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January 19, 2010

VIA E-MAIL AND HAND-DELIVERY

Planning and Land Use Management Committee
Los Angeles City Council
200 N. Spring Street
City Hall, Room 395
Los Angeles, CA 90012

Re: Council File 10-0017
Opposition to Charter Section 245 Assertion of Jurisdiction
11933 Magnolia Boulevard (the "Property")
DIR-2008-1178-DB-SPP
ENV-2008-1179-MND

Dear Chair Reyes and Honorable Members of the Planning and Land Use Management Committee:

This office represents the current owner of the Property, First Regional Bank ("First Regional"), in the matter of the approved entitlements referenced by the case numbers listed above. On behalf of First Regional, we oppose the City Council's assertion of jurisdiction under City Charter Section 245. The City Council action asserting jurisdiction over this matter was not timely and any action disturbing the City Planning Commission action of October 22, 2009 has no merit.

The City Council Action Asserting Jurisdiction Was Not Timely:

At its regular meeting of October 22, 2009, the City Planning Commission ("CPC") completed its action involving the above referenced matter. On October 22, 2009, the CPC denied the appeals before it and sustained the entire determination of the Director of Planning. The project approval includes a density bonus and an incentive allowing a deviation in the building height limitation.

The City Council did not act within the specified period of time provided in the Charter. Thus, the CPC action is final. Charter Section 245 operates under very strict time limitations. There is no ambiguity in the plain language of Charter Section 245 providing that the CPC *action* is final unless the City Council acts to bring the *action* before it within the next five meeting days of the City Council following the CPC *action*.

"Actions of boards of commissioners shall become final at the expiration of the next five meeting days of the Council during which the Council has convened in regular session, unless the Council acts within that time by two-thirds vote to bring the action before it" Los Angeles City Charter Section 245.

Not until January 12, 2010, did the City Council act to assert jurisdiction in this matter -- almost three months after the CPC action. Charter Section 245 provides that the time within which the City Council must act begins running from the date of the "action" not the date of the written decision. In many land use entitlement matters, the Los Angeles Municipal Code ("LAMC") for example, provides clearly that appeal periods begin to run from the date of the written decision, e.g. ". . . within a period of 15 days after the date of mailing of the decision . . ." (LAMC Section 17.54 A, providing the appeal period for Advisory Agency actions); "[t]he appeal shall be filed within 15 days of the date of mailing of the initial decision . . ." (LAMC Section 12.24 I.2, providing the appeal period for Zoning Administrator actions).

This is not the case with Charter Section 245. If it were intended that City Council be allowed to act during a time period beginning to run from the date of the written decision, it would say so. The face page of the December 23, 2009 CPC written decision informs the world of the date of the CPC *action*, where it is stated, "At its meeting of October 22, 2009, the following *action* was taken by the City Planning Commission." (*Emphasis added.*) By November 3, 2009, the City Council convened in regular session five times after the CPC action date. Yet, it was not until January 12, 2010 that the City Council acted to assert jurisdiction in this matter. Thus, the City Council action is time barred.

There is No Merit to Disturbing the City Planning Commission Action.

The CPC conducted a complete and thorough public hearing on October 22, 2009. Senior members of the City Planning Department staff and the City Attorney's office counseled the CPC about the limits of its consideration of the matter before it. Specifically, pursuant to California Government Code Section 65915 and LAMC Section 12.22 A.25(g)2 c.(i) and (ii) the CPC's consideration was limited to whether the incentive of increased height was needed to provide for the affordable units.

The City Planning Director's action on appeal to the CPC provides for a four-story over subterranean garage building having 146 dwelling units, 37 of which are density bonus units and 12 of which are set aside for Very Low Income households. The approval includes only one "on menu" incentive to allow an increase in height to 48' 7", in lieu of 36'0".

At the CPC hearing, the applicant presented substantial evidence supporting why the building could not be constructed within the 36'0" height limit. Given the dimensions of the Property, four stories are needed to accommodate the number of units, including the affordable set aside units. A four-story building cannot be built at or below 36'0". Granting the appeal and denying the incentive for the increased building height would have had the effect of eliminating

one story. Limiting the building to three stories reduces the number of units and floor area far below what is needed to make the project viable. No contrary evidence has been presented.

For these reasons and any additional reasons as may be presented at the public hearing, the Planning and Land Use Management committee should recommend City Council not disturb the CPC action of October 22, 2009.

Very truly yours,



KEVIN K. MCDONNELL of
Jeffer, Mangels, Butler & Marmaro LLP

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cc: Honorable Council Member Paul Krekorian; attention Dale Thrush, via e-mail