

March 5, 2020, Planning Commission Item 1 Comments

These comments on a Newport Beach Planning Commission [agenda](#) item are submitted by:

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Item No. 1. MINUTES OF FEBRUARY 20, 2020

Comment

In the discussion of [Item 4](#) (a proposed Accessory Dwelling Units ordinance), Commissioners raised questions as to whether they had to make a recommendation for approval or denial, or could simply pass the proposal on to the City Council for its review.

The last paragraph on page 6 of the [draft minutes](#) correctly records:

“Assistant City Attorney Summerhill indicated the resolution can be revised to recommend the City Council review the amendment. Deputy Community Development Director Campbell added that a recommendation to review the amendment is within the Planning Commission’s purview.”

In this connection, the Commissioners may wish to review NBMC [Chapter 20.66](#) (“Amendments”), which sets forth the procedure for amending the Zoning Code. In particular, [Section 20.66.040](#) (“Commission Recommendation”) gives the Commission three options: *“The Commission shall recommend approval, approval with modifications, or denial of the amendment to the Council.”*

The action taken on Item 4 on March 5 (passing the staff proposal on to the Council, with minor modifications but without a recommendation for approval or denial) does not appear to be among those options.

It is not completely obvious what happens to a proposal lacking a PC recommendation, but if failure to choose one of the three enumerated options is deemed “failure to take action,” then *“Failure of the Commission to take action on the proposed amendment shall be deemed to be denial of the proposed amendment by the Commission”* and *“If the proposed amendment is denied by the Commission, no further action shall be taken, unless appealed to the Council in compliance with Chapter 20.64 (Appeals).”*

In other words, failure of the Commission to recommend approval or denial, as is the case here, would normally prevent the Council from giving the proposal further review unless someone paid the appeal fee or a Council member called it up for review (the two procedures provided in the referenced [Chapter 20.64](#)).

Suggested correction

That said, I believe what the Commission passed on for Council’s review was intended to include some modifications described by staff, and that should be reflected in the minutes.

Page 6: *“Motion made by Vice Chair Weigand and seconded by Commissioner Rosene to adopt Resolution No. PC2020-006 recommending the City Council review Zoning Code Amendment No. CA2019-009 modifying regulations pertaining to accessory dwelling units; and adopt Resolution No. PC2020-007 recommending the City Council authorize staff to submit Local Coastal Program Amendment No. LC2019-008 to the California Coastal; **both with the corrections described by staff.**”*