THE CITY OF SAN DIEGO, CALIFORNIA
MINUTES FOR REGULAR COUNCIL MEETING
OF
TUESDAY, AUGUST 2, 2005
AT 9:00 A.M.
IN THE COUNCIL CHAMBERS - 12TH FLOOR

Table of Contents

CHRONOLOGY OF THE MEETING 3

ATTENDANCE DURING THE MEETING 3

ITEM-300: ROLL CALL 4

COUNCIL COMMENT 10

CITY MANAGER COMMENT 10

CITY ATTORNEY COMMENT 10

CITY CLERK COMMENT 11

ITEM-330: Cingular St. David's 11

ITEM-331: Beizai Residence 14

ITEM-332: Rashid Residence 17

ITEM-333: Paseo de Mission Hills 20

ITEM-334: Edison, Ibarra and Cherokee Point Elementary Schools – ROW Vacations 26

ITEM-335: Three actions related to Bird Rock Maintenance Assessment District Formation 28

ITEM-336: Penasquitos West 30

ITEM-S401: Waiver of Attorney-Client Privilege and the Work Product Doctrine 34

ITEM-S402: Provision of Defense for Defendants in Case No. GIC 850246 – People v. Grissom, et al 36

ITEM-S403: Provision of Defense for San Diego City Employee's Retirement System 38

ITEM-S500: Request for Additional NOFA Funds for Acquisition Activities, Hazardous Waste Removal and Demolition of Structures Located at Hilltop Drive and Euclid Avenue 39

NON-DOCKET ITEMS 40

ADJOURNMENT 40

CHRONOLOGY OF THE MEETING:

The meeting was called to order by Deputy Mayor Atkins at 10:05 a.m.

Council Member Madaffer introduced and welcomed the Asahi Baseball Club from our Sister City Yokohama, Japan, to the City of San Diego. Council Member Madaffer stated that he hoped they enjoyed their stay in San Diego, and that the City of San Diego was honored to be the host City for the "Good Will Exchange Friendship Games." Council Member Madaffer commended the organizers and volunteers for their hard work in hosting the event.

The meeting was recessed by Deputy Mayor Atkins at 11:30 p.m. to convene the Redevelopment Agency. Deputy Mayor Atkins reconvened the regular meeting at 11:31 a.m. with all Council Members present and District 2, District 8, and the Mayor vacant.

Deputy Mayor Atkins recessed the meeting at 11:55 a.m. to reconvene at 2:00 p.m.

The meeting was reconvened by Deputy Mayor Atkins at 2:07 p.m. with all Council Members present and District 2, District 8, and the Mayor vacant. Deputy Mayor Atkins recessed the meeting at 3:14 p.m. for the purpose of a break. Mayor Atkins reconvened the meeting at 3:21 p.m. with all Council Members present and District 2, District 8, and the Mayor vacant. Deputy Mayor Atkins recessed the meeting at 4:06 p.m. for the purpose of a break. Deputy Mayor Atkins reconvened the meeting at 4:14 p.m. with all Council Members present and District 2, District 8, and the Mayor vacant. Mayor Atkins adjourned the meeting at 5:13 p.m. into Closed Session immediately thereafter to discuss pending and potential litigation and meet and confer matters.

ATTENDANCE DURING THE MEETING:

(M) Mayor-Vacant

(1) Council Member Peters-present

(2) District 2-Vacant

(3) Council Member Atkins-present

(4) Council Member Young-present

(5) Council Member Maienschein-present

(6) Council Member Frye-present

(7) Council Member Madaffer-present

(8) District 8-Vacant

Clerk-Maland (pr/er)

FILE LOCATION: MINUTES

ITEM-300: ROLL CALL

Clerk Maland called the roll:

(M) Mayor-Vacant
(1) Council Member Peters-present
(2) District 2-Vacant
(3) Council Member Atkins-present
(4) Council Member Young-present
(5) Council Member Maienschein-present
(6) Council Member Frye-present
(7) Council Member Madaffer-present
(8) District 8-Vacant

NON-AGENDA COMMENT:

PUBLIC COMMENT-1:

Comment by Linda Smith wishing to thank Council Member Young for his participation regarding one of her issues.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:22 a.m. – 10:23 a.m.)

PUBLIC COMMENT-2:

Comment by Richard Agee regarding public comments and "false politics."

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:23 a.m. – 10:26 a.m.)

PUBLIC COMMENT-3:

Comment by Major Hud Collins regarding the Council, the City Attorney, and wishing to congratulate Liz Maland on her appointment as City Clerk for the City of San Diego.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:26 a.m. – 10:29 a.m.)

PUBLIC COMMENT-4:

Comment by Frances Bill regarding the problem of the homelessness in San Diego, and in particular, City Heights.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:29 a.m. – 10:33 a.m.)

PUBLIC COMMENT-5:

Comment by Sandy Summers regarding domestic terrorism.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:33 a.m. – 10:36 a.m.)

PUBLIC COMMENT-6:

Comment by Margie Peary on the residents of De Anza Cove, and wishing to thank City Attorney Michael Aguirre for his involvement in their issues.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:36 a.m. – 10:39 a.m.)

PUBLIC COMMENT-7: **REFERRED TO THE CITY MANAGER**

Comment by Carrie Wiese regarding utility undergrounding projects in her area, and that two large above ground switches are scheduled to be placed at the corner of Tennyson and Willow Street.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:39 a.m. – 10:43 a.m.)

PUBLIC COMMENT-8:

Comment by Ron Boshun regarding Council actions.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:43 a.m. – 10:46 a.m.)

PUBLIC COMMENT-9:

Comment by Phil Hart regarding the Audit Committee, and the pension debt in San Diego.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:46 a.m. – 10:50 a.m.)

PUBLIC COMMENT-10:

Comment by Adrian Kwiatkowski regarding syringe exchange and illegal activities in bath houses.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:50 a.m. – 10:53 a.m.)

PUBLIC COMMENT-11:

Comment by Peter Miller regarding "Concept 6" for airport site selection, and because the site is in the beach area, Mr. Miller felt it inappropriate asking that it be eliminated from the selection process.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:53 a.m. – 10:56 a.m.

PUBLIC COMMENT-12:

Comment by Barbara MacKenzie regarding supporting marijuana use for medical purposes.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:56 a.m. – 10:58 a.m.)

PUBLIC COMMENT-13:

Comment by Linda Lloyd regarding City approved harm reduction programs.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:59 a.m. – 11:01 a.m.)

PUBLIC COMMENT-14: **REFERRED TO THE CITY MANAGER**

Comment by Katherine Rhodes regarding construction permits for the City of San Diego, and her concern that the San Diego Daily Transcript no longer notices them.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 11:02 a.m. – 11:04 a.m.)

PUBLIC COMMENT-15:

Comment by Marvin Carpenter regarding the City and the De la Fuente judgment.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 11:04 a.m. – 11:09 a.m.)

PUBLIC COMMENT-16:

Comment by Muhammed Abdullah regarding September 11th, and Fatwa against terrorism by religious council.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 11:09 a.m. – 11:11 a.m.)

PUBLIC COMMENT-17:

Comment by Joyceline Tarr regarding the management of City Hall, and her opinion on the pension deficit.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 11:11 a.m. – 11:14 a.m.)

PUBLIC COMMENT-18:

Comment by Joseph Braverman regarding Non-Agenda comments, stating that people who are not civil when speaking, do not accomplish their points.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 11:14 a.m. – 11:16 a.m.)

COUNCIL COMMENT:

COUNCIL COMMENT-1:

Comment by Deputy Mayor Atkins stating that today is the 22nd "National Night Out," that heightens awareness of local anti-crime programs, and sends a message to criminals that neighborhoods are organized and fighting back. Deputy Mayor Atkins wished to thank the City Manager and April Penera for correcting a problem with the 39th Street Park play area in District 3 that needed to be fixed quickly, before the July 4th holiday. The problem was handled quickly, and the park was back up and running shortly after the complaint.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 11:16 a.m. – 11:18 a.m.)

COUNCIL COMMENT-2:

Comment by Council Member Madaffer who stated that although the paper did not include Allied Gardens regarding "National Night Out," that they were in fact participating, and would be showing the "Shark Tale Story" at 8:30 p.m. tonight at the Allied Gardens recreation center.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 11:18 a.m. – 11:18 a.m.)

CITY MANAGER COMMENT:

None.

CITY ATTORNEY COMMENT:

None.

CITY CLERK COMMENT:

Comment by City Clerk Liz Maland who made the following service announcement:

"The nomination period for the November 8, 2005, Special Election for Districts 2 and 8 starts today, August 2, 2005, and runs through August 12, 2005. The Clerk's Office will be offering group orientation sessions at both 9:00 a.m. and 3:00 p.m., everyday of that period. If anyone has questions, please feel free to call the Clerk's Office at (619) 533-4000."

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 11:19 a.m. – 11:19 a.m.)

ITEM-330: Cingular St. David's.

Matter of the appeal by Linda Rotert-Garduno, Christopher P. Gramlich, and Ike Fifield of the decision by the Planning Commission to certify Negative Declaration No. 19148.

(Continued from the meeting of June 14, 2005, Item 332, at the request of Councilmember Frye, for further review.)

(See City Manager Report CMR-05-124. Clairemont Mesa Community Plan Area. District-6.)

NOTE: Hearing open. No testimony taken on June 14, 2005.

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution to deny the appeal and uphold the Certification of Negative Declaration No. 19148:

(R-2006-145) DENIED APPEAL; UPHOLD THE DECISION OF THE PLANNING COMMISSION, ADOPTED AS RESOLUTION R-300739

Adoption of a Resolution granting or denying the appeal, and upholding or overturning the decision of the Planning Commission in certifying Negative Declaration No. 19148, with appropriate findings to support Council action.

OTHER RECOMMENDATIONS:

Planning Commission on November 18, 2004, voted 4-3 to deny the appeal and approve the project, and will include the condition regarding landscaping read into the record by staff.; was opposition.

Ayes: Schultz, Ontai, Otsuji, Garcia
Nays: Lettieri, Steele, Chase

The Clairemont Mesa Community Planning Group has recommended approval of this project.

CITY MANAGER SUPPORTING INFORMATION:

The proposed project for which Negative Declaration No. 19148 has been prepared and previously certified by the Planning Commission on November 18, 2004, is a wireless communication facility consisting of a new 30-foot high monument structure housing 3 panel antennas and a new 162-square-foot equipment enclosure to be located at St. David's Episcopal Church at 5050 Milton Street. The 1.46 acre project site is zoned RS-1-7 (single-unit residential) and is designated "School Site" and "Low Density Residential" within the Clairemont Mesa Community Plan. The project site is surrounded by residential development. The existing church complex was approved through a Conditional Use Permit (CUP) in 1995.
The wireless communication project was approved by staff on July 9, 2004, and was appealed by a group of neighbors concerned with issues including: aesthetics, noise, inappropriate use, design, health, inconsistencies with previous decisions on the church CUP, and possible impact on property values. After receiving the staff report and testimony from the appeallants and interested parties on November 11 and November 18, 2004, the Planning Commission voted 4-3 to uphold staff's decision to approve the project and certify the Negative Declaration. On December 1, 2004, three of the original appellants appealed the Planning Commission's certification of the Negative Declaration.

An Environmental Initial Study was conducted and it was determined that the T-Mobile (Cingular) St. David's project would not have a significant environmental effect and a Negative Declaration was prepared. The document discussed health and safety, land use, visual quality and noise issues as potential issues. All of these issues were analyzed and a full disclosure was provided as part of the Negative Declaration. No public comment was received during the public review period.

FISCAL IMPACT:

All costs associated with processing this appeal are paid from a deposit account maintained by the applicant.

Oppenheim/Halbert/KLA

LEGAL DESCRIPTION:

The project site is located at 5050 Milton Street, in the RS-1-7 zone, Clairemont Mesa Height Limit Overlay Zone, and Clairemont Mesa Community Plan Area.

Staff: Karen Lynch-Ashcraft - (619) 446-5351.

FILE LOCATION: LUP-Cingular St. Davids 06/14/05 (65)

COUNCIL ACTION: (Time duration: 11:32 a.m. – 11:55 a.m.; 2:07 p.m. – 2:13 p.m.)

Testimony in opposition by Becky McCarty, Chris Gramlich, and Linda Garduno.

Testimony in favor by Reverend Brent Carey.

MOTION BY FRYE TO ADOPT THE RESOLUTION TO DENY THE APPEAL AND UPHOLDING THE DECISION OF THE PLANNING COMMISSION WITH THE FOLLOWING DIRECTION: CRAFT LANGUAGE THAT SHALL BE INCLUDED IN THE PERMIT TO ENSURE SOME LEVEL OF PROTECTION FROM NOISE AND TOWER EMMISSIONS. MONITOR AND MEASURE EVERY FOUR MONTHS AND IF THE NOISE AND EMMISSIONS EXCEED THE ALLOWED MEASURE, BASED ON FCC COMMUNICATIONS STANDARDS, IMMEDIATELY CEASE OPERATION OF THE FACILITY. Second by Madaffer. Passed by the following vote: Peters-yea, District 2-vacant, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, District 8-vacant, Mayor-vacant.

ITEM-331: Beizai Residence.

Matter of the appeal by William J. Mitchell of the Planning Commission's decision in certifying the Environmental Determination for an application for a Coastal Development Permit to demolish existing residence and construct a 4,095 square foot single-family residence on an 11,228 square foot property. The project site is located at 6542 Avenida Wilfredo, in the RS-1-5 Zone, Coastal Overlay (non-appealable), Coastal Height Limit Overlay Zone and within the La Jolla Community Plan Area.

(See City Manager Report CMR-05-165. ND/Project No. 33137. La Jolla Community Plan Area. District 1.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution to deny the appeal, and to affirm the decision of the Planning Commission in adopting Negative Declaration (ND):

(R-2006-136) DENIED APPEAL; UPHOLD THE PLANNING COMMISSION DECISION, ADOPTED AS RESOLUTION R-300735

Adoption of a Resolution granting or denying the appeal, and upholding or overturning the decision of the Planning Commission in adopting Negative Declaration, Project No. 33137, with appropriate finding to support Council action.

OTHER RECOMMENDATIONS:

Planning Commission on May 12, 2005, voted 5-1 to deny the appeal and approve the project; was opposition.

Ayes: Garcia, Ontai, Schultz, Griswold, Otsuji
Nays: Chase
Not present: Steele

The La Jolla Community Planning Association on November 9, 2004, voted 6-2-2 to recommend approval of the project.

CITY MANAGER SUPPORTING INFORMATION:

BACKGROUND
The proposed project for which Negative Declaration No. 33137 has been prepared and previously Certified by the Planning Commission on May 12, 2005, is the demolition of an existing single-family residence and the construction of a new two-story, 4,095 square-foot residence with an attached two-car garage.

The project site is located at 6542 Avenida Wilfredo on an 11,228 square-foot, RS-1-5 zoned site also located within the Coastal Overlay Zone (non-appealable area), Coastal Height Limit and within the boundaries of the La Jolla Community Plan.

This appeal is before the City Council because of an amendment to the California Environmental Quality Act (CEQA). Effective January 1, 2003, Section 21151(c) CEQA has been amended as follows: *If a non-elected decision-making body of a local lead agency certifies an environmental impact report, approves a negative declaration or a mitigated negative declaration, or determines that a project is not subject to this division, that certification, approval, or determination may be appealed to the agency's elected decision-making body, if any.*

Pursuant to this amended legislation, Mr. William Mitchell filed an appeal of the Planning Commission's adoption of Negative Declaration for the Beizai Residence project. This appeal applies only to the environmental determination.

DISCUSSION

The appellant, on the appeal form, states that the Negative Declaration failed to identify potentially significant impacts to aesthetics, air quality, noise and that potential geology impacts remain potentially significant. The following are the relevant issue(s) raised by the appellant and staff response(s):

Aesthetics, Air Quality and Noise-The appeal is not specific as to how the project may have a significant impact on aesthetics, air quality or noise. The proposed project is a residential single family home, located within the RS-1-5 Zone, which allows for single-family development and was found to comply with all of the applicable development regulations of the underlying zone. Based on the City's Significance Thresholds, the proposed project does not have a significant impact to aesthetics, air quality or noise.

Geology-The appeal is not specific as to what potential geology impacts remain potentially significant. The Environmental Determination included the review of two submitted geotechnical reports prepared by Southern California Soils & Testing, Inc., titled "Report of Geotechnical Investigation, Proposed Beizai Residence, 6542 Avenida Wilfredo, La Jolla, California," dated March 5, 2004, and "Response to Comments, Proposed Beizai Residence, 6542 Avenida Wilfredo, La Jolla, California," dated August 17, 2004.

According to the reports, the site was found suitable for the proposed development and the site would have a factor-of-safety of at least 1.5 with respect to gross and surficial slope stability at the completion of the project. Proper engineering design of all new structures would ensure that the potential for geologic impacts from regional hazards would not be significant.

Staff's analysis, to determine whether the Beizai Residence project would have a significant effect on the environment, was based on substantial evidence that included facts and documentation based on reasonable assumptions predicated upon facts. Upon completion of the Initial Study, staff determined that no significant impacts would result from the proposed development, no mitigation would be required, and a Negative Declaration was prepared in accordance with CEQA.

CONCLUSION

Staff has investigated the issue(s) raised by the appellant and determined that no substantial evidence of unmitigated impacts exists. Staff believes that the Negative Declaration prepared for the project is in conformance with the California Environmental Quality Act (CEQA). Staff therefore recommends affirming the Planning Commission's certification of Negative Declaration No. 33137, under Section 21080(c) of the State CEQA Guidelines.

ALTERNATIVE

Grant the appeal, set aside the environmental determination, and remand the matter to the lower decision maker for reconsideration, with any direction or instruction the City Council deems appropriate (Negative Declaration, Project No. 33137).

FISCAL IMPACT:

None with this action. All cost associated with the processing of this project are paid by the applicant.

Oppenheim/Halbert/GRG

LEGAL DESCRIPTION:

The proposed project is located at 6542 Avenida Wilfredo, north of Avenida Manana, within the Coastal Zone and the La Jolla Community Planning Area and is more particularly described as Lot 192, Muirland Village Unit #4, Map 3895.

Staff: Glenn Gargas — (619) 446-5142.

FILE LOCATION: LUP-Beizai Residence, 08/02/05 (65)

COUNCIL ACTION: (Time duration: 11:21 a.m. – 11:21 a.m.)

MOTION BY PETERS TO ADOPT THE RESOLUTION TO DENY THE APPEAL, AND TO UPHOLD THE PLANNING COMMISSION DECISION TO ADOPT THE NEGATIVE DECLARATION. Second by Madaffer. Passed by the following vote: Peters-yea, District 2-vacant, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, District 8-vacant, Mayor–vacant.

ITEM-332: Rashid Residence.

Matter of the appeal by Gary McMullen and Wayne Brechtel of the certification by the Planning Commission of Environmental Negative Declaration No. 5179, and the adequacy of that document, as permitted by Section 21151(c) of the California Public Resources Code in regard to the California Environmental Quality Act (CEQA), in the evaluation of applications of a Coastal Development Permit, Site Development Permit and Tentative Map to subdivide an existing lot in two and to construct a new single-family residence on the newly created vacant portion for the site located at 7194 La Jolla Scenic Drive South in the SF (single-family) zone of the La Jolla Shores Planned District, Coastal Overlay Zone, Coastal Height Limit and within the boundaries of the La Jolla Community Plan area.

(See City Manager Report CMR-05-166. La Jolla Community Plan Area. District 1.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution to deny the appeal, and to affirm the decision of the Planning Commission in the adopting Environmental Negative Declaration No. 5179:

(R-2006-146) DENIED APPEAL; UPHOLD THE DECISION OF THE HEARING OFFICER, ADOPTED AS RESOLUTION R-300740

Adoption of a Resolution granting or denying the appeal, and upholding the decision of the Planning Commission in adopting Environmental Negative Declaration, with appropriate findings to support Council action.

OTHER RECOMMENDATIONS:

Planning Commission on May 12, 2005, voted 3-3 to approve the appeal and deny the project therefore the decision of the lower stands to grant the application for the project, was opposition.

Ayes: Griswold, Chase, Garcia
Nays: Otsuji, Ontai, Schultz
Not present: Steele

The La Jolla Community Planning Group has recommended denial of this project.

CITY MANAGER SUPPORTING INFORMATION

BACKGROUND

The proposed project for which Negative Declaration No. 5179 has been prepared and previously certified by the Hearing Officer on November 10, 2004, is the split of an existing 29,577 square-foot lot and construction of a new two-story single-family residence. The proposed residence is to total 3,796 square-feet of gross floor area, to be located on the newly created parcel two, a 14,986 square-foot property. The existing residence will remain on parcel one, a 14,591 square foot lot. The project site is located at 7194 La Jolla Scenic Drive South, within the SF Zone of the La Jolla Shores Planned District, Coastal Overlay Zone (non-appealable), Coastal Height Limitation Overlay Zone, and within the La Jolla Community Planning Area.

The decision of the Hearing Officer to approve the project was appealed to the Planning Commission. On May 12, 2005, the Planning Commission voted 3 to 3 on a motion to approve the appeal and deny the project. The 3 to 3 vote resulted in no action by the Planning Commission, which meant that the Hearing Officer's previous certification of the environmental document and approval of the project stood.

This appeal is before the City Council because of an amendment to the California Environmental Quality Act (CEQA). Effective January 1, 2003, Section 21151 (c) CEQA has been amended as follows: If a non-elected decision-making body of a local lead agency certifies an environmental impact report, approves a negative declaration or a mitigated negative declaration, or determines that a project is not subject to this division, that certification, approval, or determination may be appealed to the agency's elected decision-making body, if any.

Pursuant to this amended legislation, Mr. Gary McMullen filed an appeal (Attachment No. 2) of the Hearing Officer's adoption of Negative Declaration for the Rashid Residence project. This appeal applies only to the environmental determination.

FISCAL IMPACT:

None with this action. All cost associated with the processing of this project are paid by the applicant.

Oppenheim/Halbert/GRG

LEGAL DESCRIPTION:

The project is located at 7194 La Jolla Scenic Drive South, within the Single Family Zone of the La Jolla Shores Planned District, within the La Jolla Community Planning Area. And is more particularly described as Lot 27 of Azure Coast Unit No. 4, in the City of San Diego, County of San Diego, Parcel Map No. 6662.

Staff: Glenn Gargas - (619) 446-5142.

FILE LOCATION: LUP-Rashid Residence 08/02/05 (65)

COUNCIL ACTION: (Time duration: 2:29 p.m. – 3:14 p.m.)

Testimony in opposition by Wayne Brechtel and Gary McMullen.

Testimony in favor by Matt Peterson and Mark Lyon.

MOTION BY PETERS TO DENY THE APPEAL, UPHOLD THE DECISION OF THE PLANNING COMMISSION, AND ADOPT THE RESOLUTION WITH THE FOLLOWING DIRECTION: THE MINIMUM DENSITY RULE IN LA JOLLA LACKS CLARITY; PREPARE AMENDMENTS TO THE LA JOLLA SHORES PLANNED DISTRICT ORDINANCE TO ADDRESS MINIMUM ALLOWABLE LOT SIZE. Second by Young. Passed by the following vote: Peters-yea, District 2-vacant, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, District 8-vacant, Mayor-vacant.

ITEM-333: Paseo de Mission Hills.

Matter of the appeals by Mission Hills Heritage and Michael Wells of the decision by the Planning Commission approving an application for Process 4 Vesting Tentative Map (VTM) and a Process 4 Site Development Permit (SDP) for the Paseo de Mission Hills project. The proposed project includes the construction of a 61-unit residential condominium complex with 5,113 square feet of retail space, and a 4,721 square foot retail/office building. The scope of work includes the restoration of two existing buildings with eight (8) affordable residential rental units above office and retail space. The VTM is required for the condominiums. The SDP is required for development within the Mid-City Planned District Ordinance and due to requested deviations to the regulations of the underlying zone (setbacks, height, diagonal plan dimension, and architectural features) and deviations from the Affordable Housing Density Bonus provisions. The proposed project will conform to the Council Policy 600-27(A) criteria for the Affordable/In-Fill Housing Expedite Program. The 1.17-acre project site is located on the north side of the 800 block of W. Washington Street in the MR-1000 and CN-2A zones of Mid-City Communities Planned District within the Uptown Community Planning area and Council District 2.

(See City Manager Report CMR-05-080. MND/MMRP/VTM No. 113679/SDP No. 113680. Uptown Community Plan Area. District 2.)

(Continued from the meetings of April 19, 2005, Item 330 and July 19, 2005, Item 333; last continued at Councilmember Peters' request, to allow time for the parties to resolve design differences for the project.)

NOTE: Hearing open. Public testimony taken on 7/19/2005.
Hearing closed. Public testimony taken on 4/19/2005.

CITY MANAGER'S RECOMMENDATION:

Adopt the resolution in Subitem A to deny the appeals and to uphold the decision of the Planning Commission, and grant the permit; adopt the resolution in Subitem B; and adopt the resolution in Subitem C to grant the map:

Subitem-A: (R-2006-159) DENIED APPEAL; UPHOLD THE DECISION OF THE PLANNING COMMISSION, ADOPTED AS RESOLUTION R-300741

Adoption of a Resolution granting or denying the appeals and upholding or overturning the decision of the Planning Commission in approving the project, and granting or denying Site Development Permit No. 113680, with appropriate findings to support Council action.

Subitem-B: (R-2006-160) ADOPTED AS RESOLUTION R-300742

Adoption of a Resolution certifying that the information contained in Mitigated Negative Declaration No. 40292 has been completed in compliance with the California Environmental Quality Act of 1970 (California Public Resources Code Section 21000 et seq.) as amended, and the State guidelines thereto (California Administration Code Section 15000 et seq.), that the report reflects the independent judgment of the City of San Diego as Lead Agency and that the information contained in said report, together with any comments received during the public review process, has been reviewed and considered by the City Council;

That the City Council finds that project revisions now mitigate potentially significant effects on the environment previously identified in the Initial Study and therefore, that said Mitigated Negative Declaration is hereby approved;

That pursuant to California Public Resources Code Section 21081.6, the City Council hereby adopts the Mitigation Monitoring and Reporting Program, or alterations to implement the changes to the project as required by this body in order to mitigate or avoid significant effects on the environment;

That the City Clerk is directed to file a Notice of Determination (NOD) with the Clerk of the Board of Supervisors for the County of San Diego regarding the above project.

Subitem-C: (R-2006-161) GRANTED MAP, ADOPTED AS RESOLUTION R-300743

Adoption of a Resolution granting or denying Vesting Tentative Map No. 113679, with appropriate findings to support Council action.

OTHER RECOMMENDATIONS:

Planning Commission on January 27, 2005, voted 4-1 to approve staff's recommendation, which includes a condition for the restoration of the two potentially historical existing buildings; was opposition.

Ayes: Ontai, Otsuji, Schultz, Garcia
Nays: Chase
Recusing: Steele
Vacant: Chairperson

The Uptown Planners on October 5, 2004, voted 10-3-1 to recommend approval of the proposed project with conditions.

CITY MANAGER SUPPORTING INFORMATION:

The proposed project site is located on the north side of the 800 Block of West Washington Street, bounded by Goldfinch Street, Falcon Street, and Fort Stockton Drive. The proposed project site is located within the Mid-City Communities Planned District, and is currently zoned MR-1000 and CN-2A. The northeast corner of the project site/block (Lots 17-24), bounded by Fort Stockton Drive and Falcon Street, is zoned MR-1000 (Residential – Multiple Unit; 1 dwelling unit per 1,000 square-feet of lot area). The remaining portion of the site/block (Lots 1–16) is zoned CN-2A (Mixed Use/Residential – Multiple Unit; 1 dwelling unit per 800 square-feet of lot area). The project as zoned, allows for a total of 59 units, however, the proposal includes an affordable housing density bonus request, which would allow up to an additional 25 percent density bonus. The project is only requesting an approximately 17 percent increase in density to allow for the development of ten additional units for a total of 69 units.

The proposed project site is located within the Uptown Community Plan that designates the 0.71 – acre portion of the site for Mixed Use allowing 44-73 dwelling units per acre (dus/acre), and Medium to High Density Residential at 29-44 dus/acre on the 0.46-acre northeastern portion of the site. According to the Land Use Element of the Community Plan, the proposed project, occupying 1.17-acres, could accommodate between 45 and 72 dwelling units.

The surrounding development consists of a mixture of one- and two-story commercial structures; and two-, three-, and four-story multi-family structures. Currently, the south side of West Washington Street is developed with retail, office, restaurant, and a neighborhood bar. The development on the west side of Goldfinch Street contains two restaurants, retail, and commercial office uses. The development to the north of the project site on Fort Stockton Drive contains two single-family residences that have been converted into retail uses and a three-story structure over parking garage, multi-family complex. The development at the northeast corner of Falcon Street consists of a two-story structure over garage, multi-family complex, and the Mission Hills Commons complex is located directly to the east of the project site.

FISCAL IMPACT:

None with this action. All costs associated with the processing of this project are paid from a deposit account maintained by the applicant.

Frazier/Halbert/JAP

LEGAL DESCRIPTION:

The project site is located on the block bounded by Washington Street on the south, Fort Stockton Street on the north, Goldfinch Street on the west, and Falcon Street on the east, in the MR-1000 and CN-2A zones of the Mid-City Planned District Ordinance within the Uptown Community Plan area and is more particularly described as Lots 1, 2, 3, 4, 5, 6, the southerly 10 feet of lot 10, lots 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24 in Block 54 of Arnold & Choate's addition.

Staff: Jeffrey A. Peterson – (619) 446-5237.

FILE LOCATION: SUBITEMS A, B, & C: LUP-Paseo De Mission Hills, 04/19/05 (65)

COUNCIL ACTION: (Time duration: 2:16 p.m. – 2:29 p.m.)

Testimony in opposition by Michael Wells.

Testimony in favor by Bob Lawrence.

MOTION BY MAIENSCHEIN TO ADOPT THE RESOLUTION IN SUBITEM A TO DENY THE APPEALS AND UPHOLD THE DECISION OF THE PLANNING COMMISSION, AND GRANT THE PERMIT; AND ADOPT THE RESOLUTION IN SUBITEM B; AND ADOPT THE RESOLUTION IN SUBTIEM C TO GRANT THE MAP AND DIRECT STAFF AS FOLLOWS:

1) CERTIFY MITIGATED NEGATIVE DECLARATION NO. 40292 AND ADOPT THE MITIGATION MONITORING AND REPORTING PROGRAM; AND

2) APPROVE VESTING TENTATIVE MAP NO. 113679 AND SITE DEVELOPMENT PERMIT NO. 113680 WITH THE FOLLOWING MODIFICATIONS:

A) THE HEIGHT OF THE NEW BUILDING SHALL NOT EXCEED 53 FEET MEASURED FROM THE HIGH POINT OF THE FORT STOCKTON DRIVE SIDE OF THE PROJECT, EXCEPT FOR PROTRUSIONS FOR MECHANICAL SPACES, ELEVATOR TOWER OVERRIDES, ROOF ACCESS STAIRS AND HVAC EQUIPMENT. SECREENING FOR THE HVAC MECHANICAL EQUIPMENT REQUIRED BY THE MINICIPAL CODE WILL NOT EXCEED FIVE (5) FEET. THERE SHALL BE NO MEZZANINES ABOVE THE FIFTH LEVEL.

B) WINDOWS FACING STREETS SHALL BE RECESSED, RATHER THAN FLUSH MOUNTED.

C) COPPER SIDINGS SHALL BE REPLACED BY BRICK AND/OR STUCCO. GLASS SHALL BE REDUCED AND ELIMINATED ABOVE THE FIFTH FLOOR.

D) PROJECTING ROOFS SHALL BE ELIMINATED.

E) BELT COURSE AND CORNICE DETAILS SHALL BE ADDED.

F) THE WALKING “PASEO” SHALL REMAIN OPEN TO THE PUBLIC DURING USUAL DAYTIME AND EVENING BUSINESS HOURS, SEVEN DAYS A WEEK. THIS REQUIREMENT SHALL ALSO BE ADDED AS A CONDITION TO THE COMMUNITY’S CC&R’S.

G) THE DEVELOPER SHALL MAKE THE CRAFTSMAN HOUSE ON FALCON AVAILABLE FREE OF CHARGE TO A PARTY OF DEVELOPER'S CHOICE SO LONG AS THE PARTY INTENDS TO PRESERVE THE HOUSE IN ANOTHER LOCATION WITHIN THE GREATER SAN DIEGO AREA AND SO LONG AS THE PARTY SHOWS DEVELOPER THAT IT HAS THE RESOURCES TO SITUATE THE HOUSE. DEVELOPER SHALL PAY, IF NECESSARY, TO MOVE THE HOUSE TO THE NEW SITE. IF NO PARTY STEPS FORWARD TO MOVE THE HOUSE BY THE TIME A GRADING OR FOUNDATION PERMIT IS ISSUED BY THE CITY, THE HOUSE MAY BE DEMOLISHED.

H) THE REAR WING OF THE FUNCHEON BUILDING AND OTHER BUILDINGS TO BE DEMOLISHED (INCLUDING THE CRAFTSMAN HOUSE IF NOBODY TAKES THE BUILDING) SHALL BE MADE AVAILABLE FOR SALVAGE EFFORTS BY LOCAL ARCHITECTURAL SALVAGE COMPANIES.

I) THE DEVELOPER SHALL INCORPORATE THE NEON FUNCHEON SIGN LOCATED ON FALCON STREET INTO THE PROJECT, PREFERABLY IN THE "PASEO" AREA.

J) PRIOR TO SALVAGING AND DEMOLITION, THE DEVELOPER SHALL ALLOW MISSION HILLS HERITAGE REPRESENTATIVES TO ACCESS THE BUILDINGS FOR THE PURPOSE OF PHOTOGRAPHIC DOCUMENTATION.

K) THE BUILDINGS SHALL INCORPORATE THE DESIGN FEATURES IDENTIFIED IN THE ARCHITURAL DRAWINGS PRESENTED HERE TODAY.

Second by Frye. Passed by the following vote: Peters-yea, District 2-vacant, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, District 8-vacant, Mayor-vacant.

ITEM-334: Edison, Ibarra and Cherokee Point Elementary Schools – ROW Vacations.

(Mid-Cities Community Planning Area. Districts 3 and 7.)

(Continued from the meeting of June 28, 2005, Item 334, at Councilmember Madaffer's request, because it was brought to his attention that the new schools under construction at City Heights are not being built to the same sidewalks and intersection standards under the Safe-Route-to-School Program. The 30 day continuance will allow staff to get some questions answered and to work with the School District to resolve these issues.)

NOTE: Hearing open. No testimony taken on 6/28/2005. Districts 2 and 8 not present.

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-1268) ADOPTED AS RESOLUTION R-300736

Vacating a portion of Polk Avenue between Wilson Avenue and 35th Street and a portion of the alley north of Polk Avenue; the portion of 49th Street between Orange and Polk Avenues and the alleys east and west of 49th Street; the alley between 38th and 39th Streets, portions of 38th and 39th Streets between Wightman and Landis Streets, and a portion of Landis Street east of 38th Street.

CITY MANAGER SUPPORTING INFORMATION:

Edison Elementary (Polk Avenue and alley north of Polk)

Edison Elementary School is currently located north of University Avenue, south of Polk Avenue, east of 35th Street and west of Wilson Avenue. The Rights-of-Way to be vacated consist of a portion of Polk Avenue and an alley north of Polk Avenue between 35th Street and Wilson Avenue to allow for the expansion of the school as part of the Prop MM Program. The City has determined that these public Rights-of-Way are no longer needed. Through alley access would be provided via an extension of the alley to 35th Street.

Ibarra Elementary (49th Street and alleys east and west of 49th Street)

Ibarra Elementary School is a new school to be located north of Polk Avenue and south of Orange Avenue, east of Estrella Avenue and west of Winona Avenue. The Rights-of-Way to be vacated consist of a portion of 49th Street between Orange and Polk Avenues, and the alleys east and west of 49th Street to allow for construction of the school as part of the Prop MM Program. The City has determined that these Rights-of-Way are no longer needed.

Cherokee Point Elementary (38th and 39th Streets, alley between 38th and 39th Streets and Landis, east of 38th Street)

Cherokee Elementary School is a new school to be located north of Landis Street and south of Wightman Street, east of 38th Street and west of the alley between 40th and 39th Streets. The Rights-of-Way to be vacated consist of a portion of 38th and 39th Streets between Wightman and Landis Streets, the alley between 38th and 39th Streets and a portion of Landis Street east of 38th Street to allow for the construction of the school as part of Prop MM Program. The City has determined that these Rights-of-Way are no longer needed.

FISCAL IMPACT:

No cost to the City. A deposit has been collected from the applicant to cover the costs associated with processing the proposed projects.

NOTE: This project is exempt from the California Environmental Quality Act pursuant to State CEQA Guidelines Section 15061(b)(3).

Oppenheim/Halbert/MED

Staff: Morris Dye – (619) 446-5201.

FILE LOCATION: STRT-J2974 (39)

COUNCIL ACTION: (Time duration: 11:22 a.m. – 11:27 a.m.)

MOTION BY MADAFFER TO ADOPT. Second by Peters. Passed by the following vote: Peters-yea, District 2-vacant, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, District 8-vacant, Mayor-vacant.

ITEM-335: Three actions related to Bird Rock Maintenance Assessment District Formation.

(La Jolla Community Area. District 1.)

CITY MANAGER'S RECOMMENDATION:
Adopt the following resolutions:

Subitem-A: (R-2005-1256) ADOPTED AS RESOLUTION R-300744

Authorizing the City Auditor and Comptroller to establish the Bird Rock Maintenance Assessment District Fund.

Subitem-B: (R-2005-1257) ADOPTED AS RESOLUTION R-300745

Approving Fiscal Year 2006 Budget for the Bird Rock Maintenance Assessment District.

Subitem-C: (R-2005-1259) ADOPTED AS RESOLUTION R-300746

Considering the protests, approving Assessment Engineer's Report, confirming the assessments, and ordering the improvements, maintenance and/or services, in the matter of the Bird Rock Maintenance Assessment District.

CITY MANAGER SUPPORTING INFORMATION:
If there is no majority protest upon completion of the ballot protest proceedings, this action establishes the Bird Rock Maintenance Assessment District (District). The District is located in the La Jolla Community Planning Area roughly along the La Jolla Boulevard corridor south of La Cañada Street and north of Wrelton Street. Between September 2004 and January 2005, residents of Bird Rock became the first to meet the criteria established in Council Policy 100-21, Funding for Maintenance Assessment District (MAD) Formation. As a result, up to $50,000 from the MAD Formation Fund has been made available to the community to assist with District formation costs. If the vote passes, the new District will repay the MAD Formation Fund. The purpose of the District is to fund the enhanced maintenance of landscaping, hardscaped surfaces, and improvements located in dedicated public rights-of-way, including medians, sidewalks, bulb outs, curbs, and gutters. Maintenance may include litter control, fertilizing, irrigation, weed control, pest control, pruning, edging, and tree maintenance for plant health and appearance, hardscape and streetscape cleaning; incidental traffic control, security and the maintenance of irrigation, electrical and similar system components.

The assessment may also be used to promote community events and to install or maintain seasonal decorations and miscellaneous capital improvements including but not limited to signs, community identification and directional monumentation and artwork, street furniture, kiosks, lighting, and similar improvements that are permitted to be installed and maintained by the District. Property owners will also vote whether the Bird Rock Development Corporation, a non-profit, Section 501(c)(3) organization, should administer the contracts for goods and services for the District.

	FY 2006	Maximum Authorized
EXPENSES		
Contract	$0	$75,000
Incidentals	$115,000	$57,500
Outlay	$25,007	$27,007
Energy and Utilities	$0	$5,500
TOTAL EXPENSES	**$140,007**	**$165,007**
REVENUES		
Assessments	$165,007	$177,885
City Contributions-Gas Tax	$0	$20,000
Interest	$0	$5,000
TOTAL REVENUES	**165,007**	**$202,885**
RESERVES	**$25,000**	**$37,878**

The proposed annual assessments were calculated by an assessment engineer for parcels within Bird Rock MAD and are based on each parcel's equivalent benefit unit (EBU), which is equivalent to one single family dwelling unit. The proposed rate would be $90 per EBU.

FISCAL IMPACT:

Approximately $165,007 will be assessed to the property owners within the Bird Rock Maintenance Assessment District in FY 2006. The proposed Fiscal Year 2006 assessments and maximum authorized assessments are permitted to increase annually at a rate equivalent to the San Diego Consumer Price Index – Urban (SDCPI-U) plus 3%. The total General Fund assessment for two City-owned parcels is $36.90 in Fiscal Year 2006. Future contributions from the Gas Tax Fund will be requested in the Fiscal Year 2007 budget process as medians are brought on-line.

Herring/Medina/AWF

Staff: Andrew Field – (619) – 533-6778

FILE LOCATION: SUBITEMS A, B, & C: STRT-M-504-06 (34)

COUNCIL ACTION: (Time duration: 10:12 a.m. – 10:22 a.m.; 2:13 p.m. – 2:16 p.m.)

Deputy Mayor Atkins opened the Hearing.

Testimony in opposition by David Nightingale.

Testimony in favor by Joseph LaCava, Paul Metcalf, and Robert Joyce.

Deputy Mayor Atkins closed the public portion of the Hearing and directed the City Clerk Liz Maland to tabulate the ballots.

City Clerk Maland announced that the votes in favor exceed the votes in opposition.

MOTION BY PETERS TO ADOPT. Second by Madaffer. Passed by the following vote: Peters-yea, District 2-vacant, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, District 8-vacant, Mayor-vacant.

ITEM-336: Penasquitos West.

Matter of approving, conditionally approving, modifying or denying to rezone 30.1-acre site located east of Camino del Sur and west of Calderon Way in the Torrey Highlands Plan Area from A-1-10 (agriculture) to R1-5000 (RS-1-14) single family and R-2000 (RM-1-4) multi-family; Vesting Tentative Map to subdivide the parcel into 108 single family lots, one multi-family lot and 8 open space lots; Planned Residential Development Permit and Resource Protection Ordinance Permit to construct 108 single-family units and 21-affordable multi-family units.

(Torrey Highlands Community Plan Area. District 1.)

CITY MANAGER'S RECOMMENDATION:

Introduce the ordinance in subitem A; adopt the resolution in subitem B; adopt the resolution in subitem C to grant the map; and adopt the resolution in subitem D to grant the permits:

Subitem-A: (O-2005-139) INTRODUCED, TO BE ADOPTED ON TUESDAY, SEPTEMBER 6, 2005

Introduction of an Ordinance changing 27.04 acres, from the A1-10 Zone to the RS-1-14 Zone and 1.22 acres from the A1-10 Zone to the RM-1-3 Zone (previously) referred to as the R1-5000 and R-2000 Zones) located east of Camino Del Sur and west of Calderon Road, in the Torrey Highlands (Subarea IV) Plan Area, in the Torrey Highlands Community Plan Area, in the City of San Diego, California, as defined by San Diego Municipal Code Section 131.0403 and 131.0406, repealing Ordinance No. O-12657 (New Series), adopted May 22, 1979, of the Ordinances of the City of San Diego insofar as the same conflicts herewith.

Subitem-B: (R-2005-1217) ADOPTED AS RESOLUTION R-300747

Adoption of a Resolution certifying Mitigated Negative Declaration No. 2266, on file in the office of the City Clerk, has been completed in compliance with the California Environmental Quality Act of 1970 (California Public Resources Code Section 21000 et seq.), as amended, and the State guidelines thereto (California Code of Regulations section 15000 et seq.), that the declaration reflects the independent judgment of the City of San Diego as Lead Agency and that the information contained in the report, together with any comments received during the public review process, has been reviewed and considered by this Council in connection with the approval of a vesting tentative map, resource protection ordinance permit, planned development permit and rezone for the Penasquitos West project;

That the City Council finds that project revisions now mitigate potentially significant effects on the environment previously identified in the Initial Study and therefore, that the Mitigated Negative Declaration, a copy of which is on file in the office of the City Clerk and incorporated by reference, is approved;

That pursuant to California Public Resources Code section 21081.6, the City Council adopts the Mitigation Monitoring and Reporting Program, or alterations to implement the changes to the project as required by this body in order to mitigate or avoid significant effects on the environment, a copy of which is attached hereto, as Exhibit A, and incorporated herein by reference;

That the City Clerk is directed to file a Notice of Determination (NOD) with the Clerk of the Board of Supervisors for the County of San Diego regarding the above project.

Subitem-C: (R-2006-170) GRANTED MAP, ADOPTED AS RESOLUTION R-300748

Adoption of a Resolution granting or denying Vesting Tentative Map No. 8165, with appropriate findings to support Council action.

Subitem-D: (R-2006-171) GRANTED PERMIT, ADOPTED AS RESOLUTION R-300749

Adoption of a Resolution granting or denying Planned Residential Development Permit No. 89234 and Resource Protection Ordinance Permit No. 8166, with appropriate findings to support Council action.

OTHER RECOMMENDATIONS:

Planning Commission on February 24, 2005, voted 7:0 to approve; was opposition.

Ayes: Otsuji, Garcia, Ontai, Schultz, Chase, Steele, Griswald

There is no City Council recognized Community Planning Group for Torrey Highlands. The adjacent Rancho Penasquitos Community Planning Board voted 12:0:1 on January 5, 2005 to recommend approval of the project with no conditions.

CITY MANAGER SUPPORTING INFORMATION:

The 30.1-acre site is in the Torrey Highlands (Subarea IV) Plan area. The site is undeveloped and was previously in agricultural use. The site is designated low density residential and is zoned A-1-10. The project was deemed complete prior to January 1, 2000; therefore it was reviewed under the old zoning regulations. Approval of this Planned Residential Development Permit (PRD), Resource Protection Ordinance Permit (RPO), Vesting Tentative Map (VTM), and rezone, will permit the construction of 108 single-family units and 21 affordable multi-family housing units on-site, and 8 open space lots. The 21 affordable units represent 20 percent of the pre-density bonus market rate units required by the Housing Element of the Subarea Plan and the North City Future Urbanizing Area Framework Plan.

For the single-family homes, a deviation from the required front yard setback of 15-feet to 10-feet is proposed to implement the design standards of the Subarea Plan. The deviation will facilitate placing the garages at the rear of the properties creating a more pedestrian friendly neighborhood. A deviation from the street side setback of 10-feet to 5-feet for Lots 2, 3 and 26 is also requested. All three lots are adjacent to sloped parcels, which are HOA owned and maintained. And, a deviation from the maximum building height of 30-feet to 35-feet is proposed for chimneys.

FISCAL IMPACT:

All staff costs associated with the processing of this project are recovered from a separate deposit provided by the applicant.

Oppenheim/Halbert/PXG

LEGAL DESCRIPTION:

The site is located east of Camino del Sur and is bounded on the north, east, and south by residential developments. It is currently zoned A1-10, with a proposed rezoning to R1-5000 (single family) and R-2000 (multi-family), and is in the Torrey Highlands (Subarea IV) Plan Area of the North City Future Urbanizing Area (NCFUA) (APN 306-021-15, the west half of the south quarter of Section 12, Township 14 South, Range 3 West, San Bernardino Meridian, in the City of San Diego, County of San Diego, State of California.

Staff: Patricia Grabski-(619) 446-5277.

FILE LOCATION: SUBITEM A: NONE;
SUBITEMS B, C, & D: LUP-Penasquitos West 08/02/05 (65)

COUNCIL ACTION: (Time duration: 3:21 p.m. – 3:44 p.m.)

Testimony in opposition by Jeff O'shea.

Testimony in favor by Jeff Olivero, Scot Sandstrom, and Sandi Burgoyne.

MOTION BY PETERS TO INTRODUCE THE ORDINANCE IN SUBITEM A; ADOPT THE RESOLUTION IN SUBITEM B; ADOPT THE RESOLUTION IN SUBTIEM C TO GRANT THE MAP; AND ADOPT THE RESOLUTION IN SUBITEM D TO GRANT THE PERMITS SUBJECT TO THE MODIFICATION THAT BOLLARDS BE INSTALLED TO RESTRICT THROUGH TRAFFIC ON TORREY GLEN ROAD AT THE BOUNDARY BETWEEN PENASQUITOS WEST AND THE TORREY GLEN COMMUNITIES. THROUGH TRAFFIC ON TORREY GLEN ROAD SHALL ONLY BE ALLOWED UNDER EMERGENCY CIRCUMSTANCES. ENSURE THAT BICYCLE AND PEDESTRIAN ACCESS AS NOTED IN THE PLANS IS ALLOWED. ON ITEM 20, PAGE 16 OF VESTING TENTATIVE MAP, THE FOLLOWING SHALL BE INCLUDED: "PRIOR TO RECORDATION OF THE FIRST FINAL MAP THE CITY FIRE DEPARTMENT SHALL DETERMINE IF FIRST RESPONSE CAN BE PROVIDED ON THE PROJECT SITE WITHIN SIX MINUTES." STRIKE OUT THE REST OF THAT PARAGRAPH. Second by Young. Passed by the following vote: Peters-yea, District 2-vacant, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, District 8-vacant, Mayor-vacant.

ITEM-S401: Waiver of Attorney-Client Privilege and the Work Product Doctrine.

(Continued from the meetings of July 19, 2005, Item S501 and July 25, 2005, Item S401, last continued at the request of City Attorney Aguirre, for further review.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2006-150) ADOPTED AS RESOLUTION R-300738

Declaring that the protections of the Attorney-Client Privilege and the Work Product Doctrine are waived as to the reports prepared for the City by the law firm Procopio Cory Hargreaves & Savitch relating to the City's defense obligations for defendants named in the People v. Grissom, et al action and the separate Cross-Complaint action related to the San Diego City Employees' Retirement System which have been brought by the City Attorney;

Directing the City Attorney to prepare the necessary Resolution associated with the action.

CITY MANAGER SUPPORTING INFORMATION:

From time to time the City Council has waived the Attorney-Client privilege and the protection of the Attorney Work-Product Doctrine with respect to certain materials. This may be done in order to respond to subpoenas or requests for documents or information.

The City Attorney has filed two civil complaints on matters related to the San Diego City Employees' Retirement System; People v. Grissom, et al (Case No. GIC 850246) and a Cross-Complaint action involving the Board of Administration of the Retirement System (Case No. GIC841845).

Defendants named in these actions have tendered requests for the City of San Diego to provide for their legal representation consistent with the Resolution of Indemnification approved by the City Council on November 18, 2002 (Resolution Number R-297335) or the provisions of Government Code Section 995 (defense of any civil action on account of an act or omission in the scope of his or her employment as an employee of the City). The City Manager has requested the law firm of Procopio Cory Hargreaves and Savitch to provide a legal analysis of the City's defense obligations.

The firm's reports on these two cases have been prepared, and are otherwise subject to the Attorney-Client Privilege and the protection of the Attorney Work-Product Doctrine. Therefore, they can not be released without the City Council first waiving those protections. In order to allow a public discussion of the representation requests, which are included on this agenda as Supplemental Items S402 and S403, the City Manager is requesting that the City Council waive the applicable privileges for the reports.

Ewell

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 3:44 p.m. – 4:17 p.m.)

MOTION BY PETERS TO ADOPT. Second by Madaffer. Passed by the following vote: Peters-yea, District 2-vacant, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, District 8-vacant, Mayor-vacant.

ITEM-S402: Provision of Defense for Defendants in Case No. GIC 850246 – People v. Grissom, et al.

(Continued from the meetings of July 19, 2005, Item S502 and July 25, 2005, Item S402, last continued at the request of City Attorney Aguirre, for further review.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-) FAILED

Declaring that the City of San Diego shall defend, indemnify and hold harmless the individuals named in the Civil Complaint, People of the State of California (Plaintiff) v. Lawrence Grissom; Ronald L. Saathoff; John A. Torres; Sharon K. Wilkinson; Terri A. Webster; Cathy Lexin; Bruce Herring; Loraine Lee Chapin (Case No. GIC 850246);

Directing the City Attorney to prepare the necessary Resolution associated with the action.

CITY MANAGER SUPPORTING INFORMATION:

The San Diego City Attorney has filed a Civil Complaint in the Superior Court of California under the Political Reform Act of 1974. The Complaint (People of The State of California (Plaintiff) v. Lawrence Grissom; Ronald L. Saathoff; John A. Torres; Sharon K. Wilkinson; Terri A. Webster; Cathy Lexin; Bruce Herring; Loraine Lee Chapin (Defendants - Case No. GIC 850246) relates to actions of specific members of the Board of Administration of the San Diego City Employees' Retirement System and requests "recovery of economic benefit wrongfully received and injunctive relief setting aside official action" of the Board.

A request has been tendered on behalf of the defendants named in this action for the City of San Diego to provide for their legal representation consistent with the Resolution of Indemnification approved by the City Council on November 18, 2002 (Resolution Number R-297335) or the provisions of Government Code Section 995 (defense of any civil action on account of an act or omission in the scope of his or her employment as an employee of the City). Government Code Section 995.2.b specifies that upon receiving a written request, the public entity shall, within 20 days, inform the employee whether a defense will be provided.

At the request of the City Manager, the law firm of Procopio Cory Hargreaves and Savitch has prepared a legal analysis of the City's defense obligations for the named defendants in the case. The report is subject to Attorney Client Privilege. Based on the firm's assessment the City Manager requests that the City Council make a determination whether the City will declare its intent to defend, indemnify and hold harmless the individuals named in the civil complaint based on the findings of the report.

If the Council declares the intent to provide a defense, the City Manager will retain and oversee outside Counsel up to his authorization limit of $250,000.

Ewell

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 4:17 p.m. – 5:07 p.m.)

MOTION BY PETERS TO ADOPT THE RESOLUTION TO PROVIDE LEGAL DEFENSE FOR THE FOLLOWING SIX OF THE NAMED DEFENDANTS: RONALD L. SAATHOFF, JOHN A. TORRES, SHARON K. WILKINSON, TERRI A. WEBSTER, CATHY LEXIN, AND BRUCE HERRING IN THE PEOPLE V. GRISSOM ACTION UNDER BOTH RESOLUTION R-297335 AND UNDER THE GOVERNMENT CODE AS A SECONDARY BASIS SUBJECT TO A RESERVATION OF RIGHTS; THREE POTENTIAL RESERVATIONS: 1) RESOLUTION R-297335 WAS LATER TO BE DETERMINED TO BE INVALID OR ILLEGAL, 2) UNDER THE GOVERNMENT CODE, A FINDING WOULD BE MADE BY THIS COUNCIL THAT THOSE INDIVIDUALS WERE NOT ACTING IN THE SCOPE OF THEIR EMPLOYMENT, AND 3) THE INDIVIDUALS WERE FOUND GUILTY OF FRAUD OR CORRUPTION. DIRECT THE CITY MANAGER TO HIRE ONE ATTORNEY TO REPRESENT ALL SIX EMPLOYEES. Second by Young. Failed by the following vote: Peters-yea, District 2-vacant, Atkins-yea, Young-yea, Maienschein-nay, Frye-nay, Madaffer-yea, District 8-vacant, Mayor-vacant.

ITEM-S403: Provision of Defense for San Diego City Employee's Retirement System (SDCERS) Board of Administration in Cross Complaint Case No. GIC 841845.

(Continued from the meetings of July 19, 2005, Item S503 and July 25, 2005, Item S403, last continued at the request of City Attorney Aguirre, for further review.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-) REFFERED TO CLOSED SESSION

Declaring that the City of San Diego shall defend, indemnify and hold harmless the 21 individuals named in the Civil Cross-Complaint, San Diego City Employees' Retirement System, by and through its Board of Administration, (Plaintiff) v. San Diego City Attorney Michael J. Aguirre; the City of San Diego (Defendants) (Case No. GIC 84145);

Directing the City Attorney to prepare the necessary Resolution associated with the action.

CITY MANAGER SUPPORTING INFORMATION:

The San Diego City Attorney has filed a civil cross-complaint in the Superior Court of California (San Diego City Employees' Retirement System, by and through its Board of Administration, (Plaintiff) v. San Diego City Attorney Michael J. Aguirre; the City of San Diego (Defendants) (Case No. GIC 841845).

The complaint alleges that specific actions of members of the Board of Administration of the San Diego City Employees' Retirement System represent a breach of trust and fiduciary duty, and fraud through both negligent as well as intentional misrepresentation. The suit requests "declaratory relief" on a number of matters including terminating the 1998 MOU with the SDCERS Board and voiding the provisions of Manager's Proposals I and II.

Defendants named in this action have tendered a request for the City of San Diego to provide for their legal representation consistent with the Resolution of Indemnification approved by the City Council on November 18, 2002 (Resolution Number R-297335) or the provisions of Government Code Section 995 (defense of any civil action on account of an act or omission in the scope of his or her employment as an employee of the City). Government Code Section 995.2.b specifies that the public entity shall, within 20 days, inform the employee whether a defense will be provided.

At the request of the City Manager, the law firm of Procopio Cory Hargreaves and Savitch has prepared a legal analysis of the City's defense obligations for the named defendants in the case. The report is subject to Attorney Client Privilege. Based on the firm's assessment the City Manager requests that the City Council make a determination whether the City will declare its intent to defend, indemnify and hold harmless the individuals named in the civil complaint based on the findings of the report.

If the Council declares the intent to provide a defense, the City Manager will retain and oversee outside Counsel up to his authorization limit of $250,000.
Ewell

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 4:32 p.m. – 4:44 p.m.; 5:07 p.m. – 5:09 p.m.)

ITEM-S500: Request for Additional NOFA Funds for Acquisition Activities, Hazardous Waste Removal and Demolition of Structures Located at Hilltop Drive and Euclid Avenue.

(See Southeastern Economic Development Corporation Report SEDC-05-010. Southeastern San Diego Community Area. District 4.)

SOUTHEASTERN ECONOMIC DEVELOPMENT CORPORATION'S RECOMMENDATION:

Adopt the following resolution:

(R-2006-76) ADOPTED AS RESOLUTION R-300737

Finding and determining that, based upon the information set forth in Attachment No. 1, the use of funds from the Centre City Redevelopment Project Area Low and Moderate Income Housing Set-Aside Fund to provide for acquisition activities, hazardous waste removal, and demolition of structures on the Project Site outside of the Centre City Redevelopment Project Area will be of benefit to the Centre City Redevelopment Project Area.

Aud. Cert. 2600043.

NOTE: See the Redevelopment Agency Agenda of 8/2/2005 for a companion item.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 11:31 a.m. – 11:31 a.m.)

MOTION BY MADAFFER TO ADOPT. Second by Young. Passed by the following vote: Peters-yea, District 2-vacant, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, District 8-vacant, Mayor-vacant.

NON-DOCKET ITEMS:

None.

ADJOURNMENT:

The meeting was adjourned by Deputy Mayor Atkins at 5:13 p.m. in honor of the memory of:

Arnold Sirk as requested by Council Member Maienschein, and
Mildred Carpenter as requested by Council Member Frye.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 5:09 p.m. – 5:13 p.m.)