

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

July 22, 2013
6:00 – 8:20 p.m.

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

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

PLEDGE OF ALLEGIANCE – Commissioner Denton led the Pledge of Allegiance.

ROLL CALL

Commissioners Present: Vice-Chairwoman Liz Claus, Commissioner Denton, Chairman Gary Newkirk, and Commissioner Susan Whittaker

Commissioner(s) Absent: Commissioner April O'Connor

Staff Present: Ursula Luna-Reynosa (Director), John Tilton (City Architect/Planning Manager), Brad Fowler (Director of Public Works), Jennifer Farrell (Assistant City Attorney), Erica Demkowicz (Senior Planner), and Denise Jacobo (Planning Secretary)

DISCUSSION AND/OR DISCLOSURE OF EX PARTE COMMUNICATIONS

Commissioner Claus disclosed that she had an ex parte contact with Mr. Robert Theel (Applicant Representative for Item #3). She stated that Mr. Theel said that he would be present at tonight's meeting and that if she had any questions to call him. That was the extent of the conversation with Mr. Theel.

Chairman Newkirk disclosed that he had received an email from Mr. Theel, but he did not contact him.

A. APPROVAL OF MINUTES

ITEM 1: Minutes of the regular Planning Commission Meeting of June 24, 2013.

ACTION: Motion made (Denton) and seconded (Claus) to approve the Minutes of the regular Planning Commission Meeting of June 24, 2013. Motion carried 4-0-1. (AYES: Claus, Denton, Newkirk, Whittaker NOES: None ABSENT: O'Connor ABSTAIN: None)

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ITEM 2: Minutes of the regular Planning Commission Meeting of July 8, 2013.

ACTION: Motion made (Claus) and seconded (Denton) to approve the Minutes of the regular Planning Commission Meeting of July 8, 2013. Motion carried 3-0-1-1. (AYES: Claus, Denton, Whittaker NOES: None ABSENT: O'Connor ABSTAIN: Newkirk)

B. PUBLIC COMMENTS

There were no Public Comments.

C. CONSENT CALENDAR

There were no items on the Consent Calendar.

D. PUBLIC HEARINGS

ITEM 3: General Plan Consistency Analysis GPC13-0002, Coastal Development Permit CDP11-0018 for the conditional vacation of Scenic Drive and related lot line adjustments and quitclaim deeds resulting from the street vacation and Coastal Development Permit CDP13-0009 for the construction of private improvements to be constructed subsequent and conditioned upon the City's vacation of a portion of Scenic Drive.

Applicant/Property

Owners: City of Dana Point and the owners of three properties on Scenic Drive – Karsikko-Gassel, Plowman/Day, and Bruggeman

Location: Scenic Drive (located between 34525 to 34555 Scenic Drive)

Request: This is a request for a General Plan Consistency determination, GPC13-0002, for City's vacation of a portion of Scenic Drive; 2) for a Coastal Development Permit (CDP11-0018) for the vacation of the street and related lot line adjustments and quitclaim deeds; and 3) for a Coastal Development Permit (CDP13-0009) to allow the construction of private improvements to be constructed subsequent to and conditioned upon the City's vacation of a portion of Scenic Drive. The proposed improvements contained within CDP13-0009 include, but are not limited to, installation of a vehicular entry/pedestrian gate,

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replacement of existing landscaping with drought-tolerant landscaping, signage as well as the establishment of a pedestrian access easement.

Environmental (Street Vacation): The Proposed Vacation and associated lot line adjustments and quitclaim deeds contemplated by this Agenda Report is part and parcel of the Headlands Development and Conservation Plan (“HDCP”), which was previously reviewed under the California Environmental Quality Act (“CEQA”). Thus, environmental review of the Proposed Vacation was previously performed in the HDCP Final Environmental Impact Report (“EIR”) SC# 2001071015 certified by the City of Dana Point on January 22, 2002 in accordance with the requirements of the CEQA, the CEQA Guidelines, and the City’s local CEQA Guidelines, and for which the City of Dana Point prepared and certified an Addendum on September 22, 2004. The proposed lot line adjustment is CEQA exempt under CEQA Guidelines¹ section 15305(a) [minor lot line adjustments not resulting in the creation of any new parcel]. Therefore, no further environmental review is necessary for any of street vacation action contemplated in this agenda report.

Environmental (Private Improvements): The proposed private improvements contemplated by the Agenda Report are categorically exempt from the California Environmental Quality Act (CEQA) per Section 15303 (e) (Class 1 – New Construction) as it comprises of the construction of accessory (appurtenant) structures. The gate is an accessory structure that will be utilized by all three (3) residences on Scenic Drive.

Recommendation: That the Planning Commission adopt resolutions: 1) finding pursuant to Government Code § 65402 that the conditional vacation of a portion of Scenic Drive is consistent with the City’s General Plan; 2) rescinding of Coastal Development Permit CDP07-20; 3) approving Coastal Development Permit, CDP 11-00018, that allows for the vacation and related lot line adjustments and quitclaim deeds, subject to specific conditions; and 4) approving Coastal Development Permit, CDP13-0009, that allows for the construction of private improvements to be constructed subsequent to and conditioned upon the City’s vacation of a portion of Scenic Drive.

Erica Demkowicz (Senior Planner) summarized the staff report, referring to the information contained therein, gave a PowerPoint presentation, and answered questions from the Planning Commission.

¹ California Code of Regulation, title 14, § 15000 *et seq.*

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She made several clarifications as discussed by the Planning Commission:

1. Eliminate text “but not limited to” everywhere (staff report/resolution).
2. Add a condition that the gate will be opened automatically, each day, night, and will not be operated by hand.
3. Add more background information relative

Chairman Newkirk opened the Public Hearing.

Robert Theel (Representative of Marketta Gassel – Dana Point) stated that his role in the project was as general coordinator among the three property owners on Scenic Drive. He stated that there were numerous adjustments to the plans as a result of working with the Public Works and City Attorney’s offices, and expressed appreciation for staffs’ work. Mr. Theel recommended approval of the project.

Bud Bruggeman (Resident of Scenic Drive and part Applicant - Dana Point) recounted the history of the vacation and the current CDP application (proposed gates and use of Scenic Drive by the public). He encouraged support of the CDP’s for the Vacation and improvements.

Boyd Plowman (Resident of Scenic Drive and Applicant - Dana Point) provided testimony about the use of Scenic Drive by public and explained detrimental effects of current conditions.

Mark McGuire (Applicants Representative – San Clemente) provided testimony stating the differences between the CDP in 2006 and the 2011 CDP.

Lee Ann Caranza (Preserve Manager for Conservation of Natural Lands Management – Dana Point) provided additional testimony concerning the problem of people hopping the fence along Scenic Drive and into the Conservation Park. She stated that she supports the installation of gates at the east end of Scenic Drive and felt that it would be helpful to the Preserve.

Chairman Newkirk closed the Public Hearing.

Commissioner Denton commented on the full agreement between the property owners, and liked the safety and security of a gate. He stated that he is in support of the four resolutions and appreciated that all the questions and answers were heard.

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Vice-Chairwoman Claus commended staff and the owners for working it out in terms of reaching an agreement.

Commissioner Whittaker stated that she would disagree with consistency findings of the General Plan. She felt that it was inconsistent, addressed her concerns with parking, public access, public views of the coast, and the height of the landscaping.

Chairman Newkirk stated that the City inherited the Preserve and Park. The HDCP puts things in place. He felt that it was a great stride forward and he would be comfortable striking ("limited to") language. He also supported operating the gates on a timer and the provision to repair immediately.

Chairman Newkirk reopened the Public Hearing.

Robert Theel (Representative of Marketta Gassel – Dana Point) addressed the suggestions and noted three separate properties would need to meet and confer. He stated that they would consider widening the gate.

Chairman Newkirk closed the Public Hearing.

Commissioner Whittaker stated that the gates keep people out which is inconsistent with coastal access policy.

Ursula Luna-Reynosa (Director of Community Development) noted that staff supports the gate to protect the Natural Lands Management and it's a good compromise. She also explained that having the gate would prevent vehicle lights flashing into the preserve.

Brad Fowler (Director of Public Works) clarified the location and heights of existing and proposed fencing and gate.

ACTION: Motion made (Denton) and seconded (Claus) to adopt Resolution No. 13-07-22-15 finding the proposed vacation of Scenic Drive and proposed lot line adjustments and quitclaim deeds generally located adjacent to the Headlands, between 34525 and 34551 Scenic Drive is consistent with the Dana Point General Plan (GPC13-0002), and where the Resolution states that the "improvements include but are not limited to" the phrase "but are not limited to" shall be stricken. Motion carried 3-1-1. (AYES: Claus, Denton, Newkirk NOES: Whittaker ABSENT: O'Connor ABSTAIN: None)

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ACTION: Motion made (Claus) and seconded (Denton) to adopt Resolution No. 13-07-22-16 rescinding approval of Coastal Development Permit CDP07-20 pertaining to the conditional vacation of Scenic Drive as specified in the Headlands Development and Conservation Plan and related lot line adjustments and quitclaim deeds. Motion carried 3-1-1. (AYES: Claus, Denton, Newkirk NOES: Whittaker ABSENT: O'Connor ABSTAIN: None)

ACTION: Motion made (Denton) and seconded (Claus) to adopt Resolution No. 13-07-22-17 approving Coastal Development Permit CDP11-0018 to allow the conditional vacation of Scenic Drive as specified in the Headlands Development and Conservation Plan (HDGP) and related lot line adjustments and quitclaim deeds, and where the Resolution states that the “improvements include but are not limited to” the phrase “but are not limited to” shall be stricken. Motion carried 3-1-1. (AYES: Claus, Denton, Newkirk NOES: Whittaker ABSENT: O'Connor ABSTAIN: None)

Commissioner Whittaker stated, for the public record, that she does not believe the findings for consistency are correct and was concerned that the project does impact public access ways and public views to and along the coast.

ACTION: Motion made (Claus) to adopt Resolution No. 13-07-22-18 approving Coastal Development Permit (CDP13-0009).

Commissioner Whittaker suggested a change to condition number 11, instead of saying thirty minutes before sunrise and thirty minutes after sunset, she suggested that be changed to indicate times 6:00 a.m. to 8:00 p.m.

Commissioner Denton stated that he would support change to timing of the gates.

Vice-Chairwoman Claus referenced the opening in her motion to state:

- (1) removing “but not limited to” language
- (2) 17’ gate opening (as opposed to 14’)
- (3) operate gates on timer
- (4) hours of operation of gates to have set times (as opposed to sunrise and sunset)

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Chairman Newkirk reopened the Public Hearing.

Mark McGuire (Applicant Representative – San Clemente) stated that he would work with staff and Planning Commission but feels that the setting a time may be over-inclusive. He recommended wording the time to one-half hour before sunrise and one-half hour after sunset.

Chairman Newkirk closed the Public Hearing.

Chairman Newkirk suggested that the gates opening and closing must be forty minutes before and after sunrise and sunset.

Commissioner Whittaker suggested one hour would be better because the sky is light at the hour before sunrise and the hour after sunset.

Commissioner Denton stated that he could support flexibility for the homeowners with the timing of forty minutes to an hour.

Commissioner Whittaker also stated her concern about the height of the landscaping along the northern property line and would like to keep the height down to two-feet in height, and she feels that there are multiple plants to choose from.

Chairman Newkirk reopened the Public Hearing.

Robert Theel (Applicant – Dana Point) commented about the landscaping along the northern property line and that it should be no higher than the existing 3' high fence. He agreed to handle the timer range from forty to sixty minutes before sunrise and after sunset.

Commissioner Denton stated that he is comfortable with the timer range that allows some flexibility. He also noted Commissioner Whittaker's concern with the plant pallet not to exceed 3'-3'5" in height of the existing fence.

Vice-Chairwoman Claus stated that she is also comfortable with the timer's range.

Chairman Newkirk closed the Public Hearing.

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Jennifer Farrell (Deputy City Attorney) clarified for the record that the first motion died due to lack of a second motion.

Following discussion, Deputy City Attorney Farrell proposed the following revisions and/or conditions of approval for Resolution No. 13-07-22-18:

- (1) Where the Resolution states that the “improvements include but are not limited to” the phrase “but are not limited to” shall be stricken.
- (2) A condition of approval shall be added providing that the gate be placed on a timer and be set to open approximately forty (40) to sixty (60) minutes before sunrise and closed approximately forty (40) to sixty (60) minutes after sunset.
- (3) A condition of approval shall be added providing that if broken, the gate shall be repaired as soon as reasonably practicable, and shall remain “open” until such time that it is repaired.
- (4) A condition of approval shall be added providing that the applicant(s) shall make reasonable efforts to try to construct the gate so that it is approximately 17’ wide (as opposed to the currently proposed 14’ wide).
- (5) A condition of approval shall be added providing that the height of the landscaping materials shall not exceed three-and-a-half (3 ½) feet in height.

ACTION: Motion made (Claus) and seconded (Denton) to adopt Resolution No. 13-07-22-18 approving Coastal Development Permit (CDP13-0009) for the construction of private improvements to be constructed subsequent and conditioned upon the city’s vacation of a portion of Scenic Drive adjacent to 34525 to 34555 Scenic Drive. The proposed improvements include, but are not limited to, installation of a vehicular entry/pedestrian gate, replacement of existing landscaping with drought-tolerant landscaping, signage as well as the establishment of a pedestrian access easement, subject to the revisions to and/or additional conditions of approval proposed by the deputy city attorney. Motion carried 3-1-1. (AYES: Claus, Denton, Newkirk NOES: Whittaker ABSENT: O’Connor ABSTAIN: None)

E. NEW BUSINESS

There were no New Business items.

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F. STAFF REPORTS

There were no Staff Reports.

G. COMMISSIONER COMMENTS

Commissioner Denton proposed cancelling the second Planning Commission meeting of August.

Ursula Luna-Reynosa (Director of Community Development) noted that it would be fine if the Commission agrees.

There was a consensus of the Planning Commission to cancel the regular Planning Commission meeting of August 26, 2013.

H. ADJOURNMENT

Chairman Newkirk announced that the *next* meeting of the Planning Commission will be held on Monday, August 12, 2013, beginning at 6:00 p.m. (or as soon thereafter) in the City Council Chamber located at 33282 Golden Lantern, Suite 210, Dana Point, California.

The meeting adjourned at 8:20 p.m.



Gary Newkirk, Chairman
Planning Commission