

RESOLUTION NUMBER R- 312684

DATE OF FINAL PASSAGE OCT 07 2019

ITEM # 202-A  
10/7/19

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO VACATING THE SEPTEMBER 23, 2013 CITY COUNCIL DETERMINATION GRANTING THE APPEALS OF THE ENVIRONMENTAL DETERMINATION FOR THE BERNATE TICINO RESIDENCE LOCATED AT 1328 VIRGINIA WAY (PROJECT NO. 293008).

WHEREAS, on December 22, 2011, an application for a demolition permit was submitted to the City of San Diego to demolish the building located at 1328 Virginia Way (Windemere Cottage); and

WHEREAS, the demolition permit was issued and Windemere Cottage was subsequently demolished; and

WHEREAS, on August 22, 2012, Frank and Nina Bottini (Applicants) filed an application with the City for a Coastal Development Permit to construct a new single-family residence on a vacant lot (Project); and

WHEREAS, on January 11, 2013, the Environmental Analysis Section of the Development Services Department made the determination that the Bernate Ticino Residence Project was exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA State Guideline section 15303, and a Notice of Right to Appeal was prepared and posted pursuant to San Diego Municipal Code section 112.0310; and

WHEREAS, two appeals were filed by the La Jolla Historical Society and the La Jolla Community Planning Association on the environmental determination (Appeals); and

WHEREAS, at the hearing on the Appeals, the City Council (1) granted the Appeals based on the fact that there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances and may cause a substantial adverse

change in the significance of a historic resource; (2) remanded the Project to staff to re-evaluate the environmental determination with the baseline for the Project set with Windemere Cottage on the site at the time of the historical survey dated January 2010, as modified by the Applicant's addendum, and staff field visit and staff report to the Historical Resources Board in August of 2011; and (3) directed staff to prepare the appropriate environmental document given there is substantial evidence in the record that this Project will have a significant impact on historic resources, considering the historic nature of the Windemere Cottage previously located on the site along with the findings listed in Resolution R-308449; and

WHEREAS, the Applicants filed a petition for writ of mandate with the San Diego Superior Court in Case No. 37-2013-000075491, to set aside the City Council's determination on the Appeals; and

WHEREAS, the trial court granted the Applicants' petition for writ of mandate and determined that the City improperly included the previously demolished Windemere Cottage as part of the Project baseline under CEQA; and

WHEREAS, the trial court issued a peremptory writ of mandate and ordered the City to set aside its adoption of Resolution R-308449, which granted the Appeals, and reconsider the Appeals in conformance with the trial court opinion granting the petition for writ of mandamus; and


WHEREAS, the City appealed the trial court decision and the Court of Appeal, in *Bottini v. City of San Diego*, 27 Cal. App. 5th 281 (2018), affirmed the trial court's judgment insofar as it granted the petition for a peremptory writ of mandamus; and

WHEREAS, under Charter section 280(a)(2) this resolution is not subject to veto by the Mayor because this matter required the City Council to act as a quasi-judicial body, a public

hearing was required by law implicating due process rights of individuals affected by the decision, and the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; NOW, THEREFORE,

BE IT RESOLVED, the September 23, 2013 City Council determination, as set forth in Resolution R-308449, granting the Appeals of the environmental determination for the Bernate Ticino Residence located at 1328 Virginia Way is hereby vacated and set aside.

APPROVED: MARA W. ELLIOTT, City Attorney

By   
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Corrine L. Neuffer  
Deputy City Attorney

CLN:als  
09/19/2019  
Or.Dept:DSD  
Doc. No.: 2177605

Passed by the Council of The City of San Diego on OCT 07 2019, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery	<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"/>
Chris Cate	<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"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gómez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage OCT 07 2019.

**(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.

(Seal)

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

By *Sty Crady*, Deputy

Office of the City Clerk, San Diego, California

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