16-0115

Los Angeles General Plan Consistency Coalition

505 N. Avenue 44 Los Angeles, CA 90065

June 22, 2016

VIA HAND DELIVERY
Hon. Herb Wesson, President
Los Angeles City Council
200 N. Spring Street, Rm. 395
Los Angeles, CA 90012

RE: Project Application for two-house project at 460-462 Crane Blvd.
CF 16-0115, DIR-2014-2054-SPP-1A; DIR-2014-2050-SPP-1A,
ENV-2104-2054-MND, Meeting Agenda Item 34

Council President Wesson and Councilmembers:

I. INTRODUCTION.

The Los Angeles General Plan Consistency Coalition is an unincorporated association of persons in the City that advocates for good planning and zoning practices including the conduct of land use hearings in ways consistent with the constitutional due process. To this end, the Coalition enters its objection to approval of both projects based upon all objections and evidence submitted to the record, including the appeals of the Mount Washington Homeowners Alliance.

II. FAILURE TO CONDUCT A HEARING BEFORE THE FULL CITY COUNCIL DENIES ADJOINING LANDOWNERS REPRESENTED BY THE MOUNT WASHINGTON HOMEOWNERS ALLIANCE OF THE OPPORTUNITY TO BE HEARD BY A MAJORITY OF THOSE ON THE CITY COUNCIL MAKING THE DECISION.

The Coalition, which includes the Mount Washington Homeowners Alliance as a member organization supporting the Coalition, agrees with the Mount Washington Homeowners Alliance that its constitutional right to a fair hearing will be denied today if the City Council carries out its stated intention to consider these appeals under the portion of the City Council's agenda entitled: "Items For Which Public Hearing Has Been Held." Until and unless this City Council enacts fair procedural hearing rules and follows them consistently with principles of procedural due process, this hearing today will deny the appellant its right to a fair hearing.

The aspects of unfairness are multifaceted, but individually and cumulatively result in the conduct of routine unfair hearings at City Council. First, City laws permit aggrieved parties to file land use and CEQA appeals to the City Council.

Having been granted by local or state law a right to appeal, it would be nonsense for the City to claim that a land use appellant who followed law with a timely appeal and payment of appeal fees is owed no procedural due process or a hearing before the full City Council. Yet, that is what this City Council does on almost a daily basis.

Additionally, the Coalition and Mount Washington Homeowners Alliance have members who live immediately adjacent to the subject projects and their substantial property interests and rights to be protected from significant environmental harms will be violated if the City Council takes action to rubber stamp the PLUM Committee's recommendation report without any individual member of the City Council stating for the record that he or she has read the City Council file and listened to the recordings of the PLUM Committee hearing.

The individual property owners adjacent to this Project will be subjected to significant noise, dust from remedial grading, loss of supporting soils, and a shocking lack of legally enforceable project conditions. These property owners, consistent with California Supreme Court decisions, have a right to personal notice of the circulation of the environmental clearance document (which did not occur for all persons adjacent due to a current pattern and practice of the City to only give published notice in the paper which the Supreme Court has held is insufficient notice), have a right to personal notice of the hearing including the date the matter will be heard at the full City Council (which also did not occur).

A majority of the City Council (those who did not attend the PLUM Committee to hear the appeal presentation) will have heard no testimony, reviewed none of the Council File, reviewed none of the e-packet materials provided by the City Clerk, or seen the additional appeal materials currently missing from the Council File (see below). There has developed within the City of Los Angeles a pattern and practice that City Council members implicitly agree that they generally will not interfere with, ask questions at public hearings, or vote against the stated desires of the Councilmember in whose district the project lies. Only in cases where a project is so controversial that a hearing is afforded at full City Council, might any Councilmember ask questions, and then in most cases it results in developing a record in support of the Councilmember's stated desire. Statistically, only in the rarest cases, will a City Councilmember vote against a real estate project in another Councilmember's area.

The voting computers at City Council are programmed to automatically convert a failure to touch the voting screen to a "yes" vote. The City Council has programmed and arranged its voting system to obscure from the public the fact that the overwhelming majority of the votes of the City Council are actually cases where no a single member of the legislative body takes an affirmative act to cast a vote in favor of an agenda item, including the denial of a land use appeal such as the one in this case, and approval of the Project. Instead, no Councilmember is required to sit in their seat and actually deliberate the action they are about to take. As a result, City Councilmembers get up from their seats, walk around, talk on their cell phones,

and other activities. While City Councilmembers are suppose to obtain permission to leave the room so that the Clerk can remove the Councilmember from the quorum and the voting system, Councilmembers have been known to leave the Council chambers without being removed from the voting system. Accordingly, there are times when Councilmembers are not in the Council Chambers, not anywhere near their seat or voting screen when the Council President calls for a vote, including votes on land use appeals of people owed procedural due process.

All failures to vote are not shown to the public, but City Council rules require that all failures to vote be deemed to be a "yes" vote and the City's computer voting system converts all failures to vote to a "yes". It is commonly known among City Councilmembers and staff, that unless a Councilmember touches his or her voting screen to vote "no" when the vote is called, the failure to touch the screen will be recorded as a "yes" vote. For Councilmembers out of the room, out of their seats, and talking with others when a vote is taken, the act is not and cannot be considered a deliberative and conscious action. A land use appellant and persons with protected constitutional rights to due process of law are owed more than the physical presence of a Councilmember in the City Hall when their land use appeal is "heard" before the full City Council and they fail to take any affirmative act to indicate to the public what their vote actually is. Land use appellants and others owed due process are entitled to a deliberate and conscience act of voting for or against the appeal. Because the City Council does not do this, today the City Council will deny the Mount Washington Homeowners Alliance due process when Councilmembers fail to touch their screens to vote, fail to have heard any testimony or argument from the land use appeal parties, fail to have certified they listened to the PLUM Committee hearing, failed to certify they reviewed the e-packet materials provided by the City Clerk, if any (and if it was complete which it most likely is not), and failed to certify they reviewed the online City Council file.

All of this grossly unfair process occurs because the City has failed to adopt and publish to the public, procedural rules to govern its zoning appeals and hearings as mandated by Government Code Section 65804. This statute was enacted in the early 1970s, yet the City 45 years later, the City of Los Angeles, unlike other cities across the state, has failed to enact simple procedural rules that assure that land use appellants and persons owed due process are given a fair hearing instead of being ignored as part of an informal consensus that Councilmembers will not vote against the desires of the Councilmember in whose district the real estate project lies.

Consistent with the City Council's grossly unfair process, the Mount Washington Homeowners Alliance was given a completely deficient 5 minutes at PLUM Committee to present its appeal. This is a change of policy. The City once gave appellants at least 10 minutes to present their arguments and evidence. Today, appellants are given only 5 minutes.

Additionally, there is nothing in the record to demonstrate at PLUM Committee, the members of the Committee undertake any pre-meeting review of the

appeal papers filed by the parties. If the City Councilmembers serving on the PLUM Committee have not reviewed any of the land use appeal materials prior to the hearing, the slashing of presentation time to a mere 5 minutes means there is no realistic way for a land use appeal to explain complex land use issues to the PLUM Committee members.

The City Council has no rules requiring the City staff to explain their responses to the appeal at the outset of the PLUM Committee hearing. Thus, it is common for the staff to not explain its position before the appellant presents so that the appellant may respond to staff statements including misstatements of fact or law. As in this case, the PLUM Committee allows the City staff unlimited time after party presentations to respond, but the parties were given no opportunity to rebut or correct staff statements to the PLUM Committee. This informal procedure is intentional and deprived the Mount Washington Homeowners Alliance of a fair hearing before the PLUM Committee.

Cumulatively and individually, these practices result in no serious or substantive review of the appeals of land use appellants, including the Mount Washington Homeowners Alliance. For these reasons, the City has failed to proceed in accordance with law.

III. THE PLANNING AND LAND USE COMMITTEE ERRED IN DENYING THE MOUNT WASHINGTON HOMEOWNERS ALLIANCE APPEAL AND RECOMMENDING GRANT OF LAND USE DEVELOPMENT APPROVALS TO APPLICANT FOR 460 CRANE BLVD. EVEN THOUGH HE NO LONGER OWNS THE PROPERTY.

Originally, the applicant in this land use appeal filed two separate applications for project permit compliance determinations for the Mount Washington/Glassell Park Specific Plan: one for 460 Crane which has an existing house, and one for 462 Crane which is a vacant lot. However, in documentation submitted to the record before the PLUM Committee, the Mount Washington Homeowners Alliance submitted copies of grant deeds showing that the applicant sold the property at 460 Crane Boulevard to new owners.[1] Instead of inquiring into

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[1] It is our understanding that the Mount Washington Homeowners Alliance submitted additional appeal materials to the City Clerk at the PLUM Hearing, including the deeds showing the transfer of ownership. It has conformed copies acknowledged by the City Clerk. Yet over a week later, the City Council file does not have scanned and available for public view the additional evidence submitted by the Mount Washington Homeowners Alliance. Therefore, the City Council is about to take the final action denying the appeal and approving both project without a complete administrative record before it. The City appears to have no procedural rules in place to mandate that the City Clerk immediately scan and place into the City Council file online all submissions before the PLUM Committee or the full City

the status of the ownership of 460 Crane, neither City Planning staff nor the PLUM Committee asked the applicant under what theory of law the City could continue to process an application to develop a lot in which he no longer had an ownership interest.

Applicant should have terminated his application on the fee simple sale of the 460 Crane property. He did not do so. Upon notice of the sale at the PLUM Committee meeting, City Planning staff and the PLUM Committee had a duty to inquire and terminate the application due to the applicant no longer having any interest in the real property.

The new owners, a husband and wife, and a single man, have spent the last few months making improvements to the existing house which, in the applicant's application approved by the PLUM Committee is proposed for demolition and replacement with a new house. Thus, this morning this City Council, unless it conducts a real hearing and listens to the community, will award development entitlements to an applicant to demolish a house he not only does not own, but is currently being renovated by the new owners.

The fact that the City Council make act without a hearing before the full City Council demonstrates that the pattern and practice of erroneously placing land use appeals on a consent calendar with no presentation by the land use appeal increases the risk that the full City Council members will allow their computerized voting screens to cast an automatic "Yes" for this item without Councilmembers even consciously knowing that they are about to vote in favor of giving a developer an entitlement to demolish a house grant deeds of the County show he has not owned since January of 2016.

Under the California Environmental Quality Act a lead agency need not comply with the Act if the project is denied. In this case, the Mount Washington Homeowners Alliance submit the deeds showing the applicant no longer owned the property and the PLUM Committee granted the applicant the entitlement anyway. In granted an entitlement to demolish a house and build a new one on a lot the applicant no longer owns, the City failed to proceed in accordance with law.[2]

Council. To make public decisions without the full record before it is a failure to proceed in accordance with law.

[2] If the new owners have any interest in the current application for a project on their property at 460 Crane, there does not appear the City Council file any evidence that they have applied for this entitlement or any arrangement exists for them to obtain the entitlements.

IV. CONCLUSION.

For the foregoing reasons, the City Council should grant the appeal of the Mount Washington Homeowners Alliance and refer these cases back to City Planning for proper environmental review and to correct the unfair hearings conducted by the City. At a minimum, the City Council should not grant entitlements for the project proposed at 460 Crane Boulevard because the applicant no longer has an interest in that real estate.

Most sincerely,

Daniel Wright

Daniel Wright, Boardmember