

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

February 2, 2009
7:00 – 10:02 p.m.

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

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

PLEDGE OF ALLEGIANCE – Alternate Commissioner Dec led the Pledge of Allegiance.

ROLL CALL

Commissioners Present: Commissioner Ed Conway, Chairman Norman Denton, Commissioner Liz Anderson Fitzgerald, and Alternate Commissioner Michael Dec

Staff Present: Kyle Butterwick (Director of Community Development), John Tilton (City Architect/Planning Manager), Todd Litfin (Assistant City Attorney), Saima Qureshy (Senior Planner), and Denise Jacobo (Planning Secretary)

A. APPROVAL OF MINUTES

ITEM 1: Minutes of the regular Planning Commission Meeting of January 19, 2009.

ACTION: Motion made (Fitzgerald) and seconded (Conway) to approve the Minutes of the regular Planning Commission Meeting of January 19, 2009. Motion carried 4-0. (AYES: Conway, Dec, Denton, Fitzgerald NOES: None ABSENT: None ABSTAIN: None)

B. PUBLIC COMMENTS

Mary Jeffries (Dana Point) described a monument from Shelter Island in San Diego that fosters relaxation with a water fountain that is “earthy and Zen-like.” She suggested that the architect be considered for future work on upcoming projects in Dana Point; and offered to provide the City his contact information.

C. CONSENT CALENDAR

There were no items on the Consent Calendar.

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D. PUBLIC HEARINGS

ITEM 2: (Continued from the Planning Commission meeting of January 30, 2009) General Plan Amendment (GPA07-01), Zone Text Amendment (ZTA07-02), Zone Change (ZC07-01), and Local Coastal Program Amendment (LCPA07-01) to amend land use designations for the property located at 34202 Del Obispo Street and for the addition of a new land use category, “Residential/Commercial”, in the Land Use Element of the General Plan and a new Zoning category, “Residential/Commercial-22”, in the Zoning Ordinance.

Applicant:

Owner: Makar Properties, LLC

Location: 34202 Del Obispo Street (APN: 668-271-04)

Request: Request for General Plan Amendment GPA07-01, Zone Text Amendment ZTA07-02, Zone Change ZC07-01, and Local Coastal Program Amendment LCPA07-01 to amend the land use and zoning designations of the subject site, 34202 Del Obispo Street, from “Dana Point Specific Plan – Coastal Recreation Space” to the General Plan designation of “Residential/Commercial” and the Zoning designation of “Residential/Commercial-22”. The project also involves addition of a new land use category “Residential/Commercial” in the Land Use Element of the General Plan and a new Zoning category “Residential/Commercial-22 (R/C-22)” in Chapter 9.13 – Mixed Use District of the Zoning Ordinance.

Environmental: The City conducted an environmental review of the proposed project pursuant to the provisions of the California Environmental Quality Act (CEQA). As a result of that review, a Mitigated Negative Declaration (MND) was issued for the project with the accompanying initial study. The MND was circulated for a thirty day public review period from February 22, 2008, to March 24, 2008. At the end of the comment period, the City received a total of 11 written comments on the project.

The initial study prepared for the project evaluated a “reasonable” development scenario that could occur as a result of the proposed amendments in the land use and zoning designations of the subject site. The development scenario that was analyzed in the MND included a possible development of a mixed use project with 150 residential units and 10,000 square feet of retail commercial space. However, staff later determined that the MND should analyze a “theoretical maximum” development scenario and therefore a more thorough analysis was conducted and the MND was revised and re-circulated for public comment.

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Recommendation: That the Planning Commission approve the attached draft resolutions recommending to the City Council approval and adoption of the proposed Mitigated Negative Declaration and the General Plan Amendment, Zone Text Amendment, Zone Change, and Local Coastal Program Amendment.

Kyle Butterwick (Director) provided an overview of the project, and recapped the history of this parcel, and summarized the land use entitlement process. He reported that the first meeting on the project was a site visit on the subject site with members of the public also present on Friday, January 30, 2009. Staff recommended an additional mitigation measure MM-2(a): “Any future development on the subject site will be limited to a maximum fill credit of thirty (30) inches from current grade elevations for building height measurement purposes. More than thirty inches of fill will be counted towards the overall building height.”

Saima Qureshy (Senior Planner) presented the staff report.

John Tilton (City Architect/Planning Manager) provided a PowerPoint slide presentation detailing building heights and views simulations for a theoretical maximum development potential under the proposed new zone.

Kyle Butterwick (Director) clarified the City’s responsibility in selecting the CEQA consultant, Keeton Kreitzer, known for his outstanding reputation.

Keeton Kreitzer (Environmental Consultant - Tustin) gave an overview and summary of the CEQA process and their determination. He stated that since there is no project currently proposed for the site, the City developed a worst case scenario and evaluated a theoretical maximum development as the basis of the CEQA analysis using the proposed land use changes. He pointed out that four technical studies were conducted; traffic, noise, air quality, and visual simulations. He added that a full range evaluation was conducted including biology, hydrology, soils and geology, public health and safety, public services and utilities of baseline conditions were considered. He explained the mitigation measures process as required by CEQA. He noted input from **South Orange County Wastewater Authority (SOCWA)** has been incorporated into the document. He identified that the traffic and noise impact studies include mitigation measures. In response to the circulation of the draft Mitigated Negative Declaration, nine comment letters were received and are attached to the staff report, as part of the CEQA documentation.

Chairman Denton requested clarification baselines for the traffic related to commercial and residential impacts.

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Keeton Kreitzer (Environmental Consultant - Tustin) replied that the project will not contribute significantly based on the changing conditions.

Commissioner Fitzgerald also requested clarification about the baseline traffic analysis at its worst, for example, if the analysis was conducted during the summer peak season.

Keeton Kreitzer (Environmental Consultant) confirmed that there was no analysis conducted during summer peak season.

Chairman Denton asked if a traffic light study from the site entrance at Del Obispo was considered in the analysis.

Keeton Kreitzer (Environmental Consultant) replied that a traffic light study was not included in the analysis but could be considered in a future analysis depending on a project application.

Kyle Butterwick (Director) reviewed the staff recommendation and gave a brief summary about the applicant's maximum building heights.

Chairman Denton asked if the density allowance, as proposed, would be achievable.

John Tilton (City Architect/Planning Manager) explained that an actual project will have less units after consideration of parking, and maximum lot coverage standards.

Chairman Denton asked if a decision for the zone was made for less density than proposed by the project developer would impact the project.

Kyle Butterwick (Director) commented that the Commission has the prerogative to modify any of the proposed development standards of the proposed new zone.

Todd Litfin (Assistant City Attorney) also added that the decision is a Legislative Act for the Planning Commission to recommend to the City Council the appropriate use for the parcel.

Chairman Denton questioned the assurance of open space for the development.

Kyle Butterwick (Director) stated that the Map Act indicates that in compliance with the Quimby Act, the developer would have to dedicate approximately two

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and a half acres on or off the site within Dana Point. He explained that another alternative is to pay in-lieu fees.

Chairman Denton asked if Art In Public Places would be a required component.

Kyle Butterwick (Director) replied “yes.” He also explained the difference between Park Land and Open Space at Commissioner Fitzgerald’s request.

Commissioner Fitzgerald asked if the developer paid in-lieu fees, would it allow the full maximum acres to be built out and not have Open Space.

John Tilton (City Architect/Planning Manager) replied that however the requirement is satisfied would be up to the purview of the City.

Commissioner Fitzgerald questioned that with respect to the Quimby Act, would the City require the developer to propose 2.34 acres of park space on the site, if they so choose.

Todd Litfin (Assistant City Attorney) replied that it can be required at the time.

Chairman Denton asked if a park dedication would be accessible to the public if the residential area was gated.

Todd Litfin (Assistant City Attorney) replied that land dedicated for park purposes under the Quimby Act should be open to the public, however tradeoffs can be made for public access if any gates were proposed at that point.

Commissioner Fitzgerald asked if the property is in floodplain and requested to hear any mitigation measures related to that.

Kyle Butterwick (Director) stated that FEMA has designated this property to be within a five hundred year floodplain and consequently, the City’s Floodplain Ordinance does not mandate specific design standards. The Federal Floodplain standards are more commonly applied to lands in a one hundred year floodplain.

Alternate Commissioner Dec asked if affordable housing applies to this project.

Saima Qureshy (Senior Planner) clarified that the affordable housing standard would be part of the new zone (RC22), applicable to projects of ten or more units.

Todd Litfin (Assistant City Attorney) also added that an aspect of the Coastal Law, the Mello Act mandates affordable housing within coastal areas.

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Chairman Denton opened the Public Hearing.

Howard Zelefsky (Newport Beach - Makar Properties Representative) thanked staff for their hard work, and the Keeton Kreitzer team for the document they prepared. He expressed that they have no intent to build the theoretical maximum that is in the report. He stated he is agreeable to all of the mitigation measures presented, and with the new condition that was added this evening referencing the height limit. He addressed questions raised by the Commission regarding traffic studies and added that the site itself will have residential and common open space. He also indicated that they would comply with the FEMA regulations.

Jill McGovern (San Juan Capistrano) stated that she is a local business owner which is located near the project. She opposed the designation of anything over two hundred homes because it impacts the gateway to Dana Point and does not fit with the rest of the community such as the Harbor. She felt that if a commercial project were approved she would not be opposed as long as access in and out does not overwhelm space and traffic.

Tom Rosales (Dana Point - South Orange County Wastewater Authority SOCWA) narrated a PowerPoint slide presentation detailing the wastewater treatment system located next to the project. He described concerns related to noise generator, chemicals storage and deliveries, odor sources and sludge removal generated by SOCWA. He asked the Commission to consider requiring Makar to add additional mitigations/conditions including:

- Direct Makar to work with SOCWA on more effective noise and odor buffers
- Require odor control infrastructure investment (est. \$8M)
- Condition a permanent odor easement
- Require a full EIR instead of a Mitigated Negative Declaration.

In summary, he stated that he is not opposed to the development, however he asked that the City consider his comments.

Jeff Hoskinson (SOCWA Legal Counsel) expressed concern with homes adjacent to the sewage treatment plant, primarily the odor issue. He emphasized the reality of the visual connection of the two properties. He stated that the mitigated measures do not address exposure to future homeowners of odors from the plant. He acknowledged that odors are an important part of the mitigation but the document is only directed to original buyers and does not protect the next buyer. He asked that the odor easement be required on the title to disclose the issue. He stated that SOCWA would offer to provide language to that notice. He also asked to require the developer to fund odor covers at the plant to reduce the visual impact. He urged the Commission to deny approval of

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this project subject to either preparation of an EIR or additional mitigation measures sufficient to prevent impacts.

Richard Dietmeier (Dana Point) stated that he invested a great deal of time working with the Sanitation District to improve the treatment facility. His main concern is with the odors from the treatment plant. He did not want to see a zone change and use of the adjacent property cause the current customers of the South Coast Water District to see their rates increase to maintain the treatment facility. He added that he could support 110 units, but what is being considered tonight it is a “mythical” change. It needs to have a real project before the City.

Darren Perman (Dana Point) was concerned with the thought of a proposal without a clear project before the City, and therefore, would not support the proposal.

Tom Hribar (San Juan Capistrano) stated that he is a San Juan Capistrano City Councilmember and a representative with the South Orange County Wastewater Authority. He summarized the entity’s service between four cities. He would not support the residential development because of the odors and the visibility of the plant. He requested that the Commission consider open space and only twelve units per acre.

Sandra Grange (Dana Point) submitted a letter of opposition to the Commission and read its contents in its entirety for the record. She asked the Commission to deny the zone change.

Eugene Ralph (Dana Point) stated that he opposes the zone change because there are too many uncertainties and possible negative impacts.

Mary Jeffries (Dana Point) questioned how the MND did not mention the 275 signed petition flyers submitted to the City. She stated that no one mentioned the Sewer District, traffic, and the gas station in close proximity. She requested that the proposal not go forward without a full EIR investigation by an independent consultant. She stated that the property developer is not providing full disclosure and requested that the property remain recreational zoning.

John Murphy (Dana Point) concurred with Ms. Jeffries’ comments and mentioned his recent contact with the Coastal Commission. He agreed with the current zoning for the community. He noted that the developer is pressing the designation without a proposed project and urged the Commission to keep the existing zone, request an EIR and deny the proposal.

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James Johnson (Dana Point) expressed his concerns with the MND because it appears inconsistent with the codes and it lacks analysis of impacts to the Village. He requested that the developer incorporate an in depth analysis of the potential view impact, traffic issue on Pacific Coast Highway, the numerous driveways, and an unidentified drive turnout. He requested consideration be given for a park, a museum, or City Hall relocation.

S-Lin Yong (Dana Point) stated that he is a resident of the Village and is opposed to the zone change because it was originally designated as Parks and Recreation by the Coastal Commission. He asked the Commission to reject the zone change request because there are too many issues that need clarification.

Raymond Payne (Dana Point) expressed that it would be a mistake to change the zone without development plans. He stated that the City should preserve the zoning and reject the proposal considering the misconduct from the developer to the neighboring community in the last five years.

Howard Zelefsky (Representative – Makar Properties) stated that the Mitigated Negative Declaration does meet CEQA criteria and identifies impacts and their mitigation measures. This project does not require an EIR. He noted that he has met with SOCWA, and they are willing to work together but their request to pay for improvements was not discussed. He stated that any residential project would be screened from the SOCWA facility. The zoning does not guarantee the developer the ultimate right to build, the City still has the jurisdiction to deny and modify forthcoming projects. It could take up to two years for the Coastal Commission to act on the request after the City's action.

Commissioner Fitzgerald asked why the zone change was brought before the Commission prior to the project.

Howard Zelefsky (Representative – Makar Properties) replied that to design a project without certain Coastal Commission approval of the zoning would not be prudent.

Chairman Denton closed the Public Hearing.

Chairman Denton recessed the meeting at 9:03 p.m. and reconvened the meeting at 9:14 p.m.

Todd Litfin (Assistant City Attorney) at the request of Chairman Denton, explained the difference between a Mitigated Negative Declaration and an EIR process. He also explained that the primary focus of CEQA analysis is impacts of a project on the surrounding environment and not the other way around. He

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summarized that the Commission has the full authority to make a recommendation to the City Council.

Alternate Commissioner Dec questioned the maximum units allowed on the site, and if it can be reduced by Council.

Todd Litfin (Assistant City Attorney) replied, that it could be reduced at a future time in analysis/comparison to the guidelines constructed this evening.

Commissioner Fitzgerald stated that she is not opposed to the development; however, she is concerned with the zone change based upon the perception that this is, "putting the carriage before the horse". Her main issue is traffic since the September report is not a reliable baseline. She does not agree that an odor easement could solve the odor issue. She perceives that there will be visibility issues with SOCWA and is not in agreement with the concept of having homes next to a sewage plant. Her next concern is with the park in-lieu fees. She preferred to see a project also provide their own Art In Public Places in lieu of paying a fee.

Commissioner Conway stated that he was involved in the 1986 Specific Plan and always viewed this area as a commercial site because all four corners around are commercial so, he expressed no problem with the zone change. He expressed his concern with having a park because it might not find a benefactor. He does have a concern with the number of residential units allowed by the new zone.

Alternate Commissioner Dec stated that the property does not sit well in its current state. He stated that the public testimony heard were legitimate issues. He noted SOCWA's point of view with the noise and odor as a concern. He supported taking the first step to go forward and then address these issues down the road.

Chairman Denton stated that from hearing the testimony, he agrees with Commissioner Conway about the commercial use. He thought the traffic issues have not been adequately addressed for a commercial zone versus the residential. He noted SOCWA's concerns with their plant operation's potential for odor to back up behind some tall buildings. He was not concerned with the lack of a full EIR. He stated that he may approve less density. He questioned SOCWA's \$8.5 million request for improvements for the developer to consider.

Alternate Commissioner Dec stated that he is in agreement with Chairman Denton.

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Commissioner Fitzgerald added that she would like to see Makar and SOCWA reach an agreement.

ACTION: Motion made (Conway) and seconded (Fitzgerald) to continue this item to the regular Planning Commission meeting of April 6, 2009 to allow staff time to conduct further review of the project based on the Commission's direction to evaluate an alternative to the proposed maximum density of the project consisting of 12 units/acre with consideration of increasing the amount of commercial square footage and, to analyze traffic impacts utilizing traffic data from summer months and weekends. Motion carried 4-0. (AYES: Conway, Dec, Denton, Fitzgerald NOES: None ABSENT: None ABSTAIN: None)

E. NEW BUSINESS

There was no New Business.

F. STAFF REPORTS

There were no Staff Reports.

G. COMMISSIONER COMMENTS

There were no Commissioner Comments.

H. ADJOURNMENT

Chairman Denton announced that the *next regular* meeting of the Planning Commission will be held on Monday, March 2, 2009, beginning at 7:00 p.m. (or as soon thereafter) in the Council Chamber located at 33282 Golden Lantern, Suite 210, Dana Point, California.

The meeting adjourned at 10:02 p.m.

Norman Denton, Chairman
Planning Commission