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January 30, 2018

Sunnyvale City Clerk
603 All America Way
Sunnyvale, CA 94088

LETTER OF APPEAL OF PLANNING COMMISSION DECISION

Planning Commission Hearing

Monday, April 23, 2018 at 7 PM

File Number: 2017 – 7217

Location: 617 Evelyn Ave. (APN: 209-02-001)

Proposed Project:

Special Development Permit to redevelop the Blue Bonnet Mobile Home Park to a 62 - unit Residential Lots with associated site improvements (net increase of eight units);

Tentative Map to subdivide one lot into 62 lots and three common lots

Applicant/Owner: East Dunne Investors, LLC/ Chein-Nan and Sue Chang trustee

Staff Contact: Momoko Ishijima (408) 730-7532, mishijima@sunnyvale.co.gov

Dear Sunnyvale City Clerk:

This letter is a formal letter of appeal of the Planning Commission's Decision on the above application. Accompanying this letter of appeal, is the required fee of \$174.50, which was communicated to me by the planning commission staff and the filled in form "Planning Division Application Form" which was provided to me by the planning department to which they also informed me should be submitted with this letter. I am submitting this letter on behalf of the Blue Bonnet Residents Committee, which is a membership mutual benefit corporation, consisting of the 10 households which are tenants of the above property.¹ The grounds for the appeal, were argued to the planning commission in a letter that my office submitted on behalf of the Blue Bonnet Residents

¹The members of the Committee who are tenants and/or mobile home owners on the property, on behalf of whom this appeal is being filed, include Mary Lou Clark, Julio Rivas, Armando Nava, Delia Ayala, Jose and Annabella Abellara, Pin Laing Li, Jing Lin, Pamela Tharp and Juan Rangel.

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Committee to the Commission on January 23, 2018 along with the submission of copies of all the documents referred to both and that letter and in this letter. Thus, the documents referred to in this letter have already been submitted to the Planning Commission and so referred there to. The grounds for appeal are repeated below:

I. The Tentative Map Application Is Incomplete and Unlawful Because It Does Not Comply with the Provisions of Government Code §§66427.4's and 66473.5's and Civil Code § 798.56(g)(1)'s Requirements.

The State Legislature chose, through Government Code Sections 66427.4, to require that the conversion of a mobile home park to a subdivision requiring tentative map approval must be evaluated at the Project's tentative map hearing, that its impact on the park's homeowners' (*whom will be displaced by the conversion*) ability to obtain space in other mobile home parks must be evaluated (*through a report on the impact of the conversion - CIR*) as a component of the tentative map hearing and that any mitigation steps that the CIR demonstrates are necessary in order to enable the homeowners to obtain those spaces must be provided for as conditions of approval of the tentative map:

“66427.4. (a) At the time of filing a tentative or parcel map for a subdivision to be created from the conversion of a mobilehome park or floating home marina to another use, the subdivider shall also file a report on the impact of the conversion upon the displaced residents of the mobilehome park or floating home marina to be converted. In determining the impact of the conversion on displaced mobilehome park or floating home marina residents, the report shall address the availability of adequate replacement space in mobilehome parks or floating home marinas.

(b) The subdivider shall make a copy of the report available to each resident of the mobilehome park or floating home marina at least 15 days prior to the hearing on the map by the advisory agency or, if there is no advisory agency, by the legislative body.

(c) The legislative body, or an advisory agency **that is authorized by local ordinance to approve, conditionally approve, or disapprove the map, may require the subdivider to take steps to mitigate any adverse impact of the conversion on the ability of displaced mobilehome park or floating home marina residents to find adequate space in a mobilehome park or floating home marina, respectively.”**

(d) This section establishes a minimum standard for local

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regulation of conversions of mobilehome parks and floating home marinas into other uses and shall not prevent a local agency from enacting more stringent measures.

The proposed approval of Blue Bonnet's tentative map at this hearing is unlawful since it fails to comply with the above requirements of Government Code § 66427.4 for the following reasons:

1. In violation of subdivision (a) of Government Code §66427.4, the City failed to require, and the Developer failed to file, "a report on the impact of the conversion upon the displaced residents of the mobile home park" that among other relevant information, will... "address the availability of adequate replacement space in mobilehome parks." Instead, the Developer unlawfully filed, and the City unlawfully approved of, a CIR at a standalone hearing on March 7, 2017, independently from this tentative map application hearing and approval. The March 7, 2017 - CIR approval hearing was unlawful because, pursuant to the above subdivision (a), that CIR was required to be filed with this Project's tentative map application and evaluated at this hearing on the Project's tentative map approval. Additionally, the information regarding alternate spaces in other mobile home parks and on the mitigation benefits, which was approved as being adequate in the unlawful March 7, 2017 - CIR, is out of date and not relevant to the approval of the Project's tentative map application, and the conditions necessary for its approval, since the March 7, 2017 - CIR evaluation and approval is based on mobile home sales and resident income information from 2016 rather than more recent information that would be relevant to this application.

Even worse, the City encouraged and approved of, and the park owner then served the residents of the park with, unlawful termination of tenancy notices on March 31, 2017, which failed to comply with the provisions of Civil Code § 798.56 (g)(2) because they were served prior to the approval of the Project's Tentative Map and SDP permit application, the approval of which is the topic of this hearing. Those Termination Notices caused all of the park's tenants, and a majority of the park's homeowners, to accept inadequate mitigation benefits and move from the Park rather than face the evictions that were threatened in those Termination Notices.

Accordingly, the unlawful March 7, 2017 - CIR approval does not comply with the above requirements of Government Code §66427.4 and does not support the

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approval of this application tonight.

2. In violation of subdivision (b) of Government Code §66427.4, the City failed to require and the Developer failed to “make a copy of the report (i.e., the CIR) available to each resident of the mobilehome park .. at least 15 days prior to” this current tentative map hearing. Instead, the City only required, and the Developer only made available to the residents, a copy of the unlawful CIR which was unlawfully approved of at its unlawful hearing on March 7, 2017, and did so, at least 15 days prior to that hearing. These residents of Blue Bonnet (*whom moved from the Park based on the unlawful March 31, 2017 - Termination of Tenancy Notices, described above herein*), as well as the eight homeowner households who refused to move from the Park, are all entitled to receive copies of a lawful CIR, containing current information, as required by subdivision (b) and have not been provided with a copy of that CIR (*at least 15 days prior to this hearing*) such a lawful CIR has never been produced and does not currently exist.

3. In violation of subdivision (c) of Government Code §66427.4, the City failed to evaluate and require as conditions of approval of this tentative map that the park owner and developer provide the displaced residents with mitigation benefits that will enable them to obtain adequate space in other mobile home parks.

The approval of the tentative map and SDP permit application will also be in violation of Civil Code §798.56(g)(1) because it applies and because the Park owner and Developer failed to give the residents (*both the residents who have already moved and the eight households whom have refused to - who are described in numbers 1 and 2 herein*) 15 days - written notice that the Developer and Park Owner would be appearing at this current hearing to request approval of the Project’s Tentative Map and SDP permit, which are permits necessary for the requested change of use of Blue Bonnet:

Civil Code 798.56.

A tenancy shall be terminated by the management only for one or more of the following reasons:

(g) Change of use of the park or any portion thereof, provided:

(1) The management gives the homeowners at least 15 days’ written notice that the management will be appearing before a local governmental board, commission, or body to request permits for a change of use of the mobilehome park.

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Additionally, Government Code §66473.5 also applies, and it does **not** allow the City to approve of either the Project's tentative map or the Project's required CIR as a component of this tentative map hearing and approval, unless the proposed conversion is found to be consistent with the affordable housing preservation Goals and Policies of the City's Housing Element, since the City's Housing Element is one of the most important **mandatory** components of its General Plan:

“No local agency shall approve a tentative map, or a parcel map for which a tentative map was not required, unless the legislative body finds that the proposed subdivision, together with the provisions for its design and improvement, is consistent with the general plan required by Article 5 (commencing with Section 65300) of Chapter 3 of Division 1, or any specific plan adopted pursuant to Article 8 (commencing with Section 65450) of Chapter 3 of Division 1.

A proposed subdivision shall be consistent with a general plan or a specific plan only if the local agency has officially adopted such a plan and the proposed subdivision or land use **is compatible with the objectives, policies, general land uses, and programs specified in such a plan.** [*See* Government Code § 66473.5]

II. Sunnyvale's Housing Element Shows the City Is Suffering a Horrible Deficit in its Current Affordable Housing Stock and Cannot Afford the Unmitigated Loss of the Low Income Affordable Housing Located in Blue Bonnet.

Sunnyvale's 2015-2023 Housing Element shows that Sunnyvale is suffering a horrible deficit in its current affordable housing stock. For example, it shows that, in 2010, Sunnyvale contained 10,540 very low income and below households and 4,175 low-income households (Table 30 p. 44 of Housing Element). It then shows that 7,815 of these very low income and below households are overpaying more than they can afford on their housing and experiencing “cost burden” and that 5,365 of that same group are experiencing “severe cost burden.” (Id.) This means that Sunnyvale has a current deficit of 7,815 affordable housing units to meet the needs of its current very low income and below households and, thus, is causing 74% of those households to have to live in housing that they cannot afford and still be able to meet their other basic living expenses.

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The Housing Element also shows that 2,785 of Sunnyvale's 4,175 low income households (67% of them) are overpaying more than they can afford on their housing and experiencing "cost burden." Thus, Sunnyvale has a deficit of 10,600 affordable housing units to meet the needs of its current low income, very low income and extremely low income population. (Id.)

Sunnyvale's Housing Element also shows that Sunnyvale has consistently been able to meet only an extremely small fraction of its RHNA - allocated share of the new construction of affordable housing that is needed to meet the expanding population needs of the region. (Table 47, p. 102 of the City's Housing Element) For example, it shows that Sunnyvale was able to meet only 17% of its RHNA quota for the construction of new very low income - affordable housing units of the quota that was assigned to the City for the 2007 - 2014 housing element period. (Id.) This occurred because Sunnyvale was able to produce only 187 of its RHNA new construction goal of 1,073 very low-income units and that it, therefore, fell short by 886 very low-income units. (Id.)

Likewise, the Housing Element also shows that Sunnyvale was able to meet only 37% of its 2007 - 2014 - RHNA quota for the construction of new low income - affordable housing units by being able to produce only 260 units of its RHNA - new construction quota of 708 low income units, thus falling short by 448 low-income housing units. Id. This means that Sunnyvale has an additional deficit of 1,335 low and very low income housing units. On the other hand, Sunnyvale came very close to meeting its full 2007 - 2014 RHNA allocation for new construction of above moderate income housing, meeting 95% of that allocation by producing 1,773 of its 1,869 RHNA - new construction - above moderate income housing units goal. (Id.)

Sunnyvale's Housing Element also recognizes Blue Bonnet's 54 mobile home units to be part of the City's 16 mobile home parks' current supply of 4,000 mobile home units that, it states, are an important segment of Sunnyvale's current stock of affordable housing:²

² The fact that Blue Bonnet is one of the two of the City's fourteen remaining mobile home parks that are not zoned RMH (Residential Mobile Home) but, instead, zoned R-4 does not alter the fact that it is still part of the City's 14 mobile home parks that the City's Housing Element acknowledges comprise an important segment of Sunnyvale's stock of affordable housing, which it then sets a Goal and a Policy of preserving (*i.e.*, *Goal B and Policy B.6*). This is particularly true because, as Table B of this letter shows, Blue Bonnet is Sunnyvale's only remaining park

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“With 16 mobile home parks and over 4,000 mobile home units, mobile homes comprise an important segment of Sunnyvale’s stock of affordable housing.” [*See* p 116 of 2015 - 2023 Sunnyvale Housing Element]

Sunnyvale’s Housing Element also has a stated Goal to “maintain and enhance condition and affordability of existing housing in Sunnyvale. [*See* Goal B on p 105 of 2015 – 2023 Sunnyvale Housing Element]. In support of that Goal, Sunnyvale’s Housing Element has a stated two part policy of “**Preserving Sunnyvale’s mobile home parks as an affordable housing option.**” and of “Maintain at least 400 acres of mobile home park zoning.” [*See* Policy B.6 on p. 105 of 2015 – 2023 Sunnyvale Housing Element]

The fact that Blue Bonnet is not included in the City’s mobile home park zoning that is referred to in second part/ sentence of Policy B .6 does not matter. It only means that the conversion of Blue Bonnet is not inconsistent with that second part of Policy B.6.

that actually has any affordable housing left in it. The only significance of Blue Bonnet’s not being protected by RMH zoning is that, although the City’s zoning code allows for the redevelopment of Blue Bonnet into non-mobile home park use, **for that non-mobile home park use to be consistent with Goal B and the first and primary part of Policy B.6 of the Housing Element, the City would have to require the production of an equivalent number of affordable housing units that are equally as affordable as the affordable mobile home units that will be lost at blue Bonnet.** Blue Bonnet’s zoning designation appears to allow for this, since its R-4 zoning designation provides for high-density residential zoning of up to 36 dwelling units per acre. If, however, that R-4 zoning designation was not sufficient to allow for all of the affordable housing to be replaced, then the City would be required to change the zoning designation of Blue Bonnet to one that would either require the preservation of Blue Bonnet as an ongoing mobile home park or that would allow all of its affordable housing to be replaced within that new zoning designation. If neither of these alternatives could be accomplished, then the City would be required to “disapprove” of this tentative map pursuant to the above provisions of Government Code §§ 66427.4 and 65863.7, which require a finding of general plan consistency, inclusive of Policy B.6, of the City’s housing element. The fact that Blue Bonnet is a nonconforming use is also irrelevant, since they City unlawfully choose to limit its zoning protections to the City’s mobile home parks that have the larger spaces mobile homes (*which Table B demonstrates are not affordable to low income household*), by limiting those zoning protections to mobile home parks that contain 12 spaces per acre or less as a form of unlawful exclusionary zoning and the park can be preserved with its low-income housing saved as is.

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However, it still is in violation of the first part of B.6 of “Preserving Sunnyvale’s mobile home parks as an affordable housing option.” In that regard, the mobile home sales and park space rent information contained in Table B, demonstrates that this Project’s purported consistency with part 2 of Policy B.6, does not mean that it is also consistent with part 1 of policy B.6 because, since the City has no programs to protect the affordability of the mobile homes located in its mobile home parks (i.e., such as mobile home rent control), the mobile homes protected by the City’s mobile home park zoning are no longer affordable to low and below income households. This is because the City’s mobile home protective zoning only protects the parks with larger spaces and larger mobile homes, which, as shown in Table B, are no longer affordable. In contrast, Blue Bonnet, contains smaller mobile home spaces and mobile homes, which are affordable to low income households. See Table B

Additionally, the fact that, the City unlawfully encouraged and approved of, and the developer and park owner unlawfully served the residents of Blue Bonnet with unlawful Termination of Tenancy Notices, which resulted in the removal of most of these smaller mobile homes from the park, does not impact this conclusion. The reason these empty mobile home spaces do not change the above circumstances or conclusion of is that those smaller spaces and Blue Bonnet still exist can still be maintained and operated as a current nonconforming use under its current zoning designation and, thereby, continue providing these affordable spaces. The park owner can simply replace the displaced mobile homes with other smaller mobile homes, which under current market conditions and rents, would still be affordable to low-income homeowners. On the other hand, the Developer's March 15, 2017 - Project Description states that the 62 townhouses that will be replacing Blue Bonnet's mobile homes will range in size from 1,474 to 1,910 square feet. Exhibit A to this letter is a sales brochure for the townhouse development almost adjacent to Blue Bonnet, and it shows that its units ranging from 1,375 - 1,914 square feet were being sold from between \$919,990 and \$1,064,990. Thus the townhouses replacing Blue Bonnet's - low income affordable mobile homes will not be affordable to low income and below or to moderate income households. (See Exhibit A to this letter).

III. The Due Process and Fair Hearing Rights of the Blue Bonnet Residents Committee’s Members Are Being Violated at This Hearing So a New And Lawful Due Process Compliant Hearing Must Be Conducted.

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The Blue Bonnet Residents Committee's Members (the Homeowners) are entitled to a fair hearing for this hearing on Planning Commission's evaluating of the Blue Bonnet Conversion Project' Tentative Map and SDP Permit application approval, particularly, because, as explained above, Government Code §66427.4, requires mitigation benefits for the homeowners to be evaluated and to be conditions of this application approval, which are directed at benefiting the homeowners, and because the approval of this application will result in the loss of their homes.

In that regard, since this hearing is a quasi-judicial hearing, in which the Homeowners had a significant interest in its outcome. CCP §1094.5(b); *Clark v. City of Hermosa Beach*, 48 Cal.App.4th. 1152, 1172 (1996), *as modified on denial of reh'g* (Sept. 11, 1996) (A fair hearing requires a party to have an opportunity to refute, test, and explain the evidence against him) Where the fairness of an administrative hearing is challenged, the court independently reviews the proceedings to decide whether a party's rights were compromised. *Manufactured Home Cmtys., Inc. v. City of San Luis Obispo*. 167 Cal.App.4th 705, 711 (2008) The Homeowners are also entitled to due process protections under the California Constitution, which requires only the identification of a statutory conferred benefit or interest (*In re Thomas* (1984), 161 Cal.App.3d. 721, 727) which must be free from arbitrary adjudicative procedures. *Gresher v. Anderson* (2005), 127 Cal.App.4th 88 104-05. Its analysis requires the court to "evaluate the extent to which procedural protections can be tailored to promote more accurate and reliable administrative decisions **in light of the governmental and private interests at stake.**" *Gresher*, 127 CalApp.4th 88 at 105 The Members' "private interests" in this case are high, the loss of their homes and the deprivation of adequate mitigation assistance, to which they are entitled under the Relocation Statutes and Ordinance, thus, they are entitled to adequate adjudicative procedures under the California Constitution. Likewise, the Members also have a protected property interest, also entitling them to due process under the U.S. Constitution, the interest in their homes and in the assistance required to mitigate the loss of their homes and community. "Property interests.... are created and their dimensions are defined by existing rules or understandings that stem from an independent source such a state law - rules or understandings that secure certain benefits and that support claims of entitlement to those benefits." *Bd. of Regents of State Colleges v. Roth* (1972), 408 U.S. 564, 577. Here, the Manufactured Home Owner Relocation Statutes and the Ordinance create an explicit entitlement to receiving mitigation assistance to mitigate the loss of their homes, thus, they also create a property interest for the Homeowners under the federal Constitution.

Here, the Homeowners above due process rights and right to a fair hearing have been violated by the City's unlawfully separating out the approval of the CIR, which is

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required to be evaluated at the hearing under Government Code §66427.4. The Legislature has imposed this requirement through that statute clearly stating that the impact on the homeowners is to be evaluated as a component of this hearing and that the City is required to disapprove of this application, if it is determined that the homeowners cannot be relocated to housing in other mobile home parks with the mitigation benefits that are proposed to be provided or can be imposed as conditions of this tentative map approval. None of those issues are being evaluated at this hearing in violation of the above statutes. Accordingly, it is pointless for the residents to even attend this unlawful hearing as none of the required evidence in order to make the above evaluation has been submitted by either the developer or the City for evaluation at this hearing.

Accordingly, this hearing must be postponed and an up-to-date CIR must be produced, properly served on the homeowners and residents and then evaluated at a rescheduled hearing, at which, the homeowners will have the right to make an adequate argument, to present evidence and have the right to cross-examine any witnesses that the City may rely on if the City chooses to rely on the testimony of any witnesses rather than solely on documentary evidence. This would require providing the Blue Bonnet Residents Committee's attorney is more than three minutes to make their presentation and with the right to cross-examine any witnesses relied on to the Planning Commission if that circumstance occurs.

IV. Conclusion

For all the above reasons, the Blue Bonnet Residents Committee, hereby, files this formal Letter of Appeal of the planning commission's above decision.

Sincerely,



William J Constantine
Attorney for the Blue Bonnet
Residents Committee and its Members