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# County of San Diego

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June 10, 1992

TO: Supervisor George F. Bailey, Chairman
Supervisor Brian P. Bilbray, Vice Chairman
Supervisor Susan Golding
Supervisor Leon L. Williams
Supervisor John MacDonald

FROM: David E. Janssen, Chief Administrative Officer

OFF-AGENDA CONSIDERATION: Amendment of Procedural Rules Relating To Land Use Hearings Where Board Fails To Take Action

In accordance with Government Code Section 54954.2 (b) and Board Policy A-72, your consent is requested for Off-Agenda consideration of the attached item. The facts supporting the need to take action at this time, which arose subsequent to the Agenda being posted, are that the Board will have on its agenda for June 10, 1992 the matter of reconsideration of the Sycamore Ridge Quarry applications for a specific plan and a major use permit; the amendments to procedural requirements proposed in the attached item are designed to rectify legal and procedural uncertainties related to cases such as this; and the need to make the proposed changes was discovered at such a time that the item could not be placed on the agenda.

SUMMARY: "Amend the Rules of Procedure of the Board of Supervisors and the San Diego County Administrative Code to clarify that, where the Board fails to obtain sufficient affirmative votes to carry a motion on a land use hearing matter under the Board's original jurisdiction, the Board <u>may</u> set the matter for reconsideration, and if it does not do so, the matter is deemed disapproved."

RECOMMENDATION FOR OFF-AGENDA CONSIDERATION: Find this item conforms with provisions of the California Government Code Section 54954.2 (b), authorizing a legislative body to take action on an item not appearing on the posted agenda.

David E. Janssen

DAVID E. JANSSEN, Chief Administrative Officer
Attachment

Printed on recycled paper

LLOYD M. HARMON, JR.
COUNTY COUNSEL

ANTHONY ALBERS
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June 9, 1992

Chairman and Members of the Board of Supervisors
1600 Pacific Highway, Room 306
San Diego, CA 92101'

Re: Ordinance Amending Procedural Rules Relating To Land Use Hearings Where Board Fails To Take Action

Honorable Chairman and Board Members:

Your Board recently failed to obtain sufficient votes to carry a motion on a land use hearing matter, where the Board is designated as the authority having original jurisdiction over the matter. (The particular case was the Sycamore Ridge Quarry.) San Diego County Administrative Code Section 375.13 (d) provides that, where this circumstance occurs, either the Board shall set a date for reconsideration, or the Clerk of the Board shall continue the hearing to the next date for which the Clerk is accepting items.

Submitted herewith for your Board's consideration is an ordinance which would revise the relevant provisions of the Administrative Code to provide for more certainty and finality in these circumstances. The ordinance would provide that in the circumstance of a failure to obtain sufficient affirmative votes to carry a motion on such a matter, either the Board <u>may</u> at the time of the hearing continue the matter for further consideration or a member of the Board <u>may</u> within 30 days of the hearing request reconsideration of the matter; if neither of these occurs, the application is <u>deemed disapproved</u>. This procedure is consistent with that which applies where your Board hears an appeal from a lower decisionmaker on a land use matter (San Diego County Administrative Code Section 375.13 (c)).

Also forwarded herewith is a resolution which makes corresponding changes to your Board's Rules of Procedure, which should be adopted if your Board adopts the ordinance.

Respectfully submitted,

Anthony Ellers for

LLOYD M. HARMON, JR., County Counsel

WWT:bhs
A#92-00681
Enc.

ORDINANCE NO. _____ (N.S.)

AN ORDINANCE AMENDING THE SAN DIEGO COUNTY ADMINISTRATIVE CODE RELATING TO BOARD OF SUPERVISORS VOTING PROCEDURES ON LAND USE HEARING MATTERS

The Board of Supervisors of the County of San Diego hereby ordains as follows:

Section 1. Paragraph (c) of Section 375.13 of the San Diego County Administrative Code is hereby amended to read as follows:

"(c) Whenever the Board of Supervisors holds a hearing and thereafter takes no action because a motion on the item failed to carry by the required affirmative vote, the Board may at that meeting continue the matter for future consideration. If the Board does not do so, any member of the Board may, within thirty days after the date on which the motion failed to carry, docket with the Clerk of the Board a request that the Board reconsider the matter. If no such request is docketed within said thirty day period, or if the Board after reconsidering the matter again fails to take action because a motion thereon fails to carry by the required affirmative vote, then the following shall occur:

(1) If the matter is an appeal from a decision of a lower decision-making body, the decision from which the appeal was taken shall be deemed sustained.

(2) If the matter is one which by statute or ordinance is under the original jurisdiction of the Board of Supervisors, so that no lower decision has been made, then the matter shall be deemed disapproved."

Section 2. Paragraph (d) of Section 375.13 of the San Diego County Administrative Code is hereby deleted, and the remaining paragraphs (e), (f), (g) and (h) are hereby renumbered respectively as (d), (e), (f) and (g).

Section 3. This ordinance shall take effect and be in force from and after thirty days after its passage, and before the expiration of fifteen days after its passage, a summary thereof shall be published in the _____, a newspaper of general circulation in the County of San Diego.

ORDINANCE NO. _____ (N.S.)

AN ORDINANCE AMENDING THE SAN DIEGO COUNTY ADMINISTRATIVE CODE RELATING TO BOARD OF SUPERVISORS VOTING PROCEDURES ON LAND USE HEARING MATTERS AND DECLARING THE URGENCY THEREOF, TO TAKE EFFECT IMMEDIATELY

The Board of Supervisors of the County of San Diego hereby ordains as follows:

Section 1. The Board of Supervisors finds and declares as follows:

a. Existing provisions of Section 375.13 (d) of the San Diego County Administrative Code provide that, where the Board holds a hearing on a planning and land use matter which by statute or ordinance is only decided by the Board, and takes no action because a motion on the item fails to carry by the required affirmative vote, the matter must be reconsidered or continued.

b. It has been the experience of the Board that cases may arise where such a reconsideration or continuance is not desired by the Board and that the requirement leads to great uncertainty and confusion among the parties and the members of the public involved in the hearing process, as to procedural rights and requirements, and as to the ultimate disposition of the applications under consideration.

c. One such case was considered by the Board on May 20, 1992, and pursuant to the existing provisions of Section 375.13 (d), will be reconsidered by the Board on June 10, 1992. It is important that the revision to said section effected by this ordinance become effective immediately, so as to operate on that application, providing the necessary certainty and finality.

Section 2. Paragraph (c) of Section 375.13 of the San Diego County Administrative Code is hereby amended to read as follows:

"(c) Whenever the Board of Supervisors holds a hearing and thereafter takes no action because a motion on the item failed to carry by the required affirmative vote, the Board may at that meeting continue the matter for future consideration. If the Board does not do so, any member of the Board may, within thirty days after the date on which the motion failed to carry, docket with the Clerk of the Board a request that the Board reconsider the matter. If no such request is docketed within said thirty day period, or if the Board after reconsidering the matter again fails to take action because a motion thereon fails to carry by the required affirmative vote, then the following shall occur:

(1) If the matter is an appeal from a decision of a lower decision-making body, the decision from which the appeal was

taken shall be deemed sustained.

(2) If the matter is one which by statute or ordinance is under the original jurisdiction of the Board of Supervisors, so that no lower decision has been made, then the matter shall be deemed disapproved."

Section 3. Paragraph (d) of Section 375.13 of the San Diego County Administrative Code is hereby deleted, and the remaining paragraphs (e), (f), (g) and (h) are hereby renumbered respectively as (d), (e), (f) and (g).

Section 4. This ordinance is an urgency measure adopted by a four-fifths vote of the Board of Supervisors to protect the public health, safety and welfare, and shall take effect and be in force immediately. The reasons for such urgency are set forth in Section 1 above. Before the expiration of fifteen days after its passage, a summary thereof shall be published in the _____ _____, a newspaper of general circulation in the County of San Diego.

RESOLUTION OF THE BOARD OF SUPERVISORS
AMENDING RULES OF PROCEDURE (RULE 2)
CONCERNING VOTING PROCEDURES ON
LAND USE HEARING MATTERS

On motion of Supervisor _____, seconded by Supervisor _____, the following resolution is adopted:

WHEREAS, paragraph (i) of the Board of Supervisors' Rules of Procedure currently provides procedures for land use hearing matters where the Board is authorized to decide a matter and takes no action because a motion fails to carry by the required affirmative vote, requiring that the matter be reconsidered or continued; and

WHEREAS, it is the desire of this Board that said rule be amended to provide for an opportunity for the Board to reconsider such a matter if it desires, but that the matter shall be deemed disapproved if not set for reconsideration.

NOW, THEREFORE, BE IT HEREBY RESOLVED that paragraphs (h), (i), (j), (k) and (l) of Rule 2 of the Board of Supervisors' Rules of Procedure are hereby amended as follows:

1. Paragraph (h) is amended to read as follows:

   "(h) Whenever the Board of Supervisors holds a hearing on a planning and zoning and land use matter subject to Article XXIa of the Administrative Code and thereafter takes no action because a motion on the item failed to carry by the required affirmative vote, the Board may at that meeting continue the matter for future consideration. If the Board does not do so, any member of the Board may, within thirty days after the date on which the motion failed to carry, docket with the Clerk of the Board a request that the Board reconsider the matter. If no such request is docketed within said thirty day period, or if the Board after reconsidering the matter again fails to take action because a motion thereon fails to carry by the required affirmative vote, then the following shall occur:

   (1) If the matter is an appeal from a decision of a lower decision-making body, the decision from which the appeal was taken shall be deemed sustained.

   (2) If the matter is one which by statute or ordinance is under the original jurisdiction of the Board of Supervisors, so that no lower decision has been made, then the matter shall be deemed disapproved."

2. Paragraph (i) of the Rules of Procedure is hereby deleted.

3. Paragraphs (j), (k) and (l) are hereby renumbered as (i),

(j) and (k) respectively.

4. The changes effected by this Resolution shall take effect immediately.

PASSED AND ADOPTED ON _____, BY THE FOLLOWING VOTE:

AYES:
NOES:
ABSENT: