

July 20, 2004

Honorable Clifford R. Anderson, III
Presiding Judge
Santa Barbara Superior Court
P.O. Box 21107
Santa Barbara, CA 93121-1107

**Subject: Response to 2003-2004 Grand Jury Report on Santa Barbara
Community Development Department (“Nobody’s Dream House”)**

Dear Judge Anderson:

At the Santa Barbara City Council meeting of July 20, 2004, Council reviewed the Santa Barbara County Grand Jury 2003-2004 Report on Santa Barbara Community Development Department (“Nobody’s Dream House”), pursuant to Penal Code Section 933.

The Santa Barbara County Grand Jury’s findings and recommendations regarding the Community Development Department, and the City’s response to such findings, are below.

In responding to the report, certain assumptions were necessary given some of the broad statements made.

FINDING 1: This project contained numerous code violations on a non-conforming lot. It should never have been given a ministerial permit without an appropriate review process.

RESPONSE TO FINDING 1: The City agrees with Finding 1.

Following the issuance of the building permit for a new residence at 318 W. Ortega Street, it was discovered that the development was proposed within 25 feet of the calculated top of bank of Mission Creek and that it was displacing required parking for 322 W. Ortega Street. Non-compliance with the Mission Creek Setback Ordinance was the only code violation, while the parking condition is a unique property restriction. The issuance of the building permit was inappropriate given these two concerns.

City staff was unaware of these facts prior to the issuance of the building permit. Once the conditions of the City Council’s 1957 action regarding parking use came to light and the location of the new building was identified by a licensed engineer, City Staff issued a “stop work” order on the project, and required the applicant to address these concerns.

RECOMMENDATION 1: No ministerial permit should be granted in neighborhoods with non-conforming lots.

RESPONSE TO RECOMMENDATION 1: The City will not implement Recommendation 1, as it is unreasonable.

Non-conforming situations occur when a property is created and/or developed to existing standards, and those standards change (usually by an amendment to the Zoning Ordinance). Over the years, the Zoning Ordinance has been amended numerous times to establish and/or change development and use standards in the City. These changes in standards have resulted in thousands of properties being non-conforming in a variety of ways. The most significant of these amendments occurred in 1974, when approximately 45% of the residentially zoned land in the City was rezoned to be more restrictive as to lot size, setbacks and other standards. This “down zoning” created 4,318 acres of residentially zoned land where lots are nonconforming to lot size and setbacks. The primary areas affected by the down zoning were the Eastside, Westside, Mesa, Upper East, and San Roque neighborhoods.

As written, the Grand Jury recommends that entire neighborhoods should be prohibited from obtaining ministerial permits if there are any non-conforming lots in the neighborhood. The recommendation does not suggest what level of non-ministerial review would be appropriate, or what basis there would be to deny such a permit. The implementation of this recommendation is unreasonable. Prohibiting the issuance of ministerial permits to non-conforming lots would create a severe hardship on both the affected property owners and the City, as there are thousands of properties that are nonconforming to some zoning standard. This would create further obstacles for owners who propose appropriate development and maintenance of their non-conforming properties.

To illustrate, the City issues about 3,500 building permits per year. Of these approximately 900 undergo some type of discretionary review (26%); therefore, 2,600 permits are issued ministerially. Approximately 87% of the land in the City is residentially zoned, and at least 45% of residentially zoned lots are nonconforming; therefore, at least 40% of all lots in the City are nonconforming in some way. Forty percent of 2,600 ministerial building permits equals 1,040 building permits issued on nonconforming lots.

Additionally, the recommendation would be contrary to the City’s recently adopted standards and practices regarding nonconforming building and uses. In 1998, the City amended the zoning regulations applicable to non-conforming structures and uses to make it easier for property owners to maintain, and make appropriate improvements to non-conforming lots and structures.

FINDING 2: Based on a past working relationship with the architect, the planner assumed the information supplied for this project was accurate and conforming to code.

RESPONSE TO FINDING 2: The City disagrees with Finding 2.

Some of the information provided by the applicant was assumed to be correct because it was submitted by a licensed architect, not based on a past working relationship with the particular architect. Standard practices among planning agencies and building departments throughout the State and Country is to rely on the work of licensed professionals. The plans were reviewed by the various departments within the City for accuracy and conformance to code requirements with reliance on the accuracy of the information provided in terms of the existing conditions and proposed improvements.

RECOMMENDATION 2: Planners should not assume information provided them is correct without personally verifying the information for accuracy.

RESPONSE TO RECOMMENDATION 2: The City will not implement Recommendation 2, as it is unwarranted.

The implementation of this recommendation is unreasonable. As stated previously, in the planning and building profession, it is standard practice to rely on the work of licensed, trained professionals, such as architects and engineers. The City processes more than 3,000 building permits a year, not including resubmittals and revisions. Requiring planners to personally verify all of the information submitted and do field checks is unnecessary, as well as impractical due to time and costs. As stated in the response to Finding 2, the plans are reviewed by the various departments within the City for accuracy and conformance to code requirements. There will continue to be reliance on the accuracy of the information submitted by licensed professionals, as is the case in any other business. However, due to Staff's heightened awareness of creek issues, a survey of the top-of-bank is now required for new development within 50 feet of the top-of-bank of Mission Creek. (See Exhibit)

FINDING 3: The complainant's concerns were not immediately taken seriously.

RESPONSE TO FINDING 3: The City partially disagrees with Finding 3.

Although the City disagrees that the complainant's concerns were not taken seriously, the City does agree that more research should have occurred as part of the review of the complaint. As with all complaints received by the City, the

complainant's concerns were reviewed. However, at the time, all of the information submitted appeared to be accurate and there was no apparent evidence that supported the complaint. Once a site visit was done by a building inspector, and additional concerns were raised regarding the actual top-of-bank, a "stop work" order was issued by the building inspector, and all work was ceased until further information was provided.

RECOMMENDATION 3: The Santa Barbara Community Development Department should have a system that reviews, routes and tracks complaint issues to appropriate departments. Department heads should jointly review complex and controversial types of complaints.

RESPONSE TO RECOMMENDATION 3: The City has implemented Recommendation 3.

The City Administrator's Office has a city-wide complaint and response system, and the Community Development Department also has a comprehensive complaint and enforcement system. The complaint review process documents, reviews, tracks, and routes complaints to the appropriate departments. Depending on the nature of the complaints, teams composed of staff from various departments may be involved in the resolution of the complaints. It is also not uncommon to involve higher level staff, including Division Managers and Department Heads, in the cases.

CONCLUSION:

While the City respectfully disagrees with some of the findings and recommendations, the City appreciates the Grand Jury's efforts to provide the City with guidance on ways to prevent similar incidents from occurring in the future.

Sincerely,

Marty Blum
Mayor

Exhibit: Creek Memo dated August 22, 2003

cc: Jim Armstrong, City Administrator
Paul Casey, Community Development Director