

DATE ISSUED: September 7, 2006

REPORT NO. PC-06-218

ATTENTION: Planning Commission, Agenda of September 14, 2006

SUBJECT: DINOPIA RESIDENCE - PROJECT NO. 5596.
PROCESS NUMBER THREE

OWNER/

APPLICANT: Matthew C. Dinofia (Attachment K)

SUMMARY

Issue(s): Should the Planning Commission deny the appeal and sustain the Hearing Officer's decision to grant a variety of approvals to allow for the construction of a new single family residence at 7159 Country Club Drive within the La Jolla Community Plan area?

Staff Recommendation:

1. DENY the appeal; and
2. CERTIFY Mitigated Negative Declaration No. 5596 and ADOPT the Mitigation, Monitoring and Reporting Program; and
3. APPROVE Coastal Development Permit No. 9217, Lot Line Adjustment No. 341288 and Variance No. 341289 ; and
4. APPROVE Coastal Development Permit No. 355814, Site Development Permit No. 355815, and Variance No. 355816.

Community Planning Group Recommendation: The proposed project was heard at the La Jolla Coastal Development Permit (LJCDP) Subcommittee of the La Jolla Community Planning Association (LJCPA) on June 13, 2006. It was referred back to the City on this date as the Subcommittee could not establish the legality of the lot in

question.

The applicants chose to move the project forward to the Hearing Officer without the LJCPA recommendation because the LJCDP Subcommittee has noted that a vote cannot be achieved by them until the legality of the lot has been resolved by the City. The applicants believe the Certificate of Compliance issued on July 14, 2005 by the City is valid, rendering that portion of Lot 17 as a legal lot.

Environmental Review: Mitigated Negative Declaration No. 5596 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, to a level of insignificance, any potential impacts identified in the environmental review process.

Fiscal Impact Statement: All costs associated with the processing of this project are paid by the applicant through a deposit account with the City of San Diego.

Code Enforcement Impact: None

Housing Impact Statement: The subject site is designated as Very Low Density Residential (0-5 du/ac) in the La Jolla Community Plan. According to the community plan, this designation would permit the development of a maximum of two dwelling units. The front parcel has been improved with a single family home and the rear parcel is currently undeveloped. The project proposes the development of a new dwelling unit on the undeveloped parcel. A net increase of one dwelling unit is proposed. The new dwelling unit is not subject to the inclusionary housing ordinance and if sold would be at market rate.

BACKGROUND

The proposed development is located at 7157 and 7159 Country Club Drive in the RS-1-4 zone, Coastal Overlay (Non-Appealable Area 1), and Coastal Height Limitation Overlay zones of the La Jolla Community Plan. The site is southwest of Carizzo Drive, north of La Jolla Parkway and east of Torrey Pines Road in a neighborhood that is developed with single family homes (Attachment A).

The application consists of two parcels totaling approximately 26,068 square feet. The front lot is approximately 5,192.08 square feet and contains a single family residence. The rear lot is approximately 20,875.93 square feet and is vacant. The project proposes a lot line adjustment between the two parcels and the construction of a new single family residence on the vacant rear lot. The reconfigured parcels would increase the front lot by 4,812.64 square feet in an effort to comply with the minimum 10,000 square-foot lot size requirement under the zone and decrease the square footage of the vacant site, resulting in a 16,063 square foot rear lot.

On November 27, 2002, the project was submitted for a Process 3 Site Development Permit/Coastal Development Permit to construct a 5,655 square-foot single family residence on a vacant 20,875.93 square-foot rear lot (Lot 16) located at 7159 Country Club Drive.

A meeting was held with staff and the applicants on October 12, 2004, to discuss the legality of Lot 16. Staff determined Lot 16 did not appear to be a buildable site because it did not have street frontage. The meeting concluded with the applicants agreeing to provide legal documentation proving the 20,875.93 square-foot site located at 7159 Country Club Drive was a legal buildable lot.

In February of 2005, the City approved a revised set of plans for portion Lot 17 at 7157 Country Club Drive (front lot) through Building Permit No. C305865-02. The revised plans (which originally showed Lot 16 and portion Lot 17 as the legal description) clarified for the building inspector the project's rear yard setback for the portion Lot 17 to be 20-feet. As such the revision delineated the separation between a portion of Lot 17 and a portion of Lot 16. Staff approval of the plan change included a clarification that the applicant modify the legal description to describe that the development was entirely on a portion of Lot 17, and to delete reference to Lot 16.

Certificate of Compliance (Hearing Officer Report No. HO 06-183 Attachment 11)

On July 14, 2005, staff determined the (portion Lot 17) property described above was issued a building permit by the City of San Diego, which thereby qualifies 7157 Country Club Drive for a Certificate of Compliance (COC) under the provisions of the Subdivision Map Act and local ordinances adopted pursuant thereto. The COC recognized said property to be a separate and legal parcel that may be legally sold, leased, or financed without further proceedings. The COC was recorded at the San Diego County Recorder on July 21, 2005.

On October 18, 2005, the City issued a Notice of Intention to Determine Status (Certificate of Compliance rescinded) that was recorded by the San Diego County Recorder (Hearing Officer Report No. HO 06-183 Attachment 12).

It was later determined the COC could not be rescinded without a Process 3 public hearing. Therefore, the applicants appealed the rescinding of the COC and the project was scheduled for the January 25, 2006, Hearing Officer. The purpose for the public hearing was to determine if the property should be merged. The property located at 7157 and 7159 Country Club Drive is identified as Lot 16 and a portion of Lot 17, which were previously the subjects of Building Permit No. C305865 02. The Hearing Officer was to decide if the lots may be merged pursuant to standards specified in the merger ordinance, San Diego Municipal Code [SDMC] section 125.001 et. seq. However, at the public hearing the applicants asked for a continuance and waived the time for the hearing to a time not certain. The applicants wished to have additional time to determine the proper process needed to clarify that there were two legal lots for the site.

Based on the above, a meeting was held on February 23, 2006 with staff and representatives of the applicants. Staff agreed that the COC was still in effect pending further proceedings. The

meeting concluded with staff suggesting alternatives to rescission/merger, including the pending application which would address staff's concerns.

On April 11, 2006, the project was modified and resubmitted to the City as a Process 3 Coastal Development Permit for a Lot Line Adjustment to make 7157 Country Club Drive (front lot, proposed Parcel 1) 10,004.72 square feet in order to comply with the minimum lot size of 10,000 square feet for the RS-1-4 zone; and a Variance to allow 52.56 linear feet of street frontage where at least 65 feet of street frontage is required. A Coastal Development Permit and Site Development Permit for 7159 Country Club Drive (rear lot, proposed Parcel 2) for the construction of a new 3,729 square-foot single family residence (2,442 square feet of basement area excluded from gross floor area, for a total of 6,171 square feet) within environmentally sensitive land, on a vacant 16,063 square-foot lot; and a Variance to allow no street frontage where at least 65 feet of street frontage is required.

On July 26, 2006, the Hearing Officer granted all approvals (including all variances) pursuant to Report No. HO 06-183 (Attachment L).

On August 9, 2006, the Hearing Officer decision to approve Project No. 5596 (Attachment M) was appealed by James J. Eischen, Jr., Attorney for Kathleen Vaughan and John Treadway as set forth in Attachment I 'Development Permit Appeal Application'.

DISCUSSION

Project Description:

7157 Country Club Drive (proposed Parcel 1) (CDP/Lot Line Adjustment/Variance No. 341289)

The existing property (front lot, Lot 17A) before the Lot Line Adjustment (LLA) is 5,192.08 square feet which does not meet the minimum 10,000 square-foot lot size required for the RS-1-4 zone. Nor does the property meet the currently required 65 linear feet of street frontage. The applicant is requesting a CDP for a LLA to combine that portion of Lot 17A (5,192.08 square feet) and that portion of Lot 16 (4,812.64 square feet) for a total of 10,004.72 square feet in order to comply with the minimum lot size for the RS-1-4 zone. The area for rear lot (Lot 16) before the lot line adjustment is 20,875.93 square feet (Attachment C).

There is an existing 18 to 20-foot wide driveway easement for ingress/egress purposes from the street to 7151, 7157, 7159, 7161 Country Club Drive and 7238 Carrizo Drive (Attachment D). The existing single family residence located at 7151 Country Club Drive (portion Lot 17B) does have street frontage on Country Club Drive; however, it can only be accessed by that portion of easement going through Parcel 1, Parcel 2 and portion of Lot 18. The existing single family residence located at 7157 Country Club Drive has 52.56 linear feet of street frontage of which 10 feet 6 ½ inches of the driveway easement is included. A variance is necessary in order to allow the 52.56 linear feet of street frontage where 65 linear feet is required. The property at 7159 Country Club Drive (Parcel 2), will achieve access by the driveway easement over that portion of

Parcel 1 and Lot 18. 7161 Country Club Drive (Lot 18) has street frontage but uses the easement over that portion of Parcel 1 and Lot 18 for access. 7238 Carrizo Drive has street frontage on Carrizo Drive and only uses the easement over that portion of Parcel 1 and Lot 18 as secondary access.

7159 Country Club Drive (proposed Parcel 2) (CDP/SDP/Variance No. 355816)

The applicant is requesting a CDP and Site Development Permit (SDP) (property within environmentally sensitive lands) for the construction of a new 3,729 square-foot single family residence (2,442 square feet of basement area excluded from gross floor area, for a total of 6,171 square feet) on a vacant 16,063 square-foot lot.

The proposed residence would be two-stories over a basement and would not exceed the maximum 30-foot height limit. The basement level would include an office, an entryway, a bedroom and a three-car garage on the north western side of the residence. Four decks would be built on the west side of the house. Exterior treatments would consist of multi-colored clay barrel roofing tiles and parapet caps. The walls would be finished with mushroom colored stucco. Windows and doors including the garage door would be wood with mahogany finish. The mahogany finished decking would have posts with brass rubbed wrought iron railing.

The surrounding area consists of one, two, and three story homes with a variety of architectural styles. The area consists of lots in excess of 10,000 square feet. The proposed home and lots would be consistent with the surrounding area.

A variance would also be required in order to allow no street frontage where at least 65 feet of street frontage is required. The lack of street frontage is the result of the City's vacation of Carrizo Road, which was originally intended to serve Lot 16. Lot 16 would have had 116.23 linear feet of street frontage from Carrizo Road. The action of the City Council (Resolution No. 43966 on December 27, 1927) to vacate that portion of the northwesterly half of Carrizo Drive adjoining said Lot 16 on the southeasterly side renders Lot 16 non-compliant with the current zone regulations for street frontage. Thus, access to the site can only be achieved through the existing driveway easement.

Community Plan Analysis:

The subject site is located in a single family residential neighborhood and is designated as Very Low Density Residential (0-5DU/acre) in the 1975 La Jolla Community Plan and the 1985 La Jolla – La Jolla Shores Local Coastal Program. The potential development on the rear lot is a maximum of one dwelling unit and the application proposes a two-story residence over a basement.

The La Jolla Community Plan and the La Jolla – La Jolla Shores Local Coastal Program recommends that in order to promote transition in scale between new and older structures new development should compliment the scale, form and proportion of older development and

minimize extreme contrasts in color, shape and architectural elements. The lot for the proposed residence does not front a public right of way. The surrounding area consists of one, two, and three story homes with a variety of architectural styles. The exterior of the residence includes stucco walls, glass windows, wood doors and trim and is articulated by balconies and Mediterranean influenced tile roof. Access to the site is from an existing driveway easement that crosses both lots and serves the subject site and adjacent residences. Due to the configuration of the driveway easement the proposed residence is located on a sloped portion at the south end of the rear lot. The residence is set into the sloped portion of the site and appears as a three story structure from the front with the basement garage exposed. From the rear, only the second floor is visible. The proposed residence does not appear visible from the right-of-way as the rear lot is located behind two adjacent parcels.

The Community Plan and Local Coastal Program provides a recommendation for preserving natural steep slopes and native vegetation. It was determined during the review process that the footprint of the proposed development is outside natural steep slopes areas. However, it was determined there are impacts to sensitive biology. The Local Coastal Program requires environmental review and mitigation for impacts upon or destruction of natural habitat and further analysis and mitigation measures are identified and discussed in the environmental document.

Environmental Analysis:

A SDP is being required because the project site contains Environmentally Sensitive Lands. The lot contains on-site biology and mitigation would be provided for the loss of habitat as outlined in Mitigated Negative Declaration No. 5596.

Biological Resources: The project would impact a total of 0.30 acres of coastal sage scrub which is considered significant. The City's Biology Guidelines require that any impacts to areas of more than a tenth of an acre of coastal sage scrub must be mitigated at a ratio of 1:1. This mitigation may be in the form of a) purchase of 0.30 acre of coastal sage scrub (1:1 ratio) of equal or better quality within the MHPA; or b) purchase of 0.45 acre of coastal sage scrub (1.5:1 ratio) of equal or better quality outside of the MHPA preserve or c) contribution of \$8,250.00 to the City of San Diego Habitat Acquisition Fund (calculated as 0.30 acre @ \$25,000 acre plus a 10% administration fee). Any of these measures would reduce the direct impacts to coastal sage scrub to a less than significant level. The applicant has indicated that they would contribute \$8,250.00 to the City of San Diego Habitat Acquisition Fund.

Archaeological Resources: The site is located within a sensitive area for historical resources. Several archaeological documents have been prepared for projects in the surrounding area. None have identified any finds of archaeologically significant nature. However, due to the sensitivity of the area archaeological monitoring would be required in the gently sloping and flat areas of the site. In the steep slope area monitoring would not be required. It has been determined that the steep slope is a manmade slope and the

steep slope encroachment would not be a consideration in the determination of the project.

Paleontological Resources: The geologic formation which underlies the project area is the Ardath Shale formation. With respect to fossil resource potential, Ardath Shale is assigned a high sensitivity level within the project area. The project site would require 7,475 square feet of grading. The grading would include approximately 1,200 cubic yards of cut and 300 cubic yards of fill with 900 cubic yards of export. The grading required is for the lower level of the house and to cut into the steep hillside to create a flat area that is accessible from the existing drive. The maximum depth of the cut would be 25 feet. According to the City's Paleontological Guidelines excavation of 1,000 cubic yards of matter at a depth of 10 feet or greater could result in significant impact to fossil resources. Therefore, based on the sensitivity of the affected formation and the proposed depths, the project could result in significant impacts to paleontological resources. To reduce this impact to below a level of significance, a Mitigation Monitoring and Reporting Program has been prepared. The program requires that excavation within previously undisturbed formations be monitored by a qualified paleontologist or paleontological monitor.

The nature and extent of mitigation required as a condition of the permit is reasonably related to, and calculated to alleviate, negative impacts created by the proposed development. Therefore, since there is a potential for project construction to impact biological, archaeological, and paleontological resources, subsequent revisions in the project create the specific mitigation identified in Section V (Mitigation, Monitoring and Reporting Program, MMRP) of the Mitigated Negative Declaration No. 5596. The MMRP has been prepared in order to reduce any potential impacts to a level of insignificance.

Visual Impact

Country Club Drive is designated in the La Jolla Community Plan as a view corridor. The project site is setback approximately 1,500 feet from the Country Club Drive right-of-way and would not block any views from the road. Additionally, the area is steep slope and the residence would be set into this steep slope. Therefore, the project as proposed would not have a negative impact to the view corridors in the area.

Appeal:

The appellant reasons for the appeal are outlined below and the complete summary of those reasons are within Attachment I.

- I. Hearing Officer improperly presumed that Project No. 5596 possessed two separate legal lots with independent development rights.
- II. City of San Diego's staff closed February 23, 2006 meeting with Mr. Dinofia's representatives violating the Brown Act.

- III. Development permits and variances are contrary to public health or safety.
- IV. Mr. Dinofia's need for variances was not created by the City of San Diego's actions, but by Mr. Dinofia's own voluntary actions.
- V. The strict application of the regulations of the Land Development Code would not deprive Mr. Dinofia reasonable use of the land and create unnecessary hardship.
- VI. Variances are not consistent with the Land Use Plan.
- VII. Coastal Development Permits and Site Development Permit are improper for lack of an Environmental Impact Report (EIR).
- VIII. Coastal Development Permits are not consistent with the Land Use Plan.
- IX. Coastal Development Permit for the lot line adjustment is not exempt from CEQA.
- X. Lot line adjustment cannot be used to create an additional parcel.

See Attachment J for the applicants' responses to the appellant's reasons for the appeal.

Staff acknowledges the appellant's concerns and has addressed them below:

- I. Hearing Officer improperly presumed that Project No. 5596 possessed two separate legal lots with independent development rights.

The Certificate of Compliance recorded on July 21, 2005 recognized 7157 Country Club Drive (portion of Lot 17) to be a separate and legal parcel. Based on that information the Hearing Officer considered 7159 Country Club Drive Lot 16 to be a legal but not a buildable lot due to the lack of street frontage. Therefore, the decision to approve the variance to allow no street frontage where at least 65 feet of frontage is required was necessary in order to make (Lot 16) a buildable lot.

- II. City of San Diego's staff closed February 23, 2006 meeting with Mr. Dinofia's representatives violating the Brown Act.

Staff routinely meets with applicants to discuss project issues. The meeting of February 23, 2006 between staff and the applicant representatives was not a public meeting as defined within the Brown Act, and required no public notice. Therefore, the appellant's due process rights were not violated.

- III. Development permits and variances are contrary to public health or safety.

The permits controlling the development and continued use of the development proposed for the project site contains conditions addressing compliance with the City's regulations and other regional, state, and federal regulations to prevent detrimental impacts to the health, safety, and welfare of persons residing and/or working in the area. Conditions of approval require compliance with several operational constraints and development controls intended to assure the continued

health, safety, and general welfare of persons residing or working in the area. All applicable Building, Fire, Plumbing, Electrical, Mechanical Code sections and the City regulations governing the construction and continued operation of the development apply to the project site to prevent adverse effects to those persons or other properties in the vicinity.

- IV. Mr. Dinofia's need for variances was not created by the City of San Diego's actions, but by Mr. Dinofia's own voluntary actions.

A variance is required in order to allow no street frontage where at least 65 feet of street frontage is required. The lack of street frontage for 7159 Country Club Drive is the result of the City's vacation of Carrizo Road, which was originally intended to serve the property (Lot 16). Lot 16 would have had 116.23 linear feet of street frontage from Carrizo Road. The action of the City Council (Resolution No. 43966 on December 27, 1927) to vacate that portion of the northwesterly half of Carrizo Drive adjoining said Lot 16 on the southeasterly side renders Lot 16 non-compliant with the current zone regulations for street frontage. Thus, access to the site can only be achieved through the existing driveway easement. To not allow the variance would deprive the applicant of reasonable use of the land because it would then become an undevelopable lot. The variance granted by the City is the minimum variance that will permit the reasonable use of the land.

The existing single family residence located at 7157 Country Club Drive has 52.56 linear feet of street frontage of which 10 feet 6 ½ inches of the existing driveway easement is included. A variance is necessary in order to allow the 52.56 linear feet of street frontage where 65 linear feet is required. The special circumstances giving rise to the approximate 12 feet shortage in street frontage was the creation of the lot over 50 years ago known as 7151 Country Club Drive, which resulted in the substandard street frontage under the present City requirements. This situation is unique to the subject property and does not apply generally in the neighborhood. Moreover, the proposed development project and associated variance request will not increase the degree of street frontage non-conformity. The substandard situation will exist regardless of whether the project is approved.

- V. The strict application of the regulations of the Land Development Code would not deprive Mr. Dinofia reasonable use of the land and create unnecessary hardship.

The lack of street frontage at 7159 Country Club Drive is the result of the City's vacation of Carrizo Road, which was originally intended to serve Lot 16. Lot 16 would have had 116.23 linear feet of street frontage from Carrizo Road. The action of the City Council (Resolution No. 43966 on December 27, 1927) to vacate that portion of the northwesterly half of Carrizo Drive adjoining said Lot 16 on the southeasterly side renders Lot 16 non-compliant with the current zone

regulations for street frontage. Thus, access to the site can only be achieved through the existing driveway easement. To not allow the variance would deprive the applicant of reasonable use of the land because it would then become an undevelopable lot. The variance granted by the City is the minimum variance that will permit the reasonable use of the land.

VI. Variances are not consistent with the Land Use Plan.

The purpose for the variance for 7159 Country Club Drive is to allow no street frontage where at least 65 feet of frontage is required only. Approval of the variance would not increase density. Therefore, allowing the variance would be consistent with the La Jolla Community Plan – La Jolla-La Jolla Shores Local Coastal Program land use plan which is identified as an area Very Low Density Residential (0-5 DU/acre). The property would retain its' land use designation with the granting of the variance.

VII. Coastal Development Permits and Site Development Permit are improper for lack of an Environmental Impact Report (EIR).

The proposed project would impact 0.30 acres of Coastal Sage Scrub (CSS). Standard Best Management Practices (BMP's) would properly control any run off during construction. The removed CSS would create an area for the proposed house, three-car garage, and landscaping. Therefore, no additional erosion would occur, and the preparation of an Environmental Impact Report (EIR) will not be required.

VIII. Coastal Development Permits are not consistent with the Land Use Plan.

The proposed coastal development is located in an area identified as Very Low Density Residential (0-5 DU/acre) in the La Jolla Community Plan – La Jolla-La Jolla Shores Local Coastal Program land use plan and is consistent with that land use designation and density. For the purposes of calculating density, the La Jolla Community Plan does not distinguish between lots. Density is calculated by dwelling units per acre and the subject site is designated as Very Low Density Residential (0-5DU/acre) in the La Jolla Community Plan. The application consists of two parcels totaling approximately 26,068 square feet (0.598-acres). According to the community plan, the land use designation would permit the development of a maximum of two dwelling units for the 26,068 square foot subject area at a density of three dwelling units to the acre. The proposed density of three dwelling units to the acre is with in the 0-5DU/acre range identified in the plan.

With the approval of the Coastal Development Permit No. 355814, Site Development Permit No. 355815 (environmentally sensitive lands); Variance No.

355816 (to allow no street frontage where at least 65 feet is required) and Variance No. 341289 (to allow 52.56 linear feet of street frontage where at least 65 feet of street frontage is required) along with Coastal Development Permit No. 9217 for Lot Line Adjustment No. 341288, the proposed coastal development will be consistent with the recommended land use, design guidelines, and development standards in effect for this site per the adopted La Jolla Community Plan – La Jolla-La Jolla Shores Local Coastal Program land use plan.

- IX. Coastal Development Permit for the lot line adjustment is not exempt from CEQA.

The lot line adjustment for this project will not result in the creation of a new lot. This action is included in the whole project, which requires a Coastal Development Permit and is subject to CEQA. A Mitigated Negative Declaration has been prepared for the project which mitigates all significant impacts to below a level of significance.

- X. Lot line adjustment cannot be used to create an additional parcel.

No additional parcel would be created with the lot line adjustment. Lot 16 (Parcel 2) is shown as a separate lot on Map No. 1975, issued in 1926. It has been determined that a portion Lot 17 (Parcel 1) is a separate lot because it was issued a valid building permit (C305865-02); a Certificate of Compliance on July 14, 2005; and afterwards a Certificate of Occupancy was issued for the building. The proposed lot line adjustment would make that portion of Lot 17 (5,192.08 square feet) and that portion of Lot 16 (4,812.64 square feet) for a total of 10,004.72 square feet comply with the minimum 10,000 square-foot lot size requirement for the RS-1-4 zone. No new lots are being created by this lot line adjustment.

Conclusion:

Staff believes that the findings for Project No. 5596 can be made (Attachments F and H) and recommends the Planning Commission deny the appeal and uphold the decision of the Hearing Officer to approve the project as proposed.

ALTERNATIVES

1. Deny the appeal and approve the project with modifications to the permits.
2. Approve the appeal and deny the proposed project, if the findings required to approve the project cannot be affirmed.

Respectfully submitted,

Mike Westlake Program Manager
Development Services Department

Vena Lewis, Project Manager
Development Services Department

Attachments:

- A. Aerial Photograph
- B. Site Photos
- C. Lot Line Adjustment Exhibit (before and after)
- D. Access Exhibit
- E. Draft Permit with Conditions (7157 Country Club Drive)
- F. Draft Resolution (7157 Country Club Drive)
- G. Draft Permit with Conditions (7159 Country Club Drive)
- H. Draft Resolution (7159 Country Club Drive)
- I. Copy of Development Permit Appeal Application
- J. Applicant's response to the Development Permit Appeal Application
- K. Ownership Disclosure Statement
- L. Hearing Officer Report No. HO 06-183
- M. Hearing Officer Minutes July 26, 2006