

CORRESPONDENCE

DAVIS, COWELL & BOWE, LLP

Counselors and Attorneys at Law

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10 DEC -2 AM 1:36

November 30, 2010

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CITY OF PASADENA

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VIA FAX AND UPS TWO-DAY MAIL

Pasadena City Council
c/o Mayor Bill Bogaard
100 N. Garfield Avenue, Room S228
Pasadena, CA 91109
Fax: (626) 744-3727

- Barry S. Jellison (CA)
- Steven L. Stemerman (CA, NV)
- Richard G. McCracken (CA, NV)
- W. David Holsberry (CA, NV)
- Elizabeth Ann Lawrence (CA, NV, AZ)
- Andrew J. Kahn (CA, NV, AZ)
- John J. Davis, Jr. (CA)
- Florence E. Culp (CA, NV)
- Kristin L. Martin (CA, NV, HI)
- Eric B. Myers (CA, NV)
- Paul L. More (CA, NV)
- Winfred Kao (CA, DC)
- Sarah Varela (CA, AZ)
- Sarah Grossman-Swenson (CA)
- Adam J. Zapala (CA)
- Sophia Lai (CA)

Mark Jomsky, City Clerk
100 N. Garfield Avenue, Room S228
Pasadena, CA 91109
Fax: (626) 744-3921

Michele Beal Bagneris
City Attorney/Prosecutor
100 N. Garfield Ave., Suite N-210
Pasadena, CA 91109
Fax: (626) 744-4190

RE: *Dec. 13th Meeting-Proposed Mixed-Use and Hotel Development at Colorado and Lake (CUP 5209)*

Robert P. Cowell (1931-1980)

Dear Councilmembers and City Attorney:

of counsel:

- Philip Paul Bowe (CA)
- J. Thomas Bowen (CA, NV)
- Mark Brooks (TN)

We are counsel to the Coalition for Responsible Development, which includes several Pasadena residents who regularly use the streets where this proposed project would be located, including Peter Dreier (1749 Loma Vista Street), Terry Meng (same address) and other Pasadena residents and UNITE HERE Local 11.

McCracken, Stemerman & Holsberry

We believe that CEQA prohibits your approval of this project at this time, and the EIR needs to be revised and recirculated.

1630 S. Commerce Street, Suite A-1
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The alleged benefits of the project at the proposed intensity of use do not rise to the necessary level of making further mitigation of impacts "infeasible" as expressly required by CEQA in Public Resources Code section 21081. A less-intensive project would preserve most of the alleged benefits but reduce negative traffic and parking impacts.


November 30, 2010

As already noted by traffic expert Steve Orosz in his letter of 11/29, the project approved is much more intensive development than was considered in the traffic study, and thus traffic and parking impacts have been seriously underestimated (156 Hotel Rooms, 102,615 SF of Office/Bank uses, 13,554 SF Specialty Retail, 18,000 SF of Restaurant versus 100 Hotel Rooms, 72,400 SF of Office/Bank uses, 8,000 SF Specialty Retail and 8,000 SF of Restaurant). None of the other errors in the studies identified by Mr. Orosz in his prior letters have been corrected.

Courts have had little trouble striking down project approvals for even less serious problems with EIRs. See, e.g., *County of Inyo v. City of Los Angeles* (1977) 71 CA3d 185, 193 (“An accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR.”); *Berkeley Jets Over the Bay Committee v. Bd. of Port Comm’rs* (2001) 91 CA 4th 1344, 1367; *San Joaquin Wildlife Rescue Ctr v. County of Stanislaus* (1994) 27 CA4th 713; *Kings Co. Farm Bureau v. City of Hanford* (1990) 221 CA3d 692; *Napa Citizens for Honest Gov’t v. Napa Co. Bd. Spvrs.* (2001) 91 CA4th 342.

If this appeal is denied, this letter is also to demand the City timely serve me with a copy of its decision (Public Resources Code section 21167(f)), and give you notice that my clients intend to invoke their right to prepare the administrative record for judicial review (section 21167(b)). Thank you for your attention to this matter.

Respectfully,


Andrew Kahn
Attorney for Coalition

AJK:ja

DAVIS, COWELL & BOWE, LLP

Counselors and Attorneys at Law

San Francisco

December 1, 2010

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- Andrew J. Kahn (CA, NV, AZ)
- John J. Davis, Jr. (CA)
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- Eric D. Myers (CA, NV)
- Paul L. Mera (CA, NV)
- Winfred Kao (CA, ND)
- Sarah Varma (CA, AZ)
- Dr. J. Gopalman-Sivansan (CA)
- Adam J. Zappala (CA)
- Sophia La. (CA)
- Roger P. Cowell (1531-1530)

of counsel

- Primo Paul Bove (CA)
- J. Thomas Bowen (CA, NV)
- Mark B. Locke (TN)

Mr. Cracken, Stemerman
& Holsberry

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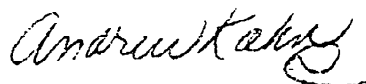
Re: *Supplement to my letter of 11-30-10 re Hotel CUP Appeal*

Dear Councilmembers and City Attorney:

Be advised that I also represent in this matter Coalition member Michael Cornwell, One South Orange Grove Blvd Unit # 2, Pasadena, CA 91105.

Thank you for your attention to this matter.

Very truly yours,



Andrew Kahn
Attorney for Coalition

AJK:ja

LAW OFFICES OF

HORGAN, ROSEN, BECKHAM & COREN

A LIMITED LIABILITY PARTNERSHIP

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December 8, 2010

Mayor William J. Bogaard
Vice-Mayor Victor M. Gordo
Hon. Council Members Haderlein, Holden, Johnson, Madison, McAustin and Tornek
City Council of the City of Pasadena
100 North Garfield Avenue, Rm. S249
Pasadena, California 91109

Re: Colorado at Lake -- December 13, 2010 Appeal of BOZA Decision for C.U.P. No. 5209

Dear Mayor Bogaard and Honorable Members of the City Council:

Thank you in advance for your consideration of the appeal that has been filed and paid for by the Unite Here Union, Local 11, based out of Los Angeles, California. We understand that they, and the Coalition for Responsible Development (the "Coalition"), are now represented by Andrew Kahn of Davis, Cowell & Bowe, LLP of San Francisco, California.

As will be explained at the hearing, the Colorado at Lake project is a mixed-use project at the intersection of Colorado and Lake, in the heart of Pasadena's Financial District. Consistent with the General Plan and Central Business District Specific Plan, the Project is designed and intended to create a vibrant, sustainable, pedestrian friendly commercial area that includes the rehabilitation and restoration of the Historic Constance Hotel and the historic storefronts facing Colorado Boulevard.

As you also may recall, on November 24, 2008, the City Council unanimously approved the application for a landmark designation of the Constance Hotel under Municipal Code Section 17.62.050. To implement that decision, we have designed a project that is well-below the allowable FAR, fully complies with the General Plan and all of the City's development standards, implements the vision in the Central Business District Specific Plan and is widely

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supported by Pasadena Heritage, the Chamber of Commerce, the South Lake Avenue Business District Association, members of the Playhouse District, and numerous local business and community leaders. Other than appellants, there has been no opposition from any neighborhood associations or other groups in our City.

The citizen advisory commissions that reviewed the project also expressed support for it. For example, in its letter of September 3, 2010, the Transportation Advisory Commission stated, "Overall, TAC supports the project and believes walkability and the condition of the immediate area will benefit from redevelopment. . . . The Commission was uniformly impressed with the traffic study, particularly the shared parking analysis."

Similarly, in its May 2010 study for the Playhouse District entitled, "Using Arts as an Economic Generator in the Playhouse District", the Community Land Use & Economics Group LLP found that, "Virtually all successful arts and cultural events have several components the Playhouse District currently lacks", including "[a] boutique hotel, reflecting some aspect of the district's personality and providing space for small conferences, meetings and events."

When combined with the Final Environmental Impact report (the "Final EIR"), the data presented to the Hearing Officer on October 20 and to the Board of Zoning Appeals on November 17, we firmly believe that substantial evidence exists for the Council to make the necessary findings for the requested entitlements and that this project will help spur growth East on Colorado Blvd. and North on Lake Avenue, which is consistent with the current General Plan and goals of many people currently involved in the General Plan Update now underway.

Having said that, we should point out that the proposed project is not the original project, but rather Project Alternative No. 3, which reduces the size of the office building so that we can preserve and restore the historic retail frontage along Colorado Boulevard.

More specifically, the primary objectives for the project have stayed the same, i.e., to renovate and preserve the existing historic landmark to Secretary of the Interior standards by returning the Constance Hotel to its original use, and to develop an underutilized site that will attract and retain businesses while promoting local job growth east of Lake Avenue.

As stated on page V-11 of the FEIR, in order to comply with the development standards of the Zoning Code, the project requires the following entitlements: (1) Conditional Use Permit to restore the former Constance Hotel building; (2) Minor Conditional Use Permits for new construction in a Transit oriented Development area, and for shared, tandem and valet parking; and (3) A Minor Variance for a reduction in loading spaces to preserve the historic courtyard at the Hotel. ***As expressly stated on page V-11 of the Final EIR, "the project is consistent with the Central District Plan designated land use intensities and would not conflict with any land use plan, policy or regulation" of the City of Pasadena.***

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As stated on page I-4 of the Final EIR, however, Project Alternative No. 3 "would reduce total development (converted and new) to approximately 90% of that proposed by the project while still converting the former Constance Hotel structure to the proposed hotel use (156 rooms converted and new) The proposed office building and associated Phase 2 and 3 restaurant and retail space of approximately 196,000 square feet would be reduced to approximately 154,000 square feet. Total site development and reuse of approximately 261,000 square feet would be reduced to approximately 235,000 square feet. A new parking structure would be built, but unlike the proposed project, it would include above grade parking in addition to on grade and subterranean parking, as well as provision of limited shared parking with 2 N. Lake across Colorado Boulevard. . . . Under [this option], the retention of existing retail uses along Colorado Boulevard and the reduction in new development would also allow for the existing hotel courtyard to remain with a new internal paseo that links to the street."

Further, Alternative No. 3 "reduces both occupancy driven (e.g., traffic, utilities) and physical (e.g., aesthetics, historic resources) impacts of the proposed project, as well as meets or exceeds most project objectives. In particular, the removal of remnant historic fabric present in the 1926 Colorado Boulevard storefronts that would be removed with the proposed project would be retained and integrated into the alternative. Consequently, the alternative (with either the hotel or residential option) would reduce a significant unmitigated impact of the project to historical resources, to a less than significant level."

As such, "Alternative 3 would be considered environmentally superior to the proposed project, and would meet or exceed many project objectives."

Despite this record, we understand that Mr. Kahn has submitted a letter calling for the revision and re-circulation of the EIR.²

Although Mr. Kahn's November 30 letter states the Coalition "includes several Pasadena residents who regularly use the streets where this proposed project would be located", the address for the two residents identified on page one of his letter is in West Pasadena, i.e., approximately five miles away from the proposed Project's location. In addition, Peter Dreier is a Professor at Occidental College, which is in Los Angeles and even further west of the proposed Project's location. Neither, therefore, has the requisite "beneficial interest" required under California CEQA law to challenge the EIR, nor any direct and substantial interest, over and above any interest held in common with the public in general, that shows they will be adversely impacted by the environmental impacts of proposed Project. Lastly, to date, Professor Drier and the union have objected to the project on competitive economic grounds that are not within the zone of interests protected under CEQA. In particular, I met with Rachel Torres and James Elmendorf, who is the Director of Public Policy for the Los Angeles Alliance for a New Economy in March 2010, and with Rachel and Derek Smith, Political Director for Unite Here Local 11, in July 2010. On both occasions, the union stated that it would oppose the proposed project unless the project applicant **unconditionally** agreed to sign the union's card check neutrality agreement. Since then, their objections to the proposed project have been over the alleged wages to be paid prospective hotel workers and affordable housing, both of which are

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As explained below, there is *no evidence* to support Mr. Kahn's request. Rather, as explained on page VI-43 of the FEIR, the Alternative 3 hotel option would generate 19% less daily trips than the proposed project and there would be an estimated 644 trips to self-parking at 2 N. Lake, which is considerably less than the 1,007 valet and self-park trips estimated under the proposed project.

Based upon our review of the FEIR and the detailed traffic study analyses in Appendix I, we believe that Mr. Kahn and the union's traffic expert have mistaken Alternative Option No. 3 in the traffic study for Project Alternative No. 3 in the FEIR. In fact, the 100 room alternative Mr. Kahn references is the "Reverse Engineered" Alternative, which is Project Alternative No. 4.

To leave no doubt, pages VI-42 to VI-56 of the Final EIR set-forth a 14 page summary of the detailed traffic analysis undertaken by the City's traffic consultant for Alternative No. 3, complete with references to the appendices containing the data supporting the analysis. ***The additional analysis for Alternative No. 3 is over and above the exceedingly detailed analysis for the proposed project set-forth in Section IV-E of the FEIR, which is 63 pages in length and includes:***

1. A comprehensive data collection effort to develop a detailed description of existing conditions within the study area. The assessment of conditions relevant to the traffic study included an inventory of the street system, traffic volumes on those facilities, and operating conditions at key intersections and street segments.
2. Fifteen local intersections identified and analyzed, plus 12 roadway segment locations identified and analyzed, plus an assessment of conditions for the proposed project ***and for each phase***. Current daily traffic counts also were conducted during April 2008 at two of the analyzed street segments (Mentor Avenue between Union Street and Colorado Boulevard and Mentor Avenue between Green Street and Cordova Street) and during May 2009 at the remaining locations using machine counters. Existing daily traffic volumes are summarized in Table IV.F-3.

beyond the scope of CEQA and the City's ordinances governing this project. We, therefore, continue to object to the consideration of the appeal and incorporate by reference herein our November 3, 2010 (8:27 p.m.) and November 4, 2010 (3:49 p.m.) e-mails to staff stating those objections in more detail accordingly.

For the record, all of the traffic issues raised by the union's traffic consultant have already been shown to be misunderstandings similar to Mr. Kahn's misunderstanding and have been addressed and completely disproven by the City's traffic consultant (Raju & Associates) in the FEIR and written memoranda that we understand will be provided (or made available) to you

3. Compilation of weekday morning and evening peak hour traffic counts from data collected at 10 of the 15 analyzed intersections during April and May 2008, with Year 2008 traffic counts were factored upward 1.5 percent per year to reflect existing 2009 conditions. The remaining five intersection counts were collected in April and May 2009 to reflect typical weekday operations during current year 2009 conditions. Exhibits depicting existing traffic volumes for 2009 AM and PM peak hour conditions are provided in Appendix I of this EIR.

4. The existing traffic volumes presented in the project traffic study in Appendix I to this FEIR also were used in conjunction with the level of service methodologies to determine the existing operating conditions at the analyzed intersections. Table IV.E-2 on page IV.E-6 summarizes the results of the intersection capacity analysis for existing conditions at the analyzed intersections.

5. A total of 20 signalized pedestrian intersections were identified within 1,300 feet from the project site and the project traffic study in Appendix I of the FEIR provides a list of the 26 bus stops and existing amenities at each stop for these bus lines that are within approximately 1,300 feet of the project site, all of which were included in the analysis.

6. On top of which, thirty-six related projects were identified within the study area, and the trip generation estimates for the related projects were included in the analysis and are shown in Table IV.E-7.

7. Beginning at pg IV.E-44, the parking evaluation consists of examining the proposed parking supply for the proposed project, by phase, in relation to the parking requirements of the various uses based on anticipated and estimated parking demand for each phase of the proposed project. An assessment of proposed parking supply for the proposed project as a whole also was prepared by Raju Associates staff conducting parking demand surveys on a typical weekday, noting down the peak parking utilization (or maximum number of cars parked at the site) every hour between the hours of 9:00 a.m. and 6:00 p.m. Parking utilization surveys were performed on a typical weekday in July and August 2009. The project traffic study (Appendix I of this EIR) summarizes the parking utilization surveys at 2 N. Lake Avenue as well.

Lastly, as explained in the staff reports and FEIR, the alternative traffic analysis for the project alternatives were not the basis for the mitigation measures outlined in the FEIR. Rather, the traffic and environmental study of the original project formed the basis for those mitigation measures and the project applicant agreed to all of the measures that still applied under Project Alternative No. 3. As such, shifting to Project Alternative No. 3 eliminated certain significant historic and intersection impacts, but did not change the scope of the analysis for the original project or the agreed-upon mitigation measures.

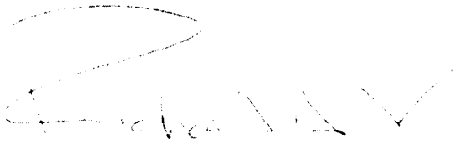
In sum, we have put together a project that we firmly believe is in the best interest of the community and is widely supported by the community. We, therefore, ask that you reject the

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appeal, affirm the Board of Zoning Appeals November 17, 2010 decisions and grant all of the requested entitlements.

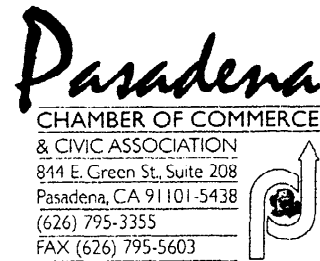
Thank you for your consideration of our request and please do not hesitate to contact me if you have any questions.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Richard A. McDonald, Esq.", with a large, stylized initial "R" at the beginning.

RICHARD A. MCDONALD, ESQ

CC: CITY MANAGER
CITY CLERK
CITY ATTORNEY



December 8, 2010

Mayor Bill Bogaard
Pasadena City Council
City of Pasadena
100 North Garfield Avenue
Pasadena, CA 91109

Re: Appeal of Colorado at Lake/Constance Hotel project EIR, CUP #5209

Dear Mayor Bogaard and Pasadena City Council,

The Pasadena Chamber of Commerce supports the development of the site at Colorado Boulevard and Lake Avenue into an office and hotel/retail/restaurant center. We understand the project will include 261,305 total square feet. Of that, approximately 80,000 square feet are proposed to be developed for a hotel, 35,000 square feet for restaurant uses, 25,000 for retail and bank uses and 103,000 square feet for commercial office space.

We also understand that the renovated hotel and new construction will meet all of the City of Pasadena green building requirements, including those mandating water and electricity conservation and that the project as proposed meets all land use and zoning requirements of the City.

At the Chamber we are very enthusiastic about adding a hotel in downtown Pasadena. We feel the reconstruction of the Constance Hotel will provide much needed luxury hotel rooms in a convenient and centrally located area of Pasadena. We are particularly pleased that The Constance Hotel will return to the use for which it was originally built. The addition of a hotel at the site will also be very positive for the restaurants and retailers nearby.

We have reviewed the Draft Environmental Impact Report prepared for the project and see that the report suggests no significant visual impacts to the area by any aspect of the project. The aesthetics and massing of the project conform with existing nearby buildings and complement developments already in the area. Restoration of the Constance Hotel will be a significant addition to Pasadena's historic built environment. We feel restoration of the Constance Hotel is an important and very positive aspect of the project and overshadows the loss of those storefronts. We are also encouraged that the project intends to preserve and enhance the existing Colorado Boulevard storefronts.

Traffic analysis prepared as part of the EIR shows one intersection with a significantly negative impact, Walnut Street and Lake Avenue. The analysis suggests that can be mitigated through acquisition of a transit bus to serve the corridor as well as incentives to encourage building occupants to utilize public transportation. At the same time, the diminution of that intersection from a Level of Service E to Level of Service F is fairly minimal and should not jeopardize this very positive project for Pasadena.

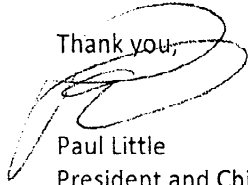
The Pasadena Chamber of Commerce is very supportive of the hotel, office and retail project at Colorado and Lake. It will bring much needed jobs to our city, renovate and revitalize an underutilized corner at the heart of our commercial district and revive one of Pasadena's historic jewels – The Constance Hotel. At a time when our economy is languishing, this project is one that could be a significant factor in revitalizing the area of Colorado Boulevard east of Lake Avenue. Approval of this project would show that the City of Pasadena is willing to move forward with developments that provide significant positive impacts to our local economy.

It is very unfortunate that, because the appeals have delayed the ability to bring bonds to market under the deadline, this project will likely not be able to take advantage of the stimulus loan funding offered by the federal government. Despite the additional costs to finance the project, I am confident that Park Place LLC will still build a quality project that Pasadena can be proud of.

We urge the City Council to deny the appeal and approve the Park Place development project.

Please include this letter as public comment for the City Council hearing of December 13, 2010.

Thank you,

A handwritten signature in black ink, appearing to read 'Paul Little', is written over the typed name. The signature is stylized and somewhat cursive.

Paul Little
President and Chief Executive Officer

Cc: M. Jomsky, M. Beck

From: Richard McDonald [mailto:rmcdonald@horganrosen.com]
Sent: Tuesday, December 07, 2010 4:49 PM
To: Jomsky, Mark
Cc: Steinmeyer, John; Fuentes, Theresa
Subject: FW: BOZA Vote

Mark -- Please include the e-mail below in the Council's Agenda Packet The e-mail is from Commissioner Richard Norton to me and explains his BOZA vote on November 17. Thank you.

Richard A. McDonald, Esq.
Law Office of Richard A. McDonald
Of Counsel, Horgan, Rosen, Beckham & Coren, L.L.P.
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From: Richard Norton [mailto:rdnorton@sbcglobal.net]
Sent: Tuesday, December 07, 2010 1:45 PM
To: Richard McDonald
Subject: RE: BOZA Vote

Hello Richard:

Because there appears to be some uncertainty, I want to clarify my vote at the Board of Zoning Appeals hearing concerning the Constance Hotel EIR.

As I said at the hearing, I voted against certifying the EIR solely because of my long-standing disapproval of the way Pasadena assesses cumulative traffic impacts. The EIR addressed traffic generated by dozens of projects planned in the vicinity of the Constance Hotel. That cumulative impact will create intersections with level of service D and E. The City's traffic methodology does not consider such impacts significant. I believe that methodology is in error.

In fact after thorough study and examination of witnesses at the hearing, I found the EIR for this project to be a model for others and far superior to any I have encountered in Pasadena over the past 3 years.

I hope this makes my position clear.

Sincerely,

Richard Norton

12/13/2010
Item 32