



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Planning &
Development
Department No.: 053
For Agenda Of: February 19, 2008
Placement: Departmental
Estimated Tme: 2 hours
Continued Item: Yes
If Yes, date from: 11/6/07
Vote Required: Majority

TO: Board of Supervisors

FROM: Department John Baker, 568-2085
Director(s)
Contact Info: Dianne Black, 568-2086

**SUBJECT: Santa Barbara Botanic Garden Appeal of Historic Landmarks Advisory
Commission Decision on Meadow Terrace Project**

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: N/A

Other Concurrence: N/A

As to form: N/A

Recommended Actions:

Consider the appeals filed by the Santa Barbara Botanic Garden on the Historic Landmarks Advisory Commission's decision regarding the Garden's Meadow Terrace project, located at 1212 Mission Canyon Road in the Mission Canyon area, First Supervisorial District, as follows (time estimate 2 hours).

That the Board of Supervisors:

1. Confirm, modify, or set aside the Historic Landmarks Advisory Commission's actions on September 10, 2007 regarding the Botanic Garden's proposed Meadow Terrace project; and,
2. Rescind all actions taken by Historic Landmarks Advisory Commission at its December 10, 2007 meeting concerning the Botanic Garden's modified Meadow Terrace project (Item 4 on the December 10, 2007 agenda) due to a procedural error of the Historic Landmarks Advisory Commission and dismiss the appeal filed on December 20, 2007; and,
3. Direct the Historic Landmarks Advisory Commission and the Botanic Garden to propose revisions to Resolution 2003-059 to improve its clarity.

Summary Text:

The Santa Barbara Botanic Garden (Garden) operates 65 acres under its existing Conditional Use Permit (72-CP-116) in the Mission Canyon area of Santa Barbara. Approximately 23 acres, (encompassing three parcels) of the Garden are designated as a County Historic Landmark (Landmark #24) and governed by Resolution 2003-059, approved by the Board of Supervisors on February 25, 2003 (see Attachment B to the Board letter). As such, the Historic Landmarks Advisory Commission (HLAC) has jurisdiction over certain elements and activities at the Garden. The proposed Meadow Terrace project site that is the subject of this appeal is located within one of the three parcels included within the Landmark Resolution boundaries. On September 10, 2007, the HLAC, in reviewing the Garden's proposed Meadow Terrace project, voted to 1) find that the project may affect a historic resource, was not exempt from, and was subject to review and approval by the HLAC, as provided for under the authority given to HLAC by the Landmark Resolution, and 2) find that the project substantially deviated from the historic landscape design concept and historic use of the Garden as set forth in the Landmark Resolution and was therefore impermissible. In support of the second action, the HLAC made the following findings:

1. The proposed project involves the conversion of natural landscaped area to paved landscaped area which would be a substantial deviation from the historic landscape design concept;
2. The overall size of the project (4,200 square feet) would result in a substantial deviation from the historic landscape design concept;
3. The proposed project involves an intensification of use of the area, and therefore, would be a substantial deviation from the historic use of the Meadow;
4. The proposed project would adversely affect a defining feature of the Garden and would not meet the Secretary of Interior's Standards and Guidelines for the Treatment of Cultural Landscapes; and
5. The piecemeal introduction of elements threatens the historical character of the Garden.

Section 2(B)(i) of the Landmark Resolution states that "no changes to the [historic landmark] shall be made which substantially deviate from the foregoing historic landscape design concept or historic use of the landmark property unless express consent in writing is first had and obtained from the Historic Landmarks Advisory Commission..." Section 2(B)(ii) of the Landmark Resolution further states that the "change, maintenance, repair, relocation, replacement, or updating of plant communities, temporary or permanent displays, exhibits, trails, public areas, interpretive materials or existing structures...shall not require review and approval by the Commission. Any construction or installation of new structures, features or facilities on the landmark property shall not substantially deviate from, or substantially conflict with, the historic landscape design concept or historic use as set forth above, and shall not cause the landmark property to substantially deviate from, or substantially conflict with, the eight criteria from County Code Chapter 18A-3...."

At the September 10th hearing, the HLAC also voted to create an ad-hoc subcommittee to be available to work with the Garden, at their request, to modify the project or change its location to make it consistent with the Landmark Resolution. At its hearing on October 8, 2007, the Garden expressed a willingness to meet with a HLAC subcommittee prior to the Board hearing to try to develop a compromise.

Subsequent to meetings of the HLAC ad hoc subcommittee and the Garden, the Garden submitted a modified Meadow Terrace project proposal to HLAC. HLAC held a special meeting on November 15, 2007 to consider this modified proposal. Five Commissioners attended the special meeting. Due to time constraints, the meeting was continued by motion to the HLAC regular meeting of December 10, 2007.

The December 10, 2007 agenda listed the Meadow Terrace project as a continued item from November 15, 2007 and stated that the Botanic Garden would present additional information at the December 10th meeting. On December 10, 2007, nine Commissioners were present, including the five who were present at the November 15, 2007 special meeting.

HLAC's bylaws require that a member be present for the duration of an agenda item discussion to vote on such item. A Commissioner joining a meeting late must abstain from voting on the item being discussed.

In order to allow the four Commissioners present on December 10, 2007 who were not present on November 15, 2007 to participate in the decision on the modified Meadow Terrace project, HLAC passed a motion to adjourn the hearing continued from November 15, 2007. HLAC then proceeded to consider the modified Meadow Terrace project as a new item, allowing the Garden to make its presentation, hearing public comment, and with all nine Commissioners participating in the discussion and decision on the item. The modified proposal was disapproved by a 5 to 4 vote.

Consideration of the First Appeal:

The HLAC is an independent body appointed by the Board of Supervisors. Planning and Development (P&D) provides administrative support to the HLAC and is therefore bringing this appeal forward to the Board on HLAC's behalf. Given its administrative support function, P&D is not making a recommendation as to what action the Board should make in this case.

Section 18A-7 of the County Code provides that when acting on an appeal of actions taken by the HLAC the Board of Supervisors may confirm, modify or set aside any or all of those actions by the HLAC.

County Counsel recommends that the Board of Supervisors' consideration of this appeal include a review of Paragraph 2(B)(i) and 2(B)(ii) at Pages 3 and 4 of Resolution Number 2003-059, which is included as Attachment B. Paragraph 2(B)(i) discusses the "historic landscape design concept" and "historic use" of the Santa Barbara Botanic Garden. Paragraph 2(B)(ii) contains two sentences:

- The first sentence describes actions and items that "shall not require review and approval by the Commission."
- The second sentence discusses "construction or installation of new structures, features or facilities on the landmark property."

Although this recommendation is not binding on the Board of Supervisors, County Counsel recommends that your Board's consideration of this appeal begin with determining whether or not the Meadow Terrace project is exempt from review and approval by the HLAC through operation of the first sentence of Paragraph 2(B)(ii) at Page 4 of Resolution Number 2003-059.

County Counsel also notes that the finding by the HLAC "that the proposed project may affect the historic resources protected under the Resolution" appears to be based on language from Section VII-1 of the Bylaws for Santa Barbara County HLAC, which were adopted by the Board of Supervisors in December 2004 and are included as Attachment C. (Underlining added.) Section VII-1 states,

“If a condition of a resolution of the Board of Supervisors or of the Commission requires Commission review and approval prior to the commencement of a project that may affect a designated County Landmark, then the owner of the Landmark, or his/her designated representative, shall apply to the Commission for its consideration of the proposed project.” (Underlining added.)

Again, if your Board’s consideration of this appeal begins with determining whether or not the Meadow Terrace project is exempt from review and approval by the HLAC through operation of the first sentence of Paragraph 2(B)(ii) of Resolution Number 2003-059, then you will also be addressing the “requires Commission review and approval” language of Section VII-1 of the Bylaws.

Consideration of Second Appeal

Staff recommends that your Board rescind all action taken by HLAC at its December 10, 2007 regular meeting concerning the Botanic Garden’s modified Meadow Terrace project proposal (Item 4 on HLAC’s December 10, 2007 agenda) due to a procedural error and dismiss the appeal. This recommendation is made based upon the following:

Appellant alleges that HLAC’s adjournment on December 10, 2007 of its November 15, 2007 special meeting violated the Brown Act because HLAC’s “adjournment” effectively terminated the November 15, 2007 meeting and such termination is not authorized under the Brown Act.

Appellant’s contention that HLAC’s effort to terminate the special meeting through adjournment in order to allow all Commissioners present to participate in the decision was procedurally flawed has merit. Government Code section 54955 provides for adjournment by a legislative body of a local agency when less than a quorum is present for a meeting or when all members are absent from a meeting. This was not the case on December 10, 2007.

Due to the procedural flaw in the proceedings on December 10, 2007, the Board should rescind all action taken by HLAC at the December 10, 2007 regular meeting concerning the Botanic Garden’s modified Meadow Terrace project proposal, thereby rendering the second appeal moot.

Although appellant has not, as required by the Brown Act, made a demand of HLAC to cure or correct the action appellant claims violated the Act, rescission of HLAC’s action, as recommended here, is consistent with the Brown Act’s provisions for addressing such a challenge.

Background:

In 2003, a portion of the Botanic Garden was designated a County Historic Landmark by the Board of Supervisors upon recommendation by the HLAC. The Resolution identified seven specific elements of the Garden deserving landmark status. Those seven features include: 1) Mission Dam and Aqueduct, 2) “Indian Steps”, 3) Entry Steps, 4) Information Kiosk, 5) Original Library, 6) Campbell Bridge, and 7) Caretaker’s Cottage. The Meadow is not specifically listed, but is a landscape design feature. The landmark requires the protection of these historic elements as well as the “historic landscape design concept” and “historic use” of the Garden, but also exempts many activities at the Garden from HLAC review. The Botanic Garden has questioned the authority of the HLAC per the Resolution since 2003, most notably in association with paving the garden trails and now with the present case. This letter’s third recommendation to your Board, to direct or encourage the parties to revise the resolution to improve its clarity, is based on the fact of these continued questions and to allow for more efficient resolution of jurisdiction issues.

The Meadow Terrace project entails construction of a three-tiered exhibit plaza area with three low level rock retaining walls defining the terrace levels. The total project area is approximately 4,025 square feet, with planting beds along the edge of each retaining wall and Oklahoma flagstones making up the terraces. A total of approximately 240 linear feet of retaining walls is proposed and would have a natural Santa Barbara sandstone facing. The maximum exposed height of the retaining walls is 18 inches. A total of 36 path lights and 11 electrical outlets are proposed. The project involves less than 50 cubic yards of cut and/or fill. The existing path along the western edge of the Meadow would be moved up to nine feet east into the existing Meadow area. The Meadow Terrace would be used as both an exhibit space and area for hosting special events.

The Botanic Garden submitted their request for a Substantial Conformity Determination (SCD) to P&D for the Meadow Terrace project on July 10, 2007. Staff reviewed the request, including in the context of the landmark designation, and on July 18, 2007 approved the project based on an interpretation that the project was not one of the seven listed historic elements and the development activity fell within the exception authority of the Historic Landmark Resolution.

Upon receiving numerous complaints by both concerned neighbors and members of the HLAC, criticizing P&D for approving the project without vetting it through the HLAC and questioning the impact of the project on the Landmark designation and “historic landscape design concept,” P&D rescinded the SCD due to the realization of longstanding substantial public controversy associated with treatment of the Meadow area (per Section 3 of Appendix H of the County Land Use Development Code, Substantial Conformity Guidelines). In order to resolve the matter, P&D offered to take the proposed project to the Planning Commission for their consideration (per Section 6 of Appendix H), which the Garden initially desired. During this time, the project was brought before the HLAC at their August 13th hearing. After a site visit on August 22, 2007, the HLAC determined at its September 10th hearing that the project was in fact subject to HLAC review and approval and found the project to be impermissible under the terms of the Landmark Resolution. The Garden then sought appeal of the HLAC decision by the Board. The project had been scheduled for the September 26, 2007 Planning Commission agenda to resolve the SCD, but the applicant withdrew the application prior to the hearing in order to have this appeal resolved first. The SCD issue is not presently before the Board, but is only described for context. Regardless of the Board’s action on the appeal, the Meadow Terrace project would still require issuance of a SCD or other permits through P&D.

Performance Measure:

N/A

Fiscal and Facilities Impacts:

There is no individual fee established for processing an appeal of a decision by the Historic Landmarks Advisory Commission. Estimated staff time to process this appeal is approximately 15 hours to prepare the Board letter, communicate with the applicant and interested residents, and attend the Board hearing.

Staffing Impacts:

Legal Positions:
N/A

FTEs:
N/A

Special Instructions:

The Clerk of the Board shall public a legal notice at least 10 days prior to the hearing on November 6, 2007. The notice shall appear in the Santa Barbara News Press. The Clerk of the Board shall fulfill noticing requirements. Mailing labels for the mailed notice are attached. The Clerk of the Board shall send a notice via certified mail to the Santa Barbara Botanic Garden, attention Ed Schneider. A minute order of the hearing and copy of the notice and proof of publication shall be returned to Planning and Development, attention David Villalobos.

Attachments:

- Attachment A: HLAC Approved Minutes, September 10, 2007
- Attachment B: HLAC Approved Minutes, November 15, 2007
- Attachment C: HLAC Approved Minutes, December 10, 2007
- Attachment D: Historic Landmark Resolution, 2003-059
- Attachment E: HLAC Bylaws
- Attachment F: Appeal Letter from Botanic Garden, September 20, 2007
- Attachment G: Appeal Letter from Botanic Garden, December 20, 2007

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