From: **Dwight Worden** <dworden@roadrunner.com>
Date: Sun, Jul 24, 2016 at 9:34 PM
Subject: Monday July 25: agenda ITEM-150: Approval of a Ground Lease Agreement between the City of San Diego and Surf Cup Sports, LLC. (Carmel Valley and Fairbanks Ranch Community Areas. District 1.)
To: sherrilightner@sandiego.gov, loriezapf@sandiego.gov, ToddGloria@sandiego.gov,myrtlecole@sandiego.gov, ChrisCate@sandiego.gov, Scott Sherman <scottsherman@sandiego.gov>, DavidAlvarez<davidalvarez@sandiego.gov>, markkersey@sandiego.gov, martiemerald@sandiego.gov

Honorable Mayor and Council:

I write to express concern over the proposed lease. As one who was intimately involved in the 1980's when the Fairbanks Ranch project was approved, my concerns include:

The Original Intent Was For This Area To Be Public Open Space Restricted To Primarily Passive Uses. In the late 1970's the City had hired nationally prominent growth management expert Dr. Robert Freilich to develop a Growth Management Plan. I was active in those proceedings. The ink was barely dry on council's adoption of that Plan when the city council in 1982 approved the Fairbanks Ranch project by ignoring and amending the new Plan.

The Fairbanks area had been designated "Future Urbanizing" (Urban Reserve) in the new Plan, but the council's 1982 action included a "phase shift" to move the property from "Future Urbanizing" to "Planned Urbanizing" to accommodate immediate development. See, Fairbanks Ranch staff report March 26, 1982. This council action generated much community outrage and was a crystallizing factor leading to the drafting and passage of Proposition A. Prop A, as you know, was an effort to prevent such plan violations in the future by requiring voter ratification of shifts from "Future Urbanizing" to "Planned Urbanizing." I was involved in this campaign as a principal drafter of Prop A.

At the time of approval of the Fairbanks Ranch project in 1982 the then city council justified its action in overriding its new Growth Management Plan based on the major commitments of public open space lands that were part of the project and on the opportunity to have an Olympic equestrian event on the site that was offered contingent on project approval. *The staff recommendation to approve this project is based on the anticipated public benefits to be obtained from the open space dedication.* City staff report March 26, 1982, page 2. The 616 acres, or 78% of the project site, being committed as open space were to include the golf course going public after a period of private usage, and what we now call the polo fields being public open space. Notwithstanding these original intentions, the golf course remains private, and now your council is on the verge of committing the polo fields to an intensity of uses that, in my opinion, go well beyond what was originally intended.

The Proposed Lease Appears To Authorize Uses That Violate The Deed Restrictions. Section 4(a) (ii) of the original deed restrictions for this property limit its use to *Passive non-commercial recreational uses....* Examples given in this restriction of what this means are *picnicking, walking, hiking, and similar activities...*The intensity of uses allowed by both the prior and proposed lease go well beyond this restriction. Section 4(a) (iii) of the restrictions limits uses to *Active non-commercial recreational uses not involving large assemblages of people or automobiles...*Examples given of what this means are *"Equestrian activities, jogging, Frisbee, and similar activities.* The uses allowed by the prior and proposed leases with their large assemblages of both people and automobiles and their commercial aspects appear to go beyond any reasonable reading of these provisions.

Your staff, and the proposed lease language itself, attempt to justify the new lease by contending it only "continues" uses that were made under the prior lease. *However, City Staff recommends the proposed lease to Surf Cup Sports, LLCauthorize (sic) uses as allowed by the grant deed and the historical uses on the Polo Fields in accordance with the Polo Club Lease.*" Executive Summary, page 2. See, also, Lease Recitals Section C: *CITY desires to lease the Premises to LESSEE to operate activities, programs and operations similar in scope to those lawfully conducted on the Premises pursuant to the Current Lease and in accordance with that certain Deed, as more specifically set forth in Section 1.2, below.*

The problem with this analysis is that it fails to distinguish between prior uses that complied with the deed restrictions and prior uses that did not. It refers to "lawful" uses, but in a context that includes unlawful uses. To the extent uses in violation of the deed restrictions were allowed to occur under the prior lease without corrective enforcement, that failure to enforce does not make those uses authorized or compliant. Unenforced violations are not amendments of the deed restrictions, yet the proposed new lease would use this prior history, not the deed restrictions themselves, to define the scope of allowed activities.

The proposed lease has language limiting uses to those allowed by the deed restrictions, but it has no clarification of what that means. See, lease section 1.2. This leaves the proposed lessee and any reader of the lease with the impression that the prior uses, allowed or not, set the scope and that all those uses can continue. At minimum, your council should ask for clarification on key issues:

- What is the scope of the deed restrictions?
- Were all the prior uses within that scope?
- What is the scope of allowed uses under the proposed new lease?
- What is the impact of the letter exchanges between staff and the successors to Watt Development, WISD and later Ocean Industries? A letter dated August 5, 2002 from WISD's attorney purports to consent to some uses identified as potentially in violation of the deed restrictions, and there is an October 18, 2014 letter to Ocean from the city staff requesting permission for certain other uses that appear to go beyond the scope of the deed restrictions.

- Ask your staff and legal council if It violates the deed restrictions to allow the successors to Watt to have, in their discretion, the unfettered ability to amend the deed restrictions by letter. In my opinion the deed restrictions (in Section 5(a)) allow only clarification of unspecified uses determined to be similar to those expressly authorized and consistent with the restrictions, not backdoor amendments that authorize non-compliant uses.

Relying on a CEQA exemption is high risk. Your staff recommends that the project is exempt from CEQA on a number of grounds, including that it will only continue existing uses. See, e.g. Request for Council Action, page 2, item 2: *...there is a past history of the facility being used for the same or similar kind of purpose for at least three years and that there is a reasonable expectation that the future occurrence of the activity would not represent a change in the operation of the facility....* Issues about non-compliance with deed restrictions and unauthorized uses are not addressed, yet the expansion of the scope of activities in both the prior and proposed lease that go beyond what is allowed by the deed restrictions raises potentially significant environmental issues.

The baseline for measuring the current project's potential environmental impacts is what is allowed by the deed restrictions, excluding illegal activity. Using that baseline, the fact that significant environmental impacts are reasonably foreseeable becomes apparent. Again, the issue of the scope of what is, and is not, allowed by the deed restrictions needs to be addressed before CEQA or the merits of the new lease can be fully addressed.

Support for River Park JPA input. I also support the input and request of the River Park JPA in its letter from its Board dated July 20, 2016 and in its letter from its Executive Director dated June 28, 2016, including the request that the lease expressly assure corrective action regarding the Coast to Crest Trail.

I understand that Surf Soccer provides a valuable community service. I also appreciate the value to the city to be received in terms of significant rental income. But, commitments were made, confirmed in writing, and recorded as deed restrictions. They were about open space not about money. If the council wants to change those restrictions, then start the process to amend them, but please don't simply ignore them or attempt to amend them by letter because they are inconvenient.

Please include a copy of this email in your record of proceedings.

Sincerely,
D. Dwight Worden,
Writing on behalf of myself.