Demystifying Land Use and Planning, and Why Should I Care?

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Police Powers

All Land Use is based on a City’s Police Power

“It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well balanced as well as carefully patrolled.”

- U.S. Supreme Court Justice William O. Douglas
The Law

Remember the difference between:

- Legislative – making law
- Adjudicatory – interpreting the law
- Administrative – implementing the law

Making the Law

*The Legislative Process*

Wide discretion on how to craft the law:

- Broad Powers that allow a City to make and enforce laws to protect and enhance residents’ quality of life
- Subject to only to constitutional limits, Federal and State preemption
- Powerful and flexible
Legislative Documents

Transformational Land Use Begins as Legislation

- General Plan – State required, guides all development at the policy level, must be horizontally and vertically consistent, land use “constitution” VISION DOCUMENT
- Horizontally Consistent – Consistency between elements or portions of the general plan
- Vertically Consistent – Consistency between goals and policies within an element of the General Plan and between General Plan and Zoning

Legislative Documents

The Legislative Process

- Zoning Ordinance
  State required, contains detailed development standards, must be consistent with General Plan, IMPLEMENTATION DOCUMENT
- Form Based Code
  Type of land use Regulation (replacing a Zoning Ordinance) that focuses on building location and form and less on separation of uses, IMPLEMENTATION DOCUMENT
Legislative Documents

The Legislative Process

- **Specific Plan**
  Defined by but not required by State law, usually addresses an neighborhood rather than the entire community, can include features of a General Plan, a zoning ordinance, design guidelines, infrastructure standards and financing, IMPLEMENTATION DOCUMENT

- **Design Standards and/or Guidelines**
  Additional implementation documents that define in detail the aesthetics of improvements, IMPLEMENTATION DOCUMENT

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CEQA

California Environmental Quality Act

- Requires analysis of potential environmental impacts.
- Requires impacts to be mitigated or Council to make findings as to why those mitigations are unfeasible or inappropriate (Overriding Considerations).
- **DISCLOSURE DOCUMENT**
CEQA
California Environmental Quality Act

- Three Levels of Disclosure:
  - Environmental Impact Report – Most complete, process intensive, costly and time consuming
  - (Mitigated) Negative Declaration – The project as designed or as conditioned will not have negative environmental impacts
  - Exemptions – Generally defined by statute

Exactions, Nexus and Rough Proportionality

- Exactions
  An amount of land, public improvements and/or money (fees) required by a city in return for approval to develop land

- Essential Nexus
  The fix must be directly related to the problem

- Rough Proportionality
  The public benefit from the exaction must be roughly proportional to the burden imposed on the public by allowing the proposed land use.
Development Agreements

- Negotiated contract that binds both developer and City to specific actions related to a project
- For the City, it generally limits future discretion for a period of time in exchange for non-nexus items
- For the developer, it generally requires items that could not be required otherwise in exchange for development regulation certainty

Quiz

What document guides all development at the policy level?

1. A Zoning Ordinance
2. A Conditional Use Permit
3. CEQA
4. A General Plan
Quiz

*Rough proportionality:*

1. The public benefit from an exaction must be about the same as the burden imposed on the public by allowing the proposed land use
2. Guides all development at the policy level
3. Requires analysis of potential environmental impacts
4. Negotiated contract that binds both developer and City to specific actions related to a project.
Project Area

Existing Southeast Long Beach
The Challenges Going In

- Wetlands preservationists pitted against development interests
- Some people preferred no change
- Repairing trust and credibility with the Public from prior efforts
- Unending General Plan Update Created Unease
  - 15 years in the making
  - Community upset about changes
- Lawsuit guaranteed
- Requires California Coastal Commission approval

Sounds fun, doesn’t it?

Maybe this time Long Beach will get it right when it comes to figuring out what to do with 1,500 acres of prime land nestled in the southeast corner of the city.

*If history is any predictor, it’s not going to be easy.*

~ Long Beach Gazette, 2013
Why prepare a Specific Plan?

- Buildings reaching end of usable life
- Property values changing
- Outdated/infeasible zoning
- Properties changing hands
- Desire to create customized standards and plans for the area; do something special
- $320M development proposal at 2nd+PCH denied by City Council
- Developer of Hollywood and Highland
- Council wanted a comprehensive plan for area vs. approving project by project

Enhance Wetlands & Coastal Resources
Bird-Safe Treatments

Window Treatment  Materials  Building Design

Façade Treatment  Landscaping  Shielded Lighting

Placemaking: Gathering Spaces
Building Form & Architecture

- Human-scale architecture that activates the ground floor & street
- Variations in architecture & frontages

Open Space Amenities

- Various open space amenities showcasing social interaction and community engagement.
Streetscapes

Building Orientation

WATERFRONT PROMENADE
BEFORE
Building Orientation

Increased Connectivity
Feasibility Analysis

**Scenario 1:** Shop Only 1 story

**Scenario 2:** Shop + Live 1-3 stories

**Scenario 3:** Shop + Live + Stay 1-5 stories

**Scenario 4:** Shop + Live + Stay 5-7 stories

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### Feasibility Analysis

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SEASP: Land Use Plan

What the SP did for Southeast LB

- Comprehensive strategy (connectivity, placemaking, natural resources, new uses)
- Increase in residential units, coastal habitat recreation areas
- Emphasis on walkability, complete streets, new enhancements for bikes and pedestrians
  - 29% increase in pedestrian connections (6.9 miles)
  - 79% increase in bicycle lane miles
- New requirements for public space enhancements and community amenities
- New architectural, placemaking and design standards
- New transportation requirements (rideshare, employer provides transit passes, shared parking)
The Plan’s Influence

- Revised CalTrans Bridge Improvement Designs
- Prompted creation of a Wetlands Mitigation Bank
  - removes aging oil wells
  - reduces oil production footprint from 187 acres to 10 acres
  - makes former oil field available for wetlands restoration and public access uses, and future transfer of ownership to the Wetlands Authority
- Prompted reinvestment and preparation of future redevelopment concepts for other properties in the area

Start at the End
What do you want?

- Without a clear goal you will never know if you have succeeded
- Knowing what you want is critical to making adjustments
  - What is “essential” and what is “nice to have” depends on your goal
Discussion

Adjudicatory Processes

Interpreting the Rules

Discretion is limited

- How do the rules apply and what do they mean as written
  - Not - What do I wish was written
  - Not - Is it a good rule

- Must use specific facts of the specific situation
Adjudicatory Processes  
**Entitlements**

- **Site Plan Approval**
  - Process to review project documents and drawings to ensure that a project conforms to all zoning standards
- **Conditional Use Permit**
  - Required for uses typically having unusual site development features or operating characteristics

Adjudicatory Processes  
**Subdivision Maps**

- Used to Divide Property
- Completed in two steps
  - Tentative Map – granted with conditions to build public infrastructure to serve the new lots
  - Final Map – approved once public improvements are built or bonded for
Garaventa Hills
Residential Subdivision for 44 Units

Vesting Tentative Tract Map 8094 (Subdivision 13-001)
Site Plan Design Review (SPDR) 13-005

April 22, 2019

General Plan/Zoning
Project History

Year 2011-2012: Initial Proposal and Preparation of Draft EIR
- 76 units
- 2 lane vehicle bridge (secondary access)
- General Plan Amendment to change the land use designation from 1.5 units per acre to 3 dwelling units per acre (legislative act)

Year 2013 Minor Revisions
- Removed units from one of the knolls
- Kept all other project features
- Revised project after significant negative testimony on informal pre-application
Project History

Year 2014: Planning Commission and Preparation of Final EIR
- Still included Zoning Amendments to reduce setbacks (legislative act)
- Recommendation for denial: extensive grading, aesthetics, and concern regarding compatibility with the adjacent Garaventa Preserve
- 47 units
- No vehicle bridge

Year 2015: Planning Commission
- Recommendation to approve: addressed previous concerns
- 47 units
- No vehicle bridge

Year 2015: City Council
- Resolution 2015-127 directing project be returned to Planning Commission after incorporation of Council directives

2014 Development Plan

2015 Development Plan
2015 City Council Direction
Revise project to be more subordinate to natural landforms, reduce overall grading, and provide a secondary emergency vehicle access and pedestrian access. Specific modifications may include:

- Reduce the number of units:
  Fewer units (47 to 44) and fewer structures (47 to 41)

- Reduce the size of the units:
  Reduced average size of units from 2,530 - 3,530 square feet to 2,390 - 3,150 square feet

- Reduce the height of the units:
  Reduced average height of units by lowering the building pad elevations

- Narrow the street widths:
  Standard 60 foot wide ROW to 36 to 50 foot wide ROW

- Reduce the wall heights:
  Retaining wall heights reduced from 7 ft.

- Provide an emergency vehicle access at Hawk Street.
  EVA/Ped/Bike bridge

2018 Project 2018 Site Plan

- Consistent with General Plan
- Consistent with all Zoning regulations
- Responded to all previous City Council direction
- Eliminated all Significant Environmental Impacts
- Adjudicatory Action
2018 City Council Action

1. Adopted a resolution certifying the Environmental Impact Report and, after approval of the application, instruct staff to file the Notice of Determination with the Alameda County Clerk;

2. Adopted a resolution approving Vesting Tentative Tract Map 8094 (Subdivision 13-001) and Site Plan Design Review (SPDR) 13-005.

Questions?
Administrative Process  

*Applying the Rules*

- Application of a “black and white” standard
  - Almost no discretion whether to conform
  - Very limited discretion on how to conform
- Examples
  - Setbacks
  - Building Codes

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Top Ten Land Use Tips  

*Land Use Planning*

1. If your community does not clearly define its future, the market will determine the future for you.
2. Remember the difference between:
   - Legislative – making law
   - Adjudicatory – interpreting the law
   - Administrative – implementing the law
3. Great land use regulations create value.
4. Poor regulations destroy value.
5. Value is what taxes are based on.
Top Ten Land Use Tips

Land Use Planning

6. Reducing risk will free up capital for community benefits or better design.
7. Everybody has a boss.
8. Everything is a Public Private partnership.
9. While you need to say “no” occasionally – it is better to say “yes, if you do it like this.”
10. Every City has competition and money incentives are only a small factor in land use decisions.

Bonus Tips

1. The best plans are built on community consensus.
2. If you don’t understand it, neither will the public.
3. Never allow your staff to lead discussions about land use with jargon.
Bonus Tips

4. The “Bear vs. the Boulder” challenge of public meetings – fear is a real thing.

5. Nobody ever went on vacation to a place whose major attraction was ample parking.

6. Always show pictures (rather than statistics) and make sure your regulations will require projects to look like the pictures.

7. Dream really big – get buy-in – and be excited about the possibilities - the impossible just takes a little longer.

Questions?