

TORREY HILLS: A CHAPTER IN THE DEVELOPMENT OF SAN DIEGO

SUMMARY

In roughly 1990, development began in the Torrey Hills area of northern San Diego. At that time, the Community Planning Board consisted of representatives from the development community because there were no residents. Under these circumstances, it was easy for a developer to make changes in the Community Plan in order to adapt the plan to changing development priorities. Eventually, as houses were built, residents gained the majority on the board, and it became difficult for a developer to control board actions.

A developer attempted to circumvent resident opposition to proposed development projects by seeking Substantial Conformance Review (SCR) approval. These SCR approvals were granted between January and August 2002. Community residents challenged these actions in three lawsuits against the City. In addition, the Del Mar School Board sued the City claiming the SCR approvals of two biotech related projects near an elementary school placed students at risk.

PURPOSE OF THE STUDY

The Grand Jury sought to understand some of the SCR actions taken by the Development Services Department (DSD) as related to development activities in the Torrey Hills area.

PROCEDURES EMPLOYED

The Grand Jury:

- Heard testimony and reviewed documents related to actions of the Development Services Department with respect to the Torrey Hills area of north San Diego
- Interviewed two representatives of Torrey Hills Community Planning Board.

DISCUSSION

Areas to the east of I-5 and south of Carmel Mountain Road are called Torrey Hills. This area was completely undeveloped until roughly 1990. Since there were no residents in the area, the local planning board was made up of landowners who were also developers. It was relatively easy for a developer to propose and obtain a change in the community plan to facilitate a development proposal. This was the case until a major developer in the area, proposed a three-part development¹ and community plan amendment. It would dramatically increase traffic and building size near the neighborhood elementary school

¹ See Carmel Valley News, August 25, 2000.

Report 2003/4-16

by developments in Unit 19 of their land holdings in Torrey Hills. The community opposed this proposal. A developer representative testified before the board that this would go before the Community Planning Board, City Planning Commission and then to the City Council for approval and there would be ample opportunity for public input.

As homes were built and new owners moved in, the residents began to elect planning board members interested in protecting amenities as promised in the Community Plan. In March of 2001, after the development proposal mentioned above was made, there was an election for new members of the Torrey Hills Community Planning Board in which resident members gained a majority. Developers seeking of their plans could not longer count on the approval of the Community Planning Board.

At the next Community Planning Board meeting on April 24, 2001, representatives from Councilman Scott Peters' office and the Planning Department assured the board that the proposed plan amendment had been cancelled.

The developer adopted another approach to circumvent the opposition. Sometime in the fall of 2001, a proposal for a major commercial development in Torrey Hills Unit 19 was submitted to DSD for Substantial Conformance Review (SCR)². On November 29, 2001, DSD rejected the proposal. Nine sections of DSD had concerns or comments that were detailed in the rejection letter.

Major deficiencies noted were:

- The developer proposed to construct more square footage than permitted in the Sorrento Hills Community Plan. To cure this, an amendment to the PRD/PID would be required.
- It would be necessary to prove that the traffic allocation for a particular Traffic Analysis Zone published in the community plan is incorrect.
- If this development were approved, only 5000 square feet of developable space would remain for two nearby lots totaling 6.7 acres.
- A new map showing a vacation of an easement must be prepared.
- An additional 975 daily trip allocations must be found to support the project.
- Many other minor requirements were listed.

Clearly, this development proposal was judged seriously flawed by DSD in the fall of 2001.

A request for approval was resubmitted. On January 18, 2002, SCR approval was granted. The Grand Jury asked DSD for documentation showing that the deficiencies

² In 2001, a Substantial Conformance Review was a process that allowed development to go forward without consideration of the Community Planning Board, the Planning Commission, or the City Council. No administrative appeal could be made to an SCR approval.

found in the earlier submission had been remedied. DSD stated that no such documents exist. The project was submitted for SCR approval and was approved with no mention of the rejection two months earlier. The first SCR approval was followed by approval of two additional SCRs involving biotech firms. The first biotech proposal was approved on April 30, 2002 and the second biotech proposal was approved on August 21, 2002.

The Torrey Hills community was concerned by these development approvals and raised funds from homeowners to pay for lawsuits against the City for acting improperly. The suit involving the major commercial development was decided June 2, 2003. The Superior Court granted a writ of mandate “on the grounds the City of San Diego’s decision approving Pacific Centre Carmel Hills LLC’s application for development was without any reasonable basis and amounts to an arbitrary and capricious decision mandating an order of reversal”. The court ordered “the City Council to rescind its approval of the Pacific Centre Project”.³ The developer, a party of interest in the suit, has since appealed this decision. The City did not join in the appeal.

The result was different for the other two cases. The Court ruled in favor of the City in both cases, the first case⁴ on June 18, 2003, and in the second case⁵ on October 7, 2003. In these cases, the court noted that the Petitioner did not provide sufficient documentary evidence to support the contention that DSD acted improperly. The Community has appealed these decisions.

Both of the latter cases involved biotech related developments. The proposed facilities were to be built near the local elementary school. The Del Mar School Board has filed two suits⁶ against the City alleging the SCR approvals place children at unacceptable environmental risk. These suits have been transferred to Riverside County for trial. As of this writing, no decisions have been rendered.

FACTS AND FINDINGS

Facts

- On November 29, 2001, DSD denied an application for an SCR approval of a development proposal citing numerous deficiencies in the proposal. On January 18, 2002, the proposal was granted SCR approval. There is no record that the deficiencies were remedied.

³ San Diego County Superior Court Case Number GIC 786702

⁴ San Diego County Superior Court Case Number GIC 793083

⁵ San Diego County Superior Court Case Number GIC 800306

⁶ Riverside County Superior Court Case Numbers RIC 390648 and RIC 390673

Report 2003/4-16

- On April 30, 2002 and August 21, 2002, DSD gave SCR approval for development projects that involve biotech work in the vicinity of an elementary school.

Findings

- When DSD grants SCR approval of a project on a second or later submission, the record should clearly indicate how earlier objections have been satisfied.
- Proper environmental considerations should precede any SCR approval.

RECOMMENDATIONS

The Grand Jury recommends that San Diego City Council

- 04-16-1** Require the Development Services Department adopt policies to assure that the record of an SCR approval is complete. When a project is approved after a second or later submission, the record should clearly indicate how earlier objections had been satisfied.
- 04-16-2** Require the Development Services Department to make sure no SCR approval is given without adequate environmental review.

REQUIREMENTS AND INSTRUCTIONS

The California Penal Code §933 (c) requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code §933.05(a), (b),(c), details, as follows, the manner in which such comment(s) are to be made:

- (a) As to each grand jury finding, the responding person or entity shall indicate one of the following:
 - (1) The respondent agrees with the finding.
 - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.
- (b) As to each grand jury recommendation, the responding person or entity shall report one of the following actions:
 - (1) The recommendation has been implemented, with a summary regarding the implemented action.

- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
 - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.
 - (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.
- (c) If a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department head and the Board of Supervisors shall respond if requested by the grand jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with the Penal Code §933.05 are required by the date indicated:

<u>RESPONDING AGENCY</u>	<u>RECOMMENDATIONS</u>	<u>DATE</u>
San Diego City Council	04-16-1 through 04-16-2	10/04/04

Report 2003/4-16

This page left blank intentionally.