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October 13, 2017

VIA U.S. MAIL AND EMAIL

Honorable Mayor Ray Withy and
Members of the Sausalito City Council
City Hall
420 Litho Street
Sausalito, CA 94965
rwithy@sausalito.gov

Re: 446/448 Sausalito Blvd - 77 Crescent Avenue
Unlawful Denial of Housing Development Project

Dear Mayor Withy and City Council Members:

This office represents the California Renters Legal Advocacy and Education Fund and the San Francisco Bay Area Renters Federation. These organizations enforce state laws designed to foster the permitting and construction of housing at all levels of affordability, including the state Housing Accountability Act (“HAA”), Government Code § 65589.5. We write regarding City of Sausalito resolution #5665, affirming the denial of a permit for the proposed housing development project at 446/448 Sausalito Blvd - 77 Crescent Avenue.

The HAA requires, inter alia:

When a proposed housing development project complies with applicable, objective general plan and zoning standards and criteria, including design review standards, in effect at the time that the housing development project’s application is determined to be complete, but the local agency proposes to disapprove the project or to approve it upon the condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by substantial evidence on the record that both of the following conditions exist:

(1) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a “specific, adverse impact” means 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.

(2) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

(Gov’t Code § 65589.5(j))

In order to deny the project, Sausalito has the burden of either proving that the “proposed project in some manner fail[ed] to comply with ‘applicable, objective general plan and zoning standards and criteria, including design review standards, in effect at the time that the housing development project’s application [was] determined to be complete. . .’”, or make the findings required by the HAA. (Honchariw v. County of Stanislaus (2011) 200 Cal.App.4th 1066, 1081)

Resolution #5665's findings solely involved discretionary design and character issues and not any failure to comply with objective general plan and zoning requirements. It also failed to make the required HAA findings. The provisions Sausalito relied on to find the project “out of scale” and “not in harmony” with the surrounding community are not objective requirements that enable you to deny permits without making the required HAA findings. In short, Sausalito’s decision clearly violates the HAA.

We request that Sausalito rehear the appeal and reverse the Planning Commission’s denial. If it does not do so, our clients will file suit under the HAA. If our clients file suit, they will prevail since the HAA prohibits municipalities from using subjective, discretionary standards to reject housing development projects. Moreover, Sausalito will “bear the burden of proof that its decision has conformed to all of the conditions specified in Section 65589.5.” (Honchariw v. County of Stanislaus (2011) 200 Cal.App.4th 1066,

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1079) Our clients will also be entitled to recover their attorney's fees and costs from Sausalito.

In the broader context, it is important to recognize that last month, the Governor signed a package of fifteen bills to address the state's housing crisis, including legislation that further restricts a municipality's ability to deny or unduly condition the approval of housing development projects. These recent actions by the Legislature and Governor highlight the need to supply California with sufficient housing. These new laws include SB-167, which strengthens the HAA by further limiting a local government's ability to disapprove a housing development project, and which can lead to the imposition of significant monetary penalties on municipalities that violate the law.

We hope that calling your attention to the Housing Accountability Act and SB-167 will help resolve this dispute without the need for expensive litigation. Please contact me to discuss this matter further.

Very truly yours,

ZACKS, FREEDMAN & PATTERSON, PC



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