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City Clerk
City of Berkeley
2180 Milvia Street, 1st Floor

October 26, 2015
CITY OF BERKELEY
CITY CLERK DEPT
2015 OCT 27 AM 9:32

RE: Appeal to City Council of the Zoning Adjustment Board's:

- September 30th Approval of Use Permit 13-10000010 (2211 HAROLD WAY) and Related Permits; and
- Zoning Adjustment Board's June 25th Certification of the Final Environmental Impact Report (FEIR) and Related Documents for the 2211 HAROLD WAY PROJECT (State Clearing House #2014052063)

This letter is submitted to the Berkeley City Council to appeal the approval of 2211 Harold Way by the Berkeley Zoning Adjustment Board meeting of September 30, 2015. Problems with the proposal include inaccuracies in the project documentation as well as in staff, consultant, and Environmental Impact Reports. It also does not advance ABAG objectives.

As outlined below, lack of earthquake safety, questionable economic viability and green goals, noncompliance Measure R passed by Berkeley voters in 2010, and the inadequate staff report should be sufficient reasons for the Berkeley City Council to reject the permit allowing 2211 Harold Way to proceed.

1. **Outside consultants did not do independent studies of the project but relied solely on information provided by Mr. Rhoades and company. Therefore, their findings are in question.**

a. **Earthquake Safety:** The report from **Tipping Structural Engineers** regarding the basement cinema construction under the Shattuck Hotel was based on documents provided by Rhoades and company, and did not involve an actual inspection of the site. **In case of structure failure, who is liable?**

It states "As detailed below, after studying the proposed development plans and various reports documenting existing conditions at the site, we conclude that the proposed construction of the basement cinema spaces are structurally feasible...."

b. **Economic Viability:** The report from The Economic Review of 2211 Harold Way Community Benefits by **Economic and Planning Systems** states:

"The review relies on the applicant's characterization of the baseline project....The review considers real estate development costs presented by the applicant...but **does not include any original cost estimation work.**" And "The Review does not include a movie theater market analysis" by the consultant. The theaters will need a subsidy from the landlord into perpetuity. **Who can predict that the economy will support this into perpetuity?**

c. **Green Goals: Conditional GREENTrip Certification** for the Residences at Berkeley Plaza. is not supported by available data from another source--the U.S. Census.

"Based on information provided by the consultant, Rhoades Planning Group, The Residences at Berkeley Plaza meets the GreenTRIP certification standards for the Urban Center Place type."

2. Concerns regarding the consultant's reports.

- a. **Earthquake Safety:** Attached is a map of earthquake prone areas of the East Bay. To determine earthquake vulnerability, engineers should actually view the site and not rely on second hand reports. **Who would be liable if it failed in an earthquake? Tipping? Rhoades? The City of Berkeley?**

Staff Report, Sept 30 2015, Page 17: makes these assumptions about seismic safety:

"Proposed changes to the retail strip and basement under the Shattuck Hotel (which is not owned by the project proponent) include the creation of a new cinema lobby on the ground floor and adding three theaters in the basement. There would be three major components to the associated structural work...

"Seismically strengthen the area affected by the new construction and the retail strip under the Shattuck Hotel. This would require the addition of four concrete shear walls that would extend from the basement to the underside of the second floor. **This work would not seismically strengthen the entire building, but only the area directly affected by the new construction.** This structural work would not be visible from the exterior of the building. It should be noted that the proposed new building's foundation system would be integrated with and would complement the existing Shattuck Hotel foundation system where it may come in contact."

"The project team includes Telmaon Engineering (Civil Engineer), Olmm Consulting Engineers (Structural Engineer), and Tipping Structural Engineers, as well as Andrew Ball of Suffolk Construction, who have consulted on and reviewed project plans and preliminary structural and geotechnical investigations to ensure construction feasibility and construction technique." **Again, who would be liable if it failed in an earthquake? Tipping? Rhoades? The City of Berkeley?**

- b. **Economic Viability:** Report from **The Economic Review of 2211 Harold Way** Community Benefits by Economic and Planning Systems states that the theater complex as constituted by Rhoades et al will require a subsidy of \$1.35 million into perpetuity.

The review states on page 6

"The applicant's memorandum concerning community benefits presents a financial feasibility analysis who indicates that the anticipated market rate rent from the theater does not justify the investment in theater development... **The city would need to subsidize the theater by ...\$525,000 a year...** These analytical assumptions reduce the estimated community benefits by 33%, 43% and 76%...(figure 3)."

The ZAB Staff Report: from the list of community benefits, page 18--

"**Movie Theater Complex:** \$17.85 Million. Construction of the ten movie theater complex, an arts and culture benefit, is estimated to cost \$16.5 million. In addition, an estimated rent subsidy of \$1.35 million is required; this number captures the rent subsidy for the first 20 years of operation, but would be necessary in perpetuity.

The Berkeley Community already benefits from the presence of the Shattuck Cinemas and they now do not require subsidy. **So how do the theaters become a community benefit after 2211 Harold way is built, requiring a subsidy of \$1.35 million into perpetuity?**

c. **Green Goals:** The data provided to **GreenTRIP** that resulted in their approval for certification was submitted by Rhoades et al. However, the **GreenTrip Certification is irrelevant and spurious because the data were insufficient. U.S. Census data are more accurate.**

Rhoades stated to GreenTrip that there are **12,931** jobs within 1/2 mile of the project implying that workers would benefit from his housing located near transportation centers and thus comply with GreenTrip certification. **However, there is no information from Rhoades on how many of these jobs pay sufficient wages for workers to rent their apartments.**

According to the U.S.Census, 2013,

The per capita income of Berkeley residents in 2013 was **\$41,308.**

The median family income in 2013 was **\$111,733.**

Median earnings for workers (dollars) **\$31,882**

Median earnings for male full-time, year-round workers **\$68,097**

Median earnings for female full-time, year-round workers **\$59,619**

The average time to work for Berkeley residents is **26.9** minutes.

Economic and Planning Systems who consulted with the project state that **rents at 2211 Harold Way will range from \$51,875 to \$155,000 a year**, depending on the floor and the view. Rents at 2211 Harold Way are affordable for people with yearly income of at least **\$155,625 to \$465,000**, assuming that housing is one third of their earnings.

So the location and proximity of 2211 Harold Way to transportation for Berkeley workers is immaterial as they do not earn enough to live in these apartments. Because of the low incomes of Berkeley workers, the high rents asked by the developer and the low capacity of public transportation, the project does not fulfill the diverse residential neighborhood housing need for Berkeley people. **These apartments will be filled by transients and high income newcomers. The GreenTrip Certification is irrelevant and spurious.**

3. The 2211 Harold Way project proposed by Rhoades et al violate provisions of Measure R passed in 2010.

a. **Measure R states that "new buildings must not be higher than 180'."**

"Measure R: Shall the City of Berkeley adopt policies to revitalize the downtown and help make Berkeley one of the greenest cities in the United States by meeting our climate action goals; concentrating housing, jobs and cultural destinations near transit, shops and amenities; preserving historic resources; enhancing open space; promoting green buildings; and calling for 2 residential buildings and 1 hotel no taller than our existing 180 foot buildings and 2 smaller office buildings up to 120 feet?"

According to the ZAB staff report of Sept 30, 2115, they state that the

"Administrative Use Permit to allow mechanical penthouse, elevator equipment and other projections to exceed maximum building height, under BMC Section 23E.04.020.C"

Therefore, Measure R is violated as to the height voted on in 2010.

b. **Measure R states that policies should "help make Berkeley one of the greenest cities in the United States."** Plans for 2211 Harold Way include only the hope that residents will use public transportation and bicycles, and will need few parking spaces for cars, but does not provide data on available transportation services or plans for future expansion that may be needed. Its plans for conserving water and energy are inadequate.

The ZAB staff report of Sept 30, 2015, states

Land Use: Consistent with DAP Goal LU-1 (including Policies LU-1.1 and LU-1.3), the Project will include residential, commercial and cinema uses that allow **people who live, work and learn in Downtown to meet daily needs on foot.**

However, according to the US Census, 2013, **the average time to work for Berkeley residents is 26.9 minutes.** They are not working in Downtown Berkeley.

Page 22: Consistent with DAP Goal AC-4, **the Project will promote transit as an efficient and attractive choice through its location** and through its TDM Plan and other associated Conditions of Approval

This is wishful thinking at best. Staff did not provide data on local transportation and the need for increased capacity of our already crowded public transit system, given an additional 500 + passengers.

4. The ZAB Planning Staff Report of Sept 30, 2015 contradicts itself. The building is clearly out of scale with its neighboring structures which are two to five stories in height..

On page 14,

"Building heights in the vicinity range from **two to three-stories** (portions of the Dharma College complex on Harold Way and U.S. Post Office along Kittredge Street) to the 12-story 2140–2144 Shattuck Avenue Chamber of Commerce Building (173 feet) and 14-story 2150 Shattuck Avenue First Savings/Great Western Building (180 feet). **The adjacent Shattuck Hotel is five stories in height, not including the basement. Most buildings around the project site are in the two-to five-story range.**"

III. Project Description

The proposed project is an 18-story mixed-use development located in Downtown Berkeley. The main project components include:

- 302 dwelling units
- A10-theater cinema
- Approximately 10,877 square feet of ground-floor commercial (retail and restaurant) space, and
- A 177-space 3-level underground parking garage with 74 bicycle parking space

"In order to approve these Use Permits, the Board must find that a proposed use or structure must:

1. Be compatible with the purposes of the District; and
2. Be compatible with the surrounding uses and buildings"

page 22

"Streets and Open Space: Consistent DAP Goal OS-1, the Project will **enhance public open spaces and streets to benefit pedestrians, improve Downtown's livability, and foster an exceptional sense of place.**"

No justification for this conclusion is presented by staff.

"The Project would further General Plan Policy H-19—Regional Housing Needs by including housing to help the **City attain the fair share housing goal established by ABAG's Regional Housing Needs Determination** for Berkeley. The project would advance the objectives and policies of the City's Housing Element, including Objective 1, that Berkeley residents should have access to quality housing at a range of prices and rents, and **Objective 3, that new housing should be developed to expand housing opportunities in Berkeley to meet the needs of all groups.**"

The ZAB staff report of Sept 30, 2115, states, page 23


"Housing and Community Health and Services: Consistent with DAP Goals HC-1 and HC-3, the Project will encourage Downtown as a thriving, livable, diverse residential neighborhood with a mix of supportive uses, and **play a significant role in meeting Berkeley's continuing need for additional housing.**"

2211 Harold Way housing does not expand housing opportunities in Berkeley to meet the needs of "all groups at a range of prices and rents." Rents are affordable only for people with yearly income of at least **\$155,625 to \$465,000**, assuming that housing is one third of their earnings.

Despite the objections of many Berkeley residents, the City of Berkeley Planning staff determined that "the project is consistent with findings noted in Section 23E.68.090.B.2" and should be approved.

Lack of earthquake safety, questionable economic viability and green goals, noncompliance with Measure R passed by Berkeley voters in 2010, and the inadequate staff report should be sufficient reasons for the Berkeley City Council to reject the permit allowing 2211 Harold Way to proceed.

Very Truly Yours,


Margot Smith, Dr.P.H.

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