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April 13, 2015

**VIA E-MAIL (Sharon.gin@lacity.org) AND U.S. MAIL**

Hon. Jose Huizar, Chair  
and Honorable Members of the  
Planning and Land Use Management Committee  
200 N. Spring Street, Rm. 395  
Los Angeles, CA 90012  
Attn: Sharon Gin, Legislative Assistant

Re: Invalidity of Handal Appeal  
Council File 15-0038  
CPC-2011-1923-CU-SPR-PA1  
ENV-2011-1924-MND  
1905, 1911, 1915 Armacost (New West Charter School)

Hearing Date: April 14, 2015

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

We represent New West Charter School ("New West"), a public school that provides a free, high-quality education to an ethnically and economically diverse student body, and the Applicant for the above-referenced Plan Approval, including a ten percent increase in enrollment, that the City Planning Commission (the "Commission") unanimously approved on September 11, 2014. The City's Municipal Code requires an appellant to be an "aggrieved" person: as described in more detail below, Mr. Jay Handal—one of the appellants seeking to overturn the Plan Approval and enrollment increase—does not qualify as "aggrieved" within the meaning of the Municipal Code and has no standing to appeal the Commission's decision. Therefore, the City Council must reject and refuse to hear his appeal.

**I. Mr. Handal is not an "Aggrieved" Person within the Meaning of the Municipal Code and Therefore Has No Standing to File an Appeal.**

Section 12.24-I.2 of the Municipal Code specifies that an appeal a decision regarding a conditional use may only be brought by the applicant or another person that is "aggrieved" by the decision. In his letter of appeal (enclosed), Mr. Handal describes himself as a "neighborhood stakeholder," stating that he is "aggrieved" as a result of several alleged procedural and substantive deficiencies affecting the Commission's determination. However, in

making these allegations, Mr. Handal fails to establish any direct relationship between his interests and the outcome of this project or his appeal. And, in fact, no such direct relationship exists, because the outcome of this appeal has absolutely no immediate or substantial impact on his interests. Consequently, Mr. Handal is not an aggrieved person within the meaning of State law or the Municipal Code and has no standing under the Code to appeal a decision of the Commission. The City should, therefore, vacate and refuse to hear his appeal.

The applicable language in the Municipal Code regarding appeals mirrors that of State law, which provides:

“Any party aggrieved may appeal in the cases prescribed in this title. A party appealing is known as an appellant, and an adverse party as a respondent.”

Cal. Code Civ. Pro., § 902. In evaluating the meaning of “aggrieved,” the California Supreme Court rejected an unbounded and unlimited interpretation of the term. Rather, the Court found that an aggrieved person is someone “whose rights or interests are injuriously affected by the decision *in an immediate and substantial way*, and not as a nominal or remote consequence of the decision.” *In re K.C.*, 52 Cal. 4th 231, 236 (2011) (emphasis added).

Here, in his role as a self-proclaimed stakeholder, Mr. Handal did not even attempt to establish that the decision he now appeals immediately affected him or his interests. His explanation regarding how he is aggrieved is nothing more than a brief recitation of procedural and substantive complaints regarding the Commission hearing. Even accepting for the purposes of this discussion that Mr. Handal’s position on the West Los Angeles Neighborhood Council grants him some interest in the outcome of this case, the mere interest of one of many members of an advisory board cannot, without more, rise to the level of “immediate and substantial” without rendering the limitation a nullity. Indeed, Mr. Handal’s refusal to specify an address on his appeal—a required element of the form—results in his failure even to establish proximity to New West, its traffic operations, or any of the claimed “violations.”

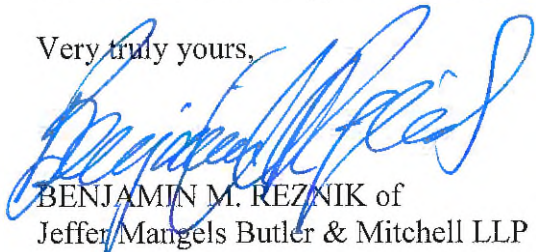
## **II. The City Council Must Reject and Refuse to Hear Mr. Handal’s Appeal.**

The use of the term “aggrieved” in the appeal provisions of the Municipal Code demonstrates an intent to impose reasonable limitations on who may properly appeal a land use decision, particularly within the context of parallel language in State law. To allow any party to establish grounds to appeal by merely asserting a “stakeholder” interest in a decision, without any attempt whatsoever to establish some connection between that party’s interests and the effects of a land use decision, subverts the limitation and renders the “aggrieved” person requirement utterly meaningless. *See, e.g., People v. Arias*, 45 Cal. 4th 169, 180 (2008) (“Significance should be given, if possible, to every word of an act. Conversely, a construction that renders a word surplusage should be avoided.”). To avoid reading an express limitation out

PLUM Committee of the  
Los Angeles City Council  
April 13, 2015  
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of the Municipal Code, the City must acknowledge that Mr. Handal's appeal fails to establish his standing to file the appeal, and must on that basis vacate the appeal and refuse to hear it.

Very truly yours,



BENJAMIN M. REZNIK of  
Jeffer Mangels Butler & Mitchell LLP

BMR:neb

cc: **Via E-mail**  
Hon. Mike Bonin, Councilmember, CD11  
Chris Robertson, CD 11  
Terry Kaufmann-Macias, Deputy City Attorney



# MASTER APPEAL FORM

**ORIGINAL**

City of Los Angeles – Department of City Planning

APPEAL TO THE: Los Angeles City Council - Land Use & Planning (PLUM) Committee  
(DIRECTOR, AREA PLANNING COMMISSION, CITY PLANNING COMMISSION, CITY COUNCIL)

REGARDING CASE #: CPC-2011-1923-CU-SPR-PA1

PROJECT ADDRESS: 1905, 1911, 1915 S. Armacost Ave., Los Angeles, CA

FINAL DATE TO APPEAL: \_\_\_\_\_

**TYPE OF APPEAL:**

1. ☐ Appeal by Applicant
2. ☒ Appeal by a person, other than the applicant, claiming to be aggrieved
3. ☐ Appeal by applicant or aggrieved person from a determination made by the Department of Building and Safety

**APPELLANT INFORMATION – Please print clearly**

Name: Jay Handal

- \* Are you filing for yourself or on behalf of another party, organization or company?

☒ Self

☐ Other: \_\_\_\_\_

Address: \_\_\_\_\_

Zip: \_\_\_\_\_

Telephone: (310) 466-0645

E-mail: sgrest@aol.com

- \* Are you filing to support the original applicant's position?

☐ Yes

☒ No

**REPRESENTATIVE INFORMATION**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

E-mail: \_\_\_\_\_

This application is to be used for any appeals authorized by the Los Angeles Municipal Code for discretionary actions administered by the Department of City Planning.

**JUSTIFICATION/REASON FOR APPEALING** – Please provide on separate sheet.

Are you appealing the entire decision or parts of it?

☒ Entire

☐ Part

Your justification/reason must state:

- The reasons for the appeal
- How you are aggrieved by the decision
- Specifically the points at issue
- Why you believe the decision-maker erred or abused their discretion

**ADDITIONAL INFORMATION/REQUIREMENTS**

- Eight (8) copies of the following documents are required (1 original and 7 duplicates):
  - Master Appeal Form
  - Justification/Reason for Appealing document
  - Original Determination Letter
- Original applicants must provide the original receipt required to calculate 85% filing fee.
- Original applicants must pay mailing fees to BTC and submit copy of receipt.
- Applicants filing per 12.26 K "Appeals from Building Department Determinations" are considered original applicants and must provide notice per 12.26 K 7.
- Appeals to the City Council from a determination on a Tentative Tract (TT or VTT) by the City (Area) Planning Commission must be filed within 10 days of the written determination of the Commission.
- A CEQA document can only be appealed if a non-elected decision-making body (i.e. ZA, APC, CPC, etc...) makes a determination for a project that is not further appealable.

*"If a nonelected decision-making body of a local lead agency certifies an environmental impact report, approves a negative declaration or mitigated negative declaration, or determines that a project is not subject to this division, that certification, approval, or determination may be appealed to the agency's elected decision-making body, if any."*

*--CA Public Resources Code § 21151 (c)*

I certify that the statements contained in this application are complete and true:

Appellant Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**Planning Staff Use Only**

Amount	Reviewed and Accepted by	Date
Receipt No.	Deemed Complete by	Date



Determination Authority Notified



Original Receipt and BTC Receipt (if original applicant)

**APPEAL to the LOS ANGELES CITY COUNCIL  
LAND USE & PLANNING (PLUM) COMMITTEE**

December 1, 2014

LOS ANGELES CITY COUNCIL  
PLANNING & LAND USE MANAGEMENT (PLUM) COMMITTEE  
200 N. Spring Street, Room 395, City Hall  
Los Angeles, CA 90012

Re: Case No. CPC-2011-1923-CU-SPR-PA1 // CEQA No. ENV-2011-1024-MND  
Applicant: New West Charter School

Dear Members of the PLUM Committee:

This is an appeal of the determination of the Los Angeles City Planning Commission ("CPC") approving a Plan Approval requested by New West Charter School (hereinafter "Applicant" or "New West"). The CPC's meeting was held on 9/11/14 and its determination was mailed on 11/19/14.

I make this appeal as a stakeholder in the neighborhood surrounding the New West project. I am the Chair of the Board of Directors of the WLA-Sawtelle Neighborhood Council (WLASNC) - formerly known as the WLA Neighborhood Council. However, I am making this appeal as an individual and not as a representative of the WLANSNC.

As a neighborhood stakeholder, I am personally aggrieved by the CPC determination and the underlying determinations made by the City of Los Angeles Dept. of City Planning ("Planning"). I am aggrieved on several grounds, including but not limited to the following:

1. Appellants and neighborhood stakeholders, including the WLANSNC, were denied due process, a violation of the Brown Act, at the CPC meeting on 9/11/14.
2. The President of the CPC demonstrated bias toward New West and its supporters and against the opposition to the New West Plan Approval.
3. Planning failed to notify the CPC of New West's lack of compliance to existing conditions.
4. Planning failed to base its Findings on sufficient, appropriate evidence.
5. The CPC failed to base its Findings on sufficient, appropriate evidence.
6. The CPC heard direct testimony from New West School representatives to the fact that New West School continually violated the CUP Parking provision by themselves testifying that they used their on site parking for P.E. purposes and not parking. This practice continues to date.

Incorporated into this appeal as though fully set forth are all letters and testimony provided to

Planning, before and at the public hearing held on 6/23/13, and to the CPC, before and at the public hearing held on 9/11/14. Request is hereby made that Planning immediately forward all the above-referenced evidence to the City Council PLUM Committee. Further incorporated into this Appeal as though fully set forth is all evidence submitted by other appellants regarding the CPC decision.

**1. The CPC denied due process to the Appellants, the public, neighborhood stakeholders and the WLASNC at the 9/11/14 CPC meeting.**

**Denial of Due Process re the Submission of Opposition Evidence**

Notice of the 9/11/14 CPC meeting was mailed to Appellants, the public and the WLASNC on 9/4/14. This Notice was received by Appellants on 9/8/14. This Notice failed to indicate any deadline for the submission of documents or other evidence to the CPC. Further, no written CPC policy specifying any deadline for the submission of documents/evidence has ever been provided.

Prior to the 9/11/14 CPC meeting, the CPC was not provided with the evidence and opposition previously submitted to Planning. (See below for more detail.)

Nevertheless, at the 9/11/14 CPC meeting, the CPC denied this Appellant, neighborhood stakeholders, interested members of the public and the WLASNC the opportunity to submit evidence and documents in opposition to the New West Application for Plan Approval.

The CPC refused to consider the evidence and documents submitted by Appellant and others on the grounds that CPC policy requires that all documents be submitted 10 days prior to any hearing. However, the CPC notice of the hearing was mailed on Thursday 9/4/14, only 7 days before the hearing. As it was mailed on a Thursday, it was not received by the interested parties until Monday, 9/8/14, only 3 days before the hearing. Adherence to this "policy" made it impossible for any opposition evidence to be submitted and considered. And to compound matters, the CPC refused to even receive and file the opposition evidence.

The CPC, by providing inadequate and untimely notice of its meeting and then denying the submission of opposition evidence, effectively denied due process to all persons and entities that opposed the New West Application for Plan Approval. As such, this entire matter should be remanded back to the CPC with instructions that adequate notice be provided and all opposition evidence and documents be received, filed and considered before any determination is made.

**Denial of Due Process re the Bias Demonstrated by the President of the CPC**

At the CPC hearing, CPC President, Renee Dake Wilson, displayed bias toward New West and the supporters of its Application for Plan Approval by praising them. However, President Wilson scolded the opposition to the Application for Plan Approval for being "angry" about the denial of due process.

This bias was so obvious that Michael LoGrande, Director of City Planning, sent an email to this Appellant on 9/11/14, stating "My apologies for how you were treated during your comments."

All of the above demonstrates extreme bias, a lack of due process and a violation of the Brown Act at the CPC regarding the New West Application for Plan Approval. This Appellant has made a California Public Records Request to the CPC so as to further buttress this contention. However, as of the date of this letter, no records have been provided.

Appellant requests that any PLUM meeting to consider this matter be continued so as to afford Appellant the opportunity to review the documents subject to Appellant's Public Records Request.

Further, upon remand of this matter to the CPC, CPC President Wilson should recuse herself from hearing Appellants' appeal.

#### Planning failed to notify the CPC of the Opposition of the WLASC

The WLASC (formerly the WLANC) is a certified neighborhood council serving the WLA-Sawtelle area where New West is located since 2004. The WLASC has consistently opposed New West's application for project compliance approval and modification of conditions going back to 2012. The WLASC issued a letter opposing the requested approval and condition modifications. WLASC Representatives appeared at the 6/23/13 Planning hearing to register its opposition.

Yet Planning failed to acknowledge the WLASC and its position in any way in its Recommendation Report to the CPC. Planning added a two page document entitled Public Hearing and Communications (P-1, P-2) but totally excluded the letters and testimony submitted by the WLASC. Further, Planning failed to provide the CPC with the letters and other documentary evidence submitted by the WLASC.

This is a blatant disregard of the neighborhood council system which allows neighborhood stakeholders to be represented in issues affecting the City. The failure to acknowledge the WLASC and its position operated to result in a significant bias in favor of New West. By acting in such a way, the WLASC and its stakeholders were deprived of due process, again, another violation of the Brown Act.

#### Planning failed to notify the CPC of New West's lack of compliance to existing conditions

Approximately 170 complaints were lodged regarding New West since its arrival at its current location, yet no mention of these complaints are contained in City Planning's Condition Compliance Findings. In each case (including but not limited to the "Use", "Parking", "Use Restrictions", "Neighborhood Outreach", "Site Access & Internal Circulation" and "Traffic Management & Monitoring (TMMP)" categories), City Planning failed to inform the CPC of the numerous documented and confirmed failures of New West to comply with the existing conditions.

No mention whatsoever is made of the documented violations of these conditions. In fact, City Planning simply ignores them all and indicates that New West has been "in compliance" regarding every condition.

This not only constitutes a false picture of the situation, but it deprives the residents of this neighborhood of due process. What is the point of allowing open hearings if City Planning is then going to conceal the evidence presented by the opposition?



For instance, City Planning made a finding that a 15% increase in enrollment will not increase traffic and parking impacts without acknowledging that there have in fact been traffic impacts, documented complaints and confirmed condition violations.

## **2. The CPC and Planning failed to base their Findings on evidence**

The CPC, in its 11/19/14 Determination and Planning, in its Recommendation Report to the CPC, both failed to provide sufficient, appropriate evidence upon which to base their Findings.

### **Finding #1. The Project will enhance the neighborhood or provide an essential, beneficial service to the community**

The CPC and Planning opine that the expansion of the school "will meet a need for public middle and high schools" solely because New West has made a "demand for more enrollment." No analysis or investigation has been made regarding the existing schools in this neighborhood and whether they are at capacity. No analysis has been made as to what the existing nearby schools already offer in "enrichment opportunities." Essentially, the CPC and Planning decided that if New West wants to expand, then there is a need for this expansion.

A finding is made that there is a "high demand for public middle and high schools" with absolutely no evidence to support this other than New West's application. No facts are shown to document the enrollment capacities of the other nearby schools.

An absurd finding made by Planning was that extended hours and an increased enrollment will not increase traffic impacts because "all activities will be conducted indoors."

### **Finding #2. The Project will be compatible with and will not adversely affect or degrade the surrounding neighborhood**

Essentially, no evidence is stated upon which to base this CPC Finding, which is unchanged from Planning's Recommendation Report to the CPC, except for in the section entitled Extended Hours.

Evidence supporting the exact opposite conclusion had been provided to Planning. Over 170 complaints and evidence of condition violations had been provided to Planning, which were ignored and concealed from the CPC. Again this is a violation of due process. Planning references Stoner Park without informing the CPC that Stoner Park is already used by several other nearby schools and is presently used to its full capacity. There is no room for further students at Stoner Park and evidence of this was provided to Planning. Planning found that there is plenty of space for more students at Stoner Park because the Park administration "has not indicated lack of space." The Park administration was not even asked about this issue. No data is provided as to how much the Park is presently being used.

Regarding "Increased Enrollment", the CPC and Planning reach the conclusion that the facility is "underutilized" solely because New West says it is. The CPC and Planning acknowledge that the present enrollment is 643 students, over 100 students less than the 750 permitted. If New West is now not at capacity, then its "underutilization" is self-imposed by New West.

Both the CPC and Planning blithely opine, without referring to any evidence whatsoever, that New West has been in compliance with the conditions of approval. This finding is made with no mention or consideration of the over 170 complaints and evidence of condition violations had been provided to Planning. Again, this evidence was concealed from the CPC by Planning and the CPC refused to accept or consider it when it was offered to the CPC at its 9/11/14 meeting.

"Parking" and "Traffic Studies" are addressed in a similar fashion. Again, Both the CPC and Planning state that New West has been in compliance with the present conditions, despite all the documented complaints and condition violations which were concealed from the CPC by Planning.

Interestingly, the only actual evidence of New West's compliance with the conditions of approval that is noted is that "Community members have observed" numerous violations of the Traffic Management Monitoring Program (TMMP), including parents driving around the neighborhood, dropping off students in prohibited areas, parents waiting in cars, etc. The CPC ignores this evidence substantiating a lack of compliance and then reaches the conclusion that New West is in compliance with the approval conditions, without any evidence upon which to base this conclusion.

### Finding #3: The Project will substantially conform with the Community Plan

Here, the CPC and Planning "cherry pick" only the Objectives that substantiate its predetermined conclusions. They cite only Goal 6 and the Objectives pursuant to it and ignore other such objectives such as under the "Land Use Policies and Programs" in the Plan (Chapter III), where it specifies as a "Goal," an "Objective" and under "Policies" the following:

#### Policies - Objective 1-1

1-1.1 Protect existing single family residential neighborhoods from new out-of scale development and other incompatible uses.

Utilizing Goal 6 and its underlying Objectives only, would justify any size school in any neighborhood on the westside of Los Angeles. What is sorely lacking in this and the other findings is an impartial, detailed look at the actual impact of raising the enrollment at this facility.

### 3. The CPC Determination erroneously states that Extended School Hours were approved.

On Pg 1 of the CPC Determination, it states "4. Approved extended school hours to 10:00 p.m. . . ."

However, in its Conditional Use Plan Approval Findings, the CPC explicitly found that "The use of campus facilities beyond 8:00 p.m. may exacerbate impacts during evening hours when most residents are at home. In addition, NWCS has not demonstrated an essential need for the extended hours. Therefore, extending use of the campus to 10:00 p.m. is not an essential service and is not beneficial to the community." The CPC further found that ". . . use of the campus until 10:00 p.m. is not compatible with the surrounding neighborhood."

Based upon the above, the CPC denied any extended hours to New West.

### Conclusion

There has been a failure of due process in this matter. First, Planning concealed and ignored the opposition of the WLASNC and the documented violations of existing conditions by New West.

Then the CPC refused to consider or admit the evidence and documents submitted by the opposition to New West's Application for Plan Approval, citing some policy requiring that all documents be submitted 10 days prior to any hearing. This was despite the fact that the Notice of its meeting was mailed only 7 days before the hearing.

Based upon the above, New West's Application for Plan Approval should be denied outright based upon the evidence provided as follows:

1. There is no evidence to support New West's claim for a "Need" to expand enrollment. There is no data or survey of surrounding schools in the area that support any such "need." In fact, the public high school in the neighborhood, University High, is presently under-enrolled.
2. There is no evidence to support the conclusion that New West has fully complied with the use and operating requirements of the existing Conditional Use Permit. In fact, the only evidence before this Committee and any City agency supports the exact opposite conclusion - that New West has not fully complied with the conditions of its Conditional Use Permit.
3. There is substantial evidence to support the conclusion that:
  - a. New West has not fully complied with the use and operating requirements of its CUP.
  - b. New West's continued operation with increased enrollment, different parking requirements, extended school hours, and reduction of traffic studies:
    1. will not enhance the built environment in the surrounding neighborhood or provide a service that is essential or beneficial to the community.
    2. will not be compatible with and will adversely affect the surrounding neighborhood.
    3. will not substantially conform with the purpose, intent and provisions of the Community Plan.

In alternative, this entire matter should be remanded to Planning for a full, open, honest and transparent hearing with instructions to provide a full disclosure of all evidence and testimony in any recommendations to the CPC.

In another alternative, this entire matter should be remanded to the CPC with instructions that adequate notice be provided and all opposition evidence and documents be received, filed and considered before any determination is made.

Very truly yours,