

BEFORE THE DIRECTOR
NEIGHBORHOOD CODE COMPLIANCE DEPARTMENT

In Re:

145S5 El Camino Real FINDINGS OF FACT AND DECISION
Civil Penalty Notice and Order

The hearing regarding the Civil Penalty Notice and Order issued by the San Diego Neighborhood Code Compliance Department, hereafter referred to as "the Department", came on regularly for hearing on November 19, 2005 the offices of the Department. The Hearing Officer was Thomas L. Marshall. The hearing was continued to December 2, 2005. Respondent Rancho Santa Fe Polo Club was represented by attorneys Paul Robinson and Michele Gierke. Appearing to testify on behalf of the Polo Club were President Chris Maloney, Director Chris Collins and Field Manager Joe Strickland. Appearing as a witness on behalf of Respondent from Southwind Construction was John Gomez. The Department appeared without counsel. Appearing to testify on behalf of the Department were Code Compliance Coordinator Melody Negrete and Land Development Investigator Deanna Walker. Testifying additionally on behalf of the City of San Diego were Development Services Biologist II Paul Schlitt, Property Agent Carol Young, Property Agent Christy Johnson and Associate Civil Engineer Abi Palaeseyed.

EXHIBITS

The following exhibits were received without objection from either party. Reference is made to the Department's exhibit list of exhibits C-1 through C-60. The exhibit list is attached hereto and incorporated by reference as Exhibit "A".

- C-61. Administrative cost accounting;
- C-62. Memorandum, November 10, 2005 Paul Schlitt to Deanna Walker;
- C-63. Memorandum, November 3, 2005 Paul Schlitt to Deanna Walker;
- C-64. E mail, Palaeseyed to Negrete and Walker;
- C-65. Letter, David Evans and Associates to John Fisher, Development Services;
- C-66. January 1998 contract San Diego Polo Club and San Diego Surf Cup, Inc.;
- C-67. Series of photographs marked A through AA taken on October 27, 2005;
- C-68. Notice of hearing and notices of continued hearings;
- C-69. Addendum to lease agreement between City of San Diego and Fairbanks Polo Club.

FINDINGS OF FACT

1. The City of San Diego acquired the real property at 14555 El Camino Real, hereafter referred to as "the Property" on September 27, 1983 pursuant to a deed from Watt Industries/San Diego, Inc. The City's title is subject to covenants, conditions and restrictions. Pages 2 and 3 of the covenants, conditions and restrictions are attached hereto and incorporated by reference as Exhibit "B".
2. March 31, 1986, the City of San Diego leased the property to Respondent San Diego Polo Club, formerly known as Fairbanks Polo Club. The lease defined allowable uses for the property and provisions for allowing additional use. Copies of pages 1 through 4 of the lease are attached hereto and incorporated by reference as Exhibit "C".
3. Provisions of the lease between Respondent and the City included the right of the City and Watt Industries/San Diego, Inc. to approve any improvements and alternate alterations of the property.
4. The term of the lease was for 26 years from the execution thereof.
5. From November 24, 2003 through and including the date of hearing, there existed conditions on the property in violation of the following municipal code sections:

"§54.0208 (a) It is unlawful for any Responsible Person to fail to maintain real property and appurtenances under his or her control free from Waste.

§121.0302(b)(2) It is unlawful to grade, excavate, clear, fill, grub, build an embankment, construct slopes, or disturb sensitive natural or biological resource on any lot of premises without the required permits.

§126.0306 It is unlawful for any person to maintain, use, or develop any premises without a Conditional Use Permit if such a permit is required for that use or development, or to maintain, use, or develop any premises contrary to the requirements or conditions of an existing Conditional Use Permit. Violation of any provision of this division shall be subject to the enforcement provisions contained in Chapter 12, Article 1. Violations of this division shall be treated as strict liability offenses regardless of intent.

§126.0505 It is unlawful for any person to maintain, use or develop any premises without a Site Development Permit if such a permit is required for the use or development, or to maintain, use, or develop any premises contrary to the requirements or conditions of any existing Site Development Permit.

§129.0602(b) Grading permit required for restoration of unauthorized grading."

§142.0144 Grading within environmentally sensitive lands shall comply with Chapter 14, Article 3, Division 1 (Environmentally Sensitive Lands Regulations).

§142.0146 (a) All grading work shall incorporate erosion and siltation control measures in accordance with Chapter 14, Article 2, Division 4 (Landscape Regulations) and the standards established in the Land Development Manual.

(b) All development shall be conducted to prevent erosion and stop sediment and pollutants from leaving the work site. The property owner is responsible to implement and maintain temporary and permanent erosion, sedimentation, and water pollution control measures to the satisfaction of the City Manager, whether or not such measures are a part of approved plans. The property owner shall install, monitor, maintain, and revise these measures, as appropriate, to ensure their effectiveness. Controls shall include measures outlined in Chapter 14, Article 2, Division 2 Storm Water Runoff Control and Drainage Regulations that address the development's potential erosion and sedimentation impacts.

"§142.0220 (a) All development shall comply with Municipal Code Chapter 4, Article 3, Division 3 (Stormwater Management and Discharge Control).

(b) All development shall be conducted to prevent erosion and stop sediment and pollutants from leaving the property to the maximum extent practicable. The property owner is responsible to implement and maintain temporary and permanent erosion, sedimentation, and water pollution control measures to the satisfaction of the City Manager, whether or not such measures are a part of approved plans. The property owner shall install, monitor, maintain, and revise these measures, as appropriate, to ensure their effectiveness. Controls shall include the following measures that address the development's potential erosion, sedimentation, and water pollution impacts. (1) Erosion prevention. (2) Sediment control. (3) Phased grading"

§143.0110(a)(2) Where any portion of the premises contains environmentally sensitive lands, this division shall apply to the entire premises."

§143.0112 It is unlawful to begin development on a premise that contains Environmentally Sensitive Lands without obtaining the applicable development permit, or an exemption as required pursuant to this division. If unlawful development occurs on property containing environmentally sensitive lands and enforcement action has been commenced by the City pursuant to Section 143.0160, no development permit application may be processed until the enforcement action has been concluded."

6. The Respondent has made a good faith effort to bring the property into compliance.

7. Respondent has obtained special event permits for certain activities at the property, such as the hosting of a large soccer tournament on a regular basis.

8. The Department has incurred the sum of \$14,846.07 in administrative costs relating to the abatement activities at the property.

9. All notices were properly given.

DISCUSSION

The Department has requested that Respondent present a completed site development plan on or before February 28, 2006 with reference to the horse trail maintained by Respondent on behalf of its members and the general public. The Department requests that Respondent also obtain a grading permit for any grading activities relating to the horse exercise trail. The Department requests that Respondent obtain a conditional use permit for group activities, such as the soccer tournament at the property.

Respondent apparently does not contest the need for a completed site development plan. However, Respondent does request that it be allowed to conduct group activities with a special events permit.

The Department requests an award of \$20,000.00 in civil penalties and that an additional \$124,000.00 in civil penalties be held in abeyance pending compliance with administrative orders. The Department also requests an award of administrative costs in the sum of \$14,846.07.

In the alternative, the Department is requesting that Respondent discontinue the use of the horse exercise trail and return that portion of the property to its natural condition. Respondent opposes the above request because it contends the horse exercise trail is necessary for the polo related activities at the property.

Respondent requests a reduction in both penalties and costs based upon its good faith efforts to bring the property into compliance.

The Department has established that the current condition of the horse-exercise trail and maintenance thereof is causing environmental damage. Department evidence regarding environmental damage was not seriously challenged by Respondent. Department witnesses have indicated that environmental issues will be addressed in the site development and grading permit process.

ORDER

1. Pending submission of completed applications as set forth in this order, Respondent shall immediately cease surface grubbing and grading at the property. Respondent shall implement best management practices along the horse exercise trail.
2. On or before February 28, 2006, Respondent San Diego Polo Club shall do the following:
 - a. Respondent shall submit a completed application for a ministerial grading permit for the restoration of all grading at the horse exercise trail. The application must be deemed complete by the San Diego Development Services in a timely manner. The ministerial permit must include plans for the restoration of vegetation in the areas identified in the memorandum dated November 10, 2005 from Paul Schlitt to Deanna Walker, previously referenced as Exhibit C-62 and incorporated by reference as Exhibit "D".
 - b. As an alternative to order 2a, Respondent shall make application for a grading permit and a site development permit to develop the horse exercise trail in the area referenced in Exhibit "D". The application must be deemed completed by Development Services in a timely manner.
3. Respondent shall immediately cease all activities unless allowed by its lease with the City of San Diego or allowed in a conditional use permit.
4. Respondent shall not engage in activities expressly prohibited in the lease except upon obtaining a conditional use permit.
5. Civil penalties for 144 days from a period of July 11, 2005 through and including December 2, 2005 in the amount of \$500.00 per day, or \$72,000.00, are ordered and stayed, less credit for penalties actually paid, on the following conditions:
 - a. Respondent timely complies with provisions of this administrative order;
 - b. Respondent pays the sum of \$9,450.00 in civil penalties;
 - c. Respondent pays the sum of \$14,846.07 in administrative costs;
 - d. Total civil penalties and costs payable by Respondent are \$24,296.07, payable pursuant to applicable provisions of the San Diego Municipal-Code.

6. The Hearing Officer shall retain jurisdiction to order any stayed civil penalties or future civil penalties and administrative costs. The period of reservation shall be for 1 year from the date of this administrative order. The imposition of stayed penalties or future penalties and costs shall only be pursuant to a duly noticed hearing.

Dated: December 19, 2005

THOMAS L. MARSHALL Hearing Officer