

MINUTES  
REGULAR PLANNING COMMISSION MEETING  
CITY COUNCIL CHAMBERS  
1 CIVIC CENTER DRIVE  
SAN MARCOS, CALIFORNIA  
MONDAY, AUGUST 3, 2009 - 6:30 PM

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CALL TO ORDER

At 6:30 p.m. Chairman Kildoo called the meeting to order.

PLEDGE OF ALLEGIANCE

Commissioner Jacoby led the Pledge of Allegiance to the Flag.

ROLL CALL

The Secretary called the roll:

PRESENT: COMMISSIONERS: Jacoby, Kildoo, Kritzer-Jabara  
(Alternate), Wedge

ALTERNATE COMMISSIONERS IN AUDIENCE: None

ABSENT: Minnery (Alternate), Nelson, Norris, Schaible, Vojtecky

Also present were: Planning Division Director, Jerry Backoff; Planning Clerk Typist, Debra Masnica; Principal Civil Engineer, Peter Kuey; Deputy City Attorney, Morton Park

ORAL AND WRITTEN COMMUNICATIONS

None.

**CONSENT CALENDAR**

1. APPROVAL OF MINUTES, 7/6/09

Action:

COMMISSIONER WEDGE MOVED TO APPROVE CONSENT CALENDAR AS PRESENTED; SECONDED BY COMMISSIONER JACOBY AND CARRIED BY A UNANIMOUS VOTE.

## PUBLIC HEARINGS

2. **Case No:** CUP 08-872 / ND 09-783  
**Application of:** North County Supply (Gabe Castano)  
**Request:** Conditional Use Permit to allow the outdoor storage and sales of building, construction and landscaping supplies and equipment in the Industrial Zone.  
**Location of Property:** 1440 and 1450 Descanso Avenue, more particularly described as: A portion of Lot 4, Block 102, Rancho Los Vallecitos De San Marcos, in the City of San Marcos, County of San Diego, State of CA, according to the map thereof No. 806, filed in the office of the County Recorder of San Diego, December 21, 1895. Assessor's Parcel No.: 219-122-11, 219-122-12.

Kildoo: Inquired if Item #2 was still being continued?

Backoff: Yes.

Kildoo: Announced Item #2, North County Supply CUP, is continued until 10/19/09 per the applicant request.

Backoff: Asked to adjourn the meeting and meet in the Valley of Discovery Room to conduct the Workshop for TSM 470, Borden Road LLC.

## ADJOURNMENT

At 6:35 p.m. Commissioner Kildoo adjourned the meeting.

  
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Steve Kildoo, Chairperson  
SAN MARCOS PLANNING COMMISSION

ATTEST:

  
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Debra Masnica, Clerk  
SAN MARCOS PLANNING COMMISSION

WORKSHOP MINUTES  
1188 BORDEN RD & 1200 VENTURE, LLC - TSM 470  
VALLEY OF DISCOVERY  
1 CIVIC CENTER DRIVE  
SAN MARCOS, CALIFORNIA  
MONDAY, AUGUST 3, 2009

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Jerry Backoff, Planning Division Director: Opened the workshop and introduced Karen Brindley who gave the PowerPoint presentation on the project. Backoff said the City had been working toward an outcome on this project for a long time, and that this is the first density bonus subdivision that has been submitted to the City. It was indicated that there were some disagreements as to the interpretation of the State Density Bonus Ordinance and that the City had a conversation with the State's Housing Community Development Department. Staff also discussed changes to the project be less impactive to the neighborhood.

Karen Brindley, Principal Planner: Discussed history of Density Bonus Law and stated that State Density Bonus Law provisions take precedence over the City's zoning and General Plan regulations. The overall intent of density bonus was discussed. The critical components of the density bonus law were articulated. Developers are entitled to between 5% and 35% density bonus and are eligible for between one and three concessions or incentives. As long as the developer meets the statutory threshold requirements of the bonus density law, the City doesn't have the legal authority to deny the request of increase in density unless there are very specific findings made. In addition, density bonus law does require that the affordable lot remain affordable for a minimum of thirty (30) years.

The proposed Tentative Subdivision map orientation was discussed yielding 22 single family lots. The project includes two very low income lots, which would qualify the developer for the 35% density bonus and a total of two concessions. The overall net lot sizes range from 4,400 sq. ft. to approximately 8,000 sq. ft. The proposed setbacks are – 20' front yard setback for straight entry garage, 15' for a habitable structure, 15' rear yard setback and 5' side yard setback. The existing General Plan designation is two to four units per acre with a single family zoning designation. Maximum density per the General Plan is 16 units and a minimum lot size of 10,000 sq. ft. with standard setbacks typically being 50' from centerline of street for front yard, 25' rear yard and a 10' side yard. The applicant is entitled to a 35% which equates to six additional lots, which brings the total to 22. The applicant is entitled to two concessions, and with this project they requested reduced lot sizes as well as setbacks, and also requested a private street.

The City has been working with HCD regarding specific provisions of the density bonus law, and HCD has determined that reduced setbacks are inextricably

linked with a reduced lot size and staff is following this recommendation. The project will be required to submit a minimum of three house plans to the Planning Division for Director's approval. The affordable housing units will be required to be designed and look the same as the market rate units. The simulations are a visual representative of what could be built. Requested concessions by the applicant were reviewed. The first concession was a reduced lot size. The average gross lot size is approximately 7,509 sq. ft. and the average net lot size is 5,815 sq ft. The reduced setback is 20' in the front, 15' habitable structure, 15' rear yard and 5' side yard setback was indicated that these setbacks are fairly consistent with the City standard for cluster development. The second concession is a request for a private street. Street "A", the primary street that provides access, has a curb to curb right-of-way of 40'. Street "B", which serves a total of three lots, is designed at a curb to curb right-of-way of 32'. There will be a sidewalk located on the east side of Street "A". The private street will be able to accommodate parking on the street. In addition, the Fire Marshal has reviewed the design of the street and determined compliance with the City standards for emergency vehicle access. The City does have an inclusionary housing ordinance which does require 15% of the target units to be affordable. The applicant will pay an in lieu fee as permitted by the ordinance. The next step will be the Planning Commission, a public hearing tentatively scheduled Tuesday, September 15, 2009. This concluded Brindley's presentation.

Commissioner Wedge: What is an in lieu fee?

Wes Peltzer (Applicant's Representative): An in lieu fee is in addition to – we will provide two very low income units and also pay an additional in lieu fee to the City.

Commissioner Wedge: You are going to build them as affordable housing units?

Applicant (Peltzer): Yes.

Unidentified man in Audience: What is a normal setback on a subdivision?

Brindley: For a standard R-1 Zone your front yard setback is 50' from the center line. The rear yard setback is 25' and a side yard is 10'.

Unidentified man in Audience: Questioned the 20' setback for a private street.

Backoff: The setback is to the garage, and is the minimum needed so that cars don't overhang into a sidewalk area or the street. The setback has been reduced to 15' to the habitable portions of the house.

Wedge: Confused on the number of affordable units (low or very low units)?

Applicant (Peltzer): Two very low, and when you are looking at a density bonus, you compare to it to the units that would actually be allowed before the bonus. Meaning the sixteen (16) that the General Plan allows are going to compute in the bonus as a percentage - you compute it based on the density that is actually allowed under the General Plan.

Kildoo: The City would set the normal conditions? Am I missing something? You could have done 16 units under normal conditions and you do two affordable. Is that the correct comparison?

Applicant (Peltzer): Sixteen (16) is the General Plan designation of the City.

Kildoo: Two affordables – so how does that 16, which works out to about 12 ½ % - so we are still short of the City's 15%.

Applicant (Peltzer): That is why we negotiated with the City and agreed to pay an in lieu fee to make sure we covered the 15%. And so yes, you are correct.

Backoff: If this was a standard subdivision, it would in all reality not require the inclusionary units because it is very difficult to finance, subsidize those types of rents. In this case the developer is saying I'm going to provide this much – the actual income level is here, which warrants them to get the density bonus, as laid out by state law, which would basically make up for the loss in lieu of the inclusionary ordinance.

Wedge: Is there going to be a homeowner's association?

Applicant: Undoubtedly, since there is a private street. Fundamentally to function well in terms of maintenance a private street needs a homeowner's association.

Wedge: As far as the upkeep of the front of the house on the affordable units as well as the others, how do we guarantee that those houses will be kept up to the standard of the rest of the houses in the surrounding homes?

Applicant (Peltzer): Through the homeowner's association.

Wedge: But there is not going to be a management company?

Applicant (Peltzer): That is a good question. In my opinion homeowners would have one unless they are going to do it themselves; they would almost always hire a management company.

Wedge: How much legal recourse would they have with some of these in what I assume is a state subsidized program – what are their payments. I mean how is

this going to work? Are they going to be able to buy these houses at a much lower percentage than the other people are buying theirs?

Applicant (Peltzer): You would have to do it either as a lease or a purchase, but if you do it as a lease, you have to rent it at levels the State dictates for very low income, which is really quite low. Or if you sell it, then you would have to sell it at the prices the state dictates so that very low income people can afford it.

Wedge: So the state is involved.

Applicant (Peltzer): They are involved in setting what you must do in order to comply with Density Bonus Law.

Kildoo: He means they make that part of the title information so that in ten or fifteen years down the road – low and very low income people often sell – that comes up and is clear to whoever purchases the home.

Applicant (Peltzer): The applicant will have an agreement that you are going to require us to sign.

Backoff: We have a regulatory requirement for the project whether they are for sale or rental and the terms.

Kildoo: It will be made clear on the final document.

Backoff: If there is a lease arrangement, then that rental structure will be tied down and they will have to do some kind of reporting.

Wedge: If the main governing or enforcement entity is a homeowners association and these houses are subsidized or under regulations of the state, how much enforcement power do they have? How much enforcement power against those people do they have?

Applicant (Peltzer): We will be signing an agreement with the City, but I don't know whether the agreement we have with the City provides the needed information. I know it gives the City a lot of enforcement authority in terms of making sure we comply with the affordable housing requirement.

Morton Park, Deputy City Attorney: I am not aware of any provision that would pre-empt or that would stop the HOA from having to refer private enforcement action against those homeowners.

Wedge: Working for the Post Office I see all the certified letters that go out to the homeowners associations if the yard is not clean, people are leaving trash in the yard, and if the garage door is open. So we are selling these very low income

houses to people who don't have a lot of discretionary money to landscape. How are we going to guarantee that their houses are going to be kept up to the standard of the rest of the neighborhood? How can we require them to pay what nobody else has to pay to have their house done?

Kildoo: I understand your concern. I think part of it is they are getting a good deal going in, and so part of the expectation on the block is the houses with very low income have to know keeping it to minimum standards is part of the deal walking in. It is as simple as mowing your lawn, it isn't any more complicated.

Jabara: I would assume that at the time they purchase the unit they have to approve the CC&Rs through the title and escrow company and, in doing so they promise signing those CC&Rs.

Applicant (Peltzer): Over and above that there is a certain amount of authority the City will have because we will be signing as part of our agreement.

Wedge: I have no problem whatsoever with affordable housing, and I'm thrilled we are getting it. I just was wondering about being able for those people, like if they buy or if they are renting, that there is somebody keeping it up for them. Painting the house, doing all kinds of the repairs they don't have to do – in this case they are going to have to pay for it themselves – that was my concern.

Applicant (Peltzer): Just to follow up on your comments, if they were to be tenants that could be a different situation depending on the allocation of responsibility between the landlord and the tenant. But we haven't gotten there yet, I can assure you that we will have a homeowners association that can enforce with authority. Because it is not just for them, I don't want to single them out; it is for everybody and to have the ability to keep their houses in proper shape. We care about that.

Wedge: So when you talk about a landlord incentive, say there is someone who purchases this house with the intention of leasing it to someone else – they can't do that?

Applicant (Peltzer): No, you've got affordable housing laws – it's going to be very low income. So only the people who are very low income will be allowed in either by purchase or by rent.

Wedge: Renting it from whom?

Applicant (Peltzer): If it was a rental, it would be from the owner of the project.

Wedge: Would they stay involved for thirty years?

Applicant (Peltzer): He would or the homeowners association would because they would in essence act as the landlord. It would be a landlord if it was a lease situation.

Unidentified man in audience: What happens in future years if the property is purchased for \$20,000 less than the one next door? I now want to sell it ten years hence. What is the value of that particular property as compared to one which is a comparable piece of property across the street?

Applicant (Peltzer): The state periodically adjusts the guidelines for what you are allowed to sell these for because they are low income, but you are still fundamentally forever stuck with those criteria.

Unidentified Man in audience: Within the project would the two units be located side by side? Or would there be one at the entrance and one at the end?

Backoff: They are spread out in the development.

Applicant (Peltzer): They would be spread out, as opposed to putting them together, because the idea is to make sure they are integrated into the community.

Kildoo: If we are done with that topic of conversation, I would like to go back. My concern as I listened to Karen's (Brindley) presentation is the setback to the front facing garage is 20' to back, which I interpret to be the street sign, or the sidewalk, or the curb. Is that not correct?

Brindley: It would be to the property line, which would be the back side of the sidewalk.

Kildoo: That being the house side. That was what I was trying to establish because I wanted to make sure 20' did not include the sidewalk.

Brindley: That is correct.

Applicant (Wes Peltzer): We spent a fair amount of time with City staff, and we spent a lot of time on redesigning the street and lighting so that we can accommodate on-street parking as well. The City staff was very helpful and we have done a lot of work with them. This is a very different design than we started with.

Kildoo: There is only parking on one side?

Applicant: Correct.



Kildoo: What is the street width Jerry?

Backoff: 40' and it goes down to 32' on the stub street.

Kildoo: If somebody is parked on one side, you are not going to get two cars going by?

Backoff: It's enough for two way travel. We made sure with the Fire Marshal it was enough space for a fire truck to go by with cars parked on one side.

Applicant: A typical lane is 12', so 12 and 12 is 24' and parking on one side makes 32'.

Applicant: The City of San Marcos has standards for public roads that are wider than private roads.

Applicant (Wes Peltzer): The reason is because it is a cul-de-sac, and if it was a through street that might make a difference, but it is going to be a cul-de-sac at the one end. So the question is, why make it a public street and why would the City want it as a public street. From the City's standpoint it doesn't make sense because it is never going to be a through street.

Kildoo: I have some questions about density bonus state law. We are talking about two concessions, one being density, the other being lot size and setbacks. Is that being talked about as a single concession?

Brindley: Correct. There was quite a bit of dialogue with the applicant and the City, as well as with HCD and our City Attorney's office relative to how do you make that determination. Should it be counted as two concessions versus one. HCD's determination is that the two are inextricably linked. As you reduce your lot sizes, your setbacks inevitably need to be reduced in order to accommodate a development envelope. I provided the comparison with some of setbacks that are being proposed with this development. The setback reductions are fairly consistent with our cluster of requirement setback. Smaller lot sizes, smaller setbacks.

Backoff: Density itself is not a concession. If you provide the housing at the required income level, then the state says you are entitled to get this much density.

Unidentified Woman in audience: I live on El Toro. Where does that back up to our houses.

Kildoo: Asks that they show her the roofs. Are any of these houses two stories?

Backoff: Asked applicant if there is an indication where there is one story or two stories or a combination?

Applicant (Wes Peltzer): We haven't made that determination, but show a visual on the worst case scenario for the two story home locations.

Unidentified Woman in audience: Worst case scenario is you will see from two of the existing houses the roof lines of the new houses.

Applicant (Peltzer): No. This particular piece of property is completely flat. When you put the two stories on there, you don't necessarily have a window view because it is a one of the lower points in the area. All you see is a roof line.

Backoff: Unfortunately, we can't regulate at this point whether it's single story or two stories. If this was a different type of project, like a Specific Plan, we could dictate where it happens. State density bonus law really regulates how we can approve something and ties our hands and puts a lot of restrictions the City.

Applicant (Peltzer): The staff is requiring the ultimate developer submit three (3) plans and get them approved by the Planning Division.

Backoff: If they are all two stories, we have to get three plans of two stories.

Applicant (Peltzer): This isn't going to look like two story boxes. It's going to have a lot of architectural detail because the staff has already indicated that they are going to require that.

Brindley: I want to address an earlier question. On El Toro, you are asking what will happen along this fence line. The setback they are proposing is 15'. You will have a fence line and from the fence property line 15' of a rear yard setback and then the structure could be built at that 15' mark. The home wouldn't be right up against the fence line.

Unidentified man in audience: A lot less than our common lot line?

Backoff: 25' is standard on a normal size lot; however, when talking about a density bonus we can pick and choose the concessions, and one of the concessions they are looking for is the lot size in relation to the setbacks. You can't give a lot size concession without affecting the setback. So, therefore, the state says it's really just one concession.

Morton Park, Deputy City Attorney: To clarify a point, that the two are inextricably linked is the determination of the attorney from HCD, which is a state regulatory agency that has a lot of authority in terms of how the regulations for a density

bonus get implemented. If we were to disagree with HCD, it could lead to litigation. Given these factors, we decided to go with the opinion of HCD.

Applicant (Wes Peltzer): This is not the first time they have given this opinion; they did this in Encinitas on a very similar basis.

Kildoo: San Elijo has rear lot lines that are 18'.

Backoff: This is comparable to a PRD, which is a cluster development where you cluster homes on smaller lots, but you have common areas.

Kildoo: Remarked that he was sympathetic, and that the City of San Marcos requirements regarding structural accents were some of the toughest in the County.

Unidentified man in audience: Said he was concerned the about distance and privacy, and suggested a 6' block wall.

Wedge: Addressed concern about the view from the two story house into the backyard of the existing homes.

Unidentified Woman in audience: Expressed concern about the traffic and speed. Asked if there would be a hearing on traffic and speed

Backoff: Remarked that this workshop was to address concerns and questions regarding the project and that an environmental document was prepared, a mitigated negative declaration, which means that any potential impacts have been mitigated below significance. A traffic analysis was done.

Unidentified woman in audience: Still concerned about speed.

Backoff: Speed is an enforcement issue.

Unidentified woman in audience: Worried about congestion during peak traffic times.

Backoff: There is a left turn pocket designed to go into the subdivision and a stop sign on the street.

Peter Kuey, Principal Civil Engineer: Addressed the left turn lane and said the Fire Marshal has reviewed interior circulation and fire trucks can access the street safely.

Unidentified man in audience: Asked about the pollution that the cars will add to the backs of their homes.

Backoff: If the developer provides a certain income level, the City is obligated to give them a density bonus. We try to improve stacking and interior movements into the development as much as we can.

Unidentified man in audience: Expressed concern about the low income houses.

Backoff: Stated the City could face a lawsuit if we say no to the project and the City has tried to design the best project possible.

Unidentified man in audience: Asked about the water drainage between the existing homes and the new development. If it is a private road, who will maintain it?

Applicant: Discussed the grassline swale and retention basins on the two areas closest to Borden Road. Said they could control a 100 year storm.

Kildoo: Commented that there are stringent rules regarding storm drains and drainage. Developers can't afford not to observe those rules.

Unidentified man in audience: Does the City sign off on the approval of the drains the developer installs?

Peter Kuey, Principal Civil Engineer: Engineering checks on all calculations. Applicant will be required to extend storm drains up Borden Road. The retention basins on Borden Road will empty into underground storm drains. Some of that street might drain on to Borden Road, but most of that project gets into the storm drain system that they are going to have to construct.

Unidentified man in audience: Asked if the properties that back up to them will drain to the front of the yard.

Peter Kuey, Principal Civil Engineer: Responded they will drain into the project.

Unidentified man in audience: The lot will drain from the back to the front?

Applicant: Correct.

Unidentified man in audience: So, no water will come close to our backyards?

Applicant (Peltzer): Most of the lot drainage goes toward the street. But there will be a little grassline swale that will go between your property and theirs.

Unidentified man in audience: I would call that an issue to be looked at again. If there is a 100 year storm, we could have problems with water from their property coming on to our property.

Applicant (Peltzer): It would never go over to your property.

Peter Kuey, Principal Civil Engineer: Those are the calculations they need to provide the City - calculations for a 100 year storm.

Unidentified man in audience: I think that is a big issue.

Applicant (Peltzer): The project has met a 100 year storm requirement.

Backoff: Asked applicant about the drainage swale crossing future private lots, if they are above ground, and how will it be ensured that they are not going to be impeded by actions of the private homeowner.

Applicant (Peltzer): We put drainage swales into an easement, which works well with the HOA concept. An HOA would make sure it was adequately maintained.

Unidentified man in audience: So, we would only have a 12' backyard?

Applicant (Peltzer): No, it would still be 15' with a 3' grassline swale. An HOA will maintain it.

Unidentified man in audience: How will an HOA maintain it, if it's on private property?

Applicant (Peltzer): It's an easement; you have an absolute right to mention it. HOAs take care of easements all the time.

Kildoo: When it's sold, there is a lot map, and the easement will be part of the title information and the requirements for that 3' easement.

Unidentified woman in audience: Asked if there was any public or open area behind those homes.

Applicant (Peltzer): No, it's a private street. Everyone on El Toro is requesting a block wall separation and applicant will look into it.

Audience Members: Express agreement for block wall separation between properties.

Unidentified woman in audience: Requested trees to block view of two story homes.

Unidentified man in audience: Asked what minimum requirement from property line to eave of house? What is the minimum for this project?

Backoff: 25' for a normal 10,000 sq. ft lot. 15' for the proposed project.

Audience members: Continued to express same concerns about project lot and home size, water consumption, drainage, construction dust and what the ultimate developer would do.

Kildoo: Ended the workshop and invited the audience members to stay and look at the map presentation of the project.

ATTEST:

A handwritten signature in cursive script, reading "Debra Masnica", written over a horizontal line.

Debra Masnica, Clerk  
SAN MARCOS PLANNING COMMISSION