



THE CITY OF SAN DIEGO
MANAGER'S REPORT

DATE ISSUED: January 19, 2005 REPORT NO. 05-017

ATTENTION: Honorable Mayor and City Council
Docket of January 25, 2005

SUBJECT: APPEAL OF ENVIRONMENTAL DETERMINATION FOR THE OLSEN
RESIDENCE, PROJECT NO. 6199, COUNCIL DISTRICT 1

REFERENCE: Planning Commission Report No. PC-04-178

OWNER/
APPLICANT: William R. Olsen and Wanda W. Tang, a Married Couple

APPELLANT: Joseph F. Marrone

SUMMARY

Issues - Should the City Council AFFIRM the Hearing Officer's Environmental Determination for the Negative Declaration No. 6199, prepared for the Olsen Residence, Project No. 6199?

Manager's Recommendation - Deny the appeal and uphold the Environmental Determination.

Environmental Review – The City of San Diego as Lead Agency under the California Environmental Quality Act (CEQA) has prepared and completed a Negative Declaration, No. 6199.

Fiscal Impact – All costs associated with processing of this project are paid from a deposit account maintained by the applicant.

Code Enforcement Impact – None with this action.

Housing Impact Statement - None with this action.

BACKGROUND

The proposed project for which Negative Declaration No. 6199 has been prepared and previously Certified by the Hearing Officer on September 8, 2004, and Planning Commission on November 4, 2004, is the demolition of an existing single-family residence and accessory structures and the construction of a new two-story, 4,943 square-foot residence with an attached 616 square-foot two-car garage (including a 1,820 square-foot basement) and the relocation of an existing storm drain. The project site is located at 348 Vista de La Playa on a 7,148 square-foot, RS-1-7 zoned site also located within the Coastal Overlay Zone (appealable area), Coastal Height Limit, Beach Parking Impact area 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. Joseph F. Marrone filed an appeal (Attachment No. 2) of the Hearing Officer's adoption of Negative Declaration for the Olsen Residence project. This appeal applies only to the environmental determination.

The applicable portion of the appeal filed states, "Planning Commission's finding that no environmental impact exists is not supported by the facts. The appellants state that expert opinions were presented that there was an environmental impact satisfying CEQA's burden that only a 'fair argument' must exist to trigger an Environmental Impact Report". Section 21080(e) of CEQA states that, "...substantial evidence includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact. Substantial evidence is not argument, speculation, unsubstantiated opinion or narrative..."

CEQA Requirements for Environmental Documents

Pursuant to Section 21080 (c) of the California Public Resources Code regarding CEQA:

If a lead agency determines that a proposed project, not otherwise exempt from this division, would not have a significant effect on the environment, the lead agency shall adopt a negative declaration to that effect. The negative declaration shall be prepared for the proposed project in either of the following circumstances:

- (1) There is no substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment.*
- (2) An initial study identifies potentially significant effects on the environment, but (A) revisions in the project plans or proposal made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on*

the environment would occur, and (B) there is no substantial evidence, in light of the whole record before the lead agency, that the project, as revised, may have a significant effect on the environment.

CEQA Definition of Substantial Evidence

As defined in Section 15384 of the CEQA Guidelines:

(a) "Substantial evidence" as used in these guidelines means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Whether a fair argument can be made that the project may have a significant effect on the environment is to be determined by examining the whole record before the lead agency. Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence.

(b) Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.

Staff's analysis, to determine that the Olsen Residence project would not have a significant effect on the environment, was based on substantial evidence that included facts and documentation based on reasonable assumptions predicated upon facts. The Hearing Officer approval, upon completion of the Initial Study, determined that no significant impacts would result from the proposed development, no mitigation would be required, and that a Negative Declaration was properly prepared in accordance with CEQA.

DISCUSSION

The appellant, on the appeal form, cites three positions with one related to a continued opposition to the applicant's relocation of the existing storm drain on-site, a second on the alleged City's failure to respond to a Public Records Act request, and finally, the relevant issue of the environmental determination. Attached to the appeal form is a copy of a letter from the appellant's legal counsel that was presented earlier to the Planning Commission. The following are the relevant issue(s) raised by the appellant and staff response(s):

1. Expert opinions were presented that there was an environmental impact satisfying CEQA's burden that only a 'fair argument' must exist to trigger an Environmental Impact Report.

Staff response: CEQA Definition of Substantial Evidence, as defined above.

The analysis, to determine whether the Olsen 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.

The project includes the demolition of the existing residence and construction of a new residence. City staff evaluated the possible historical importance of the residence based on the design having been done by architect Russell Forester. The Planning Department's Historical Section, the Development Services Department's Environmental Analysis Section and the Historical Resources Board Policy Subcommittee, all concurred that the existing structure is not a representative example of Mr. Forester's work and did not warrant the full Board's consideration. No other issues have been raised in regard to the design, siting, size, height, setbacks or landscaping for the new residence.

The relocation of an existing drain pipe that traverses the applicant's property and lies beneath the existing residence, is the focus issue that the appellant believes warrants the preparation of an Environmental Impact Report (EIR) for the Olsen Residence project. The existing drainage system begins with a curb inlet on Monte Vista Avenue in front of the appellant's residence that receives surface runoff from the surrounding community, passes beneath the appellant's and applicant's properties through a pipe, then across Vista de La Playa where it crosses another private lot before joining another natural and improved drainage channel leading to the coastal beach. The system includes a drop inlet on the Olsen's property that receives additional waters into the system from surface runoff and from the appellant's property through holes within a property-line wall. Another neighbor's runoff enters the Olsen property on a lower level and flows across the front yard. Additionally, there are a number of smaller pipes that carry water from private lots onto the Olsen and appellant's properties. The system is unique and the property owners impacted and served by the existing system have survived with it for decades.

The Olsen proposal is to relocate the existing pipe on their property so that it does not flow below the foundation of the new residence, remains on-site from the point of entry (drop inlet) to the point of discharge (crossing of Vista de La Playa) and will maintain the flow of storm water as well or better than the existing system currently functions. The City Engineer has reviewed the proposal and is satisfied that the relocated pipe will function as intended.

Based on the determinations that the site is not historically significant to warrant designation and that the relocated drain pipe will not deteriorate an existing level of service, Environmental staff prepared the Negative Declaration that has been previously adopted by the Hearing Officer.

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- (3). There is no substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment.*
- (4). An initial study identifies potentially significant effects on the environment, but (A) revisions in the project plans or proposal made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (B) there is no substantial evidence, in light of the whole record before the lead agency, that the project, as revised, may have a significant effect on the environment.*

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Staff's analysis, to determine whether the Olsen 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 exhaustively 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. 6199, under Section 21080 (c) of the State CEQA Guidelines.

ALTERNATIVE

1. Grant the appeal, set aside the environmental determination, and remand the matter to the previous decision-maker, with any direction or instruction the City Council deems appropriate.
2. Grant the appeal and make a superceding environmental determination or findings.

Respectfully submitted,

Gary Halbert
Development Services Director

Approved: George I. Loveland
Assistant City Manager

RMK

Note: Attachments are not available in electronic format. A copy for review is available in the Office of the City Clerk.

Attachments:

1. Project Location Map
2. Full Copy of Appeal
3. Ownership Disclosure Statement