

DATE ISSUED: September 29, 2004 REPORT NO. 04-210

ATTENTION: Honorable Mayor and City Council  
Docket of October 5, 2004

SUBJECT: Appeal of the Historical Designation of the Frazee-Kurtz Paint and  
Wallpaper Building

APPELLANT: Robert C. Wright, Esq., on behalf of UNIVENTURES GROUP, INC.

REFERENCE: Historical Resources Board Agenda of March 25, 2004, Item No. 5

#### SUMMARY

Issue - Should the City Council approve or deny the appeal of the Historical Resources Board action to designate the Frazee-Kurtz Paint and Wallpaper Building as a Historical Resource Site?

Staff Recommendation - Deny the appeal and uphold the decision of the Historical Resources Board to designate the Frazee-Kurtz Paint and Wallpaper Building as a Historical Resource Site.

HRB Recommendation - Designate the Frazee-Kurtz Paint and Wallpaper Building under Historical Resources Board CRITERION C (Architecture).

Other Recommendations - None.

Fiscal Impact - None.

#### BACKGROUND

This item is before the City Council as an appeal of the Historical Resources Board (HRB) decision of March 25, 2004, to designate the Frazee-Kurtz Paint and Wallpaper Building

as a City of San Diego Historical Resource Site. The HRB voted 11-1-1 to designate the apartments based on HRB CRITERION C (Architecture). An appeal of the designation was

submitted on March 30, 2004, by Robert Wright, Esq., on behalf of UNIVENTURES GROUP, INC. The property is located at 1045 Tenth Avenue in the Centre City Community, Council District 2 (see Attachment 1).

### Property Description

This axially symmetric two-story commercial building was designed in the Spanish Eclectic architectural style. Constructed of wood frame with a stucco exterior, the building features a flat roof with a broken, tile-capped parapet that has four decorative roundrels. Three pairs of vertically-divided three-light windows are regularly arranged in the upper register to either side of the central axis. The windows were originally framed with wooden shutters that are now missing. The fourth pair of windows has been recently replaced by a metal door and fire escape to meet current fire code requirements. A corbelled arcade accentuates the transition between the first and second floors of the main facade. Two of its original nine arches have been removed to accommodate the fire escape landing.

The first floor is composed of a wide central bay flanked by two shallower end bays. The central bay features a recessed doorway between two show windows. The original door has been replaced with a c1960s glass and metal door. The central composition is capped by a transom with turned wooden mullions and underscored by a tiled bulkhead, now removed. A vertical neon sign, now removed, once projected from the upper facade in the blank wall space above the central doorway. The end bays originally mirrored the features of the central bay, with a show window in the southern bay and a double glazed door in the northern bay. Today, the southern bay window opening has been remodeled with two metal doors and the northern bay features a roll up metal door.

The HRB staff report (P-03-348) and staff memorandum describes the property in more detail (see Attachments 5 and 6).

### Historical Resources Board Review

This property was originally identified in a Historical Site Inventory of the Core Area of San Diego's downtown prepared for the Centre City Development Corporation in 1989. This inventory was updated in October 2003, by the Office of Marie Burke Lia, consultant to the Centre City Development Corporation, and brought to the HRB for adoption (see Attachment 3). This referral by the Centre City Development Corporation is in accordance with Centre City Planned District Ordinance Section 103.1904(e) which requires HRB review of previously identified potential historical sites. The 43 properties included in the inventory were first heard at the November 21, 2003 HRB meeting. On November 21, 2003, the owners of the Frazee-Kurtz Paint and Wallpaper Building asked for a continuance to explore the benefits and responsibilities of historical designation. The HRB granted the continuance for 60 days. At the January 22, 2004 meeting, staff supported a second request for continuance, with the recommendation for an extension to the March 25, 2004 meeting. The HRB granted the request for a second continuance to the March 25, 2004 meeting due to a change in the property's legal representation.

On March 25, 2004, the HRB designated the Frazee-Kurtz Paint and Wallpaper Building as a Historical Resource Site by a vote of eleven votes in favor (Ahern, Burnett, Chuang, Delawie, Emme, Lynch, Malone, Marshall, McNeeley, Sewell, Silvas), one vote in opposition (Schwartz) and one abstention (Schaeffer (11-1-1)), based on the following factual information:

1. The City Centre Redevelopment Corporation historical report, dated October 2003.
2. Supplemental letter report from Robert Wright, dated February 17, 2004.
3. Supplemental Historical Assessment from Kathleen Crawford, dated February 2004.
4. The HRB staff report (P-03-348), dated November 7, 2003.
5. A memorandum dated March 11, 2004, supplementing staff report P-03-348.
6. A field check of the site by HRB members.
7. Photographs submitted by staff and the applicant.
8. Public testimony provided by the owner's representatives.

In acting to designate, the HRB concurred that the site is significant for its architecture as a fine example of a two-story Spanish Eclectic commercial building, therefore meeting HRB CRITERION C (Architecture).

#### San Diego Municipal Code Appeal Requirements

The San Diego Municipal Code (Code) Section 123.0203 provides for appeals of a HRB designation to be filed within ten business days following the HRB decision. Said decision may be appealed by an applicant or interested person, as defined by the Code. The Code requires the appeal to be in writing, specifying wherein there was error in the decision of the HRB. The City Council may reject historical site designation based on:

- Factual errors in materials of information presented to the HRB;
- Violations of bylaws or hearing procedures; or
- Presentation of new information.

Based on the City Council's evaluation under the above criteria, the Council may by resolution affirm, reverse, or modify the determination of the HRB and make written findings in support of its decision.

#### DISCUSSION

##### Appellant Request

The appellant to the historical site designation of the Frazee-Kurtz Paint and Wallpaper Building submitted an appeal on April 1, 2004, claiming procedural and factual errors (see Attachment 2 for the actual appeal). The issues cited in the appeal, with staff response, are:

1. *The subject property is not an important (or even good) example of Spanish Eclectic architecture. It lacks the low pitched roof, red tile roof covering, and asymmetrical facade that are identifying features of this style. The Historical Resources Board ("HRB")*

*designation violates its own definition of “architectural sites,” which are limited to important examples of a specific...style of architecture...”*

#### Staff Response

According to *A Field Guide of American Houses*, where the term “Spanish Eclectic” originates, “...approximately ten percent of Spanish Eclectic houses have flat roofs with parapeted walls.” This stylistic sub-type, loosely based on flat-roofed Spanish prototypes, is better adapted for commercial architecture, where front facades are the most important feature, than the house-type description presented by the appellant above. In making their decision, HRB members considered the salient characteristics identified with the building’s architectural style during individual site reviews. Also, the staff memorandum for the March 25, 2004 hearing (see Attachment 6) and the consultant’s Historical Assessment (see Attachment 7, Exhibit G) accurately and completely identified those features characteristic of the Spanish Eclectic style in general, as well as the specific features present in the subject commercial building. On a vote of eleven affirmative, one negative and one abstention (11-1-1), the HRB overwhelmingly affirmed that the building was, in fact, a good example of Spanish Eclectic commercial architecture in their designation of the subject property as a City of San Diego Historical Site, meeting CRITERION C (Architecture).

- 2. Consistent with the above error, the HRB ignored the fact that this property is not considered by the San Diego Chapter of the American Institute of Architects to be an outstanding example of architecture in the downtown core area.*

#### Staff Response

The *AIA Guidebook* was developed using different criteria than those used by the HRB. Many significant buildings in San Diego are not in the book because of a lack of space, publishing costs, and deadlines. The book is useful, but it is not a complete work on the region’s architecture, and the building’s absence from the text is not grounds for appeal. Therefore, the HRB did not make an error in not relying on the *AIA Guidebook* as the basis for their designation.

- 3. The subject property is so substantially altered from its original form to have lost over 50 percent of the physical features constituting style. The HRB’s designation violates HRB policy No. 2.1 requiring integrity of design and authoritative federal guidelines on integrity requiring that over 50 percent of the features that illustrate a building’s style remain.*

#### Staff Response

Federal guidelines on integrity recommend that “a majority” of the character-defining features be present in a historical building. Although this is commonly interpreted as a minimum of 51 percent of original fabric, the degree of acceptable integrity is somewhat of a judgment call, based upon building type, expected alterations and comparable properties. Although the appellant claims that “over 50 percent of the physical features constituting the style” are lost, the prevailing view of the HRB members and staff was that the exterior alterations cited by the

appellant were both minimal and easily reversible with available photographic documentation. The HRB noted that the building had sufficient integrity for designation, especially when compared to other commercial buildings in the Centre City, where similar first floor alterations have occurred to accommodate successive commercial uses, and other alterations have been made as a result of safety requirements. In sum, the HRB concluded that a majority of the property's character-defining features exhibited on the main facade were present, justifying designation of the building under CRITERION C (Architecture).

Board difference of opinion with the appellant is not a violation of policy or process and does not constitute grounds for appeal.

4. *The HRB chose to ignore substantial alterations to the building on the ground that they were reversible. This is an error of fact and law. Some of the material alterations to the building, such as the addition of the fire escape to the front facade, are not reversible. Moreover, there is no legal basis for this position, which virtually eliminates Board Policy 2.1 on integrity and authoritative federal guidelines requiring that the whole building be considered and its significant features identified.*

#### Staff Response

The fact that the building was designated does not result in a requirement to reverse alterations; conversely, the fact that a fire escape has been installed does not negate historical significance, or preclude historical designation. As there is no error of fact or law, this issue is not grounds for appeal. Furthermore, federal guidelines are not the applicable standards for local designation. As a Certified Local Government, the HRB has the authority to designate all, or a portion of, any property put forth for designation under any HRB criteria, if the preponderance of evidence in the record suggests HRB criteria have been met. The record demonstrates that the property's significant character-defining features were identified and their alterations noted prior to the action taken by the HRB to designate the building. In the opinion of the majority of the HRB members, the alterations were minor and reversible, should the property owner chose to do so.

5. *The HRB ignored the fact that in 1993, the current owner spent about \$93,000 to alter the building. As part of these alterations, the City required the owner to permanently deface the facade of the building to install a fire escape system. The City is now estopped from changing position and claiming that the facade is historic because of its architecture.*

#### Staff Response

Historical designation does not require, or result in, the removal of a life safety feature like a fire escape. However, should the owner choose to reverse facade alterations like the fire escape, the work would be subject to alternative compliance measures available to certified historical buildings under the State Historic Building Code. The end result would be a restored facade with less obtrusive fire/life safety measures than the current situation. Again, this issue is not grounds for appeal of a historical designation.

6. *The October 2003 State of California Department of Parks and Recreation Forms A and B (“Research Report”) on which designation was based contains a material factual error, i.e., that there were “no major alterations and/or modifications noted” when the opposite is true: since 1928, at least 18 alterations have been made.*

#### Staff Response

The staff report and the staff memorandum both identified the alterations to the building (see Attachments 5 and 6). Over ten pages of the consultant-prepared Historical Assessment, authored by Kathleen Crawford and used by the appellant, discussed the building’s alterations (see Attachment 7, Exhibit G, pp. 14-18, 21-25, 27 and 31). Exhibits A-F in Attachment 7 provided annotated photographs of the building’s alterations. The HRB members also visited the site in preparation for the designation hearing, so they were able to assess the property’s condition and integrity and develop individual conclusions independent of the staff and consultant reports. The issue was an item of discussion at the HRB meeting. In sum, the HRB was well aware of the building’s alterations and nonetheless decided to designate the property as a historical site for its architecture. The entire record of the proceedings must be considered in evaluating the adequacy of the research and documentation for this particular designation, not just the CCDC two-page DPR 523 Form (see Attachment 3). In sum, the designation did not result from factual error, so there are no grounds for appeal on this point.

7. *The Research Report is inadequate to assess the significance of the property and architecture, and, therefore, violates Section 123.0202 (c) of the Municipal Code, for the following additional reasons; (a) There is no support for the assumption that Spanish Eclectic is a distinctive style of architecture in commercial buildings as opposed to houses, (b) The Research Record does not explain how the conclusion was reached that the building embodies the distinctive characteristics of Spanish Eclectic architecture, and (c) The Research Report does not contain information sufficient to assess the loss of integrity in the property occurring through substantial alteration. To the contrary, the report erroneously assumes that there are no such alterations.*

#### Staff Response

These issues were raised in the appellant’s rebuttal letter, dated February 17, 2004 and consultant-prepared Historical Assessment, dated February 2004 (see Attachment 7, Exhibit G).

- (a) The Historical Assessment prepared by the appellant’s consultant Kathleen Crawford discussed the salient characteristics of the Spanish Eclectic style for commercial buildings on page 13 of Exhibit G. The consultant refers to the Frazee Kurtz Building as being in the Spanish Eclectic style. The entire record of the proceedings must be considered in evaluating the adequacy of the research and documentation for this particular designation, not just the Centre City Development Corporation (CCDC) consultant-prepared two-page DPR 523 Form (see Attachment 3).
- (b) The March 11, 2004 staff memorandum prepared for Agenda Item #5 articulated the character-defining features of the Spanish Eclectic style featured in the subject building (see

Attachment 6). The entire record of the proceedings must be considered in evaluating the adequacy of the research and documentation for this particular designation, not just the CCDC two-page DPR 523 Form (see Attachment 3).

- (c) The appellant's Historical Assessment (see Attachment 7, Exhibit G) and the staff memorandum for the March 25, 2004 hearing (see Attachment 6), both identified the condition of the property. Exhibits A-F in Attachment 7 provided annotated photos of the building's alterations. Although the building's integrity was raised by the appellant at the HRB meeting, the prevailing view of the HRB members and staff was that the exterior alterations were both minimal and easily reversible with available photographic documentation. The HRB noted that the building had sufficient integrity for designation, especially when compared to other commercial buildings in the Centre City, where similar first floor alterations have occurred to accommodate successive commercial uses, and other alterations have been made as a result of safety requirements. Federal guidelines on integrity recommend that "a majority" of the character-defining features be present in a historical building. Although this is commonly interpreted as a minimum of 51 percent of original fabric, the degree of acceptable integrity is somewhat of a judgment call, based upon building type, expected alterations and comparable properties. In the judgment of the HRB, a majority of the property's character-defining features exhibited on the main facade were present to designate the building under HRB CRITERION C (Architecture).

The adequacy of the research report to designate the subject property is not new information. This point was raised, and the ample evidence in favor of and against designation was discussed, at the HRB hearing to designate the property. Nor did the designation result from an error of fact, in that the entire record was quite complete. The fact that in designating the property the HRB disagreed with the appellant's evidence is not grounds for appeal of a historical designation.

8. *The owner of the property did not receive notice of the criteria being used to designate the property as an example of Spanish Eclectic style in commercial buildings so that it could make a proper response.<sup>3</sup> This omission violates the public notice requirements of Section 123.0202(b) of the Municipal Code and the requirements of due process of law.*

<sup>3</sup>The issue was further confused by City staff's reference to the property as "Spanish Revival."

### Staff Response

Section 123.0202 (b) of the Land Development Code, that requires public notice to owners, states: "The owner of a property being considered for designation by the Historical Resources Board shall be notified at least ten *business days* before the board hearing. Notice to owner shall contain information about the potential impacts of designation and a request to contact the board's administrative staff regarding information for making a presentation to the board on the proposed designation. No action shall be taken by the board to designate a *historical resource* except at a public hearing that provides all interested parties an opportunity to be heard." There is no requirement in the Land Development Code that owners be notified of the specific criteria for designation of their property, so the assertion that this omission violates public notice and due process requirements has no merit.



The original notice, dated November 6, 2003, stated that “the Historical Resources Board will hold a hearing to consider whether or not this property should be designated as a historical Resource Site and added to the Registry of San Diego Landmarks.” Attached to the owner’s notice was the staff report that included a matrix with the exact criteria under which the property would be considered for designation (see Attachment 5). Despite the fact that the Land Development Code does not require notification of designation criteria, the owner was notified of the criteria for designation at least ten business days in advance of the November 21, 2003 meeting, as required by law. At the owner’s request, the HRB continued the property’s designation for 60 days to explore benefits and responsibilities of historical designation.

A separate courtesy mailing to all Core Area property owners, dated December 23, 2003, included all the historical research available at the City on the subject property, as well as additional information on the designation and appeal process, and the benefits and responsibilities of designation (see Attachment 4). The owner was granted an additional 60-day continuance at the January 21, 2004 meeting due to a change in legal representation and to complete preparation of a research rebuttal report. An inch thick packet of professionally-prepared research and photographs provided additional information to the HRB prior to the March 25, 2004 meeting where the item was discussed. After reviewing the appellant’s submittal, the HRB disagreed with the appellant that the property was not architecturally significant. As the record shows, the appellant had more than ample opportunity to make a proper response. Therefore, improper noticing resulting in failure to make an adequate response is not grounds for appeal.

Staff’s description of the property’s style as “Spanish Revival” is the professional equivalent of the consultant’s term of “Spanish Eclectic.” Both terms are used interchangeably in the professional literature. No distinction was intended nor inferred from the alternate term. There was no confusion on the part of the HRB in that no one asked for a clarification or explanation of the two terms, or their use, in describing the subject property.

9. *The HRB’s failure to follow applicable law, regulations, and policies in designating the property, as set forth above, constitutes an abuse of discretion as a matter of law.*

#### Staff Response

The applicant’s representative asserted this claim at the HRB meeting. The City Attorney disagreed with the assertion and supported the HRB’s authority to designate the building under Municipal Code Sections 123.0202 and 143.0201. The City Attorney also assured that the HRB followed all applicable policies and procedures during the designation process. As there were no errors or failures to follow proper laws, procedures, regulations or policies, this issue is not grounds for appeal.

10. *The designation of this property as historic will cause substantial financial hardship to the owner. The market value of the property will be decreased by at least \$500,000 and the number of potential purchasers for the property will be reduced.*

### Staff Response

This issue is not part of the HRB designation criteria that are based wholly on the historical value of the designated property. Economic impact is a finding required as part of the Site Development Permit process that occurs when a specific project is formally reviewed by City staff and it is determined that a designated structure cannot be feasibly incorporated into the new development. Economic hardship is not grounds for appeal of a historical designation.

11. *The designation of this property as historic will cause unquantified, but substantial, financial hardships to nearby property owners in the same block who will not be able to use their property for its highest and best use, which is redevelopment as a high rise commercial or residential building.*

### Staff Response

This issue is not part of the HRB designation criteria that are based wholly on the historical value of the designated property. The criteria under which the HRB designates a site pertain only to the features within the site's legal boundary, and conditions outside the property limits are not relevant to the designation. Preservation of significant historical buildings is a goal within the Redevelopment Area.

Economic impact is a finding required as part of the Site Development Permit process that occurs if a specific project is formally reviewed by City staff and it is determined that a designated structure cannot be feasibly incorporated into the new development. It is not grounds for appeal of a historical designation to the City Council.

12. *The designation of isolated buildings, such as this one, as historic, will make difficult, if not impossible, the redevelopment of the block on which this property is located to its highest and best use: as a high-rise commercial or residential building. This is contrary to the strong public policy to redevelop the downtown core area and avoid blight.*

### Staff Response

This property was referred to the HRB by the Centre City Development Corporation in accordance with Centre City Planned District Ordinance Section 103.1904(e) which requires HRB review of previously identified potential historical sites. As part of Land Development Code Sections 143.0210, 143.0211, 143.0212 and 143.0213, all properties in the City that are 45 years old or older must be evaluated for historical significance prior to an alteration, addition or demolition, or during the development of a project-specific land use plan. The Land Development Code parallels the requirements of the California Environmental Quality Act that historical properties be taken in account when development occurs. The intent is not to prevent development, but to balance development interests with historical preservation values when land use conversion occurs and to disclose the presence of a historical resource as a consideration in future development of the property.

Several highly successful redevelopment projects have accommodated complete historical buildings through adaptive re-use, including City Front Terrace and the new Padres Ballpark. Elsewhere, new high-density development is occurring that incorporates portions of historical buildings. These features lend a distinctive flavor to the design of the project and are highly desirable for marketing purposes. Many of these projects, still on the drawing board or in construction, include Trilogy on Fifth, Park and Robinson, First and Robinson and The Egyptian. At times, historical properties have been re-located on site to accommodate full redevelopment of a larger assembled parcel, or moved off-site to a more compatible location. In the case of the Frazee-Kurtz Paint and Wallpaper Store, the most likely redevelopment scenario would involve restoration and re-use of the building's facade within the context of a larger project, similar to the projects referenced above.

In conclusion, a full menu of preservation-friendly redevelopment strategies is available to property owners that both meet the requirements of the California Environmental Quality Act and allow for greatly increased land densities to accommodate the future growth of the City. Rather than being contrary to public policy, the accommodation of historical resources in the course of redevelopment is in keeping with stated objectives of the Land Development Code Section 143.0201 to "protect, preserve and, where damaged, restore the historical resources of San Diego..." and "...to assure that development occurs in a manner that protects the overall quality of historical resources." The appellant's assumption that redevelopment will be thwarted as a result of historical designation is unfounded and contrary to actual redevelopment practices. In fact, preservation is encouraged in Redevelopment Areas through processing, permitting and financial incentives, as well as publicly-funded infrastructure improvements to assist property owners in the redevelopment process. Finally, potential redevelopment issues are not grounds for appeal of a historical designation.

## CONCLUSION

The HRB considered all of the information presented to it, as indicated above, before making its decision. In doing so, the HRB gave weight to compelling arguments that resulted in designation. There has been no new evidence submitted to refute the designation or to show that the information the HRB received was wrong. In fact, the information submitted with the appeal to City Council is identical to that submitted to the HRB prior to designation of the building. There also have been no procedural errors, as claimed by the appellant. Therefore, staff recommends the appeal be denied based on the fact that no material information has been provided in support of the findings that the City Council needs to make in order to overturn the decision of the HRB.

In the event the appellant submits new information before the City Council hearing date and after the preparation of this report, staff recommends that the City Council refer the information to the HRB for consideration. This will allow staff to review the information and make appropriate recommendations for the HRB to consider prior to the City Council taking action on the appeal.

## ALTERNATIVES

1. Designate only the Spanish Eclectic facade wall, including entry recesses

This will enable the most architecturally important features of the building to be preserved and incorporated into new construction while accommodating the owner's interest in maximizing redevelopment of the site.

2. Overturn Designation and Require Documentation

Approve the appeal, overturn the HRB action, and require that the appellant produce a photographic survey and as-built drawings of the commercial property. The site would not be acknowledged through a designation as a site reflecting the Spanish Eclectic commercial architectural history of San Diego, but a record of its existence would be kept.

3. Overturn Designation

Approve the appeal and overturn the HRB action. The site would not be acknowledged through a designation as a site reflecting the Spanish Eclectic commercial architectural history of San Diego.

Respectfully submitted,

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S. Gail Goldberg, AICP  
Planning Director

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Approved: George I. Loveland  
Assistant City Manager

GOLDBERG/DK/mw

Attachments: [1. Location Map](#)  
[2. Appeal Form and Attachment](#)  
[3. Applicant \(Centre City Development Corporation\) Historical Report](#)

The following items, under separate cover, have limited distribution. They are available to the general public at the City Clerk's Office:

4. Cover letter for information package to Core Area Property Owners, dated December 23, 2003
5. Staff Report P-03-348 for November 21, 2003 HRB hearing
6. Staff Memorandum for March 25, 2004 HRB hearing and meeting minutes
7. Letter from Robert C. Wright to HRB, dated February 17, 2004 with attachments, as follows:
  - Exhibits A-F: Photos
  - Exhibit G: Historical Assessment by Kathleen Crawford, dated February 2004