ATTACHMENT F

Public Comments and Staff Response to Comments on the Public Screencheck DRAFT Zoning Ordinance

AGENDA ITEM NO. 2

Screen Check Zoning Ordinance Comments/Responses

A total of five letters received as listed below with a summary of comment and response:

DCM Properties – Density Bonus

Comments:

- Clarification of approval path for Density Bonus-the City cannot require a different level of review for density bonus projects

Response: The Density Bonus chapter indicates all density bonus projects require City Council approval. The City Attorney has indicated State law does not specifically say the review process must be the same for density bonus projects as other projects.

- Providing financial incentive as an option instead of a density bonus.

Response: This section was revised to indicate incentives will be granted in conformance with Government Code section 65915 (financial incentive language was removed).

- The establishment of rents/sales price in conformance with State law

Response: Language was modified to make it clear the regulations are in full compliance with Government Code section 65915. No substantive changes were made.

- City cannot charge a developer to recover administrative costs

Response: This section was revised to indicate fees will be charged for the administration and monitoring of projects, subject to the provisions of the regulatory agreement between the City and the developer. State law does not preclude the City from establishing a fee to administer and monitor such projects.

- Extending affordability beyond 30 years

Response: Language was modified to make it clear the regulations are in full compliance with Government Code section 65915

- Timing of when to require recording on title relative to affordable units

Response: The language was not modified.

Hunsaker

Comment:

- Need for proper public review/more time.

Response: Interested parties involved with the update process have given input. The majority of input and the most interest has been from the Economic Development Corporation (EDC) stakeholders. The EDC stakeholders comprise 19 interested industrial real estate brokers, property owners, and a consultant that met to put together their comments. Staff has met with an EDC subcommittee (Don Grant, chairman of the EDC stakeholders, Dean Tilton, Marianne Hoover, Jim Hernandez, and a planning consultant working with the group) on changes to industrial land uses and development/operational standards. Additionally, it is being recommended to review the Zoning Ordinance after one year which will give the public additional input after it is implemented.

Comment:

- City has a conflict of interest since it is a major property owner, developer.

Response: This comment does not relate to the new Zoning Ordinance and is not a relevant zoning issue. The City in some cases is a landlord and on those properties have to comply with the same zoning standards as the private sector.

Comment:

- Too much administrative leeway, room for arbitrary judgments, closed door administrative procedures.

Response: The biggest issue for the EDC stakeholders subcommittee was concern over processing requirements & timeframes to process discretionary permits. In an attempt to streamline the process Minor CUPs were changed to Director Permits which is an administrative process. These type of applications still require public notification to surrounding properties. Administrative decisions can still be appealed.

Comment:

- Concerned about El Dorado MHP land use designation and non-conforming status.

Response: Comments in letter are misrepresented. The El Dorado MHP was a legal non-conforming use under the previous General Plan and Zoning classifications since the park was designated "commercial manufacturing and industrial, respectively. The newly-adopted General Plan designates the park as "Low Medium Density Residential", which matches the built density of 11.2 du/ac. To implement this land use designation, El Dorado MHP is being

rezoned from "M" Industrial to Residential Manufactured Home Park (R-MHP). As such, El Dorado will not be non-conforming, as it currently is.

Comment:

- If approval of an extension of a legal nonconforming use is discretionary than all "non-conforming" businesses could be eliminated by withholding of a permit.

Response: The ordinance mandates time frames when action has to occur and requires findings to be made in order to grant the extension. If the findings cannot be made, then the Director cannot approve an extension. In 30 years the City has never forced a property owner out over non-conforming status.

Comment:

- Large projects should not be granted a free pass on doing an EIR and going through public hearings.

Response: The updated Zoning Ordinance does not change the City's statutes on environmental review. All projects undergo environmental review except for those that are determined to be exempt under criteria established by CEQA. All other projects are subject to an initial study which determines the type of environmental review needed, a Negative Declaration, a Mitigated Negative Declaration, or an EIR. Larger projects typically are required to process either a Mitigated Negative Declaration or an EIR and all go through a public hearing process.

Comment:

- The Draft Non-conforming Ordinance was not publicly vetted, there were closed door meetings, and the ordinance has substantial differences from the earlier version.

Response: The Non-conforming Ordinance (Chapter 20.345) is essentially the same ordinance that was approved by the GPAC, except for reformatting by the consultant and minor edits by the City Attorney. There were no closed meetings. The GPAC established a subcommittee that worked with staff for many months on the drafting of the ordinance and the draft ordinance was discussed during public meetings with the GPAC. In addition, the draft Ordinances were on the www.ourcityourfuture.com website during this process (there were a few drafts generated as issues were resolved with public) and it remains on the website today.

Comment:

- Non-conforming properties don't have safeguards to protect against eminent domain.

Response: Although not a Zoning Ordinance issue, non-conforming uses have the same legal rights and protection relative to eminent domain as other properties. Any action in eminent domain is required to evaluate the acquisition of property at its highest and best use; value for the property owner is not adversely affected by legal non-conforming use status.

Comment:

- The abandonment period of 12 months is too restrictive.

Response: The draft non-conforming ordinance extends the abandonment period by an additional 12 months up to a total of 24 months, based upon certain circumstances that might occur due to economic downturns. This expands the abandonment period from the existing non-conforming ordinance. In addition the City has chosen not to require an abatement period, which is common in other jurisdictions (abatement requires the removal of nonconforming buildings within a set period of time).

Comment:

- The shift of burden of proof (for nonconforming residential) is a killer in eminent domain proceedings due to the inability to produce governmental records.

Response: The presumption is that an older nonconforming residence was built based on legitimate building permits. In the event the agency exercising eminent domain wished to prove otherwise, the burden would be on the agency to perform a records search and to support any assertion it may raise that a non-conforming use is no longer legal. This City has not previously done so unless a code enforcement action was actually initiated well before any eminent domain activity. As noted above, eminent domain requires valuation of the property at its highest and best use. Thus, despite the erroneous assumption that there is an "inability to produce governmental records" in all cases of a non-conforming residential use, value for the property owner would not be adversely affected by non-conforming use status. As long as the residential building remains a residential property that use will not be considered abandoned. Abandonment is activated when it has been vacated, not cared for, becomes blighted and/or a public health and safety concern.

Comment:

- The ability to expand a nonconforming residential structure by 10% is too restrictive.

Response: The 10% standard is an attempt to allow some flexibility on a nonconforming residential structure, which the GPAC felt was reasonable. The ordinance also allows for 10% expansion for non-residential structures and up to 20% with a Director's Permit which again allows greater flexibility over the current ordinance.

Comment:

- Concern over having 18 months to rebuild a nonconforming structure destroyed by fire. It should be 3 years.

Response: A property owner has 12 months to obtain a building permit and another 18 months to rebuild a nonconforming structure, which is 30 months, 6 months short of 3 years. It should be emphasized that the existing ordinance does not allow rebuilding of a nonconforming structure if it is over 75% destroyed, whereas the new ordinance allows complete reconstruction if any amount of damage occurs.

Comment:

- When non-conforming properties lose their rights the property owner can be ordered to close their business and demolish existing structure at the owner's expense.

Response: The ordinance does not order demolition; as mentioned previously, the City does not have an abatement requirement in the Ordinance. Additionally, the City has never required demolition with the existing more restrictive ordinance and would not do so unless the remaining structure constitutes a threat to the public health and safety.

Comment:

- Concern over open space (habitat) lands being purchased by Native American tribes and converted into Native American sovereign trust land (reservation) and building a casino.

Response: This comment is not applicable to the Zoning Ordinance or the Open Space chapter, however, open space habitat lands are required and regulated by state and federal agencies. These agencies will require that the entity that assumes responsibility for these properties maintain said properties. Development of a Native American casino is highly speculative but would be regulated by federal and/or state law, which the City has no control over.

Comment:

- Concern over allowing apartment developers to minimize parking requirements and to pay inadequate "in-lieu fees" for offsite parking.

Response: Unlike the existing Parking Ordinance the new parking standards are broken down by number of bedrooms. There is a reduction in multifamily parking standards for one studio/one bedroom units to one space/unit. The 2 + bedrooms units are at the same existing ratio and both have the same guest parking ratio. Affordable housing units have a reduced parking of 1.7 spaces/unit, but this has been demonstrated to work in the Richmar

neighborhood. In fact some of the affordable project developers indicated they are still overparked at 1.7 spaces/unit. The DRAFT Zoning Ordinance ratios for mixed use will be modified as follows: Studios require 1 space; One bedroom units require 1.25 spaces/unit; 2 bedroom units will require 1.75 spaces/unit; and 3+ bedroom units will require 2 spaces. These standards are comparable with the Creek District. Staff has proposed an errata change to be consistent with these standards. It has been shown that in mixed use areas there is less demand for parking since these developments are within walking distances of services, work, and transit. There are also parking reduction included within the updated Zoning Ordinance provisions when trip reduction measures are implemented.

Comment:

- Financial support should only be given to cover cost of subsidized units and not large projects and City should recapture increases in market value.

Response: This comment seems to be directed at the Density Bonus Ordinance and subsidized "for sale" affordable units. The Density Bonus Ordinance is consistent with the requirements of State law and modeled after the State's ordinance. As such the City is required to grant certain concessions, primarily increased units and reduction or waivers in development standards. "For sale" affordable units are not typical because of the large amount of subsidy required. If the City were to do this, the City would retain the increase in market value to fund other affordable housing projects.

Comment:

- Have not found zoning regulations on mobile home parks.

Response: The regulations that govern mobile homes is found in Chapter 20.245 – "Residential Manufactured Home Park Zone". This is the R-MHP Zone and the El Dorado mobile home is being rezoned to this zone. For most of the mobile home parks, this zone is consistent with the "Low Density Residential " (LDR) land use designation of the newly adopted General Plan; it also is consistent with the Low Medium Density Residential for two mobile home parks, one of which is what El Dorado mobile home park is currently designated.

Comment:

- Noise Ordinance mentions special insulation requirements in the Palomar Airport flight path and implications for existing homes. The General Plan also notes that City is not in this area.

Response: In the screencheck Zoning Ordinance there was a noise insulation provision. This provision simply stated that single family residences in the Airport Overlay Zone were subject to the State Building Code. This provision was modified to comply with the adopted Palomar

McClellan Airport Land Use Plan, which will require overflight notification for new residential development for some portions of the City; and also requires compliance with the FAA requirements regarding building heights when new construction is being proposed in some portions of the City.

Susan Waite

Comment:

- Time too short to complete comments. Hopes that the Stakeholders, after meeting with staff, have ironed out the bugs.

Response: See response to Hunsaker's first comment.

Marianne Hoover

Comment:

- Inquired about a typo on pg 20.400-11, Section 20.400.16, Outdoor Storage, B, CUP: conditions of approval may include the requirement of additional yards, screening.

Response: Due to overall confusion about the regulation of outdoor storage (primarily among the industrial property owners), the section that provides outdoor storage regulations have been moved into the Industrial zones chapter. In addition, the reference to requiring additional 'yards' was a carryover from the existing ordinance relating to the screening of outdoor storage contractor yards. The standard has been eliminated because the regulations require screening of outdoor storage through a variety of means. Also, please note the outdoor storage regulations are essentially the same standards that exist today. Please see 20.230.060(H), page 20.230-13 of the Draft Zoning Ordinance.

Comment:

- If Self storage is allowed in the L-I Zone should it also be included in the I or I-2 Zone?

Response: The self storage land use is restricted to the L-I Zone to prevent proliferation of self storage yards into other industrial zones which may erode the industrial base. The Light Industrial (L-I) Zones are also closer to residential areas.

Planning Commissioner Eric Flodine

Comment:

- Has consideration been given to adding the Planning Commission members to the title page of the document?

Response: It wasn't included since it wasn't included in the General Plan document. Staff can add to final approved documents if approved by the City Council.

Comment:

- Add "regulations" to last line in Section 20.100,040 (F) at end of sentence.

Response: The word "regulations" precedes the list of entities being named.

Comment:

- Relative to Section 20.100.040 (G) will approved discretionary projects need to be redesigned under the new ordinance which could entail increased costs for the applicants.

Response: No, approved projects would comply with their conditions of approval.

Comment:

- Is there a definition for "large" and "small" farm employee housing?

Response: Yes the Draft Zoning Ordinance includes both definitions in Article 6, Chapter 20.600, the "Definition" section.

Comment:

- In Section 20.215.020.A Single Family Zones – Residential 1 why is zone R-1-7.5, not R-1-6?

Response: The R-1-6 zone has been eliminated. Table 20.215-3 was corrected to identify the minimum lot size of 7,500 square feet in the R-1-7.5 zone. There was a lot of repetition of single family zones; and very minimal land was zoned R-1-6. It is possible to obtain a density range of 4.1-8.0 in the R-1-7.5 with a PRD.

Comment:

- Global update of land use tables to add "Microbrewery" to "Winery/Tasting Room" per public workshop discussions .

Response: The Draft Zoning Ordinance was updated to identify "Microbrewery/tasting room" by right in the Industrial zones (LI, I, I-2); and to allow a "Microbrewery with restaurant" with a Director's Permit in the Light Industrial zone. Winery tasting rooms were removed from the industrial zones. Winery/tasting room land use was added in the Agriculture zone, allowed with a Director's Permit; and an errata change will identify winery/tasting rooms in the R-1-20 zone with a Director's Permit.

Comment:

- In Section 20.215.050(C) the table references should be changed to 20.215-3 & 20.215-4.

Response: Changes were made in the Draft Zoning Ordinance.

Comment:

- In Table 20.215-5 – the permissible wall height of 48" adjacent to sidewalks with no landscape treatment seems more appropriate in the MU Zones. Suggested in the R-1 thru R-3 Zones to permit a shorter wall (30") unless a landscape planter is provided.

Response: In the Draft Zoning Ordinance this table has been deleted. Standards have been modified to allow courtyards to encroach up to 10 feet in the front yard. However, courtyard walls cannot encroach into setbacks and are limited to 42" in height.

Comment:

- In Section 20.225.020 (C) Item 1. Delete "a"

Response: Noted.

Comment:

- In Table 20.225-5 (MU-1 & MU – 2) under "General Retail Uses" why is catering not allowed as a ground floor use? Seems to be a great live/work opportunity.

Response: Comment noted.

Comment:

- In Table 20.225-5 (MU-1 & MU-2) "Commercial Entertainment" is permitted in ground floor, but clubs are not. The definition includes nightclub. Suggest adding clubs not permitted in the Additional use Regulations in the Commercial Entertainment category.

Response: The Draft Zoning Ordinance eliminated "nightclub" from the category "Commercial Entertainment." A "club" is different from a nightclub in that it is limited to a meeting or social facility of a private or nonprofit organization for use by its members or guests.

Comment:

- In Section 20.225.120(C) make unit plural for indoor/private space.

Response: Noted.

Comment:

- In Table 20.265-1 was it intended to have two "Secondary Ridgeline Area" headings?

Response: Eliminate second header in the table.

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FAX MEMORANDUM

TO:	Karen Brindley, Principal Planner
COMPANY:	City of San Marcos
FAX NUMBER:	760-591-4135
FROM:	David Meyer Mobile: 760-310-8836
COPIES TO:	
DATE:	07-31-12
REGARDING:	Comments Draft Zoning Ordinance – Chapter 20.305

Our firm specializes in land entitlements in the State of California, with a particular knowledge in the application of the State Density Bonus Law (SDBL) [GC §65915 et seq.] to the Subdivision Map Act. We have been active sponsors and involved in the most recent amendments to this law, including AB 1866, SB 1818, SB 435 and AB 2280.

In pursuit of the goal to promote affordable housing, California Government Code (CGC) Section 65915 requires cities to offer a density bonus program for new housing development. In brief, this state law requires jurisdictions to provide the developer with a density bonus, waivers and concessions/incentives if a specified percentage of housing in the project is reserved for lower income residents. These state law provisions are currently implemented through the San Marcos Municipal Code Chapter 20.130 and is proposed to be amended in the draft Zoning Ordinance, Chapter 20.305.

California Planning and Zoning Law, Government Code (CGC) §65008, declares any planning or zoning action by local government agencies that discriminate against housing if the intended occupancy of any residential development is by families of low income is null and void. This section goes on to provide for preferential treatment of development which provides affordable housing, including, but not limited to the reduction or waiver of fees or changes in architectural requirements, site development and property line requirements, building setback requirements, or vehicle parking requirements that reduce development costs of these developments. The Legislature in this section has declared that discriminatory practices that inhibit the development of housing for persons and families of low income are a matter of statewide concern.

Section 65913 of the CGC states: "*The Legislature finds and declares that there exists a severe shortage of affordable housing, especially for persons and families of low and moderate income, and that there is an immediate need to encourage the development of new housing*" to address this problem. This section additionally calls for changes in the

law to provide regulatory concessions and incentives to facilitate the development of affordable housing.

In CGC §65589.5, the Legislature makes the following declaration:

- The lack of housing threatens the economic, environmental, and social quality of life in California.

- California housing has become the most expensive in the nation. The excessive cost of the state's housing supply is partially caused by activities and policies of many local governments that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing.

- Among the consequences of those actions are discrimination against low-income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration.

- Many local governments do not give adequate attention to the economic, environmental, and social costs of decisions that result in disapproval of housing projects, reduction in density of housing projects, and excessive standards for housing projects.

Specifically, CGC §65915 provides that when an applicant seeks a density bonus for a housing development that local government "*shall*" provide the applicant incentives or concessions for the production of housing units. More specifically it states, that a city shall grant a density bonus and incentives or concessions, when an applicant for a housing development seeks and agrees to construct a housing development that will contain a specified type and amount of affordable units pursuant to CGC §65915.

Further, CGC §65915(d)(1) mandates that upon submission by an applicant for specific incentives or concessions that a city *"shall grant the concession or incentive requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of any of the following:*

(A) The concession or incentive is not required in order to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(B) The concession or incentive would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households.

(C) The concession or incentive would be contrary to state or federal law".

Section 65589.5(d)(2) defines "specific adverse impact" as "*a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete*".

The city is also required to establish procedures for waiving or modifying development and zoning standards that would otherwise inhibit the utilization of density bonus on specific sites. These procedures shall include, but not be limited to, such items as minimum lot size, side yard setbacks, and placement of public works improvements.

In no case may a city apply any development standard that will have the effect of physically precluding the construction of a development at the densities or with the concessions or incentives permitted by this section [CGC §65915(e)]. Further, CGC §65915 (e)(2), as amended by Assembly Bill 2280, states, *"A proposal for the waiver or reduction of development standards pursuant to this subdivision shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled..."* This clarifying language makes an unambiguous distinction between the waivers in Section (e) and the incentives/concessions provided for in Section (d). Consultation by the Applicant with California's Department of Housing and Community Development (HCD) Legal Affairs division has confirmed this distinction and its applicability.

This code section [CGC §65915(d)(3) and (e)(1)], authorize an applicant to initiate judicial proceedings if the city refuses to grant a requested density bonus, waiver, incentive, or concession in violation of these provisions, and would require the court to award the plaintiff reasonable attorney's fees and costs of suit.

Finally, CGC §65917 states: "In enacting this chapter it is the intent of the Legislature that the density bonus or other incentives offered by the city, county, or city and county pursuant to this chapter shall contribute significantly to the economic feasibility of lower income housing in proposed housing developments.

To the above, we have preliminarily reviewed the City's subject draft revision to its current Density Bonus ordinance and find it to be deficient in capturing the spirit and intent of the Legislature in enacting Government Code Section 65915 and directly contrary to the current form of this section.

In particular, please note the following comments:

1) We believe the City's Planning Commission is the final authority in reviewing and approving development projects, unless appealed to the City Council. The draft subject ordinance either removes the Planning Commission from the approval process for a Density Bonus project or subjects it to a two-tier approval process. Without clarification of the approval path for a Density Bonus project, it appears that the City is imposing additional approval requirements on a Density Bonus project, thus differentiating and discriminating against such projects.
2) The City's draft ordinance provides for the City to choose whether to grand a Density Bonus or to provide an equivalent financial incentive. This option is only

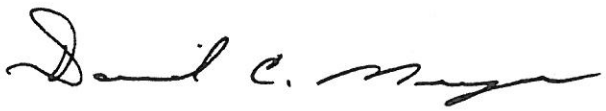
provided for in Government Code Section 65915.5(a) and applies only to projects proposing to convert apartments to condominiums. This option does not apply to other types of projects as reflected in the draft ordinance.

3) The draft ordinance provides for the City to establish rents and sale prices for the affordable units in a project, but makes no reference to that they must be established in conformance with State law, such as Section 50053 of the State Health and Safety Code as specified in 65915. The City may not arbitrarily establish these standards.
4) Again, the City mistakenly utilizes section 65915.5(a) of the State Density Bonus law that allows the City to recover its administrative costs in apartment/condominium conversions. Nowhere else in State Density Bonus law does a City have the right to charge a Density Bonus project a fee. In fact, the very concept of charging such a fee is contrary to the Legislative intent of providing incentives and concessions to developers to produce affordable housing utilizing Density Bonus.
5) The City in its draft ordinance has added conditions not included in current State law, which will allow it to extend the term of affordability beyond the 30-year period established in 65915. This language should be corrected or removed.
6) A number of documents are proposed to be recorded on title for Density Bonus projects that will create a heavy burden and expense on Density Bonus projects. In particular, the requirement to record certain documents "prior" to Final Map, with cloud the title of every lot in the subdivision. Any documents legitimately required to be recorded on title concerning the affordable units should be a requirement at, not prior to, Final Map recording and only on the title of the affordable units.

While we wholeheartedly support the City's effort to bring its current Density Bonus ordinance into conformance with current State law, the current draft ordinance is deficient and contrary to State law in a number of respects, including, but not limited to, those items set forth above.

In an effort to create a constructive dialogue on this matter, we are available meet with City Staff to provide comprehensive input into the City's draft Density Bonus.

Sincerely,



Michael Hunsaker
Property Owner Defense League, Inc.
115 Equestrian Court
San Marcos, Ca. 92069

July 31, 2012.

Planning Department and City Council
San Marcos City Hall
San Marcos, Ca.

Dear Honorable Commissioners and City Council,

Thank you for the opportunity to discuss the proposed zoning ordinances. The following views are held by a number of concerned citizens.

Need for Proper Review by Public:

These ordinances are more important and require more public scrutiny than the General Plan. The draft legislation is long and complex. It contains many potential unintended consequences and ambiguities. We spent two years on the General Plan without the most important pieces: the zoning ordinances and housing element. At least two GPAC public meetings covering these issues would be advisable given their importance. Further, the public should have at least a month more to consider these in detail. The proposed ordinances total over 488 complicated pages to be assessed in less than two weeks for comment. The fact that they were reorganized and rewritten with no red-lined version for comparison complicates and slows public review. The rush at this point is unnecessary and undesirable. This avoidable rush will be seen by many as an attempt by insiders to push for special advantage in violation of the wishes of the citizens at large.

One argument for the rush is that citizens need to know how the ordinances and new zoning will affect them. However, to be valid the ordinances need to be fully vetted and scrutinized. Ferreting out the negative aspects of these ordinances and gaining a basic understanding of the implications will take time. A month is too little to ask and will eliminate the issue that the Planning Department took over two years to write these and is giving the public just two weeks for consideration. The City is letting its citizens down.

Conflicts of Interest:

Foremost, we are deeply concerned about the fact that City itself is now a major developer, owner, and operator of real estate. This places the City in multiple conflicts of interest. The City government could easily by administrative and/or legislative fiat gain substantial advantage over private individuals in direct violation of its stated principles.

Presently, as City expenses are outstripping revenues, the City is only able to "balance" the budget by taping into the Creekside Marketplace Enterprise Fund reserves, inadequately funding

pensions, and continuing to defer vital maintenance for buildings and roads. These deficits will continue for the foreseeable future despite ample reserves to cover the temporary shortfall. Moreover, with the power to tap these reserves to buy land and use eminent domain, the City could easily displace private businesses , favor special interests and large corporations at the expense of small businesses – the provider of 80% of jobs in America and the most efficient and vital portion of business.

This section seems innocuous, but it indirectly empowers the City to decide in its interpretation of the general welfare" whether or not non-conforming properties are to be limited or stopped. Such restrictions must be fairly and timely enforced including City owned properties.

Relationship to the General Plan

One of the most serious issues of this structure of enforcement is the introduction of too much administrative leeway and room for arbitrary judgments. The generalized basis of whether or not any action matches the "form" or "general conformance" which appears throughout these ordinances facilitates arbitrary and even capricious decisions. Eventually they progressively degrade to corruption unless all actions are thoroughly vetted through the public. Providing closed door administrative procedures to go forward on major projects will likely produce uneven results. Typically special interests thrive in such an environment as they have the money, expertise and influence to tilt judgments in their favor from. Small owners and developers typically often receive progressively more brutal negative judgments under "Smart Growth" policies which favor large apartment owners over the Middle Class homeowners.

Ordinances must be much more distinct and large projects must be publicly vetted. In particular, large projects should never be granted a free pass on doing a full EIR and going through public hearings.

Applicability

I am still concerned about the El Dorado Mobile Home Park. According to Backoff, the Park was not non-conforming or illegal under past zoning. Its incorporation into a newly defined legal zoning may not save it if as making a previously non-conforming use conforming wipes out all previous non-conforming use. The Planning Department made a point of not rendering it a mobile home park zoning. This situation bears scrutiny.

B. If approval of discretionary permit is required, then all "non-conforming" businesses could be eliminated by the mere withholding of a permit. Note that any litigation would likely take more than 12 months after which the non-conforming use would be "abandoned". At least the active pursuit of a license should stay closing down the business until litigation efforts to regain operational status have been exhausted. And the 12 month period extended.

Burden of Proof

The shift of the burden of proof is a potential killer in eminent domain proceedings and nonconforming ordinances. Long time homeowners on Rancho Santa Fe which are targeted for

removal were annexed in from the county many years ago. Getting a copy of a legal permit that is over 50 years old very can be problematic given the County's and City's problems in keeping old records. Many have been lost and cannot be retrieved. Further, over 50 years there have been many changes in permitting and legal uses making the discovery process of showing how every change meet 50 year old laws is onerous. The City allows only a 12 month statute of limitations to contest overcharges of taxes; it should allow a 7 year statute of limitations on providing proof of conforming use.

Further, proving the value of properties in eminent domain should have the burden on the City else the small homeowner can be bullied into selling at less than real value. The City should not place itself in such a position where it can become predatory or unduly favor large developers and its own pocketbook.

A predatory, greedy, and self absorbed government is not a community benefit.

Nonconforming Ordinances Draft

These ordinances were not publicly vetted. When it became apparent that citizens were very concerned and passionate about possible abusive practices, GPAC considerations were stopped and closed door considerations were commenced. The Staff assurances that this deliberations are in line with the draft ordinances presented initially to GPAC is over stating the correlation. Substantial differences from the previous public draft exist.

Eminent Domain and Nonconforming Properties

If the City is empowered to shut down businesses before any court action, abusive eminent actions will result. The City already has immense powers with its financial reserves, its immunity for shutdowns, and legal immunities for its employees. If a business is shut down before the legal questions even begin, then it is financially prostrate and can be coerced into taking a highly unfavorable settlement. What has not been mentioned by the planning Department is that when eminent domain is applied to conforming properties, the City has to go through a long, very expensive property to compensate their owners for their losses and relocate them or buy up their businesses at a high evaluation. With nonconforming properties none of these safeguards apply. Typically, nonconforming property owners will get some relief, but they have to sue to get that compensation for their losses. Owners without financial resources lose most everything.

If the City can shut down businesses so they cannot afford legal protection, the coercive power grows immensely. These ordinances should shift the burden of proof to the City to level the playing field and minimize potential bureaucratic and political abuse.

Nonconforming Properties and Loss of Grandfathered Rights

The abandonment stipulation of 12 months is too restrictive particularly in a down economy and given that 21 years is the national average. In the current economy industrial properties may languish for years until a suitable new tenant arrives. The act of diligently seeking new tenants should be sufficient proof of non-abandonment. These activities were accepted as such by the

Planning Department in our GPAC meetings, but needs to be codified, probably a simple omission. Otherwise, the City could simply delay acceptance for 12 months and end the non-conforming use.

When nonconforming properties lose their rights through some real or alleged infraction of ordinances, the property owner can be ordered to close their business and demolish the existing structure at their own expense. The homeowner can be forced to abandon their home and demolish it as well. The resulting property values go to near zero as the City gets to effectively decide the value of the raw land with the hapless property owner having to go into court to disprove a more realistic valuation. Letting the City Manager decide when and where to enforce such actions by arbitrary judgment is not a public benefit and bad "law".

If a property owner has a new business coming into the area the application for a business license should also reset the 12 month clock. If not, the business owner and the property owner can be bullied into unfavorable conditions and annexations. For example, they can be forced into annexing into the Congestion Management District which is tilted in favor of higher taxes to support the infamous "urban core".

The ability for administrative redress for retaining nonconforming issues has been severely reduced to only a short extension with no ability of the property owner to correct even inadvertent errors. If the purported flaw is correctable, the property owner should be allowed to correct it and maintain his property rights. Given the increasingly complex, ambiguous and even conflicting rules and regulation, this redress is absolutely essential in the modern age else it can and will be abused as now being done routinely in Sacramento.

Moving a trailer on a "nonconforming property" should not end property rights. If a structure or trailer is moved and is in conformance of with is allowed with equivalent conforming properties, it should be allowed otherwise we encourage blight by storing progressively decaying structures. Further, replacement of trailers should be allowed. Movement of mobile homes should be allowed. This ordinance is inconsistent with the health and vitality of the community. It emphasizes the brutal consequences of artificially too restrictive policies for the benefit of insiders and government entities wishing to promote seizure by eminent domain stripping homeowners and small businesses of their accumulated wealth.

The 10% Rule for Upgrading or Modifying Nonconforming Properties

Too restrictive. Small homes are cannot build new garages. Do covered backyard porches constitute an illegal expansion?

Staff acknowledged that wholesale internal changes might be required for an industrial landlord in any case to meet different tenant requirements. An increase should be allowed for whatever internal reason makes sense to the property owner without the City second guessing matters.

In the GPAC meetings Planning indicated that they were only interested in external changes. Some internal changes involve permits which require conformance to existing standards. The proposed ordinance notes that changes required by law are allowed, but not changes required by

law if the permit is for owner requested changes. The inability to adapt to changing regulations and economic conditions means slow and inevitable death to the community.

Further, in today's economy, if a home is fire damaged and needs rebuilding, it commonly takes over 3 years to rebuild even after getting permits. Limiting the time to 18 months preys upon the unfortunate victim. Further, few banks will lend on nonconforming properties because of the increased threat of eminent domain where the main asset (the house or business structure) would be destroyed in eminent domain property evaluations. As the City has chosen NOT to protect the values of these citizen properties in eminent domain, it facilitates the worst abuses of the infamous Kelo case.

Open Space Uses

We are also worried that the Open Space zoning requires attention. If more land goes into environmental trust status and can still be purchased, say by Indians, then the Indian trust land could be easily converted into Indian sovereign trust land (reservation). If this process continues in the area around "P" mountain, then we could easily have an Indian casino in San Marcos. Only the Feds and the Bureau of Indian Affairs has to sign off on the transfer. The Obama administration has indicated a willingness to give the Tribes more commercial property and trust property. Jerry Brown accepted large donations from the Tribes and indicated his desire to develop more revenue. Of course if the casino comes in, the properties on Rancho Santa Fe and Mission would be worth a fortune, the areas most hit by rezoning and possibly subject to eminent domain. The problem can be easily fixed by an ordinance that requires all trust land can only be sold or title transferred to other nonprofits who will maintain non-commercial activities and do not engage in gambling activities.

Further, some developers have been promoting the idea of transferring title to a portion of their development land to an environmental nonprofit to meet their open space requirements. Such outfits are notorious for going bankrupt leaving the land unattended. If the open space cannot be maintained then the cost of maintenance should be paid out of a bond provided by the developer at the time of occupancy adequate to pay all the costs which allows for inflation and increased taxes.

Parking

In its ideological war on the American middle class, radical Progressives make private automobiles the target for unfair taxes and restrictions. Roads are not maintained. Congestion is increased through "traffic calming" and "complete streets. And urban parking is restricted forcing residents to park in the surrounding suburban and rural areas. One of the infamous tactics is to allow apartment developers to minimize parking requirements and to pay often inadequate "in-lieu fees" for offsite parking.

The City has promised that developers pay for their share of parking and make promises to increase fees after the fact to ensure that San Marcos Proposition R is followed. It should be mandatory that that after the fact that parking is inadequate that the developers are liable for the full cost of building of additional parking as well. This factor is especially important as the

parking requirements for only one parking space per apartment is impractical in today's economy where two cars are the normal requirement for couples forced to have two jobs requiring two cars to survive. The horrific parking problems in Lake San Marcos resulting from a small loss of spaces at San Marcos High School are instructive. The parking requirements should be at least 1.5 cars per bedroom. Further, the costs of interest and staff time should be fully recovered.

Affordable Housing Financing and Bonuses

A developer should get City financial support that covers only the cost of these additional units. In no case should a huge commercial project be materially subsidized with City loans for the marginally related facilities.

Most of the related ordinances sate that conversion must protect subsidized units, but allows the City to recapture the increase in market value. For greatly subsidized projects conversion should require ALL the increased market values go to the City in the same ratio as it provided financing.

Miscellaneous Comments

In my initial skimming of the proposed ordinances, I have as yet found little on mobile home parks, their zoning and requirements. For example, the El Dorado Mobile Home Park is to be rezoned LMDR, but I have yet to find this classification in detail. What sections address these entities?

The noise ordinance mentions special insulation requirements for homes in the Palomar Airport flight path. The General Plan notes that we are not in this area; yet, there is a section put in place for requiring this to be done. Does the City expect that the noise requirements will be progressively tightened so that existing homes will be required to add presently unneeded insulation? This section should be eliminated until it becomes an issue. Interesting the ordinances even omits the map they reference.

Thanks again for your consideration.

Mike Hunsaker
Chairman

Brindley, Karen

From: Flodine Family [flodine1234@sbcglobal.net]
Sent: Tuesday, July 31, 2012 19:34
To: Brindley, Karen
Cc: Backoff, Jerry; Eric Flodine
Subject: Initial Comments to Screencheck Draft of Zoning Ordinance
Attachments: DraftZoningOrdinanceComments_EF1.docx

Hello Karen,

Please find my initial comments attached.

Thank you,

Eric Flodine

To: Karen Brindley, Principal Planner
From: Eric Flodine (sent via email)
Date: July 31, 2012
Subject: Review Comments for Screencheck Draft Zoning Ordinance

Karen, to comply with the City's requested schedule for Review Comments to be received by July 31, please accept and consider my following comments and/or suggestions. I have read the majority of the current Draft, but have a few sections remaining. Therefore, I may send an additional comment memo, in the next few days should any further comments/suggestions occur. Thank you and the entire City/Consultant team for the tremendous effort put forth so far.

Title Page
Have you considered adding the Planning Commission members to the list?

Section 20.100.040(F)
Last sentence. Add "regulations" or similar to end of sentence.

Section 20.100.040(G)
Are there cases where approved discretionary projects will need to be redesigned under the new ordinance? This would entail increased costs for the applicants.

Table 20.210-2
Is there a definition for "Large" and "Small" farm employee housing?

Section 20.215.020 Single Family Zones - Residential 1
Why is this zone R-1-7.5, not R-1-6? If this is old nomenclature, now is the time to update it.

Table 20.215-2
Global Update of Tables needed to add "Microbrewery" to "Winery/Tasting Room" line per Public Workshop discussions.

Section 20.215.050(C)
It seems the Table references should be changed to xxx-3 and xxx-4 respectively.

Table 20.215-5
Patio/Courtyard. The standard allows for 48" walls immediately adjacent to sidewalks with no landscape treatment/planter? This height seems more appropriate in the MU Zones. Perhaps for the R-1 thru R-3 Zones permit a shorter wall (suggest 30") unless a landscape planter then allow 48" height. (This is a suggestion.)

Section 20.225.020 (C)
Item 1. Delete ", a"

Table 20.225-5. General Retail Uses.
-Why is Catering not allowed as a Ground Floor Use? This seems a great live/work opportunity.
- Commercial Entertainment is Permitted in Ground Floor, but Clubs are not. Definition section defines Commercial Entertainment as nightclub. Suggest adding Clubs not permitted in the Additional Use Regulations cell in the Commercial Entertainment category of the Table to clarify the apparent conflict.

Section 20.225.120 (C)
Revise to "...21 or more residential units..."

Table 20.265-1
There are 2 "Secondary Ridgeline Areas" headings. Is that intended?

Brindley, Karen

From: susan wait [mellosue@pacbell.net]
Sent: Tuesday, July 31, 2012 17:25
To: Brindley, Karen; Brindley, Karen
Subject: Comments on Draft Zoning Ordinance changes

Hi, Karen,

I have been unable to devote the time needed to review the latest large revision to the latest Draft Zoning Ordinance changes.

The time is way too short, and I simply have not been able to complete my comments.

For those of us (all of us) who work full time and have commitments beforehand, as well as personal issues, one week is just not enough time.

As concerned as I am about the Zoning Ordinance, I am hoping that the Stakeholders who met with the staff last Thursday have ironed out quite a few bugs.

It would be really nice to have been able to see a "red-line" referring to the corrections that relate to all of our comments, but I was told that that was not possible.

Please be confident that with another week, many of us would have been able to complete our research and comparisons.

Thank you very much,

Susan Wait

Hoover & Taylor
INDUSTRIAL PROPERTIES

July 30, 2012

City of San Marcos
Attn: Karen Brindley
1 Civic Center Drive
San Marcos, CA 92069

Regarding: Public Screencheck Draft, July 2012

Hi Karen,

Just a couple of items I had questions about:

1. Is there a typo on pg 20.400-11, Sec. 20.400.16, Outdoor Storage, B, CUP : conditions of approval may include the requirement of additional *yards*, screening.

2. If Self Storage is allowed in L-I zone, should it also be allowed in I or I-2 Zone? It would be a great fit if the need should come up in the future. Table 20.230-2, Pg 20.400.12, Table 20.400-2

Thank you and the staff for working with the business community, listening to our concerns, and making changes that will be a benificial for all. The new document is user friendly and easy to use.

Marianne Hoover

mhoover@hoovertaylor.com 760.744.5889.F 760.744.1840.O P.O. Box 215, San Marcos, CA 92079