



AGENDA REPORT

Meeting Date: March 2, 2010

Item Number: D-1

To: Honorable Mayor & City Council

From: Susan Healy Keene, AICP, Director of Community Development *By for SHK*

Subject: APPEAL OF THE BUILDING OFFICIAL'S REVOCATION OF BUILDING PERMIT NO. BS0725308 FOR THE PROPERTY LOCATED AT 1201 LAUREL WAY.

Attachments:

1. Agenda Report dated February 16, 2010, including attachments
2. Letter to City Council from Ben Reznik dated February 16, 2010
3. Staff response to February 16 letter from Ben Reznik
4. Letter to City Council from Ben Reznik dated February 25, 2010

RECOMMENDATION

After conducting a hearing on the matter, and considering any evidence presented, staff recommends that the Council direct the City Attorney's office to prepare a resolution upholding the Building Official's revocation of Building Permit No. BS0725308.

BACKGROUND AND DISCUSSION

On February 16, 2010, the City Council held a duly noticed public hearing concerning an appeal of the Building Official's revocation of Building Permit No. BS0725308. On that date, and prior to the hearing, the appellant delivered a letter to the City Council regarding this matter. Given the timing of the letter, the Council took the following actions:

1. Directed staff to respond to the issues raised in the appellant's letter by February 19, 2010;
2. Continued the public hearing until March 2, 2010.

Staff has prepared the requested response, sent it under separate cover to the City Council on February 19, 2010 and has attached it to this report (Attachment 3).

Thursday evening (February 25, 2010) staff received an additional response from the appellant regarding this case. Due to the timing, staff was unable to review and respond to this most recent letter prior to the preparation of this report; however, staff will be prepared to respond to the appellant's most recent letter at the March 2, 2010 hearing.

This report also clarifies the following errors contained in the February 16 Agenda Report:

1. The Stop Work Order was issued on July 15th, not the 14th or the 16th as reported on page 1 and page 2 of the previous report.
2. The subject building permit was issued on November 27th, not the 11th as reported on page 1 of the previous report.
3. The subject building permit is BS0725308, not BS072530 as reported on page 3 of the previous report.

FISCAL IMPACT

No fiscal impact to the City is anticipated from a Council decision in this matter.

Susan Healy Keene, AICP
Director of Community Development


Approved By _____

ATTACHMENT 1

AGENDA REPORT DATED February 16, 2010
(INCLUDING ATTACHMENTS)



AGENDA REPORT

Meeting Date: February 16, 2010

Item Number: D-1

To: Honorable Mayor & City Council

From: Susan Healy Keene, AICP, Director of Community Development

Subject: APPEAL OF THE BUILDING OFFICIAL'S REVOCATION OF BUILDING PERMIT NO. BS0725308 FOR THE PROPERTY LOCATED AT 1201 LAUREL WAY.

Attachments:

1. Scope of Work (included as part of approved plans for Building Permit No. BS0725308)
2. *Municipal Code Section 10-3-4100: Nonconforming Buildings*
3. Stop Work Order dated 7-16-2009
4. City's letter memorializing City office meeting between staff and applicant team, and revoking Building Permit No. BS0725308
5. Appeal Petition
6. Alex DeGood letter dated 10-14-2009 and attached declaration
7. Development Timeline
8. Administrative Code Section 303.5

INTRODUCTION and BACKGROUND

On November 11, 2007, Building Permit No. BS0725308 was issued for the alteration of and addition to a single family residence located at 1201 Laurel Way. The plans approved in conjunction with the building permit contain the statement that demolition activities would not exceed 49.88% of the walls and 45% of the roof of the then existing structure. (See Attachment 1.) By representing that less than 50% of the structure would be demolished, City staff determined that certain non-conforming aspects of the residence could be retained pursuant to Beverly Hills Municipal Code Section 10-3-4100 A, a copy of which is included in Attachment 2.

During construction of the project, City staff became aware that the demolition activities significantly exceeded the scope of work authorized by the building permit and approved plans, in that the contractors retained by Papcap Laurel Way, LLC, (the "Owner"), had demolished well over 50% of the structure. City staff issued a stop work notice (attached hereto as Attachment 3) on July 14, 2009, and advised the Owner to submit revised plans reflecting the

changed scope of work, which would include revisions based on the loss of the right to maintain the nonconforming aspects of the residence. The Owner failed to submit revised plans, and instead asserted that a City Building Inspector had approved demolition in excess of that authorized by the building permit. Due to a lack of compliance by the Owner, on December 14, 2009, Building Permit No. BS0725308 was revoked. A copy of the revocation letter is attached hereto as Attachment 4. A decision to revoke a building permit is appealable to the City Council pursuant to Beverly Hills Municipal Code Section 1-4-101 and 1-4-102 A, and the Owner submitted a timely appeal on December 28, 2009. The appeal letter is attached hereto as Attachment 5.

Municipal Code Section 10-3-4100: Nonconforming Buildings (see Attachment 2) states in part, "If more than fifty percent (50%) of the combined area of all the exterior walls and roof are replaced or reconstructed, then the building shall be treated as a newly constructed building for the purposes of this chapter and shall be reconstructed so that the entire building conforms with the development standards of this chapter." (BHMC 10-3-4100 A.) By representing the removal and replacement of less than 50% of the residence on the building plans, the Owner was allowed to maintain certain existing non-conforming features of the structure, and also benefited from reduced Parks and Recreation Taxes. In demolishing approximately 90% of the exterior walls and roof, the Owner greatly exceeded the scope of work authorized by the permit and approved building plans.

On October 14, 2009, Owner's attorneys submitted a letter, attached hereto as Attachment 6, asserting that project demolition exceeded 50% of the original structure only after a building inspector made a determination that the demolition was necessary for safety issues and approved the demolition. The attorney's letter included a declaration of Keith Bae, Project Manager for PCG Construction Inc, in which Mr. Bae asserts that a City building inspector approved the demolition in excess of the 50% permitted pursuant to the life safety exception provided by Beverly Hills Municipal Code Section 10-3-4100 C, which provides the following:

Exception For Life Safety Repairs/Upgrades: The provisions of this article shall not apply to any repairs or upgrades, regardless of whether those repairs or upgrades exceed the fifty percent (50%) threshold set forth in subsections A and B of this section, which the building official determines are necessary, for safety reasons, to bring the nonconforming structure into compliance with the requirements of title 9 of this code or any applicable governmental regulations. (See also Attachment 2.)

Mr. Bae's declaration, at paragraph 10, states that he asked how to get authorization to demolish more than 50% of the structure, that the Inspector "stated that he had the authority to approve it," and that he [the Inspector] would likely serve as the plan checker. Mr. Bae's statement suggests a process that would be consistent with City practice – submittal of revised plans for review by the City, and receipt of an approval for same. However, there is no indication in either the Bae declaration or in the City's records that revised plans denoting any "life safety repairs" in excess of the 50% allowed by the approved building plans were submitted for checking or approval.

Although no plans were submitted, Mr. Bae declares, at paragraph 19, that "the original house had been demolished per Inspector Tabor's approval...." Neither the City nor the applicant, however, has any documentation of any such approval. Inspector Tabor disputes Mr. Bae's claim that approval was ever requested or granted. Granting such an approval without any

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documentation would be inconsistent with the City inspectors' pattern and practice to document in writing any approvals that are granted.

The Owner's contractors also failed to request inspections "before and after demolition to verify with building inspector the scope of demolition is less than 50%" as required by notations on the approved building plans (see Attachment 1). Although other unrelated inspections were requested and performed beginning February 8, 2008, as detailed in the Development Timeline (see Attachment 7), the Owner's contractors failed to request the aforementioned, specific, demolition-related inspections.

Subsequent to the issuance of the aforementioned Stop Work Order, staff made repeated requests to the Owner to revise and resubmit building plans to the City reflective of the change in scope of project, including the following:

- Verbal notice upon issuance of Stop Work Order (July 15, 2009)
- At a City Council Study Session meeting (July 21, 2009)
- At a meeting between Benjamin M. Reznik and City staff (November 30, 2009)
- In a letter issued to the subject property owner by the City Attorney's Office (December 14, 2009)
- At a City Council Regular Session meeting (January 12, 2010)

If the Owner submitted new plans, the necessary plan review would be performed by City staff. This would include, but not be limited to: the current code requirements for side yard setbacks, pad edge setbacks, and maximum driveway slope, and completion of a new view preservation analysis pursuant to Beverly Hills Municipal Code Section 10-3-2522. To date, the Owner has failed to respond to these requests to revise and resubmit building plans.

On December 14, 2009 the City issued a letter to the Owner, which is attached hereto as Attachment 4). This letter, at page four (4), sets forth the Building Official's written revocation of Building Permit No. BS072530. This revocation is pursuant to the City's adopted Administrative Code Section 303.5 (Attachment 8), which provides:

303.5 Suspension or Revocation. The building official may, in writing, suspend or revoke a permit issued under the provisions of this code and the technical codes when the permit is issued in error or on the basis of incorrect information supplied, or in violation of an ordinance or regulation or the provisions of these codes.

Pursuant to BHMC Section 1-3-107, "[a]ny violation of a condition of any permit or approval issued pursuant to this code shall constitute a violation of this code." Therefore, the Owner's failure to comply with the demolition condition on the approved building plans constitutes a violation of the code, which empowers the Building Official to revoke the permit.

APPEAL

In the appeal petition, Owner's attorney identifies the following as the basis for the appeal:

The City's decision to revoke the Permit is inconsistent with Beverly Hills Municipal Code ("Code") in that Owner complied with all Permit and Code requirements. The City's

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actions are arbitrary, capricious, and not supported by substantial evidence in the administrative record.

The appeal petition and letter prepared by Owner's attorney is attached to this report as Attachment 5.

APPEAL ANALYSIS

Staff has reviewed the appeal petition and believes that the Building Official's actions are consistent with Administrative Code Section 303.5 (see Attachment 8), as adopted by the Beverly Hills Municipal Code.

The appeal letter asserts that the "Owner complied with all Permit and Code requirements." Staff disagrees with this statement because demolition in excess of what was permitted on the approved plans has occurred. While the letter asserts compliance with the permit requirements, the Owner has not disputed that approximately 90% of the original residence was demolished, nor have they disputed that the approved plans and building permit restricted demolition to less than 50%. Further, the Owner has not pursued other available remedies, including revising the plans so that the structure complies with current city codes.

With respect to the obligations to adhere to plans and call for necessary inspections, it is the architect's, designers and contractors responsibility to make sure these specific conditions get adhered to and the City's responsibility to respond once the Owner's representatives feel they are ready for an inspection. Therefore, although the violation of the permit conditions was not identified during certain inspections after the unpermitted demolition had occurred, this does not change the fact that the Owner's contractors failed to call for the specific inspections related to demolition, and that the demolition proceeded in conflict with the approved plans.

Although not clear from the Appeal letter, staff expects that the Owner may continue to assert that the excess demolition is permissible pursuant to Beverly Hills Municipal Code Section 10-3-4100 C. The main question before the Council is whether the project qualifies for this exception to the generally applicable rules prohibiting the retention of nonconforming rights when 50% or more of a building is renovated.

As noted in the City's December 14, 2009 revocation letter, the declaration from the Owner's contractor states that the additional demolition was necessary because of his concerns "about the safety of proceeding with the necessary cuts for the Project's basement, given that [he] did not believe [he] could implement the cuts and maintain the house's structural integrity." Staff does not believe that this rationale meets the requirements for the Life Safety Repairs/Upgrades exception because they were not necessary to bring the nonconforming structure into compliance with Building Codes, but instead were necessary to allow the new construction to maintain structural integrity. Although this was pointed out in the City's revocation letter, the Owner's Attorney did not provide any response in the appeal letter.

Therefore, staff recommends that the Council consider the following when deliberating the merits of the appeal:

- 1) Whether there is evidence to show that the demolition of the existing structure exceeded the limitations established in the approved building plans and permits;

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- 2) Whether there is substantial evidence demonstrating that the demolition in excess of the 49.88% wall length and 45% roof area are necessary, for safety reasons, to bring the nonconforming structure into compliance with the requirements of Title 9 of the Municipal Code (including the Building Code); and,
- 3) Depending on information that the Owner may present at or before the appeal hearing, the Council might also consider whether there is evidence to support Owner's claim that the Building Inspector approved the excess demolition.

RECOMMENDED ACTION

After conducting a hearing on the matter, and considering any evidence presented, staff recommends that the Council direct the City Attorney's office to prepare a resolution upholding the Building Official's revocation of Building Permit No. BS0725308.

FISCAL IMPACT

No fiscal impact to the City is anticipated from a council decision in this matter.

Susan Healy Keene, AICP
Director of Community Development



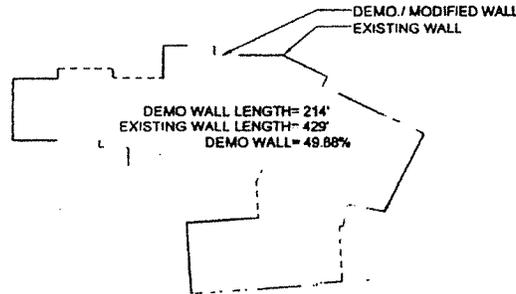
SCOPE OF WORK

urban network
design, development & construction
urbannetworks.com

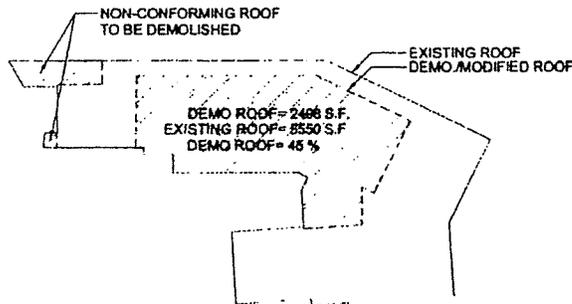
1. ADDITION OF 1447 S.F. BASEMENT UNDER E. 1 STORY HOUSE (NEW GYM, MAID'S ROOM, LAUNDRY & 2 BATHS, MECH & STORAGE ROOM).
2. ADDITION OF 1460 S.F. OF 2ND STORY (NEW MASTER BEDROOM, BATH & OFFICE SUITE)
3. COMPLETE REMODEL OF KITCHEN AND ALL 3 BATHROOM
4. DEMO. MECH & STORAGE AREA.
5. NEW PEDESTRIAN RAMP TO BASEMENT W/ RETAINING WALLS. SEE SECTION 2/A4.0 FOR RETAINING WALL HEIGHTS AND LOCATIONS IN FRONT YARD.
6. REPLACE 45% OF ROOF STRUCTURE TO ACCOMODATE THE 2ND STORY.
7. RESTUCCO EXTERIOR WALLS AS INDICATED.
8. UPGRADE GLAZING ON E. WINDOWS TO LOW-E INSULATED GLASS.
9. REPLACE INTERIOR WALL FINISHES AS INDICATED.
10. REPLACE ALL HVAC SYSTEM (SEPARATE PERMIT REQ'D)
11. REPLACE ALL ELEC. SYSTEM (SEPARATE PERMIT REQ'D)
12. REPLACE ALL PLUMBING SYSTEM (SEPARATE PERMIT REQ'D)
13. REGRADING ENTRANCE AREA FOR PEDESTRIAN RAMP TO BASEMENT.
14. FRONT YARD PAVING (SEPARATE PERMIT REQ'D)

3-50% RULES:

1. MORE THAN 50% OF EXTERIOR WALL ARE NOT MODIFIES OR DEMO'D, THEREFOR PARK AND RECREATION FEES ONLY APPLY TO ADDED FLOOR AREA AND NOT TO ENTIRE EXISTING HOUSES
NOTE: CONTRACTOR SHALL CALL FOR INSPECTION BEFORE AND AFTER DEMOLITION TO VERIFY WBLDG INSPECTOR THAT SCOPE OF DEMO IS LESS THAN 50 %.



2. MORE THAN 50% OF EXTERIOR BUILDING ENVELOPE IS NOT REPLACED OR MODIFIED, THEREFORE BUILDING MAY KEEP ITS EXISTING NON-CONFORMING RIGHTS.
NOTE: CONTRACTOR SHALL CALL FOR INSPECTION BEFORE AND AFTER DEMOLITION TO VERIFY WBLDG. INSPECTOR THAT SCOPE OF DEMO IS LESS THAN 50 %



3. BUILDING SHOULD BE FULLY SPRINKLERED SINCE COST OF ADDITION AND ALTERATION IS MORE THAN 50 % OF COST OF BUILDING REPLACEMENT.

NO.	DESCRIPTION	DATE
1	DESIGN REVIEW	2007.05.09
2	BID SET	2007.05.29
3	PLAN CHECK	2007.06.29
4	BID SET	2007.07.10
5	PLAN CHECK REVISION	2007.08.16

The use of these plans and specifications restricted to the original site for which prepared and publication thereof is expressly such use. Reproduction, publication or any method, in whole or in part, is prohibited to the plans and specifications remains Networks Inc without prejudice. Void of these plans & specifications shall constitute evidence of these restrictions.

PROJECT DATA

BUILDING TABULATIONS:	
ZONE	HILLSIDE R-1
CONSTRUCTION TYPE	V-N
NO. OF STORIES	2 STORY + BASEMENT

LLC.

10-3-4100: NONCONFORMING BUILDINGS:

- A. Single-Family Residential Developments: Except as otherwise provided by applicable local, state or federal law, any alteration to a nonconforming building in a single-family development shall conform to the following requirements:
1. Remodels: A maximum of fifty percent (50%) of the combined area of all the exterior walls and roof of a legally nonconforming building or structure may be replaced or reconstructed in any five (5) year period. For the purpose of this section, roof area shall be calculated as the horizontal area covering the floor area. If more than fifty percent (50%) of the combined area of all the exterior walls and roof are replaced or reconstructed, then the building shall be treated as a newly constructed building for the purposes of this chapter and shall be reconstructed so that the entire building conforms with the development standards of this chapter. For the purpose of this section, a portion of a wall or roof is considered replaced or reconstructed when the framing has been replaced or reconstructed.
 2. Additions: Nothing in this section shall restrict the construction of an addition to a legally nonconforming building provided that such addition complies with the requirements of this chapter.
- B. All Development Other Than Single-Family Residential Development: Except as otherwise provided by applicable local, state or federal law, any alteration to a legally nonconforming building in any development other than a single-family development shall conform to the following requirements:
1. Remodels: If, within a five (5) year period, a nonconforming building is altered, renovated, repaired, or remodeled, and the cumulative cost of such alteration, renovation, repair or remodel equals or exceeds fifty percent (50%) of the replacement cost of the building, then the building shall be treated as a newly constructed building for the purposes of this chapter and shall be reconstructed so that the entire building conforms with the development standards of this chapter.
 - a. Calculation Of Costs: The building official shall calculate the cost of replacement as well as the cost of alterations, renovations, repairs and remodels. When the building official determines that such calculation requires a degree of specialized knowledge, skill, or experience beyond that possessed by any employee of the city, or when there are differences of opinions between city staff and the project applicant with respect to such calculation, the building official may employ an independent, third party consultant or consultants to calculate the replacement cost or the cost of alterations, renovations, repairs or remodels. The project applicant or the property owner, or their respective agent(s), shall pay to the city all direct and indirect costs incurred by the city to retain said consultants and shall maintain a cash deposit with the city at all times in an amount sufficient to cover such costs.
 2. Additions: Nothing in this section shall restrict the construction of an addition to a legally nonconforming building provided that such addition complies with the requirements of this chapter.

C. Exception For Life Safety Repairs/Upgrades: The provisions of this article shall not apply to any repairs or upgrades, regardless of whether those repairs or upgrades exceed the fifty percent (50%) threshold set forth in subsections A and B of this section, which the building official determines are necessary, for safety reasons, to bring the nonconforming structure into compliance with the requirements of title 9 of this code or any applicable governmental regulations. (Ord. 96-O-2272, eff. 1-9-1997; amd. Ord. 06-O-2498, eff. 3-24-2006)



CITY OF BEVERLY HILLS
DEPARTMENT OF BUILDING AND SAFETY
455 NORTH REXFORD DRIVE - ROOM G10, BEVERLY HILLS, CALIFORNIA

STOP WORK ORDER

To: POPCAP Beverly Hills, Calif., 7-15 20 09

Address of Recipient: _____

Address of Violation: 1201 LAMAR WY.

Property Owner: _____ Mailing Address: _____

Nature of Violation: THE BUILDING APPEARS TO HAVE GONE BEYOND THE APPROVED 48% PERCENT REMODEL ADDITION. THE STRUCTURE PLANS ARE DIFFERENT FROM THE ARCHITECTURAL PLANS

Work description at time of violation: _____

130725309

Applicable Code Section(s): 301.1, 304.5, 705

You are hereby notified to stop all work by 10:45 AM/PM 7-15 20 09

Failure on your part to comply with this notice will subject you to penalties prescribed by said Code. 202.4

For general information you may Contact the Building and Safety Department at (310) 285 - 1141

Signature acknowledges receipt of notice only.

Date: _____

Driver License #: _____

Print name: M. ...

Signed: M. ...

For the Director
By: STEVE TABOR
Inspector/ Code Enforcement
Tel: (310) 285 - 1148
Stop work posted on site: YES / NO Initials: _____



CITY OF BEVERLY HILLS
DEPARTMENT OF BUILDING AND SAFETY

STOP WORK ORDER

Stop Order: When work is being done contrary to the provisions of the code, the technical codes, or other pertinent laws or ordinances implemented through the enforcement of this code, the building official may order the work stopped by notice in writing served on persons engaged in the doing or causing such work to be done, and such persons shall forthwith stop the work until authorized by the building official to proceed with the work.

(SEE REVERSE SIDE OF THIS CARD FOR VIOLATION INFORMATION)



Office of the City Attorney

December 14, 2009

Via Electronic Transmission and U.S. Mail

Benjamin M. Reznik, Esq.
Jeffer Mangels Butler & Marmaro
1900 Avenue of the Stars, 7th Floor
Los Angeles, California 90067-4308

Re: 1201 Laurel Way, Beverly Hills

Dear Mr. Reznik:

This letter is provided in response to the meeting held on November 30, 2009 with various City staff members, yourself and Messrs. DeGood and McDonnell of your office regarding the project at 1201 Laurel Way in Beverly Hills (the "Project"). The main purpose of the meeting was to discuss how to resolve the present situation wherein construction of the Project fails to conform to the approved building plans and conditions noted thereon.

As you and your client are aware the approved set of building plans includes the restriction that demolition of existing walls would not exceed 49.88%. (Approved Building Plans at p. A2.0.)

Based on this notation on the approved building plans, staff determined that the Project could retain certain nonconforming features of the Project pursuant to the "50%" rules set forth in Beverly Hills Municipal Code Section 10-3-4100 A. Recently, City staff realized that the applicant had demolished somewhere on the order of 90% of the exterior walls. Neither you nor your client dispute the fact that the demolition greatly exceeds what was authorized on the set of approved building plans on which Building Permit No. BS0725308 was issued.

In advance of the November 30, 2009 meeting, City staff considered the information provided in the letter from your office dated October 14, 2009, and completed a comprehensive review the City's records related to the Project.

If we understand correctly, it is your position that your client is entitled to maintain the nonconforming aspects of the Project notwithstanding the fact that construction has not proceeded in conformance with the approved building plans. This assertion is presumably based on Beverly Hills Municipal Code (BHMC) Section 10-3-4100 C, which provides the following:

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C. Exception For Life Safety Repairs/Upgrades: The provisions of this article shall not apply to any repairs or upgrades, regardless of whether those repairs or upgrades exceed the fifty percent (50%) threshold set forth in subsections A and B of this section, which the building official determines are necessary, for safety reasons, to bring the nonconforming structure into compliance with the requirements of Title 9 of this code or any applicable governmental regulations.

The applicant's contractor, Keith Bae, asserts that a City building inspector approved the demolition to exceed the 50% allowed pursuant to the above life safety exception. Mr. Bae's declaration, at paragraph 10, states that he asked how to get authorization to demolish more than 50% of the structure, and that "Inspector Tabor stated that he had the authority to approve it" and that he would likely serve as the plan checker. Mr. Bae's statement suggests a process that would be consistent with City practice – submittal of plans for review by the City, and receipt of an approval for same. However, there is no indication in either the Bae declaration or in the City's records that revised plans denoting any "life safety repairs" in excess of the 50% allowed by the approved building plans were submitted for checking or approval.

Although no plans were submitted, Mr. Bae declares, at paragraph 19, that "the original house had been demolished per Inspector Tabor's approval...." Neither the City nor the applicant, however, has any documentation of any such approval. Inspector Tabor disputes Mr. Bae's claim that approval was granted. Granting such an approval without any documentation would be inconsistent with the City inspectors' pattern and practice to document in writing any approvals that are granted.

It is noteworthy that Mr. Bae's declaration provides no evidence that the replacement of the existing walls was necessitated by a compromised condition of those wall resulting from such things as dry-rot or termite damage, but instead admits that the additional demolition was because he "was concerned about the safety of proceeding with the necessary cuts for the Project's basement, given that [he] did not believe [he] could implement the cuts and maintain the house's structural integrity." (Bae declaration, ¶ 8.) Further, Mr. Tabor did not observe any such damage and does not recall any assertions of such damage from the contractor during the various site inspections. Therefore, based on the City's review of its records and discussions with Inspector Tabor, staff has concluded that no approval was granted to allow demolition to exceed the 50% rule.

Based on the current conditions at the site and the records available, City staff is unable to conclude that the demolition in excess of the 49.88% allowed on the approved building plans is "necessary, for reasons of safety, to bring the nonconforming structure into compliance with the requirements of Title 9" of the Municipal Code. (BHMC §10-3-4100 C.) As noted above, Mr. Bae's declaration strongly suggests that the demolition in excess of 50% was undertaken because

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of Mr. Bae's concern that "the necessary cuts for the Project's [new] basement" could adversely impact the house's structural integrity. (Bae Declaration, at ¶8.) The Municipal Code's allowance to make life safety repairs and upgrades was not intended to allow an applicant to create a safety issue through the scope of the project (such as the basement excavation proposed for this Project), and use that self-generated circumstance to evade the 50% demolition limitation while at the same time reaping the benefit of retaining non-conforming aspects of a structure.

Because of staff's realization that the Project construction was proceeding in violation of the 50% rule, a stop work notice was issued.

In addition to violating the 50% demolition rule, the contractor failed to comply with the requirement noted on page A2.0 of the approved building plans to "call for inspection before and after demolition to verify with building inspector the scope of demolition is less than 50%." Although other inspections were called for, the contractor never called for these pre- and post-demolition inspections.

In order to resolve the issue and allow construction to continue, staff has requested that the building plans be revised to conform to the current code requirements for side yard setbacks, pad edge setbacks, and maximum driveway slope. Upon submittal of the new plans, the necessary plan check process, including completion of a new view preservation analysis pursuant to Beverly Hills Municipal Code Section 10-3-2522, can be completed. Please note that the view preservation analysis is considered discretionary in nature, and thus any staff determination regarding view preservation would be appealable to the City Council within 14 days. (BHMC Secs. 1-4-101 A and 1-4-102 A.)

Further, because of the demolition in excess of the 50% rule and the resultant loss of nonconforming rights, continued construction pursuant to the previously approved building plans would be a violation of the Municipal Code Sections 10-3-203 C and D because it would constitute alteration of a building in a manner that fails to conform to code requirements, and would constitute alteration of a structure within required setbacks.

As we discussed in our meeting, Staff has determined that Building Permit No. BS0725308 will be revoked because of the need for submittal of revised plans that conform to City codes, further plan checking, and further view preservation analysis as described above. This revocation is pursuant to the City's adopted Administrative Code Section 303.5, which provides:

303.5 Suspension or Revocation. The building official may, in writing, suspend or revoke a permit issued under the provisions of this code and the technical codes when the permit is issued in error or on the basis of incorrect information supplied, or in violation of an ordinance or regulation or the provisions of these codes.

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Re: 1201 Laurel Way
December 14, 2009
Page 4

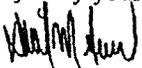
Pursuant to BHMC Section 1-3-107, "[a]ny violation of a condition of any permit or approval issued pursuant to this code shall constitute a violation of this code." Therefore, the applicant's failure to comply with the demolition condition on the approved building plans constitutes a violation of the code, which empowers the Building Official to revoke the permit. This letter serves as the Building Official's written revocation of Building Permit No. BS0725308 based on the violation of the approved plans and the 50% rule noted thereon, as well as failure to comply with required setbacks resulting from the loss of nonconforming rights.

Revocation of the building permit is appealable within a 14-day period from the date of this letter, pursuant to BHMC Sections 1-4-101 A. and 1-4-102 A. Appeals must be filed with the City Clerk, along with the required appeal fee. I trust this answers your question regarding administrative remedies that must be exhausted before your client could file any legal challenge regarding a permit revocation.

It remains staff's hope that the applicant will revise and resubmit plans for review by the Building and Planning Divisions, so that a new permit can be issued for a structure that complies with all code requirements, thus enabling the applicant to proceed with construction. Staff remains available to assist the applicant through this process.

If you have any questions regarding this letter, please do not hesitate to contact the undersigned.

Very truly yours,


David M. Snow
Assistant City Attorney


George Chavez
Assistant Director of Community Development and
Building Official

cc: Susan Healy Keene, Director of Community Development
Jonathan Lait, Assistant Director of Community Development / City Planner
David Reyes, Principal Planner
David Yelton, Plan Check Manager

B0785-0009\1191144v2.doc

Attachment No.5

JMBM | Jeffer Mangels
Butler & Marmaro LLP

Alex DeGood
Direct: (310) 201-3540
Fax: (310) 712-3348
AMD@jmbm.com

1900 Avenue of the Stars, 7th Floor
Los Angeles, California 90067-4308
(310) 203-8080 (310) 203-0567 Fax
www.jmbm.com

Ref: 70547-0001

December 28, 2009

Byron Pope
City Clerk
City of Beverly Hills
455 N. Rexford Drive
Beverly Hills, CA 90210

Re: Appeal of Revocation of Building Permit No. BS0725308 - APPEAL
FILED UNDER PROTEST

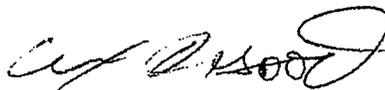
Dear Mr. Pope:

On behalf of Papcap Laurel Way, LLC, the owner ("Owner") of the real property located at 1201 Laurel Way, this office appeals the City's revocation of Building Permit No. BS0725308 (the "Permit").

The City's decision to revoke the Permit is inconsistent with Beverly Hills Municipal Code ("Code") in that Owner complied with all Permit and Code requirements. The City's actions are arbitrary, capricious, and not supported by substantial evidence in the administrative record.

**THIS APPEAL IS FILED UNDER PROTEST AND WITH FULL
RESERVATION OF RIGHTS TO BRING LEGAL ACTION AGAINST THE CITY,
INASMUCH AS OWNER MAINTAINS THAT AN ADMINISTRATIVE APPEAL OF A
BUILDING PERMIT REVOCATION DOES NOT EXIST UNDER BEVERLY HILLS
MUNICIPAL CODE.**

Sincerely,



ALEX DEGOOD of
Jeffer, Mangels, Butler & Marmaro LLP

JMBM | Jeffer Mangels
Butler & Marmaro LLP

OCT 16 2009

PLANNING & COMMUNITY
DEVELOPMENT DEPARTMENT

Alex DeGood
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Ref: 70547-0001

October 14, 2009

VIA EMAIL AND U.S. MAIL

David Reyes
Principal Planner
Community Development Department
City of Beverly Hills
455 N. Rexford Drive
Beverly Hills, CA 90210

Re: 1201 Laurel Way - Updated Demolition Schedule and Project Manager
Declaration

Dear David:

Following up on our October 6, 2009 meeting regarding 1201 Laurel Way (the "Project"), attached please find (1) the signed declaration of Project manager Keith Bae and (2) an updated demolition schedule prepared by Project architect Mauricio Duk.

These documents reinforce the fact that Project demolition in excess of 50% of the original structure occurred only after a determination that such demolition was necessary for safety issues, and that City officials were aware of and approved the demolition. It remains our expectation that the City can complete its review of the Project and resolve any issues by our scheduled October 22, 2009 meeting. In the interim, if you have any questions, please contact me. We look forward to an amicable resolution of this matter.

Sincerely,



Alex DeGood of
Jeffer, Mangels, Butler & Marmaro LLP

cc: Susan Healy Keene, Director of Community Development
Jonathan Lait, City Planner
Benjamin M. Reznik, Esq.
Kevin K. McDonnell, Esq.

DECLARATION OF KEITH BAE

I, Keith Bae, declare:

1. I am the Project Manager for PCG Construction Inc., a licensed general contractor in the State of California, Contractor License # 881795.

2. I serve, and at all times relevant to this declaration served, as the Project Manager for the General Contractor overseeing construction and remodeling activities at the single family residential property located at 1201 Laurel Way, Beverly Hills, California (the "Project").

3. Prior to commencing work on the Project I reviewed all plans and held detailed discussions with the Project architect, engineer, and owner to familiarize myself with the Project's particular requirements and approvals, including the requirement that Project demolition remain under 50% of total square footage of the existing exterior walls and roof area.

4. Prior to commencing work on the Project, on December 12, 2007, I, Miguel Macias and Joseph Yoon met with City of Beverly Hills Building & Safety inspector Steve Tabor for a pre-demolition inspection. I told Inspector Tabor that the Project would be my first work in Beverly Hills. I asked him whether he would be the Project's primary inspector. I further asked him what he would be looking for generally on the Project so that I could be sure to meet all Beverly Hills requirements.

5. At the December 12, 2007 pre-demolition inspection, Inspector Tabor and I discussed the Project's demolition plan. I informed Inspector Tabor that the Project involved a careful hand demolition of certain walls and floor area. I walked Inspector Tabor through the Project to show him the specific areas I planned to hand-demolish. As I understood it, one purpose of the December 12, 2007 meeting with Inspector Tabor was to ascertain what specific areas of the Project would count towards the 50% square footage cap.

6. On January 9, 2008 hand demolition of selected areas of the Project began. A crew of three to four workers engaged in hand demolition under the supervision of a crew leader.

7. As hand demolition progressed, substantial discrepancies emerged between the Project's City-provided structural plans and the actual physical layout of the home on the Project site. Numerous beams and footings were either missing or were not where they were shown on the structural plans. Further, over the years, the house had sustained substantial structural damage.

8. Due to these discrepancies I called an onsite meeting with Shaul Shachar, the Project's structural engineer, in early March 2008. I explained the discrepancies and stated that I was concerned about the safety of proceeding with the necessary cuts for the Project's basement, given that I did not believe I could implement the cuts and maintain the house's structural integrity. Shaul responded that I should consult with the Project's Inspector to arrive at a safe excavation plan.

9. After the early March meeting with Shaul Shachar, I remained concerned that due to the extent of the house's structural damage the house would not withstand building the planned basement. To advise how best to execute construction of the basement in light of the house's structural weaknesses, I called for another onsite meeting with Inspector Tabor, which took place on March 12, 2008. In preparation for the meeting, I drew a line on the interior and exterior of the house to indicate where I would need to excavate to build the basement. In further preparation for the meeting, my crew removed the house's sheetrock, insulation and flooring to expose beams and footings throughout the house.

10. During the March 12, 2008 meeting I walked Inspector Tabor into the house through a side gate and showed him a bathroom with substantial damage and missing beams based upon the structural plans the City provided. I then took him to the family room area and showed him more damaged structural elements. I asked him to advise me how I could accomplish construction of the basement without endangering collapse of the house in light of the 50% demolition limitation, particularly because I felt I needed to remove the portion of the house over the driveway, the roof and the living area to safely install the basement. Inspector Tabor explained that I could exceed the 50% limitation if there was structural damage that necessitated further demolition. I asked how I was to get such additional demolition approved. Inspector Tabor stated that he had the authority to approve it. I further asked about the plan check process because I was concerned about any discrepancies between submitted and actual demolition. Inspector Tabor stated that I need not worry about plan check as my plan checker was on leave and that he would likely serve as the plan checker for the Project going forward.

11. During the March 12, 2008 meeting I informed inspector Tabor that if I was allowed to demolish the home without running afoul of the 50% limitation, I would bring in large equipment to accomplish the demolition quickly rather than continuing to demolish by hand, and would need to remove the driveway to do so.

12. After a delay to procure the necessary insurance for heavy haul demolition equipment and obtain a City heavy haul permit, large-scale demolition of the Project's existing home began on April 15, 2008, consistent with the March 12, 2008 meeting with Inspector Tabor, and was completed on May 28, 2008. The existing home's driveway was also removed to accommodate the demolition equipment. The location of the driveway was marked so that the driveway could be replaced exactly as built to maintain the driveway's non-conforming layout.

13. I began reconstruction of the house after the demolition. I was able to accomplish reconstruction without new or revised plans because the approved plans clearly showed the required structural elements, either as new (N) or as existing (E). Revised plans and/or additional engineering were not necessary because the plans, including engineered elements, were complete. All structural elements, whether identified on the approved plans as new (N) or as existing (E) were replaced with new (N) members of the size and materials indicated on the approved plans. Thus, there was no need to duplicate the already-approved plans to account for the previously unplanned demolition.

14. On June 30, 2008, Inspector Tabor performed, in his plan check capacity, the plan check for the Project's mechanical permit.

15. On June 30, 2008 the Project's plumbing permit was issued.

16. On July 22, 2008 Inspector Tabor visited the Project to perform basement foundation and plumbing inspections. During this visit I showed Inspector Tabor the line I cut indicating where the old driveway had been. I explained that I was going to replace the driveway exactly as it had been so that I could maintain the driveway's non-conforming layout. Inspector Tabor agreed with this approach.

17. Between July 22, 2008 and October 28, 2008 Inspector Tabor visited the site nine times for various inspections. In addition, Inspector J. Boone inspected the site on August 7, 2008. At no time did either Inspector Tabor or Inspector Boone indicate that the Project was not in compliance with City code or approvals.

18. On October 21, 2003, Inspector Tabor, in his plan check capacity, reviewed the Project's electrical plans and issued a permit.

19. On December 12, 2008 City Planning and Building & Safety staff members, including Ryan Golich, Erik Keshishian and Steve Tabor visited the site to examine the height of the renovated home. At this time the original house had been demolished per Inspector Tabor's approval, the first floor of the new structure was framed, and I was in the process of framing the second floor of the new structure. At no point did any City staff member raise any issue related to the demolition of over 50% of the original home.

20. During the December 12, 2008 meeting, Inspector Tabor warned me to follow every City regulation strictly because "everybody" was watching the project. Inspector Tabor stated "I'm watching you like a hawk." Inspector Tabor did not mention any issue with respect to the over 50% demolition, nor did he indicate that any other City staff member was concerned with the demolition.

21. On July 15, 2009, Inspector Tabor visited the Project, along with City staff member David Yelton. Mr. Yelton informed me that the Project was in violation of City approvals because demolition had exceeded 50% of measurable area, and that he was issuing a stop work order as a result.

22. During the July 15, 2009 meeting, Inspector Tabor repeatedly asked Mr. Yelton if a restricted renovation project had the right to demolish more 50% if such demolition was approved by a project's structural engineer. After being asked multiple times, Mr. Yelton stated that this was correct.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed this 9th day of October, 2009, at Los Angeles, California.



KEITH BAE

Development Timeline

ACTION	DATE
A site visit was conducted and view preservation was approved with a maximum building height of 23'8" for the proposed project.	12/11/2006
Plans were reviewed and applicant was provided with comments.	5/15/2007
Proposed plans were reviewed and corrections were made. Building permits issued on 11/27/2007.	7/5/2007
Proposed plans were reviewed and it was determined that a Hillside R-1 Permit would be required to allow construction of the proposed pool and deck. To date, building permits have not been issued.	12/24/2007
Permit issued for demolition on 4/17/2008.	4/16/2008
The application was reviewed by the Planning Commission on 9/11/2008 and the request was denied.	5/28/2008

<p>The application was reviewed by the Planning Commission, and after several meetings was approved with conditions. The plans are currently being reviewed by Building and Safety, and permits will be issued if it is determined that the project complies with all applicable codes.</p>	<p>11/3/2008</p>
<p>Planning conducted a site visit to assess the situation, and determined that the construction exceeded the permitted height by approximately 2 feet. A Stop Work Order was issued for work on the second story of the house, and was lifted once the plans and project were brought into compliance with the original view preservation approval.</p>	<p>On or about January 2009</p>
<p>The trees were removed prior to the issuance of a permit due to the immediate life safety concerns. A permit was issued for the removal of the 7 heritage trees after-the-fact, pursuant to BHMC §10-3-2901C.</p>	<p>4/1/2009</p>
<p>Permit issued for work on guest house and garage on 4/16/2009.</p>	<p>4/15/2009</p>

A permit was issued for removal of the trees prior to their removal, pursuant to BHMC §10-3-2901.	6/12/2009
No action was taken; however, it was noted that the subject project may not be in compliance with the City's 50% rule regarding addition to and reconstruction of existing, legally nonconforming structures.	7/14/2009
Planning informed by B&S that the project does not comply with the City's 50% rule and that a Stop Work Order was issued for the subject project. No work is permitted to take place until the entire project is brought into compliance with the BHMC.	7/15/2009

Additional and Alteration to SFR	MAURICIO DUK/PCG CONSTRUCTION	7/5/2007
Excavation for basement and new retaining walls	MAURICIO DUK	7/5/2007
Additional and Alteration to SFR	MAURICIO DUK/PCG CONSTRUCTION	11/27/2007
Excavation for basement and new retaining walls	MAURICIO DUK	11/27/2007
Temporary Power Pole	NATIONAL CONSTRUCTION RENTALS INC	2/4/2008
Temporary Power Pole	NATIONAL CONSTRUCTION RENTALS INC	2/4/2008
Mechanical for alteration and addition	PCG CONSTRUCTION	6/2/2008
Plumbing for alteration and addition	LYNN GLENN PLUMBING	6/2/2008

Mechanical for alteration and addition	Issued	PCG CONSTRUCTION	6/30/2008
Plumbing for alteration and addition	Issued	LYNN GLENN PLUMBING	6/30/2008
Addition and alteration to SFR	Applied	PCG CONSTRUCTION	9/22/2008
Electrical-conduit only pending plan check	Applied	K O R BUILDERS INC dba: A W ELECTRICAL	9/23/2008
Electrical-conduit only pending plan check	Issued	K O R BUILDERS INC dba: A W ELECTRICAL	9/23/2008
Addition and alteration to SFR	Issued	PCG CONSTRUCTION	10/21/2008
Install new fire sprinkler system for single family res: 2 story with basement and 2 car garage with workshop	Applied	A H ACCORD GROUP INC	11/19/2008
Install new fire sprinkler system for single family res: 2 story with basement and 2 car garage with workshop	Applied	A H ACCORD GROUP INC	3/23/2009

Additional and Alteration to SFR	Assigned to PRE	MAURICIO DUK/PCG CONSTRUCTION	7/5/2007
Excavation for basement and new retaining walls	Assigned to PRE	MAURICIO DUK	7/5/2007
Additional and Alteration to SFR	Plan Check w/Corrections	MAURICIO DUK/PCG CONSTRUCTION	7/16/2007
Excavation for basement and new retaining walls	Plan Check w/Corrections	MAURICIO DUK	7/16/2007
Additional and Alteration to SFR	PC Approved	MAURICIO DUK/PCG CONSTRUCTION	8/20/2007
Excavation for basement and new retaining walls	PC Approved	MAURICIO DUK	9/10/2007
Mechanical for alteration and addition	Assigned to PRE	PCG CONSTRUCTION	6/5/2008
Plumbing for alteration and addition	Assigned to PRE	LYNN GLENN PLUMBING	6/5/2008
Mechanical for alteration and addition	PC Approved	PCG CONSTRUCTION	6/10/2008
Plumbing for alteration and addition	PC Approved	LYNN GLENN PLUMBING	6/10/2008
Addition and alteration to SFR	Assigned to PRE	PCG CONSTRUCTION	9/25/2008
Addition and alteration to SFR	PC Approved	PCG CONSTRUCTION	10/2/2008
Install new fire sprinkler system for single family res: 2 story with basement and 2 car garage with workshop	Assigned to PRE	A H ACCORD GROUP INC	11/19/2008
Install new fire sprinkler system for single family res: 2 story with basement and 2 car garage with workshop	Plan Check w/Corrections	A H ACCORD GROUP INC	12/1/2008
Install new fire sprinkler system for single family res: 2 story with basement and 2 car garage with workshop	PC Approved	A H ACCORD GROUP INC	3/23/2009

INSPECTION DESCRIPTION	SCHEDULING TYPE	ACTION	DATE
Clarifier	MANUAL	No Access	12/6/2007
Clarifier	ONLINE	Req for Inspection (History)	12/6/2007
Pre-construction meeting	MANUAL	Progress	12/12/2007
Pre-construction meeting	ONLINE	Req for Inspection (History)	12/12/2007
Edison meter release	MANUAL	Approved	2/8/2008
Temporary power pole	MANUAL	Approved	2/8/2008
Temporary power pole	IVR	Req for Inspection (History)	2/8/2008
Miscellaneous building	MANUAL	Progress	3/12/2008
Miscellaneous building	MANUAL	Req for Inspection (History)	3/12/2008
Project conditions	MANUAL	Progress	4/11/2008
Foundations/UFER ground	MANUAL	Progress	7/22/2008
Rough plumbing	MANUAL	Progress	7/22/2008
Foundations/UFER ground	IVR	Req for Inspection (History)	7/22/2008
Rough plumbing	IVR	Req for Inspection (History)	7/22/2008
Block wall grout	MANUAL	Progress	7/28/2008
Block wall grout	IVR	Req for Inspection (History)	7/28/2008
Block wall grout	MANUAL	Progress	7/30/2008
Block wall grout	IVR	Req for Inspection (History)	7/30/2008
Block wall grout	MANUAL	Partial Approval	8/7/2008
Foundations/UFER ground	IVR	Req for Inspection (History)	8/7/2008
Foundations/UFER ground	MANUAL	Progress	9/25/2008
Foundations/UFER ground	ONLINE	Req for Inspection (History)	9/25/2008
Foundations/UFER ground	MANUAL	Progress	10/6/2008
Foundations/UFER ground	ONLINE	Req for Inspection (History)	10/6/2008
Foundations/UFER ground	MANUAL	Approved	10/14/2008
Under-floor plumbing	MANUAL	Progress	10/14/2008
Block wall grout	ONLINE	Req for Inspection (History)	10/14/2008
Foundations/UFER ground	ONLINE	Req for Inspection (History)	10/14/2008
Rough plumbing	MANUAL	Wrong Inspection Request	10/14/2008
Foundations/UFER ground	MANUAL	Wrong Inspection Request	10/14/2008
Rough plumbing	MANUAL	Correction	10/27/2008
Slab pour	ONLINE	Req for Inspection (History)	10/27/2008
Slab pour	MANUAL	Approved	10/28/2008
Slab pour	ONLINE	Req for Inspection (History)	10/28/2008
Slab pour	MANUAL	Cancelled	12/8/2008
Miscellaneous building			

Miscellaneous building	MANUAL	Req for Inspection (History)	12/11/2008
Miscellaneous building	MANUAL	Stop Work Order	12/11/2008
Duct joint sealing (pre-duct insulation)	ONLINE	Cancelled	3/27/2009
Duct joint sealing (pre-duct insulation)	IVR	Req for Inspection (History)	3/27/2009
Duct joint sealing (pre-duct insulation)	IVR	Req for Inspection (History)	3/27/2009
Duct joint sealing (pre-duct insulation)	ONLINE	Progress	3/30/2009
Rough plumbing	MANUAL	Approved	4/20/2009
Shear walls	MANUAL	Not Approved	4/20/2009
Under-floor	MANUAL	Progress	4/20/2009
Shear walls	ONLINE	Req for Inspection (History)	4/20/2009
Under-floor	ONLINE	Req for Inspection (History)	4/20/2009
Rough plumbing	ONLINE	Req for Inspection (History)	4/20/2009
Shear walls	MANUAL	Not Approved	4/27/2009
Shear walls	ONLINE	Req for Inspection (History)	4/27/2009
Roof framing/sheathing (nailing)	MANUAL	Progress	5/7/2009
Roof framing/sheathing (nailing)	ONLINE	Req for Inspection (History)	5/7/2009
Project conditions	MANUAL	Progress	7/8/2009
Miscellaneous building	MANUAL	Stop Work Order	7/16/2009
Project conditions	MANUAL	Stop Work Order	7/16/2009

ture or building service equipment have been submitted or approved, provided adequate information and detailed statements have been filed complying with all pertinent requirements of the technical codes. The holder of a partial permit shall proceed without assurance that the permit for the entire building, structure or building service will be granted.

303.2 Retention of Plans. One set of approved plans, specifications and computations shall be retained by the building official for a period of not less than 90 days from the date of completion of the work covered therein; and one set of approved plans and specifications shall be returned to the applicant and shall be kept on the site of the building or work at all times during which the work authorized thereby is in progress.

303.3 Validity of Permit. The issuance of a permit or approval of plans, specifications and computations shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this code or the technical codes, or of any other ordinance of the jurisdiction. Permits presuming to give authority to violate or cancel the provisions of this code or of other ordinances of the jurisdiction shall not be valid.

The issuance of a permit based on plans, specifications and other data shall not prevent the building official from thereafter requiring the correction of errors in said plans, specifications and other data, or from preventing building operations being carried on thereunder when in violation of these codes or of any other ordinances of this jurisdiction.

303.4 Expiration. Every permit issued by the building official under the provisions of the technical codes shall expire by limitation and become null and void, if the building or work authorized by such permit is not commenced within 180 days from the date of such permit, or if the building or work authorized by such permit is suspended or abandoned at any time after the work is commenced for a period of 180 days. Before such work can be recommenced, a new permit shall be first obtained to do so, and the fee therefor shall be one half the amount required for a new permit for such work, provided no changes have been made or will be made in the original plans and specifications for such work; and provided further that such suspension or abandonment has not exceeded one year. In order to renew action on a permit after expiration, the permittee shall pay a new full permit fee.

A permittee holding an unexpired permit may apply for an extension of the time within which work may commence under that permit when the permittee is unable to commence work within the time required by this section for good and satisfactory reasons. The building official may extend the time for action by the permittee for a period not exceeding 180 days upon written request by the permittee showing that circumstances beyond the control of the permittee have prevented action from being taken. Permits shall not be extended more than once.

303.5 Suspension or Revocation. The building official may, in writing, suspend or revoke a permit issued under the provisions of this code and the technical codes when the permit is issued in error or on the basis of incorrect information supplied, or in violation of an ordinance or regulation or the provisions of these codes.

SECTION 304 — FEES

304.1 General. Fees shall be assessed in accordance with the provisions of this section or shall be as set forth in the fee schedule adopted by this jurisdiction.

304.2 Permit Fees. The fee for each permit shall be as set forth in Tables 3-A through 3-H. Where a technical code has been adopted by the jurisdiction for which no fee schedule is shown in

this code, the fee required shall be in accordance with the schedule established by the legislative body.

The determination of value or valuation under any of the provisions of these codes shall be made by the building official. The value to be used in computing the building permit and building plan review fees shall be the total value of all construction work for which the permit is issued as well as all finish work, painting, roofing, electrical, plumbing, heating, air-conditioning, elevators, fire-extinguishing systems and other permanent equipment.

304.3 Plan Review Fees. When submittal documents are required by Section 302.2, a plan review fee shall be paid at the time of submitting the submittal documents for plan review. Said plan review fee shall be 65 percent of the building permit fee as shown in Table 3-A.

The plan review fees for electrical, mechanical and plumbing work shall be equal to 25 percent of the total permit fee as set forth in Tables 3-B, 3-C and 3-D.

The plan review fee for grading work shall be as set forth in Table 3-G.

The plan review fees specified in this section are separate fees from the permit fees specified in Section 304.2 and are in addition to the permit fees.

When submittal documents are incomplete or changed so as to require additional plan review or when the project involves deferred submittal items as defined in Section 302.4.2, an additional plan review fee shall be charged at the rate shown in Tables 3-A through 3-G.

304.4 Expiration of Plan Review. Applications for which no permit is issued within 180 days following the date of application shall expire by limitation, and plans and other data submitted for review may thereafter be returned to the applicant or destroyed by the building official. The building official may extend the time for action by the applicant for a period not exceeding 180 days on written request by the applicant showing that circumstances beyond the control of the applicant have prevented action from being taken. An application shall not be extended more than once. An application shall not be extended if this code or any other pertinent laws or ordinances have been amended subsequent to the date of application. In order to renew action on an application after expiration, the applicant shall resubmit plans and pay a new plan review fee.

304.5 Investigation Fees: Work without a Permit.

304.5.1 Investigation. Whenever work for which a permit is required by this code has been commenced without first obtaining a permit, a special investigation shall be made before a permit may be issued for such work.

304.5.2 Fee. An investigation fee, in addition to the permit fee, shall be collected whether or not a permit is then or subsequently issued. The investigation fee shall be equal to the amount of the permit fee required by this code. The minimum investigation fee shall be the same as the minimum fee set forth in Tables 3-A through 3-H. The payment of such investigation fee shall not exempt an applicant from compliance with all other provisions of either this code or the technical codes nor from the penalty prescribed by law.

304.6 Fee Refunds. The building official may authorize refunding of a fee paid hereunder which was erroneously paid or collected.

The building official may authorize refunding of not more than 80 percent of the permit fee paid when no work has been done under a permit issued in accordance with this code.

ATTACHMENT 2

Letter to City Council from Ben Reznik dated February 16, 2010



Jeffer Mangels
Butler & Marmaro LLP

Benjamin M. Reznik
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Ref: 70547-0001

February 16, 2010

Nancy Krasne, Mayor
Jimmy Delshad, Vice Mayor
Barry Brucker, Councilmember
John Mirisch, Councilmember
William Brien, M.D., Councilmember
455 N. Rexford Drive
Beverly Hills, CA 90210

Re: 1201 Laurel Way - Appeal of Revocation of Building Permit
Hearing Date: February 16, 2010

Dear Mayor Krasne, Vice Mayor Delshad and Members of the City Council:

This office represents Papcap Laurel Way, LLC, the owner ("Owner") of the property located at 1201 Laurel Way (the "Property"). This letter concerns the appeal of the revocation of Building Permit No. BS0725308 (the "Permit") for the renovation and expansion of a single family home located on the Property (the "Project").

I. COUNCIL HAS NO AUTHORITY TO HEAR THIS APPEAL

In a December 14, 2009 letter to this office, Assistant City Attorney David Snow asserted that "Revocation of a building permit is appealable within a 14-day period from the date of this letter, pursuant to BHMC Sections 1-4-101 A. and 1-4-102 A." We find no support in the City's Municipal Code ("Code") for this assertion, and therefore contend that should City Council hold this appeal hearing, it will do so without legal authority.

Code section 1-4-101 A. states "Where a right of appeal to Council exists under this code, and a procedure is not otherwise specifically set forth in this code, an appeal may be taken to the council[.]" This section obviously begs the question: does the Code provide elsewhere for a right of appeal to Council challenging the revocation of a building permit? The answer is no. There is no mention in the Code regarding a right to appeal the revocation of a building permit.

Further, the Code does much more than merely omit the right to appeal the revocation of a building permit; it actively prohibits such an appeal.

Code section 1-4-101 B. states

"No right of appeal to the council from any administrative decision made by an official of the city pursuant to any of the provisions of this code shall exist when such decision is ministerial and thus does not involve the exercise of administrative discretion or personal judgment exercised pursuant to any of the provisions of this code."

The decision to revoke the Permit was a ministerial act, as that term is clearly defined in California law. A ministerial act need not be mandatory or perfunctory; it may be contingent on the existence of certain facts. *See Lazan v. County of Riverside* 140 Cal.App.4th 453, 460 (2006). "A ministerial act... is one that a public officer is required to perform in a prescribed manner in obedience to the mandate of legal authority and without regard to his own judgment or opinion concerning the propriety or impropriety of the act to be performed, when a given set of facts arises." *Id.*

That is precisely the case here: the public officer (in this case, Inspector Tabor) was presented with certain facts; namely, a safety issue on the construction site were the contractor to stop further demolition and proceed with the Project's plans. Inspector Tabor is the one who brought to Mr. Bae's attention the exception to the 50% demolition rule, found in Code section 10-3-4100 C., telling Mr. Bae that it applied in this case and therefore it was permissible to proceed to demolish more than 50% of the home's roof and walls. Once Inspector Tabor determined, for safety reasons, that it was necessary to demolish the remaining unsafe roof and wall sections, the permission to proceed with demolition was such a ministerial act. There was no discretion to be exercised once Inspector Tabor determined that it was unsafe to proceed absent additional demolition, as the application of the exception found in 10-3-4100 C. is a ministerial act. City code, per section 1-4-101 B. explicitly prohibits a Council appeal hearing on such a ministerial act.

Should Council therefore decide to hold this appeal hearing, the Owner will participate under protest, with full reservation of all rights to bring legal action against the City or to otherwise challenge any and all City decisions with respect to the Permit.

II. THE APPEAL HEARING VIOLATES THE OWNER'S DUE PROCESS RIGHTS

We note that this appeal concerns a building permit issue that has been examined by City staff since July 2009, and that this particular appeal hearing was scheduled on January 12, 2010, yet the staff report was not made available until the holiday weekend before this hearing. The Owner therefore has had no meaningful time to respond to staff contentions or to submit information to Council such that Council would have a meaningful opportunity to review, assess and contemplate the Owner's material in advance of tonight's 7:00pm hearing. Given that City offices were of course closed on Monday, February 15th, the Owner could not submit this letter until February 16th, the date of the hearing. Such an impossibly compressed time for a meaningful response to City staff is a violation of the basic procedural due process rights of any

applicant or appellant before City Council. *See Brown v. City of Los Angeles* 102 Cal.App.4th 155, 174 (2002) ("[D]ue process is the opportunity to be heard at a meaningful time in a meaningful manner"); *see also California Teachers Ass'n v. State of California* 20 Cal. 4th 327, 335 (1999) ("This nation has long realized that none of our freedoms would be secure if any person could be deprived of his possessions without an opportunity to defend them ' "at a meaningful time and in a meaningful manner." ' [citations omitted]).

Further, neither the staff report nor any other City material answers a most basic question: **what is the standard of review for this appeal hearing?** It is unclear whether the City considers this a de novo appeal, in which Council must judge all evidence presented independently, or whether the Council is reviewing the revocation of the Permit under some sort of substantial evidence or abuse of discretion standard. Again, the Owner cannot meaningfully prepare for, and Council cannot meaningfully hold, a hearing without the City addressing such fundamental questions.

I. PROJECT HISTORY

On November 11, 2007, the City issued Building Permit No. BS0725308 for the renovation and expansion of a single family home located on the Property. The Permit limited demolition to under 50% of the Project's roof and exterior walls, allowing the Project to maintain its nonconforming development rights, per Beverly Hills Municipal Code ("BHMC") § 10-3-4100(A)(1)¹.

On December 12, 2007, City Building Inspector Steve Tabor ("Inspector Tabor") held a pre-demolition meeting with Keith Bac, the project manager of PCG Construction, the Project's contractor, during which they discussed the Project's hand demolition plan. On March 12, 2008, Inspector Tabor inspected the Project and, upon viewing substantial structural damage, which would have posed a safety hazard had excavation of the basement proceeded as planned, approved under his authority demolition in excess of 50%, while permitting the Project to maintain its nonconforming development rights, per BHMC § 10-3-4100(C). On July 15, 2009, over sixteen months after Inspector Tabor explicitly approved Project demolition in excess of 50%, and almost fourteen months after the completion of Project demolition, the City issued a Stop Work Order (the "Order"), claiming that the Project impermissibly exceeded the 50% demolition threshold, despite regular City inspections throughout this period. The City then took another five months to purportedly investigate the Project's circumstances, finally revoking the Permit on December 14, 2009 (the "Revocation letter"). The Owner now appeals the Permit revocation (under protest and with full reservation of rights that an appeal is not available), on the grounds that the revocation is improper and does not accord with the clear standards of the BHMC, as detailed below.

¹ A copy of § 10-3-4100 A. - C. is attached for your review as "Exhibit 1".

II. PROJECT DEMOLITION WAS PROPER AND APPROVED

A. The City Approved Demolition in Excess of 50% at its March 12, 2008 Inspection

Project demolition began by hand on January 9, 2008. Hand demolition was necessary to ensure that demolition did not exceed the 50% limitation. As hand demolition progressed, substantial structural damage was exposed. Due to concerns regarding the Project's ability to withstand the approved renovation in light of its structural damage, Mr. Bae called for an inspection meeting with Inspector Tabor. On March 12, 2008, Mr. Bae met with Inspector Tabor specifically to discuss the Project's structural damage and the impossibility of safely continuing with the renovation while adhering to the Project's demolition limitation. (See Declaration of Keith Bae, October 9, 2009, attached as "Exhibit 2").

During the March 12, 2008 meeting, Mr. Bae showed Inspector Tabor the Project's structural damage and asked for Inspector Tabor's opinion regarding how the Project, now partially demolished, could continue. Inspector Tabor informed Mr. Bae that the City allowed demolition to exceed 50% while maintaining a project's nonconforming development rights when such demolition was necessary for safety reasons. Mr. Bae then inquired as to the process to receive authorization to exceed the 50% demolition limitation for safety reasons. Inspector Tabor stated that he had the authority to approve the demolition, and that because he would likely serve as the Project's plan check engineer going forward, there was no need to submit updated plans.

Based upon Inspector Tabor's explicit authorization, Mr. Bae informed Inspector Tabor he would dispense with hand demolition and begin demolition with large equipment. Mr. Bae further informed Inspector Tabor that he would need to remove the Project's driveway to provide room for large demolition equipment, but that he would mark the exact location of the driveway to replace it later so that the driveway could maintain its nonconforming rights. Inspector Tabor agreed to this approach.

As noted above, the Owner has provided a declaration, signed under penalty of perjury, by Keith Bae attesting to these facts. Further, the Owner has provided a supplemental declaration from Mr. Bae, attached as "Exhibit 3." To date, the City has presented nothing to contradict Mr. Bae's sworn statements other than stating in the staff report that "Inspector Tabor disputes Mr. Bae's claim that approval was ever requested or granted." We note that even this statement does not attack the accuracy of any specific statement by Mr. Bae. Further, staff has not explained on what basis they support Inspector Tabor's statement. Did staff interview Inspector Tabor? If so, was Inspector Tabor under oath? Was such an interview taped? Is there a transcript available for review? Did Inspector Tabor submit a sworn statement? Is such a statement available to the Owner or Council for review? If in fact a "dispute" exists in Inspector Tabor's mind between his recollection of particular meetings and that of Mr. Bae, should not Inspector Tabor testify before Council? Once more, the Owner is not being provided with a meaningful opportunity to address City contentions.

B. The City Maintains No Written Policy Regarding the Process to Exercise the Rights Afforded by BHMC § 10-3-4100(C)

BHMC § 10-3-4100(C) provides that a property may maintain its nonconforming development rights regardless of whether demolition exceeds 50% if such demolition is necessary for safety reasons. Importantly, the Code does not provide for a process by which a property owner can exercise this right. Further, the City maintains no written policy regarding a method by which this right can be exercised. Thus Inspector Tabor's approval, granted to Mr. Bae at the March 12, 2008 meeting was not only sufficient to allow the Owner to avail itself of § 10-3-4100(C), but was in fact the only way the City could have granted such approval, given that there is no form, application, or written inspection approval for this code section. The only way, therefore, that such approval could be granted would be verbally after a visual inspection of a property's structural damage.

It is quite telling that since the issuance of and the Owner's challenge to the Order, a period of seven months, the City has been unable to produce any documentation regarding a written process for utilizing the rights afforded by § 10-3-4100(C). Indeed, the City's Revocation letter and the staff report prepared for this hearing merely reference the City's purported "pattern and practice" of documenting particular building approvals in writing, something that, even if true, is of no relevance to the instant matter. Non-specific assertions of past City behavior, untethered to any code section or written City policy, cannot form the basis for the revocation of the Permit given the explicit demolition approval granted by the City staff member in charge of the Project.

The Permit revocation letter further asserts that the Owner did not "call for inspection before and after demolition to verify with the building inspector the scope of demolition is less than 50%." It is difficult to envision how the December 12, 2007 meeting could be construed as anything but a meeting called pursuant to this requirement. Further, it is nonsensical to assert that the Owner should have called for an inspection after demolition exceeded 50% to verify that demolition remained under 50%. The required post-demolition inspection to ensure demolition remains under 50% only applies when there is no exercise of the rights afforded by § 10-3-4100(C). By definition, once demolition occurs under § 10-3-4100(C), it has exceeded 50%.

C. Proper Safety Concerns Dictated Demolition in Excess of 50%

The Revocation letter and the staff report for this hearing appear to argue that even if Mr. Bae explicitly discussed the Project's structural damage with Inspector Tabor and Inspector Tabor gave approval to demolition beyond 50%, the Project's damage was not the "right kind" of damage to utilize § 10-3-4100(C). The plain language of § 10-3-4100(C) refutes this attempt to narrow the section's applicability. The section states that the 50% limitation "shall not apply to any repairs or upgrades...which...are necessary, for safety reasons, to bring the nonconforming structure into compliance with the requirements of title 9 of this code[.]" (emphasis added) Section 10-3-4100(C) thus encompasses the necessary repair and upgrade of

all structural damage that threatens the safety of a structure. This makes obvious sense; the primary concern of all building and safety inspections and approvals is the safety of construction within the City, regardless of what particular structural element threatens the safety of a building.

Further, the City's argument would force one of two illogical outcomes. If the presence of substantial structural damage is not enough to utilize § 10-3-4100(C), then an owner must either return a house to the exact layout it had before renovations began, or the owner must conform with current development standards, which effectively writes § 10-3-4100(C) out of the City's municipal code. The point of § 10-3-4100(C) is not to force compliance with current development standards, but rather to *relieve* a property from current development standards when structural damage outside of an owner's control or knowledge is discovered, which is precisely the case here.

III. THE CITY IS ESTOPPED FROM REVOKING THE PERMIT

Regardless of the particular scope of § 10-3-4100(C), California law clearly provides that a person or entity (in this case, the City) cannot make a promise to or induce action by another party on which the other party relies to its substantial detriment or injury. See *Toscano v. Greene Music*, 124 Cal.App.4th 685 (2004) (promissory estoppel); *City of Long Beach v. Mansell*, 3 Cal. 3d 462 (1970) (equitable estoppel).

In stating that the Owner could exceed the 50% demolition limitation, the City induced action on the part of the Owner. After demolition, the Owner engaged in sixteen months of construction-related activity, with regular City inspections, expending over \$1,000,000 in construction-related costs in reliance that the Project would not have to conform to current development standards. The City cannot, well over a year after the Owner commenced large-scale demolition and substantial construction per City instructions and with regular City inspections, go back on its word and eviscerate a Project that is moving toward completion without exposing itself to damage claims.

Moreover, the City's attempt to obfuscate its extremely delayed enforcement of the 50% limitation is disingenuous. The staff report for this hearing states that City staff became aware of the Project's demolition "[d]uring construction of the project," without a word mentioning that it took the City well over a year to come to this "realization." The report's very next sentence mentions the July 14, 2009² issuance of the Order, again implying that the City moved with dispatch in all enforcement efforts, when the actual enforcement timeline was anything but fast, as noted above.

The staff report also neglects to mention that the City had ample opportunity to observe the Project's state of demolition and subsequent construction. Between July 22, 2008

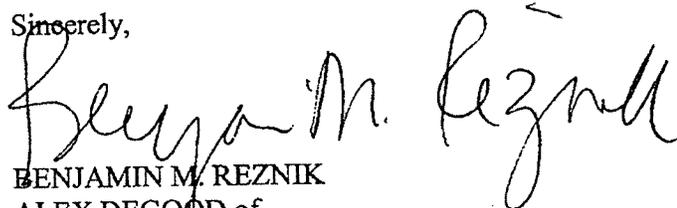
² The staff report first states the Order was issued on July 16, 2009 when describing the report's attachments, and then states the Order was issued on July 14, 2009 in the report's text. As can clearly be seen in the copy of the Order attached to the report, the Order was issued July 15, 2009.

and October 28, 2008, Inspector Tabor visited the Project site nine times for various inspections and mentioned nothing regarding the Project impermissibly exceeding the 50% limitation.³ Even more striking, City Planning and Department of Building and Safety staff members visited the Project on December 12, 2008 to examine the Project's height. At this time the original house had been largely demolished per Inspector Tabor's approval, the first floor of the new structure was framed, and the Owner was in the process of framing the Project's second floor. At no point during this site visit did any City staff raise any issued related to the demolition of over 50% of the Property's original house. Inexplicably, construction continued without incident for another seven months before the issuance of the Order.

IV. CONCLUSION

The City's municipal code clearly provides that a residential property may maintain its nonconforming development rights despite exceeding 50% demolition when such demolition is necessary for safety reasons. The City maintains no written process by which a property owner can utilize this code section, leaving its application to the judgment of inspectors in the field. The Project in question received approval from a City inspector for just such demolition and proceeded in reliance on this approval for over a year, with regular City inspections, before the City issued a Stop Work Order and eventually revoked the Project's Permit. Given that the City approved the demolition and allowed the Project Owner to incur over \$1,000,000 in construction-related costs after demolition approval was granted, the City cannot maintain the Permit revocation. For the foregoing reasons, we respectfully request that Council grant the appeal.

Sincerely,



BENJAMIN M. REZNIK

ALEX DEGOOD of

Jeffer, Mangels, Butler & Marmaro LLP

BMR:

cc: Laurence Wiener, City Attorney
David Snow, Assistant City Attorney
Susan Healy Keene, Director of Community Development
Jonathan Lait, Assistant Director of Community Development / City Planner
George Chavez, Building Official
David Reyes, Principal Planner

³ A timeline detailing City inspections is attached for your review as "Exhibit 4."

EXHIBIT 1

10-3-4100: NONCONFORMING BUILDINGS:

A. Single-Family Residential Developments: Except as otherwise provided by applicable local, state or federal law, any alteration to a nonconforming building in a single-family development shall conform to the following requirements:

1. Remodels: A maximum of fifty percent (50%) of the combined area of all the exterior walls and roof of a legally nonconforming building or structure may be replaced or reconstructed in any five (5) year period. For the purpose of this section, roof area shall be calculated as the horizontal area covering the floor area. If more than fifty percent (50%) of the combined area of all the exterior walls and roof are replaced or reconstructed, then the building shall be treated as a newly constructed building for the purposes of this chapter and shall be reconstructed so that the entire building conforms with the development standards of this chapter. For the purpose of this section, a portion of a wall or roof is considered replaced or reconstructed when the framing has been replaced or reconstructed.
2. Additions: Nothing in this section shall restrict the construction of an addition to a legally nonconforming building provided that such addition complies with the requirements of this chapter.

B. All Development Other Than Single-Family Residential Development: Except as otherwise provided by applicable local, state or federal law, any alteration to a legally nonconforming building in any development other than a single-family development shall conform to the following requirements:

1. Remodels: If, within a five (5) year period, a nonconforming building is altered, renovated, repaired, or remodeled, and the cumulative cost of such alteration, renovation, repair or remodel equals or exceeds fifty percent (50%) of the replacement cost of the building, then the building shall be treated as a newly constructed building for the purposes of this chapter and shall be reconstructed so that the entire building conforms with the development standards of this chapter.
 - a. Calculation Of Costs: The building official shall calculate the cost of replacement as well as the cost of alterations, renovations, repairs and remodels. When the building official determines that such calculation requires a degree of specialized knowledge, skill, or experience beyond that possessed by any employee of the city, or when there are differences of opinions between city staff and the project applicant with respect to such calculation, the building official may employ an independent, third party consultant or consultants to calculate the replacement cost or the cost of alterations, renovations, repairs or remodels. The project applicant or the property owner, or their respective agent(s), shall pay to the city all direct and indirect costs incurred by the city to retain said consultants and shall maintain a cash deposit with the city at all times in an amount sufficient to cover such costs.
2. Additions: Nothing in this section shall restrict the construction of an addition to a legally nonconforming building provided that such addition complies with the requirements of this chapter.

C. Exception For Life Safety Repairs/Upgrades: The provisions of this article shall not apply to any repairs or upgrades, regardless of whether those repairs or upgrades exceed the fifty percent (50%) threshold set forth in subsections A and B of this section, which the building official determines are necessary, for safety reasons, to bring the nonconforming structure into compliance with the requirements of title 9 of this code or any applicable governmental regulations. (Ord. 96-O-2272, eff. 1-9-1997; amd. Ord. 06-O-2498, eff. 3-24-2006)

EXHIBIT 2

DECLARATION OF KEITH BAE

I, Keith Bae, declare:

1. I am the Project Manager for PCG Construction Inc., a licensed general contractor in the State of California, Contractor License # 881795.

2. I serve, and at all times relevant to this declaration served, as the Project Manager for the General Contractor overseeing construction and remodeling activities at the single family residential property located at 1201 Laurel Way, Beverly Hills, California (the "Project").

3. Prior to commencing work on the Project I reviewed all plans and held detailed discussions with the Project architect, engineer, and owner to familiarize myself with the Project's particular requirements and approvals, including the requirement that Project demolition remain under 50% of total square footage of the existing exterior walls and roof area.

4. Prior to commencing work on the Project, on December 12, 2007, I, Miguel Macias and Joseph Yoon met with City of Beverly Hills Building & Safety Inspector Steve Tabor for a pre-demolition inspection. I told Inspector Tabor that the Project would be my first work in Beverly Hills. I asked him whether he would be the Project's primary inspector. I further asked him what he would be looking for generally on the Project so that I could be sure to meet all Beverly Hills requirements.

5. At the December 12, 2007 pre-demolition inspection, Inspector Tabor and I discussed the Project's demolition plan. I informed Inspector Tabor that the Project involved a careful hand demolition of certain walls and floor area. I walked Inspector Tabor through the Project to show him the specific areas I planned to hand-demolish. As I understood it, one purpose of the December 12, 2007 meeting with Inspector Tabor was to ascertain what specific areas of the Project would count towards the 50% square footage cap.

6. On January 9, 2008 hand demolition of selected areas of the Project began. A crew of three to four workers engaged in hand demolition under the supervision of a crew leader.

7. As hand demolition progressed, substantial discrepancies emerged between the Project's City-provided structural plans and the actual physical layout of the home on the Project site. Numerous beams and footings were either missing or were not where they were shown on the structural plans. Further, over the years, the house had sustained substantial structural damage.

8. Due to these discrepancies I called an onsite meeting with Shaul Shachar, the Project's structural engineer, in early March 2008. I explained the discrepancies and stated that I was concerned about the safety of proceeding with the necessary cuts for the Project's basement, given that I did not believe I could implement the cuts and maintain the house's structural integrity. Shaul responded that I should consult with the Project's Inspector to arrive at a safe excavation plan.

4

9. After the early March meeting with Shaul Shachar, I remained concerned that due to the extent of the house's structural damage the house would not withstand building the planned basement. To advise how best to execute construction of the basement in light of the house's structural weaknesses, I called for another onsite meeting with Inspector Tabor, which took place on March 12, 2008. In preparation for the meeting, I drew a line on the interior and exterior of the house to indicate where I would need to excavate to build the basement. In further preparation for the meeting, my crew removed the house's sheetrock, insulation and flooring to expose beams and footings throughout the house.

10. During the March 12, 2008 meeting I walked Inspector Tabor into the house through a side gate and showed him a bathroom with substantial damage and missing beams based upon the structural plans the City provided. I then took him to the family room area and showed him more damaged structural elements. I asked him to advise me how I could accomplish construction of the basement without endangering collapse of the house in light of the 50% demolition limitation, particularly because I felt I needed to remove the portion of the house over the driveway, the roof and the living area to safely install the basement. Inspector Tabor explained that I could exceed the 50% limitation if there was structural damage that necessitated further demolition. I asked how I was to get such additional demolition approved. Inspector Tabor stated that he had the authority to approve it. I further asked about the plan check process because I was concerned about any discrepancies between submitted and actual demolition. Inspector Tabor stated that I need not worry about plan check as my plan checker was on leave and that he would likely serve as the plan checker for the Project going forward.

11. During the March 12, 2008 meeting I informed inspector Tabor that if I was allowed to demolish the home without running afoul of the 50% limitation, I would bring in large equipment to accomplish the demolition quickly rather than continuing to demolish by hand, and would need to remove the driveway to do so.

12. After a delay to procure the necessary insurance for heavy haul demolition equipment and obtain a City heavy haul permit, large-scale demolition of the Project's existing home began on April 15, 2008, consistent with the March 12, 2008 meeting with Inspector Tabor, and was completed on May 28, 2008. The existing home's driveway was also removed to accommodate the demolition equipment. The location of the driveway was marked so that the driveway could be replaced exactly as built to maintain the driveway's non-conforming layout.

13. I began reconstruction of the house after the demolition. I was able to accomplish reconstruction without new or revised plans because the approved plans clearly showed the required structural elements, either as new (N) or as existing (E). Revised plans and/or additional engineering were not necessary because the plans, including engineered elements, were complete. All structural elements, whether identified on the approved plans as new (N) or as existing (E) were replaced with new (N) members of the size and materials indicated on the approved plans. Thus, there was no need to duplicate the already-approved plans to account for the previously unplanned demolition.

14. On June 30, 2008, Inspector Tabor performed, in his plan check capacity, the plan check for the Project's mechanical permit.



15. On June 30, 2008 the Project's plumbing permit was issued.

16. On July 22, 2008 Inspector Tabor visited the Project to perform basement foundation and plumbing inspections. During this visit I showed Inspector Tabor the line I cut indicating where the old driveway had been. I explained that I was going to replace the driveway exactly as it had been so that I could maintain the driveway's non-conforming layout. Inspector Tabor agreed with this approach.

17. Between July 22, 2008 and October 28, 2008 Inspector Tabor visited the site nine times for various inspections. In addition, Inspector J. Boone inspected the site on August 7, 2008. At no time did either Inspector Tabor or Inspector Boone indicate that the Project was not in compliance with City code or approvals.

18. On October 21, 2008, Inspector Tabor, in his plan check capacity, reviewed the Project's electrical plans and issued a permit.

19. On December 12, 2008 City Planning and Building & Safety staff members, including Ryan Golich, Erik Keshishian and Steve Tabor visited the site to examine the height of the renovated home. At this time the original house had been demolished per Inspector Tabor's approval, the first floor of the new structure was framed, and I was in the process of framing the second floor of the new structure. At no point did any City staff member raise any issue related to the demolition of over 50% of the original home.

20. During the December 12, 2008 meeting, Inspector Tabor warned me to follow every City regulation strictly because "everybody" was watching the project. Inspector Tabor stated "I'm watching you like a hawk." Inspector Tabor did not mention any issue with respect to the over 50% demolition, nor did he indicate that any other City staff member was concerned with the demolition.

21. On July 15, 2009, Inspector Tabor visited the Project, along with City staff member David Yelton. Mr. Yelton informed me that the Project was in violation of City approvals because demolition had exceeded 50% of measurable area, and that he was issuing a stop work order as a result.

22. During the July 15, 2009 meeting, Inspector Tabor repeatedly asked Mr. Yelton if a restricted renovation project had the right to demolish more 50% if such demolition was approved by a project's structural engineer. After being asked multiple times, Mr. Yelton stated that this was correct.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed this 9th day of October, 2009, at Los Angeles, California.



KEITH BAE

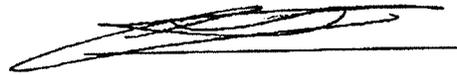
EXHIBIT 3

SUPPLEMENTAL DECLARATION OF KEITH BAE

I, Keith Bae, declare:

1. I am the Project Manager for PCG Construction Inc., a licensed general contractor in the State of California, Contractor License # 881795.
2. I serve, and at all times relevant to this declaration served, as the Project Manager for the General Contractor overseeing construction and remodeling activities at the single family residential property located at 1201 Laurel Way, Beverly Hills, California (the "Project").
3. This afternoon I was provided with the staff report for the February 16, 2010 City of Beverly Hills City Council meeting regarding an appeal of the revocation of the Building Permit for the Project. In the staff report City staff dispute several statements contained in my October 9, 2009 declaration regarding this matter. I therefore execute this supplemental declaration so that there is no ambiguity regarding my statements.
4. During a March 12, 2008 onsite meeting between myself and City Building and Safety Inspector Steve Tabor, I showed Inspector Tabor substantial structural damage in several locations of the home and offered my opinion that the house could not withstand the approved remodel if demolition could not progress beyond 50% of the home's exterior walls and roof. After viewing the home's structural damage, Inspector Tabor informed me that he had the authority to approve a demolition in excess of 50% while allowing the home to maintain its nonconforming development rights. I informed Inspector Tabor that with his approval I would therefore demolish most of the home's roof and exterior walls, and would use large-scale demolition equipment for this demolition. Inspector Tabor agreed and granted verbal approval for this demolition.
5. During the March 12, 2008 site meeting I further informed Inspector Tabor that I would need to remove the home's driveway so that I could bring large-scale demolition equipment onsite. Because I wanted to maintain the driveway's nonconforming layout, I asked Inspector Tabor if I could mark the exact the location of the driveway so that I could replace it later, thus maintaining its nonconforming layout. Inspector Tabor agreed to and verbally approved this plan.
6. The demolition that occurred pursuant to Inspector Tabor's approval concerned the roof and exterior walls of the home. The foundation and footprint of the existing home was not demolished.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed this 16th day of February, 2010, at Los Angeles, California.



KEITH BAE

EXHIBIT 4

MAIN HOUSE

FIELD INSPECTION REPORT

Inspector: [Name]
 Date: [Date]
 File No: [Number]

Address	1201 LAUREL WAY	Project No	270014733	File	Subtype
City	LAUREL	State	MD	Permit Type	Alteration
County	ST. MARY'S	Permit No	112272007	Plan No	112272007

Applied : 07/05/2007 Issued : 11/27/2007 Completed : To Expiration : 07/09/2009

Valuation : \$1,167,000.00

Project Name : ADDITION & ALTERATION TO SFR.

Description : ADDITION & ALTERATION TO SFR.

Applicant : MAURICIO DUK
 Applicant : PCG CONSTRUCTION
 Owner : PAPCAP LAUREL WAY, LLC
 Address : 1490 BIENVENEDA AVE.
 Phone : (310)490-6449

Data	SqFt.	Contractor	Phone	Zoning Code	Permit No	Trade
CON: 757675		A H ACCORD GROUP INC	(626)308-9155	BS0862475		Fire Sprinkler
CON: 900032		K O R BUILDERS INCdba: A W ELECTRICAL	(818)332-0518	BS0851583		Electrical
CON: 900032		K O R BUILDERS INCdba: A W ELECTRICAL	(818)332-0518	BS0851801		Electrical
CON: 738986		KOOLER AIR CONDITIONING & HEATING	(323)582-7000	BS0826853		Mechanical
CON: 584244		LYNN GLENN PLUMBING	(805)527-0087	BS0826854		Plumbing
CON: 687160		NATIONAL CONSTRUCTION RENTALS INC.	(323)838-1800	BS0805562		Electrical
ENG: M026578		SOLARGY INC	(818)347-6096	BS0826853		Mechanical
ENG: M026578		SOLARGY INC	(818)347-6096	BS0826854		Plumbing

Permit to do : ADDITION & ALTERATION TO SFR.

Active Holds

Date	Type	Issuer	Status	Status Date
07/09/2009	W	dyelton	Active	07/09/2009
The house currently under construction at 1201 Laurel Way is limited to a maximum height of 23'8" based on view preservation analysis; however, the building permit was issued for a maximum height of approximately 26'. Plans are being revised to correct this issue, but have not yet been submitted. Construction may continue on the site, but at the time of completion the project shall not exceed a maximum height of 23'8". See Ryan for any questions.				
09/02/2009	W	dyelton	Active	09/02/2009
Stop Work Order issued on main house. Work exceeds 50% rule. Pool plans should not be permitted until main house plan is zoning compliance. Proximity of pool in relationship to main house, may impact design of one or both structures. Detached garage/accessory building permitted for renovation. North exterior wall is structurally deficient and is not included in permitted scope of work. Do not issue any further permits or release work without approval from either D. Reyes and/or D. Yalton.				

Fees

Fee Description	Account	Units	Fee/Units	Amount	Paid
PERMIT FEE	0101	0.00	\$0.00	\$12,950.88	\$12,950.88
Gen Plan Maint/Long Range Planning Fee	521	0.00	\$0.00	\$641.85	\$641.85
PLAN CHECK FEE	020	0.00	\$0.00	\$12,950.88	\$12,950.88
PLAN CHECK ENERGY FEE	047	0.00	\$0.00	\$1,295.09	\$1,295.09
Permit Energy Fee	048	0.00	\$0.00	\$2,590.18	\$2,590.18
Plan Maintenance Fee	560	0.00	\$0.00	\$368.70	\$368.70
Bedroom Tax (No. of Bedrooms)	049	1.00	\$195.00	\$195.00	\$195.00
Parks & Recreation Tax (Sq Ft)	011	2229.00	\$6.70	\$14,934.30	\$14,934.30
School Develop. Fee (residential)	357	2229.00	\$2.63	\$5,862.27	\$5,862.27
Other Fees (plan check)	020	0.00	\$0.00	\$170.40	\$170.40
Sewer Charge (enter dollar amount)	407	0.00	\$0.00	\$297.30	\$297.30
Duplicate Inspection Card	5591	1.00	\$165.00	\$165.00	\$165.00
Seismic Fee (Residential)	364	0.00	\$0.00	\$116.70	\$116.70

Plan Check		Permit		Total	
Fees:	\$13,121.28	Fees:	\$39,417.27	Fees:	\$52,538.55
Payments:	\$13,121.28	Payments:	\$39,417.27	Adjustments:	\$0.00
Balance Due:	\$0.00	Balance Due:	\$0.00	Payments:	\$52,538.55
				Extend Credit:	\$0.00
				Balance Due:	\$0.00

FIELD INSPECTION REPORT

Inspector: Miller
Page: 2 of 4
Permit No: BS0726308
Run Date: 4/17/2009

Date	Transaction Type	Method	Amount
07/05/2007	Partial / Reversal Payment	check	\$5,827.25
11/27/2007	Payment of Balance Due	creditcard	\$12,950.88
11/27/2007	Payment of Balance Due	creditcard	\$841.85
11/27/2007	Payment of Balance Due	creditcard	\$7,123.63
11/27/2007	Payment of Balance Due	creditcard	\$1,295.09
11/27/2007	Payment of Balance Due	creditcard	\$2,590.18
11/27/2007	Payment of Balance Due	creditcard	\$368.70
11/27/2007	Payment of Balance Due	creditcard	\$195.00
11/27/2007	Payment of Balance Due	creditcard	\$14,934.30
11/27/2007	Payment of Balance Due	creditcard	\$5,862.27
11/27/2007	Payment of Balance Due	creditcard	\$297.30
11/27/2007	Payment of Balance Due	creditcard	\$116.70
12/10/2007	Payment of Balance Due	creditcard	\$1,458.75
09/26/2008	Payment of Balance Due	check	\$165.00
04/07/2009	Payment of Balance Due	creditcard	\$170.40

Conditions

To Request an Inspection:

- A.) Dial 310.285.2534
- B.) Enter your permit number. (Remember, each permit has a different number.)
- C.) Enter your three digit inspection request from the list below.

- 104. Building setback verification
- 105. Clarifier
- 106. Foundations/UFER ground
- 107. Block wall groud
- 108. Concrete wall pour
- 109. Shotcrete
- 110. Slab pour
- 111. Floor joists
- 112. Under-floor insulation
- 113. Floor sheathing (nailing)
- 114. Building height verification
- 115. Roof framing/sheathing (nailing)
- 116. Exterior wall framing
- 117. Anchor bolts
- 118. Hold downs
- 119. Shear walls
- 120. Rough accessibility
- 121. Rough framing
- 122. Insulation
- 123. Drywall nailing
- 124. Interior lath
- 125. Exterior lath
- 126. Exterior scratch coat
- 127. T-bar ceiling
- 128. Site drainage/landscaping
- 129. Final building
- 130. Pool pre-gunite (excavation/reinforcing)
- 131. Pool enclosure/door alarms (pre-plaster)

Health and Safety Code Section 17951 is amended to provide that a permittee is entitled to reimbursement of permit fees if the local enforcement agency fails to conduct an inspection of the permitted work within 60 days of receiving notice that the work is completed.

Storm water/urban runoff discharges to the public storm drainage system shall be prohibited for all discharges not wholly comprised of storm water, or permitted by a valid National Pollution Discharge Elimination System (NPDES) permit issued by the California Regional Water Quality Control Board. "Storm drain system" includes all roads with drainage systems, municipal streets, catch basins, curbs, gutter, ditches, man-made channels, or storm drains. The contractor shall prevent all non-storm water discharges from the construction site (i.e. mixing and cleaning construction materials, concrete washout, disposal of paints, adhesives, solvents, and landscape products).

SPECIAL INSPECTION/INVESTIGATION FEE: A special inspection fee may be assessed by the building official or his technical officers, inspectors, and other employees as determined necessary to achieve compliance of the permitted work

FIELD INSPECTION REPORT

Inspector: Miller
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Permit No: BS0725309
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and/or related activity. Such enforcement shall result from those actions and/or a violation(s) of Beverly Hills Municipal code associated with the permitted work and/or related activity caused by property owner, contractor, its employees, and/or persons working under the control and direction of contractor. A two hour minimum special inspection/investigation fee shall apply, with additional time charged at the current hourly rate. Such related building and/or technical permits shall be suspended until the assessed special investigation fee has been paid and the subject actions and/or violations(s) of Beverly Hills Municipal code have been resolved to the satisfaction of the building official. If Fire Life Safety Fee has been applied to this permit then prior to operation and/or use of any system or equipment, or occupancy of any temporary and/or permanent facilities, the owner/contractor must call the Fire Department to schedule inspection at (310) 281-2703.

RESTRICTIONS ON CONSTRUCTION ACTIVITY: No person shall engage in construction, maintenance or repair work which requires a City permit between the hours of 6:00 p.m. and 8:00 a.m. of any day, or at any time on a Sunday or public holiday unless such person has been issued an after hours construction permit. In addition, no person shall engage in such work within a residential zone, or within five hundred (500) feet of a residential zone, at any time on a Saturday unless such person has been issued an after hours construction permit. For the purpose of this Section, "Public Holiday" shall mean: (1) New Year's Day (2) Memorial Day (3) Independence Day (4) Labor Day (5) Thanksgiving Day (6) Christmas Day. No person employed for the purposes of construction, maintenance, or repair work which requires a city permit shall enter a site on which such work will be done prior to 8:00 a.m. Any violation of this condition shall be deemed to be an infraction.

SWIMMING POOLS: Pursuant to existing law, the Department of Health Services shall have available on the department's Web site, commencing January 1, 2007, approved pool safety information available for consumers to download. Pool contractors are encouraged to share this information with consumers regarding the potential dangers a pool or spa poses to toddlers. Additionally, pool contractors may provide the consumer with swimming pool safety materials produced from organizations such as the United States Consumer Product Safety Commission, Drowning Prevention Foundation, California Coalition for Children's Safety & Health, Safe Kids Worldwide, Association of Pool & Spa Professionals, or the American Academy of Pediatrics. (Health and Safety Code 115924(b)).

SWIMMING POOLS: Commencing January 1, 2007, except as provided in Section 115925, whenever a building permit is issued for construction of a new swimming pool or spa, or any building permit for the remodeling an existing pool or spa, at a private, single-family home, it shall be equipped to include at least one of seven safety features.

SWIMMING POOLS: Whenever a building permit is issued for the remodel or modification of a single-family home with an existing swimming pool, toddler pool or spa, the permit shall require that the suction outlet of the existing swimming pool, toddler pool or spa be upgraded so as to be equipped with an anti-entrapment cover meeting current standards of the American Society for Testing and Materials (ASTM) or the American Society of Mechanical Engineers (ASME).

USE: SFR

OCC GROUP: R3

CONST TYPE: VN

STORIES: 2+B

HEIGHT: 26'-0"

ROOFING: BUR+ METAL

LOT AREA: 36,450

ZONING: HILLSIDE R1

PAD AREA: 15,970

SLOPE AREA: 20,480

F.A.R. ALLOWED SQ.FT. 6999

F.A.R. ACTUAL SQ.FT. 6699

EXIST.BLDG AREA: 4463 FOOTNOTE(1)

GARAGE AREA: 545

FLOOR AREA ADDED: 2229

BASEMENT AREA: 1578

NEW BLDG AREA: 6692

1 DWELLING UNIT

BEDROOMS: 3 + 1

2 PARKING SPACES REQUIRED.

3 PARKING SPACES PROV.

SETBACKS ACTUAL: FRONT=20' E REAR(11

SETBACKS REQ'D: FRONT=15' REAR NO WORK

THIS PROPERTY HAS NO SIDES (ONLY FY AND RY)

PLANNING DRP : MM

STRUCTURAL OBSERVATION REQUIRED:HI STRESS STRENGTH BOLTS

EXCAVATION,REINF,FRAMING,STEEL, SHEAR WALLS, EPOXY GRAVEL, FIELD WELD, RETAINING WALLS

(E) BEDROOMS IS 3

FOOTNOTE 1: THIS EXCLUDES 400 SQ.FT. OF GARAGE & 325 SQ.FT. OF BLDG DEMO'D FROM FACE OF CURB TO PL

IS 4'-6" AT DRIVEWAY ENTRANCE

SOILS REPORT ON FILE.

5188-325-400=4463

RAY APPROVED VIEW PRESERVATION. ERIK & MICHELLE APPROVED FACADE TREATMENT AND ENTRY.

FIELD INSPECTION REPORT

Inspector: miller
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\$170.40 PLAN CHECK FEE CHARGED FOR REVISION OF ROOF HIGHT.

Permits

Type	Number	Status	Issued Date	Comp. Date	Payments	Balance Due
Fire Sprinkler	BS0862475	Issued	03/23/2009		\$1,716.89	\$0.00
PC req	PERMIT TO DO: INSTALL NEW FIRE SPRINKLER SYSTEM FOR SINGLE FAMILY RES.: 2 STORY WITH BASEMENT AND 2 CAR GARAGE WITH WORKSHOP.					
Electrical	BS0851583	Issued	10/21/2008		\$3,015.76	\$0.00
PC req	PERMIT TO DO: ADDITION & ALTERATION TO SFR					
Electrical	BS0851801	Issued	09/23/2008		\$64.30	\$0.00
PC req	PERMIT TO DO: ELECTRICAL-CONDUIT ONLY PENDING PLAN CHECK.					
Mechanical	BS0826853	Issued	06/30/2008		\$2,271.02	\$0.00
PC req	PERMIT TO DO: MECHANICAL FOR ALTERATION AND ADDITION.					
Plumbing	BS0826854	Issued	08/30/2008		\$2,271.02	\$0.00
PC req	PERMIT TO DO: PLUMBING FOR ALTERATION AND ADDITION					
Electrical	BS0805582	Issued	02/04/2008		\$58.83	\$0.00
PC req	PERMIT TO DO: TEMPORARY POWER POLE.					
Building	BS0725308	Issued	11/27/2007		\$53,997.30	\$0.00
PC req	PERMIT TO DO: ADDITION & ALTERATION TO SFR.					
Grading	BS0725418	Issued	11/27/2007		\$1,055.83	\$0.00
PC req	PERMIT TO DO: EXCAVATION FOR BASEMENT AND NEW RETAINING WALLS.					

Inspections

Item	Description	Permit	Date	Action	Inspector
5	Clarifier Customer Comment: contact: Joseph Yoon(contractor) (213)249-7348 *	BS0725308	12/06/2007	Req for Inspection (History)	stabor
5	Clarifier NO ONE ON SITE, TAG LEFT AT 1:00 PM.	BS0725308	12/06/2007	No Access	stabor
1	Pre-construction meeting MEET WITH CONTRACTOR TO GO OVER JOB.	BS0725308	12/12/2007	Progress	stabor
1	Pre-construction meeting	BS0725308	12/12/2007	Req for Inspection (History)	stabor
71	Temporary power pole	BS0805562	02/08/2008	Approved	stabor
71	Temporary power pole	BS0805562	02/08/2008	Req for Inspection (History)	stabor
77	Edison meter release Temp (Y/N): Y Res/Com: RES Amps:100 Volts: 120/240 Phase:1 Wire:3	BS0805562	02/08/2008	Approved	stabor
38	Miscellaneous building JOB MUST BE MAINTAINED CLEANER TRASH PILE IS TOO OBSERVABLE FROM THE PUBLIC WAY.	BS0725308	03/12/2008	Progress	stabor
38	Miscellaneous building	BS0725308	03/12/2008	Req for Inspection (History)	stabor
37	Project conditions Recieved complaint about working ourside of allowed construction hours from LL 4/10/2008 4/11/2008 7:30AM Called contractor's office number left a message on the Cont.'s phone. and Applicant's phone # (arch.) Arch. said he would contact workers to let them know about complaint.	BS0725308	04/11/2008	Progress	wregester
6	Foundations/UFER ground foundations for basement only.	BS0725308	07/22/2008	Progress	stabor
6	Foundations/UFER ground	BS0725308	07/22/2008	Req for Inspection (History)	stabor
89	Rough plumbing ground work for basement only.	BS0826854	07/22/2008	Progress	stabor
89	Rough plumbing	BS0826854	07/22/2008	Req for Inspection (History)	stabor
7	Block wall grout	BS0725308	07/28/2008	Progress	stabor

FIELD INSPECTION REPORT

Inspector: miller
 Page: 5 of 6
 Permit No: BS0725308
 Run Date: 10/20/2008

Item	Description	Permit	Date	Action	Inspector
	BASEMENT WALLS FIRST LIFT.				
7	Block wall grout	BS0725308	07/28/2008	Req for Inspection (History)	stabor
7	Block wall grout	BS0725308	07/30/2008	Progress	stabor
	SECOND LIFT OF BLOCK WALL FOR BASEMENT.				
7	Block wall grout	BS0725308	07/30/2008	Req for Inspection (History)	stabor
6	Foundations/UFER ground Okay to pour basement slab. Received structural observation and soils compaction report.	BS0725308	08/07/2008	Partial Approval	jboone
6	Foundations/UFER ground	BS0725308	08/07/2008	Req for Inspection (History)	jboone
6	Foundations/UFER ground OK TOUR PADS AND GRADEBEAMS IN UPER HOUSE.	BS0725308	09/25/2008	Progress	stabor
6	Foundations/UFER ground	BS0725308	09/25/2008	Req for Inspection (History)	stabor
6	Foundations/UFER ground driveway retaining wall footings.	BS0725308	10/06/2008	Progress	stabor
6	Foundations/UFER ground	BS0725308	10/06/2008	Req for Inspection (History)	stabor
8	Foundations/UFER ground	BS0725308	10/14/2008	Wrong Inspection Request	stabor
6	Foundations/UFER ground	BS0725308	10/14/2008	Req for Inspection (History)	stabor
7	Block wall grout 1st LIFT OF DRIVEWAY RETAINING WALL.	BS0725308	10/14/2008	Progress	stabor
84	Under-floor plumbing	BS0826854	10/14/2008	Approved	stabor
89	Rough plumbing	BS0826854	10/14/2008	Wrong Inspection Request	stabor
89	Rough plumbing	BS0826854	10/14/2008	Req for Inspection (History)	stabor
10	Slab pour GAS FOR ISLAND DOES NOT EXIT OUTSIDE BUILDING.	BS0725308	10/27/2008	Correction	stabor
10	Slab pour	BS0725308	10/27/2008	Req for Inspection (History)	stabor
10	Slab pour	BS0725308	10/28/2008	Approved	stabor
10	Slab pour	BS0725308	10/28/2008	Req for Inspection (History)	stabor
38	Miscellaneous building A call was received by Planning from Victor Gura ' 310-646-7767 who is a resident at 1211 Laurel Way, abutting the above cited property. He ascerts that the current construction is not in conformance with the approved construction plans. Please investigate and take appropriate action. Please contact Mr. Victor and Ronit Gura in order to obtain additional information, and to advise of any actions taken. Input by DY.	BS0725308	12/08/2008	Cancelled	stabor
38	Miscellaneous building stop work issued on any thing on the second floor, ok to continue the first floor work.	BS0725308	12/11/2008	Stop Work Order	stabor
38	Miscellaneous building Verify that building construction is compliant with B.H.M.C. Section 10-3-2522 View Preservation. Based on inspection and verification of steel support columns the building appears to be in violation of the City's View Preservation Zoning Code. City's Planners, Plan Review Engineer and Building Inspector are scheduled to meet with the Project Architect at the jobsite at 10:30 a.m. to review, discuss and verify compliance. Input by DY.	BS0725308	12/11/2008	Req for Inspection (History)	stabor
102	Duct joint sealing (pre-duct insulation)	BS0826853	03/27/2009	Req for Inspection (History)	stabor
102	Duct joint sealing (pre-duct insulation)	BS0826853	03/27/2009	Cancelled	wregester
102	Duct joint sealing (pre-duct insulation) contractor had questions about duct work being run in a soffet or on roof, soffet ok roof no.	BS0826853	03/30/2009	Progress	stabor
19	Shear walls not till trades are inspected.	BS0725308	04/20/2009	Not Approved	stabor
19	Shear walls	BS0725308	04/20/2009	Req for Inspection (History)	stabor
101	Under-floor in raised floor section of second floor.	BS0826853	04/20/2009	Progress	stabor
101	Under-floor	BS0826853	04/20/2009	Req for Inspection (History)	stabor
89	Rough plumbing	BS0826854	04/20/2009	Approved	stabor

FIELD INSPECTION REPORT

Inspector: Miller
 Page: 6 of 6
 Permit No: BS0725308
 Run Date: 3/17/2009

Item	Description	Permit	Date	Action	Inspector
89	Rough plumbing	BS0826854	04/20/2009	Req for Inspection (History)	stabor
19	Shear walls contractor called for the wrong inspection wanted roof nailing, the survey still has not been performed.	BS0725308	04/27/2009	Not Approved	stabor
19	Shear walls	BS0725308	04/27/2009	Req for Inspection (History)	stabor
15	Roof framing/sheathing (nailing)	BS0725308	05/07/2009	Req for Inspection (History)	stabor
15	Roof framing/sheathing (nailing) the survey still need to have the grade level identified.	BS0725308	05/07/2009	Progress	stabor
37	Project conditions Remove construction advertisement sign from construction fence	BS0725308	07/08/2009	Progress	wregester
37	Project conditions on 7-15-2009 a stop work order was issued due to the difference in the amount of new construction on the building as compared to the permit that states the building will remain under a 50% remodel. the architect is to revise the plans to show the work as now completed and meet with the planning dept. to see how this affects the zoning requirements of this site.	BS0725308	07/16/2009	Stop Work Order	stabor
38	Miscellaneous building During a project site visit to collect a building height survey to ensure the building was constructed in accordance with the approved plan, it became apparent that the construction work exceeded the scope of work authorized by the Building permit as issued by the City and Approved plans. Met with the jobsite superintendent, Miguel Maclas (telephone 213.380.9212 or e-mail miguel@pcgconstruction.org) with PCG Construction, Inc., and Project Manager, Keith Bae (cell 323.707.5850, and Architect, Mauricio Duk (office 310.591.8238, cell 310.936.3860 e-mail mduk@urbnetworks.com), with Urban Networks. We reviewed the scope of work and all parties concluded the work had exceeded the scope of work as per the approved plans and permit as approved by the City. Accordingly, City Senior Building Inspector, Steve Tabor issued the contractor a Stop Work Order notice to stop all work as the remodel/addition work exceeded 49.88 percent as per the approved plans. The architect was directed to revise his plans to ensure that the architectural plans match the structural plans. As part of the plan revision effort, the architect was directed to revise the plans to show the actual work demolished versus that work remaining as original. The architect was also directed to revise his plans to show the actual as-built conditions. The architect was further directed to meet with the City Planning Division upon completed plan revisions and re-submit plans for zoning plan review, code plan review, and permitting as required. The contractor and architect were directed to stop all site related development until further notice as authorized by a City official.	BS0725308	07/16/2009	Stop Work Order	dyellon

Business Tax

License No	Name	Primary	Valuation	Tax	Paid	Balance Due
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Site Data Structure

Required Electrical Solar Photovoltaic - 0	Actual Electrical Solar Photovoltaic - 0
Water Solar Heating - 0	
Required Parking - 0	Provided Parking - 0

ATTACHMENT 3

Staff response to February 16 letter from Ben Reznik



CITY OF BEVERLY HILLS
COMMUNITY DEVELOPMENT DEPARTMENT

MEMORANDUM

TO: Honorable Mayor and Members of the City Council
FROM: Susan Healy Keene, AICP, Director of Community Development 
DATE: February 19, 2010
SUBJECT: 1201 Laurel Way Appeal

Introduction and Background

As the City Council is aware, the issue of revocation of a building permit issued for the alteration of and addition to a single family residence at 1201 Laurel Way was appealed on December 28, 2009. Pursuant to Municipal Code Section 1-4-104, the filing of an appeal petition stays the determination pending a final decision by the council. The matter was set for hearing at the Council's February 16, 2010 meeting. Shortly before the meeting, the counsel for Papcap Laurel Way, LLC (the "Appellant") submitted a letter regarding the pending appeal dated February 16, 2010. At the hearing, the City Council asked if the Appellant wished to continue the hearing and the Appellant requested a continuance of the matter in order to further prepare for the hearing and in order to provide the City Council with time to consider the additional information set forth in the February 16th letter. The matter was continued to the City Council meeting of March 2, 2010.

The City Council requested that any written response to the letter be prepared and made available to the Appellant by February 19, 2010. This memorandum serves as the staff response to the letter, although staff will also follow the standard practice of presenting the matter to the Council at the March 2, 2010 meeting and will respond to questions that may arise during the appeal hearing.

Analysis

From Staff's perspective, many of the issues raised in the letter will be addressed at the appeal hearing to the extent necessary. For example, staff will be present to provide testimony regarding the events that lead to the determination to revoke the permit. ¹

¹ It should be noted that there has been no final revocation of the building permit because the staff determination set forth in the letter dated December 14, 2009, was appealable and upon the filing of the appeal by the Appellant, the revocation determination was stayed by operation of Municipal Code Section 1-4-104.

Nonetheless, staff provides the following analysis of a couple of the points raised in the letter.

First, the issue on appeal is the revocation of the building permit, not the alleged staff approval of the demolition in excess of that authorized by the approved plans and permit. The Appellant's letter incorrectly suggests that the appeal relates to the alleged City authorization to demolish more of the structure than allowed on the approved plans. Staff does not understand why the Appellant believes the alleged staff authorization to exceed the permit conditions is the subject of the appeal, and would look to the Appellant for further explanation.

The Appellant also claims that the City has provided no support for the position that the building permit revocation is appealable to the City Council. Staff refers the Council and the Appellant to the attached letter dated December 14, 2009, which explains, with citations to authority, the appeal process. The standard of review for this matter is de novo, as set forth in Municipal Code Section 1-4-106, the same section the Appellant referred to when asking that witnesses be sworn at the March 2, 2010 hearing.

The Appellant also suggests that revocation of a building permit is a ministerial act. Staff disagrees with this contention, and notes that Section 303.5 of the Administrative Code provides that the building official "may" suspend or revoke a building permit under certain circumstances. The permissive, rather than mandatory, nature of this provision requires the building official to exercise discretion.²

In staff's experience, the issues related to violations of the terms of building permits are typically resolved through project revisions or other means short of revocation. The Appellant was provided several opportunities to address the permit violations through revising the project to conform to current codes, but has failed to explore that avenue.

Finally, staff, and particularly Inspector Tabor, dispute any claim that the demolition in excess of that authorized by the plan and permit was approved by the City. Inspector Tabor will be present at the hearing to provide testimony to this effect.

Conclusion

This memo, the February 16, 2010 letter from the Appellant, and any additional information that is submitted by the Appellant in sufficient time will be included in agenda packet for the March 2nd meeting.

Attachments:

December 14, 2010 Letter to Benjamin Reznik, ESQ from City
February 16, 2010 Letter to City from Benjamin Reznik

² It bears noting that the statute at issue in *Lazan v. County of Riverside* (2006) 140 Cal.App.4th 453, cited by Appellants, was framed in mandatory language using the word "shall" rather than the permissive "may" found in Administrative Code Section 303.5.



Office of the City Attorney

December 14, 2009

Via Electronic Transmission and U.S. Mail

Benjamin M. Reznik, Esq.
Jeffer Mangels Butler & Marmaro
1900 Avenue of the Stars, 7th Floor
Los Angeles, California 90067-4308

Re: 1201 Laurel Way, Beverly Hills

Dear Mr. Reznik:

This letter is provided in response to the meeting held on November 30, 2009 with various City staff members, yourself and Messrs. DeGood and McDonnell of your office regarding the project at 1201 Laurel Way in Beverly Hills (the "Project"). The main purpose of the meeting was to discuss how to resolve the present situation wherein construction of the Project fails to conform to the approved building plans and conditions noted thereon.

As you and your client are aware the approved set of building plans includes the restriction that demolition of existing walls would not exceed 49.88%. (Approved Building Plans at p. A2.0.)

Based on this notation on the approved building plans, staff determined that the Project could retain certain nonconforming features of the Project pursuant to the "50%" rules set forth in Beverly Hills Municipal Code Section 10-3-4100 A. Recently, City staff realized that the applicant had demolished somewhere on the order of 90% of the exterior walls. Neither you nor your client dispute the fact that the demolition greatly exceeds what was authorized on the set of approved building plans on which Building Permit No. BS0725308 was issued.

In advance of the November 30, 2009 meeting, City staff considered the information provided in the letter from your office dated October 14, 2009, and completed a comprehensive review the City's records related to the Project.

If we understand correctly, it is your position that your client is entitled to maintain the nonconforming aspects of the Project notwithstanding the fact that construction has not proceeded in conformance with the approved building plans. This assertion is presumably based on Beverly Hills Municipal Code (BHMC) Section 10-3-4100 C, which provides the following:

Benjamin M. Reznik
Re: 1201 Laurel Way
December 14, 2009
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C. Exception For Life Safety Repairs/Upgrades: The provisions of this article shall not apply to any repairs or upgrades, regardless of whether those repairs or upgrades exceed the fifty percent (50%) threshold set forth in subsections A and B of this section, which the building official determines are necessary, for safety reasons, to bring the nonconforming structure into compliance with the requirements of Title 9 of this code or any applicable governmental regulations.

The applicant's contractor, Keith Bae, asserts that a City building inspector approved the demolition to exceed the 50% allowed pursuant to the above life safety exception. Mr. Bae's declaration, at paragraph 10, states that he asked how to get authorization to demolish more than 50% of the structure, and that "Inspector Tabor stated that he had the authority to approve it" and that he would likely serve as the plan checker. Mr. Bae's statement suggests a process that would be consistent with City practice – submittal of plans for review by the City, and receipt of an approval for same. However, there is no indication in either the Bae declaration or in the City's records that revised plans denoting any "life safety repairs" in excess of the 50% allowed by the approved building plans were submitted for checking or approval.

Although no plans were submitted, Mr. Bae declares, at paragraph 19, that "the original house had been demolished per Inspector Tabor's approval..." Neither the City nor the applicant, however, has any documentation of any such approval. Inspector Tabor disputes Mr. Bae's claim that approval was granted. Granting such an approval without any documentation would be inconsistent with the City inspectors' pattern and practice to document in writing any approvals that are granted.

It is noteworthy that Mr. Bae's declaration provides no evidence that the replacement of the existing walls was necessitated by a compromised condition of those walls resulting from such things as dry-rot or termite damage, but instead admits that the additional demolition was because he "was concerned about the safety of proceeding with the necessary cuts for the Project's basement, given that [he] did not believe [he] could implement the cuts and maintain the house's structural integrity." (Bae declaration, ¶ 8.) Further, Mr. Tabor did not observe any such damage and does not recall any assertions of such damage from the contractor during the various site inspections. Therefore, based on the City's review of its records and discussions with Inspector Tabor, staff has concluded that no approval was granted to allow demolition to exceed the 50% rule.

Based on the current conditions at the site and the records available, City staff is unable to conclude that the demolition in excess of the 49.88% allowed on the approved building plans is "necessary, for reasons of safety, to bring the nonconforming structure into compliance with the requirements of Title 9" of the Municipal Code. (BHMC §10-3-4100 C.) As noted above, Mr. Bae's declaration strongly suggests that the demolition in excess of 50% was undertaken because

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of Mr. Bae's concern that "the necessary cuts for the Project's [new] basement" could adversely impact the house's structural integrity. (Bae Declaration, at ¶8.) The Municipal Code's allowance to make life safety repairs and upgrades was not intended to allow an applicant to create a safety issue through the scope of the project (such as the basement excavation proposed for this Project), and use that self-generated circumstance to evade the 50% demolition limitation while at the same time reaping the benefit of retaining non-conforming aspects of a structure.

Because of staff's realization that the Project construction was proceeding in violation of the 50% rule, a stop work notice was issued.

In addition to violating the 50% demolition rule, the contractor failed to comply with the requirement noted on page A2.0 of the approved building plans to "call for inspection before and after demolition to verify with building inspector the scope of demolition is less than 50%." Although other inspections were called for, the contractor never called for these pre- and post-demolition inspections.

In order to resolve the issue and allow construction to continue, staff has requested that the building plans be revised to conform to the current code requirements for side yard setbacks, pad edge setbacks, and maximum driveway slope. Upon submittal of the new plans, the necessary plan check process, including completion of a new view preservation analysis pursuant to Beverly Hills Municipal Code Section 10-3-2522, can be completed. Please note that the view preservation analysis is considered discretionary in nature, and thus any staff determination regarding view preservation would be appealable to the City Council within 14 days. (BHMC Secs. 1-4-101 A and 1-4-102 A.)

Further, because of the demolition in excess of the 50% rule and the resultant loss of nonconforming rights, continued construction pursuant to the previously approved building plans would be a violation of the Municipal Code Sections 10-3-203 C and D because it would constitute alteration of a building in a manner that fails to conform to code requirements, and would constitute alteration of a structure within required setbacks.

As we discussed in our meeting, Staff has determined that Building Permit No. BS0725308 will be revoked because of the need for submittal of revised plans that conform to City codes, further plan checking, and further view preservation analysis as described above. This revocation is pursuant to the City's adopted Administrative Code Section 303.5, which provides:

303.5 Suspension or Revocation. The building official may, in writing, suspend or revoke a permit issued under the provisions of this code and the technical codes when the permit is issued in error or on the basis of incorrect information supplied, or in violation of an ordinance or regulation or the provisions of these codes.

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December 14, 2009
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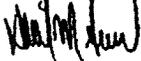
Pursuant to BHMC Section 1-3-107, "[a]ny violation of a condition of any permit or approval issued pursuant to this code shall constitute a violation of this code." Therefore, the applicant's failure to comply with the demolition condition on the approved building plans constitutes a violation of the code, which empowers the Building Official to revoke the permit. This letter serves as the Building Official's written revocation of Building Permit No. BS0725308 based on the violation of the approved plans and the 50% rule noted thereon, as well as failure to comply with required setbacks resulting from the loss of nonconforming rights.

Revocation of the building permit is appealable within a 14-day period from the date of this letter, pursuant to BHMC Sections 1-4-101 A. and 1-4-102 A. Appeals must be filed with the City Clerk, along with the required appeal fee. I trust this answers your question regarding administrative remedies that must be exhausted before your client could file any legal challenge regarding a permit revocation.

It remains staff's hope that the applicant will revise and resubmit plans for review by the Building and Planning Divisions, so that a new permit can be issued for a structure that complies with all code requirements, thus enabling the applicant to proceed with construction. Staff remains available to assist the applicant through this process.

If you have any questions regarding this letter, please do not hesitate to contact the undersigned.

Very truly yours,



David M. Snow
Assistant City Attorney



George Chavez
Assistant Director of Community Development and
Building Official

cc: Susan Healy Keene, Director of Community Development
Jonathan Lait, Assistant Director of Community Development / City Planner
David Reyes, Principal Planner
David Yelton, Plan Check Manager

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Ref: 70547-0001

February 16, 2010

Nancy Krasne, Mayor
Jimmy Delshad, Vice Mayor
Barry Brucker, Councilmember
John Mirisch, Councilmember
William Brien, M.D., Councilmember
455 N. Rexford Drive
Beverly Hills, CA 90210

Re: 1201 Laurel Way - Appeal of Revocation of Building Permit
Hearing Date: February 16, 2010

Dear Mayor Krasne, Vice Mayor Delshad and Members of the City Council:

This office represents Papcap Laurel Way, LLC, the owner ("Owner") of the property located at 1201 Laurel Way (the "Property"). This letter concerns the appeal of the revocation of Building Permit No. BS0725308 (the "Permit") for the renovation and expansion of a single family home located on the Property (the "Project").

I. COUNCIL HAS NO AUTHORITY TO HEAR THIS APPEAL

In a December 14, 2009 letter to this office, Assistant City Attorney David Snow asserted that "Revocation of a building permit is appealable within a 14-day period from the date of this letter, pursuant to BHMC Sections 1-4-101 A. and 1-4-102 A." We find no support in the City's Municipal Code ("Code") for this assertion, and therefore contend that should City Council hold this appeal hearing, it will do so without legal authority.

Code section 1-4-101 A. states "Where a right of appeal to Council exists under this code, and a procedure is not otherwise specifically set forth in this code, an appeal may be taken to the council[.]" This section obviously begs the question: does the Code provide elsewhere for a right of appeal to Council challenging the revocation of a building permit? The answer is no. There is no mention in the Code regarding a right to appeal the revocation of a building permit.

Further, the Code does much more than merely omit the right to appeal the revocation of a building permit; it actively prohibits such an appeal.

Code section 1-4-101 B. states

"No right of appeal to the council from any administrative decision made by an official of the city pursuant to any of the provisions of this code shall exist when such decision is ministerial and thus does not involve the exercise of administrative discretion or personal judgment exercised pursuant to any of the provisions of this code."

The decision to revoke the Permit was a ministerial act, as that term is clearly defined in California law. A ministerial act need not be mandatory or perfunctory; it may be contingent on the existence of certain facts. *See Lazan v. County of Riverside* 140 Cal.App.4th 453, 460 (2006). "A ministerial act...is one that a public officer is required to perform in a prescribed manner in obedience to the mandate of legal authority and without regard to his own judgment or opinion concerning the propriety or impropriety of the act to be performed, when a given set of facts arises." *Id.*

That is precisely the case here: the public officer (in this case, Inspector Tabor) was presented with certain facts; namely, a safety issue on the construction site were the contractor to stop further demolition and proceed with the Project's plans. Inspector Tabor is the one who brought to Mr. Bae's attention the exception to the 50% demolition rule, found in Code section 10-3-4100 C., telling Mr. Bae that it applied in this case and therefore it was permissible to proceed to demolish more than 50% of the home's roof and walls. Once Inspector Tabor determined, for safety reasons, that it was necessary to demolish the remaining unsafe roof and wall sections, the permission to proceed with demolition was such a ministerial act. There was no discretion to be exercised once Inspector Tabor determined that it was unsafe to proceed absent additional demolition, as the application of the exception found in 10-3-4100 C. is a ministerial act. City code, per section 1-4-101 B. explicitly prohibits a Council appeal hearing on such a ministerial act.

Should Council therefore decide to hold this appeal hearing, the Owner will participate under protest, with full reservation of all rights to bring legal action against the City or to otherwise challenge any and all City decisions with respect to the Permit.

II. THE APPEAL HEARING VIOLATES THE OWNER'S DUE PROCESS RIGHTS

We note that this appeal concerns a building permit issue that has been examined by City staff since July 2009, and that this particular appeal hearing was scheduled on January 12, 2010, yet the staff report was not made available until the holiday weekend before this hearing. The Owner therefore has had no meaningful time to respond to staff contentions or to submit information to Council such that Council would have a meaningful opportunity to review, assess and contemplate the Owner's material in advance of tonight's 7:00pm hearing. Given that City offices were of course closed on Monday, February 15th, the Owner could not submit this letter until February 16th, the date of the hearing. Such an impossibly compressed time for a meaningful response to City staff is a violation of the basic procedural due process rights of any

applicant or appellant before City Council. *See Brown v. City of Los Angeles* 102 Cal.App.4th 155, 174 (2002) ("[D]ue process is the opportunity to be heard at a meaningful time in a meaningful manner"); *see also California Teachers Ass'n v. State of California* 20 Cal. 4th 327, 335 (1999) ("This nation has long realized that none of our freedoms would be secure if any person could be deprived of his possessions without an opportunity to defend them 'at a meaningful time and in a meaningful manner.'" [citations omitted]).

Further, neither the staff report nor any other City material answers a most basic question: what is the standard of review for this appeal hearing? It is unclear whether the City considers this a de novo appeal, in which Council must judge all evidence presented independently, or whether the Council is reviewing the revocation of the Permit under some sort of substantial evidence or abuse of discretion standard. Again, the Owner cannot meaningfully prepare for, and Council cannot meaningfully hold, a hearing without the City addressing such fundamental questions.

I. PROJECT HISTORY

On November 11, 2007, the City issued Building Permit No. BS0725308 for the renovation and expansion of a single family home located on the Property. The Permit limited demolition to under 50% of the Project's roof and exterior walls, allowing the Project to maintain its nonconforming development rights, per Beverly Hills Municipal Code ("BHMC") § 10-3-4100(A)(1)¹.

On December 12, 2007, City Building Inspector Steve Tabor ("Inspector Tabor") held a pre-demolition meeting with Keith Bae, the project manager of PCG Construction, the Project's contractor, during which they discussed the Project's hand demolition plan. On March 12, 2008, Inspector Tabor inspected the Project and, upon viewing substantial structural damage, which would have posed a safety hazard had excavation of the basement proceeded as planned, approved under his authority demolition in excess of 50%, while permitting the Project to maintain its nonconforming development rights, per BHMC § 10-3-4100(C). On July 15, 2009, over sixteen months after Inspector Tabor explicitly approved Project demolition in excess of 50%, and almost fourteen months after the completion of Project demolition, the City issued a Stop Work Order (the "Order"), claiming that the Project impermissibly exceeded the 50% demolition threshold, despite regular City inspections throughout this period. The City then took another five months to purportedly investigate the Project's circumstances, finally revoking the Permit on December 14, 2009 (the "Revocation letter"). The Owner now appeals the Permit revocation (under protest and with full reservation of rights that an appeal is not available), on the grounds that the revocation is improper and does not accord with the clear standards of the BHMC, as detailed below.

¹ A copy of § 10-3-4100 A. - C. is attached for your review as "Exhibit 1".

II. PROJECT DEMOLITION WAS PROPER AND APPROVED

A. The City Approved Demolition in Excess of 50% at its March 12, 2008 Inspection

Project demolition began by hand on January 9, 2008. Hand demolition was necessary to ensure that demolition did not exceed the 50% limitation. As hand demolition progressed, substantial structural damage was exposed. Due to concerns regarding the Project's ability to withstand the approved renovation in light of its structural damage, Mr. Bae called for an inspection meeting with Inspector Tabor. On March 12, 2008, Mr. Bae met with Inspector Tabor specifically to discuss the Project's structural damage and the impossibility of safely continuing with the renovation while adhering to the Project's demolition limitation. (See Declaration of Keith Bae, October 9, 2009, attached as "Exhibit 2").

During the March 12, 2008 meeting, Mr. Bae showed Inspector Tabor the Project's structural damage and asked for Inspector Tabor's opinion regarding how the Project, now partially demolished, could continue. Inspector Tabor informed Mr. Bae that the City allowed demolition to exceed 50% while maintaining a project's nonconforming development rights when such demolition was necessary for safety reasons. Mr. Bae then inquired as to the process to receive authorization to exceed the 50% demolition limitation for safety reasons. Inspector Tabor stated that he had the authority to approve the demolition, and that because he would likely serve as the Project's plan check engineer going forward, there was no need to submit updated plans.

Based upon Inspector Tabor's explicit authorization, Mr. Bae informed Inspector Tabor he would dispense with hand demolition and begin demolition with large equipment. Mr. Bae further informed Inspector Tabor that he would need to remove the Project's driveway to provide room for large demolition equipment, but that he would mark the exact location of the driveway to replace it later so that the driveway could maintain its nonconforming rights. Inspector Tabor agreed to this approach.

As noted above, the Owner has provided a declaration, signed under penalty of perjury, by Keith Bae attesting to these facts. Further, the Owner has provided a supplemental declaration from Mr. Bae, attached as "Exhibit 3." To date, the City has presented nothing to contradict Mr. Bae's sworn statements other than stating in the staff report that "Inspector Tabor disputes Mr. Bae's claim that approval was ever requested or granted." We note that even this statement does not attack the accuracy of any specific statement by Mr. Bae. Further, staff has not explained on what basis they support Inspector Tabor's statement. Did staff interview Inspector Tabor? If so, was Inspector Tabor under oath? Was such an interview taped? Is there a transcript available for review? Did Inspector Tabor submit a sworn statement? Is such a statement available to the Owner or Council for review? If in fact a "dispute" exists in Inspector Tabor's mind between his recollection of particular meetings and that of Mr. Bae, should not Inspector Tabor testify before Council? Once more, the Owner is not being provided with a meaningful opportunity to address City contentions.

B. The City Maintains No Written Policy Regarding the Process to Exercise the Rights Afforded by BHMC § 10-3-4100(C)

BHMC § 10-3-4100(C) provides that a property may maintain its nonconforming development rights regardless of whether demolition exceeds 50% if such demolition is necessary for safety reasons. Importantly, the Code does not provide for a process by which a property owner can exercise this right. Further, the City maintains no written policy regarding a method by which this right can be exercised. Thus Inspector Tabor's approval, granted to Mr. Bae at the March 12, 2008 meeting was not only sufficient to allow the Owner to avail itself of § 10-3-4100(C), but was in fact the only way the City could have granted such approval, given that there is no form, application, or written inspection approval for this code section. The only way, therefore, that such approval could be granted would be verbally after a visual inspection of a property's structural damage.

It is quite telling that since the issuance of and the Owner's challenge to the Order, a period of seven months, the City has been unable to produce any documentation regarding a written process for utilizing the rights afforded by § 10-3-4100(C). Indeed, the City's Revocation letter and the staff report prepared for this hearing merely reference the City's purported "pattern and practice" of documenting particular building approvals in writing, something that, even if true, is of no relevance to the instant matter. Non-specific assertions of past City behavior, untethered to any code section or written City policy, cannot form the basis for the revocation of the Permit given the explicit demolition approval granted by the City staff member in charge of the Project.

The Permit revocation letter further asserts that the Owner did not "call for inspection before and after demolition to verify with the building inspector the scope of demolition is less than 50%." It is difficult to envision how the December 12, 2007 meeting could be construed as anything but a meeting called pursuant to this requirement. Further, it is nonsensical to assert that the Owner should have called for an inspection after demolition exceeded 50% to verify that demolition remained under 50%. The required post-demolition inspection to ensure demolition remains under 50% only applies when there is no exercise of the rights afforded by § 10-3-4100(C). By definition, once demolition occurs under § 10-3-4100(C), it has exceeded 50%.

C. Proper Safety Concerns Dictated Demolition in Excess of 50%

The Revocation letter and the staff report for this hearing appear to argue that even if Mr. Bae explicitly discussed the Project's structural damage with Inspector Tabor and Inspector Tabor gave approval to demolition beyond 50%, the Project's damage was not the "right kind" of damage to utilize § 10-3-4100(C). The plain language of § 10-3-4100(C) refutes this attempt to narrow the section's applicability. The section states that the 50% limitation "shall not apply to any repairs or upgrades...which...are necessary, for safety reasons, to bring the nonconforming structure into compliance with the requirements of title 9 of this code[.]" (emphasis added) Section 10-3-4100(C) thus encompasses the necessary repair and upgrade of

all structural damage that threatens the safety of a structure. This makes obvious sense; the primary concern of all building and safety inspections and approvals is the safety of construction within the City, regardless of what particular structural element threatens the safety of a building.

Further, the City's argument would force one of two illogical outcomes. If the presence of substantial structural damage is not enough to utilize § 10-3-4100(C), then an owner must either return a house to the exact layout it had before renovations began, or the owner must conform with current development standards, which effectively writes § 10-3-4100(C) out of the City's municipal code. The point of § 10-3-4100(C) is not to force compliance with current development standards, but rather to *relieve* a property from current development standards when structural damage outside of an owner's control or knowledge is discovered, which is precisely the case here.

III. THE CITY IS ESTOPPED FROM REVOKING THE PERMIT

Regardless of the particular scope of § 10-3-4100(C), California law clearly provides that a person or entity (in this case, the City) cannot make a promise to or induce action by another party on which the other party relies to its substantial detriment or injury. See *Toscano v. Greene Music*, 124 Cal.App.4th 685 (2004) (promissory estoppel); *City of Long Beach v. Mansell*, 3 Cal. 3d 462 (1970) (equitable estoppel).

In stating that the Owner could exceed the 50% demolition limitation, the City induced action on the part of the Owner. After demolition, the Owner engaged in sixteen months of construction-related activity, with regular City inspections, expending over \$1,000,000 in construction-related costs in reliance that the Project would not have to conform to current development standards. The City cannot, well over a year after the Owner commenced large-scale demolition and substantial construction per City instructions and with regular City inspections, go back on its word and eviscerate a Project that is moving toward completion without exposing itself to damage claims.

Moreover, the City's attempt to obfuscate its extremely delayed enforcement of the 50% limitation is disingenuous. The staff report for this hearing states that City staff became aware of the Project's demolition "[d]uring construction of the project," without a word mentioning that it took the City well over a year to come to this "realization." The report's very next sentence mentions the July 14, 2009² issuance of the Order, again implying that the City moved with dispatch in all enforcement efforts, when the actual enforcement timeline was anything but fast, as noted above.

The staff report also neglects to mention that the City had ample opportunity to observe the Project's state of demolition and subsequent construction. Between July 22, 2008

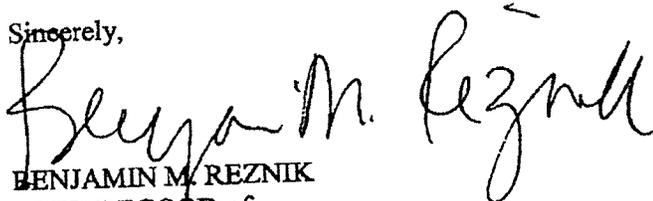
² The staff report first states the Order was issued on July 16, 2009 when describing the report's attachments, and then states the Order was issued on July 14, 2009 in the report's text. As can clearly be seen in the copy of the Order attached to the report, the Order was issued July 15, 2009.

and October 28, 2008, Inspector Tabor visited the Project site nine times for various inspections and mentioned nothing regarding the Project impermissibly exceeding the 50% limitation.³ Even more striking, City Planning and Department of Building and Safety staff members visited the Project on December 12, 2008 to examine the Project's height. At this time the original house had been largely demolished per Inspector Tabor's approval, the first floor of the new structure was framed, and the Owner was in the process of framing the Project's second floor. At no point during this site visit did any City staff raise any issued related to the demolition of over 50% of the Property's original house. Inexplicably, construction continued without incident for another seven months before the issuance of the Order.

IV. CONCLUSION

The City's municipal code clearly provides that a residential property may maintain its nonconforming development rights despite exceeding 50% demolition when such demolition is necessary for safety reasons. The City maintains no written process by which a property owner can utilize this code section, leaving its application to the judgment of inspectors in the field. The Project in question received approval from a City inspector for just such demolition and proceeded in reliance on this approval for over a year, with regular City inspections, before the City issued a Stop Work Order and eventually revoked the Project's Permit. Given that the City approved the demolition and allowed the Project Owner to incur over \$1,000,000 in construction-related costs after demolition approval was granted, the City cannot maintain the Permit revocation. For the foregoing reasons, we respectfully request that Council grant the appeal.

Sincerely,



BENJAMIN M. REZNIK
ALEX DEGODD of
Jeffer, Mangels, Butler & Marmaro LLP

BMR:

cc: Laurence Wiener, City Attorney
David Snow, Assistant City Attorney
Susan Healy Keene, Director of Community Development
Jonathan Lait, Assistant Director of Community Development / City Planner
George Chavez, Building Official
David Reyes, Principal Planner

³ A timeline detailing City inspections is attached for your review as "Exhibit 4."

EXHIBIT 1

10-2-10: NONCONFORMING BUILDINGS:

A. Single-Family Residential Developments: Except as otherwise provided by applicable local, state or federal law, any alteration to a nonconforming building in a single-family development shall conform to the following requirements:

1. Remodels: A maximum of fifty percent (50%) of the combined area of all the exterior walls and roof of a legally nonconforming building or structure may be replaced or reconstructed in any five (5) year period. For the purpose of this section, roof area shall be calculated as the horizontal area covering the floor area. If more than fifty percent (50%) of the combined area of all the exterior walls and roof are replaced or reconstructed, then the building shall be treated as a newly constructed building for the purposes of this chapter and shall be reconstructed so that the entire building conforms with the development standards of this chapter. For the purpose of this section, a portion of a wall or roof is considered replaced or reconstructed when the framing has been replaced or reconstructed.
2. Additions: Nothing in this section shall restrict the construction of an addition to a legally nonconforming building provided that such addition complies with the requirements of this chapter.

B. All Development Other Than Single-Family Residential Development: Except as otherwise provided by applicable local, state or federal law, any alteration to a legally nonconforming building in any development other than a single-family development shall conform to the following requirements:

1. Remodels: If, within a five (5) year period, a nonconforming building is altered, renovated, repaired, or remodeled, and the cumulative cost of such alteration, renovation, repair or remodel equals or exceeds fifty percent (50%) of the replacement cost of the building, then the building shall be treated as a newly constructed building for the purposes of this chapter and shall be reconstructed so that the entire building conforms with the development standards of this chapter.
 - a. Calculation Of Costs: The building official shall calculate the cost of replacement as well as the cost of alterations, renovations, repairs and remodels. When the building official determines that such calculation requires a degree of specialized knowledge, skill, or experience beyond that possessed by any employee of the city, or when there are differences of opinions between city staff and the project applicant with respect to such calculation, the building official may employ an independent, third party consultant or consultants to calculate the replacement cost or the cost of alterations, renovations, repairs or remodels. The project applicant or the property owner, or their respective agent(s), shall pay to the city all direct and indirect costs incurred by the city to retain said consultants and shall maintain a cash deposit with the city at all times in an amount sufficient to cover such costs.
2. Additions: Nothing in this section shall restrict the construction of an addition to a legally nonconforming building provided that such addition complies with the requirements of this chapter.

C. Exception For Life Safety Repairs/Upgrades: The provisions of this article shall not apply to any repairs or upgrades, regardless of whether those repairs or upgrades exceed the fifty percent (50%) threshold set forth in subsections A and B of this section, which the building official determines are necessary, for safety reasons, to bring the nonconforming structure into compliance with the requirements of title 9 of this code or any applicable governmental regulations. (Ord. 96-O-2272, eff. 1-9-1997; amd. Ord. 06-O-2498, eff. 3-24-2006)

EXHIBIT 2

DECLARATION OF KEITH BAE

I, Keith Bae, declare:

1. I am the Project Manager for PCJ Construction Inc., a licensed general contractor in the State of California, Contractor License # 881795.

2. I serve, and at all times relevant to this declaration served, as the Project Manager for the General Contractor overseeing construction and remodeling activities at the single family residential property located at 1201 Laurel Way, Beverly Hills, California (the "Project").

3. Prior to commencing work on the Project I reviewed all plans and held detailed discussions with the Project architect, engineer, and owner to familiarize myself with the Project's particular requirements and approvals, including the requirement that Project demolition remain under 50% of total square footage of the existing exterior walls and roof area.

4. Prior to commencing work on the Project, on December 12, 2007, I, Miguel Macias and Joseph Yoon met with City of Beverly Hills Building & Safety Inspector Steve Tabor for a pre-demolition inspection. I told Inspector Tabor that the Project would be my first work in Beverly Hills. I asked him whether he would be the Project's primary inspector. I further asked him what he would be looking for generally on the Project so that I could be sure to meet all Beverly Hills requirements.

5. At the December 12, 2007 pre-demolition inspection, Inspector Tabor and I discussed the Project's demolition plan. I informed Inspector Tabor that the Project involved a careful hand demolition of certain walls and floor area. I walked Inspector Tabor through the Project to show him the specific areas I planned to hand-demolish. As I understood it, one purpose of the December 12, 2007 meeting with Inspector Tabor was to ascertain what specific areas of the Project would count towards the 50% square footage cap.

6. On January 9, 2008 hand demolition of selected areas of the Project began. A crew of three to four workers engaged in hand demolition under the supervision of a crew leader.

7. As hand demolition progressed, substantial discrepancies emerged between the Project's City-provided structural plans and the actual physical layout of the home on the Project site. Numerous beams and footings were either missing or were not where they were shown on the structural plans. Further, over the years, the house had sustained substantial structural damage.

8. Due to these discrepancies I called an onsite meeting with Shaul Shachar, the Project's structural engineer, in early March 2008. I explained the discrepancies and stated that I was concerned about the safety of proceeding with the necessary cuts for the Project's basement, given that I did not believe I could implement the cuts and maintain the house's structural integrity. Shaul responded that I should consult with the Project's Inspector to arrive at a safe excavation plan.

(2)

9. After the early March meeting with Shaul Shachar, I remained concerned that due to the extent of the house's structural damage the house would not withstand building the planned basement. To advise how best to execute construction of the basement in light of the house's structural weaknesses, I called for another onsite meeting with Inspector Tabor, which took place on March 12, 2008. In preparation for the meeting, I drew a line on the interior and exterior of the house to indicate where I would need to excavate to build the basement. In further preparation for the meeting, my crew removed the house's sheetrock, insulation and flooring to expose beams and footings throughout the house.

10. During the March 12, 2008 meeting I walked Inspector Tabor into the house through a side gate and showed him a bathroom with substantial damage and missing beams based upon the structural plans the City provided. I then took him to the family room area and showed him more damaged structural elements. I asked him to advise me how I could accomplish construction of the basement without endangering collapse of the house in light of the 50% demolition limitation, particularly because I felt I needed to remove the portion of the house over the driveway, the roof and the living area to safely install the basement. Inspector Tabor explained that I could exceed the 50% limitation if there was structural damage that necessitated further demolition. I asked how I was to get such additional demolition approved. Inspector Tabor stated that he had the authority to approve it. I further asked about the plan check process because I was concerned about any discrepancies between submitted and actual demolition. Inspector Tabor stated that I need not worry about plan check as my plan checker was on leave and that he would likely serve as the plan checker for the Project going forward.

11. During the March 12, 2008 meeting I informed inspector Tabor that if I was allowed to demolish the home without running afoul of the 50% limitation, I would bring in large equipment to accomplish the demolition quickly rather than continuing to demolish by hand, and would need to remove the driveway to do so.

12. After a delay to procure the necessary insurance for heavy haul demolition equipment and obtain a City heavy haul permit, large-scale demolition of the Project's existing home began on April 15, 2008, consistent with the March 12, 2008 meeting with Inspector Tabor, and was completed on May 28, 2008. The existing home's driveway was also removed to accommodate the demolition equipment. The location of the driveway was marked so that the driveway could be replaced exactly as built to maintain the driveway's non-conforming layout.

13. I began reconstruction of the house after the demolition. I was able to accomplish reconstruction without new or revised plans because the approved plans clearly showed the required structural elements, either as new (N) or as existing (E). Revised plans and/or additional engineering were not necessary because the plans, including engineered elements, were complete. All structural elements, whether identified on the approved plans as new (N) or as existing (E) were replaced with new (N) members of the size and materials indicated on the approved plans. Thus, there was no need to duplicate the already-approved plans to account for the previously unplanned demolition.

14. On June 30, 2008, Inspector Tabor performed, in his plan check capacity, the plan check for the Project's mechanical permit.

15. On June 30, 2008 the Project's plumbing permit was issued.
16. On July 22, 2008 Inspector Tabor visited the Project to perform basement foundation and plumbing inspections. During this visit I showed Inspector Tabor the line I cut indicating where the old driveway had been. I explained that I was going to replace the driveway exactly as it had been so that I could maintain the driveway's non-conforming layout. Inspector Tabor agreed with this approach.
17. Between July 22, 2008 and October 28, 2008 Inspector Tabor visited the site nine times for various inspections. In addition, Inspector J. Boone inspected the site on August 7, 2008. At no time did either Inspector Tabor or Inspector Boone indicate that the Project was not in compliance with City code or approvals.
18. On October 21, 2008, Inspector Tabor, in his plan check capacity, reviewed the Project's electrical plans and issued a permit.
19. On December 12, 2008 City Planning and Building & Safety staff members, including Ryan Golich, Erik Keshishian and Steve Tabor visited the site to examine the height of the renovated home. At this time the original house had been demolished per Inspector Tabor's approval, the first floor of the new structure was framed, and I was in the process of framing the second floor of the new structure. At no point did any City staff member raise any issue related to the demolition of over 50% of the original home.
20. During the December 12, 2008 meeting, Inspector Tabor warned me to follow every City regulation strictly because "everybody" was watching the project. Inspector Tabor stated "I'm watching you like a hawk." Inspector Tabor did not mention any issue with respect to the over 50% demolition, nor did he indicate that any other City staff member was concerned with the demolition.
21. On July 15, 2009, Inspector Tabor visited the Project, along with City staff member David Yelton. Mr. Yelton informed me that the Project was in violation of City approvals because demolition had exceeded 50% of measurable area, and that he was issuing a stop work order as a result.
22. During the July 15, 2009 meeting, Inspector Tabor repeatedly asked Mr. Yelton if a restricted renovation project had the right to demolish more 50% if such demolition was approved by a project's structural engineer. After being asked multiple times, Mr. Yelton stated that this was correct.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed this 9th day of October, 2009, at Los Angeles, California.


KEITH BAE

EXHIBIT 3

SUPPLEMENTAL DECLARATION OF KEITH BAE

I, Keith Bae, declare:

1. I am the Project Manager for PCG Construction Inc., a licensed general contractor in the State of California, Contractor License # 881795.
2. I serve, and at all times relevant to this declaration served, as the Project Manager for the General Contractor overseeing construction and remodeling activities at the single family residential property located at 1201 Laurel Way, Beverly Hills, California (the "Project").
3. This afternoon I was provided with the staff report for the February 16, 2010 City of Beverly Hills City Council meeting regarding an appeal of the revocation of the Building Permit for the Project. In the staff report City staff dispute several statements contained in my October 9, 2009 declaration regarding this matter. I therefore execute this supplemental declaration so that there is no ambiguity regarding my statements.
4. During a March 12, 2008 onsite meeting between myself and City Building and Safety Inspector Steve Tabor, I showed Inspector Tabor substantial structural damage in several locations of the home and offered my opinion that the house could not withstand the approved remodel if demolition could not progress beyond 50% of the home's exterior walls and roof. After viewing the home's structural damage, Inspector Tabor informed me that that he had the authority to approve a demolition in excess of 50% while allowing the home to maintain its nonconforming development rights. I informed Inspector Tabor that with his approval I would therefore demolish most of the home's roof and exterior walls, and would use large-scale demolition equipment for this demolition. Inspector Tabor agreed and granted verbal approval for this demolition.
5. During the March 12, 2008 site meeting I further informed Inspector Tabor that I would need to remove the home's driveway so that I could bring large-scale demolition equipment onsite. Because I wanted to maintain the driveway's nonconforming layout, I asked Inspector Tabor if I could mark the exact the location of the driveway so that I could replace it later, thus maintaining its nonconforming layout. Inspector Tabor agreed to and verbally approved this plan.
6. The demolition that occurred pursuant to Inspector Tabor's approval concerned the roof and exterior walls of the home. The foundation and footprint of the existing home was not demolished.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed this 16th day of February, 2010, at Los Angeles, California.



KEITH BAE

EXHIBIT 4

FIELD INSPECTION REPORT

Permit No. _____
 Date of Issue _____
 Date of Report _____

Date	Transaction Type	Method	Amount
07/05/2007	Partial / Reversal Payment	check	\$5,827.25
11/27/2007	Payment of Balance Due	creditcard	\$12,850.88
11/27/2007	Payment of Balance Due	creditcard	\$841.85
11/27/2007	Payment of Balance Due	creditcard	\$7,123.63
11/27/2007	Payment of Balance Due	creditcard	\$1,285.09
11/27/2007	Payment of Balance Due	creditcard	\$2,590.18
11/27/2007	Payment of Balance Due	creditcard	\$368.70
11/27/2007	Payment of Balance Due	creditcard	\$185.00
11/27/2007	Payment of Balance Due	creditcard	\$14,934.30
11/27/2007	Payment of Balance Due	creditcard	\$5,862.27
11/27/2007	Payment of Balance Due	creditcard	\$297.30
11/27/2007	Payment of Balance Due	creditcard	\$116.70
12/10/2007	Payment of Balance Due	creditcard	\$1,458.75
09/26/2008	Payment of Balance Due	check	\$185.00
04/07/2009	Payment of Balance Due	creditcard	\$170.40

Conditions

To Request an Inspection:

- A.) Dial 310.285.2534
- B.) Enter your permit number. (Remember, each permit has a different number.)
- C.) Enter your three digit inspection request from the list below.

- 104. Building setback verification
- 105. Clarifier
- 106. Foundations/UFER ground
- 107. Block wall grout
- 108. Concrete wall pour
- 109. Shotcrete
- 110. Slab pour
- 111. Floor joists
- 112. Under-floor insulation
- 113. Floor sheathing (nailing)
- 114. Building height verification
- 115. Roof framing/sheathing (nailing)
- 116. Exterior wall framing
- 117. Anchor bolts
- 118. Hold downs
- 119. Shear walls
- 120. Rough accessibility
- 121. Rough framing
- 122. Insulation
- 123. Drywall nailing
- 124. Interior lath
- 125. Exterior lath
- 126. Exterior scratch coat
- 127. T-bar ceiling
- 128. Site drainage/landscaping
- 129. Final building
- 130. Pool pre-gunite (excavation/reinforcing)
- 131. Pool enclosure/door alarms (pre-plaster)

Health and Safety Code Section 17951 is amended to provide that a permittee is entitled to reimbursement of permit fees if the local enforcement agency fails to conduct an inspection of the permitted work within 60 days of receiving notice that the work is completed.

Storm water/urban runoff discharges to the public storm drainage system shall be prohibited for all discharges not wholly comprised of storm water, or permitted by a valid National Pollution Discharge Elimination System (NPDES) permit issued by the California Regional Water Quality Control Board. "Storm drain system" includes all roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains. The contractor shall prevent all non-storm water discharges from the construction site (i.e. mixing and cleaning construction materials, concrete washout, disposal of paints, adhesives, solvents, and landscape products).

SPECIAL INSPECTION/INVESTIGATION FEE: A special inspection fee may be assessed by the building official or his technical officers, inspectors, and other employees as determined necessary to achieve compliance of the permitted work.

FIELD INSPECTION REPORT

Inspector: [REDACTED]
Permit #: [REDACTED]
RPM#: [REDACTED]

and/or related activity. Such enforcement shall result from those actions and/or a violation(s) of Beverly Hills Municipal code associated with the permitted work and/or related activity caused by property owner, contractor, its employees, and/or persons working under the control and direction of contractor. A two hour minimum special inspection/investigation fee shall apply, with additional time charged at the current hourly rate. Such related building and/or technical permits shall be suspended until the assessed special investigation fee has been paid and the subject actions and/or violations(s) of Beverly Hills Municipal code have been resolved to the satisfaction of the building official.

If Fire Life Safety Fee has been applied to this permit then prior to operation and/or use of any system or equipment, or occupancy of any temporary and/or permanent facilities, the owner/contractor must call the Fire Department to schedule inspection at (310) 281-2703.

RESTRICTIONS ON CONSTRUCTION ACTIVITY: No person shall engage in construction, maintenance or repair work which requires a City permit between the hours of 6:00 p.m. and 8:00 a.m. of any day, or at any time on a Sunday or public holiday unless such person has been issued an after hours construction permit. In addition, no person shall engage in such work within a residential zone, or within five hundred (500) feet of a residential zone, at any time on a Saturday unless such person has been issued an after hours construction permit. For the purpose of this Section, "Public Holiday" shall mean: (1) New Year's Day (2) Memorial Day (3) Independence Day (4) Labor Day (5) Thanksgiving Day (6) Christmas Day. No person employed for the purposes of construction, maintenance, or repair work which requires a city permit shall enter a site on which such work will be done prior to 8:00 a.m. Any violation of this condition shall be deemed to be an infraction.

SWIMMING POOLS: Pursuant to existing law, the Department of Health Services shall have available on the department's Web site, commencing January 1, 2007, approved pool safety information available for consumers to download. Pool contractors are encouraged to share this information with consumers regarding the potential dangers a pool or spa poses to toddlers. Additionally, pool contractors may provide the consumer with swimming pool safety materials produced from organizations such as the United States Consumer Product Safety Commission, Drowning Prevention Foundation, California Coalition for Children's Safety & Health, Safe Kids Worldwide, Association of Pool & Spa Professionals, or the American Academy of Pediatrics. (Health and Safety Code 115824(b)).

SWIMMING POOLS: Commencing January 1, 2007, except as provided in Section 115825, whenever a building permit is issued for construction of a new swimming pool or spa, or any building permit for the remodeling an existing pool or spa, at a private, single-family home, it shall be equipped to include at least one of seven safety features.

SWIMMING POOLS: Whenever a building permit is issued for the remodel or modification of a single-family home with an existing swimming pool, toddler pool or spa, the permit shall require that the suction outlet of the existing swimming pool, toddler pool or spa be upgraded so as to be equipped with an anti-entrapment cover meeting current standards of the American Society for Testing and Materials (ASTM) or the American Society of Mechanical Engineers (ASME).

USE: SFR

OCC GROUP: R3

CONST TYPE: VN

STORIES: 2+B

HEIGHT: 26'-0"

ROOFING: BUR+ METAL

LOT AREA: 38,450

ZONING: HILLSIDE R1

PAD AREA: 15,970

SLOPE AREA: 20,480

F.A.R. ALLOWED SQ.FT. 6999

F.A.R. ACTUAL SQ.FT. 6699

EXIST.BLDG AREA: 4463 FOOTNOTE(1)

GARAGE AREA: 545

FLOOR AREA ADDED: 2229

BASEMENT AREA: 1578

NEW BLDG AREA: 6692

1 DWELLING UNIT

BEDROOMS: 3 + 1

2 PARKING SPACES REQUIRED.

3 PARKING SPACES PROV.

SETBACKS ACTUAL: FRONT=20' E REAR(11

SETBACKS REQ'D: FRONT=15' REAR NO WORK

THIS PROPERTY HAS NO SIDES (ONLY FY AND RY)

PLANNING DRP : MM

STRUCTURAL OBSERVATION REQUIRED: HI STRESS STRENGTH BOLTS

EXCAVATION, REINF, FRAMING, STEEL, SHEAR WALLS, EPOXY GRAVEL, FIELD WELD, RETAINING WALLS

(E) BEDROOMS IS 3

FOOTNOTE 1: THIS EXCLUDES 400 SQ.FT. OF GARAGE & 325 SQ.FT. OF BLDG DEMO'D FROM FACE OF CURB TO PL

IS 4'-6" AT DRIVEWAY ENTRANCE

SOILS REPORT ON FILE.

5188-325-400-4463

RAY APPROVED VIEW PRESERVATION. ERIK & MICHELLE APPROVED FACADE TREATMENT AND ENTRY.

FIELD INSPECTION REPORT

Permit No: BS0725308
 Run Date: 3/17/2008

\$170.40 PLAN CHECK FEE CHARGED FOR REVISION OF ROOF HIGHT.

Permits

Type	Number	Status	Issued Date	Comp. Date	Payments	Balance Due
Fire Sprinkler PC req	BS0862475	Issued	03/23/2009		\$1,716.89	\$0.00
PERMIT TO DO: INSTALL NEW FIRE SPRINKLER SYSTEM FOR SINGLE FAMILY RES.: 2 STORY WITH BASEMENT AND 2 CAR GARAGE WITH WORKSHOP.						
Electrical PC req	BS0851583	Issued	10/21/2008		\$3,015.76	\$0.00
PERMIT TO DO: ADDITION & ALTERATION TO SFR						
Electrical	BS0851801	Issued	09/23/2008		\$64.30	\$0.00
PERMIT TO DO: ELECTRICAL-CONDUIT ONLY PENDING PLAN CHECK.						
Mechanical PC req	BS0828853	Issued	06/30/2008		\$2,271.02	\$0.00
PERMIT TO DO: MECHANICAL FOR ALTERATION AND ADDITION.						
Plumbing PC req	BS0826854	Issued	08/30/2008		\$2,271.02	\$0.00
PERMIT TO DO: PLUMBING FOR ALTERATION AND ADDITION						
Electrical	BS0805562	Issued	02/04/2008		\$58.83	\$0.00
PERMIT TO DO: TEMPORARY POWER POLE.						
Building PC req	BS0725308	Issued	11/27/2007		\$53,997.30	\$0.00
PERMIT TO DO: ADDITION & ALTERATION TO SFR.						
Grading PC req	BS0725418	Issued	11/27/2007		\$1,055.83	\$0.00
PERMIT TO DO: EXCAVATION FOR BASEMENT AND NEW RETAINING WALLS.						

Inspections

Item	Description	Permit	Date	Action	Inspector
5	Clarifier Customer Comment: contact: Joseph Yoon(contractor) (213)249-7348	BS0725308	12/08/2007	Req for inspection (History)	stabor
5	Clarifier NO ONE ON SITE, TAG LEFT AT 1:00 PM.	BS0725308	12/08/2007	No Access	stabor
1	Pre-construction meeting MEET WITH CONTRACTOR TO GO OVER JOB.	BS0725308	12/12/2007	Progress	stabor
1	Pre-construction meeting	BS0725308	12/12/2007	Req for inspection (History)	stabor
71	Temporary power pole	BS0805562	02/08/2008	Approved	stabor
71	Temporary power pole	BS0805562	02/08/2008	Req for inspection (History)	stabor
77	Edison meter release Temp (Y/N): Y Res/Com: RES Amps:100 Volts: 120/240 Phase:1 Wire:3	BS0805562	02/08/2008	Approved	stabor
38	Miscellaneous building JOB MUST BE MAINTAINED CLEANER TRASH PILE IS TOO OBSERVABLE FROM THE PUBLIC WAY.	BS0725308	03/12/2008	Progress	stabor
38	Miscellaneous building	BS0725308	03/12/2008	Req for inspection (History)	stabor
37	Project conditions Recieved complaint about working outside of allowed construction hours from LL 4/10/2008 4/11/2008 7:30AM Called contractor's office number left a message on the Conf.s phone. and Applicant's phone # (arch.) Arch. said he would contact workers to let them know about complaint.	BS0725308	04/11/2008	Progress	wrogestar
6	Foundations/UFER ground foundations for basement only.	BS0725308	07/22/2008	Progress	stabor
8	Foundations/UFER ground	BS0725308	07/22/2008	Req for inspection (History)	stabor
89	Rough plumbing ground work for basement only.	BS0826854	07/22/2008	Progress	stabor
89	Rough plumbing	BS0826854	07/22/2008	Req for inspection (History)	stabor
7	Block wall grout	BS0725308	07/28/2008	Progress	stabor

FIELD INSPECTION REPORT

Inspection Number
 PLAN: 5-00
 Permit No.: BS0725308
 Print Date: 11/20/2008

Item	Description	Permit	Date	Action	Inspector
	BASEMENT WALLS FIRST LIFT.				
7	Block wall grout	BS0725308	07/28/2008	Req for Inspection (History)	stabor
7	Block wall grout	BS0725308	07/30/2008	Progress	stabor
	SECOND LIFT OF BLOCK WALL FOR BASEMENT.				
7	Block wall grout	BS0725308	07/30/2008	Req for Inspection (History)	stabor
6	Foundations/UFER ground	BS0725308	08/07/2008	Partial Approval	jboone
	Okay to pour basement slab. Received structural observation and soils compaction report.				
6	Foundations/UFER ground	BS0725308	08/07/2008	Req for Inspection (History)	jboone
6	Foundations/UFER ground	BS0725308	09/25/2008	Progress	stabor
	OK TOUR PADS AND GRADEBEAMS IN UPER HOUSE.				
6	Foundations/UFER ground	BS0725308	09/25/2008	Req for Inspection (History)	stabor
6	Foundations/UFER ground	BS0725308	10/06/2008	Progress	stabor
	driveway retaining wall footings.				
6	Foundations/UFER ground	BS0725308	10/06/2008	Req for Inspection (History)	stabor
6	Foundations/UFER ground	BS0725308	10/14/2008	Wrong Inspection Request	stabor
6	Foundations/UFER ground	BS0725308	10/14/2008	Req for Inspection (History)	stabor
7	Block wall grout	BS0725308	10/14/2008	Progress	stabor
	1st LIFT OF DRIVEWAY RETAINING WALL.				
84	Under-floor plumbing	BS0826854	10/14/2008	Approved	stabor
89	Rough plumbing	BS0826854	10/14/2008	Wrong Inspection Request	stabor
89	Rough plumbing	BS0826854	10/14/2008	Req for Inspection (History)	stabor
10	Slab pour	BS0725308	10/27/2008	Correction	stabor
	GAS FOR ISLAND DOES NOT EXIT OUTSIDE BUILDING.				
10	Slab pour	BS0725308	10/27/2008	Req for Inspection (History)	stabor
10	Slab pour	BS0725308	10/28/2008	Approved	stabor
10	Slab pour	BS0725308	10/28/2008	Req for Inspection (History)	stabor
38	Miscellaneous building	BS0725308	12/08/2008	Cancelled	stabor
	A call was received by Planning from Victor Gura ' 310-846-7767 who is a resident at 1211 Laurel Way, abutting the above cited property. He ascerts that the current construction is not in conformance with the approved construction plans. Please investigate and take appropriate action. Please contact Mr. Victor and Ronit Gura in order to obtain additional information, and to advise of any actions taken. Input by DY.				
38	Miscellaneous building	BS0725308	12/11/2008	Stop Work Order	stabor
	stop work issued on any thing on the second floor, ok to continue the first floor work.				
38	Miscellaneous building	BS0725308	12/11/2008	Req for Inspection (History)	stabor
	Verify that building construction is compliant with B.H.M.C. Section 10-3-2522 View Preservation. Based on inspection and verification of steel support columns the building appears to be in violation of the City's View Preservation Zoning Code. City's Planners, Plan Review Engineer and Building Inspector are scheduled to meet with the Project Architect at the jobsite at 10:30 a.m. to review, discuss and verify compliance. Input by DY.				
102	Duct joint sealing (pre-duct insulation)	BS0826853	03/27/2009	Req for Inspection (History)	stabor
102	Duct joint sealing (pre-duct insulation)	BS0826853	03/27/2009	Cancelled	wregester
102	Duct joint sealing (pre-duct insulation)	BS0826853	03/30/2009	Progress	stabor
	contractor had questions about duct work being run in a soffit or on roof, soffit ok roof no.				
19	Shear walls	BS0725308	04/20/2009	Not Approved	stabor
	not till trades are inspected.				
19	Shear walls	BS0725308	04/20/2009	Req for Inspection (History)	stabor
101	Under-floor	BS0826853	04/20/2009	Progress	stabor
	in raised floor section of second floor.				
101	Under-floor	BS0826853	04/20/2009	Req for Inspection (History)	stabor
89	Rough plumbing	BS0826854	04/20/2009	Approved	stabor

FIELD INSPECTION REPORT

Inspector: JIM BAR
 Page: 6
 Permit: BS0725308
 Run Date: 07/27/2009

Item	Description	Permit	Date	Action	Inspector
89	Rough plumbing	BS0826854	04/20/2009	Req for Inspection (History)	stabor
19	Shear walls contractor called for the wrong inspection wanted roof nailing, the survey still has not been performed.	BS0725308	04/27/2009	Not Approved	stabor
19	Shear walls	BS0725308	04/27/2009	Req for Inspection (History)	stabor
15	Roof framing/sheathing (nailing)	BS0725308	05/07/2009	Req for Inspection (History)	stabor
15	Roof framing/sheathing (nailing) the survey still needs to have the grade level identified.	BS0725308	05/07/2009	Progress	stabor
37	Project conditions Remove construction advertisement sign from construction fence	BS0725308	07/08/2009	Progress	wregester
37	Project conditions on 7-15-2009 a stop work order was issued due to the difference in the amount of new construction on the building as compared to the permit that states the building will remain under a 50% remodel. the architect is to revise the plans to show the work as now completed and meet with the planning dept. to see how this affects the zoning requirements of this site.	BS0725308	07/16/2009	Stop Work Order	stabor
38	Miscellaneous building During a project site visit to collect a building height survey to ensure the building was constructed in accordance with the approved plan, it became apparent that the construction work exceeded the scope of work authorized by the Building permit as issued by the City and Approved plans. Met with the jobsite superintendent, Miguel Macias (telephone 213.380.9212 or e-mail miguel@pcgconstruction.org) with PCG Construction, Inc., and Project Manager, Keith Bae (cell 323.707.5850, and Architect, Mauricio Duk (office 310.591.8238, cell 310.936.3860 e-mail mduk@urbnetworks.com), with Urban Networks. We reviewed the scope of work and all parties concluded the work had exceeded the scope of work as per the approved plans and permit as approved by the City. Accordingly, City Senior Building Inspector, Steve Tabor issued the contractor a Stop Work Order notice to stop all work as the remodel/addition work exceeded 49.88 percent as per the approved plans. The architect was directed to revise his plans to ensure that the architectural plans match the structural plans. As part of the plan revision effort, the architect was directed to revise the plans to show the actual work demolished verses that work remaining as original. The architect was also directed to revise his plans to show the actual as-built conditions. The architect was further directed to meet with the City Planning Division upon completed plan revisions and re-submit plans for zoning plan review, code plan review, and permitting as required. The contractor and architect were directed to stop all site related development until further notice as authorized by a City official.	BS0725308	07/16/2009	Stop Work Order	dyelton

Business Tax

License No	Name	Primary	Valuation	Tax	Paid	Balance Due
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Site Data Structure

Required Electrical Solar Photovoltaic - 0	Actual Electrical Solar Photovoltaic - 0
Water Solar Heating - 0	Provided Parking - 0
Required Parking - 0	

ATTACHMENT 4

LETTER TO CITY COUNCIL FROM BEN REZNIK
DATED FEBRUARY 25, 2010

Kevin K. McDonnell
Direct: (310) 201-3590
Fax: (310) 712-3316
KKM@jmbm.com

1900 Avenue of the Stars, 7th Floor
Los Angeles, California 90067-4308
(310) 203-8080 (310) 203-0567 Fax
www.jmbm.com

Ref: 70547-0001

February 25, 2010

V-EMAIL AND U.S. MAIL

Nancy Krasne, Mayor
Jimmy Delshad, Vice Mayor
Barry Brucker, Councilmember
John Mirisch, Councilmember
William Brien, MD, Councilmember
c/o Amy McHarg, Executive Assistant
455 N. Rexford Drive
Beverly Hills, CA 90210

Re: 1201 Laurel Way - Appeal of Building Permit Revocation
Hearing Date: March 2, 2010

Dear Mayor Krasne, Vice Mayor Delshad and Members of the City Council:

As you know, this office represents Papcap Laurel Way, LLC, the owner ("Owner") of the property located at 1201 Laurel Way (the "Property"). This letter concerns the appeal of the revocation of Building Permit No. BS0725308 (the "Permit") for the renovation and expansion of a single family home located on the Property (the "Project"), and provides additional information in response to City Planning staff's February 19, 2010 report.

I. SUBSTANTIAL EVIDENCE INDICATES THAT CITY GRANTED APPROVAL TO DEMOLISH OVER 50% OF THE PROJECT

The Owner has provided the City with substantial evidence that the City granted, pursuant to BHMC § 10-3-4100 C., approval to demolish more than 50% of the Project's roof and exterior walls while maintaining the Project's non-conforming development rights. This evidence includes two declarations, signed under penalty of perjury, by Keith Bae, the construction manager of the Project's general contractor. These declarations provide a detailed account of key onsite inspection meetings between Mr. Bae and Building and Safety Inspector Steve Tabor ("Inspector Tabor") at which the 50% demolition limitation was discussed, substantial Project structural damage was inspected, and demolition in excess of 50% was approved. The City has provided no documentation to refute these declarations, nor has it addressed, in any way, any of Mr. Bae's sworn statements.

In addition, attached as "Exhibit 1," is a dated daily contractor's report completed by Mr. Bae immediately after his March 12, 2008 meeting with Inspector Tabor. The report notes certain structural problems and states that they "would wipe out most of the house, how?"

What about the 50% on demo? This was fine...where the footings and structural integrity is decayed[.] It was ok to demo most of the house and I will be demoing the floor of the 1st floor too." These contemporaneous notes, quickly jotted down after the March 12, 2008 inspection meeting, accurately reflect exactly what Mr. Bae later stated in his declarations; namely, that he and Inspector Tabor discussed structural damage and the 50% demolition limitation, and that Inspector Tabor gave approval to exceed the 50% limitation.

To date, the City's only purported evidence that it did not grant approval to demolish over 50% of the Project is one sentence in a staff report stating that Inspector Tabor disputes that such approval was granted. The Planning Department's February 19, 2010 memorandum to the Council indicates that Inspector Tabor will testify at the Council's March 2, 2010 hearing on this matter. If so, it will be interesting to hear which specific statements in Mr. Bae's declarations Inspector Tabor disputes. Does Inspector Tabor dispute that he and Mr. Bae explicitly discussed the 50% demolition limitation and what areas of the Project would count toward it at a December 12, 2007 pre-demolition meeting? Does Inspector Tabor dispute that during a March 12, 2008 inspection, Mr. Bae showed him substantial Project structural damage and stated that he (Mr. Bae) could not safely complete the approved renovation while staying within the 50% demolition limitation? Does Inspector Tabor dispute that he approved demolition in excess of 50% based on his viewing this structural damage? Does Inspector Tabor dispute that Mr. Bae explicitly stated that in light of Inspector Tabor's approval, he (Mr. Bae) would stop time-consuming hand demolition and instead bring in large demolition equipment? Does Inspector Tabor dispute that he performed nine onsite inspections between July 22, 2008 and October 28, 2008, after the completion of demolition, yet never once raised any issue relative to the 50% demolition limitation?¹

In addition, the City has never offered any explanation for why the Owner would first engage in several months of time-consuming hand demolition, necessitated by the need to carefully stay under 50% total demolition, and then all of a sudden apply for a heavy haul permit, bring in large equipment, and demolish over 90% of the Project absent approval to do so. If the Owner wanted to flout the demolition limitation clearly stated on the approved plans, it could have done so from the beginning of the renovation. Alternatively, if the Owner wanted to comply with the demolition limitation, it would have engaged in careful hand demolition, which is exactly what happened. Further, the Owner did not merely assume that structural damage allowed it to demolish whatever it saw fit, but rather specifically sought to have the City review the damage and advise on a course of action consistent with the code.

Moreover, detailed examination of the Project site and the Project's approved plans was not limited to Inspector Tabor. Due to a concern that the approved plans did not align with the Project's View Preservation approval, the City issued a Stop Work Order on December 11, 2008 so that staff could investigate the potential discrepancy. On December 12, 2008, City staff, including Ryan Golich, Erik Keshishian and Inspector Tabor visited the Property to make a detailed examination of the Project's height and compare it with both the approved plans and the View Preservation approval. A discrepancy was identified, and the Owner immediately agreed

¹ A detailed timeline of City inspections is attached as "Exhibit 2."

to align construction with the View Preservation requirements. As such, the City lifted the Stop Work Order on December 28, 2008.

It is difficult if not impossible to fathom how a City investigation undertaken by both the Planning and Building and Safety departments, the sole purpose of which was to study the Project's approved plans in detail, could have missed the fact that a project that was supposed to stay under 50% demolition had in fact demolished over 90% of its exterior roof and walls. The obvious reason that no Planning or Building and Safety representatives raised any question or issue with respect to the Project's demolition is that demolition approval in excess of 50% had already been granted.

II. THE CITY REMAINS ESTOPPED FROM REVOKING THE PERMIT

Regardless of the exact details surrounding Inspector Tabor's approval of Project demolition, the City cannot now, fifteen months after large scale demolition began, assert its authority to revoke the Permit. As detailed in our February 16, 2010 letter, well-settled principles of estoppel prohibit the City from inducing action by the Owner and then rescinding approval for this action to the Owner's substantial economic detriment. To date, the Owner has expended over \$1,000,000 in construction-related costs in reliance on the City's demolition approval.

Even if the City maintains that it did not grant demolition approval, it is still prohibited from now revoking the Permit under the equitable principle of laches. The principle of laches bars the Permit revocation because there has been "unreasonable delay plus either acquiescence in the act about which plaintiff complains or prejudice to the defendant resulting from the delay." *Brown v. State Personnel Board*, 166 Cal.App.3d 1151, 1159 (1985). A period of fifteen months from large scale demolition to issuance of a Stop Work Order certainly qualifies as "unreasonable delay." Further, the City acquiesced to the demolition and subsequent construction by repeatedly inspecting the Project, issuing other permits, and even going so far as to specifically investigate the Project's plans, allowing construction to proceed for another eight months after this investigation. Finally, it is hard to fathom greater prejudice to the Owner than now demanding that the Project conform with current development standards, which would force the Owner to expend hundreds of thousands of dollars to redesign the Project, while causing the loss of over \$1,000,000 in construction-related expenditures and the loss of several million dollars in Project value.

III. CONCLUSION

Substantial evidence indicates that the City gave explicit approval to demolish more than 50% of the Project. The City has not refuted in any way the detailed declarations of the Project's construction manager regarding this approval. Further, the City has not, and indeed cannot, provide an explanation as to why the Project Owner first engaged in hand demolition and suddenly sought permits to begin large scale demolition. Finally, given the City's unreasonable delay in attempting to revoke the Permit, the City is estopped from now asserting this authority.

February 25, 2010
Page 4

Accordingly, we respectfully request that the City lift the Stop Work Order and reinstate Permit No. BS0725308.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kevin K. McDonnell". The signature is written in a cursive style with some flourishes.

KEVIN K. MCDONNELL
ALEX DEGOOD of
Jeffer, Mangels, Butler & Marmaro LLP

KKM:

cc: Laurence Wiener, City Attorney
David Snow, Assistant City Attorney
Susan Healy Keene, Director of Community Development
Jonathan Lait, Assistant Director of Community Development / City Planner
David Reyes, Principal Planner
George Chavez, Building Official
Benjamin M. Reznik

EXHIBIT 1

EXHIBIT 2

CHRONOLOGY OF PROJECT INSPECTIONS AND RELATED EVENTS

- Dec. 12, 2007 - Onsite pre-demolition meeting between Inspector Tabor and Contractor Keith Bae; discussion of specific demo that will count toward 50% limitation
- Jan. 2008 - Hand demolition of project begins
- March 12, 2008 - Onsite meeting between Inspector Tabor and Keith Bae to discuss home's structural damage, approval to exceed 50%
- April 8, 2008 - City issues heavy haul permit so that large scale demo equipment can be brought to site
- April 15, 2008 - Heavy demo equipment arrives on site, large scale demo begins
- May 28, 2008 - Demo complete**
- June 30, 2008 - Inspector Tabor performs plan check for mechanical permit
- July 22, 2008 - Inspector Tabor performs onsite foundation inspection
- July 28, 2008 - Inspector Tabor performs onsite inspection of first lift of basement walls
- July 30, 2008 - Inspector Tabor performs onsite inspection of second lift of basement walls
- August 7, 2008 - Inspector Tabor approves pour of basement slab
- August 7, 2008 - Inspector Boone performs onsite inspection of basement slab
- September 25, 2008 - Inspector Tabor performs onsite inspection of pads and grade beams in upper house
- October 6, 2008 - Inspector Tabor performs onsite inspection of driveway retaining walls and footings
- October 14, 2008 - Inspector Tabor performs onsite inspection of first lift of driveway retaining walls and under floor plumbing

October 21, 2008 - Inspector Tabor performs plan check and issues electrical permit

October 27, 2008 - Inspector Tabor performs onsite inspection of slab pour

October 28, 2008 - Inspector Tabor performs another onsite inspection of slab pour

December 11, 2008 - City issues stop work order to investigate height of house

December 12, 2008 - City staff, including Ryan Golich, Erik Keshishian and Inspector Tabor visit site to examine house height

December 28, 2008 - City lifts stop work order as construction plans conform with view preservation analysis

July 15, 2009 - City issues stop work order for demolition in excess of 50% limitation