

MEMORANDUM OF LAW

DATE: February 6, 1995

TO: Planning Commission

FROM: City Attorney

SUBJECT: Role of the Planning Commission in the Adoption of
Redevelopment Plans

QUESTIONS

1. What is the role of the Planning Commission, pursuant to the California Community Redevelopment Law (codified in the California Health and Safety Code section 33000 et seq.), in the adoption of redevelopment plans?
2. What are the options the Planning Commission has in exercising its role in the redevelopment plan adoption process?

ANSWERS

1. According to the California Community Redevelopment Law (the "Law"), the Planning Commission (the "Commission") has three duties in the redevelopment plan (the "Plan") adoption process. The first is early on in the process when the Commission selects the proposed redevelopment project (the "Project") boundaries from within the redevelopment survey area (which is selected by the City Council). The second, which happens at the same time that the Commission chooses the boundaries, is that it approves a preliminary plan for the proposed Project area. The third "official" role of the Commission comes at the end of the adoption process, when it votes whether or not to recommend adoption of the Plan to the City Council and Redevelopment Agency ("Agency"). If the Commission votes to not approve the Plan, the City Council can only override that decision by a two thirds affirmative vote of its entire membership.
2. Regarding the selection of the Project boundaries, there appear to be two options available to the Commission. The first is that the Law provides that the selection of survey areas may be done by the Commission if the City Council authorizes the Commission to chose survey area boundaries. This would require the City Council to pass a resolution authorizing the Commission to do so. The second option would be to maintain the current practice of having the City Council chose the survey area, but provide an opportunity for the Commission to have input prior to the decision on the survey area being made.

As to the Plan approval process, the Law sets out very clearly what

the Commission's role is in making a report and recommendation to the City Council regarding approval of a Plan. One way that the Commission may be assisted in this area would be for it to receive informational reports at certain key points in the Plan adoption process.

ANALYSIS

In this analysis all references to code sections shall be to the California Health and Safety Code.

A. Selection of Survey Areas and Project Boundaries

The first official step in the adoption of a Plan is the designation of a survey area. In San Diego, the selection of a survey area has always been done by the City Council, which is consistent with Section 33310 which states, "survey areas may be designated by resolution of the legislative body, or the legislative body may by resolution authorize the designation of survey areas by resolution of the planning commission or by resolution of the members of the agency." The City Council, therefore, does have the option of designating either the Planning Commission or the Redevelopment Agency (the "Agency") to designate survey areas.

The resolution designating a survey area must contain a finding that the area chosen requires study to see if a Project area is warranted, and a legal description of the survey area boundaries. See Section 33312.

After the City Council selects the survey area, studies are conducted by staff to determine if creation of a Project area can be justified legally. Section 33320.1 defines a "Project Area" as one that is a "predominantly urbanized area of a community which is a blighted area, the redevelopment of which is necessary to effectuate the public purposes declared in this part, and which is selected by the planning commission pursuant to Section 33322."

Section 33322 states:

The planning commission may select one or more project areas comprised of all or part of a survey area, on its own motion, or at the request of the agency. The planning commission shall select one or more project areas comprised of all or part of any survey area, at the direction of the legislative body, or upon the written petition of the owners in fee of the majority in area of a proposed project area, excluding publicly owned areas or areas dedicated to public use.

The planning commission shall formulate a preliminary plan for the redevelopment of each selected project area.

Section 33323 goes on to say, "the agency and planning commission shall cooperate in the selection of project areas and in the preparation

of the preliminary plan."

1. Commission Options. As the Law mandates that Project area boundaries be chosen from within a designated survey area, the Commission could become more involved in the early stages of the Project adoption process by requesting that the City Council 1) designate them to be the body responsible for selection of the survey area; or 2) if that is not determined to be appropriate, request staff to bring their recommendations for survey area designation to the Commission prior to going to the City Council, for the Commission's input. Finally, if the Commission determines that areas should be included in the Project's boundaries that were not included in the survey area as designated by the City Council, the Commission can request that the City Council reconsider its vote on the survey area to potentially include the additional areas.

2. Consequences of Setting the Project Boundaries. The setting of the proposed Project boundaries triggers the next two steps in the adoption process. The first involves the Preliminary Plan which is approved at the time the Commission sets the Project's boundaries. Upon approval of the Preliminary Plan by the Commission, the document is then transmitted to the Agency, which then sends to each of the potentially affected taxing entities in the area, a description of the project area, a statement that a redevelopment plan for the area is being prepared, and a map showing the boundaries. Section 33327.

The second action which is triggered by the setting of Project boundaries is the formation of a Project Area Committee ("PAC"). "The election of a representative project area committee . . . must be held in each project area within 100 days after the project area is selected." Section 33385 (d)(1) (emphasis added).

B. Recommendation of Redevelopment Plan Approval

Before the adoption of a Plan, it must be submitted to the Commission for "its report and recommendation concerning the redevelopment plan and its conformity to the general plan adopted by the planning commission or legislative body. The planning commission may recommend for or against the approval of the redevelopment plan." Section 33346.

The Commission has 30 days after the Plan is submitted to it to make its report and recommendation. If the Commission does not make a report during that period, the ability to make the report and recommendation is considered waived, and the City Council may go ahead and approve the Plan. Section 33347

If the Commission approves the Plan and it is then submitted by the Agency to the City Council, and the City Council changes the Plan or the boundaries by excluding land from the Project area, the changes are then resubmitted to the Commission. The Commission has 30 days to file a report and recommendation regarding the changes. Section 33363.5.

Finally, "if the planning commission . . . has recommended

against the approval of the redevelopment plan, the legislative body may adopt such plan by a two-thirds vote of its entire membership eligible and qualified to vote on such plan." Section 33366.

Commission Options. The Commission's role in approving the Plan is substantial. The Commission may wish to be given informational briefings at key points in the adoption process. This could be helpful for a number of reasons. One is that it allows Commissioners to give input into the process, and second, the amount of paperwork that is generated in the Plan adoption process can be overwhelming when presented all at once. Such key points could include, for example, a report after the completion of the blight study, and after the PAC has developed its list of potential projects.

CONCLUSION

This Memorandum provides a brief synopsis of the role of the Commission in the Plan adoption process as set out in the Law, and some options that the Commission has in fulfilling its functions. If additional information is needed or there are further questions, please contact me.

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