

CATEGORY: Policy

COMMITTEE: PLUM

PURPOSE: CIS requesting the Los Angeles City Attorney's opinion on the legality of considering a developer's financial interest when considering entitlements.

BACKGROUND:

In connection with applications for Adjustments, Los Angeles Municipal Code Sec. 12.28.C.4(a) (Finding #1) requires a Finding that the project design must be "impractical or infeasible" unless the Adjustment is granted.

At an April 7, 2021 hearing before the West LA Area Planning Commission, the Commissioners asked the Planning Dept. to clarify what "impractical or infeasible" project design means.

The City Attorney at the hearing stated that the Findings are "silent" on this issue, and he concluded that considering financial impact on the developer is not prohibited – and thus allowed even though the Code does not explicitly state this. Does this also mean that other financial impacts like campaign contributions can be considered (even if they are reported to the Ethics Commission)?

One Commissioner also stated that extra time and money to redesign plans and re-submit to plan check is considered "project design." Most development professionals and planners disagree on this. Development and architecture professionals consider "design" to be engineered plans and graphics drafted and printed on paper. "Project design" is different from "project plan check processing," which is what the Commissioner stated.

Conversely, the City would have specifically included "plan check process processing" in the list of required Findings in LAMC Sec. 12.28.C.4, if they meant for the financial impact of additional re-design and plan check processing to be considered, but they chose to exclude it. Considering this exclusion to be the legal standard of "silent" is doubtful and questionable.

It appears that in the context of variance applications, under California law financial impact is only considered if the applicant can clearly show that he/she was deprived of all economic benefit as a result of a unique hardship to the property in question, not

because of a self-created hardship (e.g., a claim that the project doesn't "pencil out" for the developer unless the exception is granted).

In light of apparent confusion at the April 7th WLA APC hearing as to whether consideration of financial impact is allowed, the City Attorney should be directed to provide an opinion on whether or not the financial interest of the developer can legally be considered, including what is meant by financial impact, under what circumstances can financial impact be considered, and for what types of entitlement applications.

During the November 2, 2021 PLUM meeting, the motion passed without objection.

THE MOTION:

The Mar Vista Community Council supports the Westside Regional Alliance of Councils' request that the City Council direct City Attorney Mike Feuer to provide a legal opinion as to whether or not the City Planning Department and commissions have the legal right under State and City laws and ordinances to consider the financial interest of the developer when considering entitlements.