

How City Officials Cost Taxpayers \$348,000

How is it that a few weeks ago, the City paid **\$348,000** for a lawsuit involving a private individual's (builder Michael Ray's) attempt to substantially demolish a historic house?

The City recently paid **\$275,000** to the Laguna Beach Historic Preservation Coalition's (LBHPC's) attorney and another **\$73,000** to the City's law firm for a total of **\$348,000**, all due to the City's own mistakes . . . or intent to favor Mr. Ray.

Stepping back in time, on October 1, 2020 (*before I joined Council*), the Design Review Board (DRB) approved a renovation project at Michael Ray's 337 Hawthorne home but *failed* to insert a standard clause to indemnify the City and hold it harmless against CEQA (**California Environmental Quality Act**) lawsuits. Eventually, the LBHPC filed a lawsuit alleging that due to the home's historic status, the DRB approval violated CEQA.

In 2023, a Superior Court Judge found against the City and ordered the City to rescind (cancel) all project approvals. The City recently shelled out **\$348,000** to settle the LBHPC's legal fees and cover the City's own attorney fees. Michael Ray would have been required to pay these costs if the past City Attorney, past City Manager, and Council leaders had done their jobs and indemnified the City against legal claims.

So why didn't this happen? Was it just a series of blunders? And for what valid reasons did they take the responsibility off of Mr. Ray?

We won't know the answer without further investigation. I would appreciate hearing your views on this matter. ***For a more detailed review of this case please scroll down or read the attached PDF.***

Sincerely,

George Weiss
City Councilman

How The City Gave A Builder Special Treatment That Cost Taxpayers \$348,000

Introduction: In a problematic case of favored treatment to a local builder, the City Attorney, the Design Review Board and City Officials mismanaged the near demolition of a Laguna Beach Historic Register home costing taxpayers **\$348,000** in legal fees. Here is the story.

Background: Appeal Of 337 Hawthorne To The City Council: In 2020, Councilwoman Toni Iseman requested that the City Council review a **Design Review Board (DRB)** decision that allowed a builder, Mr. Michael Ray, to substantially demolish and rebuild a house he owned at 337 Hawthorne. *The DRB approval was the first faulty decision.* This property is on the **Laguna Beach Historic Register**.

See here: (page

6) <https://www.lagunabeachcity.net/home/showpublisheddocument/9102/637527417362100000>

Review Dropped And Appeal Filed: Ms. Iseman dropped her request for review in 2021, but Cathy Jurca of the **Laguna Beach Historic Preservation Coalition (LBHPC)** filed an appeal soon after, claiming that the DRB approval violated the **California Environmental Quality Act (CEQA)**. City Attorney Phil Kohn denied the appeal, claiming it was filed too late. *This was the second faulty decision made by City officials. The City has no CEQA appeals process. State law requires that CEQA decisions (in this case adoption of a Negative Declaration) can be appealed to the elected decision-making body.*

See more about CEQA at: <https://opr.ca.gov/ceqa/guidelines/>

City Attorney Kohn Misreads The Law: When the LBHPC filed its suit, Mr. Kohn moved to dismiss the case. However, a Superior Court judge ruled that in the absence of a stated CEQA appeals process, there was **no deadline** to miss, and that the City **erred** in rejecting the appeal. The lawsuit could move forward. *(GW: Mr. Kohn had been our City Attorney for just under forty years. Did he not know the law? Until recently, the City has had a poor record of following CEQA.)*

City Attorney Kohn Doubles Down: Rather than letting the lawsuit proceed, Mr. Kohn then **manufactured** a City Council appeal which was reviewed by the City Council on November 15, 2022. *This was the third faulty decision.* With Ms. Kempf presiding as Mayor at the meeting, Mr. Kohn admitted that there was no legitimate appeal because at this point there was no appellant, and an appeal fee had not been paid. Mayor Kempf could have chosen not to place the appeal on the Council agenda, as the Mayor and City Manager create all agendas. But nevertheless, she did.

How The Process Should Work: When a 5-0 DRB decision is appealed to the City Council, **only** evidence that was presented at the DRB hearing can be considered. Ignoring that restriction, Mr. Kohn allowed Mr. Ray's attorney (Mr. Larry Nokes) to present much more new information. Mr. Nokes failed to convince the Council that Mr. Ray's house is **not** historic *(thus making it eligible for substantial demolition and rebuild)* nor that it was erroneously put on the Register many years ago. Former Director of Community Development Mark Weiner supported the latter contention despite it having never been previously made. To the contrary, the City admitted it had never completed any forms that

would have **removed** the property from the historic register. (*Mr. Weiner recently left the employment of the City under dubious circumstances*)

The City Sponsored Appeal Is Denied In Court: The Council voted 3-2 to deny the City's appeal of its own decision; as Mayor Pro-Tem Bob Whalen put it, he wanted to “**let the courts decide.**” It seems obvious that since historic experts had determined that if Mr. Ray altered the house as proposed it would cease to qualify as a historic resource, an **Environmental Impact Report (EIR)** was required. The Superior Court judge agreed, found for the petitioner, and ordered the City to rescind all project approvals.

Why Is the City on the Hook? Under state law, when petitioners prevail in a CEQA lawsuit they are entitled to recover attorney fees and costs. The Design Review Board **refused to** insert a standard clause in the project approval to indemnify the City against CEQA lawsuits. Instead, “**Mr. Nokes agreed to sit down with the City Attorney Kohn to work out an agreeable hold harmless indemnification agreement,**” (*which would hold the city harmless for legal fees and court costs*) according to the Oct. 1, 2020, DRB meeting minutes. However, no indemnification agreement was ever signed.

Doing Things Wrong Costs Money: Because of the City's refusal to grant the appeal in 2021, and Mr. Kohn's unsuccessful efforts to dismiss the case, along with his manufacture of a **false appeal** and, above all, his failure to indemnify the City against litigation – all these actions created the legal circumstances whereby taxpayer monies were extracted to benefit Mr. Ray. Normally, Mr. Ray would be responsible for paying the City's and the petitioner's fees and costs.

Special Treatment For Mr. Ray: As a result of the actions taken by the DRB, the City Attorney and other City officials, the City recently paid **\$275,000** to LBHPC's attorney and another **\$73,000** to the City's law firm. Such a substantial payment of **public** funds should never have been allowed.

Comments And Conclusions: I spoke about this at the February 13th Council meeting, stating we need to find out what happened. No other Councilmember commented.

In 2020, then Mayor Bob Whalen could have insisted Mr. Ray be held financially responsible for any litigation, and in 2022, Mayor Kempf could have stopped Mr. Kohn's fallacious appeal. Former City Manager Shohreh Dupuis could have acted as well. *The fourth faulty decision by City officials failing to act.* If they had acted in the City's best interests, taxpayers would not have been on the hook to pay **\$348,000** in legal fees.

In order to uphold the principles of transparency and accountability in local government, we must know how this happened. We need an outside investigation to find out who is

responsible and who knew of and approved these actions. Please contact me if you feel the same or if you disagree. I would like to hear from you at: gw@georgeweisscitycouncil.org

Sincerely,
George Weiss
City Councilman
949-295-0832

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