

2211 Harold Way Significant Community Benefits Additional Comments to Response  
Kelly Hammargren Page 1 of 13

Date: January 2, 2015

To: Aaron Sage, the Zoning Adjustments Board and the Berkeley extended community at large

Re: 2211 Harold Way Significant Community Benefits Page

From: Kelly Hammargren, 1709 Bancroft Way, Berkeley CA 94703

In the weeks between submitting the response to the 2211 Harold Way Significant Benefits on December 11, 2014 and today January 2, 2015, I have had the opportunity to attend the December 11 Zoning Adjustment Board meeting, the December 18, 2014 Design Review Committee meeting, to speak with current and former Berkeley Community leaders and gather petition signatures in support of saving the Shattuck Cinemas.

Each new piece of information brings in another layer of a tangled web in the presentation of the 2211 Harold Way project. Most blatant in all of this is the failure of appointed officials/representatives to exercise their power. There is the failure of the appointed officials/representatives to acknowledge the 2211 Harold Way project detriments to the Berkeley community and act. Furthermore is the failure of the appointed officials/representatives/members of the Zoning Adjustment Board and the Design Review Committee to act on their own observations and assessments. The stream of comments followed with excuses and justifications by Board and Committee members to abdicate their responsibility to act/vote on their own stated observations and assessments is shameful.

In the meetings attended by the public, the Board and Committee members have described the 2211 Harold Way project as out of scale, unimaginative, poorly designed, schizophrenic, obstructing views from downtown Shattuck, partially obstructing the view from Campanile Way, noting historical and cultural significance of these views and need to preserve these views, detrimentally changing the downtown skyline, breaking the cultural draw of the public to downtown businesses and services and the overstating claimed benefits by the developers and their consultants.

BMC Section 23 E.68.090.E ...to approve abuilding over 75 feet under 23E.68.070B the board must find that the project will provide either directly or by funding significant community benefits. The 2211 Harold Way project fails to meet this standard.

The Residences At Berkeley Plaza Documentation of Project Significant Community Benefits for the City of Berkeley October 20, 2014 on page 7 states:

*Based on exact reading of this regulation, the threshold question can be summarized as: Are community benefits "beyond what would otherwise be required" and are they "significant"? The Ammerican Heritage Dictionary defines significant as "meaningful, substantial, and having major effect." Significant*

*community benefits, therefore, must be meaningful, substantial, and having major effect for the good of the community.*

### **2211 Harold Way Claims of Significant Community Benefits**

***Privately owned open public space*** - declared as 1,872 square feet claiming value of \$7,381,560

On December 18, 2014 at the Design Review Committee meeting Charles McCulloch, Vice Chair stated he had reviewed the plaza and found that the privately owned open public space was actually only 500 square feet and by comparison it is smaller than the Clems seating area across the street. Additionally, Charles McCulloch found the privately owned open public space so poorly designed that he submitted drawings of alternative plans to Mark Rhoades to be share with the architects of 2211 Harold Way.

Using the calculations from the 2211 Harold Way project for pricing the value of square footage of \$6.50/ square foot which gives the developers/owners reimbursement on their investment, the value of the privately owned open public space as identified by Charles McCulloch Design Review Committee Vice Chair is \$39,000 per year.

Significant Community Benefits are for Berkeley and not for return on investment for developers with the actual value of the 500 square feet as some number less than \$39,000 annually and it should be noted that this is an amount of money on paper with no actual dollars exchanged. Even at \$39,000 this works out to about 35 cents per Berkeley resident per year.

***Shattuck Cinemas Retention and Modernization*** - claimed value of \$24,747,000

The 2211 Harold Way project calls for demolishing the current buildings which house the ten Shattuck Cinemas Theaters and replacing them with six theaters at a lease rate that is subsidized to nearly double the current rate. Losing four theaters and doubling the lease is not a community benefit. Furthermore, theaters in the current economic environment run on very narrow margins, making the likelihood of the Shattuck Cinemas reopening under these conditions is questionable at best and realistically hardly feasible. The Shattuck Cinemas are central to the Berkeley Downtown. In fact, from preliminary analysis of petition signatures protesting demolishing the Shattuck Cinemas nearly 2/3 of signatories come from surrounding communities including Vallejo, San Francisco, Albany, Oakland, Alameda and other cities. The Shattuck Cinemas are an important draw as many of these visitors frequent local businesses and restaurants before and after watching the films at the Shattuck Cinemas. The attendees of the Shattuck Cinemas are also bypassing an array of other theaters to come to Berkeley. It should also be noted that the Shattuck Cinema Theaters are fully wheelchair accessible, which is not the case for surrounding and extended location theaters.

A true Significant Community Benefit would be to subsidize the Shattuck Cinemas lease rate in the new building to the current lease rate in place before any raises by the new 2211 Harold Way owners and to tie future increases to CPI. Residential rent control ties rent increases to 65% of CPI increases setting precedence to establishing a pricing index to CPI. Wheelchair accessibility to the new theaters is not clearly identified in the

available plans and needs to be provided. Additionally, the projected term of the construction phase is four years. There is no offset for this loss and no alternative plan for providing access to film, especially independent and art film during the construction phase.

***Transportation Demand Management*** - claimed value of \$1,555,000

At first glance this looks promising as a benefit to the community although still not meeting a level as significant to the community for the sacrifices being made for 2211 Harold Way project. With further investigation the majority of the claimed benefits are for the projected new 500 to 600 building residents. The new residents who will be paying for these "benefits" through their rent, condominium purchases and/or condominium dues. Not even the shared electric bikes are a true benefit as in The Residences At Berkeley Plaza Documentation of Project Significant Community Benefits for the City of Berkeley October 20, 2014. Users must have City CarShare memberships. The only discovered community benefits are a corral for parking 16 bicycles pending city approval. Allowing the currently expired lease for the BART bike station to be extended for 3 years needs further research to determine the actual value with comparison to a declared subsidized value of \$72,000 per year. The SmartWalk Transit screen projected on the sidewalk where people are walking should hardly reach the level of even passing fancy. This might better be noted as being out of touch with the future.

BART is standing room only at commute hours now. Packing in more people on a finite number of trains demonstrates inadequate evaluation of current transit patterns and access. The transportation assessment in total is inadequate.

***Union Employment*** - declared value \$10,000,000

Certainly employing unionized building trades workers benefits the workers and hiring 50% living within Alameda County is a benefit, but this number comes from estimating that it will cost 8% to 12% more to use unionized workers. This restated should be read as paying workers fair wages instead of underpaying or hiring illegals will cost more. This sounds great, but is this promise binding? How will it be measured? How will it be enforced? These are important questions to be answered and written into binding agreements that cannot be skirted through declarations of the need to cut costs by the developers. Another question is what union jobs will exist after the building is completed? Will employees of the final building be unionized?

The 2211 Harold Way could be an incredible building with affordable housing included in the building. The payment of \$20,000 per unit in lieu of inclusion of affordable housing in the building is inadequate and puts the City of Berkeley further behind in meeting the Housing Elements level of needed units. The NEXUS study is in process and is expected to be available later this year. Approving an inadequate sum now should never be considered.

2211 Harold Way if approved should be completed near 2020 a time when all new housing is to meet the goal of Zero Net Energy. Prakash Pinto, Vice Chair is an architect who said during discussion after the December 11, 2014 meeting that he is involved in

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**Kelly Hammargren**

building energy efficient buildings to Building Living Challenge in Canada. Online research shows these buildings to be incredibly efficient, the kinds of buildings we should be designing to eliminate dependence on fossil fuels and have in our own community. That would be a significant community benefit. And, the unionized workers could be trained during construction in the new efficiency that is to be our future. It is shameful that a building with the only claims to being green is plopping it in the downtown near a BART station with some amenities for the residents when so much more could be done and so much more is required to qualify as Significant Community Benefit.

The 2211 Harold Way project is filled with problems. Jim Goring, Chair of the Design Review Committee on December 18, 2011 stated that the developers should just decrease the height of the building in anticipation of the objections from the community. The developers declined. Instead we are left with an out of scale, unimaginative, poorly designed, schizophrenic building which obstructs views from downtown Shattuck, partially obstructing the view from Campanile Way both of historical and cultural significance with the need to preserve these views, detrimentally changing the downtown skyline, breaking the cultural draw of the public to downtown businesses and services and the overstating claimed benefits by the developers and their consultants.

It should at all times be considered and remembered that any developer applying for approval and permits of a building greater than 75 feet is held to a standard requiring Significant Community Benefits. The 2211 Harold Way project developers, architects, consultants and representatives have failed to provide Significant Community Benefits. This failure calls for rejection. It is the responsibility and duty of the Zoning Adjust Board to reject the 2211 Harold Way development plan as completely and totally inadequate of demonstrating significant community benefits.

It is the responsibility and duty of the 2211 Harold Way project developers, architects, consultants and representatives to present a project that is in scale with the downtown area with significant benefits to Berkeley. To date they have not done so.

Respectfully submitted,  
Kelly Hammargren  
Berkeley Resident and Home Owner  
Mobile 510 325-1218

January 2, 2015

Aaron Sage  
Senior Planner, Land Use Planning Division  
2120 Milvia Street, 2nd Floor  
Berkeley CA 94704

Re: Proposed Building at 2211 Harold Way

Dear Mr. Sage,

I am writing to voice my opposition to the project at 2211 Harold Way as presently conceived. I am a downtown business owner/resident and generally favor downtown development. I served on the SOSIP committee and am looking forward to the revitalization of the downtown envisioned there and in the Downtown Plan, including the addition of needed urban density.

Recent projects completed by my firm for the San Francisco Board of Supervisors have provided me with expertise in the kind of community benefits and mitigations possible in development projects. There are four ways in which I believe the current project terms are flawed and could be improved.

**Under current planning rules, extraordinary benefits are required for construction of a project of this size. The terms of those benefits will set the stage for future large buildings coming into the pipeline. Other than the benefit of insuring union labor of \$10 million, a welcome recent change, the claimed benefits are either too small, appear to significantly overstate their value or do not further already established city priorities.**

- The developer is only offering the minimum funding required in city statute to the City's in-lieu affordable housing fund. That amount (\$20,000 per unit) is vastly inadequate according to the prior nexus study. An updated nexus study is in process, with the in-lieu fee to be reset in April. At a minimum, the amount to be provided by the developer should be set at the amount determined by the revised nexus study. However, the city should go further and request funds above the final amount determined by the study. The San Francisco Board of Supervisors required the 8 Washington Project in San Francisco to provide \$8 million in affordable housing funds above the required amount.
- The transportation mitigation plan is limited to providing AC Transit passes to the building's residents rather than providing improvements that could benefit the overall community (e.g., a downtown shuttle bus service). Moreover, it is unlikely that most of the residents will utilize AC Transit to, particularly because one of the unique features of the project is its proximity to BART.
- Funds to mitigate the impact on community resources and services, including policing, have not been included. Provision of funds for already existing needs, such as social services, should also be part of the significant community benefit package. This is a typical community benefit provided for large projects. Given the pressing need for services in Berkeley, provision should be made for these benefits.
- The value of the privately-developed public space is set at \$7,381,560, a figure that appears inflated given the 500 square feet of the planned open space and which is of significant benefit to the project itself and likely to be recouped by the developer by higher unit rents. SOSIP recommended and the Council adopted a number of downtown open space

improvements that would benefit the community as a whole, such as making Center Street a pedestrianized zone with a native habitat and creek restoration. Funds would be better provided for already-determined City priorities.

- The value of the “rent subsidies” to Shattuck Cinemas is claimed at \$24,747,000 but there is as of yet no binding agreement to maintain the theater’s lease in new building. Also, the “subsidy” is a reduction from a projected per foot rent increase. A substantive and appropriate benefit would also include subsidies during the construction phase.
- Inadequate funds provided to Habitat for displacement. The museum will be required to solicit the community to raise nearly \$1 million instead of the full amount being considered a required mitigation.

**There is no provision for inclusionary, affordable housing in the building, despite original plans providing for 32 BMR units.**

The ABAG Housing Element calls for Berkeley to build an additional 2,959 housing units between 2014 and 2022, of which 2,427 are for moderate and low income individuals. It is not just those who are at or below minimum wage or who need supportive housing who cannot afford to live in Berkeley. Those making up to 80% of the average area family income of \$93,000 (or \$74,000) are considered low income. Generally, these families are eligible for rent discounts in Emeryville and Berkeley when buildings elect inclusionary housing. The people who would benefit the most from living within minutes of major transportation hubs, BART and AC transit are the individuals and families qualifying for affordable housing. A meaningful, significant community benefit would be integrated affordable housing in the building to 20% (using the number that was in the recently defeated R).

**The project results in loss of vital community resources**

The cultural heritage of Berkeley brings visitors to attend movies, theater, museums, walk the city center, frequent our restaurants and contribute to the local economy. The likely loss of the Shattuck Cinemas, given projected rent increases, size reductions, and loss of revenues during project construction will impact the downtown. The cinemas are a destination for both residents and visitors from across the Bay Area. These visitors bring dollars into and add to our community’s vitality.

I ask the Zoning Adjustment Board to proceed with caution in their response to the 2211 Harold Way development. If approved, this development will be with us for decades. Failure to consider citizen concerns may lead to another attempt at ballot-box planning, as occurred in San Francisco. Instead, city officials have an opportunity to proceed with a site-specific, effective and thoughtful approach.

Thank you for your consideration.

Sincerely,



Kate Harrison

**Jacob, Melinda**

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**From:** Zoning Adjustments Board (ZAB)  
**Subject:** FW: 2211 Harold Way development

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

From: Jennifergalanis [<mailto:jkwrites@comcast.net>]  
Sent: Friday, January 02, 2015 12:05 AM  
To: Zoning Adjustments Board (ZAB)  
Subject: 2211 Harold Way development

Greetings.

I am not sure who will read this or if my words will make a difference.

But I must say that the proposed Harold Way development is a monstrous homage to money and ego.

I favor projects that are vetted by environmental impact reports and do more for their community than generate property taxes.

I could say so much more, but, when it comes to fighting the powers that be in today's Berkeley, stick a fork in me...I'm done.

All the best,

Jenn G.  
(a Berkeley homeowner)

Sent from my iPhone

**Jacob, Melinda**

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**From:** Zoning Adjustments Board (ZAB)  
**Subject:** FW: 2211 Harold Way Tower

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

From: Annie Hallatt [<mailto:masques@mindspring.com>]  
Sent: Friday, January 02, 2015 3:51 PM  
To: Zoning Adjustments Board (ZAB)  
Subject: 2211 Harold Way Tower

Hello Ladies and Gentlemen, I am responding within the comment period on the 2211 Harold Way Tower, in that any building of the height of 75 feet must offer benefits for the privilege of having a special high dispensation.

This project is particularly troubling in that it is being facilitated by tMark Rhoades, the former Director of the Berkeley Planning Dept thru the consulting firm he created after leaving his city job. This is clearly a conflict of interest in terms of oversight, especially because he created the developer friendly process he is using.

The benefit of 500 sq ft of public space within a public plaza for the hundreds of people living in the over 300 tiny units is an insult to the citizens of Berkeley and their needs.

The loss of the New Deal Shattuck Cinemas 10 theaters with 4 years of delay, 3 times rent and the deja vu of the loss up the street of the Fine Arts Cinema, 10 years ago, frankly makes me sick and should anyone living here and enjoying the cultural life we currently enjoy.

The Zoning Board and Design Review Committee members have said this proposed building is out of scale, unimaginative and BLOCKS THE VIEW OF THE BAY FROM THE CAMPANILE. This lack of benefit must be stopped.

While I am not at all opposed to all building, this one is not acceptable just because it is near Bart.

I believe Berkeley can wait until the next builders who come forward with a truly beneficial and green project that we can support. We need visionary and creative builders who can give us a truly dynamic and sustainable downtown, rather than old tired designs from Los Angeles, who we hopefully can leave behind.

Thank you, Sincerely, Annie Hallatt, home owner, longtime resident, Alumni 1964, and Berkeley hugger since 1946.

Jacob, Melinda

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**From:** Zoning Adjustments Board (ZAB)  
**Subject:** FW: 2211 Harold Way

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

From: Moni Law [<mailto:monitlaw@yahoo.com>]  
Sent: Friday, January 02, 2015 4:00 PM  
To: Zoning Adjustments Board (ZAB)  
Subject: 2211 Harold Way

Dear ZAB:

I'm a resident of the downtown Berkeley area. I live only 4 blocks from the proposed development on Shattuck near Kittredge (I.e. 2211 Harold Way). I write to submit serious concerns. I believe there are violations of proper development standards and a dismal absence of community benefits in this project:

1. The historic movie theater should not be demolished (and if that is allowed, some of the historic interior should be preserved and the developer should guarantee a new theater is included.. i.e. Not result in a marque only like Fine Arts.. And the marque should remain on Shattuck);
2. The lack of any Inclusionary Housing units is inexcusable and unacceptable. In a town with a serious shortage of EXISTING affordable housing, it would be negligent as an agency to approve this proposal to not include any affordable units. The apartments will not be subject to rent control, and the rents will start from \$3,000 per month up to \$6,000 per month. Most local residents, retail and restaurant workers, bartenders, working families, teachers, etc will not be able to afford these apartments. Accepting the 'in lieu' fee instead of including affordable Below Market Rate units is seriously deficient. The in lieu fee is far below the level needed according to the city's own 'Nexus Study.' How can you justify this? Further, affordable housing is desperately needed here NOW and placing a small pittance into a future 'possible pot' is very bad policy;
3. Public space must be included and appears inadequate as designed;
4. There must be an assessment on environmental impact of construction of this magnitude. The city would be neglecting its responsibility under state and local law to not acknowledge a finding of significant impact and require the developer to mitigate those impacts of noise, dust and traffic, and
5. The view of the Bay from the Campanille should not be blocked by this development.

Sincerely,

Moni T. Law  
2325 McKinley Ave

Sent from my iPhone

**Jacob, Melinda**

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**From:** Zoning Adjustments Board (ZAB)  
**Subject:** FW: 2211 Harold Way and project at 1950 Addison

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**From:** David Mayer [<mailto:davidm@mayerlabs.com>]  
**Sent:** Saturday, January 03, 2015 11:17 PM  
**To:** Zoning Adjustments Board (ZAB)  
**Cc:** Laurie Capitelli; Berkeley Mayor's Office  
**Subject:** re: 2211 Harold Way and project at 1950 Addison

Dear Members of ZAB,

I write to you both as a resident of the City of Berkeley as well as a business owner with offices located in Downtown Berkeley.

At the outset, I wish to state that I am in great support of the global objectives as expressed by the DAP. However, I have specific concerns about several current projects including 2211 Harold Way and future projects being considered including 1950 Addison Street.

To be specific, I have noted that nearly all the major projects under construction, under review, or in planning phases are nearly all residential + commercial, with commercial being narrowly defined. The 2211 Harold Way Project will eliminate a significant amount of current office space. Similarly, the 1950 Addison Street Project eliminates over 20,000 square feet of office space.

Any environmentally sustainable, transit-oriented, mixed-use development that intends "to bring new vitality to the core of downtown Berkeley" as promised by these developers, and consistent the DAP must consider all aspects of activities that take place in the Downtown Area. Downtown Berkeley has many businesses that support its citizens. Moreover, the COB has been working in conjunction with other organizations to incubate new businesses in the Downtown Area.

While several projects including 2211 Harold as well as others promise to create new residential units and dynamic commercial destinations, these projects displace high paying office and professional businesses and enterprises. As the availability of space is reduced, these businesses and organizations will have difficulty finding alternative, affordable space in the Downtown Area. Many businesses will move out of Berkeley to locate in another downtown, transit friendly area and/or in offices that are comparably priced. The elimination of office space in Downtown Berkeley will result in reduced numbers of employees, and providers of services to the community, reduced commercial activities during weekday, working hours, reduced spending at local commercial enterprises such as FedEx, Copy/Print shops, restaurants, and dislocated businesses that leave Berkeley will have result in consequential tax reduction including business taxes and sales taxes that the COB enjoys.

Moreover, the 2211 Harold Way, 1950 Addison St. and other projects which remove significant square footage of office space are counter to one of the major elements of the DAP. Reduced office space will force current and future residents to leave Berkeley for work. This, in-turn, will put many Berkeley residents into cars in order to drive to their work.

Thank you for considering my comments in your review process.

Sincerely,

David P. Mayer

Mayer Laboratories, Inc.

1950 Addison Street, Suite 101  
Berkeley, CA 94704

Resident:  
1645 Allston Way  
Berkeley, CA 94703

e: [davidm@mayerlabs.com](mailto:davidm@mayerlabs.com)  
tel: 510.229.5300 ext. 5305  
fax: 510.848.5763

**Jacob, Melinda**

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**From:** Zoning Adjustments Board (ZAB)  
**Subject:** FW: 2211 Harold Way Hi-rise

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

From: Sally Nelson [<mailto:sallynels7@gmail.com>]  
Sent: Friday, January 02, 2015 1:03 PM  
To: Zoning Adjustments Board (ZAB)  
Subject: 2211 Harold Way Hi-rise

To the Members of the Zoning Adjustments Board:  
January 2nd, 2015

Re: 2211 Harold Way, Berkeley, CA

The proposed 2211 Harold Way building with 18 stories is galactically out of scale with Berkeley's current cityscape. It is projected to be two and a half to three times taller than any of Berkeley's other tall buildings. Surrounding buildings would be dwarfed, and a mockery would be made of our historic Library and our 100 year old Post Office. The gigantism of this project is a mockery of itself. As well, the design of this building has been described as "unimaginative" by members of both the Zoning Adjustments Board and the Design Review Committee.

This 18 story structure proposes to demolish and displace the Shattuck Cinemas, which attract hundreds of people to downtown Berkeley. Besides buying tickets to the theaters, patrons frequent our restaurants both before and after seeing a film. Demolishing the Shattuck Cinemas would adversely affect the revenue streams of many downtown businesses, and consequently diminish the city's hoped for business taxes.

What are the considerations for the possibility of fire? Is Berkeley's Fire Department being funded and equipped to handle fires that may occur in the upper floors? These funds should be provided by the developers, not by Berkeley's current citizenry.

Any new building over 75 feet should include real community benefits, including affordable housing, so that people who work in our businesses and stores can live here. What provisions are being made for the increased funding needed for our city's infrastructure, including schools for additional children?

Any new building over 75 feet should be truly green, and compliant with a standard greater than LEED Gold, which is attained simply by being near BART and other public transit. New buildings should incorporate the Living Building Challenge standard, which aims for a zero carbon impact as now found in other cities. If Berkeley truly wants to be one of the greenest cities in the United States, as promised in the 2010 Ballot Measure R, then true energy efficiency needs to be incorporated.

The 18 story project at 2211 Harold Way should be denied. At the very least, it should be redesigned to be shorter and to be part of our community, rather than demolishing our basic services and turning our city into a dorm for high salaried commuters. Berkeley's real estate is intended to house and serve its residents, not to provide financial deals designed to increase the wealth of the very few.

We don't want Berkeley to look like Los Angeles or Emeryville or Manhattan. Those who do, should move there. We want development that is responsible, truly green, and supplying real

community benefits. We want development that is responsible and respectful of the people who live here. We want a Berkeley that enjoys community diversity, welcoming residents of all ethnicities, incomes, ages, and physical abilities.

Respectfully submitted,  
Sally Nelson