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March 14, 2016

Mayor Terry Tornek
Vice-Mayor Gene Masuda
Hon. Council Members Madison, Gordo, McAustin, Kennedy, Hampton, and Wilson
City Council of the City of Pasadena
100 North Garfield Avenue, Rm. S249
Pasadena, California 91109

Re: Agenda Item 18 – 920 Hillcrest Place

Dear Mayor Tornek, Vice-Mayor Masuda, and Honorable Members of the City Council:

Tonight, Item No. 18 on your Agenda is Sheffield Investment's appeal of the unanimous Board of Zoning Appeals' December 16, 2015 decision to approve Hillside Development Permit ("HDP") No. 6196, and otherwise affirm the Hearing Officer's ("HO") December 17, 2014 approval of the HDP.

The Staff Report explains the project (i.e., a new single family residence), the basis for the appeal, and how substantial evidence supports the findings to be made for the HDP. Attachment "C" also provides the actual appeal papers and shows that many of the arguments asserted are frivolous and/or lacking any evidence, let alone substantial evidence to support them.

Rather than repeat those points, therefore, we write to add the following four points to support our request that you grant the HDP and otherwise affirm the BZA's and HO's decisions based upon the substantial evidence in the record.

First, as stated in Finding No. 1 on Attachment "A" to your staff report, it is a fact that the proposed single family residence fully complies with all of the development standards set forth in the Zoning Code for hillside developments. No variances are requested. Further, as also

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stated in the Findings, the proposed residence is in conformity with the General Plan and applicable zoning district. It thus poses no threat or detriment to any adjacent properties or the neighborhood regardless of what the corporate appellant may say.

Second, Title 14, Article 19, Section 15303 of the California Code of Regulations specifically states that single family residences are categorically exempt from the requirement to perform an initial study, MND, or EIR:

“Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The numbers of structures described in this section are the maximum allowable on any legal parcel. Examples of this exemption include, but are not limited to:

(a) One single-family residence, or a second dwelling unit in a residential zone. In urbanized areas, up to three single-family residences may be constructed or converted under this exemption.”

Third, Appellants argument that the size and location of the proposed house are sufficient to establish “an unusual circumstance” prohibiting the use of the categorical exemption under Section 15303 is based upon their misreading and misapplication of the California Supreme Court’s decision in *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086.

In particular, in the *Berkeley Hillside* case, the applicant sought a hillside permit for a 6,478-square-foot house with an attached 3,394-square-foot 10-car garage, covering 16% of a steeply sloped (about 50%) lot in a heavily wooded area on Rose Street in Berkeley. The trial court denied the petition for a writ of mandate by the neighborhood group holding there were not unusual circumstances to the project, but the Court of Appeal reversed and granted it. The Supreme Court then took up the issue of how the unusual circumstances exception to categorical exemptions should be applied by lead agencies.

The Supreme Court held that the “unusual circumstances” exception can only be used to preclude the use of a categorical exemption if an “unusual circumstance” that differentiates the project from the general class of similarly situated projects, and, if so, when the unusual circumstance that pertains to the project creates a “reasonable possibility” that the project may result in a “significant environmental impact.” The court expressly rejected the appellate court’s interpretation of the “unusual circumstances” test, finding that “the Court of Appeal erred by holding that a potentially significant environmental effect itself constitutes unusual circumstances.”

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Following the Supreme Court's decision, the First District Court of Appeal filed its opinion affirming the trial court's judgment on September 23 and later ordered it published on October 15, 2015. *Berkeley Hillside Preservation, et al. v. City of Berkeley* (1st Dist., Div. 4, 2015) 241 Cal. App. 4th 943, 2015WL 6470455. The opinion states that a party challenging a categorical exemption decision by seeking to establish the unusual circumstances exception cannot prevail merely by providing substantial evidence that the project may have a significant environmental effect. Rather, such a party must establish an unusual circumstance by distinguishing the project from others in the exempt class.

On February 3, 2016, the California Supreme Court denied further review of the case, thus letting the Court of Appeal's decision stand, i.e., there were no unusual circumstances that precluded the use of the categorical exemption for the proposed residence.

In this case, there also are no unusual circumstances. The proposed residence is located on a site with an overall slope of less than two percent and its proposed size is well within the limits imposed by the neighborhood compatibility requirements of the Hillside Code. Similarly, contrary the appeal, noise, hydrology, and all other requirements of the Code have been met. ***It thus strains credulity to say that a fully Code complaint project presents "unusual circumstances" precluding the use of the categorical exemption for single family residences set-forth in Section 15303.***

Fourth, and lastly, page 5 of the staff report and the staff's presentation explain why the property is not historic, nor in a historic district, and how the City made that determination. More importantly for tonight's hearing, however, is the fact that Sean and Christine have relied on the City's determination for the past two years. See, Exhibit "A" (attached hereto and incorporated herein by this reference). Moreover, the first time Appellants challenged the City's determination was at the BZA hearing eighteen (18) months after it was made, not when the matter was before the HO, or any time prior thereto. Like so many of its other arguments, it thus is nothing more than a trumped up excuse to delay the project.

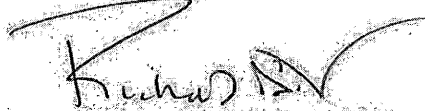
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In sum, not one of Appellants' basis for the appeal and/or arguments is supported by substantial evidence, and many are simply frivolous. As the chronology in the staff report shows, they have done nothing but repeatedly object to the project on the same grounds in hopes of delaying it to a point where the applicants drop it. But, Sean and Christine have not dropped it, and simply wish to build their family home.

For the reasons set forth in the staff report, above, and in the record, we therefore request that you deny the appeal and unanimously affirm the BZA's decision.

Thank you for your consideration. Please do not hesitate to contact me if you have any questions.

Sincerely,



Richard A. McDonald, Esq.

CC: City Manager
City Attorney
City Clerk

EXHIBIT A

Jim Schmidt

From: Jim Schmidt
Sent: Thursday, July 24, 2014 12:01 PM
To: 'Johnson, Kevin'
Cc: 'Sean Yu'; 'Yu, Christine'
Subject: RE: 920 Hillcrest Place

Hi Kevin,

Thank you for letting us know about the determination.
I will follow up with Jason on the Hillside Development Permit timing.

Best,
Jim

From: Johnson, Kevin [<mailto:kevinjohnson@cityofpasadena.net>]
Sent: Thursday, July 24, 2014 11:27 AM
To: 'Jim Schmidt'
Cc: Sean Yu; Yu, Christine
Subject: RE: 920 Hillcrest Place

Jim,

We received the report from the consultant on July 9th, which determined that the previously identified landmark district is no longer eligible and the demolition of the house would not be a significant impact on cultural resources. I forwarded the report to your case planner, Jason Killebrew, so that he could proceed with processing the Hillside Development Permit. I will defer to him on the status of that application – I've copied him on this email so he can respond to you.

Thanks,

Kevin

Kevin Johnson
Design & Historic Preservation Section
City of Pasadena Planning & Community Development Department
(p) 626-744-7806; (f) 626-396-7259
kevinjohnson@cityofpasadena.net

From: Jim Schmidt [<mailto:jim@schmidtarchitecture.com>]
Sent: Thursday, July 24, 2014 10:25 AM
To: Johnson, Kevin
Cc: Sean Yu; Yu, Christine
Subject: 920 Hillcrest Place

Hi Kevin,

I wanted to follow up to see where we are at in the process for 920 Hillcrest Place.
I had gone to the city 7/3/14 (3 weeks ago) to pay the fee for the consultant to review our project. Please let us know when you think we will be getting a determination from the city.

Thank you,

James Schmidt AIA
Principal

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