

APPELLANT’S NOTICE OF DESIGNATION OF TRANSCRIPT ON APPEAL

Attachment 7b – Points to Be Raised on Appeal [CRC 8.130(a)(2)]

The Court abused its discretion by denying the Petition for Writ of Mandate/Peremptory Writ of Mandate by Plaintiff/Appellant Darryl Cotton based (“Appellant”) upon findings which are supported by neither fact nor law.

With respect to the refusals by Respondent City of San Diego (“Respondent”) (1) to recognize Appellant as the sole applicant of the Conditional Use Permit (“CUP”) and, (2) to process the CUP with Appellant as the sole applicant, the City had a ministerial duty to process the CUP application as prescribed in its own regulations. The Respondent's duty to follow its own application process is a ministerial function. (*Lockyer v. City and County of San Francisco* (2004) 33 Cal4th 1055, 1099; *Billig v. Voges* (1990) 223 Cal.App.3d 962, 968.)

San Diego Municipal Code section 113.0103 defines "applicant" in the context of a CUP application as "any person who has filed an application for a permit, map, or other matter and that is the *record owner* of the real property that is the subject of the permit, map, or other matter." Pursuant to that definition and the uncontroverted evidence submitted in this action, Appellant is the only individual who is qualified as the applicant for the CUP at issue here, as supported by clear, uncontroverted evidence made clear that, as a matter of law, and Defendant/Real Party in Interest Rebecca Berry (“Berry”), as the agent of Defendant/Real Party in Interest Larry Geraci (“Geraci”), no longer had any right to the CUP once the partnership between Appellant and Geraci was terminated. Respondent acknowledged its obligation in this regard when it requested that Berry/Geraci provide a new grant deed for the Property, but Berry/Geraci never provided the City with the requested grant deed. Notwithstanding, however, despite the absence of a new grant deed, Respondent nonetheless continued to process the CUP application and never provided any reason why it continued to do so. Accordingly, Respondent was required to process the CUP application solely in the name of Appellant, and its failure to do so is an abuse of discretion. (*Common Cause v. Board of Supervisors* (1989) 49 Ca1.3d 432, 442.)

Furthermore, as already alleged by Appellant in his pleadings, the manner in which Respondent processed the subject CUP application has violated – and continues to violate – Appellant’s constitutional and substantive due process rights.