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Via Email

RE: 5M Project Appeal Hearing – Request for Continuance and Recusal

Dear Members of the Board of Supervisors:

Appellants, South of Market Action Committee (SMAC), South of Market Community Action Network (SOMCAN), Save our SoMa (SOS), and Friends of Boeddeker Park, (hereafter, "Citizens"), request a 60-day continuance for the appeal hearing scheduled for November 17, 2015 and request the recusal of Supervisor Jane Kim for the following reasons.

Citizens request a 60-day continuance for good cause on the grounds that a revised Project will be considered by the Board of Supervisors at the appeal hearing and Appellants have not had reasonable time to amend their appeal.

Citizens request Supervisor Kim be timely recused from participating in the appeal hearing due to her private negotiations with the developer and her announced support of the Project prior to Appellants' opportunity to be heard, in violation of San Francisco's Sunshine Ordinance and San Francisco Administrative Code Chapter 67.

This week, Supervisor Jane Kim acknowledged she negotiated a private deal with Forest City and the Hearst Corporation to make changes to the Project. Supervisor Kim's actions represent a conflict of interest; her ongoing participation in the pending hearing prejudices Appellants in the appeal process.

The purported negotiated agreement between Supervisor Kim and the developer proposes an increase in affordable housing units, changes to the Area Median Income (AMI) levels and involves a reduction in onsite parking spaces. These changes were confirmed in statements made by Supervisor Kim during the Land Use and Transportation Committee meeting and on Facebook posts while the meeting was still in process, seemingly during public comment.

Citizens' pending appeal necessarily relates to the 5M project in its previous form. Citizens were not notified of the proposed changes to the 5M project and the changes materially alter the subject matter on appeal. The revised 5M Project involves significant changes to the project including an increase to the Average Median Income

(AMI) levels related to the alleged increase in affordable housing units. Such increase in AMI levels invariably creates more displacement impacts as units earmarked for units with lower AMIs now appear to have been removed or decreased in number. This change further demonstrates less mitigation for resulting displacement impacts, which is an issue raised on appeal.

Appellants' members were first informally apprised of the altered 5M Project on Tuesday, November 9, 2015, just two hours before the Land Use and Transportation Committee was scheduled to meet. Without notice, the altered 5M Project was considered at the meeting and proposed for public comment. Consequently, Citizens were not provided with sufficient notice to adequately comment on the proposed changes before the Committee took action to approve the proposed amendments to the ordinances and move the ordinances forward to the full Board of Supervisors without recommendation. To date, Appellants still have not received any written documentation of the altered 5M Project.

Appellants have a fundamental right to a fair hearing involving unbiased decision makers. The Board of Supervisors is the ultimate decision making body in this matter. Accordingly, each Board of Supervisor must protect the parties' due process rights, including barring private communications with any party behind closed doors, pursuant to San Francisco Sunshine Ordinance (S.F. Adm. Code Ch. 67).

Supervisor Kim made the following public statement during the Land and Transportation Committee meeting.

"I want to acknowledge Forest City and Hearst Corporation for working closely with my office to reach this deal."

By, privately meeting with the developer to negotiate a non-public deal and by expressing her support for the revised Project, Supervisor Kim cannot fairly consider the merits of the appeal and her actions have negatively prejudiced the appeal process.

Citizens now pose the following question. Were any other Supervisors involved in the privately negotiated deal with the developers? Citizens also request a 60-day continuance to resolve this question.

The facts and circumstances here favor a hearing continuance in the interest of justice. Citizens also seek a continuance for all applicable deadlines related to the appeal, including the time for submission of written comments. Please provide a response by the end of the business day, Friday, November 13, 2015.

Thank you,



Rachel Mansfield-Howlett
Attorney for Appellants