

THE SILVERSTEIN LAW FIRM

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June 6, 2008

VIA FACSIMILE AND MAIL

Ms. Sharon Siedorf-Cardenas, Esq.
City Attorney's Office
City of Los Angeles
City Hall East
200 North Main Street, Room 700
Los Angeles, CA 90012

Re: Objections to Public Counter Staff Handling of Land Use Appeals
Failure of the City to Enact Implementing Ordinance for CEQA Appeals

Dear Ms. Siedorf-Cardenas:

This firm and the undersigned represent Robert ("Bob") Blue and other members of the public, including Douglas Haines, Ziggy Kruse and Karen Gilman, who have encountered ongoing difficulties in filing land use appeals with City Planning Department staff.

In particular, I write to object to a pattern and practice of public counter staff forcing appellants who file land use appeals to remove CEQA environmental case numbers and/or substantive CEQA arguments with the threat that City staff will otherwise reject the appeal for filing.

I have learned that on June 2, 2008, Greg Shoop of the public counter staff demanded not only that Mr. Blue change his Master Appeal Form to delete reference to a CEQA item, but also demanded that Mr. Blue edit his supporting letter to eliminate arguments which Mr. Shoop believed were beyond the proper scope of the appeal. Mr. Shoop's actions constitute a denial of the City Charter-provided right to file an appeal. It is alarming that public counter staff are reading appeal letters and then exercising a "discretion" which they do not possess in order to frustrate the ministerial requirement that they accept completed Master Appeal Forms and supporting appeal documentation.

This June 2, 2008 example occurred in connection with Mr. Blue's attempt to appeal a Central Area Planning Commission ("CAPC") project approval for the controversial, proposed 23-story "Sunset/Gordon" project. Major projects like Sunset/Gordon require an initial Planning Commission decision. This process is diagrammed on the Planning Department website as Planning Process No. 3A..

On June 2, 2007, Mr. Shoop informed Mr. Blue that the City "should not have accepted the appeal" because the documents attached to the Master Appeal Form submitted by Mr. Blue included CEQA arguments. Mr. Shoop told Mr. Blue that unless Mr. Blue picked up the appeal papers within the next two days and removed the environmental arguments, Mr. Shoop would mail them back without accepting them for filing.

Mr. Shoop and other City staff cannot reject appeals on such grounds. This conduct is the equivalent of the clerk of the Court of Appeal rejecting a timely filed and paid notice of appeal because the clerk decided to inspect its contents and then object that some argument should not have been made by the appellant therein.

There is no basis for the public counter staff to require an appellant to remove the ENV number from the Master Appeal Form and/or to revise appeal arguments to remove CEQA or other issues. On that note, Mr. Blue spoke to a Planning Assistant on June 4, 2008, who told Mr. Blue that his appeal was further allegedly improper because it also sought to appeal (or preserve the right to appeal) a general plan amendment, zone change, and height district change for the Sunset/Gordon project.

This conduct by staff interferes with the public's participation in the process through the exercise of Charter-granted appeal rights. I note that even if, *arguendo*, it were technically unnecessary to appeal a particular issue such as the CAPC's approval of an EIR, inclusion of this language by an appellant at most amounts to harmless surplusage. Nevertheless, the crux of the matter is that City staff has no discretion to determine whether or not to accept an appeal on these grounds because accepting an appeal for filing is a ministerial, not discretionary act.

Accordingly, we request that the City Attorney's office and/or City Council provide clear direction to City staff, and by extension to the public, as to the following issues raised by this process:

1. Staff must be directed to cease requiring appellants to modify their appeal documents as described above, especially when staff simultaneously threatens to deny appellants their appeal rights as a penalty for failing to comply with staff's directives.
2. The City should codify a CEQA appeal process consistent with State law so that City staff and the public better understand the CEQA administrative appeal process. Since CEQA was amended three years ago to include a right of appeal to the legislative body of the lead agency, the City has failed to enact Municipal Code provisions to implement this right. In this regard, the Planning Department continues to issue lower- or mid-level land use decision letters and notices which erroneously state that "No further appeal is allowed," even though Public Resources Code Section 21151(c) guarantees the right to appeal CEQA matters to the City Council. We object to this misdirection provided to the public, and question how it has been allowed to continue uncorrected for so long.

The City Charter guarantees an administrative right to appeal planning decisions. This firm recently prevailed in a petition for writ of mandate against the City related to the supremacy of the Charter's guarantee of the right to an appeal versus conflicting "deemed denied" provisions of Municipal Code Section 17.54. (See attached Judgment Granting Peremptory Writ of Mandate in La Mirada Avenue Neighborhood Association of Hollywood v. City of Los Angeles, LASC Case No. BS 104517.)

In an analogous manner, City staff cannot deny an appellant the right to file an appeal – or refuse to accept an appeal for filing – that contains whatever arguments an appellant may choose to include, and/or that contains an "ENV" number listed by the appellant on the Master Appeal Form. Any Municipal Code language (and I request to see any such language) which purports to provide that an appeal must be satisfactory to staff before being accepted for filing would conflict with the Charter's guarantee of the right to file an appeal.

As noted above, several of my clients have been required by City staff to revise proper appeal forms and appeals prior to staff accepting them for filing. This is particularly injurious when the rejection of appeal forms and appeals results in a forced resubmission by members of the public that the City may then deem to have been filed "late." This practice must stop.

Sharon Siedorf-Cardenas, Esq.
June 6, 2008
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In an attempt to avoid the need to file a lawsuit against the City to remedy these violations of the public's rights, please reply to this letter by no later than **June 27, 2008** with answers as to how these problems will be fully and expeditiously resolved. Thank you for your courtesy and attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert P. Silverstein", written over a horizontal line.

ROBERT P. SILVERSTEIN

FOR

THE SILVERSTEIN LAW FIRM

RPS:aa

Encl.

cc: Ms. Gail Goldberg (via facsimile and U.S. mail, w/ encl.)
Mr. Michael Logrande (via facsimile and U.S. mail, w/ encl.)
Mr. Greg Shoop (via facsimile and U.S. mail, w/ encl.)
Clients (via email, w/ encl.)

ORIGINAL FILED

JUL 03 2007

LOS ANGELES
SUPERIOR COURT

RECEIVED
JUN 15 2007
DEPT. 86

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

THE SILVERSTEIN LAW FIRM, APC
215 North Marengo Avenue, 3rd Floor
Pasadena, CA 91101-1504

LA MIRADA AVENUE
NEIGHBORHOOD ASSOCIATION OF
HOLLYWOOD, a California
unincorporated association; HOLLYWOOD
HERITAGE, INC., a California corporation,

Petitioners,

vs.

CITY OF LOS ANGELES, a municipal
corporation; the ADVISORY AGENCY of
the City of Los Angeles; the LOS
ANGELES CENTRAL AREA PLANNING
COMMISSION; the LOS ANGELES CITY
COUNCIL; and DOES 1 through 10,
inclusive,

Respondents

FOUNT-HO, LLC; and ROES 1-10
inclusive,

Real Party in Interest.

CASE NO. BS104517

JUDGMENT GRANTING
PEREMPTORY WRIT OF
MANDATE

~~PROPOSED~~ *el*

Hearing Date: June 4, 2007

[Assigned to the Honorable David P.
Yaffe, Department 86]

1 The petition of La Mirada Avenue Neighborhood Association of Hollywood and
2 Hollywood Heritage, Inc. ("Petitioners") for a peremptory writ of mandate compelling
3 respondents, City Of Los Angeles; The Advisory Agency Of The City Of Los Angeles;
4 The Los Angeles Central Area Planning Commission; and The Los Angeles City Council
5 (collectively the "City"), to comply with the Los Angeles City Charter and provide
6 Petitioners with an appellate hearing, came on for hearing before the Court on June 4,
7 2007. Robert P. Silverstein of The Silverstein Law Firm appeared on behalf of
8 Petitioners. Basia Jankowski of the Los Angeles City Attorney's Office appeared on
9 behalf of the City.

10 Los Angeles Municipal Code (LAMC) Section 17.54 delegates to Area Planning
11 Commissions the power to hear and determine administrative appeals from determinations
12 of the Advisory Agency with respect to parcel maps. Petitioners filed an administrative
13 appeal of the Advisory Agency's determinations in this matter. The Central Area
14 Planning Commission placed the matter on its agenda twice, but failed to hear it either
15 time. It then notified Petitioners that the determination of the Advisory Agency was
16 "deemed affirmed" because the Area Planning Commission "failed to act within the
17 required time period." (Petition, Exhibit 11).

18 LAMC Section 17.54 purports to authorize an Area Planning Commission that fails
19 to act upon such an appeal ^{within 30 days after the expiration of the 15 day appeal} ~~within 15 days after the date of mailing of the decision of the~~
20 ~~period from the decision of the~~ Advisory Agency to deem the appeal denied and to deem the decision from which the
21 appeal was taken to be affirmed. LAMC Section 17.54 cannot be reconciled with the City
22 Charter which requires an Area Planning Commission to exercise its power to hear such
23 appeals.

24 The Court on June 4, 2007 found that LAMC Section 17.54 -- and in particular its
25 "deemed affirmed" and "failed to act within the required time period" provisions -- is in
26 irreconcilable conflict with the mandatory language of Los Angeles City Charter
27 Section 552, which requires that the Los Angeles Central Area Planning Commission
28 must exercise its power to HEAR AND DETERMINE Petitioners' administrative appeal

1 from the Advisory Agency decision approving a parcel map for a proposed subdivision of
2 the premises at 5266 West Fountain Avenue in the City of Los Angeles. Therefore,

3 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that a peremptory
4 writ of mandate shall issue mandating the Los Angeles Central Area Planning
5 Commission to provide an appellate hearing to Petitioners with regard to the parcel map
6 approvals granted to Real Party in Interest Fount-Ho, LLC by the Advisory Agency, to the
7 extent that Fount-Ho, LLC retains or in any way seeks to use or transfer said parcel map
8 approvals and/or entitlements.

9 **IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that
10 the City, through an authorized officer, shall make a return to the peremptory writ of
11 mandate under oath specifying what the City has done to comply with the writ and to file
12 that return with the Court, and serve that return by hand or facsimile upon Petitioners'
13 counsel of record in this proceeding within 90 days of service of the writ on the City. The
14 Court reserves jurisdiction in this action until there has been full compliance with the writ.

15 **IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that
16 Petitioners are awarded attorney fees in the amount of \$ _____ and costs in the
17 amount of \$ _____ as the prevailing party in this proceeding.

18 **LET THE WRIT ISSUE.**

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21 DATED: JUL 03 2007 By: DAVID P. YAFFE
22 JUDGE OF THE SUPERIOR COURT
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