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VIA E-MAIL

March 21, 2022

Mayor Victor Gordo
Vice-Mayor Andy Wilson &
Honorable Members of the City Council
Pasadena City Hall
100 North Garfield Avenue
Pasadena, CA 91101

Re: Agenda Item No 12: Appeal of HPC Denial of Application for Landmark Designation of 801 S. San Rafael Avenue (Case #: DHP2021-00106)

Dear Mayor Gordo, Vice-Mayor Wilson and Honorable Members of the City Council:

Our Firm represents the owners of 801 S. San Rafael Avenue here in Pasadena. This letter is filed on their behalf to oppose and object directly, unequivocally, and vociferously to Pasadena Heritage's appeal of the denial of its application for landmark designation of their house, which is on your March 21, 2022 agenda as Item No. 12.

A. Introduction

As the October 20 Decision Letter makes clear, the HPC expressly found that (1) not enough time had passed to support any such designation, (2) there is no scholarly judgment to support it, which is required under the applicable criteria, (3) the integrity of the building and site has been lost and thus cannot support it, (4) there is no nexus between when Mr. Van de Kamp

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achieved significance and when he lived in the house, and (5) the property owners strongly oppose it because it will diminish the economic value of their property. Each finding was supported by expert testimony and substantial evidence. In fact, all of the expert testimony presented at the October 19 HPC hearing proved there is no basis for any such designation under any national, state, or local criteria. There is, therefore, no basis for granting the appeal and approving the application.

More importantly, the City of Pasadena has never designated a property as a landmark over the objections of the property owner. To the contrary, the City's policy and practice has been not to grant any such approval; and, until now, it has it been Staff's practice not to recommend to the City Council approval of any landmark designation without the consent of the property owner. For example, the last time this was an issue, Staff did not recommend approval of the nomination of 1383 – 1399 E. Washington Blvd. and 1345 – 1369 N. Hill Avenue, despite the Historic Preservation Commission's recommendation to designate it because the owner objected. The City Council also did not approve the Commission's recommendation because the owner did not consent.

As will be explained in more detail below, in this case, Staff twice denied PH's applications in this matter before switching its positions as a result of what we believe was unwarranted political pressure in violation of Section 411 of the City's Charter. Each time, staff made the exact same findings as the HPC. At no point, therefore, has the application been supported by any evidence, let alone substantial evidence, that meets the required criteria for any such designation.

Last, the owners are not unaware of who Mr. Van de Kamp was, or the friendships he had here. They also are aware that his childhood home on La Loma Road was one of the reasons the City Council designated the La Loma Bridge after him. However, that home has never been designated as a landmark, nor has the one on Prospect Terrace where he lived as Attorney General, even though either of those homes probably have a better chance of qualifying. Nonetheless, the owners offered to have a commemorative plaque placed on their property out of respect for Mr. Van de Kamp. Pasadena Heritage rejected their offer.

The owners thus strongly oppose any such designation and the resulting deprivation of their constitutionally protected private property rights that comes with it.

B. Request for Recusals

Before addressing the specifics of Pasadena Heritage's appeal and application, we request that Councilmembers Madison and Wilson recuse themselves from the hearing.

In particular, as you know, city councils and commissions often act in an adjudicatory capacity in a role similar to judges when deciding applications for land use permits. *Woody's Group, Inc. v. City of Newport Beach*, 233 Cal. App. 4th 1012, 1021 (2015). When so doing, they are required to be "neutral and unbiased" to ensure that the hearing process is fair. *Id.*

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Under California law, if a member of a city council or planning commission shows an “unacceptable probability of bias,” he or she violates the applicant’s due process rights. As the Court of Appeals observed in *Nightlife Partners, Ltd. v. City of Beverly Hills*, 108 Cal. App. 4th 81 (2003), “the broad applicability of administrative hearings to the various rights and responsibilities of citizens and businesses, and the undeniable public interest in fair hearings in the administrative adjudication arena, militate in favor of assuring that such hearings are fair.” *Id.* at 90. *See also Nasha, L.L.C. v City of Los Angeles*, 125 Cal. App. 4th 470, 483 (2004) (“Procedural due process in the administrative setting requires that the hearing be conducted” . . . “before a reasonably impartial, noninvolved reviewer.”); *Gai v. City of Selma*, 68 Cal. App. 4th 213, 219 (1998) (concluding that the Planning Commission’s decision was tainted by bias; prehearing bias of one planning commission member was enough to invalidate a planning commission decision that had overruled an approval of a project).

California courts also have provided numerous examples of what actions or statements constitute an “unacceptable probability of bias.” For example, in *Woody’s Group, supra*, a councilmember prepared remarks before the city council meeting and gave an “extraordinarily well-organized, thoughtful and well-reserved presentation on why the planning commission decision needed to be overturned.” *Woody’s Group, Inc.*, 233 Cal. App. 4th at 1019. Because the councilmember “took ‘a position against the project,’” there was an unacceptable probability of bias on the part of that councilmember that violated the restaurant owner’s right to a fair hearing. *Id.* at 1022-23. Furthermore, the fact that he had written out his speech to the council demonstrated the falsity of his self-serving comment at the hearing that he had no bias in the matter. *Id.* at 1023.

Similarly, in *Nasha, supra*, prior to the appeal hearing on a proposed development project, one of the planning commissioners authored a published article that attacked the project under consideration, describing it as a “threat” to a wildlife corridor. *Nasha*, 125 Cal. App. 4th at 476, 483. The Court found that the article “clearly advocated a position against the project,” and that the Commissioner’s authorship of it showed an “unacceptable probability of actual bias,” and thus was sufficient to preclude the decision maker from serving as a “reasonably impartial, noninvolved reviewer.” *Id.* at 484 (noting that the commissioner “clearly” should have recused himself from hearing the matter). The Court of Appeals concluded that the claim of bias was “well founded,” and that the developer had established an “unacceptable probability of actual bias.” *Id.* at 473, 481.

Here, the Appellant and Applicant is Pasadena Heritage. For years, Councilmember Madison has been a strong financial supporter and sponsor of Pasadena Heritage, donating considerable sums of money to it. For example, in 2017, he was a “Gold Sponsor of the 40th Anniversary Party, which we understand was a \$2,500 donation. *See*, Exhibit A. According to Pasadena Now, he also attended the October 7, 2017 Black Tie Dinner for it. Similarly, in 2019, he was a “Leader Sponsor” of the “Celebrating 9,136 Days” campaign, which we understand was a tribute to Sue Mossman for having worked that long as the Executive Director of Pasadena Heritage. *Id.* We understand that was another \$2,500 donation and that Sue Mossman already has spoken with him about this very appeal. In 2020, we further understand he was a sponsor of the Colorado Street Bridge Celebration. These are a few

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examples of significant dollar donations to and support for the Appellant and Applicant on the very matter before you tonight.

On top of which are Councilmember Madison's comments at the November 1, 2021 hearing on his request to call for review the Historic Preservation Commission's unanimous October 19 decision denying Pasadena Heritage's application. There, he expressly and directly challenged the HPC's finding that the property had not retained its integrity over the years by blaming the property owners of destroying the integrity of the house when in fact no such evidence exists; particularly since the house is not now, nor ever has been designated. Further, he repeatedly called them "developers" rather than the homeowners they be.

As for Councilmember Wilson, as his biography expressly states, "He has a long history of service with local not for profits including leadership roles at Pasadena Heritage, ..." In those roles he raised considerable sums of money for Pasadena Heritage, which is functionally no different than Councilmember Madison's on-going financial support for it.

Were this a private project and Pasadena Heritage simply providing public comment to advocate for its preservation position, it may be different because there would be a different real party in interest under California law. That, however is not the case. Here, Pasadena Heritage is the real party interest as the applicant and appellant. It is the party upon whom the entitlements are being requested.

As such, taken together, there is more than enough evidence of an "unacceptable probability of bias" that warrants both Councilmembers recusal to protect our client's due process rights and the integrity of the process. Therefore, to avoid violating our clients' due process rights, we request that both of them recuse themselves from the hearing and proceedings accordingly.

C. The Ross Family Buys The House

Rodney Ross and Deborah Rachlin Ross ("Ross Family") are a longstanding interracial family with deep roots in Pasadena who bought the home located at 801 S. San Rafael Avenue (the "Property") with the desire to fix it up and to enjoy living there in peace and quiet.

When they purchased the Property in June 2019, it was *not* listed as a City Historic Landmark or listed as potentially eligible on the City Planning Department eligibility list. The Property also was not listed on the Pasadena Heritage "watch list," which identifies listed or eligible historical resources throughout the City.

In addition, the seller – Andrea van de Kamp -- did not disclose that it was eligible for designation, nor had she ever sought it while living there. To the contrary, on April 18, 2019, Ms. Van de Kamp signed the Seller's Disclosures required under Civil Code 1102, et. seq., and expressly represented to Mr. and Mrs. Ross that the house was not historic. See, Exhibit B.

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She further represented that there were no “past or present known material facts or other significant items affecting the value or desirability of the Property not otherwise disclosed to Buyer.” *Id.* And yet, today, she has filed a letter with you replete with facts known to her at the time of the sale that she says supports landmark designation, thus proving her representations to the Buyers were false.

One must ask, therefore, why is landmarking the Property coming up now, only after the Ross Family moved into the neighborhood? Specifically, John Van de Kamp purchased the Property in 1987, and lived there for only a short time while he served as Attorney General of California. In fact, Pasadena Heritage admits that he lived the majority of his years as Attorney General in a house on Prospect Terrace. After his time as Attorney General ended in 1991, he retired from politics. That was 30 years ago. Not once in that time was there any suggestion the Property was a landmark. Mr. Van de Kamp then passed away in March 2017, i.e., five years ago. In his honor, the City of Pasadena renamed the La Loma Bridge. Again, nothing was mentioned about landmarking the Property. Only now is anyone concerned about the purportedly historic nature of his residence. Not while he was alive, not after he retired, and not when he died. Only now. Why?

D. The Staff Report & Expert Report

For reasons that are unclear, the Staff Report does not fully explain the history of this appeal, nor provide you with any independent analysis by Staff. To the contrary, it states that the City “has established that only a minimum time span of 45 years needs to have passed before a property can be evaluated to determine if it has achieved significance”, but then punts to the applicant and states, “the applicant has indicated that enough time has passed to establish the significance of John Van de Kamp ...”. Seriously? The applicant’s personal opinions are now the basis for Staff’s position? In short, the Staff Report completely fails to provide you with any independent analysis of the applicable criteria, the evidence offered by the applicant, and whether in their professional judgment it meets the criteria.

Were Staff to do so, they would have to admit that (1) as explained below, they twice denied the application because it did not meet the criteria, and (2) expert testimony proves it does not meet the criteria.

Specifically, an independent report by Sapphos Environmental substantiating Staff’s conclusion is being submitted with this letter (“Sapphos Memorandum”). Like City Staff originally determined, the Sapphos Memorandum concludes that the house on the Property “is not eligible for designation as a City Historic Landmark as it does not meet the City’s designation criteria for listing as such.” Sapphos Memorandum, at 2.

In coming to that conclusion, Sapphos evaluated whether the Property meets the criteria for inclusion in the National Register of Historic Places, the California Register of Historical Resources, or for designation as a City Landmark. *Id.* at 2. The review is based upon: a site investigation of the property; literature review and online research; and an application of federal,

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state, and local register eligibility criteria. *Id.* at 9, 28. The Sapphos Memorandum noted that the Property was deemed ineligible for designation as a City Landmark in November 2020 and March 2021. *Id.* at 2.

Furthermore, “no new evidence was submitted as part of the supplemental nomination package by Pasadena Heritage in January 2021.” *Id.* From pages 32 to 35, the Sapphos Memorandum explains in detail why the Property is not eligible for listing because, among other things, Mr. Van de Kamp’s work in the justice system could not be demonstrably connected to events that were important to national, state, or local history *on an individual level* during the most productive years of his life, and there was no evidence that his actions contributed to significant events within the context of the justice system. *Id.* at 29.

As a result, the Property “does not constitute a historical resource as defined in Section 15064.5(a) of the California Environmental Quality Act (CEQA) Guidelines.” *Id.* at 2.

Under California law, any determination of what is, or is not, historic must be “supported by substantial evidence in light of the whole record.” *Friends of the Willow Glen Trestle v. City of San Jose*, 2 Cal. App. 5th 457, 459 (2016). In this case, the substantial evidence submitted by the experts proves the application does not meet any of the required criteria.

E. Pasadena Heritage’s First Application

Since the Staff Report does not set-forth the history of this application, we will endeavor to do so. *See also*, Exhibit C.

In particular, on July 7, 2020, Pasadena Heritage submitted a local landmark nomination for the Property without the Ross Family’s (owners’) consent. The nomination was based solely on the status of the prior owner and had nothing to do with the architectural merit of the residence. On August 12, 2020, the City’s Director of Planning & Community Development notified the Property’s owners of the application as required under the Code.

On August 13, 2020, the City requested additional information – *i.e.*, a chronological timeline of Mr. Van de Kamp’s notable accomplishments so that they could be aligned with the period of time that he resided at the house on the Property. On August 19, 2020, Pasadena Heritage provided the chronology.

Between August 19, 2020 and August 24, 2020, the City and Pasadena Heritage then communicated via electronic mail concerning the application and the need for additional research.

On August 24, 2020, the City of Pasadena deemed Pasadena Heritage’s application incomplete and specified additional information that was needed for completing the City’s review.

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Instead of providing the requested information, however, on August 27, 2020, Pasadena Heritage requested that the nomination be kept on hold; and, on September 28, 2020, re-confirmed its request.

On November 30, 2020, after reviewing the information submitted with the application, including extensive photographs of the building, and researching information about the building, its builder and its former occupants, Staff determined that the Property *did not meet* the criteria for designation as a landmark. In reaching its conclusion, Staff applied the methodology for evaluating the significance of historic properties in guidelines of the National Register of Historic Places, published by the National Park Service, and the criteria in the Pasadena Municipal Code.

No appeal was filed and the decision on the landmark status of the subject Property became final and effective on December 11, 2020.

Despite that fact, in a letter dated January 6, 2021 letter, Pasadena Heritage objected to the Ross Family's application for a Hillside Development Permit for two accessory structures in the rear of the Property on the grounds that the residence is "an eligible historic resource" after its members "became alarmed." Ignoring the City's November 30, 2020 decision on ineligibility, Pasadena Heritage falsely asserted and intentionally misrepresented to the review authority that its "landmark nomination remains on hold for the time being."

F. Pasadena Heritage's Second Attempt at an Application

On January 15, 2021, Pasadena Heritage notified the City that it wanted to submit "additional documentation" with regard to its landmark nomination, while simultaneously conceding that it had "missed the 10-day appeal period to respond to [the City's] decision." Specifically, Pasadena Heritage asked that its landmark application be reconsidered "in light of new documentation," which was only letters from two individuals (Messrs. Kranwinkle and Bogaard) who knew Mr. Van de Kamp personally before he passed away.

However, the January 15, 2021 letter stated: "Pasadena Heritage does not intend to pursue with a second landmark nomination of the property at the present time, but we still ask that its eligibility as an historic resource be reconsidered in light of the information we are providing herewith and hope that staff's conclusion will change."

Shortly thereafter, on January 19, 2021, Pasadena Heritage clarified that it sought reconsideration of eligibility, and was *not* requesting actual designation of the building as a landmark.

The City, however, did not take any action in response to Pasadena Heritage's January 2021 request.

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G. Pasadena Heritage's Third Application

On May 21, 2021, Pasadena Heritage filed yet another application for landmark designation of the Ross Family's house on the Property. The new application presented the *same* information as the original July 2020 application and January 2021 supplemental information, and, again, was based solely on the status of the prior owner and had nothing to do with the architectural merit of the residence. ***No new evidence was submitted.*** Even the building description and statement of significance were not changed or altered between the July 2020 submittal and the May 2021 submittal. Sapphos Memorandum, at 4.

The City, however, did ***not*** timely notify the Property's owners of the May 21, 2021 application in compliance with the Municipal Code.

Despite that violation of the Code, on June 17, 2021, City Staff met with Pasadena Heritage and requested "scholarly information about JVDK [Van De Kamp] and his significance in the field of politics." This information was identified as "necessary to establish significance under Criterion B," thus making the May 21, 2021 application incomplete.

Over a month later, on July 27, 2021, the City issued a letter to Pasadena Heritage entitled "Notice of Incomplete Application," which stated that the information requested through email on June 2, 2021, and through the Microsoft Teams Meeting on June 17, 2021 (as noted above) had not been submitted and that the application "does not include appropriate documentation necessary to establish eligibility under Criterion B."

Pasadena Heritage did ***not*** appeal the incomplete determination as allowed under Municipal Code § 17.60.060.A.2 ("Where the Director has determined that an application is incomplete, and the applicant believes that the application is complete or that the information requested by the Director is not required, the applicant may appeal the determination in compliance with Chapter 17.72 (Appeals)").

Instead, on July 27, 2021, Pasadena Heritage conceded that its application was not complete and submitted via email a link to a California State Archives 2003 oral interview completed for the Oral Histories program. ***However, no scholarly works or information on Mr. Van de Kamp within the field of politics was submitted as requested by the City.***

To the contrary, the email identified the property at 419 Prospect Terrace as the residence where Van de Kamp lived during most of his term as Attorney General. Similarly, the Oral Histories program consisted of a 2003 interview at his office in Century City and made no reference whatsoever to anything he did or did not do in Pasadena.

Even though the requested scholarly information was not submitted, on August 10, 2021, the City unexpectedly and abruptly reversed its position and issued a letter to Pasadena Heritage entitled "Notice of Complete Application" for the City Landmark application submitted on May

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21, 2021.¹

On August 18, 2021, it appears the City then attempted to notify the Ross Family as owners of the Property about the very existence of Pasadena Heritage's application via electronic mail (subject line read: "Notice of Landmark Designation Application for 801 S. San Rafael"), but the e-mail was recalled that very same afternoon. The Property owners have thus never received the Code-required notice for the May 21, 2021 Application.

On August 25, 2021, the City's Design & Historic Preservation Section notified Pasadena Heritage that it changed its mind and determined that the house on the Property is eligible for designation as a landmark under "Criterion B" because "it is associated with a prominent former resident, John K. Van de Kamp" and scheduled the nomination for a public hearing on September 21, 2021 before the Historic Preservation Commission.

This determination was made without giving the Property owners notice of the application or opportunity to respond and object to the application. It also erroneously refers to "Criterion B" when in fact the City's Municipal Code actually refers to designation criteria in terms of Roman numerals 1, 2, 3, and 4, like the State of California.

Last, when City staff reached out to schedule the hearing on the landmark application, the City denied the request of counsel for the Property's owners to have the matter heard on October 19. However, when Pasadena Heritage requested October 19, 2021 for the hearing, the City promptly accommodated that request.

H. The Historic Preservation Commission's Unanimous Decision

The chronology set-forth above shows how arbitrary and capricious the acts taken by Pasadena Heritage and the City have been with respect to Pasadena Heritage's previously denied landmark nomination.

Thankfully, the Historic Preservation Commission ("HPC") saw through it and, based upon the evidence presented, denied the application on the grounds that insufficient time had passed, there was no scholarly judgment to support any such determination, the building and site lacked integrity, there was no nexus between when Mr. Van de Kamp lived in the house and his productive life where he achieved significance, and the property owner's lack of support.

The vote was unanimous, i.e., 5 – 0. Not one Commissioner, not even the most ardent preservationist, thought there was sufficient, let alone substantial, evidence to warrant any such designation over the property owner's objections. Further, the applicant's argument that Mr. Van de Kamp's work from 1987 to 2017, i.e., after he left elected office, "is the most significant part of his career, and not his time in public office" was absurd on its face. The HPC saw through it and rejected it accordingly.

1. The Property owners believe that Staff's unexpected and abrupt change in position on whether PH's application should be deemed complete may be due to political interference in violation of Section 411 of the City's Charter.

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The Staff Report tonight admits on page 4 that no formal scholarly judgment has been made as required for designation. Staff further admits on page 4 and 5 that 45 years needs to pass before a property can be evaluated to determine if it has achieved significance, and that “it has been less than 45 years that he has been associated with the property.” These statements are consistent with Staff’s previous denials of the request for designation.

Last, the Staff Report admits that any landmark designation deprives the property owner of their constitutionally protected rights to develop the property as they see fit, including the newly created rights for them under SB9. The Attorney General for the State of California already has scolded the City for trying to use arbitrary landmark designations to skirt the new law, and this application is a prime example of why it should not do so.

I. The Historic Preservation Commission’s Unanimous Decision Should Be Upheld

The HPC’s decision, therefore, should be upheld for the following reasons.

First, the City failed to follow its Code with regard to the notice required to be given the owners. The Municipal Code clearly requires that, “If the applicant is not the owner of the property, the Director shall, within 10 days of submittal of the application, notify the owner in writing that an application for designation has been submitted.” Municipal Code § 17.62.050.A.2. When Pasadena Heritage filed its May 21, 2021 application, the Municipal Code thus required the Director of Planning & Community Development to notify Mr. and Mrs. Ross of the application no later than June 4, 2021. The City, however, never provided such notice, nor complied with the requirements of Municipal Code § 17.62.050.A.2, like it did with the July 2020 application. Pasadena Heritage’s May 21, 2021 application, therefore, should not have even been considered on the merits.

Second, the City failed to follow its Code with regard to the second submittal and resubmittal of the same application. Section 17.64.090.A of the City’s Code specifically states with regard to such resubmittals that, “For a period of 12 months following the date of disapproval of a discretionary land use permit, entitlement, or amendment, ***no application for the same or substantially similar discretionary permit, entitlement, or amendment for the same site shall be filed except on the grounds of new evidence, proof of changed circumstances***, or if the disapproval was without prejudice.” Municipal Code § 17.64.090 (emphasis added).

It is undisputed that, on November 30, 2020, the City determined that the Property does not meet the criteria for designation as a landmark after applying the guidelines of the National Register of Historic Places and the criteria in the Municipal Code. Nothing has changed since November 30, 2020 with respect to the circumstances pertaining to the Property and its ineligibility for designation as a landmark. As such, Pasadena Heritage’s May 25, 2021 application is a prohibited resubmittal within 12 months of the November 30, 2020 decision.

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To the extent that Pasadena Heritage claims that “new evidence” justifies a resubmission, this is a red herring. The January 2020 letter from Bill Bogaard offers nothing more than regurgitation of Mr. Van de Kamp’s resume and accomplishments – the same type of information submitted by Pasadena Heritage in connection with its first application that was denied in November 2020. The January 2020 letter from C. Douglas Kranwinkle is similar in nature in terms of describing Mr. Van de Kamp’s accomplishments and asserts that prominent people have attended gatherings at the Property. However, it was already known that Mr. Van de Kamp gathered with prominent politicians by virtue of his role as Attorney General for the State of California. As a result, these two letters fail to constitute “new evidence” within the meaning of Municipal Code § 17.64.090.A.

Third, the Sapphos Environmental Report analyzes in great detail all of the claims regarding Mr. Van de Kamp’s use of the Property and how none of it meets the criteria for individual significance during the public and productive years of his career. Sapphos Memorandum, at 32-35. There is no scholarly judgment, 45 years has not passed, and the notion that his most productive years were after he left office is absurd. Pasadena Heritage’s application is thus nothing more than a sop to its wealthy contributors who were Mr. Van de Kamp’s personal friends and is without merit.

Fourth, California law is clear that an alleged resource cannot be listed on the National Register or the California Register over an owner’s objections. *Prentiss v. City of So. Pasadena*, 15 Cal. App. 4th 85, 95 n. 6 (1993). See also Office of Historic Preservation, State of California website (https://ohp.parks.ca.gov/?page_id=21747) (“Written consent from the property owners is required for designation”; “Those that do not have written consent from the property owner(s) are inadequate... [and] will be returned to the applicant for further work.”).

Consistent with the great consideration given to whether the property owner consents, the California Supreme Court has noted, when reviewing a voter-approved initiative measure that removed 29 properties from a city’s register of historic places, that the reasons given for the removal, among others, were that: (1) the ordinance was intended to be a voluntary ordinance “as to which properties would be listed **only with the consent of the respective owners**” and “the 29 properties listed above **never gave their consent, never should have been included, and should in fairness be de-listed at this time.**” *Friends of Sierra Madre v. City of Sierra Madre*, 25 Cal. 4th 165, 177 n.8 (2001) (emphasis added).

The reasons for requiring the owner’s consent are obvious. Under the City’s Municipal Code, if there is a designation of a historic resource, the property owner is prohibited from, among other things, new construction, demolition, relocation, changes in elevation, addition of square footage, addition of height, removal, and construction of accessory structures in front of the primary structure, without first obtaining a Certificate of Appropriateness. Municipal Code §§ 17.62.030.U, 17.62.030.V, 17.62.090.A.

As numerous studies have proven, historic designations have become a tool for preservationists to obstruct new development, thus hindering the ability of cities and their residents to adjust their environments in response to changing economic circumstances. Such

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designations make it harder (if not impossible) for property owners to develop their property for another use, and can mean less demand for a property which lowers property values. The **Property's owners do not consent** to a historic designation of their house on the Property and vigorously **object** to any such designation.

Fifth, we understand that when Landmark status for the entire neighborhood was at issue, the neighbors objected and nothing was done. It thus seems arbitrary and capricious to single out one home for such designation.

Sixth, given the owners' objection and opposition to any such designation, any designation will deprive them of valuable property rights and thus constitute an unlawful taking. Specifically, the "state and federal constitutions prohibit the government from taking private property without payment of just compensation. U.S. Const., 5th Amend.; Cal. Const., art. I, § 19. As the United States Supreme Court recently stated: "When the government, rather than appropriating private property for itself or a third party, instead imposes regulations that restrict an owner's ability to use his own property," such regulations, if they go "too far," are recognized "as a taking." *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063, 2071-72 (2021). "This framework now applies to use restrictions as varied as zoning ordinances." *Id.* at 2072. "Government action that physically appropriates property is no less a physical taking because it arises from a regulation." *Id.* The essential question is: "whether the government has physically taken property for itself or someone else – by whatever means – or **has instead restricted a property owner's ability to use his own property.** . ." *Id.* (emphasis added).

Given that any historic designation pursuant to the Municipal Code would deprive the Property's owners of valuable development rights and restrict their ability to use the Property, *e.g.*, the ability to demolish the house and rebuild one more to their liking, any such designation under Municipal Code § 17.62.050.A.1 will constitute an unlawful taking.

Accordingly, we respectfully request that Pasadena Heritage's appeal of the HPC's unanimous decision be denied. Should the City wish to discuss a commemorative plaque or some similar nod to Mr. Van de Kamp, we are willing to do so. But we oppose and object directly, unequivocally, and vociferously to any landmark designation of the house.

Sincerely,



Richard A. McDonald, Esq.

EXHIBIT A

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| Marcia & William W. Ellinger III | Structural Engineers | Joan & Ted Tanner |
| Judy Galt | Munson Kwok | Tom Marble Architecture |
| Tina & Avram Gold | Joanne & Ethan Lipzig | Jennifer & Marc Trotoux |
| Jim Gruettner | Christy & Steve McAvoy | Andy & Liz Wilson |
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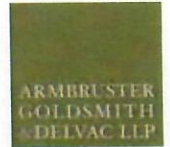
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EXHIBIT B

Property Address: 801 S San Rafael Ave, Pasadena, CA 91105-2326

Date: April 18, 2019

freeways, buses, schools, parks, refuse storage or landfill processing, agricultural operations, business, odor, recreational facilities, restaurants, entertainment complexes or facilities, parades, sporting events, fairs, neighborhood parties, litter, construction, air conditioning equipment, air compressors, generators, pool equipment or appliances, underground gas pipelines, cell phone towers, high voltage transmission lines, or wildlife

Explanation: Yes No

L. GOVERNMENTAL:

ARE YOU (SELLER) AWARE OF...

- 1. Ongoing or contemplated eminent domain, condemnation, annexation or change in zoning or general plan that applies to or could affect the Property Yes No
- 2. Existence or pendency of any rent control, occupancy restrictions, improvement restrictions or retrofit requirements that apply to or could affect the Property Yes No
- 3. Existing or contemplated building or use moratoria that apply to or could affect the Property Yes No
- 4. Current or proposed bonds, assessments, or fees that do not appear on the Property tax bill that apply to or could affect the Property Yes No
- 5. Proposed construction, reconfiguration, or closure of nearby Government facilities or amenities such as schools, parks, roadways and traffic signals Yes No
- 6. Existing or proposed Government requirements affecting the Property (i) that tall grass, brush or other vegetation be cleared; (ii) that restrict tree (or other landscaping) planting, removal or cutting or (iii) that flammable materials be removed Yes No
- 7. Any protected habitat for plants, trees, animals or insects that apply to or could affect the Property Yes No
- 8. Whether the Property is historically designated or falls within an existing or proposed Historic District Yes No
- 9. Any water surcharges or penalties being imposed by a public or private water supplier, agency or utility; or restrictions or prohibitions on wells or other ground water supplies Yes No

Explanation: _____

M. OTHER:

ARE YOU (SELLER) AWARE OF...

- 1. Reports, inspections, disclosures, warranties, maintenance recommendations, estimates, studies, surveys or other documents, pertaining to (i) the condition or repair of the Property or any improvement on this Property in the past, now or proposed; or (ii) easements, encroachments or boundary disputes affecting the Property whether oral or in writing and whether or not provided to the Seller. Yes No
(If yes, provide any such documents in your possession to Buyer.)
- 2. Any occupant of the Property smoking on or in the Property. Yes No
- 3. Any past or present known material facts or other significant items affecting the value or desirability of the Property not otherwise disclosed to Buyer Yes No

Explanation: _____

VI. (IF CHECKED) ADDITIONAL COMMENTS: The attached addendum contains an explanation or additional comments in response to specific questions answered "yes" above. Refer to line and question number in explanation.

Seller represents that Seller has provided the answers and, if any, explanations and comments on this form and any attached addenda and that such information is true and correct to the best of Seller's knowledge as of the date signed by Seller. Seller acknowledges (i) Seller's obligation to disclose information requested by this form is independent from any duty of disclosure that a real estate licensee may have in this transaction; and (ii) nothing that any such real estate licensee does or says to Seller relieves Seller from his/her own duty of disclosure.

Seller Andrea Van de Kamp **Andrea Van de Kamp, Trustee** Date 4-18-19

By signing below, Buyer acknowledges that Buyer has read, understands and has received a copy of this Seller Property Questionnaire form.

Buyer Rodney Ross Date 5/17/2019
Buyer Deborah Radcliff Ross Date 5/17/2019

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SPQ REVISED 6/18 (PAGE 4 OF 4)

SELLER PROPERTY QUESTIONNAIRE (SPQ PAGE 4 OF 4)

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801 S San Rafael



EXHIBIT C

CITY HISTORIC LANDMARK APPLICATION TIMELINE

June 2019: Property was purchased and was **not** listed as a City Historic Landmark or listed as potentially eligible on the City Planning Department potentially eligibility list. The property was also not listed on the Pasadena Heritage “watch list” which identified listed or eligible historical resources which are threatened by development.

December 10, 2019: Residence addition and NO IMPACT to Front Facade Plans were submitted and approved for Plan Check.

July 7, 2020: Pasadena Heritage submitted a City Landmark application package for the property with the following information which was reviewed by City staff:

- City landmark application form including building description and statement of significance written by Pasadena Heritage
- Historical Resources Assessment Report written by “The Building Biographer, Time Gregory” for the subject property
- Photographs of the subject property

July 14, 2020: Property owner submitted a letter to the City requesting that the application be denied, that the application was not endorsed by the owners, and that it was their understanding per the Department of Interiors and the California State Office of Historic Preservation that written consent from the property owners would be required for designation.

August 12, 2020: The property owner was notified that a City Landmark application package was submitted on July 7, 2020 for the property and that the City was taking the nomination under consideration.

August 19–24, 2020: E-mail communication between City staff (Ms. Amanda Landry) and Pasadena Heritage cited lack of connection between John Van De Kamp’s “most productive professional period of his life” and his association with the subject property during his period of residence (1987–2017).

November 30, 2020: The City issued a letter of ineligibility for designation as a City Landmark to Pasadena Heritage stating that “there is no documentation to establish Mr. Van De Kamp resided at 801 S. San Rafael Avenue during the time of most significant political accomplishments in his career or other contributions important to Pasadena or the region.” **The appeal time lapsed before response to the letter of ineligibility.**

January 15, 2021: Pasadena Heritage submitted a letter to City staff titled “Supplemental Documentation to Prove Eligibility of 801 S. San Rafael Ave” **after the appeal deadline.** The letter asked the City to “reconsider the eligibility of the Van de Kamp house and property at 801 South San Rafael Avenue as an historic resource” due to the submission of additional resources. Those resources include:

- Letters of support from Mr. Bill Bogaard and C. Douglas Kranwinkle
- Email from Andrea Van De Kamp confirming John’s residency during his **last four years** as Attorney General

- Twenty-eight (28) historic newspaper articles (See *Table 2, Supplemental Historic Newspaper Articles* below).

March 16, 2021: Pasadena Heritage submitted a letter to the City Board of Zoning Appeals with the same information submitted on January 15, 2021, to City staff with an additional letter from Ms. Claire Bogaard supporting the City Landmark Application. The letter asked, “the Board of Zoning Appeals to consider first if the property is eligible to be a City of Pasadena Landmark under Criterion B.”

March 18, 2021: City staff report to the Board of Zoning Appeals cites, “after reviewing the information submitted with the application, including extensive photographs of the building, and researching information about the building, its builder and its former occupants, staff has determined that the property **did not meet the criteria for designation as a landmark.**”

May 21, 2021: Pasadena Heritage resubmitted the City Landmark Application package with the **same** information included in the original July 2020 submission and January 2021 supplemental information. **No new evidence was submitted.** The building description and statement of significance were not changed or altered between the July 2020 submittal and the May 2021 submittal.

June 17, 2021: City staff met with Pasadena Heritage and “scholarly information about JVDK [Van De Kamp] and his significance in the field of politics” was requested. This information was identified as “necessary to establish significance under Criterion B,” thus making the May 21, 2021, **application incomplete.**

July 27, 2021: The City issued a letter to Pasadena Heritage for “**Notice of Incomplete Application.**” The letter stated that the information requested through email on June 2, 2021, and through Microsoft Teams Meeting on June 17, 2021 (as noted above) had not been submitted and that the application “does not include appropriate documentation necessary to establish eligibility under Criterion B.”

July 27, 2021: Pasadena Heritage submitted via email a link to a California State Archives 2003 oral interview completed for their Oral Histories program. **No scholarly works or information on Van De Kamp within the field of politics was submitted as requested by the City in June 2021.** The email also identifies the property at 419 Prospect Terrace as the residence Van De Kamp lived in prior to S. San Rafael and where he lived during most of his term as Attorney General.

August 10, 2021: The City issued a letter to Pasadena Heritage for “Notice of Complete Application” for the City Landmark application submitted on May 21, 2021, even though the requested supplemental material of scholarly information **had not been submitted.**

August 25, 2021: The City issued a letter stating that the property meets eligibility Criterion B for designation as a City Landmark for its association with a prominent former resident John K. Van De Kamp after no new evidence was submitted between the determination of ineligibility in March 2021 and the determination of eligibility in August 2021.

STRUMWASSER & WOOCHEE LLP
ATTORNEYS AT LAW
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LOS ANGELES, CALIFORNIA 90024

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CITY OF PASADENA

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FREDRIC D. WOOCHEE
ANDREA SHERIDAN ORDIN
SENIOR COUNSEL

March 21, 2022

Sue Mossman
Executive Director
Pasadena Heritage
651 S Saint John Ave
Pasadena, CA 91105

Dear Ms. Mossman,

It gives me great pleasure to write this letter in praise of the work of John K. Van de Kamp as Attorney General of the state of California from 1983 through 1990. I had the privilege of serving as his Chief Assistant Attorney General for Public Rights for the eight years of his two terms.

Prior to serving as Attorney General, John had a long and distinguished public service career as the first Federal Public Defender and District Attorney of Los Angeles County. His skills as a lawyer, administrator, and leader, honed in those offices, served him well in the complex and demanding role of Attorney General.

During his eight years, he expanded and improved law enforcement and oversight of the criminal justice system and brought new high-tech capacities to the state division of Law Enforcement and the Criminal Identification and Information Branch. He developed the first Division of Public Rights, which gained national prominence for enforcing the laws of antitrust, environmental, consumer, and civil rights.

John K. Van de Kamp recruited, trained, and promoted outstanding and diverse men and women to serve as lawyers, investigators, and staff from across the country. Many of those lawyers remained to lead the office under future administrations, while many others left to excel in private practice or as judges in the state and federal courts.

Under his leadership, the Civil Law Division of the office not only vigorously represented the many complex agencies of the state of California in court but acted as a trusted advisor to those agencies in order to ensure their compliance with law and to encourage consistent service to the people of the state of California.

On a personal note, his friends and colleagues remember him as an extraordinary public servant with wisdom and a real sense of justice. In his service after leaving the Office, he continued his legal career devoted to service on nonprofits, boards, and other entities, all with the goal of improving public organizations.

In order to understand John K. Van de Kamp's impact on the California Attorney General's Office, one would have to read thousands of memos, opinions from federal and state courts, and policies and procedures drafted for California State Department and Commissions. Perhaps the Sacramento Bee said it best. At the conclusion of John's second term, he was praised for leaving behind "a Department of Justice whose scope and perspective have been greatly enhanced for the public good."

Sincerely,

Andrea Sheridan Ordin

Andrea Sheridan Ordin

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info@pafar.org

CITY OF PASADENA

PASADENA FOOTHILLS
REALTORS

1070 E. Green Street, Suite 100
Pasadena, CA 91106

March 21, 2022

Mayor and City Councilmembers
City of Pasadena
Via Email

RE: Agenda Item 12

Dear Mayor and Members of the City Council:

Our Association is again writing in opposition to the most recent appeal of the historic preservation commission's decision to designate the property at 801 S. San Rafael Avenue as a landmark. We would like to continue to voice our concerns regarding the proposed landmarking of this property against the homeowners' wishes.

What is the point of private property rights if you can't use them within reason? We purchase property to have somewhere to call home, build equity, and to maintain and create personal space. The owners of 801 S. San Rafael have been attempting to do all of these things. They have attempted to make renovations to their home for over a year. They followed the city's rules and applied for the appropriate applications which were all reviewed and approved by the Pasadena Planning Department. Additional renovations were planned and submitted for the property. These again were reviewed and approved. These homeowners bought this property in good faith. They expected to be able to make that space comfortable for themselves.

Due to continued lobbying efforts by outside sources, the Zoning Appeals Board walked back the decisions of its Planning Department and granted an appeal and disapproved the most recent project request for 801 S. San Rafael. The reason being is that the property was the residence of Mr. John Van de Kamp. As an Attorney General for the State of California, he did great work. Pasadena Heritage and other owners on San Rafael have argued that the property should be landmarked under Criterion B of the Pasadena landmarking code. We feel that this section should not qualify 801 S. San Rafael for this reason:

Under Criterion B it states, "The criterion is generally restricted to those properties that illustrate (rather than commemorate) a person's important achievements." Mr. Van de Kamp has many achievements however that does not equate to 801 S. San Rafael as being the best place that illustrates those success. Furthermore, "... the historic function of the property, the historic themes represented by the property, and the period of time when the property played a significant role or acquired significance." Under these

03/21/2022
Item 12

guidelines, the property should not be considered for landmark status since nothing historically significant is tied to Mr. Van de Kamp's death.

The City of Pasadena has clear policies they should apply consistently. By not applying consistent rulings to landmark issues, the Council and the process will become ineffective by inconsistent rulings. We urge you to apply your standards in a clear and consistent way.

The City has honored Mr. Van de Kamp by renaming the La Loma Bridge in his honor. The question we should be asking is would John have wanted his home landmarked and fought over in this way? Should the will of a few overshadow a homeowner's rights to renovate their property? We appreciate and respect the process of landmarking properties which are legitimately eligible for landmark status. But this process should only be done with the cooperation of the current homeowners. In this specific case, this has not occurred. We would appreciate the city respecting private property rights and working towards a cooperative goal. We assume the way in which this item was brought to Historic Preservation was done to strategically delay improvements and prevent renovations.

We want to reemphasize that this sets a dangerous precedent of canonizing any famous resident who may have lived within the city bounds. Landmark status is a powerful tool which should be used for its intended purpose. By repeatedly submitting appeals and applications for landmark status without the current homeowner's consent should be considered a reckless use of power.

The Pasadena-Foothills REALTORS® will continue to speak up for homeowners. We ask the Council to uphold the recent recommendations of the city planners and not designate 801 S. San Rafael as a landmark property as it does not meet the defined criteria under Criterion B as specified in PMC Section 17.62.040.D.2.

Sincerely,
Pasadena- Foothills REALTORS®