

**SPECIAL CITY COUNCIL MEETING
CORONADO CITY HALL
1825 STRAND WAY
CORONADO, CALIFORNIA
WEDNESDAY, APRIL 11, 2007**

The Special City Council Meeting was called to order at 3:00 p.m.

1. ROLL CALL:

Present: Councilmembers Downey, Monroe, Ovrom, Tanaka and Smisek

Absent: None

Also Present: City Manager Mark Ochendusko
City Attorney Morgan Foley
City Clerk Linda Hascup

2. COMMUNICATIONS - ORAL: Mayor Smisek read the description of the closed session item and opened oral communications.

Arthur Wilcox, Feldhake & Wilcox, 530 B Street, San Diego, Coronado resident, representing James and Wanda Rabun, owners of property at 936 I Avenue, explained the concerns of his clients over the ongoing construction at 937 J Avenue, directly across the alley from the Rabun's property. The improvements that are being constructed are approximately 25 feet from the Rabun's property line. Prior to receiving yesterday a written notice from the Department of Community Development about this meeting, they had received no notice of the previous proceedings before the Historic Resource Commission. Mr. Wilcox understands that, as the Mayor pointed out, although there are two street numbers used for this property, the property is, in fact, one lot in an R-1A zone. The Rabuns were surprised to learn that, because the construction ongoing at 937 J is a two-story rental apartment building. They subsequently learned that approval was given despite the fact that the building is designed in a manner which would be prohibited by a number of provisions of the City Zoning Ordinance. Mr. Wilcox said he had telephoned Tony Pena and City Attorney Morgan Foley. As a result of those calls, Mr. Wilcox understood that the City had conducted its own investigation and had determined that approximately a third of the neighbors had not received notice about the development at 937 J. A notice was published, but the provisions of the City Ordinance as well as the Government Code requiring notice be sent to property owners within 300' of the development were not satisfied. The Rabuns, who did not receive notice apparently were in the group of people for

whom notice was not sent. Therefore, they had no knowledge of the developer's plans until construction began and they were notified by their neighbors as to what was happening. He stated that the location of this residential apartment building in a single family residential zone is prejudicial to the Rabuns and will cause them substantial injury because it will negatively impact the value of their property. Had the Rabuns received the notice to which they were entitled by law, they would have vigorously opposed the construction when the matter was submitted to the Historic Resource Commission. In reviewing the minutes of the Historic Resource Commission Mr. Wilcox learned that the developer initially threatened to demolish the both structures at 937 J and 941 J. By making this threat, the developer effectively coerced the HRC to giving development rights which are specifically prohibited in the single family zone. Although the plan approved by the HRC far exceed what is allowed by current zoning, the HRC's minutes show that no one appeared in opposition to the developer's plan. It is apparent that there was no opposition because the people who would have opposed, the neighbors, were not given notice of the developer's plans. They understand that when the City's error was discovered, Mr. Pena issued the stop work order. It is clear that the Rabuns and others were denied due process when the City failed to give them written notice. Mr. Wilcox stated that there is no question as to what should occur in these circumstances because the issue was settled 35 years ago by unanimous decision of the California Supreme Court in the case of Scott v City of Indian Wells. In the Court's analysis, they believe the only decision which can legally be made by the City Council is that the permit must be cancelled.

Susie Piper, whose home at 930 I Avenue is historically designated, explained that she and her husband did not receive notification of the four hearings of the HRC regarding the development of 941 J Avenue. They live one home over behind the project and feel they would also be very impacted. She feels that the most important HRC hearing was October 18 where the owner-investors of the property were granted an exception to R1-A zoning to build a new, second story, rental dwelling in a carriage house, increased in size by 60%, with only a 5' setback from the alley, at maximum carriage height of 23 feet. Without notification of four hearings Ms. Piper lost her chance to provide any findings to the HRC she would have to the HRC. As the owner of a historically designated property she believes her findings would have influenced the commissioners. She probably would have pointed that R-1A zoning is the most prized property in Coronado because it does not allow lot splits or the building of legal rental units; how with only a 5' setback the size and proximity of the structure would impact her property value and privacy; that the small, nonconforming rental that was there could not be demolished and rebuilt in R-1A zoning; the increased noise and traffic; increased transient population in the alley; and that this is precedent setting for all historic homeowners who would want rental units on the back of their properties generating income. She hopes the City Council will give a rehearing and keep the R-1A zoning healthy and uncompromised.

John Anderson, 952 I Avenue, agreed with the previous speakers and added that the garage at 937 I Avenue was a war-time, emergency housing exception to the R-1A zoning. It was his belief that once the building was demolished it could never be rebuilt. That was one of their guarantees.

Kent Sharp, attorney, La Jolla Law Group, representing Christine and Carl Schott, 916 I Avenue, explained that he had discussions with Councilmember Downey and Mr. Wilcox. The HRC was required to provide notice to the people within 300' of the project. Because of the violation of

the due process and the failure to give the notice, all of the members of this community who were required to have notice did not have the opportunity to object. He cited several addresses that did not receive notice: 420 Ninth Street, 912 I Avenue, 916 I Avenue, 924 I Avenue, 930 I Avenue, 958 I Avenue, 936 I Avenue, 952 I Avenue, 417 Tenth Street, 913 J Avenue, 923 J Avenue, 961 J Avenue, 966 J Avenue, 936 I Avenue, and 951 I Avenue. He believes the number is higher than 30%. The objections are obvious. Apparently a variance was granted by the HRC to allow a nonconforming use to be rebuilt after it had been demolished. The Schott's are requesting that the permits be cancelled, and that all four hearings be renoticed pursuant to the code to allow all members of this community to raise their objection and so the Commission can make an informed decision. The minutes from the HRC meetings show that no individuals from the community were present. It is disturbing that the lack of notice may cause a Brown Act violation. Mr. Sharp stated that the best way to handle this matter is to reset the clock. Due process was violated for the citizens.

Joe Pinsonneault, 907 I Avenue, explained that this is not a developer's project; it is his wife's project. He said they feel they did the right thing and went through the process. It wouldn't make sense to tear a structure down if they didn't have permission to build a new one. Now the property is a real hazard zone. They are concerned someone is going to get hurt on the property and they don't want to take responsibility for that.

Scott Aurich, 1037 Loma Avenue, said it is unfortunate that the process went forward without their notification but the owner shouldn't be penalized for this. He went through the process. Mr. Pinsonneault didn't do something to harm the neighbors, but only tried to do something the HRC is encouraging – to save houses. They could save the front house by trying to create a little more space in the back house to make economic sense. He would have made other decisions had he been given different direction from the HRC. The neighbors haven't done anything wrong by complaining about this either. It seems that most of the neighbors were noticed and aware. No one knows whether the HRC would have denied or approved that because they didn't have the advantage of hearing all the neighbors' concerns. They should be heard. Mr. Aurich said that staff and/or HRC didn't make any intentional mistake. He thinks this was a clerical error. The long and short of it is that this would still end up before the City Council in an appeal process where the City Council would have to make a decision as to whether the project should go forward. Unfortunately, there is an extraordinary cost because the building was torn down and wouldn't have been. There are some solutions the City Council can discuss in closed session related to how this can be prevented in the future, such as getting the Planning Commission involved in the review process when these variances are granted. HRC might need some help in making these decisions.

Jim Scott, 958 I Avenue, thanked the City Council for hearing the people. He reiterated the concerns and frustrations the neighbors have about this project. He also reiterated the request that this matter be sent back for a proper review where all of the affected neighbors have a chance to actively participate.

The City Council recessed to closed session at 3:20 p.m.

3. CLOSED SESSION:

**3a. CLOSED SESSION: CONFERENCE WITH LEGAL COUNSEL –
ANTICIPATED LITIGATION**

Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9

Number of potential cases: Two (2)

The City Council resumed the meeting at 3:59 p.m.

City Attorney Morgan Foley reported that no action was taken. Direction was given to the City's legal counsel.

4. ADJOURNMENT. The meeting adjourned at 4:00 p.m.

Approved: May 1, 2007

Tom Smisek, Mayor
City of Coronado

Attest:

Linda K. Hascup
City Clerk