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City of Oakland

Public Ethics Commission

Stamp Date/Time Received:

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PUBLIC ETHICS COMMISSION
OAKLAND

COMPLAINT FORM

Complaint Number: 08-20

Please Type or Print in Ink and Complete this Form.

This complaint concerns a possible violation of: (please check all that apply)

[ ] The Oakland Sunshine Ordinance, California Public Records Act or Brown Act. (Access to public meetings or documents.)

[ ] Oakland Campaign Reform Act

[ ] Oakland City Council's Rules of Procedure/Code of Ethics

[ ] Oakland Limited Public Financing Act

[ ] Oakland Conflict of Interest regulations

ATTACHMENT 1

[X] Oakland Lobbyist Registration Act

[ ] Oakland False Endorsement In Campaign Literature Act

[ ] I am/We are not sure which specific law, ordinance or regulations apply. However, I am/We are requesting that the Ethics Commission determine if my/our complaint is within its jurisdiction.

The alleged violation occurred on or about the following date(s)

See attached letter of 12-11-08

The alleged violation occurred at the following place:

See attached letter of 12-11-08

Please provide specific facts describing your complaint. (Or attach additional pages as necessary.)

See attached letter of 12-11-08

The persons you allege to be responsible for the violation(s) are:

See attached letter of 12-11-08

Any witnesses who were involved and/or who can provide additional information are: (Please indicate names and phone numbers, if available.)

See attached letter of 12-11-08

ATTACHMENT 1

PLEASE NOTE:

There may be other laws that apply to the violation(s) you are alleging. The time limit to commence a legal proceeding to enforce those laws may not be extended by filing this complaint. You should contact an attorney immediately to protect any rights available to you under the law.

By filing this complaint with the Public Ethics Commission it, and all other materials submitted with it, becomes a public record available for inspection and copying by the public.

NAME: JOHN KLEIN PHONE NO.(Day):( ) 510-332-7596

ADDRESS:_____PHONE NO.(Eve.):( )

_____

CITY: _____ STATE: _____ ZIP: _____

FAX NO.: ( ) _____

E-MAIL KLEINJOHNE@COMCAST.NET

PLEASE RETURN THIS FORM TO:

Public Ethics Commission
One Frank Ogawa Plaza, 4th floor
Oakland, CA 94612

Phone: (510) 238-3593
FAX:(510) 238-3315

Back

ATTACHMENT 1

December 11, 2008

City of Oakland
Public Ethics Commission
One Frank Ogawa Plaza (City Hall)
Oakland, California 94612

Dear Commissioners,
Attached are a number of documents demonstrating that Carlos Plazola of Terra Linda Services, on behalf of Oakland Builders' Alliance (OBA), and a registered lobbyist in the City of Oakland, has failed to report a numerous lobbying activities in violation of the requirement to submit quarterly reports. Mr. Plazola has also undertaken activities which are prohibited by Oakland Lobbyist Registration Act.

The Commission is requested to take notice of the fact the Carlos Plazola is currently the subject of Complaint number 08-12. Documents related to that complaint are attached hereto in the Appendix. Those documents include the September 19, 2008, letter of Council Member Nancy Nadel, the September 12, 2008, OBA power point presentation, and a list of the OBA Board of Directors.

Further, Oakland Builders' Alliance board members Kathy Kuhner, Joe DeCredico, and Jay Dodson have all engaged in lobbying activities in Oakland but have failed to register as Lobbyists in the City of Oakland or to submit the required quarterly reports. These activities are outlined below.

1. Lobbying Activities in Opposition to the Mayor Dellums' Nomination of Ada Chan to the Oakland Planning Commission which Carlos Plazola did not disclose.

1a. July 1, 2008 e-mail from Carlos Plazola, Terra Linda Services, to various City Council members and their staff, re OBA Opposition to Ada Chan Nomination.

1b. September 15, 2008, e-mail from Laura Blair, Oakland Builders Alliance, to Oakland Builders e-mail list, re Urgent: Two minutes of your time needed to protect Oakland for 4 years. The e-mail instructs recipients to contact two specific council members, Desley Brooks and Pat Kernighan and also includes scripted messages opposing the appointment for recipients to include in the body of the messages to the council members.

1c. September 15, 2008, e-mail from Carlos Plazola, Terra Linda Services, to Ignacio De La Fuente, Henry Chang, and Larry Reid, re *No on Appointment of Ada Chan to Planning Commission.* Message indicates about 40 e-mails have been sent to Council members Brooks and Kernighan from OBA members. This e-mail was sent by Mr. Plazola on the next business day following an un-noticed meeting with council members De La Fuente, Chang, and Reid and which contact Mr. Plazola failed to disclose in his most recent quarterly disclosure which is the subject of Complaint number 08-12. It is apparent that the council members are already familiar with the context and tenor of Mr. Plazola's position on the nomination from the lack of any objective discussion or context in the body of the message as to why the e-mail was sent to these three specific council members.

ATTACHMENT 1

1d. September 16, 2008, e-mail from Ignacio De La Fuente, re *Call to Action – Attend tonight's City Council Mtg.*, urging recipients to oppose Ada Chan's Appointment to the Oakland Planning Commission. Clearly, Mr. De La Fuente has been in contact with Mr. Plazola regarding the nomination of Ada Chan, contacts which Mr. Plazola failed to disclose.

2. Carlos Plazola's lobbied council member Del La Fuente to replace Dan Lindheim, Acting City Administrator, but failed to disclose the contacts. Carlos Plazola and OBA coordinated messages with council member De La Fuente. Carlos Plazola and Jay Dodson lobbied the Mayor's Office directly to influence an official action by the Mayor, i.e., the replacement of Dan Lindheim as Acting City Administrator.

Coordination of messages and the failure to disclose the contacts. The juxtaposition of key statements in media releases by both OBA and council member De La Fuente's office, published only five days apart, clearly indicate that the content and timing of messages were intentionally coordinated.

2a. June 27, 2008, Oakland Builders Alliance Press Release (OBA Release). Outlining a number of problems in Oakland and stating that "Mayor Ron Dellums must find a replacement for Dan Lindheim." OBA says "Mayor Ron Dellums must conduct a nationwide search for the position of City Administrator."

2b. July 2, 2008, Media Release by council member De La Fuente (DLF Release). Mr. De La Fuente makes several recommendations for change in Oakland, the first of which is that the Mayor should hire a city administrator with "a national reputation for excellence."

2a. The OBA Release reads, "We recognize that the council members have stepped back in the last two years to give the mayor a chance to implement his vision."

2b. The DLF Release reads, "Two years ago, after his second unsuccessful effort to become Oakland's mayor…Ignacio stepped back, out of respect, to allow Mayor Ron Dellums the opportunity and the space to lead the city…"

2a. The OBA Release reads, "But the dysfunction of the city has reached critical levels and we need them to re-emerge."

2b. The DLF Release reads, "I ran to fix this city because I love it and believe in it, and wanted to raise the quality of life for everyone. And that's what I am going to do. I'm back."

In addition, Carlos Plazola has attempted to create a fictitious appearance that the public disfavors the permanent hire of Dan Lindheim as City Administrator in violation of Section 3.20.160 of the City of Oakland Lobbyist Registration Act.

2a. OBA Release, "Mayor Ron Dellums must find a replacement for Dan Lindheim." Again, ***"Word is spreading that Dan Lindheim is being considered for the City Administrator position upon Edgerly's departure. This would be a mistake for Oakland"*** (Emphasis in original.)

2c. July 4, 2008, San Francisco Business Time article in which Mr. Plazola publicly calls on the mayor to "dump" Dan Lindheim. Mr. Plazola is quoted in the article as saying, "We are going to make (Oakland politicians) listen to us."

"Mr. Plazola, or more correctly, his clients, object to Mr. Lindheim because Mr. Lindheim's (Dellums) approach to development in Oakland is not as "friendly" as the previous Mayor's."

2d. July 7, 2008, blog posting by Mr. Plazola on *www.ABetterOakland.com*, "I'm an advocate of replacing him (Lindheim) …because this is exactly the type of thing (Brandywine leaving) that we need to prevent and I don't believe Lindheim is capable of leading the charge to restore investor confidence in Oakland."

"I have not seen Lindheim value anyone in the investment community."

2e. July 31, 2008, blog posting by Mr. Plazola on *www.ABetterOakland.com*, "What we received is what Lindheim is famous for, a level of cynicism and skepticism that drives investors away. He, in effect, killed the deal, (and) the investors walked away…"

2f. October 1, 2008, Oakland Builders' Alliance Press Release, "*Oakland Builders Call on City Leaders to view them as Solution to Help Fix Budget Deficit*." The release indicates "in a meeting with an advisor to the Mayor three weeks ago, developers in Oakland pointed to project after project that has either been killed or is in danger of being killed by the current administration. The projects discussed in the meeting alone represented over $50,000,000 of potential revenue for the city."

2g. October 15, 2008, East Bay Express, *Letters for October 15*, letter from Jay Dodson, OBA Board of Directors. Among other things, the letter states, "I sat in on one bitch-fest conducted by Mr. Bobb and I was astounded by story after story in which the mayor's main man, Dan Lindheim, has killed project after project either by design, ineptitude, or indifference."

2h. November 16, 2008, blog posting by Mr. Plazola on *www.ABetterOakland.com*, "By the way, I think it is pretty much a consensus now in the business community in Oakland that Dan Lindheim is bad for Oakland, at least as long as he is making decisions that effect economic growth."

3. Carlos Plazola and Kathy Kuhner lobbied council member De La Fuente regarding Entitlement Extensions and failed to disclose the contacts. It is likely that other council members were lobbied as well.

3a. July 7, 2008, blog posting by Mr. Plazola on *www.ABetterOakland.com*, in which he states "the Oakland Builders Alliance has recommended language for a three year blanket extension on all entitlements acquired through next year (in addition to the 2 by-right, and 1 year additional extension per letter request) and is working with council to find a sponsor. We believe we have one. We hope to bring it forth in September or October of this year. Stay tuned."

3b. October 2, 2008, letter from Council President Ignacio De La Fuente (filed October 8, 2008) to Council Members, transmitting and explaining a resolution to extend permit entitlements on development projects in Oakland. Clearly, Mr. Plazola has contacted council member De La Fuente regarding the legislation but failed to disclose the contacts.

3c. October 24-30, 2008, SF Business Times, *Oakland Builders Want More Time*, reporting that "the builders group (OBA) lobbied the City Council to grant a three year extension (on expiring building permits)." Kathy Kuhner, OBA board member and Oakland developer is quoted in the article.

3d. November 3, 2008, *Meeting Minutes*, Special Concurrent Meeting of the Oakland Redevelopment Agency/City Council indicating consideration of entitlement extensions by the City Council.

4. Carlos Plazola and Joe DeCredico lobbied City senior staff members Dan Lindheim, Eric Angstadt, and Neil Gray on June 11, 2008, regarding rezoning in the Central Business District failed to disclose the contacts.

4a. June 10, 2008, e-mail from Carlos Plazola, Terra Linda Services to Neil Gray, CEDA Strategic Planning regarding ZUC direction and discussing building heights as part of the CBD rezoning. In the exchange, Neil Gray indicates he will reserve a conference room for a meeting the following day.

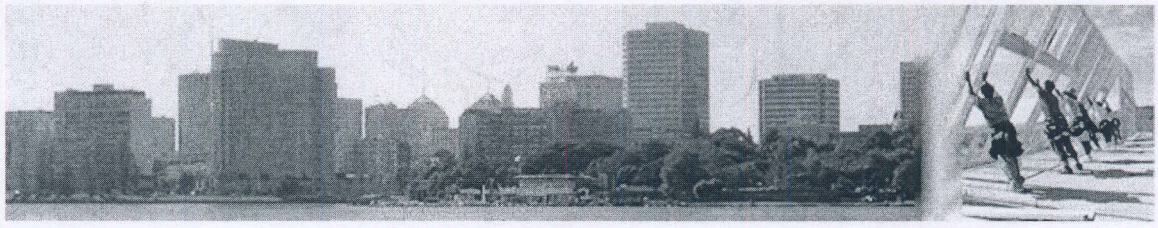
4b. June 11, 2008, calendar entry for Neil Gray, "Subject: Planning mtg with OBA (X3878)."

4c. June 11, 2008, page one of 11 pages of hand-written notes of a meeting with Carlos Plazola (OBA), Joe De Credico (architect), David Zehnder (EPS), and Owen Lang (Sasaki). City employees in attendance were Dan Lindheim, Eric Angstadt, Neil Gary, and Alicia Parker.

Very truly yours,

John Klein
kleinjohne@comcast.net

ATTACHMENT 1



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HOME PAGE

ABOUT US

MEMBER SERVICES

HOW TO JOIN

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CONTACT US

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Welcome to the website for the Oakland Builders Alliance.

The Oakland Builders Alliance (OBA) was formed in late 2007 as a non-profit organization focused on the economic growth and revitalization of Oakland, and to advocate for the needs of the building trades people and professionals of Oakland. The OBA is committed to promoting and advocating for innovative policies and practices that support smart-growth and urban infill; that lead to livable communities; and that create mixed-income, mixed-use communities that reduce dependency on automobiles, and encourage safe, walkable streets. Our members are small and medium sized builders and affiliated trades and professions who live or do considerable work in Oakland.

Join us at our next mixer! Click here for the new date and time.

FIND A CONTRACTOR OR BUILDING PROFESSIONAL!
SEARCH THE OBA MEMBER DIRECTORY.

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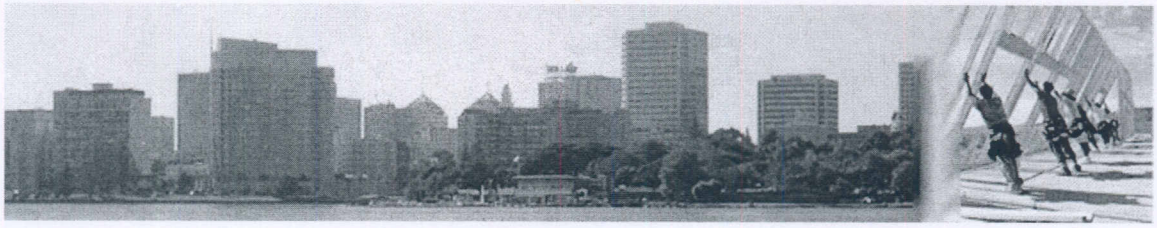
Terra Linda

19 Embarcadero Cove 2nd Floor • Oakland, CA 94606

ATTACHMENT 2

Item E-1
Date 5/4/09
Page 22 of 83



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HOME PAGE
ABOUT US
MEMBER SERVICES
HOW TO JOIN
ARTICLES & MEDIA
EVENTS
CONTACT US
MEMBERS ONLY
MEMBER DIRECTORY

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Carlos Plazola - Chair, Terra Linda Development

Kathy Kuhner - Vice Chair, Dogtown Development

Michael Stewart - Treasurer, Group F/29

Tom Dolan, Thomas Dolan Architecture

Kirk Miller, Kirk Miller Associates

Jay Dodson, Mestizo Construction

Joe DeCredico, GDeS Architecture

Charlie Hahn, Hahn Development

Joe Sarapochillo, Sarco Construction

Jose Jimenez, West Coast Electric

Andy Read, Caldecott Properties

Shauna O'Connor, Bank of America

John Bacon, Economy Lumber

Adam Howard, Bank of Alameda

John Bohannon, Builders Control

Mona Hansen, Hansen and Co.

Clinton Killian, Law Office of Clinton Killian

Robbie Lemos, Lemos Homes

About Us | Board of Directors | Our Mission Statement

19 Embarcadero Cove 2nd Floor • Oakland, CA 94606

Item E-1
Date 5/4/09
Page 23 of 83

ATTACHMENT 2

March 11, 2009

FILED
PUBLIC ETHICS COMMISSION
OAKLAND

2009 MAR 12 A 2:16

Dan Purnell, Esq.
Oakland Public Ethic Commission
One City Hall Plaza
Oakland, CA 94612

Re Complaint Nos. 08-12 and 08-20

Dear Mr. Purnell,
This letter is submitted in support of the above-referenced complaints regarding Carlos Plazola, Kathy Kuhner, Jay Dodson, and Joe DeCredico. The complaints allege that these individuals engaged in lobbying activities when they communicated directly and indirectly with public officials and designated employees for the purpose of influencing proposed or pending governmental action by the city or the redevelopment agency. The specific incidents of lobbying are outlined in the complaints. The complaints also allege that because of these communications, each of these individuals is a "local government lobbyist" as defined in Section 3.20.030 (D) of the Lobbyist Registration Act ("LRA") and that each is subject to the registration and disclosure requirements of the LRA.

Oakland Builders Alliance Board Members as Volunteers
Mr. Plazola argues that the language of the LRA does not cover volunteer nonprofit board members, which Mr. Plazola claims he is for Oakland Builders Alliance[1]. Mr. Plazola claims that this means he is exempt from disclosing his communications with local officials and designated employees because he was acting as an unpaid volunteer board member of a nonprofit organization; the same argument is made for the three other individuals. He also argues that the definition of a local government lobbyist itself is vague and as written can only be read to mean that the LRA applies to salaried directors or salaried officers and not to unpaid volunteer nonprofit board members, like himself.

The Non-Profit Status of Oakland Builders Alliance
The materials submitted to the Commission on February 9 by Mr. Plazola include general discussion of volunteer non-profit board members. They cite the Friends of the Oakland Public Library and the Sierra Club as examples of other non-profit organizations which could be adversely affected should the Commission decided to subject volunteers to LRA requirements. However, there are substantial differences between the purposes, federal tax status, and the level of participation in influencing legislation (lobbying) which may be undertaken by a 501(c)(3) organization, such as the Friends of the Oakland Public Library or the Sierra Club, on the one hand and by 501(c)(6) organization, such as OBA, on the other.

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[1] Mr. Plazola's written submission and comments at the February 9 Commission meeting were also made on behalf of other volunteer board members of Oakland Builders Alliance (OBA) for which Mr. Plazola serves as Chairperson: Kathy Kuhner, Vice-Chairperson; and both Jay Dodson and Joe DeCredico as Board members (Exhibit 2).

501(c)(6) Organizations (Exhibit 1)
OBA is organized as a 501(c)(6) non-profit organization called a "business league." A business league is defined as "an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. To be exempt, a business league's activities must be devoted to improving business conditions of one or more lines of business as distinguished from performing particular services for individual purposes." (www.irs.gov/charities/nonprofits.html)

These common business interests can include:

- promotion of higher business standards
- education of the public on the use of credit
- establishment of uniform casualty rates
- establishment and maintenance of the integrity of the local commercial market
- operation of a trade publication
- encouraging the use of goods and services of an entire industry

(IRS Publication 557, pp. 47-48)

A business league must also show that the "improvement of business conditions" is the purpose of the organization. In addition, donations to 501(c)(6) organizations are not tax deductible charitable contributions on federal income taxes; donations may be deductible as ordinary business expenses, however.

OBA's mission and membership conform to the IRS "line of business" and "improvement of business conditions" requirements for 501(c)(6) business leagues.
The home page for OBA's web site reads, "The Oakland Builders Alliance (OBA) was formed in late 2007 as a non-profit organization focused on the economic growth and revitalization of Oakland, and to advocate for the needs of the building trades people and professionals of Oakland. (www.oaklandbuilders.net).

In the Mission Statement, OBA indicates that its mission is to "promote and advocate for the continued economic revitalization and development in Oakland…" and that "our members are small and medium sized builders and affiliated trades and professions. (Id.)

501(c)(3) Organizations (Exhibit 3)
In contrast, 501(c)(3) non-profit organizations are called "charitable organizations" whose purposes must be charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and preventing cruelty to children or animals.

The term "charitable" is used in its generally accepted legal sense and includes:

- relief of the poor, the distressed, or the underprivileged
- advancement of religion
- advancement of education or science
- erecting or maintaining public buildings, monuments, or works
- lessening the burdens of government
- lessening neighborhood tensions
- eliminating prejudice and discrimination

- defending human and civil rights secured by law
- combating community deterioration and juvenile delinquency

The organization must not be organized or operated for the benefit of private interests and donations to 501(c)(3) organizations are deductible on federal income taxes. Organizations such as the Friends of the Oakland Public Library and the Sierra Club are examples charitable organizations with 501(c)(3) status.[2] (Exhibit 4)

Lobbying

501(c)(6) Organizations. There are a number of activities which a 501(c)(6) organization may undertake, including lobbying. 501(c)(6) organizations may engage in attempts to influence legislation (lobbying). As a matter of fact, a 501(c)(6) may engage in an unlimited amount of lobbying, provided that the lobbying is related to the organization's exempt purposes. (Exempt Organizations-Technical Instruction Program for FY 2003, IRC 501(3)(6) Organizations by John Francis Reilly, Carter C. Hull, and Barbara A. Braig Allen).

501(c)(3) Organizations. A 501(c)(3) organization must be organized and operated exclusively for exempt purposes listed above. Apart from these, a 501(c)(3) may not be an *action organization, i.e.,* it may not attempt to influence legislation as a substantial part of its activities and it may not participate in any campaign activity for or against political candidates.

Given the foregoing, it is apparent that there are substantial differences between the purposes, federal tax status, and the level of participation in influencing legislation (lobbying) which may be undertaken by a 501(c)(3) organization, such as the Friends of the Oakland Public Library or the Sierra Club, and those of a 501(c)(6), such as OBA.

OBA is organized to promote a particular line of business as opposed having a charitable purpose. A 501(c)(3) may not be organized for a private interest but a 501(c)(6) exists for the very purpose of promoting private interests. Simply put, the two can not be compared in the present analysis. If compared, the differences become more apparent, not less.

The point here is that Mr. Plazola's assertion that 501(c)(3) organizations are the same as 501(c)(6) organizations – OBA – is inaccurate and misleading. OBA stands separate and apart from the character and purposes of 501(c)(3) organizations. The most relevant issue to the complaints currently before the Commission is that OBA may participate in lobbying to influence legislation in an "unlimited amount" while lobbying activities by 501(c)(3) organizations are strictly limited or not permitted outright. Any comparison between the two types of organizations with regard to lobbying is false and misleading. The Commission may wish to consider amending the LRA to account for these differences between 501(c) non-profit organizations.

Plazola, Kuhner, Dodson, and DeCredico are Officers and/or Directors of Corporations and are Subject to the LRA Requirement to Register as "Local Government Lobbyists"

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[2] The Sierra Club also maintains a separate 501(c)(4) organization for the express purpose of participating in lobbying activities. (Exhibit 4)

The relevant definition of a local government lobbyist is "any individual:...2) whose duties as a salaried employee, officer or director of any corporation, organization or association include communication directly or through agents with any public official, officer or designated employee, for the purpose of influencing any proposed or pending governmental action of the city or the redevelopment agency." (Section 3.20.030, D)

Mr. Plazola's written submission and comments to the Commission by his attorney on February 9 do not discuss or disclose Mr. Plazola's status as the Chief Executive Officer and a Director for his own private, for-profit corporation. Furthermore, while making the argument that no volunteer board members of OBA are subject to the LRA, the same omission occurred regarding the status Kuhner, Dodson, and DeCredico as directors and/or officers of their own private, for-profit businesses. It is rather strange, to say the least, that Mr. Plazola and his attorney would overlook or fail to disclose these corporate interests during the Commission's inquiry on these very matters.

In fact, it is these very corporate interests that the LRA requires individuals to disclose for the purpose avoiding corruption or the appearance of corruption in the legislative process. Lobbyist registration also fulfills the public's 'right to know' regarding who is communicating with government officials for the purpose of influencing legislation.

As shown below, these individuals are clearly officers and directors of corporations.

- **Terra Linda Development.** Carlos Plazola is Chief Executive Officer and an Officer/Director of Terra Linda Development, 19 Embarcadero Cove, 2nd Floor, Oakland, CA 94606 as showing on the Statement of Information filed with the California Secretary of State on April 3, 2008. The type of business is real estate development services and brokerage. (Exhibit 5)

- **Dogtown Development Company, LLC.** Kathy Kuhner is the Chief Executive Officer and a member of Dogtown Development Company, LLC, 3250 Helen Street, Oakland, CA 94608, as showing in the Statement of Information filed with the California Secretary of State on December 10, 2007. The type of business is real estate development. (Exhibit 6)

- **Mestizo Construction Services, Inc.** Jay Dodson is the Chief Financial Officer, Secretary, Chief Financial Officer, and an Officer/Director for Mestizo Construction Services, Inc., 1442 MacArthur Blvd., Oakland CA, 94602, as showing in the Statement of Information filed with the California Secretary of State on December 27, 2007. The type of business is construction. On its web site, Mestizo Construction lists 19 Embarcadero Cove, 2nd floor, Oakland CA, 94606 as its address. (Exhibit 7)

- **Garcia DeCredico Studio Architects and Planners, A California Corporation.** Joe DeCredico is Secretary and Chief Financial Officer and an Officer/Director of Garcia DeCredico Studio Architects and Planners, A California Corporation, 2332 Fifth Street, Berkeley, CA 94107 as showing on the Statement of Information filed with the California Secretary of State on April 11, 2008. The type of business is architecture and planning. (Exhibit 8)

As shown above, Plazola, Kuhner, Dodson, and DeCredico are clearly officers and directors of corporations and are subject to the LRA.

The Public, Non-Profit Interests of OBA Board Members Can Not Be Separated From Their Private, For-Profit Interests

The claim by Mr. Plazola (and OBA) that he represents only the non-profit interests of OBA when communicating with local government officials and designated employees is not credible or believable. It requires that everyone, including the Commission, ignore the obvious: that, at the same time, each person is also an officer and/or director of a corporation as defined by the LRA. Not only this, but also that the legislation sought to be influenced may have direct or indirect financial benefits to these individuals in their capacities as officers and/or directors of private, for-profit corporations.

By definition as a 501(c)(6) organization, OBA board members may only lobby on issues directly related to the organization's exempt purposes. However, the public, non-profit interests of OBA volunteer board members are identical to, and completely aligned with, their private, for-profit interests. It is not possible for former interest to be segregated or separated from the latter interest, or to be considered unrelated to that latter interest when communicating with local government officials or designated employees for the purpose of influencing legislation. The lobbying activities of Plazola, Kuhner, Dodson and DeCredico are directly and indirectly related to the purposes of their private, for-profit corporations. Each stands to (or already has) directly or indirectly received private, for-profit financial benefits as a result of the lobbying activities.

Taken together, it is clear that Plazola, Kuhner, Dodson and DeCredico acted as "local government lobbyists" as set forth in the LRA and therefore are subject to the registration and disclosure requirements of the LRA.

Best wishes,

John Klein

De La Fuente, Ignacio

From: Carlos Plazola [cplazola@terralindaservices.com]

Sent: Tuesday, July 01, 2008 12:08 PM

To: Brunner, Jane; Wald, Zachary; Kernighan, Pat; Gerard, Jennie; Nadel, Nancy; Quan, Jean; Cowan, Richard; De La Fuente, Ignacio; Amin, Ratna; Brooks, Desley; Reid, Larry; Leon, Ray T.; Chang, Henry; Yee, Willie

Cc: Chai, David; michaelcolbruno@clearchannel.com; dboxer@gmail.com

Subject: OBA position on Ada Chan Appointment

The Oakland Builders' Alliance respectfully requests that you either **deny the appointment of Ada Chan to the Oakland Planning Commission or postpone the appointment** to allow for discourse and deliberation about who she is, what she believes in, and what she brings to the commission. There are concerns that her resume, which is the only way most of us can know who she is, has been exaggerated, or, in some cases, is simply not factual.

Quite simply, very few people in the broader community know anything about her, and the seat she is filling is a critical seat to the future economic well-being of Oakland. Oakland residents deserve to know who is being recommended to this seat.

Consistent with the lack of leadership and transparency we have seen from the Mayor's office, up until 10 days ago, most of us had never even heard she was being considered for the appointment. **Furthermore, the Machiavellian way in which she was presented at the last minute should be unanimously refuted by our city council as the "old" way of doing business that will no longer be tolerated.**

Oakland deserves to know. Oakland deserves the best. Oakland deserves leadership. We ask you all to lead on this matter and change the way Oakland does business.

Carlos Plazola
Chair
Oakland Builder's Alliance
19 Embarcadero Cove, 2nd Floor
Oakland, CA 94606
www.oaklandbuilders.org

ATTACHMENT 4A

Liao, Kevin

From: Toommaly, Bouapha
Sent: Monday, September 15, 2008 3:29 PM
To: Brooks, Desley; Kernighan, Pat
Cc: Lopez, Marisol; Bustos, Miguel; Gerard, Jennie
Subject: OBA's email
Importance: High

Dear Council Members Brooks and Kernighan:

I am writing to correct some information in this email that went out to OBA's listserve. As you both know, the Mayor strongly believes that Ms. Ada Chan has the knowledge and experience to lead Oakland's smart growth development. As stated in the Mayor's letter sent to you last week, Ms. Chan has a very broad base of support in Oakland. The allegations in OBA's email are unsubstantiated and false.

The public is being misinformed about the following:

1) " *Ada Chan refused to meet with the business community."* She has met with several developers in Oakland: Phil Tagami, Rick Holliday, Pat Calhert and Mark Borsuk. None of them expressed any oppositions or concerns about her appointment. Furthermore, Ms. Chan has been endorsed by several business entities, including: the African American Chamber of Commerce, Oakland Merchant Leadership forum, Michael Baines, Ray Carlisle, Mayor's Office of Community Development (City and County of San Francisco) and South of Market Stabilization Fund.

2) *"She has stifled development in several San Francisco neighborhoods."* The notion that one person could stifle the development is absurd, not to mention that this allegation is false. Furthermore, the Mayor has directed Ms. Chan, that if appointed to the Planning Commission, to work with each Councilmember on the various projects within their district.

3) Additionally, Ms. Ada Chan has also been endorsed by local elected-officials: Alameda County Board of Supervisors, Keith Carson and Alice Lai-Bitker.

I urge you both to look into these allegations and make an informed decision. Please feel free to call me or Miguel with any questions or concerns.

Regards,

Bouapha

------ Forwarded Message
From: Laura Blair <oaklandbuilders@gmail.com>
Date: Mon, 15 Sep 2008 11:29:14 -0700
To: 'Oakland Builders' <oaklandbuildersalliance@gmail.com>

ATTACHMENT 4B

Item E-1
Date 5/4/09
Page 30 of 83

Subject: Urgent: Two minutes of your time needed to protect Oakland for 4 years

Dear OBA Member and/or neighborhood friend:

The Oakland Builders Alliance is asking you to spend two minutes to send emails to prevent the appointment of Ada Chan to the Oakland Planning Commission. Her vote could well be the deciding vote on many redevelopment efforts in Oakland, turning the planning commission into the graveyard, where large, revenue-creating redevelopment projects are sent to get buried or where growth-inhibiting policies are passed.

Ada Chan comes out of non-profit groups that have been responsible for stifling development in San Francisco's Mission District and the Eastern Neighborhoods. With Oakland facing a $60,000,000 budget deficit that may only get worse next year, and with the investment and business community increasingly seeing Oakland as too much of a high-risk area, the last thing Oakland needs is an appointment to the planning commission that will send a chill down the spine of the business community.

In fact, even though she was advised to meet with the business community, Ada has not met with anyone from the business community—not any of the chambers, not the Oakland Builders Alliance, not the Coalition for Jobs and Housing, and not any single business interest in Oakland. But she has been very busy rallying support from non-profit and union groups. This is clearly a divisive sign that she does not plan on being a friend to the business community once appointed to the planning commission. Oakland needs jobs, and Oakland needs revenue. The business community provides these. The business community of Oakland is saying NO TO ADA CHAN!

We are asking you to take two minutes of immediate action...now, before you close this email!! Here's how:

1. Cut and paste the following councilmembers' emails into your "to" line: pkernighan@oaklandnet.com; dbrooks@oaklandnet.com.

2. Type "Opposed to Ada Chan Appointment" in the subject line and then:

3. Either send the following statement in the body of the email: "I am opposed to the appointment of Ada Chan to the planning commission because she is bad for revenue growth in Oakland. Please oppose her appointment and make the right decision for Oakland's economic growth."

Or better yet:
4. Type your own short 3-4 sentence message in the body of the email that address the following points: a) that you are opposed to the Ada Chan appointment to the planning commission because she is bad for revenue growth in

ATTACHMENT 4B

Item E-1
Date 5/4/09
Page 31 of 83

Oakland; b) your personal affiliation with, and interest in, Oakland: business owner, resident, etc; c) any personal statement about Oakland and why you oppose the appointment; d) your name

If you have additional time, please contact these same council offices at the following numbers:

Councilmember Pat Kernighan: 238-7002
Councilmember Desley Brooks: 238-7006

Thank you,

The Oakland Builders Alliance

Bouapha Toommaly
Special Assistant - Boards and Commissions
Office of the Mayor
One Frank Ogawa Plaza, 3rd Floor
Oakland, CA 94612
Ph: (510) 238-7577 Fax: (510) 238-4731
Email: btoommaly@oaklandnet.com

ATTACHMENT 4B

Item E-1
Date 5/4/09
Page 32 of 83

De La Fuente, Ignacio

From: Carlos Plazola [cplazola@terralindaservices.com]
Sent: Monday, September 15, 2008 4:29 PM
To: Chang, Henry; Yee, Willie; Reid, Larry; De La Fuente, Ignacio
Subject: FW: No on Appointment of Ada Chan to Planning Commission

All, about 40 of these emails have been sent to Councilmember Kernighan and Brooks from OBA members, but this one is particularly interesting.

-----Original Message-----
From: curtis [mailto:curtis@mariposamanagement.com]
Sent: Monday, September 15, 2008 1:10 PM
To: pkernighan@oaklandnet.com; dbrooks@oaklandnet.com
Subject: No on Appointment of Ada Chan to Planning Commission

I am opposed to the appointment of Ada Chan to the planning commission.

She represented MEDA in San Francisco where she tried to stifle every single development, good or not so good, in the Mission District.

I know because I was very active as an organizer with a citizens coalition in the Mission District that included residents, businesses, merchants and property owners in the Mission District. These are the very kind of people Oakland needs, and not someone who will make their lives miserable.

Her economic dissertations in front of the San Francisco Planning Commission were about as lucid as mud.

About two years ago I was on a first name basis with every Planning Commissioner in San Francisco and friendly with Christina Olague who came from a similar organizational background.

Ada Chan will be a disaster for reasoned growth and development in Oakland.

Curtis Eisenberger
[redacted]

ATTACHMENT 4C

Item E-1
Date 5/4/09
Page 33 of 83

Yee, Willie

From: Toommaly, Bouapha
Sent: Tuesday, September 16, 2008 11:46 AM
To: Brooks, Desley; Kernighan, Pat; Quan, Jean; Reid, Larry; Nadel, Nancy; Brunner, Jane; Chang, Henry
Cc: Bustos, Miguel; Yee, Willie; Gerard, Jennie; Merriouns, Iris
Subject: FW: Call to Action - Attend tonight's City Council Mtg

FYI.

Bouapha Toommaly
Special Assistant - Boards and Commissions
Office of the Mayor
One Frank Ogawa Plaza, 3rd Floor
Oakland, CA 94612
Ph: (510) 238-7577 Fax: (510) 238-4731
Email: btoommaly@oaklandnet.com

From: De La Fuente, Ignacio
Sent: Tuesday, September 16, 2008 11:23 AM
To: Toommaly, Bouapha
Subject: Call to Action - Attend tonight's City Council Mtg

If you're having trouble viewing this email, you may see it online.

send this to a friend

CALL TO ACTION: OAKLAND NEEDS YOU AT TONIGHT'S CITY COUNCIL MEETING

Things have gotten serious in Oakland. It's time for the Citizen's of Oakland to step forward and take back their City.

Do you care? Show it tonight by attending the City Council meeting.

You have the opportunity tonight to change the course of Oakland. Investing in the Whistleblower Program and the Hiring Practices Audit will help prevent future waste and corruption in our City government.

Attend the Council meeting tonight at 7:00 pm at Oakland City Hall and demand the following:

- **Support funding for the Whistleblower Program** to fund investigations, set up a whistleblower hotline, and publicize it to employees and citizens. (Item 25)

- **Support funding for the Hiring Practices Audit** for an audit that would address recent allegations of nepotism, favoritism, and other hiring practices issues. (Item 27)

ATTACHMENT 4D

Item E-1
Date 5/4/09
Page 34 of 83

- **Oppose Ada Chan's Appointment to the Oakland Planning Commission** (Item 28)

  More than ever, Oakland needs Commissioners who will support and promote a range of investment opportunities. In the interest of all residents, it is critical that we encourage the appointment of commissioners who have lived in Oakland and have invested extensive amounts of time and energy to improve this city. To move this city forward, Oakland needs commissioners who bring a responsible track record, and show a commitment to providing a balanced approach to increasing our tax base and creating jobs through effective business attraction and smart growth. Ada Chan is not that Commissioner.

WHAT YOU CAN DO:

- Attend tonight's City Council meeting at 7:00 PM in Oakland City Hall and speak in support of items 25 (Whistleblower) and 27 (Hiring Audit) and oppose item 28 (Ada Chan to Planning Commission.)

- Email all Councilmembers at council@oaklandnet.com

- Email or Call your individual Councilmember

  1. District 1 Jane Brunner 238-7001 jbrunner@oaklandnet.com
  2. District 2 Pat Kernighan 238-7002 pkernighan@oaklandnet.com
  3. District 3 Nancy Nadel 238-7003 nnadel@oaklandnet.com
  4. District 4 Jean Quan 238-7004 jquan@oaklandnet.com
  5. District 6 Desley Brooks 238-7006 dbrooks@oaklandnet.com
  6. District 7 Larry Reid 238-7007 lreid@oaklandnet.com
  7. At Large Henry Chang 238-7008 hchang@oaklandnet.com

- Forward this email to your networks for friends and ask them to join you tonight.

Together we can change Oakland. Join me on this historic night.

Ignacio

Ignacio
DE LA FUENTE

DISTRICT 5

Council President Ignacio De La Fuente
1 Frank Ogawa Plaza 2nd Floor | Oakland, CA 94612
Office: 238-7005 | Fax: 238-6129
idelafuente@oaklandnet.com | www.idelafuente.com

ATTACHMENT 4D

This email was sent to **btoommaly@oaklandnet.com**. To ensure that you continue receiving our emails, please add us to your address book or safe list.

Item E-1
Date 5/4/09
Page 35 of 83

OAKLAND BUILDERS ALLIANCE
19 Embarcadero Cove, 2nd Floor
Oakland, CA 94606

OAKLAND BUILDERS ALLIANCE

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Shauna O'Connor
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Andy Read
Caldecott Properties

Joseph Sarapochillo
Sarco Construction

Press Release

For Immediate Release
June 27, 2008

Contacts
Carlos Plazola, President, 510-207-7238
Kathy Kuhner, Vice President, 510-847-2387

With City Crumbling, Oakland Builders' Alliance Calls for Leadership

Cronyism, Interference, Ineptitude, and Lack of Leadership costing the City Revenues and Lives, and tax payers shouldn't pay the bill with new taxes!

Oakland (CA)—The Oakland Builders' Alliance, one of the fastest growing organization in Oakland, made up of over 60 members from the buildings trades and professions, is calling for greater accountability and leadership in Oakland, and calling for an end to cronyism, interference, polarization, and lackluster leadership.

The Problems Mount

As the City burns, residents look for leadership to emerge. Oakland's future looks more and more dismal, with every passing day:

- The Oakland Tribune notes that the East Bay is suffering one of the worst job losses in the State.
- The housing industry in the East Bay is suffering one of the worst declines ever.
- Vacant and boarded-up, bank-owned homes are at an all-time high
- The City Budget faces a $15 million shortfall, with more drops in revenue coming within the next year, while Oakland homeowners pay 40% more in property taxes than their neighbors in San Francisco.
- New building permit requests for housing are at the lowest levels they have been in over 50 years of recorded history.
- Violent crime hurts the city, and its image, more than it has in twenty years.
- Confidence of residents is waning, and getting worse.

The members of the Oakland Builder's Alliance, who live or do business in Oakland, along with all Oakland residents, are suffering not only because of the downturn of the economy, but because of the lack of leadership in the city. Oakland is a rider-less horse, running toward a cliff.

"We recognize that the council members have stepped back in the last two years to give the mayor a chance to implement his vision, but the dysfunction of the city has reached critical levels, and we need them to re-emerge. We need every leader in Oakland to show leadership, now, in fixing our city", stated the President of the Oakland Builder's Alliance, **Carlos Plazola**.

"The building industry is all but dead in Oakland, which means severe job losses, and Oakland families are in pain. The director of our Community and Economic Development Agency, Dan Lindheim, refuses to help builders in any way and scoffs at the request that he act as a cheerleader for Oakland. **Mayor Dellums** wants to tax residents for more police, while the administration of our city is in shambles. And our City Council is completely silent. It's time for the leaders to stop

ATTACHMENT 5A

studying our problems and start solving our problems." expressed **Kathy Kuhner**, Vice-President of the OBA

Burden Placed on Homeowners

Oakland's leadership is, once again, considering shifting the burden of revenue growth to Oakland residents by asking them to approve a tax increase to pay for more police. Meanwhile Oakland homeowners already pay a higher percentage of property taxes than most, if not all, other cities in the area. Oakland residents are already being squeezed by falling prices in housing, an increase in unemployment rates, increasing crime, and uncertainty in the short- and mid-term outlook of the economy.

OBA Calls For:

Rather than shifting the burden onto Oakland homeowners, it is time for **Mayor Dellums** and the **City Council** to step-up and show real leadership on behalf of the citizens of Oakland.

To this end, the OBA is calling for:

- **Mayor Ron Dellums** work 24/7 to fix Oakland's problems and that he immediately take responsibility for everything that happens, or does not happen, under his administration; that the buck must stop with him; and he must say so. No excuses.
- **Mayor Ron Dellums** must find a replacement for **Dan Lindheim**, who was brought in only as interim director of the Community and Economic Development Agency because of his inexperience in running such a department, and find a director through a national search who has successfully managed a department of similar size, or larger. This agency is responsible for much of the revenue production in Oakland, and a strong leader in this position should be able to double Oakland's revenue in 5-10 years, so leaders can stop taxing Oakland homeowners for every new endeavor.
- **Mayor Ron Dellums** must conduct a national search for the position of **City Administrator** that will become vacant on July 31st. He must show his commitment to a new direction in management of the city by recruiting from the best talent in the United States for this position. Only this type of effort can restore resident's confidence in the administration of the city. ***Word is spreading that Dan Lindheim is being considered for the City Administrator position upon Edgerly's departure. This would be a mistake for Oakland. Lindheim lacks experience in managing even one department, let alone an entire city. It would send a signal to Oakland residents that Mayor Dellums is not serious about fixing the city, but cares instead about rewarding friends.***
- There should be no further efforts to tax citizens until the economy recovers, revenue growth is on the rise, and the **Mayor** and **City Council** have shown they can manage the city's resources effectively.
- The **City Council** must re-emerge and show real leadership by:
  - Proposing programs and policies that help Oakland weather the economic downturn and reduce crime.
  - Working collaboratively to deliver leadership when it really counts: now!
  - Encouraging the **Mayor** to bring proven leadership to the positions of Director of Economic Development and City Administrator.

The Oakland Builder's Alliance, in service to its members and the residents of Oakland, will be actively working to promote and encourage the type of leadership that Oakland needs to fulfill its destiny as a great city. This is the beginning.

Item E-1
Date 5/4/09

# # #

ATTACHMENT 5A

De La Fuente re-affirms his commitment to fight for a better Oakland

(press release from Ignacio De La Fuente, seemed interesting - Vivek)

RESIDENTS CALL FOR LEADERSHIP AND A VISION FOR OAKLAND

OAKLAND, CA – Sixteen years ago, Ignacio De La Fuente ran for the Oakland city council as a youthful, energetic idealist on a mission to reform city hall by making it more responsive to citizens, creating job opportunities for Oaklanders, and improving the quality of life for residents. He's never diverted from this mission.

LINK TO FORUM THREAD FOR THIS.

MEDIA RELEASE
July 2, 2008
Contact:
Claudia Jimenez
(510) 734-4071 Cell
(510) 238-7051 Office

Two years ago, after his second unsuccessful effort to become Oakland's Mayor, and to finally gain the authority and leverage to make real systemic change to fix Oakland's ills, Ignacio stepped back, out of respect, to allow Mayor Ron Dellums the opportunity and the space to lead the city in the way the voters elected him to do. But now, Oakland residents are demanding leadership from their Councilmembers, and Ignacio is answering the call to step up and lead the City and to establish a vision for Oakland.

"Oakland residents have run out of patience," said Council President Ignacio De La Fuente. "Residents want to see action, they want change, and they are asking for someone to lead the way. I am ready and willing to do just that and I am calling on residents to join me."

After years of attempting to affect change from *within* City Hall, today Council President De La Fuente calls on Oakland residents to join him in pushing to change City Hall as he presents a vision and a set of proposals to move Oakland forward. He will continue to work with the Mayor and recognizing the division of powers between the executive and legislative branch of government, he is calling on the people of Oakland to work beside him to help him realize the Oakland he envisioned sixteen years ago when he first ran for office.

"The time is now. Today I present a vision, based on feedback I've received from Oakland residents over many years, and my deep understanding of this City. I invite you to work with me, my office, and the City Council to achieve this vision. Together, we can create:

1. A City Hall that works for you. A City government that is responsive, accountable, and delivers the services we pay for.

2. A vibrant economy with new quality jobs, retail, housing and revitalized neighborhoods.

3. A safe City with increased police service, true community policing, and modern technology.

Here are some of the First Steps I have already taken or will take in the immediate future:

1. Having the responsibility of approving the Mayor's candidate, I strongly encourage the Mayor to hire a City Administrator with a national reputation for excellence ASAP, so that all Oaklanders can be sure their city is being well-managed. No more patronage system, nepotism or cronyism.

2. Introduce an Ordinance to Establish the City of Oakland's Anti Nepotism Policy.

3. Ensure accountability in city operations by implementing a Hiring Practices Audit of the last 24 months.

4. Re-establishing investor confidence in Oakland by ensuring that new planning commission appointees, agency directors, and bureaucratic decision-makers understand that we need revenue growth brought about by economic expansion in order to pay for the services that Oakland needs (like more police, better parks, more affordable housing, and improved infrastructure).

5. Conduct and implement Citywide financial and performance audits that will identify cost savings and reallocate funds to increase our police force without raising taxes.

6. Install GPS in all City vehicles and implement a real-time data monitoring system so we can identify hot spots and trends based on crime stats, and respond effectively.

With a need for strong leadership in Oakland, Council President De La Fuente calls on Oakland residents to stand with him and help him bring focus and leadership back to the City, and to keep our City moving forward with a clear vision and a sense of direction.

"Since I just won re-election, I'm not running for anything, so I have four years to simply work hard for Oakland, the city I've dedicated much of my life to. In the face of some of my own personal challenges recently, I revisited the reasons why I ran for Council 16 years ago. I ran to fix this city because I love it and believe in it, and wanted to raise the quality of life for everyone and that's what I'm going to do. I'm back" said Ignacio in closing.

# # #

Item E-1
Date 5/4/09
Page 38 of 83

ATTACHMENT 5B

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SAN FRANCISCO Business Times

Friday, July 4, 2008

Oakland builders hammer city hall

Goal: Nail development chief Lindheim

San Francisco Business Times - by Blanca Torres

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New vision for waterfront: Rezone for biotech, housing [East Bay]

New vision for Oakland waterfront [San Francisco]

The new Oakland Builders Alliance has started life with a bang, calling on Mayor Ron Dellums to ax the city's top development official.

The group, headed by Oakland developer Carlos Plazola, publicly called on the mayor last week to stop raising taxes on residents, conduct a national search for a new city administrator -- and dump Dan Lindheim, who was directing the city's Community and Economic Development Agency and is now acting city administrator.

"We're going to make (Oakland politicians) listen to us," Plazola said.

The group released its statement at a volatile time for the Mayor's Office. Lindheim was moved to the city administrator slot after the previous person in that job, Deborah Edgerly, was placed on leave for allegations of misconduct and later fired. In his new interim position, Lindheim will oversee the Community and Economic Development Agency.

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5a6d15ea-232f-41ea-8a4d-d335fc2db2e5.Mzk1NDAwMzozOm9QZ3V2WFBMakVh July 7, 2008 6:21PM EST

John, I am adamant about Lindheim being replaced as director of CEDA and now as City Administrator because for us to solve the problems we face as a city, we need to grow our revenue stream and effectively manage our city. I don't see Mr. Lindheim doing this. We should grab coffee sometime and chat. I think if we got to know each other, you'd see my motivations, probably like yours, are based on a strong appreciation for this city. I can be reached at 510-437-9620.

Dorje Drolo, thanks for trying to speak for me but you're incorrect.

Carlos Plazola

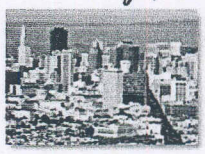
John Klein July 4, 2008 9:48PM EST

Mr. Plazola doesn't say why he is so adamant about Dellums getting rid of Lindheim.

Dorje Drolo July 4, 2008 9:26PM EST

Carlos Plazola is a registered lobbyist in the City of Oakland. He also runs a consulting firm in Oakland and some of his principle clients are developers with large, luxury residential development projects currently in the permitting and planning stages.

SAN FRANCISCO Business Times city guide



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ATTACHMENT 6A

Item E-1
Date 5/4/09
Page 39 of 83

Mr. Plazola, or more correctly, his clients, object to Mr. Lindheim because Mr. Lindheim's (Dellums) approach to development in Oakland are not as "friendly" as the previous mayor's.

Mr. Plazola is also a former staff member of Councilmember De la Fuente, one of the more developer-friendly members of the City Council. It is hardly surprising to see both of them attempting to fill the power vacuum created by Dellums' failed administration.

It will be interesting to see if the Mayor listens to a small group of developers more than to the rest of the residents in the City of Oakland. Those residents belong at the table just as much as any developers or their lobbyist.

Comments 1 to 3 of 3
Page 1 of 1

Welcome John Klein

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BEGINNERS TO BIGSHOTS
Artist draws on microloan, training

The U.S. Small Business Administration armed Joey Johnson with the money and motivation to step out and launch her graphic design business. Johnson formed Graphic Mechanic Design Studio in October 2006, after running the company on the side for nearly a decade.

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ATTACHMENT 6A

Item E-1
Date 5/4/09
Page 40 of 83

The issue of abandonment came up during the JLS Redevelopment plan discussions because we'd just seen the Sierra Condo (3rd/4th/Oak) go but midway through. Luckily, it was only stopped for 6-8 months before someone else came along and bought the unfinished project. But what happened there is that design and other concessions were made for the buyer because the City (rightfully) didn't want to see it sit as an empty, unfinished shell.

3.C hris Kidd on July 7th, 2008 12:45 pm

right, 14th & Jefferson. I am teh stupid.

4. V Smoothe on July 7th, 2008 12:50 pm

There are buildings stopped midway through construction at both 14th and Jackson *and* 14th and Jefferson.

5.J oanna/OnTheGoJo on July 7th, 2008 3:01 pm

Urgh, I just realized that my third sentence said "Jefferson" when I meant "Jackson". Two "J" president streets at the same 14th Street cross. I had heard that the Jefferson/14th project was abandoned, but that the Jackson/14th project had been revived, but have yet to see any sign that it is actually back on track.

The Ellington at 2nd/3rd/Broadway has definately been put on a MAJOR slowdown - they were supposed to have tenants start moving in back in March/April - but they have not abandoned the project. Last I heard (6 weeks ago) was that they had made many interior design changes based on feedback from potential buyers.

The 377 2nd Street/Embarcadero (known informally in the neighborhood as the "Mingles Project") has cleared their legal battles with Mingles (John Ivey et al), but have apparently decided to hold off on starting construction.

The Colony Project (name will probably be changed) at 2nd & Harrison is full speed ahead - it's a Mike Reynolds project. He did a great job with Aqua Via (2nd/Madison) and will undoubtedly do what he usually does and rent it out first, and later take it condo, just as he has done with Aqua Via. (which has not gone condo yet) He won't have to file to go condo later because of how he builds in the first place. I think it's actually a really good idea for working out the kinks.

200 Second Street has not made the 51% mark, but is starting to lease units. So are other properties such as 288 Third, Broadway Grand, and the Jade. Considering that the rental market is still fairly strong and the housing market isn't, this makes sense to me. Plus, some people might move in and decide they want to buy their unit. Or, they'll figure out before buying that this is or isn't the neighborhood for them. (which I see a lot)

6.C arlos Plazola on July 7th, 2008 3:10 pm

It is not that I dislike Dan Lindheim as a human being. He is nice enough, and I'm sure if we drank a beer together, we'd enjoy each other's company. I am an advocate for replacing him as Director of CEDA and now City Administrator because this is exactly the type of thing (Brandywine leaving) that we need to prevent, and I don't believe Lindheim is capable of leadng the charge to restore investor confidence in Oakland.

Dan Cushing, Senior Vice President at Brandywine, was very active in Oakland as the mayor was inagurated and has remained so up until recent days, I assume hopeful that Oakland would partner with him to help him lease up his building and bring a vision to the area near Center 21.

To keep investors interested in Oakland during these challenging times will take 1)valuing them as participants in Oakland's future (I have not seen Lindheim value anyone in the investment community), 2) assessing their needs (haven't seent this either), 3) developing plans that address their needs for the short and long term, and 4) implementing plans to make Oakland continuously viable for them (not seeing much implementation coming out of the mayor's office, period).

We need their investments to grow our budget to provide better services for our residents.

7.Doug Boxer on July 7th, 2008 4:47 pm

It's tough to see the forrest through the trees right now but things will improve.

The downtown area with it's three BART stops will be critical to the future of Oakland. Global warming is going to alter radically our land use planning. This is going to happen quickly. (See today's Wall Street Journal re: Sacramento). The transportation corridors will be key to this change.

Meanwhile the short term might look troubling but we have top-notch developers like Shorentsein, SKS and Swig who have sought or already received entitlements to build Class A office buildings (all will be LEED certified) here. There is momentum here that will be hard to stop.

Keep your chin up!

8. V Smoothe on July 7th, 2008 5:42 pm

I don't think that anyone would argue that our market fundamentals are good, great even, but at some point, you have to look around and ask why nobody is leasing what should be incredibly desireable space. I was as excited about the SKS project as anyone, but they've clearly lost confidence that building on spec in what is probably the best location downtown is a good bet. I'm keeping my fingers crossed that 1100 Broadway happens, but if the project evaporates…well, it wouldn't be the first time.

9.M ax Allstadt on July 7th, 2008 6:44 pm

To this end, we retained the services of the urban planner/architect responsible for master planning 80% of the Vancouver waterfront (which is famous for both its modern development and sweeping and magnificent community benefits and public realms). Together, we developed a proposal to create a Specific Area Plan (SAP) that would modernize our industrial base in the area, create more housing, retail, and office space, and most importantly, raise private funds to complete our waterfront trail, provide 15-20% of all residential units as affordable family units, build day care facilities on site, and possibly even build a new public school. We also proposed to pay for all the infrastructure improvements as well as all the costs for the SAP including EIR costs, planning costs, and outreach costs. Once built out, which would take many years, of course, but would have started in the next economic up-swing, the project would have raised over $100,000,000 for the city in new tax revenues. The delta of the area is such that all this was feasible, and still is.

Indeed, when we approached Dan Lindheim of the Mayor's office with our proposal in mid-2007, we had obtained a commitment from a local double-bottom-line (two bottom lines mandated by their mission: profits and creating social good) investment fund for up to $20,000,000, and we were in serious discussion with a New York based pension fund for investment of another $100,000,000—all private investments into Oakland, in a town used to giving subsidies for major developments. What we offered was to transform the waterfront into a thriving center of activity, with great public realms, with immense revenues for the city budget, at no cost to the city. And we even threw in one final proposition to the Mayor's Office: control. We were so confident we could come up with a widely supported plan that we were willing to give the Mayor's office the authority, through the SAP authorizing legislation, to "turn off the light switch" if it turned out our process was not faring well for the city.

What we received is what Lindheim has become famous for, a level of cynicism and skepticism that drives investors away. He, in effect, killed the deal, the investors walked away, and now the city will pay $2.5 million of its own money for a Specific Area Plan. For Oakland to prosper, it must clean its house and give confidence to investors that the city can manage its own resources effectively, and to articulate a vision for Oakland that creates a road map for growth. The dance of allowing investors to make a fair return, while creating attractive projects that create revenue for the city and significant benefits for the community, is something the next mayoral administration will hopefully do better than the current one. Until then, we have an opportunity to, at least, clean up our house, and be ready for the next wave of interested investors.

Carlos Plazola

7.C hris Kidd on July 31st, 2008 3:58 pm

Carlos,

Great to get your take on the whole Tidewater issue. Tall tales have floated around on that project for over a year and it's nice to get the story straight from the horse's mouth, as it were. Quick question: is the fact that you've already created a design concept for the Tidewater the reason that it will be left out of stakeholder input for the current iteration of

other reasons, her commitment to bring sides together to start talking.)

So, as a result of not being able to meet with Ada, the OBA along with Chinatown leaders, and other business leaders researched Ada's history on land-use decision-making, and used it as a guide to future decision-making, assessed whether it was what Oakland needed at this time, and then came to the conclusion that it was not. So, we shared our opinions with anyone that would listen. Last I checked, democracy includes sharing your opinions with councilmembers and encouraging others to do so.

By the way, I think it is pretty much a consensus now in the business community in Oakland that Dan Lindheim is bad for Oakland, at least as long as he is making decisions that effect economic growth. That the OBA was one of the first groups to boldly express this opinion simply shows that we're willing to lead, even when it is a risk to ourselves.

Carlos Plazola

23. SF2OAK on November 18th, 2008 (2 weeks ago) 11:06 am

Unfortunately our choices are slim for a Mayor- who wants the job- yes I know Perata & IDF but they are too polarizing, and who can get elected. Also unfortunate are the voters in OAK. they elected Dellum's who did just about everything he claimed he would do as Mayor, had no experience running anything, and has been a lobbyist (which one would think would doom the man) but for his opposition he was begged to run and got elected. Then the voters re elected the incumbents on the City Council - and it cannot be a reward for good job performance. I think it's because it is impossible to get a handle on who does what in City Hall- it is not transparent enough. It also doesn't get reported on except for Chip Johnson 2x weekly. I believe enough ineptitude to fill a newspaper.

24. Critical Chris on November 19th, 2008 (2 weeks ago) 6:04 pm

Perata for mayor? The public record of Perata's own (now expired) concealed handgun permit flies in face of his legislative policy efforts to control guns…or does it? I haven't seen the death threats, but what a perfect "bulletproof" (pardon the pun) reason to get a CCW: http://www.ninehundred.net/~equalccw/donperata.gif At least Dianne Feinstein was in the hallway near Harvey Milk's office.

25. Edina Monsoon on November 28th, 2008 (4 days ago) 9:00 pm

Max Allstadt, I googled Oakland Unified School District and the word Ebonics did not show up on the 10 first pages of search results. Regardless of who you support for mayor, why would you make up something like that?

26. Max Allstadt on November 29th, 2008 (3 days ago) 7:35 am

Wups. Try googling OUSD and Quan in the same search. It is admittedly old news, but comically bad judgement is a trait that rarely changes. The latest on Ms. Quan is that she may attempt to push through her friend Ada Chan for Planning Commissioner a third time.

October 1, 2008

OAKLAND BUILDERS ALLIANCE
19 Embarcadero Cove, 2nd Floor
Oakland, CA 94606

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Press Release

For Immediate Release

Oakland Builders Call on City Leaders to view them as Solution to Help Fix Budget Deficit

Increasing hostility toward investors and development projects hampering revenue growth opportunities

(Oakland, CA)--For seven months, the Oakland Builders Alliance has been banging on the door of the elected officials of Oakland, particularly the office of the Mayor, to send the following message:

"Oakland has been sending signals to the investment community, over the last two years, that it is an unfriendly place to do business, and is in danger of increasing its budget deficit in coming years if the leadership does not send a clear message to the investment and building community that they are welcomed, and needed in Oakland."

In a meeting with an advisor to the Mayor three weeks ago, developers in Oakland pointed to project after project that has either been killed or is under threat of being killed by the current administration. The projects discussed in the meeting alone represented over $50,000,000 of potential revenue for the city; revenue the city may never see if leaders don't do more to attract and invite investment into Oakland.

On Tuesday, in the address to the city council on the $42 million budget deficit, Mayor Dellums gave a dire warning that the federal and state governments will not have any money to send to Oakland after the $700 billion bailout, so matters will only get worse for Oakland in coming years. He failed to recognize the need for Oakland's leaders to embrace private investment as a key component of increasing Oakland's revenues.

The Oakland Builders Alliance continues to be baffled by the Mayor's unrelenting dependence on federal and state funds to grow the city when the investment community is being shown the exit door.

Private investment will be the only significant source of new revenue sources for Oakland into the foreseeable future. And investors are increasingly losing confidence in Oakland as a place to do business.

The Oakland Builders Alliance, over one hundred members strong, which represent the small and medium builders, architects, engineers, contractors, and subcontractors of Oakland are calling on Oakland's leaders, during these troubled times, to reach out to the business and investment community and begin to rebuild Oakland's economy by showing the investment and building community that their participation in rebuilding Oakland is not only welcomed, but desired.

Developers have seen project after project killed or delayed at the planning commission or before they even make it to the planning commission. These projects represent real future dollars for the city's budget. The city leaders should look into their own community for solutions, rather than wishing that Washington DC would send them a bag of money.

# # #

EAST BAY EXPRESS

Printed from the East Bay Express Web site:
http://www.eastbayexpress.com/news/letters_for_october_15/Content?oid=845962

Letters for October 15

Readers sound off on Mr. Vapid and Mr. Mayor.

October 15, 2008

"How My Kids Changed Me," Your Words Here, 9/10

PROGRESS?

He may not be "Mr. Vapid" or "Mr. Selfish" anymore but definitely is Mr. Arrogant Bastard.

Alythia Raya, Martinez

"Meet the Mayor," Feature, 9/17

RUN IT OR QUIT TRYING

For those of you who didn't get to read the article about Mayor Dellums ("Meet the Mayor") let me sum it up for you "Mayor Dellums is doing a crappy job." There's some late-breaking news.

When Dellums started as mayor I had two concerns — one, he didn't really want the job; and two, he wouldn't be able to translate his experience as a congressman into dealing with the day-to-day problems of a city like Oakland. While I can only speculate if the first is true, the latter has been obvious to both residents and his own staffers for some time now. And, according to the article, we can now add a third concern — Dellums doesn't know he is doing a crappy job because he "operates in a kind of bubble."

So, Mayor Dellums, if you are reading this letter let me help to burst your bubble — show some leadership and run the city already or just quit! Either way you will be doing Oakland residents a great favor.

Rob Tufel, Oakland

GREAT CONGRESSMAN, HORRIBLE MAYOR

Whether Mayor Dellums takes too much advice from his wife is irrelevant. The mayor has a right to put together any team he wants to help him with the difficult task of running a city like Oakland. Notwithstanding who has been running the show, the fact of the matter is that his administration thus far has been a comedy of errors that has done nothing to combat an

ATTACHMENT 6D

Item E-1
Date 5/4/09
Page 46 of 83

already bad economy and an already high crime rate. This is a shame because he was such a great congressman and if he continues on his current course he may well be one of the most ineffective mayors in Oakland history.

When a politician runs for office he/she has two tasks: First to get elected to the job, then to actually do the job if they are elected. Obviously the mayor was successful in getting elected, but he has experienced disaster in actually doing the job. No one does a job of this magnitude on their own, and the team assembled by Mayor Dellums has not served him well.

The city manager scandal has been well published, but what most people don't know is that behind the scenes the mayor's administration has been driving away business from Oakland by the truckload. Robert Bobb was recently hired by Dellums as a consultant, the one good thing the mayor has done thus far. As part of Mr. Bobb's assessment, he has been interviewing community and business groups. I sat in on one bitch-fest conducted by Mr. Bobb and I was just astounded by story after story in which the mayor's main man, Dan Lindheim, has killed project after project either by design, ineptitude, or indifference.

The City of Oakland is a business. Our products are the various community services: police, fire, senior services, youth programs, etc. Less than half of our income comes from taxes, fees, fines, and grants; approximately 60 percent, comes from money generated by private construction projects. What's that saying, "actions speak louder than words?" The Dellums administration's words say that they want to encourage business in Oakland, but their actions have consistently had the net effect of killing projects. The administration either needs to find a way of replacing the 6 percent that comes from construction or they need to stop killing projects.

The mayor's office has recently put out the public safety plan. This has got to be the lamest response to crime on the face of the Earth. This year my house has been broken into twice and my truck stolen, and I'm sure most people in Oakland have had similar experiences. I have literally lost count as to how many times my car windows have been broken. The business districts are afraid to stay open after dark. Where in the fuck in the public safety plan does it address that? It doesn't. Instead they want to set up a number of touchy-feelie public safety coordinating councils. Just what we need to solve crime, another layer of bureaucracy studying the problem.

When I think of the mayor I am reminded of Michael Jordan at the end of his career when he decided to try out for baseball. Although Jordan is the best basketball player of all time, he was a not very good "AA" baseball player.

Congressman Ron Dellums was one of the best congressmen ever. Mayor Ron Dellums should assemble a new team who knows how to run a city or he is going to be remembered as one of the worst mayors ever. My first choice to run that new team would be Robert Bobb.

Jay Dodson, Oakland

ATTACHMENT 6D

Item E-1
Date 5/4/09
Page 47 of 83

1100 is quite possibly the best project on the table in this town.

A while back I lamented that the proposed CBD design guidelines were a great way to make sure award winning architecture would stay out of Oakland. 1100 violates those guidelines as best as I can tell. Right now, the only project in this town that will get published in a major architectural rag is the Cathedral, and that's only because SOM has pull. It's not really very inspiring, at least on the outside.

Chair Boxer - Speaking of entitlements: vote to extend them! (if you haven't already). We've got so much on the boards that can't be built in this economy, it adds insult to injury if people will have to shell out to re-entitle projects that were already approved.

10. Carlos Plazola on July 7th, 2008 6:55 pm

Doug, agreed. So much potential. Everything's in our favor. Oakland needs strong, visionary leadership to hold steady and put all the pieces together, and then, I sincerely beleive, we can be one of the greatest cities in the world. We have everything going for us.

Max, the Oakland Builders Alliace has recommended language for a three year blanket extension on all entitlements acquired through next year (in addition to the 2 by-right, and 1 year additional extension per letter request) and is working with council to find a sponsor. We believe we have one. We hope to bring it forth in September or October of this year. Stay tuned.

11. Chris Kidd on July 8th, 2008 9:52 am

It's a fine line to walk.

On one hand, it's important to work with projects that are stalled out and under construction to make sure they get completed. Abandoned projects quickly become blight downtown and depress the areas immediately around them. No matter how positively positioned we are as a civic area, enough blighted abandoned projects will absolutely gut downtown. Investors won't want to come in and current tenants won't want to stay. Part of it is even the perception of blight. Most of the reason Oakland has a bad rep is just because people THINK it does. It's absolutely essential that we work with our current business partners to make them feel valued and help them get done whatever is necesary to get their projects finished.

On the other hand, we can't just throw caution to the wind when it comes to development. For all its warts and bumps, I'm still convinced that the current version of the CBD zoning has merit and will help develop our downtown transit corridor in the best way to position it for the future. I'm all for urban in-fill and development, just not in a willy-nilly manner. I also worry about inducing a boom-town effect. Creating more office and residential space is the right thing to be doing downtown, but I worry about reaching a saturation point and having the bottom fall out because too much came online too quickly(especially with our current economy).

So let's walk that tightrope. We should be doing everything we can in the short term to

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OFFICE OF THE CITY CLERK
OAKLAND

08 OCT -2 PM 3:54

CITY OF OAKLAND

ONE FRANK OGAWA PLAZA • 2ND FLOOR • OAKLAND, CALIFORNIA 94612

Council President Ignacio De La Fuente
City Council Member, District 5

(510) 238-7005
FAX:(510) 238-6129
TTY/TDD:(510) 839-6451

October 2, 2008

Re: A Resolution Extending For One Year The Expiration Date Of Permits Issued Under The Authority Of Title 17 Of The Oakland Municipal Code (Planning Code) And Creek Protection Permits Issued Under The Authority Of Chapter 13.16 Of The Oakland Municipal Code That Expire Prior To January 1, 2010

Dear Fellow Council Members:

I am proposing this resolution to help retain investment in Oakland help ensure that projects the City has approved get built. I am proposing that the City grant a one-year extension to all planning approvals granted under Chapter 17 of the Oakland Municipal Code (Planning Code) such as variances, design review, and conditional use permits that expire before January 1, 2010. The same extension would apply to creek protection permits issued under the authority of Chapter 13.16 of the Oakland Municipal Code that expire prior to January 1, 2010. Extensions would not be granted to any property that has been cited as a nuisance property for blight under OMC Chapter 1.12. These extensions would support investment at virtually no cost to the City.

BACKGROUND

Due to the extraordinary real estate market downturn, numerous development projects in Oakland are "on hold" while they wait until the market conditions to improve or until they can obtain financing. During this time, capital is at risk for leaving Oakland, development projects may be cancelled entirely, and properties are subject to becoming blighted. If permits expire during this time, builders have to choose whether or not go through the expensive and laborious approval process again. Instead, builders may choose to leave their land vacant or leave dilapidated structures in place, or even put the land on the market for sale.

The entitlement process for most development projects in Oakland included extensive meetings with City staff, community meetings, planning commission committee meetings, full planning commission meetings and in some instances, City Council meetings. When an entitled project is built, it results in many benefits for the

Item E-1
Date 5/4/09
Page 49 of 83

ATTACHMENT 7B

community and the City. Community benefits include vacant and blighted properties replaced by new construction, cleanup of toxics, new housing units or office space, new jobs, and improve infrastructure and pedestrian amenities. Benefits to the city include property taxes and transfer taxes.

The City has invested great time and energy to attract investment over the last ten years, especially in neighborhoods that were had been severely de-capitalized. Passage of this resolution would cost nothing to the City and show a continued commitment to those individuals, firms and investors that chose to take a risk and invest in Oakland those who are contemplating doing so in the future.

Senate Bill 1185, approved by the Governor on July 15, 2008, provided one year extension to approvals of tentative maps, which in turn allows cities to preserve development applications that are set to expire and that cannot be processed presently due to prevailing adverse economic conditions in the construction industry. While the state has provided an extension on this one limited approval, the City of Oakland has many approvals of a similar nature. This resolution would take an affirmative step to apply the state extension to local approvals.

On October 1, 2008, this proposal was presented to the Planning Commission, who unanimously supported the one year extension.

PROPOSED POLICY

The standard conditions of approval for planning approvals granted under Chapter 17 of the Oakland Municipal Code (Planning Code) have an expiration date. The standard conditions of approval state that approvals expire after two years and can be extended for one year at a time thereafter through a request a request by the applicant and payment of a fee. This resolution would grant an automatic extension and remove the burden from the applicant to apply and pay for the extension for one year.

This proposed resolution would extend by one year all approvals granted by the City per Section 17 of the OMC (Planning Code) and Creek Protection Permits issued under the authority of the OMC Section 13.16 expiring before January 1, 2010. For example, if the expiration date of a permit was July 2009, the permit would now expire in July 2010. All projects remain subject to changes in the building code and approvals from other agencies.

The one year extension shall not apply to properties that have been issued an administrative citation under Oakland Municipal Code Chapter 1.12 (blighted property) or to properties where an administrative citation is issued between the adoption date of this Resolution and January 1, 2010.

The appeal section contained in Oakland Municipal Code Chapter 17.132 applies to the administrative determination and interpretations made pursuant to this resolution.

The resolution states that the City Council may grant additional extensions in the future if economic conditions warrant it.

SUSTAINABLE OPPORTUNITIES

Economic:

The proposed extension would result in increase private investment which would result in increased revenue to the City and jobs. Projects in redevelopment areas produce contributions to the low-moderate income housing set-aside fund.

Environmental:

Due to climate conditions, transportation infrastructure and access to job, buildings in Oakland have reduced environmental impacts compared to buildings in other locations. Additionally, building projects often improve the environmental quality by cleaning up hazardous materials and adding open space.

Social Equity:

Development projects can produce jobs and housing, revitalize neighborhoods, reduce blight, create funding for affordable housing, and improve infrastructure.

ACTION REQUESTED OF THE CITY COUNCIL

Respectfully submitted,

Council President Ignacio De La Fuente

ATTACHMENT 7B

Oakland builders want more time

Approved projects face deadline, fees

De La Fuente

BY BLANCA TORRES
San Francisco Business Times

Oakland developers are counting on the city to give them a blanket one-year extension on the deadline to build approved projects.

The extension would give developers more time to round up financing or wait for the economy to improve enough to build dozens of projects that are sitting in the city's pipeline.

SEE OAKLAND, 88

OAKLAND: Stalled developers seek city extention for approved building projects

CONTINUED FROM PAGE 1

"We have spent a lot of time attracting developers and institutional investors," said Ignacio De La Fuente, president of the Oakland City Council and a proponent of the extension. "It will be absolutely important for us that these projects stay in Oakland."

The City Council will vote on Nov. 4 on the extension. The Planning Commission gave its approval on Oct. 1.

The extension applies to any project with an entitlement that expires before Jan. 1, 2010. Normally entitlements expire after two years, and then applicants can apply for a one-year extension that comes with a fee. De La Fuente's proposal would automatically give entitled projects an extra year without any fees.

But, like putting a small patch on a tire with huge holes, the move does not combat developers' biggest challenges: plummeting home prices and a fractured credit system.

"A year is not enough time, but it's nice," said Kathy Kuhner, who serves on the board of the Oakland Builders Alliance and runs Dogtown Development in West Oakland. "The city can't really help the development community, the economy can. But, extending the entitlements will keep the door open."

The builder's group had lobbied the City Council to grant a three-year extension, but one year seemed more palatable when the plan came before the Oakland Planning Commission and the Community and Economic Development Agency.

One of Kuhner's projects, Hollis 34, a 124-unit live/work development, is one of dozens of condominium, mixed-use and commercial developments approved before the economy took a steep downturn.

Many developers flocked to entitle projects during a building boom spurred on by former Mayor Jerry Brown and his goal of bringing 10,000 new residents to downtown Oakland.

At the time, housing prices rocketed skyward and Oakland seemed like a safe bet. That proved untrue. Median home prices in Alameda County fell 30 percent to $389,500 in September compared with the same month in 2007, according to research from San Diego-based MDA DataQuick, a real estate information service.

"All these builders saw the home prices going up, and everybody wanted a piece of it," said Jon Haveman, a principal with Beacon Economics, a research and consulting firm, who estimates that home prices will continue to fall another 40 percent in Alameda County in the next three years.

"Oakland is overbuilt with condos," he said. "The market will be able to absorb the condos, but it will take time."

Many developers nonetheless want to hold onto their entitlements, which can take a few years and cost millions of dollars to secure.

"I hope (the Oakland City Council) continues to do this year by year until we see a recovery in the housing market," said Bill Lightner, owner and principal of San Francisco-based Lightner Property Group. "This is an important thing that Oakland is doing. If they don't do it, I will never do business in Oakland again."

Many developers like Lightner were lured by Brown's promise that doing business in Oakland would be easier and than in San Francisco.

"We were drawn across the Bay by a progressive government that wanted to see an improvement in its community by offering an olive branch," he said. "This is a way for them to say, 'We meant it.'"

Lightner has two residential developments in Oakland that were approved in 2006. He originally expected to put the units on the market last summer, but decided to hold off on building in early 2007, before the real estate market officially tanked.

"When we looked at the tea leaves, we thought it too risky," Lightner said. "We saw it coming."

Lightner spent $1 million cleaning up the land at one of his projects, a 100-unit residential complex at 2847 Peralta St., and another $1 million on the entitlements plus the cost of the land.

"We're not considering giving it up," Lightner said. "We believe the fundamentals that make West Oakland a great place to live are still there. Moreover, we're to be able to build at starter-home pr

btorres@bizjournals.com / (415) 288-4960

IN THE PIPELINE

Here's a sampling of the largest Oakland projects that would be eligible for an extension.

Project	Developer	Description
3250 Hollis	Lightner Property Group	46 live/work units and 74 residential units.
1919 Market St.	Madison Park Financial Corp.	58 units.
Macarthur BART Transit Village	MacArthur Transit Community Partners	540 residential units and 30,000 square feet of retail/commercial space at 7 acre site between Telegraph, 40th, MacArthur and Highway 24.
Oak to Ninth Mixed Use	Oakland Harbor Partners LLC	3,100 residential units, 200,000 square feet of commercial space, 3,950 parking spaces, 29.9 acres public open space, and 2 renovated marinas at 64.2 acre waterfront site bounded by Fallon Street, Embarcadero Road, 10th Avenue and the Oakland Estuary.
Broadway West Grand Phase II	Signature Properties	2345 Broadway, 367 residential units, 8,500 square feet retail.

ATTACHMENT 1C

Item E-1
Date 5/4/09
Page 52 of 83

Hunt, Michael

From: Amin, Ratna
Sent: Friday, September 19, 2008 9:24 AM
To: Hunt, Michael
Subject: FW: Entitlement Extension Update

Michael,

Please ask Ignacio about this scheduling request. If we are going to have the meeting, then we should do it earlier rather than later because deadlines are approaching for this agenda item.

Thanks.

Ratna Amin
Office of Oakland City Council President Ignacio De La Fuente
510-238-6126

From: Carlos Plazola [mailto[redacted]terralindaservices.com]
Sent: Thursday, September 18, 2008 10:26 PM
To: Amin, Ratna
Cc: De La Fuente, Ignacio
Subject: RE: Entitlement Extension Update

Ratna, we'd like to meet with Ignacio next week about this. Can you please help schedule this?

Carlos

From: Amin, Ratna [mailto:RAmin@oaklandnet.com]
Sent: Thursday, September 18, 2008 5:43 PM
To: 'Carlos Plazola'
Cc: Amin, Ratna
Subject: Entitlement Extension Update

Carlos,

Here is where things stand for the entitlement resolution and it is different than what you sent me originally.

We are working with the City Attorney's office and CEDA.

Schedule:

-Planning Commission Oct. 1st - Director's Report (informational)

-CED Committee Oct. 14th

Policy:

ATTACHMENT 7D

Item E-1
Date 5/4/09
Page 53 of 83

- In addition to the one year entitlement extension you may currently ask for, you can ask for one additional year (total of 4 years). We are working with staff to make Year 3 automatic but they say the permit tracking software doesn't allow for it. We'll keep trying.

- Applies to all projects whose approvals would expire before Dec.31, 2009 (this is not final)

- Make our regulations compatible with SB 1185- the state law that provided 1 year extension on tentative maps.

- Revisit this emergency measure each year to see if it should be extended.

Ignacio does not the support the 3 extra years, and also staff believes that it can open us up to litigation whereas just aligning ourselves with the state extension would be no problem.

Let's talk tomorrow.

Thanks

Ratna

Ratna Amin
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ATTACHMENT 7D

Item E-1
Date 5/4/09
Page 54 of 83

Hunt, Michael

From: Matthew Novak [matth[redacted]k@yahoo.com]
Sent: Tuesday, October 21, 2008 4:34 PM
To: DL - City Council
Subject: Entitlement Extensions Resolution

Dear Honored Councilmembers:

I am writing to ask for your support for the proposed resolution to extend all entitlements in the City of Oakland by one year.

The Oakland real estate market is in a serious recession.

- Oakland has over 6,000 homes is some state of foreclosure
- The median home price in Oakland is down 47% from last year – by far the largest decrease in Alameda County
- Housing starts are down over 65% from two years ago
- Oakland's Unemployment rate is 10.5% , twice that of San Francisco's and 3% higher than the state average

There are many entitled projects in Oakland that cannot be built now due to the current environment. It will be a long time before Oakland recovers from the real estate downturn and we need to make sure that the investment in Oakland that these projects represent isn't lost.

Not only do these entitled project represent significant investment in Oakland, but they also represent a tremendous amount of potential revenue (in the form in increased property tax, transfer tax and city fees) for the City in the future.

Extending the entitlements of the these projects will cost the city virtually nothing, but allowing these projects to risk losing their entitlements could cost the city thousands of dollars in revenue.

If one 24 unit townhome project is delayed 6 mo. it will cost the city over $32,000 in lost revenue (delayed fees and taxes). City staff estimates that there are approximately 700 units affected, which represents almost $1,000,000 in cost to the city if these projects are delayed and even more if they are not built.

Thank you,

Matthew Novak

ATTACHMENT 7D

Item E-1
Date 5/4/09
Page 55 of 83

Hunt, Michael

From: Carlos Plazola [[redacted]services.com]
Sent: Wednesday, October 15, 2008 9:54 AM
To: Amin, Ratna; 'Matthew Novak'
Cc: De La Fuente, Ignacio; Schoenberger, Lupe (was Valdez)
Subject: RE: CED committee today - approval extensions

Ratna, our leadership is, once again, missing the forest for the trees, and generally, in the past, Ignacio has stepped up to put this kind of short-sighted thinking in its place. I am hoping he will start doing so on this issue soon.

In short, what the hell difference does $35K make in the grand scheme of things when we're talking about millions and millions of potentially lost revenues if the city allows entitlements to expire. I am having a really hard time watching this train wreck as Eric Angstadt is allowed, for purposes of his own desire to control things, to dictate the direction we go in, to the long-term detriment of Oakland. Read mine and Matt's posts on this blog: http://www.abetteroakland.com/delay-everything-a-year-and-hope-it-gets-better/2008-10-14#comment-12206.

We will send people the hearing next Tuesday, but at some point, Ignacio has to get in there and throw elbows on our behalf, but since we're not allowed to even meet with him on this issue, I won't hold my breath.

You all do your part, and we'll do ours.

Carlos

From: Amin, Ratna [mailto:RAmin@oaklandnet.com]
Sent: Wednesday, October 15, 2008 9:17 AM
To: 'Matthew Novak'
Cc: 'Carlos Plazola'
Subject: RE: CED committee today - approval extensions

Thanks Matt,

The speakers were very helpful yesterday – the anti-development strain/skepticism continues to exist and it was a key opportunity to get some information out about the current conditions for builders.

I was thinking about the lost revenue issue last night – and I think that the $35K possible revenue from the extension fee is not lost- its just delayed by one year. Also, the extension fee is a fee-for –service, not a way to generate "profit" for the City. John Klein has been raising these questions but I think at the end of the day, he has a totally different philosophy about development than most council members (I think he doesn't care if projects get built and sees developers as a source of revenue).

I think the idea of adding impact fees is absurd- if the projects don't pencil out now to build, how will they pencil out with fees? All the more reason to get your message out on an on-going proactive basis in my opinion. So, it would be wonderful to have speakers again on Tuesday to get the message out and any information on the lost benefits to the community and lost monetary benefits to the City would be great too.

ATTACHMENT 7D

Item E-1
Date 5/4/09
Page 56 of 83

Best,
Ratna

Ratna Amin
Office of Oakland City Council President Ignacio De La Fuente
510-238-6126

From: Matthew Novak [mailto[redacted]
Sent: Tuesday, October 14, 2008 6:32 PM
To: Amin, Ratna
Cc: Carlos Plazola
Subject: Re: CED committee today - approval extensions

Ratna:

Please let me know if you need anymore help on this before Council and please let me know when it is going to be on the agenda. I am responsible for marshaling the troops (speakers) on this one and don't want to miss it.

Since Nadel and Brunner seemed to be concerned with the loss of "extension fees" I will be prepared to talk about the lost revenue if one of these projects doesn't go forward or is delayed 6 mo.

Thanks again for your help,
Matt

----- Original Message ----
From: "Amin, Ratna" <RAmin@oaklandnet.com>
To: Matthew Novak <matth[redacted]@yahoo.com>; "kathykuhner@[redacted]"
<kathykuhner@[redacted]>
Sent: Tuesday, October 14, 2008 12:38:04 PM
Subject: CED committee today - approval extensions

Hi Matt and Kathy,

Are you coming to speak at CED committee today (4pm, Hearing Room 1)? I think it will be helpful if you are there - to get the one year extension, and then see if there is support or 2 or 3.

Thanks,

Ratna

Ratna Amin
Office of Oakland City Council President Ignacio De La Fuente
1 Frank Ogawa Plaza 2nd Floor
Oakland, CA 94612
510-238-6126
ramin@oaklandnet.com

www.idelafuente.com
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ATTACHMENT 7D

Item E-1
Date 5/4/09
Page 57 of 83

Hunt, Michael

From: Jay Dodson [mestizo@earthlink.net]
Sent: Tuesday, November 18, 2008 2:13 PM
To: De La Fuente, Ignacio
Subject: Entitlement Extensions

Hi,

I am writing to urge you to vote for entitlement extensions which is on tonight's agenda. We believe that there needs to be a clear message that Oakland wants all of the previously approved projects to get built, recognizing that the current economy makes it difficult to get some of the projects started this year.

Thank you for your consideration.

Jay Dodson, Hispanic Chamber of Commerce

Jay Dodson, President

Mestizo Construction

19 Embarcadero Cove, 2nd Floor

Oakland, CA 94606

Mobile:510.[redacted]

Fax: 1-866-617-4776

www.mestizoconstruction.com

ATTACHMENT 7D

Item E-1
Date 5/4/09
Page 58 of 83

Hunt, Michael

From: Frank Flores [Frank@MPFCorp.com]
Sent: Tuesday, November 18, 2008 2:02 PM
Subject: Entitlement Extensions

Oakland Councilmember's:

I am writing this afternoon to express our support for the issue of entitlement extensions. Each week the news of our economy make it clear that we have a long way to go before many of the currently entitled projects find the funding to start them. These projects, many of which are ours, must be permitted to survive through these rough times, to live on and to be built to house Oakland residents, provide them places of employment, and to Move Oakland Forward.

I urge you to vote in favor of ample extensions for entitled developments in order to keep them on 'life support' until the local, national and global economies takes a turn for the better.

I thank you in advance for your vote tomorrow night to **extend the right of entitled projects.**

Thank you,

Frank Flores
Director of Development

Madison Park Financial Corporation
409 13th Street Suite 800
Oakland, CA 94607
(510)452-2944 ext 16 |OFF|
(510)[redacted] |CEL|
(510)452-2973 |FAX|
www.mpfcorp.com

ATTACHMENT 7D

Item E-1
Date 5/4/09
Page 59 of 83

Hunt, Michael

From: Avila, Aileen [AAvila@[redacted].com]
Sent: Tuesday, November 18, 2008 1:53 PM
To: Nadel, Nancy; Brunner, Jane; Kernighan, Pat; Reid, Larry; De La Fuente, Ignacio; Brooks, Desley; Quan, Jean; cityochang@aol.com
Subject: Entitlement Extensions

Honored Councilmembers:

I am writing this afternoon to again express support, as I did at the CEDA Committee meeting last week, for the **entitlement extensions. T**he events of each each passing week make it clear that we have a long way to go before we see the many entitled projects--some say 400, totaling who knows how many thousands of units, both larger developments and mom-and-pop duplexes and fourplexes--get built when the time is right. These projects **must be allowed to stay alive** through these rough times, t**o live on** and to be built to house our citizens, provide them places of employment, and to Move Oakland Forward.

I urge you to vote for th**e <u>most sweeping extension to entitlements possible.</u>** The more all-encompassing the extension, the louder the message that Oakland sends to the Bay Area and he whole state: "We are still here, we are going to weather this storm, and we want you--and new developers and their projects, as things ease up---to come to Oakland, to stay in Oakland, and to help us make our fine city all the better. That will be the message, and you can bet it well get attention--positive attention throughout the state. W**e aren't just sitting here--we're DOING something.**

I thank you in advance for your vote tomorrow night to **affirm and extend the right of entitled projects to continue to exist and get built in Oakland,** rather than **dying on the vine** at **huge financial and social cost** to our communities. Thank you.

Aileen Avila
Mobile: 925 580-[redacted]
Email: aileenvavila@[redacted]

ATTACHMENT 7D

Item E-1
Date 5/4/09
Page 60 of 83

Hunt, Michael

From: kleinjohne@[redacted]
Sent: Tuesday, October 14, 2008 7:18 AM
To: Reid, Larry; De La Fuente, Ignacio; cityochang@aol.com; Brunner, Jane
Cc: Lindheim, Dan
Subject: Entitlement Extensions

Dear Council members:
I oppose the legislation to provide automatic entitlement extensions and to forego fees to developers in Oakland. There is no good justification for it and it is bad for financial reasons. With a deficeit of $42 million, why are you giving up this revenue source? You are closing libraries, cutting staff, and closing City offices, but why are you giving up this source of revenue for the City?

In part of Mr. De La Fuente's letter accompanying the legislation, renewing entitlements is called "expensive" yet in a different part of Mr. De La Fuente's letter, it says this legislation will cost the City "nothing." Which is it? If it is expensive, who is it expensive for, and to whom are the expenses paid? If it is the City who receives any money for renewing entitlements, how can you possibly justify this loss of revenue?

It would be greatly appreciated if you could provide information about the cost of renewing entitlements:
1. How many requests for extensions are received by the City in a 1-3 year period?
2. What is the amount of revenue generated for the City in the process?
3 How much money will the City be losing it this legislation is adopted?

Thank you.

John Klein

ATTACHMENT 7D

Item E-1
Date 5/4/09
Page 61 of 83

Gray, Neil D.

From: Carlos Plazola [cplazola@terralindaservices.com]
Sent: Tuesday, June 10, 2008 2:16 PM
To: Gray, Neil D.; 'Colbruno, Michael'
Cc: Angstadt, Eric
Subject: ZUC direction

Neil,

I'm also sending this to Michael Colbruno as the chair of the ZUC so I don't misquote anyone or misstate anything, or so I may be corrected if I am wrong.

I remember that at the last two ZUC meetings on the subject, the commissioners specifically mentioned that they did not want height limits downtown. In fact, I thought that the final direction from the ZUC in the last meeting was to state that they did not want height restrictions downtown, or at least remove the height limits from the Subarea A by bringing it into Area 5 or 6.

Am I wrong? If so, please correct me.

Carlos Plazola

From: Gray, Neil D. [mailto:NGray@oaklandnet.com]
Sent: Tuesday, June 10, 2008 1:40 PM
To: Carlos Plazola
Cc: Angstadt, Eric
Subject:

Hi Carlos,

I don't think we have heard clear and specific recommendations from the ZUC. We have heard generally that the height regulations should be loosened, particularly in Chinatown, and we gave the ZUC a set of alternatives and recommendations to evaluate. These were the alternatives/recommendations shown in the presentation last night. Nearly all the alternatives increased the initially proposed height maximums; alternatives were also provided that would greatly expand no height limit areas. Unfortunately, the ZUC ran out of time at their last meeting to discuss the different alternatives.

What specific input from the ZUC are you referring to?

Let's have the meeting at our office at 2:00. I'll reserve a conference room.

See you tomorrow.

Neil Gray, Planner III
Strategic Planning
Planning and Zoning
City of Oakland
(510)238-3878

ATTACHMENT 8A

Item E-1
Date 5/4/09
Page 62 of 83

Gray, Neil D.

Subject:	Planning mtg with OBA (X3878)
Start:	Wed 6/11/2008 2:00 PM
End:	Wed 6/11/2008 4:00 PM
Recurrence:	(none)

ATTACHMENT 8A

Item E-1
Date 5/4/09
Page 63 of 83

Eric
Neil
Alicia
Dan

OBA Carlos Plazola
J. De Credico, architect
DAVID Zehnder, EPS
Owen Lang, Sasaki

6/11/08 (1)

June 19th recommend / discuss w/ members

OBA = small med bldrs, engineers architects
pick certain areas to become involved w/
work/live
industrial } take interest in these topics
CBD

→ how was proposal developed
→ then ~~when~~ they will report back to OBA about our approach + whether they support it

Eric → OBA can develop term sheet, then own ~~ZUC~~ zoning proposal + will forward to ZVC

- right now we are still refining proposal
- CALM - lake merritt interest group will give us their proposal
  5 stories w/ in 300' of lake; we will forward to ZVC

OBA Baseline ~~goals~~ goals vision driving zoning decision in oakland

ATTACHMENT 8B

Item E-1
Date 5/4/09
Page 64 of 83

OAKLAND BUILDERS ALLIANCE
19 Embarcadero Cove, 2nd Floor
Oakland, CA 94606

Board of Directors

Carlos Plazola, Chair
Terra Linda Development

Kathy Kuhner, V. Chair
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John Bacon
Economy Lumber

Joe DeCredico
GDeS Architecture

Jay Dodson
Mestizo Construction

Tom Dolan
Thomas Dolan Architechture

Charlie Hahn
Hahn Development

Adam Howard
Bank of Alameda

Jose Jimenez
West Coast Electric

Clinton Killian
Real Estate Attorney

Kirk Miller
Kirk Miller Affiliates

Shauna O'Connor
Bank of America

Andy Read
Caldecott Properties

Joseph Sarapochillo
Sarco Construction

Central Business District Zoning Update Comments

Prepared on behalf of the Oakland Builders Alliance

The Oakland Builders Alliance (OBA) is pleased to respond to the call from the Planning Commission and City Staff for constructive comments on the draft zoning update for Oakland's Central Business District. Before defining our specific recommendations, it is important to outline the context in which these recommendations are put forward.

Livability, Prosperity, Sustainability

These three words form the foundation of many successful downtown planning strategies and they are equally valid in Oakland. We are at the beginning of a process that will define how we move forward as a City, a cultural model, and as a dynamic regional jobs and commercial center. We understand that this zoning update is necessary to develop consistency with the General Plan. However, the General Plan is 10 years old, and is becoming increasingly distant from the urban challenges facing us today.

Therefore, it is our recommendation that although we need to update the zoning at this time, we must begin a Citywide process, similar to those going on in Chicago, Vancouver, Portland, Seattle, San Diego and many other successful metropolises to define the vision of our Central Business District in specific terms as it relates to the fundamental principles of building on our inherent strengths to create and sustain a great city. To this end, we make recommendations and comments here on the current zoning update proposal before us, but strongly recommend that the city view the current zoning update effort as a short-term solution to bring the zoning and general plan into conformance, recognizing that to create a truly thriving, walkable, safe downtown, a comprehensive re-visioning process is necessary, and should be initiated as soon as possible, as part of this process.

Many initiatives have already been undertaken to upgrade and update facades, to improve pedestrian access and safety, and to encourage redevelopment, yet much of the information is decades old, difficult to access, and uncoordinated.

We realize and applaud the extensive hours and energy that staff has devoted to this zoning update and that this zoning update is a living ordinance that will require periodic adjustment and will most certainly be affected by the upcoming Upper Broadway Specific Plan, as well as a Specific Plan for the Lake Merritt BART Station. Both of these initiatives have the potential to define strategies for development catalyst proposals that will strengthen our downtown core transit mixed use nodes, enhance affordable housing opportunities, and provide a predictable framework for development interests. However, we believe that it is imperative that the multiple studies and plans that have been undertaken over the past 20 years be evaluated, updated, and coordinated with this zoning update so that we present a consistent, understandable direction that encourages creative, environmental and social conscious development proposals.

It is the OBA's intent to commit our experience and resources as a partner in shaping the future of the City we have chosen to make our home. As homeowners, business owners, and advocates, there are several items in the proposed Central Business District zoning update we wish to address.

The life of the City in ms of its social vitality and retail success ndamentally dependent upon the quality of its most important public open space, the street. Time tested planning principles that support the creation of great streets include; permeability, pedestrian scale, active uses, safety, and environmental quality. The size, placement and character of the buildings lining the street play a critical role in supporting these planning principles, as does the quality of the streetscape improvements themselves. Our goal in these recommendations is to increase the quality of our streets to attract active commercial interests, provide a safe environment, maintain a scale that is pedestrian friendly and allows sunlight to reach sidewalks and public open spaces.

Street Wall

This is the height of the building that is allowed at the street edge of the property and, along with the street width, is the primary definition of the street's scale. The current proposal generates street wall heights based on the defined areas without regard to the width of the street. We propose that three criteria be considered in the definition of the street wall. These three criteria are: the width of the street, the neighborhood context, and the area.

Wide streets in a primarily commercial area will be successful with taller street walls. Narrower streets require street wall heights that create a comfortable, light filled pedestrian scale. Regulating street wall heights, based on arbitrary zones without regard to street widths significantly limits the ability to create successful streets. This does not mean that some buildings with design and environmental significance that differ from the street wall height regulations should not be considered. It means that the quality of the street must be carefully considered in relation to the development proposal to ensure the proposal contributes to the livability, prosperity and sustainability of the neighborhood and the City.

In the current proposal, the language associated with Property Development Standards, Additional Regulation 3 needs to provide graphic, descriptive development standards that describe how buildings can be set back from the street to create additional space for cafes and plazas. This needs to be coordinated with building entries, and permeability issues related to amount and type of glazing, as well as interior and window signage. In addition, it should be coordinated with planned or proposed streetscape improvements.

Sky Exposure

The artificial limits defined by FAR, density ratios, and height limits do not preserve the sky exposure necessary for healthy public streets, at the density we are encouraging. Instead of using these arbitrary measures, a set of form-based mechanisms need to be put in place and provide guidance for sky exposure. In San Francisco, a minimum distance between building mass over 110' in height is used. In the New York City model, a slope plane model is utilized.

Examples under the slope plane model:

Example 1: a building in a high density commercial zone on a wide street is allowed a street wall of 85' and a slope plane of 7.6:1. On a 10,000 SF lot (100' x 100'), a tower set back 20 feet from the street wall would be allowed a height of 152' for an overall building height of 237'. Assuming a 100% lot coverage of the base and 20' side and rear setbacks for the tower for light and air, the gross square footage for the 7 story base would be 70,000 SF and the 13 story tower would be 19,200 SF for a total building area of 79,200 SF or an FAR of 7.92.

Example 2: a building in a high density commercial zone on a wide street is allowed a street wall of 85' and a slope plane of 7.6:1. On a 40,000 SF lot (200' x 200'), a tower set back 50 feet from the street wall on both streets would be allowed a height of 380' for an overall building height of 465'. Assuming a 100% lot coverage of the base and no side setbacks for the tower for light and air, the gross square

footage for the 7 story base would be 280,000 SF and the 38 story tower would be 680,000SF for a total building area of 960,000 SF or an FAR of 24.

The zoning update should both encourage density in designated areas, and shape the density to preserve the quality of the neighborhood and street. Oakland needs to look at this methodology in a comprehensive manner. Creating artificial FAR and height limits effectively encourage greater mass and put pressure on developments to 'fill out' the site with massive buildings, rather than create slender, well spaced towers. Therefore, we support unlimited height limits in all but the historic Old Oakland District, and instead, ask staff to generate a methodology that encourages density, respects the neighborhood context, preserves the quality of the street, and generates a beautiful skyline of slender towers. There are multiple examples of this strategy.

Vancouver

Chicago

We agree that the entire lake front should continue to be open, public space. In Subareas A and 2B, we believe that well spaced thin towers will not detract from the overall experience of the lake, nor will they diminish the existing multi-family residential and commercial mixed character. Rather, this type of development will enhance varied character of the vistas across the lake, and will create a physical link between the lakefront and downtown placing additional emphasis on Snow Park as an urban public open space.

Transit Oriented Development

Under the current proposal, there is little incentive to generate additional density around transit nodes. Our understanding is that the City is preparing to engage specific plans for both the Lake Merritt BART and Broadway corridor. These Specific Plans should encourage incentives for additional density adjacent to the BART stations, particularly as it relates to jobs generation, retail development, and affordable housing needs. This should include reducing parking requirements for residential development.

Because these initiatives are in their early conception, we will limit the extent of our input to that of fundamental support for significant increased density at transit oriented developments, particularly as it relates to the encouragement and incentivizing of work force and low income housing within walking distance to transit centers.

Residential Density Methodology

The retention of a "Maximum Density" for dwelling units regulated by lot square footage is an arbitrary density limiting device that should be excluded from the proposal. If the intent is to generate a minimum standard for quality livable units, the proposal should regulate general minimum standards for unit sizes. Market forces will determine viable bedroom counts for market rate housing. For workforce and low

income units, specific demographic information must be obtained in order to provide units that are appropriate to our residents' needs.

One-Family dwellings, One-Family dwellings with a secondary unit, and Two-Family Dwellings do not promote the level of density appropriate to the Central Business District. All new housing in the District should be multi-family. Existing one- and two-family dwellings, ones should be allowed as legal, non-conforming, and structures determined to be historic resources should be maintained.

In addition, Rooming Houses should be Conditionally Permitted and should not be evaluated on a lot density square footage criteria, but rather on quality of life criteria carefully crafted with qualified socio-economic and development professionals.

Signage

Regulating signage is critical to permeability at the street level and in developing a beautiful downtown. Garish and haphazard signs, as well as businesses whose storefronts are plastered with signs creating a solid wall, send a powerful message and are significant contributors to community blight. We feel that signage must be a conditionally approved use, subject to development standards and strict enforcement measures that will maintain the quality of the street and clearly define the parameters for both external and internal signage. Oakland's current Municipal Code Chapters 14 and 17 are not adequate tools to support a vibrant commercial district. A clear, graphically represented development standard is necessary and must accompany the zoning update.

Commercial Uses

It is important to understand that the Central Business District is not like other neighborhoods in Oakland in that density is important, ground floor commercial is important, and active streets are important. Allowing housing blocks in the district that create a solid ground floor wall with stoops every 30'-40' does not contribute to active streets. Block long parking structures that form a solid wall do not contribute to active streets. Numerous examples of these conditions exist in Oakland and would continue to be an available alternative to development interests. A comprehensive commercial development strategy, neighborhood by neighborhood, must be the foundation on which any zoning use criteria are based. We recommend that as part of the longer-term effort of re-visioning the downtown, staff develop a commercial development strategy, neighborhood by neighborhood, for the downtown area.

Zoning Areas

Defining zoning areas, particularly under the proposed methodology, raises questions of appropriate boundary designation and character generalization. An example of this is the land surrounding Snow Park. To the North and West are some of Oakland's signature towers, and to the South are several multi-story, multi-family residential buildings. Where one draws the line from one Area to another is ultimately arbitrary, and at the same time, economically significant to existing owners, development interests, and the City. All Cities who utilize traditional zoning methodologies grapple with this issue and it continually leads to difficult decisions based on subjective criteria. The current proposal is subject to continual challenges as "down zoned" properties on one side of a street seek to gain the same entitlements as properties on the opposite side of the street. The history of conventional zoning ordinances tells us first that this type of challenge is inevitable and divisive, and second that it is economically arbitrary and counter productive to creating dynamic neighborhoods.

Our recommendation is that Oakland not rely on arbitrary areas or zones, but rather consider the character of the neighborhoods, streets, and uses to encourage particular types of development. This can occur either in this immediate short-term zoning update effort, or as part of a longer-term re-visioning of the downtown.

Historic Resources

We are keenly aware of the value of Oakland's historic resources, including buildings and public spaces. With the exception of the Old Oakland District, we do not agree with designating zoning areas in deference to these valuable historic resources. New development in Oakland will necessarily need to consider its relation to historic buildings or public open spaces. A major success in this area is the proposal at 1100 Broadway with the Key System Building. A zoning strategy that is consistent with the character of the neighborhood and the street will provide a sound basis to establish a street wall height and setbacks such that our historical resources contribute to a sum that is greater that each individual part. Each individual historically certified building and public open space was an important part of Oakland as a growing City, and our proposal is not to diminish that importance, but rather to place it in the context of a valuable resource in the evolution of our City.

Collective Strategy

We have all said and heard two phrases about Oakland. First, Oakland is not like any other place, and that is why we choose to live here. Second, that Oakland has great potential. We have heard the second phrase for way too long. We support the City and staff in creating an interim zoning update incorporating the specific suggestions in this document. We also call for the City to engage a multi-disciplinary team to craft a general plan update and zoning strategy for the downtown area of Oakland that fully incorporates the current realities and future potential of the City we work and live in.

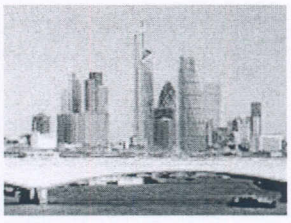
Ultimately, we believe this is pointing to the need for creation of a Form Based Code or hybrid incorporating a Regulating Plan, Public Space Standards, Building Form Standards, a clearly defined application and review process, and a comprehensive glossary of definitions and graphic examples to ensure precise use of the code and create a common language for evaluating development proposals.

This is in direct contrast to the conventional zoning methodology. It will require us to think about the City we want to be, and define the terms of how we get there rather than characterizing arbitrary limits that inhibit the economic and social vitality we are trying to achieve.

Because there is no City like Oakland--with our diversity, our climate, our port, our transportation systems, and our regional position--how we envision our City and plan for it's future cannot, and must not, fit into a decades old model of zoning development. Our staff and our leaders need to have the courage and support to reinvent how we shape our city in light of our attributes, our needs, and a vision of the future.

Singapore

San Diego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February 9, 2009

VIA E-MAIL ONLY

Dan Purnell, Esq.
Oakland Public Ethics Commission
One Frank Ogawa Plaza
Oakland, CA 94612

RE: Carlos Plazola and the Oakland Builders Alliance

Dear Dan:

We have been retained by Carlos Plazola and the Oakland Builders Alliance ("OBA") in connection with the Public Ethics Commission's investigations into whether Mr. Plazola, a "local government lobbyist," should have registered OBA as a "client" under the City's lobbying law. (Oakland Muni. Code section 3.20.010 et. seq.) We plan to appear at the Commission meeting this evening to present our position to the Commissioners that City law does not, and should not, require volunteer members of a nonprofit organization's board of directors to register as lobbyists, and also does not, and should not, require lobbyists to register a nonprofit organization as a client if they lobby City officials as a volunteer member of the nonprofit's board. We appreciate you sending this letter, which summarizes our position, to the Commissioners before the meeting.[1]

In short, we propose that, instead of pursuing these investigations of Mr. Plazola's volunteer activities, the Commission should commence a policy discussion about whether the

---

[1]As a preliminary matter, we note that our comments apply equally to the allegations in the complaint filed by Mr. Klein regarding Mr. Plazola's contacts with City officials regarding a Planning Commission appointment and certain land use matters, as well as to the possible staff-initiated investigation into Mr. Plazola's meeting with Councilpersons last September. In other words, our comments are intended both to convince the Commissioners that they should not proceed with an investigation into the September 2008 meeting, and also to convince you to close your investigation into the allegations raised in Mr. Klein's complaint.

City should require unpaid board members of nonprofit organizations and other volunteers to register as lobbyists, and that the Commission should only go after volunteers and other unpaid lobbyists if it decides to amend the law to clearly delineate such a filing obligation.

1. The language of the law does not cover volunteer nonprofit board members.

The legal question at issue in both the pending and potential investigations of Mr. Plazola is actually rather narrow: whether the word "salaried" in section 3.20.030(D), describing the second test for qualifying as a lobbyist, applies just to the word "employee," or also to the words "officer or director of any corporation, organization or association." We believe that the word "salaried" clearly applies to all three types of individuals; i.e., that officers and directors of for-profit and nonprofit organizations only qualify as lobbyists, and must only register a nonprofit organization as a client, if they are paid to lobby on behalf of the organization.

Most notably, any common sense reading of the law would apply an adjective placed before three nouns to all three nouns. Several court cases have in fact confirmed this reading of these types of statutes. (See, e.g., Ward General Ins. Services, Inc. v. Employers Fire Ins. Co. (2003) 114 Cal.App.4th 548, 554 [first adjective in series of nouns or phrases modifies each noun or phrase in the series]; United States Fid. & Guar. Co. v. Fireman's Fund Ins. Co. (6th Cir. 1990) 896 F.2d 200, 203 [insurance policy which covered "any negligent act, error or omission" only covered negligent conduct]; Lewis v. Jackson Energy Cooperative Corporation (Ky. 2006) 189 S.W.3d 87, 91-92 [applying same rule to interpretation of state law].) If the City had intended the law to apply to employees who are paid, and directors and officers of nonprofits who are paid or unpaid, we believe that it would have drafted section 3.20.030(D) differently, perhaps as "salaried employee, or salaried or unsalaried officer or director, of any corporation, organization or association."[2]

---

[2]You posit in your 1/5/09 staff memorandum titled "Analysis Of Key Terms In The Oakland Lobbyist Registration Act" that the word "salaried" does not apply to the terms "officer and director" because officers and directors of nonprofit organizations are typically not on salary. We disagree. Even though most nonprofit organizations do not pay their officers and directors, large charities and trade associations sometimes do have salaried officers and directors. In addition, the law also uses the terms "officers and directors" in the context of for-profit entities, and corporations and banks have dozens of officers who are on salary.

2. No other major California jurisdiction requires reporting of volunteer activity.

What makes this possible interpretation of the law so implausible is that the lobbying laws on the federal level, on the state level, and in every major jurisdiction in California which has a lobbying law, exempt volunteers.[3] For policy and legal reasons, all of these jurisdictions have chosen not to require volunteers to register as lobbyists – and we believe that Oakland should do the same.[4]

We do not believe that the law can or should be read so narrowly or in such a vacuum. Most notably, one could argue that the term "salaried" is not even needed to describe the term "employee," because the term employee presumes that the person is being paid. In other words, if the City really wanted the law to apply to employees who are paid, and officers and directors of nonprofits who are paid or unpaid, it would not have had to include the word "salaried" at all, because all employees of an organization are by definition paid. If the Commission were to take this narrow approach to reading the law, one could also argue that the term "salaried" only covers full-time employees paid on a salaried basis, thereby exempting any employee of a nonprofit, trade association or business paid on an hourly basis, or working for the nonprofit or business as an independent contractor.

[3]We have attached behind Tab 1 the applicable portions of the federal lobbying law (2 U.S.C. section 1602 (10)), the state lobbying law (Cal. Govt. Code section 82039 & 2 Cal. Code of Regs. Section 18239), and lobbying laws in San Francisco (S.F. Camp. & Govt. Conduct Code section 2.105(i)(1)-(3)), San Jose (S.J. Muni. Code sections 12.12.020(J) & 12.12.180), the City of Los Angeles (L.A. Muni. Code section 48.03(c)), the County of Los Angeles (L.A. County Code section 2.160.010(D)), the Los Angeles Metropolitan Transportation Authority (Cal. Pub. Util. Code section 130051.18(a)(11)), and San Diego (S.D. Muni. Code section 27.4002).

[4]You claim in your 1/5/09 staff memorandum that the lobbying laws in Canada, North Carolina and Miami-Dade County use the same qualification thresholds as Oakland's law, implying that these jurisdictions require volunteer lobbyists to register and file reports. Although we are not familiar with these laws, we note that the "Guide to Lobbyist Registration in Miami-Dade County" put out by the Clerk of that County's Board seems to state that most if not all unpaid lobbyists are exempt from that law (Tab 2), and that the North Carolina law only applies to individuals who are compensated (Tab 3).

The staff memorandum also indicates that Oakland evidently used San Jose's lobbying law as a template when it first adopted the lobbying law in 2002. Although San

3. The Ethics Commission has never advised in writing that volunteer members of nonprofit boards must register as lobbyists.

Neither the "Guide to Lobbyist Registration in the City of Oakland" (Tab 4), nor the instructions on any of the lobbying forms (Tab 5), nor any other materials published by the Ethics Commission, advises citizens that the lobbying law may cover volunteer members of nonprofit boards who contact City officials on behalf of the nonprofit.[5] Given the number of board members of local charities and trade associations who meet with City officials or testify at public hearings on a regular basis, and the fact that such an interpretation would treat these volunteers differently than volunteers who lobby in any other major California city or on the state or federal level, we believe that the Commission would have called out this interpretation and/or included a separate question on this issue in its Guide if the law really was intended to cover volunteer activity.

Not only do none of the materials published by the Ethics Commission give any hint that the lobbying law may cover volunteers, all of these materials imply very strongly that the lobbying law only covers compensated activities. For example, the very first paragraph of the Guide describes the law as covering "professional lobbyists," and the section of the Guide which outlines the two qualification thresholds similarly states that a person must register if his or her "professional activities" satisfy one of the thresholds. (Emphases added.) In addition, a later section describes a lobbyist's "client" as "the lobbyist's employer, or a person or organization that contracts with the lobbyist to be an independent contractor." (Emphases added.) We do not believe that someone who volunteers to sit on the board of directors of a nonprofit organization and who talks to City officials on behalf of the organization would ever

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Jose's lobbying law has been amended several times since 2002, and although we do not know how the version in place in 2002 defined the term "lobbyist," we note that the current version of the San Jose law explicitly exempts "uncompensated members and uncompensated members of the board of directors of nonprofit organizations." (See Tab 1.)

[5]Although one of the "Practical Questions" in Section V of the Guide addresses whether "members of neighborhood groups" have to register, it answers that they most likely do not have to register because "neighborhood groups are not organized to the point that would qualify its members as 'salaried employees, officers or directors.'" In other words, members of a neighborhood group do not have to register as lobbyists because these groups typically do not have "officers or directors." This question therefore does not answer the question of whether someone who is actually an officer of a neighborhood group, whether compensated or not, would have to register.

say that they are acting as a "professional," and would certainly never refer to him or herself as being "employed by" or "under contract with" the nonprofit.

4. Requiring volunteer board members of nonprofits to register would raise constitutional issues.

As you know, lobbying is protected under the First Amendment as the "right to petition the government for the redress of grievances." The City may therefore only regulate lobbying activity if the regulation is justified for some public policy reason, and if the regulation is narrowly tailored to meet that public policy goal. (See, e.g., U.S. v. Harriss (1954) 347 U.S. 612.)

Although courts have never, to our knowledge, specifically addressed the issue of whether a law requiring volunteers or unpaid citizens to register as lobbyists would violate the constitution (but of course, no jurisdiction has ever, to our knowledge, ever tried to enforce such a law), we note that the Supreme Court in the seminal case of U.S. v. Harriss relied on the fact that the federal lobbying law in question only covered paid lobbyists when upholding that law's constitutionality: "[The federal lobbying law] is limited to those persons . . . who engage themselves for pay or for any other valuable consideration for the purpose of attempting to influence legislation through direct communication with Congress. Construed in this way, the Lobbying Act meets the constitutional requirement of definiteness." (Id. at p. 625.) In your 1/5/09 staff memorandum, you similarly characterize this Supreme Court case as only sanctioning regulation of "the professional lobbyist."

Although the public may have the right to know about people who are being paid to attempt to influence City decisions, any public benefit in having volunteers register as lobbyists or report uncompensated activity would be far outweighed by the chilling effect that such a requirement would have on citizens' willingness to contact their elected representatives and City employees. For example, if the volunteer board members of the Friends of the Oakland Public Library had to register as lobbyists and file quarterly reports disclosing all of their contacts with City officials just because they sent an e-mail to the Mayor and their Councilpersons asking them not to cut the library's budget, these citizens would of course be much less likely to exercise their First Amendment right to express their opinions to their elected officials. Similarly, if a person who sits on the board of the local chapter of the Sierra Club had to register as a lobbyist if he or she testified at Planning Commissioner hearing to suggest that the City adopt green building standards, he or she may chose not to make this policy suggestion for fear of making a mistake in the paperwork.

In addition, the City's lobbying law – which contains both civil and criminal penalties – certainly needs to be more clear before the Commission can levy any type of penalty against Mr. Plazola or other volunteer lobbyists. It is a basic tenet of due process that the government has to put citizens on clear notice of their legal duties before punishing them for violating these duties. (See, e.g., People v. Franklin (1999) 20 Cal.4th 249, 253.) As the Harriss court explained: "The constitutional requirement of definiteness is violated by a criminal statute that fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute. The underlying principle is that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed." (347 U.S. 612 at p. 618.) Given that the law itself and the explanatory materials published by the Commission use terms which would lead "persons of ordinary intelligence" to "reasonably understand" that the lobbying law only applies to people who are paid to lobby, we believe that the Commission would violate Mr. Plazola's due process rights were it to attempt to enforce the law against him.[6]

5. Requiring volunteer board members of nonprofits to register as lobbyists would significantly increase the number of registrants.

According to the list of registered lobbyists on the Ethics Commission's website, not a single volunteer member of a nonprofit board is currently registered, and all of the individuals who list a for-profit or nonprofit organization as their client are either paid by the organization or work there as a full-time employee. (Tab 6.)

At the very least, this fact reveals that, if the law really does apply to volunteer nonprofit board members, the Ethics Commission has completely failed to educate citizens about the scope of the lobbying law. We believe that the more likely reason why no volunteers have registered as lobbyists, and why the Commission's written materials do not discuss the registration obligations of volunteers, is because the lobbying law does not, and was not intended to, cover these individuals.

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[6]We therefore disagree with the claim in your 1/5/09 staff memorandum that "there appears to be no significant defect in the current language defining "lobbyist" or "client" that would preclude its enforcement by the Commission," while agreeing with your assessment that "There are some opportunities to clarify the definition of 'in-house' lobbyist as it pertains to 'salaried employee, officer or director' and the reference to whether the individual's 'job duties' include lobbying."

6. Proposal.

We therefore propose an alternative to the Commission moving forward with these investigations of Mr. Plazola: It should use this matter as the opportunity to have a policy deliberation on whether the City should require unpaid board members of nonprofit organizations and other volunteers to register as lobbyists. These deliberations should include public hearings (so that members of the nonprofit community can voice their concerns about such a registration requirement), and should also include a much more thorough legal analysis by the City Attorney's office of the constitutional issues raised by attempting to bring volunteers into the lobbying law.

If, after these deliberations, the Commission decides that the City should require volunteers to register, then it should amend the law to say so explicitly, add this new rule to its Guide and instructions, and conduct educational outreach. At that point, Mr. Plazola would either register as a lobbyist or refrain from lobbying City officials on behalf of the OBA. Until and unless the Commission makes this decision, however, it should drop both of these investigations. Put another way, we urge the Commission to adopt the third proposal for "Further Action" from your 1/5/09 staff memorandum – "Whether to consider any additional amendments to the LRA pertaining to the definition of "lobbyist" or "client", as well as consider any additional exceptions for representatives of non-profit corporations such as the 2002 proposal" – and also to pursue such a legislative approach in lieu of any enforcement proceedings against Mr. Plazola.

We look forward to discussing these legal and policy issues with you and the Commission in more detail at Monday's Commission meeting.

Sincerely,

James R. Sutton

cc: Carlos Plazola
Enclosures
JRS/lc
#1332.01

ATTACHMENT 9

Via E-mail File

February 9, 2009

Oakland Public Ethics Commission
One Frank Ogawa Plaza
Oakland CA 94612

Re Analysis Of Key Terms In The Oakland Lobbyist Registration Act

Dear Commissioners,

I agree with the January 5, 2009, *Analysis of Key Terms in the Oakland Lobbyist Registration Act* memorandum and the conclusion to adopt a more liberal interpretation of the definition of a Local Government Lobbyist. The conclusion is stated on page 5 of the Analysis, which says *"Thus the LRA intends for the term "lobbyist" to be broadly applied in situations where there may exist doubt or uncertainty as to whether an individual meets the definition of "lobbyist."* Taking a narrow interpretation would defeat the purpose of the ordinance which is to eliminate corruption or the appearance of corruption from the legislative process.

Requiring only salaried officers and salaried directors to register as local government lobbyists would exempt the large majority of individuals who serve as unsalaried officers and unsalaried directors even though their lobbying activities and the attendant outcomes are identical with those lobbyists who are salaried. This would defeat the public's right to know who is communicating with local government officials for the purpose influencing legislative acts or administrative decisions. Further, it would frustrate the government's compelling interest of eliminating corruption or the appearance of corruption from the legislative process.

The precise meaning of the definition will always be ambiguous and subject to dispute. The nature of this ambiguity is highlighted in the following two examples:

- *All of the rodeo attendees are handsome cowboys, wives, and horses.*
- *All the meeting attendees are unemployed carpenters, plumbers, and electricians.*

In the first sentence, common sense show that the adjective "handsome" applies to neither "wives," nor "horses." In the second sentence, it is equally clear that the three groups of meeting attendees were unemployed. These examples show that the intended meaning of our ambiguous definition could always be in dispute.

This being the case, it is necessary for the Commission to interpret the language to mean "salaried employees, (*all*) directors, and (*all*) officers (*whether salaried or not*)" in order for the ordinance to serve the purpose for which it is adopted.

ATTACHMENT 10

Item E-1
Date 5/4/09
Page 77 of 83

For your reference, I've attached a few interesting and pertinent treatise sections related to statutory interpretation.

Best wishes,

/s/ John Klein /s/
John Klein

Attachment

ATTACHMENT 10

Item E-1
Date 5/4/09
78 of 83

Attachment to 2/09/09 J. Klein letter

The Equity of the Statute[1]

§54:3. The Spirit of a Statute as a Guide to Its Interpretation
In applying the doctrine of equitable interpretation, American decisions usually rationalize an extended or restricted interpretation of in language by noting that "the spirit of the statute governs the letter." But there are other judicial expressions that have a similar effect. An extended or restricted interpretation may be reconciled, for example, on the ground that "the intent prevails over the letter", that "the reason of the statute controls the letter," that the literal meaning of the statute is subject to its "object," "aim," "scheme'" or that "that implied is as much a part of the statute as that expressed."

The spirit of an act has also been found to render it mean "clear and unmistakable" even though "its language is capable of more that one meaning."

§54:4. The spirit of a statue as a guide to its interpretation – The mischief rule.
The inverse of expressing general ideas by illustrative particularity is to speak in imprecise generalities, which in the conventional usage could reasonably be found to embrace more than necessary. It is therefore correlative of equitable I officer for special interpretation that where there is doubt about how inclusively a statue should be applied, it will be construed to apply only so far as is needed to remedy the perceived mischief.

§54:5. Extensive interpretation
The limit within which the courts will apply a statute to objects or situations outside the customary or normal meaning of its language is incapable of accurate approximation. Broadly speaking, the language of a statute will be extended to include situations which would reasonably have been contemplated by the legislature in light of the circumstances giving rise to the legislation. If the language of a statute reasonably covers a situation, the statue applies irrespective of whether the legislature ever contemplated that specific application.... The doctrine is readily applied where a statute is ambiguous or capable of a range of literal meanings. And an extended interpretation is sometimes rationalized on the basis that another interpretation would make for absurdity and injustice.

Equitable interpretation has been the foundation for extensive interpretation of many kinds of statues.

Many kinds of legislation enacted to serve the public welfare have been given expansive interpretation. Thus a statute authorizing election contests in county elections was applied to municipal elections. A statuette alowing an absentee ballot to one "who is absent...on the day of... election" applied to one who was present on the day of voting, but was uncertain at the time the absentee ballots were issued whether he could be present on election day. A statute permitting recovery of public funds in the "hands" of the county treasurer where wrongly or mistakenly paid

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[1] *Statutes and Statutory Construction*, Norman J. Singer, J.D, and Shambie Singer, 7th Ed., New Edition, Vol. 2B, Thompson and West (2008).

ATTACHMENT 10

Item E-1
Date 5/4/09
Page 79 of 83

to that officer for special improvements was held applicable where the moneys wrongfully paid were in the county vault and not in the treasure's "hands." A grant of public land to settlers who were "single men" was extended to include a "widow."

THE SUTTON LAW FIRM

April 3, 2009

Dan Purnell, Esq.
Oakland Public Ethics Commission
One Frank Ogawa Plaza
Oakland, CA 94612

RE: Carlos Plazola Matters

Dear Dan:

This letter follows up the Commission's consideration of the two matters involving our client, Carlos Plazola, at its meeting in February 2009. In short, we want to make certain that the record shows that we strongly object to the Commission's continued investigation into Carlos' interactions with City officials on behalf of the Oakland Builders Alliance, given that the law is at best ambiguous on whether lobbying activities by volunteer members of the board of directors of a nonprofit organization trigger registration, and also want to re-iterate our request that the Commission close the remaining investigation and instead hold a public policy discussion on whether the lobbying law should cover volunteer activities. Not only is the Commission's continued investigation trampling our client's due process rights, it is also having a chilling effect on his constitutional right to petition the government for the redress of grievances on behalf of the Alliance and others.

This letter first confirms that the investigations into Mr. Plazola's meetings with City officials last fall (the "staff-initiated complaint") is now closed.[1] Though closed, we want the record to show that how the Commission handled its vote on this complaint at its February meeting exacerbated our concerns about the process. As you know, when the Commission considered closing this investigation because of the lack of notice given to Oakland citizens that the law may apply to volunteers lobbyists, Commissioner Green-Ajuto "abstained" from the vote – even though the Commission's own rules prohibit Commissioners from abstaining unless the other Commissioners authorize them to do so. Neither the Chair, nor any of the Commissioners, nor any City staff brought up this bylaw provision when Commissioner Green-Ajuto abstained, causing uncertainty during and after the meeting about whether the vote ultimately passed or failed. Subsequent to this meeting, we have received conflicting

ATTACHMENT 11

[1]This letter also confirms that the Commission is not scheduled to again consider the Klein complaint until its May meeting.

Item E-1
Date 5/4/09
Page 81 of 83

150 Post Street, Suite 405 ■ San Francisco, CA 94108
Tel: 415/732-7700 ■ Fax: 415/732-7701 ■ www.campaignlawyers.com

advice from the City Attorney's office about how this error actually affected the vote. In any case, we strongly believe that the motion would have passed if the bylaw issue had been raised at the time, and want to make certain that the record includes an account of this potential due process violation.

Next, you have asked Mr. Plazola certain questions about his contacts with City officials referenced in the Klein complaint. As a general matter, Mr. Plazola does not dispute that he discussed City matters with the City officials, and has attempted to respond to your specific questions in e-mail correspondence. Most relevant to your questions, Mr. Plazola also confirms that he made a point of telling the officials during these meetings that he was representing the Alliance, not one of his private clients. You therefore have all of the facts regarding these meetings needed to close this investigation.

Finally, we hope that your staff report on the Klein complaint will acknowledge that the law is at best ambiguous about whether volunteers need to register as lobbyists, that the materials published by the Commission itself strongly imply that only paid lobbyists have to register, and that not one volunteer board member of a nonprofit is currently registered as a City lobbyist. We also believe that the staff report should mention that at least three of the Commissioners voiced concerns on the record at the February meeting about the vagueness of the law and the lack of notice provided to potential lobbyists, and that you take these concerns into account when reaching your conclusion about whether the Commission can now attempt to enforce the law against Mr. Plazola or any other volunteer lobbyists.

Given that the original investigation into Mr. Plazola's volunteer lobbying activities was instigated by staff rather than a citizen complaint, and given that the Commission has never before investigated the lobbying activities of volunteer board members of nonprofits, Mr. Plazola has reason to believe that the investigations are, in his words, a "politically-motivated witch hunt" (a suggestion which we find it difficult to rebut, given the circumstances of the matter). Whether or not the investigations are politically motivated, they are clearly bad public policy and clearly infringe on his First Amendment rights, and the Commission's mis-steps to date clearly implicate his due process rights.

Therefore, we again urge the Commission to immediately close the remaining investigation and instead begin a public policy discussion about the role of volunteer lobbyists in City Hall decision-making. Mr. Plazola also wanted us to re-iterate for you that he will fully comply with whatever decision the Commission and City Council ultimately make about volunteer lobbyists.

Thank you for your cooperation in this matter, and feel free to call us if you need any further information.

Sincerely,

James R. Sutton/lc

James R. Sutton

cc: Carlos Plazola
JRS/lc
#1332.01

ATTACHMENT 11

Item E-1
Date 5/4/09
Page 83 of 83