

**SPECIAL CITY COUNCIL MEETING  
CORONADO CITY HALL COUNCIL CHAMBER  
1825 STRAND WAY  
CORONADO, CALIFORNIA  
THURSDAY, AUGUST 10, 2006, 3:00 P.M.**

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

**1. ROLL CALL:**

**Present:** Councilmembers Monroe, Tanaka, and Tierney

**Absent:** Councilmember Downey and Mayor Smisek

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

Mayor Smisek explained that two of the City Council members present have conflicts because of property ownership in or near the R1-B area. In order for there to be a quorum there must be three of the five Councilmembers present. Two of the members, Mr. Monroe and Mr. Tanaka do not have conflicts. In order to gain a quorum the members with a conflict draw straws. Mayor Smisek and Councilmember Tierney drew straws. Councilmember Tierney drew the short straw. Mayor Smisek recused himself and Mayor Pro Tem Tanaka took over as chair.

**2. ORAL COMMUNICATIONS:**

**3. CITY COUNCIL BUSINESS:**

**3a. Review of Staff Analysis of the Impacts of the Citizens' Initiative Requesting Redesignation of all Parcels Currently Zoned R-1B (Single Family Residential) to R-1A(E) (Single Family Residential); Adoption of a Resolution to Submit the Issue for the November 7, 2006 General Election Ballot; Adoption of a Resolution Providing for the Filing of Rebuttal Arguments for City Measures Submitted at Municipal Elections; Adoption of a Resolution Setting Priorities for Filing Written Arguments Regarding a City Measure and Directing the City Attorney to Prepare an Impartial Analysis; and, Direct the City Clerk to Post a Notice to the Voters of the Date After Which No Arguments For or Against a City Measure May be Submitted.**

City Attorney Morgan Foley reiterated that Mayor Smisek, Councilmember Downey, and Councilmember Tierney all have conflicts of interest and are disqualified, however under the legally required participation rules Councilmember Tierney selected the short straw and was thus selected to be the participant

Mr. Foley explained that this was the date set by the City Council when they directed that staff bring back the resolutions to place the initiative measure on the November 7th ballot as well as present to the City Council an analysis of the legal land use and fiscal impacts of the proposed measure. The report prepared by staff not only deals with the impacts analysis but also deals with the procedures the City Council needs to take to place this matter on the ballot for the voters to consider in November. In a preliminary step, the City Clerk has provided the background and authority for placing this matter on the ballot and, as a practical matter, since it did qualify for the ballot, there is no real alternative for the City Council but to put it on the ballot. If the City Council fails to put it on the ballot, it would be subject to a law suit or the City Clerk could order that the City Council place it on the ballot. He also noted that the City Clerk must deliver the resolutions to the County elections official by the day after this meeting.

Mr. Foley outlined the staff report and background information. The review of the initiative shows that there are a number of questionable issues that may arise with this measure. The staff report details and gives a copy of the actual initiative language. In short, the measure is intended to redesignate all R-1B parcels as R-1A(E) in the City of Coronado. It also provides other language and requirements of the City, including calling substandard lots as legally non-conforming lots, has the desire to revoke or to stop or to terminate any legally issued building permits after a certain date if this measure were to become effective, and to take such action necessary to implement the ordinance. It also provides that there is a moratorium in the event that there is a challenge to this ordinance, meaning that there would be no more building permits issued in the zone if there was a legal challenge.

One of the initial concerns that staff had regarding the legality of this initiative is whether the redesignation of the R-1B zone to R-1A(E) violates California Government Code §65863. This was discussed briefly at the last meeting. There was concern expressed over AB 2292 that requires the City to maintain the present level of zoning density and the present zone designations. While that legislation does impose some procedural burdens on the City, it does not necessarily create an invalidation of the ordinance itself. It would mean that, if the measure is adopted, the City Council would then need to implement steps to cure the ills of the measure or to bring back a balancing of affordable units or density in the community as §65863 requires. That section does not say that you can't down zone, it simply says that if the density is reduced in one location and if they have relied on that density in approving the City's Housing Element, then the City would need to find an area of the community where that density is increased in order to even out that reduction. So, while staff feels that the impact of this measure would require certain action on the part of the City, staff does not believe that it is necessarily illegal or unlawful to adopt the redesignation as intended in Section 1 of the measure.

Staff next addressed whether the measure can legally invalidate otherwise lawfully issued building permits. This deals with vested rights and claims of vested rights of property owners. Staff's opinion is that those permits cannot be revoked. The City cannot interfere with those rights of legally issued building permits in the community. That portion of the initiative measure

itself is suspect and probably unlawful - Sections 4 and 5 of the measure. In essence, it seems that the proponents are saying that if a building permit was issued after a certain date but before the initiative became effective, it is not a legal building permit. Staff does not know how many building permits have been issued since the date that is reflected in the measure, the March 22nd date, but there certainly could have been some and there could still be some between now and November 7th.

The next issue that staff analyzed was whether applying the lot size requirements to existing R-1B parcels is enforceable. This would require a merger of parcels because R1-A(E) zoned properties have minimum lots of 5,250 sq. ft. The R-1B lot sizes are a minimum of 3,500 sq. ft. So, in order to meet the minimum lot size requirements in a new R-1A(E) designated lot, there would have to be a merger of parcels, which would require a number of things, including the common ownership substandard lot size on one of the parcels and other criteria might have to be met. Certainly, because these are all legal lots of record they would be substandard in the size limits. This would require the property owners to consent to the merger or the City would have to go through a forced merger process by adopting an ordinance giving notice to the property owners of each of these parcels that these are to be merged and taking them through a hearing process which allows them to protest and to object and to potentially sue the City over a forced merger.

In essence, if the intent is to create lot sizes that meet the R-1A(E) requirement, the initiative does not do that. It does not create a merger by law, but simply would require the City, if the City Council wanted to pursue that, to go through a more specific process with due process given to the property owners.

Without the merger procedure, there would be legally nonconforming lots throughout the City. All these lots are lots of record that are less than the legal lot size. There would be a multitude of substandard and legally nonconforming lots. What that means is that, even though they are legally substandard, they could only be developed with one single family dwelling unit and it would have to meet the R-1A(E) setback requirements and the front yard, side yard setbacks so there would be a number of very small structures being constructed in Coronado.

Another issue staff examined was the moratorium that was implemented in the event of a legal challenge. Staff believes that is an unlawful legislative power on the part of the electorate because it does not limit it to a two-year period. California law does allow for moratoria but there would have to be certain findings made as well as to limit it to a total of two years. If there is a challenge to this ordinance by any persons the moratorium, by its nature, could extend beyond two years. Mr. Foley said he thinks the court would find that this is an unlawful effort to create a moratorium on building or on issuing of permits in the R-1B zone.

Finally, there is analysis on the idea that State Law requires second dwelling units in single-family zones. By creating these substandard sized lots with these development restrictions the City may very well be in violation of those types of state laws. Because these are so small it would almost be impractical, but in the event that someone wished to do so, the City would be faced with the prospect of either not allowing it under the ordinance or being subject to a lawsuit in the event the developer wants to put in what is typically referred to as a granny flat on this small lot.

Mr. Foley pointed out that the measure itself creates inconsistencies in certain elements of the General Plan, those being the Housing Element and the Local Coastal Elements. Both of these elements consider affordable housing opportunities in Coronado. In fact, the Local Coastal Element is one approved by the Coastal Commission and they are very strong on the concept of providing affordable units in the coastal areas. If this measure were to be approved, there is a good chance that, in order to make the General Plan consistent with this measure and the zoning map, the City would have to proceed with an amendment of the Housing Element and the Local Coastal Element. The Housing Element requires approval by the State Housing and Community Development Department (HCD). The Local Coastal Element would require approval by the Coastal Commission. Staff is not sure whether those approvals would be granted. In any event, there would be an inconsistency created with the reduction in density, reliance on the build out that was reported to HCD and the opportunities that are stated in the Local Coastal Element for building affordable units. The R-1B designation is in the City's Housing Element. It does provide the opportunity to build these smaller units as well as to meet the higher density in the R-1B zone. By reducing from 12 dwelling units to 8 dwelling units per acre, the City would be removing those opportunities that are otherwise available to property owners. Another issue is that future City Councils, in order to comply with the measure, simply does not allow building in the new R-1A(E) zone because of setback issues and because of further legislation or decisions, there is a serious concern as to whether there would be grounds for an inverse condemnation action against the City. This would involve the City in litigation for quite some time over those types of issues. When the City goes to amend the Housing Element or the Local Coastal Element, the approval of these agencies would be required. If the agencies do not grant approval, staff is not sure what that would do to this measure - how the City would be able to enforce the measure; or how the City would be able to address the issues or concerns expressed by those agencies.

The report finishes up with certain fiscal impacts. There is likely to be no impact on the City's affordable housing in lieu fee because neither the R-1B nor the R-1A(E) zones allow for subdivision of multiple family dwelling units. There may be occasions when a condominium unit may be placed in an R-1B zone but those are so few and far between that staff does not believe that there will be any impact on the affordable housing in lieu fee. There could be litigation expenses in the event of approval of the measure. Once the measure is on the ballot, if it is approved, then it is the City's obligation to enforce the new legislation and that would include the defense of the ballot measure if challenged by a third party. Staff also believes that there may be, in the event of violation of state or federal housing laws, with the reduction in density, fines or penalties imposed by the State or federal departments that deal with housing or affordable housing advocates. The final analysis on the impact is the reduced property tax potential because there very well may be an adverse impact on the property tax revenue collected by the City with this reduced density.

Councilmember Monroe said he was happy that Mr. Foley mentioned the potential for fines and penalties imposed by the State and others. There are certain pots of State money that require the Housing Element to be up to date, etc. in order to be eligible for certain funds.

Story Vogel, 350 D Avenue, said that in many cases his own research doesn't agree with some of the things Mr. Foley said. He also feels there is plenty of time to examine all of this. People

need to keep in mind that Coronado has been under attack for 15 or 20 years by over-development. Many people can remember when Country Club and Glorietta were voluntarily rezoned in 1990 by signatures of the people who lived there because they didn't want the existing R-1B zone. Things have changed since then. There is the state law that was put forth by Senator Dutra. Mr. Vogel feels that the time has come to make a stand. Coronado is over developed. There are traffic and parking problems. On his block alone, where there were 7 single-family homes, there are now 27 condos and single-family homes that are massive houses on 25 x 140' lots, or "billy boxes". He said his street is not the issue; the issue is the town as a whole. The 1973 zoning map that the City operates under shows a lack of consistency where one side of the street is R-1A(E) with a minimum lot size of 5,250 sq. ft. and across the street is R-1B. What he is trying to do is to save the roughly 200 to 240 homes that can be torn down under the existing R-1B zone and replaced with two "billy boxes". That means a potential impact of between 400 to 500 new "billy boxes" in town. This might mean new property taxes for the City, but from the view of the historic nature of the town, and for the piece of mind and sense of place that people have here, the proponents feel that the voters should be given the opportunity to express their intent that they do not like the way things are going and rezone the town so that 5250 sq. ft. is the minimum amount of land you must have in order to build a home. He believes that zoning should be a local matter.

Nancye Splinter, 1027 G Avenue, thinks that this initiative will be a major step towards salvaging the remaining character of the residential village community. She watched with great interest as the RSIP Committee worked very hard and diligently to bring forth as many of the different issues as they could. She personally was disappointed that they could not come to consensus on this particular issue, but they did give birth to the idea, and the City Council voted for it. She urged the City Council to vote with great haste to let the voters decide this.

Suzanne Ramirez, 449 D Avenue, thinks that the City Attorney and Mr. Pena have done a good job of raising all the potential issues that will ultimately need to be addressed on this. She is confident that this is going to pass and that City staff will do everything possible to come up with all the potential creative arguments to stand behind what the electorate has decided.

Councilmember Monroe said he is a little at odds with some of the speakers' comments about things that might happen and the several mentions of the word 'unlawful'. It isn't a negative fantasy about something that might happen; it is the legal advice of the City Attorney that some aspects of what is being proposed are unlawful. He asked about the City Attorney's comment that if the City Council does not put this on the ballot, that there could be a law suit and that the City Clerk could be ordered to put the measure on the ballot. He asked where the authority comes from and how would those actions impact the deadline of the County Clerk who needs to have the resolutions the next day.

Mr. Foley explained that if the City Council decides not to take the ministerial action of placing the initiative on the ballot, the proponents would be rushing to the court house to file an action to compel the City Council to act or to compel the placement of the matter on the ballot. He thinks that there are enough elements of this measure that could be considered lawful. The designation itself could be considered a lawful legislative act in and of itself so that the court would order that it be placed on the ballot; if for no other reason than to present that to the voters.

Mr. Monroe asked what would happen if there are six issues - three unlawful and three lawful - and it goes before the voters and is passed. How does the City deal with the unlawful part then? Mr. Foley explained that, if this was not challenged before the election and it is approved by the voters, any individual could sue to seek a court order declaring portions of this to be unlawful and unenforceable. The City would then have the obligation to defend this legislation. It would be incumbent on the City to provide a defense of the action and argue against the position he is telling the City Council of now.

Mr. Monroe brought up the issue of down-zoning in one area with the resultant need to up-zone in another area. Mr. Foley said he believes that HCD would require, in approving an amendment to the Housing Element, the City to find higher density elsewhere in the community in order to achieve that balance. The Department has relied on the City's prior reports as to what sort of density the City is allowing, based on the R-1B zone density of 12 units per acre.

Mr. Monroe thinks this issue is his worst nightmare. There is no discussion at this time as to where the City would up-zone. To put that big question mark out in front without any identification is troubling.

Mr. Foley explained that the City would have to come up with an idea or legal argument that maintaining the density levels is not necessary under what ever theory it comes up with. One might be because it is an initiative measure. One may be because it is permissive as opposed to mandatory in providing that density. He thinks the balancing of density is certainly the argument that would be made.

Mr. Monroe is aware of the fact that HCD is a tough nut. More and more the State in Sacramento is getting involved with what jurisdictions can do. Coronado cannot build a wall around itself and say that this is how they want to run the town, particularly with housing. The State is faced with 10 million more people coming in, 1 million of which will be in San Diego County in the next 20 years. The State has assumed the responsibility of making sure there is a place for people to live. That is part of the legislation that is being foisted upon the City from HCD and other State laws. The State has taken on the social responsibility to provide housing for people and the City Council, at its level, has to react to that and figure out how to make those laws work. He has long supported what this initiative purports to do. He is worried that it isn't crafted in a way that the City Attorney can tell the City Council is legal. He thinks there needs to be a process that will help this large group of people make this happen, rather than send people off to develop initiatives and gather signatures and end up at this point where there are many points that aren't legal. He is worried that this is an initiative that the City Council has been told needs to go in front of the voters or risk a law suit by the proponents that has been branded as not lawful by the City Attorney. He almost wonders if the proponents would file a law suit faced with a document like this that indicates that much of this isn't legal. Maybe they should go back and craft it and try again and come forth with something the City could help write, if there is a consensus on the City Council that it would like to do that. He agrees that this is where a lot of the citizens of Coronado want to go, but he is not sure this is a proper vehicle to get to that point. He is a little confused with lot sizes between the 7,000 sq. ft. lot and the 5,000 sq. ft. lot. If these are 25 x 140's they are essentially 3,500 sq. ft. and then there is a minimum lot size of 5,000 sq. ft. If these are all combined, you end up with 7,000 sq. ft.

Mr. Foley explained that many of the legal lots are 3,500 sq. ft. lots. Many of them have been merged over time to create larger lots.

Councilmember Tierney would like to have the City Attorney discuss the issue where a merger by operation of law cannot occur without notice and hearing, etc.

Mr. Foley responded by saying that this is the issue just referred to by Mr. Monroe. How do these lots get to the minimum lot size? The Subdivision Map Act controls what the City can do in dealing with these antiquated parcels, these 3,500 sq. ft. parcels. If the City were to try to create 7,000 sq. ft. parcels or 5,250 sq. ft. parcels through lot line adjustments or mergers, the City would need the consent of the property owner or the application of the property owner, but the City couldn't require it of property owners unless the City adopts an ordinance and then proceeds through that ordinance to create mergers of these small parcels, allowing property owners their opportunity to object and challenge those decisions on each of those parcels.

Mr. Tierney thinks that this initiative has the potential, and the City does have areas to which it can increase its density. People won't like the answer, but the answer is R-4. That means that the City will build up. That is the only way the City can recover to get in compliance with the State. The present efforts in the R-4 will be beaten back badly. If that does come, so be it. The public should know this. The density will simply shift. The State law is going to be challenged and the City will have to comply with it. Part of the problem has been that the City Council has never looked fondly on what is known as alley splits. The alley split argument now starts to look better in getting away from the "long, tall and narrows". It may be a case here where alley splits will be looked at, at least by the City Council, to determine whether this might be a more suitable way to get where the designers of this initiative want it to go. These two points are on the horizon and they will occur because there is simply no other way to achieve that density factor and recapture it under State law.

Mayor Pro Tem Tanaka shares his colleagues' concerns about this particular initiative. He thinks it is fraught with a number of issues he finds unsettling or that might potentially backfire on the desire of limiting density. However, he doesn't really think that is all that relevant because the City Council only has ministerial authority to put this on the ballot, not put it on the ballot, or adopt it. He doesn't see any other courses of action that the City Council can take at this meeting.

**MSUC (Tierney/Tanaka) moved that the City Council receive the impact report and adopt A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CORONADO, CALIFORNIA, CALLING AND GIVING NOTICE OF THE HOLDING OF A GENERAL MUNICIPAL ELECTION ON TUESDAY, NOVEMBER 7, 2006, FOR THE SUBMISSION OF A PROPOSED ORDINANCE RELATING TO REDESIGNATION OF ALL PARCELS CURRENTLY ZONED R-1B (SINGLE FAMILY RESIDENTIAL) TO R-1A(E) (SINGLE FAMILY RESIDENTIAL), adopt A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CORONADO, CALIFORNIA, PROVIDING FOR THE FILING OF REBUTTAL ARGUMENTS FOR CITY MEASURES SUBMITTED AT MUNICIPAL ELECTIONS, adopt A RESOLUTION OF THE CITY**

**COUNCIL OF THE CITY OF CORONADO, CALIFORNIA, SETTING PRIORITIES FOR FILING WRITTEN ARGUMENTS REGARDING A CITY MEASURE AND DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS and direct the City Clerk to post notice to the voters of the date after which no arguments for or against a city measure may be submitted. The Resolutions were read by Title, the reading in their entirety unanimously waived and adopted by Council as RESOLUTION NO. 8163, RESOLUTION NO. 8164, and RESOLUTION NO. 8165.**

Mr. Monroe commented that a lot of learning has occurred since this initiative has been developed. Maybe it is not the initiative that the City should go forward with. He wondered what the downside of not putting it on the ballot as written is after having heard the City Attorney say that many of the parts are unlawful. He was interested in hearing comments from the City Council about that other strategy.

Mr. Foley advised that this is probably the least desirable approach. There are elements to the initiative that a court would say are enforceable. The impacts of that is the responsibility of the City to face after the election dust settles. He thinks it would be a failure on the part of the City to force a law suit in that regard. Whether the Council or any one else wants to challenge pre-election other parts of the measure is a question for another day. He thinks that if the City Council chooses not to adopt the resolution there will be a law suit and a quick thumping in the law suit to place it on the ballot.

Mr. Monroe appreciates that response. If the City Council places this on the ballot and it passes and it is then up to the City to implement it and some of the actions of the initiative are deemed unlawful, how does the City Council proceed at that point?

Mr. Foley explained that the City would have an obligation to defend its law or to resolve the issue some other way through new legislative actions or some other action. The City would be put in a dubious position of having to defend a law that the City may not have wanted on the books to begin with because there were some frailties with the crafting of the legislation.

Mr. Tanaka shares Mr. Monroe's concerns, but he feels that legally the City Council is handcuffed with what it can do. He thinks the only choice the City has is to challenge this at the ballot box.

Mr. Monroe appreciated the comment made by Mr. Tierney about being able to add density to R-4. He was part of the Specific Plan group that took three stories down to two stories. It is going to be hard for him to go to five stories along Orange Avenue. He would rather have this situation in R-1B.

Mr. Tierney thinks this is a thumbs up or thumbs down situation. He is not coming out here trying to twist the rules when he doesn't have that leverage. His personal feelings are not subject to this particular request. He said that the City Council has been given good advice by the City Attorney.

**AYES:** Monroe, Tierney and Mayor Pro Tem Tanaka  
**NAYS:** None  
**DISQUALIFIED:** Downey and Smisek

4. **ADJOURNMENT.** The meeting adjourned at 3:55 p.m.

Approved:

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Tom Smisek  
Mayor of the City of Coronado

Attest:

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Linda K. Hascup, City Clerk