

April 8, 1996

REPORT TO THE HONORABLE  
MAYOR AND CITY COUNCIL

VISTA HILL FOUNDATION V. CITY OF SAN DIEGO, ET AL.

We are pleased to inform you of a favorable decision by the Court of Appeal (Fourth Appellate District, Division One) reversing a judgment against the City for \$211,510.85 in damages.

BACKGROUND

This case involves the residential structures at 545 Laurel Street known as the Clayton house.

The plaintiff, Vista Hill, purchased the property in 1989 for \$825,000. Vista Hill, a non-profit corporation providing mental health care in the county, intended to use the property for a residence for mentally ill adults after substantial renovations. Vista Hill abandoned those plans

due to regulatory requirements, costs, lack of reimbursements and other reasons, and put the property on the market in 1990.

Vista Hill and San Diego Trust and Savings Bank reached agreement for a sale for \$1,000,000. At about the same time an architectural organization and a local planning group approached the City concerning historical preservation of the property. Notice was given to Vista Hill on July 10, 1990, of a hearing on July 25, 1990, before the City Historical Site Board to determine historic designation. The City was not aware at the time of the pending sale or San Diego Trust's intention to demolish the structures and build condominiums on the site. A condition of the sale was the demolition of the structures by Vista Hill.

On July 23, 1990, Vista Hill applied to the City for a demolition permit. The following day it was issued, the City having no authority to withhold issuance.

On July 25, 1990, the Board held a hearing, which Vista Hill's representative attended, and designated the structures historic.

On July 26, 1990, after Vista Hill had made preparations for the demolition and constructed a required pedestrian protection fence, but before any actual demolition had begun, the Building Inspection Department, after consulting with the City Attorney's Office, posted a

stop work notice on the property halting the demolition in view of the historic designation.

Vista Hill appealed the historic designation to the City Council and complained to it that halting the demolition was improper. The Council was advised that the City Attorney had reviewed and authorized the stop notice action. The Council upheld the historic designation. Afterwards, the demolition permit was revoked.

## THE TRIAL

Vista Hill sued the City on various legal theories, including the

revocation violated its constitutional rights. The case was tried on March 10-12, 1992 before Superior Court Judge Wayne L. Peterson. The judge ruled that the City had no authority under its regulations to revoke a validly issued demolition permit and that the City's revocation constituted a violation of Vista Hill's constitutional right to due process. The trial judge awarded damages against the City in the amount of \$177,992.40 (for loss of value and demolition preparation costs) plus attorney's fees under the Civil Rights Act in the amount of \$33,518.45 for a total award of \$211,510.85.

### THE APPEAL

The City appealed the judgment, arguing that the revocation of the permit was authorized by the Municipal Code, but even if it was not, the revocation did not violate plaintiff's constitutional right to due process because it was done in good faith and not arbitrarily or capriciously and because plaintiff did not have a vested property right in the permit.

### THE APPEAL

On April 3, 1996 the Court of Appeal issued its unpublished opinion reversing the judgment against the City, concluding:

Since there was no good faith reliance on the permit and the City had authority to revoke the permit, this case does not implicate constitutional rights protected under section 1983, and there can be no recovery thereunder. Accordingly, we need not evaluate whether the City's conduct would otherwise have been arbitrary and capricious so as transform an ordinary tort into a constitutional tort, nor need we reach the disputed issue of the proper remedy under section 1983.

It is unknown at this time if Vista Hill will seek further review.

Deputy City Attorney Robert J. Mulcahy defended the City at the trial and Senior Chief Deputy City Attorney C. Alan Sumption handled the City's appeal.

Respectfully submitted,

JOHN W. WITT  
City Attorney

CAS:djr:Lit  
RC-96-16