

THE CITY OF SAN DIEGO, CALIFORNIA
MINUTES FOR REGULAR COUNCIL MEETING
OF
TUESDAY, OCTOBER 23, 2001
AT 9:00 A.M.
IN THE COUNCIL CHAMBERS - 12TH FLOOR

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CHRONOLOGY OF THE MEETING:

The meeting was called to order by Mayor Murphy at 10:07 a.m. Mayor Murphy recessed the meeting at 10:18 a.m. to convene the Redevelopment Agency. Mayor Murphy reconvened the regular meeting at 10:24 a.m. with all Council Members present. Mayor Murphy recessed the meeting at 10:35 a.m. for the purpose of a break. The meeting was reconvened at 10:45 a.m. with all Council Members present. The meeting was recessed by Mayor Murphy at 12:01 p.m. to reconvene at 2:00 p.m.

The meeting was reconvened by Mayor Murphy at 2:06 p.m. with all members present. Mayor Murphy adjourned the meeting at 2:36 p.m. into Closed Session immediately following the regular meeting in the twelfth floor conference room to discuss real property negotiations regarding the ballpark.

ATTENDANCE DURING THE MEETING:

- (M) Mayor Murphy-present
- (1) Council Member Peters-present
- (2) Council Member Wear-present
- (3) Council Member Atkins-present
- (4) Council Member Stevens-present
- (5) Council Member Maienschein-present
- (6) Council Member Frye-present

(7) Council Member Madaffer-present

(8) Council Member Inzunza-present

Clerk-Abdelnour/Fishkin (ek/pr)

FILE LOCATION: MINUTES

ITEM-300: ROLL CALL

Clerk Abdelnour called the roll:

- (M) Mayor Murphy-present
- (1) Council Member Peters-present
- (2) Council Member Wear-present
- (3) Council Member Atkins-present
- (4) Council Member Stevens-present
- (5) Council Member Maienschein-present
- (6) Council Member Frye-present
- (7) Council Member Madaffer-present
- (8) Council Member Inzunza-present

NON-AGENDA COMMENT:

PUBLIC COMMENT-1:

Ron Boshun commented on the behavior of the City Council and that money should not be transferred from one fund to another.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Tape location: A012-047.)

PUBLIC COMMENT-2:

Eugene Glassey commented that he has been defrauded by false claims and innuendo as the inventor of instruments for water-stage monitoring for reservoirs and rivers.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Tape location: A048-092.)

COUNCIL COMMENT:

COUNCIL COMMENT-1:

Council Member Atkins wanted to let community residents know of a meeting which will be held tomorrow, Wednesday, October 24, 2001, from 5:30 to 7:00 p.m. at Saint Paul's Episcopal Cathedral at 2728 Sixth Avenue. Council Member Atkins stated that the purpose of the meeting will be to meet with the community, the Police Department and other groups to talk about what can be done to promote safety and to discuss the issue of concern that people have had concerning sexual assaults. Council Member Atkins wants to make sure people know that we are coming together to meet on this issue to heighten awareness and attention in the area until we catch the perpetrators.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Tape location: A093-110.)

COUNCIL COMMENT-2:

Council Member Maienschein commented that Mayor Murphy's leadership is really evident by the fact that every man on the City Council is now wearing a blue shirt.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Tape location: A111-115.)

CITY ATTORNEY COMMENT:

None.

CITY MANAGER COMMENT:

The City Manager commented regarding Mr. Ron Boshun's observations. The City Manager pointed out that obviously the City has State regulations, local regulations, state and local laws to comply with as it relates to use of City funds. He mentioned that Ed Ryan is a very competent City Auditor who ensures that we comply with all such regulations and laws as it relates to the use of City funds.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Tape location: A116-124.)

ITEM-330: Four actions related to the Deer Canyon Sewer Project.

(See City Manager Report CMR-01-219. NCFUA Subarea III Community Area. District-1.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolutions:

Subitem-A: (R-2002-511) ADOPTED AS RESOLUTION R-295616

Authorizing the City Manager to execute a Subdivision Offsite Right-of-Way Acquisition Agreement for Construction of Improvements for Deer Canyon Sewer, together with any reasonably necessary modifications or amendments

which do not increase the project scope or cost and which the City Manager shall deem necessary from time to time in order to carry out the purpose and intent of this project and agreement;

Pursuant to the City's Resource Protection Ordinance Permit No. 96-0625 recorded on July 28, 1998, as Document No. 1999-0291017 (RPO Permit), and the City Council Resolution R-290515 approving the RPO Permit and incorporating the Conditions for the Mesa Verde Estates Tentative Map (Resolution R-290516), the Subdivider is required to provide a satisfactory sewer study to the City and to install and construct all sewer facilities necessary for this development.

Subitem-B: (R-2002-518) ADOPTED AS RESOLUTION R-295617

FINDINGS MUST BE MADE AS PART OF COUNCIL ADOPTION

Determining and declaring that the public interest and necessity require the acquisition of certain easements and rights-of-way over the property for the Deer Canyon Sewer Project;

Directing the filing of Eminent Domain proceedings to condemn, acquire, and obtain prejudgement possession of the property for the use of the City.

NOTE: **6** votes required.

Subitem-C: (R-2002-520) ADOPTED AS RESOLUTION R-295618

Declaring that the City Council as Lead Agency has reviewed and considered the Master Environmental Impact Report No. 95-0353 certified in June 1996 for the original Del Mar Mesa Specific Plan which was thereafter approved in 1997 and Amended on June 27, 2000, and the Findings to that Master Environmental Impact Report, LDR-96-0625, dated June 18, 1998, which was adopted by Resolution R-290514 on July 28, 1998, covering this activity. The Council has determined that no substantial changes or new information of substantial importance, within the meaning of CEQA Guidelines section 15162, would warrant any additional environmental review in connection with authorization of condemnation proceedings to develop the Deer Canyon Sewer Project, no additional significant environmental effect will result from the authorization of condemnation proceedings to develop the Deer Canyon Sewer Project, no new additional mitigation measures or alternatives may be required, and that the

authorization of condemnation proceedings to develop the Deer Canyon Sewer Project is within the scope of the Master Environmental Impact Report EIR-95-0353 certified in June 1996 for the original Del Mar Mesa Specific Plan which was thereafter approved in 1997 and Amended on June 27, 2000, and the Findings to that Master Environmental Impact Report, LDR-96-0625, dated June 18, 1998, which was adopted by Resolution No. R-290514 on July 28, 1998.

Subitem-D: (R-2002-519) ADOPTED AS RESOLUTION R-295619

Authorizing the expenditure of an amount not to exceed \$20,500 from Developer's Trust Fund No. 63020, Organization No. 100, Object Account No. 4968, Job Order No. 990870, for the acquisition of required property rights and costs related to condemnation of a permanent sewer line easement and temporary construction easements in connection with the Deer Canyon Sewer Project;

Declaring that actual expenditure of such funds is contingent upon the City Auditor and Comptroller first furnishing a certificate demonstrating that funds are available with the City Treasury.

FILE LOCATION: MEET

COUNCIL ACTION: (Tape location: A230-329.)

MOTION BY ATKINS TO ADOPT. Second by Wear. Passed by the following vote: Peters-yea, Wear-yea, Atkins-yea, Stevens-yea, Maienschein-yea, Frye-nay, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

ITEM-331: Amending the San Diego Municipal Code relating to Property Development Regulations in the Centre City Planned District.

(Centre City Redevelopment Project Area. District-2.)

CITY ATTORNEY'S RECOMMENDATION:

Introduce the following ordinance due to substantive amendments made by Council on 10/2/2001. (On 10/2/2001 Council voted 7-1 to amend the ordinance. Councilmember Frye voted nay. Councilmember Stevens not present.)

(O-2002-22 Rev.) INTRODUCED, TO BE ADOPTED MONDAY,
NOVEMBER 5, 2001

Introduction of an ordinance amending Chapter 10, Article 3, Division 19, of the San Diego Municipal Code by amending Table 2 of Section 103.1915, View Corridors, and by amending Figure 7 titled View Corridor Stepbacks, all relating to Property Development Regulations in the Centre City Planned District, to remove the requirement for View Corridor Stepbacks on Broadway, east of 12th Avenue as shown on Figure 7.

FILE LOCATION: NONE

COUNCIL ACTION: (Tape location: A330-378.)

MOTION BY WEAR TO INTRODUCE. Second by Peters. Passed by the following vote: Peters-yea, Wear-yea, Atkins-yea, Stevens-yea, Maienschein-yea, Frye-nay, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

ITEM-S500: Chevron Gas Station - Sorrento Hills.

Matter of the City Council reconsidering the appeals by Chevron Products and Richard Kiy for Torrey Hills Community Coalition, from the decision of the Planning Commission in denying the appeal of the decision of the Hearing Officer and approving the project with modifications. Chevron Corporation proposes to construct and operate a limited-hours gas station, mini-mart and automated car wash facility on a vacant 2.48-acre site located at the southwest corner of Carmel Mountain Road and East Ocean Air Drive within the Sorrento Hills Community Plan area.

(99-1200-PCD/CUP. Sorrento Hills Community Plan area. District-1.)

(Continued from the meeting of October 16, 2001, Item 332, at the request of the City Manager, for report from Dr. Langerman; Continued from the meeting of April 17, 2001, Item 332, at the request of Councilmember Peters to allow for the time necessary to do a site specific health risk assessment; Continued from the meeting of June 26, 2001, Item 330, at the request of the City Manager for further review; At the meeting of July 31, 2001, Item 351, the project was approved; At

the meeting of September 18, 2001, Item 312, the City Council granted the request for reconsideration from their decision of July 31, 2001.)

NOTE: Hearing open. No testimony taken on 10/16/2001.

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution in subitem A; and adopt the resolution in subitem B to deny the appeals and grant the permit:

Subitem-A: (R-2002-) ADOPTED AS RESOLUTION R-295621

Adoption of a Resolution certifying that the information contained in Environmental Mitigated Negative Declaration (MND) LDR No. 99-1200 has been completed in compliance with the California Environmental Quality Act of 1970 and State guidelines, and that said MND reflects the independent judgment of the City of San Diego as Lead Agency; stating for the record that the final MND has been reviewed and considered by the Council prior to approving the project; and adopting the Mitigation Monitoring and Reporting Program (MMRP) prepared for the project, pursuant to California Public Resources Code Section 21081.

Subitem-B: (R-2002-) DENIED APPEAL, GRANTED PERMIT WITH MODIFICATIONS ADOPTED AS RESOLUTION R-295622

Adoption of a Resolution granting or denying the appeals and granting or denying Planned Commercial Development/Conditional Use Permit No. 99-1200, with appropriate findings to support Council action.

OTHER RECOMMENDATIONS:

Planning Commission on February 1, 2001, voted 6 - 0 to deny the Sorrento Hills Community Planning Board's appeal and upheld the previous decision of the Hearing Officer approving the project, however the Commission conditioned their approval of this project upon modifications; was opposition.

Ayes: Anderson, Garcia, Steele, Brown, Butler, Stryker
Not present: Skorepa

The Sorrento Hills Planning Committee on October 17, 2000, voted unanimously (8 - 0) to recommend denial of the project.

CITY MANAGER SUPPORTING INFORMATION:

BACKGROUND:

The 2.48-acre project site (Attachments 1 and 2) is located at the southwest corner of Carmel Mountain Road and East Ocean Air Drive within the CC-1-3 (formerly the CA) zone of the Sorrento Hills Community Plan. The Community Plan currently designates this site for neighborhood-commercial development; and includes specific language (and an accompanying illustration) in the plan text (Attachment 12) which identifies a gas station and car wash as permitted uses on the subject property (with approval of a Conditional Use Permit).

The entire site is vacant and has been graded in accordance with a previous map approved for the area. The site is surrounded by vacant property designated for neighborhood-commercial development to the east; vacant property adjacent to the south; and residential development to the north (across Carmel Mountain Road). An existing SDG&E utility easement and power lines is located further to the southwest of the subject property (above the existing steep slope).

On March 17, 1997, the City Council approved an amendment to the Sorrento Hills Community Plan (*CPA/RZ 95-0554 - "Torrey Hills"*) which, in part, redesignated the project site from light-industrial to neighborhood-commercial; and amended the plan text to include specific language and an accompanying illustration in the amended plan text (pages 48-49) identifying a gas station and car wash as permitted uses on the project site. The 1997 plan amendment also included a corresponding rezone of the project site from M-1B to CA (now the CC-1-3 zone per the Land Development Code).

The CUP/PCD application for this project was submitted to and deemed complete by staff in December, 1999; and is therefore subject to the ordinance provisions of the Municipal Code applicable to this site prior to effectuation of the City's Land Development Code (January, 2000). In accordance with those code provisions, the proposed project is subject to the land use and development regulations of the (then-existing) CA zone, and requires approval of a combination Planned Commercial Development/Conditional Use Permit.

On December 13, 2000, the Hearing Officer approved the proposed project. That decision was subsequently appealed to the Planning Commission by the Sorrento Hills Community Planning Board.

On January 24, 2001, the San Diego County Air Pollution Control District (APCD) issued the applicant an "Authority to Construct" permit for the proposed gas station on this site. A second "Authority to Construct" permit was issued to the applicant by APCD on August 6, 2001 (Attachment 18).

On February 1, 2001, the Planning Commission voted to deny the appeal and upheld the previous decision of the Hearing Officer approving the project, subject to specific modifications of the project design and hours of operation for the proposed commercial uses on this site. There was a considerable amount of testimony presented in opposition to the project at this hearing and the decision of the Planning Commission was subsequently appealed to the City Council by both the applicant (Chevron Corporation) and the Torrey Hills Community Coalition (Attachment 9).

On April 17, 2001, the City Council considered the extraordinary appeal of the previous decision of the Planning Commission approving this project. At that hearing, there was a considerable amount of public testimony presented to the Council by area residents regarding potential air quality impacts associated with the proposed gas station use on this site; and specifically, potentially harmful impacts pertaining to human exposure to benzene ionization which may result from the operation of the proposed gas station use proximate to existing high voltage power lines to the south.

As a result of this testimony, the Council voted to continue this project and directed staff to prepare a "site specific health risk assessment," to be prepared by an independent analyst selected by staff. The Council requested that such an analysis (Attachment 15) evaluate the project's potential adverse effects (if any) associated with human exposure to the ionization of benzene molecules which, as alleged by the scientific studies referenced by the Torrey Hills Community Coalition in their appeal, may occur as a result of contact (and subsequent ionization) of benzene emissions from the proposed gas station with existing high voltage power lines located south of this site.

On July 31, 2001, the City Council held a public hearing to consider the analysis and conclusions of a health risk assessment which was prepared by the independent analyst (Dr. Neal Langerman) selected by staff. Following the staff's presentation, and after considering testimony by both project opponents and proponents, the Council voted to approve the proposed project, subject to the previous recommendations of the Planning Commission regarding signage, landscaping and hours of operation.

However, on August 7, 2001, the City Council directed staff to have the City's independent analyst prepare a response to questions raised by representatives of the Torrey Hills Community Coalition (Attachment 16) regarding the methodology used in determining some of the conclusions of the risk assessment. The City's analyst (Dr. Neal Langerman) complied with this request by providing staff with a 5-page response to the Coalition's issues (Attachment 17).

The City Council also received (for review and consideration) copies of Dr. Langerman's response to the Coalition's issues. However, based upon concerns that the methodology/conclusions referenced in the risk assessment may not be consistent with other air quality agency standards, the City Council voted unanimously (9-0-0) on September 18, 2001, to "reconsider" their previous decision of July 31st, approving the project. Correspondingly, the Council voted to discuss the "reconsideration" matter (and health risk assessment - air quality issue) further at a noticed public hearing on October 16, 2001.

PROJECT DESCRIPTION:

In summary, the project proposes to construct and operate a self-service gasoline station, convenience store, and an automated car wash on the subject property (Attachments 2, 3 and 6). Following is a description of the various building and site improvements proposed for this project:

Gas station: Construct a self-service gas station in the central portion of the property (Attachment 2); including the installation of two (20,000 gallon) underground fuel storage tanks, six fuel pump islands (totaling 12 fuel dispensers), and construction of a 23-foot high steel frame canopy above the fuel pump area. This phase of the project requires approval of a Planned Commercial Development Permit and a Conditional Use Permit (per Municipal Code section 101.0510) to authorize the proposed gas station land use on the site.

Convenience store: Construct a one-story (3,000 square-foot) convenience store in the northeast portion of the property (Attachments 2 and 6). This building (maximum height of 26-feet) would be constructed with natural stone, painted stucco walls, and a clay tile roof. In addition to the retail sale of food, fuel and general merchandise items, the applicant is also proposing to sell alcoholic beverages (beer and wine only) in the convenience store; which requires a Conditional Use Permit (per Municipal Code section 101.0515).

Carwash: Construct a one-story automated car wash in the southeastern portion of the site, behind the proposed fuel pump area (Attachments 2 and 6). The plans indicate that the design of this structure (maximum height of 16-feet, 6-inches) would match the architectural style of the convenience store.

Landscaping: The project's landscape plan (Attachment 3) includes a variety of street trees, shrubs and groundcovers which were selected by the applicant to achieve compliance with the City's Landscape Technical Manual and the Sorrento Hills Community Plan; and features the installation of a number of trees and decorative shrubs along the perimeter of both street frontages; and at various locations within the site's interior.

In accordance with the Planning Commission's approval of this project, and prior to the recordation of any permits with the County Recorder's Office, the applicant will be required to modify the project's landscape plan to replace all deciduous trees with non-deciduous species (24-inch box "broad leaf evergreen"); and install double-rows of evergreen shrubs (4- to 5-foot high) along the project frontage on Carmel Mountain Road to provide increased screening of the proposed commercial uses.

Hours of Operation: The applicant is proposing to operate the gas station and convenience store on this site between the hours of 5:00 a.m. - midnight; and the automated car wash between 7:00 a.m. - 10:00 p.m. The hours of operation proposed for the gas station / convenience store are inconsistent with the maximum hours (5:00 a.m. - midnight) approved by the Planning Commission this project.

NOTE: On March 20, 2001, Council voted unanimously to hear the appeals (Council District 2 - not present, Council District 6 - vacant).

Manager's Recommendation - Deny the appeal of the Torrey Hills Community Coalition and approve the project, subject to PCD / CUP permit conditions by the Planning Commission (Attachment 4).

Environmental Impact - The Mitigated Negative Declaration (MND 99-1200) prepared for the project concluded that specific measures would need to be incorporated into the project design in order to mitigate impacts associated with exterior water quality/ hydrology, noise, and paleontological resources to a less than significant level.

San Diego County Air Pollution Control District (APCD) approval - On January 24, 2001, APCD issued the applicant an "Authority to Construct" permit for the proposed gas station on this site. A second "Authority to Construct" permit was issued to the applicant by APCD on August 6, 2001 (Attachment 18).

Community Planning Group Recommendation: On October 17, 2000, the Sorrento Hills Community Planning Board voted unanimously (8-0) to recommend denial of the proposed project (Attachment 10). The Board cited inconsistencies of the project design

with the Community Plan's existing neighborhood-commercial designation, potential environmental impacts (pertaining to air quality, transportation, neighborhood character, public safety), and the applicant's proposal to operate a 24-hour commercial use on the site as the primary reasons for their unfavorable recommendation. Further, the Planning Board recommended the following modifications to the project design:

- a. Limit the hours of operation for the commercial uses on the site from 6:00 a.m. to 9:00 p.m.
- b. Eliminate the car wash use.
- c. Modify the design of the monument signs proposed along the project frontage to comply with signage standards of the "Carmel Valley Community Plan."
- d. Modify the project's landscape plan to provide for more mature trees and shrubs.

Hearing Officer Recommendation - On December 13, 2000, the Hearing Officer approved the proposed project, subject to specific conditions of approval. That decision was appealed to the Planning Commission by the Sorrento Hills Community Planning Board.

Planning Commission Recommendation - On February 1, 2001, the Planning Commission voted (6-0-0) to deny the Sorrento Hills Planning Board's appeal and upheld the previous decision of the Hearing Officer approving the project. However, the Commission conditioned their approval of this project upon the following modifications:

- a. Limit the hours of operation for the proposed gas station and convenience store from 6:00 a.m. to 10:00 p.m.
- b. Eliminate Chevron's standard "blue stripe" and "Chevron" wordmark from the side panel of the steel canopy proposed above the fuel pump area.
- c. Establish and maintain a 3-foot high landscape berm along the edge of the new building pad fronting on Carmel Mountain Road.
- d. Modify the landscape plan to replace all deciduous trees with non-deciduous species (minimum 24-inch box size "broad leaf evergreen");

and install double-rows of evergreen shrubs (minimum 4- to 5-foot high) along the project's Carmel Mountain Road frontage to provide increased screening of the proposed commercial uses on this site from existing residences to the north.

- e. Modify the size of the monument sign proposed along the project frontage on Carmel Mountain Road to be the same size as the monument sign proposed on East Ocean Air Drive (maximum 3-feet high and 8-feet long).

CITY COUNCIL ACTION: On July 31, 2001, the City Council held a public hearing to consider the conclusions of a "health risk assessment" which was prepared by an independent analyst selected by staff. Following staff's presentation, and after considering testimony by both project opponents and proponents, the Council voted to approve the project, subject to the previous recommendations of the Planning Commission regarding signage, landscaping and hours of operation.

FISCAL IMPACT: None anticipated with this project.

HOUSING AFFORDABILITY IMPACT: None anticipated with this project.

CODE ENFORCEMENT IMPACT: None with this project.

Loveland/Christiansen/KZS

LEGAL DESCRIPTION:

The property is located at 11140 East Ocean Air Drive, on the southwest corner of Carmel Mountain Road and East Ocean Air Drive in the Sorrento Hills community and is more particularly described as Parcel 1, Map 18123.

FILE LOCATION: PERM 99-1200 (65)

COUNCIL ACTION: (Tape location: A379-C240; D009-282.)

Hearing began at 10:46 a.m. and was recessed at 12:01 p.m.

Testimony in opposition by Jim Casall, John Cashman and Grazyna Krajewska

Testimony in favor by Chris Neils.

Motion by Peters to adopt to adopt the resolutions to deny the appeal and to grant the permit with the following directions:

1. To limit the number of fueling stations to 3 islands with 6 stations.
2. Hours of operations to be from 6:00 a.m. to 9:00 p.m.
3. Add the condition that the project site shall not include or otherwise use exterior amplified music.
4. With respect to Condition No. 42, to add that services provided by the car wash operation shall not expand beyond the self-contained automated operation. This prohibition includes employees, not customers, washing, waxing or drying customer vehicles.
5. The community requested clarification with respect to signage. The reference to the Carmel Valley Community Plan is in the Planning Commission approval already.

Second by Frye.

Trailed to afternoon session.

Hearing resumed at 2:06 p.m. and halted at 2:35 p.m.

MOTION BY PETERS TO ADOPT THE RESOLUTIONS TO DENY THE APPEAL AND TO GRANT THE PERMIT WITH THE FOLLOWING DIRECTIONS:

1. TO LIMIT THE NUMBER OF FUELING STATIONS TO 3 ISLANDS WITH 6 STATIONS.
2. HOURS OF OPERATIONS TO BE FROM 6:00 A.M. TO 10:00 P.M.
3. ADD CONDITIONS THAT THE PROJECT SITE SHALL NOT INCLUDE OR

