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VIA E-MAIL

Gloria Sciara
Development Review Officer
City of Santa Clara
Planning Division

Re: 2354 Calle Del Mundo Project – Response to Ron Patrick's Contentions

Dear Ms. Sciara:

We represent Ensemble Investments, the owner and developer of the property located at 2354 Calle Del Mundo. On behalf of our client, we would like to thank you and other members of the City's staff for your efforts and thorough review of the proposed 89-unit residential project. We look forward to receiving the City's approval and moving forward with construction to provide much-needed housing for the community.

As you know, last March, the owner of the adjacent property located at 5191 Lafayette Avenue Mr. Ron Patrick, prepared a presentation and submitted a letter through his attorney raising some concerns about the Project. The purpose of this letter is to briefly address those contentions, all of which lack merit and are generally premised on a mistaken understanding both of the Project and the California Environmental Quality Act.

I. The Project Qualifies for a Statutory Exemption.

The Project proposes 89 rental units on an approximately 19,998 square foot site within the Tasman East Specific Plan area. As you know, the City certified an Environmental Impact Report which analyzed the potential environmental impacts resulting from full buildout of the 46-acre Specific Plan area in 2018. No one challenged the City's approval of either the Specific Plan or the associated EIR.

From the outset, the applicant's design intent was to comply with all applicable development standards imposed by the Specific Plan, and no argument has been raised concerning the consistency of the Project with the Specific Plan. Unsurprisingly, the City has therefore determined that the Project meets the criteria for a statutory exemption under Government Code Section 65457 because it is a residential development consistent with the Specific Plan for which an EIR was certified, and none of the events specified in Public Resources Code Section 21166 have occurred. The City's publicly available analysis is set forth in a 40-page memorandum which

thoroughly evaluates the Project's consistency with the Specific Plan and demonstrates why further environmental review is unwarranted under Section 21166.

Mr. Patrick's counsel does not dispute that the Project is residential or argue that the Project is inconsistent with the Specific Plan. Instead, his counsel asserts that supplemental environmental review is required because the Project meets the criteria of Section 21166. That Section provides that supplemental environmental review is warranted in limited circumstances where (i) substantial changes are proposed in the project which will require major revisions of the EIR, (ii) substantial changes have occurred with respect to the circumstances under which the project is being undertaken which will require major revisions to the EIR, or (iii) new information, which was not known and could not have been known at the time the EIR was certified, becomes available. Unfortunately for Mr. Patrick, the concerns raised by Mr. Patrick's counsel regarding the requirement for a "stable" project description, parking, and traffic do not actually relate to those standards under Section 21166. They are essentially non-sequiturs.

The requirement for a "stable" project description, for example, relates to case law regarding the adequacy of an EIR in the first instance. (See e.g., *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185.) Here, the Specific Plan EIR was certified in 2018, was not challenged, and is therefore presumed to be adequate as a matter of law. (Public Resources Code Section 21167.2.) If Mr. Patrick had concerns about the adequacy of the City's environmental analysis for the Specific Plan, including the project description and environmental setting, then he should have raised those concerns when the City was in the process of preparing and evaluating the Specific Plan EIR. Mr. Patrick's arguments do not qualify as the type of "new" information that necessitates a supplemental EIR.

Mr. Patrick's purported factual arguments fare no better. Conclusory statements that the Project may have parking impacts on Mr. Patrick's property are unsubstantiated and similarly do not meet or tie to the criteria under Section 21166. The request for further traffic analysis (which incidentally is no longer required under CEQA given the shift to vehicle miles traveled under SB 743) is also unsubstantiated and speculative. With respect to air quality, Mr. Patrick's counsel's suggestion that the impacts to the Project from Mr. Patrick's existing business be further analyzed is contrary to the well-settled case law that CEQA only requires analysis of a project's impacts on the environment; CEQA does not require an evaluation of how existing conditions would impact future occupants of a proposed project (i.e., "CEQA-in-reverse").[1]

In sum, Mr. Patrick's counsel misrepresents what CEQA requires, and the principal objection appears to be with the legislature's policy decision to exempt residential projects that are

[1] Mr. Patrick's counsel also ignores the fact that the Project does follow best practices and is subject to protective conditions of approval relative to air quality, including the requirement for installation of air filtration devices rated MERV13 or higher.

consistent with approved specific plans. That is a question for the legislature. It is not a basis to require supplemental environmental review under CEQA.

II. The Project Complies With All Applicable Code Requirements and is Designed to Respect the Integrity of Mr. Patrick's Building.

Mr. Patrick's counsel also claims that there are various "engineering problems" with the Project, and that the Project "appears to flout" code requirements. These arguments are also conclusory and based on a misunderstanding of the Project. The excavation activities required to construct the Project are standard and commonplace, and can be performed by any competent builder. A great deal of analysis and thought has gone into the design and program, and particularly with respect to the need to avoid impacts on adjacent properties.

Further assurances are provided by the fact that the City is imposing standard conditions of approval to ensure that the Project is properly and safely built. While redundant, the City has added new conditions based on the recommendations from our client's geotechnical and structural consultants to make explicit what was already going to occur. There is nothing about the Project or the existing conditions that is unique or rarefied, and all of the required activities would have occurred in the normal course of construction.

To the extent Mr. Patrick's arguments are focused on the extent of below-grade construction, they are moot and based on drafting error in the older plan sets that shows below-grade parking where none is planned and his building at an incorrect elevation. Those errors have since been corrected, and the City has reviewed the updated plans which are also attached to this letter.

III. The Request for a "Nuisance" Condition of Approval is Unnecessary.

Mr. Patrick's demand for a condition of approval that would require our client and every future resident to "acknowledge and consent" in writing to the noise and emissions resulting from Mr. Patrick's business is unjustified and unreasonable. The City is not in the business of anticipating and mediating future neighbor disputes that are wholly speculative. And the entire premise of the Specific Plan is to promote and streamline new housing production within an historically industrial area. That is not an uncommon phenomenon, and no jurisdiction to our knowledge has ever required a vague and unclear condition requiring future tenants of a multifamily project to "consent" to an existing adjacent use.

IV. Mr. Patrick Will Retain Full Access to His Parking Easement.

Contrary to Mr. Patrick's contentions, the Project's plans respect his parking easement. If Mr. Patrick cannot access his easement (which we understand he has not used for a considerable amount of time), it is because of a wall constructed on his property which he alone has control over. That said, any dispute about Mr. Patrick's easement rights and whether they are being infringed upon is a matter to be resolved privately between our client and Mr. Patrick. It is not a

factor that bears upon the City's approval of the Project. (It is also notable that our client has offered to purchase the right to extinguish the parking easement; while negotiations have ensued, the parties have not yet reached an agreement on the terms.)

V. **The City Provided Proper Notice.**

Mr. Patrick's claim that "meaningful" notice was not provided is belied by the fact that Mr. Patrick and his counsel prepared both visual presentations and a written letter in advance of the hearing in March. Planning staff also personally reached out to Mr. Patrick's counsel the week before the approval hearing to alert her as to when the agenda would be published. It is therefore difficult to discern how Mr. Patrick suffered any prejudice based on the purported lack of "meaningful" notice.

Nor does Mr. Patrick's counsel actually assert that the City failed to follow its noticing requirements. All the noticing information appears to have been provided according to the City's standard practices and we have no reason to question whether City staff provided adequate notice.

VI. **Conclusion.**

In short, Mr. Patrick's "throw everything against the wall and see what sticks" approach fails to identify any substantive issues or concerns. The City conducted a diligent and thorough evaluation of the Project, and should you decide to render a decision to approve the Project on May 12th, we believe you would be fully justified in doing so.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

Frank Petrilli

FRP

cc: Alexander Abbe
Steve Atkinson