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April 5, 2019

Via Certified-Mail, Return Receipt Requested and E-mail

The Honorable Richard Bailey
Coronado City Council
City of Coronado
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Coronado, CA 92118
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Re: **Demand to Cure or Correct Coronado City Council Action
(Cal. Govt. Code Section 54960.1(b))**

Dear Mayor Bailey, Council Members and Ms. Canlas:

Cure or Correct

This law firm represents Harold DeNardi, who is an interested person pursuant to California Government Code section 54960.1(b). This letter shall serve as a demand on the Coronado City Council and Mayor Richard Bailey¹ to cure or correct the action taken on February 19, 2019 upholding an appeal of a Street Tree Committee decision. At the February 19, 2019 City Council Meeting (the "City Council Meeting"), the City Council voted 3 to 2 to uphold an appeal

¹ References to the City Council hereinafter include Mayor Richard Bailey.

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of the Coronado Street Tree Committee's January 10, 2019 decision to approve removal of a tree located at 609 First Street, agenda item 8a.²

On December 19, 2018, Ed McVaney submitted a Tree Removal Request to the Coronado Street Tree Committee ("STC") requesting removal of a tree in front of his property located at 609 First Street, to allow for a court-ordered restoration of an easement across 609 First Street. Removal of the tree is necessary to comply with Coronado's current requirement that a public access point have a width of 20 feet. On January 10, 2019, the STC voted 3 to 1 to approve the Request (the "STC Approval"). On January 17, 2019, McVaney's neighbor, Robert Bardin, filed an appeal of the STC Approval (the "Appeal"), requesting that the City Council deny the Removal Request. The City Council's approval of the Appeal is a direct result of ex parte communications that violate the Brown Act. Cal. Govt. Code section 54950 *et seq.*

Brown Act Violations

Before the City Council Meeting, a group of Coronado residents met privately with individual City Council members and lobbied them to vote to uphold the Appeal. This group of resident advocates, composed of Leslie Bell, Phil Manion, Suzy Heap, Gail Bardin, and Robert Bardin, made phone calls, sent emails, and met in person with the City Council in order to influence the City Council's vote in advance of the February 19, 2019 meeting. These private communications were intended to bring about a consensus to uphold the Appeal and exchange information that would influence the City Council to uphold the Appeal.

The City Council violated the Brown Act by engaging in these serial meetings in violation of California Government Code sections 54953 & 54952.2. There was a concerted effort by Coronado residents to influence City Council's vote and at the City Council Meeting, the City Council failed to disclose many of the communications that violated the Brown Act.

Undisclosed on-site meetings

Depositions of Robert Bardin, Leslie Bell, Phil Manion, and emails between Suzie Heap, Robert Bardin, Leslie Bell and the Coronado City Council reveal the following undisclosed meetings:

- On-site meetings between Mayor Richard Bailey and Leslie Bell, Gail Bardin, Robert Bardin, and Suzie Heap;
- Meeting between Leslie Bell, Robert Bardin, Council Member Sandke;
- Council Member Benzian's on-site meeting.

² The Appeal is more accurately characterized as an appeal of the City of Coronado's decision to grant a permit to install a public right of way and remove a tree at 609 First Street. For the sake of clarity, the language used by the City of Coronado in its Agenda and Minutes has been adopted in this letter.

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Undisclosed e-mail communications

Disclosures pursuant to depositions and public records requests revealed the following undisclosed e-mail communications:

- E-mails between Leslie Bell, Susie Heap, and Mayor Richard Bailey;
- E-mails between Leslie Bell, Susie Heap, and Council Member Sandke;
- E-mails between Leslie Bell, Susie Heap, and Council Member Benzian.

On January 22, 2019, Leslie Bell sent the following undisclosed e-mail to the entire City Council:

Dear Mayor and City Council,

On behalf of Bob Bardin, and other concerned residents, I am writing in regards to the appeal of the Street Tree Committee decision approving the removal of a beautiful and healthy Eucalyptus tree at 609 First Street.

The stated purpose for the removal of the tree is for the installation of a new driveway. However, a reasonable alternative exists that would provide McVaney access to his property while preserving the tree.

I am inviting you to meet with me and Bob on site so you can see the tree and alternative driveway location in person. We believe visiting the site will help inform your decision regarding the appeal. Please let me and Bob know when your schedule allows to meet and we will be available accordingly.

Best,
Leslie

This e-mail was received by each member of the City Council and each responded to it, but none of these communications were disclosed at the City Council Meeting. The text of the e-mail shows that the purpose of the on-site meetings between the Ms. Bell, Mr. Bardin and the City Council Members was intended to *inform their decisions* and reach a consensus about upholding the Appeal on the theory that there is an “alternative driveway location.”

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On February 8, 2019, Suzie Heap wrote an e-mail to the entire City Council urging them to vote to keep the tree for aesthetic reasons and citing an alleged alternative location. At the City Council Meeting, only Council Member Donovan disclosed that he received the email from Suzie Heap. None of the City Council Members disclosed the content of the e-mail from Suzie Heap. This e-mail was clearly calculated to cause the City Council to reach a consensus to vote to uphold the Appeal.

Undisclosed content

In addition to the undisclosed ex parte communications, the content of the ex parte communications disclosed by the City Council at the City Council Meeting was entirely inadequate.

- Mayor Bailey stated that the ex parte communications about the Appeal included, “An expressed desire to keep the tree standing while providing enhanced access to residents on the frontage road.”
- Council Member Sandke stated “I would ditto those same comments.”
- Council Member Benzian stated, “Same.”

At her April 1, 2019 deposition, Leslie Bell testified that as a result of the meetings with the Council Members and Mayor Bailey, she and Robert Bardin prepared an “addendum” to the Appeal addressing the Council Members’ questions about an alternative location for access to First Street. The Addendum was received by the City of Coronado on **February 8, 2019**. On-site meetings between resident advocates and the City Council occurred between **January 24, 2019** and **February 1, 2019** (the “on-site meetings”). Thus, the addendum was prepared after the on-site meetings at the suggestion of City Council Members and Mayor Bailey. This deliberative communication was not disclosed by anyone on the City Council at the City Council Meeting.

In addition, Leslie Bell testified at her deposition that the on-site meetings with each of the participating Councilmembers lasted at least fifteen minutes. The City Council Members’ *one sentence or one-word* disclosures are grossly inadequate.

The totality of these ex parte communications, undisclosed in-person and on-site meetings, as well as undisclosed e-mail communications between the City Council and residents lobbying for the Appeal, lead to an obvious inference that the City Council engaged in deliberations outside the context of a public meeting. *Page v. MiraCosta Community College District* (2009) 180 Cal.App.4th 471, 503-04 (holding that a court can infer improper deliberations from individual meetings with intermediaries.)

Such serial meetings, where a majority of a government body is contacted individually to engage in deliberations without public notice, are unlawful and violate California’s Brown Act. Govt. Code section 54952.2(b); *see also, Page v. MiraCosta Community College District* (2009) 180 Cal.App.4th 471, 503-04; 84 Cal. Ops. Atty. Gen. 30, at p. 2 (2001) (“Brown Act open

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meeting requirements encompass not only actions taken but also fact finding meetings and deliberations leading up to those actions.”) *216 Sutter Bay Ass’n. v. County of Sutter* (1997) 58 Cal.App.4th 860, 877 (“Deliberation in this context connotes not only collective decision making, but also the ‘collective acquisition and exchange of facts preliminary to the ultimate decision.’”)

The foregoing are a few examples of the multiple ways in which the City Council’s deliberations, meetings, communications, and conduct leading up to the vote upholding the Appeal were improper and unlawful.³ To the extent they are currently known, these improper communications are detailed herein. Additional evidence is expected via the City of Coronado’s response to our client’s public records requests.

Conclusion

Based on the facts and authority cited herein, the City Council has thirty days to address its violations of the Brown Act. Govt. Code § 54960.1(c)(2). If the City Council does not cure or correct its actions by voiding the vote to uphold the Appeal, Mr. DeNardi will be forced to take legal action to invalidate the City Council’s action. Cal. Govt. Code §54960(a).

Please contact the undersigned or this office if you wish to discuss this matter.

Sincerely,



William C. Hernquist II
HERNQUIST & ASSOCIATES

WCH/kj

cc: Coronado City Clerk c/o Mary Clifford (via email mclifford@coronado.ca.us)

³ Govt. Code §§ 54953, 54952.2, & 54960.1