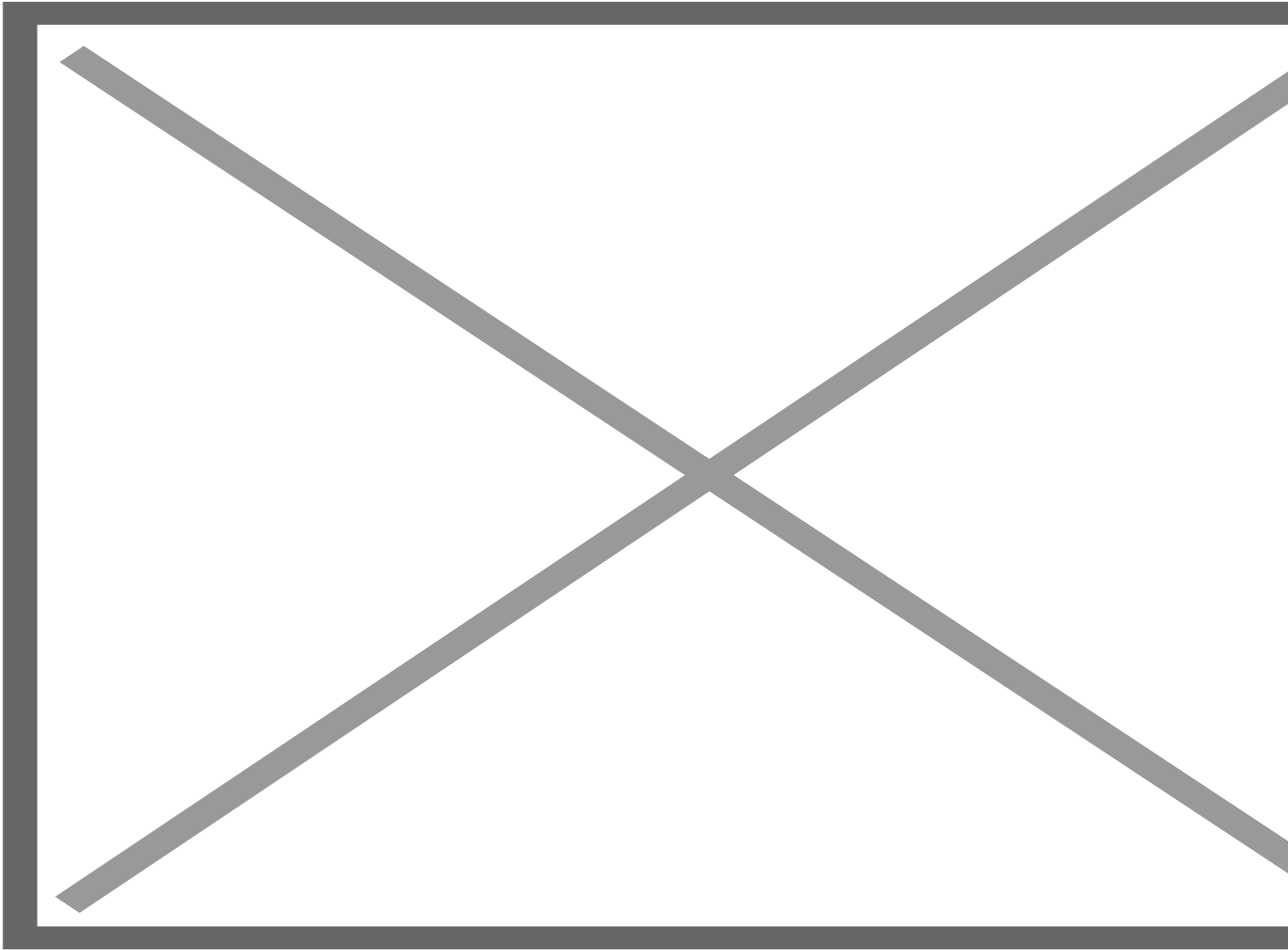


## **Court Must Defer to Local Agency Decisions if Supported by Substantial Evidence**

The court of appeal reaffirmed that a court should not second guess or "micro-manage" the development decisions of municipal governments; rather, the courts are simply charged with reviewing whether there is substantial evidence in the record supporting the city's decision. [Kutzke v. City of San Diego](#), 11 Cal. App. 5th 1034 (2017). A developer proposed to subdivide a large parcel of property in the La Playa neighborhood of Point Loma in San Diego. The La Playa neighborhood is characterized by very-low-density large single-family homes of various ages and architectural styles. The property is currently the site of a residence constructed initially in 1929, designed by a master architect and the long-time home of a prominent figure in San Diego, Joseph E. Jessop. Among the goals and objectives of the applicable community plan include conservation of the character of existing single-family neighborhoods, such as the low-density nature of the La Playa neighborhood. The proposed project would subdivide the property's two existing lots into four lots. One lot would continue to have the existing 1929 residence. New residences would be constructed on the three other lots. The four lots would share a private driveway, which would be too steep for fire trucks to access the property. However, the project would include the installation of standpipes near the three rear residences for fire department use.



The project would deviate from the City of San Diego's municipal code in three ways. First, the residence on the front lot would not comply with the minimum rear-yard setback. Second, the residences on the three rear lots would deviate from the minimum street footage requirement, as they would have no street footage at all. Third, one of the lots would have a retaining wall that exceeded the maximum, six-foot height. The project thus required approval of deviations from the city's municipal code. The city's initial study concluded that there would be a potentially significant impact to paleontological resources. However, the owner agreed to mitigation measures that would reduce the impact to less-than-significant levels. As such, the city prepared a mitigated negative declaration to comply with CEQA. The local community planning board recommended denial of the project due to concerns about fire safety, fire truck access, density, and the appropriateness of the necessary deviations. However, the planning commission approved the project, and certified the mitigated negative declaration. An opponent appealed the planning commission's approval to the city council. After a public hearing, the city council reversed the planning commission's decision to approve the project. The city council also concluded that the mitigated negative declaration was inadequate, particularly as to the project's potential impacts on geology, land use and public safety. The city council also found that the project was inconsistent with the applicable community plan and that the requested deviations were inappropriate and would not result in a more desirable project as required by the municipal code. The superior court reversed the city council's decision, finding that there was insufficient evidence to support the city's decision. The court of appeal reversed, finding that there was substantial evidence in the record to support the city's decision to deny the project. In doing so, the court of appeal reiterated well-established law that it must uphold the city's decision to deny the project if

substantial evidence supported *any one* of the city council's findings underlying its decision to deny the project. In reviewing the record, the court of appeal found substantial evidence to support the city council's finding that the project was not consistent with the community plan. It stressed that such a finding need not be supported by expert evidence. Rather, opinions and objections of neighbors can be sufficient. Here, these opinions were corroborated by visual simulations of the project and photographs of the surrounding neighborhood. The simulations also demonstrated the inconsistency of the project with the surrounding neighborhood's density and character. The court of appeal concluded that, collectively, this evidence was sufficient to support the city council's decision. With respect to impacts on public health, safety, and welfare, the court of appeal found the record to contain substantial evidence, including expert opinions, that the project could not be built safely on a steep sandstone hillside and would present significant challenges for fire and emergency services. Similarly, this evidence supported the city council's conclusion that the project was inappropriate for its proposed location and the required deviations would not result in a more desirable project. The court of appeal recognized that it is the city council's role—*not* the court's—to weigh whether evidence from the project proponent was more persuasive. Because the project proponent could not establish that no reasonable city would have reached the same decision as the City of San Diego did here, the court of appeal concluded that the city council's decision should be upheld.

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