

Date November 22, 2010

Mr. Don Ashton
Deputy Executive Officer
Los Angeles County Board of Supervisors
Room 383, Kenneth Hahn
Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Mr. Ashton:

Subject: Initiation of Plan Amendment to Rowland Heights Community Plan and Related Project Applications

Use: Existing Land Use - School and Church; Proposed Land Use - Residential

Address 1920 Brea Canyon Cut-Off Rd., Rowland Heights

San Jose Zoned District

Related zoning matters:

Tract or Parcel Map No. _____

Change of Zone Case No. _____

Other Project No. R2008-00549-(4); Plan Amendment No. 200800004;
ROAK T2008-00015; RZC T2008-00015; RCUP T2008-00069; RPA T2008-00004; RENV T2008-00042

This is a notice of appeal from the decision of the Regional Planning Commission on:
(Check One)

XX The Denial of this request

_____ The Approval of this request

_____ The following conditions of the approval:

Briefly, the reason for this appeal is as follows:

Please see the attached for an explanation of the reasons for this appeal.

Enclosed is a check (or money order) in the total amount of \$ _____.
The amount of ~~\$1,578.00~~ for applicants or \$789.00 for non-applicants is to cover the
Regional Planning Department's processing fee.

*o/c
120* *6,768.00 JP*



(Signed) Appellant

Peter J. Gutierrez, of Latham & Watkins LLP on behalf of Canyons Apartments, LLC

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BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

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JUSTIFICATION

This Justification supports the appeal of Canyons Apartments, LLC (“Applicant”) of the Regional Planning Commission’s November 6, 2010 decision to reject, without review of the County’s Draft EIR, the initiation of a general plan amendment to the Rowland Heights Community Plan. The Applicant made clear, as did the staff recommendation, that initiation of the plan amendment would allow for review on the merits and did not constitute an approval. The Regional Planning Commission debated the level of density appropriate for multi-family, without reference to CEQA or the County’s own Housing Element, and made no findings to justify its decision. The Applicant seeks direction from the Board of Supervisors that the Regional Planning Commission should initiate the plan amendment for the purposes of reviewing the applications on the merits. Such review should include completion of the CEQA process initiated by the County over two years ago, and a determination of the request’s consistency with the County’s General Plan and its 2008 Housing Element.

The proposed project would allow for multi-family residential development on nearly 15 acres located at 1920 Brea Canyon Cut Off Road (“Project”), replacing a relocating church and a school which have operated pursuant to conditional use permits for over 30 years. This site is well-located for infill development with adjacent shopping centers and easy access to transit, jobs and services, including a nearby Metrolink station, bus and other transportation facilities. Multi-family housing is located on the adjoining properties to the south and north, with the property to the south being designated U-4, which means it can be developed at a rate of 12.1 to 22 dwelling units per acre

The current Community Plan category for the project site (U-1) was created in recognition of then-existing uses on the Project site and should be reconsidered now that the church is relocating. During the Community Plan adoption process almost 30 years ago, this site already had a conditional use permit to operate and develop a church/school complex at a density far higher than its current use at the time – a density which, according to the Project’s Draft EIR has impacts in excess of the residential density being proposed for the site. Since the property owner already had entitlements to use the property in its chosen manner, there was no need for the County to fully analyze the site land use category. Consequently, the County left the A-1 20,000 zoning designation adopted in 1957 in place and designated the site with a corresponding Urban 1 category since the existing church and school would be allowed under those designations.

In fact, the existing CUP on the property allows a significant expansion, pursuant to the most recent site plan approved in 2005. The expansion would allow an increase from the existing approximately 65,000 square feet to a total of 200,000 square feet, including a new 63,000 square foot, 3 story church assembly building with 3,500 seat capacity, and does not require any traffic improvements.

The Applicant has reduced the size, height and proposed density of the Canyons Apartments by over 50% in recent months in recognition of community comments. By letter dated September 21, 2010, the Applicant advised it would reduce the previously proposed 775 unit development, which had requested a text amendment to the Rowland Heights Community General Plan, down to a 35 units per acre U5 (537 Units) “Reduced Density Alternative”

considered in the Draft EIR. In November 2010, the Applicant further reduced the size of the project to correspond to the adjoining property's U4 land use category in the Rowland Heights Community General Plan with a maximum density of 345 units. Despite such reductions, the Applicant testified to the Commission that it would provide all of the traffic and other improvements which had been identified in the Draft EIR for the larger project. The Applicant continues to review the appropriate project size and community benefits and seeks the opportunity to work with the Commission and the County to do so.

Initiation was requested to allow the staff to process, in accordance with its recommendation, the proposed plan amendment application. This would allow staff to complete a thorough analysis that would allow the Commission to properly analyze the Project's merits and subsequently determine if the Project warrants approval at a subsequent date.

Denial of the initiation request was not based on any findings of fact, nor did it reference any of the objective environmental information prepared by the County during two years of review of the Project applications to prepare the Draft EIR now in public circulation. The Commission's denial ignored the substantial process that the Applicant has undertaken at the Commission's and County staff's direction since the County accepted the Project applications in April 2008. The Commission's decision not even to consider whether multi-family could be appropriate for this site, after hearing evidence consistent with its own Housing Element of the unmet housing needs and lack of housing diversity in this area, is not consistent with State housing laws or the County's Housing Element policies. The Commission's decision further ignored CEQA and the County's own analysis prepared with significant costs for the Applicant in accordance with the County's initiation of the EIR process. Further, the Commission has never, to the best of the Applicant's knowledge, processed a proposed initiation of a plan amendment as it did in this matter.

Together, these factors indicate that there is no rational basis consistent with applicable laws for the Commission's denial of initiation and for the differential treatment of this Applicant in comparison to other similarly situated entities or persons seeking review of development applications. Accordingly, the Applicant submits this appeal of the Commission's decision, and respectfully requests that the Board of Supervisors remand the matter back to the Commission for review of the plan amendment and applications on the merits, together with a completed EIR and full staff analysis.

Given the limited time available to submit this appeal, the Applicant has summarized key issues in support, but will supply additional information going forward including a transcript of the Commission's hearing. Because the County's own Draft EIR provides extensive information about the Project that was not considered by the Commission, the Applicant hereby incorporates that Draft EIR into this appeal by this reference, together with the staff recommendation previously issued to the Commission and the Applicant's presentation at the Commission's November 6, 2010 hearing, for the additional evidence that they contain on the Project's merits and the one-time procedures the Commission followed in processing the Applicant's plan amendment initiation application.

A. Background

The Applicant's proposed residential community represents an investment of up to \$80 million in sustainable residential housing in the Rowland Heights community. To implement the Project, the Applicant's application for a plan amendment, as well as other required entitlements, was accepted by the County over two and a half years ago (April 1, 2008). Since that time, the Applicant has spent substantial time and resources working with the planning staff on the application, preparing and publishing the Draft EIR, and working with the County to initiate review of the proposed plan amendment. For over two years, the Project has been subject to a robust formal public process, including a scoping meeting attended by approximately 300 persons in Rowland Heights on June 19, 2008 and two hearings before the Commission in the fall of 2008 on the issue of initiation of a plan amendment. There was also an Applicant-sponsored public meeting, attended by well over 300 persons as well as dozens of meetings between the Applicant and various community stakeholder groups. Names of many supporters and letters of support have been presented to the County on the Project's behalf.

The Community Plan states that "Amendments to the Rowland Heights Plan may be initiated only by the Regional Planning Commission or the Board of Supervisors." The County has interpreted this provision to require that the Commission must "initiate" a plan amendment in order to allow formal processing of the application. This "initiation" would allow the Commission and Board of Supervisors to fully consider the merits of a plan amendment and overall Project. The Community Plan itself recognizes that "adoption of the plan does not end the planning process" and recognizes the need for periodic review to ensure that the plan continues to meet the needs of the community. (Rowland Heights Community Plan, at 38.)

The Commission first considered initiating a plan amendment over two years ago, on July 16, 2008, with the Applicant requesting that the Commission "initiate" a plan amendment and County staff recommending that the Commission approve the initiation. At that meeting, the Commission instructed that prior to taking an action on the initiation of a plan amendment, the Applicant must notice and conduct a community information meeting in Rowland Heights. The Applicant worked quickly to organize and notice this public meeting. The Applicant reserved one of the largest meeting spaces available in the Community Plan area and sent notice to over 18,400 owners, occupants, and community leaders in Rowland Heights at a cost of over \$30,000. The Applicant's notice went far beyond even the County Code's 500 foot notice requirements for public hearings, which highlights the Applicant's commitment to keeping the community informed and the Project and plan amendment process transparent.

On September 3, 2008, after the community meeting, the Commission again considered the initiation of a plan amendment and based on community feedback indicated that it would consider reducing the Project's proposed density. At this meeting, the Commission took no action. Rather, the Commission indicated that CEQA review should continue so that the Commission could have more information before making a decision on whether to initiate a plan amendment. Consistent with the Commission's direction, the Applicant continued to fund, at substantial cost, the preparation of the Project's Draft EIR under supervision of the County. The Draft EIR was published on September 16, 2010. Pursuant to extensive noticing funded by the Applicant, a public hearing was set for September 29, 2010, in a local venue with capacity up to 500 persons. The opponents overcrowded the facility, chanting and shouting and intimidating

supporters. The hearing was not held and continued to November 6, 2010, when a larger facility was available. The Applicant then funded the mailing of additional notices for the November hearing.

Finally, on November 6, 2010, the Applicant again appeared before the Commission to seek initiation of a plan amendment. As the staff report stated, similar to the other hearings, this hearing was merely to consider initiation of the processing of the Project applications, and “the Commission’s action to initiate would not imply an endorsement of the proposal or any guarantee of approval.” Staff had issued a recommendation to initiate a plan amendment and to allow for processing of a plan amendment and other requested entitlement actions, so the Commission could further review the Project’s merits at a subsequent date. Citing community opposition, the Commission explained that the highest residential density likely to be approved would be U-3, and then denied the Applicant’s request to initiate a plan amendment, citing the community’s opposition to multi-family housing. Community opposition, however, is not a proper basis for failure to apply the principles in the County’s Housing Element and state law, as well as the Rowland Heights Community Plan, or a valid reason to risk violation of the Applicant’s Constitutionally protected equal protection and due process rights.

B. Errors Committed by the Regional Planning Commission

Based on a comparison to other Los Angeles County community plans, the unusual language that “[a]mendments to the Rowland Heights Plan may be initiated only by the Regional Planning Commission or the Board of Supervisors” only occurs in the Rowland Heights Community Plan. This language is certainly not intended to short circuit the planning process, and by voting to “initiate” a plan amendment process, the Commission is merely allowing a land use case to move through the planning process in the same way that any other land use case in the County with a plan amendment would proceed. The Applicant only seeks the same treatment afforded to applicants on every other proposed plan amendment, including a prior plan amendment approved to the Rowland Heights Community Plan.

This would not be the first time the Community Plan has been amended to accommodate housing needs. The Community Plan was amended in 1987 to accommodate a 392 unit senior apartment project on property at 18600 Colima Road not far to the west of the Canyons Residences site. That plan amendment from Commercial to Urban 5 facilitated development at 35 dwelling units per acre. We are unaware of any evidence in the public record which indicates that a separate plan amendment initiation proceeding was ever undertaken as a pre-step prior to the Commission considering the case. Nevertheless, in that case, the County recognized that the higher densities allowed in the Community Plan could appropriately be used in Rowland Heights to accomplish housing goals. The Applicant is not asking for a density as high as was granted for the 18600 Colima Road site.

1. *The Commission’s Decision Is Inconsistent With The County’s Housing Element and Violates the Government Code*

The Commission’s decision is inconsistent with the County’s Housing Element. The Project’s objectives and proposed multi-family units would greatly assist the County in reaching goals identified in the Regional Housing Needs Assessment and 2008 General Plan Housing

Element, especially at a time when the housing supply has failed to keep up with demand and new construction of multi-family residential units in the region is suppressed. No evidence was presented that the County has met this need.

The Housing Element calls for a balanced mix of dwelling unit types and an overall diversity of housing. In fact, the Housing Element notes that in the San Gabriel Valley alone population and households are set to increase by 13 percent and 14 percent, respectively, by 2014. The Housing Element also states that 23,000 moderate/above moderate units should be built by 2014, plus 34,000 other units, totaling 57,000 units. Further, the 2008 Housing Element recognizes the need for multi-family housing in unincorporated areas, and notes that consistent housing construction is necessary to meet the County's regional housing goals and to keep pace with the County's expected rate of population growth.

As the County tries to meet the goals of the Housing Element and overall needs of the unincorporated County's population, it is important that urban infill sites be approved at higher densities, as very few large vacant parcels currently exist in the County. The Housing Element specifically recognizes that higher density housing is needed to balance the shortage of land for development and the increasing needs for housing and commerce. The Commission did **not** state that it would not initiate a plan amendment because the County had achieved the goals of housing production set forth in the Housing Element. Rather, it cited the opposition of those present to multi-family housing at the Project site. However state housing law expressly provides that local preferences cannot override the failure to meet regional housing needs. (*See Gov't Code, § 65581(c)* [stating the Legislature's intent that a locality's determination of what the efforts necessary to contribute to the state's housing needs must be "compatible with the state housing goal and regional housing needs."].)

Evidence was also provided of the County's own Housing Element projections of the need for housing in the San Gabriel Valley of which Rowland Heights is a part. The Rowland Heights Community Plan acknowledges state law whereby every region must meet its Regional Housing Needs Assessment. The County's own Draft EIR concludes that the Project is consistent with Southern California Association of Governments' policies. Evidence was presented demonstrating that the Project is consistent with the 2008 Housing Element by providing a substantial number of housing units in a location in dire needs of multi-family housing. Rowland Heights grew 33 percent from 1980 to 2000, and yet no new multi-family homes were built. Further, the Project site's unique location meets the County's infill goals, since the Project site will enable new residents to walk to neighborhood-serving commercial and retail uses, and the provision of landscaped areas and streetscape upgrades will provide a pedestrian-friendly environment that will enrich the street life by encouraging walking between adjacent uses. In addition, the Project is close to public bus service and within a short distance to the Metrolink commuter rail station, and also will provide housing in close proximity to local and regional jobs and services. Overall, the Project will be attractively designed, implement cutting-edge sustainable design features, and will enhance the visual character of the surrounding community by transforming a site consisting mostly of paved parking lots and dispersed buildings into appropriately designed high-quality residential buildings with landscaped open space and landscaped setbacks.

By failing to provide a rational basis for denying initiation of a plan amendment despite its furtherance of the Housing Element and Regional Housing Needs Assessment goals, the matter should be remanded back to the Commission for review of the evidence: this is especially true given the fact that the purpose of the hearing was not to make a decision on the Project's merits, but rather solely to decide whether to initiate a plan amendment so that staff could further evaluate a plan amendment and the Project's merits.

Because the Commission refused even to consider the merits of whether the Rowland Heights Community Plan should be amended to allow for the development of additional and needed housing in the County, the County's General Plan is now internally inconsistent, which internal inconsistency violates the Government Code. The County's General Plan must be internally consistent. (Gov't Code, § 65300.5.) As noted above, the General Plan's Housing Element explicitly calls for the development of nearly 60,000 new dwelling units and recognizes the need for multi-family housing. The Commission's determination that the Rowland Heights Community Plan cannot be amended to allow for new multi-family dwelling units means that the County will be unable to ensure "an ample supply of housing for a variety of income groups [is] available in each community." (Rowland Heights Community Plan, at 25.) It also directly conflicts with the Housing Element's goal of "deconcentration and equitable distribution of...moderate income housing opportunities." (*Id.*) The Rowland Heights Community Plan itself provides that the Plan must be updated to meet the changing needs of the community. (*Id.*, at 38 [providing that "the plan itself must be periodically reviewed to assure that it continues to address the needs of the community."].) Refusal to consider such an updated provision for this property is not consistent with that mandate.

2. *The Commission's Decision To Short Circuit The Environmental Review Process Violated CEQA*

The Applicant has spent hundreds of thousands of dollars over a two-year period preparing the proposed project's EIR. The Draft EIR is now circulating for public comment. The Commission's actions have essentially stopped the EIR process mid-stream, in violation of CEQA. Having begun preparing the EIR, the Commission's action prematurely ending the process violated CEQA. The Applicant hereby incorporates the Draft EIR into this Appeal by reference and requests the Board of Supervisors consider the substantial evidence it contains of the merits of this proposal.

In *Sunset Drive*, the project applicant alleged that it had requested the City of Redlands approve a housing project, that the City required an EIR be prepared for the project, and that the applicant had paid all necessary fees. (*Sunset Drive Corp. v. City of Redlands* (1999) 73 Cal.App.3d 215, 219-20.) However, after nearly two years, Redlands stopped processing the EIR and refused to assist the project applicant in completing it. The court held that, once a lead agency commences preparation of a project EIR, it has a ministerial duty to complete the EIR. (*Id.*, at 220-21.) According to the court:

[The lead agency] has no discretion to refuse to complete an EIR when a project requires one. Therefore, mandamus lies to compel [the lead agency] to complete the process of preparing and certifying the EIR for this project.

(*Id.*, at 222.) The court held that the trial court was “not only authorized, but required, to issue a writ of mandate ordering Redlands to take corrective action.” (*Id.*, at 221.)

Here, just as in *Sunset Drive*, the County has commenced and abruptly terminated the environmental review process. Furthermore, the Commission had previously indicated that it was appropriate for the Applicant to undertake environmental review under CEQA prior to its consideration of a plan amendment. Consideration of the environmental information, before making a determination on the merits, is necessary for consistency with CEQA.

3. *The Commission Directed The Applicant To Commence Environmental Review; It Would Be Unjust Now To Refuse To Initiate A Plan Amendment Without The Benefit Of Environmental Review*

The County accepted the applications, issued a Notice of Preparation, and held a public scoping meeting. The Regional Planning Commission directed County staff and the Applicant to complete environmental review of the proposed project under CEQA before the Commission would consider the initiation of a plan amendment. Relying on the Commission’s direction, the Applicant spent hundreds of thousands of dollars to provide data for a Draft EIR. This EIR explores fully the potential impacts of a plan amendment and also analyzes reduced-density alternatives. The Commission, however, acted without the benefit of this document, which is not consistent with the County’s acceptance of the applications, circulation of a Notice of Preparation, conduct of a Scoping Meeting, and prior direction in 2008 to proceed with the EIR preparation.

The Applicant proceeded to fund the EIR preparation and circulation based on the reasonable belief that the Commission would utilize the information generated to evaluate the plan amendment application, once environmental review under CEQA was completed. Fulfillment of this process by remanding the case to the Commission is necessary to avoid an injustice. (*See Kajima/Ray Wilson v. Los Angeles County Metropolitan Authority* (2000) 23 Cal.4th 305, 310.) Terminating the process while the Draft EIR is still circulating is neither good public policy nor consistent with the County’s actions on other plan amendments. Accordingly, because the Applicant fulfilled its obligations and those actions directed by the County, the decision on the application should not be made without considering the information which the County directed the Applicant to complete.

C. Substantial Constitutional Rights Are At Stake

Community opposition, which the Regional Planning Commission stated was the basis for its decision, does not provide a rational basis for denial. Conclusions not grounded in factual analysis and without research and analytical findings is not a rational basis for denial of the initiation of a plan amendment, especially given the fact that environmental review has not even been completed. Notably, there were no findings at all, let alone any findings establishing a rational basis for denying the Applicant the opportunity to have a plan amendment initiated. In fact, the staff report had recommended to “INITIATE the plan amendment application process and instruct staff to proceed with the review of the applications associated with [the Project].”

Denying the Applicant the opportunity to have its application evaluated by staff, as well as denying the Applicant the ability to have a hearing before the Commission and Board of Supervisors on the merits, is unreasonable and without a rational basis and in doing so the County has departed from its general practice of allowing applicants to initiate General Plan amendments using the County's general form for doing so. Short circuiting the process would lead to violations of the Applicant's rights to equal protection under the law.

Substantive due process compels the County to decide matters before them in a fundamentally fair manner and not for arbitrary or irrational reasons. (*See Galland v. City of Clovis* (2001) 24 Cal.4th 1003, 1030-40.) Further, decisionmakers cannot place costly and unnecessary obstacles or burdens on an applicant during the administrative process and deliberately hinder its ability to obtain a fair and efficient decision. (*Id.*, at 1030-38.)

The Regional Planning Commission decision to refuse to consider the nearly completed EIR before rendering a decision on whether merely to initiate a plan amendment process was not conducive to a fair decision or consistent with procedural due process protections. Additionally, the environment in which the Commission conducted its deliberations and made its decision was inconsistent with the Applicant's due process rights. Due process required that the Applicant receive a fair and objective hearing, an adequate opportunity to present and respond to arguments raised, and a fair opportunity to be heard "at a meaningful time and in a *meaningful manner*." (*Armstrong v. Manzo* (1965) 380 US 545, 552 (emphasis added).) While the Applicant appreciated the Commission's efforts to encourage civility, the crowd repeatedly failed to comply with the Commission's directions and intimidated supporters as well as drowning out the Applicant's own testimony on repeated occasions. The Commission's statements indicate that the behavior of some individuals at the public hearing contributed to an environment where the decisionmakers were deterred from maintaining an open state of mind, which led to denial of a fair and objective hearing based on the merits of the proposal and its consistency with adopted policies of the County and the State of California.

The Applicant has acted in good faith and expended hundreds of thousands of dollars in reasonable reliance that the County would comply with CEQA, its own General Plan policies including the 2008 Housing Element, and state law in evaluating this Project on the merits for its consistency with those provisions. That evaluation has been denied in a context influenced by opposition of community members determined to eliminate a whole category of housing from future consideration, despite ample evidence of the need for such housing in the future and the failure to meet it in Rowland Heights over the past 30 years. To assure fairness and consistent with the established need to create high-quality multi-family housing in close proximity to jobs and transportation, the Applicant respectfully requests initiation of the plan amendment and review on the merits of the application for the Canyons apartment community.