

THE CITY OF SAN DIEGO, CALIFORNIA
MINUTES FOR REGULAR COUNCIL MEETING
OF
MONDAY, NOVEMBER 27, 2006
AT 2:00 P.M.
IN THE COUNCIL CHAMBERS - 12TH FLOOR

Table of Contents

CHRONOLOGY OF THE MEETING.....2

ATTENDANCE DURING THE MEETING.....2

ITEM-1: ROLL CALL.....3

ITEM-10: INVOCATION.....3

ITEM-20: PLEDGE OF ALLEGIANCE.....3

CLOSED SESSION ITEMS.....4

ITEM-200: Two actions related to Status of Underground Conversion Program 9

ITEM-201: Wightman Street Neighborhood Park Request for Grant Amendment and Request for Special Park Fees 11

ITEM-202: Fox Canyon Neighborhood Park.....15

ITEM-203: Dinofia Residence.....18

ITEM-250: **Notice** of Pending Final Map Approval – 2732-2734 Figueroa Boulevard Condominiums.....22

REPORT OUT OF CLOSED SESSION.....23

NON-DOCKET ITEMS.....23

ADJOURNMENT.....23

CHRONOLOGY OF THE MEETING:

The meeting was called to order by Council President Peters at 2:02 p.m. Council President Peters recessed the meeting at 2:55 p.m. to convene the Redevelopment Agency and thereafter a break. Council President Peters reconvened the regular meeting at 3:03 p.m. with all Council Members present. The meeting was adjourned by Council President Peters at 3:49 p.m.

ATTENDANCE DURING THE MEETING:

- (1) Council Member Peters-present
 - (2) Council Member Faulconer-present
 - (3) Council Member Atkins-present
 - (4) Council Member Young-present
 - (5) Council Member Maienschein-present
 - (6) Council Member Frye-present
 - (7) Council Member Madaffer-present
 - (8) Council Member Hueso-present
- Clerk-Maland (gs)

FILE LOCATION: MINUTES

ITEM-1: ROLL CALL

Clerk Maland called the roll:

- (1) Council Member Peters-present
- (2) Council Member Faulconer-present
- (3) Council Member Atkins-present
- (4) Council Member Young-present
- (5) Council Member Maienschein-present
- (6) Council Member Frye-present
- (7) Council Member Madaffer-present
- (8) Council Member Hueso-present

FILE LOCATION: MINUTES



ITEM-10: INVOCATION

Invocation was given by Pastor Philip Ballestrieri of Horizon Christian Fellowship.

FILE LOCATION: MINUTES

ITEM-20: PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Council Member Frye.

FILE LOCATION: MINUTES

CLOSED SESSION ITEMS:

Conference with Legal Counsel - existing litigation, pursuant to California Government Code section 54956.9(a):

**CS-1 *Save Our Forest and Ranchlands v. City of San Diego, et al.*
San Diego Superior Court Case No. GIC 864298**

REFERRED TO CLOSED SESSION OF TUESDAY, NOVEMBER 28, 2006

CDCA assigned: H. Carlye

This is an update on a petition for writ of mandate filed by a citizens group known as Save Our Forest and Ranchlands challenging the City's compliance with the California Environmental Quality Act [CEQA] in its February 28, 2006 approvals of the Downtown Community Plan and subsequent implementing ordinances. Pursuant to mandatory CEQA requirements, a settlement conference was conducted and settlement discussions have continued. The merits of the writ and the status of the settlement negotiations will be presented to the Council.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:52 p.m. – 2:55 p.m.)

Council President Peters closed the hearing.

**CS-2 *Save Our Heritage Organization v. City of San Diego, et al.*
San Diego Superior Court Case No. GIC 865774**

REFERRED TO CLOSED SESSION OF TUESDAY, NOVEMBER 28, 2006

CDCA assigned: H. Carlye

This is an update on a petition for writ of mandate filed by a citizens group known as Save Our Heritage Organization challenging the City's compliance with the California Environmental Quality Act [CEQA] in its February 28, 2006 approvals of the Downtown

Community Plan and subsequent implementing ordinances. Pursuant to mandatory CEQA requirements, a settlement conference was conducted and settlement discussions have continued. The merits of the writ and the status of the settlement negotiations will be presented to the Council.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:52 p.m. – 2:55 p.m.)

Council President Peters closed the hearing.

**CS-3 *City of San Diego v. Callan, et al.*
San Diego Superior Court Case No. GIC852419**

REFERRED TO CLOSED SESSION OF TUESDAY, NOVEMBER 28, 2006

EACA assigned: D. McGrath

In closed session, the City Attorney and retained outside counsel will update the City Council on the litigation's status and discuss settlement of the litigation.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:52 p.m. – 2:55 p.m.)

Council President Peters closed the hearing.

**CS-4 *City of San Diego v. Vinson & Elkins, L.L.P., et al.*
San Diego Superior Court Case No. GIC869788**

REFERRED TO CLOSED SESSION OF TUESDAY, NOVEMBER 28, 2006

EACA assigned: D. McGrath

In closed session, the City Attorney and retained outside counsel will update the City Council on the litigation's status.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:52 p.m. – 2:55 p.m.)

Council President Peters closed the hearing.

**CS-5 *Carmen Dumais v. City of San Diego*
San Diego Superior Court, Case No. GIC 854051**

REFERRED TO CLOSED SESSION OF TUESDAY, NOVEMBER 28, 2006

DCA assigned M. Herrin

This matter involves a dangerous condition of public property case resulting from allegedly sustained at the San Vicente Reservoir. The City Attorney requests that the City Council consider a possible settlement of the case in closed session.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:52 p.m. – 2:55 p.m.)

Council President Peters closed the hearing.

**CS-6 *Anja Freeman v. City of San Diego, et al.*
San Diego Superior Court Case No. GIC 844968**

REFERRED TO CLOSED SESSION OF TUESDAY, NOVEMBER 28, 2006

ACA assigned: E. Gordon

This employment discrimination lawsuit is brought by a former Emergency Medical Technician who alleges she was subjected to sexual harassment, retaliation, and wrongful termination. The parties engaged in mediation, and believe they have reached an appropriate settlement. In closed session the City attorney will update Council on the status of the litigation and recommend approval of the proposed settlement.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:52 p.m. – 2:55 p.m.)

Council President Peters closed the hearing.

**CS-7 *Boat Depot, Inc v. City of San Diego./SMCM Partners GP v. City of San Diego*
Consolidated under San Diego Superior Court Case No. GIC 846472**

REFERRED TO CLOSED SESSION OF TUESDAY, NOVEMBER 28, 2006

DCA assigned: W. Donnell

This matter involves a claim for flood damages at 4025-4035 Pacific Highway, resulting from the failure of the storm drain system on October 27, 2004. The City Attorney requests that the Mayor and City Council consider a possible settlement of the case in closed session.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:52 p.m. – 2:55 p.m.)

Council President Peters closed the hearing.

**CS-8 *Michael Shames v. City of San Diego*
San Diego Superior Court Case No. GIC 831539**

REFERRED TO CLOSED SESSION OF TUESDAY, NOVEMBER 28, 2006

DCA assigned: J. Riley

This case involves an alleged over billing of single-family sewer customers in violation of the state constitution and a breach by the City of San Diego of loan and grant contracts from the State of California and the Federal Government. In closed session, the City Attorney will update the City Council related to the mediation process and seek approval of the proposed settlement.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:52 p.m. – 2:55 p.m.)

Council President Peters closed the hearing.

Conference with Labor Negotiator, pursuant to Government Code section 54957.6:

CS-9 Agency negotiator: Scott Chadwick, J. Rod Betts, Lisa Briggs, Rich Snapper, Jessica Falk Michelli William Gersten, Joe Harris, Rick Reynolds

Employee organizations: Municipal Employees Association, Local 145 International Association of Firefighters AFL-CIO, San Diego Police Officers Association, Deputy City Attorney Association, AFSCME Local 127

REFERRED TO CLOSED SESSION OF TUESDAY, NOVEMBER 28, 2006

DCA assigned: W. Gersten

Discuss with Council the negotiations with all five labor unions (Municipal Employees Association, AFSCME Local 127, Police Officers Association, International Association of Firefighters Local 145, and the Deputy City Attorney's Association) regarding the implementing ordinances for the Mayor's Ballot proposals that would allow for the managed competition of certain City services and also require voter approval for enhancements to employee pension benefits.

Closed Session Comment 1:

Joan Raymond commented on the unions making progress during the bargaining process. Ms. Raymond added that the Mayor's team is pushing to end the negotiations prematurely.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:52 p.m. – 2:55 p.m.)

Council President Peters closed the hearing.



ITEM-200: Two actions related to Status of Underground Conversion Program.

(See Report to the City Council No. 06-179 and City of San Diego Utilities Undergrounding Program Master Plan Fiscal Year 2007 Report.)

STAFF'S RECOMMENDATION:

Introduce the following ordinance in Subitem A and adopt the resolution in Subitem B:

Subitem-A: (O-2007-50) INTRODUCED WITH DIRECTION, TO BE ADOPTED
ON TUESDAY, JANUARY 9, 2007

Introduction of an Ordinance amending Chapter 6, Article 1, Division 5, by
amending Section 61.0508; relating to Underground Utility Procedures.

Subitem-B: (R-2007-588) ADOPTED WITH DIRECTION AS RESOLUTION
R-302119

Accepting the report regarding the status of the City's Utility Undergrounding Program, including status of all allocated underground conversion projects, as well as the status of expenditures and underground conversion account status, as provided in accordance with Council Policy 600-08, Section (D)(3);

Accepting and approving the revised master plan for undergrounding of utilities;

Approving an allocation of CPUC Rule 20-A (CPUC Case No. 8209)
underground conversion projects estimated at \$10,582,715;

Amending Council Policy No. 600-08, implementing the City's undergrounding program, as reflected on Attachment 6 to the accompanying Report to the City Council, which is hereby incorporated into this resolution by reference;

Declaring the intent of the Council that the undergrounding of overhead lines outside of the boundaries of any Underground Utility District created by the Council is consistent with the intent of the Council as expressed in Section 61.0508(a) of the San Diego Municipal Code, provided that the newly undergrounded route will vary as little as possible from the existing aerial route,

and that those variations which do exist are necessary to make possible the removal of poles and overhead facilities, which is required for the public health, safety, and general welfare, and that this resolution effects a clarification of, rather than a change in, existing law.

STAFF SUPPORTING INFORMATION:

In accordance with City Council Policy 600-08, these actions provide for the annual approval of a utilities undergrounding master plan and an annual allocation of projects.

In addition to this, staff is requesting that the Council consider amendments to Council Policy 600-08 that would change the required dates for the bi-yearly staff reports regarding the status of the Utilities Undergrounding Program, and corresponding project allocations, be moved from January 31st and June 30th to March 31st and October 31st respectively. This would bring the policy more in line with practice. Currently, accounting information needed to draft the reports for the City of San Diego fiscal year end is not available until mid August and December 31 is the fiscal year end for SDG&E. Thus, needed SDG&E fiscal reports are not available until February.

Staff is also recommending that the Council amend Council Policy 600-08, to require the Mayor to present to the Council for consideration a utilities undergrounding master plan every five (5) years versus the current annual master plan approval.

Finally, from time to time, during the course of undergrounding overhead utilities, particularly electric transmission facilities, a utility may find the need, for technical reasons to relocate a utility underground along a different path than that of the existing overhead line. Staff is requesting that the Council find that this is consistent with the Council's intent of Section 61.0508(a) of the San Diego Municipal Code, provided that the newly undergrounded route will vary as little as possible from the existing aerial route, and that those variations which do exist are necessary to make possible the removal of poles and overhead facilities, which is required for the public health, safety, and general welfare. Staff also requests that the Council adopt language to this Municipal Code Section that more clearly states the Council's intent.

FISCAL CONSIDERATIONS:

None with these actions.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

The previous report regarding the status of the Underground Conversion Program was submitted April 20, 2006. Report to the City Council 06-042.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

None for these actions in particular.

KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable):

All City Council Districts.

Oskoui/Haas/Boekamp

Staff: Afshin Oskoui - (619) 533-3102
Michael P. Calabrese – Chief Deputy City Attorney

FILE LOCATION: SUBITEM A: NONE
SUBITEM B: MEET

COUNCIL ACTION: (Time duration: 2:06 p.m. – 2:46 p.m.)

MOTION BY ATKINS TO: 1) INTRODUCE THE ORDINANCE IN SUBITEM A; 2) ADOPT THE RESOLUTION IN SUBITEM B; AND 3) DIRECT STAFF TO REFER THE ISSUE OF TIMING TO THE BUDGET AND FINANCING COMMITTEE.

Second by Madaffer. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-yea.



ITEM-201: Wightman Street Neighborhood Park Request for Grant Amendment and Request for Special Park Fees.

(City Heights/Mid-City Community Area. District 7.)

STAFF'S RECOMMENDATION:

Adopt the following resolution:

(R-2007-524) CONTINUED TO TUESDAY, DECEMBER 5, 2006

Authorizing the Mayor, or his representative, to request approval from the State of California Department of Parks and Recreation to amend the project location in grant contract number UP-37-002 to 5024 Wightman Street (Project) and request for Special Park Fees;

Amending the Fiscal Year 2007 Capital Improvement Program Budget by adding CIP-29-925.0, Wightman Street Neighborhood Park;

Authorizing the City Auditor and Comptroller to transfer an amount not to exceed \$2,363,000 from CIP-29-596.0, Fox Canyon Park Acquisition and Development, to CIP-29-925.0, Wightman Street Neighborhood Park Acquisition and Development, pending receipt of State of California approval for the project location at Wightman Street;

Authorizing the expenditure of an amount not to exceed \$2,363,000 from CIP-29-596.0, Fox Canyon Park Acquisition and Development, solely and exclusively, for the purpose of providing funds for Wightman Street Neighborhood Park Project, provided that the City Auditor and Comptroller first furnishes one or more certificates certifying that the funds necessary for expenditure are, or will be, on deposit with the City Treasurer;

Authorizing the City Auditor and Comptroller to de-appropriate \$686,000 from CIP-29-596.0, Fox Canyon Neighborhood Park, to be returned to Special Park Fee, Fund No. 39094;

Authorizing the appropriation and expenditure of an amount not to exceed \$686,000 from Special Park Fee, Fund No. 39094 to CIP-29-925.0, solely and exclusively, for the purpose of providing funds for Wightman Street Neighborhood Park Project, provided that the City Auditor and Comptroller first furnishes one or more certificates certifying that the funds necessary for expenditures are, or will be, on deposit with the City Treasurer;

Authorizing the City Auditor and Comptroller, upon advice from the administering department, to transfer excess budgeted funds, if any, to the appropriate reserves;

Declaring this activity is exempt from CEQA pursuant to State CEQA Guidelines Section 15061(b)(3).

STAFF SUPPORTING INFORMATION:

A State Park grant in the amount of \$2,363,000 was awarded to the City of San Diego for the construction of Fox Canyon Park in the City Heights Neighborhood. At the time of the Grant application, the City was in favorable negotiations with the owner of the proposed Fox Canyon Park parcel. In order to meet the grant deadline for completion of the Environmental Document within one year of the award, the City proceeded with a Site Development Permit and Mitigated Negative Declaration (MND) for the site, with the owners' knowledge and support. Subsequent to the approval of the permit and certification of the MND, the owner and the City were unable to reach agreement on the purchase price. The grant requires a willing seller; however, the City could not justify the sellers' requested price, based upon a recent appraisal, which was significantly lower. The City has withdrawn its offer to purchase the property.

The City Heights area is park deficient; therefore, the City sought other properties, in the neighborhood, that might fulfill the requirements of the State Park Grant. The City acquired the Wightman Street Property (Metzger Property) through Council action on August 8, 2006. This new parcel is within 680 feet of the original Fox Canyon Park parcel, is adjacent to Auburn Creek, similar to the original parcel, and serves the same neighborhood. The Park and Recreation Department wishes to use this parcel for park development subject to approval from the State of California for a re-scope of the Fox Canyon Neighborhood Park to Wightman Street Neighborhood Park. Park Planning and Development Division must resubmit this new location to the State Department of Parks and Recreation for their approval; this funding is not guaranteed. Authorizing the transfer of funds will allow further assessment of the property.

This action does not name the park to permit flexibility in naming and changing the name in the future.

FISCAL CONSIDERATIONS:

Funding is available in CIP-29-596.0, Fox Canyon Neighborhood Park, Fund 39034, Special Park Fees, because the Fox Canyon Neighborhood Park project will no longer be completed.

Additional funding in the amount of \$2,363,000 from the State Parks Urban Parks Grant, may be available, subject to approval from the State of California for a re-scope of the Fox Canyon Neighborhood Park to Wightman Street Neighborhood Park.

ENVIRONMENTAL CONSIDERATIONS:

The activity is exempt from CEQA pursuant to Section 15061(b)(3) as defined by the State CEQA Guidelines ("General Rule"). This determination is predicated on Section 15004 of the Guidelines, which provides direction to lead agencies on the appropriate timing for environmental review under the provisions of CEQA. There is no construction activity associated with this action. Any subsequent activity involving construction shall be conditioned on full compliance with CEQA.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

- 12/1/03 Council approved \$30K Community Development Block Grant for Pre-Acquisition services (Resolution R-298643)
- 12/7/03 Council approved application to the State for \$2,363,000 through the Urban Park Act of 2001. (Resolution R-298701)
- 6/21/04 Council authorized \$900,000 from Mid-City Special Park Fees for acquisition and development of Fox Canyon. (Resolution R-299371)
- 6/13/05 Council authorized funding for the purchase of the Fox Canyon Parcel. (Resolution R-00516)
- 12/5/05 Planning Commission approved the Site Development Permit for Fox Canyon Park. (PC-05-358)
- 3/21/06 Council approved the Mitigated Negative Declaration for Fox Canyon Park. (Resolution R-301321)

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

- 5/10/05 Fox Canyon Community Input at Pro Kids Golf with Councilman Madaffer.
- 6/6/05 City Heights Planning Group
- 6/9/05 Euclid Revitalization Committee
- 7/6/05 City Heights Planning Group
- 8/22/05 Public Notice of Draft Mitigated Negative Declaration
- 10/12/05 Planning Commission Hearing Officer: certified MND and approved Site Development Permit
- 12/1/05 Planning Commission
- 02/06 Ontario Rd. Task Force (three meetings)
- 3/21/06 City Council (appeal of the Mitigated Negative Declaration)

KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable):

The Fox Canyon Neighborhood Association, the Chollas Creek Neighborhood Association, the Colina del Sol Recreation Council, City Heights Planning Group, Euclid Revitalization Committee, Fox Canyon Task Force

Penera/Martinez

Aud. Cert. 2700354.

Staff: April Penera - (619) 525-8265
Peter A. Mesich - Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:04 p.m. – 2:06 p.m.)

MOTION BY MADAFFER TO CONTINUE TO TUESDAY, DECEMBER 5, 2006, FOR FURTHER REVIEW. Second by Frye. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-yea.



ITEM-202: Fox Canyon Neighborhood Park.

The rescission of Resolution No. R-301321, Mitigated Negative Declaration No. 70422, SCH No. 2005081130, and Site Development Permit No. 267281 pertaining to the Fox Canyon Neighborhood. The site is bounded by Landis Street and Sterling Court on the north and south and Altadena Avenue and Winona Avenue on the east and west, within the City Heights Neighborhood of the Mid-City Communities Planning Area.

In settlement of litigation (Friends of Fox Canyon Park v. City of San Diego, et. al, San Diego County Superior Court Number GIC864623), it is necessary that the Council of the City of San Diego rescind Resolution No. R-301321, Site Development Permit No. 267281 and Mitigated Negative Declaration No. 70422.

(Project No.70422. City Heights Neighborhood of the Mid-City Communities Plan Area. District 7.)

STAFF'S RECOMMENDATION:

Adopt the following resolution:

(R-2007-543) ADOPTED AS RESOLUTION R-302120

Adoption of a Resolution certifying that Site Development Permit No. 267281, for Project No. 70422, SCH NO. 2005081130, is hereby rescinded;

That Resolution No. R-301321, certifying the Mitigated Negative Declaration for Project No. 70422, SCH No. 2005081130, adopted by the City Council on March 21, 2006, is hereby rescinded;

That the Mitigated Negative Declaration for Project No. 70422, SCH No. 2005081130 is hereby rescinded.

STAFF SUPPORTING INFORMATION:

REQUESTED ACTION:

1. Rescind Resolution No. R-301321 (Certification of Mitigated Negative Declaration Project No. 70422, SCH NO. 2005081130 and denial of appeal by Friends of Fox Canyon).
2. Rescind certification of Mitigated Negative Declaration Project No. 70422, SCH NO. 2005081130.
3. Rescind Site Development Permit No. 267281.

STAFF RECOMMENDATION:

Rescind Resolution No. R-301321, Rescind certification of the Mitigated Negative Declaration, Rescind Site Development permit.

EXECUTIVE SUMMARY:

The subject site is bounded by Landis Street and Sterling Court on the north and south and Altadena Avenue and Ontario Avenue on the east and west. The site is zoned RM 2-5 and is designated in the Mid-City Communities Plan for multi-family residential development. The site is not designated as open space. The site consists of a small undeveloped canyon, a north facing slope, and a relatively flat disturbed area. The site is surrounded by residential development. With the exception of a few scattered patches of exotic plant species, this area is devoid of vegetation.

Hearing Officer Decision

On October 12, 2005, the Hearing Officer approved a Site Development Permit to develop a 1.9 acre passive park plus the Ontario Avenue connection for a total of 2.7 acres.

Planning Commission Appeal Decision

On December 1, 2005, the Planning Commission heard an appeal of the Hearing Officer's decision to approve the Fox Canyon Park project. At that hearing the Planning Commission upheld the Hearing Officer's decision to approve the project and denied the appeal.

City Council Appeal of Environmental Determination Decision

On March 21, 2006, the City Council heard an appeal of the determination to certify the Mitigated Negative Declaration related to Project No. 70422, SCH NO. 2005081130. At that hearing the City Council upheld the certification of the environmental determination and denied the appeal.

Lawsuit by Friends of Fox Canyon

On April 19, 2006, a lawsuit was filed by Friends of Fox Canyon Park (Superior Court Case Number GIC86423) challenging the approval of Project No. 70422, SCH NO. 2005081130, and the certification of the Mitigated Negative Declaration related thereto.

On October 10, 2006, the Parties entered into a settlement agreement which requires Petitioner to dismiss the lawsuit if the City Council takes action to rescind Resolution No. R-301321, the Mitigated Negative Declaration for Project No. 70422, and the Site Development Permit No. 267281.

FISCAL CONSIDERATIONS:

None.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

- 12/1/03**– Council approved \$30K Community Development Block Grant for Pre- Acquisition services (Resolution R-298643)
- 12/7/03**– Council approved application to the State for \$2,363,000 through the Urban Park Act of 2001. (Resolution R-298701)
- 6/21/04** – Council authorized \$900,000 from Mid-City Special Park Fees for acquisition and development of Fox Canyon. (Resolution R-299371)
- 6/13/05**– Council authorized funding for the purchase of the Fox Canyon Parcel. (Resolution R-300516)
- 12/5/05**– Planning Commission approved the Site Development Permit for Fox Canyon Park. (PC-05-358)

3/21/06– Council approved the Mitigated Negative Declaration for Fox Canyon Park.
(Resolution R-301321)

10/10/06– Council authorized approval of a Settlement Agreement in closed session on October 10, 2006, by the following vote: Yeas, District 2, 3, 4, 6, 7; Nays, District 1, and absent, District 5 and adopted the Settlement Agreement in open session on November 14, 2006. The settlement agreement requires the City Council to docket rescission of the Mitigated Negative Declaration and Site Development Permit for open session. If, at open session, the Council takes action to rescind the documents, the Petitioner is required by the settlement agreement to dismiss the lawsuit in its entirety. Additionally, if the lawsuit is dismissed, City will pay Petitioner \$5,000, and Petitioner will waive all claims to attorney's fees and costs.

Gordon/Dickenson/MD

NOTE: This activity is pursuant to CEQA Guideline 15378.

Staff: Malinda Dickenson – Deputy City Attorney (619) 235-5884

NOTE: This item is not subject to Mayor's veto.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:47 p.m. – 2:51 p.m.)

MOTION BY MADAFFER TO ADOPT. Second by Hueso. Passed by the following vote: Peters-nay, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-yea.



ITEM-203: Dinofia Residence.

Matter of the appeal filed by James J. Eischen, Jr., Attorney for Kathleen Vaughan and John Treadway for the City Council to consider the Environmental Determination Appeal Application of the Planning Commission's decision to Certify Mitigated Negative Declaration No. 5596 that was part of the approved application for a Coastal Development Permit for a Lot Line Adjustment to make 7157 Country Club Drive (front lot) 10,004.72 square feet in order to comply with the minimum lot size of 10,000 square feet for the RS-1-4 zone; and a Variance allowing 52.56 linear feet of street frontage where at least 65 feet of street

frontage is required. The rear lot (7159 Country Club Drive) has a Coastal Development Permit and Site Development Permit (property within environmentally sensitive lands) for the construction of a new 3,729 square-foot single family residence (2,442 square feet of basement area excluded from gross floor area, for a total of 6,171 square feet) on a vacant 16,063 square foot lot; and a Variance allowing no street frontage where at least 65 feet of street frontage is required. Matter of appeal applies only to the environmental determination.

(See Report to the City Council No. 06-174. La Jolla Community Area. District 1.)

STAFF'S RECOMMENDATION:

Take the following actions:

(R-2007-543) ADOPTED AS RESOLUTION R-302121

Deny the appeal and uphold the Environmental Determination (Mitigated Negative Declaration No. 5596);

Make an express finding that the information submitted by the appellant does not constitute substantial evidence supporting a fair argument that the project may result in a significant environmental impact, because it is argument, speculation, unsubstantiated opinion or narrative, or evidence which is clearly erroneous or inaccurate;

Directing the City Attorney to prepare the appropriate resolution according to Section 40 of the City Charter.

OTHER RECOMMENDATIONS:

Planning Commission on September 14, 2006 voted 5-1-0 to approve the project and Deny the appeal as presented in Report No. PC-06-218 to the Planning Commission; was opposition.

Ayes: Schultz, Griswold, Ontai, Otsuji, Naslund

Nays: Chase

Not present: Garcia

The Community Planning Group has been notified of this project and has not taken a position.

STAFF SUPPORTING INFORMATION:

The only issue before the City Council is the appeal of the environmental determination. A Mitigated Negative Declaration (MND) was prepared for the project in accordance with the California Environmental Quality Act (CEQA). As stated in Section III (Determination) of the MND: *The City of San Diego conducted an Initial Study which determined that the proposed project could have a significant environmental effect in the following areas: Paleontological and Biological resources. Subsequent revisions in the project create the specific mitigation identified in Section V (Mitigation, Monitoring and Reporting Program) of the MND. The project as revised now avoids or mitigates the potentially significant environmental effect previously identified, and the preparation of an Environmental Impact Report will not be required.* In addition, the Initial Study includes discussions regarding other environmental issues such as Geologic Conditions, Historical Resources, and Visual Effects which staff considered during the environmental review, however, no significant impacts were identified.

All project appeal rights have been exhausted. The only issue before the Council is the appeal of the environmental determination. The appeal, received September 28, 2006, is lengthy, with the issue areas somewhat intermixed. The City Council Report focuses on the environmental issues only. The Report has highlighted the issue areas pertaining to the environmental document and provides responses to the seven main topics of discussion raised in the appeal that relate to the environmental document. These issue areas include 1) Land use (steep hillside); 2) The Groundwater Table; 3) Loss of Raptors' Breeding Habitat; 4) Coastal Sage Scrub; 5) Density; 6) Public Noticing; and 7) Public Comment.

Information about the project has been included in the Report to provide a context for Council's discussion of the Mitigated Negative Declaration. Any project details and conditions discussed relate to an already approved project, and they cannot be changed.

Staff believes that MND No. 5596 adequately addresses the project's potential impacts, and that implementation of the MMRP would avoid or reduce such impacts to below a level of significance.

As alternative actions for consideration, the Council can either 1) GRANT the appeal, set aside the environmental determination, and REMAND the matter to the Development Services Director for reconsideration, with direction or instruction the City Council deems appropriate - or- 2) GRANT the appeal and make a superceding environmental determination or CEQA findings. If Council chooses this alternative, staff respectfully requests direction from Council regarding the existence of substantial evidence, as required by Section 21082.2 of the California Public Resources Code, supporting a fair argument that the project would result in significant environmental effects.

FISCAL CONSIDERATIONS:

All costs associated with the processing of this project are paid by the applicant through a deposit account with the City of San Diego.

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:

On July 26, 2006, the Hearing Officer granted all approvals for the Dinofia Residence – Project No. 5596 (including all variances, certification of the Mitigated Negative Declaration (MND) No. 5596 and adoption of the Mitigation, Monitoring and Reporting Program (MMRP).

On September 14, 2006, the Planning Commission voted 5-1-0 to DENY the appeal and UPHOLD the Hearing Officer’s Decision.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

On October 11, 2005 and June 13, 2006, the project was reviewed by the La Jolla Coastal Development Permit Subcommittee of the LJCPA. However, the subcommittee did not take formal action due to questions regarding the legality of the lot. The applicant therefore, chose to move forward without an official vote from the Planning Group.

KEY STAKEHOLDERS & PROJECTED IMPACTS:

Matthew C. Dinofia, Owner/Applicant (7157 Country Club Drive)
Country Club Drive, LLC/Owner (7159 Country Club Drive) Matthew C. Dinofia/Applicant

Escobar-Eck/Waring/VL

LEGAL DESCRIPTION:

The project site is located north of La Jolla Parkway and east of Torrey Pines Road at 7159 Country Club Drive in the RS-1-4 Zone of the La Jolla Community Plan Area, City and County of San Diego and is more particularly described as Lot 16 in block “B” of La Jolla Country Club Heights.

Staff: Vena Lewis – (619) 446-5197

NOTE: This item is not subject to Mayor’s veto.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 3:06 p.m. – 3:46 p.m.)

Testimony in favor of the appeal by James Eischen.

Testimony in opposition of the appeal by Jeff Chine.

MOTION BY HUESO TO ADOPT. Second by Peters. Passed by the following vote:
Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea,
Madaffer-yea, Hueso-yea.

ITEM-250: **Notice** of Pending Final Map Approval – 2732-2734 Figueroa Boulevard Condominiums.

Notice is hereby given that the City Engineer has reviewed and will approve on this day the subdivision of land shown on that certain final map entitled “2732-2734 Figueroa Boulevard Condominiums ” (T.M. No. 201274/PTS No. 92323), located on the north side of Figueroa Boulevard between Bond Street and Magnolia Avenue in the Pacific Beach Community Plan Area in Council District 2, a copy of which is available for public viewing at the Office of the San Diego City Clerk. Specifically, the City Engineer has caused the map to be examined and has made the following findings:

- (1) The map substantially conforms to the approved tentative map, and any approved alterations thereof and any conditions of approval imposed with said tentative map.
- (2) The map complies with the provisions of the Subdivision Map Act and any local ordinances applicable at the time of approval of the tentative map.
- (3) The map is technically correct.

Said map will be finalized and recorded unless a valid appeal is filed. Interested parties will have 10 calendar days from the date of this Council hearing to appeal the above findings of the City Engineer to the City Council. A valid appeal must be filed with the City Clerk no later than 2:00 p.m., 10 calendar days from the date of this Notice stating briefly which of the above findings made by the City Engineer was improper or incorrect and the basis for that conclusion. If you have questions about the approval findings or need additional information about the map or your appeal rights, please feel free to contact Deputy City Engineer Lee Hennes at (619) 446-5291.

REPORT OUT OF CLOSED SESSION:

None.

NON-DOCKET ITEMS:

None.

ADJOURNMENT:

The meeting was adjourned by Council President Peters at 3:49 p.m. in honor of the memory of:

Peter Shea as requested by Council Member Frye.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 3:46 p.m. – 3:49 p.m.)