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November 14, 2019

VIA E-MAIL AND OVERNIGHT MAIL

City Council
City of Huntington Beach
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Re: September 3, 2019 Wrongful Denial of Ellis Avenue Condo Project (Case No. 19-910)

Dear City Council:

I am writing on behalf of the applicants in the above-captioned matter, THDT Investments, Inc. and HB Ellis LLC, as well as the California Renters Legal Advocacy and Education Fund ("CaRLA)", a California non-profit housing advocacy organization. On September 3, 2019, the council disapproved the applicant's proposed development on Ellis Avenue that would have provided 48 units of housing. This denial was in violation of the Housing Accountability Act, Gov. Code § 65589.5 ("HAA") because the project complied with all the city's objective land use standards in place at the time, and the city did not identify a specific adverse impact on public health or safety. Violation of the HAA subjects the city to legal penalties including liability for reasonable attorney fees and expenses incurred by the applicants and CaRLA, as well as other possible penalties.

We would like to give the city the opportunity to resolve this matter without costly litigation. Toward that end, if the council wishes to reconsider its decision, please contact me no later than November 22, 2019. If I have not received your response by that date, we intend to file suit in court challenging the denial of the project. We will request that the court order the project to be approved and award reasonable attorney's fees and expenses.

To assist you in making your decision, this letter briefly explains why a court is likely to find the city's denial in violation of the HAA. The HAA generally prohibits cities from denying approval to housing development projects like the present one that complies with "applicable, objective general plan, zoning and subdivision standards and criteria, including design review standards, in effect at the time that the housing development project's application is deemed complete." Gov. Code § 65589.5(j)(1). The project must be deemed compliant if there is enough evidence for a "reasonable person to conclude" that the project met the relevant standards. Gov. Code §

65589.5(f)(4). In this case, there is clearly sufficient evidence for a reasonable person to conclude that the relevant standards were met because your city's own professional planning staff determined that the project met all the relevant standards, and on that basis recommended that the project be approved. Therefore, this project must be deemed compliant with all the relevant standards.

Because this project is compliant with all the relevant standards, the HAA only permits the city to deny the project if the city makes written findings, supported by a preponderance of the evidence, that the project would have a "specific, adverse impact upon the public health or safety," which is defined as "a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete." Gov. Code § 65589.5(j)(1)(A). In the HAA, the legislature has expressed its intent that conditions constituting a specific, adverse impact upon the public health or safety "arise infrequently." Gov. Code § 65589.5(f)(4)(a)(1)(L)(3).

The conditions cited by the city in its findings of denial as evidence that there was a specific, adverse impact upon the public health or safety are plainly insufficient to meet the city's burden of proof. The findings do not even cite any "identified written public health or safety standards," nor do they make any effort to quantify the project's impact on public health and safety. The findings merely make vague statements about traffic safety that could apply to *any* project, hardly the specific and "infrequent" conditions that the legislature contemplated.

If the city declines to reconsider its decision in this matter, we intend to bring suit for a writ of mandate under C.C.P. Section 1094.5. If we are successful, the HAA entitles both the applicants and CaRLA, as a "housing organization" under the statute, to recover reasonable attorney's fees and expenses. Gov. Code §§ 65589.5(k)(1)(A); (k)(2). In addition, the city could potentially be liable for fines that start at $10,000 for each denied housing unit ($480,000 for this project). Gov. Code §§ 65589.5(k)(1)(B)(i).

I look forward to receiving the city's response to this letter by November 22, 2019.

Sincerely,

/s/

Kenneth A. Stahl

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