

MEMORANDUM OF LAW

DATE: August 11, 1986

TO: Councilmember Abbe Wolfsheimer  
FROM: City Attorney  
SUBJECT: Can PRD 85-0153/0154 (Camino Bernardo) Be  
Approved in the Face of Emergency Ordinance No.  
O-16686

You inquired as to the propriety of passing on PRD 85-0153 on the docket of July 22, 1986 as Item 338 in the face of the then-existing Emergency Ordinance No. O-16686. By way of background, Item 338 was an appeal by the Rancho de los Penasquitos Planning Board of the approval of PRD 85-0153/0154 pursuant to San Diego Municipal Code sections 101.0900 G. and 101.0240.

The purpose of a planned residential development (PRD) is to facilitate development with imaginative design and variety of dwelling unit types while maintaining a sensitivity to the environment. San Diego Municipal Code section 101.0900 et seq. Yet the application remains one of design and does not require substantive construction details. Section 101.0900 D. Hence approval of a PRD does not insure a building permit as a building permit has wholly independent reasons for existence. *Blue Chip Properties v. Permanent Rent Control Board*, 170 Cal.App.3d 648, 661 (1985); *Avco Community Developers, Inc. v. South Coast Regional Commission*, 17 Cal.3d 785, 795 (1976).

Therefore a favorable decision on the PRD involved in Item 338 would not automatically lead to a building permit. Emergency Ordinance No. O-16686 provided in pertinent part as follows:

Section 1. No building permit shall be issued which requires a sewer hookup in the Sewer Pump Station No. 64 service area within the City of San Diego nor shall any project be approved which requires a sewer hookup in the Sewer Pump Station No. 64 service area within the City of San Diego as delineated in that certain map filed in the office of the City Clerk as Document No. OO-16686.

Emphasis added.

While clearly a PRD is a project, it was not a project the approval of which constitutes an approval of a "sewer hookup" as the sewer hookup is a natural consequence of and is conditioned upon a building permit and not the mere approval of a planning mechanism such as a PRD.

While Emergency Ordinance No. O-16686 is no longer in effect, we find no restriction in its language to the review and consideration of PRD 85-0153/0154 which occurred on July 22, 1986.

JOHN W. WITT, City Attorney

By

Ted Bromfield

Chief Deputy City Attorney

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