

**CITY OF DANA POINT
PLANNING COMMISSION
AGENDA REPORT**

DATE: SEPTEMBER 22, 2014

TO: DANA POINT PLANNING COMMISSION

FROM: COMMUNITY DEVELOPMENT DEPARTMENT
URSULA LUNA-REYNOSA, COMMUNITY DEVELOPMENT DIRECTOR
SAIMA QURESHY, AICP, SENIOR PLANNER

SUBJECT: TENTATIVE TRACT MAP TTM 17751, COASTAL DEVELOPMENT PERMIT CDP14-0008, SITE DEVELOPMENT PERMIT SDP14-0006, CONDITIONAL USE PERMIT CUP14-0005, AND VARIANCE V14-0004 TO ALLOW THE DEMOLITION OF CURRENT STRUCTURES ON SUBJECT PROPERTIES AND CONSTRUCTION OF A NEW, THREE PHASED, MIXED USE PROJECT FEATURING 30,100 SQUARE FEET OF RETAIL SPACE ON THE GROUND FLOORS AND 110 RESIDENTIAL CONDOMINIUMS ON THREE LEVELS ABOVE, WITH TWO LEVELS OF SUBTERRANEAN PARKING, ON SEVEN NON-CONTIGUOUS LOTS AT 34135 PCH, 24471 DEL PRADO, 34129 PCH (PHASE 1); 34137 PCH, 24501 DEL PRADO (PHASE 2); and 34155 PCH, 24591 DEL PRADO (PHASE 3) LOCATED IN THE CITY'S TOWN CENTER PLAN AREA. (Continued from the regular Planning Commission meetings of July 14, August 11, and September 8, 2014)

RECOMMENDATION: That the Planning Commission continue the public hearing to a special meeting of the Planning Commission scheduled for October 6, 2014 at the Community Center located at 34052 Del Obispo, Dana Point, CA 92629.

APPLICANT/ OWNER: Majestic Housing & Development LLC/ Peggy Tabbas

REQUEST: Approval of Tentative Tract Map TTM 17751, Coastal Development Permit CDP14-0008, Site Development Permit SDP14-0006, Conditional Use Permit CUP14-0005 and Variance V14-0004 for the properties located at 34135 PCH, 24471 Del Prado, 34129 PCH (Phase 1); 34137 PCH, 24501 Del Prado (Phase 2); and 34155 PCH, 24591 Del Prado (Phase 3) to allow the demolition of current structures on-site and construction of a new mixed use project on seven non-contiguous lots.

LOCATION: Phase 1: 34135 PCH (APN 682-232-06), 24471 Del Prado (APN 682-232-07), 34129 PCH (APN 682-232-11); Phase 2: 34137 PCH (APN 682-321-01), 24501 Del Prado (682-321-14); Phase 3: 34155 PCH (APN 682-321-07), 24591 Del Prado (APN 682-321-08).

NOTICE:

Notices of the Public Hearing were mailed to property owners within a 500-foot radius and occupants within a 100-foot radius on September 10, 2014, published within a newspaper of general circulation on September 11, 2014, and posted on September 12, 2014 at Dana Point City Hall, the Dana Point and Capistrano Beach Branch Post Offices, Dana Point Library, as well as on the City of Dana Point website.

ENVIRONMENTAL:

Pursuant to the California Environmental Quality Act (CEQA), staff finds the project is Categorically Exempt per Section 15332 (Class 32 – In-fill Development Projects). CEQA guidelines - Section 15332 “In-fill Development Projects” provides that projects that are in-fill development projects on lots that are 5 acres or less, are surrounded by urban uses, and do not have significant effects relating to Land Uses, Biological Resources, Traffic, Noise, Air Quality or Water Quality and can be adequately served by all required utilities and public resources are Categorically Exempt from the provisions of CEQA. The proposed project meets the necessary conditions to qualify for this exemption.

BACKGROUND / DISCUSSION: The Planning Commission has conducted three previous public hearings to review this project, the second and third meetings functioning as study sessions to provide the public the opportunity to comment on design revisions. The meetings occurred on the following dates:

- July 14, 2014
- August 11, 2014
- September 8, 2014

At the first meeting of July 14, 2014, the Commission considered the proposed mixed-use project. After presentations from City staff and the applicant and hearing testimony from public speakers, the Commission continued the hearing to August 11, 2014 to give the applicant a chance to revise their design in light of the public comments and the Commission’s directions.

At both the August 11, 2014 and September 8, 2014 meetings, the applicant presented their revised design concepts, enhanced elevations, and details on loading spaces. At the last meeting, the commission reviewed the project, took in public testimony and continued the item to September 22, 2014.

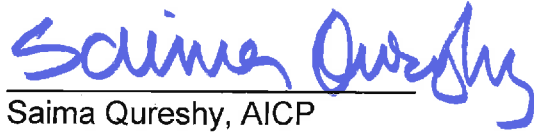
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Since the applicant's plans need further revisions and staff review, staff is recommending that the Commission continue this item to their October 6, 2014 meeting.



Saima Qureshy, AICP
Senior Planner



Ursula Luna-Reynosa
Director of Community Development

ATTACHMENTS:

1. Public Correspondence

SAIMA QURESHY

From: URSULA LUNA-REYNOSA
Sent: Tuesday, September 16, 2014 1:47 PM
To: ERICA DEMKOWICZ; SAIMA QURESHY; JOHN TILTON
Subject: FW: no to special treatment for developer's!

From: DOUG CHOTKEVYS
Sent: Tuesday, September 16, 2014 7:27 AM
To: URSULA LUNA-REYNOSA; MIKE KILLEBREW; Patrick Munoz
Subject: Fwd: no to special treatment for developer's!

FYI

Sent from my iPhone

Begin forwarded message:

From: SCOTT SCHOEFFEL <[SSchoeffel@DanaPoint.org](mailto:sschoeffel@DanaPoint.org)>
Date: September 16, 2014 at 6:04:04 AM PDT
To: KATHY WARD <kward@DanaPoint.org>
Cc: DOUG CHOTKEVYS <DChotkevys@DanaPoint.org>
Subject: FW: no to special treatment for developer's!

Hello Kathy,

For the record. Thanks.

Sincerely,

J. Scott Schoeffel
Council Member
City of Dana Point
sschoeffel@danapoint.org

From: chris carrillo <seacarrillo@hotmail.com>
Sent: Saturday, September 13, 2014 10:03 AM
To: LISA BARTLETT; STEVEN WEINBERG; BILL BROUGH; SCOTT SCHOEFFEL; CARLOS OLVERA
Subject: no to special treatment for developer's!

please add my name to the list of unhappy residents who are frustrated by this town's leadership. we are long time residents of Capistrano beach, my husband has lived here since 1961 and myself in 1985 when i bought our current house in capo beach. we are not opposed to change in the city but i for one am very unhappy at a city so determined to be run by business interests that are in opposition to the interests of those of us who live here. i do not

believe in allowing non-conforming, high density hotels, and condos that leave us with a legacy of traffic congestion and noise. why don't the businesses that already are here form an organization to improve the town center with city approval, using their monies, as was done in big bear city. why can't capo beach have concerts in the park again, it was a wonderful evening for our community, obviously we can't all drive and park in the limited spaces offered for the summer concerts in dana point. some concerts seem to be focused on the guests of surrounding hotels rather than residents. another big gripe is that the city supports the interests of the elite community built on the headlands, using the city attorney to fight against the interests of the general community in keeping the beach gates open. that is shameful. your job is to make this a community good for all of its residents and please stop taking money from developers for your personal campaigns, it might be legal but it smells foul.

regards, chris carrillo capo beach

SAIMA QURESHY

From: URSULA LUNA-REYNOSA
Sent: Tuesday, September 16, 2014 1:46 PM
To: ERICA DEMKOWICZ; SAIMA QURESHY; JOHN TILTON
Subject: FW: Opposed to non-compliant projects

From: DOUG CHOTKEVYS
Sent: Tuesday, September 16, 2014 7:28 AM
To: URSULA LUNA-REYNOSA; MIKE KILLEBREW; Patrick Munoz
Subject: Fwd: Opposed to non-compliant projects

FYI

Sent from my iPhone

Begin forwarded message:

From: SCOTT SCHOEFFEL <SSchoeffel@DanaPoint.org>
Date: September 16, 2014 at 6:01:15 AM PDT
To: KATHY WARD <kward@DanaPoint.org>
Cc: DOUG CHOTKEVYS <DChotkevys@DanaPoint.org>
Subject: FW: Opposed to non-compliant projects

From: Burton Lucich <drLucich@sbcglobal.net>
Sent: Saturday, September 13, 2014 2:07 PM
To: LISA BARTLETT; STEVEN WEINBERG; BILL BROUGH; CARLOS OLVERA; SCOTT SCHOEFFEL
Subject: Opposed to non-compliant projects

My name is Dr Burton Lucich, I have my practice by the Chamber of Commerce in Dana Point for 18 years and represent a business that has been here since 1981. I'm very disappointed at where the future of the city is going. I still do not understand the changes to traffic but those are happening. I think a huge waste of money was spent on center dividers and too many palm trees, already done. Please stop these giant eye sores from being built. The hotel has already been voted down but I know it will come back again. The town center 4 story buildings are wrong and too big for our quaint city. This appears to be a money grab by developers to over develop Dana point. Most cities are trying to improve traffic flow, not here. We want to slow it down. I know somewhere is a report showing how this is good for businesses, but what's good for our citizens and the city? People love QUAINT Dana Point. We do not want to be Huntington Beach or Newport!! The city has plenty of money from hotel taxes. We can get a bocheball field but not a skatepark? We can restrict access at Strands gate and defend 3 different court orders to open it but don't? As you can tell I'm not happy with how the city is moving. All of you are part of that direction. I ask that you stop supporting these projects that are out of scale with the rest of DP. The traffic congestion these will leave us to deal with after you all have moved on will be a

bad legacy with your names attached.

Please feel free to respond to this or call me at my office 949-240-6422 to help me understand how you are going to help improve Dana Point not ruin it.

Respectfully

Dr Burton Lucich

Sent from my iPhone

SAIMA QURESHY

From: URSULA LUNA-REYNOSA
Sent: Tuesday, September 16, 2014 1:45 PM
To: ERICA DEMKOWICZ; SAIMA QURESHY; JOHN TILTON
Subject: FW: Opposition to ALL Non-compliant Projects

FYI

From: DOUG CHOTKEVYS
Sent: Tuesday, September 16, 2014 7:28 AM
To: URSULA LUNA-REYNOSA; MIKE KILLEBREW; Patrick Munoz
Subject: Fwd: Opposition to ALL Non-compliant Projects

FYI

Sent from my iPhone

Begin forwarded message:

From: SCOTT SCHOEFFEL <[SSchoeffel@DanaPoint.org](mailto:sschoeffel@DanaPoint.org)>
Date: September 16, 2014 at 5:54:35 AM PDT
To: KATHY WARD <kward@DanaPoint.org>
Cc: DOUG CHOTKEVYS <DChotkevys@DanaPoint.org>
Subject: FW: Opposition to ALL Non-compliant Projects

Hello Kathy,

For the record. Thanks.

Sincerely,

J. Scott Schoeffel
Council Member
City of Dana Point
sschoeffel@danapoint.org

From: Gail Benda <GailBenda@cox.net>
Sent: Monday, September 15, 2014 12:43 PM
To: LISA BARTLETT; BILL BROUGH; SCOTT SCHOEFFEL; STEVEN WEINBERG; CARLOS OLVERA
Subject: Opposition to ALL Non-compliant Projects

Dear Councilmembers of Dana Point:

We encourage you to vote "NO" on both of the projects that will be on your agendas in the coming days and weeks: the hotel on PCH below Lantern Bay Park and the four-story mixed-use development in the Town Center area. Both of these projects are requesting extreme

density and height variance approvals—which would allow the beginning of the end of the beauty of Dana Point!

The Beverly Hills Hospitality Group has absolutely no vested interest in our fine city! Their only incentive in making this appeal to the City Council is to help line their pocketbooks! PLEASE do the right thing for Dana Point and deny their appeal tomorrow evening!!!

The Majestic Project would make our new Town Center look like we're trying to become a big city with high-rise development. Also, with the new two-way traffic on that section of PCH, the added traffic congestion would make driving through our city a nightmare! And there isn't going to be enough parking for this new development, and that would make matters even worse! Please understand that the majority of Dana Point residents do NOT want these problems for our home town!

Managed growth and progress for Dana Point is something we all desire. However, these two projects would be completely out of character for Dana Point, so you must vote "NO" on both of them!!!

Thank you.
Gail Benda and Marvin Sherrill
25101 Sea Vista Drive
Dana Point, CA 92629



TO: City of Dana Point Planning Commissioners, City Council members

From: Dana Point Residents for Responsible Development ("DPRRD")

Re: Majestic Housing & Development LLC ("Majestic")
Majestic's Town Center Project, Project Nos. Tentative Tract Map TTM 17751, Coastal Development Permit CDP14-0008, Site Development Permit SDP14-0006, Conditional Use Permit CUP14-0005 and Variance V14-004 for the properties located at 34135 PCH, 24471 Del Prado, 34129 PCH (Phase 1); 34137 PCH, 24501 Del Prado (Phase 2); and 34155 PCH, 24591 Del Prado (Phase 3)] ("Project")

Violation of Mandatory Development Standards (proposed fourth story)
Addition to Staking Letter
CUP violates Mandatory Development Standards (adverse view impact)

Date: September 10, 2014

Project's Proposed Fourth Story Violates Mandatory Development Standards

The Project's proposed fourth story violates both the 2006 Dana Point Town Center Plan Initial Study/Negative Declaration ("Neg. Dec.") and the 2008 Dana Point Town Center Plan ("Town Center Plan"). Neg. Dec. Section 2.5, page 2-5 states:

"The efforts of the Dana Point Town Center Subcommittee has resulted in the following four key elements that are to be integrated into the Town Center Plan

- Town Center Plan Policies
- Land Use Regulations
- Development Standards
- Design Guidelines

These four elements comprise the core of the Town Center Plan, as evidenced by the Town Center Plan's Table of Contents which reads:

- Goals and Policies
- Land use Regulations
- Development Standards
- Design Guidelines

Neg Dec. p. 2-7 states "It should be noted that the Development Standards are **mandatory** while the Town Center Design Guidelines would be advisory." (Neg. Dec. p. 2-7 Design Guidelines, emphasis added)

Maximum Building Height is contained within the Town Center Plan Development Standards section mandatory provisions (Town Center Plan, p. 30). The Town Center Plan defines Maximum Building Height as 40 feet AND 3 stories. By footnote, only encroachments may be higher, subject to a conditional use permit. But there is **no** provision, footnote or otherwise, for more than three stories within these mandatory development standards.

Town Center Plan p. 33 specifically delineates the very few items that constitute permitted encroachments. They are limited to:

- Mechanical Equipment Screening & Chimneys
- Elevators Not Providing Access to Roof Decks
- Roof Decks (only within interior portion of the couplet (within PCH and Del Prado)
- Guardrail
- Stairwells and Elevators Providing Access to Roof Decks

Approval of a fourth story variance by either the Planning Commission or the City Council violates the mandatory Development Standards as stated in the Town Center Plan, providing a legal basis for its challenge.

Project's Staking is Inadequate and Improper

DPRRD's September 8, 2014 letter to the City regarding Inadequate Staking and Failure to Comply ("Staking Letter") is hereby incorporated into this letter by this reference hereto. It is requested that Staking Letter and this Addition to Staking Letter be distributed to each of the Planning Commissioners and each of the City Council members and made part of the public record.

a basis for challenge of any and all approvals given to the Project prior to its proper staking.

Elevator and Stairwell Towers Violate Mandatory Development Standards (adverse view impact)

As stated earlier, Neg Dec. p. 2-7 states “It should be noted that the Development Standards are **mandatory** while the Town Center Design Guidelines would be advisory.” (Neg. Dec. p. 2-7 Design Guidelines, emphasis added)

Within the mandatory Development Standards of the Town Center Plan, are the following:

“Height impacts not only the general identity and character of the Town Center, but also ‘blue water’ views from upland residential areas.”

Accordingly, the Town Center Plan imposes upon the planning commission and city council a mandatory duty to protect upland residents’ “blue water” views. (Town Center Plan, p. 31)

Requiring an applicant to obtain a conditional use permit (“CUP”) for any roof top deck and necessary means of ingress and egress thereto within the Town Center provides the mechanism imposed by the Town Center Plan to protect upland residents’ “blue water” views. The CUP can only be granted when an applicant meets **both** of the following two findings:

- “The approval **will not result** in an undue impact on the quiet use, enjoyment or privacy of surrounding properties, AND
- The approval **will not result** in undue adverse impacts on ocean views from surrounding properties.” (Town Center Plan, page 32, emphasis added)

There exists no discretion to waive a requirement imposed by use of the words “shall” or “will.” Therefore, the mandatory protection of residents’ quiet use, enjoyment or privacy and the residents’ “blue water views” requires Majestic to demonstrate with factual evidence that the roof top deck and its numerous fifty-five to sixty foot high stairwells and elevator towers **will not result** in undue adverse impacts on quiet use, enjoyment, privacy AND ocean views from surrounding properties before a CUP can be granted for this Project. A CUP approval without such evidence provides a basis for challenge of an approval.

DPRRD would support the suggestion heard last night to build internal stairwells and elevators instead of the proposed fourth floor to service the roof top deck, provided an applicant makes a proper showing that all other mandatory requirements are met.

Dana Point Planning Commissioners
Dana Point City Council Members
September 10, 2014
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DPRRD requests that this letter be distributed to each of the Planning Commissioners and City Council members and made a part of the public record.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Debra H. Lewis', with a large, stylized loop at the end.

Debra H. Lewis, Esq.
for Dana Point Residents for Responsible Development



TO: City of Dana Point

From: Dana Point Residents for Responsible Development

Re: Majestic Housing & Development LLC ("Majestic")
Majestic's Town Center Project, Project Nos. Tentative Tract Map TTM 17751, Coastal Development Permit CDP14-0008, Site Development Permit SDP14-0006, Conditional Use Permit CUP14-0005 and Variance V14-004 for the properties located at 34135 PCH, 24471 Del Prado, 34129 PCH (Phase 1); 34137 PCH, 24501 Del Prado (Phase 2); and 34155 PCH, 24591 Del Prado (Phase 3)] ("Project")

Inadequate Staking Plan and Staking's Failure to Comply with Requirements

Date: September 8, 2014

To Whom It May Concern:

The purpose of this letter is to request that the City of Dana Point require Majestic to immediately and properly stake the entire Project. The Story Pole Staking Plan created by Architects Orange and certified by Charles J. Bonadiman, a Licensed Land Surveyor on 7/9/14 ("Staking Plan") evidences that staking for the Project violated both the letter and the spirit of the Dana Point Town Center Plan published in 2008 ("Town Center Plan") and the Initial Study/Mitigated Negative Declaration dated September 1, 2006 ("Neg. Dec.")

Goal of Story Poles

Story poles are important to the community. The goal is to inform the public that something is proposed and to provide an accurate representation of what is being proposed. The public relies upon accurate actual representations of height to determine the impact of an **entire** project.

Majestic's initial staking implementation for the Project fell woefully short of the story poles' goals and failed to comply with the staking requirements set out in both the Town Center Plan and Neg. Dec.

Staking Plan Inadequate

Staking plans are supposed to depict both the horizontal relation of a project to the property lot lines and delineate all of the elevations of the subject building(s). The staking plan must be developed so the resulting story poles be an accurate reflection of the proposed building envelope for all proposed structures. Typically, a Staking Plan identifies existing or established survey monuments that are to be used as the basis of the Staking Plan. Further, in addition to pole identification numbers and story pole heights, ground level indications for each pole should appear on the Staking Plan so that by viewing only the Staking Plan, the heights from ground level are readily apparent.

Majestic's Staking Plan does not depict all of the elevations of any of the three subject buildings. It fails to include any topographical information regarding the lots themselves meaning that the elevations from ground level are not apparent without referring to other documents. This information should be contained within the Staking Plan. Further, it fails to comply with the staking requirements of the Town Center Plan and Neg. Dec.

Because the Staking Plan was inadequate, it is hereby requested that City of Dana Point immediately require Majestic submit a proper Staking Plan.

Staking Improper

The certification of the Staking Plan evidences that the story poles for each building were visible for some extremely limited but unspecified period of time, but certainly less than twenty-four hours for each building. The entire Project was not staked at one time, but rather each building was staked sequentially so that the visual impact of the entire Project was not visible through the use of the story poles.

Photographic evidence of the staking itself proves that at least for one of the portions of a building was not even staked. The Staking Plan itself evidences that some of the elevations for each building were not staked.

It appears that for the most part, the roof overhang height was selected for the four corners. Cherry pickers were raised to that height at each of the corners (but not for all buildings) and a string of flags was draped from one cherry picker to the next, giving the overall appearance of a box,

as evidenced by the pictures. This is a false impression. The buildings are not simply single height boxes. Staking the buildings sequentially rather than in tandem only further added to the false appearance, with the apparent intent of diminishing the Project's overall impact.

Because the technical implementation of the Staking Plan was inadequate, it is hereby requested that the City of Dana Point require Majestic to immediately restake the entire Project in accordance with the requirements stated in the Town Center Plan and the Neg. Dec.

Inadequate Period Depriving Public of Opportunity to Assess and Comment

The entire point of staking a proposed development is to inform the public that something is proposed and to provide an accurate representation of what is being proposed. To stake a major development for some extremely limited, unstated period of time, but less than 24 hours, on a major holiday weekend when residents are typically out of town, without prior notice to the public that the staking will take place constitutes a willful attempt to circumvent the purpose of requiring that story poles be erected. An overwhelming number of Dana Point residents did not know that staking of the Project would be taking place. Most residents did not know that the staking had in fact occurred until after it was almost immediately taken down. Many returned home after the July 4th weekend only to learn that some type of staking had taken place. Those that saw flags in the distance reported that by the time they went to look at the flags, they were gone.

Majestic and the City claim to be proud to present their vision for Town Center and that this Project dovetails with that vision. Yet, the evidence suggests just the opposite. It appears that through purposeful timing and manipulation, the intent was to hide the Project's visual impact to avoid expected overwhelming opposition, while providing the cover of having erected story poles and therefore technically and literally complying with the Town Center Plan and Neg. Dec. requirements.

Contrast Majestic's staking of its Project with the staking of the house on Blue Lantern which was just approved for its variance by the Planning Commission on August 11, 2014. The story poles were erected and left in place for months. In fact, they still remain in place.

Contrast Majestic's staking of its Project with the requirements for numerous California cities that require staking to be erected for some period of time prior to the first public hearing, remain in place throughout the entire approval process, and be removed only after expiration of the final appeal period. Such policies conform with the spirit and goal of erecting story poles in the first place - allowing the public an adequate opportunity to assess the visual impact of a development.

At each public hearing since the inadequate and noncompliant story poles were erected for the Majestic Project, the public has repeatedly requested that the story poles be properly redone and left in place throughout the entire approval process. The City has repeatedly refused. A reason given for the refusal was the expense and difficulty for the applicant in staking a project such as this one.

The residents contend that story poles are a usual and customary cost of developing real property. Expense and "nuisance" to the applicant should not be factored into the equation. The City's responsibility is to protect and fully inform its residents in a transparent manner and act solely on their behalf.

In conclusion, this letter requests that the City of Dana Point require Majestic to immediately prepare an adequate Staking Plan and erect story poles in compliance with the Town Center Plan and Neg. Dec., depicting all of the buildings' elevations, including the parapets, roof decks, tops of roof deck railings, tops of stairwells and elevators (not just elevation of the stairwell and elevator landings) and mechanical equipment.

Further it is requested that the City of Dana Point require proper and compliant restaking of the entire Project at one time and require the staking to remain in place throughout the entire approval process until the final appeal period on Majestic's application has expired.

It is further requested that these actions be initiated and completed prior to any further consideration of Majestic's application by the Planning Commission or City Council and that the public be notified at least one week prior to the restaking.

Sincerely,



Debra Lewis, Esq. for
Dana Point Residents for Responsible Planning