

April 30, 1992  
REPORT TO THE HONORABLE  
MAYOR AND CITY COUNCIL

REQUEST OF PARK HAVEN NO. 4 BY JOHN B. WALSH FOR INITIATION OF AN  
AMENDMENT TO THE MID-CITY COMMUNITY PLAN INVOLVING A 4.4-ACRE SITE  
LOCATED IN THE AREA OF 54TH STREET AND EUCLID AVENUE

At the Council meeting on March 3, 1992, Mr. John B. ("Jack") Walsh asked the City Council to initiate an amendment to the Mid-City Community Plan which would redesignate a portion of a 4.4-acre site from open space to low density residential (5-10 dwelling units per acre). The City Council declined to initiate such amendment.

Jack Walsh indicated that he felt that the City's past action in approving the sale of multifamily housing bonds, which included a project on the subject site, would result in potential legal problems if the City does not agree to redesignate the site for housing.

The issue was referred to this office for a report back.

Attached as Attachment 1 is a report from the Planning Department giving the factual background relating to Mr. Walsh's involvement in the site. Hal Valderhaug of my office discussed the background briefly with Mr. Walsh who provided our office numerous documents which were prepared over the years in connection with the proposed development of the site, the modification to the community plan to change the designation on the site from low density residential to open space, and the rezoning of the site from R-1-5 to its present zone of R-1-40.

With regard to the bonds, the records indicate that in 1984 a multifamily bond issue was in fact sold to provide funding through a "loans to lenders" process for several small to medium-sized housing projects, all of which involved ownership interests of Mr. Walsh as well as his associates. Mr. Walsh obtained approximately \$250,000 from the bond proceeds and utilized that amount to exercise his option to acquire the 4.4-acre parcel.

A moratorium affecting the property was subsequently imposed and in December 1984 the City amended the community plan to redesignate the site from low density residential to open space. In 1988, the City Council approved a rezone of the site from R-1-5 to R-1-40.

As a result of being unable to proceed with development of the 54th and Euclid site, Mr. Walsh requested and obtained authorization to transfer the balance of the bond funds allocated for that site to an

alternative project site in San Ysidro and constructed an affordable housing project on the San Ysidro site. The "loans to lenders" process involved loaning the total proceeds of the bond issuance to Home Federal which then entered into loan agreements for the individual projects with Mr. Walsh and his associates.

As part of the above described transactions, Home Federal retained a security interest in the 54th and Euclid parcel as well as the alternative San Ysidro parcel where the project was actually constructed. When the bond payments for the San Ysidro project are completed and the bonds retired, Home Federal's security interest in the 54th and Euclid parcel will be released.

The question, as noted above, is whether, under the above described facts, the City or the City's Housing Authority has some legal obligation to allow Mr. Walsh to proceed with any particular development on the 54th and Euclid site. Attached as Attachment 2 is a copy of a legal memorandum prepared by a senior legal intern in this office which basically concludes that Mr. Walsh has no legal right to proceed with any particular housing project on the 54th and Euclid site. The legal intern also concluded that, because of applicable statutes of limitation, Mr. Walsh is legally precluded from challenging the moratorium action of the City and the redesignation of the site on the community plan from low density residential to open space. It does not appear to us at this time that Mr. Walsh has any valid legal cause of action against the City, as a result of the City's and Housing Authority's past actions.

However, it must be noted that a city cannot generally downzone property to the extent that the downzoning results in a situation where the property owner no longer has any economically viable use of his or her property. Mr. Walsh has indicated that he feels that it is not economically feasible to develop the 4.4-acre 54th and Euclid site for any use authorized under the R-1-40 zone. However, this office has no factual information which would support a conclusion that the R-1-40 zoning precludes an economically viable project on the site.

In summary, with regard to the issue regarding bonds, it does not appear that Mr. Walsh has any valid cause of action against the City. With regard to the downzoning of the property, we do not have any facts to support a position that the subject site, because of the downzoning, can no longer be developed as an economically viable project.

Respectfully submitted,  
JOHN W. WITT  
City Attorney

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Attachments 2

RC-92-34