DATE: December 1, 1988

TO: Chairman and Members of the Planning Commission, via Planning Director
FROM: City Attorney
SUBJECT: Torrey Pines Science Center PID 86-0884 - Vesting Tentative Map - Appeal from Decision of Subdivision Board and Planning Director - Sierra Club

By an informal memorandum dated November 10, 1988, copy attached as Attachment 1, Fred Conrad of this office concluded that the Sierra Club had not filed a valid appeal to the decisions of the Planning Director and Subdivision Board with regard to a planned industrial development permit and a vesting tentative map for a project known as Torrey Pines Science Center. The purported appeal had already been docketed for the Planning Commission's hearing prior to Mr. Conrad's memorandum.

Your chairman has asked whether the Planning Commission has the option of either hearing or not hearing the appeal or whether the Planning Commission has jurisdiction to consider the matter. After additional review, it is our opinion that the Sierra Club has not filed a valid appeal and the item should be removed from your agenda.

Our conclusion is based upon the following summary of the facts:

1. On September 26, 1988, the Subdivision Review Board approved vested Tentative Map No. 86-0884 and the planned industrial development permit relating to Torrey Pines Science Center.

2. On or about October 4, 1988, a letter from the Sierra Club was delivered to the City Planning Department, attention Mr. Tom Murphy, which commenced as follows:

> Greetings:
>
> Sierra Club wishes to appeal the decision of the Subdivision Review Board approving the subject project.
>
> The proposed project is of unreasonable density for the site and consumes canyons designated in the University Community Plan as open space.

The remainder of the letter deals with alleged inadequacies with regard to the environmental impact report.

3. The Sierra Club representative requested that the original letter be time-stamped and returned and a copy of the

letter was made.

4. Tom Murphy received the xerox copy of the Sierra Club letter and filed it on a mistaken conclusion that the original letter was being processed as an appeal by another senior planner. No action was therefore taken by any Planning Department employee to cause the matter of an appeal to be placed on the Planning Commission agenda.

5. On or about October 9, 1988, a representative of the owner of the subject property contacted the Planning Department to determine whether or not an appeal had been filed pursuant to Municipal Code section 101.0230. The representative of the property owner was informed that no such appeal had been filed and thereupon proceeded with actions as described in the letter attached hereto as Attachment 2, including beginning architectural work, proceeding with construction coordination activities and incurring additional legal and planning expenditures.

6. On or about October 21, 1988, in response to a query from a representative of the Sierra Club, the letter dated October 4, 1988, from the Sierra Club was sought out and found in the correspondence file for the project, the property owner was notified of the purported appeal and notices and procedures were followed to have the matter heard by the Planning Commission at its meeting on November 17, 1988.

7. The property owner objected to the validity of the appeal by letter dated October 25, 1988, which letter is attached to Mr. Conrad's memorandum (Attachment 1 hereto).

Mr. Conrad's memorandum concluded that no valid appeal had in fact been filed because of the failure to comply with the provisions of the Municipal Code and specifically for failure to state "wherein there was an error in the decision of the Planning Director."

Municipal Code section 101.0230 specifies the legal process to be followed in appealing a decision of the Planning Director or the Subdivision Board and specifies that such an appeal "shall be in writing and filed in duplicate with the Planning Department upon the forms provided" within ten days of the decision. The section further provides that "the appeal shall specify wherein there was an error in the decision of the Planning Director."

As stated above, we concur in Mr. Conrad's conclusion. Discussions with Planning Department staff indicate that there is at present no formal procedure for informing prospective appellants that they must conform to the specific provisions of section 101.0230 in filing an appeal. In fact, it appears that the Planning Department has, on numerous occasions, accepted

appeals on forms other than the standard form, a copy of which is attached hereto as Attachment 3, and which you will note is printed on distinctive goldenrod paper.

However, the Municipal Code requirements are clear, the appeal form is readily available, and failure to comply with the Municipal Code requirements must, in a fact situation such as described above, result in a conclusion that no valid appeal has in fact been filed.

Not only did the Sierra Club fail to specify an error in the decision, its appeal was not filed on the appeal form, its appeal was not filed in duplicate, the original was retained by the Sierra Club, and its letter merely indicates a "wish" to appeal. The fact that its letter was filed with other correspondence relating to the project rather than being treated as an appeal was the direct result of the Sierra Club's failure to comply with the Municipal Code requirements. As a result of the delay in recognizing that the letter was, in fact, an attempted appeal, not only did the developer proceed in good faith with the project but the thirty-day requirement for hearing an appeal contained in Government Code section 66452.5, as discussed in the property owner's October 25, 1988, letter, was not met.

While the Planning Department has in the past accepted appeals in some cases without requiring strict compliance with the Municipal Code, to our knowledge failure to require such compliance did not, in any past instance, result in a failure to recognize a document as an official appeal. The fact that in the subject case the person attempting to file the appeal requested the return of the only original appeal document supports the conclusion that a valid appeal was not filed in this case.

The case law is clear that persons dealing with public agencies such as the City are chargeable with knowledge of the powers and limits of power of officers and employees of the public agency when an officer or employee of the City acts beyond the scope of the power vested in the officer or employee. Such action is generally held to be void. In addition, the doctrine of estoppel will not generally be invoked against a governmental agency in circumstances where it would operate to defeat a policy designed to protect the public interest. Therefore, the action by the City employee in not requiring compliance with the Municipal Code provisions for appeal was, we feel, beyond the scope of that employee's power and the purported appeal itself must be considered void under the above described facts and circumstances. Hampson v. Superior Court, 67 Cal.App.3d 472, 136 Cal.Rptr. 722 (1977).

In summary, while it appears that the Planning Department

has, on various occasions, processed appeals without requiring strict compliance to the Municipal Code provisions relating to such appeals, in the above-described fact situation it is our conclusion that the burden of failing to comply with the Municipal Code requirements must fall upon the proposed appellant rather than the property owner who was without fault and acted in reliance upon statements by the Planning Department that an appeal had not been filed within the specified ten-day time period.

In order to avoid such misunderstandings and inadequate appeals in the future, it is recommended that the Planning Department establish procedures to guarantee that prospective appellants are informed of and are required to comply with the specific provisions of Municipal Code section 101.0230.

JOHN W. WITT, City Attorney
By
Harold O. Valderhaug
Deputy City Attorney

HOV:ps:600(x043.2)
Attachments 3
ML-88-101