

June 1, 2020

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VIA E-MAIL

Mayor Murphy & Councilmembers
City of Merced
678 West 18th Street
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Re: Requested continuance of Agenda Item J.1 (Appeal of Conditional Use Permit (CUP) #1238 and Site Plan Review #455)

Dear Mayor Murphy & Councilmembers:

We have recently been retained by Merced Holdings, LP ("Applicant") with regards to the appeal of Conditional Use Permit (CUP) #1238 and Site Plan Review #455 and the associated CEQA clearances to allow construction of a Mixed-Use Development, including 214 Apartments, approximately 22,000 square feet of Retail Commercial Space, and approximately 14,000 square feet of Office Space (the "Project") on a 5.94-Acre parcel generally located at the southeast corner of Yosemite Avenue and McKee Road. **We respectfully request that this item be continued to July 20, 2020 by the City Council.** The reasons for the requested continuance are set forth herein.

A continuance is necessary because the Applicant did not receive proper notice of the June 1, 2020 hearing in accordance with Merced Municipal Code (MMC) Section 20.70.020. That section requires notice to be mailed or delivered to Applicant or Applicant's representative at least ten days prior to the scheduled hearing. Neither Applicant nor Applicant's representative were given such notice. Instead, Applicant simply received a phone call from a member of the planning department on May 26, 2020. This type of notification does not meet the City's requirements, nor was a date certain decided upon and announced at the May 4, 2020 City Council meeting. As such, another notice was required to be given by the City. Therefore, a continuance is required under the City's own laws.

A continuance is also necessary because the Applicant is unable to attend the June 1, 2020 City Council meeting in person due to the ongoing Covid-19 health pandemic. The Applicant is an emergency room physician in Los Angeles, and in an

abundance of caution, as a first responder, Applicant is not travelling as a matter of safety. The Applicant was easily able to participate in the last meeting because it was held by electronic means and did not necessitate the Applicant or its representatives to travel during the health crisis. Applicant and its representatives are located in Southern California, and travelling to the June 1, 2020 meeting is not viable at this time. This is particularly problematic given the lack of notice given to Applicant. Because of these concerns alone, a continuance is merited.

Moreover, Applicant is now further inhibited from travelling by the local curfew due to civil unrest.

A continuance is also necessary to give Applicant the opportunity to try to find common ground with the appellants and to obviate the need for an appeal hearing. Avoiding the appeal will preserve municipal resources and process. Moreover, should the appeal go forward, it is highly likely that the losing party would file litigation against the City to overturn the City Council's decision. The Applicant seeks to avoid the time and cost to the City of litigation. Doing so is in all parties' best interest, especially during this time of diminished municipal revenues.

A continuance will provide our Firm with sufficient time to get up to speed on the issues raised in the appeal and to help broker a compromise. Upon our initial review of the file, there are a number of issues that raise concerns. Particularly, the request by appellant that the Applicant reduce the number of housing units in the Project, even after Applicant already did so. Such reduction potentially violates the State's Housing Accountability Act. We are similarly concerned with the City requiring the Applicant to provide greater setbacks, open space, parking and landscaping than is required by the objective standards in the Zoning Code. We also have concerns about statements by the City Attorney relating to the applicability of the Housing Accountability Act to my client's project and appreciate a continuance to allow us to fully analyze those statements and positions. California is facing a severe housing shortage and reduction of housing units in any project is of great concern. The Housing Accountability Act provides for significant damages and fees to be awarded to successful litigants. The Applicant seeks to avoid such litigation and a continuance will provide Applicant with the time necessary to potentially do so.

We also seek to understand the rationale and process for the City's requirement that, after the initial approval by the Planning Commission, an additional approval be processed relating to MMC Section 20.32. It is unclear why the Applicant was required to obtain this approval after years of processing.

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Finally, we seek to work with the City to ensure that the administrative record fully and accurately responds to all issues raised on appeal by appellants. Again, given our Firm's recent retention, we appreciate the City providing a continuance to allow coordination to occur.

For all of the reasons discussed above, we respectfully request that the City continue Agenda Item J.1 to July 20, 2020. The Applicant seeks to avoid potential litigation, something which is in the best interest of all the parties. It does not make sense for the City to rush to a decision that might put the City and the greatly needed housing at risk. Therefore, we hope that the City Council will vote to continue this item.

Please do not hesitate to contact myself or the Applicant with any questions.

Sincerely yours,

Elisa Paster

ELISA L. PASTER
of GLASER WEIL FINK HOWARD AVCHEN & SHAPIRO LLP

ELP:ep

cc: Scott McBride, Merced Planning Department, McBrideS@cityofmerced.org
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