

October 26, 2010
7:30 P.M.
Council Chambers of City Hall
340 Palos Verdes Dr. West
Palos Verdes Estates

**AGENDA
OF A REGULAR MEETING
OF THE CITY COUNCIL OF THE CITY OF
PALOS VERDES ESTATES, CALIFORNIA**

Copies of the staff reports or other written documentation relating to each item of business referred to on the agenda are on file in the office of the City Clerk and are available for public inspection. If applicable, materials related to an item on this agenda submitted to the Council after distribution of the agenda packet are available for public inspection in the City Clerk's office during normal business hours. Any person having any question concerning any agenda item may call the City Clerk to make inquiry concerning the item. Upon request, the agenda and documents in the agenda packet can be made available in appropriate alternative formats to persons with a disability in compliance with the Americans with Disabilities Act. Please contact the City Clerk at 310-378-0383, at least 48 hours prior to the meeting to request a disability-related modification or accommodation.

The City Council welcomes and encourages public participation at the Council meetings; however, to allow for the orderly progression of business, each person wishing to comment or make a presentation shall be limited to three (3) minutes. Anyone wishing to address the City Council must fill out a green speaker's card available at the end of each row in the Chambers. The card permits the City to identify persons for purposes of City Council minute preparation. Please see specific agenda sections below for any other requirements related to meeting participation. The City Council, at the direction of the Mayor with concurrence of the Council, may modify the order of items shown on the agenda.

**NEXT RESOLUTION NO. R10-26
NEXT ORDINANCE NO. 10-698**

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

MAYOR'S REPORT – Matters of Community Interest

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CONSENT AGENDA (Items 1-8)

All items under this heading are considered to be routine and will be enacted by one motion, unless a Councilmember, staff, or member of the public requests that an item be removed for separate discussion. An applicant or interested citizen who wishes to appeal any Planning Commission decision (Item #8a-e) may file an appeal with the City Clerk's office within 15 days after the date of the Planning Commission's decision.

Any item removed from the Consent Agenda will be considered immediately following the motion to approve the Consent Agenda.

1. City Council Minutes of October 12, 2010

Recommendation: Review and File.

2. Treasurer's Monthly Report – September 2010

Recommendation: Receive and File.

3. Treasurer's Quarterly Interest Report – July-September 2010

Recommendation: Receive and File.

4. Resolution R10-25 Approving Supplement Agreement No. 005-N to Federal Master Agreement No. 07-5283R

Recommendation: It is recommended that the City Council adopt Resolution R10-25 approving Supplement No. 005-N to Federal Master Agreement No. 07-5283R and authorizing the Mayor to execute the agreement for the Paseo Lunado Overlay Project

5. PW-565-09; Completion of Contract for the Via Coronel Catch Basins Project

Recommendation: It is recommended that the City Council accept as complete the construction contract PW-565-09 in the amount of \$21,500; Via Coronel Catch Basins Project, direct the City Clerk to file the Notice of Completion, and release the 10% retention 30 days after the County Recorder's office records the Notice of Completion, if no stop notices are filed.

6. Parklands Committee Meeting Items of October 11, 2010

Recommendation: Review and Approve.

- a. PC-314-10; Application to remove 1 pine tree in the city parkway located adjacent to 1612 Chelsea Road.

Applicant: Rick Edler
608 Silver Spur Road, Suite 250

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Action: Denied (5-0).

- b. PC-316-10; Application to remove 1 pine tree in the city parkway located adjacent to 1304 Via Coronel

Applicant: James S. Campbell
1349 Via Coronel
Palos Verdes Estates, CA 90274

Action: Approved (5-0) to remove 1 pine tree located in the parkway adjacent to 1304 Via Coronel according to the 'Standard Conditions for Tree Removal Approvals'.

- 7. Traffic Safety Committee Meeting Items of October 13, 2010

Recommendation: Review and Approve.

- a. Request for Red Curb at Fire Hydrant Next to 4316 Via Valmonte

Action: Recommended that staff install red curb at 4316 Via Valmonte. (Approved 4-0, Friedman absent).

- b. Request for No Parking Restrictions in the Alley Next to 711 Yarmouth Road

Action: Recommended that staff install No Parking signs in the alley. (Approved 4-0, Friedman absent).

- c. Traffic Calming Application for Via Del Monte Between 789 Via Del Monte and Via Corta

Action: Recommended that staff arrange for traffic calming plan to be put to a resident vote for installation of pavement markings and additional signage between Via Corta and 780 Via Del Monte, as well as installation of speed cushions at 533/536 Via Del Monte and 544/545 Via Del Monte (Approved 4-0, Friedman absent).

- 8. Planning Commission Actions of October 19, 2010

Recommendation: Receive and file.

- a. **WT-117-10**; Consideration of a Wireless Telecommunication Facilities Application for equipment proposed within the City right-of-way adjacent to 4010 Palos Verdes Drive North. Lot B, Tract 9822.

Applicant: AT&T Mobility
12900 Park Plaza Dr.

Action: Approved (4-0, Chang absent) with standard conditions and the following additional conditions: 1) All structures are to be painted to match the natural surroundings; 2) The foundation is to be built so the pole can be easily modified to allow for additional carriers.

- b. **CDP-80/NC-1393/GA-1473-10;** Consideration of Coastal Development Permit, Neighborhood Compatibility and Grading Applications for a new single family residence located at 3004 Paseo Del Mar. Parcel 2 of parcel map 70848, as recorded in PMB 367-12-14.

Applicant: Jesus Meza
5912 Tipton Way
Los Angeles, CA 90042
Owner: Michael & Gina Mulligan
1325 Via Cataluna
Palos Verdes Estates, CA 90274

Action: Approved (4-0) with standard conditions and the following additional conditions: 1) A standard urban stormwater mitigation plan, approved by the City Engineer shall be prepared and implemented for the project; 2) The ridge height at the tower is to be lowered by one foot; 3) The landscape is to be constrained to not exceed the height of the ridgelines; 4) The chimneys are to be eliminated.

- c. **NC-1394/GA-1475-10;** Consideration of Neighborhood Compatibility and Grading Applications for a new single family residence located at 2201 Thorley Place. Lot 17, Block 2211, Tract 6888.

Applicant: Douglas Leach
119 W. Torrance Blvd., Suite 24
Redondo Beach, CA 90277
Owner: Paul & Rosanne Sanacore
24714 Via Valmonte
Torrance, CA 90505

Action: Approved (3-1, King dissenting) with standard conditions and the following additional conditions: 1) The existing damaged Hollywood berm is to be replaced; 2) The existing non-standard stones and hedge are to be removed from the right-of-way.

- d. **M-783-10;** Consideration of a Miscellaneous Application for a structure exceeding the maximum allowable height at the single family residence located at 2816 Via Anacapa. Lot 5, Block 2232, Tract 7144.

Applicant: Waters Construction and Design
616 El Redondo

Redondo Beach, CA 90277
Owner: Don & Dianne Ecker

Action: Approved (3-0, King recused) with standard conditions.

- e. **M-788-10;** Consideration of a Miscellaneous Application requesting after-the-fact approval of structures exceeding the maximum allowable height at the single family residence located at 2204 Via Cerritos. Lots F, G & vacated alley of Tract 7538.

Applicant: J. H. Bryant, Jr. Inc.
17217 S. Broadway
Gardena, CA 90248

Owner: Ann Mortimer

Action: Approved (3-1, King dissenting) with standard conditions.

COMMUNICATIONS FROM THE PUBLIC

This portion of the agenda is reserved for comments from the public on items which are NOT on the agenda. Due to state law, no action can be taken by the Council this evening on matters presented under this section. If the Council determines action is warranted, the item may be referred to staff or placed on a future Council agenda.

PUBLIC HEARING

Persons addressing the City Council during public hearings shall be limited to three (3) minutes for comment.

- 9. Consideration of ZC-1-10 Initial Study and Negative Declaration; Application for Existing Open Space Lots to be Re-zoned to R-1 Single Family Residential Located Between 2032-2100 Via Pacheco and 2037-2101 Palos Verdes Drive West. Lots C & D, Tract 7331

Applicant: Brent Caldwell
Caldwell Land Solutions
2300 Dupont Dr., Suite 312
Irvine, CA 92612

Owner: Palos Verdes Peninsula Unified School District
375 Via Almar
Palos Verdes Estates, CA 90274

Recommendation: It is recommended that the City Council open the public hearing, receive public input, close the public hearing and direct staff to renote the hearing on the application to amend the zoning map to change the zoning designation on two vacant

parcels located between 2032-2100 Via Pacheco and 2037-2101 Palos Verdes Drive West from Open Space to Single Family Residential (R-1) for further consideration after there is a final judicial determination of the validity of the deed restrictions.

OLD BUSINESS

NEW BUSINESS

STAFF REPORTS

10. City Manager's Report

DEMANDS

11.
 - a. Authorize Payment of Motion #1 – Payroll Warrant of October 15, 2010
 - b. Authorize Payment of Motion #2 – Warrant Register of October 26, 2010

Recommendation: Authorize Payment of Motions #1 & #2.

MAYOR & CITY COUNCILMEMBERS' REPORTS

ADJOURNMENT TO TUESDAY, NOVEMBER 9, 2010, IN COUNCIL CHAMBERS OF CITY HALL FOR THE PURPOSE OF A REGULAR MEETING.

- *This City Council meeting can be viewed on Cox Cable, Channel 35, Wednesday, October 27, 2010 at 7:30 p.m., and Wednesday, November 3, 2010, at 7:30 p.m.*

Agenda Item #: 4
Meeting Date: 10/26/10

TO: JOSEPH M. HOEFGEN, CITY MANAGER

FROM: ALLAN RIGG, PUBLIC WORKS DIRECTOR

SUBJECT: ADOPTION OF RESOLUTION NO. R10-25 APPROVING SUPPLEMENT AGREEMENT NO. 005-N TO FEDERAL MASTER AGREEMENT NO. 07-5283R AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT.

DATE: OCTOBER 26, 2010

The Issue

Should the City Council:

Adopt Resolution No. R10-25 approving Supplement Agreement No. 005-N to Federal Master Agreement No. 07-5283R, and authorizing the Mayor to execute the agreement for the Paseo Lunado Overlay Project?

Background and Analysis

If a local agency has projects it would like to construct with federal funds, it applies for funding with the State of California Department of Transportation (Caltrans) to see if a project is eligible. In order to formally obligate or reserve the funding, an agency must enter into a Master Agreement with Caltrans. Then, for each specific project, an agency must enter into a Supplement Agreement with Caltrans. With each agreement to be executed, Caltrans requests a certified resolution that clearly identifies the project and the official authorized to execute the agreement.

On February 12, 2008, Council adopted Resolution 08-04, executing Master Agreement No. 07-5283R.

Two copies of Supplement Agreement No. 005-N have now been received for the Paseo Lunado Overlay Project. Staff recommends that the Mayor be identified as the official authorized to execute the agreements pertaining to this federal project. Resolution R10-25 is attached.

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Alternatives Available to Council

The following alternatives are available to the City Council:

1. Adopt Resolution No. R10-25 approving Supplement Agreement No. 005-N to Federal Master Agreement No. 07-5283R, and authorizing the Mayor to execute the agreement for the Paseo Lunado Overlay Project.
2. Adopt Resolution No. R10-25 with modifications.
3. Decline to adopt Resolution No. R10-25.

Recommendation from Staff

Staff recommends that the Council:

Adopt Resolution No. R10-25 approving Supplement Agreement No. 005-N to Federal Master Agreement No. 07-5283R, and authorizing the Mayor to execute the agreement for the Paseo Lunado Overlay Project.

Fiscal Impact

The lowest responsible bid for the Paseo Lunado Overlay Project is \$86,000. The City must match 11.47% of federal funding, and must pay for all construction costs up front and submit reimbursement requests to Caltrans. The City will have to ensure that adequate funding will be available to pay for project costs as they occur; however, significant fiscal savings would result from the City being reimbursed for a majority of those costs.

Staff report prepared by:
Floriza Rivera
Public Works Department

TO: JOSEPH M. HOEFGEN, CITY MANAGER

FROM: ALLAN RIGG, PUBLIC WORKS DIRECTOR

SUBJECT: PW 565-09; COMPLETION OF CONTRACT FOR THE CONSTRUCTION OF THE VIA CORONEL CATCHBASINS

DATE: OCTOBER 26, 2010

The Issue

Should the City Council:

- 1) Accept as complete the construction contract PW 565-09; Via Coronel Catch Basin Project in the amount of \$21,500; and
- 2) Direct the City Clerk to file the Notice of Completion, and release the 10% retention 30 days after the County Recorder's office records the Notice of Completion, if no stop notices are filed?

Background and Analysis

On October 27, 2009, the City Council awarded a Contract in the amount of \$21,500 to Simich Construction, Inc. for the construction of the Via Coronel Catch Basin Project. The project consisted of enlarging the catch basin capacities and configurations to adequately accommodate current rainfall conditions. The catch basins and the storm drain are owned by the Los Angeles County Department of Public Works (County). Project inspection was jointly done by both the City and County personnel.

The project was satisfactorily completed in April, 2010, with no change orders. It has been six months and City staff has requested a copy of the County Notice of Field Acceptance for the project. Since there have been no concerns from the County regarding the project, staff feels it can now be closed. The final project cost is \$21,500.

Alternatives Available to Council

The following alternatives are available to the City Council:

- 4. Accept as complete the construction contract PW 565-09; Via Coronel Catch Basin Project in the amount of \$21,500, direct the City Clerk to file the Notice of Completion, and release the 10% retention 30 days after the County Recorder's office records the Notice of Completion, if no stop notices are filed.
- 5. Decline to accept the project as complete.

Recommendation from Staff

Staff recommends that the Council:

- 1) Accept as complete the construction contract PW 565-09; Via Coronel Catch Basin Project in the amount of \$21,500; and
- 2) Direct the City Clerk to file the Notice of Completion, and release the 10% retention 30 days after the County Recorder's office records the Notice of Completion, if no stop notices are filed.

Fiscal Impact

The Fiscal Year 09/10 budget contained \$70,000 for both the Via Coronel catch basin and Thorley Place drainage improvements. The Thorley Place final construction costs were \$4,926.35. These are the Via Coronel project costs:

Construction Costs	\$21,500
Inspection/Administration	\$1,000
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Total	\$22,500

There are sufficient funds budgeted to cover the total construction cost of \$22,500 shown above.

Staff report prepared by:
Floriza Rivera
Public Works Department

TO: JOSEPH HOEFGEN, CITY MANAGER
FROM: ALLAN RIGG, PLANNING DIRECTOR
DATE: OCTOBER 26, 2010
SUBJECT: PLANNING COMMISSION ACTIONS OF OCTOBER 19, 2010

The items attached were acted upon by the Planning Commission on October 19, 2010.

The Council may, within fifteen days after the date of the decision on or before the first day following the first Council meeting after the date of the Planning Commission decision, whichever occurs last:

1. Confirm the action of the Planning Commission and grant or deny the application;
2. Set the matter for public hearing and dispose of it in the same manner as on an appeal; or
3. Amend, modify, delete, or add any condition of approval which the Council finds is not substantial under the circumstances relative to or affecting the property subject to the application for a development entitlement. Any determination of the Council pursuant to this paragraph shall be conclusive and final.

In the event the Council does not take one of the actions specified above within the period of time required, the decision of the Planning Commission shall be final.

Recommendation:

Receive and file.

TO: JOSEPH M. HOEFGEN, CITY MANAGER

**FROM: ALLAN RIGG, PLANNING DIRECTOR
CHRISTI HOGIN, CITY ATTORNEY**

**SUBJECT: CONSIDERATION OF ZC-1-10, INITIAL STUDY, AND NEGATIVE
DECLARATION; APPLICATION FOR EXISTING OPEN SPACE LOTS TO
BE REZONED TO R-1 SINGLE FAMILY RESIDENTIAL LOCATED
BETWEEN 2032-2100 VIA PACHECO AND 2037-2101 PALOS VERDES
DRIVE WEST. LOTS C & D, BLOCK 1290, TRACT 7331.**

**APPLICANT: BRENT CALDWELL
CALDWELL LAND SOLUTIONS
2300 DUPONT DRIVE, STE. 312
IRVINE, CA 92612**

**OWNER: PALOS VERDES PENINSULA UNIFIED
SCHOOL DISTRICT
375 VIA ALMAR
PALOS VERDES ESTATES, CA 90274**

DATE: OCTOBER 26, 2010

The Issue

Whether to approve the Palos Verdes Peninsula Unified School District's application to amend the zoning map to change the zoning designation from Open Space to Single Family Residential (R-1) on two vacant parcels owned by the District located between 2032-2100 Via Pacheco and 2037-2101 Palos Verdes Drive West.

Planning Commission Recommendation

As required by state law and the PVEMC, the Planning Commission held a duly noticed public hearing to consider the application and recommends that the City Council wait for a final judicial determination of the validity of the deed restrictions before taking action on the School District's rezoning application, as memorialized in PC Resolution No. 2010-0477, attached to this report.

Background and Analysis

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This is a Zone Change application for existing Open Space lots to be rezoned to R-1 Single Family Residential. The lots are located between 2032-2100 Via Pacheco and 2037-2101 Palos Verdes Drive West and are also known as Lots C and D. Lots C and D are owned by the Palos Verdes Peninsula Unified School District (referred to as PVPUSD, “the School District” or “the District”). The requested zoning is similar to the adjacent lots within the surrounding neighborhood. Lot C is approximately 19,984 sq. ft. and Lot D is approximately 17,978 sq. ft.

General Plan Consistency

PVEMC sections 18.16.020 (permitted uses) and 18.16.025 (conditionally permitted uses) enumerate the variety of uses to which Open Space zoned lots may be put; these uses include, but are not limited to, supervised recreational activities, educational facilities, playgrounds, firehouses, and art/music studios. In this case, the two lots are undeveloped, natural land owned by the School District; PVEMC section 18.16.020(A) permits the use of OS zoned lots for “undeveloped natural open space available for visual and physical enjoyment of the public.” The School District indicates that the size and location of the lots are not conducive to efficient school use and it does not wish to use the property for any of the uses permitted under the current zoning designation. Moreover, the School District specifically seeks to sell the properties for residential development in order to create revenue for the PVPUSD.

Staff has reviewed the General Plan, the overarching goal of which is to protect and promote the single-family residential character of the City, the views of ocean and the park like natural setting. Should the application be approved, the rezoning of Lots C and D to R-1 would be consistent with the General Plan because it would allow single family residential development on property which is flanked by single family residences on either side. The current use of Lots C and D as undeveloped natural open space for the visual enjoyment of the public is also consistent with the General Plan.

CEQA Compliance

Pursuant to the California Environmental Quality Act (CEQA), staff prepared an Initial Study. The Initial Study confirmed that the project does not have the potential to result in significant impacts on the environment. Consequently, staff prepared a negative declaration for the City Council’s consideration.

At the Planning Commission hearing, some residents questioned whether a full environmental impact report was warranted for the proposed zone change. CEQA requires an environmental impact report (EIR) when it can be fairly argued, based on substantial evidence that a project may result in a significant environmental impact. This is known as the “fair argument” standard. The standard sets a relatively low bar intentionally as CEQA favors the preparation of EIRs. However, while the “fair argument” test does set a relatively low bar, it still requires any fair argument of a potentially significant environmental impact to be based on solid, credible evidence. EIRs tend to be expensive and time-consuming. The application of the standard --based on evidence -- tends to assure that CEQA is implemented in a manner that serves the purpose of promoting informed decision-making and is not used for the purpose of needless cost and delay.

“Substantial evidence” is evidence of ponderable legal significance, reasonable in nature, credible, and of solid value. Substantial evidence generally consists of facts, expert opinion based upon facts, and reasonable assumptions predicated upon facts. Argument, speculation and unsubstantiated opinion do not constitute substantial evidence. A “significant effect on the environment” means a substantial or potentially substantial adverse change in the physical conditions within the area affected by the project.

At the Planning Commission hearing and in the correspondence submitted in connection with the hearing, three areas were raised as potentially requiring additional study in an EIR: impacts to land use planning, traffic and aesthetics.

When analyzing potential impacts on land use planning, initial studies are generally concerned with three areas of inquiry: (1) will the project physically divide an established community? (2) will the project conflict with any land use plan, policy or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect? and (3) will the project conflict with any applicable habitat conservation plan or natural community conservation plan?

Any analysis of potential land use impacts in terms of a potential conflict with a plan or policy must be tied to a written plan or policy adopted by the city. Speculative claims of inconsistency with the presumed intent of the city’s founders would not be “substantial evidence;” on the other hand, where that “intent” is clearly manifested in written plans or policies of the city (e.g., the general plan or the zoning ordinance), if the proposed project conflicts with a particular plan or policy that fact would be evidence of a land use impact warranting analysis in a full environmental impact report.

In terms of a potential traffic impact, to support a conclusion that an EIR is necessary, the Council would need to be presented with credible evidence of potential traffic impacts. Unsubstantiated claims do not rise to the level of substantial evidence necessary to trigger the preparation of an EIR. Initial studies generally pose the following questions with regard to the traffic analysis: Would the project (1) cause an increase in traffic which is substantial in relation to the existing load and capacity of the street system? (2) exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways? (3) substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)? (4) result in inadequate emergency access? (5) result in inadequate parking capacity? (6) conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)? If there is substantial evidence in the record to support a fair argument that the project may have significant impact in one or more of these areas, CEQA requires an environmental impact report be prepared. Without any such evidence, the City has no basis to require an EIR.

The last area of concern that was raised at the Planning Commission hearing was the effect of the rezoning on the aesthetics of the neighborhood. As to aesthetic values, the General Plan certainly protects views but the rezoning alone will not have an impact on views necessarily. Like all proposed homes, any development on the rezoned parcels would have to meet neighborhood

compatibility standards. Therefore, the proposed project (rezoning) cannot be said to have a likely impact on aesthetics.

Extent of the City's Discretion

A city ordinarily enjoys broad discretion to determine the zoning of land within its jurisdiction. Legislative determinations regarding zoning designations are legally valid as long as the zone designation is rationally related to a legitimate government purpose. Maintaining the single family residential character, ocean views and park-like quality of the neighborhoods are legitimate government goals that are advanced by the City's zoning regulations.

However, under certain circumstances, state law limits a city's ordinary discretion over zoning decisions. Relevant here is Government Code section 65852.9 which requires a city to rezone a schoolsite upon request of the school district if the district has first offered the schoolsite for sale or lease to other public agencies and all agencies have declined the offer. The statute further requires the schoolsite to be given the same land use control treatment as if it were privately owned. Essentially, that means that, if the statutory conditions are met, the city must rezone the property to a designation consistent with the general plan and compatible with the uses of property surrounding the schoolsite. The R-1 zone designation is the only zone designation other than OS that is consistent with the General Plan and the surrounding property.

Government Code section 65852.9 provides, in its entirety:

“(a) The Legislature recognizes that unused schoolsites represent a potentially major source of revenue for school districts and that current law reserves a percentage of unused schoolsites for park and recreational purposes. It is therefore the intent of the Legislature to ensure that unused schoolsites not leased or purchased for park or recreational purposes pursuant to Article 5 (commencing with Section 17485) of Chapter 4 of Part 10.5 of the Education Code can be developed to the same extent as is permitted on adjacent property. It is further the intent of the Legislature to expedite the process of zoning the property to avoid unnecessary costs and delays to the school district. However, school districts shall be charged for the administrative costs of this rezoning.

(b) If all of the public entities enumerated in Section 17489 of the Education Code decline a school district's offer to sell or lease school property pursuant to Article 5 (commencing with Section 17485) of Chapter 4 of Part 10.5 of the Education Code, the city or county having zoning jurisdiction over the property shall, upon request of the school district, zone the schoolsite as defined in Section [17487] of the Education Code, consistent with the provisions of the applicable general and specific plans and compatible with the uses of property surrounding the schoolsite. The schoolsite shall be given the same land use control treatment as if it were privately owned. In no event shall the city or county, prior to the school district's sale or lease of the schoolsite, rezone the site to open-space, park or recreation, or similar designation unless the adjacent property is so zoned, or if so requested or agreed to by the school district.

(c) A rezoning effected pursuant to this section shall be subject to any applicable procedural requirements of state law or of the city or county.

(d) A school district that requests a zoning change pursuant to this section shall, in the fiscal year in which the city or county incurs costs in effecting the requested zoning change, reimburse the city or county for the actual costs incurred by it.”

State law (Government Code section 65860) requires that the zoning ordinance, including the zoning map, be consistent with the General Plan. The City Municipal Code does not have any additional findings for Zone Changes. The guidelines for the design standards of new residential lots are set forth in Chapter 16.16.090; new lots must conform to the following:

- “A. Lot areas shall be such as will conform to the standards of development as defined by the zoning ordinance or other official plans adopted pursuant to law.*
- B. Lots having no frontage on a public street shall be cause for disapproval of subdivisions.*
- C. The width of lots shall be such as will conform to standards of development as defined by the zoning ordinance or other official plans adopted pursuant to law; provided, that the minimum width of lots shall be one hundred feet; and provided further, that odd-shaped lots shall be subject to individual determination by the city. No lot shall be less than fifteen thousand square feet.*
- D. No lot shall be divided by a county, city, school district or other taxing boundary line.*
- E. The side lines of lots shall be approximately at right angles to the street line on straight streets or be radial to the curve on curved streets.*
- F. Double-frontage lots should be avoided.*
- G. Corner lots shall have a width sufficient to permit adequate side yards. (Ord. 156 § 9, 1956)”*

As the attached tract map indicates, both Lots C and D meet the minimum design requirements for frontage, shape, size, and street access.

While no development is proposed in connection with the rezoning, both lots will be consistent with City standards and may be developed in the future upon proper application. For informational purposes, the development potential on each lot has been assessed by staff. The maximum allowable floor area for Lot C (located on Via Pacheco) will be approximately 7,745 sq. ft. The footprint for this lot could potentially be 5,995 sq. ft. The maximum allowable floor area for Lot D (located on Palos Verdes Drive West) will be approximately 7,143 sq. ft. The footprint for this lot could potentially be 5,393 sq. ft. As with all Single Family Residential lots, the maximum height for residences is 30 ft. as measured from natural grade.

Please keep in mind that if and when new homes are proposed for each site, the Planning Commission will review and assess the compatibility of the designs at that time. A decision to approve the Zone Change does not constrain the City’s discretion when evaluating specific development proposals in the future. Those future applications will be treated the same way and are subject to the same standards as all privately owned property within the City.

Statutory prerequisites and Offers to sell for parks purposes

The application of Government Code section 65852.9 is not free from controversy, Lots C and D are “schoolsites,” which are defined in state law as essentially any property owned by a school district. Whether the property is “unused” may garner some attention. At the Planning Commission there was testimony that suggested that the Lots had been used by the school for various purposes. There was also testimony that suggests that the Lots were used by the public for passage and as open space/park uses. The School District takes the position that these are unused, vacant lots.

The more significant point of controversy is over whether the School District must offer the Lots for sale for park and recreation purposes at a reduced rate or whether it may dispose of the Lots as surplus property for market value. State law has different statutory schemes for the disposition of school property that govern different factual situations. Government Code section 65852.9 applies to “unused schoolsites” and appears to codify a balance between preserving parkland (by making the offering unused property to park entities a prerequisite to rezoning) with the ability of school districts to raise funds by selling its unused property (by requiring cities to rezone the property for use consistent with the surrounding privately owned properties). However, section 65852.9 is not the model of clarity. The section makes reference to Section 17489 of the Education Code, which is part of a legislative scheme that requires school districts to sell the property to certain public entities that maintain parks and recreation facilities at a price set by a formula that is tied to the district’s acquisition costs. However, that statutory scheme applies where the property has been used for recreation facilities at least 8 years. There are other complications with respect to the application of these sections to Lots C and D and this report does not aim to resolve those issues. The point is that the state law that disrupts the City’s ordinarily broad discretion over zoning includes certain prerequisites before the School District is entitled to the benefit of that statute. At this time, the School District takes the position that it does not have to offer the property for sale in order to be entitled to a rezoning to R-1.

The District has not attempted to sell the property for parks. The District’s lawyer contends that the District is not required to comply with this because the property was not in use or because the District only must comply with such provisions before a sale of property and not before a rezoning. Staff believes that the statute lends itself to a different reading. The statute that would compel rezoning is based on the premise that these sites are “unused” and have not been purchased for parks:

“...It is therefore the intent of the Legislature to ensure that unused schoolsites not leased or purchased for park or recreational purposes pursuant to Article 5 (commencing with Section 17485) of Chapter 4 of Part 10.5 of the Education Code can be developed to the same extent as is permitted on adjacent property....”

The City cannot know if Lots C & D are “not leased or purchased for parks or recreation purposes” under section 17485, until they are offered and those offers are rejected. The statute expressly conditions the City’s obligation on the offers being refused:

“If all of the public entities enumerated in Section 17489 of the Education Code decline a school district’s offer to sell or lease school property...the city...shall, upon request of the school district, zone the schoolsite...consistent with the provisions of the applicable general and specific plans and compatible with the uses of property surrounding the schoolsite.”

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As a policy matter, it makes sense that the District should establish that no one will buy it for park or open space purposes (currently permitted) before changing the uses permitted. The statute is set up that way.

The Litigation over the deed restrictions

Ultimately, the deed restrictions became the “elephant in the room” for the Planning Commission and the uncertainty of the enforceability of the deed restrictions was the determining factor in the Commission’s recommendation to the City Council. The City has no jurisdiction over the deed restrictions. Currently, a lawsuit is pending in the Los Angeles County Superior Court in which the School District is seeking a court order determining whether the deed restrictions are valid. The School District contends that the deed restrictions are invalid due to changed circumstances and state policy. The Homes Association contends that the deed restrictions are enforceable equitable servitudes on the Property. The outcome of this lawsuit will determine whether the property may be legally used for the uses permitted in the R-1 zone.

The Planning Commission’s recommendation is to wait until it is known whether the deed restrictions are enforceable. Orderly planning suggests that the rezoning should not take effect unless and until the deed restrictions are determined to be unenforceable. Indeed, in recognition of this dilemma, at the public hearing, the School District’s representatives expressly offered to accept a condition on any rezoning approval that the rezoning would not be effective unless and until the deed restrictions are invalidated by the court.

The Planning Commission was mindful of the fact that the Legislature intended to avoid unnecessary costs and delays in rezoning property that qualified for rezoning under section 65852.9. The Commission found, however, that postponement of this action will not result in any unnecessary cost or delay to the School District because, as its representatives have readily conceded, the District cannot use Lots C and D as permitted in the R-1 zone or sell it to any private party for that purpose unless and until the court invalidates the deed restrictions. The District has brought a lawsuit for this purpose, which is scheduled to be tried in March 2011.

Procedural history

On August 17, 2010, the Planning Commission conducted a public hearing to consider ZC-1-10; Zone Change application for existing Open Space lots to be rezoned to R-1 Single Family Residential located between 2032-2100 Via Pacheco and 2037-2101 Palos Verdes Drive West.

After considering the facts and testimony, the Planning Commission directed staff to prepare a resolution memorializing its recommendation that the City Council wait for a final judicial determination of the validity of the deed restrictions before taking action on an application to amend the zoning map to change the zoning designation on two vacant parcels located between 2032-2100 Via Pacheco and 2037-2101 Palos Verdes Drive West from Open Space to Single Family Residential (R-1).

On September 21, 2010, the Planning Commission adopted the recommendation and approved Planning Commission Resolution No. 2010-0477 (3-0, Chang and Thomas abstained because they had not been present for the August 17 Planning Commission hearing).

Attached are the tract map, Planning Commission Resolution No. 2010-0477, the application materials, the environmental documents, the minutes from the August and September Planning Commission meetings, and all correspondence received regarding the application.

Having already held the required Planning Commission hearing and the City Council public hearing, the City Council may effect the zone change by taking two actions at two separate meetings. First, an ordinance amending the zoning map must be introduced. Subsequently and at a regular meeting of the City Council, the Council may adopt the ordinance. There is no limit to the amount of time between the introduction and adoption of an ordinance. Generally, an ordinance becomes effective 30 days after its adoption, if it is not referended.

Alternatives Available to the City Council

The following are alternatives available to the City Council:

1. Direct staff to renote the hearing on the District's rezoning application for Lots C and D for further consideration after there is a final judicial determination of the validity of the deed restrictions.
2. Introduce on first reading an ordinance that would approve the application to amend the zoning map to change the zoning designation on two vacant parcels located between 2032-2100 Via Pacheco and 2037-2101 Palos Verdes Drive West from Open Space to Single Family Residential (R-1) and schedule adoption of the ordinance at the next regular meeting.
3. Introduce on first reading an ordinance that would approve the application to amend the zoning map to change the zoning designation on two vacant parcels located between 2032-2100 Via Pacheco and 2037-2101 Palos Verdes Drive West from Open Space to Single Family Residential (R-1) and direct staff to schedule the adoption of the ordinance after there is a final judicial determination of the validity of the deed restrictions. NOTE: this option essentially incorporates the District's offer to accept a "condition" on the rezoning that it takes effect only if the deed restrictions are unenforceable. The action to introduce the ordinance does NOT re-zone the property. A subsequent adoption of the ordinance is required.
4. Direct staff to prepare a resolution denying the application to amend the zoning map to change the zoning designation on two vacant parcels located between 2032-2100 Via Pacheco and 2037-2101 Palos Verdes Drive West from Open Space to Single Family Residential (R-1) and provide the basis for the action.

Recommendation from Staff

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It is recommended that the City Council open the public hearing, receive public input, close the public hearing and direct staff to renotice the hearing on the application to amend the zoning map to change the zoning designation on two vacant parcels located between 2032-2100 Via Pacheco and 2037-2101 Palos Verdes Drive West from Open Space to Single Family Residential (R-1) for further consideration after there is a final judicial determination of the validity of the deed restrictions.

Staff report prepared by:
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