Communication from Public

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Date Submitted: 03/04/2020 07:03 AM
Council File No: 20-0027
Comments for Public Posting: Communication from Applicant Representative

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March 3, 2020

VIA E-MAIL

President Nury Martinez
Honorable Members of the City Council
200 N. Spring Street, Rm. 272
Los Angeles, CA 90012

Re: Council File 20-0027
560-620 (even) Marquette Street
Supplemental Response to CEQA Appeal
Council Date: March 4, 2020 (Item 9)

President Martinez and Honorable Councilmembers:

We represent Cosimo and Christine Pizzulli, the owners of 560-620 (even) Marquette Street in Pacific Palisades (the "Properties") and applicants for the eight approved single-family homes on eight single-family lots (collectively, the "Project"). We respond to the recommendation adopted by the Planning and Land Use Management ("PLUM") Committee, granting the appeal and disapproving the Categorical Exemption adopted by the West Los Angeles Area Planning Commission. As discussed in testimony before the PLUM Committee, rejection of the categorical exemption and denial of the Project was not supported by substantial evidence, and violated the Housing Accountability Act (the "HAA", Govt. Code §65589.5, *et seq.*).

The HAA prohibits a city from disapproving a housing development project, including reducing density or imposing conditions comparable to a density reduction, unless it finds, based on a preponderance of the evidence, that the project would have a specific adverse impact on public health or safety that cannot be feasibly mitigated in any way other than rejecting the project or reducing its size.[1] The HAA specifically protects housing and mixed use projects that comply with ***objective*** general plan, zoning, and subdivision standards, which the Project does.[2,3]

The HAA narrowly defines the public health and safety exception as a "specific, adverse impact" that is a "significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they

[1] § 65589.5(k).
[2] *Honchariw v. City of Stanislaus*, 200 Cal. App. 4th 1066, 1070 (2011).
[3] *Id.*, § 65589.5(j)(1); emphasis supplied.

existed on the date the application was deemed complete."[4] ***The findings must be supported by a* preponderance *of the evidence***, and the City bears the burden of proof. The State Legislature has declared that specific adverse impacts to health and safety "will arise ***infrequently***" (emphasis supplied). Here, no such adverse impact was identified or substantiated, let alone adequately substantiated by the preponderance of the evidence. Moreover, the City did not even attempt to impose a lesser remedy than outright denial of the Project.

Courts have established that a finding of non-suitability of a site for the project is insufficient if a project complies with "objective general plan and zoning standards and criteria." See *Honchariw v. City of Stanislaus*, 200 Cal. App. 4th 1066, 1070 (2011). Just as in *Honchariw*, the adverse findings the appeal and opposition urged, and PLUM adopted, do not constitute a permissible basis for denial of the Project and would subject the City to substantial financial liability.

As described above and in prior correspondence, not only has the appeal failed to provide substantial evidence, but the evidence in the record concerning environmental impacts contradicts the appeals. Simply put, the appeals have failed to meet their burden, and the record for the proposed Project cannot support a rejection on the grounds the appeals proffer. The Council should reject the unfounded claims of the appeal, deny the appeal, and sustain the Director's and APC's determinations for the Project.

Sincerely,

NEILL E. BROWER of
Jeffer Mangels Butler & Mitchell LLP

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[4] *Id.*, § 65589.5(j)(1).