



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: January 16, 2008 REPORT NO. 07-209
ATTENTION: Council President and City Council
Docket of January 22, 2008
SUBJECT: Appeal of the Historical Designation of the Mission Hills District.
REFERENCE: Historical Resources Board Agenda of July 16, 2007, Item No. 3

REQUESTED ACTION:

Should the City Council reject the July 16, 2007 historical resource designation of the Mission Hills Historic District by the City of San Diego's (City) Historical Resources Board (HRB)?

STAFF RECOMMENDATION:

Deny the appeals and do not reject or modify the historical resource designation of the Mission Hills Historic District.

SUMMARY:

BACKGROUND

In 2004, following several years of research, survey efforts and preparation of materials, a group of property owners within the Mission Hills community submitted a Geographic/Traditional Historic District nomination for a portion of Mission Hills bounded by the properties fronting on Sunset Boulevard (inclusive of 1814 Sunset Blvd through 1898 Sunset Blvd) to the north; the homes fronting Sheridan Avenue to Lyndon Road (inclusive of 1801 Sheridan Ave through 1896 Lyndon Rd and 4107 Saint James Place) to the east and south; and the properties on the east side of Saint James Place to the west. The report was held by staff until workload and staffing levels permitted review of the nomination. In January of 2007, staff reviewed the nomination, completed an intensive field inspection, and worked with the applicants to revise and update portions of the nomination before it was deemed complete to City standards.

When a district nomination is submitted by an applicant other than the City, the HRB's Historical District Policy on Establishing Historical Districts (see Attachment 1) requires that the applicant submit a petition signed by a "substantial number or a majority" of the property owners

in support of the district nomination. This petition was submitted by the applicant with the nomination in 2004 (see Attachment 2). When the nomination was reviewed by staff in 2007, the petition was reviewed and the ownership information was verified by staff. The petition submitted by the applicants included signatures from 46 of the 75 property owners within the district. Staff was unable to verify ownership for seven of these properties, due to sale of the property and other various reasons. The remaining verified signatures constituted a substantial number or a majority (52 percent) of property owners.

On April 17, 2007, staff mailed an invitation to property owners within the proposed district boundary to attend an informational workshop on April 28, 2007 where staff provided information regarding the significance of the proposed Mission Hills district; how the establishment of a Historic District would affect their property; and the process of establishing a Historic District (see Attachment 3). Staff was also available to answer any questions the property owners may have. There were 14 property owners who attended the April 28, 2007 workshop, the majority of whom indicated their support for the establishment of the district at the workshop.

On April 30, 2007, the district nomination was presented to the policy subcommittee of the HRB for their comment (see Attachment 4). The subcommittee did not identify any significant issues with the nomination and encouraged staff to continue processing the nomination and bring it before the full Board for review. The HRB District Policy requires two hearings by the full HRB. The first hearing is intended to allow the Board to "evaluate the completeness and adequacy of the information submitted establishing the significance of the proposed historical district at a regularly scheduled Board meeting. If the information submitted is found adequate, a second noticed public hearing shall be scheduled for the next available Board hearing". At the second hearing, the Board will "hear public testimony on the establishment of the historical district, and take appropriate action."

On May 8, 2007, staff mailed a Notice of Public Hearing to all property owners within the proposed district boundary for the first district hearing on May 24, 2007 (see Attachment 5). Copies of the district nomination and the staff report (see Attachment 6) were distributed to the Boardmembers and made available to property owners at the City Planning & Community Investment department and the Mission Hills branch library. At the May 24, 2007 hearing, the Board considered the information, including a supplemental memo from staff with a corrected recommendation (see Attachment 7), took public testimony, discussed the merits of the nomination and the classification of contributing and non-contributing resources within the district, and forwarded the nomination to a second hearing to consider the designation of the district (see Attachment 8). At the May 24, 2007 hearing, which was attended by 8 of the 11 seated Boardmembers, some Boardmembers expressed some concern regarding the sufficiency of the petition required by the adopted District Policy, which is the only required indication of property owner support and opposition. Staff responded that in addition to the petition, staff held the April 28, 2007 workshop, noticed all property owners of the May 24, 2007 hearing and, as of the day of the hearing had heard very little opposition.

On June 12, 2007, staff mailed a Notice of Public Hearing to all property owners within the proposed district boundary for the second district hearing on June 28, 2007 (see Attachment 9). On June 15, 2007, the staff report (see Attachment 10) was distributed to the Boardmembers and made available to property owners at the City Planning & Community Investment department and the Mission Hills branch library. Following the mailing of the notice for the second hearing, staff received several phone calls from property owners concerned about the establishment of the

district. In light of this and the Board's comments regarding possible owner opposition to the establishment of the district, staff elected to distribute self-addressed stamped "ballot" postcards to property owners along with a letter of instruction in order to obtain a better understanding as to the level of support and opposition (see Attachment 11). The letter asked property owners to return the ballot within one week and stated that those properties, which had indicated their support through the petition (which were identified in the letter), would be presumed to be in support of the district unless they returned a postcard to the contrary.

In addition, shortly after the notice distribution, staff discovered that the audio tapes of the May 24, 2007 hearing, which had to be reviewed by the three Boardmembers not in attendance at the first hearing in order to participate in any future action, were defective. In order to allow as many Boardmembers as possible to participate in the discussion and designation of a historical district, and to allow staff additional time to process the ballots, staff, at the direction of the Board Chair, issued a revised agenda for the June 28, 2007 hearing changing the second hearing to a reconsideration of the first hearing, as well as a memo detailing the purpose of the reconsideration (see Attachment 12). However, after the revised agenda and memo were distributed, staff discovered that the reconsideration was not docketed within the timeframe established by the Board's adopted procedures and that the first hearing could not be reconsidered at any time. At the June 28, 2007 hearing it was announced that the Mission Hills District would not be heard at that meeting due to the docketing error, and that the second hearing would occur at a special hearing on July 16, 2007 due to anticipated Boardmember absences at the regular meeting on July 26, 2007. The docketing error was identified and corrected during the process prior to any Board action.

On June 29, 2007 staff mailed a Notice of Public Hearing to all property owners within the proposed district boundary for the second district hearing on July 16, 2007 (see Attachment 13). A staff memo (see Attachment 14) was distributed to the Boardmembers and made available to property owners at the City Planning & Community Investment department and the Mission Hills branch library. The memo included all letters received by staff from both property owners and interested parties in support and opposition to the designation of the district. At the hearing, staff presented the district nomination and staff recommendation, and provided Boardmembers with the final results of all property owner response to the proposed designation of the Mission Hills Historic District (see Attachment 15). Of the 75 properties within the proposed district, 52 had indicated their support (69 percent) and 11 indicated their opposition directly to staff via petition, ballot, the workshop, email and/or phone.

On July 16, 2007, the Board considered all of the information before them, took public testimony from property owners in support and opposed to the district, and designated the Mission Hills District as a historical resource (HRB #821) with a vote of 7 in favor, 0 opposed and 0 abstentions. The Mission Hills District is comprised of 75 properties, 60 of which are contributing resources and 15 of which are non-contributing resources to the district. An object within the right-of-way was also designated as a contributing resource. The District was designated under three HRB designation Criteria: Criterion A as a special element of the City and neighborhood's historical, cultural, landscaping and architectural development; HRB Criterion C as an embodiment of distinctive characteristics of various styles, types and period(s) of construction from 1908-1942; and HRB Criterion D, as a reflection of quality design and construction work of several established Master Architects and Builders (see Attachment 16).

On July 25, 2007, the City Clerk's office received two appeals of the Board's decision to designate the Mission Hills Historic District. One appeal was filed by Dr. Sheldon Zablow, owner of a contributing resource within the district, who questioned the level of property owner

support for the establishment of the district (see Attachment 17). The second appeal was filed by Dr. David Demer and Shirley Demer, owners of a contributing resource within the district, who questioned the level of property owner support for the establishment of the district and staff's response to public requests for information, and took issue with the impact of the designation on property owners (see Attachment 18). Since the appeal, staff has responded to a request for information from Dr. Zablow and a Public Records Act request from Dr. Demer. Little additional information has been provided in support of the appeals.

SUMMARY OF EVENTS	
Date	Action
2004	Mission Hills Historic District Nomination is submitted to the City with a petition signed by a majority of the property owners within the district.
February 2007	HRB staff begins review of the nomination and works with the applicants to revise per City standards.
April 17, 2007	Letter of invitation mailed to property owners within the proposed district inviting them to attend and informational workshop.
April 28, 2007	Informational workshop held.
April 30, 2007	The nomination is reviewed by the HRB's Policy Subcommittee
May 8, 2007	Notice of Public Hearing on May 24, 2007 is mailed to all property owners within the proposed district boundary.
May 15, 2007	Staff report number HRB 07-027 for the first hearing is distributed and made available to property owners.
May 24, 2007	FIRST HEARING before the HRB. Staff issues a memo with a corrected staff recommendation. The Board reviews the nomination and forwards it to a second hearing for designation.
June 12, 2007	Notice of Public Hearing on June 28, 2007 is mailed to all property owners within the proposed district boundary.
June 15, 2007	Staff report number HRB 07-030 for the second hearing is distributed and made available to property owners.
June 19, 2007	In response to some property owner opposition following the June 12, 2007 notice, a letter and self-addressed stamped ballot is mailed to property owners within the district, encouraging them to state their position on the establishment of the district.
June 22, 2007	HRB staff issues a memo stating that the second hearing on June 28, 2007 is being re-docketed as a reconsideration of the first hearing to allow Boardmembers absent at the first hearing to participate, and to allow more time to gauge property owner support and opposition.
June 22-28 th , 2007	HRB staff discovers that the time frame for docketing a reconsideration, as established by adopted HRB procedures, was not met and that the first hearing cannot be reconsidered.
June 28, 2007	It is announced at the June 28, 2007 hearing that the first hearing cannot be reconsidered and that the item will not be heard due to the docketing error.
June 29, 2007	Notice of Public Hearing on July 16, 2007 is mailed to all property owners within the proposed district boundary.
July 10, 2007	HRB staff memo for the second hearing on July 16, 2007 is distributed and made available to property owners.
July 16, 2007	SECOND HEARING before the HRB. The Board considers all information and designates the Mission Hills Historic District under three Criteria.
July 25, 2007	Dr. Sheldon Zablow and Dr. David and Shirley Demer file appeals of the Mission Hills District Designation and the designation of their properties.

DISCUSSION

The City Council may overturn the action of the HRB to designate a historical resource under certain circumstances, consistent with the San Diego Municipal Code Section 123.0203 (see Attachment 19). The Code states that the action of the Board in the designation process is final unless an appeal to the City Council is filed. An appeal shall be in writing and shall specify wherein there was error in the decision of the Board. The City Council may reject designation on the basis of: *factual errors in materials or information presented to the Board; violations of hearing procedures by the Board or individual member; or presentation of new information.* At the public hearing on the appeal, the City Council may by resolution affirm, reverse, or modify the determination of the Board and shall make written findings in support of its decision.

The appeal filed by Dr. Zablow states four grounds for appeal, which are listed below with a staff response to each appeal issue:

1. *"My signature was used without my permission to support the designation."*

Dr. Zablow signed the petition circulated by the applicants which stated, *"As a resident in the proposed Original Mission Hills Historical District I request support from the City of San Diego Historic Resources Board to assist us in the recognizing the area starting at the east end of Sunset to St. James south to Lyndon and including Sheridan Ave. as a Traditional Historical District. I request priority with completion of DPR forms from the upcoming site survey in addition to the prompt response to this request by HRB staff."* Once he indicated to staff that he no longer supported the district, his name and property were removed from the list of supporters and that information was communicated to the Board.

2. *"The number of people who live in the proposed district who support the proposal was misrepresented."*

Staff has made every effort to accurately tally and communicate the level of property owner support and opposition to the district, beyond the requirements of the adopted Board Policy. The spreadsheet presented to the Board with the level of support and opposition clearly stated how that information was ascertained.

3. *"Request for information under Freedom of Information was not responded to."*

Dr. Zablow submitted a letter dated July 8, 2007 with questions posed to staff (Attachment 20). The questions were of a legal nature and were forwarded to the Deputy City Attorney assigned to the Historical Resources Board for review and comment on July 11th. Copies of the letter were also distributed to the Board. The City Attorney reviewed the letter and provided a response at the July 16th public hearing, which Dr. Zablow attended.

4. *"During the presentation to the Board, the people that supported had a significant amount of time to make their presentation. Those opposed were not given equal time or adequate notice to present concerns or have their questions answered."*

Noticing of all property owners within the boundary of the district for each hearing was completed in accordance with Municipal Code requirements. At the publicly noticed May 24, 2007 hearing, seven speaker slips were filed in support and one was filed in opposition (which was opposed to the classification of their property as non-contributing and was in support of designating the district and their property). Mr. Zablow did not submit a speaker slip at the first hearing. At the publicly noticed July 16, 2007 hearing, which Dr. Zablow attended, 26 speaker slips were filed in support (two of which were part of an organized presentation) and one speaker slip was filed in opposition (Dr. Zablow). At both hearings, every individual speaker was given equal time by the Chair to address the Board. All letters received by staff both in support and opposition, were provided to the Board prior to and at the July 16, 2007 hearing.

The appeal filed by Dr. Demer states four grounds for appeal, which are listed below with a staff response to each appeal issue:

1. *"The signature list provided to the HRB by the Applicants and purported to represent property owners in support of the MHHD, is inaccurate (evidenced in the appeal of another property owner), and casts reasonable doubt that a majority of the property owners are in support of the Resolution (refers to HRB Policy 4.1, Section 5, Board Action, Subsection a. Designation Request)."*

In the three instances where property owners who signed the applicant's petition later expressed opposition to the district to staff, staff then changed the owner's stance to opposition, which was reflected in the final tally. Of the 75 property owners within the boundary of the district, 52 (69 percent) supported the designation of the district, either through the petition, ballot, the workshop, email and/or phone. 36 of those 52 had signed the applicant's petition. Of those 36 original petition signatures, only 11 chose not to restate their support of the district, which staff clearly indicated was not required in the letter that accompanied the ballots. However, even if one were to discount the 11 original petition signatures which did not re-state their support in one form or another, 41 of the 75 property owners would continue to affirmatively support the district, which constitutes a majority (54.6 percent).

2. *"Efforts by the HRB staff to validate the Applicant's signature list (see i), were not in good faith and forthright, evidenced by the inappropriately-short time allowed by the HRB staff for property owners to respond, the resulting paucity of responses, and the HRB staff's misrepresentation of the responses by joining them with the dubious signature list (see l), and assuming no-response is equivalent to a response in support of the MHHD."*

Staff verified the petition signatures against the ownership information on record. The petition is the only measure of property owner support or opposition required by the adopted District Policy. In an effort to provide the Board with updated and accurate information, staff initiated the balloting process to provide current property owners with an additional opportunity to express their opinion. The quick turn-around (one week) was required in order to communicate that information to the Board at the second hearing. Ballots were returned by nearly half of the property owners within the district boundary, a good result for a balloting effort.

3. *"The designations of Contributing and Non-Contributing Resources within the MHHD are subjective and the supporting documentation and decision rationale of the HRB staff was withheld from the public (evidenced in Attachment 2, an unanswered informal request for the information; and Attachment 3, an unanswered formal Public Records Act Request) (refers to HRB Policy 4.1, Section 5, Board Action, Subsection b. Historical Report; SDMC Ch 12, Art3, Division2, §123.0202 Designation Process for Historical Resources; and CA-Code 6250-6270)."*

The classification of contributing and non-contributing resources as recommended by staff was based on a professional analysis (under the U.S. Secretary of the Interior's Standards) of the property and its eligibility for designation based on the significance of the district and the level of integrity of each property. This analysis was provided in the staff report and attachments which were made available to the public for review, as stated in the Notice of Public Hearing.

Dr. Demer first contacted staff via email on June 27, 2007 in which he expressed his opposition and raised some issues regarding the nomination (see Attachment 21). Staff responded to this first email later that same day (see Attachment 22). Dr. Demer followed with a second letter on June 28, 2007 (see Attachment 23) in which he asked, "Please let me know how I can obtain a copy of the application for the proposed Mission Hills Historic District and all of the supporting documentation that has been submitted by the applicants and your staff in this regard." This is the informal request for information that the appellant refers to. This information had been communicated in the Notice of Public Hearing, which stated that this information was available at the City Planning & Community Investment and at the Mission Hills branch library. Dr. Demer then submitted a Public Records Act (PRA) request on July 6, 2007 and again on July 9, 2007 (see Attachment 24). HRB staff forwarded the request to the Department PRA liason on July 9th and informed Dr. Demer that he would receive a response shortly (see Attachment 25). On July 11, 2007 the department's PRA liason responded to Dr. Demer's request (see Attachment 26). Another PRA request followed on August 22, 2007 (see Attachment 27), which staff responded to on August 30, 2007. The staff response and all subsequent communication to and from the appellant in regard to the August 22, 2007 PRA request have been included in Attachment 28. Staff has provided all responsive documents associated with the appellant's PRA requests.

4. *"We support the rights of individual property owners to submit their own application to the HRB for historical designations of their properties, and for a Mills Act designation. However certain property owners may be aggrieved as a result of the MHHD, incur financial hardship, significant reduction to the values of home and land investments; and or be subject to dangers associated with archaic materials and methods of construction."*

Financial hardship is not grounds for appeal of a historic resource designation under the Municipal Code.

CONCLUSION

The San Diego Municipal Code limits the findings for an appeal to the following:

1. *"factual errors in materials or information presented to the Board"*
2. *"violations of hearing procedures by the Board or individual member"*
3. *"presentation of new information"*

The required findings for the appeal cannot be made. No factual errors in material or information presented to the Board have been identified; no violations of hearing procedures by the Board or individual member occurred; and no new information relevant to the designation of the Mission Hills District has been provided. The district nomination was processed in accordance with the adopted Historical District Policy on Establishing Historical Districts (HRB Policy 4.1) and the Municipal Code regulations for Designation of Historical Resources (Chapter 12, Article 3, Division 2). Therefore, staff recommends that the City Council deny the appeals and do not reject or modify the historical resource designation of the Mission Hills Historic District.

ALTERNATIVES

Deny the appeal of the Mission Hills Historic District designation, but grant the appeal and overturn the designation of Dr. Zablow's property at 1815 Sheridan Avenue and/or Dr. Demer's property at 1819 Sheridan Avenue as contributing resources to the Mission Hills Historic District. This alternative would leave the district designation in place, but change the classification of 1815 Sheridan and/or 1819 Sheridan from contributing to non-contributing properties. As non-contributing properties they would continue to be regulated by the historic district and the Municipal Code, but would be provided a greater degree of flexibility in regard to development of the property.

Grant the appeal and overturn the designation of the Mission Hills Historic District. This alternative would remove the historical designation from the district as a whole. Only those properties which are individually designated as historic resources would continue to be regulated by the Municipal Code.

FISCAL CONSIDERATION:

None identified.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

None.

COMMUNITY PARTICIPATION and PUBLIC OUTREACH EFFORTS:

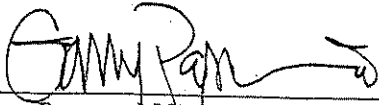
A noticed public workshop was held on April 28, 2007. Notices of Public Hearing were sent to all property owners within the Mission Hills Historic District prior to each hearing before the Historical Resources Board, consistent with Municipal Code requirements. All property owners have been sent public notice of the appeal hearing.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Key stakeholders and those impacted by the decision of the Council include the 75 property owners within the boundary of the Mission Hills Historic District, including the appellants, Dr. Sheldon Zablow and Dr. David and Shirley Demer. The Demer's have hired an attorney, Paul White of the Law Offices of Fletcher, White and Adair, to represent them during their appeal. If

the designation is upheld, all property owners will be required to maintain their property consistent with the U.S. Secretary of the Interior's Standards and the City's Historical Resources Regulations, which do provide flexibility in regard to additions and modifications of historic resources in order to accommodate continued use of the resource.

Respectfully submitted,



Garry Papers, NCARB, AIA
Deputy Director – Urban Form
City Planning & Community Investment

- Attachments:
1. Historical Resources Board Policy 4.1: "Historical District Policy on Establishing Historical Districts"
 2. Petition submitted by the applicant in support of the Mission Hills District nomination.
 3. Letter of invitation dated April 17, 2007 and flyer for public workshop held April 28, 2007.
 4. HRB Policy Subcommittee Agenda of April 30, 2007.
 5. Notice of Public Hearing for HRB Hearing of May 24, 2007.
 6. Staff report dated May 15, 2007 with attachments prepared for the first hearing of the Mission Hills District nomination on May 24, 2007.
 7. Memo from staff dated May 24, 2007 for the hearing on May 24, 2007.
 8. HRB Minutes of the May 24, 2007 hearing.
 9. Notice of Public Hearing for HRB Hearing of June 28, 2007.
 10. Staff report dated June 15, 2007 with attachments prepared for the second hearing of the Mission Hills District nomination on June 28, 2007.
 11. Letter dated June 19, 2007 and postcard ballot sent to property owners within the proposed district boundary in order to ascertain property owner support and opposition.
 12. Memo from staff dated June 22, 2007 regarding the reconsideration of the first hearing.
 13. Notice of Public Hearing for HRB Hearing of July 16, 2007.
 14. Memo from staff dated July 10, 2007 clarifying the recommended Board action at the second hearing on July 16, 2007
 15. Spreadsheet: "Mission Hills Historic District Property Owner Support and Opposition", which contains the final tally, distributed to the Board at the second hearing on July 16, 2007.
 16. HRB Minutes of the July 16, 2007 hearing.
 17. Copy of appeal filed by Dr. Sheldon Zablow
 18. Copy of appeal filed by Dr. David and Shirley Demer
 19. San Diego Municipal Code Chapter 12, Article 3, Division 2: Designation of Historical Resources Procedures
 20. Letter from Dr. Sheldon Zablow dated July 8, 2007
 21. Email letter from Dr. David Demer dated June 27, 2007
 22. Email from staff to Dr. David Demer dated June 27, 2007

23. Email letter from Dr. David Demer dated June 28, 2007
24. Public Records Act request from Dr. David Demer dated July 6, 2007
25. Initial email response from staff to Dr. David Demer dated July 9, 2007
26. Staff response to Dr. David Demer regarding Public Records Act request, dated July 11, 2007
27. Second Public Records Act request from Dr. David Demer dated August 22, 2007
28. Staff response and all subsequent communication to and from Dr. David Demer regarding the August 22, 2007 Public Records Act request.