Dec 10, 2024

City of Sunnyvale
456 W. Olive Ave.
Sunnyvale, CA 94086

Re: 1250 Oakmead Parkway Builder's Remedy Project

By email: council@sunnyvale.ca.gov; kleincouncil@sunnyvale.ca.gov; srinivasancouncil@sunnyvale.ca.gov; meltoncouncil@sunnyvale.ca.gov; cisneroscouncil@sunnyvale.ca.gov; dincouncil@sunnyvale.ca.gov; mehlingercouncil@sunnyvale.ca.gov; sellcouncil@sunnyvale.ca.gov;

CC: RMoon@sunnyvale.ca.gov; SLee@sunnyvale.ca.gov; cityclerk@sunnyvale.ca.gov;

Dear Sunnyvale City Council,

The California Housing Defense Fund ("CalHDF") and Yes In My Back Yard ("YIMBY Law") write regarding item A on the closed session agenda for this evening's Council meeting. We urge the City to process the application for a housing development project at 1230-1250-1270-1290 Oakmead Parkway (APN 216-44-124) in accordance with the Permit Streamlining Act and other law.

As a pure matter of public policy, the proposed project will create 318 new housing units, including 64 affordable units, in a region suffering from an acute housing shortage. Processing applications like this one and ultimately ensuring that more housing is built is crucial to addressing the sky-high housing costs that have made Silicon Valley and the Bay Area accessible only to the wealthy and those lucky enough to have lived in the region for decades. CalHDF and YIMBY Law acknowledge that Sunnyvale has engaged in extensive planning work with the goal of seeing more units built, but planning is not enough. This project is an opportunity to create actual units, and the City should make an honest effort to see it through.

The City must process the application, moreover, according to state law. The Permit Streamlining Act, Gov. Code §§ 65920 et seq., requires the City to respond to applicant submittals (either of application materials or materials addressing an incompleteness determination) within 30 days. (Gov. Code, § 65943, subd. (b).) The applicant, in turn, has 90

days after an incompleteness determination to submit such information. (Gov. Code, § 65941.1, subd. (d)(2).) Here, the City made an initial incompleteness determination, to which the applicant responded, to which the City then responded with a second incompleteness determination on June 10, 2024. The applicant responded to the second incompleteness determination on July 29, 2024, after which the City continued to process the application, beginning the environmental review process and working with the applicant on proposed mitigation measures, among other things.

But the City did not respond to the applicant's July 29 submittal until November 6, 2024. This violated the City's 30-day deadline to respond, and the application was therefore deemed complete as a matter of law. (See Gov. Code, § 65943, subd. (a).) Now, CalHDF and YIMBY Law understand, the City is attempting to argue that the applicant's July 29 submittal did not count as a response to the June 10 incompleteness determination because it did not include new application materials but rather answered the incompleteness determination more or less line-by-line and explained why no further materials were required. This makes no sense. To begin with, nothing in the Permit Streamlining Act requires new materials to be submitted in response to an incompleteness determination before the 30-day response deadline is triggered. (See generally, Gov. Code §§ 65940 et seq.) The Act says that "any resubmittal of the application" puts the City on the clock. (Gov. Code, § 65943, subd. (a).) The applicant's July 29 letter undoubtedly falls within this language's broad sweep. Furthermore, the City's position leads to absurd results: if it were correct, the applicant's submission would have triggered the 30-day deadline if it had included even one trivial piece of information that had not previously been submitted but otherwise been identical to what the applicant in fact submitted. This makes no sense. The Act is clear: any resubmittal of the application puts the ball in the City's court, and the consequences of the City's failure to timely act on the July 29 resubmittal fall squarely on the City, not the applicant.

The City is now on the clock again. It has 60 days from the applicant's demand for an appeal (dated December 5, 2024) to issue a final written determination on the application, or it will *again* be deemed complete as a matter of law. (Gov. Code, § 65943, subd. (c).) CalHDF and YIMBY Law urge the City to grant the appeal and determine the application to be complete, as the Permit Streamlining Act requires. We intend to monitor the City's actions to ensure compliance with the law.

In closing, CalHDF and YIMBY Law note two more things. First: state housing law, and in particular the Housing Accountability Act, Gov. Code § 65589.5, which would govern a lawsuit here, place a high burden on the City. (See Gov. Code, §§ 65589.5, subd. (a)(2)(L) [law should be interpreted "to afford the fullest possible weight to the … approval and provision of, housing"]; 65589.6 [City bears the burden of proof].) Second: the City's actions, at minimum, do not look good, and at worst they show bad faith. The City continued to engage with the applicant after the July 29 letter on issues such as environmental review and mitigation measures and waited more than 90 days to inform the applicant that its July 29 letter would

not be considered adequate to meet the June 10 incompleteness determination. These facts, in combination with the Housing Accountability Act's high standards, would make it difficult for the City to successfully defend a lawsuit. CalHDF and YIMBY Law urge the City to deem the application complete under the Permit Streamlining Act, or, at minimum, hear the applicant's appeal within 60 days as the Act requires, rather than invite a lawsuit.

CalHDF is a 501(c)3 non-profit corporation whose mission includes advocating for increased access to housing for Californians at all income levels, including low-income households. You may learn more about CalHDF at www.calhdf.org.

YIMBY Law is a 501(c)3 non-profit corporation, whose mission is to increase the accessibility and affordability of housing in California. YIMBY Law provides education to, and sues municipalities when they fail to comply with state housing laws. You may learn more about YIMBY Law at www.yimbylaw.org.

Sincerely,

Dylan Casey
CalHDF Executive Director

Sonja Trauss
Executive Director
YIMBY Law