



City of Huntington Beach

2000 Main Street ♦ Huntington Beach, CA 92648
(714) 536-5227 ♦ www.huntingtonbeachca.gov

Office of the City Clerk
Robin Estanislau, City Clerk

NOTICE OF APPEAL TO CITY COUNCIL

Appeal of Planning Commission Decision

Date: October 5, 2023

To: Community Development Department
City Attorney
City Council Office
Administration
Chair and Planning Commission
Public Works Department

Filed by: Michael McMahon of Carmel & Naccasha LLP

**Re: APPEAL OF PLANNING COMMISSION DECISION TO APPROVE CUP NO. 21-024 –
BOLSA CHICA SENIOR LIVING COMMUNITY**

Date for Public Hearing: TBD

Copy of appeal letter attached: Yes

Fee collected: \$4,582.00

Completed by: Tania Moore, Senior Deputy City Clerk

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SCHEDULE STATES LEGAL NOTICE AND MAILING LABELS MUST BE RECEIVED IN THE
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mmcmahon@carneclaw.com

Robin Estanislau
City Clerk
City of Huntington Beach
2000 Main Street
Huntington Beach CA 92648

RE: Conditional Use Permit 21-024

- *Bolsa Chica Senior Living Community*

Dear Ms. Estanislau:

Carmel & Naccasha, LLP, has been retained by Brian Thienes to submit these preliminary comments objecting to and appealing the approval of the above-referenced Conditional Use Permit ("CUP") by the Planning Commission on September 26, 2023 to the City Council. Mr. Thienes is the owner of certain real property located in the City of Huntington Beach, near the proposed Bolsa Chica Senior Living Community located at 4952 and 4972 Warner Avenue, Huntington Beach, CA ("Project"). The size, mass, and scale of the Project is entirely inconsistent with the size, scale and character of the surrounding neighborhood and community.

Our comments and objections to the CUP and Project are as follows:

California law requires that findings in support of land use decisions of this nature be supported by substantial evidence in the administrative record. Below are specific deficiencies in the findings approved by the Planning Commission.

Land Use Element:

Goal LU-1: New commercial, industrial, and residential development is coordinated to ensure the land use pattern is consistent with the overall goals and needs of the community.

Policy LU-1D: Ensure that new development projects are of compatible proportion, scale, and character to complement adjoining uses.

Policy LU-2E: Intensify the use and strengthen the role of public art, architecture, landscaping, site design, and development patterns to enhance the visual image of Huntington Beach.

Goal LU-4: A range of housing types is available to meet the diverse economic, physical, and social needs of future and existing residents, while neighborhood character and residences are well maintained and protected.

The findings justifying the foregoing goals and policies are simply conclusory statements, unsupported by substantial evidence in the administrative record, as required by law. The fact is that the Project is not consistent with the overall goals and needs of the community, is not of compatible proportion, scale and character to complement adjoining uses, does not intensify the use or strengthen the roles of architecture, landscaping, site design and development patterns, and will not provide a housing range that meets diverse economic and social needs or maintain and protect the neighborhood character.

Housing Element:

Goal H1: Maintain and enhance the quality and affordability of existing housing in Huntington Beach.

Policy H2.1: Provide site opportunities for development of housing that responds to diverse community needs in terms of housing types, cost, and location emphasizing locations near services and transit that promote walkability.

Again, the findings justifying the foregoing goals and policies are simply conclusory statements, unsupported by substantial evidence in the administrative record, as required by law. The Project will not enhance the affordability of existing housing, nor will it provide a site opportunity to develop housing that meets the diverse community needs in terms of housing type and cost.

Furthermore, Mr. Thienes objects to the method by which the CUP was approved, specifically consideration of the CUP separately from the General Plan amendment, Zoning Map amendment, and certification of the EIR. If the CUP were unchallenged, the City Council would be robbed of the ability to modify the findings and conditions while considering the legislative amendments and certification of the EIR. Since no conditions can be placed on legislative amendments, this bifurcated approval method usurps decision making authority that rightly belongs to the City Council.

In addition, Mr. Thienes objects to the General Plan amendment to change the land use designation from CG to mixed-use (MU) and objects to the Zoning Map amendment to change the zoning from CG to specific plan (SP). Mr. Thienes also objects to the increase in allowable floor area ratio to 2.5 and to raising the maximum building height to 65 feet. The impact to the environment has not been reasonably assessed and conclusions of the Environmental Impact Report ("EIR") lack support. The Project's inconsistency with the City of Huntington Beach policy and zoning will cause significant physical environmental impacts to Mr. Thienes's neighborhood.

Additional comments and concerns regarding the EIR are as follows:

Project Impacts

The statement "the proposed project would not result in significant and unavoidable adverse impacts to the existing environmental setting" lacks factual support. The Project would create a precedent for future development, and the EIR does not consider that the approval of the Project will pave the road for future similar developments in the area. The effects of allowing

a specific plan to subvert zoning regulations would lead to increased interest in developing surrounding projects of a similar nature. The Project needs to study the long-term cumulative impact of increasing the code-required maximum density, the lack of code-required parking, and the effect on the adjoining neighborhood and their ability to absorb the street parking that would result from the deficiency of the required parking. The EIR should also study the long-term effects of the sewer capacity and water capacity of the surrounding existing development of similar nature that could be redeveloped if the Planning Commission's approval of the Project stands. The EIR failed to provide a sewer capacity and water capacity study.

Alternatives

An alternate project could be proposed that complies with the existing zoning that is also consistent with the surrounding community.

Also lacking support is the conclusion that "the no project alternative would result in greater environmental impacts to air quality and transportation to the surrounding circulation system due to the greater number of vehicle trips to and from the project site." Zoning similar to the adjacent properties would actually result in less impact than the proposed Project but would still achieve the goal of providing senior housing.

Aesthetics - Height

The conclusion that "the proposed project would not conflict with relevant goals and policies in terms of preserving the visual quality in the city," is also completely unsupported. The City has developed zoning standards which do not allow for a 65-foot-high building structure. The building structure would tower over the existing residences which are only two stories tall. The proposed structure is not compatible in proportion, scale, or character to the adjoining uses.

Land Use and Planning

The Project would cause significant environmental impacts due to the conflict with the existing land use plan. Upholding the Planning Commission's approval of this Project would lead to approval of multiple projects in the area which would have a massive cumulative impacts on the community, including aesthetics, traffic, noise, solar access, wind access, and impacts to the infrastructure, such as water and sewer capacities and street parking. The Project is inconsistent with the City's established development standards, which were applied to the surrounding infrastructure. The surrounding infrastructure was not designed to handle the proposed densities. The overall impact to the surrounding community would be far from 'less than significant' when the cumulative effect of future developments similar to the proposed Project is considered.

Utilities and Service Systems - Energy

The statement that "the proposed project would have less than significant impacts associated with electric power and natural gas" is wholly unsupported. The cumulative effect of approving this Project would lead to similar developments in the area, which would have a major impact to the available electricity and natural gas. The existing infrastructure is not sufficient for the bulk, density, and mass of the proposed development. Approval of this Project would cause

additional projects of a similar nature that would have a cumulative effect on the availability of electricity and natural gas.

Aesthetics - Light

The conclusion that the Project will “not create a source of substantial light or glare” similarly lacks evidentiary support. Security and patio lighting on the 5th floor would be seen from the entire neighborhood. Nothing in the EIR evaluated the lighting spillover into the wetlands that requires dark sky. If the Brightwater development respects the dark sky requirements of the Bolsa Chica Ecological Preserve, this Project must address the impact to the Bolsa Chica Ecological Preserve. The proposed building elevations in the EIR appear to show exterior lighting fixtures that are not properly shielded. The Project as approved cannot provide adequate lighting for the patio areas and still shield all of the light spillover into the surrounding neighborhood and wetlands.

Hydrology and Water Quality

Bolsa Chica Street and Warner Avenue lack sufficient storm drain facilities to capture runoff from the east that flows to the intersection of Bolsa Chica Street and Dunbar Drive, and as a result this intersection experiences flooding during normal rain events. The adjacent existing parking lot serves as an incidental detention basin and helps protect the surrounding properties. The EIR fails to analyze and address the effect of construction over the parking lot, which would reduce the available ponding space and could cause flooding on adjacent properties. This Project will increase the depth of flooding at the intersection of Bolsa Chica Street and Dunbar Drive.

Recreation

Also lacking support is the statement “the proposed project does not include recreational facilities nor require the construction or expensing of recreational facilities that would result in a significant adverse physical effect to the environment, therefore project related impacts with respect to recreation are not evaluated further in this draft EIR.” The proposed Project is significantly under-parked according to existing zoning. The City of Huntington Beach has established parking standards that eliminate the need for street parking. If developed, this Project would cause excessive street parking that would inhibit access to the trail system. Parking is already in short supply for people visiting the Bolsa Chica wetlands, and this project would severely impact the available street parking leading to the trailhead at the southerly terminus of Bolsa Chica Street. The Project only considers parking spaces for the residential units and fails to address the required parking spaces for the estimated 110 employees who will work at the proposed multiple restaurants, wellness centers, and studio spaces. We can assume 62 units parked at a ratio of 0.65 spaces per unit when no mechanism is in place to control whether a unit is assisted living or normal senior housing. The parking should be evaluated as worst-case senior housing and a separate calculation added for the multiple restaurant-style dining venues, wellness centers, and studio spaces. Due to the lack of parking, this development does not support the protection and maintenance of environmental open-space resources. The lack of on-site parking will severely limit access to the Bolsa Chica trail system.

Utilities and Service Systems - Wastewater

Additionally unsupported is the statement “therefore, impacts related to the construction of wastewater treatment or collection facilities would be less than significant.” Recently the Orange County Sanitation District upgraded the sewer force mains and lift stations throughout the City. These systems should have been designed to comply with the existing zoning and did not consider the increased density this Project carries. This Project should consider the cumulative effect of increasing the density of existing sites within the vicinity to verify that additional sewer capacity is available to serve this site and future developments of this nature. The EIR failed to provide an adequate sewer and water capacity study.

Project Impacts

We dispute the statement that “given the current visual quality of the project site, implementation of the proposed project consistent with the development standards and design guidelines specified in the specific plan would promote a cohesive community identity and enhance the visual quality of the project site to viewers on an off-site.” Increasing the maximum height of the building to 65 feet would block the skyline view from the public way. The open sky view at the corner of Bolsa Chica Street and Warner Avenue would be forever impacted by replacing it with a massive residential structure and destroying public view of the sky would have a negative impact on the community.

Staff incorrectly concludes “therefore, implementation of the proposed project would not result in significant shade or shadow impacts to nearby residential uses.” The shade and shadow study prepared by CRTKL is seriously flawed; a 65-foot-tall structure will cast a shadow in the easterly and westerly directions during sunrise and sunset during the spring and fall equinox; however, only the winter solstice was studied. This study proposes a shadow less than the building height. A study of the spring and fall equinox would prove expansive shadows would be cast on the residential properties to the east and west of the proposed development.

Cumulative Impacts

Approval of the General Plan amendment and Zoning amendment would not “render the proposed project consistent with the city’s establish development standards and no mitigation would be required.” The existing zoning has been in place for years and has been relied upon by the residents to protect the integrity of the community. Allowing the General Plan amendment and the Zoning Map amendment to change the zoning from CG to Specific Plan would cause long-term environmental impacts to the community. If this Project is built a landslide of similar developments will forever change the character and density of the community, as evidenced by the recent development at Bella Terra and downtown Huntington Beach. This Project must evaluate the cumulative impacts of all sites of similar nature that would be subject to redevelopment. This Project is not compatible with the long-term established development standards in the area.

Air Quality

The EIR failed to study air quality in the vicinity of the Project and used air quality data from Anaheim, California, which is approximately ten miles from the proposed development.

As stated in the initial study, “occupants of facilities such as schools, daycare centers, parks and playgrounds, hospitals and nursing and convalescent homes are considered to be more sensitive than the general public to air pollutants because these population groups have increased susceptibility to respiratory disease.” The air quality study fails to consider the proposed development and the residents who will be living in the proposed development. Bolsa Chica Street and Warner Avenue are both three-lane major highways that produce a significant amount of emissions. The study should consider the effect of these emissions on the people who will be living in the proposed development. As stated in the EIR, “Air pollutant exposures and their associated health burdens vary considerably within places in relation to sources of air pollution. Motor vehicle traffic is perhaps the most important source of intra-urban spatial variation in air pollution concentration.” Obviously, this site is not suitable for senior housing due to the proximity of the high-volume roadways.

Table 4.7.B: Gen. plan consistency analysis ERC-A

We disagree with the statement “these recreational and open-space elements would be for private use by residents and not open to the public but are anticipated to reduce the strain on surrounding parks and open spaces as residents would be more likely to use the on-site facilities.” The proposed Project does nothing to maintain the current Park per capita ratio of 5.0 acres per 1,000 persons, as the proposed development does not include any public open space for parks.

In conclusion and for the foregoing reasons, we urge the Huntington Beach City Council to uphold the appeal of the CUP and deny approval of the Project unless and until the issues identified in this letter have been resolved satisfactorily.

Sincerely,

CARMEL & NACCASHA LLP

Michael M. McMahon

Michael McMahon

MMM/lmh

