

May 24, 2012

Gwen Peirce, City Clerk Services Manager
Post Office Box 1990
Santa Barbara, CA 93102-1990

Re: Zoning Information Reports (ZIRs) and Request to Place Issue Before Council

Ms. Peirce:

Since 2009, the Santa Barbara Association of REALTORS® (SBAOR) has been working on a number of issues pertaining to Zoning Information Reports (ZIR's) with city staff. Some issues have been resolved, but one major issue is still outstanding and seems to need direction from the City Council to resolve.

The major outstanding issue revolves around property owners who purchased a home with a clean ZIR (no violations cited) from the city, yet when that same property owner (having made no modifications to the property) subsequently attempts to sell the home; the new ZIR cites and requires remediation of newly discovered violation(s). The violations cited in the new report were missed in the original inspection and not reported to the purchaser in the ZIR provided by the city. The property owner relied on the report they were given by the city when they purchased the property, yet they are now being forced by that same city to spend tens or even hundreds of thousands of dollars to correct problems they were not advised of in the original report. We believe, and we hope you will agree, that this is patently unfair and unnecessary in all but the most extreme cases of properties with significant health and safety violations. This is, and has been a serious problem. There were hundreds, perhaps thousands of ZIRs done in the past, and many of them missed numerous violations at the time they were performed. Those reports were relied on by the people who purchased those homes, regardless of the small print in which the city denies any responsibility or liability for the accuracy of the report. Those people are now being penalized (in some cases financially ruined) for relying on the information provided to them by the City itself. We implore the City Council to stop this inequitable practice.

Another somewhat glaring issue with the ZIR as currently administered is the cost. As you are aware the city must be revenue neutral on such programs yet the cost is far in excess of that charged by other cities nearby (See Exhibit 1). This has become a major point of contention for our members and their clients will certainly require further scrutiny and discussion as we move forward in our analysis of the ZIR program.

By way of background, ZIR's were originally created by the City of Santa Barbara with full support from SBAOR in the late 1970's as a way to disclose information about a property to potential buyers. ZIR's were instrumental at that time because of the lack of required formal disclosures during a real estate transaction. They were originally informational only and no enforcement went along with them. They subsequently became a way to identify (and remove) illegal dwelling units at a time when those were a significant problem in the city, and correctional enforcement started to occur. Originally, however, they were for informational purposes only.

Today there are over forty (40) disclosures (some of them required by law) that are commonly used during a real estate transaction (see Exhibit 2). Some examples of required disclosures that are used during a transaction in today's market are:

- Agency Disclosure and Agency Confirmation
- The Transfer Disclosure Statement
- Smoke detectors
- Heater bracing
- Carbon Monoxide Detector Disclosure & Compliance
- The visual inspection
- Natural Hazard Disclosure Statement
- Mello-Roos Taxes and 1915 Bond Act Assessments
- Informational booklets and form FLD
 - The Homeowners Guide to Earthquake Safety Booklet
 - The Commercial Property Owner's Guide to Earthquake Safety
 - Residential Earthquake Hazards Report
 - The Lead-Based Paint Pamphlet and Form FLD
 - The Residential Environmental Hazards Booklet
 - The Home Energy Rating system (HERS) Booklet
- Registered sex offenders
- Toxic mold

Disclosures in residential real estate transactions have become the norm rather than the exception. Not only has the law and practice focused on incorporating detailed disclosures into the real estate transaction, the utilization of professional inspectors has become the norm as well. Home inspections by certified inspectors, structural pest control inspections, roof inspections, sewer lateral inspections, mold inspections, and a host of others are frequently utilized in an industry that has swung to the side of over disclosure and over inspection to avoid problems and lawsuits later. In light of these inspections, the ZIR may very well have become an unnecessary evil.

SBAOR and most homeowners believe the city has a duty to stand behind the reports that have been generated and delivered to the citizens/homeowners by the City. We believe this is the right thing for the city to do despite the "small print" denying any responsibility for the reports. We believe the City, at a bare minimum, needs to "grandfather" these previously overlooked conditions for those properties so long as the "improvements" or conditions are not in danger of falling down, or causing a fire or other major hazards. In other words, as long as they are not a serious health and safety threat. The conditions should be treated as any other legal variance or pre-existing use, and be allowed for the present and future owners.

Better yet, perhaps the city should consider eliminating ZIRs all together. If not eliminating them then go back to providing them as informational reports and drop the enforcement component all together. Make the property owner aware of the problem(s) if there are any, and explain that any new permits may require mediation of some or all noted violations.

If no other action is taken, SBAOR would ask the City Council to direct staff to create a "grandfathering" and/or "allowed exception" clause and policy pertaining to ZIR's. We would also ask that the city allow these types of issues to be fast tracked through the permitting process at no additional cost to the property owner. This is an important issue that affects all homeowners with the City of Santa Barbara.

We look forward to discussing this important issue with the City Council, and to working towards an equitable solution to this on-going problem. Thank you for your time and consideration of this request.

Sincerely,



Jim Caldwell
President

Cc: Mayor Helene Schneider
City Councilmember Dale Francisco
City Councilmember Frank Hotchkiss
City Councilmember Grant House
City Councilmember Randy Rowse
City Councilmember Cathy Murillo
City Councilmember Bendy White
City Administrator Jim Armstrong
City Attorney Steve Wiley
Community Development Director Paul Casey

Enclosed: Exhibit 1 - Prices of ZIR's in other CA cities
Exhibit 2 - Disclosure forms
Exhibit 3 - ZIR Stories from agents and their clients
Exhibit 4 - Santa Barbara News-Press Letters: Opinion: The \$18,000 Shower