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PLUM February 14 and City Council February 28 Council File- 13-1499 7401-7501 La Tijera Boulevard / 5630 West 74th Street / Proposed Construction Project / Density Bonus / Appeal

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The PLUM and the City Council should consider the following:

1. THE CITY OF LOS ANGELES HAS FAILED TO EXERCISE DISCRETION IN EVALUATING THE AFFORDABLE HOUSING INCENTIVES

PLANNING NEEDS A PAID EXPERT FEASIBILITY ANALYST

The Project is requesting off menu affordable housing incentives--a lot of them. The Los Angeles Municipal Ordinance which provides for affordable housing incentives require that the decision maker consider and make a finding as to whether the incentive is required to provide for affordable housing costs.

The Planning Report is silent on this issue and simply looks to whether the incentives are required to physically accomplish the project. There is no financial analysis measuring the value of the incentives afforded the developer against the costs of providing affordable housing . This is because the Planning Department has no "Project Feasibility Analyst" on staff. Where this leave the City of Los Angeles is exercising discretion and making findings that incentives either are or are not required to make the project economically feasible based on no City analysis. Hence the City simply looks to the physical structure requirements and decides the issue--i.e. you cannot build 140 units and two stories of commercial without going 5 stories up on this lot--so the incentives are required. The analysis in the Planning Report has nothing to do with the findings the City is supposed consider and make. An abdication of discretion is a failure of due process and a disservice to the City.

This leaves the City of Los Angeles to face developers who want oversized projects and out sized profits in exchange for nominal amounts of affordable housing. The price paid by the affected communities is ridiculously high relative to the public good served. Here are the incentives really to allow for high value commercial and additional full rent apartment units? Would a smaller project, compatible with the community, be just as feasible to support the required affordable housing units? The Planning Department needs resources to make these assessments because we have projects like this one throughout the City where developers are seeking cap rates which exceed industry standards on the back of affordable housing incentives.

What stops a request for a 10 story parking garage, with ten affordable housing units in a tower at the top, no other housing units, anywhere where parking is at an economic premium and you have mixed commercial/residential zoning? If the entire analysis is that the incentives are required to

physically accommodate the project as defined by the developer, which is the analysis in the Planning Report here, the answer is nothing stops the request--except the Community Plan.

As to this case, a simple basis for denial would be the absence of information on which the required determinations regarding off menu incentive can be based. For off menu incentives the developer is required to present "a pro forma or other documentation to show that the waiver or modification of any development standard(s) are needed in order to make the Restricted Affordable Units economically feasible. . ." Section 25, (g)(3)(i)(a). I see no reference to this analysis anywhere in the Planning Report so I assume it was not presented by the developer. A simple finding of failure to provide required information should support denial of off menu incentives. If there is information in the file, you should send the file back to the Planning Department to reach findings on feasibility--hopefully there will be a staff analyst in place to do this near term.

Moreover, the City needs a statute which makes it 100% clear exactly what is the required feasibility analysis. There is nothing in the State law which prevents the City from defining this analysis. As a matter of fact, the State law is a complete paper tiger when you get past the density bonus and the parking standard reduction incentives. Moving to other incentives or concessions, such as height, set back etc. the requirement in the State statute is "quantifiable cost savings sufficient to enable the project." Government Code Section 65915 (k). Most of the time, the off menu incentives sought by developers do not generate "cost savings" at all, they enhance revenue. You don't save money by building a bigger building or a higher building--so denial would almost always comply with State law automatically.

This leaves the City of Los Angeles free to make its own policy to tailor what incentives a project receives to what is really required to make the affordable housing element of the project feasible. I'm sure the City has clever people who have thought this through much more clearly than I but the point is the City needs to enact an emergency ordinance now. OTHERWISE, THE MIDDLE CLASS WE WILL BE LIVING IN A CEMENT CANYON, UNABLE TO DRIVE TO WORK AND PARK, AND THE POOR WILL STILL BE HOMELESS. ALL THE CITY WILL HAVE ACCOMPLISHED IS INCREASING DENSITY IN HIGHER RENT AREAS AND R-1 ABUTTING AREAS WHERE THE CITIZENS DID NOT HAVE THE RESOURCES TO MAKE DEMANDS IN THE CITY PLANNING PROCESS AND PREVENT UP-ZONING IN THE LAST ROUND OF PLANNING.

2. THE PLANNING COMMISSION DID THE RIGHT THING

The Planning Commission performed a Site Plan Review and found that the project does not match the Community Plan. Their reasons were many and sound. The analysis is consistent with City law and the requirements of the Government Code which make the General Plan (which translates to the 35 Community Plans) the overriding constitution. The Applicant now has the burden of disproving the Planning Commission findings. Reading their appeal, I find nothing which explains how the project truly fits the community and the Community Plan. The City Council should uphold the Planning Commission findings because they are supported by evidence, reasonable and the appeal is not de novo.

Moreover, the Planning Commission did the right thing because the Community Plan and the local specific plans, used at Site Review, can protect communities from ridiculous off menu requests which have everything to do with developer profit and nothing to do with creating projects which make affordable housing economically feasible.

3. RIGHT TO APPEAL GRANTING OF AFFORDABLE HOUSING INCENTIVES

The City Affordable Housing Incentive Ordinance defines the right to appeal very narrowly--adjacent properties only. This is inconsistent with the City Charter provisions which give citizens the right to appeal land use decisions which negatively affect them. The definition is so narrow it does not meet due process. Given the definition, I have exhausted my appeal rights because I functionally am denied administrative appeal and reserve the right to go straight to court for myself and others affected by the decision. Of course, my recourse to the courts is not controlled by the time frames specified in the ordinance for those who have been granted administrative appeal rights--so I'll take my time.

Thank you.

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