door to the subject business at 18122 Brookhurst #C, stated that he is opposed to the business opening earlier; that all of the parking was designated 30 minute parking over a decade ago; that his clients do not have adequate parking now that there is a full service restaurant being operated; that the parking area is poorly designed; and that cars get backed up into the drive aisles causing inconveniences, and hazards.

Chair Drilling asked if they had talked to the management about the problems.

Mr. Hines stated that management stated they should convert some of the spaces to 15 minute spaces.

Chair Drilling asked if 30 minute parking designation is allowed.

Mr. Perea stated that designated parking is not enforceable anywhere in the city.

Commissioner Walker stated that the other business with parking problems is the Claim Jumper.

Mr. Hines stated that the Claim Jumper was an issue years ago but that Claim Jumper customers do not appear to park in the designated 30 minute spaces.

Mr. Perea asked when the former coffee shop opened.

Mr. Hines stated they opened at 5:30 a.m. or 6:00 a.m.

Mr. Perea stated their approvals were for 11:00 a.m.

Sean Byung Lim, owner of Big City Bagel located at 18120 Brookhurst #2, stated that he is opposed to the change for several reasons. He stated that they are taking away parking spaces that his customers use; that the restaurants prices are too low; that they are selling bread very cheap so he cannot survive; and that his customers are going to go there for lunch. He also stated that he is concerned with the change of demographics of the clientele in the center.

Paula Smith, 18129 Rustic Lane, stated that she is about 10 feet from their building and that her home is 4 feet from their wall. She stated that she is concerned with

the hours of operation due to the noise; that there are traffic problems with ingress and egress at the shopping center; and that she opposes the extended hours because 5:30 a.m. is too early and 10:00 p.m. is too late.

Chair Drilling asked if there is noise from Big City Bagel.

Ms. Smith stated that Big City Bagel is farther away from her home.

Ms. Ly stated that they have not changed the number of seats outside of the business; that there is no seating on the side of the business; and that their employees do not open any back door for access to the alley.

Commissioner Walker asked what time their employees arrive for work.

Ms. Ly stated the employees arrive at 10:00 a.m.; and that her customers state they have problems with parking also.

Chair Drilling asked where the employees park.

Ms. Ly stated the store employees park across the parking lot; that they make their own bread and do not make bagels so they do not compete; and that they do not have enough business to cover their expenses by opening at 11:00 a.m. so she is asking to extend their hours to get more customers.

Commissioner Walker asked if most of her business is to-go or sit down.

Ms. Ly stated that most of her business will be take-out.

Chair Drilling asked if there was a condition regarding noise or complaints.

Vice Chair Jensen stated that Condition 22 talks about nuisance and criminal activity at restaurants.

Commissioner Gaston stated that Condition 12 states the hours be restricted beginning at 5:30 a.m.

Chair Drilling asked what Condition 26 means by revocation proceedings.

Mr. Perea stated that if three or more complaints are received, the item can be brought back to the Commission for revocation of their CUP.

Mr. Ayers stated that Condition 23 should be revised to state that outdoor seating shall be consistent with the approved precise plan.

Mr. Perea stated that no additional seating should be allowed.

Commissioner Walker asked where the outdoor seating is located.

Mr. Perea stated outdoor seating is allowed directly in front of the business, also at Arriba's, and Pick-Up Sticks; and that he would like the condition to be consistent with the previously approved precise plan and that no additional seating be allowed.

Mr. Ayers stated that there are 7 tables allowed with seating for 24 people.

Chair Drilling closed the public hearing.

Chair Drilling stated that she is concerned about allowing the business to open as early as 5:30 a.m.

Vice Chair Jensen stated that to serve breakfast the opening should probably be no later than 6:00 a.m.; and that the issue with competition is good and fair.

Commissioner Walker stated that he could support the business opening at 6:00 a.m. but that the business should be aware that the noise ordinance begins at 7:00 a.m.; and that the residents are very close to the back wall so the applicant must make efforts to work with the neighbors to ensure there is no noise.

Chair Drilling asked about the closing time, stating that the applicant requested to stay open one hour later to 10:00 p.m.

Commissioner Gaston stated that 10:00 p.m. is when the noise ordinance begins.

Mr. Perea clarified that the applicant is now asking to extend the closing time to 10:00 p.m. on Fridays and Saturdays, which is not consistent with her written request.

Chair Drilling made a motion to recommend adoption of Resolution No. 09-30 approving Conditional Use Permit No. 1176M which is a request submitted by Phoche Cali, on behalf of the property owner, to modify the existing hours of operation from 11:00 a.m. to 9:00 p.m. seven days a week to 6:00 a.m. to 9:00 p.m. Sunday through Thursday and 6:00 a.m. to 10:00 p.m. Friday and Saturday for the business located at 18122 Brookhurst Street and to change Condition 23 to be consistent with the approved precise plan and to remove Condition 20.

Commissioner Gaston seconded the motion with modifications.

Motion approved 4-1 with Commissioner Frank voting no.

Commissioner Walker asked that Code Enforcement find out where the noise is coming from.

3. LITTLE SAIGON NOODLE RESTAURANT – CONDITIONAL USE PERMIT NO. 1456M – Petition submitted by Steven Do to permit the on-site sales and consumption of beer and wine in conjunction with the continued use and operation of an existing restaurant located at 17860 Newhope Street, Suite 106.

Mr. Ayers presented the staff report. He stated that the applicant is requesting a modification to their existing CUP to permit the on-site sale of beer and wine at the restaurant; and that the Police Department has reviewed the proposal and has no concerns with the issuance of the requested liquor license.

Chair Drilling opened the public hearing.

The applicant was not present to answer any questions.

No public comments were received.

Chair Drilling closed the public hearing.

Commissioner Gaston made a motion to recommend that the Planning Commission adopt Resolution No. 09-31 approving Conditional Use Permit No. 1456M to permit the on-site sale and consumption of beer and wine in conjunction with the continued use and operation of the existing restaurant located at 17860 Newhope Street, Suite 106.

Commissioner Walker seconded the motion.

By a unanimous vote, the Planning Commission adopted Resolution No. 09-31 approving Conditional Use Permit No. 1456M.

4. FOUNTAIN VALLEY REGIONAL HOSPITAL – VARIANCE NO. 270
Petition submitted by Fountain Valley Regional Hospital to erect 13 directional signs exceeding the maximum size and height requirement, erect 2 monument signs that exceed the maximum square footage requirement, and a logo sign exceeding the 10 percent maximum per sign area requirement at 17100 Euclid Street.

Matt Jenkins, Assistant Planner presented the staff report. He stated that the Fountain Valley Regional Hospital is a very large property that offers many services in many different buildings; that if the signs were limited to the height and size requirements from the Sign Code, the signs would not be legible or useful; and that

the new logo with the hospital name is proposed to identify the new entrance for the hospital.

Chair Drilling opened the public hearing.

Matthew Brown of Interface Architectural Signs representing Fountain Valley Regional Hospital and Medical Center stated that the new logo and hospital name sign is necessary as a way to identify the new main entrance to the complex; and that directional signs need to be accurate and clearly visible to assist the public in finding their way to critical destinations throughout the campus.

Commissioner Walker asked if the logo can be reduced to be within the code requirements.

Mr. Brown stated that it is believed that the public will have trouble finding the new entrance without a larger sign being installed; and that the new entrance will become a gateway to the complex.

Commissioner Walker asked if the logo is a palm tree.

Mr. Brown stated the logo would be the palm tree logo, but that it would not be visible from Euclid or Warner, only visible within the complex.

Chair Drilling asked if the signs are in addition to the old signs or to replace the old signs.

Mr. Perea stated that the new signs will replace the old signs.

Chair Drilling asked if there would be any address signs on the monument sign.

Mr. Perea stated that it was decided that the addresses should not be included on the monument sign since there are so many addresses it would be more confusing and they could not all fit.

Commissioner Walker stated that currently the address signs are on the buildings; and that you can easily find where you are going.

Chair Drilling stated that the signs are classy.

Vice Chair Jensen stated that the signs are large, but are needed.

Commissioner Walker stated that most of the signs are internal to the campus.

Chair Drilling closed the public hearing.

Vice Chair Jensen made a motion to approve Variance No. 270 for Fountain Valley Regional Hospital consisting of two (2) monument signs, fifteen (15) directional signs, three (3) channel letter signs, and two (2) address identification-signs and incorporate that all existing can signs and existing directional signs be removed.

Commissioner Walker seconded the motion with a requirement that existing signs be removed.

By a unanimous vote, the Planning Commission approved Variance No. 270 for Fountain Valley Regional Hospital consisting of two (2) monument signs, fifteen (15) directional signs, three (3) channel letter signs, and two (2) address identification-signs and incorporate that existing signs be removed.

5. DRAFT HOUSING ELEMENT - GENERAL PLAN AMENDMENT NO. 07-01
Public hearing to receive input on the City of Fountain Valley's draft Housing Element of the General Plan.

Mr. Perea made a presentation to the Commission including a PowerPoint presentation. He stated that the Housing Element is one of the seven mandated elements of the General Plan; that the Housing Element contains goals and objectives for the production of housing for all economic segments of the community including affordable housing; that it covers the planning period from January 1, 2006 – June 30, 2014; that the Draft Housing Element was sent to Housing and Community Development (HCD) on May 27, 2009 and that comments were received from HCD; that there was a lack of available sites to produce the required number of units, but since the May 27, 2009 submittal, the Fountain Valley Agency for Community Development has acquired a vacant parcel that can accommodate an additional 117 units; that the inclusion of the newly acquired site and the responses to HCD's comments will be incorporated into the document; and that the document will then be resubmitted to HCD. He recommends that the Planning Commission conduct a public hearing to receive comments on the draft housing element, and adopt Resolution No. 09-35 incorporating the responses to HCD's comments into the May 27, 2009 draft document, directing staff to resubmit the draft Housing Element to HCD and recommending to the City Council approval of the Draft Housing Element as amended.

Chair Drilling opened the public hearing.

No public comments were received.

Chair Drilling closed the public hearing.

Commissioner Walker asked if the number of affordable units to be provided is the same thing as the case that Irvine is appealing.

Mr. Perea stated they are the same thing, and that Irvine just lost their appeal.

Vice Chair Jensen asked how the RHNA number is determined.

Mr. Perea stated that the number is determined based on the population, need in the area, and availability of land.

Vice Chair Jensen stated that Fountain Valley does not really have any available land.

Mr. Perea stated that he believes Irvine got hit with such a large number because of the opportunities within the Great Park; and that there are only a few communities on a county-wide basis that received lower RHNA numbers than Fountain Valley; and that the RHNA number process takes about 24 months.

Commissioner Gaston asked if the City has to find available sites.

Mr. Perea stated that the City has to identify potential sites and provide zoning and financing for the creation of the units, but the law does not require the City to build the units; and that the Housing Element is a planning document.

Commissioner Walker stated that the City already has provided 456 units at Palm Island.

Mr. Perea stated that is correct, as well as the 156 at the senior project.

Commissioner Gaston asked if developers come to the City, or if the City finds developers.

Mr. Perea stated that it can happen both ways; that either the developer comes to the City with a piece of property stating they want to make affordable housing units and need funding, or like the newly acquired property, the City will send a proposal out to affordable housing developers.

Chair Drilling asked if the City would look at new development like Los Caballeros, if they were to request to build affordable units.

Mr. Perea stated that the City would look over their proposal; and that the City did receive some credit for housing units built at Los Caballeros, since the certificate of occupancy had not been issued until this planning period.

Chair Drilling asked about the income limits for the Green Rehabilitation Program.

Brent Hoff, Housing Coordinator, stated that the income limit for the Green Rehabilitation Program is at or below 80% of the median income for Orange County; that the program provides a loan up to \$25,000 for energy efficiency or conservation type improvements at zero percent interest; and that the items can include water heaters, replacement of heating and air conditioning units; and that there would be required items like attic insulation, low flow toilets and water conservation devices.

Chair Drilling asked if people were asking for these types of improvements.

Mr. Hoff stated that the City is doing this to help meet requirements like SB 375 and other future requirements, and to help get low income households items that they need; and that this loan does not accrue interest and gets paid off at the time the property is sold or transferred.

Commissioner Walker made a motion to adopt Resolution No. 09-35 incorporating the responses to HCD's comments into the May 27, 2009 draft document, directing staff to resubmit the draft Housing Element to HCD and recommending to the City Council approval of the Draft Housing Element as amended.

Chair Drilling seconded the motion.

By a unanimous vote, the Planning Commission adopted Resolution No. 09-35 recommending adoption of the Draft Housing Element of the Fountain Valley General Plan.

NEW BUSINESS

6. SIGN COMMITTEE MEETING UPDATE

An update of the Sign Committee actions below from the July 8, 2009 meeting.

1. SIGN PERMIT NO. 09-13 – ARCO GAS STATION
Donco & Son's on behalf of Arco has submitted a request to reface the canopies and gasoline pumps located at 17520 Brookhurst.
2. SIGN PERMIT NO 09-14 – FAMIMA!!
Express Permits on behalf of Famima has submitted a request to install two (2) illuminated cabinet signs located at 9475 Warner.
3. SIGN PERMIT NO. 09-15 – @ HOME DESIGN CENTER

Wayne Carvalho on behalf of @Home Design Center has submitted a request to create a sign program for the businesses located at 10700 Spencer Ave.

4. SIGN PERMIT NO. 09-16 – CHIM RUNG RESTAURANT
Paul Nguyen on behalf of Chim Rung has submitted a request to install one (1) illuminated channel letter sign located at 16121 Harbor Blvd.
5. SIGN PERMIT NO. 09-17 – VALLEY CENTER SIGN PROGRAM
C & C Signs has submitted a request on behalf of the property owner to create a sign program for the multi tenant building located at 15972 Euclid St.

Mr. Perea informed the Planning Commission that items were approved as submitted subject to various conditions as stated in the agenda packet.

Commissioner Walker asked if the change for Famima was to clarify their type of business.

Mr. Perea stated that the change was needed because many people did not know that Famima was a convenience store.

Chair Drilling made a motion to receive and file the report.

Commissioner Walker seconded the motion.

By a unanimous vote, the Planning Commission voted to receive and file the report.

UNFINISHED BUSINESS

None

STAFF COMMENTS

Mr. Perea stated that City Hall will now be open from 7:00 a.m. to 5:00 p.m. Monday through Thursday, alternate Fridays from 8:00 a.m. to 5:00 p.m. and closed every other Friday. He also stated that the affordable housing project on Harbor that was discussed at the last Planning Commission meeting has not been approved yet; that staff met with the County to discuss our concerns; that Council has directed staff to file an appeal if the project is approved; and that the County project does not require a public hearing, or public review of this action.

Commissioner Walker asked if staff was looking into having the property annexed.

Mr. Perea stated that in the past, the County was only interested in annexing the south island if the City also annexed the north county island; but the County may be interested in allowing the City to annex just the southern island.

Chair Drilling asked if Code Enforcement went out to investigate regarding the children from the tutoring business loitering by Fresh and Easy.

Mr. Ayers stated that Excelsius Academy has requested a modification to expand; and if approved a condition will be included that they are not to allow any loitering outside of the facility.

Chair Drilling stated that she had not seen any kids loitering recently.

Commissioner Walker stated that school is out, and that may be the reason there are no kids hanging around the area.

ADJOURNMENT

The Planning Commission meeting of July 8, 2009 was adjourned at 10:50 p.m. to the next regularly scheduled Planning Commission meeting of August 12, 2009.

APPROVED:

Chairperson

Secretary