

MASTER APPEAL FORM

2.

City of Los Angeles – Department of City Planning

APPEAL TO THE: City Council

(DIRECTOR, AREA PLANNING COMMISSION, CITY PLANNING COMMISSION, CITY COUNCIL)

REGARDING CASE #: CPC-2014-666-VCU-ZAA-SPR

PROJECT ADDRESS: 11725 W. Sunset Boulevard

FINAL DATE TO APPEAL: May 28, 2015

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: Douglas P. Carstens

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

Self

Other: On behalf of David and Zofia Wright

Address: 11845 Chaparal Street

Los Angeles CA

Zip: 90049

Telephone: _____ E-mail: _____

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

Yes

No

REPRESENTATIVE INFORMATION

Name: Douglas P. Carstens, Chatten-Brown & Carstens LLP

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Hermosa Beach CA

Zip: 90254

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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

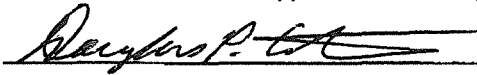
ADDITIONAL INFORMATION/REQUIREMENTS

- 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: May 26, 2015

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)

CHATTEN-BROWN & CARSTENS LLP

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May 26, 2015

Re: Support for Appeal of Planning Commission Determination, Case No. CPC-2014-666-VCU-ZAA-SPR; ENV-2011-2689-EIR dated May 13, 2015

On behalf of our clients David and Zofia Wright, we hereby appeal the above entitled Planning Commission Determination and MND pursuant to the Los Angeles Municipal Code and the California Environmental Quality Act (CEQA). The approval is for expansion of the physical facilities and operations of the Archer School (Project). However, the proposed Project is located in a problematic location among residential uses and should not be expanded in any way. The Wrights are aggrieved because they live directly across Chaparal to the north of Archer School.

We incorporate by reference the previous letters of the Wrights and the letters of Residential Neighbors of Archer, the Brentwood Community Council, BHHA, Eric and Thelma Waxman, Beth Dorris, and the Brentwood Residents Coalition throughout the process. Each of these letters identified specific defects in the environmental review and lack of compliance with applicable laws and regulations. The responses to their comments and those of others are not sufficient to comply with CEQA or the Municipal Code. The following comments are not intended to limit the grounds of our appeal to the identified issues, but are provided for illustration purposes of certain specific defects.

A. Archer's Intransigent Refusal to Accommodate Reasonable Requirements.

Councilmember Bonin throughout the review process for the Project has required changes or modifications to the Project, many of which have not been heeded yet. Councilmember Bonin's requirements fell into three categories: traffic, neighborhood impacts, and the physical footprint. At the City Planning Commission hearing of April 23, 2015, and continuing into the Planning Commission's determination, Archer refused, and continues to refuse, to adhere to various critical elements of Councilmember Bonin's reasonable requirements. Archer flatly refused the following terms of Councilmember Bonin's April 22, 2015 letter and Exhibit 2 to that letter:

- [1] Apply residential use maximum floor area limits.
- [2] Prohibit Use of campus for summer school or other summer programs;

[3] Prohibit the use of the campus for commercial filming;

[4] Require the use of the underground pathway beginning at 6 pm, Monday through Friday and all day on Saturdays. Design and/or structural treatments to ensure that the pathway is used during the specified time periods;

[5] Prohibit the use of the North Garden for any formal classroom or other daytime instruction.

[6] Prohibit construction workers from parking on-site. All construction workers shall be required to park off-site at a remote location and be shuttled to the project site. There shall be no construction worker parking in the Barrington Village Public Parking Lot.

[7] Limit the total number of permanent striped parking spaces on-site to 164 spaces;

[8] Archer to prepare and submit two plans [Transportation Management Program] and [Transportation and Parking Management Requirements] to DOT for review and approval at least 6 months before the earlier of either the Academic Year in which Archer will hold more than 47 events or the issuance of the first Certificate of Occupancy for a building or facility authorized by this grant.

[9] Limit interscholastic athletic competitions to a maximum of 98 days, including a maximum of 40 days of such games on the athletic field;

[10] Limit interscholastic competitions to Monday-Friday. Prohibit athletic competitions on Saturdays and Sundays. Therefore, no athletic competitions and Special Events will occur on the same day on the weekends. No Special Events and interscholastic athletic competitions may happen concurrently during the week;

[11] Require that Archer bus 75% of the students up to 450 students. Further require that 100% of all students over 450 and up to the maximum of 518 either be bused, join an existing carpool, walk, or bike so that there will be no new trips associated with such students.

Furthermore, there are various items not addressed among Councilmember Bonin's concerns that are also critically important. The following reasonable conditions must apply to make mitigation measures enforceable:

[12] Financial penalties will apply of \$250,000 for each week of construction over the due date and a \$10 million construction bond must be posted upon the date that final entitlements have been granted and approved by the final decision making body.

[13] All construction vehicles must access the property via Sunset Boulevard. Chaparal Street, Westgate, Saltair, and North Barrington Avenue shall not be used as a construction haul route or staging area. The Barrington parcel may not be used as a staging area for construction or for access to the site.

[14] Archer must commit to maintain the Barrington parcel as residential property, and not use it for other purposes such as storage or staging.

[15] Archer must submit appropriate applications for mergers and lot line adjustments necessary to agglomerate its various parcels into a single parcel. This is especially important because Archer purports to calculate its allowable floor area ratio across the various parcels it owns.

[16] If further changes are approved, there must be an explicit standstill for at least 20 years. Condition 12e stipulates no increase in enrollment or improvements beyond those in Condition 2 would be permitted within the next 20 years. However, this condition applies only to physical improvements and enrollment, and does not address other operational characteristics such as numbers of events, hours of operations, and carpooling. If any changes are made in the future, they should be more protective of the neighborhood rather than further loosening restrictions.

B. Addressing Councilmember Bonin's and the Community's Concerns are Legally Required; Rejecting them Violates CEQA and the City's Municipal Code.

1. Floor Area Ratios Must Conform to Residential Requirements.

Councilmember Bonin required that Archer's performing arts center on Chaparral Street comply with residential development standards. This and other buildings must meet the maximum floor area limits that apply to residential uses under the Baseline Mansionization Ordinance.

As Residential Neighbors of Archer correctly explained in their letter dated April 20, 2015 submitted by Beverly Grossman Palmer, under the Los Angeles Municipal Code, Archer's proposal for the performing arts center must conform to residential maximum floor area ratio requirements.

The Municipal Code limits the floor area in buildings on RE zoned properties to 35 percent of the lot size. (LAMC § 12.07.01.C). "Residential Floor Area" is defined as "the area in square feet confined within the exterior walls of a Building or Accessory Building on a Lot in an RA, RE, RS, or R1 Zone." (LAMC § 12.03.) The term "Building" is further defined as "any structure" for "enclosure" of "persons." (*Ibid.*) Buildings in RE zones are expressly exempted from the allowance for 3:1 FAR in some other types of areas. (LAMC § 12.21.1.A.1.) Therefore, not only is it advisable to comply with Councilmember Bonin's requirement that buildings adhere to the FAR set for residential zones, but it is legally required by the Los Angeles Municipal Code.

2. Usage and Outdoor Activity Limits Must Be Required.

Mitigation measures must be incorporated in a proposed project which reduce its identified impacts. “Under CEQA, the public agency bears the burden of affirmatively demonstrating that...the agency’s approval of the proposed project followed meaningful consideration of alternatives and mitigation measures.” (*Mountain Lion Foundation v. Fish and Game Commission* (1997) 16 Cal.4th 105, 134.) The adoption of a less damaging feasible alternative is the equivalent of the adoption of feasible mitigation. (*Laurel Heights Improvement Association v Regents of the University of California* (1988) 47 Cal. 3d 376, 403.) Such an alternative or mitigation measure *must* be adopted by the lead agency unless the lead agency can demonstrate that the mitigation is “truly infeasible.” (*City of Marina v. Board of Trustees of the California State University* (2006) 39 Cal. 4th 341, 368; see also Pub. Res. Code § 21002 [“public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects”].)

Councilmember Bonin required that Archer implement operational measures to reduce or eliminate all potentially significant and unavoidable impacts from outdoor athletic activity. Further conditions to reduce the number of days that athletic events may occur on campus in order to further reduce any impacts from outdoor activities must be required.

Councilmember Bonin required that Archer hold no non-Archer related events at the school - in particular, no weddings, summer school, or non-Archer related speaking events. Although the conditions the Planning Commission approved allow for summer school, no summer school and non-Archer related events should be allowed. Interscholastic athletic tournaments should not be held at Archer. The athletic facilities should be used only by Archer and the teams that it plays. Archer must strictly limit the time and size of athletic competitions. Additional conditions must reduce the number of days that athletic events may occur on campus and the number of days that games can be played on the athletic field, limit games to weekdays.

Councilmember Bonin required Archer to reduce the size and configuration of the North Garden area to ensure that it is not a gathering space, but instead a passageway from the subterranean parking into the gym. The North Garden area should be operated as a transition area from the parking garage to campus and not as a gathering place or a space for classroom instruction.

Councilmember Bonin required Archer to redesign the project to add an underground tunnel for access to the parking garage from the building for evening events, and require that everyone attending evening events use the underground tunnel to access

their cars when they leave. Use of the pathway must be required earlier in the evening and on Saturdays to further address noise impacts.

Councilmember Bonin required Archer to reduce the proposed hours of operation for field use, and strictly limit Saturday field use. Additional limits on Saturday field use are required.

Saturday noise impacts are identified as a significant unavoidable impact. The Project may not be approved where there are feasible mitigation measures available that would reduce or eliminate significant, unavoidable impacts. (Pub. Resources Code § 21081.) Therefore, unless Saturday activity hours are eliminated entirely, the Project may not be approved.

3. Traffic Impacts Must be Further Reduced by Limiting Parking.

Vehicle trip generation of the Project can be further limited by limiting the availability of parking. Councilmember Bonin has required that parking spaces be reduced to limit the total number of permanent striped parking spaces on-site to 164 spaces. However, the Planning Commission's Determination allows 185 spaces, that may be expanded to 208 with tandem parking or even up to 257 spaces with an attendant. (Condition 14). This must be revised to limit parking further.

C. Alternatives Would Address Many Issues so Must Be Considered

We agree with the comments of the Residential Neighbors of Archer in their DEIR comment letter regarding alternatives. (Comment 51-39 et seq.) These and other comments about alternatives were not adequately addressed. An analysis of alternative sites is an important consideration under CEQA. "The key question and first step in analysis is whether any of the significant effects of the project would be avoided or substantially lessened by putting the project in another location." (CEQA Guidelines § 15126.6.) California Courts have endorsed the use of rigorous off site alternatives analyses. (See, for example, *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553 [upholding EIR in part because of adequate analysis of an off site alternative] and *Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal. App. 4th 1437 [EIR found inadequate for failure to assess an offsite alternative that would have reduced impacts].)

Many of the impacts of the Project could be avoided by placing some or all of the proposed new uses such as classrooms, athletic facilities, and the performing arts center in alternative locations off campus. Other schools, including the nearby Brentwood School, have either relocated to nonresidential venues (Curtis School, Crossroads School, etc.) or have acquired second properties so that the grades could be split without

congesting the original property as to facilities or intensity of usage. Instead of further burdening the surrounding neighborhood with its inappropriate expansion, Archer should be required to do the same as these other schools have already done.

D. Construction Schedule Compression Requires Recirculation of the EIR.

With the change and compression of the construction schedule from six years to three years, the analysis in the EIR must be revised because some impacts will be more intense during that time. Specifically, construction traffic will have to increase in frequency and that will impact both traffic conditions in the area and air quality. Archer did not shorten the construction schedule by eliminating some activities but rather compressed the activities it originally proposed into a shorter timeframe. The construction period should be reduced by eliminating tasks, such as eliminating construction of the Performing Arts Center, not by intensifying the construction of the Project as proposed. As proposed now, the mitigation measure of compressing the schedule would create significant impacts of its own. Therefore, those impacts must be analyzed.

An EIR must be revised and recirculated when new information is added to the EIR. (CEQA Guidelines § 15088.5.) New information includes the availability of a feasible project alternative that would clearly lessen the significant impacts of the project, but are not adopted. Furthermore, recirculation is required when "A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented" or "A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance." (*Ibid.*) Here, the very substantial change in the construction schedule, which intensifies the air quality and construction impacts of the Project, is significant new information which requires recirculation of the EIR.

1. Traffic Conditions Under the More Intense Schedule Will be Worsened.

While a shorter construction period will alleviate some impacts, additional measures must be taken to ensure that such a shortened construction period does not intensify the adverse impacts that have been identified for construction traffic. Among other concerns that have not been sufficiently addressed, we mention the following two: (1) a "queueing" problem will exist during the operations period (i.e., after construction is complete) on N. Barrington where it reaches Sunset Blvd. -- as well as (2) massive surges clockwise on Westgate Avenue (and possibly Saltair), then onto Chaparal will certainly occur after Special Events on the Archer site end during weekday afternoon and

evening periods of high congestion on Sunset -- adding to the "cut-through" traffic that already uses those small streets extensively each weekday evening.

As to item 1, virtually all of the construction traffic is planned to depart the Archer site via the proposed construction driveways that debouch onto Chaparal and N. Barrington, thus necessarily adding to any queue where N. Barrington reaches Sunset -- then virtually all attempting to turn left into whatever spaces are available at the rear of the Barrington Place cohort.

The same queueing issue at that intersection will occur during the operations period after any Special Event that ends during heavy traffic hours, since none of the vehicles leaving the Archer site via its only driveway, onto Sunset, will be able to turn left. Approximately 80% or more of those visitors will have destinations that require them to end up eastbound on Sunset -- or diverting to less direct routes and congesting additional street stretches and intersections.

The study that Archer's expert submitted analyzed one stretch of Chaparal, and the segment of N. Barrington between Chaparal and Sunset, very superficially. The surges mentioned above will result in a temporary tripling or more of clockwise traffic on Westgate and Barrington, which simply do not have the capacity to accommodate that without various very adverse impacts. Therefore, the level of significance for traffic impacts on the segments and at the intersections of these streets will be greatly exceeded.

2. Air Quality, Including Toxic Air Contaminants Will be Worse Under the Three Year Schedule.

Every measure must be taken to identify and avoid air quality impacts, including from toxic contaminants. The Draft EIR purported to analyze *an acceleration* of the construction schedule that would occur over a five year period instead of six. (Page IV.B-43.) However, the EIR did not analyze a *compression* into a three year schedule as is currently proposed for the Project. Even with a small compression of the schedule into five years rather than six, the EIR stated:

under the accelerated schedule, the duration of peak construction days could be increased to handle the mass excavation spoils from both Phase 1 and Phase 2. Construction impacts under an accelerated schedule would also be greater during other phases of construction due to the condensed timeframe for construction and associated increased intensity of construction activities.

(EIR, p. IV.B-43.)

Errata 2, released in April 2015, claimed construction impacts would be “experienced on more days of construction” but not change overall impacts. (Errata 2, p. 10.) These assertions defy common sense, and fail to address critical impacts in peak hours. When construction is compressed, activities will overlap that would not have overlapped before, thus creating cumulatively greater impacts within peak hours, even if the project proponent is somehow able to average out the impacts throughout the day.

Additionally, the air quality guidance under which the EIR was prepared is outdated. In February 2015, California’s Office of Environmental Health Hazard Assessment released its final “Air Toxics Hot Spots Program Guidance manual for the Preparation of Risk Assessments (Guidance Manual).” This is available at OEHHA’s website (http://oehha.ca.gov/air/hot_spots/2015/2015GuidanceManual.pdf.) This new Guidance Manual is different from previous guidance because it includes the use of age-sensitivity factors for estimating cancer risk and changes to the duration of exposure for residents and workers. Therefore, the new assessment methods can demonstrate a substantially higher health risk for residential and other sensitive receptors such as schoolchildren near emission sources than the previous guidance would have indicated.

We reserve the right to submit further supplemental information supporting this appeal prior to the hearing of it by the City Council. This need to provide supplemental material is especially relevant because of the large amount of material that was prepared after the Draft EIR, including the Erratas, and not circulated properly for public review and comment.

Thank you for your consideration.

Sincerely,



Douglas P. Carstens