

Communication from Public

Name: Daniel Freedman

Date Submitted: 01/30/2023 05:18 PM

Council File No: 22-1055-S1

Comments for Public Posting: Please see attached correspondence re Council File(s) 22-1055 and 22-1055-S1. Due to file size constraints, the exhibits will be provided in a separate email. Thank you.

Benjamin M. Reznik
bmr@jmbm.com

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

Ref: 82152-0003

January 30, 2023

VIA ONLINE SUBMITTAL

President Paul Krekorian and Hon.
Members of the Los Angeles City Council
City of Los Angeles
200 N. Spring Street
City Hall - Room 340
Los Angeles, CA 90012

Re: **Council File:** 22-1055-S1 and 22-1055
City Council Hearing Date: February 1, 2023.
Agenda Item: 4
Site Address: 1840-1848 West Adams Boulevard

Dear President Kerkorian and Hon. Members of the Los Angeles City Council:

Our office represents Tripalink, Corp. ("Applicant"), the owner of 1840-1848 West Adams Boulevard, Los Angeles, CA 90018 (the "Property") and applicant for the above referenced 10-unit small lot subdivision (the "Project"). We submit this letter to (i) further object to the Planning Land Use and Management ("PLUM") committee's arbitrary and capricious "Findings of Fact" (or "Alternative Findings") concerning the Project's Class 32 exemption; and, (ii) to raise additional concerns over the bad-faith tactics being employed to undermine a perfectly legal housing development project that is consistent with all applicable laws and regulations.¹

A. The Project description is accurate and stable.

As noted in our prior correspondence, the Alternative Findings' contention that the Class 32 exemption is deficient because the project is "student housing dormitory with over 90 units," and not a 10 unit small-lot subdivision, is wrong as a matter of fact and law. As noted previously, this Project is not a dormitory and it is not student housing development; and to describe it as such, would be both inaccurate and speculative. In fact, the Alternative Findings' entire premise that the Project will be used by students is speculative, and the City has no right or legal grounds to presume who will own or live in these homes, and to deny a categorical exemption

¹ It remains Applicant's view that these proceedings are in violation of state and local law, and that the City has lost jurisdiction to act on the appeal. Accordingly, as with our prior correspondence, we submit this letter under protest and with a full reservation of our client's rights.

on that basis. Moreover, the findings are further wrong in claiming that the bedroom count and/or design of the building was somehow hidden from the City or not considered in the California Environmental Quality Act ("CEQA") analysis. In fact, the Project was specifically designed in reliance on feedback and recommendations provided by the Department of City Planning and Council District 8, and it was only after those recommendations were integrated into the design did the Project move forward to its initial hearing. (See **Exhibit A-2**) Accordingly, the Alternative Findings are simply wrong in claiming that the bedroom count was not considered in the environmental analysis.

B. The City is judicially estopped from taking the position that a dwelling unit is not a dwelling unit because of the bedroom count.

Significantly, in another case where an appellant argued that a CEQA exemption was improperly issued because a dwelling unit contained multiple bedrooms, the City and the City Council took the exact opposite position being taken by the Alternative Findings. Attached as **Exhibit B-2** are copies of the City's records concerning an appeal of a project proposed at 5817-5823 West Lexington Avenue and 5806-5812 West Lexington Avenue (Case No. ENV-2019-5389-CE), where the appellant in that case similarly argued that an apartment building's Class 32 exemption was issued in error because it failed to take into account the number of bedrooms. The City Council rejected that appeal, and expressly denied the appellant's contention that a single dwelling unit with multiple bedrooms should be treated as some other use simply because it contains multiple bedrooms and baths. When the appellant challenged this position in court, the City again pushed back, arguing in court that it is the Municipal Code's definition of the proposed use that is controlling, not the bedroom count or a speculative claim that the units could be used for some other purpose. A superior court judge agreed with the City, and rejected the very same arguments being advanced by the Alternative Findings. Attached as **Exhibit C-2** are copies of the court's records relating to this litigation. Accordingly, this City Council knows – or should know – that the theory advanced by the Alternative Findings is wrong and in conflict with the law.

C. The City's actions constitute a bad-faith violation of the Housing Accountability Act.

Second, we write to once again advise the City Council that the actions being advanced by the PLUM Committee's recommendation is in violation of the Housing Accountability Act ("HAA"). In this instance, the City is violating the HAA in multiple respects. First, by finding that the project is "inconsistent with the Community Plan Implementation Plan Overlay Zone and the community plan," almost a year after approving the project, the City is acting in direct violation of Government Code Sec. 65589.6(J)(2). Pursuant to this provision, the HAA requires a local government must provide written notification of an inconsistency with the applicable zoning within 30 days of the Project application being deemed complete. As the Project

was deemed complete more than a year ago, the City may not now decide that the project is inconsistent with the applicable zoning without violating the clear mandates of the HAA.²

Moreover, this upcoming hearing is once again a violation of Government Code Sec. 65905.5, which limits a local agency to conducting a maximum of five hearings in connection with a proposed housing development project. At this point, the City has already held no less than 11 hearings on this development, making any further action on this yet another blatant violation of state law. For reference, attached as **Exhibit D-2** is a copy of the Department of Housing and Community Development's Housing Accountability Act Technical Assistance Advisory Handbook, which provides guidance as to the applicability of these various legal issues. Thank you for your consideration.³

Very truly yours,



BENJAMIN M. REZNIK and
DANIEL FREEDMAN of
Jeffer Mangels Butler & Mitchell LLP

DF:df

CC Holly L. Wolcott, Los Angeles City Clerk (Cityclerk@lacity.org)
Kathryn C. Phelan, Deputy City Attorney
Clarissa G. Padilla, Deputy City Attorney

² Moreover, to the extent the City relies on this illegal appeal to further delay this project, the City is clearly violating Government Code Sec. 65589.5(J)(1), by denying a housing development project without making the required findings. The Project has been denied by operation of Government Code Sec. 65589.5(h)(6), because the City previously failed to approve or disapprove the Project within 60 days from the date the City determined the Project was exempt from CEQA.

³ We further object to these proceedings as the City has failed to timely respond to a public records requests that seeks records that may be relevant to this quasi-adjudicative hearing. Accordingly, we reserve the right to supplement the administrative record with new records as they are disclosed.