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FOR CITY COUNCIL MEETING 2/29/16*

APPELLANT'S SUPPLEMENTAL ARGUMENT RE:
CITY COUNCIL HEARING CONCERNING CUP #6116
325 SOUTH LOS ROBLES

1. STATEMENT OF FACTS:

Applicant, Pasadena Department of Human services and Recreation ("Parks") has made the following request (the "Application") concerning the Gymnasium of the McKinley School at the subject address:

That the gymnasium be made available to the public evenings between 5 and 9 p.m. during the week, and from 8 a.m. to 5 p.m. on weekends for various classes and events; and further that the number of "participants" at any one time be limited to 100 persons, thus converting the limited access school facility (access available only to students and school faculty and staff) to a public facility with unlimited access during the specified hours.

The Planning Department determined that the exemption from environmental review of California Administrative Code, Title 14, Chapter 3, Section 15301, Class 1 ("15301") applied to the proposed project since: (i) the facility was not being physically changed; and (ii) the facility had been used for recreational purposes generally conducted at the school, and was to be used for similar recreational purposes if the CUP was granted, and accordingly, the change in users and hours of use was a negligible expansion of the use.

Appellant HAK Twenty-Eighth Street Corporation ("HAK"), the owner of a condominium unit at the corner of Del Mar Boulevard and El Molino which it had purchased on May 26, 2015, appeared at the initial hearing before the Hearing Officer and raised the following objections: (1) That the proposed project would cause parking problems in the neighborhood, which already had limited street parking; (2) that the proposed project would cause security problems in the neighborhood of the school and its periphery; (3) that the proposed number of persons to be present at events was unspecified (this latter objection was partially obviated by Paragraph 10 of the Planning Department's Attachment B ("Recommended Conditions of Approval ...") to its Hearing presentation - "The attendance at any time shall not exceed 100 participants". No one else appeared to object at the Hearing Officer hearing.

The Hearing Officer upheld the 15301 exemption at its hearing on October 7, 2015 and approved the application.

HAK timely appealed the Hearing Officer's determination and a Board of Zoning Appeals hearing was scheduled for December 16, 2015. Grounds for appeal were issues generally concerning (i) interference with neighborhood parking and the inability of Parks to enforce event parking being limited to the lots earmarked for the purpose (one of the lots was at a much greater distance from the facility than the neighborhood street parking) - and the proposed solution, establishment of a permit parking zone would present obvious inconveniences to neighborhood residents having visitors; (ii)

the likely effect on safety in the neighborhood and thus interference with the neighborhood as comprising walking streets safe for women and elderly pedestrians in the evening; and (iii) the ambiguous nature of the word "participants" as for example including or excluding additional "spectators" who may not be counted as part of the 100 "participants" depending on the interpretation of the word.

Prior to the Board of Zoning Appeals hearing, HAK had a private (in the sense that no other members of the public were present) meeting with various officials of Parks and City Planning. Since HAK's president had met with some of those persons in the hallway at the conclusion of the Hearing Officer hearing, and had been assured that the limit of 100 participants included all persons to be present at events, including spectators, that issue was not discussed at the private meeting, except that Parks indicated that the number of persons admitted would be counted at the door by a Parks employee.

The primary result of the meeting was to exclude boxing and adult soccer training and events from the proposed use, and to make a small addition to security by Parks personnel being present inside and outside the Gymnasium for 30 minutes before and after events. This seemed satisfactory to HAK since, with only 100 persons present, a parking lot adjacent to the event, without the secondary remote lot proposed to be provided, would be sufficient without the use of street parking; the limit of 100 total attendees would be less of a security problem than a larger number; and the proposed addition to security would more or less satisfy HAK's concerns with security with only that number of attendees being present.

The Board of Zoning Appeals hearing was held on December 16, 2015. HAK and several neighbors of the McKinley School appeared at the hearing. Since HAK believed it had settled its objections with Parks, its initial presentation was minimal and primarily discussed the parking and safety issues. The neighbors who appeared (only one of the three was known to HAK) raised issues concerning parking and hours of use of the facility - the evening hours during the week were too late and the weekend hours too early.

When Parks made its presentation it was asked by one of the Board members whether the 100 "participants" included potential spectators. Parks responded that it did not, and thus the application had placed no limit on the total number of persons who could be present in the Gymnasium at an event. Parks was then asked the legal capacity of the Gymnasium. Parks responded that the Gymnasium was licensed to hold 500 people.

This came as a shock to HAK who had previously been led down the "primrose path" to believe that there would not be more than 100 total people present at any one time. Since the presence of 500 persons would obviously create many more concerns about parking and security than 100 persons, HAK objected to this interpretation of "participants" as not including spectators.

Nevertheless, the Board of Zoning Appeals approved the Application, revising it only to include the adjustments agreed to by HAK and Parks at the private meeting.

This appeal was timely filed and the matter set for City Council hearing on February 29.

2. ARGUMENT:

A. 15301 Class 1 does not apply:

“Class 1 consists of the operation ... of existing public or private structures ... involving negligible or no expansion of use beyond that existing at the time of the lead agency’s determination. ... The key consideration is whether the project involves negligible or no expansion of an existing use.” 15301

This section was relied upon by Planning to exempt the project from the requirements of CEQA. However, the section has two limitations.

(i) The entire CEQA statutory scheme is intended to require and establish procedures for appropriate environmental scrutiny of proposed projects, and particularly to prevent environmental damage by any such projects. Particularly, this underlying purpose, therefore, should be considered when interpreting the words of the statutes and regulations promulgated in order to give the purpose effect.

Here Parks and Planning take the surprising position that conversion of a K-8 school with limited public access to a public facility with unlimited public access is a “negligible expansion of use” simply because the school children use the facility to play the same types of sports as will assertedly be played by the general public. Using this argument as the final determination on the subject, which is the only “evidence” presented by Applicants a variety of hypothetical uses would be allowed without environmental review. These absurd examples make the point:

Current use: K-8 basketball - Proposed use: NBA All-Star game - wouldn’t need an EIR since it is the same game.

Current use: Middle School Dance - Proposed use: Rave open to the public - both being dancing so wouldn’t need an EIR

Current use: PTA meeting - Proposed use: Presidential political rally - both being meetings so wouldn’t need an EIR

Current use: Pasadena College football field - Proposed use: new stadium for Rams games - both being football so wouldn’t need environmental review.

Using Parks limited analysis, 15301 would apply to all of these examples. Clearly Parks analysis was substantially lacking in any evidence to show that the proposed public use can be exempted from environmental scrutiny without an environmental review.

Thus, no further argument is needed; application of 15301 exemption, and the approvals by the hearing officer and the Appeals Board were clearly erroneous on their face, since the expansion a limited access school use to an unlimited access public use in the subject location, was not negligible.

See also *McQueen v. Mid-Peninsula Regional Open Space* (1988) 202 Cal.App.3d 1136 (Categorical Exemptions are construed strictly and shall not be unreasonably expanded beyond their terms).

Accordingly, an EIR, a limited EIR or a negative declaration is required.

B. 15300.2(c) reads as follows:

“Significant Effect: A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances”.

The California Supreme Court in *Berkeley Hills Preservation v. City of Berkeley*, (March 2, 2015, Case No. S201116) recently ruled that, where a Lead Agency decides that there are no unusual circumstances, that determination will be upheld if the Lead Agency offers substantial evidence to support that position, regardless of the arguments of opponents. On the other hand, if the Lead Agency determines that there are unusual circumstances, whether those circumstances will cause a significant environmental effect will be determined under the “fair argument” standard.

Here, in applying the exemption, the Lead Agency made no specific determination that there were or were not unusual circumstances. However, it implicitly recognized the possibility of unusual circumstances in its initial presentation in Attachment B - Recommended Conditions for Approval ... to wit:

1. Parking issues - Paragraph 11
2. Capacity limitation - Paragraph 10
3. Noise - Paragraph 12
4. Hours of Use - Paragraph 7

Accordingly, if the presentation of Planning is to be considered to contain implicitly a determination that there were no unusual circumstances, it offered no substantial evidence therefor (in fact, no evidence at all) and consequently is not entitled to deference. On the other hand, if it is to be considered to acknowledge unusual circumstances by its Conditions for Approval, the “fair argument” standard applies to the arguments of objectors.

To recognize that the foregoing conditions were an acknowledgment of unusual circumstances, one might compare the proposed project with a change in use where McKinley students were doing gymnastics or having a bake sale in addition to current activities - in that instance the categorical exemption would clearly apply and the exception of 15300.2(c) would not be involved. None of the proposed mitigating conditions would be required and none of the instant objections would be applicable.

3. CONCLUSION:

The appealed determination is clearly erroneous in that: (i) the proposed expansion of use is factually non-negligible so that 15301 does not apply; and (ii) even if 15301 applies, the exception to the exemption in 15300.2(c) applies. Fair argument was presented that thus far unmitigated environmental conditions can be reasonably anticipated to result. Accordingly, without further mitigation to cure HAK's objections, an EIR, a negative declaration or a limited EIR should be required.

Respectfully submitted,

Harold Halaban President

HAK TWENTY-EIGHTH STREET CORPORATION

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2-24-16

Jomsky, Mark

From: Thyret, Pam
Sent: Thursday, February 25, 2016 3:41 PM
To: 'Gita Yahyai'
Cc: Jomsky, Mark; Wilson, Andy
Subject: RE: McKinley school CUP #6116 appeal hearing February 29, 2016

Gita,

Thank you for your comments. I will forward them to the City Clerk to be part of the record for Monday evening's hearing.

Pam Thyret
City Council District Liaison for Councilmember Andy Wilson
(626) 441-4802

From: Gita Yahyai [<mailto:gita.yahyai@gmail.com>]
Sent: Thursday, February 25, 2016 3:38 PM
To: Thyret, Pam
Subject: McKinley school CUP #6116 appeal hearing February 29, 2016

Hi Pam.

My husband and I are the owner of unit 308 at 625 E Del Mar Blvd in Pasadena, and have the following 8 reservations about the above mentioned topic:

- 1) **the facilities will be used 7-days per week, for 48-50 weeks per year.** *This means we would barely get any breaks in a year, even when school is not in session, and that would amount to a total of no more than 2 weeks in a year when events are not scheduled.*
- 2) **the facilities will be used on weekdays after school till about 9pm, and on weekends as early as 8a.m.** *This means people could start arriving even on weekends as early as 7:30 a.m. which adds to the already noisy Del Mar/El Molino streets.*
- 3) **"participant" are defined as athletes and this # is limited to 100.** *This number does not include families/friends/fans of athletes which would amount to much more with many more cars.*
- 4) **athletes will be mostly middle school/high school aged kids.** *This definitely means that for at least half of them, someone needs to drive them there, impacting total #of attendees (athletes + audience).*
- 5) **the venue can house up to 500 people, which means some events can drive a huge # of attendees, impacting noise, traffic, and parking.** *We could face same issues that those living near Rose Bowl face during events at that venue. I anticipate that we as residents would need to add significant time to getting out off/into our garage. Similarly, our guests would be impacted in how long it would take them to drive to our building, as well as finding parking spot...already a limited commodity on Del Mar and El Molino.*
- 6) **there will be people directing traffic for "large" events" to a nearby parking garage.** *This garage is about 2 blocks away, and it is uncertain whether it is free or at a cost to individuals. In my opinion people would choose to park closer and for free if they can, instead of using the allocated garage. Additionally, they did not quantify what may constitute a "large" event.*
- 7) *I also believe that the public hearing was not communicated sufficiently. We are too busy to stand on the side of the street to read a sign which is as clear as mud (similar to many parking signs). Additionally most of us use online payment for bills and do not pay much attention to mailings as we assume most, if not all, are junk mail.*

8) the traffic congestion would also negatively impact the assisted living facility on El Molino, as they regularly are in need of emergency (ambulance) services.

I am requesting the city council to require parking on Del Mar and El Molino to be limited to permit owners only at all times, which would limit street parking to those with permits (and their guests could park when provided with a guest permit decal for longer than 2 hours & over night), thereby forcing others to park in the allocated garage or on other streets.

Thank you for your consideration & assistance in this matter.

Sincerely,
Gita Yahyai & Ardavan Ghassemi

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Gita Yahyai