

Council Chamber, Bank of America Building,
San Clemente, California,
Thursday, July 30th, 1936.

An adjourned regular meeting of the City Council of the City of San Clemente was held in the Council Chamber, Room 210, Bank of America Building, San Clemente, California, Thursday, July 30th, 1936, at 8:00 o'clock, p.m. - Mayor Dan Mulherron in the Chair.

The following was the state of the roll-call:
PRESENT: COUNCILMEN: Fate, Coe, Smith and Mulherron,
ABSENT: COUNCILMEN: Kinney.

This being the time and place set, pursuant to Notice Inviting Sealed Bids dated July 18th, 1936, to receive and open sealed bids or proposals for supplying the City with a 1½ ton truck according to specifications approved by the Superintendent of Public Works; the Clerk reported that he had received bids from the following firms:

1.	L. D. Coffin Company, Santa Ana,	-	Dodge;
2.	Weseloh Chevrolet Company, Escondido,	-	Chevrolet,
3.	Chevrolet Sales Company, San Clemente	-	Chevrolet,
4.	Brown Motor Company, San Diego,	-	Ford,
5.	A. C. Mallette Inc., San Diego,	-	Ford,
6.	Tony's Mission Garage, San Juan Capistrano	-	Ford,
7.	C. F. Laverty, Oceanside,	-	Ford,
8.	Roberts Chevrolet Company, Fullerton	-	Chevrolet,
9.	George Dunton, Santa Ana,	-	Ford
10.	C. A. Gray, San Diego,	-	Dodge,
11.	Archie L. Campbell, Oceanside	-	Oceanside.

The above bids were opened by the Mayor and read.

Moved by Councilman Fate, seconded by Councilman Smith, and carried, that the bids be referred to the Superintendent of Public Works and the City Engineer for tabulation and report back to the City Council.

On returning the Superintendent of Public Works reported the bid of the Brown Motor Company, San Diego, was the lowest, and he recommended that their bid be accepted.

Moved by Councilman Fate, seconded by Councilman Coe, that the bid of the Brown Motor Company Company be accepted and that the truck be purchased from that Company for the sum of \$ 868.37 -

On roll-call the following was the stated vote, to-wit:
AYES : COUNCILMEN: Fate, Coe, Smith and Mulherron,
NOES : COUNCILMEN: None;
ABSENT: COUNCILMEN: Kinney.

The Motion was declared carried.

REQUEST FROM
CAPITAL COY
TO HAVE BUILD-
ING RESTRICT-
IONS CHANGED
TO ALLOW OF
OTHER TYPES OF
ARCHITECTURE.

Mr. David I. Stoddard, representing the Capital Company, the real estate department of the Bank of America, appeared before the Mayor and Council and addressed them as follows:
" Honorable Mayor and Members of the City Council. The purpose of appearing before the City Council this evening is to discuss the proposed development of San Clemente. This question should be of vital interest to every property owner and citizen of this community.

We are of the opinion that it is necessary that a modification of the present building restrictions will be necessary to certain Tracts to accomplish this development. The particular area we have in mind are Tract 900, South and West of the Golf Course, and Tract 821 in the Beach Club area. It is not without due consideration of all conditions attending the original development of San Clemente that we have come to this decision.

It might be well to consider the early development of San Clemente, and view those conditions as compared with the situation as it exists today.

As you know, Mr. Ole Hanson, associated with other prominent individuals, established along with this development, an idea - that of planning and building a Spanish Village, which would be the only one of its kind in America. In the first place, the location of San Clemente was ideal. Its perfect climate and many recreational advantages on the South Coast of California, made it a set-up which appealed to many purchasers of real estate at that time. During that period we were enjoying a high degree of business prosperity in the United States. A very substantial amount of property was sold under this plan of expansion - something over 3,000 lots were sold out of a total of approximately 6,000 - 185 houses and 35 business buildings were built on 3,000 lots and 3,000 lots were unsold out of the total of the 6,000 lots, showing improved 3½%. Then occurred the eventful crash of 1929 and San Clemente, along with every other development in the country, suffered heavily. Building activity, however, has been revived in other Southern California communities, but San Clemente has been at a standstill for some five years and with little hope of increased building unless some changes are made.

We have been confronted with certain obstacles in the sale of property, particularly unimproved property. San Clemente was originally planned for the home of retired people of independent income, but, unfortunately, the depression has decreased this class to such a small number that the opportunity to effect sales in this limited market has been very discouraging.

There exists, however, a much larger field for the sale of this property among the residents of Riverside, San Bernardino, Los Angeles, and other similar cities, which persons already have a business, or employment, and who maintain a home in those localities, but who are able to, and interested in, building vacation homes. The investment that they are prepared to make in such a property is indicated to be a maximum of around \$3,000.00. In studying the general situation from this angle and hearing the comments of prospective purchasers, it brings up the question of architectural restrictions.

It costs more to build a house with a red tile roof and stucco walls than it does to build equally serviceable houses of other types. Communities up and down the Coast, both to the North and South of San Clemente, have been enjoying substantial growth and development this season, where other types of building have been permitted. What we have in mind is the Monterey type of construction.

It is not our thought to suggest that construction of shacks, or unsightly properties, such as have been permitted in some locations, but well constructed, attractive appearing houses that can be built for the amount of money that has been indicated for this type of construction.

Mr. David I.
Stoddard.

We have received definite word that the Capital Company is prepared to start the construction of new houses, providing they can be sold. The Sales Organization is confident from the experience of the past sixth months that a large number of new homes can be sold in San Clemente, providing that they are of the proper type to appeal to the prospective purchasers. We are not prepared to launch this building campaign if we can secure the approval and co-operation of the City Council and the citizens of this community.

During the past year a very determined effort has been made to secure Federal Housing approval for San Clemente. Twice this has been turned down and the principal reason given by the authorities was that San Clemente had no resources for the production of wealth, and that no means for providing a livelihood was available in this location. In spite of the refusal to grant Federal Housing approval, we have persistently worked for a reversal of this decision and have finally received word from the Federal Housing Administration that San Clemente would now qualify for Title II loans. "

Mr. E. L.
Holloway.

Mr. E. L. Holloway said he had listened to what Mr. Stoddard had to say and there was so many things he did say that it was hard for them to have any objection to it, but he wanted to say there was not a man in San Clemente interested any more than he was in the building up of the City - We were dealing with a very delicate question - you and I, and everybody who bought property here with restrictions on it, and that restriction is just the same as any other paragraph in your deed - it is your title and a part of your title and I do not think it lies within my power, your power, or the Council's power, to throw these restrictions out. You all know I don't like the restrictions. I have said for a good many years past that as long as we stick to the Spanish type of building with white stucco walls and red tile roofs we will have a Village because when he was in the filling station and talked with people he kept a diary and mostly everybody said it was wonderful but that if they were building they would not build the present type of buildings with white stucco walls and red tiled roofs. If you change the restrictions at all you will have to change it all - throw open the whole city - but if that is done you will have started a war.

Mr. Earl Von
Bon Horst.

Mr. Earl Von Bon Horst said Mr. Stoddard did not ask the Council to break any restrictions. He believed that the restrictions should be removed in order to get people here who want to build homes other than with white stucco walls and red tiled roofs - such as monterey type houses, english type and colonial homes. He thought the City should be zoned and the Council appoint a Planning Commission and all plans and specifications approved by them for each and every one of the zones. It would be up to the property owners to get together and zone the City with the approval of the planning commission.

He believed that this would bring lots of people here to build houses according to their own liking, this being a beach city and not an industrial center, and, in time to come, we would have a beautiful community.

Mr. B.Z. McKinney,
City Attorney.

City Attorney, B. Z. McKinney, said as long as this question had been brought up by the citizens interested, as City Attorney, he would like to answer some of the questions brought up by Mr. Holloway. He believed he could say to the people here tonight, without attempting to speak for the Council, because he had not talked with them regarding the matter, that this Council wanted to do anything they felt the people of San Clemente want to do for the upbuilding of San Clemente in the right way. Mr. Stoddard this week called at his office asking for legal opinion regarding the Building Ordinance of the City. The Mayor asked me to make some investigation about the matter first of all to determine just where we stood.

City Clerk's
comment. The City
Attorney evidently
means Ordinance
No. 10, as this is
the only one we
have on the subject

He went over to the Orange County Title Company who has done a great deal of work in connection with the projects down here and there he read a copy of what is known as Ordinance No. 62 of this City regarding the building of homes here. Now you people want to bear in mind that opinions of attorneys are sometimes different as the clothes that women wear as to what is legal and what is not legal. The restrictions contained in the deed and contracts of the sale of property in San Clemente are what we lawyers call personal restrictions; that is restrictions which can be enforced by the seller of the property and the successor in interest as against the buyer of the property. The specifications set forth in their requirements a stucco wall and red tiled roof. There are some attorneys however - one of the Orange County Title Company's - is of the opinion that the restrictions contained in the deed and contracts cannot be enforced by any lot owner as against another lot owner that may attempt to build a house disregarding those restrictions. I feel that the restrictions can only be enforced here in San Clemente by the Bank of America as the successor to most of the interests of Mr. Ole Hanson and also as a trustee in the original purchase agreement under which most of the lots were sold. That means if you as a lot owner want to build a house on a lot different than the restrictions call for any other lot owner could not bring an action to prevent such a building but that the action would have to be instituted by the Bank of America to prevent the restriction being broken. In addition to the restriction contained in the deed the Architectural Committee must also pass on plans for any proposed building. The Mayor, Dan Mulherron, Mr. David I. Stoddard and Mr. Tom Walker constitute this Committee. The only Ordinance of the City of San Clemente is No. 62, which restricts houses under a total cost of \$2,000.00; and gives out the terms of the restriction contained in the contract and deeds relating to the type of stucco wall and red tiled roof. This Ordinance in my mind is very questionable as to its validity. There is only one way that I know of to enforce Building Restrictions and that is to create a Planning Commission and make City into certain zones and the planning commission regulate the type of construction. However, all that as it may, the situation, as I see it, legally is that the Bank of America if they want to go ahead and build buildings different in type than that called for in the Ordinance, I am very doubtful if anybody even the City of San Clemente under the present Ordinance could stop it. Mr. Stoddard informed

Mr. B.Z. McKinney,
City Attorney -
continued

me that the Bank did not want to go ahead and do something that would not be in accordance with the wishes of the majority of the people of this community and I advised him to submit the matter to the City Council at this meeting so that the people might be advised on it, and I suggest to the Mayor that the City Council should not take any action at this meeting but take it at the next meeting or the one succeeding that and the people would have an opportunity to talk the matter over before them. As far as the City Council are concerned the only thing they would have to do would be to amend the Ordinance they now have, particularly that portion of it which required red tiled roofs and stucco walls - that would leave it open so that anyone wishing to build a house costing \$2,000.00 or upwards would have to obtain a permit before construction could begin. That is the legal angle to it. It is a question of dispute between attorneys as to whether restrictions could be enforced by the lot owners of this community against another lot owner or only by the bank.

Mr. E. L. Holloway.

Mr. E. L. Holloway replying said he thanked the City Attorney for his remarks. It had given him some information. He was aware of the fact that the City could remove any restrictions which they have but he did not know that it rested with the Capital Company to relieve any restrictions that would affect the title of his property. He just hoped the City Attorney was right. If the Capital Company built houses down there in Tract 821 of the Beach Club area near his property, which he hoped they could and do it legally, if he wanted to build on his own lot he could do it.

Mr. B. Z. McKinney.

City Attorney McKinney stated that was the peculiar situation. If you violate the restrictions the Bank of America in my opinion is the only one that can compel you to live up to them. If some other lot owner violates the restrictions and the Bank of America does not compel them to live up to those restrictions you or other lot owners can not do anything about it.

Councilman Fate.

Councilman Fate said it looked as if the Council had nothing to say but it is up to the Bank of America.

Mr. B. Z. McKinney:

City Attorney McKinney said there is a City Ordinance which may or may not be valid. He personally doubted it. He did not think the Bank of America would like to take a chance of violating City Ordinances. As the Ordinance now stands it requires stucco walls and red tiled roofs.

Councilman Fate said if the Ordinance was invalid we would have to make another Ordinance to include any type of house.

City Attorney McKinney said if the Council wanted to repeal that section of the Ordinance requiring stucco walls and red tiled roofs, it would still leave the requirements of substantial homes costing not less than \$ 2,000.00 -

Councilman Fate said it would require a whole new Ordinance and we would have a shanty town.

Mr. B. H. Latham.

Mr. B. H. Latham said he was anxious to see the City go ahead and start building. Most of the citizens here bought property on the understanding that the restrictions as to white stucco walls and red tile roofs would be strictly adhered to for all time, and he knew that such people as the Wierk Sisters, Mrs. Bartow and Mr. W. H. Moulton were very much opposed to changing these, as are most of the owners of the better class homes. His private opinion was that if certain portions of the city could be designated or set aside for other types of buildings to be erected and some assurance given that other parts of the city would be inviolate, he would be heartily in favor of that, but he would take no action to stop anything relating to improvements whatever.

Mr. Von Bon Horst said the Wierk Sisters personally were in favor of it, and the rest of the people mentioned by Mr. Latham are only here two or three months of the year and did not depend on San Clemente to make their livelihood.

Councilman A. T. Smith.

Councilman A. T. Smith enquired if the Federal Housing applied to San Clemente and whether or not that has stimulated building in other parts of the State. Mr. Stoddard said that San Clemente now had the advantage of the Federal Housing Plan and that 95% of the new construction in Laguna Beach was financed by the Federal Housing scheme. Councilman Smith said that being the case, would it not be better to try it on San Clemente before making any changes?

Mrs. Robert Smith.

Mrs. Robert Smith said she had been a resident of San Clemente nine years and would like to see the City keep its Spanish architecture.

If the class of houses the bank contemplated building would it not bring in a different class of people? She would like houses built costing more than \$2,000.00 - cheap houses meant cheap people. She was interested in San Clemente and wanted to see it grow, as everyone did. If we allowed the Capital Company, or the Bank of America, to build these houses and get people here, if they will keep them by themselves it will be all right, because we want people here, but we do not want a class of people here that will be a detriment to San Clemente.

Mr. E. L. Holloway said "Let us remove all restrictions all over and see what happens - and I bet you it happens".

Mr. Chas. Hight.

Mr. Chas. Hight said that during the three years he had been at the State Park some 30,000 to 40,000 persons had been spoken to by him and almost everyone agreed or said that if the building restrictions were taken off they would like and be glad to come here and live.

Mr. Geoffrey Hamilton.

Mr. Geoffrey Hamilton, Manager of the Bank of America, said he liked the point the City Attorney brought out - that we should have a Planning Commission and the city zoned. Practically every city of importance has certain portions that might be considered a higher restriction than other districts with lower restrictions in order that people of different means may find a district which is suitable for their purpose and purse. It takes all kinds of people to make a city and I think it advisable to plan the city so that everyone can choose the district in which the size of the home suitable for their needs can be erected.

Mayor Mulherron said when it comes to zoning a City it was a waste of time. He had a two years fight on zoning and spent lots of money on it.

Mr. Geo. E. Higgins:

Mr. George E. Higgins said San Clemente was the only town he had ever been in where there is no undesirable section. All parts of this City are under the same architectural restrictions. The proposition put forth by the Bank would create two cheap sections, one at each entrance to the city, where they would attract the most attention and create the most unfavorable comment.

It is claimed that these restrictions can only be enforced by the Bank against individual property owners, and not by one property owner against another. He believed any Court would hold that the fact these restrictions were laid against all property owners equally, with penalties for violation, would imply that each owner was to be protected against a violation by another owner. This intent is made clearer by the fact that the City Ordinance enforcing restrictions is identical with the contracts and was drawn up and enacted by the same people who made the restrictions, or their representatives.

Moreover, if the Bank should succeed in breaking this particular restriction in the deeds and contracts, it will automatically break all other similar restrictions and would permit the renting and selling of property in the City to classes of people whom we have so far been able to keep out.

He did not think the City Council should place itself on record as being in favor of repealing this Ordinance, for a violation of restrictions is certain to bring on law suits which will cause unfavorable publicity to the City.

Fred S. Warner,
City Judge.

City Judge, Fred S. Warner, said if you are going to open it up, open up the whole thing.

He was interested in the growth of the city and it seemed to him that there had been no buildings or improvements in the last four or five years and he was anxious to see something get started and he would be in favor of building some of these small houses, not only that but he thought if they modified or changed the restrictions they should make it all over the lots and not a part of them so that all of those people who had lots scattered round over the different parts of the City should have the same chance to build as others in a particular location where they did not own a lot.

Personally, however, he thought it was going to be a hard matter for anyone to change the present restrictions as they were a part of the original deed and was the original intention when the lots were bought.

Mayor Mulherron at this point asked the property owners present to stand up and it was found that 35 were owners of property. On standing up again "For" and "Against" the restrictions being removed it was a 50-50 proposition. Mayor Mulherron said the question would be open for discussion again at a later meeting.

ADJOURNMENT.

Moved by Councilman Smith, seconded by Councilman Fate, and carried, that the meeting adjourn.

William Holmes
City Clerk and ex-officio
Clerk of the City Council.

APPROVED: AUGUST 7th, 1936

San Mulherron
Mayor and President of the
City Council.