

L.A. Violates Your Due-Process Rights



By Jill Stewart
Thursday, August 30, 2012

In May 2011, at a final public hearing over whether to approve the tallest skyscraper in Hollywood history, the Department of Planning unveiled 231 pages of surprise "supplemental findings" backing the developer's plan.

The 200,000-word, book-length document gave the L.A. City Council's Planning and Land Use Management committee an added boldness. Its chairman, City Councilman Ed Reyes, refused to let a member of the public rebut the developer, Hanover Company. Then the committee quickly approved the Hollywood/Gower Project.

Reyes should have let the man speak.

An environmental attorney from the Silverstein Law Firm, Daniel Wright knew the Department of Planning hadn't written the 231-page "supplemental findings." Doug Haines, a representative of the firm's client, the La Mirada Avenue Neighborhood Association of Hollywood, had discovered that the developer wrote the entire tome.

Wright had minutes earlier warned the land-use committee that the key study repeatedly referred to in the "findings" — the parking study claiming that the development would need 30 percent less parking than the city generally requires — wasn't even included in the 200,000 words and was never seen by the public.

The Hirsch/Green Parking Study, it turned out, was merely an "exhibit" attached to a letter from the developer's lobbying firm, in a pile of papers submitted at the hearing itself. Later, emails showed that city planners likely never read the study: Just before the hearing, planner Jim Tokunaga couldn't open the developer's attachment.

The land-use committee, known as PLUM, approved the skyscraper, along with the developer's request for reduced parking, in parking-challenged Hollywood.

"We were asking city officials, 'Where is the parking study that's being voted on? Where is it?' " Wright says. "But no member of the public could see it — until it was posted the next day on the City Council website."

Later, the City Council rubber-stamped the committee's approval without allowing public comment — ending a supposedly public process in which the public was prevented from considering and debating the key issues.

The legal wrongdoing by City Hall resulted in an uncommon finding in July by Los Angeles Superior Court Judge Ann I. Jones: that the City Council and city had violated the "due process" rights of the Hollywood community. (Jones also found that L.A. violated the California Environmental Quality Act.)

"We alleged the city engaged in misconduct, lied to members of the public and suppressed information in an effort to conceal critical material from the public," explains Robert P. Silverstein, the lead attorney. "So we won on our constitutional challenge — which is extremely rare."

On Aug. 13, Jones affirmed her initial ruling, rejecting objections filed by the developer and City Attorney Carmen Trutanich. She ordered not just a redo of the areas obfuscated by city officials, such as parking shortages, but also an entirely new Environmental Impact Report.

R.J. Comer, attorney for the project's investors, said they are considering all options. The City Attorney's office had no comment.

But Wright responds, "They're so caught with their hands in the cookie jar, we do not see an appeal."

Silverstein persuaded Jones to enter into evidence disturbing emails showing city officials readying the developer's "findings" in support of the project as the city's own.

Environmental attorneys consulted by the L.A. Weekly say they cannot recall such a courtroom slap-down. Although this was a lower court, only a few appellate cases have been reported involving municipalities guilty of violating due process.

Attorney Noel Weiss, who has won suits against L.A., says, "It's because they are running a kangaroo court. The City Council and its PLUM committee don't read the planning documents before them, which often aren't written by the planners they pay. It's lawless, and nobody has been shutting it down. Judge Jones is stepping on a lot of powerful toes by being so courageous against big L.A. powers. I very much admire her for doing it. "

Although one Hollywood neighborhood council dominated by business interests backs the high-rise, the other four Hollywood-area neighborhood councils do not. Many residents are angry that it would tower 270 feet over a low-slung historic community. The first three stories were to be parking, topped by 17 stories of condos or high-end rentals — squeezed onto a cramped lot whose zoning restrictions prohibit skyscrapers.

Labor lawyer David Bell, president of the East Hollywood Neighborhood Council, argues that while the City Council granted the developer many "entitlements" — zone changes and billboard ads to help provide a more robust bottom line — the council was simultaneously degrading a protected skyline that has made the Hollywood Hills and its landmark sign among the most recognized sights anywhere.

"This isn't Tarzana or Century City," Bell says. "Hollywood is a global cultural asset that belongs to the community and world, being trampled upon for 176 luxury apartments. It isn't right."

The most controversial "entitlement" allowed investors to provide far less parking than required. (The developer claims, among possible mitigations, that the well-to-do residents will choose to use buses and subways.) Another "entitlement" lets the developer embed a huge billboard into the building's side, visible from great distances and, Haines says, taller than the W Hotel nearby.

Maybe the ghost of Hollywood historic preservationist Robert Nudelman, who abhorred City Councilman Eric Garcetti's dream of skyscrapers and billboards in Hollywood, caught wind of what was unfolding. One day, Haines, who greatly admired Nudelman, noticed in the public record an odd term — "supplemental findings" — mentioned in a letter from the developer's consultant written to City Hall.

"I called city planner Jae Kim and said, 'Hey, this isn't supposed to be a game of hide-and-seek. Where are these supplemental findings?'"

As it emerged at trial, Kim then provided Haines with the "findings," assuring him three times that City Planning had no intention of submitting the developers' submission to the council committee.

But Haines was uneasy. He pored over the 200,000 words, and then he and attorney Wright attended the committee hearing. Then they watched, stunned, as Jae Kim himself delivered the findings as the city's own.

La Mirada Avenue Neighborhood Association's legal team showed in court that Kim's superior, senior planner Jim Tokunaga, exchanged emails with Kim before the hearing, explaining that they would do a quick edit of the developer's work. The new version was 20 pages shorter, with some sections tweaked.

Key city officials have refused to comment on who (or what) compelled Kim and Tokunaga to proceed. And no city officials involved would comment on why the Hirsch/Green Parking Study was kept secret from the public and added to the city website only after the skyscraper was approved.

City planner Michael LoGrande, Kim's and Tokunaga's boss, refused to comment, saying the project still faces litigation. Ken Bernstein, a principal city planner, returned the Weekly's call to LoGrande but did not know any details. Kim and Tokunaga did not return calls seeking comment.

Garcetti's office, which led the cheers for the Hollywood/Gower skyscraper and wants more high-rise towers in Hollywood, said it did not know the Department of Planning had claimed the fat "supplemental findings" from the developer as its own. Julie Wong, a top aide to Garcetti, said she didn't know if LoGrande had launched an investigation and was surprised to learn that LoGrande was not commenting.

City Attorney's spokesman Frank Mateljan could not comment as to whether those involved in violating the due process of the Hollywood community will be investigated.

However, former city planning commissioner Mike Woo, who stepped down in mid-July, said an investigation would not be unheard of.

In an email, Woo explained that when a judge finds that L.A. acted illegally, "The City Attorney routinely reports back to the decision-making bodies (in this case, the City Planning Commission and the City Council) about the outcome of the lawsuit and recommends a course of action. In theory, this can include the kind of investigation or reprimand" the Weekly queried Woo about.

Silverstein isn't holding his breath. If the skyscraper is ever built, he says, "Its big billboard should say, 'Don't violate our constitutional rights.' "