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August 17,2021

MEMBERS OF THE LOS ANGELES
CITY COUNCIL PLUM COMMITTEE **Via Email**
Los Angeles City Hall
200 North Spring Street
Los Angeles, California 90012

RE: *COUNCIL FILE NOS. 19-1389-S1*
VTT-82654-2A

PROJECT SITE: 4629-4651 West Maubert Avenue

Dear Councilmembers:

I write on behalf of tenant David Kirby, teacher and musician Susan Winsberg, and "The Responsible Urban Initiative" in support of the appeal of the proposed "VTT" (Vested Tentative Tract Map) No. 82654-2A. The appeal should be granted for the reasons stated in the appeal (which is not made part of the council file)[1] and for the reasons stated below.

a. The proposed VTT cannot be deemed consistent with the City's zoning laws and general plan when the entire proposed VTT is premised on the legal validity of the TOC law, where the TOC law is itself legally infirm both as enacted and as applied to this project.

[1] How can this Council, sitting in a quasi-judicial capacity possibly render a ruling on the appeal when the council file does not even contain a full copy of the appeal? This omission is a denial of substantive and procedural due process. As quasi-judges, a fair determination cannot be rendered by the Council in the absence of the full file. The public is likewise prejudiced because the public needs the opportunity to review the substance of the appeals so as to meaningfully comment on them. For this reason alone, the appeal should be granted.

The legality of the proposed VTT map is keyed to whether the map as proposed is consistent with the City's zoning laws and the development standards incorporated into the City's zoning laws.

The VTT is not consistent with the City's zoning laws because its legality depends on the application of the "TOC" law (Transit Oriented Communities Affordable Housing Program) passed by the voters as an *Ordinance* (LAMC §12.32(A)(31).[2]

The "guidelines" approved by the City Planning Commission were never approved by the City Council. As "guidelines", they can ***supplement*** the City's zoning laws and the development standards incorporated in the City's zoning laws; but such guidelines cannot ***supplant*** the City's zoning laws and development standards. The only way to validate the TOC "guidelines" is to amend the Charter. This was not done by the voters when the TOC law was passed.

For example, Charter §555, and its implementing ordinance, LAMC §11.5.6 (general plan) and LAMC §11.5.7 (as to specific plans) controls the process and protocol attendant to *general plan amendments*. Charter Section §558 and its implementing ordinance LAMC §12.32 controls the protocol attendant to the effectuation of *zone changes*. Charter §563 and it implementing ordinance LAMC §12.24 sets out the protocol attendant to the grant of *conditional use permits.*

None of these Charter provisions were followed here. As an *Ordinance*, the TOC law is subject to the Charter; it does ***not*** supplant the Charter. If the TOC law was consistent with the Charter, or if a Charter amendment had passed incorporating the provisions of the TOC law, then these massive density increases and grossly disproportionate zoning development standards would be permissible. In the absence of a charter amendment, however, for the underlying entitlements upon which the proposed VTT is based to be lawful, a zone change or variance, general plan amendment, and conditional use permit are required to build out the

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[2] Because the TOC *Ordinance* is inconsistent with the Charter, it is void ab initio. *Lesher Communications vs. the City of Walnut* (1990) 52 Cal. 3d 531 (voter passed initiative ordinance effectuating de facto zoning changes which otherwise conflict with a City's general plan is void *ab initio*). By application of the same logic, any ordinance which conflicts with the City's charter is void *ab initio*. The TOC Ordinance conflicts with the City Charter because, as applied to this Maubert project, it creates changes to the City's zoning law and zoning development standards which are inconsistent with the Charter.

development contemplated by the VTT (which is a merger of lot-lines into one consolidated lot to accommodate the building envelope and building foot-print).

This was not done in this case. No such land use entitlement application invoking the protocols mandated by the Charter was made by the developer. So the VTT cannot be approved because it is inconsistent with the current zoning law and development standards ***as laid out in the Charter***.

b. Even assuming the TOC law is legal, its provisions were not followed in this instance because the applicant/developer was granted four incentives when the TOC law allows for a maximum of three incentives. The fourth phantom incentive granted was for height.

The developer/applicant was granted an 80% density bonus increase (itself not contemplated by either the state density bonus law or the City's implementation of the same), and four bonus *incentives* (even though the applicant only applied for and was "officially" granted three *incentives* (all of which are "*off-menu*" incentives requiring the submittal of an economic pro-forma justifying the need for the incentives as per LAMC §12.22(A)(25)((g)((3) – Spoiler alert! No economic pro-forma was submitted in support of the application. This renders the TOC approval a legal nullity and the VTT cannot be approved when it is solely supported by a TOC law which contravenes the charter; and in any event was not followed in this case).

The fourth phantom incentive is a *height incentive* to go from 75' to 108' which is "off-menu" because it exceeds the 11' maximum height increase allowed in the "on-menu" height category set out in LAMC §12.22(A)(25)(f)(5) (the City's density bonus implementation ordinance which is incorporated into the TOC law and upon which the underlying land use entitlements supporting the proposed VTT are based). The other three *incentives* sought and granted were and are:

Base Incentives Sought to implement Density Bonus Grant:

1. 45% increase in ***Floor Area Ration*** (FAR) (**off-menu** incentive because it exceeds the 35% on-menu incentive allowable increase);

2. No residential ***parking*** (***off-Menu*** Item because City law implementing the state Density Bonus Law (LAMC §12.22(A)(25) there be at least some parking in the proposed development); and

Additional Incentive:

3. 25% ***reduction*** in the overall usable ***open space*** requirement (***off-menu*** incentive because it exceeds the 25% maximum allowed for an "on-menu" incentive)

The maximum number of incentives allowable under the TOC law are three (3) as per LAMC §12.22(A)(31)(b)(2)(iii). That section reads as follows:

"Incentives and Concessions. An eligible housing development may be granted up to either two or three incentives or concessions based upon the requirements set forth in California Government Code §65915(d)(2)."

This fact was hidden behind the generic statement in the conditions that the height of the project "shall comply with the underlying zone height provisions of the R-4-1 zone." That height limit is 75 feet (as noted in the "Zoning Code Analysis" set out on the "Title Sheet" of the approved plans (screen-shot below).

In short, no analysis or factual finding exists supporting this increase in Height (ostensibly premised on the application of the TOC law (which, as noted herein, because it is inconsistent with the Charter is void ab initio).[3]

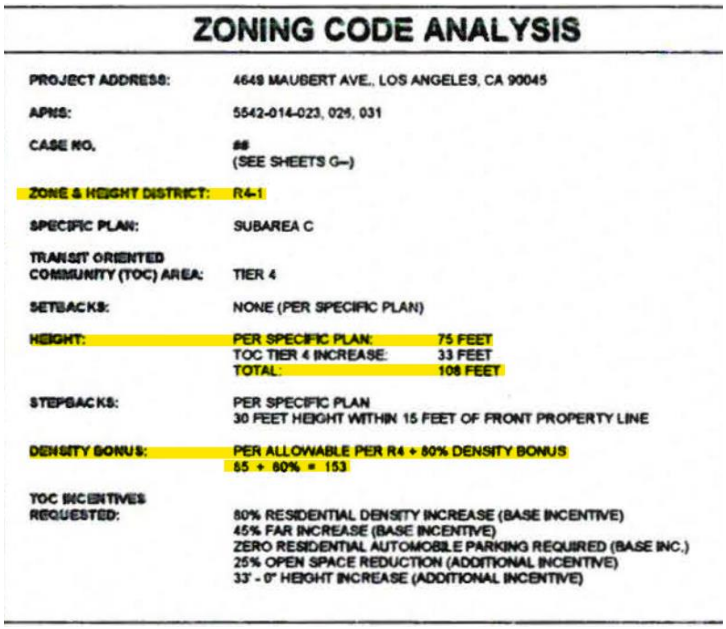
c. There is an inconsistency between the height limit on the proposed tract map and the height set out in the plans (108'). This inconsistency renders the proposed VTT legally infirm.

The insistency which exists between that the proposed VTT references as the maximum allowable height (85') and what the proposed height is under the plans as approved by the Planning Commission (108') is reflected in the screen-shots of

[3] As also noted herein, there is in any event, an inconsistency between what is set out on the proposed VTT Map (height not to exceed 85') and what is contemplated by the plans (height = 108'). That inconsistency alone precludes approval of this proposed VTT until lawfully reconciled.

the relevant portion of the two documents reproduced below. Until this inconsistency is reconciled, the VTT cannot be approved.

Height Contemplated by the plans approved by the CPC: 108 Feet (applying the TOC law. . . even though no formal height increase under the TOC was approved based on Planning's determination that "a height incentive is not necessary for the proposed project [because] sub-area C of the SNAP is silent on 100% residential buildings regarding height. ..and the underlying zone of R4-1 has no height limit."[4]



ZONING CODE ANALYSIS

PROJECT ADDRESS:	4649 MAUBERT AVE., LOS ANGELES, CA 90045	
APNS:	5542-014-023, 026, 031	
CASE NO.	## (SEE SHEETS G--)	
ZONE & HEIGHT DISTRICT:	R4-1	
SPECIFIC PLAN:	SUBAREA C	
TRANSIT ORIENTED COMMUNITY (TOC) AREA:	TIER 4	
SETBACKS:	NONE (PER SPECIFIC PLAN)	
HEIGHT:	PER SPECIFIC PLAN: TOC TIER 4 INCREASE: TOTAL:	75 FEET 33 FEET 108 FEET
STEPBACKS:	PER SPECIFIC PLAN 30 FEET HEIGHT WITHIN 15 FEET OF FRONT PROPERTY LINE	
DENSITY BONUS:	PER ALLOWABLE PER R4 + 80% DENSITY BONUS 85 + 80% = 153	
TOC INCENTIVES REQUESTED:	80% RESIDENTIAL DENSITY INCREASE (BASE INCENTIVE) 45% FAR INCREASE (BASE INCENTIVE) ZERO RESIDENTIAL AUTOMOBILE PARKING REQUIRED (BASE INC.) 25% OPEN SPACE REDUCTION (ADDITIONAL INCENTIVE) 33' - 0" HEIGHT INCREASE (ADDITIONAL INCENTIVE)	

[4] This conclusion that there is no height limit is contradicted by the applicat' own submission set out in the above screen shot where it is noted that under the Vermont/Western Specific Plan, the height limit is 75'. The Planning Department's position is that the specific plan is silent on the height limit where the building is 100% "residential" ("residential" is not defined). Were this developer or a successor-in-interest to change the use from an "apartment" use to a "co-living" (residential) use where bedrooms and beds are rented out separately (with exclusive-use rights), but use of common living areas (kitchen, living room, patios, and some bathrooms) are non-exclusive (similar to an "adult dorm"), the use of the residential space as "dwelling units" (as a traditional "apartment") would morph into a commercial use as an "apartment hotel" (assuming the number of "guest rooms" created exceeded six), putting the owner at risk of violating the building permit. So for the VTT to remain consistent with the zoning code, there needs to be a ***mandated, clear written prohibition*** against changing the use of the project from traditional apartments into a "co-living" "Apartment Hotel" that runs with the land.

Here is the height limitation as per the proposed VTT. Note the reference to the fact that under the proposed VTT, the building height is "not to exceed 85'). The obvious inconsistency between the proposed VTT and what is in the plans must be reconciled before the VTT can be approved, regardless of the legal efficacy of any other contention.

GENERAL MAP NOTES

1. A.P.N. 5542-014-023, 5542-014-026, 5542-014-031
2. EXISTING ZONING: R4-1
   PROPOSED ZONING: NO CHANGE
3. COMMUNITY REDEVELOPMENT AREA: NONE
4. EXISTING LAND USE DESIGNATION: COMMUNITY COMMERCIAL
   PROPOSED LAND USE DESIGNATION: COMMUNITY COMMERCIAL
5. DISTRICT MAP: 147B197
6. FLOOD HAZARD ZONE: NO
7. HILLSIDE GRADING AREA: NO BUT WITHIN SPECIAL GRADING AREA
8. HILLSIDE ORDINANCE AREA: NO
9. COMMUNITY PLAN: HOLLYWOOD
10. GENERAL PLAN DESIGNATION: EXISTING - COMMUNITY COMMERCIAL,
    PROPOSED - NO CHANGE
11. NO OAK TREES, WESTERN SYCAMORE, CALIFORNIA BAY, AND/OR CALIFORNI
    BLACK WALNUT ON-SITE
12. PROJECT IS NOT IN A METHANE ZONE
13. ADJACENT LAND USE: COMMUNITY COMMERCIAL & RESIDENTIAL
14. TOTAL NUMBER OF RESIDENTIAL DWELLING UNITS: 153 MAX
15. PROPOSED TOTAL FLOOR AREA: APPROXIMATELY 143,785 SF (FAR)
16. PROPOSED BUILDING HEIGHTS: NOT TO EXCEED 85'-0"
17. ALL PUBLIC UTILITIES ARE AVAILABLE WITHIN PUBLIC AND PRIVATE STREETS
    ADJACENT TO SUBDIVISION
18. THERE ARE NO KNOWN POTENTIALLY DANGEROUS AREAS AND/OR GEOLOGI
    HAZARD AREAS ON SITE
19. HAUL ROUTE APPROVAL IS REQUESTED
20. STREET DESIGNATION & CONDITION:
    MAUBERT AVENUE - LOCAL STREET
    PROPOSED HIGHWAY DEDICATIONS:
A. 2.5' DEDICATION ALONG ALLEY
22. PARKING:
23. EXISTING TREES:
    (1)-8" FRAXINUS UHDEI ON MAUBERT AVENUE TO BE REMOVED
    (1)-6" SYAGRUS ROMANZOFFIANUM ON MAUBERT AVENUE TO BE REMOVE
    (1)-3" ERIOBOTRYA JAPONICA ON MAUBERT AVENUE TO BE PROTECTED
    (1)-12" JUNIPERUS CHINENSIS TO BE REMOVED
    (1)-12" PINUS PINEA TO BE REMOVED
    (1)-15" FICUS TO BE REMOVED
    (1)-5" CITRUS TO BE REMOVED
    (1)-4" ERIOBOTRYA JAPONICA TO BE REMOVED

d. The VTT should not be approved because the underlying TOC approval is not permissible under the state density bonus law which, in the case of an 11% law affordability set-aside, allows at most only two incentives or concessions. Because the VTT's validity is premised on the lawfulness of the TOC, as enacted and as applied, the VTT cannot be deemed to be consistent with the City's zoning laws in the face of the TOC's invalidity, and, if valid, the grant of three incentives is not authorized under the state density bonus law.

Because the scope of the TOC ordinance is limited and constrained by the state density bonus law, the TOC guidelines must conform to the requirements of the state density bonus law; particularly the provision of Government Code §65912(d)(2) which conditions the granting of a second concession or *incentive* on there being at least a 10% set-aside for affordable housing. This project has an 11% set aside for very low-income households. The project meets that threshold (except for the fact the "concessions" or "incentives" sought are off-menu and no economic pro-forma has been provided as mandated under the City's density bonus implementation law).[5]

Under the state density bonus law (Government Code §65912(d)(2), to obtain a third concession or *incentive*, the set aside to very low-income households has to be *15%* or more. Therefore, the granting of a third concession or incentive is not permissible.

Also to be kept in mind is that it is not clear how many of these apartments are going to be short-term transitory rentals; or whether the use of any apartments will

[5] The City's contention that the state legislature repealed the requirement for economic pro-formas is not persuasive in this instance because the state density bonus law is not being used by the applicant. The state density bonus law is being used only as a reference for the implementation of the TOC law; with the City's density bonus law implementation ordinance being used as the template for the TOC law's implementation. While the state legislature may have repealed the economic pro-forma requirement for density bonus cases, the City Council never repealed the economic pro-forma requirement for off-menu *incentives*; and it is the City's density bonus implementation law that is being applied here, not the state density bonus law. Accordingly, the entitlements granted under the TOC law should be set aside. Absent the TOC incentives, the VTT cannot comply with the City's zoning law. Therefore, the VTT cannot be approved.

be changed from being "dwelling units" to "guest rooms" under the zoning code where the owner (be it this applicant or a successor-in-interest) changes the use from a traditional "apartment" (dwelling unit) to a "co-living" (adult dorm) residential configuration where the project then becomes an "apartment hotel" assuming the number of "guest rooms" exceeds five.

Assuming the TOC as enacted or applied to this project is lawful, if the applicants wants three concessions or incentives, the number of affordable dwelling units must be increased.

e. The VTT should not be approved until proof has been submitted that all tenants were paid their relocation fees as mandated under the City's zoning laws.

The right to develop and procure land use entitlements is keyed to the tenants being lawfully relocated. These apartments are subject to the provisions of the RSO and the Ellis Act. Those laws mandate that tenants be paid relocation and be given the time contemplated by the law to relocate. (LAMC §47.07). As of the time of this writing, the properties are vacant. For this condition to have any meaning, therefore, the applicant should be made to provide proof that all tenants received the relocation benefits (money and time) to which the law allows them, and this condition contemplates. In short, the condition needs to be adapted to the current circumstances as they exist, rather than the theoretical situation to which the condition, as worded, appears to refer (i.e. where at the time of the application or approval of the VTT map, the tenants remain in possession). Otherwise, this condition is likely to be ignored.

Planning as part of the application process should have procured a full tenant list and had the applicant affirmatively demonstrate that the City's RSO laws and this zoning component of the RSO laws were followed.

Thank you for your consideration of the points and issues raised in this letter.

Respectfully submitted,

NOEL WEISS

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