

June 5, 1992

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

CONSAUL, ET AL. V. CITY OF SAN DIEGO

We are pleased to inform you of a favorable ruling by the Court of Appeal, Fourth Appellate District, Division One after an appeal of this case and a rehearing of the appeal upon request of the City.

BACKGROUND

This case involves an undeveloped 1.06 acre parcel of land located in the Peninsula Community Plan area and the owners' attempts to develop it for multi-family use beginning in 1986. A complex series of land use and planning events took place after 1987 when the property owners filed their tentative subdivision map including: adoption of a community plan; adoption of an Interim Development Ordinance (IDO); adoption of an Interim single family protection ordinance; a classification of single-family neighborhoods project; the granting to the property owners IDO allocations for 26 units; and a rezoning of the subject property to single family.

The owners filed a petition for writ of mandate in December 1989, seeking to invalidate the City's actions and to allow the proposed development on vested rights, estoppel, denial of viable economic use, and arbitrary action theories.

The Superior Court in March, 1990 denied the petition for a writ, ruling in favor of the City. The owners appealed to the Court of Appeal. In June, 1991 the Court of Appeal filed a published opinion reversing the trial court. The City sought a rehearing based on erroneous conclusions of fact and law especially in the discussion of vested rights. The Court of Appeal granted a rehearing and requested further briefing. On June 1, 1992, the Court of Appeal reversed its previous decision and upheld the Superior Court's ruling in favor of the City, with Justice Gilbert Nares dissenting.

It is unknown if the owners will seek further appellate review of this decision.

Copies of the 33 page decision and 21 page dissent will be provided upon request. Deputy City Attorney Larry Renner handled the trial and appeal for the City with the assistance of Deputy

City Attorney Leslie Girard on the appeal.

Respectfully submitted,

JOHN W. WITT
City Attorney

CAS:dk:Lit.(043.1)

RC-92-39

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