

RESOURCES & DEVELOPMENT MANAGEMENT DEPARTMENT  
REPORT

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**DATE:** August 24, 2005

**TO:** Orange County Planning Commission

**FROM:** RDMD/Land Planning Services Division

**SUBJECT:** Public Hearing on Planning Application PA05-0028 for Site Development Permit

**PROPOSAL:** Consideration of a Site Development Permit under Orange County Zoning Code Section 7-9-150 to allow development of four single family homes with attached 2-car garages, in the 100-E4 "Small Estates" District. This Site Development Permit requirement was a condition of the subdivision map approval by the Subdivision Committee.

Section 7-9-150.1(d) of the Zoning Code describes Site Development Permits:

"Site plans are included within the term "site development permit". The purpose of a site development permit is to provide for administrative review of detailed development plans for a proposed use. Uses which require a site development permit are regarded as having a relatively low potential for adverse impacts on the subject site or surrounding community due to the nature or magnitude of the use vis-a-vis the sensitivity of the subject site or surrounding community".

**LOCATION:** In the Red Hill/North Tustin area at 12432 Red Hill Avenue, Third Supervisorial District.

**APPLICANT:** Bluff Homes, LLC

**SYNOPSIS:** Land Planning Services Division recommends Planning Commission approval of PA05-0028 subject to the attached findings and conditions.

**STAFF PLANNER/CONTACT:** J. Alfred Swanek, Project Manager  
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**BACKGROUND:**

The proposed project is four single family houses with attached 2-car garages. Each lot is a minimum 10,300 sq. ft. in size. The total site is 1.18 acres. Each house is two stories and 24.5 feet tall. A Site Development Permit is normally not required for single family houses in the E4 District. This Site Development Permit requirement was conditioned under Parcel Map 2004-303 approved by the Orange County Subdivision Committee on March 8, 2005, which provides under Condition of Approval No. 1:

“Prior to the issuance of any grading permits and prior to recordation of any extension of time to record, the applicant shall obtain an approved Site Development Permit approved by the Planning Commission at a public hearing, per Zoning Code Section 7-9-150. Such permit shall demonstrate that the project area can be developed in compliance with all site development standards and in a manner that is compatible with existing nearby residential development. The permit shall identify proposed grading contours, the maximum building footprint on each parcel, proposed drainage, project perimeter walls and landscaping, and the maximum height of future residences. The permit shall also address any line-of-sight traffic safety issues and any issues regarding hazardous materials located on the site. Clearance of this (aspect of the) condition shall be by the Manager, Land Use Planning.”

To address these requirements, the applicant has produced a site plan, unit floor plans, elevations, and a grading plan, all of which would become, if approved, a precise plan of development, meaning that future homeowners could make no room additions, re-frame the roof, or even enlarge windows, without review of consistency with this Site Development Permit, unless the Planning Commission were to determine that subsequent improvements (room additions, etc.) need only conform to the regulations applicable to other surrounding properties, i.e., the underlying E4 District regulations.

A conceptual landscape plan is provided.

There is an existing wall on the northeast side of the project, which is owned by the neighbors. The remainder of the site would be surrounded by a 6 foot tall perimeter wall (the 6'6" reference on the plans is incorrect and will be revised to reflect the correct height).

#### **SURROUNDING LAND USE:**

The project site and surrounding properties are designated as Suburban Residential in the County General Plan Land Use Map.

<b>Direction</b>	<b>Land Use Designation</b>	<b>Existing Land Use</b>
Project Site	100-E4 “Small Estates”	Single family dwelling (to be demolished)
Northeast	100-E4 “Small Estates”	Single family residential (the “Oakhill Project”)
Southeast	100-E4 “Small Estates”	Single family residential
Northwest	100-E4 “Small Estates”	Single family residential
Southwest	100-E4 “Small Estates”	Single family residential

**REFERRAL FOR COMMENT AND PUBLIC NOTICE:**

A Notice of Hearing was mailed to all owners of record within 300 feet of the subject site. Additionally, a notice was posted at the site, at the 300 N. Flower Building and the nearest (Tustin) public library. Copies of the planning application and plans were distributed to County Divisions for technical review and comment, as well as to the North Tustin Specific Plan Advisory Committee (NTAC). On May 18, 2005, by a 4-2 vote, denial was recommended. The Minutes of that Meeting, together with supplemental identifications of concern, are attached as Exhibit 2.

**CEQA COMPLIANCE:**

The underlying Parcel Map 2004-303 was itself deemed Categorical Exempt as a Class 15 Minor Land Division. The proposed project as a precise plan of development is covered by a Negative Declaration PA050028, which became final without appeal on August 9, 2005. Mitigation measures were included to address grading, drainage, water quality, line of sight at the intersection of streets, driveways and walls, and construction noise. These measures have been transposed into recommended conditions of approval for the project. Prior to project approval, the decision-maker must confirm this determination. A finding to that effect is included.

**ANALYSIS:**

The subject property is zoned 100-E4 “Small Estates” District. The purpose and intent of the E4 District regulations states: “the E4 District is established to provide for the development and maintenance of low-medium density single-family residential neighborhoods in which open spaces and deep setbacks predominate. Only those uses are permitted that are complementary to, and can exist in harmony with, such a residential neighborhood.”

The Subdivision Committee asked for development on this site to be “compatible with existing nearby residential development”. Staff believes that “compatibility” in this context was intended to refer to the standard “compatibility” finding found in Zoning Code Section 7-9-150.3(e)(1)d. Perhaps the best way to view what finding the Subdivision Committee intended to have the Commission make would be to combine the standard wording with a reference to “existing” and “nearby”, which would then read as follows:

“The location, size, and operating characteristics of the proposed use will not create conditions or situations that may be incompatible with other existing nearby uses in the vicinity.”

The NTAC meeting material indicates the members had great difficulty making such a finding. There are references to a preponderant single story housing configuration and walls that are less than 6 feet tall fronting on Red Hill. Reference was also made to the “Oakhill” project next door. Oakhill is a similar 4-lot subdivision which was appealed to the Board of Supervisors. On November 3, 1998, the Board approved the Parcel Map but included in its Meeting Minutes language that would forever restrict the homes to be built thereon to one story and 17 feet in height, provided that all properties owners on all sides of the project similarly agreed to forever restrict their properties as well, and to notify future prospective buyers of such limitations on room additions. Such agreement never came to fruition, and

each of these homeowners is thus now entitled to any future room additions on a second or even third level, provided that the maximum 35 foot District height limit is never exceeded.

The project seems compatible with the “Oakhill” project approval next door, as stated by three of those four homeowners at the NTAC meeting. A majority of NTAC however found it incompatible with other “existing nearby residential development” i.e., single story structures set sufficiently far back from any street that 6 foot tall noise-attenuating frontage walls are not required.

The applicant responds (see Exhibit 3): there are 26 homes within 2 blocks with street-fronting walls; notes the Zoning Code would permit such walls outright to the extent their “frontage” on Red Hill is actually the rears of two lots; that there are other 2-story structures in the immediate vicinity; and suggests these structures should be viewed as very limited 2-story structures with regards to their overall massing.

Staff believes there are no other salient points with respect to drainage, land use regulations, and alleged on-site hazardous materials that have not been adequately addressed in the detailed project design, or will be addressed through compliance with standard conditions of approval already imposed under the Parcel Map approval.

#### **CONCLUSION:**

The site development permit requirement for this project was conditioned by the Subdivision Committee. The Subdivision Committee found for the subdivision of the 1.18 acre site into four lots ranging in size from 10,302 to 11, 692 sq. ft. This subdivision is similar to one located adjacent, which exhibits similar access and lot configurations. However, unlike the prior adjacent project, the Subdivision Committee included a site development permit requirement to attempt to address local resident comments concerning the development of four additional single-family houses.

The applicant has prepared the site development permit package to respond to the items outlined by the Subdivision Committee. The site plan is similar to the plot of the adjacent development, which was the impetus for the site development permit requirements for this project. Staff notes that, after the Board approval of the next door “Oakhill” project in 1998, PDSO commissioned a “North Tustin Area Land Use Survey” completed in late 1999, which concluded that most, though not all, of the area’s recent residential development and redevelopment contrasted with existing, older subdivisions, as much in terms of architecture as in the typical new two-story massing. No solution to this gradual transition was offered.

The Commission is the arbiter and final decision-maker. Staff notes the site plan, unit floor plans, and elevations would all become, if approved, a precise plan of development, meaning that future homeowners could make no room additions, re-frame the roof, or even enlarge windows, without review of consistency with this Site Development Permit, unless an exemption of some form is desired and crafted.

Staff concludes the applicant has met the requirement to prepare a site plan which could act as a precise plan of development. The site plan is consistent and hence compatible with the very similar development which it abuts to on the northeast. The question of how or whether the development is complementary to surrounding development on all sides is more difficult to answer. There are two-story homes and similar density developments in the vicinity, while every one-story home has a right without discretionary review

to add a second or even third floor at present. The 1999 “North Tustin Area Land Use Survey” concedes the area is in transition, with newer development contrasting to varying degrees with older developments, particularly long blocks where no homeowner has yet added a second story.

### **RECOMMENDATION**

Land Planning Services Division recommends the Planning Commission:

- a. Receive staff presentation and public testimony as appropriate; and,
- b. Approve Application PA05-0028 subject to the attached required Findings and recommended Conditions of Approval.

Respectfully submitted,

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Timothy S. Neely, Director  
Planning & Development Services

Attachments:

- A. Recommended Findings
- B. Recommended Conditions of Approval

Exhibits: (Planning Commissioners’ distribution only)

1. Applicant’s Letter of Explanation (w/photos and explanation of drainage management)
2. NTAC Minutes and Member Supplemental Material
3. Applicant’s Response to NTAC Material
4. Negative Declaration PA050028
5. Plan Packages

### **APPEAL PROCEDURE**

Any interested person may appeal the decision of the Planning Commission on this permit to the Orange County Board of Supervisors within 15 calendar days of the decision, upon submittal of required documents and payment of the appeal processing fee of \$760, filed at the Development Processing Center, 300 N. Flower, Santa Ana.



## AGENDA STAFF REPORT

Agenda Item

ASR Control 05-002030

**MEETING DATE:** 11/08/05  
**LEGAL ENTITY TAKING ACTION:** Board of Supervisors  
**BOARD OF SUPERVISORS DISTRICT(S):** 3  
**SUBMITTING AGENCY/DEPARTMENT:** Resources and Development Management Department  
(Approved)  
**DEPARTMENT CONTACT PERSON(S):** Tim Neely (714) 834-2552  
Charles Shoemaker (714) 834-2166

**SUBJECT: PUBLIC HEARING TO CONSIDER APPEAL OF PA050028**

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**CEO CONCUR**

**CLERK OF THE BOARD**

Concur

County Counsel Review

Approval Not Required

Public Hearing  
3 Votes Board Majority

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**Budgeted:** N/A

**Current Year Cost:** N/A

**Annual Cost:** N/A

**Staffing Impact:** No

**# of Positions:**

**Sole Source:** N/A

**Current Fiscal Year Revenue:** N/A

**Funding Source:** N/A

**Prior Board Action:** N/A

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### RECOMMENDED ACTION(S)

1. Open Public Hearing;
2. Receive Staff Report, Accept Public Testimony, and Close Public Hearing; and
3. Deny the Appeal and uphold the Planning Commission's approval of the project application.

### SUMMARY:

On September 8, 2005, Janis T. and John H. Foster appealed the August 24, 2005 Orange County Planning Commission approval of Planning Application PA05-0028, a Site Development Permit for the development of four single-family dwelling units located at 12432 Red Hill Avenue.

### BACKGROUND INFORMATION:

On March 8, 2005, the Subdivision Committee approved Parcel Map 2004-303 for the subject property and created building sites for four residential units. In its approval action, the Subdivision Committee added a condition to the Parcel Map in response to comments submitted by the North Tustin Advisory Committee (NTAC) who had expressed concerns about structure heights and orientation, landscape screening / buffers, line-of-sight distance and other design issues. The purpose of the Site Development Permit condition was to allow these design issues to be explored and resolved prior to the issuance of any building or grading permits.

When the Site Development Permit was submitted to the County, the plans were referred to NTAC for review and comment. On May 18, 2005, by a 4-2 vote, NTAC recommended disapproval due to the inability to make the required finding that the project would be compatible with existing nearby development. At its August 24, 2005 public hearing, the Planning Commission received testimony from neighbors requesting that the project be limited to single story residences and expressing concerns about site drainage, possible hazardous material contamination and access. The applicant noted there are other two-story homes in the vicinity and that existing one-story homes are allowed additions up to a maximum height of 35 feet without discretionary review. The Planning Commission approved the Site Development Permit with conditions to address the outstanding issues and found the proposed project consistent and compatible with the single story Oakhill development that abuts the subject property. All legal requirements for development of the site are met by the proposed plan.

Oakhill is also a four lot subdivision with access and lot configurations similar to that which is proposed with the Bluff Homes project. The Subdivision Committee's approval of the Oakhill parcel map in 1998 was appealed to the Board of Supervisors by adjacent property owners. The Board considered the appeal and approved the parcel map with language that would permanently restrict the homes to be built thereon to one story and 17 feet in height, provided that property owners on all sides of the project similarly agreed to permanently restrict their properties. Such agreements never came to fruition, and each of the Oakhill homeowners is now entitled to construct room additions to the maximum 35 foot height limit.

The appellants Janis and John Foster submitted their appeal on September 8, 2005. Their appeal requests that specific studies, such as final engineered drainage plans, line of sight traffic compliance, and "substantiation that hazardous materials are not present" be completed prior to Site Development Permit approval. Staff believes that the points referred to in the appeal letter with respect to drainage, land use regulations, and alleged on-site hazardous materials either have been adequately addressed in the detailed project design under the Site Development Permit, or will be addressed through compliance with standard conditions of approval already imposed under the Parcel Map approval.

## **CONCLUSION:**

Staff finds nothing to indicate that the Planning Commission's finding was either incorrect or inappropriate, or that the requirement for detailed engineering studies to be performed in the normal and typical course of subsequent approvals, was improper. All legal requirements for development of the site are met by the proposed plan. Upholding the Planning Commission's approval action does not eliminate or diminish compliance with the items outlined in the Subdivision Committee condition. Compliance remains assured with these studies being performed in the standard sequence of events. The Board of Supervisors, acting as the appeal body for this discretionary permit, has the discretion to add, modify or delete conditions of approval that were a part of the Planning Commission's action.

**CEQA COMPLIANCE:**

The proposed project is covered by a Negative Declaration PA050028, which became final on August 9, 2005.

**FINANCIAL IMPACT:**

N/A

**STAFFING IMPACT:**

N/A

**EXHIBIT(S):**

- A. Appellant's Letter of Appeal
- B. Planning Commission Meeting Minutes
- C. Staff Report to Planning Commission, with Attachments 1-4:
  - 1. Applicant's Letter of Explanation (w/photos and explanation of drainage management)
  - 2. NTAC Minutes and Member Supplemental Material
  - 3. Applicant's Response to NTAC Material
  - 4. Negative Declaration PA050028
- D. Material Presented to Planning Commissioners at their Hearing (photos and correspondence)
- E. Project Plans