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CITY OF LA HABRA HEIGHTS
MINUTES OF A REGULAR MEETING
OF THE PLANNING COMMISSION
JUNE 23, 2009

OPENING CEREMONIES

1. CALL MEETING TO ORDER

Chairman Larry Black called the June 23, 2009 Planning Commission Meeting to order at 7:06 p.m. in the Multi-Purpose Room, 1245 Hacienda Road, La Habra Heights, California.

ROLL CALL

Present: Chairman Larry Black, Vice Chairperson Margarita McCoy, Commissioners Ray Fernandez, Judi Steffle and Alternate Faith Grimm. Commissioner Dominick DiMario arrived at 7:14 p.m.

Staff Present: City Planner Kenneth Phung and Planning Commission Attorney Daniel Ballin.

2. FLAG SALUTE

Chairman Black led the flag salute.

3. ITEMS FROM THE PUBLIC NOT ON THE AGENDA

Stephen Blagden, Citron Road, commented that at the last meeting two Commissioners stated that a project under consideration followed the Code and the General Plan when it did not follow all of the codes. He noted that if it does not follow all of the Codes it does not work. We need to follow all of the Codes and the General Plan or use a Standards Modification. The quantitative standards are just as important to passing a project. Don't try to fit a home on a hillside. If you have a hillside lot, follow the land that is there.

CONSENT CALENDAR

4. APPROVAL OF MINUTES FOR MAY 26, 2009

RECOMMENDATION: That by Minute Action the Planning Commission approves Planning Commission Minutes for May 26, 2009.

Vice Chairperson McCoy moved to approve the Regular Planning Commission Meeting Minutes for May 26, 2009 as presented. **Seconded by Commissioner Fernandez** and approved as follows:

AYES: Black, Fernandez, McCoy, Steffle and Alternate Grimm
NOES: None

51 ABSENT: DiMario (Arrived at 7:14 p.m.)
52

53 PUBLIC HEARINGS
54

55 5. **CONDITIONAL USE PERMIT 2009-04 TO ALLOW THE CONTINUED USE OF AN**
56 **EXISTING COMMUNICATION TOWER LOCATED AT 16700 SKYLINE DRIVE**
57 **(APPLICANT: RICHARD PATTERSON)**
58

59 City Planner Phung noted the location of the Communication Tower is around open space land
60 owned by the Habitat Authority. It is zoned for Public Facilities. He presented the facility
61 history starting in 1971, for a CUP for a 254 foot KOCE television tower and approved by the
62 County prior to the incorporation of our City in 1978. In 1982 the CUP was renewed with a
63 variance by the City Council for continued use and again renewed in 1994 by the City. In 2004
64 another CUP was requested for expansion of the tower, not only for KOCE but to include
65 Sempra Energy, CHP and Suburban Water for radio antennas. In 2008 there was an
66 amendment to the 2004 CUP approval to allow them to add two additional six-foot microwave
67 dish antennas. In the present proposal they hope to allow what was approved in 2004 and 2008
68 "in perpetuity". **Staff is recommending approval of Conditional Use Permit 2009-04 for a**
69 **ten-year period rather than an indefinite time period at 16700 Skyline Drive, subject to**
70 **the findings contained in the staff report, and make findings in support thereof.** Staff
71 noted that in 1971, 1982 and 1994 the tower area was zoned Residential and in 2004 it was
72 changed to Public Facilities and the surrounding area was changed to Open Space, so it is now
73 more compatible than the previous history. Mr. Phung explained that there are two microwave
74 dishes for back-up service for voice and data for Coast Community College District (CCCD);
75 two microwave antennas for Sempra Energy; two cross arm antennas for California Highway
76 Patrol and one radio antenna for Suburban Water. He noted that he had been informed that the
77 Suburban Water antenna has been removed this year. He further noted that the tower is painted
78 red and white as required by FAA and has a red light on top as required for any tower over 200
79 feet, and they have a building on the lot. The site is only half usable as it is very steep and it
80 is not accessible from any La Habra Heights City streets. The access is from Hacienda Heights.
81 Staff noted the Habitat Authority would like more environmental review. Staff believes that
82 the Categorical Exemption is sufficient. The Habitat Authority also request that the tower
83 height be reduced to 200 feet as some birds are attracted to the light and it would not be needed
84 if it was only 200 feet. City Planner Phung also mentioned a letter from CCCD stating their
85 finances from the tower.
86

87 Commissioner Stefflre asked if Mr. Phung knew of any birds mortality found around the tower
88 area.
89

90 City Planner Phung stated that he had no information on this.
91

92 Chairman Black opened the Public Hearing for this item.
93

94 **Cecelia Borrow** expressed her concern over continuing tower use. She stated that in the past
95 we were told that there was no real activity there. They told us that there would be no reason
96 for lights at that site, and now there are lights there. We have a dark sky policy in our city. She
97 stated she would like to see the lights go away. Her second concern was that if they are losing
98 money, why do they want to continue it? There are other towers they could use and she would
99 not like to see this one continue.

100 **Stephen Blagden**, Citron Road, stated that he has provided evidence that shows the CCCD's
101 intentions are different from their application. He stated that only one of the antennas on the
102 tower in 1994 was permitted. The rest were bootlegged. They have a long history of hiding
103 their true intentions. A Categorical Exemption is wrong for this project and an EIR should be
104 done. The proposed CUP violates three legal agreements. In 1971 LA County's CUP was only
105 for a transmitter tower for a Public Television Station and in 1982 the City granted the same
106 CUP and a Variance for a sub-size lot and the CCCD was required to increase the lot size if the
107 use of the lot was changed to anything other than a Television Transmitter. That has not been
108 done. That restriction was recorded against the property. In 1994, seeking forgiveness rather
109 than permission, two of the bootleg antennas were allowed by the City. In 2004 the City
110 granted a five-year extension of the CUP in anticipation of the cessation of Analog
111 Broadcasting this month. The 2004 approval was conditioned on the removal of the tower and
112 building. The tower and building are now obsolete and should be removed. There are other
113 towers that can be used by the Highway Patrol and Sempra Energy. He stated that although it
114 is nice to have the three slots for the Fire Department, the offer has been outstanding for 15-20
115 years and it has not been shown that the site is better than our present antenna site for the Fire
116 Department. Mr. Blagden stated if the City is going to let them violate the three agreements, he
117 recommended five conditions beyond the EIR: Removal of the broadcast antenna and tower
118 extension so it only totals 175 feet: five-year or less limit in the CUP: same
119 termination/removal conditions: any new antenna has to have an EMF study including
120 cumulative effects with others on the tower: the Commission must also prohibit the use of the
121 tower for FM Broadcasts which would wipe out radio reception for the rest of the Heights. Mr.
122 Blagden stated that the FCC has no record of the Highway Patrol using the tower.
123

124 **Roland vomDorp**, Reposado Drive, asked that the Commission deny the request for an
125 extension of the 2004 CUP. He stated his opinion that the tower is an eyesore and serves no
126 purpose to the Community. The area is attractive to party goers and a danger to the City.
127 There is no easy access for fire trucks. There is a large propane tank on the property which is a
128 danger.
129

130 **George Edwards**, Fullerton Road, stated that the Crown Castle site is a good one to transmit
131 from and in his opinion is better than the KOCE site. He stated that he would not like to see the
132 KOCE tower broadcasting anything that does not benefit the whole Community. He stated that
133 all they can do now is ethnic or religious broadcasting. He stated his opinion that the reason
134 KOCE does not want to remove the tower is because it would cost about \$300,000 to do so. He
135 stated that since last year he has changed his mind and does not think the tower would be useful
136 to Fire Watch, and the CCCD wrote that they did not want to work with him.
137

138 **Tina Javid**, Public Affairs Manager for Sempra Energy stated that they are a gas company
139 utility and are in favor of the tower. It is critical to their system. Among others, we do serve
140 La Habra Heights. Being close we can quickly address emergencies.
141

142 Ms. Javid stated that she can find that out if they have any contingency plans if the tower does
143 not continue. She stated that they have a contract that runs through 2012 and she does not
144 know if it would make any difference if the tower was lowered to 200 feet. She did not think it
145 would matter as they are low on the tower. She did not know how easy it would be to move to
146 another tower.
147

148 **Richard Patterson**, Director of Applications and Telecommunications for CCCD presented a
149 history on CCCD and the tower. He noted in 2008, 214 of the 50,000 students were from La

150 Habra Heights. He noted that the approval for the two microwave dishes in 2008 cost us over
151 \$100,000. They have a life expectancy of 15 years. We would like to amend the
152 recommendation to 15 years to maximize the lifespan of investment. He stated that moving the
153 microwave dishes would not be assured as it would have to be approved by the FCC. He stated
154 that the CHP is still active on the tower and upgraded their equipment to include video
155 coverage on some of their frequencies. He stated that he was not prepared to answer if the
156 height was critical for them.

157
158 Vice Chairperson McCoy stated that at the Council meeting last year about the addition of the
159 two microwave dishes, David Moss, representing the CCCD, stated that it was imperative that
160 we be given a long range plan. Our City Attorney stated that it was important for us to know
161 what the plans were for the future. We have received nothing of this kind.

162
163 Mr. Patterson noted that it is hard to have a long term plan when they were only renewed for
164 one year. He noted that it was not a condition of approval to present the City with a long term
165 plan and that they can no longer afford to hire Mr. Moss as a Consultant.

166
167 Planning Commission Attorney Ballin noted that it would be appropriate to make a condition
168 that they give us their long term plan for usage of the tower within a certain number of days.

169
170 Mr. Patterson explained that the tower will be safe indefinitely as long as we continue our
171 regular maintenance on it. He explained that their costs for 2008/09 seem to have gone down
172 as they no longer have the expense of a Consultant and he noted that every five years they have
173 to paint the tower.

174
175 **Jeff Arthur, representing CCCD,** noted that all of the antennas on the tower are below 200
176 feet. He noted that the top 75 feet of the tower is where the television was broadcast from and
177 noted that there is no longer any plan to continue television broadcasts from this tower. We are
178 definitely not getting rich with the tower. We are using it because we need backup for our
179 Community College District.

180
181 Chairman Black asked how long it would take for the CCCD to make a future plan for at least
182 the next ten years.

183
184 Mr. Arthur stated that even after the expense of Consultant Moss we did not have a plan. He
185 stated that his plan would be to keep what they have and maintain it and keep our services up.
186 We also have FAA and FCC rules to follow.

187
188 City Planner Phung stated that in all his years of experience he has never encountered anyone
189 asking for a Master Plan for a tower. Usually a Master Plan would only be required if an
190 applicant was requested for many antennas.

191
192 Chairman Black stated that they don't need anything complex, but something going along with
193 the existing understanding.

194
195 Mr. Patterson explained that they had looked into leasing at other and found it would be far
196 more expensive than purchasing the two microwave dishes that were approved at the last
197 meeting with the City and they would like to get their lifespan. He also noted that according to
198 the present CUP they cannot add other antennas without the approval of the City of La Habra
199 Heights.

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City Planner Phung stated that there is a condition in the CUP that states that if any antenna is installed without permission and is not removed within 30 days, the approval of the CUP will expire.

Mr. Arthur stated that to put an antenna on the tower would require an Engineer's study and the tower's regulators would not allow that. The tower has only a certain amount of load capacity. He verified that they plan to comply with the City. No one gets on the tower without the City approval. He confirmed that there are now 7 antennas functioning and one that we don't know what it is, left over from the past. He stated that he would like to add more antennas to the tower for income, but it would be very complicated.

Mr. Patterson stated that they have had an FM station that is very interested but we have been holding them off until we get the CUP approved and then they can go ahead and apply to have the CUP process amended to get their equipment up there if they choose to do that. The CCCD might want to add one whip type antenna for our disaster contingency.

Mr. Arthur noted that to lower the tower would be costly for them.

City Planner Phung explained that if the Council wants to investigate whether the tower can be lowered or not, you could make your conditions and get a majority vote on what you want to accomplish and continue the meeting to have the information brought back.

Chairman Black closed the Public Hearing and brought the meeting back to the Commission.

The Commission discussed approval and denial or continuance and the findings they need for their decision.

Commissioner Fernandez stated that he was for approval of this application and would be opposed to any continuance.

Commissioner Fernandez moved to approve CUP 2009-04. The motion was seconded by Commissioner DiMario.

Vice Chairperson McCoy noted concern that in the minutes of the City Council meeting last year, the City Planner commented that when the tower use became entirely digital, it would be necessary to do an EIR. She stated that she felt it was very important that they check this out. She was of the opinion that the conditions in this proposal are not adequate. We need to look at all of the previous conditions to make sure the City is covered. We do not want to end up with an abandoned tower if it is no longer used.

City Planner Phung stated that he could read all of the conditions from 2004 if she would like.

Vice Chairperson McCoy stated that she would like him to do that after they have gotten further along in the discussion. Last year at the City Council meeting the City Attorney stated that the laws about communication facilities were changing rapidly and at that time she did not want to make any statement about what legal limits would be this year. Ms. McCoy asked Planning Commission Attorney Ballin if there have been any changes in laws that would be pertinent to our decisions.

250 Attorney Ballin stated that he did not know of any with respect to this application.

251
252 Vice Chairperson McCoy stated that she did not see that this application was of any benefit to
253 the City. She noted that the Fire Department has been offered three spots on the tower and the
254 City has not taken advantage of this. The CCCD states that they make very little profit from
255 the tower and she is concerned that there isn't a plan for the tower from them.

256
257 Commissioner Stefflre stated that a Public Use Facility dedicated for profit revenue is not in an
258 appropriate area for this and so we can only think of it as an eyesore. She stated that she does
259 not understand the cost for the use of air conditioning in the building at the tower area and
260 stated that it was of no benefit to the City.

261
262 Attorney Ballin stated that the "finding" the Commission has to make is not that it be a Public
263 Benefit or a need for the City, but that it would not be a detriment to the Public Interest, Health,
264 Safety, Convenience and Welfare.

265
266 Commissioner Stefflre stated that in her opinion, if this is approved without a plan, it should
267 not be for more than five years. Any additional use of the tower should be approved by the
268 City. Her opinion was that they should pay business taxes and user fees to the City.

269
270 Commissioner DiMario stated that as long as any addition to the tower has to be approved by
271 the City, he would be in favor of approving the present application.

272
273 Chairman Black asked for the Conditions covered by the 2004 approval.

274
275 Vice Chairperson McCoy asked if they can find out if there is really a propane tank on the site
276 and if it is a danger.

277
278 Chairman Black reopened the Public Hearing to get this information.

279
280 Mr. Patterson stated that it is required by Sempra Energy as power for their backup generator
281 and was approved by the City. He stated that it is behind a concrete berm on an asphalt slab.
282 He noted it has been there about three years. Mr. Patterson also explained that the building on
283 the property houses sensitive electric equipment that is temperature sensitive. That is why it is
284 air conditioned. It is very important.

285
286 Chairman Black closed the Public Hearing.

287
288 City Planner Phung read the Conditions from 2004. Mr. Phung answered the question from
289 Vice Chairperson McCoy about the need for an EIR on this project and stated that an EIR is not
290 required.

291
292 Vice Chairperson McCoy stated that she could not make a "finding" that this has any benefit to
293 the City, so she would be ready to deny the application.

294
295 Commissioner Fernandez noted that even if it was not a benefit to the City, it benefits many
296 other people.

297
298 City Planner Phung stated that a Business License was something different from what is being
299 considered tonight.

300
301 Chairman Black asked staff and Counsel to take care of any redundancies in the 2004
302 conditions.
303

304 Vice Chairperson McCoy asked about the reduction of the tower height.
305

306 Commissioner Fernandez agreed to amend his motion to include the ability of Chairman Black
307 to take care of any redundancies in the 2004 Conditions, but not to include lowering the height
308 of the tower.
309

310 **The motion was for an extension of 10-years as recommended by City Planner Phung and**
311 **it was agreed that Chairman Black would look at what staff and counsel presents to him**
312 **and he will sign his approval of the Resolution without it being brought back at a later**
313 **meeting.**
314

315 Vice Chairperson McCoy asked Commissioner Fernandez if he would accept a friendly
316 amendment for a shorter time approval.
317

318 Commissioner Fernandez stated that he would not accept that amendment.
319

320 **The motion was approved as follows:**
321

322 **AYES: Black, DiMario, Fernandez and Steffle**

323 **NOES: McCoy**

324 **ABSENT: None**
325

326 **Planning Commission Attorney Ballin clarified that the Commission gave Chairman**
327 **Black authority to sign for them as long as what is brought back is exactly as they have**
328 **discussed above.**
329

330 **ITEMS FROM THE PLANNING COMMISSION**
331

332 6. N/A
333

334 There were no issues discussed.
335

336 **ITEMS FROM STAFF**
337

338 7. **MONTHLY COMMUNITY DEVELOPMENT DEPARTMENT REPORT**
339

340 **RECOMMENDATION: Receive and File Report**
341

342 **Chairman Black moved to Receive and File. The motion was seconded by Commissioner**
343 **Fernandez and approved as follows:**
344

345 **AYES: Black, DiMario, Fernandez, McCoy and Steffle**

346 **NOES: None**

347 **ABSENT: None**
348

349 Chairman Black encouraged everyone to volunteer for your City and to maintain their speed
350 limits within the Heights.

351
352 **ADJOURNMENT**

353
354 Chairman Black adjourned the June 23, 2009 Planning Commission Meeting at 9:06 p.m.
355

356 **ATTEST:**

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360

361 **LARRY BLACK, CHAIRMAN**

362

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365

366 **KENNETH PHUNG, CITY PLANNER**