



HAND-DELIVERED AND VIA EMAIL

Norman Yee, President  
San Francisco Board of Supervisors  
City Hall, 1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

April 8, 2019

RE: 1052-1060 Folsom Street and 190-194 Russ Street  
2016-004905ENV — Appeal of Determination of Community Plan Exemption  
Board of Supervisors File No. 190093-190096  
Hearing Date: April 9, 2019—Special Order 3:00pm

**RECEIVED AFTER THE ELEVEN-DAY DEADLINE, BY NOON, PURSUANT TO ADMIN. CODE, SECTION 31.16(b)(5)**  
*(Note: Pursuant to California Government Code, Section 65009(b)(2), information received at, or prior to, the public hearing will be included as part of the official file.)*

President Yee and Members of the Board:

**Introduction**

This office is helping to represent Appellant South of Market Community Action Network (SOMCAN) on a pro bono basis at the request of counsel and the surrounding neighbors. The neighbors of this proposed project include homeowners, residents and those people who use Victoria Manalo Draves Park on a daily basis. As shown below, the park is a rare South of Market oasis of greenery and calm.



Victoria Manalo Draves Park is the only multi-use park in the South of Market neighborhood, a neighborhood that is absorbing the vast majority of office and residential growth. The Planning Director, John Rahaim has noted many times that 80% of development in the City is happening in 20% of the City’s land mass. District 6 boundary

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lines encompass almost all that 20%. Under the General Plan, new buildings must be compatible with, and complementary to the prevailing residential pattern and structures and most of all, shall do no harm. This Project is not compatible and harms the Park and this neighborhood.

The subject site is flanked on the north, west and east sides by *smaller* residential structures. On the south side the Central Freeway bisects the neighborhood. The proposed location for this in-fill development calls for a sensitive design to avoid negative impacts to the neighboring Park and residential uses. Even greater care should be used now that the Eastern Neighborhoods Plan has changed the zoning of the area to allow for much larger structures.

Golden Properties LLC is a private commercial real estate investment company engaged in the acquisition, development and redevelopment of multifamily residential properties. It is operated by the project sponsor Paul Iantorno and his father Sergio Iantorno who also own and operate Peninsula Realty LLC, Realty West LLC, San Francisco Developers, LLC and is associated with Vanguard Real Estate and DBA Realty West. The Iantornos are well known for real estate speculation, numerous TIC conversions via owner move-in eviction, Ellis Act evictions and capital improvement evictions. This is the second time the Iantornos have proposed a project that would result in shadows on Victoria Manalo Draves Park.

**A Previous (much smaller) Project at 190 Russ Street (2013.0350) Was Found to Have a Significant Shadow Impact and Was Rejected by Recreation and Parks**

The proposed project would result in construction of a building greater than 40 feet in height. A preliminary shadow fan analysis prepared by Planning Department staff indicated that the proposed project could cast shadows on Victoria Manalo Draves Park and the SoMa Recreation Center, which are Recreation and Park Department properties subject to Section 295.

It's important to note that a *smaller* previous project at 190 Russ Street (2013.0350) was found by the Recreation and Park Commission to have a significant shadow impact.

	<b>Original Project (2015)</b>	<b>Project Revision (2018)</b>	<b>% Increase</b>
<b>Units</b>	<b>9</b>	<b>63</b>	<b>700%</b>
<b>Gross sq.ft.</b>	<b>12,958</b>	<b>59,862</b>	<b>460%</b>
<b>Height</b>	<b>64'</b>	<b>79' 6"</b>	<b>13%</b>
<b>Parking</b>	<b>6</b>	<b>21</b>	<b>350%</b>

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The Project was rejected in January 2015 because of the significant shadow impacts it caused on the Victoria Manalo Draves Park. However, the developer Golden Properties, rather than reduce the overall size and height of the project to mitigate such impacts, determined to add to the Project and dramatically increase its size. Because it incorporates the development lots directly on Folsom Street, the new Project is not only much larger, it is also closer to the Park and will further block access to light and will cast more shadows than the proposal in 2015.

In 2015, the Recreation and Park Commission voted *unanimously* to stop the condominium project because the building would cast a shadow on Victoria Manalo Draves Park on the other side of Folsom Street. It was a straightforward and correct ruling. Proposition K, the “Sunlight Ordinance,” was passed by voters in 1984 and the impact on the neighboring park was found to be substantial. The shadow would not only hit the park at peak use hours, but also throw shade over the busy basketball courts, the children’s play area and on benches where senior, dog owners, adults, homeless individuals and workers like to rest and visit with the community.

CEQA review and determination should NOT be a political football. Disapproving a smaller project because of its shadow impacts on the Park cannot be reconciled with now recommending approval for this larger project. The public will lose faith in the process and any credibility still existing in the functions of City government will be destroyed. The purpose of CEQA is to disclose to the public and decision makers, the significant environmental effects of a proposed discretionary project, through the preparation of an Initial Study (IS), Negative Declaration (ND), or Environmental Impact Report (EIR). The past action is ignored here and not explained.

As set forth in 14 CCR § 15003, CEQA serves not only to protect the environment but also to demonstrate to the public that it is being protected. *County of Inyo v. Yorty* (1973) 32 Cal. App. 3d 795. CEQA was designed to inform other governmental agencies and the public generally of the environmental impact of a proposed project. *No Oil, Inc. v. City of Los Angeles* (1974) 13 C. 3d 68. CEQA must demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action. (1975) *People ex rel. Department of Public Works v. Bosio* 47 Cal. App. 3d 495. The CEQA process will enable the public to determine the environmental and economic values of their elected and appointed officials thus allowing for appropriate action come election day should a majority of the voters disagree. *People v. County of Kern* (1974) 39 Cal. App. 3d 830. CEQA was intended to be interpreted in such a manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language. *Friends of Mammoth v. Board of Supervisors*, (1972) 8 Cal. 3d 247.

In this instance, the past history of proposed projects at the site was completely ignored by the development team and by the Dept. As an information process and document the Community Plan Exemption fails to satisfy the requirements of CEQA.

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**The Shadow Analysis and Environmental Review Fail to Acknowledge and Discuss the Prior Decision and Specific Finding of Significant Shadow Impacts as Directed in the Preliminary Project Assessment**

The proposed project, if constructed as proposed, will cast shadows on the park for eight months out of the year. It has been determined that it will shadow the Park for an average of 72 minutes per day and up to 110 minutes in June. The shadow comes in around 5PM or 6PM depending on time of the year.

The Project height was increased to the absolute maximum of 64 feet *to the roof*. With its parapets and other roof top penthouses etc, it will exceed 80 feet. An analysis of the impacts of the proposed Project and its maximum height, which is greater than all the surrounding buildings on the block face, must be part of the shadow analysis in the Planning Dept packet as well as the shadow analysis of the environmental review.

Further, in the Preliminary Project Assessment issued by the Planning Dept., the Sponsor was specifically directed to take note of the prior decision---that did not happen. The new analysis ignores the prior decision and makes no mention of it and does not explain how a smaller project, further away from the Park could be found to have significant shadow impacts but the new project, much larger and closer to the Park has none.

The Preliminary Project Assessment states as follows:

**8. Shadow.** *The proposed project would result in construction of a building greater than 40 feet in height. A preliminary shadow fan analysis prepared by Planning Department staff indicates that the proposed project could cast shadows on Victoria Manalo Draves*

*Park and the SoMa Recreation Center, which are Recreation and Park Department properties subject to Section 295. The project sponsor is therefore required to hire a qualified consultant to prepare a detailed shadow study. The consultant must submit a Shadow Study Application, which can be found on the Planning Department's website. A separate fee is required. The consultant must also prepare a proposed scope of work for review and approval by Environmental Planning staff prior to preparing the analysis. **It's important to note that a previous project at 190 Russ Street (2013.0350) was found by the Recreation and Park Commission to have a significant shadow impact.***

However, the new analysis does not “note” the previous project and the findings found in that instance. The new project completely ignores the prior determination as if it had never happened. The fact that a prior, smaller project was disapproved because of a finding of significant shadow impacts precludes a new finding of no impacts absent a discussion of the conflicting information in the record for the same site, same developer and a larger project.

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The Project may not be granted a Community Plan Exemption or other exclusion from environmental review as such exemptions are only permitted when there is no substantial evidence that the project may have a significant effect on the environment. In this instance there is substantial evidence that has not been considered, explained or discussed in any environmental document---a prior finding of significant impact by the Recreation and Park Commission.

**The Prior Determination of Significant Impacts from Shadowing Requires an Analysis of Potential Mitigations**

Environmental review requires review of potential impacts related to land use that could result from implementation of the proposed project. An assessment of potential shade and shadow impacts must be provided based on the finding of significant negative impacts in 2015 and mitigation measures must be reviewed and recommended, as appropriate.

The proposed project would have a significant shade and shadow impact if it would:

- Cast shadow that substantially impairs the beneficial use of any public or quasi-public park, lawn, garden, or open space.
- Introduce landscape that would now or in the future cast shadow on existing solar collectors in conflict with California Public Resource Code Section 25980-25986.
- Cast shadow that substantially impairs the function of a building using passive solar heat collection, solar collectors for hot water heating, or photovoltaic solar collectors.

These criteria are derived from the State Public Resources Code, CEQA Guidelines, and best practice standards. Similar criteria are used in other municipalities to evaluate the effects of development projects on shade and shadow. New shadows created by the proposed project would substantially impair the beneficial use of public park or open space area. The public park located south of proposed would be subject to shadows cast by the proposed project. The existing outdoor seating area and the basketball court would, however, be subject to shadows created by the project.

A project would have a significant impact pertaining to the degradation of character/quality if it would substantially block surrounding shadow-sensitive areas. For the purposes of analysis, facilities and operations sensitive to the effects of shading include routinely useable outdoor spaces associated with residential, recreational, or institutional (e.g., schools, convalescent homes) land uses; commercial uses such as pedestrian oriented outdoor spaces or restaurants with outdoor eating areas; nurseries; and existing solar collectors. These uses are considered sensitive because sunlight is important to function, physical comfort, or commerce. Obviously, the Park falls into the category.

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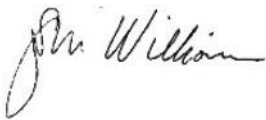
After being directed by the Dept to include a discussion of the prior finding of significant shadow impact found for a smaller project at the same site, the development team and the Dept ignored the history at the site and the prior findings. This violates CEQA and its overarching purpose to inform the PUBLIC as well as decision makers and to provide assurances that the impacts and implications of projects are being analyzed.

### **Conclusion**

The building will create negative impacts on the neighboring buildings and on the Park across Folsom Street. The design of the proposed structure has not been sculpted or tailored in any manner to improve light and air to the neighbors. The Project does not provide any “good neighbor” gestures---at all.

The Shadow Analysis fails to mention a prior finding that the park directly across the street from the Project and at the maximum height, the Project will shadow the open space for much of the year and should not be permitted. The Project must be returned to the Dept for a more complete analysis on the impacts of this massive proposal including a review of the past determinations and a reconciliation of that prior finding of significant shadow impacts.

Sincerely,

A handwritten signature in cursive script that reads "Stephen M. Williams". The signature is written in black ink and is positioned below the word "Sincerely,".

Stephen M. Williams,