

## South of Market Community Action Network (SOMCAN)

President Norman Yee  
and Members of San Francisco Board of Supervisors  
City Hall  
San Francisco CA 94102

**Appeal 190097 - Conditional Use Authorization Appeal - 1052-1060 Folsom St & 190-194 Russ St  
Hearing Date: April 9, 2019**

**Victoria Manalo Draves (VMD) Park** is the only multi use public park operated by Recreation and Park Department (Rec Park) in the South of Market. VMD Park is on **south side of Folsom between 6th and 7th Sts**. It is in a lower income residential community, which substantially lives on side streets between Market and Folsom. For decades this area has had a large Filipino population, many of them immigrants. VMD Park is in the Youth and Family Special Use District and the SOMA Filipinas, Filipino Cultural Heritage District. Existing buildings in immediate vicinity are mostly 2-4 stories in height. The only public school in the South of Market is **Bessie Carmichael School** immediately adjacent to VMD Park.<sup>1</sup>

For over five years appellant **South of Market Community Action Network (SOMCAN)** with other community, tenant and Filipino organizations have actively participated in matters related to development of site across Folsom from VMD Park. Consistently raising importance of Park to Filipino community and to area residents before Rec & Park Commission and Planning.

**SOMCAN asks Board of Supervisors to deny approval of 1052 Folsom Conditional Use and return project to Planning for further action. The Planning Commission did not have necessary information on how 1052 Folsom project will shadow VMD Park to make REQUIRED Prop K/Sec 295 finding that shadow will not be adverse to uses in that Park.**

### **History of Proposed Development of THIS Project Site**

Project Sponsor Iantorno has proposed **TWO** separate projects for **1052-1060 Folsom Street & 190-194 Russ Street site**. Both were issued a Sec 15183 Environmental Exemption<sup>2</sup> (Catex). Both underwent PreVision analysis of their Prop K/Section 295 **shadow impacts on Victoria Manalo Draves Park**. Both projects were subject of required Prop K/Section 295 Recreation and Park Commission hearing.

---

<sup>1</sup> Victoria Manalo Draves Park was created by transfer of part of school district property to Rec Park specifically to create a public park. It opened in 2006. Exh 11 1:22.

<sup>2</sup> Exemption based on approval of PEIR for Eastern Neighborhoods Area Plan

**2013.0350E - 190 Russ** - 3731/007 one **4,500** sq ft lot, one vacant one-story bldg use - storage Proposal - 6 stories (65'), 10 Dwelling units (1 required inclusionary affordable)

**190 Russ** project was much smaller than current project. Shadows cast on VMD Park by **190 Russ** resulted in Rec Park Commission advising Planning Commission that new shadows fail to meet **QUALITATIVE** Prop K criteria.

**190 Russ Street** proposed developing one 4,500 sq ft lot on Russ Street with a 65' building providing 10 apartments. Since project cast new shadows on VMD Park, Proposition K evaluation and hearings by Rec Park and Planning Commissions were required.

**2016-004905 - 1052-1060 Folsom & 190-194 Russ** - 3731/**021,023,087** - 3 reconfigured lots, 5 existing bldgs - merged into one **11,500** sq ft building

**021** - 3 bldgs: **1052-1058 Folsom** 2 story DUs w/2ground fl retail + **192-194 Russ** 1 story commercial + 3 story **196 Russ** w/2DUs **023** -2 story commercial **1060 Folsom**  
**087** - pkg lot + **190 Russ** 1-story commercial

Proposal - 7 stories (64'6" - 79'6" including elevator/stair penthouse) Ground fl retail + REPLACE 4 rent controlled DUs + ADD 59 new DUs. 15 of 59 added DUs are inclusionary affordable, 14 are required.

#### **Rec Park Commission review and vote on 190 Russ Street project**

On **1/15/15** when Rec Park Commission did mandatory Prop K review and hearing on shadow impacts of **190 Russ** on VMD Park, Commissioners discussed impacts on users of the park and the community. They unanimously found the project did not meet Prop K **qualitative** requirements which mandate protection of sunlight in public parks. Exhibit 8<sup>3</sup>

Public testimony also addressed the **QUALITATIVE** impacts of the project. The PEOPLE and COMMUNITY AFFECTED when uses in the park are no longer in sunlight, but in shadow. There was extensive discussion among Commissioners leading to their vote.<sup>4</sup>

They had full information on the **quantitative** amount of shadow being cast.  
Graphic of SETTING of VMD Park - surrounding streets and immediate area.  
Graphic of VMD Park labels the park's use areas, as well as those at Gene Friend Rec Center.

**Page 3 that follows** was before Rec Park Commission in 2015. Shows **FULL VMP Park**. Bounded on south by Harrison and freeway. **No housing on south side of Harrison. VMD park use areas labeled.**

---

<sup>3</sup> Appellants Exhibit 11 is transcript of **January 15, 2015 Rec Park Commission hearing** on **190 Russ St** proposal. Transcripts Exh 11 (1/15/15 RecPark, Exh 13 (12/20/18 RecPark, Exh 15 (12/20/18 Plan Comm) are of complete hearings. They were derived from SFGovTV caption notes.

<sup>4</sup> In seconding Rec Park Commission **190 Russ** motion Meagan Levitan explained that THIS neighborhood does not have open space. It is important that Rec Park protect sunlight on parks for kids. We are responsible to protect quality of life as it relates to recreation and open space for those raising children in area. Ibid 28:14-27

**190 RUSS STREET SHADING ANALYSIS:**  
Graphic showing conditions on Summer Solstice (6/21) at 7:35 PM



PreVision graphic on **preceding page**, showing shadows on VMD Park on **Summer Solstice at 7:35pm**, one hour before sunset, was presented to Rec Park Commission.<sup>5</sup> **On January 15, 2015 the Commission unanimously found shadows cast by 190 Russ did not meet QUALITATIVE Prop K criteria and will have significant adverse impact on Victoria Manalo Draves park. Exhibit 8**

There was no Planning Department or Commission review of **190 Russ** project.<sup>6</sup>

After January 15, 2015 vote, sponsor proceeded to develop a much **larger project** on a much **larger site** - **1052-1060 Folsom St & 190-194 Russ St.** On May 10, 2016 project applications accepted by Planning.

Size of development site increased 250%. Folsom and Russ lots merged and reconfigured. With larger site, replacement of 4 rent-controlled units to be demolished is now required. Larger project also needs Planning Commission approvals - Conditional Use, Large Project Allocation, Variances - plus required Shadow Determination.<sup>7</sup> **190 Russ** needed no Commission approval beyond shadow determination.

The PreVision shadow analysis graphic - prepared for both environmental analysis and shadow analysis for Rec Park and Planning - also modified base graphic under shadow overlay.

Graphic used in **190 Russ** analysis (preceding page) shows entire VMD Park + adjacent blocks.

Bounded clearly by Harrison St/US 101 freeway to south

**Park entries ONLY** on Folsom (north) mid-block on east and west sides

Gene Friend Rec Center on NORTH side of Folsom and slightly to EAST shown

Use areas in VMD Park (and Gene Friend) clearly labeled

Graphic shows no housing on south side of Harrison, opposite VMD Park and baseball field

Graphic used for **190 Russ** analysis helps the viewer to understand use areas being shaded and effect on parks users. This new graphic - with overlays showing progression of shadows - is used throughout **1052 Folsom** analysis and proceedings.

### **1052 Folsom project review and vote by Rec Park Commission**

Report on **1052 Folsom shadows cast on VMD Park**, presented to Rec Park Commission for its December 20, 2018 hearing, used base graphic that was "simpler." It no longer labeled use areas in VMD Park. US Highway 101 disappeared. Surrounding blocks, dramatically cut. **Gene Friend Recreation Center**, shrunk to large dot. The following page - **Summer Solstice, June 21 7:36 pm - 1052 Folsom** - was presented to **12/20/18 Rec Park Commission**.

---

<sup>5</sup> Prop K only measures shadows one hour AFTER sunrise and one hour BEFORE sunset. Evening shadows would continue lengthening up until sunset - one hour AFTER the 7:35pm time shown in graphic.

<sup>6</sup> Environmental Review is conducted separately from Planning Commission review.

<sup>7</sup> Rec Park planner, environmental review planner, Plan Dept shadow expert, project planner all changed between **190 Russ** and **1052 Folsom** projects. Two Rec Park Commissioners, who voted that **190 Russ** project did not meet **QUALITATIVE** Prop K criteria of due to impact on VMD Park, were also replaced by 2 new Commissioners.

# B1.19 1052 FOLSOM STREET

Shading diagrams on the Summer Solstice



SUMMER SOLSTICE  
JUNE 21  
**7:36 PM**

- Proposed Project
  - Existing (current) Shadows
  - New Shading by Proposed Project
  - New Shading from Cumulative Projects
- Note: Shadows from 980 Folsom, 988 Harrison, and 850 Bryant (Hall of Justice) are considered as part of the analysis but these buildings fall outside the graphical view of this diagram.*
- Cumulative Projects
    - 363 6th Street
    - 345 6th Street
    - 999 Folsom St.
    - 40 Cleveland St.
    - 1075-1089 Folsom St.
    - 280 7th St.
  - RPD Parks
    - Victoria Manso Draves Park
    - Gene Friend Rec Center

Exd 200

Preceding 2018 **1052 Folsom graphic** of Summer Solstice shadow on VMD Park shows:

Harrison St side of the park virtually unshaded. Shadows increase on areas near Folsom St.

- The freeway along Harrison - disappeared.
- The total lack of buildings/housing on south side of Harrison - disappeared.
- Labeling of VMD Park areas by use - disappeared.
- The lack of entrance to VMD Park on Harrison or to baseball field - disappeared.
- Even Gene Friend Recreation Center (north side of Folsom slightly east of VMD Park) - virtually disappeared.

A person unfamiliar with VMD Park and surrounding area, who gets information from **1052 Folsom graphic**, faces a challenge. The base graphic lacks important information. How is the park entered by people in the neighborhood? How are spaces used?

This includes Planning Commissioners who had not been provided with shadow studies and graphics to review the setting of VMD Park to prepare for 12/20/18 hearing and make required shadow findings applying QUALITATIVE standards. *A hearing less than two hours after Rec Park Commission meets.*

In initial statement at December 20, 2018 Rec Park Commission hearing on **1052 Folsom**, the Rec Park planner *mentioned* the 2015 hearing on **190 Russ** and Rec Park Commission finding of significant impact on VMD Park. But her presentation on **1052 Folsom** project *did not mention* that shadows cast by **1052 Folsom** project on VMD Park had grown - compared to shadow cast by **190 Russ** project.

Shadows cast by the **2 proposals** would be brought up by Commissioner Low after public testimony, comparing graphics of impacts of **190 Russ** shadows on Summer Solstice evening (**Exhibit 20b**) to graphic at same time for **1052 Folsom (Exhibit 20c)**.

#### **December 20, 2018 Rec Park Commission hearing on 1052 Folsom St**

There was extensive public testimony from South of Market residents following up comments they had made 3 years earlier at January 15, 2015 hearing on 190 Russ Street. Two new Commissioners had replaced Commissioners Levitan and Wei, plus there was another new Commissioner

Public testimony to Rec Park Commission at December 20 hearing and spoke to the three new Rec Park Commissioners. Who had replaced Commissioners Levitan and Wei. The new Commissioners did not know how much effort it had taken to get Victoria Manalo Draves Park built. The years of community work to get a park built in SOMA. An area which had been light industrial for decades. The residents mostly lived in small units with very few yards. Often in between small industrial or commercial buildings.

Because Rec Park did not prioritize funding to create the park, the community of residents and stakeholders had to request an add-back from then-Supervisor Chris Daly so Rec & Park could build the park. This effort had been led by appellant SOMCAN. Exhibit 13, 23:25

Letters to the Rec Park Commission were submitted by SOMA Pilipinas, United Playaz, Bayanihan Equity Center. Increased shadowing in VMD Park affects park users - many of whom do not have other alternatives for open space. Exhibits 23, 24, 25

South of Market residents who live around Victoria Manalo Draves Park goes to the park regularly after work or after school. In summer when days are longer and they rely on VMD park for access to open space. People who work with kids, particularly those trying to head off high-risk behavior, use the park as a place where children and youth can do physical activities.

There also was extensive community comment on the importance of Victoria Manalo Draves Park to the Filipino community. It is the ONLY park named for and honoring a Filipina. A San Francisco woman athlete who had won gold medals at the Olympics. Exhibit 13 5:22, 6:15, 9:30, 12:10, 12:27, 25:14, 21:11

In her last weeks as Supervisor for this area, Jane Kim urged the Commission to help build community by protecting the limited open space in South of Market. Ibid 9:1

**Commissioner Allan Low**, one of three Rec Park commissioners who had participated in review of 190 Russ, focused on 3 issues at December 20, 2018 Rec Park Commission hearing on 1052 Folsom:

Greater **Summer Solstice shadows in 190 Russ** compared to **those in 1052 Folsom**

QUALITATIVE shadow impacts - reason why Rec Park found against smaller **190 Russ**

Rec Park Commission required to be **SOLELY focused on effect of shadows on park use**

**Commissioner Low** asked Rec Park planner to compare the shadow cast by 190 Russ project on VMD Park one hour before sunset on summer solstice (this brief page 3/Exh 20b) to the larger shadow cast by 1052 Folsom project on summer solstice (this brief page 5/Exh 20c).<sup>8</sup>

**Low** (passing 2015 190 Russ graphic to Rec Park planner) - isn't this shadow greater than what we unanimously rejected in 2015? Shaded basketball court active recreation area, and entrance to park. Because shadow was significant and adverse?

**Bradley** - that is correct

**Low** (showing 2018 1052 Folsom graphic) - doesn't that shadow show greater impact on park - entire basketball court, not just a portion, and dog play area?

**Bradley** - that is correct

---

<sup>8</sup> United Playaz submitted to Rec Park Commission two graphics - **190 Russ summer solstice shadows (2015)** and **1052 Folsom summer solstice shadows (2018)**. Both were drafted by PreVision and submitted to Rec Park Commission.

**Low** - 2015 Commission vote was some precedent?

**Bradley** - yes

**Exhibit 13 25:4-17**

How spaces in VMD Park are used and the people who use the park are more important than whether amount of time (quantity) of increased shadow.<sup>9</sup> Even if quantity of increased shadow falls within "allowed limits," **QUALITATIVE** aspects must be addressed by Commission. **QUALITATIVE** aspects were basis for 2015 Rec Park Commission vote. Ibid 25:18-23, 29: 11-12.<sup>10</sup>

**Commissioner Mark Buell**, who had also reviewed and voted on **190 Russ** project shadows, echoed importance of quality of park to public who used VMD Park.

There is a lack of backyards in neighborhood, placing greater demands on parks.  
Ibid 29:16-28.

The third issue Commissioner Low addressed was the **role of the Rec & Park Commission** and the money dangled by sponsor for park improvements and other "benefits." The **only** issue Rec Park is to weigh is the **value of sunlight on VMD Park**. It is illegal for Rec Park to take cash (\$150,000 for improvements) for shadows. Per advice from City Attorney. Exhibit 13 24:25-29. Under Sec 295 Rec Park has no role in weighing any aspect of project other than SHADOW impacts - including housing. That is the exclusive responsibility of the Planning Commission.<sup>11</sup>

On December 20, 2018 Recreation and Park Commission, by a vote of 4-2, recommended to Planning Commission that the shadow cast by proposed project at **1052-1060 Folsom Street and 190-194 Russ Streets** will not have a significant adverse impact on the use of Victoria Manalo Draves Park pursuant to the Sunlight Ordinance. Exhibit 9

The two Commissioners, Mark Buell and Allan Low, who voted against **1052 Folsom** recommendation to Planning Commission, had been on Rec & Park Commission in 2015 when it voted unanimously for a resolution that SMALLER shadows from the SMALLER **190 Russ** project on part of the same site did not meet QUALITATIVE standards of the Sunlight Ordinance.

---

<sup>9</sup> Later in hearing VMD Park hours were found to be **6am to 10pm**. It does NOT close at sunset. **Exh 14 27:20 BUT** sunrise to sunset is stated as VMD Park hours of operation in Planning Commission shadow motion. **Exhibit 6**

<sup>10</sup> **Transcript Exhibits 11, 13, 15** submitted by Appellant are of **ENTIRE** hearings, based on SFGTV caption Notes. Project Sponsor's **Exhibit 6 of 12/20/18 Rec Park Commission hearing** excerpts only EXACT lines they want Supervisors to read. It absurdly omits the making of the motion discussed by Commissioner Anderson. Sponsor appears to not want contrary views available in a "transcript." **Sponsors Exhibit 6 (Rec Park)** and **Sponsors Exhibit 5 (Planning Comm)** are so truncated as to not provide a fair report of what occurred at respective hearings.

<sup>11</sup> Commissioner Buell had stressed same issue in 2015 discussion of **190 Russ**. Rec Park Commission has serious responsibility to the single issue of parks and quality of life related to parks in San Francisco. Ibid 29: 11-14



## 12/20/18 Planning Commission review of 1052 Folsom project and its shadows

Virtually no concrete information on shadows cast by **1052 Folsom** was provided to the Planning Commission to allow it to do its REQUIRED REVIEW of effects of that project's increased shadowing of VMD Park.

Proposition K (Planning Code Sec 295) requires:

The **Planning Commission shall conduct a hearing** and shall disapprove the issuance of any building permit governed by the provisions of this Section if it finds that the proposed project will have any adverse impact on the use of the property under the jurisdiction of...the Recreation and Park Commission because of the shading or shadowing that it will cause, unless it is determined that the impact would be insignificant. Exhibit 1, Exhibit 2 Sec 295 (b)

Planning Commission **SHALL** conduct a hearing.

The Planning Commission **SHALL DISAPPROVE** project if the PLANNING COMMISSION FINDS project shadow will have ANY adverse impact on USE of the park unless they determine impact insignificant.

**Who** makes finding that increased shadows are insignificant? Not consultant PreVision.<sup>12</sup> Not Planning Department.<sup>13</sup> Not the Board of Supervisors when a CU is appealed to that body. **1052 Folsom project** was approved with defective (no graphics provided to Commissioners) **Planning Commission** finding that impact of Project's shadow on Draves Park was insignificant. Board can't substitute itself in to make finding where exclusive role has been granted by initiative to Planning Commission.

### Record provided for Planning Commission review BEFORE 12/20/18 hearing

On December 13, 2018, one week before 12/20/18 hearing, Department planner Doug Vu published **1052 Folsom staff report**, simultaneously providing it to Planning Commissioners. Staff report included almost no information on the Shadow impacts of Project on Victoria Manalo Draves Park, although the Planning Commission was required to make findings BEFORE they could consider approving the project.

The **only information on shadows 1052 Folsom casts on VMD Park** was in the Environmental Exemption in the staff report (Catex). Exhibit 5 page 31 is the **sole graphic** provided showing shadow impacts.<sup>14</sup> No graphic showing areas and uses in VMD Park is included. PreVision 10/30/18 Shadow Analysis Report is mentioned<sup>15</sup> in Catex and observations described. But only ONE graphic showing shadow is

<sup>12</sup> Sponsor's brief, p. 6 second full paragraph

<sup>13</sup> Ibid, p. 6 fourth full paragraph

<sup>14</sup> Full text of Wind and Shadow analysis for the Catex is Appellant Exhibit 5. Catex states that Eastern Neighborhoods PEIR could not conclude there were no shadow impacts of Eastern Neighborhoods rezoning because specific proposals to develop sites were unknown at that time. PEIR was certified in 2008.

<sup>15</sup> Exhibit 5, page 29 fn 49

included. Providing no information to enable Planning Commissioners to make own evaluation of QUALITATIVE impacts of shadows on VMD Park or whether Project should be modified to reduce or otherwise modify shadow impacts.

Catex itself says that it does NOT provide complete information on which Planning Commission must rely in making Prop K findings. After describing **quantitative limit** on increased shadows in February 3, 1989 Proposition K memorandum (long before Draves Park was developed) and information in the PreVision analysis, Catex states:

"... additional shadow of up to one percent **could be** potentially permitted if the shadow meets the **qualitative** criteria of how shading would occur in the park. The **qualitative** criteria includes existing shadow profiles, important times of day and seasons in the year associated with the park's use, the size and duration of new shadows, and the public good served by the buildings casting new shadow. **Approval of new project-related shadow on Victoria Manalo Draves Park would require hearings at the Recreation and Park Commission and the Planning Commission.** Exhibit 5, page 29

The Catex then includes four pages of narrative and ONE graphic on page 31. **NO OTHER GRAPHICS.**

The 12/13/18 packet did include Draft Shadow Motion **finding** that there is no shadow impact. It cites reliance on 10/31/18 PreVision shadow analysis report which was not provided to the Commission. The draft erroneously claims that Planning Commission findings are **Recommendation of General Manager of Recreation and Park Department, in consultation with the Recreation and Park Commission. Exhibit 7** Rec & Park Commission did **not** have a hearing and vote on shadow impacts of **1052 Folsom** project on VMD Park until **December 20, 2018** one week *after* draft motion was published.

That is **the entire information** provided on shadow impacts of **1052 Folsom** project on VMD Park provided in **staff packet published December 13** - for Planning Commissioners to review to prepare for December 20 hearing.

#### **December 20, 2018 - Separate hearings by Rec & Park and Planning Commissions**

Until proposed projects started to show shadows being cast on VMD Park, Prop K hearings on shadows affecting downtown parks were conducted at a joint Rec Park/Planning Commission hearing. VMD Park shadows were not subject of any joint hearings.<sup>16</sup> *Gene Friend across Folsom - ALL Joint hearings.*

---

<sup>16</sup> After 1984 passage of Prop K protecting sunlight on parks, Planning and Rec Park did an extensive evaluation of DOWNTOWN PARKS, 14 parks in northeastern San Francisco. **October 22, 1987 Memo on Prop K - The Sunlight Ordinance** mapped those **14 parks**, described development around each park, and set in motion the process used today to evaluate shadow impacts on parks.

Exhibit 21 is relevant pages of that document. THIRTEEN of the parks are north of Market Street. ONE park - **South of Market Park** - was analyzed. Although that park was still under development. (Ibid - unnumbered pages

On December 20, 2018 there were totally separate hearings on 1052 Folsom project. At **10am Rec Park & Commission conducted a hearing and took evidence solely about making a recommendation to Planning Commission on shadow impacts of 1052 Folsom project on VMD Park.**

APPROVAL of Project itself - or conditions imposed - was not Rec Park Commission role. That is jurisdiction of PLANNING Commission. REC & PARK Commission was ONLY required to make a recommendation on impacts of project shadow to VMD Park to Planning Commission. Ascertain that quantitative limits are not exceeded. Evaluate QUALITATIVE criteria using testimony and evidence of how VMD Park is used and its role in the community.

The morning of December 20 the **Rec Park Commission, but not the Planning Commission** heard:

Extensive testimony on shadow impacts and importance of Draves park and its sunlight to surrounding residents, particularly to Filipino community,

Discussion of shadow impacts on VMD Park by Rec Park staff and Commissioners,

Commissioner Low questioning staff and comparing graphics of summer solstice evening shadows cast by **190 Russ** project and greater shadows cast by **1052 Folsom** project - *despite 2015 Commission unanimous resolution that lesser shadows cast by 190 Russ did not meet QUALITATIVE Prop K criteria.*

Rec & Park Commission concluded by voting 4-2 its recommendation to the Planning Commission. Except for one-sentence recommendation, none of this was heard by the Planning Commission. Which met at 1 pm.

The usual practice of having **JOINT** Rec & Park/Planning Commission hearings on shadow impacts results in all public testimony on shadow impacts being heard by BOTH Commissions.

In a Joint Hearing the Commissions take separate votes on shadow impacts. Once public testimony is closed at joint shadow hearing, Rec & Park Commission has deliberated, voted and adjourned, the Planning Commission reconvenes. Planning has a hearing on the PROJECT and votes on project approvals. Planning Commissioner Moore describes the usual practice at Transcript Exh. 15 24:14-17.

### **What Planning staff presented to Commission on 1052 Folsom shadows on December 20**

---

South of Market Park towards the end) After development it was later named Gene Friend Recreation Center. It is on north side of Folsom at northwest corner of 6th St, slightly east of Victoria Manalo Draves Park.

Because VMD Park did not even exist in 1987, it is not in the list of the 14 Downtown Parks that receive **Joint Rec Park/Planning Commission hearings** on increased shadow impacts from proposed projects. With no joint hearing the Planning Commission would not receive advance shadow studies before they voted, or hear testimony focused on the shadow impacts of a proposed project.

Appellants have provided a transcript of the full Planning Commission hearing. **Exhibit 15.** Doug Vu's fairly brief presentation is at Ibid 1:5-2:18. He hands in letters supporting project submitted after staff packet published. Ibid 1:28 Amended Exhibit A to Large Project Authorization. Ibid 2:1

No mention of project shadow impacts on VMD Park. No mention of Shadow Motion he asks Commission to adopt. No mention of Shadow findings that Commission is **required to make before** considering approval of **1052 Folsom** project. Not mentioned at all. Vu would not speak again until after public comment concluded.<sup>17</sup>

Project sponsor's attorney Alice Barkley SHOWED several slides of shadow impacts on monitor. Since a written transcript (**Exhibit 15**) lacks visuals, but references made to them at 4:21-5:3 are shown in the transcript.

After extensive public testimony opposing project, and some supporting project, along with speakers who showed small parts of various shadow studies, and discussed impacts of **1052 Folsom** project on use of Victoria Manalo Draves Park, Commissioner Moore gave Mr. Vu a second opportunity to speak to Planning:

**Commissioner Kathrin Moore's direct questions to the planner elicited -**

**Moore** - Why does staff report have no copies with **details of shadow analysis**?

**Vu** - actual shadow analysis included in Community Plan Exemption

**Moore** - there in one diagram in there. Normally we have basically all of the days. Only one diagram, which is the summary diagram. There is no complete shadow study. Why is this different?

**Vu** - Department commissioned study by PreVision who is shadow consultant. Environmental review staff reviewed that analysis and developed the narrative within Community Plan Exemption

**Moore** - please answer my question

**Vu** - shadow analysis itself was not included in the packet (Exh 15, 24:17-29)

Commissioner Moore emphasized the need for Planning Commissioners to have shadow analysis diagrams to analyze impacts and make Planning Commission decision required by Prop K/Sec 295. Shadow analysis diagrams had not been included in material presented by Department. Ibid 25:16-21

---

<sup>17</sup> In Project Sponsor's testimony following Vu's presentation Alice Barkley informed Planning Commission that the Rec Park Commission had earlier that morning voted 4-2 that the shadows from 1052 Folsom do not have significant impact on VMD Park. Exh.15 5:10-14. She noted Vu had not mentioned in his remarks to Planning Commission that Rec Park vote had been taken earlier that day.

This lack of information/shadow studies was echoed by **Commissioner Dennis Richards** -

There's no real shadow study in our packet. No alternatives that could be presented that says at 5' less, it casts less of a shadow at this time of year. Can we shift massing around? There's nothing in there. Ibid 33:8-12

Richards proceeds to address what he heard during public testimony, particularly the impact to communities of color that increased shadows cast on VMD Park would have "If *you approve* this project it's exclusionary to us, it's racist to us." Mostly European Americans and the real estate industry say, "if *you don't approve* project it is racist, it is exclusionary."

This is about equity. To the community increased shadows on Draves park are substantial. Ibid 29:5-17

**Commissioner Myrna Melgar** pointed out that all neighborhoods are not the same. The SOMA neighborhood has very little access to sunshine and parks. When shadow falls on the basketball court later in the day during the summer, when kids are out of school, is precisely the time when teenagers use VMD Park basketball court. It is not the same when increased shadow hits the basketball court that is used heavily in the summer when school is out. That's when shadow is most impactful. Ibid 26:31-27:14.

The above three Planning Commissioners voted AGAINST the **1052 Folsom** approval and required shadow finding. **Exhibit 6**. Two explicitly stating that they had NOT been provided the tools, the data, they needed to make the required shadow determination of no impact based on QUALITATIVE issues.

Two Commissioners who voted FOR the Project made similar points relevant to the determination of Shadow Impacts.

**Commissioner Rich Hillis** - stated that he did not have shadow study in Planning Commission packet. So he went to REC & PARK COMMISSION packet which had more detail on the shadow impact. Ibid 25:25-28. He agreed that the PLANNING COMMISSION had not been presented with data to make the required shadow determination.

**Commissioner Rodney Fong** spoke about watching the slow deterioration of a neighborhood and its culture in San Francisco: We are all being squeezed out of our own town. I don't see housing prices coming down in the near future. I feel the pressure of San Franciscans being squeezed out. Ibid 28-31. The issues he raised are part of analysis of QUALITATIVE issues from impact increased shadowing on VMD Park. This analysis is required by Section 295 of the PLANNING CODE.

Despite having no shadow analysis report with diagrams to review provided by their Department, on December 20, 2018 Planning Commission adopted shadow findings on impacts of 1052 Folsom project on Victoria Manalo Draves Park by a vote of 4-3. **Exhibit 6**

## **Appellant SOMCAN requests to BOARD OF SUPERVISORS**

Respect the lower income residents living in community around Victoria Manalo Draves park which has limited access to sunlit open space. Sunlight, places to sit and talk, places for kids to play, places for teenagers and others to shoot hoops with friends, should continue to be provided in VMD Park.

Respect the Filipino community that worked so many *years* to get Bessie Carmichael School built - the only public school in the South of Market. Then that community worked with the school district to get part of that site transferred to Rec Park so a public park could be built honoring a Filipina. A woman who grew up in San Francisco. An Olympic Gold medalist who had been ignored by her City. A WOMAN with a San Francisco park named in her honor.

Respect the people of San Francisco who voted in 1984 to adopt Prop K and protect SUNLIGHT in public parks which is particularly valuable to kids and teenagers who do not have access to open space where they live and senior citizens who want to live near a sunny park.

### **Disapprove the Conditional Use Authorization for 1052-1060 Folsom and 190-194 Russ Street.**

The Conditional Use was approved in violation of Planning Code Section 295. BEFORE Planning Commission could even consider the 1052 Folsom project, they had to conduct a real hearing with real evidence before them, and adopt findings regarding the increased shadowing in Victoria Manalo Draves Park. They went through the motions, acting as they WERE complying with 295, while not doing so.

Follow Planning Code 295 and Prop K requirement that the **PLANNING COMMISSION** shall conduct a hearing on a shadow impacts of a proposed project that casts shadow on a park under jurisdiction of Rec Park Department. A hearing that is more than a pro forma "hearing." The Planning Commission must conduct a REAL hearing, with analysis of shadow impacts PRESENTED TO THEM IN ADVANCE so they may require adjustments to proposed **1052 Folsom project** so sunlight can be protected on Victoria Manalo Draves Park. Not a hearing folded into the approval hearing for project casting shadows on VMD Park.

Because the **Planning Commission** was not provided with **ANY** shadow study, it did not have the opportunity to respond to residents of South of Market and the Filipino community and make QUALITATIVE findings regarding protecting sunlight on Victoria Manalo Draves park. Project approvals given to **1052 Folsom project** were made before the PLANNING COMMISSION made required findings based on appropriate shadow information before them.

The Board of Supervisors must **disapprove the 1052 Folsom Street Conditional Use**. The REQUIRED PRIOR APPROVAL of shadow findings BY THE PLANNING COMMISSION lacked proper approval because adequate graphics and studies had not been presented to Planning Commissioners sufficiently in advance of their voting on Motion 20362, Shadow Findings. Since Motion 20362 is not valid, the requirements of Planning Code 295 were not met.

Appellant SOMCAN has separately submitted Exhibits 1 through 27 on this appeal. This reference incorporates them. References to Exhibits are to those exhibits.

Respectfully submitted,  
Sue C. Hestor

870 Market St #1128  
San Francisco CA 94012  
hestor@earthlink.net

on behalf of South of Market Community Action Network (SOMCAN)  
1110 Howard St  
San Francisco CA 94103  
[www.somcan.org](http://www.somcan.org)