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VIA E-MAIL

Council President Wesson
Los Angeles City Hall
200 North Spring Street
Los Angeles, CA 90012

Honorable Members of the City Council
Los Angeles City Hall
200 North Spring Street
Los Angeles, CA 90012

Re: Historic Designation of 10346 Moorpark/Council File #16-1049/CHC-2016-3581-HCM

Council President Wesson and Honorable Members of the City Council,

This office represents the Dolores Hope Trust/Bob and Dolores Hope Foundation (Property Owner) in opposition to the proposed historic cultural monument designation of the property located at 10346 Moorpark Street in Toluca Lake.^{1,2}

We urge you to uphold the Cultural Heritage Commission's (CHC) determination that the property is not eligible as a Historic Cultural Monument (HCM) pursuant to Los Angeles Administrative Code Section 22.171.10, *et seq.* As detailed below, a Council action to reverse the CHC's decision would be: (1) a violation of the substantive and procedural due process rights of the Property Owner; (2) tainted by bias; (3) a violation of the requirement that quasi-judicial decisions be based on findings supported by substantial evidence; (4) arbitrary and capricious; (5) a violation of the Los Angeles Administrative and Municipal Codes; and (6) a taking of private property without just compensation.

On September 16, 2016, Mr. Ryu, Councilmember for the Fourth District, introduced a motion pursuant to Section 22.171.10 of the Administrative Code which provides for the Council to initiate consideration of a proposed site as a Historic-Cultural Monument (HCM).³ The Office of Historic Resources (OHR) staff prepared a

¹ The City refers to this matter as 10350 Moorpark.

² The owner of the property is the Dolores Hope Trust. The Bob & Dolores Hope Foundation is the beneficiary of the Dolores Hope Residuary Estate.

³ The procedure for a "Council Initiated Designations" is as follows:

report recommending that the CHC find that the property was eligible as an HCM. On November 17, 2016, the CHC convened a public hearing on the designation. After a lengthy discussion, the CHC voted unanimously to deny the designation.

Los Angeles Administrative Code Section 22.171.7 sets forth the definition of an HCM. The CHC determined that the Property did not meet this criteria. As CHC Commissioner Barry Milofsky stated, "I have a hard time designating something that was never seen, never part of the public, or relevant in that way. As much as I appreciate the importance of documenting this type of estate, this type of importance in the San Fernando Valley, with that limited access, with that limit over time, the limited visibility, I don't see grounds for overruling a family's wishes." CHC Commissioner Buelna stated, "[Y]ou know usually when I hear something - a celebrity's home is going to be designated I feel - I always think oh there's going to be a museum, or there's going to be access to the public so the public can enjoy this, and I don't hear that today." CHC Commissioner Kennard stated that compared to the Del Rio home, "This house from the pictures that I'm seeing doesn't rise to that level, so I couldn't support the nomination." Following this discussion, the CHC voted unanimously to reject the designation.

The Planning and Land Use Management Committee of the City Council (PLUM) considered the CHC's report and declined to recommend to the City Council that the Property be designated as an HCM.

In designating a property as an HCM, the City Council acts as a quasi-judicial/administrative decision maker. As such, the City Council must afford the Property Owner a fair and unbiased hearing and make its decision based on facts in the record, not on unsubstantiated opinions or bias. *Horn v. Cty. of Ventura* (1979) 24 Cal.3d 605, 612; *Nasha L.L.C. v. City of Los Angeles* (2004) 125 Cal.App.4th 470, 483, ([p]rocedural due process in the administrative setting requires that the hearing be conducted "before a reasonably impartial, noninvolved reviewer." [internal citations omitted].).

Procedure for Council-Initiated Designations. Upon receipt of any proposed designation initiated by the Council, the commission shall, pursuant to Section 22.171.8 of this article, inspect and investigate the proposed Council-initiated designation. The Director shall thereafter prepare a report and recommendation on the proposed designation. After receipt of the Director's report and recommendation, the Commission shall hold a public hearing regarding the proposed designation and determine whether the site, building or structure conforms with the definition of a Monument set forth in Section 22.171.7 of this article. After the Commission submits a report and recommendation, the Council may consider the matter. If the Commission recommends approval of a Council-initiated designation, the Council may adopt the designation by a majority vote. If the Commission recommends disapproval of a Council-initiated designation, the Council may adopt the proposed designation by a two-thirds vote. The Council shall act within the time specified in Subsection (f) of this section. (Los Angeles Administrative Code (LAAC) Section 22.171.10).

Here, the CHC refused to recommend that the Property be designated. Thereafter, as described in our letter dated February 27, 2017, Mr. Ryu embarked on an intense campaign to convince his constituents and colleagues that the CHC had erred in its recommendation even though no substantial evidence supports designation. (See Enclosure 1). Mr. Ryu's actions have tainted the entire proceeding and any potential evidence with bias such that the entire proceeding is defective.

A City Council reversal of the CHC determination would violate the Property Owner's due process rights under the United States Constitution and related local laws, including, but not limited to, 42 USC section 1983. Both the California and U.S. Constitutions prohibit the City from depriving a person of property without due process of law. (Cal. Const. art I, §§ 6, 15; U.S. Const. 5th Amend. & 14th Amend. § 1).

Mr. Ryu made his pre-determined decision on the property known in multiple public settings and made every effort to convince neighbors and other Councilmembers - based on false assertions, speculation, and personal opinion - that the property should be designated. Any process that Mr. Ryu now participates in, and any evidence that he cites to support the designation, is tainted with bias.⁴

When evidence in the record is based on bias, it is not substantial and cannot be relied upon in making findings. Moreover, Mr. Ryu's bias is imputed to the rest of the Council. "As *Nasha* made clear, allowing a biased decision maker to participate in the decision is enough to invalidate the decision." *Woody's Group, Inc. v. City of Newport Beach* (2015) 233 Cal.App.4th 1012, 1022, review filed (Mar. 11, 2015), review withdrawn (Mar. 20, 2015). That is the case here. As such, the Property Owner has been deprived of a full and fair evidentiary hearing, and has been deprived of its private property without just compensation.

Even if designation of the property is considered a "legislative action," which is not the case, the City would still be violating the Property Owner's constitutional rights. Substantive due process prohibits the City from acting in a manner that is arbitrary, discriminatory, or lacks a reasonable relationship to the legislative purpose. (Cal. Const., art. I, §§ 7, 15; U.S. Const., 14th Amend., § 1). Designation of the property would not advance public health safety or welfare, nor would it benefit the public. The property is screened from public view by landscaping today, and it always has been. It was designed to provide privacy for the family. The property was never open to the public. The structures have been substantially modified over time and have no architectural significance. The property does not embody characteristics of an architectural type specimen, nor is it the work of a master builder or significant

⁴ The Property Owner submitted a public records act request on February 23, 2017. Council District Four responded on February 24, 2017. (See Enclosure 2).

architect. For all of these reasons, designation of the property bears no reasonable relationship, real or otherwise, to the public health, safety, and welfare. Therefore, there is no rational basis to designate the property, and any such action would be an invalid exercise of the City's police power.

Based on the lack of substantial evidence, a designation would violate Los Angeles Administrative Code, Los Angeles Municipal Code, and applicable Charter provisions. Reversal of the decision below would also be an abuse of discretion, as there is no evidence to support findings to support such action. *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506. Reversal of the CHC decision by the Council would be arbitrary and capricious and an abuse of discretion.

Designation of the property would also violate the Property Owner's equal protection rights because there is no rational basis for the property to be treated differently than similarly situated properties. The Property does not meet the criteria for an HCM. It appears that Mr. Ryu's sole purpose in nominating and designating the property is to stop a potential sale and future development (in accordance with the zoning code) of the property. If the City Council designates the property, it would be intentionally singling out the Property Owner for discriminatory treatment under the guise of historic designation. This denies the Property Owner equal protection under the law.

A reversal of the CHC's decision would result in a taking of private property for a public use without just compensation in violation of Article I, section 19 of the California Constitution and the Fifth Amendment to the U.S. Constitution. The City has intentionally interfered with the Property Owner's investment backed expectations with regards to the property. Specifically, Mr. Ryu has intentionally tried to stop the sale and future development of the property, in accordance with existing zoning law by using the HCM process, even though no substantial evidence supports designation. In addition, Mr. Ryu has been interfering in the sale of the property by speaking with potential buyers. Designation of the property would also deprive the Property Owner of reasonable beneficial economic use and marketability of the property. See *Penn Central Transp. Co. v. New York City*, (1978) 438 U.S. 104.⁵

⁵ Before the introduction of Mr. Ryu's motion, the property was under escrow. After Mr. Ryu's motion was introduced, the property fell out of escrow.

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Finally, the City's process allowing a Councilmember to introduce the nomination of an HCM while at the same time requiring that Councilmember to vote on the matter, which is quasi-judicial in nature, taints the entire nomination process with bias and does not meet the standard of review set forth Civil Code Section 1094.5.

This letter is submitted without waiving and we expressly reserve all legal rights and remedies.

Sincerely,



TIMOTHY B. MCOSKER
of GLASER WEIL FINK HOWARD AVCHEN & SHAPIRO LLP

TBM:cp
Enclosures

cc: Los Angeles City Council