SAN DIEGO CITY DEVELOPMENT SERVICES DEPARTMENT: PROFESSIONALS IN A MAZE

SUMMARY

The Development Services Department (DSD) of the City of San Diego is staffed with well-qualified and dedicated people who have to work with an extraordinarily long and opaque Land Development Code. Staff levels are subject to large changes in number. There is considerable lack of clarity and excessive latitude in the application of the City's ordinances in approving development projects. This can be demonstrated through various examples of project approvals proceedings and an examination of the internal operating procedures of the DSD. Six minor projects: 1) the Pacific Coast Office Building, 2) the Stebbins residence, 3) the Mesa College Parking Lot, 4) 444-480 Camino Del Rio South, 5) redevelopment of the Mehl property in La Jolla, and 6) the Kensington Terrace project, and one major project (Sunroad Centrum 12) illustrate the complex and often perplexing labyrinth under which the DSD must labor.

PURPOSE

To describe various areas of the DSD procedures that seem to be overly complex and obscure and that need reorganization and simplification. To urge the Mayor and the City Council of the City of San Diego to ensure strict application of those procedures.

PROCEDURES

Documents related to seven development projects currently at issue in the City, as well as the California Environmental Quality Act (CEQA), and City ordinances related to development and City planning documents were examined in detail. Interviews were conducted with officials from the Planning Department, the DSD and the City Council, and City Council minutes were researched.

DISCUSSION 1: The Development Services Department

When a proposal for a construction project comes to the DSD it is assigned to a Development Project Manager (DPM). The DPM assigns a process level for that project. There are five levels; the Municipal Code specifies in detail, which types of projects have to be handled at which level:

Process Level	Decision Level	Appealable to
One	DSD	X
Two	DSD	Hearing Officer
Three	Hearing Officer	Planning Commission
Four	Planning Commission	City Council

Five	City Council (Acting on recommendation of Planning Commission)	X

Level One projects can be approved virtually over the counter at the DSD. Levels Two to Five are "discretionary". Level Two is also handled within the DSD but with more requirements than Level One. Levels Three to Five require higher authority for approval: Three by a Hearing Officer; Four by the City Planning Commission; Five by the City Council. Levels Two to Four can be appealed to the next higher level of authority. The first step in processing the application is for the environmental section of the DSD to file an Environmental Impact Statement (EIS). This is a checklist based on CEQA. The DSD also has threshold statements that help them to assign the level of environmental review needed: a Negative Declaration (ND), a Mitigated Negative Declaration (MND), or an Environmental Impact Report (EIR). The essence of an ND is that the project would have no environmental impact. An MND states that the mitigation measures that the proposal includes will make any impact negligible; it amounts to an ND with mitigation.

An EIR is a major review by an independent consultant at the expense of the developer. Either an MND or EIR is handled according to the assigned Process Level for approval. Then the project itself is reviewed by various City employees and/or officials as specified in the Municipal Code for a project of its type. Most projects require long-term negotiations between the applicant and the DSD before receiving approval. We note that the 2004-05 San Diego County Grand Jury recommended training on CEQA for all DSD personnel.

DSD officials are caught in the middle of a multiple ring circus: the applicant, the public, and the review process. There are some 1700 pages in the Land Development Code (Municipal Code chapters 10-14). We found the Municipal Code to be confusing and opaque; we wonder how developers and DSD personnel can find their way through the maze. We were told by the DSD and the City Clerk's office that the most up-to-date version of the code was available on the net, but we found the material to be illegible. The Land Development Code should be rewritten for better organization and a great reduction in length. A detailed cross-reference index and, perhaps, a simplified index are necessary. We understand that revision of the Land Development portion of the Municipal Code is an ongoing project at the DSD, but perhaps some outside body, such as a blue-ribbon commission, could reconsider the whole with the aim of a thorough reorganization and simplification. We note that the 2002/03 San Diego County Grand Jury recommended easier access to the Municipal Code on the City's website. They also found that the Code was too complex since even the DSD advised applicants to get professional help in preparing a proposal for even the simplest projects. It may also be added that the Centre City Development Corporation is able to process entitlement applications more rapidly than the DSD.

The DSD personnel were knowledgeable, forthcoming and helpful. Contrary to a common urban myth, we found no evidence of corruption in the department. However,

according to some DSD personnel morale was not high, and several mentioned the difficulty of functioning efficiently after the loss of trained personnel last year. Part of this is due to the fact that the DSD operates as an enterprise fund, i.e., its budget is just what it takes in through fees. That means the staff is usually too few in number and unstable in positions. This erodes morale and makes it more difficult to maintain the expertise the department needs. Perhaps the department should have a base floor budget such that if the funds from fees fall below that level, the difference would be made up from the City's General Fund. Or, perhaps the department could be assigned a budget to be paid from the General Fund, and all fee income would go to the General Fund. This would stabilize the staff. It would also make them less liable to charges that they promote development just to earn fees to sustain themselves. But there are some advantages to the enterprise funding system currently in use. Perhaps a mixture of both kinds of funding would be helpful. When San Diego is in a building boom some work could be farmed out to consultants; this would ease the staffing requirements and loads at one extreme. At the other end, perhaps the General Fund could permanently fund a number of the "front office" personnel.

Due to understaffing and instability in personnel, training of new employees is done "as best as we can". We found no evidence that the ethics training recommended in the Sunroad Investigative Report prepared by SawyerKnoll, July 19, 2007, was ever conducted in the department.

To clarify the purpose of the DSD, the staff should not be required to "Approve" a project; they should go on record as stating whether the proposal meets code and ordinance requirements. "Approval" might seem to the general public to imply that the DSD "likes" the project. The public never sees the original proposals or any that fail to comply with code.

Other jurisdictions ensure that their community planning boards have a real role in discussing and approving large projects. The City of San Diego seems to value the contribution of such boards; but the 2004/05 San Diego County Grand Jury noted that the City frequently disregards community planning boards. To give them more clout, the City could require that any proposal opposed by the appropriate planning board be handled through Process Five. This measure should also help to reduce pressure on the DSD.

FACTS AND FINDINGS

Fact: The ethics training recommended in the SawyerKnoll report has yet to be conducted.

Fact: The Land Development Code is 1700 pages long, difficult to access, disorganized, and has complicated indexing.

Fact: The DSD is budgeted strictly as an enterprise fund. This leads to frequent loss or position changes for trained personnel.

Finding: We found the DSD personnel to be knowledgeable, forthcoming, and helpful.

Finding: Training is conducted informally on the job with no formal process prescribed.

RECOMMENDATIONS

The 2007/2008 San Diego County Grand Jury recommends that the Mayor and City Council of the City of San Diego:

08-28: Rewrite the Land Development Code to make it shorter, user friendly, better organized, and cross-referenced for ease of use.

08-29: Make the up-to-date version of the Land Code more accessible to citizens.

08-30: Reconfigure the funding for the DSD to cap periods of high personnel needs and to put a floor under their funding during periods of low numbers of applications.

08-31: Institute formalized training in the DSD.

DISCUSSION 2: Six Minor Development Projects Under Consideration in the City of San Diego

CASE STUDY #1: The Pacific Coast Office Building

The application for the Pacific Coast Office Building specified a building that would rise to nearly 200 feet—50 feet i.e., 33% higher than the recommended height limit in the Mission Valley Development Plan. The proposal recently rejected by the City Council would require an intrusion into dedicated open space to ensure a mandated 100-foot brush clearance zone. (Brush clearance zones can exceed 100 feet, but cannot be less.) The building site had been found to be an erosion and landslide hazard zone approximately 15 years ago. The proposal suggested, apparently with DSD approval, that this is not true, but the proposal calls for 160 feet of retaining wall. Various versions of a Mitigated Negative Declaration (MND) were prepared, but all seemed to contain errors of omission. When the City Council remanded one proposal to the Planning Commission, the Planning Commission merely approved it again; there is no indication that they carried out the rest of the Council's requests. The MND for the proposal has now been rejected de facto by the City Council. (The City Council did not have enough yes votes at the meeting when the MND appeal was considered.)

CASE STUDY #2: The Stebbins Residence

This proposal concerns the potential construction of a large house next to the ocean in Ocean Beach. The early plans included an underground parking garage even though FEMA clearly designates the area as a flood plain and forbids such an underground structure under a dwelling. The MND does not mention the FEMA limitation. The DSD

at one point suggested a carport but that caused problems having to do with how much more of the property could be occupied by the house but the developer rejected the suggestion. The initial proposals all showed a house with considerable elevation, which did not fit in with the surrounding area and might have obstructed ocean views. The DSD is still working with the developer to obtain an acceptable proposal. In any case the property is in the Coastal Overlay Zone, and any approval must be forwarded to the California Coastal Commission (CCC) and may be appealed to them by any interested parties.

CASE STUDY #3: The Mesa College Parking Lot

Mesa College applied for a permit to build a parking lot on land to their south. The MND did not clearly indicate that the lot would encroach on .169 acres of Kearny Mesa Park and require the removal of several trees. The City Council Minutes of the meeting that approved the permit show that the Council discussed some grading to be done on some park land. It is not clear whether the plans called only for grading and not inclusion of park property, or if any such distinction was made to Council.

CASE STUDY #4: 444-480 Camino Del Rio South

This project entails the destruction of two 2-story office buildings and erecting two 4-story buildings, one office building, and one residential complex containing 72 units. The floor space would also more than double the square footage from 71,670 to 188,950. 86,000 cubic yards of dirt would be hauled away involving some 4300 dump truck trips. Doubling the height of buildings, adding 72 residential units in an already crowded Mission Valley corridor, and removing that much dirt appear to represent significant changes in the use and appearance of the property. In our opinion, these sorts of changes would seem to be enough to trigger a full-blown Environmental Impact Report (EIR).

CASE STUDY #5: The Mehl property in La Jolla

The owner applied to the DSD for permission to demolish his current one-story residence and build a new two-story one. The property is built on a bluff over the ocean. The bluff has edged close to the current building and the owner wants to build the new one 25 feet back from the edge of the bluff. Issues arose over whether, under current coastal development rules, the new house would have to be built 45 feet back from the bluff edge, and whether the owner could count the area in the original plat (survey) of his lot that has eroded in the total developable area thus affecting the Floor Area Ratio (FAR) for the new project. This project was being processed at Level Two so a hearing officer heard the case. His approval was not appealed within the City but was appealed to the CCC by several outside parties. (The City is required to submit all project permits for work in the Coastal Overlay Zone to the CCC and did so in this case). The CCC at their December meeting in San Francisco found "Substantial Issue" with the proposal and will conduct a de novo ("from the beginning") full hearing on it sometime this spring.

CASE STUDY #6 Kensington Terrace

According to the *Union Tribune*, the City Council on February 5, 2008 approved a proposal for a large project in Kensington to be called Kensington Terrace. According to this and previous articles, a number of local residents and interested parties have opposed the project all along, and did so again at the City Council meeting where the proposal was approved. At an earlier stage of the approval process there was opposition on the basis that a building in the area to be redeveloped might have historical value; it was determined that this was not the case. The City Council also did not accept the objection that the project was out of scale for a neighborhood with historical values. The Grand Jury takes no position on any of the claims or processes involved in all of this except to note that the opponents have always called for a full EIR to be submitted.

These case studies indicate that MNDs are sometimes inaccurate and that perhaps they are used too often when EIRs would be more appropriate. Externally generated codes and restrictions such as FEMA regulations have not always been understood or enforced by the DSD. It was also observed at several City Council meetings that the DSD staff present could not answer the questions from members of the Council. In several of these cases we found evidence that people with vested interests persistently interfered with and badgered city personnel involved in the planning and approval processes to get various changes made in community plans and regulations.

RECOMMENDATIONS

The 2007/2008 San Diego County Grand Jury recommends that the City of San Diego's Development Services Department:

08-32: Ensure that MNDs are complete and accurate and contain full disclosures.

The 2007/2008 San Diego County Grand Jury recommends that the San Diego City Council:

08-33: Demand complete and accurate EIRs and MNDs with full disclosures.

08-34: Insist on firm, clear answers to their questions at the time they are asked or at the next City Council meeting.

DISCUSSION –3: Sunroad Centrum 12

The history of the developer's proposals and the DSD actions on this project is quite arcane and convoluted. The building was almost completed last summer at 14 stories. The developer was required to remove the top two floors, and the building is now, again, close to being completed at 12 stories.

The New Century Center Manual for developing the property approved by the City Council in 1997 specified commercial/retail use for the property; in the appropriate

zoning that would have meant 3-story buildings (or a 45 foot height limit). The zoning covering the property was grand fathered in perpetuity. That zoning did not contain any height limitation, but it did include a Floor Area Ratio ("FAR") requirement. Rather than use a FAR, the manual called for density transfers, which, in effect, allow for greater height in one area of the development project with height reductions or no development in another. (In 2000 the City Council changed the overall zoning for Kearny Mesa, which includes this property, to include a height restriction of 45 feet and slightly different FARs.)

On October 3, 2000 the City Council considered and approved a revised New Century Center Manual and associated changes to the Kearny Mesa Community Plan. The general concepts embodied in this plan seem rather different from those in the 1997 plan.

In 2002 the developer forwarded to the City another revised New Century Center Manual for the property, the 2002 New Century Center Master Plan. According to the DSD and the City Council minutes the only changes were ones necessary to increase the number of housing structures to be constructed. However, what was not made clear until recently is that the 2002 Manual covers only one section of the 1997 manual. (And where does the 2000 revision fit into this genealogy?) For the area where the housing is to go, one refers to the 2002 manual. For the rest of the tract, the 1997 manual applies. In addition the area where the 1997 manual called for commercial/retail development, which has a 3-story limit in the zoning code; this was later changed by the developer to commercial/mixed use, which has no height limit. DSD officials told us that since both uses were permitted in the zoning code, the developer had the right to make the change without any approval process. Since the three manuals did not cover the same area, and since the 1997 proposal could have been taken to mean less height, the developer surprised a lot of people with his 12-story building.

The three master plans are manifestly different in more ways than just adding more residential units, though perhaps other changes might be claimed to be just cosmetic. But it is clear that the 2002 manual is not the sole direct descendant of the 1997 manual. This rather bizarre outcome should be sorted out so that there is only one manual covering the whole tract or that each of the current manuals (and any others in the future) be labeled to indicate just what section of the tract is covered. In view of this complex history, it would probably have been wiser for the DSD to process the building permits for Centrum 12 through at least Process Level Four and perhaps have required a new EIR. In addition, the property has been developed in the extreme with hardly any open space; one informant said he thought it looked like a built out city. This raises the issue of how well the appropriate authorities are keeping track of the density transfers and whether the development is within City Council parameters for density. (The SawyerKnoll report recommended that better liaison with the FAA should be instituted; according to our evidence this recommendation has been adopted fully.)

FACTS AND FINDINGS

Fact: There are three New Century Center manuals being used by developers and the DSD.

Finding: The relationships of the three manuals to each other and of the revisions to the whole plan area are not manifest.

RECOMMENDATIONS

The 2007/2008 San Diego County Grand Jury recommends that the San Diego City Council and the City of San Diego's Development Services Department:

08-35: Revise the three New Century Center manuals to reflect their relationship to each other and to the entire plan area.

08-36: Impose a moratorium on all new building permits in all of the New Century Center development area until the City Council receives a density transfer audit for the property that they determine fits their criteria for the project.

COMPLETE RECOMMENDATIONS

The 2007/2008 San Diego County Grand Jury recommends that the Mayor and City Council of the City of San Diego:

08-28: Rewrite the Land Development Code to make it shorter, user friendly, better organized, and cross-referenced for ease of use.

08-29: Make the up-to-date version of the Land Code more accessible to citizens.

08-30: Reconfigure the funding for the DSD to cap periods of high personnel needs and to put a floor under their funding during periods of low numbers of applications.

08-31: Institute formalized training in the DSD.

The 2007/2008 San Diego County Grand Jury recommends that the City of San Diego's Development Services Department:

08-32: Ensure that MNDs are complete and accurate and contain full disclosures.

08-35: Revise the three New Century Center manuals to reflect their relationship to each other and to the entire plan area.

08-36: Impose a moratorium on all new building permits in all of the New Century Center development area until the City Council receives a density transfer audit for the property that they determine fits their criteria for the project.

The 2007/2008 San Diego County Grand Jury recommends that the San Diego City Council:

08-33: Demand complete and accurate EIRs and MNDs with full disclosures.

08-34: Insist on firm, clear answers to their questions at the time they are asked or at the next City Council meeting.

08-35: Revise the three New Century Center manuals to reflect their relationship to each other and to the entire plan area.

08-36: Impose a moratorium on all new building permits in all of the New Century Center development area until the City Council receives a density transfer audit for the property that they determine fits their criteria for the project.

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 therefore.

(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 therefore.

(c) If a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the 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 from:

Responding Agency	Recommendations	Date
Mayor, City of San Diego	**08-28 through 08-31**	**07/15/08**
City Council, City of San Diego	**08-28 through 08-31, 08-33 through 08-36**	**07/15/08**
Development Services Department, City of San Diego	**08-32, 08-35, 08-36**	**07/15/08**