

August 24, 2004

**Honorable Mayor and Members of the
Hermosa Beach City Council**

**Regular Meeting of
September 14, 2004**

SUBJECT: REQUEST BY PROPERTY OWNERS FOR AN INTERPRETATION REGARDING A
PARTIAL O-S OPEN SPACE ZONING DESIGNATION FOR RESIDENTIAL PROPERTIES
LOCATED AT 517 AND 521-521 ½ LOMA DRIVE

Recommendation:

That the City Council direct staff as deemed appropriate.

Background:

The subject property owners have submitted the attached correspondence requesting that the City Council provide an interpretation that would relieve them of the open space zoning designation shown on the City's zoning maps on the rear of their properties. The issue is whether the rear portions of these privately owned parcels are subject to two City ballot measures, approved by the electorate in 1984 and 1986, that prohibit removal of the open space designation without a vote of the people.

The two parcels in question are Lot 5 and Lot 4 of Block K, Tract 1686 in the County Assessors Maps. These parcels are located adjacent to South Park, and the rear portion of the parcels (the portions in question) were at one time owned by the School District and used for recreational purposes in connection with the school. The current depth of the residential zoning varies between the parcels and the residential use has never encroached on the rear of the lots. The rear portion of the lots are designated open space, and hence, cannot be occupied with structures. The owners of 517 Loma have demolished the residence on the front half, and desire to construct a new residence on the entire lot. They cannot do so without a vote of the people if the rear half is subject to the 1984/1986 initiatives.

Staff conducted extensive research on the zone boundaries and met several times with the owners and their representative and ultimately referred the matter to the City Attorney. The City Attorney met with the lawyer for the property owners to discuss the options relating to the current zoning. The matter has been submitted to the City Council for interpretation since the City Attorney and staff were unable conclusively to determine whether the 1984/1986 initiatives apply to the property. The City Attorney has determined that, aside from a City Council interpretation, the other options available to resolve the matter include placing a measure on the ballot to eliminate the open space designation, or a lawsuit by the property owners seeking declaratory relief in which the parties could, if they chose, agree to a stipulated judgment; neither alternative is palatable to the property owners.

Proposition N and Proposition O were approved by voter initiative in 1984 and 1986 respectively. These initiatives provided that certain existing open space designations shall not be modified, amended or repealed except by vote of the people. However, evidence of precisely what properties were intended to be included in the rule established by the initiatives is incomplete and inconclusive. The petitions that were circulated in 1984 and 1986 were not retained by the City Clerk. The ordinance placed on the ballot included an Exhibit A, which likely was a map of the affected properties. The City Clerk has possession of such a map, but it is not denominated "Exhibit A." In all other respects, the map appears to correspond to the initiative ordinance and to constitute the Exhibit. The map contains what appears to be the configuration of Lots 5 and 4, and importantly, shows them designated as open space and subject to the ballot measure; however, the scale is so small, it is

difficult to know precisely how much land is being designated. Furthermore, there was no survey or legal description prepared for the affected properties which would have clarified the zone boundary. Copies of the documents pertaining to the initiatives provided by the City Clerk also include a list of properties with tabulated acreage for designation as open space. This listing appears to have been a part of the initiative measure, however, it is not clear what role the list played in the ultimate approval of the measures by the electorate.

The reason that the rear portions of these lots may have been included as open space in the initiatives is that at the time, those portions were owned by the School District and appear to have been used as a playground in connection with the adjoining South School site. Early photos of the lots show a playground area associated with the school. The chronology below explains the history of ownership of these properties and how it came to be that they ended up in private hands after approval of Measures N and O.

This situation came to light with a recent proposal to redevelop the property at 517 Loma Drive. In reviewing the proposed development, staff noted the open space designation and indicated that the rear 51.5 feet of the property can only be developed with uses permitted in the O-S Zone.¹ 521- 521 ½ Loma Drive is similarly affected with an open space designation 28 feet in depth.

The development standards in the zone preclude the owners from fully developing their lot with a single family dwelling, although the owners may construct a single family dwelling on the portion of the lot currently designated R-2.² The owners are instead seeking an interpretation of the initiative and ultimately of the zone boundary on the City's Zoning Map and General Plan Map to fully develop their property.

The question presented is whether the electorate intended to include the rear portions of the subject properties within the proscription of Measures N and O.

Chronology Relating Open Space Designation

1. Lot 5 and Lot 4, Block K, Tract 1686 are established sometime in the 1920's as privately owned lots containing single family dwellings located in the front portion of the properties.
2. In the 1950's the owner of 517 Loma (Lot 5, Block K, Tract 1686) conveyed the back (westerly) half of the property to the school district as determined from a note in the Building Department permit address file and old records and assessors parcel maps that refer to 517 Loma as the easterly 51.5 feet of lot 5, Block K, Tract 1686.
3. A review of the City's zoning maps prior to the initiatives show changes to the residential zoning for the entire lot depth for Lots 5 and 4. In the 1940's the properties were zoned R-2 (two family residence). In the late 1970's the properties are classified "South School" for the development of a school site. In the early 1980's the properties are classified South School and O-S (open space). South of the properties the land is "unzoned" or "unclassified" permitting development of single family dwellings.³
4. In the months prior to the 1986 initiative the properties continue to show an OS designation in staff reports regarding citywide zoning measures being considered by the City Council and Commission.

The current General Plan and Zoning Map for the lots are based upon the boundaries established in the 1980's.

5. The back portions of the lots are designated in the General Plan and Zoning Maps as Open Space (from late 1970's maps to date), apparently to reflect the use of the back half as part of the South School site. There are no city records of formal action to designate these specific properties open space. It is assumed that an action occurred to warrant inclusion of the open space designation of these properties on the City's official maps.

6. In 1984 an initiative called Measure N was enacted (and later amended in 1986 by Measure O) providing that certain existing open space designations in the General Plan, referred to in the initiative, could not be removed without a vote of the people. The initiative listed the open space areas by name and acreages in a table for each identified open space area, and included an Exhibit A, which appears by the language of the ordinance to have been a map.

7. The City purchased 4.48 acres consisting of the South School site from the School District for use as a park in 1992; however, the City did not purchase the rear portions of the lots in question and the School District had no use for them. In January 1991 the District conveyed the back half of Lot 5 (westerly 51.5 feet) back to the private property owner at the time, Martin Cochran. Lot 4 was conveyed to the current owner, Francis Parker, in 1990.

8. In 1993, a Mrs. Fuhs purchased the entire Lot 5 from Cochran, and in 2003, the current owner purchased the entire Lot 5 from Fuhs. The current owner has provided a title report verifying this purchase, which also includes the above information regarding the school district conveyance.

9. In 1995, the City Council vacated Sunset Drive (an alley located at the rear of this property, and at the westerly edge of South Park). The vacated portion added another 10-feet to these properties as well as other properties located along Monterey Boulevard. The adjacent vacated alley is also designated open space on the General Plan map. The intent of this vacation was to convey ownership of the alley to the adjacent property owners. The vacation did not include a request for a zone change or general plan amendment.

11. In 1995, the City improved South Park

Analysis:

The property owner's land surveyor, Denn Engineering, has submitted a record survey indicating the total complement of property comprising South Park to be 4.48 acres. (Attachment No. 4) If the alley areas abutting the park and the subject lots are subtracted from the total park acreage, the net area corresponds closely to the total acreage shown in the list of open space properties prepared at the time the initiatives (Propositions N and O) were adopted, which was 4.43 acres. (Attachment No. 5). The owner's representative maintains that this net acreage (which excludes the subject parcels) demonstrates that the properties should never have been included in the designated open space and that the City's open space zoning boundaries for South Park which were established under the 1984 and 1986 initiatives are incorrect. The owners maintain that the land that was the subject of the initiative was never properly surveyed and that a lack of precision during the initiative process led to including their property with the land designated for open space.

While not conclusive for the reasons discussed above, both the map associated with the initiatives and the City's official maps from that era suggest that the subject properties were designated open space both before and at the time Measures N and O were adopted, while these properties were under School District ownership. That would mean that they are governed by the initiatives, and that the open space designation cannot be removed without a vote of the people. Subsequent events (sale of the site to the City excluding these parcels, and their subsequent sale to the private owners) make this result arguably unintended. The parcels are now in private ownership and have no use to the public as open space. Staff does not advocate retaining these parcels as open space. Placement of a measure on the ballot to correct this situation is the obvious remedy, and the only remedy that is completely free of legal doubt. According to the owners, the delay before the next municipal election (and the cost of a special election) presents an untenable hardship to them. Based on the documentary evidence, the City Attorney believes that neither he nor City staff has the authority to determine that the parcels are not governed by Measures N and O. For that reason, the property owners have requested that this matter be presented to the City Council for consideration.

Sol Blumenfeld, Director
Community Development

Concur:

Steve Burrell,
City Manager

Notes:

1. The permitted uses include: public and private parks, educational buildings and playgrounds, public and private recreation centers, public utility structures, trails for hiking and biking, public government buildings, historical monuments, public malls and plazas, land (public and private) where natural topography seismic hazards, and flooding condition preclude development, scenic areas, ocean and beach areas, transit uses which accommodate railroad tracks, signals and other operating devices, and movement of rolling stock and freight passengers, landscaping and appurtenances, wireless communication facilities.
2. Staff reviewed the option of developing the rear portion of the lot with uses allowed in the open space zone which may include required parking, recreational buildings, landscaping, a pool or spa and constructing a home on the front half of the lot. A home of approximately 2,200 sq. ft. may be constructed if the development plan is organized with required parking and open space located on the rear of the lot. Further, it is possible seek approval from the Planning Commission for a variance from lot coverage, front yard and open space restrictions due to the unique conditions of the property to further increase developable area on the lot.
3. Pursuant to Section 17.06.060 of the Zone Code. Any property which, for any reason is not designated on the zoning map as being classified in any of the zones established hereby, or any property annexed to or consolidated with the city subsequent to the effective date of the ordinance codified in this chapter shall be deemed to be classified as R-1 zone until the same shall have been otherwise classified in the manner set forth in Chapter 17.66.

Attachments:

1. Correspondence
2. 1984 and 1986 Open Space Initiatives
3. Zoning and General Plan Maps
4. Record Survey
5. Tabulation of Open Space Designated Properties

F:b95/cd/Cmemo517Loma