C.F. 13-0593

13-0593-S1

THE SILVERSTEIN LAW FIRM
A Professional Corporation

215 NORTH MARENGO AVENUE, 3RD FLOOR
PASADENA, CALIFORNIA 91101-1504
PHONE: (626) 449-4200 FAX: (626) 449-4205
ROBERT@ROBERTSILVERSTEINLAW.COM
WWW.ROBERTSILVERSTEINLAW.COM

July 24, 2013

RECEIVED
CITY CLERK'S OFFICE
2013 JUL 24 AM 10:06
CITY CLERK
BY _____
DEPUTY

VIA HAND DELIVERY

Hon. Herb Wesson, President and
Los Angeles City Council
c/o June Lagmay, City Clerk
City of Los Angeles
200 North Spring Street
City Hall - Room 360
Los Angeles, California 90012

Re: Objections to Millennium Hollywood Project;
Appeals of VTTM-71837-CN-1A and
CPC-2008-3440-VZC-CUB-CU-ZV-HD; ENV-2011-0675-EIR

Dear Honorable Wesson and Members of the City Council:

I. INTRODUCTION.

Yesterday, the Millennium Developer's attorneys, Sheppard Mullin, submitted to the City Council file for the Millennium Project a 311-page letter containing new argument, including a substantial new geologic analysis of the Millennium Project Site. CURD, as an appellant in a land use case before the Los Angeles City Council, was and has been denied due process of law.

The Los Angeles City Council has failed to adopt procedural hearing rules for land use appeals required by state law and the City's allowing such a 311-page letter to be considered and part of its administrative record to try to paper over violations of the California Environmental Quality Act ("CEQA") and Government Code Section 1090 is unlawful.

For many years the Los Angeles City Council has acted as if land use appellants are merely public commenters under the Brown Act. This is untrue. Land use appellants are exercising rights under the City's Charter, state law, and municipal code that is separate and distinct from mere participation in a public meeting. They also pay appeal

fees to the City as part of the exercise of their right to appeal and enforce legal duties of the City and project developers.

The failure of the City to adopt fair hearing procedural rules as mandated by Government Code Section 65804 rules is ongoing and repeated violations of the due process rights of Appellants who, like CURD, are politically sandbagged by Applicants and City Hall partisans working to ram real estate development projects through without an opportunity of land use Appellants and the commenting public to submit argument and evidence to respond and rebut new arguments and substantial new studies that have a habit of showing up in the administrative record at the last minute – presumably because the City Council actively seeks to assure that no one can respond. This is not the act of a "Temple of Democracy" as Mayor Eric Garcetti has termed the Los Angeles City Council. It is a lawless abuse of fair hearing procedures against their own constituents.

The City has already been successfully sued by this law firm for deprivation of due process hearing rights in the case of La Mirada Avenue Neighborhood Association of Hollywood v. City of Los Angeles (LASC Case No. BS 132533). Attached is a copy of the Court's judgment and order and the LA Weekly's article about the case "LA Illegally Defiles Due Process". This case involved another Hollywood skyscraper project in which the Applicant's attorneys attached to their final comment letter before the City Council's Planning and Land Use Committee a substantial new parking study which was relied upon in revised project findings without ever re-circulating the study as part of CEQA and a recirculated Draft EIR.

The trial court specifically found that the City Council's process violated the public's right of participation under CEQA and that the attempt to slide massive new argument and new expert studies into the record deprived La Mirada of its due process rights to a fair hearing.

Despite the court's ruling in La Mirada, the City Council has yet to adopt fair hearing rules for Applicants and Appellants. The City Council knows it continues to violate the law and it does so with full knowledge of the willful nature of these acts.

The developer and its representatives have conspired with City officials to wait until the eleventh hour to submit this new argument and data dump, depriving CURD of the ability to even read the letter and supporting materials and formulate a full and complete response.

We object that the Los Angeles City Council continues to act above the law of this state with respect to its duty to provide fair hearing procedural rules. Yesterday's submittal is just the latest example of the harm imposed on land use appellants and the public by this pernicious practice.

II. THE SHEPPARD MULLIN JULY 23, 2013 NEW ARGUMENTS ON THE GOVERNMENT CODE SECTION 1090 VIOLATION ARE WITHOUT MERIT AND THEIR LAST MINUTE SUBMISSION DEPRIVES CURD OF DUE PROCESS OF LAW IN ITS LAND USE HEARING BEFORE THE CITYCOUNCIL.

Given that CURD's counsel has had only a short time to skim the Sheppard Mullin letter and supporting exhibits, the following response cannot possibly be a full and complete one which is a right of a land use Appellant.

Sheppard Mullin twists CURD's Section 1090 conflict of interest argument. Such sophistry does not deflect from the fact that William Roschen, as a paid consultant to the Developer, has a disqualifying interest in BOTH the now withdrawn Development Agreement and the CPC Entitlement Contract. Millennium's withdrawal of the Development Agreement did not "solve" the conflict of interest problem. Because Section 1090 is construed by the Court as broadly as possible to reach every kind of possible corruption, it will easily reach the enforceable Covenant and Agreement that the City and Developer execute as an integral part of approving the Project.

Sheppard Mullin desperately asserts that CURD cited no legal authority in support of the proposition that the Covenant and Agreement is not an agreement. It claims that because the Covenant and Agreement grew out of the City's municipal corporation authority to zone land and approve projects it is somehow "different" and "not a contract" in which William Roschen has a disqualifying interest.

First, CURD did cite contract law and Civil Code provisions in its argument to illustrate how such contract principles would apply to find that the City's offer to the Developer to execute a Covenant and Agreement for the project conditions would constitute the making of a contract under California law.

Second, the law and broad interpretation of Section 1090 are not affected by the fact that the contract arises out of the City's approval of development projects under its police power. A contract is a contract. Elsewhere Sheppard Mullin has conceded, indeed

touted, that the project entitlements are "enforceable" and this means the Millennium Developer concedes that the Covenant and Agreement is an enforceable contract.

Because Sheppard Mullin knows that CURD's legal analysis of its cited case law would likely show it is inapplicable or distinguishable, it seeks unfair advantage by submitting this argument at the last moment before final project action by the City Council. This violates the due process rights of a land use appellant like CURD to formulate a full and complete response to rebut the new arguments of Sheppard Mullin on behalf of the Millennium Developer.

That the new City Attorney, Mike Feuer, has passively sat on the sidelines while allowing a real estate developer to misrepresent Section 1090 law demonstrates the ongoing dereliction of the City's duty to enforce the conflict of interest laws of this state.

Accordingly, all Millennium project entitlements are void and merely await the issuance of an injunction to halt this massive violation of law.

III. THE SHEPPARD MULLIN JULY 23, 2013 SUBMITTAL OF A SUBSTANTIAL NEW EXPERT GEOLOGIC REBUTTAL BY GEOLOGISTS NOW UNDER DISCIPLINARY INVESTIGATION FOR PROFESSIONALLY DEFICIENT REPORTS ON THE MILLENNIUM PROJECT ARE FILLED WITH FURTHER MATERIALLY MISLEADING INFORMATION AND EVEN LEGAL ARGUMENT AND ITS LAST MINUTE SUBMISSION, JUST LIKE THE HOLLYWOOD GOWER CASE, DEPRIVES CURD OF DUE PROCESS OF LAW IN ITS LAND USE HEARING BEFORE THE CITY COUNCIL.

This law firm has already obtained writ and injunctive relief against the City of Los Angeles in the La Mirada case involving the Hollywood Gower Tower. In that case, the last minute submission of expert study materials and reliance of the City on those submittals to make "findings" of no significant impact and no new information requiring revision and recirculation of the environmental documents "derailed" the public participation rights of CEQA. It was also a denial of due process of law.

Only two significant points can be made in the scant time available to prepare a response to this massive new report of hundreds of pages. First, the Langan geologists twist Mr. Wilson's comments about the deficiencies in using the City's ZIMAS system for anything into a preposterous claim that Mr. Wilson "relied" on the ZIMAS system to

locate the Hollywood Fault. On page 2 of his report, Mr. Wilson makes clear he was critiquing the complete inadequacy of Langan's use of ZIMAS as any kind of authoritative source of information about fault location. The name of the system "Zoning Information Map Access System" speaks volumes. It is the City's GIS system for zoning information, not geologic data. If anything, its rough data on fault locations is only a starting point for investigation, not an authoritative end point. Moreover, ZIMAS provides no maps of fault locations.

Second, throughout the Langan Rebuttal attached to the Sheppard Mullin letter, both geologists and attorneys for the developer talk out of both sides of their mouth. At some points, without citation to any authority, they try to claim that the November 2012 Langan Fault Investigation Report was not required by "CEQA" but rather was required as part of the tract map application. Then at other points, they say that although the Fault Investigation Report was not required to be disclosed to the public as part of the CEQA comment process, nonetheless, they will put it into the administrative record in support of the conclusions in the DEIR and FEIR.

This is a blatant failure to proceed in accordance with law. The City required the preparation of a Fault Investigation Report. It was required to be circulated with the Draft EIR and could have been. Instead the City circulated the DEIR without any mention of it. Both the DEIR and FEIR contain the unsubstantiated claim that the Hollywood Fault (as if it is only one line which every geologist in Southern California knows it is not) is 0.4 miles away from the Project Site. It was suppressed until now when the City, having "derailed" the CEQA comment process, wants to include it in the administrative record to defend its actions in court. This it may not lawfully do.

IV. CONCLUSION.

For these reasons, the Millennium Project must be sent back to the Planning Department for proper environmental analysis of its serious defects and the project should not be approved today.

Very truly yours,

ROBERT P. SILVERSTEIN
FOR
THE SILVERSTEIN LAW FIRM

Attachments

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 08/13/12			DEPT. 86
HONORABLE ANN I. JONES	JUDGE	N DIGIAMBATTISTA T MASSAROTTI/COURTROOM ASST	DEPUTY CLERK
HONORABLE 10	JUDGE PRO TEM		ELECTRONIC RECORDING MONITOR
NONE	Deputy Sheriff	NONE	Reporter

10:00 am	BS132533	Plaintiff Counsel	
	LA MIRADA AVE NEIGHBORHOOD ASSO OF HOLLYWOOD VS CITY OF LOS ANGELES ET AL	Defendant Counsel	NO APPEARANCES
	CEQA case		

NATURE OF PROCEEDINGS:

CLERK'S CERTIFICATE OF MAILING/NOTICE OF ENTRY OF JUDGMENT AND JUDGMENT

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein and that this date I served Notice of Entry of the Judgment and Judgment entered on August 13, 2012, upon each party or counsel named below by depositing in the United States mail at the courthouse in Los Angeles, California, one copy of the original entered herein in a separate sealed envelope for each, addressed as shown below with the postage thereon fully prepaid.

DATED: AUGUST 13, 2012

JOHN A. CLARKE, EXECUTIVE OFFICER/CLERK

BY N. Digiambattista
N DIGIAMBATTISTA

ROBERT P. SILVERSTEIN, ESQ., 215 N. MARENGO AVE., 3RD FL., PASADENA, CA 91101-1504

R. J. COMER, ARMBRUSTER, GOLDSMITH, ET AL, 11611 SAN VICENTE BLVD., SUITE 900, LOS ANGELES, CA 90049

ADRIENNE KHORASANEE, LOS ANGELES CITY ATTY'S OFFICE, 200 N. MAIN ST., CHE - ROOM 701, LOS ANGELES, CA 90012

MINUTES ENTERED
08/13/12
COUNTY CLERK

THE SILVERSTEIN LAW FIRM, APC
215 North Marengo Avenue, 3rd Floor
Pasadena, CA 91101-1504

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

LA MIRADA AVENUE NEIGHBORHOOD ASSOCIATION OF HOLLYWOOD, a California unincorporated association,

Petitioner and Plaintiff,

vs.

CITY OF LOS ANGELES, a municipal corporation; LOS ANGELES CITY COUNCIL; and DOES 1 through 10, inclusive,

Respondents and Defendants.

6104 HOLLYWOOD, LLC, a California limited liability company; and ROES 1-10, inclusive,

Real Parties in Interest.

Case No. BS132533

[~~PROPOSED~~] JUDGMENT GRANTING PEREMPTORY WRIT OF MANDATE

Trial Date: July 20, 2012
Time: 1:30 p.m.
Dept: 86

[Hon. Ann I. Jones]

Petitioner La Mirada Avenue Neighborhood Association of Hollywood's ("Petitioner") verified petition for writ of mandate against Respondents City of Los Angeles and the Los Angeles City Council ("Respondents"), and naming Real Party in Interest 6104 Hollywood, LLC ("Real Party"), came on for trial on July 20, 2012, the Honorable Ann I. Jones, presiding. Robert P. Silverstein appeared on behalf of Petitioner, Deputy City Attorneys Adrienne Khorasanee and Timothy McWilliams appeared on behalf of Respondents, and R.J. Comer and Howard Weinberg appeared on behalf of Real Party. Petitioner's action challenged Respondents' certification of an Environmental Impact Report ("EIR") and approval of land use entitlements for the development project commonly known as the "Hollywood Gower Project," located at 6100-6116 Hollywood Boulevard and 1633-1649 Gower Street; Council File No. 11-0317; and Related Case Numbers VTT-70119, CPC-2008-3087-ZC-HD-ZAA-SPR, and ENV-2007-5750-EIR.

On July 23, 2012 the Court entered an order granting the petition for writ of mandate as to Petitioner's first cause of action for unfair hearing and Petitioner's third and fourth causes of action for violation of the California Environmental Quality Act ("CEQA") for the reasons set forth in the Court's "Ruling on Petition for Writ of Mandate Heard on July 20, 2012," attached hereto at Exhibit 1 and incorporated in full herein by this reference. Petitioner's second cause of action regarding the City's pattern and practice of conducting unfair hearings for land use projects was severed and stayed by prior order of the Court.

The Court, having read and considered the pleadings on file in this case, having reviewed and considered the administrative record admitted into evidence in this case, having considered the argument of counsel, having taken the matter under submission and issued its ruling in this case, and being fully advised including having read Respondents' and Real Party's objections, **DOES HEREBY ORDER, ADJUDGE, AND DECREE** as follows:

Regarding the CEQA violations, the petition for writ of mandate is granted and Respondents' certification EIR for the Hollywood Gower Project is ~~invalidated~~ revoked. A peremptory writ of mandate shall issue from the Clerk of the Court commanding Respondents to:

THE SILVERSTEIN LAW FIRM, APC
215 North Marengo Avenue, 3rd Floor
Pasadena, CA 91101-1504

(1) Fully comply with the requirements of the California Environmental Quality Act by inter alia re-circulating a Draft EIR for the Hollywood Gower Project;

(2) ~~Invalidate~~ Set aside all approvals already obtained for the Hollywood Gower Project which relied upon the prior EIR and CEQA approvals; and

(3) Be restrained and enjoined from any actions or approvals, including granting any authority, permits, or land use entitlements, in furtherance of the Hollywood Gower Project and/or in furtherance of construction of the Hollywood Gower Project (other than prerequisites for restarting the CEQA process) unless a new EIR has been prepared, publicly circulated, and certified consistent with CEQA, the CEQA Guidelines, and all other applicable laws.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Respondents violated Petitioner's constitutional due process rights and denied Petitioner a fair hearing, as more fully described in Exhibit 1 hereto. All approvals by the City Council or its Committees that relied on or were made at the subject unfair hearing are invalidated on this further ground. Accordingly, the peremptory writ to issue from the Clerk of the Court shall also command Respondents to:

(4) In connection with any further hearings for the Hollywood Gower Project, provide Petitioner a hearing process that assures it the "basic right to have before it the information upon which the administrative decision rests and an opportunity to be heard as to the competency or adequacy of the information."

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Respondents shall make a return to the peremptory writ of mandate under oath specifying what Respondents have done or are doing to comply with the writ, and to file that return with the Court, and serve that return by hand or facsimile upon Petitioner's counsel of record in this proceeding, no later than 90 days after issuance of the writ and service on Respondents.

THE SILVERSTEIN LAW FIRM, APC
215 North Marengo Avenue, 3rd Floor
Pasadena, CA 91101-1504

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that the peremptory writ of mandate shall be served on Respondents by personally delivering the writ to Respondents, Attn: Ms. June Lagmay, City Clerk, City of Los Angeles, 200 N. Spring Street, Room 360, Los Angeles, CA 90012, during regular business hours.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Petitioner may seek an award of attorney fees, which award of attorney fees shall be determined by the Court based upon noticed motion, and shall be awarded costs in the amount of $_____ as the prevailing party in this proceeding.

The Court reserves jurisdiction in this action until there has been full compliance with the writ as provided in Code of Civil Procedure Section 1097.

LET THE WRIT ISSUE.

DATED: AUG 13 2012 By: **ANN I. JONES**

HON. ANN I. JONES
JUDGE OF THE SUPERIOR COURT

THE SILVERSTEIN LAW FIRM, APC
215 North Marengo Avenue, 3rd Floor
Pasadena, CA 91101-1504

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 07/23/12			DEPT. 86
HONORABLE ANN I. JONES	JUDGE	N DIGIAMBATTISTA M. D. CLARK/COURTROOM ASST	DEPUTY CLERK
HONORABLE 1	JUDGE PRO TEM		ELECTRONIC RECORDING MONITOR
NONE	Deputy Sheriff	NONE	Reporter

8:30 am	BS132533	Plaintiff Counsel	
	LA MIRADA AVE NEIGHBORHOOD ASSO OF HOLLYWOOD VS CITY OF LOS ANGELES ET AL	Defendant Counsel	NO APPEARANCES
	CEQA case		

NATURE OF PROCEEDINGS:

HEARING ON PETITION FOR WRIT OF MANDATE
RULING ON SUBMITTED MATTER

The court having taken the above matter under submission on July 20, 2012, now makes its ruling as follows:

The petition for writ of mandate is granted for the reasons set forth in the document entitled COURT'S RULING ON PETITION FOR WRIT OF MANDATE HEARD ON JULY 20, 2012, signed and filed this date.

Counsel for petitioner is to prepare, serve and lodge the proposed judgment and writ within ten days. The court will hold the documents ten days for objections.

A copy of this minute order as well as the Court's Ruling are mailed via U.S. Mail to counsel of record addressed as follows:

ROBERT P. SILVERSTEIN, ESQ., 215 N. MARENGO AVE., 3RD FL., PASADENA, CA 91101-1504

TIMOTHY MCWILLIAMS, ESQ., L.A. CITY ATTY'S OFFICE, 200 N. MAIN ST., CHE - ROOM 701, LOS ANGELES, CA 90012

R. J. COMER, ARMBRUSTER, GOLDSMITH, ET AL, 11611 SAN VICENTE BLVD., SUITE 900, LOS ANGELES, CA 90049

MINUTES ENTERED
07/23/12
COUNTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

LA MIRADA AVE NEIGHBORHOOD ASSN ETC. Petitioner	)	
vs	)	CASE NO. BS132533
CITY OF LOS ANGELES, ET AL Respondents	)	

COURT'S RULING ON PETITION FOR WRIT OF MANDATE HEARD ON JULY 20, 2012

Petitioner La Mirada Avenue Neighborhood Asssociation of Hollywood ("La Mirada") challenges the decision of the Respondents City of Los Angeles and the Los Angeles City Council ("Los Angeles" or "City") to certify an Environmental Impact Report ("EIR") and to approve the Hollywood/Gower Project ("Project"), a proposed residential condominium tower with retail spaces on the ground floor. Real Party in Interest 6104 Hollywood, LLC ("6104 Hwd") is the Project developer. Petitioner asserts two arguments: (1) that the City denied La Mirada a fair hearing and (2) that the City violated CEQA in connection with the Project approvals.

In opposition, the City and the Real Party in Interest assert that Petitioner received a fair hearing and that its CEQA challenges are without merit. The City asserts that it afforded Petitioner ample and legally sufficient due process in this instance. And, the City argues that the EIR's analysis, most specifically of parking effects of the project, is adequate and supported by substantial evidence.

After considering the parties' briefs, the augmented administrative record and judicially noticed materials,[1] having heard argument and having taken the matter under submission, , the Court rules as follows:

[1] The Petitioner's motion to augment the record to include e-mails by certain staff members (tabs 1-5) and "declaratory evidence of Petitioner's representative and counsel" (tabs 6-7) is granted. .

With respect to the staff generated e-mails contained in tabs 1-5, the motion is granted. The e-mail chatter of certain staff members, while not ordinarily relevant, may be added to the record when it evinces impropriety in the process itself. Code of Civ. P. 1094.5; Clark v. City of Hermosa Beach, 48 Cal. App. 4th 1152, 1170 n. 17 (1996). And, this material existed before the agency made its decision and Petitioner was not able with the exercise of reasonable diligence to present these facts to the decision maker before the decision was made. See Western States Petroleum Association v. Superior Court, 9 Cal. 4th 559, 577-578 (1995). Nor are these documents protected under the deliberative process privilege. These documents show the timing by which certain materials were obtained, whether

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ORIGINAL FILED
JUL 23 2012
LOS ANGELES
SUPERIOR COURT

LA MIRADA AVE NEIGHBORHOOD ASSN ETC. Petitioner	)	
vs	)	CASE NO. BS132533
CITY OF LOS ANGELES, ET AL Respondents	)	

COURT'S RULING ON PETITION FOR WRIT OF MANDATE HEARD ON JULY 20, 2012

Petitioner La Mirada Avenue Neighborhood Asssociation of Hollywood ("La Mirada") challenges the decision of the Respondents City of Los Angeles and the Los Angeles City Council ("Los Angeles" or "City") to certify an Environmental Impact Report ("EIR") and to approve the Hollywood/Gower Project ("Project"), a proposed residential condominium tower with retail spaces on the ground floor. Real Party in Interest 6104 Hollywood, LLC ("6104 Hwd") is the Project developer. Petitioner asserts two arguments: (1) that the City denied La Mirada a fair hearing and (2) that the City violated CEQA in connection with the Project approvals.

In opposition, the City and the Real Party in Interest assert that Petitioner received a fair hearing and that its CEQA challenges are without merit. The City asserts that it afforded Petitioner ample and legally sufficient due process in this instance. And, the City argues that the EIR's analysis, most specifically of parking effects of the project, is adequate and supported by substantial evidence.

After considering the parties' briefs, the augmented administrative record and judicially noticed materials,[1] having heard argument and having taken the matter under submission, , the Court rules as follows:

[1] The Petitioner's motion to augment the record to include e-mails by certain staff members (tabs 1-5) and "declaratory evidence of Petitioner's representative and counsel" (tabs 6-7) is granted. .

With respect to the staff generated e-mails contained in tabs 1-5, the motion is granted. The e-mail chatter of certain staff members, while not ordinarily relevant, may be added to the record when it evinces impropriety in the process itself. Code of Civ. P. 1094.5; Clark v. City of Hermosa Beach, 48 Cal. App. 4th 1152, 1170 n. 17 (1996). And, this material existed before the agency made its decision and Petitioner was not able with the exercise of reasonable diligence to present these facts to the decision maker before the decision was made. See Western States Petroleum Association v. Superior Court, 9 Cal. 4th 559, 577-578 (1995). Nor are these documents protected under the deliberative process privilege. These documents show the timing by which certain materials were obtained, whether

Statement of Facts

The Project site consists of a 47,000+ square foot site that is currently vacant. (AR 258). Petitioner plans to construct a 20-story mixed use building with 192,000+ square feet of total floor area. (Id.) The building was originally planned to contain 151 residential units and 6,200 square feet of ground-level retail located along Hollywood Boulevard. (Id.) The project included five levels of parking with 331 spaces for residential development and 14 spaces for the

---

those materials were placed in the public file, whether those materials were considered by the decision-maker at the hearing and the access afforded by interested parties to the decision-makers. All of these non-deliberative facts are highly probative on the issue of whether the administrative process in this instance was "fair."

With regard to the "declaratory evidence" set forth in tab 6, the motion is denied. The facts set forth in paragraphs 1-9 were known by the declarant before the final administrative action in this case on May 10, 2011 and there is nothing that would have stopped Petitioner in the exercise of reasonable diligence from presenting this information to at the PLUM Committee hearing. Thus, this declaration fails to meet the strict and narrow exceptions to the general rule of inadmissibility of extra-record evidence in administrative mandamus proceedings. Western States Petroleum Association v. Superior Court, 9 Cal. 4th 559, 577-578 (1995). Paragraph 10 is covered in the Declaration of Daniel Wright and is, therefore, cumulative.

With regard to tab 7, that same objection applies to paragraphs 2-6 of the Wright Declaration. However, in Paragraph 7, Attorney Wright notes that the May 10, 2011 letter from Dale Goldsmith, containing the Hirsch/Green Parking Study, was not available to the public until May 11 – one day *after* the PLUM Hearing was held and closed. This fact and this information could not have been presented to the PLUM Committee before the hearing; nor (given the nature of the City Council's determination of this matter without further hearing) could it have been presented in the exercise of reasonable diligence to the City Council. Accordingly, the Court grants the motion to augment the administrative record to include tab 7, paragraphs 1 and 7.

The Petitioner's motion to further augment the administrative record is granted. Although late, it requests that the court consider additional e-mails showing exactly when the Hirsch/Green parking study was provided to the City Planning staff and the timing of staff revisions to the developer's supplemental findings. As discussed above, these materials are relevant, existed at the time of the administrative proceeding and could not have been obtained and put into the record with the exercise of reasonable diligence. As before, these e-mails were never presented to the decision-makers in the matter or considered by them. They are, therefore, not protected by the deliberative process privilege.

Petitioner's requests for judicial notice of exhibits A-C are denied. While records of the Superior Court are ordinarily subject to judicial notice, these decisions involve a wholly different case. The unremarkable proposition *that different judges rule in different ways is not sufficiently relevant to allow these documents to be judicially* noticed. To be judicially noticed, the evidence must also be relevant. Evid. Code 350.

Respondents' and Real Party's joint request for judicial notice of Exhibit 1 is denied. Although selected portions of the California Natural Resources Agency's December 2009 Statement of Reasons for Regulatory action may constitute official acts of a public entity and otherwise no subject to dispute and capable of immediate and accurate determination, they are properly objected to as partial and irrelevant. The responses to comment, which makes up a substantial part of the Request for Judicial Notice, appears merely to be staff responses at a public hearing that were not adopted by any official act of the Natural Resources Agency's Board. Additionally, this partial document did not inform any aspect of the environmental review conducted by the City in this case.

The Court does, however, grant judicial notice of the City's Administrative Code (Exhibit 2), without deciding the issue of whether it is valid after the enactment of the new City Charter in 1999. The Court shall also take Judicial Notice of Exhibit 3, which is a portion of the LAMC.

retail development, for a total of 345. (AR 258, 315). As of the date of the PLUM Committee hearing, the Project had grown to include 176 condominiums and 7,200 square feet of ground floor retail uses – with the same number of parking spaces. (AR 2106).

On January 28, 2008, the City issued a notice of preparation of an Environmental Impact Report ("EIR") on the Project.[2] (Id.) In October 2009, the Draft EIR was completed. (AR 1724). In the summary of impacts prepared as part of the Draft EIR, the City noted that the proposed project would not meet the Planning Department's Residential Parking policy. (AR 315). Under that Policy, a condominium is required to have two spaces per unit, plus .5 spaces per unit for guest parking. (Id.) Using that model, the project would have 109 spaces less than required.[3] (Id.)

Although the applicant expressed "confidence" that it would have sufficient parking because the project would operate initially as an apartment building rather than a condominium, it was noted in the Draft EIR that the Project location was in a "parking congested area."[4] (Id.) The Draft EIR also noted that "the Project was targeted" to individuals and households attracted by walking and public transit. (Id). No additional mitigation measures were proposed. (Id.)

In a later portion of that same Draft EIR, however, the agency opined that "[g]iven the urban surroundings of the project, and the availability of public transit opportunities adjacent to and in close proximity to the site, the proposed amount of residential parking is anticipated to be adequate to meet the needs of the project. (AR 334). It was also noted that a recently approved project in the vicinity was required only to provide .25 guest spaces per unit, rather than the .5 spaces required by the Parking Authority Guidelines. Under this model, the Project would be only 65 "resident" spaces deficient. (Id.) Nonetheless, the applicant would request a waiver from the Planning Department's Residential Parking policy.[5] (Id.) And, to state the obvious, were the project to provide less parking than needed, it would result in a significant impact on parking. (AR 661). But, it might occasion a reduction in the significant and unavoidable traffic impacts at adjacent intersections during peak traffic time. (AR 754).

---

[2] The City's Initial Study identified inadequate parking capacity as a potentially significant impact of the Project which would be evaluated in an EIR. (AR 850-51). Respondent wishes to retract this admission based on a state agency's Statement of Reasons for Regulatory Action promulgated after the Draft EIR was prepared and circulated. The Natural Resources Agency's Statement did not inform the instant CEQA process, nor was it cited by or relied upon by the decision maker in this case. Accordingly, it is outside of the record and shall not be considered as part of this mandamus proceeding. Western States Petroleum, *supra*, 9 Cal. 4th at 577-578.

[3] In its current dimension, the Project's residential parking spaces are thirty percent below what is required by the Planning Department's Residential Parking policy for condominiums. (AR 2290).

[4] While the initial development might be rented as apartments, the developer requested a subdivision map that would allow the units to become condominiums in the future were the market demand for such units develop. (AR 1845). For a proper assessment of the Project's potential effects, therefore, the Project would be evaluated under the parking policy relating to condominiums. (AR 1846). The Real Party's effort to characterize the Project as "code compliant" by applying the apartment standard is wholly incorrect. (AR 4664)

[5] The Draft EIR assumed that the City's parking requirements applied to the proposed Project. (AR 685).

In a report dated September 2008, Hirsch/Green Transportation Consulting, Inc. made many of the claims contained in the Draft EIR. Because the Project was located in an urban neighborhood with proximate public transit, the expert assumed that it would not be necessary for residents to own and park two vehicles per unit. (AR 1488). In addition, the consultants assumed that the project could secure an exemption to allow .25 guest space model, as had been used at another near-by development.[6] (Id.) Without further analysis, the expert declared the parking for the Project to be adequate. (Id.)

A number of comments were submitted by interested persons in response to the Draft EIR. (AR 1828-1835). One commentator challenged the use of the .25 guest space model because the project for which that variance was provided had a surplus of parking for its retail component. (AR 1831). Such an assumption for this Project, however, would be improper as there was no retail parking surplus. (Id.) In reply, the agency made the same argument as was contained in the Draft EIR – this is an urban setting in which public transit would be available and, by implication, two cars per household would not be necessary. (AR 1846). Nothing is mentioned about surplus retail parking at the other location or the sufficiency of guest parking with a .25 per unit ratio. (Id.)

In June 2010, a Final EIR was prepared. (AR 1925). In the Final EIR, the City noted that the Project's parking spaces would fall well below the applicable recommended residential parking ratios. (AR 1811). In response, there were no mitigation measures required and the claimed impact of such parking shortages was deemed "less than significant." (Id). Again, the parking was presumed adequate because of the urban surroundings and the availability of public transit. (AR 1812). Once again, the EIR noted that the developer would apply to obtain a reduction in the required number of guest parking spaces, but noted that the Project would still fail to meet existing parking requirements. (AR 1812).

In August 2010, the City's Advisory Agency, which is responsible for subdivision map applications, and a hearing officer, conducted a joint public hearing on the project. (AR 2105-07). At that hearing, Petitioner and others made objections to the proposed Project. (AR 2029). Nevertheless, the Advisory Agency approved the tentative tract map, including a reduction in the parking required for the Project. (AR 3078-83). Petitioner timely appealed that decision to the Planning Commission.

In December 2010, the Planning Commission heard the appeal of the tentative tract map decision and the zoning entitlements sought by the Real Party. (AR 3195-96). Over expressed reservations regarding the adequacy of the parking in the building, the Commission adopted the EIR, approved the Project and denied Petitioner's appeals. (AR 2217, 2229, 3352, 3378, 3407-08, 3440, 3461, 3487). Petitioner timely appealed. (AR 3517-35, 3669-82).

---

[6]The Consulting Report is confusing on this point. At one point, the consultant's note that the City of Los Angeles' policy is to require additional guest parking at .5 spaces per unit and that this rule applied to this project. (AR 1486-87). At another point, they use .25 guest spaces per unit to conclude that "the proposed amount of residential parking is anticipated to be adequate to meet the needs of the project." (AR 1488). There is no discussion as to any similarity or dissimilarity of the other project's parking situation with those present in the proposed Project.

On April 7, 2011 – four months after the Planning Commission adopted the EIR and approved the project and five days before Petitioner appeal was to be heard by the PLUM Committee -- 6104 Hwd's land use consultant submitted a letter that was added to the City Council file for on line viewing. (Joint Answer ¶ 26). That letter urged the members of the Planning and Land Use Management (PLUM) Committee of the City Council to adopt "Supplemental Findings" provided by the Planning Department. (AR 4077-83). At that time, there were no "Supplemental Findings" in the City Council File. (Joint Answer ¶ 27).

On that same day, April 7, the developer's consultant submitted draft review supplemental findings to City Planner Jae Kim "for his independent review and consideration." (Joint Answer ¶ 32.)

On April 12, the PLUM Committee continued the meeting to approve the project and to consider Petitioner's appeal until May 10, 2011. (AR 2269-70).

During the brief continuance, Petitioner repeatedly checked the City Council's public file and inquired of City Council staff regarding the existence of such "supplemental findings." On May 5 or 6, City Planner Jae Kim acknowledged that the developer had provided the Planning Department with "courtesy" supplemental findings, but Kim stated that the City had no intention of submitting any such findings at the May 10 hearing. (Verified Petition at 34).

Nevertheless, Petitioner's representative traveled to City Hall the next day and obtained a copy of these "courtesy supplemental filings" (Id. ¶ 35). One document contained 139 single-spaced pages of "Findings," and another was 110 single-spaced pages of "Findings of Fact (CEQA)." Id. Three days before the hearing, therefore, Petitioner received for the first time over 200 pages of proposed "courtesy supplemental filings" what had been provided by the developer to the City almost a month earlier. And, these "supplemental findings" further referred to a "parking utilization study" that was not included in the materials. (Verified Petition ¶ 39).

Immediately before the PLUM Committee meeting commenced, City Planner Jae Kim handed Petitioner's representative a set of "revised findings" that would be presented to the PLUM Committee. (Joint Answer ¶ 39; AR 2105). The first document, entitled "Supplemental Findings," was 134 single-spaced pages. The other document, entitled "Findings of Fact (CEQA)" was 97 pages in length. (Id.; AR 27-257) The 295 page "parking utilization study" referred to in the findings was not included in these materials. (Augmented Record at Tab 7, ¶ 7; AR 2288).

Despite Petitioner's request for a two-week continuance in order to give Petitioner an opportunity to rebut these newly submitted findings, PLUM concluded the hearing and voted to adopt the EIR, approve the Project without modification and deny Petitioner's appeals.[7] (AR 2284-2288, 2325-2326).

[7] Although RPI argued that this meeting remained open for submission of additional materials after the vote had been taken, the decision/recommendation by PLUM had occurred. The courts have articulated (and CEQA Guidelines have restated) six separate policy grounds justifying the requirement that agencies seek and respond to comments: (1) "sharing expertise; (2) disclosing agency analysis; (3) checking for accuracy; (4) detecting omissions; (5) discovering public concerns; and (6) soliciting counterproposals. CEQA Guidelines § 15200. The process

One day after the PLUM hearing, the City Clerk made available in the City Council file the May 10, 2011 letter from Real Party's attorney and the March 2011 Hersch/Green parking study and other sources. (AR 4727-4790).

On May 17, 2011, the City Council certified the EIR and adopted the findings of the PLUM Committee and denied the Petitioner's appeal without further hearing. (AR 2331).

Petitioner filed the Instant writ on June 15, 2011.

Statement of Issues

Both Respondent and Petitioner have set forth the Statement of CEQA Issues pursuant to Public Code Section 21167.8(f). The court incorporates those statements as if fully set forth herein.

Standard of Review

In any action or proceeding . . . to attack, review, set aside, void or annul a determination, finding or decision of a public agency on the grounds of non-compliance with CEQA, the inquiry shall extend only to whether there was a prejudicial abuse of discretion. Abuse of discretion is established if the agency has not proceeded in a manner required by law, or if the determination or decision is not supported by substantial evidence." Madrigal v. City of Huntington Beach, 147 Cal. App. 4th 1375, 1381 (2007).

Substantial evidence is defined as "enough relevant evidence and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." 14 CCR § 15384(a). Substantial evidence, however, is not "argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate or evidence of social or economic impacts which do not constitute or are not caused by physical impacts . . . " 14 CCR § 15384(a).

In applying the substantial evidence standard, "the reviewing court must resolve reasonable doubts in favor of the administrative finding and decision." Topanga Ass'n for a Scenic Community v. County of Los Angeles, 11 Cal. 3d 506, 514 (1974). However, a clearly inadequate or unsupported study is entitled to no judicial deference. Berkeley Keep Jets Over the Bay Comm. v. Board of Port Comm'rs., 91 Cal. App. 4th 1344, 1355 (2001).

Persons challenging an EIR bear the burden of proving that it is legally inadequate and that the agency abused its discretion in certifying it. Cherry Valley Pass Acres and Neighbors v. City of Beaumont, 190 Cal. App. 4th 316, 327-28 (2010).

---

employed in this case effectively negated the benefits of meaningful public participation. CEQA's policy of inviting effective public participation was wholly derailed by the process adopted by the City in this case.

Analysis

Petitioner asserts a number of different arguments in support of its claim that the Respondent abused its discretion under CEQA and that it violated due process by denying Petitioner a fair hearing. Considering those two arguments separately:

1. The City Failed to Proceed in a Manner Required by CEQA

In lawsuits challenging agency decisions for alleged non-compliance with CEQA, the Court "can and must . . . scrupulously enforce all legislatively mandates CEQA requirements." Citizens of Goleta Valley v. Board of Supervisors, 52 Cal. 3d 553, 564 (1990). One of those legislatively mandated requirements requires that the public be allowed to participate in the CEQA process. Ocean View Estates Homeowners Assn., Inc. v. Montecito Water Dist., 116 Cal. App. 4th 396, 400 (2004)("[e]nvironmental review derives its vitality from public participation.") Comments from the public "are an integral part of the [final] EIR." Sutter Sensible Planning, Inc. v. Board of Supervisors, 122 Cal. App. 3d 813, 820 (1981).

> The purpose of requiring public review is to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action. Public review permits accountability and informed self-government . . . . Public review ensures that appropriate alternatives and mitigation measures are considered, and permits input from agencies with expertise. . . . Thus, public review provides the dual purpose of bolstering the public's confidence in the agency's decision and proving the agency with information from a variety of experts and sources.

Schoen v. Department of Forestry & Fire Protection, 58 Cal. App. 4th 556, 573-74 (1997).

Consistent with this interest in ensuring meaningful public participation, the law also requires that, if subsequent to the commencement of public review, but prior to final EIR certification, the lead agency adds "significant new information to an EIR, the agency must issue new notice and re-circulate the revised EIR or portions thereof, for additional commentary and consultation." Pub. Res. Code § 21092.1; CEQA Guidelines § 150885.5; Laurel Heights Improvement Assn. v. Regents of the University of California ("Laurel Heights II), 6 Cal. 4th 1112 (1993). The revised environmental document must be subjected to the "same critical evaluation that occurs in the draft stage," so that the public is not denied "an opportunity to test, assess, and evaluate the data and make an informed judgment as to the validity of the conclusions to be drawn therefrom." Sutter Sensible Planning, Inc. v. Board of Supervisors, 122 Cal. App. 3d 813, 822 (1981). Recirculation of an EIR requires notice pursuant to Section 15088.5, subd. (d).[8]

In this case, the PLUM Committee relied extensively upon the Hirsch/Green Transportation Consulting, Inc.'s March 28, 2011 parking "study" as "substantial evidence" to support its

[8]This issue has been exhausted administratively. (AR 4157).

findings that the Project would not result in a substantial adverse impact because the proposed parking spaces were sufficient to meet the needs of the residents.[9] (AR 75-76).

Petitioner asserts that this study constitutes "significant new information" as defined in the Guidelines and under relevant case law. CEQA Guidelines 15088.5; Pub. Res. Code section 21092.1. Specifically, "new information added to an EIR is "significant" if the EIR is changed in a way that deprives the public of a *meaningful opportunity to comment* upon a substantial adverse environmental effect of the project. Id. For example, where a draft EIR is so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded, significant new information that may constitute substantial evidence requires recirculation in order to ensure meaningful public review. CEQA Guidelines Section 15088.5, subd. a (4); Mountain Lion Coalition v. Fish and Game Commission, 214 Cal. App. 3d 1043 (1989).

Respondent and Real Party assert that the new parking study did not require recirculation because it only clarified, amplified or made insignificant changes to an adequate EIR.[10] See

---

[9]The Court does not reach, nor does it decide, whether the March 28, 2011 Hirsch/Green study constitutes substantial evidence to support a finding that the number of parking spaces proposed for the Project are sufficient to meet both resident only and residential guest parking. This material was added to the record without a sufficient time for the public to consider and question its contents. Looking at it more carefully, however, may reveal its defects. First, the projects relied upon by the expert are not particularly good proxies to the Hollywood/Gower Project. The 2001 Kaku study focused on both apartments and condominiums in Long Beach, Santa Monica and San Diego. It is unclear whether any of the locations studied were in the severely parking-scarce adjacent neighborhood as is true in this case. (AR 4740- 4766). Nor can it be determined whether these studies considered "luxury projects"—such as this one -- where residents are more likely to retain their cars and drive in higher numbers than the general public. (AR 94, 106). As for the "Shared Parking" book, it provides only "a systematic way to apply" adjustments to parking ratios, but then states that "a poorly designed site for shared parking often cannot be significantly improved, and more spaces may ultimately have to be added." (AR 4777). The City of Los Angeles, obviously with access to such treatises, has decided in the Advisory Agency's Residential Parking Policy No. AA 2000-1, issued May 24, 2000. That Policy requires new residential condominiums to provide 2 parking spaces per dwelling unit plus .5 guest spaces per dwelling unit in light of the unique and particular car-centric nature of Los Angeles. That academics or consultants suggest a change in that policy is not substantial evidence that the Project in this case will provide sufficient parking without occasioning an overflow into the surrounding neighborhood. The third "study" upon which the March 28 "study is based involves high-rise apartments, not condominiums. (AR 4787-88). Finally, the chart showing the developers other projects is immaterial to the question of whether the current parking ratio is sufficient to meet demand. (AR 75, 4790). See Berkeley Keep Jets Over the Bay Comm. V. Board of Port Comm'rs, 91 Cal. App. 4th 1344, 1355 (2001)(a clearly inadequate or unsupported study is entitled to no judicial deference); Laurel Heights Improvement Assn. v. Regents of the University of California, 47 Cal. 3d 376, 404-09 (1988)(findings must be adequate, complete and not based on erroneous calculations or misinterpretations of the studies they rely upon.)

The Court, however, rejects RPI's claim at oral argument that this study was simply composed of already published information and that it added no new information for public review. The record shows that the March 28, 2011 report was neither a summary nor simply a regurgitation of existing reports/studies already in the record. (AR 56, 4681).

[10] Respondent and Real Party also appear to argue that under the most recent CEQA Guidelines, a project's inadequate parking capacity is not considered an adverse environmental impact. Whatever recent changes have taken place in the Guidelines, those do not affect this case. The NOP in this case was published at a time when parking capacity was considered an adverse environmental effect. (AR 850-51). The initial study acknowledged

California Oak Foundation v. Regents of the University of California, 188 Cal. App. 4th 227, 266 (2010). CEQA Guidelines Section 15088.5, subd. b. An agency's decision not to recirculate an EIR must be supported by substantial evidence in the administrative record. CEQA Guidelines Section 15088.5, subd. (e).

The agency's decision not to recirculate the Draft EIR in this instance is not supported by substantial evidence in the administrative record. The March 28, 2011 parking study – no matter how flawed – was a monumental improvement from what was presented in the Draft EIR. The Draft EIR contained only unsubstantiated opinions and conclusory statements that allowing a Project with parking spaces below the City's policy requirements would not cause any significant impacts. (AR 315-16, 685-86, 1486-88). For example, the Draft EIR notes that the "project applicant is confident that the amount of proposed parking would meet the needs of the proposed project." (AR 315). Developer "confidence" does not constitute substantial evidence to support a fact. Nor can it be fairly argued that parking ratios for "apartments" should be used, as the Project is clearly one for condominiums.[11] Finally, while the Draft EIR notes that the Project is "targeted to individuals attracted by the location," and that there are "public transit opportunities available within the project vicinity," fails to bridge the analytic gap. That some residents may like to walk around the area or that there are public transit stops nearby does not explain how the construction of a project with 109 too few parking spaces will not occasion inadequate parking for residents and their guests. Unless and until objective evidence is posited showing that occasional use of public transit or preference for walkable neighborhoods obviates the need of high-wage earners to own and park a car at one's residence, the link between these facts and the conclusion for which they are posited has not been established. In fact, the substantial evidence in the record is to the contrary. (AR 106)(Planning Commissioner Epstein's contrary opinions based on experience).

Moreover, authorizing a departure from existing parking requirements – the recommendation made by PLUM with regard to the Project – will have a substantial adverse environmental effect. While any new information does not trigger re-circulation, section 21092.1 requires an agency to provide the public with "new information" that was a substantial change/improvement on the

---

such an effect. The City is bound by the legal framework it has proceeded under. Gentry v. City of Murietta, 36 Cal. App. 4th 1359, 1404-05 (1995).

Moreover, under the new CEQA Guidelines Appendix Checklist, inadequate parking capacity can still be considered an adverse environmental impact if the project would "conflict with an applicable plan or policy . . . establishing measures of effectiveness for the performance of the circulation system." Without any discussion in this record that the circulation system of Hollywood is sufficiently robust to withstand untold numbers of new residents and their guests cruising for non-existent street parking, the Respondents' claim that the Project's variance from City-established parking ratios cannot cause an adverse environmental effect is unsupported by substantial evidence.

[11] Although the Real Party repeatedly refers to the City's parking requirement for apartments, this project was a condominium project. Further, while there is some discussion about the Paseo Plaza project as a "proxy" to demonstrate that the parking spaces in the Project are not insufficient, that building only reduced the ratio of guest parking spaces from .5 per unit to .25 per unit because in that instance, as noted by a speaker at the public hearing, there were surplus retail parking spaces. That project is not sufficiently similar to the Hollywood/Gower project to support a finding that the reduced parking spaces at the Project were "consistent with other high-rise mixed use buildings in the Central Hollywood area."

previously provided information. See also CEQA Guidelines sections 15162 and 15163. Where, as here, the March 2011 Hersch/Green parking study made a significant modification to an otherwise inadequate EIR, recirculation is required. Laurel Heights II, 6 Cal. 4th 1112, 1121-22 (1993).

Without having an opportunity to review the new traffic study evidence – which is the only evidence to support the EIR's finding of no significant environmental impacts – the public was deprived of its right to fulfill its proper role in the CEQA process. See Laurel Heights Improvement Assn. v. Regents of the University of California, 47 Cal. 3d 376, 404-05 (1988).

By failing to recirculate for public comment, Respondent's approval of the EIR failed to comport with the law under CEQA and, therefore, constitutes an abuse of discretion.

For that reason and on that ground, the Writ is granted.

2. "Fair Hearing" Claims

While the Court initially declined to reach the question of whether the process afforded by the Respondent in this case was constitutionally deficient, it shall do so here.

While a court must give substantial deference to the *good faith judgment* of an agency that its procedures afforded fair consideration of a party's claims, that deference is not unlimited. A local agency's adjudicatory decisions must be made pursuant to principles of due process. Horn v. County of Ventura, 24 Cal. 3d 605, 610 (1979).

In this case, the first time that Petitioner even *heard* that a March 29, 2011 report compiling parking utilization at a total of 18 residential developments in the Southern California region and supplemented by recommendations provided by the Urban Land Institute and the Institute of Transportation Engineers would be relied upon as substantial evidence that the parking ratio provided by the applicant would be sufficient to meet demand was provided one business day before the PLUM hearing. (AR 5243, 5293, 5380). This late disclosure was compounded by the fact that the City Planner had repeatedly reassured Petitioner's representative that no additional evidence would be submitted. (AR 22-23, 26-27). The first time that the petitioner was able to *see* the evidence in the new parking study was on May 11, 2011, the day after the PLUM Committee held the hearing on this Project. (AR 4663-4790). This parking study is the only substantial evidence cited in the revised findings adopted by the PLUM Committee that the reduction in parking proposed for this Project would not result in overflow parking impacts in the adjacent neighborhood. (AR 75-77, 199-201).

And, while the City contends that its deprivation of notice and opportunity to Petitioners was "cured" at the City Council, that claim is simply incorrect. The parking study upon which the PLUM Commission relied was made public one day after the matter was referred to the full City Council. (AR 4124, 4734-4790). There was no hearing at the next level; the only "hearing" at

which Petitioner could have proffered "rebuttal" was at the PLUM Commission hearing.[12] (AR 2328-2332, 4124).

While there is no express statute that affords Petitioner the right to have notice and an opportunity to be heard, the doctrine of due process applies to land use administrative hearings of the type at issue here. Mohlief v. Robert Janovici, 51 Cal. App. 4th 267, 302 (1996)(standards regarding adequacy of due process apply at administrative hearings). The deprivation of process in this case – of a basic right to have before it the information upon which the administrative decision rests and an opportunity to be heard as to the competency or adequacy of that information – is patent.[13] The City put more than 200 pages of new findings that relied upon a new planning book not generally available to the public on short notice and the undisclosed 56-page Hirsch/Green Parking Report into the record less than one business day before the hearing on this matter. Having deprived the Petitioner and the public a reasonable advance opportunity to review the new findings and the new evidence cited in support of these findings, the City failed to afford Petitioner a fair hearing in this case. See Clark v. City of Hermosa Beach, 48 Cal. App. 4th 1152, 1171-72 (1996)("A hearing requires that the party be apprised of the evidence against him so that he may have an opportunity to refute, test and explain it.")

As the PLUM Commission's approvals of the Project violated the due process requirements of a fair hearing, the Writ is granted on this ground as well.

Conclusion

For the reasons stated above, the Court grants the Writ of Mandate.

Counsel for Petitioner is to submit to this Department a proposed judgment and a proposed writ within 10 days with a proof of service showing that copies were served on Respondent by hand delivery or fax. The Court will hold these documents for ten days before signing and filing the judgment and causing the clerk to issue the writ.

The administrative record is ordered returned to the party who lodged it to be preserved without alteration until a final judgment is rendered and to forward it to the Court of Appeal in the event of appeal.

DATED: JULY 23, 2012

ANN I. JONES

ANN I. JONES, JUDGE OF THE SUPERIOR COURT

---

[12] Both RPI and the City sought to assert that the PLUM Committee decision was only a recommendation, not a decision. Constitutionally, the one who "decides, must hear" Vollstedt v. City of Stockton, 220 Cal. App. 3d 265, 274-75 (1990). If the actual decision-maker was the City Council, it decided the issue without hearing any testimony, much less rebuttal experts. Although Petitioner and its counsel submitted speaker cards at the City Council meeting on the project, no testimony was allowed. (AR 5039-41, 2330, 2340-43).

[13] The Petitioner has a property interest sufficient to allow its due process claim to be heard. An neighborhood adversely affected by a proposed development has a deprivation substantial enough to require procedural due process protection. Cf. Horn v. County of Ventura, 24 Cal. 3d 605, 615 (1979).

PROOF OF SRVICE

I, ESTHER KORNFELD, declare:

I am a resident of the state of California and over the age of eighteen years, and not a party to the within action; my business address is The Silverstein Law Firm, 215 North Marengo Ave, Third Floor, Pasadena, California 91101-1504. On August 1, 2012, I served the within document(s):

[PROPOSED] JUDGMENT GRANTING PEREMPTORY WRIT OF MANDATE AND DECLARATORY INJUNCTIVE RELIEF

☒ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below.

☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Pasadena, California addressed as set forth below.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

CASE NAME:	**LA MIRADA AVENUE NEIGHBORHOOD ASSOCIATION OF HOLLYWOOD v. CITY OF LOS ANGELES, ET AL.**
CASE No.:	**BS132533**

Carmen A. Trutanich, City Attorney
Timothy McWilliams, Esq.
Adrienne Khorasanee, Esq.
Los Angeles City Attorney's Office
200 North Main Street
City Hall East, Room 701
Los Angeles, CA 90012
Fax No.: (213) 978-8214

Howard Weinberg, Esq.
R.J. Comer, Esq.
Armbruster Goldsmith & Delvac LLP
11611 San Vicente Boulevard
Suite 900
Los Angeles, CA 90049
Fax No.: (310) 209-8801

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on August 1, 2012, at Pasadena, California.

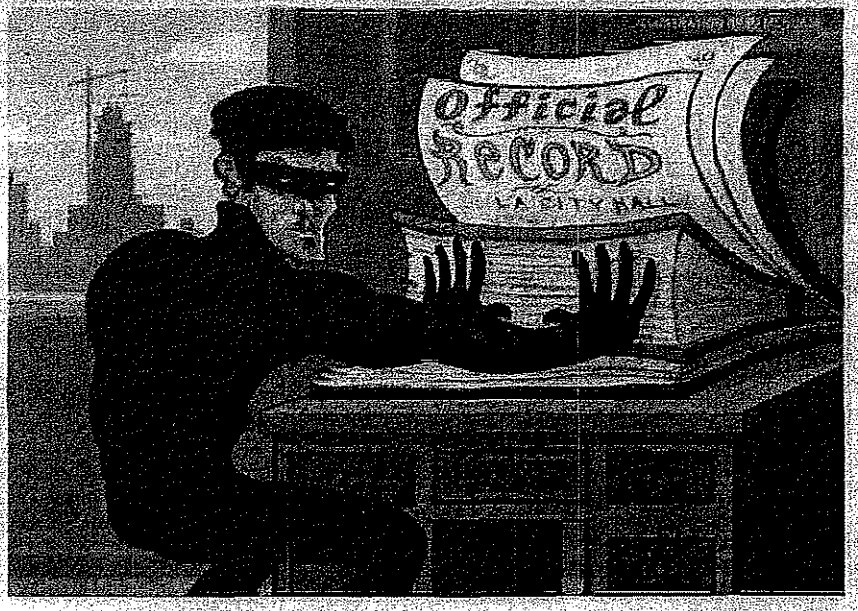
Esther Kornfeld
ESTHER KORNFELD

THE SILVERSTEIN LAW FIRM, APC
215 North Marengo Avenue, 3rd Floor
Pasadena, CA 91101-1504

L.A. ILLEGALLY DEFILES DUE PROCESS

How residents detected the phony findings put forth by City Hall — and halted a skyscraper at Hollywood and Gower

BY JILL STEWART



In May 2011, at a final public hearing over whether to approve the tallest skyscraper in Hollywood history, the Department of Planning unveiled 231 pages of surprise "supplemental findings" backing the developer's plan.

The 200,000-word, book-length document gave the L.A. City Council's Planning and Land Use Management committee an added boldness. Its chairman, City Councilman Ed Reyes, refused to let a member of the public rebut the developer, Hanover Company. Then the committee quickly approved the Hollywood/Gower Project.

Reyes should have let the man speak.

An environmental attorney from the Silverstein Law Firm, Daniel Wright knew the Department of Planning hadn't written the 231-page "supplemental findings." Doug Haines, a representative of the firm's client, the La Mirada Avenue Neighborhood Association of Hollywood, had discovered that the developer wrote the entire tome.

Wright had minutes earlier warned the land-use committee that the key study repeatedly referred to in the "findings" — the parking study claiming that the development would need 30 percent less parking than the city generally requires — wasn't even included in the 200,000 words and was never seen by the public.

The Hirsch/Green Parking Study, it turned out, was merely an "exhibit" attached to a letter from the developer's lobbying firm, in a pile of papers submitted at the hearing itself. Later, emails showed that city planners likely never read the study: Just before the hearing, planner Jim Tokunaga couldn't open the developer's attachment.

The land-use committee, known as PLUM, approved the skyscraper, along with the developer's request for reduced parking, in parking-challenged Hollywood.

"We were asking city officials, 'Where is the parking study that's being voted on? Where is it?'" Wright says. "But no member of the public could see it — until it was posted the next day on the City Council website."

Later, the City Council rubber-stamped the committee's approval without allowing public comment — ending a supposedly public process in which the public was prevented from considering and debating the key issues.

The legal wrongdoing by City Hall resulted in an uncommon finding in July by Los Angeles Superior Court Judge Ann I. Jones: that the City Council and city had violated the "due process" rights of the Hollywood community. (Jones also found that L.A. violated the California Environmental Quality Act.)

"We alleged the city engaged in misconduct, lied to members of the public and suppressed information in an effort to conceal critical material from the public," explains Robert P. Silverstein, the lead attorney. "So we won on our constitutional challenge — which is extremely rare."

On Aug. 13, Jones affirmed her initial ruling, rejecting objections filed by the developer and City Attorney Carmen Trutanich. She ordered not just a redo of the areas obfuscated by city officials, such as parking shortages, but also an entirely new Environmental Impact Report.

R.J. Comer, attorney for the project's investors, said they are considering all options. The City Attorney's office had no comment.

But Wright responds, "They're so caught with their hands in the cookie jar, we do not see an appeal."

Silverstein persuaded Jones to enter into evidence disturbing emails showing city officials readying the developer's "findings" in support of the project as the city's own.

Environmental attorneys consulted by the *L.A. Weekly* say they cannot recall such a courtroom slap-down. Although this was a lower court, only a few appellate cases have been reported involving municipalities guilty of violating due process.

Attorney Noel Weiss, who has won suits against L.A., says, "It's because they are running a kangaroo court. The City Council and its PLUM committee don't read the planning documents before them, which often aren't written by the planners they pay. It's lawless, and nobody has been shutting it down. Judge Jones is stepping on a lot of powerful toes by being so courageous against big L.A. powers. I very much admire her for doing it."

Although one Hollywood neighborhood council dominated by business interests backs the high-rise, the other four Hollywood-area neighborhood councils do not. Many residents are angry that it would tower 270 feet over a low-slung historic community. The first three stories were to be parking, topped by 17 stories of condos or high-end rentals — squeezed onto a cramped lot whose zoning restrictions prohibit skyscrapers.

Labor lawyer David Bell, president of the East Hollywood Neighborhood Council, argues that while the City Council granted the developer many "entitlements" — zone changes and billboard ads to help provide a more robust bottom line — the council was simultaneously degrading a protected skyline that has made the Hollywood Hills and its landmark sign among the most-recognized sights anywhere.

"This isn't Tarzana or Century City," Bell says. "Hollywood is a global cultural asset that belongs to the community and world, being trampled upon for 176 luxury apartments. It isn't right."

The most controversial "entitlement" allowed investors to provide far less parking than required. (The developer claims, among possible mitigations, that the well-to-do residents will choose to use buses and subways.) Another "entitlement" lets the developer embed a huge digital billboard into the building's side, visible from great distances and, Haines says, taller than the W Hotel nearby.

Maybe the ghost of Hollywood

14 »

»13) historic preservationist Robert Nudelman, who abhorred City Councilman Eric Garcetti's dream of skyscrapers and billboards in Hollywood, caught wind of what was unfolding. One day, Haines, who greatly admired Nudelman, noticed in the public record an odd term — "supplemental findings" — mentioned in a letter from the developer's consultant written to City Hall.

"I called city planner Jae Kim and said, 'Hey, this isn't supposed to be a game of hide-and-seek. Where are these supplemental findings?'"

As it emerged at trial, Kim then provided Haines with the "findings," assuring him three times that City Planning had no intention of submitting the developers' submission to the council committee.

But Haines was uneasy. He pored over the 200,000 words, and then he and attorney Wright attended the committee hearing. Then they watched, stunned, as Jae Kim himself delivered the findings as the city's own.

La Mirada Avenue Neighborhood Association's legal team showed in court that Kim's superior, senior planner Jim Tokunaga, exchanged emails with Kim before the hearing, explaining that they would do a quick edit of the developer's work. The new version was 20 pages shorter, with some sections tweaked.

Key city officials have refused to comment on who (or what) compelled Kim and Tokunaga to proceed. And no city officials involved would comment on why the Hirsch/Green Parking Study was kept secret from the public and added to the city website only after the skyscraper was approved.

City planner Michael LoGrande, Kim's and Tokunaga's boss, refused to comment, saying the project still faces litigation. Ken Bernstein, a principal city planner, returned the *Weekly*'s call to LoGrande but did not know any details. Kim and Tokunaga did not return calls seeking comment.

Garcetti's office, which led the cheers for the Hollywood/Gower skyscraper and wants more high-rise towers in Hollywood, said it did not know the Department of Planning had claimed the fat "supplemental findings" from the developer as its own. Julie Wong, a top aide to Garcetti, said she didn't know if LoGrande had launched an investigation and was surprised to learn that LoGrande was not commenting.

City Attorney's spokesman Frank Mateljan could not comment as to whether those involved in violating the due process of the Hollywood community will be investigated.

However, former city planning commissioner Mike Woo, who stepped down in mid-July, said an investigation would not be unheard of.

In an email, Woo explained that when a judge finds that L.A. acted illegally, "The City Attorney routinely reports back to the decision-making bodies (in this case, the City Planning Commission and the City Council) about the outcome of the lawsuit and recommends a course of action. In theory, this can include the kind of investigation or reprimand" the *Weekly* queried Woo about.

Silverstein isn't holding his breath. If the skyscraper is ever built, he says, "Its big billboard should say, 'Don't violate our constitutional rights.'"

Reach the writer at jstewart@laweekly.com.