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April 27, 2007

E-MAIL AND U.S. MAIL

David Berry, Chair
Miramar Ranch North Planning Committee
10755 F Scripps Poway Parkway #247
San Diego, CA 92131

Dear Chair Berry:

Defense and Indemnification of Community Planning Groups

We are in receipt of your 7 April 2007 letter to Councilmember Maienschein regarding your concerns about whether the City Attorney will provide a legal defense and indemnification for community planning groups faced with legal actions brought against a group or any of its individual members for actions taken on behalf of the City in its advisory capacity.

Please know that the City Attorney is prepared to represent, defend, and indemnify any community planning group and its members from litigation for community planning group actions in its advisory role to the City. The City Attorney, Community Planners Committee, and City Planning and Community Investment Department are working together to amend and correct deficiencies in the 1988 indemnification ordinance and to clarify the importance of providing definitive legal protections to the volunteers serving on community planning groups.

Currently, the City Attorney is representing the Rancho Bernardo Community Planning Board [RBCPB] in litigation brought by an applicant church that applied for a Conditional Use Permit [CUP] in an industrial zone, contrary to the Rancho Bernardo Community Plan. The RBCPB denied the CUP based on the conflict with its community plan. However, the Hearing Officer and, on appeal, the Planning Commission granted the CUP, though for a period of time

less than that requested by the applicant church. The litigation is against the RBCPB, Planning Commission, and City of San Diego.¹ The City Attorney is representing, defending and indemnifying, all City parties to this action.

Historically, there is only one instance where defense and indemnification of a community planning group has been denied and, in that situation, a community group of La Jollans sued the La Jolla Community Planning Association, Inc. [LJCPA] for declaratory relief based on allegations of Brown Act and LJCPA bylaw violations.² The City Attorney declined to take the side of one community group over another community group and, instead, worked with both community groups to resolve the issues in the complaint and to dismiss the lawsuit.³ In response to the concerns regarding the LJCPA, the City Attorney has had a deputy city attorney attend the LJCPA meetings since August 2006, advised the LJCPA regarding conflict of interest laws and Brown Act requirements, assisted the LJCPA in updating its bylaws⁴, defended the LJCPA elections as proper against two election challenges⁵, and advocated against the City Planning and Community Investment Department's proposal to decertify the LJCPA.⁶ Further, the City Attorney issued a memo to the Mayor and City Council explaining there is no legal basis or process for decertification of a community planning group.⁷

The City Attorney recognizes the importance of the community planning groups and is seeking a Neighborhood Bill of Rights to protect community planning groups, neighborhoods, and preserve the individual interests of the diverse San Diego communities.

¹ *GRACE CHURCH OF NORTH COUNTY, a nonprofit religious corporation of California, on behalf of itself and its members v. CITY OF SAN DIEGO, a municipal charter corporation existing under the law of the State of California, RANCHO BERNARDO COMMUNITY PLANNING BOARD, a charter organization of the City of San Diego, and SAN DIEGO PLANNING COMMISSION*, U.S. District Court Case No. 07CV0419H

² *LA JOLLANS FOR CLEAN GOVERNMENT, INC., a California non-profit corporation, SALLY FULLER, an individual, and DONNA REICHERT, an individual, Plaintiffs, v. LA JOLLA COMMUNITY PLANNING ASSOCIATION, INC., a California non-profit corporation*. San Diego Superior Court Case No. GIC 865370

³ See San Diego Resolution R- 2006-1125 (June 30, 2006)
(<http://clerkdoc.sannet.gov/Website/rao/raofullsearch.html>)

⁴ February 2, 2007 Memorandum from Assistant City Attorney Karen Heumann to Council President Scott Peters: Docketing Request: Approval of Newly Adopted Bylaws for the La Jolla Community Planning Association, Inc. Per Council Policy 600-24; and February 16, 2007 Memorandum from Assistant City Attorney Karen Heumann to Honorable Mayor and City Council: **Second Docketing Request:** Approval of Newly Adopted Bylaws for the La Jolla Community Planning Association, Inc., Per Council Policy 600-24

⁵ City Att'y MOL No. 2007-5 (Apr. 4, 2007) titled "Validity of the La Jolla Community Planning Association, Inc., Election Process, Election and Election Results for the March 1, 2007 Election"
(<http://clerkdoc.sannet.gov/Website/alrml/alrmlfullsearch.htm>)

⁶ See San Diego Resolution R-2007-1039 (<http://clerkdoc.sannet.gov/Website/rao/raofullsearch.html>)

⁷ See attachment City Att'y Misc Memo No. MS-2007-5 (Apr. 23, 2007) titled "Decertification of the La Jolla Community Planning Association, Inc." (<http://clerkdoc.sannet.gov/Website/alrml/alrmlfullsearch.html>)

Please contact our Office if you have any questions. We look forward to working with you and your community planning committee members on any planning issues and concerns you have, now and in the future.

MICHAEL J. AGUIRRE, City Attorney

By

Karen Heumann
Assistant City Attorney

KH:jb

Attachment

cc: Honorable Mayor and City Council

Bill Anderson, City Planning and Community Investment

Leo Wilson, Chair, CPC

Community Planning Groups