

**MINUTES OF THE REGULAR MEETING  
OF THE CITY OF SAN CLEMENTE  
PLANNING COMMISSION  
February 4, 2015 @ 7:00 p.m.  
City Council Chambers  
100 Avenida Presidio  
San Clemente, CA**

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**1. CALL TO ORDER**

Chair Darden called the Regular Meeting of the Planning Commission of the City of San Clemente to order at 7:04 p.m.

**2. PLEDGE OF ALLEGIANCE**

Chair pro tem Ruehlin led the Pledge of Allegiance.

**3. ROLL CALL**

Commissioners Present: Vonne Barnes, Barton Crandell, Wayne Eggleston, and Michael Smith; Chair pro tem Jim Ruehlin, Vice Chair Donald Brown, and Chair Julia Darden

Commissioners Absent: None

Staff Present: Jim Pechous, City Planner  
Amber Gregg, Associate Planner  
Michael Jorgensen, Building Official  
Zachary Ponsen, Senior Civil Engineer  
Ajit Thind, Assistant City Attorney  
Eileen White, Recording Secretary

**4. SPECIAL ORDERS OF BUSINESS**

**A. Closed Session Report - City Attorney**

Ajit Thind, Assistant City Attorney, announced no reportable action was taken during the Closed Session.

**B. Selection of Design Review Subcommittee Alternate**

Select one member to serve as the alternate on the Design Review Subcommittee which meets the second and fourth Wednesday of each month at 3:00 p.m. in the Community Development Department, Conference Room A.

Commissioner Crandell nominated Commissioner Eggleston to serve as alternative on the Design Review Subcommittee and Commissioner Barnes seconded the nominations. There were no other nominations, and Commissioner Eggleston was appointed to serve as alternative on the Design Review Subcommittee on a unanimous vote.

**5. MINUTES**

**A. Minutes from the Planning Commission Regular Study Session of January 21, 2015**

IT WAS MOVED BY VICE CHAIR BROWN, SECONDED BY COMMISSIONER BARNES, AND CARRIED 6-0-1, WITH COMMISSIONER EGGLESTON ABSTAINING, to receive and file the minutes of the Regular Study Session of January 21, 2015, as submitted.

**B. Minutes from the Planning Commission Regular Meeting of January 21, 2015**

IT WAS MOVED BY CHAIR PRO TEM RUEHLIN, SECONDED BY VICE CHAIR BROWN, AND CARRIED 6-0-1, WITH COMMISSIONER EGGLESTON ABSTAINING, to receive and file the minutes of the Regular Meeting of January 21, 2015, as submitted by staff.

**6. ORAL AND WRITTEN COMMUNICATION - None**

**7. CONSENT CALENDAR - None**

**8. PUBLIC HEARING**

**A. 209 Avenida La Cuesta – Cultural Heritage Permit 14-107/Minor Exception Permit 14-471 – McIlvain Residence (Ciampa) (continued from 01-21-15)**

A request to consider a reduction in the side yard setback for an addition to a historic house located at 209 Avenida La Cuesta within the Residential Low (RL-2) zoning district, legal description being Lot 123 of Tract 898, Assessor's Parcel Number 057-061-17.

City Planner Pechous recommended the Commission table this agenda item in order for its revised submittal to undergo Design Review Subcommittee (DRSC) review.

IT WAS MOVED BY COMMISSIONER VICE CHAIR BROWN, SECONDED BY COMMISSIONER BARNES, AND UNANIMOUSLY CARRIED TO TABLE 209 AVENIDA LA CUESTA – CULTURAL

HERITAGE PERMIT 14-107/MINOR EXCEPTION PERMIT 14-471 – MCILVAIN RESIDENCE.

[ITEM TABLED.]

**B. 1880 N. El Camino Real – Variance 14-474/Conditional Use Permit 14-475 – Capistrano Shores Wall and Landscaping (Gregg)**

A request to consider an eight foot tall decorative block wall between the railroad tracks and the Capistrano Shores Mobile Homes Park with 9'9" accent columns at the main entrance, along with accessory structures, landscaping, and utility improvements within the park. The project is located at 1880 N. El Camino Real within the Open Space zoning district and Coastal Zone Overlay (OS2-S2-CZ), the legal description being a strip of land 27.55 feet wide in the City of San Clemente, County of Orange, State of California, being a portion of Section 32, Township 8 South, Range 7 West, and Assessor's Parcel Number 691-432-02.

**C. 1880 N. El Camino Real – Conditional Use Permit 14-389/Architectural Permit 14-378 – Capistrano Shores Transformers and Fence (Gregg)**

A request to consider seven new transformers, enclosed by temporary chain link fencing, located in the Capistrano Shores Mobile Homes Park leased portion of the railroad right-of-way. The project is located at 1880 N. El Camino Real within the Open Space zoning district and Coastal Zone Overlay (OS2-S2-CZ), the legal description being a strip of land 27.55 feet wide in the City of San Clemente, County of Orange, State of California, being a portion of Section 32, Township 8 South, Range 7 West, and Assessor's Parcel Number 691-432-02.

Amber Gregg, Associate Planner, combined presentation for items B & C for a comprehensive analysis of corresponding projects. She narrated a PowerPoint Presentation entitled, "Capistrano Shores Mobile Home Park Applications, dated February 4, 2015;" provided background information, summary of project Phases, before and after photographs, and analyses for each project. In addition, she summarized unique conditions of approval; reviewed necessary findings that must be made in order for the Commission to approve the project; provided staff's analysis of the findings. Staff recommended the Commission approve the request as conditioned.

In response to questions from the Commission, Associate Planner Gregg advised staff elected not to require a sound study based on regulations and information provided on the Federal Railroad Administration website; illustrated how noise will travel/affect the Marblehead Coastal Project; noted the project's landscaping plan will be reviewed in subsequent

submissions. This project is being presented in an unusual order due to the applicants' time frame. Subsequent plans will be reviewed and approved by the Design Review Subcommittee (DRSC) and City Planner. Landscaping plans will be reviewed and approved by the City's Landscape Consultant Pat Murphy. A standard condition of approval will require the project to be ready for recycled water in the event it becomes available to the site. She noted that none of the homes in the immediate vicinity have variances for fence heights and noted that there are no projects with similar circumstances with the same zoning designation as the subject property, and additionally there are differences and circumstances unique to this property that make it unlikely to set precedent with subsequent requests.

Ajit Thind, Assistant City Attorney, advised that this variance, if approved, is based on unique specifications and factors specific to this property. It would be extremely unlikely that the exact same circumstances would be present on other properties requesting variances, and therefore it would be doubtful that this approval could be used to set precedence for other variances. In addition, he noted that upon analysis of the existing lease with OCTA, his office has determined that City approval of the project will allow the applicant to access OCTA property.

Associate Planner Gregg referred to a letter dated February 2, 2015, from Bill Mock, Senior Real Property Agent for the Orange County Transportation Authority, indicating approval to allow vegetation to grow on the east side of the proposed wall. In response to questions, she advised that the vegetation on the wall will help deter graffiti, provide visual relief, and attenuate sound; noted staff did not require a study to measure the difference between noise impacts between an 8-foot and 6-foot wall; stated the wall and other accessory improvements requires both City and California Coastal Commission (CCC) approvals before construction.

Michael Jorgensen, Building Official, stated that he is unaware of any regulations that would be relevant to sound issues for mobile homes; advised the applicant currently has an approved plan to replace antiquated utilities including the transformers, but with this application are requesting an alternative location and "pop outs" for the transformers.

Zachary Ponsen, Senior Civil Engineer, advised the storm drains associated with the project are privately owned and maintained.

Chair Darden opened the public hearing.

Eric Anderson, Park Manager, advised that a corporation owns the entire site. There are 90 sites for mobile homes, and 90 shares held in the corporation. He noted the letter from the attorneys for Capistrano Shores included with the meeting packet is almost verbatim to a letter presented

to the Commission at its December 17, 2014, meeting by Mr. Eric Wills. He noted the February 4, 2015, letter was presented late because applicants do not receive the staff report until the week before the meeting.

Eric Wills, resident, noted that the corporation is not willing to set aside money so the City can build the proposed wall in the event the corporation elects not to do it. If the City does not approve the proposed wall, they would prefer the transformers are located on the other side, in the originally approved location. The City is making them install the wall if they want to put the transformers in the alternative location. They would prefer to install the transformers in the alternative location before the wall is constructed; in the odd chance that they decide not to install a wall, the City can relocate the transformers to the other side of the fence and return it to its original condition. He requested the Commission approve language submitted in the letter dated February 4, 2015, from The Loftin Firm, P.C., Attorneys at Law representing Capistrano Shores Mobilehome Park, rather than the language recommended by staff. The revised conditions relate to the financial security conditions and reduce the bond amount to reflect the cost of removal. The new language would allow them to locate the transformers in the temporary pop outs without the wall requirement. Additionally, the letter compares the City's requirement for costs to construct a permanent wall to a case where the California Court of Appeals found a bond to be "an illegal forfeiture." He noted the project is not acceptable to them as proposed by staff. They would like to have the wall approved so it can be combined with other issues and presented to the CCC. He referred to a legal settlement with the City before being reminded by Assistant City Attorney Thind that settlement plans are confidential and should not be discussed at a public meeting. He submitted photos of temporary fencing installations throughout town, including some on City-owned properties.

Associate Planner Gregg noted that staff does not believe the findings necessary to permit the architectural permit for the temporary pop-outs can be approved without conditions included to ensure the wall is built. In order to approve the project as presented, the permanent fence has to be part of the application. Approval of the project would only be a conceptual approval of the wall, the final design is subject to DRSC and City Planner approval. Ms. Gregg also clarified that approval of the applications does not count as an official "In-concept" approval as required by the California Coastal Commission (CCC) for the wall, they would need to obtain the DRSC and City Planner approval of the wall for it to meet CCC's requirements. They can however inform the CCC that they have a preliminary approval and provide them with the approved Resolution.

Chair Darden closed the public hearing.

Commission Comment:

Chair pro tem Ruehlin does not agree that the required findings to allow the wall height variance have been met and is concerned that precedence would be set for other applicants desiring same. He endorsed staff's requirement that the applicant be required to create a cash deposit or line of credit to ensure the permanent wall is constructed to protect the City from risk and finds it problematic that the applicants' and their attorneys are opposed to the requirement. He believes the DRSC made it clear to the applicants that the proposed pop outs do not comply with the General Plan, and could not be approved as they are proposed. He also questioned the CEQA exemption. Although the CEQA specifically allows exemptions for walls and other accessory structures, because the proposed wall is 2/3 of a mile long, it's possible that its size would disqualify it as an exemption. Additionally he has questions due to sound attenuation, graffiti issues, and issues related to the approved bike and pedestrian path adjacent to the subject property. He established from staff that a permit for the wall is still required whether or not the variance is granted. Although he acknowledged it would be more costly for the applicant, he would prefer the applicant install the transformers in the currently approved location and have to incur relocation costs when/if the permanent wall is constructed rather than the City take risk by allowing the pop out construction and potential the wall will not be constructed.

Commissioner Barnes felt the CEQA concerns expressed by Chair pro tem Ruehlin were warranted, and would like more information on what potential CEQA mitigations would be. She does not believe some of the findings have been met, specifically with regard to whether denial of the request would result in a hardship, and questioned whether construction of a solid wall allows the public access in compliance with CCC guidelines and the City's General Plan guidelines. She noted that if a permanent wall is built, it will block views of the ocean that have been enjoyed by the public for many years. Additionally, the block wall may negatively affect the expanded bike and pedestrian lanes. She questioned whether allowing this wall might negatively affect/set precedence in the City of Dana Point as well as the State of California.

Vice Chair Brown commented that staff has worked diligently with the applicants to create a compromise situation that would allow Capistrano Shores to move ahead with its improvements and at the same time give the City some protection and assurance that the project would comply with its General Plan. He agreed the variance findings have not been met to his satisfaction, and commented that if the variance request is removed, in his opinion, the need for CEQA review would be eliminated. He commented that it was unnecessary and unwarranted for the applicants' attorney to submit a threatening letter at 5:00 p.m. on the day

of the meeting. He encouraged the applicant to continue working with staff to come to an appropriate compromise. He supported findings for the Conditional Use Permit and Architectural Permit, and recognized that the project phases are out of sequence due to timing concerns.

Commissioner Crandell agreed that staff has worked diligently with the applicant for a solution. He commented that the documents submitted by the applicants feature several different designs and dimensions for the proposed wall making it very difficult for the Commission to imagine its appearance. Additionally, necessary information and designs for other required elements are missing from the proposed plans. He is unable to support the project without being provided with this information and cohesive plans. He would support the temporary fencing as long as the project remains conditioned to require construction of the wall. He suggested several different methods for them to install the transformers so it would be easy and less expensive to install them in their current approved location and move them to their desired location at a later date. The wall should also include recesses to support mature plantings, design details, and other mitigation to ensure it does not appear as a long, blank white wall.

Commissioner Eggleston felt that all the necessary findings could not be met for the variance, and suggested it was unreasonable for the applicant to suggest the Commission could go against the staff recommendation and approve language suggested by his counsel in a letter received at 5:00 p.m. today. He recommended the project go back through the staff review process once more to review findings and allow for thorough review of the applicant's letter.

Commissioner Smith commented that although the project concept was good on its face, the project details are very uncertain at this point. He agreed proper design review of the wall is necessary, and all issues, such as the City's Local Coastal Plan, potential impacts on the new bike/pedestrian path, coastal access conflicts with the Marblehead Coastal project, etc., must be considered or conditioned for consideration before the plan can be approved. Making the wall 8-feet instead of the 6-foot maximum is just another obstacle to streamlining the approval process. He is encouraged to see the letter from the OCTA to allow vegetation, and commented that a long white wall without undulation, interesting screening, shading, design, vegetation, etc. would be an eyesore, especially as it is a gateway to the City and may offset the nature of a beach town. He opposed changing to language suggested by the applicants' attorney at the last minute.

Chair Darden also questioned whether the proposed project would have negative impacts on the adjacent community and new Marblehead Coastal project located on the cliffs above the subject property. She noted in DRSC meetings, DRSC members and staff displayed willingness to

work with the applicant to find solutions and connect the applications so that the applicants get what they needed and the City is assured they have a plan that complies with regulations. She expressed concern that approval of the variance might generate similar arguments from others living along the coast and create precedence. She is comfortable with the conditions attached to the project to require the wall design review and construction, and in favor of the project as proposed with removal of the proposed variance. In addition, she thanked the entire Commission for the detailed discussion of such a complex issue, and for coming to a resolution on the motion in the spirit of moving the project along.

Discussion ensued regarding how to move forward with this application, with staff providing guidance, and the Commission coming to consensus on key issues. The majority decided that removal of the variance request eliminated need to question whether the project is exempt from CEQA review, and the Commission unanimously decided to deny the request for the variance, revise language for clarification, and add a condition encouraging beach access for the public. The requests were continued with direction for staff to return with revised resolutions.

Eric Wills, applicant, thanked the Commissioners for their time and effort.

IT WAS MOVED BY CHAIR PRO TEM RUEHLIN, SECONDED BY VICE CHAIR BROWN, AND UNANIMOUSLY CARRIED TO CONTINUE AGENDA ITEM 8.B. 1880 N. EL CAMINO REAL – VARIANCE 14-474/CONDITIONAL USE PERMIT 14-475 – CAPISTRANO SHORES WALL AND LANDSCAPING AND AGENDA ITEM 8.C. 1880 N. EL CAMINO REAL – CONDITIONAL USE PERMIT 14-389/ARCHITECTURAL PERMIT 14-378 – CAPISTRANO SHORES TRANSFORMERS AND FENCE, TO THE REGULAR MEETING OF FEBRUARY 18, 2015, WITH THE FOLLOWING DIRECTION:

Staff directed to provide resolution for denial for Variance 14-474.

Resolution no. PC 15-002, Page 2, Section 2.B., 2<sup>nd</sup> sentence, strike “from the existing three to seven”

Resolution no. PC 15-002, Page 2, no. 11, 1<sup>st</sup> sentence, after “commence” insert the word “within”

Resolution no. PC 15-002, Page 8, no. 19, 3<sup>rd</sup> sentence, strike “If landscaping...of the wall.” 4<sup>th</sup> sentence, after “include” insert “other types of”

Resolution no. PC 15-003, Page 7, no. 13, 3<sup>rd</sup> sentence, strike “If landscaping...of the wall.” 4<sup>th</sup> sentence, after “include” insert “other types of”



Staff to add Condition of Approval encouraging the applicant and CCC work together to satisfy beach access requirement and mitigate the long wall design.

**[ITEM CONTINUED. PLANNING COMMISSION DECISION PENDING.]**

**9. NEW BUSINESS - None**

**10. OLD BUSINESS - None**

**11. REPORTS OF COMMISSIONERS/STAFF**

- A. Tentative Future Agenda
- B. Minutes from the Zoning Administrator meeting of January 21, 2015
- C. Staff Waiver 15-022, 908 S. Ola Vista
- D. Staff Waiver 15-026, 402 Pasadena Court
- E. Staff Waiver 15-029, 120 Trafalgar Lane
- F. Staff Waiver 15-031, 235 La Paloma

Vice Chair Brown reported that at their next meeting, the Coastal Advisory Committee will discuss Poche Beach, the Capital Improvement Program, and potentially hear an update on the Sand Replenishment project. He agreed to provide detailed updates on the status of Poche Beach improvements in response to a request from Commissioner Smith. In addition, he announced he will not be able to attend the Commission's next meeting.

City Planner Pechous provided direction regarding quorum discussion and noticing of DRSC meetings when a quorum is planning on attending.

Chair Darden encouraged the Commissioners to forward requests for sessions at the upcoming Planners Institute meeting to staff; the Commission can discuss coordination of sessions at their next Study Session or Regular Meeting.

Chair pro tem Ruehlin announced that the Transportation Ad-hoc Committee meeting has been rescheduled to next week due to noticing issue; agreed to update the Commission on the progress of the Ad-hoc Committee at each Regular Meeting.

Commissioner Smith announced that he resigned from the position of DRSC Alternative due to an increase in demand for his services as an independent consultant.

City Planner Pechous announced that due to the League of Cities meeting occurring close to the League of Cities conference, he is recommending the Commission consider rescheduling their Regular Meeting of March 4 to either March 2 or March 9. He will send out an email to establish availability for both dates.


**12. ADJOURNMENT**

IT WAS MOVED BY CHAIR PRO TEM RUEHLIN, SECONDED BY COMMISSIONER SMITH, AND UNANIMOUSLY CARRIED to adjourn at 9:15 p.m. to the Study Session to be held at 6:00 p.m. on February 18, 2015, in Council Chambers at City Hall located at 100 Avenida Presidio, San Clemente, CA.

Respectfully submitted,

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Julia Darden, Chair

Attest:

  
Jim Pechous, City Planner

DRAFT