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August 1, 2022

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

Re: Property Address: 3209-3227 West Sunset Boulevard
Council File 22-0468
Case No. CPC-2021-2035-DB-CU-CUB-SPR-HCA; ENV-2021-2036-CE
Hearing Date: August 2, 2022, Agenda Item 1

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

This letter represents my reply to the letter brief (the "Opposition") filed by counsel for Sunset Twins-HH, LLC (the "Developer") on Friday, July 29, 2022, in connection with the above-referenced hearing. Although I was not personally served with a copy of the Developer's Opposition, I have served them with this reply letter.

A. The Developer's rhetoric is not substantial evidence

Much of the Developer's Opposition is standard rhetoric for development disputes, such as the claim that issues of greenhouse gas emissions caused by excessive cars searching for unavailable street parking, or newly-created risks to our narrow evacuation routes and fire department access, are somehow NIMBY-ism.

To the contrary, the issues raised by the two pending appeals are issues that apply across the city, and need to be addressed with a CEQA review on this Project to ensure that High Fire Risk Severity Zones receive the legal protection that remains under existing law, and to ensure that this City is able to move towards a sustainable future that is less-dependent on gas-powered vehicles.

Neither appellant is opposed to density per se, but to a Project that uses the rallying cry of density to cause material damage to public safety and the environment in the surrounding area.

B. The Project was not properly approved by the City Planning Commission

Contrary to the Developer's claim, the Project was approved in violation of the L.A. Municipal Code. LAMC Section 12.22(A)25(e) is not ambiguous. It provides that a project "shall not be located" in a high fire risk severity zone ("HFRSZ") if it seeks on-menu incentives, such as 20% setback or the height limitations, for example. The Developer claims that by simply re-labeling the incentive as a "waiver" or "off-menu" item, they can evade this limitation entirely, and even evade the "on-menu" setback limit by giving themselves a 100% reduction on setback once it's labeled a "waiver." Such an interpretation would erase Section 12.22(A)25(e) entirely from the Code by allowing any developer to evade specific protections for HFRSZ neighborhoods simply by renaming the "on-menu" incentive as a "waiver."

California courts do not interpret laws or codes in a manner that is irrational or absurd, nor will they write a provision out of existence. The Developer's interpretation is beyond irrational, and I have not witnessed a statutory interpretation so cynically absurd in nearly thirty years of practicing law. This Project sits on a lot that is plainly defined as being within an HFRSZ, and the Petitioner's own HFRSZ report attached to the Opposition predicts that Los Angeles HFRSZs may be expanded with pending revisions, not reduced (as incorrectly claimed in their counsel's letter).

The Developer originally sought two "on-menu" incentives in its Application (See Application, Attachment A, p. 1), for a 20% open space reduction, and a rear setback from 19 feet to 17 feet. By the time it had finished its approval process – and learned that its Project was illegal – these two "on-menu" items had been converted to "waivers" that reduced the rear setback to zero feet, and reduced Open Space by 24%. Such a cynical ploy, if permitted, would not merely erase all LAMC protections for HFRSZ areas of the City, but would also erase all intended "on-menu" limits.

C. The sole relevant "substantial evidence" is put forward by Appellants

As I raised in my appeal letter, the standard for CEQA review is "substantial evidence," and the observations of a long-time resident qualify as "substantial evidence." *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 173, 217 Cal.Rptr. 893 ("an adjacent property owner may testify to traffic conditions based upon personal knowledge."); *Taxpayers for Accountable School Bond Spending v. San Diego Unified School Dist.* (2013) 215 Cal.App.4th 1013, 1053-1054, 156 Cal.Rptr.3d 449 ("personal observations and opinions of local residents on the issue of parking in the area may constitute substantial evidence"); *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 339, 29 Cal. Rptr. 3d 788 ("Project opponents who challenge a negative declaration often have no expert studies to rely on. Recognizing this, courts have held that the absence of expert studies is not an obstacle because personal observations concerning nontechnical matters may constitute substantial evidence under CEQA.").

By contrast, the Developer has not presented any relevant substantial evidence that addresses the issues that are presented by these two Appeals.

The expert report attached to the Developer's Opposition addresses issues that are not raised in these appeals, and are not relevant. If the Project's illegal 100% setback waiver means that it will not have any vegetation that could be a fire hazard, that is nice to know. But it has no relevance to the issue that was raised in my appeal concerning the risks to our fire access and evacuation routes caused by excessive cars forced onto this hillside by a Developer that doesn't want to provide them with interior parking. Nor does it have any relevance to the excessive greenhouse gases that will be emitted by vehicles searching the hillside for parking.

Further, the Developer's claim that it submitted substantial evidence on traffic impact ignores the fact that the Developer did not produce any evidence of the impact this Project will have on hillside parking, fire safety, or increased greenhouse gas emissions other than the brief discussion about construction impacts. Traffic patterns on Sunset Blvd. may have been useful for the initial application, but they are irrelevant to the issues raised in this Appeal.

The Developer's Opposition does not cite to any evidence in the record pertaining to these issues on appeal because there is no evidence in the record for the Developer to rely upon. None of the evidence put forward by the Developer is relevant to the issues before the Committee. The sole substantial evidence that actually pertains to the relevant issues has been presented by Appellants.

D. Cumulative impact requires consideration of other developments

The Developer claims that it would be improper for the Committee to consider the cumulative impact of nearby developments because they are not piecemealed projects. This is an inaccurate description of the test required by CEQA.

CEQA requires consideration of the project under review as well as all projects, past, present or future in the area that will contribute to a cumulative impact. *Laurel Heights Improvement Assn. v. Regents of University of California*, 47 Cal. 3d 376, 396 (1988) ("The Guidelines explain that a discussion of cumulative effects should encompass 'past, present, and reasonably anticipated future projects.'") (citing CEQA Guidelines). *See also* 14 CCR 15130(a)(1) ("a cumulative impact consists of an impact which is created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts.").

Even the Developer stated in its Application to the Commission that this Project is consistent with "existing and planned future developments in the neighborhood" (Attachment A to Application, p. 9), demonstrating that this area will face future developments proposing similar "incentives" and "waivers."

This Project alone will push at least 90 cars into the hillside, given that the Code would require 159 residential and commercial spaces, but there will be only 69 combined spots at this Project. But the impact of the related project next door, and the similar future developments that even the Developer admits will be built in this area, ensure that the cumulative impact of the Commission's decisions will be to push hundreds of cars into the hillside. This is not an

argument of convenience. I have all the private parking I need. But hundreds of cars – even a fraction of that number – searching for parking on a hillside will add substantial greenhouse gases to the atmosphere. Nearly all will be gas-powered cars for the simple reason that there are no EV charging facilities on side streets. Rather than ensure that this City will be ready to address the State's EV mandate that is coming, the City's approval of development projects that dump most of the new-density-residents' vehicles onto side streets ensures that the City will be incapable of fulfilling the zero emissions future that is proposed by our Governor. We will all look back on this era in a few short years as an abandonment of environmental goals in favor of developer profits, even though the City is well aware of the EV mandate that is looming. Rational development would combine a drive for density with required interior parking that provides EV charging. This Project is irrational, materially detrimental to the environment, and it requires a CEQA review.

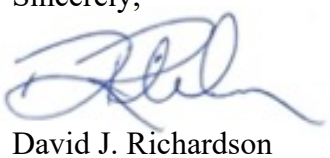
The Developer's additional argument on this issue is to simply misrepresent my description of related projects. As explained in my appeal letter, there are now three permitted developments along a short stretch of Sunset Blvd. being built by "RYDA Ventures and its various limited liability companies," along with a small, pending fourth project. The Developer's counsel argues that this statement "ignores the critical fact that all of the projects referenced in the appeals as "RYDA" projects were filed by different applicants (i.e., not RYDA.)." Quite the opposite, my appeal letter accurately describes these three projects are being pursued by RYDA through its LLCs, as is typical and standard for any developer that is building multiple projects. The Developer's suggestion that I am misleading the Committee is inappropriate.

CONCLUSION

The sole substantial evidence in the record demonstrates that the cumulative impact of this Project and other developments along this corridor of Sunset Blvd. will have a material impact on the safety and environmental health of this neighborhood. The Developer's efforts to deflect attention to unrelated evidence in the record does not satisfy the standard that applies to this proceeding, and does not address the actual issues on appeal.

For all of the reasons addressed in Appellants' appeal letters and this Reply, Appellants respectfully request that the City require a CEQA review for this Project.

Sincerely,



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