

September 27, 2022, City Council Agenda Comments

The following comments on items on the Newport Beach City Council agenda are submitted by:

Jim Mosher (jimmosher@yahoo.com), 2210 Private Road, Newport Beach 92660 (949-548-6229)

Item 1. Minutes for the September 13, 2022 City Council Meeting

The passages shown in *italics* below are from the draft minutes with suggested corrections shown in ***strikeout underline*** format. The page numbers refer to Volume 65.

Page 381, Item SS2, paragraph 3: “Nancy Scarbrough noted sentiment shared among residents regarding fractional ownership during recent community events, asked that Council consider the residents’ dissatisfaction, and ***direct*** City staff to further explore options to regulate or restrict fractional home ownership.” [or “..., and City staff ~~to~~ further explore ...”]

Page 383, first full paragraph: “Council Member Avery noted that, even before Pacaso, the City was starting to lose local control to the State, experienced more density and traffic, agreed with implementing a moratorium, cautioned the potential cost to the City, supported looking at what other cities have done and updating the NBMC, and ***mitigate mitigating*** the impacts.” [or “... updating the NBMC, ~~and to~~ mitigate the impacts.”]

Page 384, last two bullets:

“* Met with Denis ***Labonge LaBonge*** and Amber Snyder regarding the Fire Safety Council and home hardening efforts .

* Attended the General Plan Update ***Planning Steering*** Committee meeting, Sherman Gardens Annual Garden Party, League of California Cities Conference, two-day Source-to-Sea Water Conference ...”

Page 390, paragraph 5: “Suzanne ***Forrester Forster***, VP of Banning Ranch Conservancy, provided an update on the Banning Ranch acquisition effort, ...”

Item XIII. MATTERS WHICH COUNCIL MEMBERS HAVE ASKED TO BE PLACED ON A FUTURE AGENDA (NON-DISCUSSION ITEM)

Item 1, the draft minutes of the September 13 meeting, on page 385, shows two requests for future agenda items, only one of which appears here, under Item XIII.

The other was for “a future agenda item to consider directing staff to review the status of a general aviation issue regarding private jet bias and bring back a report to Council with a plan of action and remedies.”

I can imagine this could have been withdrawn, perhaps on an assurance that the Aviation Committee was looking into it, but it is always troubling to the public to see requests made on their behalf and then seemingly not acted upon.

Item 10. School Resource Officer Program Agreement

It is good to see the school district sharing in the cost of this effort, unlike the equally-necessary crossing guards for which the City appears to pay the full cost.

Item 12. Budget Amendment to Accept a Check from the Friends of the Newport Beach Library and Appropriate Funds to the Library's Fiscal Year 2022-23 Maintenance and Operation Budget

It is good to see the Friends continue their remarkable success at fundraising, primarily through the sale of donated books.

Formerly the Library Foundation was the larger contributor, serving as the primary conduit for monetary donations. The last few years, however, it seems contributions to the library through them have been largely diverted to their Lecture Hall project, which it could be argued benefits their private organization at least as much as it benefits the library.

Item 13. Confirmation of Appointments to the the [sic] Ad Hoc Municipal Code and Council Policy Review Committee

Since this committee will apparently focus solely on deleting words from the City's codes and policies, it seems ironic the agenda notice for this item (as shown above) contains a word that could be deleted.

That said, one would not guess the committee's very limited function from the notice, and I would have hoped the committee was charged with "review" – that is looking for improvements, rather than only deletions.

It might be noted that at least with regard to the Council Policy Manual, prior to 2017, [Policy D-3](#) required an at least annual review not just for deletions, but "*for any needed additions, changes or deletions deemed appropriate.*" It is not clear why the Council dropped that review.

Item 15. Ordinance Nos. 2022-19 and 2022-20: Tennis Club at Newport Beach Project Amendment (PA2021-260)

It is not clear why the notice copied above focuses on the two ordinances being introduced, since the item recommends the Council also adopt three resolutions, some of which may have more immediate effect.

That said, it is frustrating to spend several hours preparing three pages of written comments to the Planning Commission on this topic, and see them not passed on to the Council, but reduced to a single sentence buried on page 15-193 of the agenda packet and neither acknowledged nor addressed anywhere else in the staff report.

For those interested, those earlier comments are likely somewhere in the [347 page PDF document](#) Community Development staff has used to archive part of the September 8, 2022, Planning Commission agenda Item 3, as well as, for a little while, starting on page 60 of the 77 pages of "[Item No. 3b - Additional Materials Received](#)" posted at the time of the hearing, and included here by reference.

The essence of those earlier comments was that staff is deceptively suggesting the City Council has the power to approve this very substantial proposed amendment to the General Plan without the [City Charter Section 423](#) ("Greenlight") vote by the people that it clearly requires.

Staff's entire response to date consists of Deputy Director Campbell's dismissal of those comments starting at [1:03:55](#) in the Planning Commission video: *"We've done the Greenlight analysis. We don't agree with Mr. Mosher's viewpoint on the analysis. To adopt his point of view would suggest that the City Council did not approve entitlements for this club and so the increase here with the General Plan Amendment is only 14,000 square feet and that is pursuant to Council policy, you know with every hotel room equals 1,000 square feet. So, we're following City Council policy to a T on this analysis and it does not result in a vote of the electorate."*

This is the same Deputy Director Campbell who, as Principal Planner, wrote a [November 9, 2011, memo](#) to the Planning Commission stating that changing the voter-approved allocation for tennis courts at this site into an allocation for hotel rooms or building floor area would require processing a General Plan amendment.

Yet because Greenlight votes are triggered by General Plan amendments and amending the Plan in 2012 would have triggered a Greenlight vote, the entitlements he refers to above as having been previously approved by the Council were approved *without* processing a General Plan amendment and therefore without any Greenlight tracking.

As a result, everything being requested to be added to the General Plan – 41 hotel rooms, not 14 – is being added for the first time.

In addition, counting it's not clear counting hotel rooms larger than 1,000 sf as being 1,000 sf and ignoring the requests for large amounts of ancillary square footage is *"we're following City Council policy to a T,"* for if one looks at Table LU2 (Anomaly Locations) in the General Plan [Land Use Element](#) (starting on page 3-18), one sees about half specify a square foot development limit that *includes* the hotel rooms, and about half specify a development limit *in addition* to the hotel rooms. The presently proposed amendment on page 15-59 of the staff report is different in appearance from those, and especially unusual in its footnote purporting to explain the origin of the 41 hotel rooms.

In the present case, Condition 5 on page 15-50 of the staff report indicates the "41 hotel rooms" will be adding not the assumed 41,000 sf, but rather allowing 61,870 sf of development not currently in the General Plan. Either way, this over the 40,000 sf requiring voter approval.

To be sure, the applicant, Mr. O Hill, may have had a good faith belief that when voters approved the comprehensive General Plan update with of [Measure V](#) in 2006, they approved enough entitlements for his projected development. For indeed they did, approving on Anomaly 46 not just the existing 3,725 sf clubhouse and 24 tennis courts, but making it eligible for the "MU-H3" floating pool of 540 residences and 65 hotel rooms.

But by the time Mr. O Hill submitted his proposal in 2011, other developers had gobbled up all of the MU-H3 floating pool except for 5 residences, which he claimed as his. But (and despite any City Council approvals in 2012) there was no provision left in the General Plan for the 27 or 41 hotel rooms he might like to build.

To copy from my comments to the Planning Commission, according to pages 7 and 11 of [Resolution No. 2006-77](#), what was presented to voters and approved by them in 2006 was:

Table LU2 Anomaly Locations

Anomaly Number	Statistical Area	Land Use Designation	Development Limit (sf)	Development Limit (Other)	Additional Information
46	L1	MU-H3/PR	3,725	24 Tennis Courts	Residential permitted in accordance with MU-H3

and since no amendments to Anomaly 46 have ever been processed, that is exactly what the General Plan *continues* to allow at Anomaly 46.

The current City Council resolution proposes to amend that to read:

Anomaly Number	Statistical Area	Land Use Designation	Development Limit (sf)	Development Limit (Other)	Additional Information
46	L1	MU-H3/PR	3,725	8 Tennis Courts 41 Hotel Rooms*	Residential permitted in accordance with MU-H3 *27 rooms converted from 17 tennis courts per Council Resolution 2012-10 and 14 rooms per General Plan Amendment PA2022-260

Whatever the footnote might say, the 41 hotel rooms, comprising at least 41,000 sf (and more realistically 61,870 sf) are entirely new, and have never been in the General Plan before.

Since either of those is more than 40,000 sf, voter approval is required.

But staff says “no.”

As proof the 27 hotel rooms were not previously added to the General Plan in 2012 “per Council Resolution 2012-10,” had they been added then, there would have been evidence of them in the City’s [Charter Section 423 Statistical Area Tracking Tables](#) for the 10 years following that.

But there is no such record because there was no amendment and no prior Greenlight tracking.

Shown below is the City’s Greenlight Tracking Table for Newport Center (Statistical Area L1) as [captured by the Internet Archive’s Wayback Machine](#) on March 1, 2021.

City of Newport Beach
 Charter Section 423 Tracking Table
 Statistical Area L1 (Newport Center)
 Post 2006 General Plan Amendments Approved
 Land Use Element
 July 1, 2015
 (Updated April 15, 2016)
 (Updated August 13, 2019)

Project Name Address	Date Approved	Project/GPA Number	Amendment Description	Square Footage Change	Dwelling Unit Change	AM Peak Hour Trip Change	PM Peak Hour Trip Change
Newport Beach Country Club (Clubhouse)	1/24/2012	PA2008-152 GP2008-005	Parks and Recreation (PR) - No Change	21,000	0	N/A	N/A
Vivante Senior Housing	8/13/2019	PA2018-185 GP2018-003	Private Institutions (PI) to Mixed Use Horizontal (MU-H3)	0 (Reduction: 45,028 to 16,000)	90	26	52
100% Totals				21,000	90	26	52
80% Totals				16,800	72	21	42
Remaining Capacity Without Vote				23,200	28	79	58

GPA – General Plan Amendment

CLUP – Coastal Land Use Plan

100% Totals – Cumulative increases resulting from approved GPA's. Decreases are not included.

80% Totals - Charter Section 423 requires that 80% of square footage, dwelling unit and peak hour trip increases of "Prior Amendments" be tracked for a period of 10 years and added to proposed general plan amendments located within the same Statistical Area to determine if the 423 GPA Thresholds are exceeded and a vote of the electorate required. Decreases in any category are not tracked.

Charter Section 423 Thresholds: 40,000 square feet of non-residential floor area, 100 dwelling units, 100 AM or PM Peak Hour trips

Note that this prior tracking table *does* show 21,000 sf added for the neighboring Newport Beach Country Club golf clubhouse on January 24, 2012, which is the reason amending the General Plan to add 27 hotel rooms for the Tennis Club at that time would have broken the 40,000 sf Greenlight limit and required voter approval.

In effect, staff is saying they could avoid a Greenlight vote in 2012 by claiming **no** General Plan amendment took place in 2012, and they can avoid a Greenlight vote in 2022 by claiming a General Plan amendment **did** take place in 2012. The contradiction should be self-evident.

One might argue that since the golf Country Club floor area increase is more than 10 years in the past and has dropped off the Greenlight tracking, Mr. O Hill could avoid a vote now by simply removing one or two hotel rooms from his proposal (assuming the Council is OK counting his rooms as 1,000 sf each and ignoring the large amount of ancillary development he desires).

But even then, the point is that the amount new allocation presently being added to the General Plan is much more than staff's claimed "14,000 sf" and needs to be properly acknowledged, for it becomes part of the Greenlight tracking that affects future General Plan amendment requests for the *next* 10 years.

Item 16. Call for Review – Denial of Reforestation Request for 938 Sandcastle Drive

Considering residents are expected to share in maintaining the City trees in the public parkways adjacent to their homes (primarily by watering them), this appeal by a prominent city figure highlights what could be government over-control in deciding what kind of tree that jointly-maintained tree should be.

However, a key expectation of all governments is that the rules they create will be applied equally to all, without favoritism.

In the present case, the Parks, Beaches and Recreation Commission's consistent interpretation of the City's current policy has been to deny requests to replace healthy City street trees that are not causing significant damage, especially with a less well-developed specimen.

PB&R sometimes even denies replacement of trees that do seem to be causing damage, as the Council may recall from the appeal it heard as [Item 20](#) on August 24, 2021, and upheld 5:2.¹

So, if the current rule creates what the Council sees as over-control, I think the response should be a modified rule rather than applying the existing rule differently from the way it has been applied to others.

The appellant, and all those others, can then come back with a renewed request under the new rule, whatever it may be.

Item 18. Community Development Block Grant Program Year 2021-22, Consolidated Annual Performance and Evaluation Report

I need to study this item more carefully, but the explanation of the status of substantial amounts of expenditure planned for the last year that either were not spent or have not yet been "drawn" (and why they were not spent or drawn) is less than clear.

In addition, with the loan for long-ago improvements in Balboa Village finally payed off, it is not clear to me what the plan is to spend the newly-available money in future years.

It might be noted that CDBG funds were used to develop the original OASIS center, and many think there should be a facility offering similar or supplemental services on the west side of town.

¹ One of the two trees that was the subject of that denied appeal later suffered limb failures after a night of Santa Ana winds, and was replaced.