

Moore, Tania

From: David Treiman <dtreiman@earthlink.net>
Sent: Saturday, May 15, 2021 1:18 AM
To: supplementalcomm@surfcity-hb.org
Subject: Comments regarding Item 18 of May 17, 2017 Meeting
Attachments: Comments to City Council Item 18 - May 17 2021.pdf

Please see attachment for comments regarding Agenda for May 17, 2021 Item 18

David Treiman
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**SUPPLEMENTAL
COMMUNICATION**

Meeting Date: 5/17/2021

Agenda Item No.: 18 (21-379)

Comments regarding Agenda Item 18 of the May 17, 2021 meeting of the Huntington Beach City Council from David Treiman, Huntington Beach resident.

These comments are about the proposed amendment to the Zoning Code to eliminate the Environmental Assessment Committee [EAC]. I have information relating to the performance of the current environmental impact assessment process that raises the question of whether there are too many steps, not enough steps, or a combination of both.

I appreciate Councilmember Kalmick's knowledge and ability and his desire and efforts to improve the processes of city government. I agree with his proposal to streamline government processes that are too complex, confusing, or unnecessary, while maintaining or improving outcomes.

When I learned that the Planning Commission had rejected his proposal and that he requesting review by the City Council, I watched the Planning Commission meeting of April 27, 2021, twice on video. I was very impressed by Commissioner Scandura's explanation of some risks of eliminating the EAC. His concerns included the risk that abolishing the EAC could result in loss of expertise, public notification and participation, a right to appeal, and insulation from outside political pressure. These risks deserve study and evaluation. Unfortunately during the course of a long Commission discussion I heard explanations and responses to his concerns that included non-responsive or confusing or conflicting information. Because of the format of the video, I could not identify who was making which remarks. Some of the speakers may not have appreciated how confusing the answers were because the problem lies in large part with the lack of clarity in the various sources of law and policy that are relevant to this discussion. The meeting did not provide the study and evaluation needed. At a minimum, staff should investigate issues raised by Commissioner Scandura and other commissioners and report the results for consideration by the Planning Commission.

I believe that before changing the current Huntington Beach environmental process, there should be a clear understanding of the purpose or goals of the CEQA and the environmental assessment process. The discussion at the Planning Commission meeting demonstrates that there needs to be a better understanding of the process Huntington Beach has adopted. Only then will it be possible to identify problems and deficiencies and what, if any, changes will better achieve the purpose and goals of CEQA.

It is clear that the assessment process must begin somewhere, or with someone. CEQA requires that someone must decide whether a discretionary decision by the city about a project is likely to have a significant environmental impact. For purposes of my following comments, it is important to recognize that CEQA recognizes that noise harmful to humans is included as an environmental impact. This determination might include consideration of facts regarding science, medicine, technology, and more. This determination might require knowledge of the law. The breadth of the knowledge needed may require multiple participants. Another issue in designing the assessment process is whether to it is better if each participant acts independently and then shares conclusions, or whether collaboration should occur at the outset, or at various times in the process. This consideration may lead to different designs in the process. The design must also consider what to do when there are conflicting conclusions. Also to be considered is when public participation should occur. If it occurs too early, the public won't know enough to make informed comments. If it comes too late, it may deprive the public decision makers of useful information. More citizen input might improve the process but it might cause delays that are not justified by the value of the

input.

I don't claim any expertise regarding the questions I have raised, but I believe the city has an ethical and legal obligation to carefully consider these issues.

I agree with Commissioner Scandura that the city's process should carefully consider whether the process adopted provides public notice, public input, relevant professional expertise, fair opportunity for appeals, efficiency, and protection from improper political pressure.

I also agree with Councilmember Kalmick that the current system can be improved by eliminating steps in the process that are redundant or otherwise unneeded because this will make the process less confusing, less time consuming, and less expensive. But evaluating whether an amendment will advance this goal is not a simple task.

Councilmember Kalmick may be correct that the EAC's role is unclear or already performed (or could be performed) by someone else (but, I would add, only if that other person knows he or she is required to perform this duty). Staff response to comments from Planning Commissioners at the April 27, 2021 meeting indicates the role of the EAC is viewed differently by different officials, and does not always work the same way. I demonstrate below that if the current system cannot be counted on to provide critical legal advice, then that process needs to be repaired to avoid legal violations of CEQA by the city. My example is an illustration of an illegal failure of the environmental assessment process, even with an EAC. I hope that this illustration will clarify the abstract concepts discussed above and provide a guide to examining potential amendment to improve the process.

NOISE DEVIATION PERMITS - Municipal Code Chapter 8.40 Noise Control.

The Noise Deviation Permit process added to the Noise Ordinance in 2012 clearly required an environmental assessment but there was none. The noise deviation permits authorized by this amendment to the code also require environmental assessments, but aren't any.

My illustration of the failure of the current environmental assessment process is the enactment of the Noise Deviation Permit ordinance without a required environmental assessment and granting permits without any required environmental assessment. Examination of this permit process directly addresses the question of whether the current system, with or without the EAC, adequately considers whether environmental concerns are being assessed by a process that requires citizen notice, allows fair opportunity for citizens to be heard, and whether there is a fair opportunity to appeal decisions. The conclusion is that there is no real environmental assessment at all and the permit process fails to provide adequate notice, right to be heard, and right to a fair appeal.

1. Public Notice and right to be heard.

The applicant submits the request for a noise deviation permit and the Director of Planning (now Community Development) grants or denies it without any hearing. The Director can grant the permit before any notice is given. There is no requirement of general public notice. The only notice required is the notification to affected property owners within 300 feet of the noise source. However, there is no meaningful right to be heard. The Director must notify the neighbors within 10 days of receiving the application but without any instructions about a right to comment. (Does "notify" mean mailing of notice or receipt of notice?) But this step is no guarantee of a right to be heard in writing because the Director can grant the permit upon receipt of the application and does

not have to notify the neighbors for 24 hours after the decision. All of this can take place before the 10-day deadline for notifying the neighbors of the receipt of the application. So the law does not require notice or hearing or citizen input before the decision is made.

2. Right to appeal. There are parts of the Zoning Code that suggest any environmental decisions can be appealed to the Planning Commission. But the Municipal Code Noise Deviation permit process only allows an appeal to a hearing officer. Contrary to provisions in the Zoning Code, there is no appeal of the Director's decision to the Planning Commission or even the City Council. In addition, the appellant must pay a fee of \$2983. The only source of review of the Hearing Officer's decision is to file suit in Superior Court.

The appellant is not even given a fair amount of time to appeal. Only neighbors within 300 feet of the noise source receive notice of a right to appeal. The Director must provide notice within 24 hours of the decision. It is not clear whether the Director must send it or that the citizen must receive it, but logistically it would be difficult to ensure receipt within 24 hours of making the decision.

The appellant must file a written appeal within 5 days of the decision, even if he only received the notice a day or more after the decision. The law requires the appellant to state the grounds for the appeal. Although the Director must make written findings when granting a permit, there is no requirement whether and when this must be provided to the appellant. Without the findings, it could be difficult or impossible to state the grounds for the appeal, especially since there was no hearing for the appellant to attend.

This process clearly fails to provide the notice, opportunity to be heard, opportunity appeal to appeal that Commissioner Scandura discussed at the Planning Commission meeting.

The illegal adoption and utilization of the Noise Deviation Permit process illustrate that there must be a better process for environmental assessments than we currently have. Perhaps streamlining it can make clearer who has the responsibility for making certain our system meets the requirements of CEQA. The current system relying on the Environmental Assessment Committee failed. Why was there no assessment for this ordinance and the permits? Who dropped the ball? This illustrates that the current process does not assure that staff members with adequate knowledge or training are part of the process. So both Council Member Kalmick and Commissioner Scandura are both correct - there is too much complexity but at the same time additional people with appropriate skills and insulation from political pressure should be involved.

My hope is that this information will be of assistance to you and that staff reexamines the proposal to abolish the EAC.

My concluding request is that whether or not you abolish the Environmental Assessment Committee, you should require that someone at some point in the process assures that CEQA is followed and that there is oversight by a superior official when failures in the process are identified.

Moore, Tania

From: David Treiman <dtreiman@earthlink.net>
Sent: Saturday, May 15, 2021 11:18 PM
To: supplementalcomm@surfcity-hb.org
Subject: Supplement Comment regarding May 17th agenda item 18

Comments for the City Council regarding Agenda Item 18 on May 17, 2021.
From David Treiman
May 15, 2021

This is a brief followup to the comments I sent earlier today regarding the abolition of the Environmental Assessment Committee - Agenda Item 18. I shared these comments with a wise person who pointed out that Council members have so much to read before a meeting that it is not reasonable to expect you to carefully read a complex three-page document in the narrow time frame you have. I apologize for that. Therefore I am providing a very concise statement of the points I wanted to make.

1. I am not advocating the abolition or retention of the Environmental Assessment Committee.
2. I was unable to get a clear understanding listening to the Planning Commission meeting of how the current environmental system is supposed to work and how it would work without the Environmental Assessment Committee.
3. The main point I want to make is that the current environmental assessment system has a serious flaw. Some city actions that require an environmental assessment have been approved without anything like the environmental assessment required by CEQA. Some actions did not provide public notice, public hearings, an opportunity to comment, and a fair appeal. The Environmental Assessment Committee does not appear to have been involved in these actions at all. (For details regarding the illegal enactment of an ordinance authorizing noise deviation permits, and the granting of permits pursuant to this ordinance without CEQA required assessments, see my prior comments).

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4. Whether or not the Environmental Assessment Committee is abolished, the problems I identified remain. Shouldn't these problems be addressed first so you can determine why the Environmental Assessment Committee was bypassed and how the lack of required CEQA assessments can be remedied? If and when you address this problem, I would be happy to provide you documents supporting my allegations.

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