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February 29, 2008

Oakland City Council
City of Oakland
1 Frank Ogawa Plaza
Oakland, CA 94612

RE: Project No. CMDV06-426; AMG & Associates; 4311-4317 MacArthur Blvd.

Dear Council member:

Our law firm represents Commercial & Retail Attraction & Development for the Laurel (CRADL), Citizens4Oakland, David Vahlstrom, Dr. Maureen Dorsey, Lease Wong and Luann Stauss. We have appealed the Planning Commission's approval of a 115 unit senior housing project proposed for the corner of High St. and MacArthur Blvd. in the Laurel District.

A. Background re AMG project

As you probably know, Council member Quan and her chief of staff Richard Cowan feel strongly that this project is a "must have" for them. I have publicly debated their views on legal, economic and moral grounds. The location is horrible, the economic fallout for the citizens of Oakland is significant and morally the project comes very close to nothing more than a land scam with negative impacts for the prospective elderly residents. The only winner seems to be the property owner who stands to make a significant profit from a three year investment in property that is basically worth little, especially in today's market. That purchase is an excellent place to start the story of what has occurred with this project.

In approximately 2005, Alex Hahn invested in three lots collectively located in a triangular shape with one side bordering the I-580 freeway. The other two sides are the very heavily trafficked High St. and MacArthur Blvd. According to the tax assessor records he paid about \$1.28 million for the three lots adjacent to one another.

Mr. Hahn had contacted a Southern California affordable housing developer (AMG) and explored with Council member Quan whether it would be possible to get city council approval for basically switching the zoning a la the Tidewater land deal. As you may recall, Tidewater was a piece of property zoned industrial and as such had little value. The owners of the Tidewater property wanted to get the property rezoned residential so that with nearby future development their property would suddenly be worth millions of dollars. The land deal became the topic of extensive suspicion and several exposes in the *East Bay Express* starting late last year.

By convincing the City Council to ignore the retail zoning restrictions and allowing a residential project, Mr. Hahn could effectuate the same result --- take a piece of property zoned for one purpose rendering it without much value and change the use with City Council participation to another much more lucrative use. The drop in the market rate housing market was not a barrier to the plan because affordable housing is funded from a combination of tax credit money and Oakland's affordable housing subsidy funds. Generally, land that is used for affordable housing has a very high acquisition price regardless of the economy. Mr. Hahn has never been willing to reveal his acquisition price that he negotiated for the property but rumors have it at well above \$2.0 million, a hefty profit on a three year investment.

The first time the retail merchants heard about the project was at a meeting with Council member Quan who informed them about the proposed project. At that point, the project was nearly 70 feet tall, had absolutely no retail uses and was massive. Council member Quan described the project as "senior residential" without mentioning that it was for very low income seniors. Instead, she represented to the Laurel merchants that the big selling point of this project was that it would "bring lots of people to the Laurel who would be shopping and saving the Laurel business district. We need much more foot traffic along the MacArthur to bring up your business receipts." Further, she represented repeatedly that the project was "free" and AMG representatives also claimed that "absolutely no city money will be needed for this project - it's all tax credits."

The Laurel merchants began questioning why the project was so large and then learned that the massive size was driven by Mr. Hahn's acquisition price. They also pointed out that there was no retail in the project, violating the ground floor retail requirements of the C-31 zoning and complained that the height way exceeded the 35 foot limit. Council member Quan did not immediately respond to any of these criticisms.

Instead, the project showed up in Design Review and that was my first appearance regarding the project. At that time, we briefed the Planning Commission on the legal problems with the project. It disappeared. In fact the project disappeared for months and months.

Council member Quan called a community meeting in February 2007 to talk about what had now become her personal mission with respect to the project. AMG had made some minor changes putting a tiny bit of retail into the project and had removed one floor, still way exceeding the zoning height limits. Council member Quan announced at the outset of the meeting that there was no point in anyone objecting to this project because it was going to be granted no matter what anyone in the community had to say about it. She likened the project to the market rate housing in the Temescal area pointing out how futile community opposition had been there. Council member Quan

still persisted in claiming that the project was going to be a financial boon for the business people due to all the shoppers added to the Laurel business district. Although there was plenty of upset over Council member Quan's project, she printed and disseminated a website claiming that "overall most people who attended supported the project."

Subsequent to the community meeting, the Planning Commission began having hearings regarding the project. At that time, the many problems with the project further raised their heads. During that process, the sad economic truth became evident when the community began investigating Council member Quan's claims that the AMG project was free to the city and would bring much needed retail dollars to the Laurel merchants.

B. The AMG project is going to involve substantial City expenses and losses including to the Laurel retail community.

When the City decides to take an almost one acre piece of property ostensibly out of retail zoning and use it for subsidized affordable housing several major costs to the City occur. For example, I believe based on speaking with affordable housing consultants that AMG will have a non-profit partner who will apply for and who will receive an exemption from property taxation. This land will no longer generate any property taxes for decades. Currently, according to the Assessor's office records, this property without anything on it generates \$ 33,017.97 in property taxes annually. (See Exhibit A, attached.)¹ Without computing increases in taxes, \$33,000 x the 50 year life of the project means Oakland will have contributed well over \$1.6 million in property taxes with the AMG project while even empty, the property will have generated substantial taxes to help pay for basic services.

I also believe that it will be exempt from City rental business taxes because most of the money used to pay for the rents will come from tax subsidies. So even as just an empty piece of land, this property is generating much needed income for Oakland and at a time when the city is woefully underfunded. (I welcome any rebuttal to my beliefs, by the way.)

No evidence supports that the property can't ever be used at any time in the future for purposes that will generate business income and property taxes. It was previously used as a grocery store, a tire store and a PG&E substation with these uses providing direct and indirect income to Oakland for basic services including police and fire. The suggestion that the property might fall into the hands of a fast food restaurant is not

¹ I have included Lincoln Court for comparison at the end of Exhibit A. Parcel # 29-993-20-1 shows the tax exemption.

horrible given the amount of money that this .93 acre would then generate. Nor would it be unthinkable in a few years for some of the property to fall within market rate housing on top of ground floor retail uses assuming that the pollution problem resolves with decreased auto usage, again a much higher and better use financially for this property. In that event, Oakland citizens would see substantial funds as opposed to what AMG will produce.

The single greatest cost to the City in the near term is the affordable housing fund subsidy the project will require. A year ago, Mr. Mark Baldwin, an affordable housing consultant wrote to the planner and pointed out that the project would not “pencil out” without a sizeable subsidy from the City. To give you an idea of the enormity of these subsidies, we have attached as Exhibit B excerpts from the January 27, 2004 City Administrator’s report in which she requested (and we believe obtained) over \$3.5 million dollars each for Lincoln Court and Altheim senior subsidized housing projects from our Oakland affordable housing fund.²

The total amount of funds available from our affordable housing fund that year was a little over \$18 million. Over a third of it went to two projects located less than a half a mile from each other. These are all of the funds we had available that year to pay for all types of affordable housing projects that qualified. Lincoln provided 80 units; AMG is 115 units. Logically, it would be impossible for Lincoln to need a city subsidy of \$3.5 million in 2004 and AMG to make all of its construction costs on state tax credits alone in 2008.³

Another major cost is to the retail area. The claim by AMG and Council member Quan that the residents will “bring up the Laurel business district” or “buy lots of things from the shops” is belied by the survey completed and attached to this letter. (Please find attached a survey and conclusions from an affordable housing expert attached as Exhibit C.) Ms. Burnett, an appraiser and expert affordable housing consultant who provides analyses for affordable housing projects completed a survey of 11 projects throughout Oakland, including the Altheim and Lincoln Court. She discovered that the demand for projects such as the AMG project is from individual seniors with incomes between \$17,610 and \$29,350 with “significant demand” from seniors with income of less than \$29,350.

The income levels for potential AMG residents is extremely low. Ms. Burnett found no existing Oakland senior subsidized projects where the demand was from seniors who fell above the \$29,350 level. There is no reason to believe that the AMG project

² We also included some summary documents in this exhibit.

³ These subsidies are set up as “loans” for regulatory purposes, but as any Council member knows they in fact are subsidies that the City will not receive back.

which doesn't even provide a few of the services provided by Lincoln Court and suffers from the environmental problems we have discussed during Planning Commission hearings is going to find a different, higher income level in its applicants for subsidized affordable housing.⁴

A huge, massive subsidized housing project at the gateway of the Laurel business district for very low income residents cannot generate the amount of disposable income necessary to have any positive impact on the merchants other than perhaps early bird special dinners and groceries. The project can and will, however, have an impact on the willingness of retail vendors to invest in the Laurel. Just as Ms. Burnett did her homework, so too will business people who are considering where to invest their funds in a retail establishment. The first thing careful business people look at is, "where are my customers going to come from with the funds to buy my products?" If they feel that there isn't much disposable income they won't invest which in turn threatens the future of the Laurel merchants. Less investment, more empty storefronts – less business taxes for Oakland to pay its basic services. (And, it's not as if we have lots of other major sources of business taxes other than our small retail districts.)

Ah, you might say, those business people are heartless and didn't notice the tremendous need for very low income senior housing referenced in Ms. Burnett's survey and report. Here too there is cost.

C. ABAG's housing allocation demonstrates that Oakland has been doing its fair share of affordable subsidized housing and other cities' share as well.

The Association of Bay Area Governments (ABAG) is charged by the state with figuring out how much of each kind of housing each city in California should plan to complete over the next seven years. The latest allocation came out last year and is good for seven years. Attached as Exhibit D is the allocation chart and a news story kind of summarizing what happened with Oakland.

Basically, cities don't like to take land out of taxation and income generation for subsidized affordable housing given all of the reasons mentioned above plus they know that very low income seniors are going to need more public services on average than persons buying market rate housing.⁵ So, they don't. Oakland and Antioch were the exceptions over the last seven years – both cities contributed so much land, tax income

⁴ It was interesting to note that when Lincoln Court applied for the City subsidy, it intended to serve primarily people in the 60% AMI level (\$35,220), but when Ms. Burnett surveyed them the demand was coming from seniors with a much lower income level.

⁵ The number of paramedic trips to overcrowded hospital emergency rooms goes up considerably in the elderly population creating another pull on county and city funds.

and other revenue to the subsidized affordable housing market, it became necessary to use a different formula taking into consideration their past contributions. (The allocations do not distinguish between family versus senior limited housing, incidentally.)

As a result you will notice that Oakland's very low income housing allocation (where AMG fits) is only 1,900 units for the next seven years. All of the rest of our Oakland housing allocation totaling 12,729 housing units is spread over below 80% AMI (\$46,960) up through market rate housing, with 7,489 units in the market rate housing category.⁶ The goal is to shift the allocations such that other cities will have to start doing their fair share instead of waiting for Oakland and Antioch to always be the "volunteers." Oakland in turn needs to focus on more market rate housing for various reasons discussed in the ABAG report. (As we know, it also needs to focus on increasing its general fund to pay for basic services!)

You'll notice that Ms. Burnett found one project where 20% of the residents came from outside of Oakland to live closer to relatives. (I believe that project may have been Lincoln Court). Other than tapping into Oakland's willingness to expend its resources there is no reason why Oakland residents can't live in a neighboring city that should be providing its share of affordable subsidized housing. There's also no reason why Oakland can't wait until the Altemheim finishes constructing and filling its next 85 units instead of immediately constructing the next subsidized housing project one shopping district over!

With that financial backdrop, it becomes clear that when the City Council grants as many variances as requested here, basically removing a property from income generation the project should be delivering something of substantial value. Further, the developers and property owners who make good money on these projects as opposed to Oakland and the taxpayers who spend for them, should offer a great many benefits for the intended population. Instead, AMG and Mr. Hahn are clear and away the greatest financial winners out of this project and as shown below the intended population the losers.

According to the documents attached as Exhibit A, from the Assessor's office, we see that Mr. Hahn bought the three properties around 2005 for approximately \$1.28 million.⁷ AMG and Mr. Hahn refuse to tell us how much the land acquisition cost will

⁶ It's important to note that most likely all of the data collection and computer modeling that went into these allocations probably occurred before the subprime meltdown. To date, Oakland has not yet implemented a plan to get block after block of properties back into use. How should we count these empty units – as meeting part of our allocation or not?

⁷ I am assuming the purchase year from the sudden 2005 increase in property taxes suggesting a re-assessment event.

be, but rumors have it that Mr. Hahn expects to make well over \$2 million on the sale and that has been a reason given to the community for why the building has to be so enormous “to pencil out” the land acquisition cost. If true, that’s a pretty good turn around on a three year old investment! (Interestingly, the assessor records show Mr. Hahn hasn’t even been paying his property taxes – no doubt he is so sure that the City Council will come through for him that he doesn’t feel the need to pay them!)

Similarly, AMG is not willing to divulge their fee although both the land acquisition cost and the developer fee will become public information shortly after the grant of City use permit entitlements when they submit their tax credit application. However, we can look at Lincoln Court for a comparison. There, the property owner scored \$2.2 million for what previously was a rundown motel and the developer made a hefty \$950,000. (See third page from front of Exhibit B.)

My clients and I don’t think that this project comes near to offsetting the costs given its many drawbacks and problems. I will briefly summarize below the issues raised by the community and the legal problems:

D. The community’s objections to the proposed project.

1. The project violates zoning in height and ground floor use

The project is huge in comparison with the rest of the neighborhood, towering over every other building in this single level shopping area. The residences surrounding it are also very small, causing the AMG building to look like the elephant in the china shop. The City is recommending giving special privilege to AMG to construct the building at a substantially higher level than other buildings in the same zone in violation of the General Plan and zoning test for granting variances. The findings don’t substantiate a valid reason for granting the special privileges.

The retail is a “token” step toward getting around the zoning code’s ground floor retail use restrictions. Originally, there was no retail in the project and when the community squawked about the zoning violation, the developer added a tiny bit of retail with inadequate parking to get around the zoning code.

1. The project in conjunction with others threatens the scenic highway designation on I-580 which potentially provides transportation funds to Oakland and opens the door to heavy truck traffic.

Caltrans has written to the City warning that, while the AMG project alone is not enough to cost us the designation, the combination of this project and others in the future

may cost us the designation. (At the time the letter was written Kaiser had not yet started constructing its multi-level parking tower also very close to the freeway.) Besides potentially losing transportation funds hooked to the designation, the loss could open the door to heavy trucks on I-580, a fight that the community has fought with Caltrans for years.

Council member Quan promised to get a written guarantee that this would never happen and that the project would not be part of any decision by Caltrans. The email to Mr. Merkamp attached to the staff report falls far short and really is nothing more than a repeat of what Caltrans already said. In fact, it is somewhat more ominous in that Caltrans states that they are now going to review all of the designations, a review we would rather not have given the amount of construction, past and future along with this project, that has been too close to the freeway.

2. The project violates CEQA in a number of regards

The community raised problems with traffic, noise and air quality in response to the City's decision to use an in-fill exemption and one for projects consistent with the general plan & zoning. These two exemptions should not be used in the face of substantial negative environmental impacts. The City should have conducted at least an initial study.

The City has responded with attempts at reducing the impacts through conditions of approval. However, these conditions belong as mitigations in an environmental document. Further, in some cases the conditions don't adequately address the impacts. For example, the right turn only sign will only cause cars heading toward the Laurel District to try and cross lanes in efforts to turn left instead of heading into the Mills College area. The sound report has never been completed and its recommendations do not appear in the conditions. Also, it assumes a future evaluation of noise impacts instead of doing so now in the environmental document. The air quality has been an admitted problem all along necessitating the filtration system which also does not appear in any environmental document as a mitigation.

The sum total of the environmental problems renders the location obviously unfit for senior residents. The combination of noise that way exceeds Oakland's standards, inability to safely cross High St. to get groceries and a shuttle service that comes potentially only four times a week possibly with no return trip and significant air quality issues with no air conditioning system paint a picture of trying to fit this project into the wrong location.

E. Conclusion.

Depressingly, lack of affordable housing for very low income families, individuals and seniors is a fact for the greater Bay Area, not just Oakland. While the scenario ABAG paints of cities competing to NOT provide very low income subsidized housing is truly horrible, the fact remains that Oakland can't be the volunteer city of last resort. Here, Oakland is giving up property zoned for retail that brings in funding even when empty and can potentially bring in much more if developed to the highest and best possible use even if that means fast food.

Cities ten minutes away like San Leandro with plenty of empty land have managed to build terrific ground floor retail areas (14th St. & for a small one -- Estudillo), adding substantially to their coffers while pulling shoppers from Oakland and avoiding impinging on their retail zoned land for subsidized housing. Oakland is simply not competitive with its neighbor cities who develop their retail areas.

Granting this project's application for many special exceptions to the zoning code accomplishes using nearly an acre of Oakland's Laurel retail zoned area to act on an albeit morally worthy contribution of retail zoned land for very low income subsidized housing at great cost to the City and its citizens.

At the last hearing, someone from an affordable housing non-profit spoke to the Planning Commission about how affordable housing project proponents "have to take what's left and go with properties that are not very desirable." Several times Richard Cowan has argued that if not this AMG project, there won't be anything to fill up the hole on the corner of MacArthur Blvd. and High St. and it will stay empty. Neither of these sentiments justifies the project.

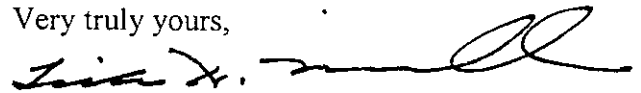
The purpose of the tax credits for affordable housing is to allow people living in poverty to have the SAME access to homes as those who are better off financially. No doubt, that is part of the reason the tax credits pay generously for land acquisition. Dumping poor seniors into a toxic retail zoned piece of property where they can't even cross High St. doesn't even come close to meeting the purpose of the affordable housing statutes. Nor does using poor people to fill up one of Oakland's many empty lots rise to the level of providing decent housing.

The community, including my clients, strongly supported the Lincoln Court and Altenheim senior housing projects because they met the goals of providing good housing to seniors in need who couldn't financially afford housing without them. They are located in residential areas and offer services. The housing looks and functions exactly the same as the surrounding housing. It does not put seniors at risk for toxic problems.

While your denying the AMG project application will definitely deprive Mr. Hahn of a financial windfall, it will leave the tax credits and city subsidies for worthy projects similar to Lincoln Court and the Altenheim.

Thank you for considering our comments.

Very truly yours,



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