

MEMORANDUM OF LAW

DATE: August 28, 1985

TO: Harry Atkinson, Assistant Director, Park and
Recreation Department

FROM: City Attorney

SUBJECT: Balboa Park - Naval Hospital - Final Judgment

By memorandum dated July 29, 1985, received in this office August 5, 1985, a copy of which memorandum is attached for reference, you posed several questions relating to the Final Judgment, copy attached, providing for the exchange of Balboa Park properties involved in the reconstruction of the Naval Hospital. Your questions apparently originated from the Naval Hospital Ad Hoc Committee.

The first question is: What happens to \$1,200,000 if City wants 2 or 3 buildings demolished or 17 or 19 buildings demolished? Does the City still pay the Navy \$1,200,000?

Paragraph 4 of the Final Judgment ("Judgment"), commencing on

page 7, provided that the City would set aside \$1,950,000 of the \$3,700,000 paid by the Navy in connection with the land exchange into a special fund. Paragraph 4.a. specifies that the \$1,200,000 of the \$1,950,000, plus interest, "shall be held . . . to pay for the demolition of buildings and structures on the Exchange Parcel." The provision goes on to state that the City at its option may either require the Navy to demolish the buildings chosen by the City to be demolished, in which case the entire \$1,200,000 would be transferred to the Navy, or the City may keep the \$1,200,000 and have the buildings demolished itself.

Therefore, it is incumbent upon the City to determine which buildings it wants to demolish and to determine the approximate cost of such demolition. If the estimated cost would exceed \$1,200,000 it is obviously in the City's best interest to pay the \$1,200,000 to the Navy and require demolition by the Navy. On the other hand, if the demolition cost would clearly be less than \$1,200,000, it is in the City's best interest to have the demolition work done itself and keep the difference.

The exact same provisions apply to the \$450,000 set aside for landscaping described in Paragraph 4.b. on page 8 of the Judgment. Therefore, the answer to your second question is the same as the answer to your first question.

It should be noted that the Judgment specifies that:

"as soon as Navy establishes the date that it will be vacating the Exchange Parcel, Navy shall give City at least one year advance written notice of said date and within 120 days after receipt of such notice City shall notify Navy in writing of its election whether or not to have the . . . work on the Exchange Parcel performed by Navy." (Emphasis ours.)

Since the Judgment requires the Navy to vacate the Exchange Parcel by June 30, 1988, the City can expect the one year notice in early 1987 or perhaps even earlier.

Therefore, it is extremely important to determine in a timely manner which buildings are to be demolished so that we can be prepared to obtain an accurate estimate of demolition and landscaping costs in order to decide whether to do the demolition and landscaping ourselves. No further agreement between the City and the Navy is necessary in order to implement the clear language of the Judgment.

Your third question asks whether Section 8 on page 10 of the Judgment means "that the Navy may vacate the Exchange Parcel without complying with the National Historic Preservation Act of 1966." You indicated that Ron Buckley of the City Planning Department understood the judge who approved the Judgment to have

stated that "the buildings in the Exchange Parcel may be passed on to the City without stipulation as to which are to be preserved or maintained, and that the responsibility for compliance with the National Historic Preservation Act of 1966 is the sole responsibility of the City." Section 8 is quite specific in stating that the Navy, not the City, must secure compliance with the National Historic Preservation Act with respect to the entire Exchange Parcel and all improvements thereon. The Navy is in fact apparently providing for such compliance as indicated in the Memorandum of Agreement between the Navy and the Advisory Council on Historic Preservation dated April 3, 1985, copy attached. The Judgment does, however, further specify that, if the City determines that a historically significant improvement or structure not be demolished, then the City, not the Navy, shall thereafter be responsible for complying with requirements arising from the historic nature of the structure or improvement.

The answer to your fourth question, regarding responsibility for complying with requirements involving a historically significant structure or improvement which is to be demolished, is that the Navy, not the City, is responsible for complying with any such requirements.

Paragraph F of your memorandum asked whether "there are any impediments or restrictions at the present time that would prohibit the City from demolishing all the structures in the Exchange Parcel as well as Building 149 (chapel)." The City is, of course, precluded from demolishing, or requiring the Navy to demolish, any of the buildings on the Exchange Parcel until the Navy establishes the date that it will be vacating the Exchange Parcel. Furthermore, Paragraph 7 of the Judgment granted the Navy the right to continue occupancy of the chapel property until the vacation by the Navy of the Exchange Parcel.

Paragraph G of your memorandum relates to the Navy's present efforts towards complying with the National Historic Preservation Act. The Navy's efforts appear to be towards compliance with the Act. If you or Mr. Buckley feel that for some reason the Navy is not acting appropriately to secure compliance with the Act, please contact me with regard to your basis for such an opinion.

Paragraph H of your memorandum asked "if there are any easements on the Exchange Parcel that may hinder demolition or reconstruction." By copy of this memorandum of law the City Property Department is requested to report back to you with regard to existing easements on the Exchange Parcel.

It is unlikely that any easement would significantly hinder demolition and, of course, it is impossible to ascertain whether

any easement may hinder reconstruction until we have established plans for reconstruction. It should be noted, however, that the Judgment, in Paragraph 3.b. on page 6, provides that the Navy may reserve easements for maintenance and replacement of all existing utility lines serving the medical center but that the easement areas "shall not be maintained, repaired or replaced in such a manner as to unreasonably or unnecessarily interfere with City's utilization of the Exchange Parcel for public park purposes."

In answer to your last question, a copy of the quitclaim deed from the Navy, as required under said Paragraph 3.b. of the Judgment, is attached for reference. The quitclaim deed, as you will note, specifies the location of drainage easements which are to be retained to serve the Navy's adjacent property.

JOHN W. WITT, City Attorney

By

Harold O. Valderhaug

Deputy City Attorney

HOV:ps:710.4(x043.2)

Attachments

cc Jim Spotts

ML-85-46