

DATE ISSUED: June 30, 2003

REPORT NO. 03-141

ATTENTION: Land Use and Housing Committee
Docket of July 2, 2003

SUBJECT: Substantial Conformance Review

REFERENCE: Memorandum to the Land Use and Housing Committee dated
June 21, 2002

SUMMARY

Issue – Should the Land Use and Housing Committee recommend adoption of the proposed modifications to the Substantial Conformance Review process as outlined in this report?

Manager's Recommendation – Support the proposed revisions to the substantial conformity review process and direct Development Services Department staff to prepare the necessary amendments to the Land Development Code and associated reference guides in order to implement the proposed modifications to the Substantial Conformance Review process as outlined in this report.

Other Recommendations –

Community Planners Committee (CPC)

On May 27, 2003 the CPC voted 18-2-2 to recommend approval of the modifications to the Substantial Conformance Review process as presented by staff.

Technical Advisory Committee (TAC)

On June 11, 2003 the TAC members present voted unanimously to recommend approval of the modifications to the Substantial Conformance Review process as presented by staff.

BACKGROUND

At the request of the Land Use and Housing Committee we began an evaluation of the Substantial Conformance Review process. Over the years several concerns were raised about some instances where the Substantial Conformance Review (SCR) process was perceived as arbitrary or overused. Community Planning Group members raised most of these concerns. Additionally, the Grand Jury issued a Report dated April 16, 2003 (Attachment 5). In this report the Grand Jury makes several observations about the Substantial Conformance Review process, which were similar in nature to those raised by the members of the Community Planning Groups.

The following are a couple of excerpts from the report which encompass the nature of the Grand Jury's concerns:

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"The level one review process, as currently structured, does not allow public involvement. Perhaps this is a shortcoming. Not every review merits public input. However, for the occasional project that bears 'quality of life' issues, perhaps a level one-and-a-half process, or simply an appeal process to the DSD itself is needed."

"If the SCR level one process precludes public input in all cases, the Grand Jury finds that the process is flawed and needs to be amended."

The remainder of the issues raised in this report is being addressed in a separate staff response which will be issued this July. The following is some general information and background about the Substantial Conformance Review process as currently identified within the Land Development Code. A decision of Substantial Conformance is a Process One staff level decision, a public hearing is not held. Within the coastal zone a substantial conformance determination is a Process Two, a staff level decision, which can be appealed to the Planning Commission (Attachment 3). As part of the Land Development Code update project, modifications to the Substantial Conformance Review process were discussed. Direction was given by the Planning Commission, Land Use and Housing Committee and ultimately the City Council to leave the process as a staff level decision (report numbers P96-070, P97-077, and P97-092).

The Land Development Code defines ***Substantial Conformance*** as "a revision to a development that was approved through a permit or tentative map complies with the objectives, standards, guidelines and conditions for that permit or tentative map."

LDC Section 126.0112 Minor Modifications to a Development Permit

A proposed minor modification to an approved development permit may be submitted to the City Manager to determine if the revision is in ***substantial conformance*** with the approved permit. If the revision is determined to be in substantial conformance with the approved permit, the revision shall not require an amendment to the development permit. Within the Coastal Overlay Zone, any substantial conformance determination shall be reached through a Process Two review. (Added 12-9-1997 by 0-1845 1 N.S.; amended 10-18-1999 by 0-18691 N.S.; effective 1-1-2000.)

DISCUSSION

Procedure for Review

Substantial Conformance review is triggered by a desire to revise a project's design after the City has approved a project. This can result from encountering unknown field conditions, from a property owner's desire to make improvements to the development proposal, from a change request by a potential buyer, as result of changes in the marketplace, from unexpected project construction costs, or because of a change in project ownership. These changes can be requested at various points in the review or construction process. Many Substantial Conformance reviews are processed as construction changes that occur once construction is underway and are often time sensitive. Others are done well in advance of an applicant submitting plans for construction permits.

Staff begins a review for substantial conformance by first determining the nature and extent of the change being proposed by comparing it to the approved project and permit conditions. Staff then determines if the changes are consistent with prior approval. Appropriate land use plans are then reviewed to determine if the project is still consistent with applicable guidelines and objectives. Staff then consults with the public record for the initial approval including project notes, written correspondence, testimony at decision hearings, and discussions with staff involved in the original approval. Staff also reviews applicable regulations to insure that the proposed modifications would still comply. Professional judgment is then used to make the determination of whether the revised project is in substantial conformance with the original approved project.

Examples of changes regularly proposed as substantial conformance within the project area include relocation of plant material, change of plant material types within the context of the original landscape design (i.e., a different species of shade tree); modifications to grading to reduce cut and fill, changes to structure locations within lot setback; changes in driveway or road alignment to improve safety or site design considerations, modifications to signage, changes to utility locations, changes in finish materials within the context of the originally approved materials; modifications to parking lot layouts within the quantity of required spaces, changes to pedestrian circulation to coordinate with the final site and architectural design, etc. Staff reviews approximately 70 Substantial Conformity applications each year.

In a memorandum dated April 15, 2002, Councilmember Peters proposed that projects which allow significant density transfers within the project area, should be required to submit for a Process Two decision to allow the community to appeal the City staff's decision to the Planning Commission. This issue can be dealt with on future project proposals as part of the development permit process. In the past, staff typically included standard substantial conformity language utilizing a Process One approach. Staff proposes to modify this practice in the future to require a Process Two Substantial Conformance Review.

Recommendations

After meeting with a CPC subcommittee on the potential clarifications to the SCR process the attached proposal was prepared for consideration by the CPC and the TAC. The proposed modifications to the SCR process will:

- Require Process 2 Approval for SCR's that implement Master Plan Design Guidelines (Attachment 1).
- Publish general staff review guidelines for SCR's (Attachment 2).

In conclusion, staff has worked with the CPC, its subcommittee, and the TAC to provide proposed modifications to the SCR Process that address their concerns and the issues raised by the Grand Jury in their recent report. The CPC subcommittee included: (Dave Potter-Clairemont Mesa; Kathryn Burton-Torrey Hills; Buzz Gibbs-Kearny Mesa; Claude-Anthony Marengo-La Jolla; Jim Varnadore-City Heights. Ad-Hoc member from the TAC - Janay Kruger, President Kruger Development Co.).

Staff recommends that the necessary amendments to the Land Development Code be prepared and presented to City Council for their decision on the matter.

Respectfully submitted,

Tina P. Christiansen, A.I.A.
Development Services Director

Approved: P. Lamont Ewell
Assistant City Manager

CHRISTIANSEN/MEE

- Attachments: 1) [Proposed Code Amendment](#)
2) [Proposed Guidelines to be added to Information Bulletin 500](#)
3) [Decision Process](#)
4) [Information Bulletin 500 Substantial Conformance Review](#)
5) [San Diego County Grand Jury Report dated April 16, 2003 "Development Services Department: A CASE STUDY IN COMPLAINT-RESOLUTION \(GONE AWRY\)"](#)