

Long Beach City Council
Belmont Beach and Aquatics Center Public Hearing
Comments from Gordana Kajer
May 16, 2017

Based on the following information I'm providing I wish to advise you:

1. That the Standards Variance approved by the Planning Commission is not supported with facts, violates the City's Local Coastal Program and must be overturned;
2. That the Coastal Development Permit approval violates the City's certified Local Coastal Program and Coastal Act policy and must be overturned;
3. And that the Long Beach City Council must find that the EIR is flawed and must ask for it to be re-circulated.

1. **Standards Variance**

A "standards variance" was approved by Planning Commission for this project. There are three City of Long Beach Municipal Codes regarding standards and standards variances:

21.15.2870: Standards or development standards.

21.15.2890: Standards variance.

21.25.306 : Required Findings (or approve or deny a Standards Variance).

The Planning Commission's approval of the standards variance was not based on facts and fails to support the requirements under the Long Beach Municipal code to approve a standards variance.

- Code 21.15.2890: Defines "standards variance".

A standards variance can't be used to "intensify the use" on a lot.

- Code 21.25.306 – Required Findings

These findings must be based on fact and "analyzed, made and adopted" before a standards variance can be approved. Most important: The project must be found to comply with all four of these findings to approve a variance.

Not just one, or two. All of them. Here they are:

1. The site or the improvements on the site are physically unique when compared to other sites in the same zone;

For Condition Number One;

The Staff Report argues that the project site is unique because it is split-zoned. The inland (northern) part is in Belmont Pier Planned Development District (PD-2).

Planned Development (PD-2) Maximum height is 25 feet.

The southern part is in the Park (P) Zone.

Park Zone maximum height is 30 feet.

It goes on to give a history of the former Belmont Plaza Pool and then describes all areas – buildings, beach, parking lots and paving - around the site.

That section ends with this affirmation:

“The diverse range of project site conditions is thus unique when compared with other sites in the PD-2 and P zone.”

The staff report then goes on:

“The presence and location of these existing improvements act as site constraints that limit possible design options, including the ability to design a facility in compliance with height limitations.”

None of this “uniqueness” makes it impossible to design a 25 feet to 30 foot pool building surrounded by the existing buildings, parking lots and sand beach.

“Furthermore, the proposed closure of Olympic Plaza (to be integrated into a passive park and landscaping component of the project – would leave the site uniquely without a street frontage.”

Olympic Plaza is being closed as a design feature of this project to create a passive park. This is not a mandatory closing of the street frontage.

Next we learn in the Staff Report that the Belmont Pool Complex is designated Special Use Park.

“Special Use Parks ‘provide unique cultural heritage and/or educational features which attract a broad audience from near and far.’ The proposed replacement pool facility would retain this unique designation and continue the site’s demonstrated 45-year ability to support a swimming facility capable of accommodating local, regional and national aquatic events.”

The temporary pool on the site now supports swimming events. It could easily be made into a permanent pool to support accommodating local, regional and national aquatic events.

In conclusion:

The Staff Report fails to support the argument that split zoning and the site's surrounding structures/amenities or designation as a Special Use Park can only be satisfied by this new pool project.

This standards variance finding is not supported by fact and cannot not be approved.

2. The unique situation causes the applicant [The City] to experience hardship that deprives the applicant [The City] of a substantial right to use of the property as other properties in the same zone are used and will not constitute a grant of special privilege inconsistent with limitations imposed on similarly zoned properties or inconsistent with the purpose of the zone regulations;

The Staff Report provides two short paragraphs as factual argument for this condition.

For Condition B-

The City's is clearly not experiencing hardship or being deprived of their rights to use the property as a Park or PD-2 zoned area because of some unique situation which they failed to identify in Condition A above.

Other properties in the same zone are being used as a park – our public beach, for example.

The Staff argument is based on the former use of this site, not on the use of other properties nearby - or on other properties with these zoning designations.

There is no evidence that nearby improvements force the approval of this structure on this site.

Ironically, allowing the City to build at 78 foot high structure in a zone with a maximum height limit of 25 feet (Park) and 30 feet (PD-2) is – in fact - a grant of special privilege.

The City's inability to use this property in a manner as other properties in PD-2 or Park, and that the City is experiencing a hardship, is not supported by fact.

This standards variance cannot be approved.

3. The variance will not cause substantial adverse effects upon the community;
4. In the Coastal Zone, the variance will carry out the local coastal program and will not interfere with physical, visual and psychological aspects of access to or along the coast.

The Staff offers one brief paragraph in this report to support this condition.

This project actually VIOLATES the city's local coastal program.

From that document:

- (A) Style: All building should be in harmony with other existing styles in the area.
- This building is clearly DESIGNED to be ICONIC.
An ICONIC building is -by definition- NOT 'in harmony' with other buildings.
- (B) Height: No building can be over two stories high or 25 feet above grade.
- This building is 78 feet high. The curved roofline is more than 25 feet high over the majority of the structure.
- (C) Lot Coverage: No building shall cover more than 50% of its site.
And here's the math:
- This pool complex sits on a 7 foot high foundation (plinth).
 - The plinth covers ONE HUNDRED THIRTY THOUSAND AND THIRTY FOUR SQUARE FEET of the project site.
 - The project site is 5.8 acres or TWO HUNDRED FIFTY TWO THOUSAND SIX HUNDRED FORTY EIGHT SQUARE FEET.
 - Half of the project site is ONE HUNDRED TWENTY SIX THOUSAND TWO HUNDRED NINETY TWO SQUARE FEET.
 - The project exceeds the 50% maximum on this site by over THREE THOUSAND SEVEN HUNDRED SQUARE FEET.
- (D) Special Design: There won't be any unobstructed views through this site towards the beach and recreational facilities.
- This pool structure is built on a 7 feet high plinth on the beach.
 - That 7 foot wall WILL obstruct views through this site towards the BEACH AND OCEAN.

This standards variance cannot be approved as three of the four findings of fact have not been met. The City Council cannot uphold the Planning Commission approval of a Standards Variance for this project.

2. The Local Coastal Development Permit Findings

The Staff Report deliberately ignores critical elements of the LCP.

From Mel Nutter's testimony on 3/2/2017 at Planning Commission:

The City, as the applicant, is asking itself as the permitting agency to violate its own LCP rules.

The proposed Coastal Development findings speak generally about Coastal Act policies and LCP policies.

The Findings do not mention the requirements of its adopted LCP that the Coastal Development Permits it issues be found consistent with its implementing ordinances. [Such as the Standards Variance just described.]

The standards for granting a variance in the City's Coastal Zone are included in its certified LCP.

Therefore, a failure to apply those standards would violate Local Coastal Program requirements.

If the City can't satisfy the Standards Variance conditions in findings of fact then the City has violated its own certified Local Coastal Program.

The Long Beach City Council must overturn the Planning Commission's approval of a Coastal Development Permit for this project since it violates the City's certified LCP.

3. Violations of the Coastal Act

There are Coastal Act policies for this project which were never identified OR analyzed in the EIR. This is a violation of CEQA which mandates that the EIR identify and fully analyze important Coastal Act policies.

For example, the proposed development violates 30253 (a) and (b) of the Coastal Act. This has to do with "protective devices" and policies against coastal armoring.

From that section:

"New development shall do all of the following:

- a) Minimize risks to life and property in areas of high geologic, flood and fire hazard.
- b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs."

This pool is built on a 7 foot high pedestal (the plinth) foundation. This is a structural “protective device” specifically designed to address flooding from foreseeable sea level rise. The EIR fails to identify, much less analyze, the Coastal Act policies prohibiting protective devices.

This is a violation of CEQA and a violation of the Coastal Act.

4. Protecting views of the ocean and beach are important elements of the Coastal Act. The EIR is supposed to analyze potential impacts, evaluate them properly and identify the negative impacts under Section 30231.

From the EIR Chapter 4: Aesthetics

Page 4.1-2

“Scenic Vista”

“A scenic vista can be impacted in two ways. A development project can have visual impacts by either directly diminishing the scenic quality of the vista or by block the view corridors of “vista” of the scenic resource. Important factors in determining whether a proposed project will block views include HEIGHT, MASS and LOCATION relative to surrounding land uses and travel corridors.”

The EIR then lands this whopper:

“The City has not adopted defined standards or methodologies for the assessment of aesthetic impacts.”

That’s a false statement.

The City sure does have a defined method to identify aesthetic impacts.

This is Municipal Code 21.21.302.5(b).

“Building height variance applicants shall erect story poles which accurately represent the full extent of the proposed structure....”

The City installed a single story pole 14 days prior to the MARCH TWO TWENTY SEVENTEEN Planning Commission meeting to satisfy the City’s public notice period and AFTER close of public comment for the EIR. The pole recorded ONLY the height of the new building (78 feet) and the height of the former pool (60 feet).

Figure 4.1.5

All views of the former building and proposed building (Key Views) in the EIR were photo-shopped into one dimension images, artificially reducing the visual impacts of the proposed building in these images.

Figure 4.1.4

The EIR ignored the public vista which will be blocked from Belmont Plaza adjacent to the Belmont Brewing Company by the Bubble building looking east by southeast.

Page 4.1-18, Threshold 4.1.1:

So - Would the project have a substantial adverse effect on a scenic vista?

The EIR tells us no.

“Less than Significant Impact”

“The curved elliptical shape of the Bubble reduces the structural scale and mass when compared to the traditional rectangular rebuilding by eliminating the corners of the building, allowing for an increase in viewable area. Therefore, [and] the change in the building placement on the site [now north-south, formerly east-west] in combination with the reduced structural mass from the Bubble’s elliptical design, would not result in a substantial adverse effect on scenic vistas and a less than significant impact would occur. No mitigation is required.”

That is a subjective statement with no basis in fact provided in the EIR.

Page 4.1-29

Conclusion: ...”However, the proposed Project design appears to have comparable mass, scale and height [to the former Belmont Pool complex] and would also be aligned to provide for increased coastal views.”

That’s a subjective statement. No basis in fact.

Further:

“...the visual character of the Project site would not be substantially degraded with implementation of the proposed Project.”

Another subjective statement. No basis in fact.

The former building covered 45,595 square feet.

The proposed project is 125,500 square feet.

A letter from the firm of Chatten-Brown & Carstens (2/6/2017) the City further details the CEQA violations resulting from the City’s refusal to include information obtained from story pole installation.

The City failed to install story poles during the EIR Public Comment period.

The public was not given an adequate method to assess AND COMMENT on the impacts of this project on ANY scenic vistas under the City’s own municipal code. The EIR failed to objectively identify the height mass and scale of the building and these statements are not supported by fact.

The EIR should be recirculated after the installation of story poles that document the full size, shape and mass of the new project. Allow the public to identify and comment on the impacts to scenic vistas as required under Section 30231 of the Coastal Act.

5. GLOBAL CLIMATE CHANGE

According to the EIR (pg 4.6-1)

“This section evaluates potential greenhouse gas emissions impacts on global climate change associated with the project and identifies mitigation measures recommended for potentially significant impacts.”

The project was analyzed in the EIR for impacts on Green House Gas emissions and the impact those emissions have on sea level rise. And there aren't any.

The EIR suggests the project may, in fact, be vulnerable to THE EFFECTS of sea-level rise.

Page 4.6-11:

The City commissioned a “Wave Uprush Study” in October 2014 to analyze the site’s vulnerability to rising sea levels.

Page 4.6-12:

“The elevation of the project site is essentially at sea level and therefore the rising of the ocean levels could result in on-site flood conditions.”

The EIR offers this table with sea level rise projections from the study at the project site.

One Half Foot to 2 Point 6 Feet by Twenty Sixty and 1 Point 4 Feet to Five Point Five Feet by Two Thousand One Hundred

Then the EIR has some GOOD news.

Page 4.6-24:

Everything above the pool’s main deck is safe.

That’s because the main pool deck would be elevated SEVENTEEN feet ABOVE MEAN SEA LEVEL.

The waves will only reach EIGHT POINT TWO FEET (Twenty Sixty) and TEN POINT FOUR FEET or greater (in Two Thousand One Hundred) at the Project site.

Here’s the bad news:

“The lower level of the building (pool equipment and storage) and associated parking areas would be below the projected water line under both scenarios; however, these areas would

not be open for public use, and therefore, would not subject visitors to the Project site to significant cumulative impacts related to sea level rise.”

The lower level of the building (pool equipment and storage) and the parking areas are expected to be below projected water lines.

The EIR then makes these two AMAZING conclusions:

“...visitors to the project would not be subjected to the impacts of sea level rise.”

AND

“Therefore, the proposed Project would not be adversely impacted by sea level rise due to climate change.”

And how does this project square with the City’s policies on sea level rise, climate adaptation and resiliency?

It doesn’t.

The City’s “Climate Resiliency Assessment Report” (December 2015).

Page 24:

“As sea level rises to 50 cm [ONE POINT FIVE FEET], flooding from a 100-year storm expands to cover almost the entire Peninsula, all of Belmont Shore and Alamitos Bay, the Marina and large portions of the beach south of Belmont Shore.”

Page 30:

Table 4: Adaptation strategies for existing and new developments:

- Mandatory setbacks or restriction of development in vulnerable areas.
- Required warning notices for developers and buyers regarding the potential impacts of future SLR;
- Smart growth and clustered development in low-risk areas;

Page 33:

“If Long Beach is to be a model of a climate-change resilient city, it will have to prepare for greater temporary coastal flooding, erosion and eventual permanent inundation of low-lying areas.”

The Peninsula and Alamitos Bay are Long Beach’s most vulnerable areas to coastal flooding and erosion.

Page 63: Summary and Conclusions – Threats to Long Beach

“While uncertainty exists as to how climate change and SLR will play out in Long Beach in detail, we know enough to begin to take action.”

Do you believe that action should include building a \$103 Million infrastructure project on the beach in the face of that uncertainty?

Or would a better action be to prepare to protect existing homes and businesses?

And now let's hear from the State of California.

Ocean Protection Council: April 2017

Adapting to Rising Seas: Updating California's Sea-Level Rise Guidance

This is the State's guidance document (initially adopted in 2010, updated in 2013). It's provided to state and local agencies to incorporate sea-level rise projections into planning, permitting, and investment.

The April 2017 report cites recent advances in ice loss science and projections of sea-level rise.

These are the Report's Key Findings

Scientific understanding of sea-level rise is advancing at a rapid pace.

The direction of sea-level change is clear.

We're already experiencing the effects of sea-level rise.

The rate of ice loss from the Greenland and the Antarctic Ice sheets is increasing.

New science evidence has highlighted the potential for EXTREME sea-level rise.

Probabilities of specific sea-level increases CAN inform decisions.

CURRENT policy decisions are shaping our coastal future.

Waiting for scientific CERTAINTY is neither a safe nor prudent option.

CalMatters – April 25, 2017:

“Rising seas are claiming our famed coast faster than scientists imagined.”

The APRIL 2017 report shows a chance of sea levels rising higher than 10 feet in 70 years. That's two times higher than the SLR projections identified in the EIR.

(Table 4.6.C, Page 4.6-12).

Here are images of what that might look like at this site.

The EIR must be recirculated to analyze the latest SLR science projection released by the State of California.

6. EIR Chapter 5.0: Alternatives

Page 5.8

“Additionally, funding for the proposed Project is entirely sourced from Tidelands Operating Fund...”

That’s a false statement.

The project site alternatives were artificially excluded based on the proposed funding for this pool. With a \$103 Million estimated construction budget and only \$60 Million budgeted from Tidelands funds, this project requires alternative public funding sources for over \$43 Million.

Where is that \$43 Million to come from?

And that money – where ever it might come from - is MORE THAN enough to build this project INLAND, away from unstable sand and away from the threat of sea-level rise.

The EIR was announced on 4/11/2016 asserting full funding with Tidelands Funds.

Assistant City Manager Tom Modica was quoted in the Press-Telegram on 4/9/2016:

\$60 Million in Tidelands Funds is secured, he noted the falling price of oil and that the city was working to identify other funding sources.

The City failed to correct this false assertion about Tidelands Funding in the EIR even when they had the opportunity.

The EIR must be re-circulated with alternative sites identified outside of the coastal zone, without consideration for funding sources.

Thank you. I’m available to answer any questions.

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