

**CITY OF DANA POINT  
PLANNING COMMISSION  
REGULAR MEETING MINUTES**

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April 23, 2012  
6:00 –6:52 p.m.

City Hall Offices  
Council Chamber (#210)  
33282 Golden Lantern  
Dana Point, CA 92629

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**CALL TO ORDER** – Chairman Denton called the meeting to order.

**PLEDGE OF ALLEGIANCE** – Evan Langan (Associate Planner) led the Pledge of Allegiance.

**ROLL CALL**

**Commissioners Present:** Commissioner Liz Claus, Chairman Norman Denton, Vice-Chairman Gary Newkirk, Commissioner April O'Connor, and Commissioner Tarquin Preziosi

**Staff Present:** John Tilton (City Architect/Planning Manager), Evan Langan (Associate Planner), Jennifer Farrell (Deputy City Attorney), and Denise Jacobo (Planning Secretary)

**A. APPROVAL OF MINUTES**

**ITEM 1: Minutes of the regular Planning Commission Meeting of April 9, 2012.**

**ACTION: Motion made (Newkirk) and seconded (Claus) to approve the Minutes of the regular Planning Commission Meeting of April 9, 2012. Motion carried 4-0-1. (AYES: Claus, Denton, Newkirk, Preziosi NOES: None ABSENT: None ABSTAIN: O'Connor)**

**B. PUBLIC COMMENTS**

There were no Public Comments.

**C. CONSENT CALENDAR**

There were no items on the Consent Calendar.

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**D. PUBLIC HEARINGS**

**ITEM 2: Coastal Development Permit CDP12-0007 and Minor Site Development Permit SDP12-0008(M) to allow the construction of new, detached structures including, but not limited to, outdoor living areas, landscaping, a pool/spa as well as retaining walls at 11 Breakers Isle**

Applicant: Ken Brown (Designer, Fleming Distinctive Homes)  
Property Owner: Charles Maxey  
Location: 11 Breakers Isle

Request: Approval of a Coastal Development Permit to allow the construction of new structures on land located within the City's Coastal Overlay District and Appeals Jurisdiction of the California Coastal Commission, as well as a Minor Site Development Permit to allow the construction of retaining walls in excess of 60 inches in height.

Environmental: Pursuant to the California Environmental Quality Act (CEQA), staff finds the project is Categorical Exempt per Section 15303 (e) (Class 3 – New Construction or Conversion of Small Structures).

Recommendation: That the Planning Commission adopt the attached, draft resolution approving Coastal Development Permit CDP12-0007 and Minor Site Development Permit SDP12-0008(M).

**Evan Langan** (Associate Planner) reviewed the agenda report. In response to a Commissioner question as to why the project had yet to receive Homeowners Association (HOA) approval, he stated that project changes triggered an additional HOA hearing, delaying its approval until after the City's hearing. He addressed the lack of HOA approval by stating that a Condition of Approval had been placed in the Draft Resolution, stating that the City must receive HOA correspondence prior to issuing building permits, and if any substantial changes to the design were to occur, the project would return to the Planning Commission for another review.

**Chairman Denton opened the Public Hearing.**

**Ken Brown** (Applicant – Lake Forest) addressed the drainage requirements, detailed the HOAs review process, and reiterated that the HOA board provided conceptual approval to proceed, but required one more meeting to review engineering details prior to issuing a final approval. In response to a Commissioner inquiry, Mr. Brown indicated that three formal HOA hearings have

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already been held, that he has worked with neighbors on each side of the subject property, and they are currently reviewing a common wall between the two properties, as well as shoring.

**Chairman Denton closed the Public Hearing.**

**Commissioner Preziosi** expressed his concern with the nature of the procedure and felt that without final approval from the HOA, it would be inappropriate for the Commission to grant approval. He stated that he did not wish to deviate from common practice.

**Vice-Chairman Newkirk** indicated that Staff could clarify if substantial changes were made to the project, subsequent to an approval, and if anything beyond procedural changes were made, it would have to come back to the Planning Commission for a rehearing.

**John Tilton** (City Architect/Planning Manager) clarified that the noticing requirements have been met, all neighbors were notified of the hearing, and no correspondence has been received from the public concerning the project.

**Jennifer Farrell** (Deputy City Attorney) stated that there is no legal requirement to have HOA approval first, before the City can proceed to issue any permits. She reiterated Mr. Langan's explanation that it is typically a courtesy in order for things to work out smoothly with costs associated in noticing and hearings, and moving forward without having to re-incur costs.

**Vice-Chairman Newkirk** stated that in light Staff's responses and diligence on this matter, he is comfortable in approving the project.

**Commissioner Claus** stated that this is a nice example of making a difference in a neighborhood where projects have been vetted before, and where familiar issues can be recognized. She stated that she is comfortable with approving the project and that the goal of the City should be to make development easy for people as opposed to a complicated process making it unnecessarily difficult while conditions of approval have been put into place.

**Commissioner O'Connor** stated that she would agree with Commissioner Preziosi, and suggested continuing the matter under the circumstances. She added that there would be an expense if the HOA decided to come back and ask for changes, and pointed out that the project would affect an HOA pathway. She stated that homeowners are under the impression that they could come back and voice their concerns and, after that meeting, come before the Planning

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Commission to voice their concern again. For those reasons, she would prefer to continue the item.

**Chairman Denton** stated that this is a first time that a project has come before the Planning Commission without the HOA approval, and tends to agree with Commissioner Claus point of view to prevent renoticing. He felt that city staff has assured if any changes were to be significant it would be renoticed to allow neighbors in the community to have their say before the Planning Commission. In light of making it easier to proceed, he would vote to approve the project.

**Commissioner O'Connor** stated that she would like to convince others to continue the item to allow the public to have another opportunity to come before the City. She added that by approving the item tonight, it leaves an impression that people can defeat the HOA because they have already obtained City approval.

**Commissioner Preziosi** expressed his concern with the problem of never having issued an approval prior to getting HOA approval and the Commission should not deviate now. He stated that although added costs or extra work would incur, these are consequences when all the proper steps are not taken.

**Mr. Brown** (Applicant) responded to a Commissioner inquiry about continuing the item to the next regular scheduled meeting of May 14<sup>th</sup>. He indicated that the continuance would impose a burden on the owner by pushing the completion date. He stated that he would not be opposed to continuing the item if they could be allowed to submit grading plans.

**John Tilton** (City Architect/Planning Manager) responded that it would be unusual to submit structural plans before obtaining Planning Commission approval. He also stated that if the HOA's approval is acquired within three days, there would be no problem of continuing this item to the May 14, 2012 meeting.

**Vice-Chairman Newkirk** stated that if neighborhood had an objection to the project they would have responded through the City's notice. He stated that he does not see this as being a precedent that the City is going to have to deal with moving forward. He noted that every item is looked at individually and this falls under a technical area which does not really benefit anything, and if there is any differentiation between what the applicant has applied for and what the Commission approves, it is going to come back and be seen anyway. He then stated that in light of that understanding, and Commissioner Preziosi and Commissioner O'Connor's statements, he still felt comfortable with approving the project.

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**Commissioner O'Connor** (in rebuttal) clarified that the issue is not just the precedent; the important issue is that there are homeowners that think they have an opportunity speak at the HOA level. She pointed out that if the HOA makes changes, they will conclude that the Planning Commission already approved the project. She added that the Commission is inhibiting that process that occurs at the HOA or community level.

**Chairman Denton** stated that some valid points have been pointed out, and added that, based on making everyone comfortable he would continue the meeting.

**Commissioner Claus** stated that she continues to be comfortable with approving the project as it stands because she is aware of the HOA's input which would specify exactly what needs to be done to move forward. Her concern is to delay the hearing into the May 14<sup>th</sup> meeting date and, if it is not approved, pushing it into June.

**Commissioner O'Connor** (in rebuttal) expressed that she did not think that the HOA meeting would take place this week, and does not see why May 14<sup>th</sup> meeting is a delay, it would be a continuance and should make the Commission comfortable.

**John Tilton** (City Architect/Planning Manager) recommended that, due to Commissioners concerns, a continuance of the item to May 14<sup>th</sup> meeting would be appropriate.

**Chairman Denton reopened the Public Hearing.**

**Charles Maxey** (Homeowner – Dana Point) stated he has no plans of creating something different than their proposed plans, he expressed that it would be a hardship with pushing the date back to the May 14<sup>th</sup> meeting.

**Chairman Denton** added that he would support a continuance.

**ACTION:** Motion made (O'Connor) and seconded (Denton) to continue this item to the next regular Planning Commission meeting of May 14, 2012. Motion carried 3-2. (AYES: Denton, O'Connor, Preziosi NOES: Claus, Newkirk ABSENT: None ABSTAIN: None)

**Jennifer Farrell** (Deputy City Attorney) clarified for the record that the Public Hearing is still open.

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**Chairman Denton closed the Public Hearing** (and will remain open for the Item).

**E. NEW BUSINESS**

There was no New Business.

**F. STAFF REPORTS**

**John Tilton (City Architect/Planning Manager)** provided an update on the City Council meeting of April 17, 2012 and clarified that the suggested modifications to the Land Use Plan for the former mobile home park have been accepted. He reported that Planning and Public Works staff held a Charrette Session with the ROMA Design Group and continued to develop concepts for the Doheny Village Plan. He also reported that the County Harbor is moving forward, the architecture and design and engineering consultant contracts were awarded for the Harbor, the plan submittals could come before the Planning Commission before the end of the year.

**Jennifer Farrell** (Deputy City Attorney) provided a brief status of the lawsuit that had been brought against the City involving the gates and hours of operation at the Headlands.

**G. COMMISSIONER COMMENTS**

**Commissioner Preziosi** noted the departure of Revo Cycles shop from Dana Point, and announced that a bicycle shop called “Cycle Logic” is new in town.

**Vice-Chairman Newkirk** stated that he attended a Cycling Conference in Monterrey, which addressed a range of issues from the rising importance of cities in bicycle advocacy, the management and sharing of real time data with communities using digital marketing strategies. He felt that Dana Point could integrate some of these initiatives to support cycling in the community.

**Commissioner O'Connor** stated that she visited Zion National Park while she was on vacation. She announced that this week is National Park Week which offers free admission to any national park. She encouraged everyone to visit a national park, it is a chance for all Americans to experience the amazing places that make up the national park system.

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**Chairman Denton** reminded everyone that the Pet Project Foundation's upcoming 19<sup>th</sup> Annual Wag-A-Thon event will be on Saturday, April 28, 2012 between 8:30am and 1:00pm on Dana Point Harbor Island. He reported that he attended the San Clemente-Dana Point Animal Shelter Grand Opening of Cat Rooms/Condos addition which was a three year project headed up by dedicated community members. He described the facility as something to be proud of.

**H. ADJOURNMENT**

**Chairman Denton** announced that the *next* meeting of the Planning Commission will be held on Monday, May 14, 2012, beginning at 6:00 p.m. (or as soon thereafter) in the City Council Chamber located at 33282 Golden Lantern, Suite 210, Dana Point, California.

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Norman Denton, Chairman  
Planning Commission

**The meeting adjourned at 6:52 p.m.**