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VIA E-MAIL (clerk.plumcommittee@lacity.org)
Hon. Chair Marqueece Harris-Dawson and
Members of the Planning and Land Use Management Committee
Attention: Armando Bencomo, Legislative Assistant
200 North Spring Street, Room 272
Los Angeles, CA 90012

Re: Property Address: 5353 Del Moreno Drive
Council File 21-0808
Hearing Date: August 31, 2021, Agenda Item 8.

Hon. Chair Harris-Dawson and Hon. Members of the PLUM Committee:

Our office represents the owner of 5353 Del Moreno Drive, Los Angeles, 90232 (the "Property"), and the appellant challenging the Department of City Planning refusal to process the proposed 67 unit density bonus development, including 7 units designated for very-low income households. Given the voluminous staff report, we submit this letter to simplify the issues, and to ask the City Council to grant this appeal in order to (i) encourage and support affordable housing development; and, (ii) avoid subjecting the City to needless liability under the California Housing Accountability Act as a result of the the Department of City Planning's obviously incorrect interpretation of state law.

BACKGROUND

Our client's Property is located at 5353 Del Moreno Drive, only steps from the Ventura Boulevard commercial corridor. The Property is improved with a single-family home, and is zoned RA-1 (Residential Agriculture Zone for One Single-Family Dwelling). Given its proximity to adjacent commercial properties, however, the land use designation for the property under the Canoga Park - Winnetka - Woodland Hills - West Hills Community Plan ("Community Plan") is "Limited Commercial." The Community Plan identifies the corresponding zones for Limited Commercial as CR, C1.5, C2, C4, RAS3, and RAS4. Under California housing law, where the density of the zoning is inconsistent with the density permitted under General Plan, an applicant is permitted to develop a project consistent with the maximum allowable density permitted under the General Plan. Accordingly, our client is permitted to develop the Property consistent with the maximum allowable density permitted by the corresponding zones for the Community Plan's Limited Commercial land use designation.

Pursuant to the recently adopted California Housing Crisis Act, on May 20, 2020, our client submitted a Preliminary Application to the Department of City Planning for a density bonus project on the Property, with the project densities calculated based on the Community Plan, not the zoning. The Preliminary Application fee was paid on May 29, 2020. Consistent with the procedures set forth by state law,, on August 18, 2020, our client submitted the density bonus project application (the "Main Application"). The application included most of the necessary documentation for a project application, however, two of the "referral forms" lacked the City staff signatures.. The reason these forms lacked staff signatures was simply because the various City officials and planners tasked with signing the forms, refused to recognize the densities permitted under the Community Plan, and therefore refused to sign applicant's completed forms.

On September 18, 2020, 31 days after our client submitted the Main Application, the Department of City Planning issued our client a completed "CP-7782.1 DCP Application Checklist and Deemed Complete" for the "Density Bonus" application. The documents contains an exhaustive list of documents and materials required for a complete application, and the last page of the document includes a checked box, which states as follows: "There are portions of your application that have been determined to be 'incomplete' for filing purposes." On January 21, 2021, our client submitted ***all*** the documents identified in the checklist. On February 26, 2021 (36 days after the submission of supplemental documents), the city notified our client that the application is still incomplete. After substantial back and forth communication between our client and the Department, it was clear that the Department was concluding that (1) the project can only be developed consistent with the densities permitted by the zoning; and, (2) the Main Application is incomplete due to lack of signature on the two forms.

Pursuant to the appeal procedures provided under California law, our client filed an appeal challenging the City's determination on these two conclusions. Our client requested an appeal on February 26, 2021 to review the completeness of the submitted documents for the Main Application and the appeal was denied on the same day by the City Planning Staff. On July 8, 2021, our client filed for an appeal for deeming the project application consistent, compliant, and in conformity with the applicable plan, program, policy, ordinance, standard, requirement, or other similar provision.

ISSUE 1. **<u>The Property's zoning is inconsistent with the Community Plan's land use designation.</u>**

As detailed in the August 26, 2021 staff report reviewing the appeal (the "Staff Report"), the Community Plan designation for the Property is "Limited Commercial," which includes corresponding zones of CR, C1.5, C2, C4, RAS3, and RAS4. The Property's zoning, however, is RA-1, which is **not** one of the corresponding zones. This inconsistency is significant, because under California law, a project may be developed consistent with the Community Plan's land use designations in instances where "the zoning for the project site is inconsistent with the general plan." California Government Code Section 65905.5 (c)(2).

The Staff Report argues that the RA-1 zone is actually ***is*** consistent with the Limited Commercial designation in reliance on Footnote 9 of the Community Plan, which states that "[e]ach Plan category permits all indicated corresponding zones as well as those zones referenced in the Los Angeles Municipal Code ("LAMC") as permitted by such zones unless further restricted by adopted Specific Plans, specific conditions and/or limitations of project approval, plan footnotes or other Plan map or text notations." (*See* Exhibit A.) The Staff Report states that this footnote "explains that each land use category permits the less intensive zones referenced by the LAMC, in addition to the more intensive corresponding zones listed on the face of the Community Plan land use map." Essentially, the Staff Report argues that any zone is consistent with the Limited Commercial designation, so long as it is "less intensive" than the corresponding zones identified in the Community Plan. This explanation, unfortunately, is both incomplete and wrong.

Specifically, in taking this absurd position, the Staff Report fails to quote the entirety of Footnote 9, which goes on to explain that "[i]t is the intent of the [Community] Plan that the entitlements granted shall be one of the zone designations within the corresponding zones shown on the [Community] Plan, unless accompanied by a concurrent Plan Amendment." Accordingly, this language makes it clear that for the purposes of project entitlements, the Community Plan's corresponding zones are controlling. In other words, while the City may zone a parcel with a lesser intensive zone, the entitlements must still be processed pursuant to the intensities permitted in the Community Plan. Accordingly, for the purpose of project entitlements, the zoning RA-1 and the Limited Commercial land use designation are obviously in conflict, and the Staff Report's failure to read the entirety of the footnote led it to its incorrect conclusion to the contrary.

Moreover, the Staff Report's conclusion that any lesser intensive zone – even Open Space – is consistent with a Limited Commercial land use designation, is simply not reasonable. Pursuant to the Housing Accountability Act, a City's determination of "consistency" with the Community Plan must be supported by substantial evidence that could allow a reasonable person to reach the same conclusion. California Government Code § 65589.5(f)(4). In this instance, the City's finding that an RA-1 (Residential Agriculture Zone for One Single-Family Dwelling) zone is consistent with a Limited Commercial land use designation based on the partial reading of a footnote does not meet this standard. No reasonable person can read the Community Plan and conclude that an RA-1 zone is consistent with the Limited Commercial land use designation, and the Staff Report's strained attempt to conclude otherwise in reliance on Footnote 9 is not ***substantial*** evidence.

ISSUE 2: **Even if the zoning is consistent with the Community Plan, California Density Bonus law allows a project consistent with the maximum allowable density of the Community Plan *regardless of the zoning*.**

Notwithstanding the zoning's consistency or inconsistency with Community Plan, California Density Bonus law specifically states that a density bonus is permitted "over the otherwise maximum allowable gross residential density" otherwise permitted by the site. Government Code 65915(f). The law then clarifies and defines the term "maximum allowable residential density," and states that "if the density allowed under the zoning ordinance [for a site] is inconsistent with the density allowed under the land use element of the general plan, ***the general***

plan density shall prevail." Government Code 65915(o)(4)(emphasis added). Ignoring this requirement completely, the Staff Report incorrectly argues that because it found previously that the zoning is not inconsistent with the Community Plan. that this provision does not apply. This conclusion is wrong. Since the density permitted under the Community Plan is significantly greater than the density permitted in the zoning, the applicant has the right to proceed with the project under the higher density provided in the Community Plan under California Density Bonus law, regardless of the City's determination of the site's zoning consistency under the Housing Accountability Act.

ISSUE 3. <u>The Project's Main Application was deemed complete by operation of law.</u>

Government Code section 65943 states that local governments have 30 days after an application for a housing development project is submitted to inform the applicant whether or not the application is complete. As explained by State of California Housing and Community Development Department's Housing Accountability Act Handbook, "[i]f the local government does not inform the applicant of any deficiencies within that 30-day period, the application will be 'deemed complete', *even if it is deficient*." (HCD HAA Technical Advisory Memorandum, Pg. 8.) The facts here are clear. The applicant submitted the Main Application on August 18, 2020. On September 18, 2020 – 31 days later - the Department of City Planning determined the project application was incomplete. Because the Department failed to respond to it within the 30 day period specified by statute, the application is deemed complete on September 17, 2020, even if what was submitted by the applicant was deficient.

Similarly, on the supplemental submission of the documents by our client on January 21, 2021, the city notified our client of deficiency on the Main Application on February 26, 2021, which is 36 days after the supplemental submission. Once again, as explained by State of California Housing and Community Development Department's Housing Accountability Act Handbook, "[e]ach time an applicant resubmits new information, a local government has 30 calendar days to review the submittal materials and to identify deficiencies in the application."

Quite shockingly, the Department of City Planning contends that the 30-day timeline never started to run because it contends it never "received" an application. The Staff Report claims the City never "received" an application, because the application did not include all of the required materials, i.e., two referral forms the City refused to sign based on the inconsistency between the zoning and the Community Plan. This position, however, is simply not supportable by any law or basic reasoning. As stated above, the Housing Accountability Act requires the City to determine whether an application is complete or incomplete within 30 days, and if the City fails to act in that timeline, "the application will be 'deemed complete', ***even if it is deficient***." For the City to suggest that it must receive a complete application, before an application may be deemed complete by operation of law, completely undermines the entire purpose of the law. It is also inconsistent with the Department's own statements, as the Main Application checklist provided to the applicant on September 18, 2020, specifically referred to the "documents" as an "application." The City's position that it never "received" an application does not pass muster, and the City should not be

attempting to side-step its legal obligations with such absurd and transparent "work-arounds" like these.[1]

CONCLUSION

In conclusion, the Department of City Planning has clearly erred in this case, and our client's appeal must be upheld. In addition to those request submitted by our client and her representative, we ask that the City Council find that (i) the Property's zoning is inconsistent with the Community Plan's land use designation; (ii) the applicant's density bonus project may proceed consistent with the maximum allowable residential density permitted under the Community Plan; (iii) the Main Application was deemed complete as of January 21, 2021; and, (iv) the Main Application to be to be deemed compliant consistent, compliant, and in conformity with the applicable plan, program, policy, ordinance, standard, requirement, or other similar provision.

Thank you in advance for your consideration, and we look forward to answering any questions you may have at tomorrow's hearing.

Very truly yours,

DANIEL FREEDMAN of
Jeffer Mangels Butler & Mitchell LLP

CC: Elizabeth Ene, Director of Planning and Land Use, Councilmember Blumenfield.
Karly Katona, Chief of Staff, Councilmember Ridley-Thomas.
Kristen Gordon, Planning and Econ. Dev. Deputy, Councilmember Harris-Dawson.
Gerald Gubatan, Planning Director, Councilmember Cedillo.
Hannah Lee, Chief of Staff, Councilmember Lee.
Maya Zaitzevsky, Principal City Planner, Department of City Planning.
Sarah Molina Pearson, Senior City Planner, Department of City Planning.

[1] Since substantial time has passed between the submission of application by our client on January 21, 2021, - and not allowing the appeal within 60 days as required by the law (Gov. Code. §65943 (c)) - the 30-days for the city to issue written finding based on preponderance of evidence has passed, and our client rightly contends that this project application has by operation of law been "deemed compliant consistent, compliant, and in conformity with the applicable plan, program, policy, ordinance, standard, requirement, or other similar provision." (See Government Code § 65589.5.(j) (2) (B).)

EXHIBIT A
(Footnote 9)

9. Each Plan category permits all indicated corresponding zones as well as those zones referenced in the Los Angeles Municipal Code (LAMC) as permitted by such zones unless further restricted by adopted Specific Plans, specific conditions and/or limitations of project approval, plan footnotes or other Plan map or text notations.

   Zones established in the LAMC subsequent to the adoption of the Plan shall not be deemed as corresponding to any particular Plan category unless the Plan is amended to so indicate.

   It is the intent of the Plan that the entitlements granted shall be one of the zone designations within the corresponding zones shown on the Plan, unless accompanied by a concurrent Plan Amendment.