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October 9, 2017

VIA E-MAIL AND HAND DELIVERY

Honorable Planning Commissioners
City of Santa Ana Planning Commission
22 Civic Center Plaza
Santa Ana, California 92701
Email: eComments@santa-ana.org

Re: Case for Site Plan Review No. 2017-06, Variance No. 2017-03 and Tentative Parcel Map No. 2016-04 for the Elks Lodge and Orange County Credit Union Project

Dear Honorable Planning Commissioners:

This firm represents AGNL Antenna, L.P. ("AGNL Antenna") who owns the property located at 1761-1801 East Saint Andrews Place in the City of Santa Ana ("City"). We understand that on **October 9, 2017 the Planning Commission** of the City of Santa Ana ("Planning Commission") may consider a development project that includes Site Plan Review No. 2017-06, Variance No. 2017-03, and Tentative Parcel Map No. 2016-04 ("Tentative Map") to allow construction of a two-story 51,024 square-foot building (the "Project"). As stated in the staff report for the Project, the entitlements listed above would apply to an approximately 7.10-acre parcel located generally between Edinger Avenue and East Saint Andrews Place along Lyon Street in the City ("Project Site"). The City is at risk of violating several laws if it proceeds to approve the Project.

We understand that the Hofmann Finn Development Company Inc. ("Applicant") is the representative for the Santa Ana Elks Lodge ("Elks Lodge") and the Orange County's Credit Union ("Credit Union"). The Applicant requested entitlements to construct the Project on the Project Site. AGNL Antenna, as an adjacent property owner with standing to challenge the Project, is concerned because: (a) its land could be impacted by a project that violates City plans and code; (b) there may be significant environmental impacts not disclosed in the administrative record; (c) the City cannot make the required legal findings; and (d) public notice and process for the Planning Commission hearing appears inadequate.

Therefore, we respectfully request that the Planning Commission not take an action on the Project and continue the matter for at least 30 days. This would allow the City time to consider legal issues associated with the Project and properly coordinate with AGNL Antenna as an impacted stakeholder. If the Planning Commission does not continue this matter, then we may be forced to appeal the matter and vigorously oppose the Project administratively and in court.

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privileges not otherwise at variance with the intent and purpose of the provisions of this chapter; (ii) That the granting of a variance or minor exception is necessary for the preservation and enjoyment of one (1) or more substantial property rights; (iii) That the granting of a variance or minor exception will not be materially detrimental to the public welfare or injurious to surrounding property; and (iv) that the granting of a variance or minor exception will not adversely affect the general plan of the city.

There are no special circumstances associated with this typical parcel that would deprive the Applicant of developing a smaller project that requires less parking. The variance is clearly not necessary because the Project Site is undeveloped and the Applicant can design a project that complies with zoning and development standards. And, the City cannot support its assertion that the variance is not injurious to adjacent property owners because neither the Applicant nor the City studied the potential impacts on adjacent parking facilities caused by underparking the Project Site. The Project Site is underparked by a staggering 469 parking spaces. The variance would fail on these grounds and others.

Furthermore, as the City knows, courts carefully review variances and the local agency must ensure that the record supports the conclusions made in the findings and that all required procedures were adequately followed. (See *Eskeland v. City of Del Mar* (2014) 224 Cal.App.4th 936, 949.) Moreover, as a general rule, variances should only be granted in limited circumstances. (Gov. Code, § 65906.) Based on our review of the staff report, it appears that the City has not fulfilled its obligations. The City has not sufficiently supported the findings made in the proposed resolution or provided substantial evidence in the record to support the findings required under SAMC section 41-638. (See *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 511.) We do not believe the circumstances of the Project or the Project Site warrant a variance of this magnitude. We will challenge the variance if required.

B. Tentative Parcel Map

The Applicant also requested the City to approve the Tentative Map under SAMC sections 34-119 and 34-318 to subdivide the 7.10-acre Project Site into two lots. Government Code section 66474 requires the Planning Commission to deny a tentative map if it can make any of the following findings: (a) the proposed map is not consistent with applicable general and specific plans as specified in Section 65451; (b) the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans; (c) the site is not physically suitable for the type of development; (d) the site is not physically suitable for the proposed density of development; (e) the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat; (f) the design of the subdivision or type of improvements is likely to cause serious public health problems; or (g) the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. The SAMC has similar provisions to ensure compliance with the Subdivision Map Act. Note that a city must affirmatively address each of these matters before approving a parcel map. (*Spring Valley Lake Assn. v. City of Victorville* (2016) 248 Cal.App.4th 91, 105-106.)

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requires the City to analyze the Project in the environmental baseline condition. As illustrated by the Tentative Map contained in the Staff Report, the Project Site is substantially larger than the five-acre maximum required for a Class 32 exemption. It follows, that the City cannot use a categorical exemption for the Project and thereby the City has failed to provide any meaningful environmental review or documentation to comply with CEQA.

Third, the City's CEQA findings overall are barebones, conclusory and not supported by evidence in the record. For instance, the City provides no evidence to support its findings that the Project would have no significant impacts on the environmental issue areas listed above or that the Project would be consistent with the General Plan or Specific Development No. 69.

Therefore, the Planning Commission cannot act on October 9, 2017 to approve the Project because that would violate several fundamental CEQA requirements.

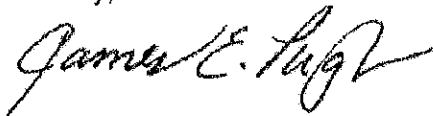
IV. Conclusion

In conclusion, our client is a concerned stakeholder with adjacent property that could be impacted by the City's actions. AGNL Antenna is willing to work with the City and the Applicant, but requires sufficient time do to so. Thus, we reiterate our request for a continuance of at least 30 days.

At this time, we must lodge our opposition to the Project. Once we receive more information about the Project, we may not oppose. Regardless, the requested entitlements are faulty, there are unanalyzed environmental impacts, the proposed CEQA exemption does not apply, the administrative record lacks substantial evidence, public notice and holding a hearing on a holiday is questionable, the Project violates the SAMC and Specific Development No. 69, and the City cannot make the required findings.

Therefore, we respectfully request that the Planning Commission either continue this matter or deny the Project at the October 9, 2017 hearing. If the City chooses neither of these options, then we may be forced to appeal to the City Council and implement additional legal strategies to stop the Project.

Sincerely,



James E. Pugh
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP