

From the Desk of Marshall B. Krupp

DA-00-01
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November 4, 2011

Chairman and Members of the Planning Commission
c/o Ms. Claire L. Flynn, AICP
Acting Assistant Development Services Director
City of Costa Mesa
77 Fair Drive
Costa Mesa, California 92626

Subject: Annual Review of Home Ranch Development Agreement DA-00-01
Home Ranch Development
Planning Commission November 14, 2011 Public Hearing
Written Testimony

Dear Chairman and Members of the Planning Commission;

I am a homeowner in the Ivy's portion of the Providence Park residential development that is governed by Development Agreement DA-00-01 for the Home Ranch development and is located east of Susan Street between South Coats Drive and Sunflower Avenue. I own the property located at 3367 Corte Levanto, Costa Mesa, 92626. I am a past President and member of the Board of Directors, and have a working knowledge of the Covenants, Conditions and Restrictions ("CC & R's"), Bylaws, and the Rules and Regulations of the Providence Park Community Association. I have degrees in Urban and Regional Planning and in Environmental Quality Management and Public Administration, and have been a consultant to cities, countries, redevelopment agencies, and school districts in the areas of community development, urban planning, environmental law, public/private agreements, impact mitigation, and public financing for over 40 year. I have a working administrative and legal knowledge of city planning, development agreements, CC & R's and the public hearing process.

I have received an Official City Notice setting forth the Costa Mesa Planning Commission public hearing on the Development Agreement for Monday, November 14, 2011 at 6:00 p.m. Unfortunately, I have to be out of town on business the evening of November 14, 2011 and cannot offer my oral testimony. Therefore, I am submitting this written testimony as my formal testimony regarding the review of the Development Agreement.

The CC & R's of the Providence Park Community Association were drafted, approved and recorded by Standard Pacific and the City of Costa Mesa in accordance with the Development Agreement and the Conditions of Approval of the Providence Park development and the Home Ranch Development Agreement. The CC & R's were recorded with the County of Orange by the Standard Pacific, the developer of Providence Park on October 3, 2003. The Bylaws of the Providence Park Community Association was also recorded as Attachment "C" of the CC & R's. The CC & R's and Bylaws are required to be enforced by the Board of Directors of the Association and the City is required to ensure enforcement pursuant to the Development Agreement. The City also has certain enforcement rights and obligations that are provided in the CC & R's to insure enforcement and compliance in order to protect the rights of the residents of the Providence Park development and to insure that the application of the City's project approvals are protected.

The content of this letter sets forth a number of concerns with regards to the implementation and compliance with the Development Agreement, including compliance with the CC & R's and Bylaws. I am requesting that the Planning Commission direct the City of Costa Mesa Development Services Department and City Attorney to take

the appropriate enforcement procedures and legal actions to obtain compliance of the Providence Park Community Association and the Board of Directors with regards to the issues raised herein and the CC & R's and Bylaws of the Providence Park Community Associations.

I further request that the City take the appropriate actions to address the other issues raised herein that are specifically under the jurisdiction of the City and not the Providence Park Community Association, such as the issues relating to traffic and circulation on Susan Street and the other issues relating to the U.S. Post Office at the northeast corner of Susan Street and Sunflower Avenue.

Finally, I request that this public hearing be continued to the next scheduled meeting of the Planning Commission, so that I and others can attend the public hearing and so that the City can formally invite the Board of Directors of Providence Park Community Association to attend the meeting and address the issues raised herein before the Planning Commission, prior to the Planning Commission taking any further action on the annual review of the Development Agreement so that they can make informed decisions.

Failure to take the actions requested herein would perpetuate the conditions and would result in further deterioration and devaluation of the Providence Park development, which may require further more intense enforcement in the future by the City, and that could lead to legal liability for the City of Costa Mesa.

There are a number of particular issues that I offer for consideration by the Planning Commission. These are discussed herein:

Providence Park Parking and Garages

The most serious of the issues internal to Providence Park is the failure to obtain compliance with the street and garage parking requirements set forth in the CC & R's and which were directly related to the variance which Standard Pacific received regarding to compliance with the City's parking requirement for the Laurel's and the Ivy's at Providence Park. It is my understanding in reviewing the public record of the Home Ranch development and the Conditions of Approval, that adequate and available parking and compliance with the parking requirements of the City was a significant concern of the City at the time that the Providence Park portion of the Home Ranch development was considered. This is evident in the environmental documentation, the Staff reports at the time, the Conditions of Approval and the supporting documentation. It was and continues to be a serious topic.

As such, the City required specific Conditions of Approval and further required that the CC & R's contain specific limitations and restrictions with regards to street parking, driveway parking, and the use of garages for something other than parking spaces (i.e. storage or garage conversions). The CC & R's contain the following (emphasis added):

"2.6. PARKING AND VEHICULAR RESTRICTIONS.

2.6.1. Authorized Vehicles. The following vehicles are "Authorized Vehicles": standard passenger vehicles including automobiles, passenger vans designed to accommodate ten (10) or fewer people, motorcycles, and pick-up trucks having a manufacturer's rating or payload capacity of one (1) ton or less. Authorized Vehicles may be parked in any portion of the Properties intended for parking of motorized vehicles; however, no Owner may park a vehicle so that it encroaches onto the sidewalk or other public or private right-of-way. The Master Association has the power to identify additional vehicles as Authorized Vehicles in the Rules and Regulations and to adapt this restriction to other types of vehicles.

2.6.2. Prohibited Vehicles. The following vehicles are "Prohibited Vehicles": (a) recreational vehicles (e.g., motorhomes, travel trailers, camper vans, boats, etc.), (b) commercial-type vehicles (e.g., stakebed trucks, tank trucks, dump trucks, step vans, concrete trucks and limousines), (c) buses or vans designed to accommodate more than ten (10) people, (d) vehicles having more than two (2) axles, (e) trailers, (f) inoperable vehicles or parts of vehicles, (g) aircraft, (h) any vehicle or vehicular equipment deemed a nuisance by the Board, and (i) any other vehicle not classified as an Authorized Vehicle. Prohibited Vehicles may not be parked, stored or kept on any public or private street in, adjacent to or visible from the Properties, any driveway of a Lot or Condominium, any Master Association Property or any Neighborhood Association Property parking area except for brief periods for loading, unloading, making deliveries or emergency repairs, or if parked in an Owner's fully enclosed garage with the door closed. Prohibited Vehicles may only be parked in an Owner's fully enclosed garage with the door closed so long as their presence in the Properties does not otherwise violate this Master Declaration. If a vehicle qualifies as both an Authorized Vehicle and a Prohibited Vehicle, then the vehicle is presumed to be a Prohibited Vehicle, unless the vehicle is expressly classified as an Authorized Vehicle in writing by the Board.

2.6.3. General Restrictions. Subject to the restriction on Prohibited Vehicles, all vehicles owned or operated by or under the control of an Owner or a resident of an Owner's Lot or Condominium and kept in the Properties must be parked in the garage of that Owner to the extent of the space available; provided that each Owner shall ensure that any such garage accommodates at least two (2) Authorized Vehicles. No maintenance or restoration of any vehicle may be conducted on the Properties except in an enclosed garage when the garage door is closed, provided such activity is not undertaken as a business, and provided that such activity may be prohibited entirely by the Board if the Board determines that it constitutes a nuisance. In addition, Owners are not permitted to change or use a different type of garage door opener from the type originally installed by Declarant. No parking is permitted in front of the garage doors of the Condominiums in the Properties; however, parking is permitted in front of the garage doors of the Lots.

2.6.4. Parking Regulations. The Board may establish additional regulations regarding any parking areas not assigned to individual Lots or Condominiums, including designating "parking," "guest parking," and "no parking" areas. The Board may take all actions necessary to enforce all parking and vehicle use regulations for the Properties including removing violating vehicles from the Properties pursuant to California Vehicle Code Section 22658.2 or other applicable law. If the Board fails to enforce any of the parking or vehicle use regulations, the City may enforce such regulations."

Clearly, the CC & R's provide that each owner of a townhome in the Laurel's and a home in the Ivy's is required to ensure that their garages can accommodate two authorized vehicles. There are a significant number of townhomes in the Ivy's and an equal number of homes in the Laurel's that are using their garages for storage or for other purposes (garage conversions) that prevent the garages from being able to accommodate two vehicles. Instead, townhome owners are parking their vehicles on the streets and home owners are parking their vehicles on their driveways or on the streets in violation of the CC & R's.

The Board of Directors of the Providence Park Community Association has specifically chosen to not enforce these provisions of the CC & R's. It is noted that even several of the Board of Directors themselves are in violation of these provisions. Rather than complying with the provisions that "subject to the restriction on Prohibited Vehicles, all vehicles owned or operated by or under the control of an Owner or a resident of an Owner's Lot or Condominium and kept in the Properties must be parked in the

garage of that Owner to the extent of the space available”, the Board of Directors of the Providence Park Community Association has allowed these provisions to be violated contrary to desires of many homeowners and townhome owners in the Community. The Board of Directors has taken this even further by issuing variances to the CC & R’s to allow homeowners and townhomes owners to violate the provisions of the CC & R’s for reasons that are not valid.

The lack of compliance of the CC & R’s relating to the parking of vehicle, the lack of providing parking spaces in garages, and the alternative use of garages for storage and other purposes has caused the number of vehicles parking on the streets to increase, the aesthetic character of the development to be adversely affected due to the large number of vehicles parked on driveways, and has created a fire hazard directly related to the unkempt garage storage. The fire hazard is a serious concern for the homes within the Ivy’s’, but even more of a concern with the townhome in the Laurel’s, due to the common walls of the building, townhome and garages. Even though the City required significant fire protection measures in Providence Park, including the sprinkling of all townhomes and homes, the use of garages for the purpose of unkempt storage in place of open space areas within the garages for the parking of vehicles is a significant nuisance for adjoining homeowner and is a serious safety concern and hazard for the homes and townhomes in the development.

The Board of Directors of the Providence Park Community Association is the legal authority for ensuring compliance with the CC & R’s. Even the Board of Directors of the Laurel’s Community Association who represents the Laurel’s portion of Providence Park has brought this to the attention of the Board of Directors of the Providence Park Community Association and has sought their enforcement, only to be advised by the Providence Park Community Association Board of Directors that they do not intend to enforce the provisions of the CC & R’s with regards to the parking provisions of Sections 2.6.3.

In accordance with the provisions of Section 2.6.4 which provides that “If the Board fails to enforce any of the parking or vehicle use regulations, the City may enforce such regulations”, it is hereby formally requested that the City enforce the parking and vehicle use regulations, particularly as they relate to the provisions of Section 2.6.3 of the CC & R’s.

This is a serious problem that was contemplated in conjunction with the approval of the project and the Development Agreement, and was addressed by the Planning Commission at the time that the project’s Conditions of Approval were considered and the parking variance authorized by the City. As such, the City has a fiduciary responsibility to ensure enforcement of the CC & R’s relating to the applicable parking and vehicle restrictions of the development.

The City is requested and should take all necessary steps to insure that the CC & R’s are complied with and that the Board of Directors of the Providence Park Community Association be directed to enforce all provisions of the CC & R’s in compliance with the approvals of the development, the Conditions of Approval of the project and the Development Agreement.

The provisions of Article XVII of the CC & R’s entitled “City Required Provisions” are noted and contain in part, the following:

“17.1. CITY REQUIREMENTS. The covenants, conditions and restrictions contained in this Master Declaration shall run to the City insofar as they apply to the maintenance of the Master Association Property.

17.2. CITY ENFORCEMENT. In the event the Master Association or other legally responsible person(s) fails to maintain the Master Association Property in such a manner as to cause the

Master Association Property to constitute a public nuisance, the City may, upon reasonable notice and hearing, institute summary abatement procedures and impose a lien for the costs of such abatement upon the Master Association Property or individual Lots or Condominiums, as provided by law.”

The streets within Providence Park are part of the Master Association Property. The failure of the Board of Directors to enforce the parking provisions of the CC & R's is causing the streets to not be maintained in accordance with the intent and purpose of the CC & R's with regards to the number of parking spaces that were approved for the development as a result of the parking variance provided by the City when the development was approved. The City has an obligation to step in and address this situation, particularly if the Board of Directors of the Providence Park Community Association has chosen to not enforce the parking and garage provisions of the CC & R's.

Excess Vehicle Speeds

This is a consistent problem within the gates of Providence Park with regards to the excess speed of vehicle and the lack of law enforcement of the speed requirements. This is creating an unsafe condition for pedestrian and continuous vehicle conflicts. The posted speed limit is 10 mph. However, regularly vehicles are traveling in excess of 20-30 mph through the neighborhood. The Costa Mesa Police Department is unwilling or unable to patrol the neighborhood because the City established Providence Park with private streets. The Board of Directors of the Providence Park Community Association has been unable to implement solutions to address this problem. There will be in the future an accident that will have a significant cost to a resident of Providence Park, and potentially to a child living the area.

The Community has a large number of younger children who are now playing in the streets, and the numbers are growing as a result of the number of families that reside in Providence Park. This issue needs to be addressed by the City with the Board of Directors of the Providence Park Community Association in light of the fact that the mitigation of the traffic impacts of the development was a part of the Conditions of Approval and the Development Agreement. Failure to address this situation would perpetuate the unsafe and hazardous conditions and the City's failure to address it after it was brought to the attention of the City would potentially transfer liability to the City in the event of an incident.

Stop Sign at Via Luca

When Providence Park was developed there was no stop sign installed at the intersection of Via Luca and Susan Street for the west bound traffic exiting Providence Park. The result is that vehicles exiting Providence Park do not stop for the traffic traveling north or south on Susan Street. A number of accidents have occurred due to the limited restrictions in this area. A stop sign should be installed at the northeast corner of Via Luca and Susan Street to establish some clarity as to who has the right of way at this intersection and to provide for the further safety for the vehicles exiting Providence Park. This is particularly critical due to the fact that Susan Street has become a heavily traveled street and has a significant number of trucks.

Traffic Blocking Providence Park Entrance

This is an issue that the City may not be aware of. Although the north bound traffic on Susan Street from South Coast Drive is two lanes, the lanes change after Via Luca with one going north bound and the second becoming a right turn lane. The result is that stopped traffic going north bound backs up in the thru lane blocking Via Luca during high traffic volumes, thereby preventing the Via Luca traffic from turning left to go south bound. There needs to be pavement markings extending from the south side of

Via Luca to be located on Susan Street that requires traffic to not block the intersection of Via Luca and Susan Street. This would provide for a safer traffic situation and would minimize the constraints that north bound traffic on Susan Street has on the traffic exiting Via Luca.

Truck Traffic Violations

Truck traffic is prohibited north bound from 10:00 p.m. to 6:00 a.m. on Susan Street due to the noise and vibration impacting the residences of Providence Park that back up to Susan Street. However, trucks consistently violate this prohibition and travel on Susan Street prior to 6:00 a.m. and after 10:00 p.m. There is no Costa Mesa Police Department law enforcement in the area. The result is that there are consistent and constant violations. In addition, the hours of prohibition should be revised to 9:00 p.m. to 8:00 a.m. due to the fact that the noises of the trucks are of serious impacts on the sleeping hours of the residents in the area. Most of these vehicles in the early morning and the evenings are directly related to the deliveries to and from the U.S. Post Office at Susan Street and Sunflower Avenue. There are alternative routes that could be used which would not affect the traffic on these alternative streets at these times. The modification of the prohibition hours would have a positive effect on the residents of Providence Park.

Deterioration of Susan Street Pavement Surfaces

Due to the stop-and-go heavy truck traffic on Susan Street, the surface area of Susan Street is deteriorating at a rapid rate. Already there is a significant pothole that is located approximately 30-50 feet south of the intersection of Susan Street and Sunflower Avenue in the north bound lanes that the City has failed to correct. This is causing vehicles to swerve and is causing further unsafe and hazardous conditions. This condition needs to be monitored and corrected.

Susan Street/Sunflower Avenue Intersection Congestion

Much of the increased traffic on Susan Street is directly related with the traffic patterns of the U.S. Post Office at the northeast corner of Susan Street and Sunflower Avenue. With the increased in traffic, the driveway entrance to the public parking lot at the Post Office being on Susan Street and being so close to the corner of Susan Street and Sunflower Avenue, and Susan Street north of Sunflower Avenue being a single lane in each direction, there is considerable congestion at the corner of Susan Street and Sunflower Avenue. Not only does this create traffic in the intersection, it also creates back up in the north bound lanes of Susan Street, south of Sunflower Avenue.

The Post Office parking lot should be redesigned and reconfigured to close the drive way on Susan Street and instead have an alternative driveway entrance off of Sunflower Avenue east of Susan Street. There is more than adequate public right-of way to have stacking of vehicles on Sunflower Avenue, then to have it on Susan Street. This would also eliminate a significant amount of traffic at the intersection of Susan Street and Sunflower Avenue, and would make the north bound traffic of Susan Street more efficient going through the intersection. It is noted that there is a public parking areas north of the Post Office that would still have adequate access from Susan Street and would provide access/egress for users of the Post Office with this modification that has been offered.

Susan Street Traffic Congestion North of Sunflower Avenue Due to Vehicle Mail Drop Off

There is located a vehicle mail drop-off area on the east side of Susan Street, north of Sunflower Avenue. Although there are two mail boxes for mail drop-off, there is inadequate separation between the mail boxes to allow two vehicles to be dropping off mail at the same time. This is a partial reason for the back

up of vehicles that are entering the vehicle mail drop-off area. The mail boxes should be relocated so that there is greater separation between them to allow two vehicles to drop-off mail at the same time. This would speed up the vehicle drop-off activities and would minimize the back up of vehicles on Susan Street in the north bound lanes.

There is adequate area that is already provided with curbs and proper pavement surface. All that needs to be done is that one of the mail boxes needs to be relocated south of its current location or an additional mail box needs to be added to the area. This is a simple solution that would have significant benefit to the traffic pattern of the area.

Susan Avenue Vehicle Speed

Susan Avenue is posted with a maximum speed limit of 35 mph. However, due to the fact that the vehicles traveling north bound on Susan Street come off the north bound lanes of the 405 Freeway at the Susan Street off-ramp, the vehicle speeds regularly are in excess of 35 mph. There is limited enforcement of the speed limit by the Costa Mesa Police Department due to the area being on the fringe of the City's boundaries and further due to the limited resources allocated to traffic law enforcement by the City. A request was made for a radar speed limit device (similar to the one on Adams Street) to be permanently installed in the area to warn violators of their speed. The City rejected this due to limited financial resources. Since, the request was made, the problem has become more significant and is creating a hazardous and unsafe condition for the area.

Street Sweeping Time

Apparently, the City maintains a street sweeping service for Susan Street and Sunflower Avenue that conducts street sweeping maintenance once a month. The street sweeping is conducted between 3:00 a.m. and 4:00 a.m. in the morning once a month and includes two passes of the equipment vehicle. The street sweeping equipment vehicle is extremely loud and far exceeds the ambient noise levels at that time of the early morning. The noise affects the sleeping homeowners that have residences that back up on Susan Street and Sunflower Avenue, thereby impacting the peace and tranquility of Providence Park residents. The street sweeping routing and time of activity in this area cannot be driven by the general character of the areas being light industrial and office. As such, the street sweeping times should be modified so that the noise does not affect the residents of Providence Park.

I believe that that Planning Commission has a responsibility to the residents of Providence Park to take the necessary and appropriate actions to protect the homeowners that have purchased homes or townhomes in Providence Park. Further, the Planning Commission has a responsibility to insure that the CC & R's are complied with, that the Conditions of Approval are enforced, and that the Development Agreement is implemented in accordance with the intent of the approvals of the Planning Commission and the City Council.

In the event that the Planning Commission is of the belief that they do not have the authority or responsibility to address these issues, then it would appear that this written testimony should be forwarded to the City Council of the City of Costa Mesa so that they, the Administration, and the City Attorney can address these matters from a legal and administrative perspective.

Please advise me by notice of the date and time of any meeting if any of these matters are to be continued to a subsequent meeting of the Planning Commission or if any of these matters will be referred to the City Council for their consideration.

Thank you for your consideration and assistance. I look forward to a follow up correspondence advising me of the status of these matters and the actions that will be taken.

Sincerely,

Marshall Krupp

Mr. Marshall B. Krupp

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Letter – Costa Mesa Planning Commission Development Agreement Review 2011-11-04

CC: Mayor and Members of the City Council
c/o Ms. Tom Hatch, Chief Executive Officer
City of Costa Mesa
77 Fair Drive
Costa Mesa, California 92626