
**CITY OF DANA POINT
PLANNING COMMISSION
REGULAR MEETING MINUTES**

September 6, 2006
7:10 p.m. – 12:22 a.m.

City Hall Offices
Council Chambers (#210)
33282 Golden Lantern
Dana Point, CA 92629

CALL TO ORDER – Chairman Schoeffel called the meeting to order.

PLEDGE OF ALLEGIANCE – Vice-Chairman Weinberg led the Pledge of Allegiance.

ROLL CALL

Commissioners Present: Commissioner Norman Denton, Commissioner Liz Anderson-Fitzgerald, Commissioner April O'Connor, Chairman J. Scott Schoeffel, and Vice-Chairman Steven Weinberg

Staff Present: Kyle Butterwick (Director), John Tilton (City Architect/Planning Manager), John Ramirez (Assistant City Attorney), Erica Williams (Senior Planner), Christy Teague (Economic Development Manager), Brenda Chase (Senior Planner), and Bobbi Ogan (Planning Secretary)

A. APPROVAL OF MINUTES

ITEM 1: Minutes of the regular Planning Commission Meeting of August 16, 2006.

ACTION: Motion made (O'Connor) and seconded (Denton) to approve the Minutes of the regular Planning Commission Meeting of August 16, 2006. Motion carried 4-0-1. (AYES: Denton, Fitzgerald, O'Connor, Schoeffel NOES: None ABSENT: None ABSTAIN: Weinberg)

B. PUBLIC COMMENTS

Lisa Bartlett (Capistrano Beach) spoke about the median at the end of Doheny Place and Palisades. She stated that the artificial grass and plants did not suit the area and felt that other things could be done that would look natural such as drought tolerant plants or river rock. She added that the Planning Commission needs to take this into consideration because of the artificial plants proposed for the Town Center. She stated that she and her neighbors were in the process of

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putting together a petition to be submitted to the City regarding their interest in having the landscape changed. She invited the Planning Commission to come out and view the median.

Brian Starr (Irvine – Building Industry Association (BIA)) stated that the public hearing for the General Plan Amendment, Inclusionary Housing Program, and the Density Bonus Program was improperly noticed. He added that it was the opinion on the BIA attorneys that the Planning Commission may be in violation of the Brown Act should the public hearing commence tonight. He asked for the item to be continued to allow for proper notice of the hearing to be given to the public.

John Ramirez (Assistant City Attorney) *replied that the law in their view was fairly clear with respect to notice that an allegation with respect to improper notice is in effect cured to the extent that someone has notice and obviously the BIA representatives are here and are free to participate in the hearing and certainly can participate in the deliberative process.*

Kyle Butterwick (Director) stated that this issue was brought to staff's attention this afternoon and that we had an opportunity to consult with the City Attorney and compare closely the notification process and the language in the documents. He added that the representative from the BIA was correct that the public notice which appeared in the newspaper did identify the Community Center as the location for the public hearing on the Housing Element. He stated that however, the official Agenda for this evening had identified the City Council Chambers as the proper venue for the location of the hearing and had been properly posted. He added that staff had placed signage at the Community Center so if anyone did show up expecting to attend the public hearing they would be directed to come back to the City Council Chambers. He stated that there was also Staff at the Community Center that would assist in directing people back to the Council Chambers and if they needed to be transported here to participate in the hearing, that service would be offered to them as well. He added that any comments the Planning Commission might have on the Housing Element tonight will be a recommendation to the City Council and that there will be additional noticing for the City Council as part of their public hearing and deliberations on the Element and that would provide additional opportunity for the public to be heard and represented. He stated that it was his recommendation that the Planning Commission proceed with the hearing.

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C. CONSENT CALENDAR

ITEM 2: General Plan Amendment GPA04-01, Zone Change ZC04-01, Tentative Tract Map TTM16730 and Site Development Permit SDP06-25 for 35200 and 35322 Del Rey.

Recommendation: Approval of language contained in Resolution No. 06-09-06-XX.

ACTION: Motion made (O'Connor) and seconded (Denton) to approve the Consent Calendar. Motion carried 4-0-1. (AYES: Denton, Fitzgerald, O'Connor, Schoeffel NOES: None ABSENT: None ABSTAIN: Weinberg)

D. PUBLIC HEARINGS

ITEM 3: General Plan Amendment (GPA06-01) and Municipal Code Amendment to update the Housing Element and adopt an Inclusionary Housing Program and Density Bonus Program.

Location: Citywide

Environmental: In accordance with CEQA, a draft Negative Declaration has been prepared for the proposed Ordinances. The Housing Element is proposed to be "approved in concept" at this time. CEQA compliance for adoption of the Housing Element will be addressed following comments and certification from the State Housing & Community Development and prior to the City's final adoption of the Element.

Recommendation: That the Planning Commission review the draft Housing Element and related housing programs and adopt the attached Resolutions recommending that the City Council:

1. Approve in concept the updated Housing Element, amend the General Plan and authorize staff to forward it to the State Housing and Community Development for certification (Action Document A);
2. Approve the Negative Declaration for the Inclusionary Housing and Density Bonus Programs (Action Document B);
3. Approve an amendment to the Dana Point Municipal Code Section 4.50 to incorporate an Inclusionary Housing Program (Action Document C); and

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4. Approve an amendment to the Dana Point Municipal Code Section 4.40 to incorporate a Density Bonus Program (Action Document D).

Brenda Chase (Senior Planner) reviewed the staff report.

Christy Teague (Economic Development Manager) reviewed the proposed Inclusionary and Density Bonus Programs.

Kathleen Head (Keyser Marston Associates – City Consultant) reviewed the analysis used for the creation of the proposed programs.

John Ramirez (Assistant City Attorney) stated that after review of the Inclusionary Housing Ordinance it was determined that Section 4.50.034 had been left out and that a copy of the language was provided on the dais for each Commissioner. He added that this provision was modeled after other Inclusionary Housing Ordinances and its purpose was to ensure that no unlawful exactions occur. He stated that the Courts have effectively required these types of savings clauses to be part of these types of Ordinances.

Chairman Schoeffel opened the Public Hearing.

Bob Montgomery (Dana Point – BIA) stated that he was opposed to the proposed Inclusionary Housing Program. He added that it was not a requirement of State Law that the City have an Inclusionary Housing Program. He felt that the program would only increase the cost of housing for the market rate buyer and asked the Commission to not recommend adoption of the Ordinance.

Brian Starr (Irvine – BIA) stated that he was in opposition of the proposed Inclusionary Housing Program. He felt that the number of income potential qualified buyers was very limited and that the program would be devastating to the new home buyer because the costs would be passed on to the buyer. He added that the California Department of Housing and Community Development takes the position that Inclusionary zoning translates into higher prices for new homebuyers and that they discourage the use of Inclusionary programs.

Judy Rice (Laguna Hills) stated that the City has not yet replaced the 90 units that were taken away with the closure of the mobile home park and that the City only has one (1) year left to do so.

Lisa Bartlett (Capistrano Beach) agreed that the City needs to address the affordable housing issue, but the proposed programs have raised a number of concerns. She stated that it is the developers who will be burdened with the costs and those costs will be passed on to the market rate buyer. She added

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that the City needs to address affordable housing and that it might be best addressed by providing affordable rental housing. She suggested that before the City develops some of the key parcels of land and using them for affordable housing, that the City should consider working with the South Coast Water District. She stated that the Housing Element issues should be addressed separately to allow more time to look into the various options and financial impacts of the Inclusionary Housing Program.

Pat Plepler (Dana Point) asked for the Commission to recommend to the City Council that they go forward with this update before a new Council is in place.

Carol McDermott (Newport Beach) stated that it was not clear what the criteria would be to be eligible for the payment of in lieu fees. She added that there was a question whether politically the City could ever approve Density Bonuses. She stated that in trying to meet affordable housing requirements with ownership units that there would be a problem with homeowner association dues. She added that dues could not be allocated to affordable units so that would require the other owners within that development to pay more than their fair share for common area maintenance. She suggested that it may be appropriate to hold off on the adoption of the proposed Programs until the City understands the full ramifications of any recommendations from the State on the Housing Element. She stated that the Building Industry Association offers as a value to the Cities a way to test the theories that are being proposed and put them into place in terms of an actual project to see how they will really work.

Chairman Schoeffel closed the Public Hearing and recessed the meeting at 8:36 p.m. Chairman Schoeffel reconvened the meeting at 8:50 p.m.

Commissioner Fitzgerald suggested that the starting point be five (5) units instead of three (3) units for the affordable housing component. She stated that she does not know how to resolve the potential for increased height in the Town Center.

Commissioner Denton felt that an Inclusionary Housing Program worked better in an area where there was land for a large development as opposed to Dana Point where the City is mostly built-out. He agreed with Commissioner Fitzgerald that the threshold should begin at five (5) units. He stated that he was concerned with the City accumulating the in-lieu fees and how the money is managed. He stated that he was uncomfortable with the heights in Town Center and with the City having no control over how parking would be dealt with. He added that it would not be fair to force the hotels to be responsible for affordable housing.

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Commissioner O'Connor stated that she agreed that the number of units should be increased to five (5). She felt that there was no enforcement mechanism in place to monitor the affordable units. She stated that she would be interested in lowering the price per square foot for the in lieu fees because she felt they were too high and that she would agree to a sliding scale.

Vice-Chairman Weinberg stated that he agreed with Commissioner Fitzgerald that five (5) or more units would make more sense in Dana Point. He added that he would support the proposals and recommends forwarding the Housing Element to the City Council.

Chairman Schoeffel stated that he agreed with raising the threshold of affordable housing units. He added that he liked the in lieu fee being based on price per square foot but that it still needs some fine tuning. He stated that he was prepared to recommend the draft Housing Element to the City Council with those specific recommendations.

Vice-Chairman Weinberg recommended five (5) units at 60% and full price at ten (10) units for a sliding scale.

Commissioner Denton recommended that the Density Bonus Program be amended to not allow Density Bonuses that would permit any height in excess of what has been proposed for Town Center.

Vice-Chairman Weinberg suggested that Commissioner Denton's recommendation apply Citywide, not just to the Town Center.

Commissioner Fitzgerald stated that she would support the amendment of the Density Bonus.

Commissioner O'Connor proposed that the in lieu fees be used for housing rehabilitation.

ACTION: Motion made (Fitzgerald) and seconded (Schoeffel) to adopt Resolution 06-09-06-35 recommending that the City Council "Approve In Concept" a General Plan Amendment to update the Housing Element subject to the exclusion of that portion of the General Plan Amendment which includes the Density Bonus/height increase. Motion carried 5-0. (AYES: Denton, Fitzgerald, O'Connor, Schoeffel, Weinberg NOES: None ABSENT: None ABSTAIN: None)

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ACTION: Motion made (O'Connor) and seconded (Fitzgerald) to adopt Resolution 06-09-06-36 recommending that the City Council approve Negative Declaration establishing Density Bonus and Inclusionary Housing Programs subject to:

1. The inclusion of a sliding scale starting at 60%.
2. The threshold number of units increased to five (5).
3. No Density Bonus that would allow a height increase Citywide.
4. Allowing the use of in lieu fees for housing rehabilitation.

Motion carried 5-0. (AYES: Denton, Fitzgerald, O'Connor, Schoeffel, Weinberg NOES: None ABSENT: None ABSTAIN: None)

ACTION: Motion made (Schoeffel) and seconded (Weinberg) to adopt Resolution 06-09-06-37 recommending that the City Council amend the Municipal Code to establish an Inclusionary Housing Program subject to:

1. The inclusion of a sliding scale starting at 60%.
2. The threshold number of units increased to five (5).
3. No action that would allow a height increase Citywide.
4. Allowing the use of in lieu fees for housing rehabilitation.

Motion carried 5-0. (AYES: Denton, Fitzgerald, O'Connor, Schoeffel, Weinberg NOES: None ABSENT: None ABSTAIN: None)

ACTION: Motion made (Denton) and seconded (Schoeffel) to adopt Resolution 06-09-06-38 recommending that the City Council amend the Municipal Code to establish a Density Bonus Program subject to no Density Bonus that would allow a height increase Citywide. Motion carried 5-0. (AYES: Denton, Fitzgerald, O'Connor, Schoeffel, Weinberg NOES: None ABSENT: None ABSTAIN: None)

Chairman Schoeffel recessed the meeting at 9:45 p.m. and reconvened the meeting at 9:55 p.m.

ITEM 4: An appeal of a decision by the Director of Community Development regarding Site Development Permit SDP03-52M and Variance V03-23 for a new single-family dwelling at 34111 Street of the Blue Lantern.

Applicant: Robert Theel Company
Owner: James F. DeCarli
Location: 34111 Street of the Blue Lantern

Request: An appeal of the Director's determination that the plans submitted for building permits are in substantial conformance with the original approval of Site Development Permit SDP03-52M and Variance V03-23.

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Environmental: The proposed project qualifies as a Class 3 exemption (Section 15303) pursuant to the applicable provisions of the California Environmental Quality Act (CEQA) in that the project involves the construction of a single-family residence and associated retaining walls.

Recommendation: That the Planning Commission adopt the attached draft Resolution denying the appeal of the Director's decision determining that the construction plans for the new single-family dwelling at 34111 Street of the Blue Lantern are in substantial conformance with approved plans for Site Development Permit SDP03-52M and Variance V03-23.

John Tilton (City Architect/Planning Manager) reviewed the staff report.

Chairman Schoeffel opened the Public Hearing.

Jack Hamilton (Dana Point) reviewed a PowerPoint presentation which included slides of the proposed home from previous plan submittals. He stated that staff acknowledges that the stated square footage on the approved plan was understated by more than 200 square feet. He added that he believes the current drawing even though it states the square footage is 149 square feet more than the approved plan is still understating the actual square feet by about 300 square feet. He stated that the project should come back to the Planning Commission as a new application with the proper detailing or resubmit the plans corrected as approved.

Bob Theel (Dana Point) stated that the current standing City policy allows for two (2) council persons to appeal a land use decision without submitting an appeal fee. He felt that the appeal was not adequate because only one councilmember had appealed.

Chairman Schoeffel recessed the meeting at 10:55 p.m. to allow staff time to research the Code regarding appeal procedures. It was noted that Vice-Chairman Weinberg was not feeling well and left the meeting at 10:55 p.m. Chairman Schoeffel reconvened the meeting at 11:00 p.m.

John Ramirez (Assistant City Attorney) *replied that the Zoning Code has two (2) separate appellate processes that it refers to. He stated that the appellate process that Mr. Theel had referred to is the appellate process set forth in the General Administrative and Personnel section of the Municipal Code which states that it does not apply where other appellate procedures are set forth in the Code. He added that the Zoning Code, Section 9.61.110 provides broad appellant rights to basically anyone and does not require a fee at all by its very*

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terms. He stated that it was his view that the Planning Commission has jurisdiction to hear the appeal.

Bob Theel (Dana Point) apologized for the interruption and stated that when the Chairman had introduced the topic with Mr. Hamilton as the appellant, it had raised the question.

Jim DeCarli (Dana Point) stated that he agreed with the staff report and felt that staff had done a commendable job in understanding the issues. He asked the Planning Commission to deny the appeal and issue his building permit.

Harold Larson (Dana Point – Structural Engineer) explained the reasoning behind the proposed excavation.

Bob Theel (Dana Point) stated that the approved plans and the construction plans have been compared and have been found to be in substantial conformance.

Norm Jackes (Dana Point) felt that the developer had overstated the steepness of the slope and understated the square footage allowed. He stated that the proposed home would be 10% larger than what he should be allowed. He suggested the Commission table their decision on this project to a later date so the developer could erect the story poles that he had promised his neighbors three (3) years ago.

Herb Hueg (Dana Point) felt that Variances were bad policy and that the property owner had designed a house that he wanted, not what fit the Code.

Ted Toch (Dana Point) stated that he was concerned with the amount of excavation proposed for the home. He felt that there has been a contradiction of statements on the record.

Jack Hamilton (Dana Point) stated that it was important to note that the slide that shows the shallow storage area at the rear of the building is exactly what this Planning Commission had unanimously denied. He added that Mr. DeCarli came back to the Commission with two changes to the project that changed your denial into an approval and one of those changes was the elimination of that shallow storage; moving the foundations higher to ease neighbors' concerns.

Jim DeCarli (Dana Point – Property Owner) stated that the planning set of plans did not include structural engineering or grading. He added that engineering and grading comes after approval. He stated that the additional details were added

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by the structural engineer and the grading engineer. He felt that the rear setback issue had already been addressed previously by the Court of Appeal.

Chairman Schoeffel closed the Public Hearing.

Commissioner O'Connor felt that there have been miscalculations on the square footage and that the construction plans were not in compliance with the approved plans. She stated that she would support the appeal.

Commissioner Denton stated that after reviewing the plan comparisons and listening to the testimony that there did not appear to be a substantial difference in the plans. He added that he would not support the appeal.

Commissioner Fitzgerald stated that she did not think that the plans had changed. She added that she was concerned with the two (2) voids shown on the plans and what could be done with them in the future.

Chairman Schoeffel stated that the construction plans complied with the approved plans and felt that there was not enough evidence to overturn the Director's decision.

ACTION: Motion made (Fitzgerald) and seconded (Schoeffel) to adopt Resolution 06-09-06-39 denying the appeal of the Director's decision.
Motion carried 3-1-1. (AYES: Denton, Fitzgerald, Schoeffel NOES: O'Connor ABSENT: Weinberg ABSTAIN: None)

E. PUBLIC MEETINGS

There were no Public Meetings.

F. OLD BUSINESS

There was no Old Business.

G. NEW BUSINESS

There was no New Business.

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H. STAFF REPORTS

Kyle Butterwick (Director) reported that the City Council would be conducting a public hearing on the Harbor Plan at their meeting next week. He stated that there have been some changes to the Plan since the Planning Commission had last reviewed it.

He stated that at the last City Council meeting, that the City Council had supported the Planning Commission's determination on the Chula Vista approval. He added that subsequent to the Council's approval of that project the neighbors appealed before the Coastal Commission a question and request for the Commission to entertain an appeal of the City Council's determination based on some issues relative to the Coastal Act. He stated that the Coastal Commission had responded back today denying the request of any consideration of any future appeal before the Coastal Commission. He added that the City's decision on the Chula Vista project stands.

John Tilton (City Architect/Planning Manager) reported that there had been two (2) open house meetings for the Town Center. He stated that about 200 people had attended.

I. COMMISSIONER COMMENTS

Commissioner Denton stated that the Town Center open house was well done and that he had received positive comments from the public. He added that he was excited to see progress on the Plan.

Commissioner Fitzgerald stated that the work on the Housing Element was well done.

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J. ADJOURNMENT

Chairman Schoeffel announced that the *next regular* meeting of the Planning Commission will be held on Wednesday, September 20, 2006, beginning at 7:00 p.m. (or as soon thereafter) in the Dana Point Community Center located at 34052 Del Obispo, Dana Point, California.

The meeting adjourned at 12:22 a.m.

J. Scott Schoeffel, Chairman
Planning Commission