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LAND USE PLANNING

This appeal is divided into two parts. The first argues that the project should not have been authorized. The second raises a number of issues relating to the proposed implementation of the project.

I. The project should not have been authorized.

(1) The owners and their architect have been engaged in an on-going seven year construction project.

By carefully dividing up this project into a number of separate ones, each subject to an individual review process, they have avoided the possibility that the zoning authorities would have to take into account at each stage the full impact of other parts of the project. We believe that had the applicants made public at the outset the full magnitude of their project, the zoning authorities would have been able to pay much more attention to the enormous long-term impact that the project would have on the neighborhood. While this may not have been significant for the owners, who live elsewhere for a considerable portion of the year, it has had a major impact on the dozen or more persons who live in the six other residences located in the cul de sac, as well the other residents of La Vereda Road.

(2) The construction project has, over the course of six to seven years, resulted in 4 to 6 trucks of the contractor and/or various subcontractors parking in the cul de sac most days of the week, including on Saturdays, and occasionally on Sundays, in an area that has 7 parking spaces in the lower portion of the cul de sac and 2 in the upper portion. (In the last phase of construction, the 1734 La Vereda owners added two more spaces, but these will be rendered unusable during the next phase.) It has resulted in material from lumber, sand, stone, slate for the walkway, among other material, being stored in the middle of the upper cul de sac for days or more, partially, if not fully blocking the access of Sharon and Robert Zentner to their home at 1731 La Vereda and of Leo Simon and his family to their home at 1730 La Vereda. Calls to the City were required in order to force the contractors to cover Loose gravel blowing off a gravel heap stored on the street created a significant traffic

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hazard, yet the contractors did not cover it until pressured to do so by the City. Trucks delivering various items would park in the middle of the cul de sac for hours on end until their cargo could be off-loaded, frequently preventing other residents from having access to their cars and/or leaving the cul-de-sac. It has adversely affected access to the only fire hydrant located in the cul de sac, opposite the 1730 La Vereda residence. It has adversely affected access by emergency vehicles to the cul-de-sac. We have every reason to expect that we will be negatively impacted in similar ways during the next phase of the project.

- (3) The most recent phase of the project has become, we believe, essentially a private taking of public property. The public right-of-way immediately above 1730 La Vereda will, at least in part, become an extension of the owners' personal land holding. In particular, the plans call for a large, circular structure to be built in the right-of-way, exclusively to provide access to the owners' property. Moreover, we understand that the owners intend to pave the public right-of-way with slate tiles. Since public streets are never paved with slate tiles, the right-of-way will appear, to all but those who are intimately familiar with the true situation, to be a private driveway. To all intents and purposes, this portion of the right-of-way will have been privatized.
- (4) This appropriation of public land for the parking structure has been justified by the owners on the false and misleading grounds that it "provides improved pedestrian, vehicular and emergency access to the cul-de-sac at the end of La Vereda Road" (p. 2, Environmental Initial Study). Since the project is confined to the portion of the cul-de-sac to the east of 1730 La Vereda Road property line, it cannot possibly impact any pedestrians or vehicles, either emergency or otherwise, in the cul de sac, unless they need to travel east of this line. The *only* pedestrians and vehicles that go beyond this line are those with business at 1734 or 1735 La Vereda. There are no benefits, and many costs, for everybody else.
- (5) The 977 square foot project is out of proportion and character with the neighborhood. It significantly exceeds the average size of the garages in the neighborhood. It exceeds both the 12 foot maximum

height allowance and the 24 foot maximum length allowance. An indicator of the extent to which the project exceeds City norms is that no fewer than five distinct administrative use permits are required as part of the application process.

- (6) There does not appear to be any domestic justification for a garage of this size. The owners have already carved out two parking spots for their personal use from the public right-of-way. In fact, they park three of their cars there regularly. The only apparent justification for five parking spaces might be that the occupants are running part of their business from out of their home.
- (7) The La Vereda cul-de-sac is a uniquely configured location, entailing significant and specialized hazards for a construction project, and as such deserves very special attention. It is located on an extremely steep hill-side, very close to the Hayward fault line. This project calls for extensive excavations that threaten to permanently destabilize the hillside, endangering neighboring property. In addition to permanent damage, there will be interim damage and constant disruption during the course of the construction period. These problems have not been adequately addressed by the ZAB. Indeed, it would appear that the planning authorities are not fully aware of the nature and extent of the risks to the neighborhood that the project will entail, as indicated below.
- (8) Probably the greatest and least manageable risk to the neighborhood arises from the projected movement of trucks to and from the construction site. To illuminate the nature of the problem, we will relate the the experience of the Airporter transportation company. Until a few years ago, Airporter vans would periodically (once every few months) mount the curb immediately to the southwest of the apron in front of 1731 La Vereda Road and, because of the steepness of the terrain, be immobilized. Each time this would happen, access to the houses to the east would be blocked for several hours, until a large tow-truck could come and extricate the vehicle. Eventually, the Airporter Company strictly forbade its drivers to venture beyond the base of the cul-de-sac. Among the other incidents that have occurred in the cul-de-sac, in 1980 a garbage truck was trying to manipulate the same corner, lost its air brakes and crashed into 1701 La Vereda, causing extensive damage to

that property. Since then, garbage trucks have been instructed not to proceed beyond the base of the cul-de-sac. While they do not always respect these instructions, no garbage truck has, to our knowledge, attempted to advance beyond the eastern boundary of 1701's property.

It has been estimated that dump trucks will need to make 325 trips to and from the construction site, in order to move the 1250 cubic yards of dirt that will be excavated. No dirt-hauling effort of anything like this magnitude has ever been attempted before in this part of the cul-de-sac. It is the return trip that is the most dangerous, when the trucks are fully loaded. Each dirt truck will need to manipulate the same corner that finally forced the Airporter to ban the cul-de-sac, and has obliged garbage men for years to walk up the cul-de-sac rather than drive. The problem will be compounded by the weight of the trucks. The corner is very steep, traction is poor, and heavy trucks *cannot* back up if they misjudge the turn. The turn will be even more difficult to negotiate if a car is parked in the legal parking space at the eastern boundary of the cul-de-sac. When there is dirt on the road because of construction, or the road is slippery, either because of rain or water generated by the project (see, especially §32 and §34 of the Notice of Decision), the dangers will be even greater. The statistical probability that on one or more of the 325 trips a truck will fail to negotiate this corner is extremely high. A single error could cause serious damage to neighbors' properties, and will certainly block access to the eastern end of the cul-de-sac for an extended period of time.

We believe that the ZAB has not adequately taken this danger into account. When Leo Simon raised the issue at the July ZAB hearing, the owners' attorney casually dismissed this concern by saying: "it really isn't a problem, because when the trucks are going up the hill they'll be empty, and it's only going downhill that they'll be heavily laden." In fact, of course, it is on the return trip that the risks are greater: the heavier the vehicle, the more difficult it will be to rectify an error before it is too late.

- (9) The plans specify a wall running from west to east, starting at the retaining wall that supports the carport on 1730 La Vereda Road and ending at the circular structure referred to in item (3). Unlike

other aspects of the proposed structure, details of this wall have not been provided to the planning officer, Christopher Wolf. Indeed, when we discussed this wall with Mr Wolf, he acknowledged that he had not noticed it and was puzzled by the lack of information about it. The problem with the wall is that if built, it would entirely block any access to the strip of Mr Simon's property to the east of his retaining wall. This is unacceptable to Mr Simon on several grounds. Most immediately, the northern end of the strip would be the only natural location for Mr Simon's garbage cans, once construction has been completed: these cans are currently located in a niche in the right-of-way, which will be removed during the construction.

Summarizing, the bases for this portion of the appeal are that the project entails an unjustified private "taking" of public property, is inappropriately large, blocks off access to a portion of Mr Simon's property and creates public risks and inconvenience that are out of proportion to the private benefits to the project. Moreover, the entire permitting process has been manipulated by the owners and their architect to ensure that the full impact of their ongoing construction activity has not been taken into account by the planning authorities.

## II. Implementation issues.

The second part of the appeal relates to the proposed implementation plan for completing the construction. Generally, we believe that the proposed mitigation measures do not adequately respond to the problems experienced by the neighbors during previous construction activities (see item (1) above). In particular,

- (10) The risks discussed in detail in item (8) above have not been taken into account and should be addressed.
- (11) Mitigation Measure XV.1 (§12 in the NOD) does not adequately protect the neighbors from inconvenience due to construction traffic and parking. Indeed, the protections provided to the neighbors are *weaker* than in previous projects. Specifically, the three relevant bullet points of this mitigation measure are:

- only one truck will be on site at a time being loaded, and only one truck will be on an adjoining street in a queue to work;
- the contractor will make arrangements to transport construction workers to and from the site to further mitigate potential transportation and traffic impacts; and
- during non-working hours, there will be no trucks or equipment left in the road.

During previous phases of the project, there had been a restriction that at most two construction-related vehicles could be parked in the cul-de-sac at any time. During the July ZAB hearing, a board member asked why this restriction had not been imposed for this phase. The answer provided by the owners' attorney was that they had "changed the baseline" by providing additional off-street parking. This response, which was accepted by the ZAB without question, suggests that the ZAB is not fully familiar with the nature of the site and its problems. The additional parking spots provided by the owners will obviously be rendered unusable during the construction period, since without access to these spaces, it would not be possible to manipulate the dump trucks and earth moving equipment. Moreover, we anticipate pressure from the owners to vacate the two parking places in the upper part of the cul-de-sac, to facilitate truck movements. If this is indeed the case, then the number of available parking spaces will be even fewer than during past phases of the project.

We recognize that the City's intention was to minimize the impact of construction related traffic on the neighbors. We have learned from long experience with the owners and their architect/contractor that City intentions are unfortunately not enough, and that for the contractor, his employees and subcontractors, neighborhood relations are of minimal concern: restrictions that are "intended" but not incorporated explicitly into the traffic plan will, as in the past, be totally ignored

(12) Mitigation XV.1 (§12 of the NOD) calls for for an on-site controller to monitor traffic and to ensure that neighbors have access to their properties. A controller sounds good on paper, but based again on many years of past experience, this group has demonstrated minimal concern for neighborhood welfare. Accordingly, we believe that even with a controller present, the neighbors' access will be

significantly impeded on a daily basis. We request, accordingly, that there should be a provision in the traffic mitigation plan that stipulates in the most explicit possible language that there should not at any time be any construction-related vehicle and/or material blocking access to any part of the cul-de-sac, or to the car-ports at 1730 and 1731 La Vereda.

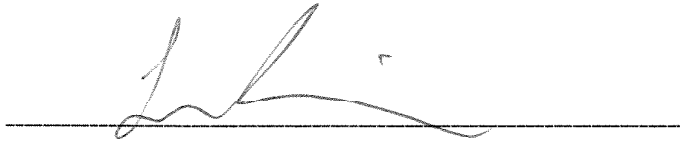
- (13) Paragraph §3D in the NOD claims that effects on the existing storm drain system will be negligible. Based on the experience of the neighborhood in previous construction periods, this claim is clearly erroneous. The existing storm drain system is fragile and will *inevitably* be overloaded by a project of the proposed magnitude. There has been no demonstration of why previous experience will not be replicated.
- (14) The neighbors recognize and appreciate that ZAB and the City have taken the unusual step of requiring a traffic plan for this project. Nonetheless, the many issues cited above indicate that the unique characteristics of our cul-de-sac have not been fully taken into account. (As just one example, the issue raised in item (8) above—the transport of earth by 325 dump trucks—has not been realistically addressed.) We therefore request that the neighbors be provided with an opportunity to review the preliminary draft of the traffic plan, and participate in the process of finalizing this draft, as necessary.
- (15) The following example illustrates the way in which the owners have failed to comply with regulations imposed by the city. It concerns the Port-o-Let transporter, which, during a previous phase of the owners' construction project, would arrive at 6:11 a.m. every Thursday morning, for over a year, to service the port-a-potty at the site. The driver would park underneath the bedroom window of 1730 La Vereda, leave the engine running while servicing the potty, then beep loudly as he backed out of the cul-de-sac. Week after week Mr Simon would call Creative Spaces' foreman, Bob Jones, to request that the Port-O-Let truck should be instructed to confine its visits to the admissible hours of operation; week after week, Mr Jones would respond, "gee, I called them last week and they

assured me they would come later in the day.” The service schedule *never* changed until, finally, the Port-O-Let was removed, at 6 a.m. on a Sunday morning.

- (16) We have been advised that notwithstanding the steady stream of complaints issued by the neighbors during previous phases of the project, these have never once resulted in a red tag. We respectfully request, therefore, that we be provided with the names and contact information (phone numbers and emails) of the City officials who will be responsible for monitoring compliance for this project. In particular, since there have been many curfew violations in the past, we respectfully request contact information in the event that violations occur outside of the City’s regular hours of operation. We also respectfully request that the city set forth a list of potential violations which would result in a red-tag of the project. We believe that this list would facilitate the enforcement of the permit conditions imposed by the City.

Please see following pages for signatures.

Respectfully submitted



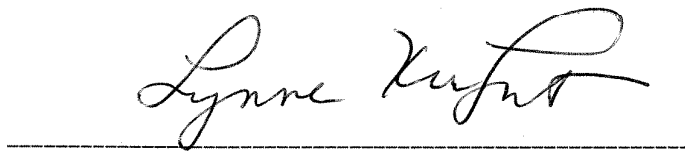
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Leo Simon  
1730 La Vereda Road



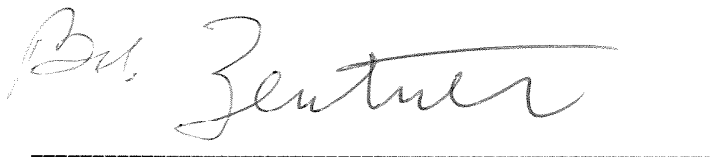
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