October 22, 2015 Meeting

INFORMATION RECEIVED
AFTER THE MEETING AGENDA
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DRAFT MINUTES
AD HOC DEVELOPMENT REVIEW PROCESS
CITIZENS’ ADVISORY COMMITTEE
CITY OF DEL MAR

CITY HALL ANNEX - 235 11th STREET
TUESDAY, SEPTEMBER 15, 2015 – 6:00 – 7:30pm
City Council Liaisons: Don Mosier, Dwight Worden

COMMITEE’S STATEMENT OF MISSION/PURPOSE:
1) Identify the concerns related to community impacts of new and remodeled homes;
2) Identify the goal to be achieved in potentially modifying regulations/procedures; and
3) Recommend solutions to remedy the situation, including possible amendments to the regulations in the Municipal Code and/or the City’s development review procedures.
(Ref. City Council Resolution 2015-24)

RULES ON PUBLIC COMMENT:
Anyone may address the Committee for three minutes on items listed on the agenda. If there are several speakers on an item, time made available to speak may be limited to two minutes. When recognized by the Committee Chairperson, please step forward and state your name and address. The Committee may ask questions of you, to which you may respond. For items not on the agenda, please see: Oral Communications.

1. CALL TO ORDER
The meeting was called to order by Chairman Harold Feder at 6:00pm.

2. ROLL CALL

3. APPROVAL OF MINUTES (August 18, 2015 meeting)
   • MMSC (Giebink/Doyle) 6-0 to approve minutes, as presented.

4. COUNCIL REPORT
Liaison Mosier noted that Kelly Kaplan has had to miss several Committee meetings; but because of prearranged vacation, her absence from this meeting is excused. The committee was reminded that it is Council policy that three unexcused absences in a 12-month period (if they are not excused by the committee Liaisons) disqualifies a member from continuing with that committee.

Liaison Worden reported that at the City Council meeting on September 8, 2015, the Council voted 4-1 to reaffirm the membership of the Ad Hoc Committee as constituted. The Council expressed thanks for the work of the Committee and looks forward to regular reports on Committee progress.

Liaison Worden noted that there remains a time conflict for him with TPAC; he is hoping that TPAC can begin its meetings earlier so that he can attend both in those days when the two committees’ dates/times conflict.

Senior Planner Birnbaum reported that on September 21, 2015, the Ad Hoc Committee’s Work Plan will be presented to the City Council. As Chair Feder is out of town, Vice-Chair Jamison...
will present the Plan at the meeting and be available for questions.

5. **ORAL COMMUNICATIONS (NON-ACTION ITEMS)**

   State law precludes the Committee from acting on any topic that is not an action item on the posted agenda. Testimony on an issue may be received and, at the Committee’s direction, placed on the next or subsequent Committee agenda.

   **Greg Rothnem, 8th Steet.** Mr. Rothnem stated that in regard to the Ad Hoc Committee’s earlier request to the public to submit in writing five items for the Committee to discuss, he referred the Committee to a memo submitted on August 3rd by Tina and Bob Fried, and stated that his group intended to submit other ideas soon.

6. **COMMITTEE WORK PLAN DISCUSSION**

   Committee Vice-Chair Jamison reiterated the five overall areas the Work Plan will address. He noted that the Work Plan identifies concerns which may not necessarily constitute problems; the Committee wants to distinguish between concerns and problems, noting that it will be the problems that require solutions.

   He emphasized the importance of the Workshops that will take place; the goal is to obtain as much public input as possible. Once the Workshops are completed, the subcommittees will take that public input, drill down, and then begin work. He noted that the coming several meetings will be in the form of workshops and hopes that many people will attend.

   In terms of public outreach to the Committee, Member Farrell noted that the public can communicate anytime via Adam Birnbaum’s email (abirnbaum@delmar.ca.us); he will immediately distribute any correspondence to the entire Committee.

   Because of the complexity of jointly scheduling the Ad Hoc Committee and the Design Review Board, a Doodle Poll will be used; Planner Birnbaum urged quick participation in this poll, so that meeting can get scheduled.

   Member Doyle, in looking at the different Workshops being scheduled, stated that she would very much like to see one more added: focused on applicants and neighbors who have gone through the DRB process. She would like to see the same import given to these individuals as will be given to the architects and builders, noting that there might be some interesting different perspectives or commonalities. Members Giebink, Farrell, Meredith, and Graybill informally agreed and Vice-Chair Jamison said that such a Workshop will be added.

   Liaison Worden noted that December 1st would be final meeting of the calendar year 2015 for the Ad Hoc Committee. It was also noted that the Public Workshop and joint meeting with DRB will be televised. It is hoped that there can be a report to City Council by the end of January or February 2016. The goal remains to wrap up the Ad Hoc Committee’s work by September 2016.

**PUBLIC COMMENT:**

**Greg Rothnem** asked about the format of the Workshops, whether there will be an outline of meetings in advance; and if people are requested to just come and speak on the topic, will they? Vice-Chair Jamison replied that the Committee wanted an open discussion, but that in order to keep on schedule, there would likely be time limits to comments in the Workshops, followed by Q&As from the Committee if appropriate.

Mr. Rothnem asked whether a Moderator would be beneficial for the Public Workshop? Per Liaison Worden, it is standard with City Committees that Workshop moderators are the chairs of the Committees, with breakout groups and sub-moderators as needed.
7. INPUT FROM PLANNING DEPARTMENT STAFF

Planner Adam Birnbaum made opening comments, noting that he has proudly spent the past 26 years working as staff for Del Mar’s planning processes, and he believes in them. He noted that while some issues and concerns have been raised, the process overall has worked remarkably well for some 30-35 years, resulting in an attractive, desirable community. The land use review process was community-driven when it began with The Community Plan, and has been for its entire duration. It is not by accident that the results—the City of Del Mar as we know it and the Design Review process that protects it—have been the envy and model for many other cities. The Del Mar Community Plan was written to protect the topography, community, and quaint nature of Del Mar, and it continues to be a foundational document today.

The DRO regulations and the review process coupled with the City’s zoning code strongly drive design and the resulting character and desirability of Del Mar as a livable, walkable community with remarkably high property values. Overall, the citizens should be proud. Again, Del Mar is the envy of many communities. He noted that when new staff planners come to town, he often take them on a “field trip” tour and by simply driving south on Nob Avenue from Del Mar Heights Road, one can immediately sense when you leave the San Diego city limit and enter Del Mar—there is an entirely different feel.

He noted that the pertinent issues at hand are: Design Review, Coastal Development and Land Conservation, and the format/content of DMMC Chapter 23.08, the DRO (Design Review Ordinances). One comment that is often made is that the language of DRO’s regulatory conclusions has overly broad applicability. However, he pointed out that this is part of the DRO’s usefulness - its broad applicability to different types of project and designs in different areas of the community.

In trying to help applicants address the issues of “reasonability,” and their requests of “What is the DRB looking for?,” the Planning Department staff tells applicants and their agents that the DRB is looking for quality design suited to the site and quality materials, but that projects must also not violate elements of the DRO as regards impact on neighbors, the community, or topography.

One potential means to address the concerns of applicants/agents understanding how to work with the DRO would be to develop and publish Guidelines for Interpreting the DRO, similar to what the City Council did for two voter-approved initiative ordinances Measure B for the downtown and BOZO for dealing with protecting each access). The Committee felt that could be very helpful, along with a Neighbors’ Handbook on the DRB Process, a layperson’s explanation of how housing development works in Del Mar.

He cited one frequently discussed question: “What constitutes unreasonable view blockage for a neighbor?” Should view blockage be more quantifiable, recognizing the constraints on trying to measure what views would be blocked vs. those that would be retained or enhanced? Planner Birnbaum noted that one practical procedure that could help is having a standard for how view blockage concerns are presented. Rather than public testimony including photographs taken by either applicants or neighbors and showing each’s version of view blockage, a non-biased third party (probably the City staff) could be assigned to take pictures using standard camera format and processes (e.g., standardized heights from floor, variable perspectives, etc.). This testimonial evidence would augment the DRB’s own personal visits and observations.

He noted that a suggestion that has been raised is to reinstitute a process that was enacted but not used, a preliminary review by the DRB of what views are protected across a site so that an applicant can have a baseline on which to begin design. However, he stated there were both pros and cons to this approach.
A suggestion that has been made to the Planning Department in the past is to develop Design Guidelines, as some cities and communities do. However, it was cautioned that if you stipulate preferred design styles or are explicit about architectural style, then that is what you’ll get. He argued that a large part of Del Mar’s charm is the eclectic mix of architectural styles that exist in the neighborhoods and in homes next to each other.

Planner Birnbaum felt that there could be improved processes for ensuring that the public is aware of and can fully understand a set of plans for a project. This could be done by posting up-to-date plans at the site and/or on the City’s web.

He then discussed the Citizens’ Participation Program (CPP). He gave background on how this Program came about, originally drafted by him along with then-Mayor Lee Haydu. Its intent was to give early notice to neighbors of a project proposal, in hopes that there could be early issue identification and neighbor dialogue in order to minimize disputes. The goal was that affected parties would know what project was being proposed and could, therefore, have a chance to express concerns and have them addressed. Architects could be aware of these issues before the design was too far along to allow different approaches, as appropriate. That was the intent of the CPP and for a while it was working fairly well but not as well now. The question is why? Are applicants “gaming” the system? Planner Birnbaum felt that the Ad Hoc Committee’s time could be well spent in analyzing the CPP and making recommendations that would improve it.

PUBLIC COMMENT:
Howard Gad: Mr. Gad noted that there was previously a two-step CPP process (schematic review).

Member Graybill asked: couldn’t we take that idea as a springboard for a new process? Add a preliminary review as extra step?

When Liaison Worden was asked why the city stopped this two-part CPP, Planner Birnbaum noted it had been written as a trial procedure, but it was not used in before it “sun-setted.”

Liaison Mosier noted that he has been to three CPPs, and each one was completely different. One was very good and cordial; another had applicant who wanted one thing and didn’t care what any neighbor said or needed. The third one was a CPP for a project by an out-of-town architect who didn’t understand the DROs, and it was dysfunctional. There is always the potential for conflicts with the three different parties involved: the applicant, architect, and neighbors. It needs to be emphasized that applicants and architects must work with the neighbors to successfully develop a project in Del Mar.

Member Meredith noted that owners/applicants or out-of-town architects may not know why or how our DROs function, nor how to implement a CPP. He felt that there should be a handout given to all applicants early on with the most-asked questions about the process: FAQs for DROs.

Planner Birnbaum noted that within the City of Del Mar, some zoning districts, like the R-2 Zone, have specific design review regulations, although they are pretty generic. This might be an area where more specific design goals and standards for that area of the community could be set forth (for example, recognizing that gauging the potential for privacy impacts may be different for neighbors in the hilly areas versus in the beach district.)

Planner Birnbaum then discussed some issues related to The Community Plan and other Land Use Policies and Regulations. He noted that other than the Housing Element, the Community Plan has not been substantially updated since 1985 Community Development Element. But
the document is still valid and has worked well—the unique charm and feel of the Del Mar community is the result.

He did note, however, that the Land Conservation Ordinance (DRO 23.33—“Change in Topography”) is an under-utilized tool in the DRB’s development review toolbox. It deals with wholesale changes in the landscape or topography. Should 23.33 be used more by DRB to help retain existing topography? It is explicitly stated within The Community Plan that “development should be subservient to, rather than commanding of, topography.” Why is 23.33 not more frequently used? Planner Birnbaum opined that perhaps staff needs to do better job of pointing out that the land conservation ordinance is very pertinent in DRB reviews, and should be considered.

Liaison Mosier recalled from his time on the DRB that when he tried to use the 23.33 ordinance on several projects, it was not successful in the DRB discussion; he wondered if the Board was simply not informed enough by the staff on how to use this tool. Members Giebink and Farrell, who both served on the DRB, do not recall using it. The Committee wondered if it this was an example where the staff needs to give DRB members more thorough training.

Planner Birnbaum reiterated that there are many additional useful and explicit DROs in place, but that not all of them are being utilized enough or even at all. He did note that the Board must make findings of inconsistency or failure to meet a standard, and that the ordinances and the work of the DRB have been so consistent and well-executed that there have only been five times in his 26-year tenure that projects been challenged in court on the use of the DRO and, in each case, the City won in court.

For DRB, Chapter 23.08 contains the key standards of review, the Chapter’s regulatory conclusions. Planner Birnbaum noted that the Design Review Board is a discretionary body making findings based on factual situations. At every step, they must ask: does this project fail to meet these standards of the DRO? Yes, the standards are written very broadly. But in their broadness, they allow the DRB to review different styles of architecture, different neighborhoods, and different circumstances.

Member Graybill asked Planner Birnbaum: “When you talk about ‘broadness”—the issue of neighborhood compatibility can be contentious. Could the Ad Hoc group further define that?” Planner Birnbaum noted that in the DRO, certain standards are broadly written; and when the DRO opines on privacy or views, there is an accompanying statement: “is it reasonable?” He noted that in terms of looking at view impacts, it is not quantitative, and, as he noted earlier, this is something he has heard from applicants and neighbors - a request for more specific guidance on what would be considered an unreasonable blockage of views.

Again, the Committee asked if there was a need for Zoning to identify different standards for different areas of the community—the beach, the hills, etc. Member Doyle noted that as a resident of the beach district, there are most definitely different circumstances there. However, Planner Birnbaum did note that there already is a tool of design review within the different zones (R-1, R-2, beach, etc.).

Liaison Mosier noted that the Design Review Board does view the issue of “privacy” at the beach differently than elsewhere; but just in practice, not in policy. He felt this can create conflicts between neighbors, and that the City should memorialize in policy things that are in practice.

Given the unique circumstances of the Beach Overlay Zone, it was asked if the Ad Hoc Committee could articulate or provide guidance defining “reasonable” in this zone, as compared to other zones. Could there be “guidelines” that are separate from the DRO?
Member Farrell asked for a definition of “guidelines,” and Member Giebink asked if you can you base a decision on a guideline? Planner Birnbaum replied that it would probably be part of overall land use policies; perhaps not guidelines but policies. The goal here is simply to put more tools in the toolbox for the DRB to use as they assess projects and for applicants and interested parties to know what they can rely on as being the standards of review that the DRB will apply to a project.

Member Meredith discussed the flood plain zone; where an applicant is required by law to elevate the finished (habitable) floor above the height of a potential 100-year flood. In the North Beach area that means that the floor levels of new projects are required to be elevated above those on many of the older, neighboring properties. Planner Birnbaum noted that the flood elevation is determined by federally by FEMA, and that there were some revisions coming due to climate change impacts.

Vice-Chair Jamison asked if “privacy” needed its own chapter? He noted that the DRO was written more than 35 years ago; and that there have been some changes over the years, including the addition of “bulk and mass” to address elements porches.

Vice-Chair Jamison also asked about consideration of hardscape. There is a regulatory standard, but no actual ratio or percentage cited, no minimum quantifiable standards. He asked if there should be more quantifiable standards. Planner Birnbaum replied that broader standards always allow for more flexibility, though permeability, water runoff, and water conservation issues are becoming more important.

Member Meredith raised the issue of view blockage and the thorny question of “primary living space” and its official definition. In Del Mar, many owners have properties with ocean views that might not be from their Living Room; what happens to your property value if your only view is taken away based on a too-rigid definition of “primary living space”?

Planner Birnbaum replied that this is an area where interpretive guidelines could really help. He noted that especially in recent years, at DRB meetings the issues that come up most often are: (1) view blockage, (2) privacy impact, and (3) bulk and mass. Despite the fact that there are sixty different DRO regulatory conclusions, 80% of the time, the DROs cited are related to those three issues.

Planner Birnbaum discussed the issue of Floor-Area Ratio (FAR) and the fact that today, he rarely sees a proposed project come in that is proposed under the maximum allowable FAR.

Member Graybill asked if the Ad Hoc Committee should address the issue of which components are and are not included in the FAR? He noted that so many more projects now come before the Board with many outdoor elements that do not count towards FAR but do add to bulk and mass. Planner Birnbaum replied that having guidelines about excessive bulk and mass would be very helpful. He cautioned, however, that these elements, such as covered porches add and overhangs add to the articulation of a building. He noted that simply not allowing elements could result in bland architectural design.

Member Graybill offered his opinion that in Del Mar, applicants and neighbors seem to be getting more cantankerous about these issues than ever before. How can we fix that? Why do people feel they have to go to battle in the DRB?

PUBLIC COMMENTS
Greg Rothnem felt it was insightful to hear from Planner Birnbaum that 80% of the DRB disputes are based on those same three issues. He noted that in Santa Barbara, they have an excellent design review process that might help mitigate these issues.
Vice-Chair Jamison reiterated that he hopes Mr. Rothnem and others will put their questions and concerns in writing and send them to Planner Birnbaum for distribution to the Committee, so that there is fair and open dialogue on the issues of importance to the community.

6. DISCUSS SCHEDULING AND LOGISTICS OF MEETINGS

The Committee agreed that it will be somewhat of a challenge to schedule all of these Workshops over the next few months, but the most challenging one will be the joint DRB/Ad Hoc meeting. It was agreed that for the Public Workshop, it will be important to announce it in local media and other ways in order to get good attendance.

7. ITEMS FOR NEXT AGENDA

The October 6th Ad Hoc Committee Meeting will be primarily a Workshop to hear the ideas and concerns of those who represent home owners/applicants before the DRB, such as architects and builders. Planner Birnbaum has a contact list of those who have had interaction with the City and he will send out information about the meeting to this group.

8. ADJOURNMENT

The meeting was adjourned at 7:40pm.
DRAFT MINUTES
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CITY HALL ANNEX - 235 11th STREET
TUESDAY, OCTOBER 6, 2015 – 6:00 – 7:30pm
City Council Liaisons: Don Mosier, Dwight Worden

COMMITTEE’S STATEMENT OF MISSION/PURPOSE:
1) Identify the concerns related to community impacts of new and remodeled homes;
2) Identify the goal to be achieved in potentially modifying regulations/procedures; and
3) Recommend solutions to remedy the situation, including possible amendments to the regulations in the Municipal Code and/or the City’s development review procedures.
(Ref. City Council Resolution 2015-24)

RULES ON PUBLIC COMMENT:
Anyone may address the Committee for three minutes on items listed on the agenda. If there are several speakers on an item, time made available to speak may be limited to two minutes. When recognized by the Committee Chairperson, please step forward and state your name and address. The Committee may ask questions of you, to which you may respond. For items not on the agenda, please see: Oral Communications.

1. CALL TO ORDER
The meeting was called to order by Chairman Harold Feder at 6:00pm.

2. ROLL CALL

3. APPROVAL OF MINUTES (September 22, 2015 meeting)
   • The minutes were not completed in time for review so will be approved at the next meeting.

4. COUNCIL REPORT
Liaison Worden noted that the meeting is being recorded and the disk will be available at City Hall in the Planning Department if anyone wants to review it.

5. ORAL COMMUNICATIONS (NON-ACTION ITEMS)
State law precludes the Committee from acting on any topic that is not an action item on the posted agenda. Testimony on an issue may be received and, at the Committee’s direction, placed on the next or subsequent Committee agenda.

Harvey Furgatch, Camino del Mar. Mr. Furgatch asked the Committee to consider reviewing the allowed timetable for completion of construction projects following DRB approvals, noting that he has had significant disruption at his home because of a large and time consuming project being built next door. He also asked that sound issues be considered, such as limiting the amount of time jackhammers can be used. Chairman Harold Feder suggested that Mr. Furgatch return and speak at the upcoming Ad Hoc Committee Workshop that will focus on individuals affected by developments (as either a neighbor or applicant).
6. DISCUSSION OF FUTURE WORKSHOPS

The public was informed that the next Ad Hoc Committee Workshop will be held jointly with the Design Review Board, so that the Committee can hear from the DRB perspective. This meeting will be held on Thursday, October 22 beginning at 5:00 PM in the Del Mar Communications Center.

7. WORKSHOP WITH ARCHITECTS, BUILDERS, AND REPRESENTATIVES

When recognized by the Chairperson, please step forward and state name, address, and professional position. To ensure enough time for everyone to speak, please limit each participant’s comments to 5 minutes, which may be followed by Committee questions.

Liaison Mosier reminded the audience, speakers, and committee that we cannot discuss projects currently under DRB review.

SPEAKER: ROBERT (BOB) SCOTT, RJS Planning, 1155 Camino del Mar: Mr. Scott gave a prepared PowerPoint presentation, and spoke about these Del Mar Development Review Process Themes: Context, Expectations (Predictability), and Questions to Consider regarding Regulations & Process.

He noted that density is major determinate of context that generally affects development. What is a reasonable expectation for an applicant or neighbors? He stated that the Zoning ordinances are quantifiable standards; but with the Design Review Ordinances, there are 51 different regulatory conclusions and many of them are subjective or qualifiable, with the central finding being the reasonability or unreasonability of the impact of a project or project component.

He felt that the central issues to consider are definitions for: unreasonable/reasonable, primary scenic view, and/or bulk and mass. He wondered if these definitions could be tightened up, and whether setting specific DRO standards in different zones might be an option.

In terms of zoning, Mr. Scott noted the differences between a remodel and all-new construction because of the rule that non-conforming buildings can be remodeled so long as the improvements do not exceed 50% of the existing buildings value. He wondered if we eliminated this 50% rule, would it encourage more remodeling? This could help maintain the community’s existing character.

In Mr. Scott’s opinion, the DRO has not “caught up with how people live”…suggesting that it was a new trend that people want more formal outdoor living such as outdoor kitchens, entertainment centers, decks/covered porches, etc.

Member John Graybill stated that Mr. Scott had hit on an important subject: PREDICTABILITY. How do we create more predictability for applicants and architects/builders?

Mr. Scott replied that this was difficult. If you were trying to obtain predictability through the CPP as it is now configured, it might backfire. In his experience, there was often resistance the moment plans are shown. He advised it might be better to meet without plans, form a relationship, and listen to the neighbors before creating actual architectural plans. Early dialogue could help, but it is uncertain how this could be formalized or become procedure.

Member Meredith agreed: if discussions occurred prior to drawings, then the neighbors are part of the solution.

Member Doyle also agreed and stated it was so important to listen to the neighbors before finishing the plans.
Mr. Scott noted that oftentimes, neighbors do not understand story poles and have trouble visualizing 3-dimensions from drawings, even with the poles.

**Vice-Chair Jamison** asked: are there specific places in the DRO where we need standards of reasonableness?

Mr. Scott opined that there should be standards of reasonableness in terms of outdoor living spaces, BBQs, pools, fireplaces, outdoor kitchens, etc., noting that these tend to be “DRB pet peeve” issues, sometimes with an individual DRB member focusing on one of those while another focused on a different issue. Could they be codified more to eliminate personal opinion or prejudice?

**Chairman Feder** asked a question in terms of the trend Mr. Scott says is occurring—the increase in applications that include substantial outdoor living spaces. Mr. Feder asked how we could balance the rights of the applicant to build with the rights of the neighbors who may be substantially impacted by these ancillary elements of a development. More broadly, how can we find a balance between this trend and neighborhoods?

Mr. Scott suggested that the architect is generally going to be focused primarily on the needs and desires of his/her client, while an applicant representative (such as Mr. Scott) would be able to look more to the context of the neighborhood, to building relationships with neighbors, and to find ways to shape the project to fit the DROs.

**Member Farrell** expressed her observation that the best architects do work within context—that context is essential to the creative process of architecture and architects themselves should be taking the neighborhood and neighbors into consideration as they develop projects. Mr. Scott agreed and stated that he did not mean to imply otherwise.

**Chairman Feder** wondered if we need more objectivity in relation to impacts of ancillary outdoor spaces, e.g., lighting, sound, smoke, etc., and if so, where do we find that objectivity?

Mr. Scott said that we should look at zoning, DRB processes, objective/subjective standards, DRB selection, and training. In some of these cases, rules already exist, for instance the city has a noise ordinance. If an applicant proved the project met that sound standard, it should be allowed. The same goes for lighting; although reference is made to “dark sky” concepts, in fact the City has no dark sky policies at present. These could be codified however.

**Member Olson** asked about the notion of different DROs per zone, and it was noted that Planning Manager Adam Birnbaum mentioned at the last meeting that there are ways to include special Design Review requirements within different zones.

**Member Graybill** also noted that Mr. Birnbaum discussed the DRO regarding preservation of topography, and felt that there were other ordinances that might be applied and considered by the Design Review Board, apart from the few ordinances that were often cited.

Mr. Scott then opined that there should be minor deviations allowed in approvals—e.g., small intrusion into a setback to accommodate a fireplace wall.

**Member Doyle** said that she observed how different neighborhoods have a certain “character” within our zoning ordinances, such as the R-2 zone versus R-10. She asked whether the DRB should look at things more contextually with variances in DRO standards at the beach or in the hills.

**SPEAKER: LAURIE FISHER**, architect in San Diego; was the first professional ex-officio DRB member in 2006-07 (served for two years). Ms. Fisher began by asking the question: What is the DRB for? To give their opinions on design but very subjectively? On the other hand, are there qualitative DROs and quantitative zoning rules that should address these issues?

She said that what she often sees is DRB members making architectural judgments, not necessarily based on sound knowledge, and then finding a few DROs to support those judgements. Ms. Fisher recommended returning to the mission statement of DRB to see how...
the Board should be reviewing applications. She also recommends educational workshops for the members. As an example, she found it enormously frustrating to try to explain the physics of light to members of the DRB who, as lay individuals, did not understand.

She followed up on Mr. Scott’s comments regarding the beach district and the flood plain zone, which presents a huge dilemma for architects to try to work within the DROs. When you build in the flood plain, there are many issues—stairs/railings count in FAR; habitable space is compromised. So she supports the idea of looking at varying zones differently in terms of DRB compliance.

Ms. Fisher believes that story poles are a problem. In general, they cannot truly convey the bulk and mass of a building at all, or its articulation. However, it is the job of the architect to help lay people understand the three dimensional aspects of a project.

She thought it might be helpful if the City gave architects a checklist of items they needed to address, in order to make the review more quantitative. She also feels that neighbor support of a project should carry more weight; she cited circumstances where all the surrounding neighbors were supportive of a project, but one or a few DRB members objected and the project had to be modified.

**Member Olson** asked: what would quantitative bulk and mass be?

Ms. Fisher replied that it was a difficult thing, but that in some cases, comparing drawings showing the maximum allowable and then showing reasonable reductions taken by the applicant might demonstrate the give and take for the DRB.

**Vice Chair Jamison** asked if Ms. Fisher felt the CPP is effective.

Ms. Fisher replied that in her experience, she did think it was effective.

**Vice Chair Jamison** asked Ms. Fisher how she would suggest that the “checklist” idea be organized—by zone or by type of lot?

Ms. Fisher said that she was not sure if each zone needed its own checklist. Her idea is simply to limit the amount of subjective debate when it comes to the more objective items. She noted that the DRB could have been structured as a true design review board, with design guidelines of architecture. But since it is not that, then we should be more quantitative about review, and less subjective.

**Member Graybill** asked about Ms. Fisher’s comment that story poles are problematic, and asked if she could suggest an alternative.

Ms. Fisher said that she would suggest greater use of contextual 3-D renderings and require that as part of presentations to DRB.

**Member Graybill** then asked about her comments about inadequate DRB board member training—what kind of training do members need?

Ms. Fisher suggested that perhaps DRB members should have required “continuing education,” with credits and points; have architects and design professionals offer workshops on objective things—light, noise, what is scale and context? She felt that something like this could help citizens serving on the DRB to make decisions that are more informed.

**Member Kaplan** asked: is the primary problem a lack of design knowledge on the part of the Design Review Board?

Ms. Fisher replied that yes, she saw that when she served the DRB as an ex-officio member.

**Member Kaplan** asked: what is the effectiveness of the ex-officio? What do you see as their role to help members who may be lacking knowledge?

Ms. Fisher stated that if the DRB does have an ex-officio member, it is mandatory that they be able to comment on the project. That should be part of the job. Just as the Planning Staff
opines in writing regarding a project’s compliance with DROs, the ex-officio should be able to opine on the staff’s interpretation.

Member Meredith noted that with the CPP, story poles are not mandatory but he gave his opinion that they should be. He noted that 3-D renderings can show color and articulation; but they can be manipulated. Mr. Meredith asked whether it would be helpful to have the ex-officio member on-site at CPPs or at other times, to answer questions from DRB members and the lay public.

Vice-Chair Jamison wondered if the accuracy of 3-D images submitted by an applicant should be confirmed by the ex-officio DRB member or by the staff.

Member Farrell concurred that it was easy to manipulate any 3-D rendering or A-V presentation, just like photographs of views could be manipulated. She felt that some safeguards needed to be in place to ensure neutrality.

Ms. Fisher stated that she felt the job of an architect is to have honest and good communication with all parties.

Member Graybill asked Ms. Fisher her opinion of how we might better quantify neighborhood compatibility.

Ms. Fisher replied that we have to recognize that many of these older buildings will not be around forever and that contexts change. Sometimes you have to let old buildings go.

She noted that in San Diego, some neighborhoods have overlay zones, and the design elements are very specific.

Member Farrell asked if Ms. Fisher was advocating for those kinds of architectural design guidelines; Ms. Fisher replied that personally, she doesn’t mind those constraints—you just use them creatively. She said that context can be hard for architects and laypeople to understand. They don’t see it objectively; they see it emotionally.

Member Graybill responded that he interpreted her comments to be a suggestion that if we had a better definition of neighborhood compatibility, it could help with predictability.

Ms. Fisher replied that she did think design guidelines could help, but many architects would disagree.

SPEAKER: DON COUNTRYMAN, Donald A. Countryman Design, Highland Ave., Solana Beach

Mr. Countryman offered some of his thoughts on the design review process in Del Mar, having designed many homes here.

He felt that the DRB members needed to be more specific when citing a project’s non-compliance with the DRO. In terms of community compatibility, he noted that many architects who have worked in Del Mar for a long time have done this. He felt that the code could be strengthened in terms of the issues of “community compatibility, visual impact, and massing.

He stated that it was his opinion that projects’ visual impact on the community was most problematic in terms of projects that had difficulty with the DRB—primarily because of size and non-compatibility with the neighborhood.

Mr. Countryman felt that it would be helpful if the DRB had better participation—in terms of training, in terms of DRB members visiting all projects being considered, etc. Individually, he felt board members could help identify issues if they were better trained.

He raised the idea of integrating DRB members more in the review process before hearings.

Mr. Countryman noted that some of the most difficult projects are those sited on ascending uphill lots. The general wish of an owner or developer is to site their new home at the highest
level possible, but this can have impact on neighboring projects. He felt that when architects’ designs are not appropriately tied to the natural topography, problems ensue. He cited this as an example of where design guidelines would be useful.

He noted that building size and FAR (floor-area ratio) do not necessarily relate to visual impact, depending on the architect’s work. One good strategy is to work for compatibility at the street, and put the bulkier mass of the building mass behind.

In terms of basements, Mr. Countryman expressed his opinion that the basement ordinance works well for fully-exempt basements. They help the architect to adjust massing; are fully flexible; and do not impact size or scale of building. However, he noted that partially-exempt basements are a problem. They usually end up giving the appearance of a three-story façade and that can be a problem for the neighbors or neighborhood. In his opinion, attempts to resolve this issue have thus far not been effective.

In terms of DRB training: Mr. Countryman feels that the Planning Staff does a good job of training members on process and the 51 standards of review. As practical matter, however, a new Board member has a hard time knowing how to apply those standards if they do not have professional experience. Mr. Countryman likes Ms. Fisher’s idea of professional workshops or continuing education—these could be reviews of past projects, for instance, or reviews of built projects and how they relate to topography, zonal context, etc.

Member Meredith asked about issues of existing views that might be impacted, but that the neighbor benefited from new views opened up by landscape changes. He noted that the code says that benefits shall be ascribed or credited, but commented that this can be a tough sell through the DRB.

Member Graybill returned to the subject of partially-exempt basements, asking if they could use limitations. If so, how to quantify?

Mr. Countryman said that in his opinion, the partially-exempt basement ordinance should be tightened up substantially, with large penalty for violation. If a building goes more than two levels, it is a problem.

Member Graybill asked about light wells that encroach into the setback.

Mr. Countryman replied that the situation could be all right, depending on how it is handled by the architect.

Member Farrell followed up on Mr. Countryman’s comment about DRB members participating before the actual DRB hearing.

Mr. Countryman replied that a subcommittee could be asked to go out to the site at beginning stages; and become more involved early in the process. His opinion is that story poles at CPP are a good idea.

Vice-Chairman Jamison asked if Mr. Countryman supports a conceptual design review process.

Mr. Countryman replied that many jurisdictions do have such a two-step process, and that it could be helpful in identifying issues and process. It is one way to generate enough information to make sound decisions.

Member Kelly noted that in older neighborhoods like Van Dyke, where there is a steep hill and small bungalows, it is hard to balance the situation of a large home coming into a neighborhood of smaller homes. How do you not disrupt the whole neighborhood?

Mr. Countryman replied that you have to look at the overall acceptable standards. If new buildings were brought down in scale, particularly where massing occurs, then there could be more compatibility. He notes that the trend now is to build large and up high, but in his opinion, that is not where things should be going at this time, not in Del Mar.
There needs to be give and take in that situation—a big part of the “give” is in terms of massing at the particular site. That is the nature of a community like Del Mar. We want to have a sense of compatibility—that is the visual impact that a structure has on its site and neighborhood. It is possible to minimize visual impact, but there may need to be new standards on massing and visual impact.

Member Graybill asked how we can improve the transparency of the DRB process. He expressed that often, as a project moves through the DRB pipeline, there are many contentious issues. Neighbors are not informed; there are substantial conformance issues after approval. There are so many pitfalls when neighbors are on defense, but it is because they are afraid of what they will lose.

Chairman Feder stated that transparency should be addressed from the very start. How can everyone have a realistic understanding of what is being proposed to being built? He feels that the questions to confront are these: How do we improve transparency for everyone—applicant and neighbor? How do we communicate better? How do we avoid misunderstandings that cause acrimony?

Mr. Countryman suggested that the notification process can be improved. There needs to be a better effort at the CPP process, and story poles would be a big help. There should be offers of follow-up meetings post-CPP if there continues to be neighbor issues. The architect and new homeowner should be generating a sense of openness and a wish to communicate. It would be helpful if plans could be shared with neighbors, to give them a chance to study them; could they be sent electronically?

Chairman Feder asked about 3-D renderings: could there be a standard so they are not misleading, and could they be available at CPP?

Mr. Countryman concurred that it could be helpful. He opined that story poles are mostly for view impact; they are less helpful to understand bulk, mass, and design.

Chairman Feder noted that Mr. Countryman began his presentation talking about the demonstration of non-compliance, versus requiring the burden of proof on an applicant to show compliance. Would the DRB process be improved if the burden were shifted to applicant to show compliance? Or would that be difficult?

Mr. Countryman said that he felt from a legal perspective, the code is written as it is for a reason. There must be a demonstration of non-compliance in order to deny a project. A person has a legal right to improve their property unless it is shown that it is non-complying with our community’s DROs. However, the code could be slightly modified to clarify how the project is going to be compatible with the topography and neighborhood conditions—and in that case, the burden could be on the applicant to show compliance.

Vice-Chairman Jamison noted that many cities and jurisdictions require a demonstration of neighborhood compatibility.

SPEAKER: LEW DOMINY, 203 24th St. Mr. Dominy noted that he has designed approximately sixty houses in Del Mar over the years, including his own home that required numerous DRB meetings before it won approval.

He felt that looking at the issues globally, we should insist on computerization to make this process more objective and scientific. Computerizing plans would help to certify story poles and project elements.

He stated that he felt story poles do not show bulk and mass properly, and that the city needs better ways to visualize projects. It is his belief that computerization could make this very subjective process more accurate and more objective.

Mr. Dominy opined that basements are a relief valve for the city. They are invisible (fully-
Mr. Dominy would discourage tinkering with the basement ordinance. He felt that partially exempt basements that presented a three-story appearance should be allowed where they are not visible to neighbors. Although somewhat off-subject, he did note that in the Beach Colony, there should be coordinated curb cuts. The city is losing street parking when new homes take too much street frontage for driveways, etc.

In Mr. Dominy's opinion, the RM-East is a deprived zone because it is so hard to build there. Restrictions are so tight. If you create a duplex, you end up with 800-s/f living units, which make it difficult for developers to make a profit. And because this is in the flood plain district, there can be no basements. Therefore, you see some very contorted projects in this area. There generally are no view issues in RM-East, but there are some privacy issues. Perhaps the committee could look at this zone.

Mr. Dominy offered his opinion that it is not fair for a new resident, who wants to renovate or build a new home, to have to bend over backwards to make accommodation for an existing resident whose home is non-conforming.

Most frustrating to Mr. Dominy is that those who are already in place feel that they have more rights than new people coming in. In fact, rights of existing and new neighbors should be equal. In his opinion, the prevailing attitude of Del Mar neighbors is that “we were here first; you don’t have rights to mess up our neighborhood.”

Mr. Dominy’s closing comment: “It’s not how big you make it; it is how you make it big.”

SPEAKER: BRIAN CHurch, Brian Church Architecture, 1650 Camino Del Mar

Mr. Church offered his opinion that it is very important to remove subjectivity from the process. He noted that in his practice, most clients are building a house for the first time, and the DRB process can be hard.

He felt that the “current mood” of the DRB should not be allowed to dictate the design of someone’s house. He stated that “everyone feels they have the right to opin and the right to mess with your neighbors. Del Mar people aren’t nastier than in other jurisdictions, but that is how it comes across. ‘I don’t like you, I don’t like the fact you are flipping this house…’”

Mr. Church felt that one way to avoid subjectivity is to qualify and quantify the DRB more specifically. He cited the Rancho Santa Fe community of Cielo, which has extensive Design Guidelines, as an example.

Mr. Church stated that the name of the “Design Review Board” is a misnomer. Moreover, he objects that he is criticized by the Board for building projects to the maximum, when those are allowed by the DROs.

Mr. Church feels that the ex-officio should be a voting member of the DRB.

In terms of 3-D renderings, he felt that they could perceived as “scary” to clients or laypeople; in his opinion, computer elevations look so much worse than hand-drawn elevations, for instance.

Mr. Church suggested that one requirement for being a DRB member should be that the person himself or herself went through design review at some prior time.

Member Doyle noted that she used to live in a home designed by Brian Church, in the Beach Colony. She asked him whether he felt that DRB members were appropriately knowledgeable about the special circumstances in the Beach Colony.

Mr. Church replied that no, there seems to be a contextual misunderstanding of this zone by the Design Review Board members, in his experience.
Member Doyle suggested that perhaps we need to add “continuing education” or other additional learning for DRB members so that they understand the context of the Beach Colony when considering projects there.

Member Kaplan asked Mr. Church about the concept of Design Guidelines. Should we have Design Guidelines that provide objectivity?

Mr. Church replied that he felt that they should provide objectivity.

Member Meredith asked: what do you think about qualifications for citizens to serve on the DRB—should there be architects, designers, etc., be on the DRB again?

Mr. Church felt that yes, there should be.

Member Olson asked more about 3-D visualization. He expressed his opinion that a 3-D physical model is very helpful. He asked Mr. Church if it would be possible to create a 3-D rendering of the physical model, noting that technology today can help make the characteristics of a building and its context more visible and understandable to the DRB and the public.

Member Olson said that he agreed with Lew Dominy—we should use modern technology more for Del Mar’s design review process.

Member Meredith concurred that a physical model can indeed be very helpful, though it can be expensive to create.

Chairman Feder asked if an architect has an obligation or a standard to consider the character of the community in the process of designing a house.

Mr. Church replied that “No, not so much. Every neighborhood has a different character.” He noted that an architect is working with the taste of the client, not the neighborhood.

Chairman Feder then asked if, when someone comes to Mr. Church and says they want to have him design a house for them, does he tell them “this is what the DROs allow,” versus saying “these are the rules, but in addition this is the character of the neighborhood.”

Mr. Church replied that no one wants to build out of context to the neighborhood, but the client will say, “I still want my 2,500 sq./ft.,” and so as architects, we find a way to fit that in. Because of the high cost of lots in Del Mar now, we need to maximize what people want to build.

**SPEAKER: HOWARD GAD,** Heritage West Development Company, 505 Lomas Santa Fe Drive, Solana Beach

Mr. Gad stated that he appreciated the comments of the preceding speakers, but wanted to note that predictability is very important to him and his company.

He noted that there had been an experimental two-step process for Design Review: a separate meeting that a developer would pay extra for, in order to have early assessment of potential view blockage issues. In the first step, story poles would be erected, and the developer would get a “read” from the DRB as well as neighbors’ input.

Mr. Gad suggested that if those view issues were out of the way early and a confined envelope was established and agreed upon, then view issue is out of the way. The architect could then design the home within that envelope.

Mr. Gad also noted that there are extensive and expensive requirements for a DRB application that includes engineering requirements, lighting, landscape, etc., but that when projects go through contentious review and there are many changes, that can be very expensive for the applicant.

Mr. Gad felt that story poles are good and useful, as they show where the issues are in terms of neighbor impact.

He also noted that view blockage can pose a problem when it is not clear what a neighbor
claims and his or her primary view. He wondered if perhaps there should there be a neutral arbiter for this, such as the ex-officio member.

He also felt that the DRB should limit comments on a project to people who live within 300 feet only. He felt it not fair for neighbors to have their friends come in to DRB meetings and object to a project; objections or support should be tied to the actual neighborhood, not from those living miles away.

Mr. Gad spoke about a zoning issue that bothers him - the four-foot-level issue, noting that to exempt the basement, you must have it 4-feet of separation but for no reason other than definitional. He felt this rule was actually counterproductive to keeping down the scale of a home, and wondered if the Ad Hoc Committee could review that issue even though it is in the Zoning ordinance.

He also felt that the strict side-yard encroachment rules could pose a problem in terms of design—with no bay windows, no fireplace, etc., allowed, one could end up with a blank wall; the only exception to that are 2-foot overhangs.

**Member Meredith** concurred with Mr. Gad’s statement that the cost to take a new house to DRB is high, because of the need for extensive engineering, lighting, etc.

Mr. Gad noted that a problem with the DRB is subjectivity. He also felt that applicants should “get credit” for using the CPP. He felt that as it is now structured, a builder could make concessions as part of the CPP, and then when the project is heard at the DRB meeting, no credit is given for the concessions already made.

**Member Kelly** asked Mr. Gad if he had any comments regarding partially-exempt basement.

Mr. Gad replied that if a basement is fully exempt, there is no problem. He felt that with partially-exempt basements, if you didn’t have the 4-foot rule, it would be an improvement.

**Member Farrell** asked about the previous comments that a partially exempt basement gives the visual impact of a three-story house, which is a problem for the neighborhood, and asked if he had an opinion on that.

Mr. Gad stated that he no comment on that circumstance.

8. **ITEMS FOR NEXT AGENDA**

9. **ADJOURNMENT**

The meeting was adjourned at 8:05pm.
MEMORANDUM

TO: Adam Birnbaum

CC: Joe Curtis, Scott Huth

FROM: Scott MacDonald

RE: Improvements to DRB

DATE: October 20, 2015

Adam, as I indicated earlier, I will be in route to South America Thursday on a long planned holiday to the Galapagos Islands and then on to Machu Picchu. Unfortunately, I will miss the Ad Hoc Committee / DRB meeting. Please consider and circulate my comments below.

The DRO and its implementing DRB are beneficial to the community and have contributed significantly to the well being of the city for many years. I fully support the DRB and am proud to serve as a current member. However, I believe some changes would also be beneficial.

My biggest concern is that applicants do not have clear guidance on what is acceptable when they prepare and submit an application. Their time-consuming and expensive process results in an application that is judged subjectively. It would be much fairer if applicants had guideline or safe harbor interpretations of what phrases like neighborhood compatibility or building mass actually meant.

I suggest the committee try to establish such definitional guidelines. There should always be some discretion for unusual projects, but better guidance up front is only fair. A few examples of possible guidelines include:

- A proposed building generally does not violate the DRO for neighborhood scale compatibility (23.08.077C) if its height is no higher from the street than an adjacent building or the majority of buildings on the same block.
- A proposed building does not violate the Bulk and Mass DRO (23.08.078E) if the uncounted GLA does not exceed 50% of the counted GLA.
- If the same amount of coast view is available before and after a proposed building, it will not violate Public Coastal Views (23.08.077A).

I am certain many of the commonly used DRO violations could be framed with guidance measures.
A second concern is the size of many proposed buildings that used excluded FAR to add scale. Oddly, the market for homes seems to want smaller units matching the long-term trend toward smaller households but developers seem to try to maximize living area regardless.

I suggest the following modifications to the zoning ordinance.

- 10% of all basement and covered deck space, which is currently excluded from FAR calculations, be included.
- Parking requirements should be calculated based on total FAR, including excluded living areas such as basements. The bigger the house, the more cars should be accommodated on site.
- The right to build ancillary buildings, especially in the R1-10 low density zone, should be much more limited.

The DRO does not address lighting except for 23.08.077F where it is a violation if the design adversely affects lighting quality in the neighborhood. This is widely and differently interpreted. I think the guideline should be if lights are facing inward or down and the proposed lights do not reflect into a neighbor’s home, there is no DRO violation. We should not micro manage a homeowners lights.

The DRO addresses landscaping but there should be encouragement to use drought tolerant and water conservation measures, and these should have specific guidelines.

The city planning department uses a calculation to determine when an application can continue as a non-conforming use or weather it needs to conform to current zoning standards. This formula should be examined and, if possible, simplified. Currently, it is a bit of a “black box” to many.

I believe the DRO process should be modified so rejection of an application is not so punitive. Instead of prohibiting a rejected applicant from reapplying for a year and requiring a full set of new fees, we should just limit reapplication to no sooner than four months. The DRB almost always continues an application even if the Board unanimously rejects because a rejection is so punitive. We should be able to reject an application without causing so much damage to the applicant, who is usually a Del Mar resident.

Finally, I would like to see the fiscal impact of an application. This is not now a DRO issue but I think it is prudent to ask what the fiscal implications are of approving or rejecting an application. The City requires property tax revenue to meet the needs of its citizens, and many residents do not pay very much according to state law (Proposition 13). We should not approve applications, which detract from the neighborhood, but we should be aware of the financial consequences of our actions.
Hopefully, these comments will be helpful for the committee in evaluating options to improve the DRO and the DRB process. The comments and recommendations are my own and do not, to my knowledge, represent the thoughts of any other DRB member or the DRB in its entirety.