

RESOLUTION NUMBER R-308923

DATE OF FINAL PASSAGE APR 29 2014

A RESOLUTION GRANTING THE APPEAL OF THE SANFORD B. MYERS SPEC HOUSE #1 LOCATED AT 1619 J STREET, AND REVERSING THE DECISION OF THE HISTORICAL RESOURCES BOARD TO DESIGNATE THE PROPERTY AS A HISTORICAL RESOURCE.

WHEREAS, on May 25, 2006, the San Diego Historical Resources Board (HRB) designated the Sanford B. Myers Spec House #1, located at 1619 J Street (Sanford B. Myers Spec House), San Diego, California, 92101, as a historical resource under Criteria A and C; and

WHEREAS, on June 2, 2006, Katalyst LLC, then owner of the Sanford B. Myers Spec House, appealed the decision of the HRB to the City Council of the City of San Diego (City Council); and

WHEREAS, on November 21, 2006, the City Council continued the appeal of the decision of the HRB designating the Sanford B. Myers Spec House a historical resource; and

WHEREAS, on February 20, 2007, the City Council returned the item to the Mayor at the request of Katalyst LLC; and

WHEREAS, in April 2009, the Sanford B. Myers Spec House was acquired by Vineyard Bank through a foreclosure action; and

WHEREAS, in September 2010, the Sanford B. Myers Spec House was sold to the Jerome Navarra Family Trust; and

WHEREAS, on May 25, 2013, the Jerome Navarra Family Trust renewed its appeal of the May 25, 2006 HRB designation; and

WHEREAS, on January 28, 2014, at the request of appellant, the City Council continued the appeal of the decision of the HRB designating the Sanford B. Myers Spec House a historical resource; and

WHEREAS, on appeal the City Council may by resolution affirm, reverse, or modify the determination of the HRB; and

WHEREAS, on appeal the City Council may reject the HRB's designation of a property as a historical resource on the basis of: factual errors in materials or information presented to the HRB; violations of bylaws or hearing procedures by the HRB or individual member; or presentation of new information; and

WHEREAS, under Charter section 280(a)(2) this resolution is not subject to veto by the Mayor because this matter requires the City Council to act as a quasi-judicial body, requires by law that the Council consider evidence at a hearing and make legal findings based on the evidence presented; and because a public hearing is required by law implicating due process rights of individuals affected by the decision; and

WHEREAS, the matter was set for public hearing on April 29, 2014, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego, that the Council adopts the following findings with respect to the HRB designation of the Sanford B. Myers Spec House as a historic resource:

1. That the HRB erred in designating the Sanford B. Myers Spec House a historic resource due to factual errors in the materials and information presented to the

HRB as set forth in Exhibit "A" which is by this reference incorporated herein and made a part hereof.

2. That new information concerning the Sanford B. Myers Spec House and its designation was provided as set forth in Exhibit "A" which is by this reference incorporated herein and made a part hereof.

BE IT FURTHER RESOLVED, by the Council of the City of San Diego, that the appeal of the Jerome Navarra Family Trust is granted, the decision of the Historical Resources Board designating the Sanford B. Myers Spec House as a historical resource is reversed, and that the Sanford B. Myers Spec House is not designated as a historical resource.

APPROVED: JAN I. GOLDSMITH, City Attorney

By

  
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Inga B. Lantvedt  
Deputy City Attorney

IBL:mm  
May 5, 2014  
Or.Dept: DSD  
Doc. No. 780367

**III. THE HRB ERRED IN DESIGNATING THE PROPERTY DUE TO  
FACTUAL ERRORS IN MATERIALS AND/OR INFORMATION  
WHICH WERE PRESENTED TO THE BOARD**

**A. FACTUAL ERRORS IN WRITTEN MATERIALS AND/OR INFORMATION**

Factual errors in materials and information were made in the HRB Staff Report ("Staff Report") and HRB Staff Memorandum ("Staff Memorandum") and were presented to the HRB at the time of designation. The HRB relied upon such errors, either in whole, or in part, in arriving at its decision to designate the Property. Such errors in material and information in the Staff Reports, include, but are not limited to:

**1. The ownership, occupancy, and nature of the Property with regard to the first owner, "Sanford B. Myers:"**

The Staff Memorandum stated that, "[i]n regard to the owner of the house and the appropriate naming of the house, staff acknowledges that the applicant's original report mistakenly identified the house as the R.B. Meyers house, when in fact the property was owned by Sanford B. Meyers. In addition, it appears that Mr. Meyers never lived at the property, and therefore, staff would recommend that, should the Board opt to designate the house, that the house be called the Sanford B. Meyers Spec House #1, in accordance with the Board's adopted naming policy."<sup>6</sup>

Historical research submitted to the HRB on May 10, 2006 determined that Sanford B. "Myers" not "Meyers" owned the Property from 1904-1918. San Diego City Directories over this period indicate that Myers occupied the property from at least 1909-1912.<sup>7</sup> Therefore, based upon this information, the Staff Memorandum was factually incorrect as it related to the correct spelling of Sanford B. "Myers," an individual who did not develop the property on speculation or "spec." but rather owned and occupied the property from at least 1909-1912. These errors are reflected in the "historic" naming of the property as the "Sanford B. Meyers Spec House #1" and the nature of the real estate investment.

**2. The original date of Property construction:**

The Staff Report and Staff Memorandum stated that the Property was built "c.1906".<sup>8</sup> The Staff Memorandum further stated that the "applicant states that the...water/sewer connection

<sup>6</sup> HRB Staff Memorandum, May 18, 2006, p.2. Underline added. See Appendix F.

<sup>7</sup> Letter To The HRB Prepared By Scott A. Moomjian, May 10, 2006, pp.3-4. See Appendix E. Note that this Appendix contains additional letters from other professionals submitted under separate cover to the HRB in 2006.

<sup>8</sup> HRB Staff Report, April 13, 2006, pp.2-3; HRB Memorandum, May 18, 2006, p.2. Underline Added. See Appendix F.

record is unclear as to whether the order provided for one or two connections.”<sup>9</sup>

Historical research submitted to the HRB on May 10, 2006 determined that the Property was not constructed in “1906” or “c.1906,” but rather sometime between 1908-1909. In addition, the sewer connection record is clear that sewer service was provided to the western portion of the property, for the structure located at 371 16<sup>th</sup> Street/1601 J Street, not the building located at 1619 J Street (which is located at the eastern portion of the property).<sup>10</sup> Therefore, based upon this information, the Staff Report and Staff Memorandum were factually incorrect as they related to the original date of Property construction and additional historical evidence bearing upon the original construction date.

### **3. The nature and detail of “third phase East Village development;”**

A. The Staff Report stated that “East Village experienced roughly four periods of development, including pre-1887, 1887-1906, 1906-1921, and 1921-1956” and that “[d]evelopment during the third phase (1906-1921), during which the 1619 J Street house was built, was characterized by the Foursquare and Transitional styles, moving from Victorian to Craftsman and Prairie styles.” The Staff Report further indicated that the periods of East Village development were “outlined in detail” in the East Village Combined Surveys.<sup>11</sup>

Historical research submitted to the HRB on May 10, 2006 determined that the “authority” for the four periods of East Village development was based upon the published dates of Sanborn Fire Insurance Maps (i.e. 1887, 1888, 1906, 1921, 1940, and 1956).<sup>12</sup> To group the four periods of East Village development merely on this “convenient” basis, without any further attempt to identify precise periods of development, is to create factually incorrect periods of East Village development. Communities did not develop based upon the dates in which Sanborn Maps were published. Therefore, based upon this information, the Staff Report was factually incorrect as it related to the nature of East Village development as a whole, and the third phase of East Village development, in particular.

B. The Staff Report stated that ““Development during the third phase (1906-1921), during the time the 1619 J Street house was built, was characterized by the Foursquare and Transitional styles, moving from Victorian to Craftsman and Prairie styles. Transitional styles feature regular massing captured within a square footprint and pyramidal roof, but retain controlled asymmetry. Because this is a major period of growth for San Diego, with homeownership expanding to the working classes, there is a good representation of the Foursquare and Transitional housing types

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<sup>9</sup> HRB Memorandum, May 18, 2006, p.2. Underline Added. See Appendix F.

<sup>10</sup> Letter To The HRB Prepared By Scott A. Moomjian, May 10, 2006, pp.3-4. See Appendix E.

<sup>11</sup> HRB Staff Report, April 13, 2006, pp.2-3. See Appendix F.

<sup>12</sup> Letter To The HRB Prepared By Scott A. Moomjian, May 10, 2006, pp.4-5. See Appendix E.

in neighborhoods adjacent to East Village, including Sherman Heights, Golden Hill, South Park, North Park and Uptown....”<sup>13</sup>

Historical research submitted to the HRB on May 10, 2006 cited the following statement quoted from HRB Staff-prepared, East Village Combined Surveys,

“Within the East Village study area, both simple one-story cottages and two-storey [sic.] single-family dwellings in Transitional styles (moving from Victorian to Craftsman) are found. They feature regular massing captured within a square footprint and pyramidal roof, but retain controlled asymmetry in details like bay windows. Window styles and rhythms also shift from paired tall and narrow sashes to triplets with a large, fixed center panes flanked by narrower sashes and wide, flat window trim. Classical details like dentil moldings and columns also pay homage to the Classical Revival popularized by the 1893 Columbian Exposition in Chicago. The Hiatt House (1902), Kreiss/Wilcox House (1906), Lee House (1908), and Smythe [sic.] House (1908) are good representative examples of these trends.”<sup>14</sup>

Historic inventory forms prepared on the Hiatt, Kreiss/Wilcox, Lee, and Smythe Houses (“good representative examples”) were also submitted. While the Staff Report indicated that the Property was asymmetrical with a pyramidal roof, and was thus a “representative example of early East Village residential development,” the Staff Report failed to discuss physical characteristics formerly acknowledged in the East Village Combined Surveys associated with the third phase of East Village development which were lacking in the Property. These elements included bay windows; paired/tall or triplet windows; or classical details such as dentil moldings and columns. Other than its roof and footprint, the Staff Report did not factually discuss or address a lack of “representative” elements in the Property. Therefore, based upon this information, the Staff Report omitted important facts related to the precise nature and detail of East Village development and the Property. Such omission amounted to a factual error in materials and information presented to the Board.

#### **4. The relationship between the East Village and Sherman Heights communities;**

The Staff Report stated that the Property was “part of Sherman’s Addition, which originally spanned between 15<sup>th</sup> Street and 24<sup>th</sup> Street between Market and Commercial Streets.”<sup>15</sup> The Staff Report also noted that the Interstate-5 freeway was an “artificial border” which divided “Sherman Heights” and “East Village” and that the Sherman Heights Historic District includes “approximately 30 homes which were built between 1906 and 1921 in the pyramidal roof cottage style which are comparable to the 1619 J Street house.”<sup>16</sup> Further, the

<sup>13</sup> HRB Staff Report, April 13, 2006, p.3. See Appendix F.

<sup>14</sup> Letter To The HRB Prepared By Scott A. Moomjian, May 10, 2006, p.5. See Appendix E.

<sup>15</sup> HRB Staff Report, April 13, 2006, p.3. See Appendix F.

<sup>16</sup> HRB Staff Report, April 13, 2006, p.4. See Appendix F.

Staff Report indicated that remaining “transitional” examples in East Village “do gain significance as the last remaining physical representations of residential development in East Village.”<sup>17</sup>

The Staff Report was factually incorrect in so far as it included a discussion of the relationship between the “fictitious” East Village community and the established Sherman Heights community.<sup>18</sup> The Staff Report omitted any factual discussion of the establishment of the East Village area (c.1998), but yet indicated that the Property, located in Sherman Heights, derived significance due to its located on the western side of the Interstate-5 Freeway (within the modern East Village community). Such an error led to the false conclusion that the Property represented a development pattern associated with East Village, rather than a development pattern associated with Sherman Heights.

#### **5. The concept of “expected integrity”;**

The notion of “expected integrity” was introduced by HRB Staff in the East Village Combined Historical Surveys. The Staff Report further cites to this concept with the following comments, “integrity and condition can be expected to be fair to poor,”<sup>19</sup> and the “expected replacement” of Property features.<sup>20</sup>

Historical research submitted to the HRB on May 10, 2006, failed to substantiate the use of this concept as a common, objective standard in historic property evaluation, nor define what is meant by “expected integrity.” Further, the concept does not have any basis in local, state, or national guidelines, or bulletins for evaluating properties. Therefore, based upon this information, the use of this concept in the Staff Report, amounted to a factual error in materials and information presented to the Board.

#### **6. Improper classification of the Property;**

In May, 2004, the Property was first classified as a “Craftsman” single-family residence.<sup>21</sup> In February, 2005, the East Village Combined Surveys concurred with this classification as a “Craftsman.”<sup>22</sup> In March, 2006, the *Historical Assessment Of The Residences Located At 1619 J Street, San Diego, California 92101* also found the building to be a Craftsman.<sup>23</sup> The Staff Report in April, 2006, however, found the Property to be a “Transitional

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<sup>17</sup> *Ibid.*

<sup>18</sup> Note that this problem was perceived by at least one Board member at the time of designation. See Appendix G, Page 27, Lines 27-34.

<sup>19</sup> HRB Staff Report, April 13, 2006, p.3. See Appendix F.

<sup>20</sup> HRB Staff Report, April 13, 2006, p.5. See Appendix F.

<sup>21</sup> *Historic Resources Inventory Update Of The East Village Area For Centre City Development Corporation*, Department Of Parks & Recreation (DPR) Forms 523A & B, Office of Marie Burke Lia, May, 2004. Underline Added.

<sup>22</sup> *East Village Combined Historical Surveys Report 2005*, Table 4, Staff Evaluation, February, 10, 2005. Underline Added.

<sup>23</sup> Kathleen Crawford, *Historical Assessment Of The Residences Located At 1619 J Street, San Diego, California 92101*, March, 2006, p.1. Underline Added. See Appendix B.

vernacular cottage with Craftsman influences” or an example of “Transitional vernacular architecture.”<sup>24</sup> However, in the Staff Memorandum in May, 2006, Staff indicated that, “[p]erhaps it would have been clearer to identify the house as a vernacular Craftsman built during a transitional period....”<sup>25</sup> At the HRB meeting on May 25, 2006, Staff described the house was described as a “representative example of working class vernacular architecture built during a transitional period” and later during the meeting as “it’s a little bit of everything.”<sup>26</sup> Other testimony given before the HRB at the time, suggested that the building was a “Colonial Revival bungalow” or “New Colonial” structure.<sup>27</sup> One Board member commented that “I think that could be part of being a vernacular with characteristics of Colonial Revival.”<sup>28</sup>

Therefore, since architectural classification of the Property by HRB Staff has been inconsistent from 2005-2006, and proper architectural classification is open to debate, conjecture, and speculation, based upon this information, classification of the Property in the Staff Report and Memorandum as a “Transitional vernacular cottage with Craftsman influences” or “a vernacular Craftsman built during a transitional period,” is factually incorrect.

### **7. The recognition of “Transitional Vernacular” as an architectural style**

As stated above, the Staff Report classified the Property as an example of the “Transitional Vernacular” architectural style. The Staff Memorandum classified the Property as a “vernacular Craftsman built during a transitional period.” In either event, “transitional vernacular” is not recognized as an architectural style. The Staff Memorandum further stated that,

“Staff would like to clarify that the term “transitional vernacular” was used in the East Village survey to broadly identify those properties which are vernacular and built during a period of transition from one architectural style to another. That shift during this period of development was from Victorian and neo-classical styles to simplified Craftsman styles. Staff’s intention was not to establish a “new style” per se, but to provide a terminology to help identify these structures which fall within a period of transition from one style to another....”<sup>29</sup>

Historical research submitted to the HRB on May 10, 2006, indicated that the “transitional vernacular” architectural style does not exist within the lexicon of architectural history. Further, no outside source has identified, mentioned, or referenced a style known as “transitional vernacular.” This term is not used or recognized by the State Office of Historic Preservation.

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<sup>24</sup> HRB Staff Report, April 13, 2006, pp.2-5. Underline Added. See Appendix F.

<sup>25</sup> HRB Staff Memorandum, May 18, 2006, p.1. Underline Added. See Appendix F.

<sup>26</sup> HRB Hearing Transcript, Page 3, Lines 14-15; Page 16, Line 18. Underlines Added. See Appendix G.

<sup>27</sup> HRB Hearing Transcript, Page 8, Lines 28-31. Underlines Added. See Appendix G.

<sup>28</sup> HRB Hearing Transcript, Page 16, Lines 9-10. Underline Added. See Appendix G.

<sup>29</sup> HRB Staff Memorandum, May 18, 2006, p.1. Underline Added. See Appendix F.



(OHP). The Property was not identified as “transitional vernacular” in the East Village Survey, but rather as “Craftsman.” New information provided as part of this Appeal, further substantiates that “transitional vernacular” does not exist as a recognized style (See Section V(1) below).

Despite Staff’s intention “not to establish a “new style” per se,” the Property was, in fact, designated as an example of “transitional vernacular” architecture. In other words, the Property was designated as a new style of architecture created by Staff. Therefore, the fact that the Staff Report and Staff Memorandum introduced the “transitional vernacular” style, when such is not recognized, nor are definitions or physical characteristics of what constitute this “new style” available, factual errors in materials and information were made and presented to the Board.

**8. “Transitional Vernacular” is a “threatened” style within Sherman’s Addition and East Village**

The Staff Report stated that “residential properties, and in particular those of the Transitional style, are rare and threatened in the western most part of Sherman’s Addition and East Village as a whole” but produced no evidence of this.<sup>30</sup> No known “threats” to this “type” of “style” are known to exist in western Sherman’s Addition or East Village area. Therefore, based upon this information, the Staff Report was factually incorrect as it related to a perceived residential property “threat.”

**9. The Improper Application And/Or Misuse Of The Secretary of the Interior’s Standards for the Treatment of Historic Properties**

The written Staff Report and oral Staff Report indicated that modifications made to the Property over the years could be “easily removed and the modification reversed.”<sup>31</sup> The issue of modification reversibility is an element of the *Secretary of the Interior’s Standards for the Rehabilitation of Historic Properties* and Standard #10 states, “New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired. In addition, one Board member commented at the hearing that, “We’re here to look at the Secretary of the Interior’s Standards and to determine if this building is what it is and it is, and if so, we’re supposed to designate it....”<sup>32</sup>

According to the *Land Development Code, Historical Resources Guidelines*, a property may be designated by the HRB if the property qualifies under established Board Criteria (Criterion A-F).<sup>33</sup> The HRB may not designate a property under any other Criteria, nor may the Board designate a property under the Secretary of the Interior’s Standards for the Rehabilitation

<sup>30</sup> HRB Staff Report, April 13, 2006, p.4. See Appendix F.

<sup>31</sup> HRB Staff Report, April 13, 2006, p.4. See Appendix F; HRB Hearing Transcript, Page 3 Lines 4-5. See Appendix G.

<sup>32</sup> See Appendix G, Page 10, Lines 7-9. Underline Added.

<sup>33</sup> *Historical Resources Guidelines*, pp.12-13.

of Historic Properties which deal with the preservation, rehabilitation, restoration, and reconstruction of officially recognized and designated historic sites. In addition, the issue of reversibility is not an issue to be considered during a designation proceeding. National Register guidelines and bulletins even preclude the issue of "reversibility" from determinations of significance.

It must be noted that since the Property was designated in 2006, HRB Staff has stated that it is improper to entertain discussions of integrity that are tied to the "reversibility" of identified alterations in the context of designation proceedings. In a recent, successful appeal of another property (the Harwood Tichenor Building, 1151-1159 Tenth Avenue) to the City Council in November 30, 2010, HRB Staff considered a similar instance involving the issue of "reversibility." In that case, the HRB and HRB Staff concluded that major alterations to the Harwood Tichenor Building, which were deemed to be reversible such that sufficient integrity existed to support designation, was an approach "not consistent with the National Register standards for assessing integrity of the building at the time of designation and is not an accepted methodology." HRB Staff, which supported the Harwood Tichenor Building appeal, concluded that, "Based on the written materials before the HRB and the discussion of integrity improperly tied to the reversibility of identified alterations, staff agrees that factual errors were presented to the Board and were relied on in the designation of the Harwood Tichenor Building, and that a finding can be made to uphold the appeal and overturn the historic designation on these grounds."<sup>34</sup> While it must be acknowledged that the scope of modifications affecting the Harwood Tichenor Building exceeded those which affected the Property, the principle remains the same, that is, the HRB is not permitted to the issue of reversibility of modifications as a methodology in examining levels of present integrity for purposes historic site designation. To do so, in any measure, constitutes both a factual error and a violation of the Land Development Code, *Historical Resources Guidelines*, and San Diego Municipal Code. Therefore, since the issue of reversibility was introduced at the time of designation, at least one Board member applied and/or considered impermissible criteria at the time of designation, and the motion to designate just passed by the required number of votes, these actions constituted an improper application or misuse of the Secretary of the Interior's Standards and violated the Land Development Code, *Historical Resources Guidelines*, and San Diego Municipal Code.

## **B. FACTUAL ERRORS IN ORAL TESTIMONY**

Factual errors in materials and information were made during oral testimony presented at the time of designation. These errors included, and essentially mirrored remarks made by HRB Staff and others in support of site designation. The HRB relied upon such errors, either in whole, or in part, in arriving at its decision to designate the Property. Such errors made in oral testimony compounded those errors made in writing. For evidence of these errors see Appendix.

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<sup>34</sup> City of San Diego, Report To The City Council, Report Number 10-153, November 9, 2010, p.3.

G.<sup>35</sup>

**IV. THE HRB ERRED IN DESIGNATING THE PROPERTY DUE TO VIOLATIONS OF BYLAWS AND/OR HEARING PROCEDURES BY THE BOARD AND/OR INDIVIDUAL MEMBER(S)**

Violations of HRB Bylaws and/or Hearing Procedures were made by the Board as a whole, and/or individual Board members, at the time the Property was designated. Such violations included, but are not limited to:

**1. The Improper Application And/Or Misuse Of HRB Criterion A (Community Development) & Criterion C (Architecture):**

The HRB designated the Property under both Criterion A and Criterion C as "one of only three homes of a similar style remaining in East Village and as a representative example of working class, Transitional vernacular residential architecture during the third phase of development in East Village beginning in 1906 and ending in 1921."<sup>36</sup> This occurred despite the fact that at least one Board member admitted that she "didn't understand well...the difference for Criterion A and Criterion C."<sup>37</sup>

**Criterion A**

According to the Land Development Code, *Historical Resources Guidelines*,<sup>38</sup> a property may be designated by the HRB under Criterion A if the property, "exemplifies or reflects special elements of the City's, a community's or a neighborhood's historical, archaeological, cultural, social, economic, political, aesthetic, engineering, landscaping or architectural development."<sup>39</sup>

Neither the Staff Report, Staff Memorandum, or any other information presented at the time of site designation, supported the contention that the Property qualified under Criterion A as a site which exemplified or reflected "special elements" of City, community, or neighborhood development. No finding was made that the Property exemplified or reflected special elements of development. In particular, "working class, Transitional vernacular residential architecture during the third phase of development in East Village beginning in 1906 and ending in 1921" was not found to be a special element of development. Therefore, designation under Criterion A was improper and violated the *Historical Resources Guidelines*.

<sup>35</sup> See specifically, Error #1 (Page 4; Lines 8-14); Error #2 (Page 3; Lines 36-41); Error #3 (Page 1; Lines 29-32 & Page 2; Lines 33-41); Error #4 (Page 1; Lines 40-41 & Page 2; 1-10); Error #5 (Page 3; Line 6); Error #6 (Page 1; Lines 40-41 & Page 2; Lines 33-41 & Page 3; Lines 12-34); and Error #7 (Page 2; Lines 15-22). See Appendix G.

<sup>36</sup> City of San Diego, Historical Designation Resolution Number R-06052501, Adopted On May 25, 2006. See Appendix H.

<sup>37</sup> HRB Hearing Transcript, Page 9; Line 6. Underline Added. See Appendix G.

<sup>38</sup> Adopted September 28, 1999; Amended June 6, 2000; Amended April 30, 2001.

<sup>39</sup> *Historical Resources Guidelines*, p.12.

### Criterion C

According to the Land Development Code, *Historical Resources Guidelines*, a property may be designated by the HRB under Criterion C if the property, "embodies distinctive characteristics of a style, type, period or method of construction or is a valuable example of the use of indigenous materials or craftsmanship."<sup>40</sup>

Neither the Staff Report, Staff Memorandum, or any other information presented at the time of site designation, supported the contention that the Property qualified under Criterion C as a site which embodied the distinctive characteristics of a style, type, period or method of construction, or was a valuable example of the use of indigenous materials or craftsmanship. To the contrary, "transitional vernacular," is not an accepted architectural style, and no evidence was provided which either defined this style or identified the "distinctive characteristics" of the style in the Property. Therefore, designation under Criterion C was improper and violated the *Historical Resources Guidelines*.

### 2. The Improper Application And/Or Misuse Of The Secretary of the Interior's Standards for the Treatment of Historic Properties

This violation was previously discussed in the Factual Errors Section A9 above. It is hereby included as this factual error also constitutes a violation of the Board's Bylaws and/or Hearing Procedures. As mentioned above, the written Staff Report and oral Staff Report indicated that modifications made to the Property over the years could be "easily removed and the modification reversed."<sup>41</sup> The issue of modification reversibility is an element of the *Secretary of the Interior's Standards for the Rehabilitation of Historic Properties* and Standard #10 states, "New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired. In addition, one Board member commented at the hearing that, "We're here to look at the Secretary of the Interior's Standards and to determine if this building is what it is and it is, and if so, we're supposed to designate it..."<sup>42</sup>

According to the *Land Development Code, Historical Resources Guidelines*, a property may be designated by the HRB if the property qualifies under established Board Criteria (Criterion A-F).<sup>43</sup> The HRB may not designate a property under any other Criteria, nor may the Board designate a property under the Secretary of the Interior's Standards for the Rehabilitation of Historic Properties which deal with the preservation, rehabilitation, restoration, and reconstruction of officially recognized and designated historic sites. In addition, the issue of reversibility is not an issue to be considered during a designation proceeding. National Register guidelines and bulletins even preclude the issue of "reversibility" from determinations of significance.

<sup>40</sup> *Historical Resources Guidelines*, p.13.

<sup>41</sup> HRB Staff Report, April 13, 2006, p. 4. See Appendix F; HRB Hearing Transcript, Page 3 Lines 4-5. See Appendix G.

<sup>42</sup> See Appendix G, Page 10, Lines 7-9. Underline Added.

<sup>43</sup> *Historical Resources Guidelines*, pp.12-13.

It must be noted that since the Property was designated in 2006, HRB Staff has stated that it is improper to entertain discussions of integrity that are tied to the "reversibility" of identified alterations in the context of designation proceedings. In a recent, successful appeal of another property (the Harwood Tichenor Building, 1151-1159 Tenth Avenue) to the City Council in November 30, 2010, HRB Staff considered a similar instance involving the issue of "reversibility." In that case, the HRB and HRB Staff concluded that major alterations to the Harwood Tichenor Building, which were deemed to be reversible such that sufficient integrity existed to support designation, was an approach "not consistent with the National Register standards for assessing integrity of the building at the time of designation and is not an accepted methodology." HRB Staff, which supported the Harwood Tichenor Building appeal, concluded that, "Based on the written materials before the HRB and the discussion of integrity improperly tied to the reversibility of identified alterations, staff agrees that factual errors were presented to the Board and were relied on in the designation of the Harwood Tichenor Building, and that a finding can be made to uphold the appeal and overturn the historic designation on these grounds."<sup>44</sup> While it must be acknowledged that the scope of modifications affecting the Harwood Tichenor Building exceeded those which affected the Property, the principle remains the same, that is, the HRB is not permitted to the issue of reversibility of modifications as a methodology in examining levels of present integrity for purposes historic site designation. To do so, in any measure, constitutes both a factual error and a violation of the Land Development Code, *Historical Resources Guidelines*, and San Diego Municipal Code. Therefore, since the issue of reversibility was introduced at the time of designation, at least one Board member applied and/or considered impermissible criteria at the time of designation, and the motion to designate just passed by the required number of votes, these actions constituted an improper application or misuse of the Secretary of the Interior's Standards and violated the Land Development Code, *Historical Resources Guidelines*, and San Diego Municipal Code.

### 3. *The Improper Application And/Or Misuse Of HRB Guidelines & Procedures For Designation Of Historic Sites*

Neither the Staff Report, Staff Memorandum, nor any other information presented at the time of site designation, supported the contention that the Property was considered either an "important" or "notable" architecturally significant site. At the time the Property was designated, the HRB was subject to the *Guidelines and Procedures For Designation Of Historic Sites*, rather than the *Guidelines for the Application of Historical Resources Board Designation Criteria* (Land Development Manual, Historical Resources Guidelines, Appendix E, Part 2). The latter Guidelines did not come into existence until August 27, 2009 (later revised on February 24, 2011).

According to the HRB's *Guidelines and Procedures For Designation Of Historic Sites*, architecturally significant sites are defined as "those sites notable as important examples of a specific type, period, trend or style of architecture...."<sup>45</sup> Since the Property was not found to be a

<sup>44</sup> City of San Diego, Report To The City Council, Report Number 10-153, November 9, 2010, p.3.

<sup>45</sup> City of San Diego, Historic Site [Resources] Board, *Guidelines and Procedures For Designation Of Historic Sites*, Republished On June 22, 1994, p.2. Underline Added.

notable, important example of a specific type or style of architecture, the Property did not meet the definition of a site significant for its architecture. Therefore, designation of the Property in this manner violated the HRB's Guidelines and Procedures For Designation Of Historic Sites.

#### **4. The Improper Consideration Of Project Impacts And/Or Mitigation Measures**

Over the past several years, the HRB has employed a long-standing hearing procedure whereby any discussion of a development project's impact upon a potentially historic site is prohibited. The Proposed Project impacts (removal of the Property) were only slightly addressed in the HRB Staff Report and in correspondence submitted in advance of the meeting by the Project Architect. Such impacts were not raised during oral testimony by the property owner or its consultants. Nevertheless, some Board discussion improperly focused upon the impact of the proposed Project and related mitigation measures. According to one Board member,

"Whereas, if it is designated for either [Criterion], it means that there has to be a process that's followed which may involve mitigation measures. It still could result in a demolished building, so you're not telling the property owner that you're stuck with this building for the next 200 years. You're basically saying that if you're going to demolish it, you need to take some steps to mitigate and make up for that loss to the community. I want everybody to understand that. This isn't the end of the line necessarily, which is in my view, not necessarily a good thing. But all you're doing now is deciding whether this site should be cleared with no other mitigations."<sup>46</sup>

Therefore, since proposed Project impacts and related mitigation measures were discussed by the HRB at the time of designation, such discussion violated the HRB's hearing procedure practice.

### **V. NEW INFORMATION IS HEREBY PRESENTED TO REVERSE THE DESIGNATION**

Since designation, new information has been developed and presented. Such new information includes, but is not limited to:

#### **1. "Transitional Vernacular" Is Not A Recognized Style:**

Historical research conducted on "Transitional Vernacular" indicates that it is not a recognized or acknowledged architectural style. Additional historical research was conducted at the University of California, San Diego (UCSD) Library and the City of San Diego Public Library, Downtown Branch (among other information repositories). While a variety of sources discuss "vernacular" architecture, none mention "Transitional Vernacular." According to historian, Kathleen Crawford who completed the research, "Vernacular is more of a type, based on regional aspects such as adobe buildings in the southwest, but is not a recognized style in

<sup>46</sup> HRB Hearing Transcript, Page 11, Lines 6-14. See Appendix G.

terms of any of the material which I reviewed. Transitional is never mentioned— period. I did not come across one single reference either in the original research or the new material that had that term—it simply does not exist.”<sup>47</sup> The fact that new historical research failed to identify any information related to “Transitional Vernacular.” indicates that it is not a recognized style and constitutes new information in support of this appeal.

## VI. CONCLUSION

Based upon the above information, which conclusively establishes that the HRB erred in designating the Property due to factual errors in written documentation and oral testimony in materials and/or information which were presented to the HRB at the time of designation; that the HRB erred in designating the Property due to violations of bylaws and/or hearing procedures by the Board and/or individual Board members at the time of designation; and the presentation of new information, we would respectfully request that you to overturn the HRBs’ designation of the Property.

Sincerely,

Scott A. Moomjian.  
Attorney at Law

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<sup>47</sup> Kathleen Crawford, Conversation with Scott A. Moomjian, November 6, 2006. See Appendix I for a list of sources consulted for information related to “Transitional Vernacular.” These sources fail to mention this “style.”

Passed by the Council of The City of San Diego on APR 29 2014, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ed Harris	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Date of final passage APR 29 2014.

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

KEVIN L. FAULCONER  
Mayor of The City of San Diego, California.

ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.

(Seal)

By  Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 308923