



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: March 15, 2006 REPORT NO. 06-028

ATTENTION: Council President and City Council
Docket of March 20, 2006

SUBJECT: Airport Land Use Plan Determination Override
Montessori School at 5424 Morehouse Drive

SUMMARY

Issues - Should the City Council approve the request to override the City Manager's determination of non-compliance with the Comprehensive Land Use Plan for Marine Corps Air Station Miramar for the conversion of an office building to a day care use at 5424 Morehouse Drive?

Manager's Recommendations - That City Council deny the request to override the City Manager's determination of non-compliance with the Comprehensive Land Use Plan for Marine Corps Air Station Miramar.

Planning Commission Recommendation - a recommendation from the Planning Commission is not part of this process per Land Development Code Section 132.0310.

United States Marine Corps - On June 29, 2005 Colonel P.S. Parkhurst of the United States Marine Corps recommended denial of the proposed conversion of the existing office building to a daycare use citing concerns with noise and safety standards (Attachment No. 2).

San Diego County Regional Airport Authority - On July 7, 2005 the San Diego County Regional Airport Authority Board, acting in its capacity as the Airport Land Use Commission, adopted Resolution No. 2005-0002, making a determination that the proposed conversion of the existing office building to a daycare use is not consistent with the Comprehensive Land Use Plan for Marine Corps Air Station Miramar (Attachment No. 3).

Community Planning Group Recommendation – a recommendation from the planning group is not part of this process per Land Development Code Section 132.0310.

Environmental Impact – These activities are exempt from CEQA pursuant to State CEQA Guidelines Section 15060(c)(2), the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment.

Fiscal Impact – None.

Housing Impact – None.

Code Enforcement Impact – None.

BACKGROUND

The existing structure is located in the IL-2-1 zone at 5440 Morehouse Drive in the Mira Mesa Community Plan. The structure was first permitted as an open “gazebo” in or around 2003. In March 2003 the applicant applied for a conditional use permit to use the structure as an auto service station. As part of the project review, the applicant’s representatives were informed that the project was in the Airport Environs Overlay Zone and that the proposed auto service station use would adversely affect the community plan land use goals. The applicant then applied for and received subsequent permits for electric service in August of 2003 to the open gazebo. In December of 2003, the applicant requested a language revision to the community plan to remove the section that identifies auto service uses as inconsistent with this location in the community. After finding out that this request would not be supported by staff, the community plan amendment was not pursued. Building permits for a connected restroom to the gazebo and site retaining walls were subsequently applied for and approved in April and May 2004 respectively. In November 2004, a building permit was applied for to enclose this open gazebo for the purpose of a type M Occupancy for miscellaneous use.

On January 26, 2005 the applicant then applied for a building permit to change the use of this structure to a type E Occupancy for a day care use for 75 children. On April 4, 2005 the applicant was informed that the use was incompatible with the Accident Potential Zone 2 (APZ 2) of the Comprehensive Land Use Plan for Marine Corps Air Station Miramar per the Airport Environs Overlay Zone (Municipal Code Chapter 13, Article 2, Division 3). As a result, no building permit was issued for this structure to be used as a day care use.

City staff informed the applicant of the option to request an override of the City Manager’s determination on April 19, 2005. Staff also requested that they obtain a recommendation from the Airport Land Use Commission. The Airport Land Use Commission determined that the use was not consistent with the Comprehensive Land Use Plan on July 7, 2005. On July 8, the applicant filed a petition to the City Council to override the City Manager’s determination of noncompliance with the Comprehensive Land Use Plan for Marine Corps Air Station Miramar.

DISCUSSION

In order to grant an override of the City Manager's determination, Municipal Code Section 132.0310 requires City Council, by a two-thirds vote (6 votes required), to determine the proposed use meets the intent of the Comprehensive Land Use Plan by making the following three findings.

- (1) *The proposed development will not be detrimental to the public health, safety, and welfare; and*
- (2) *The proposed development will minimize the public's exposure to excessive noise and safety hazards to the extent feasible; and*
- (3) *The proposed development will meet the purpose and intent of the California Public Utilities Code Section 21670.*

Due to the information provided by the United States Marine Corp regarding the potential for aircraft mishaps as a result of their ongoing training and flight activities, staff believes the siting of a day care use in the Accident Potential Zone 2 could be detrimental to the public's health and safety. In addition, while the interior noise levels of the structure could be reduced through architectural features to 45 decibels as required by the Comprehensive Land Use Plan, the school would also have an outside playground that would expose children to noise levels in excess of 60 decibels. This would increase the public's exposure to excessive noise levels.

Placing the day care at this location would also not meet with the purpose and intent of the Public Utilities Code since it creates new noise and safety problems that do not now currently exist. In addition, Public Utilities Code Section 21678 states that "*with respect to a publicly owned airport that a public agency does not operate, if the public agency pursuant to Section 21676, 21676.5, or 21677 overrules a commission's action or recommendation, the operator of the airport shall be immune from liability for damages to property or personal injury caused by or resulting directly or indirectly from the public agency's decision to overrule the commission's action or recommendation.*" This section would eliminate liability from the airport operator if the City should choose to override this determination. In the absence of airport operator liability, the City would likely be placed in a position of liability in the case of an accident.

CONCLUSION

Staff acknowledges and supports the need for day care facilities in and around centers for employment. However, the evidence does not support the necessary findings required to

override staff's determination that a day care use is incompatible with the Comprehensive Land Use Plan at 5440 Morehouse Drive.

ALTERNATIVE

Based upon further information or evidence provided by either the applicant or members of public at the public hearing, make the required findings and override the City Manager's determination that the land use is incompatible.

Respectfully submitted,

Gary Halbert
Development Services Department Director

Approved: Ellen Oppenheim
Deputy City Manager

BROUGHTON/AJL

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

- Attachments:
1. Applicant Request for City Council Override
 2. United States Marine Corps Recommendation
 3. Airport Land Use Authority Recommendation