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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

UPHOLD OUR HERITAGE Petitioner, v. TOWN OF WOODSIDE Respondent. _____ STEPHEN P. JOBS and DOES 1 to 10; Real Parties in Interest.	CASE NO.: **CIV444270** Assigned CEQA Judge Hon. Marie S. Weiner, Dept. 2 **PETITIONER'S SUPPLEMENTAL OBJECTIONS TO RETURN TO WRIT OF MANDATE** (California Environmental Quality Act) Petition Filed: January 14, 2005

I. INTRODUCTION

Pursuant to the Court's direction at the Case Management Conference of July 10, 2009, Petitioner submits the following Supplemental Objections to the Return to Writ of Mandate. In summary, the fact that the Town and Real Party in Interest (collectively, Respondents) have recently identified and negotiated an agreement with a demolition contractor does not address any of Petitioner's prior objections that the Town had failed to substantiate its conclusion that alternatives involving preservation of the Jackling House were infeasible and that the Town had failed to substantiate its statement of overriding considerations with any showing of benefit as required by CEQA.

II. CHRONOLOGY OF EVENTS SINCE PETITIONER'S OBJECTIONS WERE FILED.

On May 22, 2009, Petitioner objected to the Return to Peremptory Writ of Mandate (Return) filed by the Town of Woodside (Town) and Real Party in Interest Steve Jobs (Jobs) on May 12, 2009.

Subsequently, on May 28, 2009, the Court by Case Management Order #5 set a case management conference for June 19, 2009. After this Order, was issued, the Town of Woodside held further hearings related to this case, after having already passed a resolution on May 12, 2009 authorizing the issuance of a demolition permit. (Carstens Dec. in Support of Supplement Objections, Exh. A, p. 2.)

On June 23, 2009, the Town held a hearing regarding its May 12, 2009 resolution authorizing demolition. At this hearing, Gordon Smythe of Propel Properties appeared to discuss his proposal to mitigate the impacts of the City's authorization of demolition. Apparently, his proposal was submitted to Jobs in May 2009. (Carstens Dec. in Support of Supplement Objections, Exh. A, p. 2.) Subsequently, the Town voted again to authorize demolition.

On July 1, 2009, the Respondents filed a Case Management Statement and a set of "Documents and Materials" in support of it. These materials did not include any transcripts of public hearing, minutes of meetings, or resolutions that were adopted by the Town on June 23,

2009. In this Case Management Statement, the Respondents highlighted evidence that Jobs had submitted regarding a plan by restoration architect Andrew Skurman that restoration in place could exceed $13,000,000. (Case Management Statement, p. 4.) Respondents reported that on June 23, the Council voted to approve demolition, subject to conditions. (Case Management Statement, p. 5.)

III. ARGUMENT

A. The Town Can Not Demonstrate Compliance With CEQA by Approving Demolition of a Significant Historical Structure When Feasible Alternatives Exist and Benefits Do Not Outweigh the Significant Impacts.

In its Objections to the Return to the Writ of Mandate, Petitioner argued that (1) the Town lacks substantial evidence to support its conclusion that no feasible alternatives to demolition exist and (2) the Town continues to lack substantial evidence to conclude that the benefits of the project outweighed its significant impacts. (Petitioner's Objections filed May 26, 2009.) The Town's actions since May 2009 do not rebut these arguments. The Town has apparently negotiated an agreement[1] with Gordon Smythe of Propel Partners operating as an entity called Jackling House LLC. (Carstens Dec. in Support of Supplement Objections, Exh. D.) However, this agreement is little more than a demolition contract between Smythe and Jobs. It does not provide evidence of the infeasibility of preservation alternatives, nor does it provide any evidence of a benefit accruing from the Town granting permission to demolish a historic resource.

1. Respondents Have Failed to Affirmatively Demonstrate the Infeasibility of Preservation Alternatives Analyzed in the EIR.

Respondents discuss the standard of review of their return to this Court's Writ as if the Town had not already been found in violation of CEQA on January 27, 2006. (Respondents' Case Management Statement, p. 8.) CEQA imposes a high standard when a lead agency is proposing to reject the feasibility of an alternative considered feasible in an EIR. "One of [an EIR's] major functions . . . is to ensure that *all reasonable alternatives* to proposed projects are

thoroughly assessed by the responsible official." (*Laurel Heights Improvement Ass'n. v. Regents of the University of California* (1988) 47 Cal. 3d 376, 400, quoting *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 197; emphasis in original.) Further, "Under CEQA, the public agency bears the burden of *affirmatively demonstrating* that…the agency's approval of the proposed project *followed meaningful consideration of alternatives* and mitigation measures." (*Mountain Lion Foundation v. Fish and Game Commission* (1997) 16 Cal.4th 105, 134, emphasis added.) The Supreme Court in *Environmental Protection & Information Center v. California Dept. of Forestry & Fire Protection* (2008) 44 Cal.4th 459, 516, and *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515 made it clear that it is the agency's burden to cite the evidence supporting its decision in its findings when making a decision. The Town has fallen far short of affirmatively demonstrating the infeasibility of alternatives set forth in the EIR or that there is any benefit that justifies overriding the significant impacts of approving the project.

The evidence Respondents rely on to substantiate infeasibility of alternatives such as restoration starts with the assertion that construction of a new, 6,000 square foot residence on the property would cost $8,000,000. (Case Management Statement, p. 4.) However, the Respondents still fail to present a fair statement of the value of the property to provide context for their assertions of infeasibility of restoration on site. There is no comparison of value of a house restored on the site relative to the value of a smaller new house on the site. The information submitted only compared the cost of restoring a 17,000 square foot house to the cost of building a 6,000 square foot house, but does not provide information about their relative values once completed. Respondents note that building a new house would cost "more than $1,000 per square foot" (Case Management Statement, p. 4) but fail to acknowledge that restoring the 17,000 square foot house under Alternative 2, even if it cost $11,000,000 as Respondents incorrectly assert (*Id*. at p. 4 ln. 13),[2] would only cost approximately $647 per

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[1] There is no evidence submitted thus far to show that the draft agreement has even been signed.

[2] The certified Final EIR stated based on the schematic plans prepared by Carey & Co. for onsite restoration, "the conceptual cost estimate to implement Alternative 2 is approximately $4.9 million." (2 AR 556, attached as Exhibit F to the Carstens Declaration in Support of

square foot- thus on a square foot basis being much more economically feasible than constructing a new residence at more than $1000 per square foot. Respondents also fail to provide unbiased, substantial evidence of the infeasibility of a relocation alternative based on its expense. The Respondents assert that relocation would exceed a $5 million cost differential between the project and a relocation alternative that makes such an alternative infeasible. (Case Management Statement, p. 1.) However, Respondents provide no evidence of a cost estimate for relocation based on the plan from relocation proposed by Architectural Resources Group architects. (Carstens Declaration in Support of Objections to Return to Writ of Mandate, Exh. E, p. 31.) Without an independent cost estimate of relocation as proposed by architects in a report prepared for the Town itself, the Town does not have meaningful evidence of the feasibility of a relocation alternative. The Town's complete reliance on cost estimates supplied by the project applicant leave the Town relying on assertions and opinions of the applicant and its agents, not substantial evidence, as it rejects the feasibility of relocation alternatives.

2. The Draft Demolition Agreement Provides No Benefit to Justify Demolition.

The Public Resources Code requires that before approving a project that has a significant, unavoidable impact, a public agency must articulate a benefit that outweighs the impact. (Pub. Resources Code s. 21081 (b).) This Court previously found that the Town had failed to articulate such a benefit. (Carstens Declaration in Support of Objections to the Return to Writ of Mandate, Exh. F, pp. 15-20.) The Town's staff report does not articulate any benefit different from those that were rejected before by this Court. (*Id*. at Exh E, p. 14-16.) The draft demolition agreement does not provide any benefit. Whereas the Town could have required terms that included a commitment to restoration including a performance bond to ensure preservation would actually occur and holding the restored House open in some way for public visitation, the Agreement provides no such publicly beneficial terms. Instead, the Agreement benefits two private parties, Steve Jobs and Gordon Smythe, but does not provide any benefit

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Supplemental Objections to Return to Writ). Respondents' assertion of a restoration cost of $11 million is overblown.

that outweighs the significant impact of allowing demolition of the Jackling House.

The draft agreement, provides for two obligations, at bottom: Steve Jobs will pay Gordon Smythe's company $604,800; (2) Smythe's company will demolish and remove the Jackling House from Steve Jobs' property. (Carstens Dec. in Support of Supplement Objections, Exh. D, pp. 3 and 5.) All other terms of the draft agreement are conditional or non-committal. For example, Smythe is obligated to do no more than "undertake a good faith effort to identify an appropriate site (the 'Restoration Site') to which" the pieces of the House would be moved. (*Id*. at 5.) Reportedly, Smythe does not have an appropriate site for relocation of the pieces of the House and "At the June meeting, Smythe said he was having trouble finding an appropriate site." (Carstens Dec. in Support of Supplement Objections, Exh. E, [The Mercury News], p. 1.)[3] In contrast with Smythe, there is at least one other party, with long-term interest in restoration of the Jackling House named Paul Berger that reported he had "located several suitable sites and offered to complete the work in an expeditious fashion." (Carstens Declaration in Support of Objections to Return to Writ of Mandate, Exh. B, pp. 38-39.) The Town failed to investigate in any way the fact that Berger owned 40 acres in Napa County zoned appropriately for restoration of the House. (*Id*., Exh. B, p. 42 ["My Napa County parcel is 40 acres and is zoned AW [Agricultural Watershed]" which "allows for one main house of unlimited size along with 2 smaller structures"].)

The Agreement simply absolves Jobs of responsibility for mitigation, leaving Smythe alone to try to build, if he can, somewhere, perhaps within five years but not necessarily, with no budget shown for purchasing land or completing the restoration. The Agreement lets Jobs clear his land with no contribution to mitigation, and funds provided only for demolition, with the fragments of the Jackling House to be stored indefinitely in Smythe's undisclosed temporary storage location.

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[3] Uphold Our Heritage recognizes that newspaper accounts may not normally be reliable enough for judicial notice, but the Town has not submitted any minutes from the June 23, 2009 meeting. Additionally, the statements reported in the newspaper are "Facts and propositions that are not

The Town does not explain why it found the non-committal Agreement with Smythe, who does not have an appropriate relocation site, superior to, or more feasible than, requiring Jobs to reach an agreement with Berger or other relocation proponent, who would have an appropriate relocation site available for restoration of the Jackling House.

CONCLUSION

Since the Town has not demonstrated its compliance with CEQA as directed by the January 27, 2006 ruling and has instead re-issued a demolition permit on grounds that have already been rejected by this Court, the Return filed by the Town should be rejected and the Town ordered to demonstrate its compliance with CEQA to the satisfaction of the Court before the Town may issue any demolition permit.

Date: July 31, 2009

Respectfully Submitted,

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reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." (Ev. Code s. 452 (h).)