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Our File Number: 0100-922636

September 17, 2010

***VIA MESSENGER AND E-MAIL***

Mr. Robert "Bud" Ovrom  
General Manager  
Department of Building and Safety  
201 N. Figueroa Street, Suite 1000  
Los Angeles, CA 90012

Mr. Michael J. LoGrande  
Chief Zoning Administrator  
City of Los Angeles  
Director of Planning  
200 North Spring Street, Room 525  
Los Angeles, CA 90012

Re: Motion by Councilman Ed Reyes (CF #10-2410, the "Motion") Instructing the Los Angeles Department of Building and Safety ("LADBS") to Issue Stop Work Orders on Permits No. 10020-1000-00328 and 10020-1001-00328 (the "Permits") that Permit the Construction of a Solar Energy System (the "Project") at 4570 Griffin Avenue (the "Property") in the City of Los Angeles (the "City").

Dear Mr. Ovrom and Mr. LoGrande:

This firm represents Broadview, Inc. ("Broadview"), the owners of the Property. It has come to our attention that the Los Angeles City Council ("Council") approved a motion on September 14, 2010 presented by Councilman Reyes pursuant to Council Rule 23 that directed your departments to report to the City Council on Tuesday, September 21, 2010 on whether the City may issue stop work orders to halt the Project. I am writing to highlight some issues for you to consider as you formulate your advice to the Council. Specifically, issuing stop work orders would violate California Government Code sections 65850.5 and 54950 *et seq.*, Los Angeles Municipal Code ("LAMC") section 12.26, as well as Broadview's vested rights under the Permits.

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### **Background.**

Broadview submitted an application to LADBS for the Permits on February 9, 2010. The application was reviewed by LADBS, the Los Angeles Planning Department ("Planning"), the Los Angeles Fire Department ("LAFD") and the Bureau of Sanitation's Watershed Protection Division. All of these City departments reviewed Broadview's application and determined that the Permits do not present any public safety concerns and that the application complies with all aspects of the LAMC. Specifically, LAFD signed off on the permits on March 30, 2010, after seven weeks of review.

LADBS completed its review and issued the Permits on April 14, 2010. Since that time, Broadview has begun construction and expended more than \$1 million to date in reliance on the Permits. LADBS has inspected the Project at least four times and has never raised any concerns about potential public safety issues.

Five months after LADBS issued the Permits and after construction on the Project was well under way and with no notice to Broadview, Councilman Ed Reyes submitted a motion pursuant to Council Rule 23. Despite the fact that the City has known about the Project since February 9, 2010 and all of the evidence in the record indicates there are no actual or potential public safety issues, the Council adopted findings, pursuant to Rule 23, that special conditions existed that overrode the public's interest in receiving notice. The Council approved a motion directing LADBS and Planning to report to the City Council on Tuesday, September 21, 2010 on whether the City may issue stop work orders to halt the Project.

### **The City Lacks the Authority Under State Law to Deny the Permits.**

California Government Code section 625850.5 requires a City to issue building permits for a solar energy system unless there is substantial evidence in the record that the solar energy system will have a "specific, adverse impact upon the public health or safety". The Motion's assertions that the Project "may" be in a high fire hazard severity zone and that neighbors are concerned of "potential adverse impacts" do not meet the standard under State law. The Motion does not explain why the solar panels create any more risk of fire, erosion, drainage, glare or obstruction of wildlife habitat than other structures in the area that operate electrically, create glare and consume space that might divert water or wildlife such as pool pumps, air conditioners, windows or houses. In contrast, all of the City departments that have reviewed the Permits have found that the Project does not create any potential public health or safety issues. There is no evidence in the record of any public health or safety issues and the issues that are raised in the Motion are at best vague and speculative. As such, the City lacks the authority under Government Code section 62850.5 to deny the permits.

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Additionally, the issuance of the Permits is a ministerial act. *See Prentiss v. City of Pasadena*, 15 Cal.App.4th 85 (1993). Under California law, the City does not have discretion to deny a ministerial permit when the development is consistent with the zoning and applicable building codes. LADBS and Planning have both opined that the Project complies with the zoning and building permits. As such, the Permits are ministerial permits and the City does not have the discretion to deny the Permits.

**Broadview has Vested Rights Under the Permits.**

The common law rule in California is that a property owner gains vested rights under a building permit once the property owner has obtained the permit, performed substantial work and incurred substantial liabilities in good faith reliance upon the permit. *See Avco Community Developers, Inc. v. South Coast Reg'l Comm'n*, 17 Cal.3d 785 (1976). All three of those criteria have been satisfied in this instance.

As noted above, the building permit was issued more than five months ago. Broadview diligently commenced and continued construction of the Project. Broadview has performed substantial work and incurred substantial liabilities – more than \$1 million to date – in good faith reliance of the Permits. Further, any action by the City that would delay the construction will cause significant harm to Broadview, by escalating the costs of construction, causing logistical complications and delaying the energy savings Broadview anticipates receiving once the Project is complete.

**Revocation of the Permits Would Violate Broadview's Due Process Rights.**

LAMC section 12.26 establishes the procedures for appealing and revoking a building permit. Under the LAMC, an appeal of the Permits must be first made to the Board of Building and Safety Commissioners (the "Board"). A further appeal may be made to the Director of Planning (the "Director"), but only after the Board has opined on the merits of the appeal. The Director's decision may be appealed further to either the appropriate Area Planning Commission ("APC") or the City Planning Commission ("CPC"). Only after either the APC or the CPC has decided the appeal, the Council may assert jurisdiction over the decision pursuant to Los Angeles City Charter section 245.

The Motion denies Broadview its due process rights by short circuiting the appeal process established under the LAMC and revoking the Permits under which Broadview has acquired vested rights. Should the City determine that it is necessary to halt construction on the Project pending the resolution of an appeal, then the appropriate course of action would be to seek an injunction through the Courts. However, the City does not have the authority to unilaterally revoke the Permits via a non-publicly noticed motion.

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**The Council's Consideration of the Motion Violated the Brown Act.**

California Government Code section 54950 *et seq.* (the "Brown Act") requires the Council to conduct all of its meetings in sessions open to the public, unless expressly excepted under the Brown Act. Generally, the Brown Act requires the Council to post a regular meeting agenda in a location that is freely accessible to members of the public at least 72 hours before the meeting. Gov. Code § 54954.2. The legislative body cannot take action or hold discussion on any item not appearing on the posted agenda. Other provisions allow for special meetings with a 24-hour notice and posting requirement. The Brown Act allows unnoticed meetings in emergency situations in which prompt action is necessary, but defines an emergency situation as "a work stoppage, crippling activity, or other activity that severely impairs public health, safety, or both, as determined by a majority of the members of the legislative body . . ." Gov. Code § 54956.5(a). Further, pursuant to Council Rule 23, the Council may only take action on an unnoticed issue if it makes a finding that the need arose after the posting of the agenda for that meeting or if an emergency exists.

The Council cannot support the finding that an emergency situation existed and thus violated both the Brown Act and Rule 23. There is no evidence in the record that the Project presents any risk to public health or safety. To the contrary, every City department that has reviewed the Permits has determined that the Project does not present any risk. As such, the City cannot support a finding that an emergency existed.

Additionally, the Council can not make a finding that the need to address this issue arose after the posting of the agenda for the September 14, 2010 hearing. Broadview submitted the application for the Permits on February 9, 2010. LADBS issued the Permits on April 14, 2010 and has inspected the construction at least four times since then. The City has known about the project for eight months and has known that the Permits were issued for five months. The City has had ample time to address this issue without needing to violate the Brown Act's notice requirements.

**Conclusion**

The Motion asks the City to violate California and City laws by acting beyond the scope of the City's authority, infringing upon Broadview's vested rights and denying Broadview its due process rights. Additionally, the process the Council used during its September 14, 2010 meeting violated the Brown Act and Council Rule 23. In light of the above, we respectfully request that you advise the Council that it would violate California and City law to issue stop work orders.

While Broadview remains concerned of potential impacts that may be caused should the Council decide to order LADBS to issue stop work orders, we remain committed to

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meeting with Councilman Reyes in an effort to resolve his concerns. Additionally, Broadview strives to be a partner with the community. To that end, Broadview has attended community meetings and set up a website (<http://www.broadviewsolar.org>) to provide our neighbors with more information about the Project. Like the City departments who have reviewed the Permits, Broadview remains convinced that the Project poses no risk to public health or safety and hopes that our outreach efforts may alleviate the concern some members of the community have.

I appreciate your consideration of this letter and I am available should you have any questions or concerns.

Very truly yours,

A handwritten signature in black ink, appearing to read "Phillip M. Tate", with a long horizontal flourish extending to the right.

Phillip M. Tate

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

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cc: The Honorable Ed Reyes  
The Honorable Carmen Trutanich