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**Council File 13-1070: 13-11764 Idaho/1601 Stoner: Appeal to City  
PLUM/Council**

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CONFIDENTIAL

Jay Ross <ross\_jay@hotmail.com>  
To: "sharon.gin@lacity.org" <sharon.gin@lacity.org>

Wed, Sep 4, 2013 at 10:23 AM

Ms. Wolcott and Ms. Gin:

Please accept as public comment for Council File 13-1070.

Can you please reply to confirm receipt?

To: Council members on PLUM Committee  
c/o Holly Wolcott, City Clerk; Sharon Gin, PLUM.  
Fr: Jay Ross, West L.A. resident, 1721 S. Granville Ave.  
**Re: Council file - 13-1070 (Appeal for 11764 W. Idaho Ave. / 1601 S. Stoner Ave.)**  
Date: Sept. 4, 2013

I likely cannot attend the PLUM and Council hearings because they are in the middle of the work day, and I'm not a supervisor, so I can't take time off whenever I want. So, please give as much credence to these comments as if I were there in person. In addition, I am not an expensive lawyer who has all day to work on this and gets paid \$400 per hour. I am a representative of the neighbors, and I don't have fancy letterhead.

Note that when a developer has to hire an expensive lawyer, his case is usually weak, and they need to grasp at straws to make up arguments. The developer's original arguments were poor and already rejected by the WLAPC. Please consider that the WLAPC has already heard all of these arguments, and rejected them (based on its determination).

In addition, the West L.A. NC has already heard these arguments and rejected them, in its decision to oppose the project.

Please note that the developer calls himself "just a small developer" (see the WLAPC hearing transcript), and now he has hired one of the biggest law firms in the city to state his case. Please consider this in the future when making your decision... how can a "small developer" afford such a large, expensive firm? Then, review all of his arguments in that light... if he has misled us about being a small developer who's being oppressed by the city, what other arguments is he making up to win at all costs?

I list 13 arguments below, which shows you how much the attorneys and the developer are trying to distort this case. They make so many mistakes, that my reply memo runs 9 pages long.

**My Request:** Deny the developer's appeal, because the City should respect the opinion and authority of the West L.A. Area Planning Commission. No violation of the Community Plan has taken place because of the WLAPC's decision to uphold the original residents' appeal.

In addition, the recent Deputy Advisory Agency decision on Aug. 22 for 1641 S. Stoner Ave. (another proposal for a 4-story condominium that demolishes a 1-story house on the very same block) placed a condition on the Tract/Parcel Map 71823 (ENV-2012-2073) to limit the height to 3 stories in an R3-1 zone. The Zoning Administrator, J.C. Romero-Navaro, based his decision on the fact that the proposed 4-story building did not comply with the Community Plan.

**First argument:** Please respect the authority and expertise of the WLAPC. They are appointed by the past mayor, and their terms continue under the new administration because they are highly intelligent and fully understand the authority they have to enforce the Community Plan. They have years of planning expertise, and their determination is fully documented by facts.

The attorney states there is no substantial evidence. I don't know why they make a false claim like this. Here is all the substantial evidence that you need. It's hard data and numbers-based:

The Community Plan requires that new development "conform to the character of the community".

There are no 4-story buildings on either side of the 1600 block of Stoner Ave. (which is the technical frontage of the property), and no buildings on the block have a discretionary approval for reduced open space. Note that no buildings on the adjacent lots are 4 stories (there are 1-story house, 2-story apartment, 3-story apartment and a parking lot – yes, parking lots with 0 stories do count, so the attorney shouldn't try to change to rules to fit their arguments).

In fact, in the 4-block quadrant that surrounds the site, 85% of buildings are 3 stories and shorter.

The attorneys give a bunch of info about zoning that we already know. But, they do not address this fact – the Community Plan has precedence over zoning. Zoning is secondary and implements the Community Plan. Your development must first "conform to the character of the community", even if it means a shorter height than the maximum of 45 ft. Remember, 45 ft. is a maximum, not a guaranteed minimum. Developers do not automatically get 45 ft. maximum height, especially if there are no other 4-story buildings on the block.

**Second argument:** The Planning Dept. already has precedent and has made similar decisions to limit height in R3-1 zones below 45 ft.

On the very same block, just 2 weeks ago on Aug. 22, the Deputy Advisory Agency considered a TT-71823, which is located on the same block as 11764 W. Idaho/1601 S. Stoner Ave. The proposal was for 4-story condominium that would demolish a 1-story house and was next to a 1-story house, 1-story house, 2-story apartment, and 3-story apartment. The Zoning

Administrator, J.C. Romero-Navarro, placed a condition on the Tract/Parcel Map to limit height to 3 stories, in order to comply with the Community Plan. You can ask him or Greg Shoop to confirm the decision, since we have not yet received the Determination Letter (it has not been mailed because it's only been 2-3 weeks).

Mr. Romero-Navarro added the following modifications:

- plant two trees for every one tree that is torn down
- post a sign with a direct phone number where neighbors can call if there are problems with the demolition or construction.
- if the development stays with 7 units, then they must have 17 parking spots (rather than the proposed 16)
- if a condo development has more than 5 units, then there must be 2 parking spots for each unit plus 1/2 guest parking spot which is why 7 units requires 17 parking spots

***There's more...*** I asked the question about limiting size per the Community Plan specifically of Greg Shoop, the Westside's planning manager, when he spoke at the West L.A. NC earlier in 2013. He recalled an example in the San Fernando Valley of a block of R3 zone properties right off a major boulevard that was still all 1-story houses. A developer proposed a big apartment (3-4 stories) in the middle of 5 houses.

The Planning Dept denied the project exactly on those grounds – it did not fit with the character of the existing community. So, we have precedent, and you can continue to respect the WLAPC's determination in this case, and use as precedent the Planning Dept's determination for 1641 S. Stoner Ave. (which is on the SAME block as this 11764 W. Idaho Ave /1601 S. Stoner Ave project).

**Third argument:** Do not be afraid of an expensive big law firm making threats. This is the same thing that happened with the billboards. They tried to intimidate the city with frivolous lawsuits, and they lost in the courts. In the end, the people make the rules, and lawyers will make up arguments or twist them in ways that sound threatening, but are actually irrelevant.

Do not fear a lawsuit. It's easy for a developer to pay \$5,000 to get a big law firm to write a threatening letter on fancy letterhead. But it's a much more difficult decision to spend \$50,000 on a lawsuit that will take 1-2 years to resolve. Most developers will accept the city's decision on a smaller project, instead of dragging it out for a long time with less than a 50% chance of success. Your city attorneys are just as smart, and would win any lawsuit.

**4th argument:** The developer is not aggrieved. He can build a 3-story building that will fit all 8 units. If he purchased the land before entitlements were secured, that's his own fault. A developer should do proper due diligence before deciding on a land price and closing on land. Most developers do that simple task first.

The developer was invited to attend two West L.A. Neighborhood Councils, and he steadfastly refused to attend (Ron Cargill of Cargill & Associates can attest to this. I talked to Ron on the

phone at least twice and sent him many emails to invite Reza. But, Ron said that Reza refused to participate in the community process and showed no consideration for the neighbors.) Reza would have learned that the Community Plan has higher authority than zoning, had he accepted the invitation, and he would have known exactly what he could have built.

Please consider these actions on his part when he claims he is “just a small developer” and being oppressed by the city. If his profit is reduced by what the city eventually approves, that is his own poor decision.

In addition, he has not submitted a proforma that shows how the project will be impacted? He claims he'll lose money. But, how can we believe him? Are we just going to take his word (remember \_\_\_ calls himself “a small developer” \_\_\_ then hires one of the biggest, most expensive law firms in the city \_\_\_ can we trust his word that he's actually losing money when he refuses to submit his proforma or certified/audited statements or bank loan information)?

In fact, the city is prohibited from making planning decisions based on how much money the developer wants to make.

**5th argument:** The decision to allow a 3-level building to be constructed in a high density zone is not a “taking”. Lawyers love to throw around this threatening term, and in this case, it's irrelevant. The developer is still allowed to build. In fact, he can fit all 8 units in a 3-story building that complies with the required open space. That way, he is fully entitled to enjoy the entitlements for his land. (A “taking” would be if his property was downzoned to Agricultural and he could build nothing). Please ask the attorney to provide case law about how a 3-story building that can still fit 8 units is a taking... they certainly didn't include it in their original submittal... maybe because they're just making idle threats that don't hold water. Ask them to submit evidence of precedent.

The WLAPC did not say he could not build housing. The developer chose to design extraordinarily large units, then he complains when they don't fit. That's his fault. Your job is not to bail out his poor decisions. He just wants to make more money with bigger units, and he's not entitled to 2000-sf units. If his units have to be 1000 sf, then so be it.

**6th argument:** This is not “spot zoning”. The zoning didn't change. It's still R3. And a 3-story apartment with 8 units can still be built. Again, lawyers throw around threatening terms, just hoping that one of them will “stick” and that the city will be afraid of a lawsuit. Don't worry about a lawsuit – they're not going to spend 1 year and \$50,000 to get 1 more story when you tell a judge that all 8 units can still fit on the site.

I work for a developer – we build 850-sf 2-bedroom units all the time. The developer wants 2,000-sf units. That's his decision to build extra large units and lose density. Again, the city is not responsible for bailing him out on his poor decisions.

**7th argument:** No one in the community supports this variance (reduction in open space) and extra height (no other 4-story buildings on the block of Stoner Ave., 85% of buildings are 3 stories or shorter). At the WLAPC hearing, the developer had no supporters. The appellant had 2 neighbors who testified, 8 individual letters of opposition, and a petition of 20 neighbors

who opposed the project.

Be sure to ask the lawyers how many neighborhood supporters they have.

**8th argument:** The WLAPC used plenty of facts to provide the legal basis for its decision to lower the height and require the full open space. Here is all the substantial evidence that you need. It's hard data and numbers-based:

The Community Plan requires that new development conform to the character of the community.

There are no 4-story buildings on the block, and no buildings have a discretionary approval for reduced open space. Note that no buildings on the adjacent lots are 4 stories (there are 1-story house, 2-story apartment, 3-story apartment and a parking lot – yes, parking lots with 0 stories do count, so the attorney shouldn't try to change to rules to fit their arguments).

In fact, in the 4-block quadrant that surrounds the site, 85% of buildings are 3 stories and shorter.

**9th argument:** Mr. Cargill says incorrectly that the developer "does not think he deserves more than others". False. The developer is asking for a 4<sup>th</sup> story and 10% open space reduction when none of the surrounding buildings are 4 stories (they are a 3-story apartment, 2-story apartment, 1-story house, and a 0-story parking lot – yes, the parking lot counts as development) and no other open space reductions have been granted. Asking for a 4<sup>th</sup> story when no other building next to it is 4 stories, and asking for an open space reduction when no one else has that same reduction, are definitely asking for more than others.

The developer and Ron should provide a list of all other properties that request a 10% reduction. Will you ask them to submit it at this hearing?

**10th argument:** The reasonable expectation is to build according to the Community Plan, which allows buildings up to 4 stories, if they "conform to the character of the community." 4 stories is a maximum, not a minimum, despite what the attorneys try to say.

The attorneys provide a list of 4-story buildings in the area. They list 5 such buildings. Do you consider 5 buildings to be a "cluster"? I don't.

Here is a list of 42 parcels with buildings that are 3 stories or shorter in that same area. Count them up – my 42 buildings is a whole lot more than their 5 buildings, in fact it is 800% more buildings that are shorter than 3 stories!:

1519 S. Stoner Ave.  
1524 S. Stoner Ave.  
1525 S. Stoner Ave.

1528 S. Stoner Ave.  
1531 S. Stoner Ave.  
1532 S. Stoner Ave.  
1535 S. Stoner Ave.  
1541 S. Stoner Ave.  
1545 S. Stoner Ave.  
1601 S. Stoner Ave.  
1602-10 S. Stoner Ave.  
1622 S. Stoner Ave.  
1624 S. Stoner Ave.  
1625 S. Stoner Ave.  
1628 S. Stoner Ave.  
1632 S. Stoner Ave.  
1638 S. Stoner Ave.  
1641 S. Stoner Ave.  
1644 S. Stoner Ave.  
1645 S. Stoner Ave.  
1532 S. Granville Ave.  
1538 S. Granville Ave.  
1548 S. Granville Ave.  
1610 S. Granville Ave.  
1626 S. Granville Ave.  
1630 S. Granville Ave.  
1567 S. Barrington Ave.  
1605 S. Barrington Ave.  
1609 S. Barrington Ave.  
1615 S. Barrington Ave.  
1619 S. Barrington Ave.  
1623 S. Barrington Ave.  
1631 S. Barrington Ave.  
1637 S. Barrington Ave.  
1635 S. Barrington Ave.  
1641 S. Barrington Ave.  
11701 W. Idaho Ave.  
11703 W. Idaho Ave.  
11709 W. Idaho Ave.  
11717 W. Idaho Ave.  
11721 W. Idaho Ave.  
11705 W. Iowa Ave.  
11707 W. Iowa Ave.  
11759 W. Iowa Ave.  
11763-65 W. Iowa Ave.  
11767 W. Iowa Ave.

Also, the developer and attorney have to go over to other streets to find their 5 buildings to try to establish that 4-story buildings are a “development trend”. So, why don’t they look on the same street where the project is (1600 block of Stoner Ave.) where there are tons of 1-story houses,

2-story apartments and 3-story apartments (and no 4-story buildings)?

Why don't they give the same credit to shorter and smaller buildings that are actually closer (including the house to the west, which will end up like Mr. Frederickson's house in the movie "Up" – skyscrapers on both sides, but it's OK).

I encourage you to make your decision based on the 85% of the buildings that are 3 stories or shorter, not the 15% of the buildings that are 4 stories. It's simply a numbers game. A clear majority of buildings are 3-stories or shorter and have full required open space. This is sufficient evidence for the WL APC's determination, and we ask you to concur.

The developer does not have a "reasonable expectation" to build 4 stories and reduce open space, when almost no other buildings in the area are similar. If Reza can't make clear and logical planning decisions, and actively chooses to ignore the community, that is arrogance on his part, and he will have to deal with the consequences of the city's final decision. The city should not bail out his poor decisions.

**11th argument:** The attorneys are trying to make up a new part of the Community Plan out of thin air to enhance their questionable logic. They claim that "recent construction" is the standard, which is false, the Community Plan clearly states that "existing" community and buildings, which has been developing since the 1920s, is the standard. The existing community is what is on the ground now, not speculating about the future, or even the most recent construction.

**12th argument:** Century City is an irrelevant example. It is separated from residential by streets that are 120 ft. wide. And to answer the lawyers' question... yes, a 50-story high rise with minimum setbacks would not be permitted next to an R1 zone. Why? Because the Community Plan states that commercial areas must have transitions from residential zones. In addition, try to get that skyscraper approved in CD5 through the Westside NC, Tract 7280 HOA, and South of Santa Monica Blvd. HOA.

**13th argument:** Why don't the attorney and developer list all the other non-density bonus buildings in the area that have a 10% reduction in open space in our neighborhood? Where is the precedent for them to cite? The answer: There are no other buildings like that, and they are trying to make up a new precedent.

## **Conclusion:**

The WL APC's determination allows the developer to build a 3-level building with the full required open space, and still fit 6-8 units. There plenty of square footage in that footprint. He is the one that chooses to build extravagant 2000-sf units (size of units is not an entitlement), so he can decide whether to fit 6-8 units.

We ask you to listen to the people who wrote the Community Plan, and the WLAPC that was appointed to safeguard it – not the developers and their expensive lawyers that have to conjure up false arguments to threaten the city. We will win this if they want to take it to court, guaranteed.

Thank you for your service to the city and citizens who created a fine Community Plan. We ask that you ensure that our neighborhood is safeguarded properly, and our Plan is respected.

Jay Ross


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**3 attachments**

 **Pix Building silhouet.pdf**  
153K

 **Pix.pdf**  
1488K

 **Appeal response 11764 W Idaho Ave in West LA.doc**  
53K