

**CORRESPONDENCE
FROM
02/10/2020
CITY COUNCIL MEETING**

Reese, Latasha

Subject: FW: For City Council consideration in support of Fowler Garden CUP revocation

From: Christa Peitzman
Sent: Monday, January 27, 2020 3:25:43 PM (UTC-08:00) Pacific Time (US & Canada)
To: cityclerk
Subject: For City Council consideration in support of Fowler Garden CUP revocation

CAUTION: This email was delivered from the Internet. Do not click links or open attachments unless you know the content is safe.

Pasadena City Council,

I am a resident/owner in The Ambassador Gardens community. My husband and I have lived here for almost 5 years and really love being in Pasadena and in this community!

I am writing to you to express my support of the revocation of the CUP for Fowler Gardens and to ask for your support at the council meeting on 2/10 which will allow the revocation to stand.

When we first moved in there were large events in the garden almost weekly Spring thru Fall. These were **quite** inconvenient in terms of refuse left behind and wandering guests during events; to say nothing of the amplified sound coming from the garden.

The city's Planning commission was very thorough in the appeals process and in ultimately deciding to revoke the CUP. I agree with their findings and therefore won't restate all of the impact issues found.

Our community, especially now with Etco's completion, is no longer conducive to supporting events in this garden. It is my hope that this garden can become a community garden in some form and be owned by someone (such as the Master HOA) who will care for it better and return it to its former glory and maintain it to that glory.

Thank you for your time in reading my concerns.

Christa Peitzman
200 S Orange Grove Blvd. unit 107

Sent from my iPad

Sent from my iPad

Richard A. Kleinert
196 S. Orange Grove Blvd.
Unit 303
Pasadena, CA 91105

RECEIVED

2020 JAN 28 AM 10: 23

CITY CLERK
CITY OF PASADENA

Message to Pasadena City Council
Re. Revocation of CUP No. 5535 – Fowler Garden

My home (condo) sits immediately adjacent to Fowler Garden. My wife and I have lived here for going on 5 years. I also serve as the President of our HOA (Ambassador Gardens Community Corporation), which consists of 70 units and close to 140 residents. All of these people moved here sometime since 2013. We strongly support the decision by the City to repeal this CUP, and acknowledge the deliberate and methodical process the City followed in reaching this decision. To that end, in July, we helped gather signatures from about 80 of our neighbors who support revocation of this CUP.

When the CUP was in effect and being used, our neighbors and we experienced significant nuisance, including foot traffic, litter, noise (set up, event, and tear down), inability to sit outside and enjoy our balconies, and very late hours (beyond stated limits). (At the time, I was not aware that such disturbances should be reported to the City – I thought doing so would be a nuisance to the City officials.)

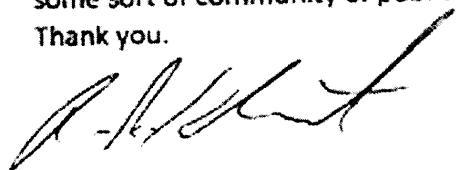
Since that time, conditions on our campus have changed dramatically:

- Since the condos have been developed and sold on the campus, we now have (or soon will have) close to 280 new residents living adjacent or close to Fowler Gardens.
- Since several mansions on campus have been sold to private buyers, the enabling facilities previously used by City Ventures in connection with events at Fowler Gardens are now gone or not available – restrooms, parking, kitchens, etc.
- Commercial and large public events are simply inconsistent with our community environment today.

City Ventures purchased and developed a large portion of the entire campus with full knowledge that they were bringing a large population of new residents to live on the campus area. They knew what they were dealing with. City Ventures made huge profits, many millions of dollars, on their investment in the campus. The value of this single remaining parcel, Fowler Garden, is negligible in the context of the profits they have already earned. Fowler Garden represents a cost of doing business for them. City Ventures needs to move on.

City Ventures has not communicated well with our community, and has neglected basic maintenance and upkeep responsibilities. Other than an outrageously high purchase price suggested by them several years ago, City Ventures has made absolutely no effort to discuss alternative uses or disposition of Fowler Garden with us. Fowler Garden should now become some sort of community of public asset.

Thank you.



1/18/2020

Jomsky, Mark

From: cityclerk
Sent: Tuesday, January 28, 2020 11:49 AM
To: Flores, Valerie; Iraheta, Alba; Jomsky, Mark; Martinez, Ruben; Novelo, Lilia; Reese, Latasha; Robles, Sandra
Subject: FW: My support for revocation of CUP in Fowler Garden

From: Scott Warmuth
Sent: Tuesday, January 28, 2020 11:48:27 AM (UTC-08:00) Pacific Time (US & Canada)
To: Madison, Steve
Cc: cityclerk
Subject: My support for revocation of CUP in Fowler Garden

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Dear Councilmember Madison:

I am a homeowner in Ambassador Gardens and my home directly overlooks Fowler Garden.

The tranquility of my residence has been upset by the few group gatherings that have been allowed in the past in Fowler Garden pursuant to a CUP. I support the City's decision to revoke the CUP and I oppose any effort to overturn the decision on appeal, which will be heard by your chamber on February 10, 2020.

The large events that have been held are incompatible with the nature of the residential community and I respectfully urge that the decision already made by the city not be overturned.

Sincerely,

Scott Warmuth
196 S. Orange Grove Blvd., #204
Pasadena, CA 91105
626-203-3980

Jomsky, Mark

Subject:

FW: Support for Revocation of Fowler Gardens CUP

-----Original Message-----

From: Madison, Steve <smadison@cityofpasadena.net>

Sent: Tuesday, January 28, 2020 4:35 PM

To: Christa Peitzman <tapeitzman@aol.com>; Madison, Steve
<smadison@cityofpasadena.net>

Subject: RE: Support for Revocation of Fowler Gardens CUP

Thank you for your input. I will send a copy to the City Clerk so that all of the council members have your correspondence.

-----Original Message-----

From: Christa Peitzman <tapeitzman@aol.com>

Sent: Monday, January 27, 2020 3:17 PM

To: Madison, Steve <smadison@cityofpasadena.net>

Subject: Support for Revocation of Fowler Gardens CUP

Mr. Madison

I am a resident/owner in The Ambassador Gardens community. My husband and I have lived here for almost 5 years and really love being in Pasadena and in this community!

I am writing to you to express my support of the revocation of the CUP for Fowler Gardens and to ask for your support at the council meeting on 2/10 which will allow the revocation to stand.

When we first moved in there were large events in the garden almost weekly Spring thru Fall. These were quite inconvenient in terms of refuse left behind and wandering guests during events; to say nothing of the amplified sound coming from the garden.

Our community, especially now with Etco's completion, is no longer conducive to supporting events in this garden. It is my hope that this garden can become a community garden and be owned by someone (such as the Master HOA) who will care for it better and return it to its former glory and maintain it to that glory.

Thank you for your time in reading my concerns.

Christa Peitzman

200 S Orange Grove Blvd. unit 107

Reese, Latasha

Subject: FW: Conditional Use Permit: Fowler Gardens

From: Terry Perucca
Sent: Wednesday, January 29, 2020 11:30:54 AM (UTC-08:00) Pacific Time (US & Canada)
To: Madison, Steve
Cc: cityclerk
Subject: Conditional Use Permit: Fowler Gardens

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Dear Councilman Madison:

I understand that at the City Council meeting on February 10th it will be addressing a very important issue for the Community, City Ventures appeal of the previous decision not to renew the Conditional Use Permit No. 5535 which addresses how Fowler Gardens can be used for events.

As I am sure you know the nature of the area around Fowler Gardens has changed substantially over the last several years from what was essentially a school and buildings related to the school to a fabulous residential community. It is obvious that the City of Pasadena did an excellent job working with developers on the master plan for the area and it has resulted in approximately 140 additional residential housing units that fit within the character and charm that makes Pasadena one of the most unique cities in Southern California.

City Ventures, the major developer of the area has retained ownership of Fowler Garden even after the residential construction has been completed and has been using the Conditional Use Permit that was previously issued to allow large group events in Fowler Garden. While this may have been a reasonable thing to do while the area was being developed it is not today. The area surrounding Fowler Garden is now very much residential and the large group events that City Ventures has been holding create a significant nuisance to the families that are now living adjacent to the Garden. In addition to the noise and parking issues related to these events there also security concerns when a large number of people are in the space just adjacent to the residential units.

Because of the changing nature of the area around Fowler Gardens and the negative issues it creates for the neighborhood I urge you and your fellow members of the City Council to reject City Ventures appeal to overturn the recommendation of the Pasadena Planning Commission and confirm the decision to not renew Conditional Use Permit No. 5535.

Thank you very much for taking this matter seriously and listening to the residents of Pasadena who's interests should come before those of City Ventures.

Terry Perucca

Reese, Latasha

Subject: FW: Appeal of CUP revocation Fowler Gardens

From: Kathleen Colburn
Sent: Saturday, February 1, 2020 12:13:21 PM (UTC-08:00) Pacific Time (US & Canada)
To: Madison, Steve
Cc: cityclerk
Subject: Appeal of CUP revocation Fowler Gardens

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Dear Mr. Madison,

My husband and I are fairly new homeowners in the Villas and Terraces at the Ambassador Gardens. We have been thoroughly impressed with the beauty and tranquility of this hidden gem in the heart of Pasadena. With the recent sale of some of the mansions in the area it appears that the infrastructure no longer exists to support large group and commercial events in Fowler Gardens. Additionally it does not appear that proper maintenance, care, and refurbishment is being performed at this site. We would like to see this area maintained as community property, beautifully maintained, and open for the public's enjoyment.

Wedding photos - yes! Wedding receptions - no!

Thank you for your consideration,
Kathleen and David Colburn
382 W. Green St., unit 136
Pasadena, CA 91105

Reese, Latasha

Subject: FW: CUP #5535

From: Nancy VanTuyle
Sent: Monday, February 3, 2020 11:47:17 AM (UTC-08:00) Pacific Time (US & Canada)
To: cityclerk
Subject: CUP #5535

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To members of the City Council,

I am a resident of The Grove at Ambassador Gardens and have been directly impacted in the past by events that City Ventures has held in the Fowler Gardens. Now that the development of the Ambassador Gardens is complete I will be even more affected by any events that might take place in this space. Not only will parking be an issue but in the past the noise from setting up and breaking down an event goes well beyond the designated time slot. In addition guests wander into private areas and leave trash that City Ventures does not pick up. I encourage the revocation of this CUP.

Sincerely,
Nancy Van Tuyle
192 S. Orange Grove Blvd.
Unit 302
Pasadena, CA 91105

To: Members of the Pasadena City Council
From: Joe and Joni Topper
Date: February 3, 2020
Subject: Revocation of CUP #5535 - Fowler Garden

We are writing to request your support on February 10th to uphold the revocation of City Venture's CUP #5535 pertaining to the Fowler Garden. The original revocation decision was made by the Hearing Officer in July, 2019, and upheld by the Board of Zoning Appeals in October, 2019.

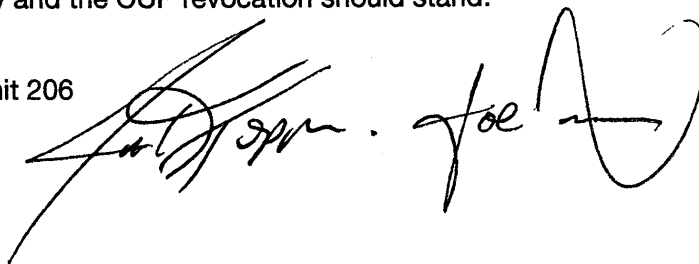
In the Staff Reports presented, and during the hearings, all parties acknowledged that the conditions on the Ambassador Gardens campus have changed dramatically since the CUP was granted in 2013. Three of the four event venues are no longer available, forcing all the event capacity into one space. Because City Ventures sold the two mansions, there are no longer any on-site bathroom or kitchen facilities. And all of the on-site parking was developed into housing units. What was an underutilized and largely uninhabited campus in 2013 is now a thriving community that will total almost 200 housing units and over 350 residents. We believe these changed circumstances dictate a different perspective on the appropriateness of the CUP. Would the City today grant a CUP allowing the operation of an event business for up to 500 people in the middle of our community? We think not. It is no longer reasonable. As the Staff Report says, such use is "...detrimental to the public health, safety, and welfare and the manner of operation is creating a public nuisance due to event impacts...".

We personally experienced those detrimental impacts. When we moved into our Ambassador Gardens condominium in April 2015, City Ventures was gearing up for their third season, which totaled 30 events. There was at least 1 event almost every weekend through November. We endured major inconveniences and aggravations, including noise (amplified music, set-up, and tear-down), congestion (both pedestrian and vehicular), and trash. It should be noted too that City Ventures, through their own actions, demonstrated back in 2015 that they understood the negative impact their event business was having on the community. They directed their catering contractor, Sylvia Noland, to send residents a letter dated 8/14/15 (copy attached) in which she states, "It has been brought to my attention that the loading out of our events has been impacting many of you." She goes on to say, "FYI there will not be receptions at the Ambassador Gardens next year. I can hear ALL of YOU applauding!"

We also want to point out that City Ventures has not complied with all the conditions of the CUP. Condition 7 requires the submission of monthly reports recapping data for each event, including date, time, location, parking, and number of attendees and staff. No reports have been turned in since November 2015, though there have been events since. Condition 13 requires turning in weekly an acoustical study measuring the noise level at each event. No such studies were ever turned in. City Venture's willful non-compliance should not be rewarded with an extension of the CUP.

When the City granted the CUP in 2013 we cannot imagine the intent was to saddle the community with a nuisance that would last forever. We agree wholeheartedly with the conclusion contained in the Staff reports and those of the Hearing Officer and the Board of Zoning Appeals. The use allowed by CUP #5535 has become detrimental to the public health, safety, and welfare of the greater Ambassador Gardens community and the CUP revocation should stand.

Joe & Joni Topper
200 South Orange Grove Ave, Unit 206
Pasadena, Ca. 91105
(626) 219-6400

A handwritten signature in black ink, appearing to read "Joe & Joni Topper", with a large, stylized flourish at the end.

**AMBASSADOR MANSION & GARDENS/
AMBASSADOR AUDITORIUM
300 W. GREEN ST.
PASADENA, CA. 91105**

8/14/15

**TO: Residents-Ambassador Campus
FROM: Sylvia Noland, Ambassador Event Director**

I want to introduce myself to those of you that don't know me, I am Sylvia Noland and I have been the Event Director at the Ambassador for the last 9 years.

It has been brought to my attention that the loading out of our events has been impacting many of you. I have informed the caterer and the rental company they will not be allowed to access Terrace Villa driveway past 11pm. The rentals have to return Monday morning for pick up and the catering truck is going to access the property via Green St. and load out over by Merritt Mansion so the noise doesn't affect those of you that are closest to Terrace Villa.

We have 12 events left for the year, 3 of which the ceremony is held on our property and the Auditorium is hosting the reception portion of the event on their plaza. FYI there will not be receptions at the Ambassador Gardens next year. I can hear ALL of YOU applauding!

I am giving you the dates so you know when the events will occur for the rest of the year:

~~8/15~~

8/22 and 8/29- Auditorium events

9/5, 9/12

9/26 the Pasadena Symphony uses our property for their Annual Gala

10/3, 10/10

10/17 -Auditorium event

10/24

11/14

11/28

The MUSIC is monitored by the City of Pasadena and the music cannot exceed 65 decibels to the property line. If for any reason this is disturbing you please call me and we will have the music levels adjusted if it has gone above the designated limits. **My number is: Sylvia Noland 310 292 5393.**

I thank the neighbors who have reached out to me. I can't fix a problem if I don't know about it. Our neighbors are just as important as the guests renting the property for their special occasion. Thank you for your cooperation!

Reese, Latasha

Subject: FW: Revocation of CUP No. 5535 - Fowler Garden

From: Darleen Kleinert
Sent: Monday, February 3, 2020 5:48:22 PM (UTC-08:00) Pacific Time (US & Canada)
To: cityclerk
Cc: Darleen Kleinert
Subject: Revocation of CUP No. 5535 - Fowler Garden

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My husband and I moved in the Ambassador Gardens almost 5 years ago. Over that period of time, when large group events were being held in Fowler Garden we experienced significant nuisance. The environment on our campus has changed dramatically since the CUP was originally granted, and now large group and commercial events are not compatible with the nature of our residential community. Given this change, the City of Pasadena planning department followed a very methodical process to review the CUP which produced a decision to revoke the CUP. Our neighbors and we strongly support the City's decision to revoke the CUP. Fowler Gardens should become some sort of community property, perhaps owned and managed by the Master Association.

We appreciate your support on the Revocation of CUP No. 5535 - Fowler Garden.

Thank you,

Darleen Kleinert
196 S Orange Grove Blvd,
Unit 303
Pasadena, CA 91105
818-583-7003

Reese, Latasha

Subject: FW: Fowler Garden public hearing

From: Nancy McIntyre
Sent: Tuesday, February 4, 2020 2:24:03 PM (UTC-08:00) Pacific Time (US & Canada)
To: cityclerk
Subject: Fowler Garden public hearing

CAUTION: This email was delivered from the Internet. Do not click links or open attachments unless you know the content is safe.

After two public hearings, this important neighborhood issue involving Fowler Garden is being brought before the City Council for resolution on Monday, February 10 . Over the years, the environment around the Ambassador College campus has changed significantly with the construction and sale by City Ventures of more than 70 condominiums known as Ambassador Gardens. While the developer's use of Fowler Garden for multiple events (up to 30 a year) may have been appropriate when the Conditional Use Permit (CUP) was issued in 2013, we believe City Venture's continuing use of the garden as an event venue is no longer compatible with the change in environment. City staff has carefully followed the process of review for the outdated CUP which was further studied by the appropriate bodies who have ultimately supported the recommendation to revoke the CUP.

As owners of a condominium overlooking Fowler Garden, we will appreciate City Council's support to revoke City Venture's request for this inappropriate land use.

Thank you.

Don and Nancy McIntyre
196 South Orange Grove Blvd
Unit #103
Pasadena, CA 91105

Walter & Andrea Yoka
196 S. Orange Grove Blvd, Unit #104
Pasadena, CA 91105
wyoka@yokasmith.com

RECEIVED

2020 FEB -7 PM 4:57
CITY CLERK
CITY OF PASADENA

February 3, 2020

Members of Pasadena City Council
Pasadena City Hall
100 North Garfield Ave.
Pasadena, CA 91101

Re: Revocation of CUP No. 5535-Fowler Garden

Dear City Council Members:

We write in support of the revocation of City Ventures' CUP No. 5535 for Fowler Garden.

Our home sits immediately above Fowler Garden. Given this location, we are clearly impacted in regard to the current and future use of Fowler Garden, and therefore have a vested interest in the outcome of this matter.

The City's Planning and Community Development Department has undertaken an extensive review and examination of this entire situation, including the change of circumstances that has occurred over the years, and the obvious impact that the future use of Fowler Garden will have on this new community that has sprung up at and around the garden. In so doing, the Planning and Community Development Department has afforded ample opportunity to City Ventures, due process if you will, to make its case for why it should continue to have the ability to operate an event space for profit in this small historic garden.

We have attended each of the hearings leading up to the City Council's consideration of this revocation, and quite appropriately City Ventures' position has been roundly rejected.

When City Ventures purchased this property it came with 4 historical sites, the Merritt Mansion, Terrace Villa, the Italian Garden and Fowler Garden. The original CUP was issued in order to permit City Ventures to use these sites collectively for the purpose of offering, for profit, event spaces. The homes, Merritt Mansion and Terrace Villa, provided City Ventures with access to restrooms, kitchens, amenities, and the like. Fowler Garden has no such facilities.

Along the way, City Ventures turned the Italian Garden into a community swimming pool for HOA members, and ultimately sold the Merritt Mansion and Terrace Villa to private parties for millions of dollars. As a result of all of this, they find themselves holding on to a small historic piece of land. As I mentioned, it is devoid of any facilities. There are no restrooms, there is very limited access, and there is no available kitchen area. Additionally, the parking that they were relying upon in having events, is no longer available. It is literally a small island in the middle of a larger historic garden which is now surrounded by hundreds of homes.

What did City Ventures think would happen under these circumstances? That they seriously would be able to run an event space in a historic garden in perpetuity? How can they with a straight face claim that there has been no change of circumstances, or that these new homeowners, having paid City Ventures millions of dollars, are somehow prevented from playing a role in their own future, a future by the way which does not include City Ventures, as they have long ago left the Ambassador Gardens area and Pasadena. In fact, their sole tie to our community is this isolated historic garden.

There is no small amount of irony to City Ventures' efforts to cast themselves in the role of some every day Pasadena citizen trying to simply use a piece of property in a profitable way. Let's not forget that City Ventures had sales nearing \$200 million. So, the idea that they would somehow be unfairly treated by having the CUP revoked strains credulity.

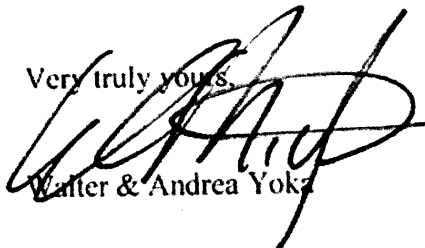
It is also worth mentioning that City Ventures is a real estate development company. It is not a for hire event planner. City Ventures cannot possibly suggest that being precluded from holding a limited number of events at this historic garden results in a taking of property or that it is somehow serious financial detriment to them. Again, they took these historical properties as they found them, turned them over for huge profits, and can hardly be heard to complain about having miscalculated what to do with an unusable piece of property.

To the extent that City Ventures claims that they are somehow doing a service to the community by maintaining this historic garden, the Council should know that they have done a very poor job of maintenance. This is not due to their lack of profit making, but simply due to neglect. Additionally, the Council should know that they have had every opportunity to turn over this historic garden to the Master HOA, which maintains the entire historic garden area, including the former Italian Garden, which they turned over to the Master HOA. We, as homeowners, pay HOA fees for the maintenance of all of the historic gardens.

Fowler Garden has no real economic value, other than a historic value. City Ventures knew this going in, and they cannot possibly with a straight face suggest that this piece of property has ever had any real economic value to them.

If they are, as they wish you to think a citizen of this community, then they should do what they know is right and allow this garden to take its place with the other historic property that surrounds it.

Very truly yours,



Walter & Andrea Yokoyama



Newmeyer & Dillion LLP
895 Dove Street
Fifth Floor
Newport Beach, CA 92660
949 854 7000

February 10, 2020

Michael W. Shonafelt
Michael.Shonafelt@ndlf.com

VIA EMAIL AND HAND DELIVERY

Terry Tornek, Mayor, and Members of the City Council
City of Pasadena
175 N. Garfield Ave.
Pasadena, CA 91101
Irocha@cityofpasadena.net

Re: Revocation of Conditional Use Permit #5530

Dear Mayor Tornek :

This office represents Pasadena Lots-70, LLC ("Applicant") regarding the above-referenced conditional use permit (#5535; PLN 2010-00384) ("CUP"). This letter presents our legal grounds for the appeal of the Board of Zoning Appeals' ("BZA") October 31, 2019, revocation of the CUP. This matter is set as item 10 on the February 10, 2020, agenda.

As a preliminary note, on February 5, 2020, Applicant sent a letter to the City Attorney's Office requesting a continuance of this matter to a date and time sufficient for the City to adequately respond to Applicant's November 25, 2019, Public Records Act request pursuant to Government Code, §§ 6250–6276.48 (City Request No. 0012299, "PRA Request"). The City's response to the PRA Request was incomplete and until the City provides Applicant with a complete response, Applicant will be prejudiced in its efforts to present its case against the revocation of the CUP. We hereby incorporate by this reference, and enclose, all of Applicant's prior correspondence to the City on this matter, including: (1) Applicant's July 16, 2019, letter to the Hearing Officer; (2) Applicant's October 29, 2019, letter to the Board of Zoning Appeals; (3) Applicant's November 25, 2019, PRA Request; and (4) Applicant's February 5, 2020, letter to the City Attorney.

1. INTRODUCTION AND SUMMARY OF GROUNDS FOR APPEAL.

The City of Pasadena ("City") approved the CUP on March 6, 2013. Since that time the Applicant has been availing itself of the rights granted by that entitlement, namely, allowing private group events at the former Ambassador College Campus. Its use of the CUP right has matured into a constitutionally protected, vested right. (See, e.g., *Goat Hill Tavern v. City of Costa Mesa* (1992) 6 Cal.App.4th 1519, 1525-1526 [8

2470.105 / 8633087.1

Cal.Rptr.2d 385]; see also *Tex-Cal Land Management v. Agric. Labor Relations Bd.* (1979) 24 Cal.3d 335, 343-344 [156 Cal.Rptr. 1].)

The BZA's October 31, 2019, decision rests on only one of the six possible grounds for revoking a vested CUP right: the "changed circumstances" ground. (PMC, § 17.78.090(a).) That finding cannot properly be made, because the foreseeability of purportedly "changed" conditions was a matter of record at the time the City granted the CUP. Nor do any of the changed circumstances conflict with the terms of the CUP or the Applicant's ability to comply with the CUP conditions of approval. Specifically:

(a) The CUP Entitles the Applicant to Continue Its Events at Fowler Garden, Regardless of the Elimination of the Other Venues: The BZA's main basis for terminating the CUP is that three of the four original locations for events allowed by the CUP (Merritt Mansion, Terrace Villa, and Italian Garden) are no longer available for event use, thereby concentrating the uses into the Fowler Garden. This argument reads restrictions into the CUP that are not there. Nothing in the original CUP prohibited the allotment of events from occurring on only one site. If the City were concerned about concentrating event and guest maximums on one site, it could have fashioned an appropriate condition of approval prohibiting that manner of use or placing venue-specific caps; it did not do so. This ground is insufficient to support a termination of the Applicant's vested CUP rights.

(b) Ther's Compatible Use Argument Is not Supported by the Record: The BZA concluded that allowance of event uses is inconsistent with new residential uses on the western boundary of the Fowler Garden. The City approved that residential project on April 12, 2007, some six years before it approved the CUP. The findings to approve the CUP required the City to determine compatibility, not just with existing uses, but also known *future* uses. (See, e.g. PMC, § 17.61.050.H.6.) When the City approved the CUP it was fully aware of the residential uses that would be located adjacent to the Fowler Garden. It cannot therefore invoke this ground as a basis for revoking the CUP right.

() The BZA's Assertion about Use of On-Site and Off-Site Facilities Is Devoid of Legal Support: The third ground for the BZA's revocation was based on a finding that the lack of kitchen and/or restroom amenities from adjacent facilities qualifies as grounds to revoke the CUP. In fact, the CUP contains no restrictions on how the Applicant may avail itself of amenities for its events. There is no restriction on the use of ported kitchen or bathroom amenities, nor does the CUP prohibit use of such amenities on alternative adjacent facilities. The City is prohibited from revoking the CUP on the basis of uses and activities that the CUP allows. Nor does the BZA's references to changes in the Applicant's use of parking amenities sufficient to revoke the CUP. If the Applicant seeks to avail itself of only one of many alternative parking resources, it is free to do so without facing the penalty of a revocation of its CUP right, as long as it remains in compliance with the CUP conditions.

(c) The BZA's Reference to Purported Failures to Provide Monthly Reports Is Improper in this Proceeding: As noted in the Applicant's October 29, 2019, letter to the BZA, the Applicant has been in strict compliance with the conditions of approval for the CUP since its issuance. Staff's passing attempt to undermine this

showing by invoking a purported failure to comply with a condition of approval requiring monthly reporting to the Zoning Administrator is not proper. (See Board Staff Report at p. 7.) The proper procedure for enforcing a failure to comply with a condition of approval for a CUP is an enforcement action under section 17.78.090(c). This is a revocation action, proceeding on only one criterion for revocation -- section 17.78.090(a) for purportedly "changed" circumstances.

2. DISCUSSION.

In determining whether to revoke a CUP right, the City is bound, not only by the provisions of the City of Pasadena Municipal Code ("PMC"), but also state law. As the staff report notes, PMC section 17.78.090 governs the revocation of CUPs. That ordinance sets forth limited criteria for revocation of CUPs. The BZA invoked only one of those criteria, which allows the City to revoke a CUP if

[c]ircumstances under which the permit or entitlement was granted have been changed by the applicant to a degree that one or more of the findings contained in the original permit or entitlement can no longer be made in a positive manner and the public health, safety, and welfare require the revocation.

(PMC, § 17.78.090(a).) As demonstrated in this letter, the City cannot properly invoke section 17.78.090(a) and must allow the Applicant to continue to avail itself of the rights of the CUP.

Administrative decisions -- such as this -- must rest on findings supported by substantial evidence. (Code Civ. Proc., § 1094.5.) As the courts repeatedly have concluded, substantial evidence "means more than a mere scintilla; it means 'such relevant evidence as a reasonable man might accept as adequate to support a conclusion'" The term "substantial evidence" cannot be deemed synonymous with 'any' evidence. It must be reasonable in nature, credible, and of solid value; it must actually be 'substantial' proof of the essentials which the law requires in a particular case." (*Nakasone v. Randall* (1982) 129 Cal.App.3d 757, 762 [181 Cal.Rptr. 324] quoting *United Professional Planning, Inc. v. Superior Court* (1970) 9 Cal.App.3d 377, 392-393 [88 Cal.Rptr. 551].) To support a denial, the agency "must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order." (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515 [113 Cal.Rptr. 836].)

Importantly, the standard of review for terminating CUP rights is a heightened one because it deals with vested rights. In such cases, ***no deference is to be paid to the public agency's findings.*** (*Nightlife Partners, Ltd. v. City of Beverly Hills* (2003) 108 Cal.App.4th 81, 89 [133 Cal.Rptr.2d 234].) As one court observed:

If [an administrative] decision does not substantially affect a fundamental vested right, the trial court considers only whether the findings are supported by substantial evidence

in light of the whole record.” [Citation.] If, however, “an administrative decision substantially affects a fundamental vested right, the trial court must exercise its independent judgment on the evidence and find an abuse of discretion if the findings are not supported by the weight of the evidence. [Citation.]

(*Goat Hill Tavern v. City of Costa Mesa*, *supra*, 6 Cal.App.4th at pp. 1525-1526; see also *Tex-Cal Land Management v. Agric. Labor Relations Bd.*, *supra*, 24 Cal.3d at pp. 343-344.)

In this case, the BZA’s decision to revoke the CUP under PMC section 17.78.090(a) is devoid of substantial evidence and cannot withstand the heightened scrutiny applicable to administrative decisions to terminate constitutionally vested CUP rights. The BZA’s decision rests on three substantive grounds. Each ground is devoid of legal support, as demonstrated below.

A. The CUP Entitles the Applicant to Continue Its Events at Fowler Garden, Regardless of the Elimination of the Other Venues:

The BZA’s primary contention for termination of the CUP is that three of the four original locations for events allowed by the CUP (Merritt Mansion, Terrace Villa, and Italian Garden) are no longer available for event use, leaving only the Fowler Garden open for the events contemplated by the CUP. The BZA asserts that the CUP’s originally findings -- which supported up to 32 events a year, with a maximum of 300 guests on four locations -are no longer tenable for only one event location.

The BZA’s finding reads restrictions into the CUP that are not there. Nothing in the original CUP prohibited the maximum allotment of events from occurring on only one site. Nor did the City impose venue-specific caps on the number of maximum attendees. The Applicant always was -- and still is -- entitled by the CUP to hold its events wherever it deems appropriate as long as its use is consistent with its grant under the CUP. If the City were concerned about concentrating event and guest maximums on one site, it could have fashioned an appropriate condition of approval prohibiting that manner of use or otherwise imposing venue-specific caps; it did not do so. Use of Fowler Garden as the situs of the CUP’s annual allotment of events is not precluded by the CUP, and the City has no legal basis to read that prohibition into the CUP or to purport to base a termination of the CUP rights on that ground.

If concentration of the uses granted by the CUP remains a major concern for the City, other measures exist -- short of revoking the Applicant’s constitutionally protected CUP rights -that can adequately address that concern. Specifically, an amendment can be crafted to reduce the maximum events and/or attendee caps at the Fowler Garden. The Applicant is willing to work with staff to determine a mutually acceptable maximum event/guest cap.

B. The BZA's Compatible Use Ground Is Unsupported by Substantial Evidence.

The BZA's decision also rested on a finding that allowance of event uses is inconsistent with new residential uses on the western boundary of the Fowler Garden. On that basis, the BZAs concluded that findings three, four and six no longer can be made. The "adjacent" residential uses to which the BZA refers are part of the City Ventures Grove project. Notably, the City approved that project on April 12, 2007, some six years before it approved the CUP.

The findings to approve the CUP required the City to determine compatibility, not just with existing uses, but also known *future* uses. (See, e.g. PMC, § 17.61.050.H.6.) When the City approved the CUP it was fully aware of the residential uses that would be located adjacent to the Fowler Garden, and it made an express finding that

[t]he hours of operation, noise level, maximum number of attendees permitted, and parking have been conditioned to be compatible with the surrounding existing *and proposed* residential uses.

(See CUP Staff Report, Findings (Mar. 6, 2013), at p. 13, emphasis added.) Indeed, the CUP uses were disclosed to the purchasers of the residential units that ostensibly now oppose the CUP. The Second Amendment to the Ambassador West Declaration of Covenants, Conditions and Restrictions (Oct. 31, 2013) ("CC&Rs") amends section 2.4 of the original Master HOA CC&Rs to expressly prohibit the HOA from "limiting or abridging" the commercial uses allowed by the CUP for the Fowler Garden. (CC&Rs, § 8, p. 4.) That provision goes on to state that the HOA shall not "interfere with or challenge, whether by legal challenge or otherwise the operation and/or use by the respective owner of the Merritt Mansion, Terrance Villa or Fowler Garden" (*Ibid.*) \

The revocation findings also generally reference "148 multi-family residences that have been constructed on the Ambassador College Campus, in and around areas originally approved for events." (City Council Staff Report (Feb. 10, 2020) ("Staff Report"), p. 6.) Aside from conceding that "a majority of these uses were contemplated when the CUP was approved," this finding also overlooks that the General Plan policy the BZA invokes addresses only "adjoining" incompatible uses. (See Staff Report, finding 3 [invoking Policy 25.7 of the Land Use Element of the City of Pasadena General Plan.]) As noted above, the "adjoining" residential uses were approved well before the CUP was issued, and the City knew all about those adjoining uses at that time. That is why it crafted conditions of approval designed to mitigate potential impacts to those residential uses. (See, e.g., BZA Staff Report, Attachment E (Staff Report for Approval of CUP #5535) Conditions of Approval.) The City cannot now invoke impacts to residential uses as a ground for revoking the CUP.

C. The BZA's Conclusions about Use of On-Site and Off-Site Facilities Is Devoid of Legal Support.

The third substantive ground cited by the BZA for the termination of the CUP is that use of kitchen and/or restroom amenities brought on-site or from adjacent facilities qualifies as grounds to revoke the CUP. In fact, the CUP contains no restrictions on use of on-site kitchen or bathroom amenities, nor does it prohibit use of such amenities on adjacent facilities. Nor does the reference to the change in the Applicant's use of parking amenities support a finding of denial. The Applicant is entitled to draw from any one of its allowed parking resources to meet its parking demands, as long as the Applicant does not violate the conditions of approval and terms of the CUP. The City is prohibited from revoking the CUP on the basis of uses and activities that the CUP allows.

D. The BZA's Reference to Purported Failures to Provide Monthly Reports to the Zoning Administrator Is Misplaced in this Proceeding.

As noted in the Applicant's October 29, 2019, letter to the BZA, the Applicant has been in strict compliance with the conditions of approval for the CUP since its issuance. The staff's passing attempt to undermine this showing by invoking a purported failure to comply with a condition of approval requiring monthly reporting to the Zoning Administrator is not proper. (See Board Staff Report at p. 7.) The proper procedure for enforcing a failure to comply with a condition of approval for a CUP is an enforcement action under section 17.78.090(c). This is a revocation action, proceeding on only one criterion for revocation -- section 17.78.090(a) for purportedly "changed" circumstances.

3. CONCLUSION

For the foregoing reasons, among others, the BZA's decision to revoke the CUP is unsupported by law and/or evidence. Nor can the City meet the stringent standard for revocation of a vested CUP right. In fact, upholding the BZA's decision to revoke the CUP under the grounds presented in that decision could give rise to a viable action for a regulatory taking. We respectfully request that the City Council overturn the BZA's decision to revoke the CUP.

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Terry Tornek, Mayor, and Members of the City Council
February 10, 2020
Page 7

The undersigned will be on hand at the February 10, 2020, hearing to answer any questions.

Very truly yours,



Michael W. Shonafelt

MWS

Enclosures

cc: David Reyes, Director, City of Pasadena Department of Planning and Community Development (davidreyes@cityofpasadena.net)
Michele Beal Bagneris, Esq., City Attorney (mbagneris@ci.pasadena.ca.us)
Philip Kerr, Chief Executive Officer, City Ventures, (phil@cityventures.com)
Ryan Aeh, Senior Vice President, City Ventures (ryan@cityventures.com)



NEWMAYER & DILLION LLP
ATTORNEYS AT LAW

MICHAEL W. SHONAFELT
Michael.Shonafelt@ndlf.com

File No.:
2470.105

July 16, 2019

VIA EMAIL AND HAND DELIVERY

Hearing Officer
c/o Carrie Banks
City of Pasadena
175 N. Garfield Ave.
Pasadena, CA 91101
cbanks@cityofpasadena.net

Re: Revocation of Conditional Use Permit #5530

Dear Ms. Banks,

This office represents Pasadena Lots-70, LLC ("PL-70") regarding the above-referenced conditional use permit (#5535; PLN 2010-00384) ("CUP"). Revocation of the CUP is set for a hearing before the Hearing Officer on July 17, 2019, and is item D on the agenda.

The City of Pasadena ("City") approved the CUP on March 6, 2013. Since that time, PL-70, the CUP applicant, has been availing itself of the rights granted by that entitlement, namely, allowing private group events at various locations located at the former Ambassador College Campus. Since the date of the issuance of the CUP, PL-70 and has been in strict compliance with all CUP conditions of approval.

In determining whether to revoke a CUP right, the City is bound, not only by the provisions of the City of Pasadena Municipal Code ("PMC"), but also state law. As the staff report notes, PMC section 17.78.090 governs the revocation of CUPs. That ordinance sets forth limited criteria for revocation of CUPs. Staff invoke one of those criteria, which allows the City to revoke a CUP if

[c]ircumstances under which the permit or entitlement was granted have been changed by the applicant to a degree that one or more of the findings contained in the original permit or entitlement can no longer be made in a positive manner and the public health, safety, and welfare require the revocation.

(PMC, § 17.78.090(a).) As demonstrated in this letter, the City cannot properly invoke section 17.78.090(a) and must allow PL-70 to continue to avail itself of the rights of the CUP.

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F 925 988 3290

895 DOVE STREET
5TH FLOOR
NEWPORT BEACH, CA 92660
T 949 854 7000
F 949 854 7099

3800 HOWARD HUGHES PKWY
SUITE 700
LAS VEGAS, NV 89169
T 702 777 7500
F 702 777 7599

Administrative decisions -- such as this -- must rest on findings supported by substantial evidence. (Code Civ. Proc., § 1094.5.) As the courts repeatedly have concluded, substantial evidence “means more than a mere scintilla; it means ‘such relevant evidence as a reasonable man might accept as adequate to support a conclusion’” The term “substantial evidence” “cannot be deemed synonymous with ‘any’ evidence. It must be reasonable in nature, credible, and of solid value; it must actually be ‘substantial’ proof of the essentials which the law requires in a particular case.” (*Nakasone v. Randall* (1982) 129 Cal.App.3d 757, 762 [181 Cal.Rptr. 324] quoting *United Professional Planning, Inc. v. Superior Court* (1970) 9 Cal.App.3d 377, 392-393 [88 Cal.Rptr. 551].) To support a denial, the agency “must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order.” (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515 [113 Cal.Rptr. 836].)

Importantly, the standard of review for terminating CUP rights is a heightened one because it deals with vested rights. In such cases, ***no deference is to be paid to the public agency’s findings***. (*Nightlife Partners, Ltd. v. City of Beverly Hills* (2003) 108 Cal.App.4th 81, 89 [133 Cal.Rptr.2d 234].) As one court observed:

If [an administrative] decision does not substantially affect a fundamental vested right, the trial court considers only whether the findings are supported by substantial evidence in light of the whole record.” [Citation.] If, however, “an administrative decision substantially affects a fundamental vested right, the trial court must exercise its independent judgment on the evidence and find an abuse of discretion if the findings are not supported by the weight of the evidence. [Citation.]

(*Goat Hill Tavern v. City of Costa Mesa* (1992) 6 Cal.App.4th 1519, 1525-1526 [8 Cal.Rptr.2d 385]; see also *Tex-Cal Land Management v. Agric. Labor Relations Bd.* (1979) 24 Cal.3d 335, 343-344 [156 Cal.Rptr. 1].)

In this case, staff’s recommendation to revoke the CUP under PMC section 17.78.090(a) is devoid of substantial evidence and cannot withstand the heightened scrutiny applicable to administrative decisions to terminate CUP rights. Staff cite three reasons to revoke the CUP. Each reason is devoid of legal support, as demonstrated below.

(a) The CUP Entitles PL-70 to Continue Its Events at Fowler Garden, Regardless of the Elimination of the Other Venues: Staff’s main contention for termination of the CUP is that three of the four original locations for events allowed by the CUP (Merritt Mansion, Terrance Villa, and Italian Garden) are no longer available for event use, leaving only the Fowler Garden open for the events contemplated by the CUP. Staff contend that the CUP’s originally findings -- which supported up to 32 events a year, with a maximum of 300 guests on four locations -- are no longer tenable for only one event location. The problem with the staff’s argument is that it reads restrictions into the CUP that are not there. Nothing in the original CUP

prohibited the maximum allotment of events from occurring on only one site. PL-70 always was -- and still is -- entitled by the CUP to hold its events wherever it deems appropriate as long as its use is consistent with its grant under the CUP. If the City were concerned about concentrating event and guest maximums on one site, it could have fashioned an appropriate condition of approval prohibiting that manner of use; it did not do so. Use of Fowler Garden as the situs of the CUP's annual allotment of events is not precluded by the CUP, and the City has no legal basis to read that prohibition into the CUP or to purport to base a termination of the CUP rights on that ground.

(b) Staff's Compatible Use Argument Is Baseless: Staff next concludes that allowance of event uses is inconsistent with new residential uses on the western boundary of the Fowler Garden. On that basis, staff conclude that findings three, four and six no longer can be made. The residential uses to which staff refers are part of the City Ventures Grove project. Notably, the City approved that project on April 12, 2007, some six years before it approved the CUP. The findings to approve the CUP required the City to determine compatibility, not just with existing uses, but also known *future* uses. (See, e.g. PMC, § 17.61.050.H.6.) When the City approved the CUP it was fully aware of the residential uses that would be located adjacent to the Fowler Garden, and it made an express finding that "[t]he hours of operation, noise level, maximum number of attendees permitted, and parking have been conditioned to be compatible with the surrounding existing *and proposed* residential uses." (See CUP Staff Report, Findings (Mar. 6, 2013), at p. 13, emphasis added.) Indeed, the CUP uses were disclosed to the purchasers of the residential units. The Second Amendment to the Ambassador West Declaration of Covenants, Conditions and Restrictions (Oct. 31, 2013) ("CC&Rs") amends section 2.4 of the original Master HOA CC&Rs to expressly prohibit the HOA from "limiting or abridging" the commercial uses allowed by the CUP for the Fowler Garden. (CC&Rs, § 8, p. 4.) That provision goes on to state that the HOA shall not "interfere with or challenge, whether by legal challenge or otherwise the operation and/or use by the respective owner of the Merritt Mansion, Terrance Villa or Fowler Garden" (*Ibid.*)

(c) Staff's Contention about Use of On-Site and Off-Site Facilities Is Devoid of Legal Support: The third ground cited by staff for recommending termination of the CUP is that use of kitchen and/or restroom amenities brought on-site or from adjacent facilities qualifies as grounds to revoke the CUP. In fact, the CUP contains no restrictions on use of on-site kitchen or bathroom amenities, nor does it prohibit use of such amenities on adjacent facilities. The City is prohibited from revoking the CUP on the basis of uses and activities that the CUP allows.

For the foregoing reasons, among others, staff's recommendation of revocation of the CUP is unsupported by law and/or evidence. Nor can the City meet the stringent standard for revocation of a vested CUP right. The City must refrain from following staff's recommendation and affirm PL-70's right to continue the uses granted by the CUP.

Hearing Officer
July 16, 2019
Page 4

Representatives of PL-70 will be on hand at the July 17, 2019, hearing to answer any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read 'M Shonafelt', with a long horizontal flourish extending to the right.

Michael W. Shonafelt

MWS

cc:

David Reyes, Director, City of Pasadena Department of Planning and Community
Development (davidreyes@cityofpasadena.net)
Michele Beal Bagneris, Esq., City Attorney (mbagneris@ci.pasadena.ca.us)
Joe Oftelie, Vice President of Development, City Ventures, LLC.

MWS

2470.105 / 8288744.1



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895 Dove Street
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Newport Beach, CA 92660
949 854 7000

October 29, 2019

Michael W. Shonafelt
Michael.Shonafelt@ndlf.com

VIA EMAIL AND HAND DELIVERY

Luis Rocha
Board of Zoning Appeals
City of Pasadena
175 N. Garfield Ave.
Pasadena, CA 91101
lrocha@cityofpasadena.net

Re: Revocation of Conditional Use Permit #5530

Dear Mr. Rocha,

This office represents Pasadena Lots-70, LLC ("Applicant") regarding the above-referenced conditional use permit (#5535; PLN 2010-00384) ("CUP"). This letter presents our legal grounds for the appeal of the Hearing Officer's July 17, 2019, revocation of the CUP. This matter is set as item 2.A. on the October 30, 2019, agenda.

1. INTRODUCTION AND SUMMARY OF GROUNDS FOR APPEAL.

The City of Pasadena ("City") approved the CUP on March 6, 2013. Since that time the Applicant has been availing itself of the rights granted by that entitlement, namely, allowing private group events at the former Ambassador College Campus. Its use of the CUP right has matured into a constitutionally protected, vested right. (See, e.g., *Goat Hill Tavern v. City of Costa Mesa* (1992) 6 Cal.App.4th 1519, 1525-1526 [8 Cal.Rptr.2d 385]; see also *Tex-Cal Land Management v. Agric. Labor Relations Bd.* (1979) 24 Cal.3d 335, 343-344 [156 Cal.Rptr. 1].)

The Hearing Officer's July 17, 2019, revocation rests on only one of the six possible grounds for revoking a vested CUP right: the "changed circumstances" ground. (PMC, § 17.78.090(a).) That finding cannot properly be made, because the foreseeability of purportedly "changed" conditions was a matter of record at the time the City granted the CUP. Nor do any of the changed circumstances conflict with the terms of the CUP or the Applicant's ability to comply with the CUP conditions of approval. Specifically:

(a) The CUP Entitles the Applicant to Continue Its Events at Fowler Garden, Regardless of the Elimination of the Other Venues: The Hearing Officer's main basis for terminating the CUP is that three of the four original locations for events allowed by the CUP (Merritt Mansion, Terrace Villa, and Italian Garden) are no longer available for event use, thereby concentrating the uses into the Fowler Garden. This argument reads restrictions into the CUP that are not there. Nothing in the original CUP prohibited the allotment of events from occurring on only one site. If the City were concerned about concentrating event and guest maximums on one site, it could have fashioned an appropriate condition of approval prohibiting

that manner of use or placing venue-specific caps; it did not do so. This ground is insufficient to support a termination of the Applicant's vested CUP rights.

(b) The Hearing Officer's Compatible Use Argument Is not Supported by the Record: The Hearing Officer concluded that allowance of event uses is inconsistent with new residential uses on the western boundary of the Fowler Garden. The City approved that residential project on April 12, 2007, some six years before it approved the CUP. The findings to approve the CUP required the City to determine compatibility, not just with existing uses, but also known *future* uses. (See, e.g. PMC, § 17.61.050.H.6.) When the City approved the CUP it was fully aware of the residential uses that would be located adjacent to the Fowler Garden. It cannot therefore invoke this ground as a basis for revoking the CUP right.

(c) The Hearing Officer's Assertion about Use of On-Site and Off-Site Facilities Is Devoid of Legal Support: The third ground for the Hearing Officer's revocation was based on a finding that the lack of kitchen and/or restroom amenities from adjacent facilities qualifies as grounds to revoke the CUP. In fact, the CUP contains no restrictions on how the Applicant may avail itself of amenities for its events. There is no restriction on the use of ported kitchen or bathroom amenities, nor does the CUP prohibit use of such amenities on alternative adjacent facilities. The City is prohibited from revoking the CUP on the basis of uses and activities that the CUP allows. Nor does the Hearing Officer's references to changes in the Applicant's use of parking amenities sufficient to revoke the CUP. If the Applicant seeks to avail itself of only one of many alternative parking resources, it is free to do so without facing the penalty of a revocation of its CUP right, as long as it remains in compliance with the CUP conditions.

(d) The Hearing Officer's Reference to Purported Failures to Provide Monthly Reports Is Improper in this Proceeding: As noted in the Applicant's July 16, 2019, letter to the Hearing Officer, the Applicant has been in strict compliance with the conditions of approval for the CUP since its issuance. Staff's passing attempt to undermine this showing by invoking a purported failure to comply with a condition of approval requiring monthly reporting to the Zoning Administrator is not proper. (See Board Staff Report at p. 7.) The proper procedure for enforcing a failure to comply with a condition of approval for a CUP is an enforcement action under section 17.78.090(c). This is a revocation action, proceeding on only one criterion for revocation -- section 17.78.090(a) for purportedly "changed" circumstances.

2. DISCUSSION.

In determining whether to revoke a CUP right, the City is bound, not only by the provisions of the City of Pasadena Municipal Code ("PMC"), but also state law. As the staff report notes, PMC section 17.78.090 governs the revocation of CUPs. That ordinance sets forth limited criteria for revocation of CUPs. The Hearing Officer invoked only one of those criteria, which allows the City to revoke a CUP if

[c]ircumstances under which the permit or entitlement was granted have been changed by the applicant to a degree that one or more of the findings contained in the original permit or entitlement can no longer be made in a positive manner and the public health, safety, and welfare require the revocation.

(PMC, § 17.78.090(a).) As demonstrated in this letter, the City cannot properly invoke section 17.78.090(a) and must allow the Applicant to continue to avail itself of the rights of the CUP.

Administrative decisions -- such as this -- must rest on findings supported by substantial evidence. (Code Civ. Proc., § 1094.5.) As the courts repeatedly have concluded, substantial evidence "means more than a mere scintilla; it means 'such relevant evidence as a reasonable man might accept as adequate to support a conclusion'" The term "substantial evidence" cannot be deemed synonymous with 'any' evidence. It must be reasonable in nature, credible, and of solid value; it must actually be 'substantial' proof of the essentials which the law requires in a particular case." (*Nakasone v. Randall* (1982) 129 Cal.App.3d 757, 762 [181 Cal.Rptr. 324] quoting *United Professional Planning, Inc. v. Superior Court* (1970) 9 Cal.App.3d 377, 392-393 [88 Cal.Rptr. 551].) To support a denial, the agency "must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order." (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515 [113 Cal.Rptr. 836].)

Importantly, the standard of review for terminating CUP rights is a heightened one because it deals with vested rights. In such cases, ***no deference is to be paid to the public agency's findings***. (*Nightlife Partners, Ltd. v. City of Beverly Hills* (2003) 108 Cal.App.4th 81, 89 [133 Cal.Rptr.2d 234].) As one court observed:

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In this case, the Hearing Officer's decision to revoke the CUP under PMC section 17.78.090(a) is devoid of substantial evidence and cannot withstand the heightened scrutiny applicable to administrative decisions to terminate constitutionally vested CUP rights. The Hearing Officer's decision rests on three substantive grounds. Each ground is devoid of legal support, as demonstrated below.

A. The CUP Entitles the Applicant to Continue Its Events at Fowler Garden, Regardless of the Elimination of the Other Venues:

The Hearing Officer's primary contention for termination of the CUP is that three of the four original locations for events allowed by the CUP (Merritt Mansion, Terrace Villa, and Italian Garden) are no longer available for event use, leaving only the Fowler Garden open for the events contemplated by the CUP. The Hearing Officer asserts that the CUP's originally findings -- which supported up to 32 events a year, with a maximum of 300 guests on four locations -- are no longer tenable for only one event location.

The Hearing Officer's finding reads restrictions into the CUP that are not there. Nothing in the original CUP prohibited the maximum allotment of events from occurring on only one site. Nor did the City impose venue-specific caps on the number of maximum attendees. The Applicant always was -- and still is -- entitled by the CUP to hold its events wherever it deems appropriate as long as its use is consistent with its grant under the CUP. If the City were concerned about concentrating event and guest maximums on one site, it could have fashioned

an appropriate condition of approval prohibiting that manner of use or otherwise imposing venue-specific caps; it did not do so. Use of Fowler Garden as the situs of the CUP's annual allotment of events is not precluded by the CUP, and the City has no legal basis to read that prohibition into the CUP or to purport to base a termination of the CUP rights on that ground.

If concentration of the uses granted by the CUP remains a major concern for the City, other measures exist – short of revoking the Applicant's constitutionally protected CUP rights – that can adequately address that concern. Specifically, an amendment can be crafted to reduce the maximum events and/or attendee caps at the Fowler Garden. The Applicant is willing to work with staff to determine a mutually acceptable maximum event/guest cap.

B. The Hearing Officer's Compatible Use Ground Is Unsupported by Substantial Evidence.

The Hearing Officer's decision also rested on a finding that allowance of event uses is inconsistent with new residential uses on the western boundary of the Fowler Garden. On that basis, the Hearing Officers concluded that findings three, four and six no longer can be made. The "adjacent" residential uses to which the Hearing Officer refers are part of the City Ventures Grove project. Notably, the City approved that project on April 12, 2007, some six years before it approved the CUP.

The findings to approve the CUP required the City to determine compatibility, not just with existing uses, but also known *future* uses. (See, e.g. PMC, § 17.61.050.H.6.) When the City approved the CUP it was fully aware of the residential uses that would be located adjacent to the Fowler Garden, and it made an express finding that

[t]he hours of operation, noise level, maximum number of attendees permitted, and parking have been conditioned to be compatible with the surrounding existing *and proposed* residential uses.

(See CUP Staff Report, Findings (Mar. 6, 2013), at p. 13, emphasis added.) Indeed, the CUP uses were disclosed to the purchasers of the residential units that ostensibly now oppose the CUP. The Second Amendment to the Ambassador West Declaration of Covenants, Conditions and Restrictions (Oct. 31, 2013) ("CC&Rs") amends section 2.4 of the original Master HOA CC&Rs to expressly prohibit the HOA from "limiting or abridging" the commercial uses allowed by the CUP for the Fowler Garden. (CC&Rs, § 8, p. 4.) That provision goes on to state that the HOA shall not "interfere with or challenge, whether by legal challenge or otherwise the operation and/or use by the respective owner of the Merritt Mansion, Terrance Villa or Fowler Garden" (*Ibid.*) \

The revocation findings also generally reference "148 multi-family residences that have been constructed on the Ambassador College Campus, in and around areas originally approved for events." (Board of Zoning Appeals Staff Report (Oct. 30, 2019) ("Board Staff Report"), p. 6.) Aside from conceding that "a majority of these uses were contemplated when the CUP was approved," this finding also overlooks that the General Plan policy the Hearing Officer invokes addresses only "adjoining" incompatible uses. (See Board Staff Report, at p. 9, finding 3 [invoking Policy 25.7 of the Land Use Element of the City of Pasadena General Plan.]) As noted above, the "adjoining" residential uses were approved well before the CUP was issued, and the City knew all about those adjoining uses at that time. That is why it crafted conditions of approval designed to mitigate potential impacts to those residential uses. (See, e.g., Board

Staff Report, Attachment E (Staff Report for Approval of CUP #5535] Conditions of Approval.)
The City cannot now invoke impacts to residential uses as a ground for revoking the CUP.

C. The Hearing Officer's Conclusions about Use of On-Site and Off-Site Facilities Is Devoid of Legal Support.

The third substantive ground cited by the Hearing Officer for the termination of the CUP is that use of kitchen and/or restroom amenities brought on-site or from adjacent facilities qualifies as grounds to revoke the CUP. In fact, the CUP contains no restrictions on use of on-site kitchen or bathroom amenities, nor does it prohibit use of such amenities on adjacent facilities. Nor does the reference to the change in the Applicant's use of parking amenities support a finding of denial. The Applicant is entitled to draw from any one of its allowed parking resources to meet its parking demands, as long as the Applicant does not violate the conditions of approval and terms of the CUP. The City is prohibited from revoking the CUP on the basis of uses and activities that the CUP allows.

D. The Hearing Officer's Reference to Purported Failures to Provide Monthly Reports to the Zoning Administrator Is Misplaced in this Proceeding.

As noted in the Applicant's July 16, 2019, letter to the Hearing Officer, the Applicant has been in strict compliance with the conditions of approval for the CUP since its issuance. The staff's passing attempt to undermine this showing by invoking a purported failure to comply with a condition of approval requiring monthly reporting to the Zoning Administrator is not proper. (See Board Staff Report at p. 7.) The proper procedure for enforcing a failure to comply with a condition of approval for a CUP is an enforcement action under section 17.78.090(c). This is a revocation action, proceeding on only one criterion for revocation -- section 17.78.090(a) for purportedly "changed" circumstances.

3. CONCLUSION

For the foregoing reasons, among others, the Hearing Officer's decision to revoke the CUP is unsupported by law and/or evidence. Nor can the City meet the stringent standard for revocation of a vested CUP right. In fact, upholding the Hearing Officer's decision to revoke the CUP under the grounds presented in that decision could give rise to a viable action for a regulatory taking. We respectfully request that the Board of Zoning Appeals overturn the Hearing Officer's decision to revoke the CUP.

Representatives of the Applicant will be on hand at the October 30, 2019, hearing to answer any questions.

Very truly yours,



Michael W. Shonafelt

MWS

cc: David Reyes, Director, City of Pasadena Department of Planning and Community
Development (davidreyes@cityofpasadena.net)
Michele Beal Bagneris, Esq., City Attorney (mbagneris@ci.pasadena.ca.us)
Joe Oftelie, Vice President of Development, City Ventures, LLC. (joe@cityventures.com)



Newmeyer & Dillion LLP
895 Dove Street
Fifth Floor
Newport Beach, CA 92660
949 854 7000

November 25, 2019

Michael W. Shonafelt
Michael.Shonafelt@ndlf.com

**VIA CERTIFIED MAIL,
ONLINE PORTAL &
FASCIMILE 626-744-4190 W/ ENCL.**

Mark Jomsky
City Clerk
City of Pasadena
175 N. Garfield Ave.
Pasadena, CA 91101

Re: Request for All Public Records Concerning Conditional Use Permit No. 5535

Dear Mr. Jomsky,

This office represents Pasadena Lots-70, LLC ("PL-70") regarding the above-referenced conditional use permit (No. 5535; PLN 2010-00384) ("CUP"). The City of Pasadena ("City") approved the CUP on March 6, 2013. On October 30, 2019, the City of Pasadena Board of Zoning Appeals took action to revoke the CUP. PL-70 timely appealed that decision to the City Council and that appeal is pending ("Appeal").

PL-70 hereby requests certain public records from the City regarding the CUP pursuant to the Public Records Act (Gov. Code, § 6250, et seq.) ("PRA"). This PRA request seeks the following categories of documents:

1. The complete administrative record for the Appeal/revocation of the CUP.
2. Any and all public notices related to the Appeal/revocation of the CUP.
3. Any and all public comments, correspondence and/or complaints received by the City, its elected or appointed officials, its various departments and/or employees/representatives related to the Appeal/revocation of the CUP.
4. Any and all transcripts or recordings related to the Appeal/revocation of the CUP.
5. Any and all reports or recommendations made by any relevant advisory committee related to the Appeal/revocation of the CUP.

6. Any and all documents required by statute, executive order, agency rule, or other local, state, or federal rule or regulation to be considered or to be made public related to the Appeal/revocation of the CUP.
7. Any and all internal City memoranda, email correspondence and/or communications related to the Appeal/revocation of the CUP.
8. Any and all documents and/or communications between or among the City and any other party or parties related to the Appeal/revocation of the CUP.
9. Any and all other documents and/or communications that have been or will be referenced in evaluating the Appeal/revocation of the CUP.

The above-mentioned documents are considered "public records" as defined in Government Code section 6250 subdivision (d). We are prepared to pay the applicable copying charges for the requested documents upon demand from the City. We hope that this stated purpose will aid the City in "identify[ing] records and information that are responsive to the request or to the purpose of the request, if stated." (See *id.*, § 6253.1, subd. (a).)

We request that you provide the responsive information within ten (10) days of receipt of this letter, or earlier, if possible. Should you deny any part of this request, please provide a written response describing the legal authority or authorities on which you relied for your determination to deny the request. Please also describe where the requested records are located and provide suggestion for overcoming any practical basis for denying access to the records or information sought. If the records are located with another public agency, please forward a copy of this request to that department and advise this office of your doing so. Finally, please provide the undersigned with the anticipated cost of duplicating the requested public records prior to incurring the direct costs of their duplication.

Thank you for your anticipated cooperation and attention to this matter.

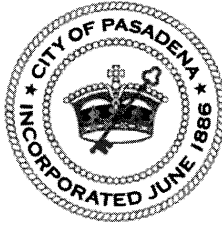
Very truly yours,



Michael W. Shonafelt

cc:

David Reyes, Director, City of Pasadena Department of Planning and Community Development
(davidreyes@cityofpasadena.net)
Michele Beal Bagneris, Esq., City Attorney (mbagneris@ci.pasadena.ca.us)
Joe Otfelie, Vice President of Development, City Ventures, LLC.



CITY OF PASADENA
FAX (626) 744-4190

PUBLIC RECORDS ACT REQUEST FORM

DATE: November 25, 2019

REQUESTOR	Michael W. Shonafelt, Esq., Newmeyer & Dillion LLP
ADDRESS	895 Dove Street, 5th Floor
CITY, STATE, ZIP	Newport Beach, CA 92660
TELEPHONE #	949-271-7196
E-MAIL ADDRESS	Michael.Shonafelt@ndlf.com

Please provide a written description of the records you are requesting below. The more specific you are, the easier it will be to determine if such records exist in city files.

This public record request is made pursuant to the Public Records Act (Gov. Code, § 6250, et seq.) and seeks the following categories of documents: (1) The complete administrative record for the Appeal/revocation of the conditional use permit No. 5535; PLN 2010-00384 ("CUP"). (2) Any and all public notices related to the Appeal/revocation of the CUP. (3) Any and all public comments, correspondence and/or complaints received by the City, its elected or appointed officials, its various departments and/or employees/representatives related to the Appeal/revocation of the CUP. (4) Any and all transcripts or recordings related to the Appeal/revocation of the CUP. (5) Any and all reports or recommendations made by any relevant advisory committee related to the Appeal/revocation of the CUP. (6) Any and all documents required by statute, executive order, agency rule, or other local, state, or federal rule or regulation to be considered or to be made public related to the Appeal/revocation of the CUP. (7) Any and all internal City memoranda, email correspondence and/or communications related to the Appeal/revocation of the CUP. (8) Any and all documents and/or communications between or among the City and any other party or parties related to the Appeal/revocation of the CUP. (9) Any and all other documents and/or communications that have been or will be referenced in evaluating the Appeal/revocation of the CUP.



Please note that the California Public Records Act (Government Code Section 6250 et. seq.) applies to writings in city files "containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." The City will provide those documents to you, unless they are exempt from disclosure under the Public Records Act or other legal reason prevents the documents from being disclosed to the public.

Public Records Request

Thank you for your public records request to the City of Pasadena. The city will promptly research your request and contact you should there be any questions. Documents will be prepared and delivered by each department via the mode requested (USMAIL).

The complete administrative record for the Appeal/revocation of the conditional use permit No. 5535.
See records described in attachment.

Your public records request number is: 0012299
Please refer to this number if contacting the city regarding this request.

Please print this page for your records.
If you provided an email address you will receive an email confirmation soon.

[start over](#)[submit paper form](#)

Viola R. Fennell

From: Right Fax
Sent: Monday, November 25, 2019 4:15 PM
To: Viola R. Fennell
Subject: Your fax has been successfully sent to City Clerk at 6267444190.

Your fax has been successfully sent to City Clerk at 6267444190.

Account: 2470.105

11/25/2019 4:13:48 PM Transmission Record
Sent to 916267444190 with remote ID ""
Result: (0/339;0/0) Success
Page record: 1 - 5
Elapsed time: 01:12 on channel 5



Newmeyer & Dillion LLP
895 Dove Street
Fifth Floor
Newport Beach, CA 92660
949 854 7000

February 5, 2020

Michael W. Shonafelt
Michael.Shonafelt@ndlf.com

**VIA CERTIFIED MAIL &
E-MAIL MBAGNERIS@CI.PASADENA.CA.US**

Michele Beal Bagneris, Esq.
City Attorney
City of Pasadena
100 N. Garfield Avenue Room N-210
Pasadena, CA 91101

Re: Notice of Failure to Properly Respond to Public Records Request No. 0012299 & Request for 30-day Extension of February 10, 2020, Revocation Hearing Conditional Use Permit No. 5535; PLN2010-00384

Dear Ms. Bagneris,

This office continues to represent Pasadena Lots-70, LLC ("PL-70"), regarding revocation of the above-referenced Conditional Use Permit No. 5535; PLN 2010-00384 ("CUP") and the related public records request made pursuant to the California Public Records Act ("PRA") (Gov. Code, §§ 6250–6276.48),¹ City Request No. 0012299 ("PRA Request").

This letter provides the City of Pasadena ("City") with formal notice of its failure to properly respond to PL-70's PRA Request. As a result, PL-70 seeks a minimum 30-day extension of the CUP revocation hearing, presently set for February 10, 2020, to allow the City to conduct a further search of its files.

PL-70 requests that the City confirm that it will provide all responsive public records and grant the reasonable 30-day extension of the CUP hearing. PL-70 asks that the City provide this written confirmation by 5:00 p.m. (PST), Friday, February 7, 2020. If the City fails to do so, PL-70 may need to pursue other avenues for recourse due to the City's failure to comply with its clear and present duties under the PRA.

For brief background, in or around July 2019, the City held the first of several hearings in the administrative process for the CUP's revocation. Following that initial hearing, the City Board of Zoning Appeals heard the CUP's revocation in or around October 2019.

¹ All future references are to the Government Code unless otherwise stated.

To exhaust administrative remedies, PL-70 timely appealed all determinations. Shortly thereafter, PL-70 sent the City a PRA Request. The PRA Request sought the complete administrative record for the CUP's revocation, including any and all documents comprising internal emails, written memoranda and other written communications to and from the City. PL-70 submitted that request to the City on November 25, 2019.

On or about December 19, 2019, the City responded with a scant collection of documents already in PL-70's possession. Notably absent were any documents comprising internal communications, memoranda, emails and correspondence to and from the City concerning the revocation of the CUP. As a result, PL-70 must now prepare for a hearing that may deprive it of its long-held CUP without being afforded a full and fair opportunity to respond to the contents of the complete administrative record. For those reasons, among others, PL-70 respectfully requests a minimum 30-day extension of the CUP's final revocation hearing to allow the City to fully respond to our request.

The City is under a clear and present constitutional and statutory duty to provide the public with prompt access to its own information. The PRA requires a prompt response within ten days of receipt of the initial PRA request:

[U]pon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor.

(§ 6253, subd. (c).) Only in "unusual circumstances" may the City extend that timeframe. (*Ibid.*) To do so, the City must provide written notice, setting forth the reasons for the extension and the date on which a determination is to be dispatched. (*Ibid.*) Under no circumstances is such an extension to go beyond 14 days. (See *ibid.*) In this case, the City utilized several extensions, only to supply PL-70 with a mere fragment of the documents that should be included in the administrative record.

Again, PL-70 requests that the City immediately provide the complete administrative record and confirm, in writing, the requested minimum 30-day extension of the CUP's revocation hearing. PL-70 requests this written confirmation from the City by **5:00 p.m., Friday, February 7, 2020.**

If the City fails provide this written confirmation, PL-70 will be forced to pursue additional remedies to address the City's failure to comply. It bears noting that an award of attorneys' fees and costs is available to a prevailing petitioner under the PRA. (See § 6259.) A petitioner prevails under the PRA only "if the litigation substantially contributed or was demonstrably influential in setting in motion the process which eventually achieved the desired result." (See *Garcia v. Bellflower Unified Sch. Dist. Governing Bd.* (2013) 220 Cal.App.4th 1058, 1063 [163 Cal.Rptr.3d 689, 692].)

Michele Beal Bagneris, Esq.
February 5, 2020
Page 3

Should the City have any questions regarding the above, please do not hesitate to contact the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read "M Shonafelt", with a stylized flourish at the end.

Michael W. Shonafelt

MWS:vrf