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SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 07/17/14

DEPT. 15

HONORABLE RICHARD FRUIN

JUDGE

E. GARCIA

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

P. BARRERAS, C.A.

Deputy Sheriff

NONE

Reporter

BS140889

Plaintiff

Counsel

LA MIRADA AVENUE NEIGHBORHOOD
ASSOCIATION OF HOLLYWOOD

NO APPEARANCES

VS

Defendant

Counsel

CITY OF LOS ANGELES ET AL
['CEQA' CASE ASSIGNED TO SE,
NORWALK, DEPT G, JUDGE TORRIBIO

NATURE OF PROCEEDINGS:

NON-APPEARANCE CASE REVIEW;

The Court having reviewed the case file, and having considered the oral arguments presented by all sides, now issues the following ruling:

FINAL DECISION ON PETITIONS FOR WRIT OF MANDAMUS

Clerk to give notice, and provide a copy to all sides of the said ruling.

CLERK'S CERTIFICATE OF MAILING

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the minute order and order dated 7/17/14 upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Dated: 7/17/14

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NATURE OF PROCEEDINGS:

Sherri R. Carter, Executive Officer/Clerk

By:

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NORWALK, DEPT G, JUDGE TORRIBIO

NATURE OF PROCEEDINGS:

200 N. MAIN STREET CITY HALL EAST

6TH FLOOR

LOS ANGELES, CA 90012

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

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BS140930

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Counsel

CITIZENS COALITION LOS ANGELES
VS
CITY OF LOS ANGELES ET AL

NO APPEARANCES

Defendant
Counsel

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NORWALK, DEPT G-JUDGE TORRIBIO]

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NATURE OF PROCEEDINGS:

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CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

JUL 17 2014

Sherri R. Carter, Executive Officer/Clerk
By E. Garcia, Deputy

FINAL DECISION ON PETITIONS FOR WRIT OF MANDAMUS

LA MIRADA AVENUE NEIGHBORHOOD ASSOCIATION OF HOLLYWOOD v.
CITY OF LOS ANGELES, CITY OF LOS ANGELES CITY COUNCIL (ex. rel.
TARGET CORPORATION), Case No. BS140889.

CITIZENS COALITION LOS ANGELES V. CITY OF LOS ANGELES, et al, Case No.
BS140930.

Petitioners challenge the actions of the Los Angeles City Council in approving exceptions to a Specific Plan, the Vermont/Western Station Neighborhood Plan (abbreviated as “SNAP”), to permit the construction of a three-level structure to contain a 163,862 sq. ft. Target store on the southwest corner of Sunset Boulevard and Western Avenue (the “Project”). The real party in interest is Target Corporation.

The Project, as approved, is a three-level structure with the Target store as the top floor, two levels of parking (458 spaces) below the store, with about 30,887 sq. ft. of retail and restaurant space on the ground level fronting on Sunset and Western. There is a 11,000 sq. ft. landscaped entry space (called a “plaza”) on Sunset at the corner with Western. The Project is sited on block-size parcel of approximately 168,869 sq. ft. The three level structure, plus the ground level retail/restaurant space, will cover 97.5% of the parcel. (See, EIR, 55/AR 01767-01779; for floor plans and elevations, see 607/AR 16436-16450 and 55/AR 01771-01773.)

The City Council approved eight exceptions to SNAP to permit the Project. The exception that has excited the most controversy was the Council’s approval of a height exception. The Project will stand 74 feet, 4 inches above grade, while SNAP limits the height of commercial structures to 35 feet above grade.

Petitioners contend that the City Council’s findings, required by the Municipal Code section 11.5.7 F.2, do not support the exceptions and are without substantial evidence.

Petitioners further argue that the Environment Impact Report (EIR) for the Project does not contain the information required by the California Environmental Quality Act, Public Resources Code section 21000 et seq. ("CEQA").

THE PARTIES:

Petitioners are La Mirada Avenue Neighborhood Association and the Citizens Coalition Los Angeles. La Mirada and Citizens Coalition are both unincorporated community associations whose members, according to the petitions, advocate for residential quality of life issues in Hollywood. They filed separate verified petitions in December, 2012 and amended petitions in May 2013. Both amended petitions allege these causes of action: (1) that the manner of the preparation of the EIR violates CEQA and CEQA Guidelines; (2) that the findings in the EIR violate CEQA and CEQA Guidelines; and (3) that exceptions to the specific plan approved by the City Council do not comply with Los Angeles Municipal Code section 11.5.7 F.2. La Mirada's amended petition additionally alleges: (4) deprivation of a fair hearing relating to the City Council's action April 3, 2013; and (5) a sham cure and correction of a Brown Act violation.¹

The City of Los Angeles and City Council and the Real Party in Interest filed answers to the amended petitions and denied the charging allegations in December, 2013

The Writ Trial for both actions was conducted on February 27, 2014, with a transcript of the trial provided to the court on March 21. Robert Silverstein argued the variance issues and Brad Trogan the CEQA issues for petitioners. Richard A. Schulman argued for respondent City of Los Angeles and Real Party in Interest Target Corporation. Deputy City Attorneys Mary S. Decker and Kenneth T. Fong appeared for respondent City of Los Angeles.

COURT CONCLUSIONS RE SUFFICIENCY OF THE CITY COUNCIL'S FINDINGS IN APPROVING EXCEPTIONS TO THE SPECIFIC PLAN:

SNAP is the specific plan for the Vermont/Western Station Neighborhood Area.

¹ The court understands that La Mirada is no longer pursuing any claim under the Brown Act (Government Code section 54950 et seq.) After the City and Target argued that any Brown Act violation was not prejudicial and, in any event, was time-barred, La Mirada did not respond in its reply brief. Brown Act violations were not mentioned in the Writ Trial. The court does not discuss further any Brown Act issue.

The Project is within its boundaries. (See 464/AR 14635-14694 for relevant parts of SNAP and its Guidelines.)

SNAP identifies 20 purposes of the specific plan (AR 14638-39), among them to:

C. Establish a clean, safe, comfortable and pedestrian oriented community environment for residents to shop in;

E. Guide all development, including use, location, height and density, to assure compatibility of uses...;

H. Promote increased flexibility in the regulation of the height and bulk of buildings ... in order to ensure a well-planned combination of commercial and residential uses with adequate open space.

SNAP imposes height and floor area restrictions on new commercial developments. "Projects comprised exclusively of commercial uses (not Hospital and Medical Uses) shall not exceed a maximum building height of 35 feet and a maximum FAR of 1.5." AR14660. Greater height is allowed for a hospital (100 feet) or a mixed-use project (75 feet). AR 14661. A mixed-use project is "any project which combines a commercial use with a residential use, either in the same building or in separate buildings on the same lot or lots in a unified development." AR 14641.

If a new development requires exceptions from the SNAP design specifications, such exceptions must be applied for from the Planning and Land Use Management Committee (PLUM). PLUM must consider and decide the application in a noticed public hearing. A disappointed applicant or objector may appeal to the City Council, and the City Council must then consider and decide the appeal in a noticed public hearing.

There is a governing ordinance for exceptions (also called variances) to a specific plan. The Los Angeles Municipal Code section 11.5.7 F.2 (464/AR14744-45) provides that the Area Planning Commission "may permit an exception from a specific plan if it makes all the following findings:

(a) That strict application of the regulations of the specific plan would result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the specific plan;

(b) That there are exceptional circumstances or conditions applicable to the subject property that do not apply generally to other property in the

specific plan area;

(c) That an exception from the specific plan is necessary for the preservation and enjoyment of a substantial property right or use generally possessed by other property within the specific plan area in the same zone and vicinity but which, because of special circumstances and practical difficulties or unnecessary hardships is denied to the property in question;

(d) That the granting of an exception will not be materially detrimental to the public welfare or injurious to the property or improvements adjacent to or in the vicinity of the subject property; and

(e) That the granting of an exception will be consistent with the principles, intent and goals of the specific plan and any applicable element of the general plan.”

The edited findings that were prepared after PLUM approval and then approved by the City Council (5/AR 00136-00138) are found in the Administrative Record at Tab 22/AR00596-00712.² The court, in discharge of its responsibility to review vigorously any exceptions to the specific plan, has examined those findings against the requirements imposed by LAMC section 11.5.7.F.2. The findings must demonstrate the “exceptional circumstances” and must be supported by substantial evidence to justify a variance to the specific plan. *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 517-518.

I. EXCEPTION APPROVED FOR PROJECT HEIGHT:

1. The City’s evidence and findings (22/AR 00607) do not provide substantial evidence to support a conclusion that enforcement of the specific plan “will result in practical difficulties or unnecessary hardships inconsistent with the [specific plan’s] general purpose and intent” for Target. The finding does not satisfy subdivision (a) of LAMC 11.5.7 F.2.

The height variance is the principal exception that the applicant was required to justify under the LAMC. The structure stands 74 feet, 4 inches above grade in a zone imposing 35 foot maximum for commercial structures. The Project thus is more than

² The parties in their briefs usually refer to the PLUM findings that are contained in the Administrative Record at 23/AR732-747, 820-837.

twice the permitted height maximum.

The City's findings re "practical difficulties or unnecessary hardships" consists of three paragraphs. Paragraph 1 states that "[o]ne of the goals of the SNAP is to promote flexibility in the regulation of height and massing in order to achieve a balanced mix of uses within the SNAP." The finding notes that the Project includes "a variety of smaller neighborhood serving ground level floor retail establishments. There are a variety of uses proposed at the site." And Paragraph 2 states "in addition, ... to promote the SNAP goal of providing for lively pedestrian uses and a walkable environment, the mix of retail and service spaces, the pedestrian plaza, open areas and other amenities would be concentrated along Sunset Boulevard and Western Avenue on the ground level."

The finding does not identify any "practical difficulties or unnecessary hardships" to which the applicant Target would be subject. The broader record indicates that such "practical difficulties or unnecessary hardships" refer to the expense to which the applicant would be put to comply with the height limit by constructing underground parking in order to reduce Project height by eliminating two levels of above ground parking. The parties concede that the applicant may develop the property for a full-sized Target store within near compliance with SNAP if it constructs underground parking. The applicant, moreover, originally suggested (to the council member's office) a different design that complied with the specific plan. The applicant's former counsel in a November 1, 2012 letter to the PLUM Committee said: "The Applicant initially planned a stand-alone Target storeThe initial concept would have complied with the SNAP height requirements and many other SNAP requirements." A.R. 11813. The applicant, thus, is seeking a variance to avoid a zoning restriction that would increase the cost of the development. (It is conceded that undergrounding the parking would increase the development costs by at least \$5 million.) That additional cost is self-imposed by the applicant's present development plan. The LAMC does not permit the justification for a structural exception to a specific plan to depend upon an additional expense that is imposed by an applicant's design choice. "An exception from a specific plan shall not be used to grant a special privilege, nor to grant relief from self-imposed hardships." LAMC 11.5.7 F.3(a). The City's finding provides no substantial evidence to support an exception for greater height because of "practical difficulties or unnecessary hardships" due to the features of the property. See *Stolman v. City of Los Angeles* (2003) 114 Cal.App.4th 916, 926.

The City's overall finding may be characterized, not unfairly, as deciding that in order to achieve one of the purposes of the specific plan--a lively shopping area--the Target development should be excepted from the SNAP height limitation. The City's finding that the design will provide a lively shopping area does not constitute substantial

evidence that a height exception is needed to overcome “practical difficulties or unnecessary hardships.” Our appellate courts tell us:

[D]ata focusing on the qualities of the property and Project for which the variance is sought, the desirability of the proposed development, the attractiveness of its design, the benefits to the community, or the economic difficulties of developing the property in conformance with the zoning regulations, lack legal significance and are simply irrelevant to the controlling issue of whether strict application of zoning rules would prevent the would-be developer from utilizing his or her property to the same extent as other property owners in the same zoning district.

Orinda Association v. Board of Supervisors of Contra Costa (1986) 182 Cal.App.3d 1145, 1166.

The City’s final paragraph in support of the finding advises that while the structure is 74 feet, 4 inches from the lowest grade (along De Longpre Avenue), the building height is 61 feet, 6 inches along Sunset Boulevard; and that the Target store on the third level will be set back 16 feet from the face of the building at ground level. “Thus, from the Sunset Boulevard street level view, the impact of the additional building height would be minimized.” It notes too that “[t]he project incorporates facade treatments on all four sides consisting of varying elements such as display windows, balconies, overhangs, landscaping and vine treatments and the use of colors and material to provide a pleasing and varied design.” This paragraph also does not identify any “practical difficulties or unnecessary hardships” that can support an exception to SNAP. This paragraph suggests only that the appearance of the nonconforming height and bulk of the structure can be mitigated by architectural features

2. The City’s evidence and findings (22/AR 00608) do not contain substantial evidence to support a conclusion that “there are exceptional circumstances or conditions that are applicable to the subject property or to the intended use or development of the subject property that do not apply to other properties within the specific plan area.” The finding does not satisfy subdivision (b) of LAMC 11.5.7 F.2.

Paragraph 1 of this finding provides in part:

Although this type of use is allowed per the SNAP, and is encouraged in a major commercial corridor, the unique characteristics and area limitations of the site create exceptional circumstances, which necessitate the height

exception, that do not apply to other properties which can accommodate large structures in the SNAP area. Larger commercial-only projects in the SNAP consist of large, big-box type of design that do not meet SNAP goals and were constructed prior to the adoption of the SNAP

This City finding appears to assert that new construction “big box stores” such as a Target store cannot be accommodated within the limitations imposed by the specific plan, at least on a parcel of the size owned by Target, and for that reason an exception must be made to the specific plan. This argument may support a legislative change to the specific plan but it does not provide evidence, let alone substantial evidence, for an exception to the specific plan based on a finding of “exceptional circumstances or conditions ... that do not apply to other properties within the specific plan area.”

Paragraphs 2 for this finding points out that, if this project was a mixed-use project, that is, including residential use, its maximum height could be 75 feet. This statement does not support an exception because for this “commercial only” Project SNAP imposes a 35 foot height maximum.

Paragraph 3 discusses whether it would be feasible to put the parking underground. The finding concludes that subterranean parking would still require a lesser height exception, would require a “loud and expensive ventilation system,” would impose “approximately 22,000 cubic yards of soil export, thereby causing ... air quality impacts” and would “eliminate the ability for any green space to meet landscape requirements by removing the community gathering areas.” This Council finding suggests that the proposed project may not be suitable for the site, if the requirements of the specific plan are applied, but it does not support a conclusion that there are “exceptional circumstances” that would **not** apply to other sites of similar size within the SNAP boundaries.

The exception for Target’s 74 foot, 4 inch design, if allowed, will become a precedent used by other applicants throughout SNAP to apply for height and bulk exceptions (variances) for commercial developments.

3. The City’s evidence and findings (22/AR 00609) do not contain substantial evidence to support a conclusion that “the requested exception is necessary for the preservation ... of a substantial property right or use generally possessed by other property within the geographically specific plan in the same zone....” The finding fails to satisfy subdivision (c) of LAMC 11.5.7 F.2.

The key finding made by the City reads as follows: “For a Target or other similar

type retail use to be developed within the SNAP without a height limitation would require a larger lot” This assertion does not support a height exception because it concedes that every property owner within SNAP would require exceptions to build out the Project on a similarly dimensioned lot. The sentence continues: “and would not provide a mix of retail types and uses envisioned by the SNAP.” The benefits to the public do not provide substantial evidence to override the height restrictions that are imposed by SNAP for commercial developments. See, *Orinda Association v. Board of Supervisors of Contra Costa* quoted above. There is no provision in the SNAP which provides that if the decision-makers decide that a development has sufficient public amenities they may grant an exception to the SNAP zoning requirements for that reason alone.

4. The City’s evidence and findings (AR 00609) do not contain substantial evidence to support a conclusion that “the granting of the exception will not be detrimental to the public welfare and injurious to property ... adjacent to or in the vicinity of the subject property.” The finding does not satisfy subdivision (d) of LAMC 11.5.7 F.2.³

The finding advises that “the proposed project would be buffered from low-rise commercial land uses by the intervening streets. The setbacks created by the intervening streets and the transitional heights created by the project’s design would reduce the effects of the contrasting building heights created by the project’s design between the proposed building and existing off-site buildings.” The evidence which is offered for the finding suggests that the appearance of the Project’s height and bulk will be mitigated by the “transitional heights” of nearby buildings. But such evidence offers no support for a finding that the building of a nearly 75 foot building will not be detrimental to the public welfare and/or injurious to nearby properties. The height restriction codified in the SNAP presumably expressed the community’s standard for “public welfare” with respect to commercial building height at the time when SNAP was adopted. Nothing in the evidence that is identified to support the finding suggests that a building height that exceeds by double the SNAP height standard is in furtherance of public welfare or is not injurious to nearby properties. There is no substantial evidence to support the finding.

³ La Mirada rather than Citizens Coalition provides the more extensive briefing for the argument that the City’s findings do not satisfy LAMC 11.5.7 F.2. Yet La Mirada does not discuss the findings required for the Project exceptions under subsections 11.5.7 F.2(d) and (e). The court nonetheless has addressed the findings required under these subsections.

5. The City's evidence and findings do not contain substantial evidence "the granting of the exception is consistent with the principles, intent and goals of the specific plan." AR 00610. The finding does not satisfy subdivision (e) of LAMC 11.5.7 F.2.

The City's findings (AR 00610) provides in part:

The proposed project was designed to be consistent with the goals of the SNAP. The SNAP was "implemented to make the neighborhood more livable, economically viable, as well as pedestrian and transit friendly ... and achieves a maximum benefit from the subway stations."... As recommended for approval, the project proposes a height similar in scale and massing to that envisioned by the SNAP. The SNAP promotes flexibility in the regulation of the height and buildings in order to ensure a well-planned mix of uses. The proposed project would provide a mix of different retail use, including ground floor neighborhood serving retail and a larger Target that would be accessible from public transit opportunities along Sunset Boulevard.

This finding states that an exception from the specific plan--an exception that permits a doubling of the height restriction--has substantial evidence if the project has amenities ("a well planned mix of uses") wanted by the City's decision-makers. The reasoning is ad hoc and circular: the City is reciting the goals of the specific plan to overthrow the limitations of the specific plan. SNAP itself does not contain a provision that authorizes exceptions from its limitations because the decision-makers believe that a particular project is consistent with or in furtherance of its goals. The benefits of a development cannot justify a substantial deviation from the specific plan absent such authorization in the specific plan itself.

II. DESIGN EXCEPTIONS RELATING THE PROJECT'S SIZE AND PROPORTIONS:

The SNAP Guidelines provide other building restrictions for which the City approved exceptions. These exceptions all relate to the Project's appearance--the exceptions are for setbacks, stepbacks, roof lines and the percentage of ground level wall space that is used for windows and doors or constructed of transparent elements (22/AR 14693)--and the court refers to these exceptions as "facade exceptions."

The facade exceptions are intended to mitigate the appearance of bulk in the Project. The facade exceptions, thus, are derivative of the height exception that the City

Council approved for the Project.

The City made findings to justify these facade exceptions from the SNAP Guidelines as a group (and combined them with a discussion of another exception for hours of operation). 22/AR 00611-00616. That is, the City did not apply the five-part test of LAMC section 11.5.7 F.2 to each facade exception. Petitioners object to the failure of the City to make findings that are individual to each of the facade exceptions. This objection has merit: the court cannot review the City's findings made under LAMC section 11.5.7 F.2 if the City did not provide individual findings for each exception. The court determines the findings are without substantial evidence for that reason.

The City refers to the facade exceptions from SNAP as "Building Design" because they are all design-related. The City justifies the Building Design by referring to the Project's amenities or by making other generalizations.

Under the "practical difficulties or unnecessary hardships" test, the City notes that the Guidelines seek "to ensure that a project avoids large blank expanses of building walls," harmonizes "with the surrounding neighborhood, and contributes to a lively pedestrian atmosphere." Having said that, the City finds, in another example of result-oriented reasoning, that "[a]lthough the proposed project requests deviations from the building design standards it meets the intent of them." AR 00612. Referring to design features that require an exception, the City's finding explains that the features are required by the applicant's design: "Such features do not exist in other projects in the area and are unique to this project." This finding demonstrates that any difficulty or hardship is imposed by the applicant's chosen design. The City's finding does not provide substantial evidence to support an exception under the "practical difficulties or unnecessary hardships" test for the Building Design (or facade) exceptions.

Under the "exceptional circumstances or conditions" test, the City's finding highlights the amenities the Project will provide, saying, for instance, "[t]he project will incorporate landscaping and architectural design that will promote an attractive streetscape and transit friendly development." 22/AR 00614. Such findings are irrelevant to the legal justification for a zoning exception. *Orinda Association, supra*. The City's finding does not provide substantial evidence to support an exception under the "exceptional circumstances or conditions" test for the building design (or facade) exception.

Under the "preservation and enjoyment of a substantial property right or use generally possessed by other property owners" test, the City's finding is that "[o]ther properties in this area are either commercial only projects built prior to the adoption of

the SNAP or contain smaller scale retail or mixed use projects that do not have the similar building and parking structure constraints.” The City further states: “The Exception is necessary to address changing design vernaculars that were not anticipated at the time the SNAP was adopted.” 22/AR 00615. Nothing in this finding supports a conclusion that the facade exceptions are necessary because other properties that are limited by SNAP already have similar design features.

The City’s findings do support a conclusion that the facade exceptions will not be detrimental to the public welfare. The facade exceptions raise only aesthetic considerations. The City’s finding, in this regard, does comply with LAMC 11.5.7 F.2(d).

The City’s findings do provide substantial evidence that, if a project of the size and proportions of the Target Project is approved to proceed, the granting of exceptions for the facade elements to mitigate its bulk “is consistent with the principles, intent and goals of the specific plan.” The finding does satisfy LAMC 11.5.7 F.2(e).

III. THREE REMAINING EXCEPTIONS APPROVED FOR THE PROJECT:

Petitioners, particularly La Mirada, attack the three remaining SNAP exceptions approved for the Project by the City Council, to wit. (1) an exception to eliminate free home delivery to local residents; (2) an exception to increase parking authorized for the Project from 390 to 468 spaces; and (3) an exception for the hours of operation for deliveries to the service bays. La Mirada’s challenge to these exceptions, however, was largely saved for its 32-page reply, so that respondents did not have an opportunity to respond.

The court, therefore, issued its initial decision as a tentative decision under Code of Civil Procedure section 632. The parties argued their respective positions as to these remaining exceptions to the SNAP at a hearing on June 30, 2014. The court has placed its rulings as to whether these three remaining exceptions comply with LAMC 11.5.7 F.2 in the Appendix to this Final Decision.

COURT CONCLUSIONS RE SUFFICIENCY OF THE THE ENVIRONMENTAL IMPACT REPORT:

Petitions challenge the EIR (55/AR 01691-02245) on three grounds: (1) that the cumulative impacts section is deficient because the EIR does not analyze the potential impacts of an envisioned Hollywood CAP Park; (2) that the range of alternatives section is deficient in failing to include a single store possibility; and (3) that its baseline analysis

is deficient because the EIR did not include a newly inaugurated charter school across De Longpre Avenue from the site.

(1) Hollywood Central (“CAP”) Park.

CEQA requires an EIR to discuss significant cumulative impacts to which a project contributes an incremental amount. 14 Cal. Code Regs (“CEQA Guidelines”) section 15130(a). A cumulative impact consists of an impact created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts. Guidelines 15130(a)(1). “The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects.” Guidelines 15355(b).

The List of Related Projects in Target’s EIR does not include Hollywood CAP Park. See, DEIR 55/AR01790-01794. Hollywood CAP Park is a proposal that envisions a structure being built over a one mile segment of the 101 Freeway that would provide a surface for a greenbelt and park uses. The most recent cost estimate is \$725 million, none of which has been committed or raised. The City has allocated \$2 million for initial design studies and the preparation of an EIR; the court is unaware of what portion of that amount has been expended.

Whether Hollywood CAP Park should be included as a “related project” in the EIR depends on three issues: whether CAP Park is a “reasonably foreseeable” project, and a “related” project and a project that would produce impacts that would combine with those of the project under review. The court finds that on all of these issues there is substantial evidence to support the City’s decision.

The City published its Notice of EIR Preparation on December 6, 2010, setting the date for the City to evaluate the Project’s impacts. See, *Fat v. County of Sacramento* (2002) 97 Cal.App.4th 1270. The Hollywood CAP Park as of that date (and now) had no design, no start date, no governmental approvals and, decisively under the reasonably foreseeable test, no funding source. The Park is a dream, and, while it has community supporters, public funds would be required to realize the project. There is, given the State’s still weak economic recovery, substantial evidence to support the City’s conclusion that the Park is not a project that can come to fruition in the reasonably foreseeable future.

(2) Sufficient Alternatives.

“An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects ...”
Guidelines 15126.6(a)

Citizens Coalition argues that the EIR is deficient because it did not consider a smaller Target store, one purportedly similar in size to other nearby Target stores, while retaining adjacent retail/restaurant space. Citizens’ brief, p. 13, identifies three other existing Target stores, one being approximately 150,000 sq. ft. and two others being approximately 104,000 sq. ft., although they are tenants in previously built shopping malls with an existing customer base and parking. (The proposed Target store has 163,862 sq. ft. with additional retail/restaurant space at street level).

The EIR did consider a range of alternatives including a 149,400 square foot Target store “with two levels of underground parking.” This Reduced Project Alternative was deemed not to eliminate the view obstruction and to have the disadvantage of not providing “retail shopping and dining opportunities.” 55/AR 02244. The EIR analyzed other SNAP-compliant alternatives. 55/AR 2232 et seq. The issue is whether the EIR considered a reasonable range of alternatives to permit the decision-makers an ability to evaluate the proposed project. *Jones v. Regents of the University of California* (2010) 183 Cal.App.4th 818, 826-828. The court finds the EIR was not deficient in this respect.

(3) New School Use.

La Mirada argues, independently of co-petitioner Citizens Coalition, that the signing of a lease agreement for the operation of a 390-student Charter Elementary School, the playing fields (and parking facilities) of which are across DeLongpre Avenue from the Project, require a recirculation of the EIR. Re-circulation is required only when “significant new information” is available after the public comment period begins but before an agency decision on an EIR. Public Resources Code section 21092.1. Re-circulation is not necessary if the new information would make “insignificant modifications” to an EIR. An agency’s decision not to re-circulate the draft EIR must be supported by substantial evidence.

The City makes a persuasive argument that the siting of a charter school as a new tenant in the DeLongpre property is not information that requires further analysis in the EIR. The charter school will replace a “children’s club and daycare facility in a building having a maximum capacity of 974 persons.” 298/AR 10773. The existence of a “learning center” in the location was noted in the EIR (AR 55/1784) and its impacts were studied (55/AR 2089 for air quality) and found to be insignificant (55/2091-2094) or

mitigated (AR 55/2064, IV.H 7 - IV.H.10).

Citizens Coalition argues, independently of La Mirada, that the City committed to the project before the completion of environmental review. Target and the City refuted his argument with record-based evidence (Opp. Br., pp. 11-12), to which Citizens Coalition did not respond in its reply brief. The court regards the issue as abandoned.

COURT'S CONCLUSIONS ON THE RIGHT TO FAIR HEARING ISSUE:

La Mirada asks the court to vacate the action of the City Council in approving the Project on April 3, 2013 on the ground that its representative, Douglas Haines, was given inadequate notice of an amendment to Condition 133 to the Project before the City Council voted to approve the Project.

Condition 133 was imposed as a condition to the Project approval. It required Target to provide space for child care in the Project or pay an in lieu fee instead. Condition 133 originally required Target to pay the in lieu fee before the City issued building permits. The amendment to Condition 133 permitted Target to pay the in lieu fee before the issuance of the Certificate of Occupancy. The amendment was significant because it permitted Target, once the City issued building permits, to commence construction even before the amount of the in lieu fee was determined by the Parks & Recreation Committee and, thus, before Target was obliged to make the in lieu payment. The amendment, if adopted (and it was adopted), removed an obstacle to Target obtaining building permits and beginning construction.

The issue is whether the amendment to Condition 133 was publicly posted in a manner that allowed sufficient time for La Mirada to learn of and comment about the amendment before the City Council voted on the Project. Douglas Haines, La Mirada's representative, testified that he attended the April 3, 2013 City Council hearing for the purpose of offering public comment in opposition to the Target Project and that he first learned of the amendment when then Council Member Eric Garcetti introduced the agenda item and stated: "there's an amendment correcting Condition 133 to reflect the intent of the SNAP." Haines decl., para. 17.⁴ Each speaker was allowed only one minute to make comments, and there were 10 speakers. [Pet. Ob., 4/3/13 Transcript, p. 29.] Haines was called as the first speaker, and, as he walked to the podium, he saw a staff

⁴ The Haines declaration was submitted as an attachment to La Mirada's Petitioner's Memorandum filed on December 20, 2013. The court will receive the Haines declaration into evidence.

person “pinning a paper to the posting board.” He introduced his remarks by saying he would like to read the amendment “before I speak” and asking the City Attorney “do I have the opportunity to do that?” The City Attorney “stated for the record that the amendment ‘should have been posted.’” *Id.*, paras 18-19. Haines said “it wasn’t posted when I checked.” [Trans., p. 30.] The Council President said “[T]hen go and talk to them. But don’t give up your time.” Haines gave brief comments, and he then walked to the posting board and “for the first time read the amended Childcare Facility requirement.”

The court views the situation as analogous to facts in *BreakZone Billards v. City of Torrance* (2000) 81 Cal.App.4th 1205. The appellate court in *BreakZone* rejected appellant’s argument that it was denied a fair hearing because matters had been raised at the hearing that had not been disclosed earlier. *Id.* at 1242-1243. La Mirada argues *BreakZone* may be distinguished because the appellant was offered an opportunity for a hearing continuance but declined that opportunity. Haines was La Mirada’s designated speaker to oppose the Target Project--his declaration states that he had spoken at other public hearings on the subject-- and he was sufficiently experienced to know that he could have asked the presiding officer to reserve part of his allocated time for later comment to allow him to review the amendment that he had seen being posted on the notice board. The Council President did not refuse Haines an opportunity to read the posting before he spoke (as Haines did not specifically make that request), he merely told Haines “But don’t give up your time.” If Haines had made a request to view the posted amendment before concluding his turn to speak, and it had been refused, the court could decide that an opportunity to rebut new information was denied to La Mirada. Without having made such request, La Mirada’s argument is not persuasive.

PREPARATION OF JUDGMENT:

The court served and filed its Tentative Decision on Petitions for Writ of Mandamus on June 23, 2014, permitting the parties to file objections or requests for modification. CCP section 632 and CRC 3.1590. Petitioners filed Objections to Ambiguities and Omissions on July 1. Real Party filed Objections on July 10. This Final Statement has been revised to accommodate certain of the parties’ objections.

On the First Amended Petition for Writ of Mandamus filed by petitioner La Mirada Avenue Neighborhood Association of Hollywood the court shall grant judgment for petitioner on its third cause of action for violation of LAMC section 11.5.7 F.2 resulting in an improper grant of exceptions to the Specific Plan for the Target Project. The court shall grant judgment for respondents on the first, second, fourth and fifth causes of action on La Mirada’s amended petition.

On the First Amended Petition for Writ of Mandamus filed by petitioner Citizens Coalition Los Angeles the court shall grant judgment for petitioner on its third cause of action for violation of LAMC section 11.5.7 F.2 resulting in an improper grant of exceptions to the Specific Plan for the Target Project. The court shall grant judgment for respondents on the first and second causes of action on Citizens' amended petition.

The court in its Tentative Decision requested petitioners to submit a form of judgment. Petitioners lodged and served a (proposed) Joint Judgment Granting Peremptory Writ of Mandate and a (proposed) Peremptory Writ of Mandamus. Real Party in its Objections, filed July 10, urged the court to defer the entry of judgment as the Project is under construction and Real Party is seeking an amendment of the Specific Plan so as to "render the exceptions unnecessary." Real Party also advised "Target (and probably the City) would be certain to appeal the Judgment, at which point Code of Civil Procedure section 916 would automatically stay both this Court's Judgment and Writ, and Code of Civil Procedure section 1094.5(g) would stay the City's decision granting the exceptions."

The court nonetheless intends to enter judgment forthwith. The court, however, is not satisfied with the proposed Judgment and proposed Peremptory Writ suggested by petitioners.

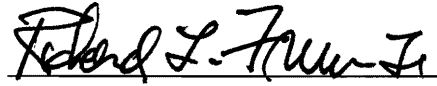
The court requests petitioners to submit a simplified Judgment reciting that for reasons stated in the court's Final Decision, petitioners shall have judgment against respondents and Real Party in Interest; that judgment is entered in favor of petitioners on their causes of action to vacate and set aside the actions approving six of the Specific Plan exceptions for the Project (specifying which particular City Council actions are set aside); that a Peremptory Writ of Mandate shall issue under the seal of the court in a form that is attached to the Judgment as Exhibit A; that the court enters judgment for respondents on the other causes of action (specifying them) pled in the amended petitions; that petitioners upon motion may seek their costs and reasonable legal fees; and that the court shall retain jurisdiction to enter injunctive relief and until such time as respondents file a return evidencing compliance with the Peremptory Writ of Mandate.

Petitioners are also to submit a proposed Peremptory Writ of Mandate (a copy of which is to be attached to the Judgment).

The court asks that the proposed Judgment and proposed Peremptory Writ of Mandate be lodged (and served) within five calendar days. The parties are directed to retrieve the administrative record exhibits and exhibit binders that have been retained by the Clerk promptly after the court signs and enters the Judgment.

The Clerk is directed to serve this FINAL DECISION ON PETITIONS FOR WRIT OF MANDAMUS on the parties by U.S. Mail this date..

Dated: July 17, 2014

A handwritten signature in black ink, appearing to read "Richard L. Fruin, Jr.", written over a horizontal line.

RICHARD L. FRUIN, JR.
Superior Court of California,
County of Los Angeles

Communication from Public

Name: Doug Haines

Date Submitted: 05/06/2023 02:50 PM

Council File No: 21-1502

Comments for Public Posting: Please upload the attached document to council file 21-1502 on behalf of appellant La Mirada Ave. Neighborhood Association. This document was previously submitted to the clerk's online portal but was not uploaded.

FROM THE DESK OF JON PERICA
10338 ETIWANDA AVE., NORTHRIDGE, CA 91326

RECEIVED
CITY CLERK'S OFFICE

2013 MAR -6 AM 9:15

CITY CLERK
BY _____
DEPUTY
COPY

February 20, 2012

Honorable City Council

APPEAL JUSTIFICATION – APCC 2008-2703 SPE-CUB-SPP-SPR-1A AND COUNCIL FILES 12-1604 AND CF 09-2092 – TARGET RETAIL PROJECT, 5520 SUNSET BLVD., HOLLYWOOD.

My name is Jon Perica and I worked in the Los Angeles Planning Department for 35 years, including working as a Zoning Administrator for 20 years issuing legal decisions on over 2,500 cases. My decisions were based on the required legal findings and a fair and impartial evaluation of each case irrespective of the applicant and political popularity of the case. None of my cases were ever overturned by a Superior Court action. Over these many years of ruling on development projects I have learned what makes a “good” project. Unfortunately, the Target Hollywood project is not a good project and can’t legally be supported.

I have reviewed the applicant’s requests and the City Planning Dept. and Central Area Planning Commission’s actions granting approval for the above-cited commercial project at 5520 Sunset Blvd. in Hollywood. I previously submitted a letter in 2009 regarding this case, pointing out at that time that the Commission’s incomplete findings for its original approval of the project were the worst I had ever seen for any Planning Commission grant in my 35 years with the Planning Department. Upon review of the Commission’s 2012 findings, and the developer’s supplemental findings adopted by the City at the November 13, 2012 Planning and Land Use Management Committee’s hearing for the matter (also known as the PLUM Committee), I again strongly believe that the City Council should deny the applicant’s requests for the following reasons:

1. Failure to make all the required findings.

The City of Los Angeles’ Zoning Code (Section 11.5.7.F.2) contains five required findings that must be individually reviewed and upheld in order to justify the approval of each requested exception to the Vermont/Western Transit Oriented District Specific Plan (also referred to as the Station Neighborhood Area Plan, or “SNAP”). The City of Los Angeles must also independently issue each of these five required findings in order to approve any exception for a deviation from the requirements of SNAP’s Development Standards and Design Guidelines. Therefore, both the applicant and the City Planning Department are required by the Zoning Code to address each of the project’s requested exceptions by separately delineating the five required findings to determine if the exceptions are justified.

Target has requested eight exceptions from SNAP; five of those exceptions are from SNAP's Development Standards and Design Guidelines. Each of these requested exceptions requires 5 separate findings. The Zoning Code at Section 11.5.7.F.2 clearly lists the five separate findings that must be submitted and reviewed for any exception to be approved. The City's Zoning Code could have listed all of the required five findings together as a group but it does not. Instead, each finding is delineated separately for a very good reason, since it is required under Section 65906 of the California Government Code, and by implication, Section 562 of the Los Angeles City Charter.

Justification for Required Findings – The reasons for the separate findings are numerous. Asking for an exception to a long established City Planning requirement constitutes a major deviation from what the community, council office, neighborhood councils and Planning Department have spent years to formulate and enact. The City's various Specific Plans are especially sensitive to such deviations since they go beyond the underlying zoning to establish additional restrictive regulations that enhance and preserve the unique characteristics of a distinct community. The purpose of a Specific Plan is primarily one of correcting past planning mistakes and strictly controlling future development, to improve the quality of that development, and to enhance the quality of life of local residents and businesses. To deviate from the City Planning community standards requires a very compelling justification to override the Zone Code.

The fact that SNAP's Development Standards and Design Guidelines have so many details is therefore a reflection of the vigorous and exacting standards that Specific Plans are held to. To reach consensus on those Standards, all of the major stakeholders in the community meet and confer through a series of public hearings over a period of many years. The resulting ordinance is a carefully crafted roadmap specifically designed to improve the community by requiring that future construction both enhance the visual environment while also being compatible with the appearance and scale of the surrounding neighborhoods. To deviate from the Standards would therefore negate that harmonious effort, causing adverse impacts and incompatible design features that would result in a negative impact on the entire community. Any deviation therefore must be taken very seriously, and the City must rigorously enforce the five required findings made for each requested exception in order to justify a grant for approval.

Specific Reasons Findings are Inadequate – Target requested five exceptions from SNAP's Development Standards. These are: 1) An exception to reduce the transparent building elements such as windows and doors to 24 percent in lieu of the required minimum 50 percent; 2) An exception from the required 10-foot setback of the second-floor from the first floor; 3) An exception to allow entrance balconies to exceed the permitted height of 30 feet; 4) An exception from the requirement that roof lines be articulated; and 5) An exception allowing relief from the allowable hours of store deliveries. Target is also seeking exceptions from other aspects of SNAP's zoning regulations, including an exception from the restriction that commercial buildings not exceed 35 feet in height, in order to make the building over 74 feet in height. Each of these requested exceptions requires rigorous review under the Los Angeles Municipal Code.

Unfortunately, however, instead of following the Zoning Code by showing the five required findings for each requested exception, Target merely submitted findings for four of the five exceptions from the Development Standards as a group, not delineating how each of the exceptions is justified. For the City Planning Department to accept this, and for the City Council to approve it, is unprecedented.

Problems of Missing Findings – Under the Municipal Code, Target was required to submit the five required findings for each of the five requested exceptions from SNAP's Development Standards, for a total of 25 separate findings. To approve the exceptions with anything less is clearly prohibited by the clear and unambiguous language of the Code. Target did provide separate findings for its requested exception for relief from the allowable hours of store deliveries, but lumped the other four exceptions together as a group with incomplete, generalized findings. The City or any stakeholder who reads the Target findings cannot clearly determine if all five required findings have specifically been submitted for each exception as required by the Code. Such "generalized" applicant findings do not address each exception request so it is impossible to determine if all of the required justifications are made to approve each exception, or if Target made adequate arguments for each exception being requested. A generalized argument for one of the five findings to justify one exception might be inadequate for the remaining exceptions. Without specifically answering all of the required findings for each of the four exceptions, the application is incomplete, and the requested exceptions cannot be approved. Until the five general findings for each of the four non-delineated requested exceptions are replaced by 20 specific findings, the City has no legal right to grant their approval.

Lack of Independent Planning Department Judgment – Target's lack of separate findings for its requested exceptions from SNAP's Development Standards is either an intentional effort to hide the fact that the exceptions cannot be justified, or this large corporation is merely trying to save money by not paying its consultant to do what is required by the Zoning Code. The justification for either is inadequate, and the City Planning Department has no legal basis for accepting such generalized findings. The department has compounded the error by adopting such incomplete findings as "their" own findings.

The Planning Department is an independent governmental decision-maker, and it must therefore make an independent evaluation of each requested exception. By using the applicant's language as their own, the unbiased decision-making process and judgment of the Planning Department is seriously called into question. Furthermore, the Planning Department's determination to approve the four subject exceptions by adopting Target's generalized findings also makes the Planning Department at fault for not following their own Zoning Code requirements and more than 50 years of Planning Department policy, which has always required separate findings for each separate exception request.

It's bad enough that Target submitted inadequate findings for its requested exceptions from SNAP's Development Standards, but the Planning Department is even more at fault for basing their approvals on incomplete findings that confuse the public. Issues of approval or denial must be made by the Planning Department based on a complete set of facts that the general public and decision-makers can clearly understand and evaluate. That situation did not occur when the Planning Department approved the four exceptions based only on the applicant's incomplete findings and not on their own independent judgment. Some might say that this situation looks like the Planning Department was working for Target.

Corrective Planning Department Action – The Planning Department's decision to approve the four Development Standards exceptions requested by Target that are based on generalized findings cannot legally be justified because the findings are incomplete. Therefore, the Planning Department must redo the findings so that every request for an exception has the five required

findings clearly and separately numbered with adequate justification for each. Finally, all planning staff working on this case should be reminded that it is their clear responsibility to uphold the legal requirements of the Los Angeles Municipal Code and City Charter, which requires that five findings for any exception or variance shall be separately made for each applicant request.

2. The Commission's approval of 8 Specific Plan Exceptions is a serious indicator of a poorly designed project that is inappropriate for this site.

To request more than just several discretionary changes from the Specific Plan shows the project is too large, too tall, and out of scale with what the by-right building standards allow. The limitations on height, setbacks and parking, and even a requirement for free delivery to area residents, are all being disregarded and the amount of non-compliance with the Specific Plan is huge.

The problem with the project's current design is that the applicant started with the project he wanted and dismissed the Specific Plan requirements for what was required. What the unequaled amount of 8 exceptions from the Specific Plan requested for this Sunset Blvd. project shows is a complete disregard for the protective provisions and standards of good quality development that the Zone Code creates and maintains. What is most insulting in this Commission decision is that Target's "big box" is asking for so much of a deviation in height. The original request for a building height of 80 feet, reduced to a token 74 feet, is over twice the Specific Plan height limit of 35 feet. This is a **profound** increase and it is **totally beyond the scope and spirit of the Specific Plan**. Exceptions from the Specific Plan are not intended to be "blank checks" where the applicant can ask for anything he wants. The intent of any granted exception is to preserve the major parts of the Specific Plan while permitting minor deviations or adjustments that are limited in nature so as to keep the "integrity" of the Specific Plan requirements, and a height increase grant of 5-9 feet would be within the range of a reasonable Exception request based on a roof design feature or a sloping lot where Building and Safety defines height measurements as five feet from the lowest part of the project. The approved 74-ft height request makes a total **mockery** of the Specific Plan. To double the height makes even having a Specific Plan height limit worthless if it can be exceeded by such a large amount. This approved height sets a **terrible precedent** for other projects in the local community to cite. The height limit was perhaps the **single most important justification to creating the Specific Plan in the first place** and this grant makes the Specific Plan **meaningless**.

If it is City policy to totally disregard their Specific Plans, the City should just be more honest and revoke the Specific Plan and let the applicants play "let's make a deal" with every new project. Is it any wonder that neighborhood councils feel that city adopted planning documents and ordinances are worth very little in the way of neighborhood protection when the City requirements and standards are so routinely violated without legal justification and at a scale never contemplated by the original planning documents? This Commission's determination is just one more City decision to invalidate the goals of a Specific Plan and one of the worst recent examples of the City not enforcing its own planning standards and goals.

3. There is no commensurate Public Benefit to justify 8 discretionary Specific Plan Exceptions.

The Specific Plan's standards are not being protected and implemented because the Central Area Planning Commission's findings do not explain how granting the exceptions to the Specific Plan's standards help implement the Specific Plan's goals. How does granting an Exception allowing the

applicant to adhere **less** to the requirements of the Specific Plan help meet the goal of the Specific Plan that was put in place for developers to do **more**? Doing less in the past was unacceptable to the local residents of the subject area and the justification for adopting the Specific Plan was to better define the quality of new construction that would occur. A massive 74-foot-tall building with a roofline allowed to come out to the very sidewalk creates a "Berlin Wall" effect that is not pedestrian friendly, and yet creating a better pedestrian atmosphere was one of the primary goals for creating the Specific Plan in the first place.

Furthermore, there is no Commission or applicant proof that **any other exception was granted** in the **local** area for another **commercial project** to exceed the permitted height by over double the City limit, so that particular grant cannot be approved. Similarly, the Commission and applicant never provided any justification explaining why this subject lot is significantly different in zoning, size or topography than the similar commercial properties on the same street, so the "special circumstances" finding is clearly not justified. By not even addressing this crucial issue, the Commission and applicant indicate there is really no justification to support the required findings.

4. There is a better project design that the applicant should provide the City.

The vast majority of recent development in Hollywood have requested only a few discretionary exceptions to the Zone Code, and the applicant for Target should redesign his project so that it meets the Specific Plan requirements in as many areas as possible, particularly in conformance to height limitations and setbacks. Most of the exceptions requested by the applicant don't mean that the Specific Plan requirements **can't be followed**, but that the applicant doesn't want to because he **won't change** the design of his current project. The applicant doesn't limit what the City can consider for the design of a project at this site. As a Zoning Administrator acting on these same types of issues for 20 years, I often asked the applicant or architect to change the project design, and that is exactly what the City should require. Make the applicant show you a project within the Specific Plan's 35-foot height limitation and with all or almost all of the Code requirements followed and then evaluate that project as an alternative to this design. The **City, not the applicant**, controls the final design.

Summary – The Central Area Planning Commission's approval of the eight Specific Plan exceptions for the Target project lacks supporting evidence to justify the required findings. The Commission's justifications for the findings are not born out of reality, and Target's approved building design would totally redefine the skyline for the local community for no valid reason while opening up the community to future similar tall buildings in the area. If challenged in the courts, it is my professional opinion that case law precedents show that the City will lose an appeal of this request, and this project, as proposed, will not be built. Do the right thing now and ask the applicant to design a better project that is consistent with the Specific Plan.



Jon Perica
Retired Zoning Administrator