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APR 25 2019

PLANNING DEPARTMENT

April 24, 2019

To Members of the Emeryville Planning Commission

Members of the Commission, my name is Rich Robbins, I am the Founder of Wareham Development. Wareham has been a stakeholder, developer, and owner of property in Emeryville for more than 41 years. In those 41 years, Wareham has never appealed another owner's project.

It has been stated in one of the attachments to the staff report that we are attempting to stifle competition and slow an approval process down. It has also been said that we objected to the TMG project with criticisms in 2008. Firstly, we are obviously not NIMBYS. Secondly, with millions of square feet fully leased in Emeryville, we are advocates and supportive to see the Emeryville cluster expand. Simply put, this constructive objection is solely about the design being proposed and the impact from that design on wind and other factors. For the record, we worked most amicably with our colleagues at TMG in 2008, and agreed with their density given the conditions of approval for design and the massing that had been originally adopted and proposed. We, better than most, understand how important it is to not make mistakes on paper before a project is constructed. As experienced builders of life science and technology campuses, and as long-term owners, design and its impact means everything to everyday life.

If you look at the applicant's Exhibit E, the East elevation comparison, I hope you will see some of the concerns that violate Article 2 of the conditions of approval and discussed in our letters. These design criteria were carefully worked out by both the City Council and the Planning Commission to absolutely insure that the architecture proposed would comply with these design conditions. Critical is that what is being proposed is nearly one and two thirds of a football field in length, nearly 500 feet long. A key mandate in Article 2 of the conditions of approval is to avoid absolutely a visual wall. The East elevation is obviously a wall. We at Wareham welcome more density and development in Emeryville. We feel strongly that this proposal is not in compliance with the conditions of approval and is not a design appropriate to the site. As an experienced developer, in reviewing the staff report and its attachments, including the prior staff report and the letter from Holland & Knight, I offer the following thoughts:

The applicant and the staff keep referring to the PDP and consistency with the PDP. It is true that the FDP must be consistent with the PDP, but that is by no means the end of the inquiry. The PDP was approved subject to conditions of approval, plus many of the key conditions were also mitigation measures in the EIR aimed at ensuring that environmental impacts are alleviated. Therefore, a straight comparison to the PDP is not enough because the PDP was found wanting and the subsequent steps in the development process (i.e., the FDP) are SUBJECT TO the conditions/mitigation measures, such as the aesthetic mitigation measures.

The City is bound by law to implement those mitigation measures. By their very nature, conditions of approval/mitigation measures require that changes be made to the approved project – the PDP – before it may be implemented. The mitigation measures must be strictly adhered to.

This FDP represents a change to the approved project as to Parcel B, with additional square footage. CEQA dictates that such change be evaluated to determine whether it would generate significant

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environmental impacts not analyzed in the EIR. Since the EIR found the aesthetic mitigation measures were needed even without the added space on Parcel B, it is even more important now and failure to fully implement them could indicate a new or more severe environmental effect that must be addressed per CEQA.

The Emeryville Municipal Code specifically recognizes that compliance with conditions of approval (which inevitably shape and alter the approved project, here the PDP) is a criterion for FDP approval, per the following sections:

9-7.1009(b) The final development plan shall substantially conform to the approved preliminary development plan. In addition to any other application requirements as specified in Article 2 of this chapter, Common Procedures, an application for a final development plan shall include the following:

(9) Changes, if any, as required by the City Council as conditions of approval of the preliminary development plan.

9-7.1010. [T]he Planning and Building Director shall examine the plan and review it for substantial conformity to the preliminary development plan approved by the City Council and whether changes and conditions of approval specified by the City Council have been met.

This means the FDP clearly may not be approved, unless the conditions are fully satisfied.

The staff report and the applicant state that comparison to the previously approved FDP is not pertinent. However, one must presume that the City found that the prior FDP met all conditions of approval/mitigation measures, which the PDP obviously did not yet, so comparison to the prior FDP is instructive of what it takes to satisfy the requirements imposed in connection with PDP approval in order to be eligible for FDP approval.

We also are curious about the statement in the staff report that the Planning Commission consideration is limited to the issues raised in the appeal letter. The City Council sent the matter back to the Planning Commission so it seems the Planning Commission is still responsible to make all required findings for FDP approval, so any evidence and issues raised should be valid in this proceeding.

In summary, we are not against density as long as the design complies with the conditions of approval stated in Article 2.E., and the adverse impacts from wind are mitigated. We implore the Commission to further consider design alternatives that will allow for the applicant's proposal to be in compliance with the conditions of approval.

Thank you for your consideration.

Sincerely,


Richard K. Robbins
WAREHAM DEVELOPMENT

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cc: Charles Bryant
Miroo Desai