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File No. 099999

October 7, 2024

VIA E-MAIL

Landmarks Preservation Commission
City of Berkeley
North Berkeley Senior Center
1901 Hearst Avenue
Berkeley, CA

Land Use Planning
Received
October 7, 2024

**Re: Action Item 8: 2500–2512 San Pablo Avenue/1094–1098 Dwight Way,
Landmark or Structure of Merit Designation**

Dear Chairperson Montgomery, Vice Chairperson Finacom, and Commissioners:

We write on behalf of our client West Berkeley Center Partners LLC (“WBCP”), owner of the building at 2500–2512 San Pablo Avenue and 1094–1098 Dwight Way (“Subject Building”), in the City of Berkeley (“City”). We have corresponded with your secretary, Fatema Crane, regarding our concerns related to the noticing of Action Item 8. (See **Attachment A.**) Ms. Crane has been very understanding and indicated that she would recommend that the Landmarks Preservation Commission (“LPC”) postpone the matter. (See **Attachment B.**) We also want to directly make the request for postponement to you.

Mr. Brandel is the primary partner of WBCP. He had major surgery with a very lengthy recovery that upended his daily routine. For this reason, he had no knowledge of the fact that the LPC discussed the Subject Building at the September hearing. Nor did he receive mailed notice until late last week of tonight’s hearing.

The first notice Mr. Brandel received regarding the fact that the LPC would consider the Subject Building for listing as a landmark or structure of merit was from a photograph taken on September 27th by his property manager of a posted notice indicating that the hearing would occur on October 3, 2024. Ms. Crane indicated to me that City staff replaced the incorrect notice later that day, but Mr. Brandel did not see the corrected notice until Monday, September 30, which was less than ten days before today.

We ask that you postpone this matter for at least a month for three reasons. First, we are concerned that our client did not get sufficient notice. Second, we need time to review the 165-page staff report, the material circulated in September, analyze the legal issues, and discuss these issues with our new client, Mr. Brandel, so he can fully participate in a hearing that has important implications on his property rights. Finally, Mr. Brandel would appreciate having a

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few more weeks to recover and get his life back in order so he is better able to address this matter.

We know you are prepared for this hearing and our request for a delay is an inconvenience. But for due process and fairness purposes, we ask that you grant our request.

Sincerely,

Cox, Castle & Nicholson LLP



Linda C. Klein

Attachments

Attachment A: Correspondence to Ms. Crane Regarding Notice

Attachment B: Correspondence from Ms. Crane Regarding Postponement

ATTACHMENT A: Correspondence to Ms. Crane Regarding Notice

Klein, Linda C.

From: Klein, Linda C.
Sent: Tuesday, October 1, 2024 10:26 PM
To: 'fcrane@berkeleyca.gov'
Cc: 'attorney@berkeleyca.gov'
Subject: Notice Discrepancy related to an October LPC Agenda Item
Attachments: notice landmarks.jpg

Fatema,

I write on behalf of the owner of 2500-2512 San Pablo Avenue/1094-1098 Dwight Way, Hal Brandel. He contacted me about a notice (picture attached) that his tenant found attached to the door of his building on Friday, September 27th. We have several concerns about this notice:

1. **Timing of Posted Notice.** As you can see, the notice states that the Landmarks Preservation Commission (“LPC”) hearing will be held on Thursday, October 3, at 6:30 pm. According to Municipal Code section 3.24.140, notice must be posted “not less than ten days prior to the date of the hearing.” September 27 is less than 10 days prior to October 3. In addition, Thursday is a holiday and not everyone who is interested in attending the hearing can attend.
2. **Lack of Mailed Notice.** I asked Hal if he had received any mailed notice about any hearings related to identifying his building as a structure of merit or landmark, and he said “no.” Although the Municipal Code states that “the failure of any such property owner or resident to receive [mailed] notice shall not affect the validity of the proceedings,” the owner of the effected building has a greater interest at stake in the hearing than neighbors. “Due process principles require reasonable notice and opportunity to be heard before governmental deprivation of a significant property interest” through adjudicative actions, such as the decision to landmark property. (*Horn v. County of Ventura* (1979) 24 Cal.3d 605, 612.) The notice here does not seem “reasonably calculated to afford affected persons the realistic opportunity to protect their interests” as required. (*Calvert v. County of Yuba* (2006) 145 Cal.App.4th 613, 632.)
3. **Discrepancy between the Notice and the Agenda.** On Monday, after speaking with Hal about his concerns, I went to find the agenda for the LPC meeting. I did not see an agenda for October 3. Accordingly, I began clicking on links until I stumbled upon the right [agenda](#). According to the agenda, the hearing will be on Monday, October 7, and not October 3. A notice stating October 3 is the hearing date is not sufficient to notify anyone of a hearing on October 7.

In addition, while scanning agendas to find the right one, I saw that the LPC considered Hal’s building on September 5. Hal told me he had no notice of that hearing—not posted or mailed. In addition, I see that the address of the property was originally printed incorrectly in the September 5 agenda, again frustrating the purpose of notice.

For the foregoing reasons, we ask that you put over consideration of Hal’s building until at the matter can be properly noticed and agendized (for example, until November 7, 2024).

Please let me know if you have questions or would like to discuss. My contact information is below my signature.

Best,

Linda C. Klein



direct: 415.262.5130 | mobile: 310.985.9381
lklein@coxcastle.com | [vcard](#) | [bio](#) | [website](#)

CITY OF BERKELEY

NOTICE OF

PUBLIC HEARING

 Planning and Development Department
Land Use Planning Division
1947 Center Street, 2nd Floor
Berkeley, CA 94704-1113

LANDMARKS PRESERVATION COMMISSION NOTICE OF PUBLIC HEARING

WHEN: Thursday, October 3, 2024.
Meeting starts at 6:30 p.m.

WHERE: North Berkeley Senior Center
1901 Hearst Avenue
Berkeley, CA 94709

SUBJECT: 2500-2512 San Pablo Avenue / 1094-1098 Dwight Way - Union Investment Company Building Number 1
City Landmark/Structure of Merit Designation (#LMIN2024-0004) consideration for a commercial building completed in 1912.

All persons are welcome to attend the virtual hearing and will be given an opportunity to address the Board. Comments may be made verbally at the public hearing and/or in writing before the hearing. The Board may limit the time granted to each speaker.

Send written comments to:
Landmarks Preservation Commission Secretary
City of Berkeley Land Use Planning Division
1947 Center Street, 2nd Fl / Berkeley, CA 94704
or email to: LPC@berkeleyca.gov

To ensure inclusion in the packet, submit correspondence **seven (7)** days prior to the hearing. For any correspondence submitted less than seven days before the meeting, submit 11 copies which staff will deliver to the Commission at its meeting.

PLEASE NOTE: Email addresses, names, street addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, it will become part of the public record, and will become accessible on the City Website.

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services Specialist at 981-6418 (V) or 981-6347 (TDD) at least three business days before the meeting date.

NOTICE CONCERNING YOUR LEGAL RIGHTS:
If you challenge the decision of the City in court, you may be limited to raising only those issues you or someone else raised at the public hearing or in written correspondence delivered to the Commission at or prior to the public hearing.

The agenda and project files for this meeting will be available online 3 days prior to this meeting at: <https://berkeleyca.gov/your-government/boards-commissions/landmarks-preservation-commission>

Post Date: September 23, 2024

DO NOT REMOVE SHEETS

ATTACHMENT B: Correspondence from Ms. Crane Regarding Postponement

Klein, Linda C.

From: Crane, Fatema <FCrane@berkeleyca.gov>
Sent: Thursday, October 3, 2024 11:00 AM
To: Klein, Linda C.
Subject: RE: Notice Discrepancy related to an October LPC Agenda Item

Lisa,
Thank you.

I, personally, reached out to your client on September 11, 2024, and I did not hear from him. On September 27, 2024, we issued ten-day advance Notice of the October 7, 2024, hearing. This hearing requires ten-day advance Notice and such Notice was issued on September 27, 2024. The item appears on the October 7, 2024 LPC Meeting Agenda, and I am glad to know that you have reviewed the Agenda and materials.

I disagree that this matter has been improperly Noticed and Agendized. However, I understand that you have requested additional time for your client to prepare for the Commission hearing. Therefore, I will advise the Commission of your request and recommend that they post-pone their consideration until their November meeting.

I invite you and your client to attend the October 7, 2024 LPC meeting.

Please let me know if you have further questions or concerns. I am standing by.

-Fatema Crane/COB

From: Klein, Linda C. <lklein@coxcastle.com>
Sent: Thursday, October 3, 2024 10:26 AM
To: Crane, Fatema <FCrane@berkeleyca.gov>
Cc: Darrow, Brendan <Bdarrow@berkeleyca.gov>
Subject: RE: Notice Discrepancy related to an October LPC Agenda Item

Hi Fatema,

While I appreciate the notice correction, my client saw a photo of the incorrect notice, where the photo was taken on Friday September 27, 2024, and has not seen the corrected notice yet. Indeed, Hal called his real estate attorney, who is a friend of mine, on Friday, noting the October 3 date, and Hal and I did not connect until Monday morning. Given the gravity of the listing on Hal's property interest, including on his ability to attract and retain tenants, we renew the request that you reschedule this item to November. That would allow Hal to consult with experts and for me to do research and prepare for the hearing. If you could accommodate that request, we would greatly appreciate it.

Best,
Linda

Linda C. Klein



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From: Crane, Fatema <FCrane@berkeleyca.gov>
Sent: Thursday, October 3, 2024 9:54 AM
To: Klein, Linda C. <lklein@coxcastle.com>
Subject: RE: Notice Discrepancy related to an October LPC Agenda Item

RE: City Landmark or Structure of Merit Designation for 2500-25012 San Pablo Avenue – LPC Hearing on **OCTOBER 7, 2024**

Linda,
Good morning. Thank you for your message.
After being away from the office yesterday, I returned this morning and read your message, below.

Please be advised that the Notice in the photograph contains a typographical error and a new Notice was posted on Friday correcting the error and explaining that the Landmarks Preservation Commission will hold a hearing on the matter of the designation consideration for 2500-2512 San Pablo on Monday, October 7, 2024. There will be no hearing this evening, October 3, 2024. This corrected Notice was also mailed to the property owner on September 27, 2024. The address on record for the owner is 1933 Francisco Street, Berkeley, CA.

I'd like to address each of your concerns here:

- **Timing of the Notice.** The October 7, 2024 Landmark Preservation Commission (LPC) hearing was noticed on September 27, 2024. Notices were provided via USPS mailing as well as posting at the property site. As I explained above, the Notices that were posted on Friday, September 27, 2024 replaced the previous Notices that incorrectly stated the October 7, 2024 hearing date as October 3, 2024 (the hearing will not occur on October 3, 2024).
- **Lack of Mailed Notice.** The property owners address as provided by the Alameda County Assessor is 1933 Francisco Street, Berkeley. Our staff mailed a Notice to that address on Friday, September 27, 2024, in accordance with the ten-day advance noticing requirement of Berkeley Municipal Code 3.24.140 for Public Hearing Notice Requirements.
- **Discrepancy between the Notice and the Agenda.** The discrepancy between the Notice in the photograph you have provided and the LPC meeting agenda is explained by the typographical error and subsequent correction on September 27, 2024. The Agenda is correct. Please let me know if you have questions about the Agenda and meeting materials for this item.

The hearing on the matter of this designation consideration will occur on October 7, 2024. As a public hearing, this event requires ten-day advance notice. The previous meeting during which the LPC considered whether to initiate this process occurred on September 5, 2024. That discussion was not subject to the ten-day advance Notice because it was not a hearing to decide the matter of the designation; it was a discussion to initiate (or not initiate) the designation process. On September 11, 2024, I mailed the attached correspondence to the property owner, advised them of the initiation and anticipated October 7 hearing date, and invited them to contact me with any questions. I appreciate this opportunity to extend this information and invitation to you.

I understand the confusion and I apologize for it. Please be advised of the LPC Hearing on October 7, 2024. If you have further questions or concerns, please reply.

Sincerely,
Fatema Crane

Fatema Crane (pronouns: s/her)