



AGENDA REPORT

Meeting Date: November 15, 2016

Item Number: E-1

To: Honorable Mayor & City Council

From: Ryan Gohlich, Assistant Director of Community Development/City Planner

Subject: SET HEARING DATE TO CONSIDER AN APPEAL OF THE PLANNING COMMISSION'S DECISION APPROVING A VESTING TENTATIVE TRACT MAP AND DEVELOPMENT PLAN REVIEW TO ALLOW THE CONSTRUCTION OF A NEW, 26-UNIT MULTIFAMILY CONDOMINIUM BUILDING PARTIALLY LOCATED IN THE CITY OF LOS ANGELES.

Attachments: 1. Appeal Petition

RECOMMENDATION

It is recommended that the City Council schedule an appeal of the Planning Commission's decision approving a vesting tentative tract map and development plan review to allow the construction of a new, 26-unit multifamily condominium building partially located in the City of Los Angeles for December 20, 2016.

DISCUSSION

On October 13, 2016, the Planning Commission voted 2-1 (Commissioners Block and Fisher were absent) to approve a Vesting Tentative Tract Map and Development Plan Review for a new, 26-unit multi-family condominium building partially located in the City of Beverly Hills at 332-336 North Oakhurst Drive. The portion of the building located in the City of Beverly Hills would contain seven units or fractions thereof, and the remaining 19 units would be located in the portion of the building in the City of Los Angeles. The portion of the project located in the City of Beverly Hills would be three stories and 39 feet in height, while the portion of the project in the City of Los Angeles would be four stories and 52 feet in height.

On October 24, 2016 an appeal of the Planning Commission's decision was filed by Steve Mayer.

PROCESS

Pursuant to Beverly Hill Municipal Code Section 1-4-105, the procedure for appeals of Planning Commission decisions to the City Council is a two-step process. The matter is first placed on the Council agenda for review of the evidence presented in the appeal petition. If the evidence and information presented in the appeal is the same as was presented to the Planning Commission, the Council can then set a public hearing to consider the appeal. However, if the appeal petition contains new information, the Council may order that the Commission rehear the matter. Importantly, the Code provides that the Council shall not permit oral testimony in its review and determination of the appeal materials and whether further consideration by the Commission should be required.

Planning Staff and the City Attorney's Office have reviewed the appeal petition and do not believe that new information beyond that already considered by the Planning Commission is presented therein. Therefore, staff recommends that the Council formally schedule this matter for a formal public hearing on December 20, 2016 to consider the appeal.

Susan Healy Keene, AICP
Director of Community Development

Approved By 

Attachment 1

Appeal Petition

**APPEAL PETITIONS MUST BE FILED WITH THE CITY CLERK'S OFFICE WITHIN
14 CALENDAR DAYS AFTER THE DATE OF THE DECISION**

APPEAL TO _____ ~~COMMISSION OR~~ CITY COUNCIL

PLEASE TYPE OR PRINT CLEARLY IN BLACK INK

10/24/16

Date

In accordance with the appeals procedure as authorized by the provisions of the Beverly Hills Municipal Code, the undersigned hereby appeals from the decision of PLANNING COMMISSION (Official, Board or Commission involved) rendered on OCTOBER 13, 2016, _____; which decision consisted of: The grounds submitted for this appeal are as follows: **(WARNING: State all grounds for appeal. Describe how decision is inconsistent with law. Use extra paper if necessary.)**

Steve Mayer hereby appeals the October 13, 2016 decision of the Planning Commission regarding the proposed development of, and Vesting Tentative Tract Map at, 332-336 North Oakhurst Drive. The grounds for appeal are set forth initially in a letter to the City Council. The Appellant reserves the right to supplement the initial letter.

The undersigned discussed the decision being appealed with:

~~BYRON POPE~~ MASA ALKIRE

on 10/21/16

(Department Head(s) Involved)

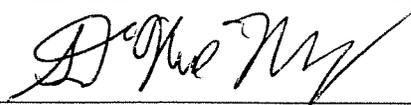
Date

It is requested that written notice of the time and place for the hearing on this appeal before the City Council be sent to:

Steve Mayer P. O. Box 16766 Beverly Hills, CA 90209

Name

Address



Signature of appealing party

P. O. Box 16766 Beverly Hills, CA 90209

Address

(310) 275-8423 mayer@iname.com

Telephone Number & Fax Number

Fee Paid \$5,231.00

(For City Clerk's use)

DATE RECEIVED

LOG NO. 42x16

Written Notice mailed to appellant:

Copies to: City Council, City Manager, City Attorney, Community Development
(Susan Healy Keene, Ryan Gohlich, Masa Alkire and Andre Sahakian) Involved Department

RECEIVED
CITY OF BEVERLY HILLS
2016 OCT 24 P 4:57
CITY CLERK'S OFFICE

P. O. Box 16766
Beverly Hills, California 90209
(310) 275-8423

October 24, 2016

City Council
City of Beverly Hills
455 North Rexford Drive
Beverly Hills, California 90210

RE: Appeal of October 13, 2016 Planning Commission Decision of the
proposed condominium project at 332-336 North Oakhurst

Honorable Mayor and Councilmembers:

Please permit this correspondence to summarize some of the issues regarding the appeal of the October 13, 2016 Planning Commission Decision of a proposed condominium project at 332-336 North Oakhurst Drive, including, but not limited to, the:

- Development Plan Review
- Vesting Tentative Tract Map
- Resolution
- Mitigated Negative Declaration
- Determination Letter

332-336 North Oakhurst Drive is a bi-jurisdictional property of which approximately 30% of the land lies in the City, with the balance in the City of Los Angeles.

The Commission voted 2-1 to approve a 26-unit, four-story, 52' high building. The original proposal, which was rejected, was for a 31-unit, five-story, 60' high structure.

The City ceded Lead Agency status to the City of Los Angeles that issued both a Mitigated Negative Declaration and a Determination Letter in 2012 and 2015 respectively.

The issues of the Appeal include, but are not limited to:

- ▶ **BROWN ACT VIOLATIONS.** The Ralph M. Brown Act (California Government Code Section 54940) has been violated by Staff and the Commission. Amongst the transgressions related only to the October 13th hearing (and not the preceding hearings):

- Staff did not disseminate the information to all parties at the same time
- The Chair arbitrarily, unlawfully and/or improperly reduced the amount of the time for speakers wishing to refute the untruthfulness of the Applicant's representative. Evidence was not allowed to be presented.
- The Chair arbitrarily, unlawfully and/or improperly permitted a Commissioner who would be leaving early, and could not deliberate, to sit at the dais and participate in the hearing
- The Applicant submitted a revised proposal that was not provided to the public until 45 hours before the hearing

- ▶ **PUBLIC RECORDS ACT VIOLATIONS.** The California Public Records Act (California Government Code Section 6250) has been violated by Staff. Amongst the transgressions:

Staff, in contravention to both City and State statutes, did not provide requested materials under the Public Records California Public Record Act.

Staff arbitrarily and unlawfully has refused to provide materials prior to a public hearing, not once by three times, and over the period of two months.

The significance is even more paramount because during the approval process in the City of Los Angeles, two planning department staffers apparently deliberately and wantonly withheld critical information from appointed and elected officials. The question is whether that practice is continuing from the City of Los Angeles to the City of Beverly Hills.

- ▶ **LEGISLATIVE ADVOCATE ORDINANCE VIOLATIONS.** The Legislative Advocate Ordinance has been violated by a registrant. Amongst the transgressions by the Legislative Advocate include:
 - Filing under a different client's name
 - Not revealing his position to the Associate Planner prior to the September 19th hearing
 - Not being identified in the September 19th Staff Report as a Legislative Advocate, yet was the presenter at the September 19th hearing
 - Repeatedly requesting meetings with the Appellant starting at the July 14th Planning Commission meeting, but not revealing his status

- ▶ **LAND USE POLICIES.** The General Plan and some of its Land Use Policies were not properly reviewed at the October 13th hearing.

During the October 8, 2015 hearing, the pertinent Land Use Policies cited, in rejecting a 31-unit, five-story, 60' high proposal, were:

 - LU 1.1: The Scale of the City
 - LU 2.1: City Places: Neighborhoods, Districts, and Corridors
 - LU 2.4: Architectural and Site Design
 - LU 5.2: Infill and Replacement Housing
 - LU 7.1: Character and Design
 - LU 7.2: Amenities

From the standpoint of Land Use Policies, the underlying conditions were not fully considered at the October 13, 2016 hearing

- ▶ **DIRECTION NOT FOLLOWED**: The Applicant did not fulfill the direction of the Planning Commission of the September 19, 2016 hearing, specifically exceeding the height maximum.

The zoning for the area calls for four stories with a 45' height limit. At the September 19th hearing, the Commission acceded to examining a project at 49' in height. The submitted plans were for 52' in height.

The project is only 8' less than the 60' originally proposed (87% of the originally proposed height).

- ▶ **UNSUBSTANTIATED FEAR**. The Legislative Advocate propagated a fear that is totally erroneous.

The Legislative Advocate successfully instilled the fear that if Commissioners did not approve the project, then the Applicant would build upon an unlimited basis in the City of Los Angeles.

The Commissioners failed to understand that an LA-only project would have a front door on an alley. A frontage on an alley would make any proposed project financially unviable.

- ▶ **UNQUALIFIED REPORTS**. Section 8, Paragraph 2 of the Resolution relied upon a report submitted by the Applicant that cannot be considered, and thus is null and void.

The City adheres to the standards of the Secretary of Interior relative to all historically-related reports. The report in question was prepared by a consultant (and a firm) that do not meet the minimum standards in either of the Cities of Beverly Hills and Los Angeles.

- ▶ **DATED REPORTS**. The Commission relied upon dated reports that are no longer relevant.

For example, at the October 9, 2015 hearing, it was pointed out that the parking assessment (not a survey) did not incorporate the effect of approved projects at 9100 Alden and 325 North Maple.

Since that time, projects at 328 North Oakhurst, 328 North Maple, and Townscape and have been proposed.

The Commission erred in failing to direct the Applicant to provide updated studies in October, 2015 and September, 2016.

- ▶ **CULTURAL HERITAGE COMMISSION.** The mandate for the Cultural Heritage Commission been violated.

It was discovered after the October 13th hearing that the Cultural Heritage Commission had never, ever been consulted about this project.

Two of the Planning Commission members had specifically queried community members why the Cultural Heritage Commission had never been involved in the process.

Only after the hearing was it uncovered that Staff had apparently intentionally never involved the Cultural Heritage Commission in the process.

- ▶ **UNENFORCEABILITY.** Some of the provisions in the resolution are unenforceable, because the units are situated in the City of Los Angeles.

For example, Section 9, Paragraph 17 (*“Amplified music shall be prohibited in outdoor open spaces, courtyards, and rooftop patios and amenities.”*) cannot be enforced in the City of Los Angeles by the Beverly Hills Police Department.

If the property was owned by one entity, enforceability is possible. With 26 separate and distinct owners, enforceability on the Los Angeles units is impossible.

As a separate example, AirB2B is not permitted in the City of Beverly Hills, but soon will be in the City of Los Angeles.

A condominium project that straddles two jurisdictions is not enforceable by either City.

- ▶ **ALTERNATIVE NOT CONSIDERED.** Local community members requested that the Applicant provide drawings for a three-story, 39' high project.

Staff insisted to the Commissioners that such a request would require 10-day noticing period.

Staff was in error, again. The Community Members were not demanding a condition, but a request of the Applicant. A request does not require noticing.

Adding insult to injury, the 45 hours before the October 13th hearing, the public received the drawings of the Applicant's five-story, 28-unit, 60' high alternative.

- ▶ **EX PARTE COMMUNICATION.** At the September 19th hearing it was revealed that the Legislative Advocate had lobbied two (2) Commissioners. This is the same Legislative Advocate who had filed under a different client's name.

A year before, the local community members were informed by Staff that ex parte communication with the Commissioners was forbidden

With the revelation that the Legislative Advocate had been lobbying, the local community members began their own ex parte communications.

But the question remains, how can the community members overcome the influence of decades of relationships?

- ▶ **MITIGATION MEASURES.** Since 2014, the local community members had requested mitigation measures.

Some were as simple as constructing a 16' construction fence.

None were included in the Mitigated Negative Declaration, the Determination Letter, the Mitigation Monitoring and Reporting Program and/or the Resolution.

▶ **MITIGATED NEGATIVE DECLARATION / DETERMINATION LETTER**

In neither the September 19th nor the October 13th hearings were either the Mitigated Negative Declaration and/or the Determination Letter specifically addressed.

The Commission erred in not examining those two critical documents. Those documents should have been considered as a separate part of the hearing, unrelated to the proposal.

* * * * *

There are many other aspects of the approval process that needed to be examined and were not during the public hearings.

Effectively, the Planning Commission lost control of a project, due to the fear instilled by a Beverly Hills-based Legislative Advocate.

The number of issues and discrepancies were just touched upon in this communication. Thus, this communication will be supplemented close to the hearing date.

Sincerely,



Steve Mayer

LAND USE POLICIES CITED DURING OCTOBER 8, 2015 HEARING

“LU 1.1 The Scale of the City. *Although implicit in any discussion of the future of the City, the importance of scale must be underscored. As long as the City is able to regenerate itself within the general framework of the existing scale, it will offer an environment which is becoming increasingly unique in the Westside. (Imp. 2.1, 2.2)*

“LU 2.1 City Places: Neighborhoods, Districts, and Corridors. *Maintain and enhance the character, distribution, built form, scale, and aesthetic qualities of the City's distinctive residential neighborhoods, business districts, corridors, and open spaces. (Imp. 2.1, 2.2)”*

“LU 2.4 Architectural and Site Design. *Require that new construction and renovation of existing buildings and properties exhibit a high level of excellence in site planning, architectural design, building materials, use of sustainable design and construction practices, landscaping, and amenities that contribute to the City's distinctive image and complement existing development.” (Imp. 2.2, 2.3)*

“LU 5.2 Infill and Replacement Housing. *Accommodate new and renovated housing within existing neighborhoods that is consistent with contextual parcel sizes, densities, built form and scale. (Imp. 2.1, 2.2)*

“LU 7.1 Character and Design. *Require that multi-family dwellings and properties be designed to reflect the high level of architectural and landscape quality that distinguishes existing neighborhoods. (Imp. 2.1, 2.2)”*

“LU 7.2 Amenities. *Encourage new multi-family development to provide amenities for residents such as on-site recreational facilities, community meeting spaces, and require useable private open space, public open space, or both. (Imp. 2.2)*