



MINUTES

HUNTINGTON BEACH PLANNING COMMISSION

TUESDAY, JANUARY 25, 2005
HUNTINGTON BEACH CIVIC CENTER
2000 MAIN STREET, HUNTINGTON BEACH, CALIFORNIA 92648

5:15 P.M. - ROOM B-8 (CITY HALL LOWER LEVEL)

CALL PLANNING COMMISSION MEETING TO ORDER

ROLL CALL: P P P P P P P
Dwyer, Scandura, Dingwall, Ray, Livengood, Burnett, Fuhrman
Commissioner Burnett arrived at 5:20 p.m.

AGENDA APPROVAL

A MOTION WAS MADE BY RAY, SECONDED BY DINGWALL, TO MODIFY THE PLANNING COMMISSION AGENDA OF JANUARY 25, 2005 BY INCLUDING SECTION D) PLANNING COMMISSION COMMENTS, BY THE FOLLOWING VOTE:

AYES: Dwyer, Scandura, Dingwall, Ray, Livengood, Fuhrman
NOES: None
ABSENT: Burnett
ABSTAIN: None

MOTION APPROVED

A MOTION WAS MADE BY DINGWALL, SECONDED BY SCANDURA, TO APPROVE THE PLANNING COMMISSION AGENDA OF JANUARY 25, 2005 AS MODIFIED, BY THE FOLLOWING VOTE:

AYES: Dwyer, Scandura, Dingwall, Ray, Livengood, Fuhrman
NOES: None
ABSENT: Burnett
ABSTAIN: None

MOTION APPROVED

A. STUDY SESSION ITEMS

A-1. GENERAL PLAN AMENDMENT NO. 03-02, LOCAL COASTAL PROGRAM AMENDMENT NO. 03-02, ZONING TEXT AMENDMENT NO. 03-03 (DOWNTOWN SPECIFIC PLAN - TIMESHARES) – Rosemary Medel

Rosemary Medel, Associate Planner, provided a staff report and discussed the following points of information:

- Number of timeshare units in Orange County (967; 11 projects with 5 to 330 units per project)

- Number of hotel/motel units in Huntington Beach (19 with approximately 1700 rooms)
- Environmental Assessment
- Economic Advantages

Mary Beth Broeren, Principal Planner added that the request does not involve adding more rooms to the City's hotel/motel base, but does apply to the future 3rd Waterfront hotel proposed on the Mayer Corporation property. She also added that timeshares attract different parts of the travel market.

Ms. Medel stated that the proposed request is very similar to a hotel and the analysis identified in the environmental impact report for General Plan Amendment No. 94-1 (General Plan Update) adequately analyzed timeshares, finding that additional environmental review is not necessary. She also identified February 8, 2005 as the public hearing date for the request.

Commissioner Dingwall asked about the existing parcels zoned for timeshares. Staff explained that timeshares are currently allowed within the Commercial General and Commercial Visitor zones. Commissioner Dingwall asked staff to explain the financial benefits of timeshares. Ms. Medel explained Transient Occupancy Tax (TOT) and some of the potential benefits to the City.

Leonie Mulvihill, Commission Counsel, discussed how Huntington Beach, a Charter City, collects TOT by ordinance, and that the issue before the Commission is only land use and not the collection of TOT.

Commissioner Scandura asked if timeshares are allowed within the coastal zone. Ms. Medel explained that timeshares are permitted within the Commercial Visitor districts of the Coastal zone and that District Nos. 7 and 9 of the Downtown Specific Plan are the only coastal areas with parcels large enough to accommodate timeshares as part of a master plan area. Ms. Medel also discussed how parking ratios for timeshares are similar to hotels.

Commissioner Dingwall asked about hotel tax revenue. Ms. Mulvihill responded and explained how nightly tax rates are collected by the respective hotel and paid to the city.

Commissioner Dwyer asked if a timeshare development and the property is assessed at a greater value. Gus Duran, Redevelopment Manager, discussed property tax valuation and land appraisal based on revenue potential. He explained that timeshares carry a greater value than that of hotels which raises property tax and provides greater lease payments to the Redevelopment Agency.

Discussion ensued on how TOT is split between the City and Redevelopment Agency. Mr. Hess advised the Commission to concentrate on the land use proposal rather than economic factors behind the request.

Shawn Millbern, Robert Mayer Corporation, provided a PowerPoint presentation and distributed an informational handout that addressed the following topics:

- National Perspective
- Number of resorts in California
- Market Driven/Consumer Driven

- Units Description
- Marriott Vacation Club
- Hilton Grand Vacation Club
- Disney Vacation Club
- Hyatt Vacation Club
- Sheraton Vacation Ownership
- Westin Vacation Ownership
- Ritz-Carlton Club
- Four Seasons
- Club Intrawest
- Fairfield Resorts, Inc.
- OC Locations
- Future OC Locations
- Customer Profile
- City Benefits

Commissioner Livengood asked about the number of timeshare weeks sold. Mr. Millbern stated that 51 weeks are sold, and the remaining week is held for maintenance, etc.

Chair Ray asked about the high season. Mr. Millbern described the high season as May through August (summer), the mid season as spring and fall, and the low season as winter, all of which effect purchase price and tradability.

Chair Ray reminded the Commission that the request should be considered only as a land use decision, amending the General Plan (GP), Local Coastal Program Amendment (LCPA) and Specific Plan (SP) to allow a particular use, that no project is before the Commission, and the potential properties identified as possible timeshare sites are not to be considered. Ms. Broeren explained that following Planning Commission action, the item would be heard by the City Council and forwarded to the California Coastal Commission for final consideration.

Commissioner Dingwall asked if the Commission provides a recommendation to City Council could it include negative issues. Ms. Broeren responded that written opinion can be forwarded to the City Council through minute action, and that staff would prepare a summary of the Commission's feedback, issues and recommended action.

Chair Ray provided an explanation of minute action as a written recommendation approved by the majority of the Commission. He also referenced an extreme example whereby the Commission approved a request and sent a written recommendation of denial to the City Council due to certain circumstances or factors that were applicable.

Commissioner Fuhrman was curious why timeshares are being excluded from certain sections of the General Plan and Zoning Code. Ms. Broeren explained that timeshares are also allowed in certain areas of the city, just not within the Visitor Commercial zone. Ms. Broeren added that the Coastal Commission has historically been opposed to timeshares in the coastal zone, but that current changes in the timeshare industry now allow timeshares to be used as hotel rooms when they are not rented out. Scott Hess added that timeshares were not anticipated in early 1980's when the Downtown Specific Plan was adopted.

Commissioner Livengood discussed major changes in the timeshare industry from the early 1970's to the late 1980's and 1990's.

Chair Ray discussed timeshare credibility and asked what prompted the application. Ms. Medel responded that in November 2003 the Robert Mayer Corporation submitted an application for timeshare as a permitted use. Chair Ray asked if timeshares as a permitted use was addressed in the environmental assessment done for the Mayer (Waterfront) property. Ms. Medel explained that timeshares as a use are similar to hotels and the hotel/timeshare use was included as part of the environmental impact report for the General Plan Update which covered the Waterfront project.

Chair Ray asked for the date the environmental assessment document was published. Ms. Medel answered December 2004.

Commissioner Fuhrman asked staff to clarify sections of the ordinance language that are shaded, bold or stricken. Ms. Medel explained the significance of each text type. Mr. Hess added that only pages with text changes are provided.

Commissioner Fuhrman asked if the Commission could add, change or delete text within the ordinance. Staff responded that modified language could be considered by a vote during the public hearing. Commissioner Fuhrman asked what could be forwarded to the City Council. Staff responded a text modification would be approved and forwarded to the City Council by a majority vote.

Commissioner Fuhrman asked about revisions on Attachment 2.2. Ms. Medel responded that Attachment 2.2 is provided for informational purposes only, and is not a part of the request and cannot be changed.

A-2. CONFLICTS OF INTEREST – Leonie Mulvihill

Leonie Mulvihill, Deputy City Attorney, made a presentation to the Commission that outlined the following points related to Code of Ethics and Conflicts of Interest:

Code of Ethics:

- Purpose
- Basic Provisions

Discussion ensued on public official employment and compatibility issues related to private economic interests, volunteer organizations, impartiality, etc.

Commissioner Dingwall discussed his role as a self-employed consultant on entitlement issues, including environmental and design review on items not heard by the Planning Commission. He asked Ms. Mulvihill to provide an opinion on whether or not his consulting activity presented a conflict of interest. Ms. Mulvihill answered that she was not in a position to provide an opinion without studying his activity and cautioned him to carefully consider future actions that may present a conflict. Chair Ray suggested that Commissioner Dingwall provide Ms. Mulvihill specifics related to his consulting disclosures. Commissioner Dingwall replied that he was only providing a hypothetical situation.

- Regulation of Gifts

Chair Ray cautioned the Commission that complimentary tickets with a monetary value are considered gifts and can be accepted as long as their value does not exceed the allowable amount identified in the City Municipal Code. Commissioner Scandura asked

if the rule applies to complimentary tickets given to family members. Ms. Mulvihill stated that she would research the issue and return with an opinion at a later date.

Discussion ensued on filing the Statement of Economic Interests Form 700. Commissioner Dingwall provided another hypothetical situation related to purchasing property currently involved in entitlement activity. Ms. Mulvihill suggested that hypothetical scenarios be avoided and Chair Ray concurred.

- Penalties
- Resources

Conflict of Interest:

- Political Reform Act
- Purpose
- Basic Rules

Discussion ensued on disqualification from participating in the decision making process if in doing so would affect a public official's personal finances, including property ownership within a specific boundary of a property which is the subject of a decision.

- Presumptions
- Disclosure Requirements
- Government Code Section 1090
- Informational Resources

Chair Ray asked about campaign contributions. Ms. Mulvihill stated that information on campaign contributions is provided in the Commission's orientation binder, but added that she would look into the matter more closely and provide additional material at a later date.

B. PLANNING COMMISSION COMMITTEE REPORTS

B-1. ANNOUNCEMENT OF PLANNING COMMISSION ADVISORY BODY ASSIGNMENTS – Steve Ray

Chair Ray announced the following advisory body assignments:

<u>Advisory Board</u>	<u>PC Liaison</u>	<u>PC Alternate</u>
Design Review Board** 2nd. Thursday (3:30 PM)	Livengood	Dingwall
Environmental Board** 1st. Thursday evenings (6:30 PM)	Burnett	Dwyer
School District Issues Council Subcommittee* 4 th Fri. Qrtly (12:00 PM) Rm B-8	Scandura	Fuhrman

Subdivision Committee**
(Three Members)
As needed

Ray
Dwyer
Fuhrman

Dingwall

*Council directed

**Code required

C. PUBLIC COMMENTS – Regarding Study Session portion of Meeting – None.

D. PLANNING COMMISSION COMMENTS

Commissioner Livengood – requested that staff provide a timeline of activity for the proposed Home Depot project that will occupy space on the existing K-Mart site at the southwest corner of Garfield Avenue and Magnolia Street.

Commissioner Dingwall asked what Home Depot is proposing. Staff replied that the Home Depot plans to demolish the buildings on the site and construct a new retail facility.

Commissioner Fuhrman – asked if staff could schedule an additional meeting among staff and the new Commissioners to discuss the appropriate course of action when asking for information related to the entitlement process, clarification of terms, project history, planning documents, protocol, and the Brown Act. Staff responded that it would follow up with a meeting date and time.

Commissioner Fuhrman also asked about the timeline for Planning Commission items identified as “pending.” Chair Ray asked if staff could present information related to major projects at the February 8 study session. Staff confirmed, stating that they would provide an updated Major Projects List to the Commission at their earliest convenience.

Commissioner Dingwall asked why the Commission had not been informed of Home Depot’s application. Staff explained that not all applications for entitlement come before the Commission, and that the Zoning Administrator would hear Home Depot’s request. Staff also stated that the Commission would find it helpful to go over the Major Projects List to better understand pending items.

Discussion ensued about the items scheduled for discussion at the February 8 study session.

Commissioner Dwyer – None.

Commissioner Ray – requested that discussion on the Brown Act remain on the February 8 study session agenda, and that the Commission refrain from corresponding with one another via email, referencing a memorandum from the City Attorney discussing the topic of possible conflicts of interest related to email communications among Commissioners. He also stated that if the Commission wishes to distribute information via email that the information is forwarded to staff first for review and appropriate distribution.

Commissioner Livengood informed the Commission that the League of California Cities publishes educational information on Brown Act violations related to email.

Staff informed the Commission of the items scheduled for public hearing on March 8, and that the regular meeting of February 22 may be canceled due to a lack of public hearing items.

Staff voiced concerns about the amount of time each item scheduled for the February 8 study session would take, including introductions of Planning Department Staff, Park Avenue Marina, Downtown Parking Master Plan Annual Review and the Brown Act. Staff and the Commission discussed possible alternatives to scheduling all items during one session. Commissioner Scandura suggested that the February 8 study session begin at 4:30 p.m.

A MOTION WAS MADE BY LIVENGOOD, SECONDED BY BURNETT, TO START THE FEBRUARY 8, 2005 STUDY SESSION AT 4:30 P.M. BY THE FOLLOWING VOTE:

AYES: Dwyer, Scandura, Dingwall, Ray, Livengood, Burnett
NOES: Fuhrman
ABSENT: None
ABSTAIN: None

MOTION APPROVED

Commissioner Dingwall – asked for the status of a request to Commission Counsel about providing a legal opinion on the effects Proposition 59 will have on the City. Commission Counsel stated that the opinion would be provided on February 8.

Commissioner Dingwall also asked for the status of a request made for staff to provide the official title and version of Robert's Rules of Order used by the City Attorney. Commission Counsel referred to what is noted in the Planning Commission By Laws, and advised that the correct information was provided to Planning staff and will be forwarded accordingly.

Commissioner Dingwall voiced concerns about suspect Brown Act material available to the public on various websites. He requested that the City educate the public that the Attorney General is the final authority on the Brown Act and provides official documentation online.

Commissioner Burnett – asked if study sessions are open to the public. Staff confirmed. She also asked about the number of Commissioner's who received correspondence from Shirley Doo regarding entitlement fees related to construction activity at her Huntington Beach residence. Staff informed the Commission that Ms. Doo recently met with Mayor Hardy, Councilmember Bohr and Planning staff to address her issues related to fees and requirements for a conditional use permit.

Commissioner Fuhrman - voiced concerns about the possibilities of violating the Brown Act when communicating among other Commissioners, requesting that Commission Counsel provide clarification on what constitutes a violation. Commission Counsel explained that deliberations among Commissioners should be held in a public forum, and that email communications, although not ill intended, creates a potential to share opinions on City business without involving the public.

Chair Ray - discussed public perception of Brown Act violations.

ADJOURNMENT: Adjourned at 7:45 p.m. to the next regularly scheduled meeting of Tuesday, February 8, 2005, beginning at 4:30 p.m. in Room B-8, Huntington Beach Civic Center.

APPROVED BY:

Howard Zelefsky, Secretary

Steve Ray, Chair