THE CITY OF SAN DIEGO

# REPORT TO THE PLANNING COMMISSION

**DATE ISSUED:** January 19, 2007 **REPORT NO. PC-07-012**

**ATTENTION:** **Planning Commission, Agenda of January 25, 2007**

**SUBJECT:** BALBOA MESA - PROJECT NUMBER: 70797. PROCESS 3

**REFERENCE:** Hearing Officer Report No. HO-06-252

**OWNER:** Balboa Realty, LLC (Attachment 11)

**APPLICANT:** John Ziebarth and Associates

## SUMMARY


**Issue(s):** Should the Planning Commission deny the appeal of the Hearing Officer's decision to approve the demolition of 13,096 square feet and construction of 29,430 square feet, for a new total of 207,138 square feet of commercial retail space at an existing shopping center?

**Staff Recommendation:**

1. CERTIFY Mitigated Negative Declaration No. 70797 and adopt the Mitigation, Monitoring and Reporting Program; and

2. DENY the Appeal and APPROVE Site Development Permit No. 215119 and Planned Development Permit No. 215120.

**Community Planning Group Recommendation:** On July 18, 2006, the Clairemont Mesa Planning Committee voted 14-1-0 to recommend approval of the project with concerns as outlined in this report (Attachment 9).

**Environmental Review:** Mitigated Negative Declaration No. 70797 has been prepared for the project in accordance with State of California Environmental Quality Act (CEQA) Guidelines. A Mitigation, Monitoring and Reporting Program has been prepared and will be implemented which will reduce any potential impacts identified in the environmental

review process to a level below significance.

**Fiscal Impact Statement:** None with this action. A deposit account is maintained for this project by the applicant.

**Code Enforcement Impact:** None with this action

**Housing Impact Statement:** This proposed project is located in the Commercial Core area of the Clairemont Mesa Community Plan area. There are no existing residential units on site and none are proposed.

## BACKGROUND

The proposed project site is an existing commercial retail shopping center that has been developed over the last forty years. It is located at the southeast intersection of Balboa and Genesee Avenues at 5401-5685 Balboa Avenue and 4104 Genesee Avenue (Attachment 1). Balboa Avenue was a State highway in 1996 when State legislators formed the Balboa Avenue Citizens Advisory Committee (BACAC) for community involvement in the upgrading of the highway. Soon after, the State relinquished the highway to the City of San Diego to be a local street. The City of San Diego and the BACAC worked together to form a vision of a more pedestrian friendly upgrade of Balboa Avenue including enhanced medians and increased pedestrian connectivity across the former highway. On September 12, 2005, the City Council adopted the Balboa Avenue Revitalization Action Program (BARAP) that identified desired enhancements to this corridor. The proposed project is in response to the desire by the community to have a pedestrian crossing between Genesee Avenue and Mount Alifan Drive to the east. This project would demolish four existing retail structures to allow for the installation of a traffic signal and required enhancements to internal circulation of the shopping center and permit four new commercial structures with an increase in gross square footage of approximately 16,400 to a new total of 207,138 square feet of commercial retail space at the existing shopping center (Attachment 5).

### *Project Description*:

The proposed project would demolish 13,096 square feet and construct 29,430 square feet, for a new total of 207,138 square feet of commercial retail space at an existing shopping center located at the southeast corner of Genesee and Balboa Avenues. The 16.22 acre site is located at 5401-5685 Balboa Avenue and 4104 Genesee Avenue in the CC-1-3, CN-1-2, and Community Implementation Overlay Zone (CPIOZ) and Clairemont Mesa Height Limit Overlay Zone of the Clairemont Mesa Community Plan area. The Project requires a Site Development Permit as it is located in the CPIOZ Type B, and a Planned Development Permit as recommended in the Community Plan. The Proposal would amend the existing Community Plan Implementation Overlay Zone and Planned Commercial Development Permit No. 96-7779.

***Community Plan Analysis:***

The Clairemont Mesa Community Plan designates this site as a portion of the Community Core and places it in the CPIOZ, Type B, recommending that a Planned Development Permit be obtained. Further Recommendations include improved internal circulation for vehicles, pedestrians and bicyclists, along with improved landscaping along Balboa Avenue. In addition, the Community Plan and the BARAP recommend a pedestrian crossing between this center and the commercial retail center to the north. A project feature would be the installation of a pedestrian and vehicle crossing between the two centers, thus meeting the intent of the Plan. The proposed project would demolish older structures and construct new commercial retail structures along Balboa Avenue with pedestrian walkways and plazas, further implementing the Plan.

***Environmental Analysis:***

A Mitigated Negative Declaration was prepared for this project in accordance with the California Environmental Quality Act. A Mitigation Monitoring and Reporting Program would be implemented with this project to reduce potential impacts to Human Health/Public Safety/Hazardous Materials, to levels below significance.

***Project Analysis:***

The proposed project would implement The BARAP and the Clairemont Mesa Community Plan. The proposed project enhances the aesthetics and image of the buildings and the center as a whole by articulating the new buildings, creating varying roof lines, canopies and trellises in front of the large retail uses, replacing the existing buildings that do not match the architectural character of the center with four new buildings which do. Further, the new proposed retail/ commercial buildings have the potential to relocate existing tenants and provide new tenant space in order to accommodate commercial facilities within the community core to meet the needs of the existing and projected residential population of Clairemont Mesa.

A proposed project feature is the installation of a new traffic signal on Balboa Avenue. This will allow pedestrians and vehicles to traverse between the existing center and the commercial center to the north. In addition there will be pathways through the center using enhanced paving This feature is recommended in the Balboa Avenue Revitalization Action Plan as well in the Community Plan. In addition, a project feature is the creation of a bike lane on Balboa Avenue and provides enhanced landscaping both in the parking areas and at the street, which is recommended in the Plan.

The proposed project is consistent with the San Diego Municipal Code, the intent of the land use plan for the commercial core identified in the Clairemont Community Plan, and enhances the existing land use development on the property.

***Community Planning Committee Recommendation***

On July 18, 2006, the Clairemont Mesa Planning Committee voted 14-1-0 to recommend approval of the project with the stipulation that the responsibility for protecting pedestrian safety remains that of the City of San Diego Transportation Department, Traffic Engineering, and noting that the Committee still feels the crossing is unsafe.

City staff has responded both in the Mitigated Negative Declaration and to the community at the July 18, 2006, meeting that the proposed location of the signalized crossing has been reviewed by a professional traffic engineer and the Transportation Development Section of the City of San Diego. It has concluded that the proposed location would provide a safe pedestrian crossing that would also provide improved interconnectivity between the two shopping centers without resulting in a significant impact on traffic circulation. Further, it has been concluded that safe pedestrian crossing at a protected/permissive intersection is a valid alternative to a pedestrian bridge as recommended, but not required in the community plan. In fact, as noted in the BARAP, the pedestrian bridge is no longer the preferred option for safely crossing Balboa Avenue.

***Hearing Officer's Decision***

On November 15, 2006, the project was heard by the Hearing Officer. Testimony was taken and the discussion centered around conformance with the California Environmental Quality Act (CEQA), conformance with the Clairemont Mesa Community Plan and the Balboa Avenue Revitalization Program, and the location of the proposed traffic signal on Balboa Avenue. Based on the discussion and evidence presented at the hearing, the Hearing Officer certified the Mitigated Negative Declaration and approved Site Development Permit No. 215119 and Planned Development Permit No. 215120.

***Appeal of Hearing Officer's Decision:***

On November 29, 2006, Butch Biendara, filed an appeal (Attachment 10) of the Process Three, Hearing Officer decision to certify Mitigated Negative Declaration No. 70797 and approval of Site Development Permit No. 215119 and Planned Development Permit No. 215120, citing factual error and findings not supported as the reason for appeal.

**DISCUSSION:**

While the appeal itself is lengthy, staff has summarized the main issues addressed in the appeal received November 29, 2006. Therefore, staff has the following responses:

**1. Segmentation of the project as it relates to the California Environmental Quality Act.**

The California Environmental Quality Act (CEQA) defines a project as "the whole of the action,

which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect change in the environment" where the activity "involve[s] the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies." (CEQA Guidelines, sec. 15378; Public Resources Code sec. 21065). The segmentation, or piece-mealing, of a project occurs when a single project, or "the whole of the action," is broken down into two or more smaller projects. The phrase "whole of the action" has been interpreted by the California Supreme Court to mean that it is generally unacceptable to segment a project into small pieces or smaller projects to avoid preparing an Environmental Impact Report (EIR) or in an effort to avoid full disclosure of certain environmental impacts when it is known or is foreseeable that one or more of the segmented smaller projects would require the other (See *Bozung v. Local Agency Formation Commission* (1975) 13 Cal. 3d 263.). Therefore, an agency may not treat each separate permit or approval as a separate project when evaluating environmental impacts.

The appellant claims that the Genesee Plaza Expansion project and the Balboa Mesa Expansion project are one project as defined by CEQA and therefore preparing an environmental document for each project is segmenting the "whole of the action" and attempting to avoid full disclosure of the environmental impacts and/or the preparation of an EIR.

However, staff asserts that Genesee Plaza and Balboa Mesa are, in fact, separate projects pursuant to CEQA because either project may be approved, while the other is disapproved, and still be implemented by the respective applicant. Furthermore, Staff asserts that the preparation of separate environmental documents for the two separate projects was appropriate, and that segmentation as defined by CEQA has <u>not</u> occurred. It should be noted that each project assumed implementation of the other in their analyses, so should both projects be approved and implemented, all impacts have been disclosed. The analyses did not find that there are any significant direct or cumulative unmitigable impacts from each project, nor would there be any significant direct or cumulative unmitigable impacts if one or the other project is implemented, and not both.

Staff also believes that segmentation has <u>not</u> occurred because neither project is a reasonably foreseeable consequence of the other in that the projects could be approved independent of the other, and there is no reason to assume that approval of Genesee Plaza means Balboa Mesa is approved or vice versa. Neither project is providing needed access to the other, nor is one project a phase of the other. Additionally, Genesee Plaza is not a future expansion of Balboa Mesa, and vice versa, that would result in significant impacts because one would not contribute to the impacts of the other that are not disclosed with the separate project documents. The environmental documents for each project did look at the potential cumulative impacts, and no cumulative impacts were identified. Additionally, neither action project relies on essential public services that would be provided by the other project, as no aspect of Genesee Plaza relies on a service (such as public utilities) that would be provided by Balboa Mesa, and vice versa.

Finally, segmentation of a project should not be confused with two separate project applicants collaborating to provide two separate complementary projects.

**2. Conformance with the Clairemont Mesa Community Plan as stated in the Mitigated Negative Declaration and the approved findings for Site Development Permit No. 188311, Planned Development Permit No. 189029 and Conditional Use Permit No. 190103.**

The project site is designated in the Clairemont Mesa Community Plan as being within the Community Core and subject to the Community Plan Implementation Overlay Zone (CPIOZ) Type B.

The Plan contains a number of CPIOZ design guidelines in order to ensure that development occurs with a unifying architectural, sign and landscape theme and creates a pedestrian environment in the Community Core area. The project as proposed, replaces the existing buildings, which do not meet the architectural character envisioned for the center, with new buildings which do. The proposed buildings include articulation, varying roof lines, canopies, trellises and pedestrian plaza areas. The public plaza areas include seatwalls, landscaping and hardscape elements, also allowing for additional space to accomodate outdoor dining areas.

Further, in accordance with the Balboa Avenue Revitalization Action Program (RAP), some building footprints will move closer to the edge of the street, thus encouraging pedestrian activity along the street frontages. Also included in the project proposal are a network of pathways throughout the shopping center, including areas of enhanced paving and landscaping. In order to improve pedestrian circulation and promote walkability, the applicant worked with staff to expand this network of pathways as to provide several options to pedestrians, rather than provide one ten-foot wide walkway.

In order to promote bicycle circulation, bicycle lanes will be added to both sides of Balboa Avenue as a feature of this project. In regards to parking, the Community Plan states that "Parking in the community core should be underground, behind the building or within the building." and further states that large surface parking areas should be screened from the public right-of-way and include colored-concrete paving (pg. 48). A significant portion of the proposed parking is located behind buildings, as a portion of the proposed buildings will be located along the edge of the street, and new landscaping will be added throughout the parking area as well as all along the project street frontage in order to screen the parking area, and finally areas of enhanced colored concrete paving will be included throughout the parking lot.

In regards to the pedestrian bridge, it is no longer the preferred option, as noted in the Balboa Avenue RAP. A signalized crossing is the preferred option which came out of the community workshops that were held in order to develop the RAP, as part of the SANDAG Walkable Communities Demonstration Grant Program.

In summary, the proposed project is in conformance with the Community Plan, as all of the improvements outlined above will help to create an architecturally unified shopping center with an improved pedestrian environment.

**3. Safety of the operation of the proposed traffic signal.**

Staff believes that the proposed traffic signal would provide a safe pedestrian crossing that would also improve interconnectivity between the two shopping centers, without resulting in a significant impact on circulation. The Mitigated Negative Declaration for the project notes that the standard driveway traffic signal phasing for this location would be permissive left turn phasing to address vehicular, pedestrian and bicycle crossings. In response to comments through the process, the phasing of the signal was modified to protected/permissive left turn phasing, as noted in the document. Either scenario would be safer than the current situation where pedestrians illegally cross Balboa Avenue at unprotected mid-block locations.

**Conclusion:**

Staff has reviewed the proposed project in conformance with local, state, and federal regulations and requirements. The issues raised in the appeal are the same issues raised at the Hearing Officer meeting. Therefore, staff recommends denying the appeal and approving Site Development Permit No. 215119 and Planned Development Permit No. 215120, subject to the conditions in the draft permit. Staff can also make the appropriate findings as described in the draft Resolution.

**ALTERNATIVE:**

GRANT the appeal and DENY Site Development Permit No. 215119 and Planned Development Permit No. 215120, if the findings required to approve the project cannot be affirmed.

**Respectfully submitted,**

**Mike Westlake**
**Program Manager**
**Development Services Department**

**Jeannette Temple**
**Project Manager**
**Development Services Department**

WESTLAKE/JT

Attachments:

1. Aerial Photograph
2. Community Plan Land Use Map
3. Project Location Map
4. Project Data Sheet

5. Project Plans
6. Draft Permit with Conditions
7. Draft Resolution with Findings
8. Copy of Recorded (existing) Permits
9. Copy of Appeal Dated November 29, 2006
10. Community Planning Group Recommendation
11. Ownership Disclosure Statement