From:	Board of Supervisors, (BOS)
To:	BOS-Supervisors; BOS Legislation, (BOS)
Subject:	FW: File No. 180019: Against 8-storey building at 2918 Mission St.
Date:	Tuesday, June 19, 2018 12:46:13 PM

From: Jade Praerie [mailto:jadepraerie@gmail.com]
Sent: Tuesday, June 19, 2018 12:05 PM
To: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>
Subject: File No. 180019: Against 8-storey building at 2918 Mission St.

Please accept this message for today's 3:00pm public hearing at the Board of Supervisors.

I stand against the request to construct an eight-storey building at 2918–2924 Mission Street.

The vast majority of buildings in this neighborhood are two to three stories in height. At best, I would accept new construction at twice the norm (four to six stories), but not triple the norm.

This would be a skyscraper in a residential neighborhood. Skyscrapers cast cold shadows on other properties, and they create cold wind tunnels. They also block established views.

Isn't there already a height limit on new buildings in the Mission? Why must developers constantly request exceptions instead of simply obeying the law?

Why not build skyscrapers along the undeveloped Muni T line in Mission Bay?

Thank you for your consideration.

Allen Matkins

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Via Electronic Mail

June 18, 2018

London Breed, President
and the San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689
Bos.legislation@sfgov.org

Re: CEQA Appeal: 2918-2924 Mission Street
June 19, 2018 Meeting, Agenda Item 35
Planning Dept. Case No. 2014.0376ENV

Dear President Breed and Supervisors:

On behalf of RRTI, Inc., the owner of the above-referenced property, we submit this correspondence with regard to the above-referenced Agenda Item. The purpose of this correspondence is to urge this Board to make a final decision on June 19 regarding the pending appeal of Staff's CEQA exemption determination and to refrain from any further delays. In addition, this correspondence is submitted in order to exhaust RRTI's administrative remedies in the event that this Board votes to continue this matter or to grant the appeal. As such, this correspondence incorporates by reference all oral and written communications to the Planning Commission and this Board with regard to the appeal.

The contents of the Agenda Packet, particularly the February 2 and June 8 Project Sponsor briefs and the February 5 and June 11 Planning Appeal Responses, provide substantial evidence supporting Staff's CEQA exemption determination per 14 CCR § 15183. There are simply no legitimate bases upon which to grant the appeal, nor would any trier of fact find one.

We therefore strongly request that the Board deny the appeal at its June 19 meeting.

I. GRANTING THE APPEAL OR CONTINUING THE HEARING WOULD INFRINGE UPON RRTI'S CONSTITUTIONAL PROTECTIONS AND STATUTORY RIGHTS UNDER SECTION 1094.5

A. Procedural Background

RRTI has fundamental concerns regarding the circumstances surrounding this appeal. The appeal letter filed on January 2, 2018 by Scott Weaver on behalf of Calle 24 Latino Cultural District Council listed seven bases for the appeal, none of which claimed that the building was an historic resource, especially one based on the prior occupancy of various community-based organizations in the building. Instead, the appeal contained a generic reference to "cultural and historic resources" buried in the third bullet point regarding the effect of the project on the Calle 24 Latino Cultural District, which is a different claim than that the Project itself is of historic significance.

In fact, there were no claims of historical significance regarding the prior use of the property at any point during the project's entitlement process until *after* the Planning Commission's November 30, 2017 project approval and *after* the appeal was filed. As chronicled in a March 22, 2018 story in the *Bay City Beacon*, *attached*, Planning Commission Vice President Myrna Melgar heard in January 2018 that some advocacy groups occupied the building 40 years ago, so she contacted Planning Director John Rahaim, claiming that the building has historic significance. In the *Beacon* story, Commissioner Melgar admitted: "I felt it was part of my duty as a commissioner to make sure that the new information was considered now that I had found out about it. It's important that the history of activism in the community is recognized."

Commissioner Melgar's claim of the laundromat's historical significance, made after the January 2, 2018 period to file an appeal, prompted the Planning Department to recommend further historical study of the property. As a result, the Board voted during its February 13, 2018, meeting to continue the meeting for several months to allow the study to be completed, finally leading to this June 19 Board meeting.

In his June 8 Supplemental Appeal Letter, Mr. Weaver does not provide or incorporate any of Commissioner Melgar's arguments that the laundromat is an historic property. Her appellate argument is thus independent and distinct from Mr. Weaver's timely-filed appeal, yet did not follow the City's protocol for pursuing an appeal.

Not only does the Property's historic resource evaluation demonstrate Commissioner Melgar's preservation concerns are without merit, her actions are procedurally unlawful and unfair, as set forth below. In addition, there are no legitimate bases to further continue this matter. All of the requested studies and analysis have been provided and fully analyzed by Staff. Any further continuances at this point would be due to political gamesmanship and would constitute an unlawful attempt to defeat the project through unreasonable delays.

Actions such as these not only impede the City's ability to provide badly-needed housing to its residents, they reflect poorly on the City's reputation. This appeal has been reported not only by the local press, but by the international press. In its June 2-8, 2018 edition, *The Economist* featured an article on San Francisco's housing problems, and explained (at p. 13):

> The planning process is a bureaucratic quagmire, made worse by NIMBYism and nonsensical neighbour complaints. A 75-unit complex in the Mission district is being held up by an investigation into whether a laundromat qualifies as a historic site.

The City and its reputation deserve better than this. Improper meddling by City officials should not be tolerated. For these reasons, and those set forth below, the appeal must be denied.

B. Constitutional Procedural Due Process Protections

"While the police power is broad, its exercise cannot be divorced from the requirements of procedural due process." *Beck Development Co. v. Southern Pacific Transportation Co*. (1996) 44 Cal. App. 4th 1160, 1187. "In essence, due process principles are intended to guarantee a fundamentally fair decisionmaking process." *Id.* at 1188. "At a minimum, due process requires notice and an opportunity for a hearing, and the other safeguards that may be required vary with the circumstances." *Ibid.* "In each of these steps a landowner is entitled to notice and a hearing, a decision based upon factual findings rather than speculation, and a right of review of the decision. A landowner is obviously not necessarily entitled to approval, but the landowner is entitled to agency action based upon appropriate criteria and to approval unless the agency finds cause for denial." *Id. at* 1201.

"Just as in a judicial proceeding, due process in an administrative hearing also demands an appearance of fairness and the absence of even a probability of outside influence on the adjudication." *Nightlife Partners, Ltd. v. City of Beverly Hills* (2003) 108 Cal. App. 4th 81, 90 (emphasis added). "In fact, the broad applicability of administrative hearings to the various rights and responsibilities of citizens and businesses, and the undeniable public interest in fair hearings in the administrative adjudication arena, militate in favor assuring that such hearings are fair." *Ibid*.

"The constitutional guarantee of due process requires an administrative agency conducting adjudicative proceedings to act as a fair and impartial tribunal." *Nick v. City of Lake Forest* (2014) 232 Cal. App. 4th 871, 887. "Although administrative decision makers are ordinarily presumed to be impartial, a bias resulting in the denial of a fair hearing may arise when an administrative agency fails to adequately separate its prosecutory and adjudicatory functions in the same proceeding." *Ibid*.

Violations of procedural due process are also actionable under 42 USC §1983, entitling the aggrieved party to a damages award and attorneys' fees.

In this case, there are questions regarding whether this appeal involves a "fundamentally fair decisionmaking process." Commissioner Melgar's improper interference[1] undermines the "appearance of fairness and the absence of even a probability of outside influence on the adjudication." Moreover, should this Board base any part of its decision on Commissioner Melgar's "historic laundromat" argument, it would be relying on an argument not raised or endorsed by appellant; it is an argument raised by a member of the Planning Commission *after* the Planning Commission's approval of the project, and demonstrates an intent by the Commissioner to use her office to improperly influence this Board.

C. Statutory Requirement for a Fair Hearing/Proceeding in the Manner Required by Law

Similar to the due process protections under the federal and state constitutions, California Code of Civil Procedure section 1094.5(b) requires that an adjudicatory decision be set aside if the decision if the administrative proceeding is unfair. *Nasha v. City of Los Angeles* (2004) 125 Cal. App. 4th 470, 482. Thus, the concerns set forth in Section B above apply here.

Section 1094.5(b) also requires a local agency decision to be set aside upon a showing of a prejudicial abuse of discretion. *Bell v. City of Mountain View* (1977) 66 Cal. App. 3d 332, 342. "Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence." Code of Civ. Proc., § 1094.5(b.). In this case, both RRTI and Staff have provided substantial evidence supporting the City's reliance on the Community Plan Exemption under the Eastern Neighborhoods EIR. Appellant has not provided evidence to the contrary.

With regard to Section 1094.5's separate "not proceeded in the manner required by law" factor, the "law" to which the agency must comply includes statutes, ordinances, and constitutional due process requirements. *Georgia-Pacific Corp. v. California Coastal Comm*, (1982) 132 Cal. App. 3d 678, 701; *Negrete v. State Pers. Bd*. (1989) 213 Cal. App. 3d 1160, 1165. As set forth above, granting or continuing the appeal would violate the City's due process requirements and the CEQA statute.

A further continuance would also violate the City's codified requirements for handling CEQA appeals. San Francisco Administrative Code section 31.16(b)(7) requires the Board to act on an appeal within certain timeframes, including within 30 days of the date scheduled for the hearing. Any further continuances at this point, considering that RRTI and City Staff have responded fully to the recent historic claims from Commissioner Melgar, would violate Section 31.16 and serve as a separate ground for judicial review under Section 1094.5(b).

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[1] The City Attorney's Good Government Guide, in its discussion on the roles of commissioners (p. 15), states that SF Charter "section 4.102 prohibits individual members of boards and commissions from dictation, suggestion, or interference in administrative matters." Such interference constitutes official misconduct. SF Charter § 4.102.

D. Other Constitutional Issues

A denial of the project at this point would be arbitrary, capricious, and unreasonable, and thus violate RRTI's substantive due process and property rights guaranteed under the Fifth and Fourteenth Amendments to the United States Constitution. Moreover, a denial would be arbitrary, irrational and intended to discriminate and deprive RRTI of its rights without any rational relation to a legitimate governmental interest, thereby denying RRTI of its equal protection of the laws. In addition, a continuance or denial would violate RRTI's civil rights under 42 U.S.C. § 1983.

II. THE PROJECT IS PROTECTED UNDER THE HOUSING ACCOUNTABILITY ACT AND THE DENSITY BONUS LAW

This appeal is limited to the City's CEQA determination for the project. Issues relating to the Planning and Zoning Law–based determinations by the Planning Commission (*e.g.*, the Conditional Use authorization), were not timely appealed and are therefore not before this Board. Nevertheless, it is important to recognize that the Legislature's statutory protections for housing projects – in particular, the Housing Accountability Act (HAA) and the Density Bonus Law (DBL) – prohibit a local agency from taking actions to impair or deny such projects except under specific statutory requirements.

Under the HAA, in order for a local agency to disapprove a housing development project, it must base its decision upon written findings supported by a preponderance of the evidence on the record, none of which apply here. Gov. Code § 65589.5(j)(1). The phrase "disapprove a housing development project" includes disapproving a project application, including any required land use approvals or entitlements necessary for the issuance of a building permit. Gov. Code § 65589.5(h)(5). If a court determines that the local agency violated subdivision (j), the court: may direct the local agency to comply with the HAA; may direct it to approve the project if it determines the agency acted in bad faith; shall award attorneys' fees and costs; and may impose fines and multiply those fines under certain circumstances. Gov. Code 65589.5(k)(1)(A).

The DBL imposes similar limitations on the ability of a local agency to disapprove incentive or waiver requests for qualifying projects, and mandates an award of attorneys' fees and costs to the developer if successful in court. Gov. Code § 65915(d)(3),(e)(1). The DBL also prohibits a local agency from applying "any development standard that will have the effect of physically precluding the construction of a development [that qualifies for a density bonus] at the densities or with the concessions or incentives permitted by this section." Gov. Code § 65915(e)(1).

Attempts to improperly manipulate the CEQA appeal process to either delay or deny the project could expose the City to a litigation process that does not forgive such behavior. RRTI trusts that this Board will carefully and dutifully examine the facts before it and deny the appeal. Based on the record for this matter, there is no other justifiable outcome. Staff has performed an exemplary

job responding to each and every argument raised by appellant and by Commissioner Melgar. There is no basis to continue this matter or to grant the appeal.

Very truly yours,

David H. Blackwell

DHB:kem

cc: Robert R. Tillman

https://www.thebaycitybeacon.com/politics/planning-commissioner-intervenes-to-delay-new-housing-on-allegedly-historic/article_6e446180-2557-11e8-8b2a-5b9b69a977d1.html

FEATURED

Planning Commissioner Intervenes to Delay New Housing on Allegedly 'Historic' Laundromat

Mike Ege Mar 11, 2018 Updated Mar 11, 2018

Robert Tillman in his Mission District Laundromat.
Mike Ege

Interference and possible misconduct by the Vice President of the Planning Commission may complicate the latest delay facing the controversial 2918 Mission project.

Robert Tillman has been trying to build a 75-unit apartment building at 2918 Mission for the last five years. Approved by the San Francisco Planning Commission last November, the project is opposed by well-organized neighborhood groups in the Mission District, like the Plaza 16 Coalition and board members of the Calle 24 Latino Cultural District, which have filed a CEQA (California Environmental Quality Act) appeal to try and stop it. Recently, a leading member of the Planning Commission lent a hand to their cause, potentially in violation of longstanding city government regulations.

In the past, Tillman had also been in negotiations with the local nonprofit housing provider Mission Economic Development Agency (MEDA) to sell the property for use as as affordable housing, but neither party could come to an agreement.

Up until last month, it had been assumed that the Board of Supervisors would be the final local hurdle for the project: either they would go ahead and deny the appeal based on the recommendation of the Planning Department, or they would uphold it, and Tillman would end up suing the city under the Housing Accountability Act, a suit which he would almost certainly win.

But what ended up happening on February 13 seemed like a bolt from the blue: instead of the Board of Supervisors voting on the appeal, District 9 Supervisor Hillary Ronen moved to delay the vote in light of an ongoing historical study for the property. The study was recommended at the beginning of February by the Planning Department and agreed to by Tillman, and will likely delay the entire process another 4 to 5 months. In the meantime, the move has become yet another widely-discussed example of the City's barriers to building housing.

When Tillman first heard of the study, his attorneys at the firm Reuben & Junius inquired with the Planning Department about its justification. And that's where things got messy.

As it turns out, new information was supplied to the Department regarding the site being used as workspace for a number of grassroots groups associated with the Mission Coalition of Organizations, an umbrella group organized to address concerns of Mission District residents over redevelopment policies during the early 1970s. As such, the Department had no choice but to go ahead and recommend the study.

The question in many minds became who supplied the information, and why now, in such a way as to delay the project even further? Tillman asked Scott Weaver, attorney for the appellants, about it. “He said they had nothing to do with it,” says Tillman. “He said it came from within the Planning Department.”

Meanwhile, rumors were circulating that in late January, Planning Commission Vice President Myrna Melgar had a conversation over brunch with a longtime Mission District activist, who mentioned remembering working with MCO-allied organizations during the 1970s at 2918 Mission.

When the project was voted on in November by the Planning Commission, Melgar voted against it, offering a number of objections to it during deliberations. Some of those objections could be best described as tangential, such as how the project could compound the high rate of childhood obesity found in the census tract.

In the course of following up on the rumors, Commissioner Melgar contacted the Beacon, and admitted bringing the new information to the attention of Planning Department Director John Rahaim in a telephone call.

Melgar said that she felt compelled to do so after the brunch conversation, as well as subsequent inquiries she made with members of the Mission activist community who were active during the 1960s and 70s.

"I felt it was part of my duty as a commissioner to make sure that the new information was considered now that I had found out about it," says Melgar. “It's important that the history of activism in the community is recognized."

The problem is that under the City Charter, what Commissioner Melgar did may constitute misconduct that could potentially disqualify her from holding public office.

For instance, in City Charter Section 15.103, it says that:

"in some cases, commissioners, by law, must be selected from certain neighborhood, community or professional groups. But such commissioners all their duty of loyalty to the entire city. They do not just represent a neighborhood, community or profession,

although they may bring their to their service a greater knowledge of or appreciation for the needs of that group. These commissioners, like all commissioners must act in the city's interest."

The Charter also stresses the "quasi-judicial" role of certain commissions, including the Planning Commission, emphasizing that the conduct of commissioners on these bodies must take into account due process. Specifically, Charter Section 4.102 provides that:

"any dictation, suggestion or interference [in administrative affairs] herein prohibited on the part of any member of a board or commission shall constitute official misconduct."

In addition to requiring that a board or commission deal with administrative matter solely through the department head or their designees, section 4.102 prohibits individual commissioners from *"dictation, suggestion, or interference"* in administrative matters.

It's been speculated that at least one possible motive for delaying the project further with the historical study is to provide additional room for MEDA to make another offer for the property, while increasing pressure on Tillman to lower the price, given the continuing delays in the entitlement process.

It just so happens that Commissioner Melgar, currently Executive Director of the Jamestown Community Center, is a former Deputy Director of MEDA.

Melgar maintains that while she was aware that MEDA and Tillman had been in negotiations over the property, she had no communications with the nonprofit on the matter.

While it's certainly not improper for a City department to change course in a policy decision based on new information, the fact that it was supplied through independent research by the Vice President of the Planning Commission, after that body had already voted to approve the project, could open up the City to further liability.

Jim Sutton, a leading political and election lawyer in the City, weighed in with skepticism: "This kind of action taken after the fact, as a result of independent research by a member of a commission which has already adjudicated the issue, represents a fundamental due process violation," says Sutton.

Whether or not the history of local activism at the site justifies holding up its demolition and redevelopment into dense, transit-adjacent housing remains an open question.

It's worth noting that Mike Miller, an early lead organizer with the MCO, was recently quoted in a MissionLocal article as having"no reason to think that building is a historic resource." In addition, the MCO and its allied organizations also occupied other locations in the neighborhood, both before and after their time at 2918 – 2922 Mission, with historic recognition.

As it stands today, 2918 Mission carries no remaining evidence of the organizations that were there during this period. This includes a mural, “Latinoamerica,” painted by women activists during that time, but which had been subsequently removed long before Tillman acquired the property.

Was Melgar implicitly using her position as Vice President of the Planning Commission to compel the department to further delay the project? Ultimately, that question can only be answered by knowing the context of the conversation she had with Director Rahaim, who has not responded to our inquiries by press time.