

Meeting Minutes

Citizens for Sensible Growth (CFSG) and City of Campbell

Tuesday 9/12/2017 – 10:30 A.M. to 12:00 P.M. (noon)

Purpose of Meeting

Review and discussion of application for development at 499 E. Hamilton Avenue, Campbell by In-N-Out Burger.

Present

Citizens For Sensible Growth Jean Lund-Drew, Charles Drew, Dawn Haskin, George Haskin, David Hiatt

City of Campbell Paul Kermoyan (City Development Director),
Daniel Fama (Senior Planner, Planning Department)

CFSG member Dawn Haskin recorded written notes, which were provided to CFSG attendees for comment and correction. These updated notes were subsequently provided to Paul Kermoyan and Daniel Fama for review and correction. Edits were suggested by Mr. Fama and Mr. Kermoyan and were accepted by CFSG.

The meeting convened with Paul Kermoyan taking the lead. Mr. Kermoyan suggested topics to be covered including: (1) opening discussions to some of our questions and concerns, (2) explaining some of the processes involved, and (3) how CFSG can be involved.

Processes Explained

Mr. Kermoyan noted that If In-N-Out had proposed to go in without a drive through, we would likely not be here. However, Mr. Fama noted that City zoning for this particular location is C-2, which does not allow for fast food restaurants except under conditional use permits. However, review of the City Code does reveal that if the restaurant incorporated seating in excess of 50% of the building's floor area, it could be classified as a standard restaurant which would preclude their need for a Conditional Use Permit, as the Director was alluding to. Standard sit down restaurants would be allowed as a "matter of right" as they are permitted under this particular zoning code and would not require any public process.

In-N-Out incurs traffic beyond the scope of most other fast food and/or restaurants due to its popularity so the City must look at its proposal in a different manner. The City must determine if this business is an appropriate one for this particular location.

In-N-Out has submitted their plans for the site and due to questions or comments from the city was asked to make some changes. These changes are mostly technical and will not change the current look of the plans.

CFSG brought up some of the concerns that have been raised by many people in the community. On the top of the list is the fact that this area is already inundated with traffic and congestion issues. It was observed by CFSG that, during a 1-½ hour period during rush hour one night, three separate emergency vehicles had problems navigating the intersection between Central Ave and Highway 17. This corridor is the artery to local hospitals such as Valley Medical and Good Samaritan. Minutes can make the difference between life and death.

Another issue brought up was the concern of other retailers and their parking which, it is felt, would increase due to people not able to get into the parking lot or the drive through of In-N-Out. Mr. Kermoyan indicated that when a city looks at land uses, they do not factor in whether or not the new business would have a competitive advantage over existing businesses in the area. However, the City will analyze the proposed business's ability to create noise, operational, odor, traffic and other impacts.

In-N-Out has not been issued a conditional use permit at this time, and the city is required to make findings and "statement of facts" in order for a conditional use permit to be recommended for Planning Commission approval. Please note that staff serves as an advisory component to the decision-making process and the Planning Commission is the ultimate decision maker. If statement of facts can be made indicating various issues are not resolvable, the proposal would conceivably be recommended for denial. If no statements can be made, the city must approve the permit.

For purposes of allowing CFSG to understand this, we will insert an excerpt of Title 21.46 of the Ordinance here:

- A. Special impact or uniqueness. Conditional uses are those that have a special impact or uniqueness so that their effect on the surrounding environment cannot be determined in advance of the use being proposed for a particular location.
- B. Protect the integrity and character of the city. This chapter provides a process for reviewing conditional use permit applications to allow for specified activities and uses as identified in the various zoning districts as requiring a conditional use permit. These provisions are intended to protect the integrity and character of the residential, commercial, industrial, and mixed use areas of the city, consistent with the objectives, policies, general land uses, and implementation programs of the general plan. This chapter also ensures adequate review and input for development projects that potentially impact the community, and adequate review to ensure that development in each zoning district protects the integrity of that district.
- C. Weighing the public need and benefit. A project requiring conditional use permit approval is reviewed as to its location, design configuration, and potential impacts by comparing the project to established standards. The purpose of the review is to determine whether the permit should be approved by weighing the public need for, and the benefit to be derived from, the project, against any impacts it may cause.

Further, from 21.46.030:

- A. Filing. An application for a conditional use permit shall be filed with the community development department in compliance with Chapter 21.38, (Application Filing, Processing and Fees).
- B. Contents. The application shall be accompanied by detailed and fully dimensioned site plans, and/or any other data/materials identified in the community development department handout for conditional use permit applications.
- C. Applicant's responsibility. It is the responsibility of the applicant to establish evidence in support of the findings required by Section 21.46.040, (Findings and decision), below.
- D. Project review procedures. Following receipt of a completed application, the community development director shall make an investigation of the facts bearing on the case to provide the information necessary for action consistent with the purpose of this chapter.
- E. Notice and hearings.
 - 1. ...A public hearing shall be required for the planning commission's decision on a conditional use permit application.
 - 2. ...A public hearing shall be scheduled once the community development director has deemed the application complete.
 - 3. ...Notice of the public hearing shall be provided, and the hearing shall be conducted in compliance with **Chapter 21.64** (Public Hearings).

(Ord. 2043 § 1 (part), 2004).

21.46.040 - Findings and Decision.

A Conditional Use Permit may be approved, with or without conditions, only if the planning commission (or the City Council, upon appeal) first finds that:

- A. The proposed use is allowed within the applicable zoning district with Conditional Use Permit approval, and complies with all other applicable provisions of this Zoning Code and the Campbell Municipal Code;
- B. The proposed use is consistent with the General Plan;
- C. The proposed site is adequate in terms of size and shape to accommodate the fences and walls, landscaping, parking and loading facilities, yards, and other development features required in order to integrate the use with uses in the surrounding area;
- D. The proposed site is adequately served by streets of sufficient capacity to carry the kind and quantity of traffic the use would be expected to generate;

- E. The design, location, size, and operating characteristics of the proposed use are compatible with the existing and future land uses on-site and in the vicinity of the subject property; and
- F. The establishment, maintenance, or operation of the proposed use at the location proposed will not be detrimental to the comfort, health, morals, peace, safety, or general welfare of persons residing or working in the neighborhood of the proposed use, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the city.

CFSG is most concerned with items C, D, E and F of the ordinance.

Should the Planning Commission approve In-N-Out conditional use permit, then any appeal would need to address one or more of the conditional use permit findings, above.

Solicitation of Business

CFSG asked whether or not In-N-Out was solicited by the City or if they inquired on their own. The response given by Mr. Kermoyan was that, while at an Economic Development conference in southern California about 18 months ago, he solicited In-N-Out for a location at Campbell's Campbell Village area which is located on Camden Ave between Bascom and Highway 17. There are four lots there considered "blight" and he thought In-N-Out would be a good fit to be located on the City's periphery in an area that is dominated by vehicles. Such a proposal there would have the ability to also remove several debilitated buildings. However, they found out that In-N-Out had been monitoring the site where Elephant Bar was located for about five years as they knew the restaurant chain was having problems and the location might eventually become available.

When we inquired as to what happened to asking In-N-Out about the Camden location, Mr. Kermoyan said that they couldn't get complete agreement with the owners of that location. They also did not like the access to the property. In-N-Out appears not to be interested in pursuing that location as their priority at this time is on Hamilton Ave.

Apparently, In-N-Out also approached the owner of the Shell/Staples location but their preference is the Elephant Bar location.

In-N-Out Model

In-N-Out Model generally requires that their restaurants be open until 1:30 A.M. Daniel Fama said that In-N-Out will not approve going forward without this model being followed.

Currently, City of Campbell does not allow a business to be open beyond 10 P.M. except with a conditional use permit for late night hours. This includes deliveries which must occur during operational hours.

Paul needs to inquire as to where the loading zone is for delivery trucks and how these deliveries would impact circulation of vehicles during business hours.

Processes for Traffic Study

The first step in this process is the Traffic Impact Analysis (TIA). Once this is complete, then the city must look at it and understand implications and results of the findings. The issues of hospital/emergency vehicles and delivery vehicles needs to be given to the traffic consultant to incorporate into their findings.

Supposedly, according to Daniel Fama, the traffic study was started last week. CFSG indicated that there have been no visual sightings of a study being done (and we were told the study would start on 9/11). Visual sightings would be having traffic counters across the roadway or having person(s) on street corners with their laptops or otherwise manually recording information. When the committee asked Mr. Fama HOW the study was being done, he responded that “there are multiple ways to do a study” (subsequently Mr. Fama informed CFSG that the counts were primarily conducted with pole-mounted cameras).

Timeline for traffic study is that the administrative draft will be completed approximately 6-8 weeks from last week (when the study was supposedly started). When the draft is received by the city, the Public Works Engineers will take a look at it along with other city officials. The city can pose further questions to issues that may have not been addressed and/or ask for clarification.

Some of the things looked at include (1) volume of existing traffic, (2) how the project would change the volume of traffic, (3) does it affect delay of intersection (and a rating is done on that). Often this scope of the report fails to take into consideration other feeder streets to the area. Therefore, an additional scope is added (4) to the Hamilton Avenue corridor analysis. For this report, the study includes all Hamilton Avenue intersections Bascom Ave and Winchester Avenue.

CFSG was informed that the City selects the traffic consultant, pays for the traffic study and is reimbursed for the total amount by In-N-Out. The cost, according to Daniel Fama, is approximately \$30,000.

Mr. Fama is aware that this restaurant permit is a special case. For normal traffic studies, there is a “trip generation manual” which helps them determine ranges of traffic generation for various popular types of stores and restaurants. It is known that In-N-Out is not comparable to any of the typical fast food restaurants so they must make assumptions that will be higher than the trip generation manual indicates. To help them, they will survey three (3) other In-N-Out locations which are comparable to the one being proposed for Hamilton Ave. CFSG asked which ones they were using because they are not aware of any that come close to the dynamics of this location. Mr. Fama indicated that the three were already chosen and did not feel that any others should be looked at. Again, the committee asked to be informed as to what locations were being used. Everyone concurred that we are likely not going to find three that fit exactly into our model, but we still wish to be informed. The traffic study will incorporate the findings of the other In-N-Out locations and use other studies to validate any assumptions that are made and the impact on traffic. As of September 13, CFSG has not heard from Daniel Fama about the three allegedly comparable locations.

The Traffic Impact Analysis administrative draft is not available for public review because the City needs to look at it for accuracies. They will work with W-Trans to ensure that all issues are addressed and included in documentation. This may need several revisions before a final report is ready to be released. Once released, the City will forward copies to CFSG, VTA, CalTrans, City of San Jose and any other agencies which are impacted by the proposed use of this property. These groups will have approximately 2-3 weeks to respond, in writing, any issues, concerns or comments.

Additional Studies

In addition to a traffic study, an Initial Study and an architectural review will need to be done in order to comply with City code. The architectural review is necessary because In-N-Out proposes taking down a structure and putting up a new one. The timeline for these was not identified by Paul Kermoyan or Daniel Fama as the project review is dependent on completion of the traffic study.

Communication Going Forward

1. Mr. Kermoyan suggested that the City meet with CFSG on a monthly basis to keep everyone in the loop about where things stand in regards to the In-N-Out proposal. CFSG representatives felt that a phone call could work as well and appreciated the offer.
2. It was agreed that there be some sort of place on the City’s website where general updates on city projects can be placed to keep residents informed.
3. It was also suggested that the City can use local media (i.e., Campbell Express) to inform residents.

Mr. Kermoyan stated that the City does not have an ordinance requiring the City or applicant to hold community meetings in advance of a hearing. They can choose to do so, but are legally not required to do so. (**Note: This will be looked at further by CFSG at some point in the future.)

While San Jose requires public forums to address any projects or policies which affect the community, City of Campbell does not. We can ask In-N-Out to hold a public forum for the purposes of allowing citizens to voice their concerns and have In-N-Out respond directly.

When asked by Paul if there were any concessions that we would agree to in order to allow In-N-Out to take up residence in the Hamilton Avenue location, he was told that there were none. In particular, Director Kermoyan asked if In-N-Out were to remove their drive-through, would that help the neighborhood form support of the project? The response was that it wouldn't. The CFSG representatives have formed an opinion that the majority of the community does not feel that In-N-Out is a good fit for this location under any circumstances due largely to traffic issues and feels there is absolutely no way that this can feasibly be mitigated to make it "fit." Jean noted that the CFSG Neighborhood flyer and yard sign both say "NO!" to In-N-Out at the Hamilton/Almarida intersection.

The meeting adjourned at noon. The next meeting will be coordinated with Charles Drew and Paul Kermoyan and relayed to CFSG committee members.

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