



Agenda
Planning Commission Meeting
7:00 P.M. on Tuesday, March 10, 2009
Clayton Community Library Meeting Room
6125 Clayton Road, Clayton

CALL TO ORDER, ROLL CALL, PLEDGE TO THE FLAG

Administrative

- 1A. Review of agenda items.
- 1B. Commissioner Haydon to report at the March 17, 2009 City Council meeting.

Public Comment

Approval of Minutes

2. Approval of minutes from the meeting of February 10, 2009.

Discussion Items

3. Presentation by City Attorney Dan Adams regarding Conflict of Interest standards.
Proposed Action: Receive information.

Public Hearings

4. **ENV 01-08, Development Plan, Komgold.** The proposed project site is located at 1005 and 1007 Oak Street (APNs 119-050-009 and 119-050-034) and includes a third parcel located west of Mitchell Creek (APN 119-050-008). The purpose of this item is to review and receive comments on the Rivulet Project Initial Environmental Study/Mitigated Negative Declaration (IES/MND), prepared in accordance with the California Environmental Quality Act. This report analyzes the potential impacts caused by the proposed project and identifies various measures to mitigate these impacts. The proposed Rivulet project involves the removal of two existing single-story modular buildings and the redevelopment of the site with a two-story, mixed-use building with approximately 7,000 square feet of retail space on the ground floor and seven (7) residential units on the second floor.
Proposed Action: Receive comments from the Planning Commission and the public regarding the IES/MND.

Old Business

5. None.

New Business

6. None.

Communications

7A. Staff.

7B. Commission.

Adjournment

8. The next meeting of the Planning Commission is scheduled for **Tuesday, March 24, 2009.**

Most Planning Commission decisions are appealable to the City Council within ten (10) calendar days of the decision. Please contact Community Development Department staff for further information immediately following the decision. If the decision is appealed, the City Council will hold a public hearing and make a final decision. If you challenge a final decision of the City in court, you may be limited to raising only those issues you or someone else raised at the public hearing(s), either in oral testimony at the hearing(s) or in written correspondence delivered to the Community Development Department at or prior to the public hearing(s). Further, any court challenge must be made within 90 days of the final decision on the noticed matter. If you have a physical impairment that requires special accommodations to participate, please contact the Community Development Department at least 72 hours in advance of the meeting at 925-673-7340.

An affirmative vote of the Planning Commission is required for approval. A tie vote (e.g., 2-2) is considered a denial. Therefore, applicants may wish to request a continuance to a later Commission meeting if only four Planning Commissioners are present.

Any writing or documents provided to the majority of the Planning Commission after distribution of the agenda packet regarding any item on this agenda will be made available for public inspection in the Community Development Department located at 6000 Heritage Trail during normal business hours.

Minutes
City of Clayton Planning Commission Meeting
Tuesday, February 10, 2009

Call to Order

Chair Catalano called the meeting to order at 7:00 p.m. at the Library Meeting Room, Clayton Community Library, 6125 Clayton Road, Clayton.

Present: Chair Tuija Catalano, Vice Chair Ed Hartley, Commissioner Bob Armstrong, Commissioner Keith Haydon, Commissioner Sandra Johnson

Absent: None

Staff: Community Development Director David Woltering
Assistant Planner Milan Sikela, Jr.

Administrative

1A. Review of agenda items.

1B. Commissioner Johnson to report at the February 17, 2009 City Council meeting.

Approval of Minutes

2. Approval of minutes from the meeting of January 27, 2009.

Chair Catalano moved and Commissioner Haydon seconded a motion to approve the minutes from the meeting of January 27, 2009, as submitted. The motion passed 5-0.

Public Hearings

3. **UP 01-09, Use Permit, Snap Fitness, 6200 Center Street, Suite G, APN 119-620-060.** A Use Permit to allow Snap Fitness representatives to amend their Use Permit to allow the following:

- Amend their previously-approved 5:00 a.m. opening time one hour earlier to the newly-proposed 4:00 a.m. opening time; and
- Amend their previously-approved 11:00 p.m. closing time one hour later to the newly-proposed 12:00 a.m. closing time.

The public hearing was opened. Assistant Planner Sikela presented the staff report. The representative of Snap Fitness, Mike Monahan, was available for questions.

Commission questions and comments included:

- How many members do you currently have attending the Snap Fitness facility? Mr. Monahan indicated that approximately 300 members currently attend the Snap Fitness facility.
- Do you have a breakdown of the demographics of your membership? Mr. Monahan indicated that he did not have demographic information of the clientele.
- Is there a demand for a 4:00 a.m. opening time? Mr. Monahan indicated that, yes, there is a demand given there has been a line of people waiting at the front door of Snap Fitness at the current opening time of 5:00 a.m. Furthermore, Snap Fitness clientele have directly expressed a desire to have earlier access to the facility.
- Currently, there are no employees on-site after 8:00 p.m.? Mr. Monahan indicated that, yes, there are no employees on-site after 8:00 p.m.

- Are the on-site security cameras working well? Mr. Monahan indicated that the on-site security cameras are working great.
- Have you installed the on-site panic buttons? Mr. Monahan answered that there are two mounted panic buttons—one in the trainer’s office and one in the gym—as well as several necklace panic buttons that can be worn by the clientele.
- Have any of the panic buttons been used? Mr. Monahan answered that, thankfully, panic buttons have not had to be used so far.
- We heard that a member fell down on a treadmill in the gym. Mr. Monahan indicated that a member, a woman, did fall and her husband was present to assist her.
- Is knowledge of how to operate your panic buttons a requirement for members? Mr. Monahan responded, yes, the members are required to learn about where the panic buttons are and how to use them.
- How do you control access through the front door after the facility is closed? Mr. Monahan responded that the door is set to automatically to shut off when the facility is closed, preventing anyone from accessing the facility after hours.
- How long has the Snap Fitness facility been open? Mr. Monahan responded that the facility has been open since December 12, 2008.
- What is the maximum number of members that the facility could accommodate? Mr. Monahan responded “400 members”.
- I have heard good things about the operation of the facility.
- If demand for business continues to expand such that Snap Fitness proposes to operate 24 hours, would the applicant have to amend to Use Permit again? Director Woltering answered “yes”.

There being no further comments, the public testimony period was closed. Commission comments and questions included:

- I see no problem with the expansion of operating hours for Snap Fitness.
- A condition of approval should be added that the project shall be conducted in accordance with the revised Statement of Operation.
- The Statement of Operation should reflect the newly-approved operating times.

Chair Catalano moved and Commissioner Haydon seconded a motion to approve Use Permit UP 01-09, with the findings and conditions recommended by staff, and with the conditions as amended by the Planning Commission. The motion passed 5-0.

Old Business

- 4. None.

New Business

- 5. None.

Communications

- 6A. Staff.

Director Woltering indicated the following regarding the Flora Square project:

- Flora Square is expected to open within approximately 30 days.

- Certain floodproofing issues remain to be addressed; the design and installation of the floodgates have to be finalized.
- Architectural features and exterior colors and materials look good.
- Installation of the elevator is underway.
- Two restaurants are looking at the site.

Director Woltering indicated the following regarding the Rivulet project:

- The public review draft environmental document is nearing completion.
- We are anticipating presenting the public review draft mitigated negative declaration at the March 10, 2009 Planning Commission meeting to receive comments.

Director Woltering indicated that Association of Bay Area Governments has released their *Projections 2009* document which describes two scenarios of possible future development: *scattered success*, which essentially continues the current patterns of development, and *focused future*, which anticipates the majority of future development occurring in proximity to mass transit and along major transportation corridors.

Director Woltering indicated that Village Market is proposing to open a deli in the tenant space facing Center Street. He indicated further that a building permit(s) will be required to complete work for the opening.

Director Woltering indicated that the regular Planning Commission meeting of February 24, 2009 may be cancelled due to a lack of agenda items ready to move forward for that date.

6B. Commission.

Vice Chair Hartley indicated that he went to the Mitchell Creek Place subdivision and noted that five units still remain to be sold.

Commissioner Johnson asked which restaurant was looking at tenant spaces in the Town Center? Director Woltering answered that restaurateurs representing a restaurant called Bangkok 101 were looking at potential sites in the Town Center. He stated that he did not know the identities of others that had been reported to be interested in the area.

Commissioner Haydon indicated that he would not attend the Planning Commission meeting of February 24, 2009.

Adjournment

7. The meeting was adjourned at 7:30 p.m.

Submitted by
David Woltering, AICP
Community Development Director


Approved by
Tuija Catalano
Chair

Plng Comm\2009\Minutes\0210

MEMORANDUM

DATE: March 10, 2009

TO: Planning Commission

FROM: David Woltering, AICP 
Community Development Director

SUBJECT: Conflict of Interest Issues

At the March 10, 2009 Planning Commission meeting, City Attorney Dan Adams will be presenting conflict of interest information to the Commissioners. As part of the presentation, the attached Institute for Local Government Publication *Key Ethics Law Principles For Public Servants* has been provided for Commission review.

Attachment: *Key Ethics Law Principles For Public Servants*, date received February 24, 2009

Com Dev\Dates09\memo-conflict.of.interest



Key Ethics Law Principles

FOR PUBLIC SERVANTS

Note that the following are not statements of law, but rather principles the law is designed to achieve. The goal in providing this list is to identify the kinds of issues addressed by public service ethics laws. If an issue arises for you under these principles, consult your agency counsel.

PERSONAL FINANCIAL GAIN

Public officials:

- ◆ Must disqualify themselves from participating in decisions that may affect (positively or negatively) their financial interests (see reverse for list of types of financial interests).
- ◆ Cannot have an interest in a contract made by their agency.
- ◆ Cannot request, receive or agree to receive anything of value or other advantages in exchange for a decision.
- ◆ Cannot influence agency decisions relating to potential prospective employers.
- ◆ May not acquire interests in property within redevelopment areas over which they have decision-making influence.

PERSONAL ADVANTAGES & PERKS

Public officials:

- ◆ Must disclose all gifts received of \$50 or more and may not receive gifts aggregating to over \$390 (2007-8) from a single source in a given year.
- ◆ Cannot receive compensation from third parties for speaking, writing an article or attending a conference.
- ◆ Cannot use public agency resources (money, travel expenses, staff time and agency equipment) for personal or political purposes.
- ◆ May only be reimbursed for actual and necessary expenses consistent with their agency's reimbursement policy.
- ◆ Cannot participate in decisions that may affect (positively or negatively) their personal interests.
- ◆ Cannot accept free transportation from transportation companies.
- ◆ Cannot send mass mailings at public expense.
- ◆ Cannot make gifts of public resources or funds.
- ◆ Cannot receive loans over \$250 from those within the agency or those who do business with the agency.

GOVERNMENT TRANSPARENCY

Public officials:

- ◆ Must disclose their financial interests.
- ◆ Must conduct the public's business in open and publicized meetings, except for the limited circumstances when the law allows closed sessions.
- ◆ Must allow public inspection of documents and records generated by public agencies, except when non-disclosure is specifically authorized by law.
- ◆ Must disclose information about significant (\$5000 or more) fundraising activities for legislative, governmental or charitable purposes.

FAIR PROCESSES

Public officials:

- ◆ Have a responsibility to assure fair and competitive agency contracting processes.
- ◆ Cannot participate in decisions that will benefit their immediate family (spouse/domestic partner or dependent children).
- ◆ Cannot participate in quasi-judicial proceedings in which they have a strong bias with respect to the parties or facts.
- ◆ Cannot simultaneously hold certain public offices or engage in other outside activities that would subject them to conflicting loyalties.
- ◆ Cannot participate in entitlement proceedings – such as land use permits – involving campaign contributors (does not apply to elected bodies).
- ◆ Cannot solicit campaign contributions of more than \$250 from permit applicants while application is pending and for three months after a decision (does not apply to elected bodies).
- ◆ Cannot represent individuals before their agency for one year after leaving agency service.
- ◆ Must conduct public hearings in accordance with due process principles.

A Public Official's Conflict Of Interest Checklist

KEY CONCEPTS

- ✓ A public agency's decision should be based solely on what best serves the public's interests.
- ✓ The law is aimed at the perception, as well as the reality, that a public official's personal interests may influence a decision. Even the temptation to act in one's own interest could lead to disqualification, or worse.
- ✓ Having a conflict of interest does not imply that you have done anything wrong; it just means you have financial or other disqualifying interests.
- ✓ Violating the conflict of interest laws could lead to monetary fines and criminal penalties for public officials. Don't take that risk.

BASIC RULE

A public official may not participate in a decision – including trying to influence a decision – if the official has financial or, in some cases, other strong personal interests in that decision. When an official has an interest in a contract, the official's agency may be prevented from even making the contract.

WHEN TO SEEK ADVICE FROM AGENCY COUNSEL

The rules are very complex. Talk with your agency counsel 1) early and often 2) when an action by your public agency 3) may affect (positively or negatively) 4) any of the following:

- ✓ **Income.** Any source of income of \$500 or more (including promised income) during the prior 12 months for you or your spouse/domestic partner.
- ✓ **Business Management or Employment.** An entity for which you serve as a director, officer, partner, trustee, employee, or manager.
- ✓ **Real Property.** A direct or indirect interest in real property of \$2000 or more that you or your immediate family (spouse/domestic partner and dependent children) have, including such interests as ownership, leaseholds (but not month-to-month tenancies), and options to purchase. Be especially alert when any of these are located within 500 feet of the subject of your decision.
- ✓ **Personal Finances.** Your or your immediate family's (spouse/domestic partner and dependent children) personal expenses, income, assets, or liabilities.

- ✓ **Gift Giver.** A giver of a gift of \$420 or more to you in the prior 12 months to you, including promised gifts.
- ✓ **Lender/Guarantor.** A source of a loan (including a loan guarantor) to you.
- ✓ **Contract.** You or a member of your family would have an interest (direct or indirect) in a contract with the agency.
- ✓ **Business Investment.** An interest in a business that you or your immediate family (spouse/domestic partner and dependent children) have a direct or indirect investment worth \$2000 or more.
- ✓ **Related Business Entity.** An interest in a business that is the parent, subsidiary or is otherwise related to a business where you:
 - Have a direct or indirect investment worth \$2000 or more; or
 - Are a director, officer, partner, trustee, employee, or manager.
- ✓ **Business Entity Owning Property.** A direct or indirect ownership interest in a business entity or trust of yours that owns real property.
- ✓ **Campaign Contributor.** A campaign contributor of yours (applies to appointed decision-making bodies only).
- ✓ **Other Personal Interests and Biases.** You have important, but non-financial, personal interests or biases (positive or negative) about the facts or the parties that could cast doubt on your ability to make a fair decision.

WHAT WILL HAPPEN NEXT?

Agency counsel will advise you whether 1) you can participate in the decision and, 2) if a contract is involved, whether the agency can enter into the contract at all. Counsel may suggest asking either the Fair Political Practices Commission or the State Attorney General to weigh in.

EVEN IF IT'S LEGAL, IS IT ETHICAL?

The law sets only minimum standards. Ask yourself whether members of the public whose opinion you value will question whether you can act solely in the public's interest. If they might, consider excusing yourself voluntarily from that particular decision-making process.

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PLANNING COMMISSION STAFF REPORT

Meeting Date: March 10, 2009

From: David Woltering, Community Development Director 

Subject: Rivulet Project
Initial Environmental Study/Mitigated Negative Declaration (ENV 01-08)

RECOMMENDATION

Staff recommends that the Planning Commission take the following actions on the Rivulet Initial Environmental Study/Mitigated Negative Declaration (IES/MND) at the March 10, 2009 Planning Commission meeting:

- ▶ Accept the presentation on the IES/MND;
- ▶ Take public comment on the IES/MND; and
- ▶ Provide comments and/or direction to staff regarding any modifications of the IES/MND.

(Following the conclusion of the public comment period on the IES/MND on April 2, 2009, the environmental consultant and City staff will prepare written comments in response to the comments received on the document. Thereafter, and prior to the Planning Commission making a recommendation to the City Council on the requested approvals [e.g., Development Plan, Tentative Map, etc.] the Commission will need to provide provisional approval of the IES/MND, subject to City Council confirmation. The City Council will need to formally adopt the IES/MND before approving the requested entitlements.)

BACKGROUND

The project site is located in the City of Clayton, on the west side of Oak Street between High and Center Streets. The project involves the re-development of two properties, which are currently developed, generally level, and serviced by utilities. The third parcel is an up-sloping undeveloped property with Mitchell Creek traversing at its eastern edge near the toe of slope. The proposed project involves the construction of a two-story mixed-use building with western-style exterior architectural themes suggested in the Town Center Specific Plan. The first floor is comprised of approximately 7,000 square feet of retail commercial space with a 20-foot ceiling. The second floor includes seven (7) residential units. The residential units have one-bedroom and several of the units feature dens. A terrace is proposed on the creek (west) side of the second story.

The IES/MND, prepared by Raney Planning and Management under contract with the City, analyzes the impacts associated with construction and occupancy of the mixed-use project. The IES/MND concludes that, with the incorporation of mitigation measures addressing several identified issues, there would be no significant impacts resulting from the project. The mitigation measures for the project pertain to air quality, biological resources, cultural resources, geology, hazards, hydrology, and public services. The applicant needs to agree in writing to comply with the mitigation measures listed in the IES/MND as a condition of project approval.

On February 27, 2009, a "Public Hearing Notice of Intent to Adopt a Negative Declaration" was mailed to property owners within 300 feet of the site, interested parties, and affected agencies. The same public hearing notice has been submitted to the Contra Costa Times for publication and the County Clerk for posting. Copies of the IES/MND have been made available for review, check-out, and purchase at the Clayton Community Development Department, 3rd Floor, City Hall, 6000 Heritage Trail, Clayton.

Attachment: Rivulet Initial Environmental Study/Mitigated Negative Declaration Public Review Draft, dated March 2009 (previously provided to the Planning Commission members).

ENV\2008\01-08. IESMND Public Review Draft Staff Report 3.10.09