

#37

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COUNCIL MEETING OF:

MAY 8 2007

OFFICE OF THE CITY CLERK
CITY OF BERKELEY

May 8, 2007

Stephen Wollmer
1823 'B' Berkeley Way
Berkeley, CA 94703

Mayor Bates and Berkeley City Council,

Report on Hudson McDonald's offer to fund streetscape improvements in exchange for dropping appeal.

As you will no doubt hear from Hudson McDonald about their appeal settlement offer passed through Council member Capitelli to Neighbors for a Livable Berkeley Way we offer you our written responses to their offer. We previously communicated our response verbally through Council member Capitelli as we were uncomfortable making a written response to a verbal offer. Subsequent to our response, Chris Hudson and Evan McDonald hand delivered a letter throughout the neighborhood with the apparent goal of dividing our neighborhood against itself – needless to say it has only increased our resolve. We include a copy of that letter along with neighborhood reaction to the threats and bluster it contained at the end of this letter. Lastly I include Chris Hudson's draft of a settlement agreement for my signature that I declined to sign and which expired prior to this evening's City Council meeting.

I want to assure the Council that we look forward to your review of our appeal, and reiterate that we stand ready to participate in mediated negotiations towards a just and equitable resolution of this issue.

Transmittal of offer to neighborhood and responses received:

Through Council Member Capitelli we have received a verbal offer from Hudson McDonald to fund \$250k of street and neighborhood improvements contingent upon dropping our appeal. To understand what this offer could mean for our neighborhood's safety and livability we asked for pricing on pedestrian safety improvements, which addresses what I consider one of the most serious impacts associated with the project. There would probably be money left over for 'beautification' (such as street trees) and 'amenities' (such as bus shelters), which although important, are typically less expensive. The one exception was my request for a 'costing' to make the Berkeley Way/Grant Street barrier function better and be something more than the current neighborhood blight.

Priority 1:

Pedestrian actuated crosswalk-warning lights (similar to those on Shattuck near Berkeley Bowl) to make crosswalks without traffic lights less dangerous, particularly in low light situations. \$10-20K each (Suggested at University @ Bonita, Grant, and McGee, Addison @ MLK, Berkeley Way @ Milvia)

Priority 2:

Pedestrian safety islands in the middle of University @ MLK for slow walkers attempting this wide north-south crossing. This should be built into the design for the revised turn lane from eastbound University onto MLK northbound. A westbound University island may be able to be designed to work with the existing bus stops and turn lane – if it is feasible it would cost ~\$10K

Priority 3:

Re-design and rebuilding of the Berkeley Way Grant Street diverter for better function and appearance: \$10-15K

Priority 4:

Bulb-Outs - widening of sidewalks at crosswalks to reduce pedestrian exposure to traffic – some love them, others (particularly bicyclists) hate them. No suggested locations, but may work some places. \$5-20K depending if storm drains need to be re-located.

As you can see, even a modest amount of money could make significant improvements in our neighborhood – all of the above measures would improve pedestrian safety for all of us in partial mitigation for the increased traffic that a Trader Joe's would bring to our neighborhood. I recommend that we reserve judgment on this offer, as it does not begin to deal with the other impacts from the project, particularly the impacts to the immediate neighbors. I recommend that for now we discuss these measures so the ones that have the most support can be part of any settlement agreement. Please send me feedback on this offer so I can compile it and send back it out in a few days so we can respond to Councilmember Capitelli.

As noted above, we initially understood the offer to be for \$250,000 in streetscape improvements to paid over 10-years, although from the HM letters it appears that the amount was only \$200K and the money would be paid into a city account prior to occupancy. The overwhelming neighborhood reaction was that the suggested safety improvements, while worthwhile, were secondary to overwhelming size and intensity of the project that is what truly puts the livability of our neighborhood at risk. I summarized the neighborhood responses for Council member Capitelli in the following points:

- **It is an inadequate offer relative to the impacts to the neighborhood from a project of this size with this tenant.**
- **Safety, particularly for pedestrians, is of concern in the neighborhood, whether or not Trader Joe's ever arrives.**
- **Pedestrian actuated crosswalk lights: Yes.**
- **Pedestrian landing at mid-street crosswalks on University: Yes**
- **Bulbouts at corners: Yes**
- **Bulbouts between corners breaking up the line of parked cars (similar to UA between Milvia and Shattuck): No**
- **The barrier at Berkeley Way-Grant Street is unattractive and some believe it needs a redesign to meet the needs of residents on Berkeley Way and Grant Street to provide better access without encouraging through traffic. This should be discussed at length in an open meeting, as people hold strong opinions, and there is no clear consensus.**
- **Access to the neighborhood is already a problem; a barrier at the east end of BW will make it almost impossible, a light at Grant and University was suggested to allow traffic to go eastbound on UA.**

Even though almost everyone believed the offer to be dismissive and un-responsive to the substantive legal and procedural issues raised by our appeal and woefully inadequate to our concerns about the size and detriment from the project, the neighbors took the opportunity to thoughtfully and vigorously discuss needed neighborhood improvements. Twenty neighbors responded, listed on the following pages in reverse order of receipt.

PM

First of all, I am opposed to giving any indication that this is any kind of a "settlement," and I, as a full-time pedestrian, do not think the appeal should be dropped in return. The project is still too large and will bring in too much constant traffic for pedestrians, drivers, and residents, both on the already busy main streets and circling on the side streets. These "improvements" will not take care of the problem. I still want to bring forth Berkeley Bowl's traffic and parking issues as the appropriate model to predict what will happen.

Also--if these "improvements" are to be stretched out over 10 years--what specific timetable is being proposed? What happens to all the pedestrians who are endangered by the traffic while many of those "mitigations" are waiting for their turn to be installed? If these are needed to take care of the danger to pedestrians coming from TJ/apartment traffic--how can there be a wait for any of them, let alone a 10-year wait for some?

As far as pedestrian safety goes--whenever I do go to Berkeley Bowl I never feel particularly safe crossing the busy street anywhere around there with heavy bags of groceries. When there is as much traffic and as many drivers whose attention is distracted by looking for parking as there is now at Berkeley Bowl and as I am sure there will be at a Trader Joe's or any comparable trendy high-volume retailer, in my experience it just isn't very safe for pedestrians, period.

I don't think that the proposed kinds of mechanisms always work all that well. Much depends on the specific design (as does the barrier), and can't be agreed to in the abstract. For example, many safety islands are not large enough for a pedestrian to feel secure, especially if weighted down with groceries. I have much less confidence in the other proposed measures--for example, not all cars pay attention to the pedestrian-activated lights (after all, drivers are able to ignore quite visible people trying to cross in crosswalks in the daytime), and putting them in will cause even more difficulties for the traffic flow on University and MLK in particular, which is already going to be snarled from TJ's and the large number of apartments with the driveway on University.

Obviously, taking pedestrians into account is a good thing, and for that reason I think that adequate safety islands should be in all heavily traveled streets, period, especially for older people and people who walk slowly for other reasons (disabilities, pushing baby carriages, pulling suitcases or carrying groceries, etc.). Pedestrian safety at the University/MLK corner should not depend on an offer from Hudson McDonald that is designed to avoid continued conflict over a fundamentally inappropriate project. The only place I as a pedestrian (who does not own a car) really feels reasonably safe crossing is at a traffic light--and even then I like wide safety islands on busy streets. If pedestrian safety were really high on planners' and developers' minds, they would put in more traffic lights as well as more safety islands, since a traffic light is the only mechanism that fairly well guarantees that cars will in fact stop. Of course drivers hate more lights, and I understand why, and there are environmental issues from idling motors, but from a pedestrian point of view they are the only really adequate measure.

Once again, if these proposed "improvements" were put in to deal with the current level of traffic they would be worth something; but they are not a sufficient trade-off for the excessively huge increase in traffic that any reasonable person (including plenty whom I've talked to who are not residents of the neighborhood) can expect. To repeat: I am a full-time pedestrian--and I certainly do not support accepting them in return for dropping the appeal.

Not to mention all the other things wrong with it, both physically and in terms of process--but we were asked to discuss only these specific pedestrian-related points.

RB

I think one of the statements in your list summarizing neighbors' views on possible improvements in our neighborhood misrepresents its subject:

"No one likes the barrier at Berkeley Way-Grant Street, it is unattractive and doesn't function well - it needs a re-design." *Revised above*

In fact, those of us who remember that intersection before installation of the diverter like the homely thing quite a lot. We remember the routine collisions there and the streams of cars on Berkeley Way when our street functioned as an additional westbound lane for University Avenue traffic. The diverter needs to become a fully landscaped feature of the streetscape, like so many others throughout Berkeley. It functions just fine. It's just ugly. Removing it would be folly.

The main point about all these fine ideas for improvements is that they don't respond to the substantive problems posed by the proposed development at Berkeley Way and MLK. That doesn't mean they shouldn't be pursued. It means we should not be lulled into thinking these desirable street improvements might in any significant degree mitigate the increased commercial traffic and looming, out-of-scale development that the proposal would inflict on this neighborhood. Nor would these street improvements undo the long-term damage to Berkeley's zoning approval process that would almost certainly result from the precedent of approving the thing as proposed: granting approval to a development profoundly out of keeping with the city's applicable standards on the basis of a staff report that evades and ignores the obvious excesses of the proposal. A relatively few alterations to the proposal have been suggested that would in fact help make the thing a tolerable neighbor. Those alterations should remain the focus of our attention as the proposal approaches its City Council consideration.

KE

I just don't see how these topics are related. Of course there will be more pedestrian safety improvements needed once traffic is increased 10 fold or more! Just as they would be with any huge new development, and the City should require the developer to make improvements to mitigate these. How this ties into the noise, traffic, parking and scale/shadowing impacts on the neighborhood is beyond me. Nice that they should ask of course, but I resent them implying that solving the pedestrian safety issues, caused by a project that they encouraged, could be considered any sort of "compensation" for the loss of our neighborhood.

MM

I'd like to echo somebody's suggestion that a traffic light be installed at Grant & University. With automobile access blocked from Berkeley Way to MLK, the only way to exit our neighborhood will be via Grant Street to University. Unless we happen to be heading west on University, the only way to get where we're going is to take a **very** dangerous left turn onto University from Grant. I don't think we should have to risk our lives in order to head north, south, or east.

Thanks for your continued efforts.

TH

A light there could be a problem. It would make it harder to reconfigure the barrier at Berkeley Way and Grant by making it easier to cross University Avenue. Think S. on MLK, right on Hearst, left on Grant, across Univ. Any mitigations not identified in the environmental review are a sign that the review was defective. Any specific traffic, parking, pedestrian etc. changes need to be thoroughly studied as a

system. This project needs to stay within the zoning. If it does, there will be fewer problems that would require less expensive solutions. Even if they offered 10 times the money for neighborhood "improvements", the precedent of ignoring the variance requirements among other zoning sections would be terrible for the entire city. You know how the city attorney's office is going to argue to the ZAB and the Council: You did this for Hudson/MacDonald so you have to ignore the zoning ordinance on all new applications.

DLH

I treasure the barricade on Grant at Berkeley Way! I want to make life better for the 1800 block too. But...I don't want traffic to divert from University and start using the 1700, 1600 and 1500 blocks as a main drag. Lots of kids on my block. Make it nicer, yes; take it away? no. \$250,000 seems a meager sop.

RR

After some consideration, I just want to second others comments that these traffic & safety issues should already be addressed by the project, not foisted off on the neighborhood to deal with. This is clearly a buy-out/bribe of the bait-&-switch variety, with no guarantee that any of this money will ever materialize. Unless HM puts in writing that they will support without condition any & all traffic/safety plans we propose, and unless they turn the money over in a dedicated escrow fund that they rescind access to, no dice! And any acceptance of these necessary funds does not mean blind acquiescence to the rest of the project's tragic flaws.

RB

Thanks again, Steve, for continuing to take the lead in the efforts to make this proposal serve its neighborhood. While none of the improvements envisioned in your list address the problems with the proposed development, they would certainly help make the neighborhood more livable. Pedestrian-serving areas at busy intersections ("bulbouts" and "islands") with appropriate landscaping should certainly be put in place whatever happens at the MLK-University site. Our streets need to begin to look and feel like places for pedestrians--not just automobiles. The landscaping of the Berkeley Way-Grant diverter was a serious prospect 10 years ago (Patrick Kennedy had offered to help fund it in connection with his building at 1801 University), but a neighbor's objection to using city parks money for part of the cost squelched it, although the same funding source was paying for similar installations throughout the city. Some of us have managed for a decade or two now to nurse along the diverter plantings we put in those concrete drums and occasionally to paint out the graffiti on them. But we'd love to see it developed as the little curving mid-street landscape that it longs to be.

TD

I think the offer is great. My vote would be to accept the offer & drop the appeal.

MK

Thank you for staying with this issue I would have given up long ago. My 2 cents:
Will this be built and paid for BEFORE construction?

Can the developer be trusted to keep their word? How can this be enforced?

My experience:

Our family home in Hayward was taken by eminent domain for BART. My parents bought a home in a development in Newark (Transamerica) There was a park provided with a Lake and an island.

They planted grass around the edge of the Lake. The developer never developed the island part of the park and then guess what? Some huge expensive homes were built on it. The people who bought homes with the "promise" of the island becoming a part of the park got burned. My teacher said this often happens. But there may be ways to require the developer to build these first.

All that said, \$250,000 does not seem to me like an amount that can accommodate the huge change in quality of life for the immediate neighbors and the larger community for the rest of their lives and the lives of coming generations.

VA

The most important of these improvements, in my opinion, are the pedestrian-activated crosswalk warning lights, and the improvement of the Grant/BW traffic diverter.

Did we get them to agree to not allow the residents of 1885 to have Area E parking permits?

AF

Thanks for all of your hard work over the years. My two cents: a traffic light at University and Grant would be useful. If the street is blocked off at the MLK end, it is extremely difficult to get out of the neighborhood.

My other thought is that the barrier at Berkeley Way and Grant be removed, so that there is a second way out of our block. That could cause more traffic into our block, but I think that there needs to be a way to go east or north from here if MLK is blocked off. When the MLK end was blocked off months ago, I had to drive in circles to get towards the north or east. Turning left at Grant onto University is Very Difficult.

I support the addition of pedestrian-actuated crosswalk lights. Friends of ours have been hit or nearly hit at the intersection of MLK and Berkeley Way in the past.

Pedestrian safety islands at MLK and University sound good.

I am neutral about bulb-outs.

Other than that, my issues are that the oversized building will reduce parking for current tenants outrageously. And the shadow of the building is too great for nearby Homes. Also, the increased traffic does seem too great to be handled at this intersection. Yeah. All that stuff that I should have been standing up for all along. (insert guilt). What are the chances of winning the appeal? What would be won by winning the appeal? Sorry, I'm a little behind on all of this.

Thanks for your time and consideration.

MR

Interesting..... Obviously, \$250,000 to protect pedestrians would be very important to the neighborhood, but at what cost?

ED

Hi Stephen,

Great follow thru on all your enduring notices and concerns on this project. I highly recommend your group look at similar projects or conditions around the city that have improvements that work and don't work, and list those. The goal of maintaining and enhancing an urban neighborhood is such a subjective topic, but even though I live 10 blocks away, I stay interested. We have a chance to do "precedent-setting" improvements here. Let's just do it! RW

The goal was to stop the project, or stop its immensity. They're trying to buy you off, perhaps attractively. It's your call to know how sharp are the teeth of your legal action. If your suit can jam them or force them smaller, then I wouldn't take the deal, but try to insure they remain somehow committed to the improvements should the project proceed as planned. That last is wishful, but hey.

RR

Steve,

Sounds like something we should respond positively to, but how do we lock them in to this amount of \$-what's to say they won't make an initial token payout then balk at the rest? Does the full amount get put in escrow for our use? That's the only way I trust them to actually put out. We get the full amount up front to put in a neighborhood improvement investment fund (with oversight, of course)!

HG

I think for now I've nothing more to offer your effort but I think that what they are suggesting is a cheap shot to be rid of you and your appeal. Don't lose sight of what supposedly was one of your greater concerns and that was the overarching size and mass of this building.

Along with the misuse and abuse of more units than the law allows. Also -- if member Capitelli gets you to signoff on this it's a feather in his cap. Clearly there are underlying motives and if pedestrian safety is one of them then they should make that be part of the use permit and no negotiations with neighbors should be required. That is a responsibility of the city to ensure safety. Why is this all coming out now and not part of the traffic analysis that was sorely lacking? It appears to me they recognize the problems and should deal with it without the negotiations. And honestly, their word is worth nothing unless written on paper. My two cents.

BW If there were to be a settlement, I would like to see the 5 bumps on the Milvia Slow Street raised 2 inches (cost negligible) and a stop sign put in at Milvia and Delaware.

The total cost would be minimal. (Maybe \$3000.00)

JP

At this point, is it out of the question to try to induce HD to provide adequate off-street parking for TJ shoppers and its new upstairs residents-to-be (or reduce the # of the latter)? In the most personal, palpable way, on the corner of Hearst and Bonita, it might be the sheer number of cars trolling for parking places, day and night, that I'm confronted with, most.

But I want to stand with the neighbors who are more immediately, physically overshadowed. So on the matter of handling bargaining chips and priorities such as these, I trust your instincts entirely. So

whatever you're comfortable with as a fitting response to the verbal offer, I'll lend it/you my support.

KE

You already know my opinion of these "improvements", which is that they do not represent any compromise with the neighborhood whatsoever. I don't even know where these ideas came from, as they certainly weren't discussed in any forum that I was aware of. Improved safety resulting from City decisions and deals with developers is a City concern that has to be solved by the City however they choose to finance it. In no way can these be seen as giving back anything to the neighborhood in return for the damage caused by this project.

The bulb outs in particular are a ridiculous waste of precious parking for the neighbors who live in multiple unit conversions and those already without curb cuts for offstreet parking. The only improvement which might possibly be considered a neighborhood improvement in exchange for dropping opposition to the project would be landscaping of the barrier and moving it farther to the east. Apparently this is off the table.

Actually there would be a benefit to redesigning the Grant/B.Way diverter so that people on our block of B.W. would have the option of turning right toward Hearst as well as left to University. Traffic approaching from Hearst would still have to make the right turn going west down B.Way (although I guess if they drove on the wrong side of the street they could make an illegal turn eastbound on B.Way). This would entail an offset "T" shaped barrier so that cars couldn't use Grant as a short cut between University and Hearst. The tail of the "T" would extend a couple of car lengths east down Berkeley Way to prevent this (at least without turning east down Berkeley Way and then making a u-turn to then go back west). Might work and wouldn't necessarily have to be that expensive at all.



May 3, 2007

Dear Neighbors:

As many of you know, 1950 MLK, LLC has obtained approval from the Zoning Adjustments Board to construct a mixed-use project that includes 148 apartments and a Trader Joe's at the site of the current Kragen Auto. This approval has been appealed by one of your neighbors, Stephen Wollmer, and is scheduled to be reviewed by the City Council on May 22, 2007.

We are confident that Mr. Wollmer's appeal will not be successful. There is overwhelming support for this project in the City and Mr. Wollmer's appeal raises no issues that were not already addressed by the ZAB. However, as the applicant, we must challenge this appeal. This challenge will be time consuming and costly and will do very little to change the project or add any benefits to the neighborhood.

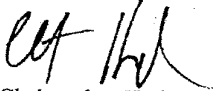
We have made an offer to Mr. Wollmer that, in exchange for the withdrawal of his appeal, we will provide \$200,000 to the City of Berkeley to be used for street beautification and improvements in the vicinity of the project (in addition to the Berkeley Way barrier already included in the project). The City has indicated its willingness to work with the residents of the 1800 block of Berkeley Way and the 1900 Block of Grant Street to determine exactly how the money should be spent.

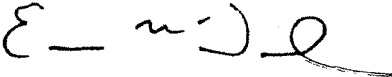
Discussions about the possible resolution to the appeal have been ongoing since March and the appeal is now set for a City Council hearing. We have made it clear that, for this offer to remain open, the appeal must be withdrawn no later than May 8, 2007. After this date, we will be bringing on legal counsel to prepare for the appeal and threatened litigation and our offer to invest in neighborhood improvements will be withdrawn.

If you would rather see funds invested in your neighborhood and not go to our land use attorneys, please let Mr. Wollmer know as soon as possible. According to Google, Mr. Wollmer's contact information is:

1823 Berkeley Way
Berkeley, CA 94703
swollmer@pcmagic.net
Tel: 510.843.2053

Please feel free to contact us should you have any questions. Thank you for considering this information.


Christopher Hudson


Evan McDonald

Here are the responses to Hudson McDonald's neighborhood letter:

MKR

Thank you for your note. I find it insulting and condescending. You address us as neighbors, yet you don't live in this neighborhood and if you did you would know that the majority of the resistance to your project is based on it being too large for our neighborhood, not the project itself. Your token offer of \$200,000 over 10 years should not detract from the fact that the city should be working on the beautification and improving of the already dangerous and ugly intersection of Grant and Berkeley Way. I'm sure you've sent similar threatening and divisive letters to other communities to help you get your projects completed, and it may very well work with our neighborhood, but it is clear to me that your project does not have the best interests of our neighborhood in mind. Mr Wollmer has worked very hard to protect the integrity of our neighborhood and has the support of his neighbors. I think your hard earned money would be better spent on your attorneys.

KH

Hi Steve -

I agree with your notes about the letter. I was a bit surprised to get this sent directly to me. The tone was surprisingly smarmy and self-serving, and I thought that that indicated that they misjudge the sophistication of the neighbors; nice to know in the tactical planning.

In the letter, HM states that it will be too bad if the money has to go to their lawyers for the fight, instead of to the neighborhood. That seems a common negotiating ploy, but I wonder if it has any effect - everyone, including me, wants to cut out the hated lawyers if they can.

HG

HM offer to withdrawal is not regrettable because it stunk to begin with \$200K is NOTHING to them and it actually seems very disingenuous from the get go. I always believed it was the City of Berkeley who should have had all that in the use permit/traffic design to start with. It was a cheap shot to begin with from them and now they are acting like a bunch of 4 year olds because we're not playing as nice as them in the sandbox. They are a piece of work. I know I haven't done much in way of sending letters to you to submit in the packet. Maybe I can time box some time to get a short but to the point note out.

What is our deadline to send you anything again?

KE

Hi Steve,

I wondered what Chris and Evan were doing walking down the block (I think it was Wednesday evening but it might have been Thursday). They saw me in the driveway and sort of picked up speed heading west. By the time I got to the sidewalk to see where they had gone they were out of sight so I assumed they had gone into Tom Roland's. Didn't get a copy of the letter and I don't think Tom Hunt did either but I'll ask.

TH

It's too bad Mr. Rogers isn't around to show them what it means to be a neighbor.

CONTINGENT PLEDGE

1950 MLK, LLC, a California limited liability company, in consideration of the matters recited below, hereby pledges as follows:

A. On January 11, 2007 the City of Berkeley's Zoning Adjustment Board, after conducting a public hearing, adopted the Mitigated Negative Declaration and Approved the Use Permits described in Use Permit No. 02-1000070 (the "**Entitlements**") in connection with the proposed development of the mixed use building with the uses described in the Entitlements at 1950 Martin Luther King, Jr. Way and 1885 University Avenue (the "**Project**").

B. On February 2, 2007, Steven Wollmer, on behalf of Neighbors for a Livable Berkeley Way, filed an appeal of the Entitlements with the City Clerk of the City of Berkeley.

C. Steven Wollmer has offered to withdraw his appeal if 1950 MLK, LLC makes the pledge set forth below, subject to the following conditions:

1. Pledge. 1950 MLK, LLC hereby pledges to pay Two Hundred Thousand Dollars (\$200,000) (the "**Payment**") to the City of Berkeley upon the later of March 15, 2009 or the issuance by the City of Berkeley of a building permit for the tenant improvements for a Trader Joe's that will be constructed in the Project. The Payment will be used by the City to construct and/or maintain certain pedestrian safety improvements in the vicinity of the Project.

2. Conditions to Pledge. The obligation of 1950 MLK, LLC to make the payment shall be subject to the timely satisfaction of the following conditions (the "**Conditions**"):

(a) Delivery of written, notarized notice by Stephen Wollmer to the Berkeley City Clerk of his withdrawal of the appeal of the Entitlements on or before 5:00PM (PDT) on May 8, 2007.

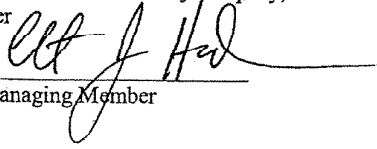
(b) The absence during the period before the date the Payment is due of an appeal or other legal challenge of the Entitlements or any other governmental action with respect to the Project, including the absence of an appeal of the issuance of a liquor license for any business to be operated in the Project.

3. Security of Pledge. 1950 MLK, LLC acknowledges that, if the foregoing Conditions are satisfied, it will not be granted a Certificate of Occupancy for the Project until the Payment is received by the City of Berkeley.

IN WITNESS WHEREOF, 1950 MLK, LLC, has made the foregoing pledge as of May 1, 2007.

1950 MLK, LLC
a California limited liability company

By: Hudson McDonald, LLC,
a California limited liability company,
manager

By: 
Managing Member

Soo, Sheila

From: swollmer [swollmer@mail.pcmagic.net]
Sent: Monday, May 14, 2007 6:51 PM
To: Clerk
Subject: Updated letter to council to correct page citations.



5_14_07_SW_CC.p
df

Pamyla,

Steve has corrected the pdf and therefore, I attach my updated letter. Appreciate it if this can be substituted for my earlier letter, as the Council might find the earlier letter a tad confusing.

ps sorry about getting your name wrong earlier - believe me it was inadvertant.

steve

Stephen Wollmer
 510 287 1356 wk
 510 843 2053 hm
 swollmer@pcmagic.net

----- Forwarded message -----

Subject: RE: Important, and then not so important
 Date: Mon, 14 May 2007 11:34:55 -0700
 Message-ID: <C0307258A2DDFA45BBFE6AEC86C3BA9F809AF2@COBEXVS1.berkeley.root>
 From: "Ross, Steven D." <SDRoss@ci.berkeley.ca.us>
 To: "swollmer" <swollmer@mail.pcmagic.net>

Steve,

The PDF file has been corrected, and I've burned new CDs for both you and the applicant. Again, they are in the PSC will-call box.

I also created a separate PDF file with the complete captioner's record for the 10/27/05 ZAB meeting. It will have to be a supplement to the Council Report, because the hard copy has already been printed.

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

From: swollmer [mailto:swollmer@mail.pcmagic.net]
 Sent: Monday, May 14, 2007 9:33 AM
 To: Ross, Steven D.
 Subject: Re: Important, and then not so important

Thanks, - I will need to revise my letter to Council giving new page numbers. Can you provide a new disk for my pickup this afternoon?

steve

Ross, Steven D. writes:

> Thanks, Steve. I didn't catch those errors. I've sent a request to the Clerk's office to make the corrections. Regarding the last item, we don't have copies of the 9/22/03 e-mails to Hector Lopez.

>

> -----Original Message-----

> From: swollmer [mailto:swollmer@mail.pcmagic.net]
> Sent: Sunday, May 13, 2007 7:47 PM
> To: Ross, Steven D.
> Subject: Important, and then not so important
>
>
> Steve,
>
> Pagination is off in the record because you inserted the index at the front
> - if it is deleted and re-inserted at the end the pagination (and the very
> helpful go to function works again). My letter will include citations to
> both, but if you can 'hold the presses' I will delete the second page
> reference (which is offset by +).
>
> minor matters:
> Most of the captioner's transcript from the October 27, 2005 meeting is
> missing.
>
> Emails from Applicant to Hector Lopez referred ton on p. 349 are missing
>
> I will be filing a public records request for the more substantative missing
> documents as they will take some time to assemble.
>
>
> steve
>
>
>
> Stephen Wollmer
> 510 287 1356 wk
> 510 843 2053 hm
> swollmer@pcmagic.net

Stephen Wollmer
510 287 1356 wk
510 843 2053 hm
swollmer@pcmagic.net

May 14, 2007

Stephen Wollmer
1823 'B' Berkeley Way
Berkeley, CA 94703

Mayor Bates and Berkeley City Council

Appeal of ZAB permit for 1885 University Avenue: Administrative record support for appeal.

I wish to take this opportunity to point out certain documents heretofore unknown to us in the administrative record that are supportive of our appeal. I have not attached the pages I reference, assuming that you will be able to locate them in the Cdrom of the administrative record by using the extremely handy 'go-to' function in Adobe Acrobat or Acrobat Reader (the small box at the bottom center of the application flanked with navigation arrows where a user can type in the page they wish to go to). If you have any difficulty navigating to a cited page number, please do not hesitate to call.

Support for our claim on page 16 of our appeal calling for rejection of Condition 43 as rent levels specified in that condition are not affordable under State standards:

- Email from the applicant (Evan McDonald) agreeing that the affordable rents for the units that qualify the project for benefits under the State density bonus law will be set at 30% of 60% of the AMI for 30-years, after which the City standard of 30% of 80% will apply. (1464);
- The applicant's statement for the Deemed Complete correctly interprets State law, although it misinterprets the applicable rents under Berkeley's inclusionary ordinance. (440);
- Hand annotated copy of the above attached to the Trader Joe's project applicant's statement that applies this standard to the modified project although it cites the incorrect State law. (1349).

Support for our claim under CEQA on pages 24-25 of our appeal that the Initial Study failed to adequately address and mitigate impacts on the aesthetics and cultural resources of the neighborhood:

- Letter from the California Historical Resources Information System: recommendation number 2: "Review for possible historic structures has included only those sources listed in the attached bibliography and should not be considered comprehensive. The Office of Historic Preservation has determined that buildings, structures, and objects 45 years or older may be of historical value. If the area of potential effect contains such properties not noted in our research, they should be assessed by an architectural historian before commencement of project activities. In addition, given the proximity of the National Register listed historic district it is recommended that an architectural historian assess the project impacts to the District's viewshed." (2415-2416).

Support for our request on page 35 of our appeal for a modification of Condition 12 to require the applicant to commit to a remote parking location for construction workers:

- Comment from Harmindar Sran under the heading of 'environmental health-noise' recommends that because "Contractors or deliveries often arrived earlier and make noise that disturb residents. A contractor parking area will have to be designated. A designated off site parking site with shuttle for workers should probably be designated to minimize parking problems in the neighborhood associated with early arrivals. ... See what was done for Library Gardens project – off-site parking at the Marina?" (1399);
- The applicant (Evan McDonald) replied in an email "Noise: We plan on parking on site once our basement level is complete". This response leaves unanswered the concern of Mr. Sran about

where the construction workers will be parking during the many months of demolition, excavation, and construction of the foundation and podium. (1415).

Support for the request on page 35 of our appeal for modification of Condition 37 to allow Saturday PM parking on the east side of MLK between University and Hearst, thereby avoiding unnecessary impacts to neighborhood businesses:

- Petition from 2004 (prior to Trader Joe's project) with signatures of 160 of Flamingo Cleaner's customers requesting preservation and enhancement of their parking (831-838);
- 2006 Letter from Jerry and Judy Cho, proprietors of Flamingo Cleaners, requesting consideration of their customer's need for short term parking during all business hours accompanied by a petition signed by 60 of their customers (pages 2228-2232);
- An email from Peter Eakland to Chris Hudson agreeing that parking restrictions are not necessary on Saturdays (2659);
- Memo from Peter Hillier (6th bullet point) stating that restrictions are recommended on weekdays only. (3312).

Support for the request on page 36 of our appeal that the Berkeley City Council review and reverse the ministerial decision by the Planning Department to re-fronting the lot from MLK to University Avenue:

- The record includes not only the previously known Steve Solomon letter to me dismissing the claim that the front of the lot should remain on MLK but also a memo from him to Dan Marks with a frank discussion of the reduction in protection for the neighborhoods that would result from a decision to re-front the lot. The memo includes the statement that "However, finding the MLK frontage, the front property line would afford the nearby residentially zoned neighbors some greater protection than (sic) offered by the standard non-detriment finding." ... (if the lot was not re-fronted) "The reduction could be granted only if a finding, in addition to standard one for non-detriment, could be made "that such smaller yard would provide greater privacy or improved amenity to a lot in the residential District;: a more difficult case for the applicant to make than just proving non-detriment. Setting MLK as the front property line would establish a required fifteen-foot rear yard setback from the westerly neighbors; otherwise a five-foot setback would apply." but "While recognizing that finding MLK the front property line would offer more protection for the residential neighbors, the ordinance does not provide sufficient discretion to do so." None of these statements were included in Mr. Solomon's letter to me that follows the memo. We request that the Council carefully consider this matter and overturn this decision on the grounds that it fails to implement the Council's clear intent that the Zoning Officer should interpret the law to promote the 'orderly development of the area' including protection for residential neighbors. (391-395).

Traffic and Parking. Although traffic and parking were only specifically appealed under CEQA in regards to the failure of the traffic study to adequately address the intensity of traffic and parking disruption caused by locating a Trader Joe's adjacent to a residential neighborhood and at an already traffic 'challenged' intersection, in anticipation that this matter may be set for public hearing, I include the following references that point out the many ways the safety and peaceful enjoyment of our neighborhood will be affected by the project should it be approved as currently proposed:

- Peter Hillier, in his preliminary comments about an earlier, much less traffic intensive proposal at this site, cites concerns about pedestrian safety at MLK@BW and Grant@UA, the general failure of traffic studies to take sufficient notice of pedestrians in general, and the likely need for a traffic light at MLK@BW. (345-347);

- Peter Eakland, in comments to the traffic consultant compares Berkeley's parking requirements and I.T.E. (Institute of Traffic Engineers) standards: compared to Berkeley's C-1 parking requirements the ITE levels are 46% higher for residential and 117% higher for commercial uses, and that 'of particular concern is the retail demand on weekends. Item 9 on (1402);
- Steve Ross comments that student households should be assumed to have 1 car per two undergraduates and 1 car per graduate student – he rejects the study's rate of 1 car per 20 students. Item headed p.21 on (1156);
- Peter Eakland, in comments to the traffic consultant: "it should not be assumed that persons who utilize non-auto modes of travel do not own automobiles" and that "parking impacts are likely to occur when RPP restrictions are not in effect, i.e. on weekends and in the late evenings on weekdays." Item headed Page 26, par.3. (886);
- When asked to comment on the Trader Joe's project the University Avenue Association, while supporting the project, suggested that commercial parking be doubled to 96-retail parking spaces to 'lessen the burden on the surrounding neighborhood." (1926);
- Peter Eakland, in comments to the traffic consultant states: "Since the City has consistently denied RPP permits to residents of developments that do not meet City parking requirements, residents who do not have on-site parking almost certainly will be unable to obtain day-time on-street parking. Also the availability of overnight parking in the area will be significantly impacted. No mitigations exist except for the applicant increasing the number of on-site parking spaces. (Note: I understand that the applicant is reluctant to admit that there will be parking impacts, but the text must at least state the facts." Item headed Page 27, last para. (1161);
- Heavy truck traffic turning onto Grant Street: Steve Ross to Evan McDonald: "Do you have a major problem prohibiting heavy construction truck traffic to the site during the AM and PM peak hours (with the possible exception of the concrete pour dates)? The Grant University intersection poor LOS and that is the way inbound trucks will access the site. Allowing heavy trucks to make left (northbound) turns onto Grant from University during the peak hours seems like a potential hazard, in addition to a traffic nuisance, especially if there is a significant amount of truck traffic it may be important to station flag man at the Grant/University intersection to facilitate turns by the trucks." Evan McDonald's reply. "This kind of restriction is very difficult to control, as trucks are coming from far away, are battling bay area traffic, and get here when they get here. They are also about three steps removed from our control (Owner, general contractor, subcontractor, material supplier). We can't agree to any restrictions other than not having them come outside of work hours. I think a better way to deal with this is to have the trucks use the City's truck route system to get to University, headed westbound, east of MLK. Then the can turn right onto Grant. We always have flaggers once trucks get to the site." (1572-1574).

Over the next week I will continue my review of the record to identify additional areas for your attention, in particular items which question the legal basis for the grant of 25 additional density bonus units to compensate the developer for their below cost lease with Trader Joe's rather than the State intent of using density bonus units for the sole purpose of increasing the feasibility of affordable housing, housing for senior citizens, and for day care centers which serve 50% or more lower income clients.

Sincerely yours

Stephen Wollmer

Soo, Sheila

From: ClevelandLaw@aol.com
Sent: Saturday, May 12, 2007 11:59 PM
To: Clerk
Cc: swollmer@pcmagic.net
Subject: Trader Joe's Appeal - Set for Hearing or Remand

Mayor and Council:

As the neighborhood across University Avenue from the proposed 'Trader Joe's project, MAAGNA is concerned about the impacts on our neighbors near the project and we're concerned about our ability to safely access the new Trader Joe's grocery store by waking from our neighborhood. Local residents walking to shop (from transit or from home) is an important reason to locate shopping on a transit corridor. With the increased traffic generated by TJ and without any developer-provided improvements to the University Avenue/MLK intersection, the already difficult UA/MLK intersection becomes increasingly less usable by walkers. The UA/Grant intersection already is unusable at rush hour by walkers who cannot get safely across.

The developer is getting many concessions and extras in the project as proposed. What is the City or the nearby residents getting for those extras and waivers?

Either set this appeal for hearing or remand it to ZAB. The City needs a project that works for everyone, and that includes the residents most impacted by the project.

Wendy Alfsen, Corresponding Sectary
MAAGNA

See what's free at AOL.com.

BARRY WOFSY
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CITY OF BERKELEY
CITY CLERK DEPT

07 MAY 14 AM 10: 25

May 14, 2007

Re: 1885 University Avenue

Dear Mayor Bates and Berkeley City Council Members,

We believe that the City Council must set a public hearing for the proposed project at 1885 University Avenue. Without an EIR, the full impacts from the traffic and parking of the proposed Trader Joe's and the inappropriate density of the overall project will obviously not be mitigated.

We would like you to focus on the Milvia Slow Street bordering this project. There will be a tremendous increase in traffic along the historic "Milvia Slow Street". There has been no attempt by these developers to mitigate this particular impact. We believe that these impacts could partly be mitigated if the developer were required to raise the 4 traffic bumps on the slow street by two inches and create a four way stop sign intersection instead of the current two at the corner of Delaware and Milvia. The total cost would be less than \$5,000.

Thank you for your consideration.

Sincerely,

Barry Wofsy



Erika Shore
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Berkeley, CA. 94709
510-848-4151
Shoreerike@cs.com

CITY OF BERKELEY
CITY CLERK DEPT

07 MAY 14 AM 10: 25

May 14, 2007

Re: Proposed Project at 1885 University Avenue

Dear Mayor Bates and City Council Members,

I am distressed that there has been no EIR in connection with the proposed development at the corner of University and MLK, Jr. Way. The deserved popularity of Trader Joe's and the density of the overall project will inevitably have impacts on the existing citizenry in terms of traffic, congestion, noise, and pollution. But because it was determined that no EIR was required, there has been no systematic evaluation of anticipated impacts and suggested ways to mitigate them. This is what was envisioned when the EIR was mandated by law, not to impede development but to help shape it to a scale and proportion that is tolerable and sane for the community.

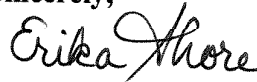
At the very least, please pay particular attention to the fate of the world-renowned Milvia Slow Street. Without the benefit of EIR-type suggestions, in my humble opinion, I propose raising the Slow Street's speed bumps by at least 1 inch and preferably 2 inches, and by putting in a 4 way stop at the corner of Milvia and Delaware.

I still do not understand why Trader Joe's hasn't been encouraged to seek space on San Pablo Avenue just north of University where the Long's just became vacant, adjacent to plenty of parking. That seems to be a much more appropriate location for such a popular and desirable business rather than at an already heavily trafficked intersection adjacent to a fragile residential area.

Please insist that legitimate neighborhood concerns are mitigated before the adoption of a final plan.

Thank you.

Sincerely,



Erika Shore