

The City Attorney  
City of San Diego  
MEMORANDUM  
236-6220

DATE: February 9, 1987

TO: Bill Levin, Planning Department  
FROM: City Attorney  
SUBJECT: Dana Junior High School Zoning - Applicability  
of Government Code Section 65852.9 to Charter  
City

Your memo of January 29, 1987, asked my assistance in responding to the Planning Commission's request concerning zoning that could legally be applied to the Dana Junior High School site.

The applicability of Government Code Section 65852.9 to the City of San Diego raises interesting legal questions. This section is in Chapter 4, Division 1, Title 7, of the Government Code, as is Section 65803 which provides that the provisions of the chapter do not apply to a charter city except to the extent that the same may be adopted by charter or ordinance of the city. Several sections within the chapter are made applicable to charter cities by the inclusion of a statement to that effect. Based on Section 65803, it would appear that Section 65852.9 is not applicable to charter cities. However, the language of Section 65852.9 includes statements of legislative intent that might be construed by a court to represent a matter of statewide concern that would apply to charter cities in spite of Section 65803. The resolution of this may well require a lawsuit.

The provisions of Section 65852.9 assume that a school site is restricted under zoning to school use or other use which is less intense than surrounding land. If the site is not acquired for park or recreation use, the school district is entitled to have it rezoned. Our situation is the reverse, the present zoning is more liberal than surrounding areas. The City may rezone the property to a more restrictive classification but the classification chosen must be supportable using criteria used in any similar area. Applying agricultural zones would appear to be unreasonable. Whatever zone is recommended must provide for a reasonable use of the land. Since the surrounding land is zoned

and developed under the R-1-5000 and R-1-10000 Zones, these zones would appear to establish a range of uses for the subject property. A zone should be selected that results in development

that is compatible with the area to which the property relates.

Since no street access is available between the site and the R-1-10000 area to the southwest, the property appears to relate more to the R-1-5000 areas that surround the area on three sides. Unless the zone selected is consistent with the General Plan and community plan, and is compatible with the surrounding area, the zone will be subject to attack. In addition, rezoning the property to open space, park or recreation, or similar designation, may result in an attack by the school district based on the provisions of Section 65852.9. Even if this section is not applicable to charter cities, the principles embodied in this section are those that should be applied in any rezoning action and could constitute the basis for an attack on the validity of the rezoning.

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By

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