

Grand Jury Submission Planning Meeting 1/31/24

Invitees/Attendees

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Grand Jury

Committee Website

<https://sites.google.com/view/cpc-subcommittee-grand-juries/grand-jury-request?authuser=2>

Timeline & Strategy

January - April working sessions on assembling the submission package.

May - June edits and approval of the CPC.

July 2024 submission for the 2024/2025 Grand Jury cycle.

- Single package submission. Details for getting the panel started are good.
- Focus on actions that are illegal or improper.

Summary of Last Meeting

- Grand Jury looks at compliance with policy and law
- Copyright used as a shield against viewing building plans, yet citizens are relied on for code compliance.
- CPG can request documents when a hearing is in the works. Copyright is not a reason to hide
- The Planning Department should be the primary target since DSD was investigated recently.
- Ministerial processes are city council policy. Planning and DSD use of exceptions to use process 1 (ministerial) will need evidence.
- Grants are also driving ministerial process use. (Low income housing component for tax benefits).
- Keep an eye on this: Equity forward program is designed to engage the community. In an in depth program, how to reconcile the program with the complaint submission? CPG should be the primary voice of the community to provide solidarity. There is a survey on the EF website but also a worksheet for the CPG. Planning is gathering info from CPG at the start of the year. [Inclusive Public Engagement Guide Worksheet](#) (docx)

New Information

Email from Shain Haug prior to meeting (emphasis by Paul):

The Grand Jury investigates, evaluates, and reports. It has no power of enforcement but its findings and recommendations have great power in the political sphere. The reports are the hammers with which citizens pound on the doors of their representatives (our torches and pitchforks).

I propose we treat the disputes with the products of the Planning Department and the Development Services Department (DSD), as defined in the “Topics,” as arising from the lack of public input and oversight following the failure or refusal of DSD to place developments before the public by way on notice to Community Planning Groups (CPG). I am sure that this is an issue with all city departments but the Community Planning Council (CPC) is particularly interested in input and oversight, or the lack thereof, by the CPGs in land development projects. The failure of the city to allow the CPGs to represent their communities should be the clearly stated gravamen, the exclusive focus, of the complaint to the Grand Jury. **I suggest that the following might be the statement of issue:**

“Land use and development decisions are made by the San Diego Planning Department and the San Diego Development Services Department without adequate involvement by the Community Planning Groups as representatives of the communities they represent.”

The complaint would **then continue with specific examples of the alleged failures.** The following would be my first:

“**Council Policy 600-24** provides “...A recognized CPG [Community Planning Group] may make advisory recommendations to the City and other governmental agencies on land use matters within the CPG’s planning area boundaries, including the preparation of, adoption of, implementation of, or amendment to, the General Plan or a land use plan when a plan relates to its boundaries. Recognized CPGs may also advise on associated matters as described in this Policy, and on other land use matters as requested by the City or other governmental agencies...”

“The **Development Services Department (DSD)** avoids the opportunity for CPGs to make advisory recommendations by working with developers to use a plethora of exceptions to classify projects as ‘ministerial’ and to thereby deny the CPG review and examination before permits are issued.

“Every real estate development has some effect on the neighborhood. For Good or Bad, and regardless of the technical characterization as “ministerial,” **the community should have the opportunity to influence those projects that have an effect on the character of their neighborhoods.** That influence begins with early notice of the projects to the CPGs and a chance to be heard”

The complaint could proceed with further examples, as listed in the Topics, with explanation how the failure of the opportunity for and **denial of community input resulted in projects that are unfavorable to the neighborhood.**

The complaint would include the names, titles (if applicable), and contact information for complainants and city officials along with members of the public most likely to be provide accurate information on the topic.

This request for Grand Jury action will be most effective if **filed by the CPC**. If the CPC is unwilling to do so any individual can. If CPC cannot I am willing to, but only if assured that folks with greater technical knowledge will back me up.

Topics for Categorization and Prioritization

The following was reviewed and color coded to categorize the items.

BLACK = directly related to core issue of city not engaging communities

BLUE = supporting evidence for core narrative

PURPLE = Out of scope

Planning Department

1. Planning is not entitled to perform legal analyses on behalf of the City addressing the case law nexus requirements of the US Supreme Court's several decisions on the matter.
 - a. More info needed - who submitted.
 - b. Did the planning dept do an analysis? Is there evidence of this?**
2. Lack of transparency on CIP prioritization and DIF/CIP planning through the PFFP/IFS to CIP process.
 - a. Public records act request for score sheet - should be published/public.
3. **DIF collection and usage compliance with the California Mitigation Fee Act is questionable and a lawsuit was filed challenging the "Build Better SD" program.**
 - a. Tom can supply more info as needed**
 - b. If there is a lawsuit, the grand jury will not touch it.**
4. The Parks Master Plan and Build Better SD were adopted without implementation plans.
 - a. Why is this an issue? There may be a legal requirement to have a plan. (doing badly)
 - b. Community involvement is needed to develop the plan.
5. There is a lack of implementation planning for how DIFs will be allocated and spent.
 - a. Implementation is important (doing badly/illegal). Could lead to developer lawsuits.
 - b. How is disbursement handled? Is there community input?
 - c. Will the people designing the new DIF collection scheme talk to the communities?
 - d. Navajo wants to put a library on the CIP and it is not known how to elevate from the facilities financing plan to the community. Long term funding is approved.

- e. Land has been purchased at San Carlos.
- f. The Nexus Studies are a one-time report and the city has no requirement to refer to a previous or new nexus determination when spending DIF money.
- 6. The balance in the current DIF funds is listed at \$222 million while a Grand Jury report shows \$511 million.
 - a. Sandy Johnson covered this. City promoted \$222M as the lock box amount.
 - b. Review spreadsheet.**
- 7. Broader issues
 - a. Allowances are not made for usage of public right of way for driveway parking when it would not interfere with pedestrian activity and would foster the use of electric vehicles.
 - b. There are two sources of water seepage in the 92129 community and the city will not provide the planning board the water reports.
 - c. LMAD - not part of planning but these maintain the medians and the city is requiring replacement of trees in the same location and not in general for the mad. They will not let donated money be used to improve the infrastructure of the community, and only want a vote to raise fees.
- 8. Lack of comprehensive plans for public facilities
 - a. Penasquitos Village Park: The city has not allowed for other funding sources to provide for this required park. They have not looked at solutions to reduce the expense of this park and make it more available for the community. Our local developer fees are now going to the general fund.
 - i. Lockbox DIF will not cover all of the needed public facilities for new projects.
- 9. Planning dept sometimes produces false and misleading information. To the planning commission and city council.
 - a. During HAP 2.0 - "Single Family zoning only allows one unit". Ignored ADU laws already in effect.
 - b. Mira Mesa Community Plan Update. Park & Rec Board was mis-quoted. PR approved with changes while planning stated it was approved.
 - c. Misdirection on 41 vs. 175 units.
 - d. Percent of affordable quoted at 40% for complete communities (verbal)
- 10. Park targets are missed with no intention of meeting standards.
 - a. What responses are provided to residents when greenspace is not delivered?

Development Services Department

DSD is the primary contact for CPG and is where the decision is made to make projects ministerial.

DSD could involve CPG in the processes.

DSD will not send out an inspector unless the developer calls for inspection or there is a complaint. Honor system. All exceptions on standard code should be inspected for compliance. Too much rule bending and lack of oversight.

1. Issues permits for small items and allows work on larger projects for flippers
 - b. Permit to install new windows results in a total remodel down to the slab. (4549 E Talmadge Drive.) See Code Compliance section below.
2. Extends permit expirations outside of municipal code requirements. Example: 7837 Lookout Drive Proj. No. 632589
 - c. Partial construction sites create a nuisance.
 - d. Is there a labor or material shortage? - Tom will ask around on this.
 - e. Is there a separation between residential/commercial, or small/large projects.
3. Permit approvals are held up on pending code compliance issues not related to the construction in progress.
 - f. Comprehensive coordination between departments is needed.
4. **Changes to the land development code generally do not apply within the Coastal Zone until they are certified by the Coastal Commission. The city does not maintain a Coastal version of the muni code. Instead, DSD, CPGs, and applicants have to rely on strikeout versions of each code section, and research which of the ordinances are approved by the Coastal Commission. This creates regular issues in our CPG review.**
 - a. Is the city ignoring the coastal zone code?
 - g. What is the ask?**
 - h. Some examples are:
 - i. PTS 695193, 5018 Narragansett. DSD reviewers signed off on an ADU exceeding FAR. CPG rejected the project based on this, and the applicant voluntarily waited until Coastal certified the amendment allowing ADUs to exceed FAR. Then they completed the CDP.
 - j. PTS 660431, 4684 Santa Cruz. ADU exceeding FAR. Applicant abided by FAR during CDP process, but later expanded the project during ministerial permit review. DSD approved the permit. A CPG member inquired with the DSD project manager why it was approved, they were non-responsive. About a year after construction was complete, Coastal finally certified the muni code change allowing this.
 - k. PTS 685135, 4753 Pescadero. DSD reviewers signed off on 2 ADUs on a lot in a RM-1-1 zone. This muni code change had not been certified by Coastal. The CPG committee recommended denial based on this and the applicant voluntarily changed the project to remove an ADU.
 - l. PTS 697315 - 4953 Coronado Ave. Muni code at the time required that 25% of FAR be set aside for parking in this zone (RM-2-4). City approved it anyway. This code section was later amended to allow 100% of FAR to be used for living areas, and certified by Coastal.
 - m. PTS 610368, 5018 Narragansett. Similar to above. 25% of FAR not set aside for parking. DSD approved it anyway.

- n. PTS 621447, 1776 Cable. Similar to above. 25% of FAR not set aside for parking. CPG recommended denial based on this. DSD approved it anyway.
 - o. PTS 689976, 4962 Saratoga. Similar to above. 25% of FAR not set aside for parking. DSD approved it anyway.
- 5. DSD regularly approves projects that encroach on view corridors.
 - p. Some communities have views marked out on the Community Plan but these only protect public views.
 - q. No guarantee for view unless spelled out in CCRs
 - r. Measure E changed Midway to be a carve out.
 - s. Are there examples?
- 6. Historic reviewers usually ignore the Ocean Beach Emerging Cottage District, which is the city's largest historic district, and should trigger automatic additional historic review of projects.
 - t. Historic review ignores "potential districts" and waiting period erodes the district.
 - u. Emerging historic areas need to be certified in a limited time.
 - i. OB
 - ii. Talmage
 - v. 600-24 allows comment on anything of interest but is not related specifically to CPG
 - w. At the September 28, 2023 hearing, the Historic Resources Board broke the rules of public deliberation.
 - x. *Need more info on rules regarding historic review and **whether community notice/input is required.***
- 7. Millennium PQ was a ministerial review and bypassed community input. This is larger than the scope approved for the site.
 - y. Need more info
- 8. Pacific Village PQ builder completed the project and the general overhead lights did not get connected for over a year because the city was understaffed. One person was hit by a car and died in this stretch.
 - z. Need more info
- 9. Developers pay for expedited service but the option is not gated so expedited service is not delivered in exchange for the fee paid.
 - aa. Work with developer
 - bb. No issue with expedited process by community per se, it is the community involvement. The 30 day accelerated process applies to building permit only, not the project.
- 10. Accelerated processes are not noticed to CPG in a timely manner.
 - a. CPG get blamed for delays
- 11. DSD writes and maintains enforceable details of municipal code in manuals which are not part of the legal process.
 - a. Internal practice guides may not be public and are not easily accessed.
 - b. City clerk website may have some of this information.
- 12. Dampening of the appeal process.
 - a. \$1000 filing fee

- b. Is the first one free?
 - c. Shain will follow up with OB on recent submission.
 - d. Appeal process has not been abused by CPG.
- 13. Planning used to attend planning group meetings
- 14. Projects that are out of compliance with land development code are still processed as ministerial using loop holes.
- 15. Most involvement is going to improve for both developer and community.
 - a. Riverwalk on border of LV and MV. LV negotiated changes.
 - b. Success story (include more if possible)
 - c. Proposed CUP for 7-Eleven - community opposition in LV. Planning group provided forum and filed appeal. Developer pulled application.

Code Compliance

- 1. Does not enforce STRO requirements for public posting.
- 2. Allows multiple entities to front for a single owner of multiple STRO, subverting the law.
- 3. Code enforcement applies penalties to out of compliance structures while best effort remediation is underway.
- 4. Projects have been opposed by La Jolla Community Planning Assn. for lack of compliance to SD Land Development Code or La Jolla community plan. Approved in spite of community input. CPG are advisory but the volume is of concern. Were any revised with community input (Dianne Kane)?
 - 416 Nautilus Street - Project No. 621791
 - 735 Nautilus Street - Project No. 693284
 - 1011 Muirlands Vista Way - Project No. 673921
 - 7595 Hillside Drive - Project No. 522708
 - 7615 Hillside Drive - Project No. 361774
 - 7930 Costebelle Way
 - 7940 Costebelle Way
 - 1030 Scarlati Place

Next Steps

- Paul will create a draft in Google Docs for all to edit.
- Next meeting date is Wednesday 2/21/24 @ 6pm
- Tom and Paul will review the spreadsheet of DIF lockbox balances.
 - Update 2/1 Data has been obtained and Paul will do analysis.
- Need to identify contact point for Grand Jury to interface with
 - David Moty (may be too busy)
 - Tom Mullany (may be too busy)
 - Paul Coogan (maybe)
 - Others?

