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January 14, 2019

VIA E-MAIL AND U.S. MAIL

Robert B. Hodil
Coblentz Patch Duffy & Bass LLP
1 Montgomery Street, Suite 3000
San Francisco, CA 94104
E-Mail: rhodil@coblentzlaw.com

**Re: Conflict of Interest Issues Regarding City Councilmember Susan Candell
with Respect to the Terraces of Lafayette Apartment Project**

Dear Rob:

As you know, along with Allan Moore of Wendel, Rosen, Black & Dean LLP, we represent O'Brien Land Company, LLC and Anna Maria Dettmer, in connection with the above-referenced 315-unit apartment project ("**Project**"), which requires an adjudicative land use permit under the findings established in Lafayette Municipal Code section 6-215, subject to the strict rules established by the state's Housing Accountability Act (Gov't Code section 65589.5) ("**HAA**"). We write in connection with the closed session recently scheduled for the City Council's January 14, 2019 regular meeting because we remain acutely concerned about the possibility Councilmember Susan Candell might have any role or influence regarding the Project, whether in an open and noticed meeting or otherwise, and whether in a public or private capacity.

The law requires Councilmember Candell to recuse herself from any involvement in the Project, as we documented in correspondence to you dated November 30, 2018 and December 5, 2018. For reasons unknown to us, however, despite her impermissible bias, Councilmember Candell has not yet recused and may well be participating in improper discussions intended to detrimentally affect the Project.

The objective, undisputed, and unassailable facts show that Councilmember Candell has a long history actively opposing the Project and even expressing personal hostility to our clients. As shown in our prior correspondence, with but a partial representation of Ms. Candell's tenacious and unrelenting Project opposition, she has committed extensive time and effort since 2013 attempting to thwart the Project as well as The Homes at Deer Hill project alternative that was ultimately defeated by a referendum petition in part through her efforts. These activities undoubtedly helped catapult her to office.

While we again acknowledge that Ms. Candell had a right to express herself as a private citizen and to advocate against the Project in that context, a right she regularly exercised for half a dozen years, there is a consequence to having done so now that she is a member of the City Council. As a Councilmember, Ms. Candell has various legal obligations. Among them, she is sworn to uphold the law, including compliance with the HAA and to not deprive our clients of their legal rights to impartial adjudicators. But Councilmember Candell cannot comply with her legal obligations here, however, unless she recuses herself, because she is embroiled in her long and spirited battle against the Project and cannot “unring” the bell she voluntarily chose to ring for years.

We understand Councilmember Candell will be out of the country this week and thus will apparently not participate in the closed session, at least in person (and presumably not telephonically). Nevertheless, because the Project is on the eve of its decision hearing and City has scheduled this closed session, following our December 18, 2018 letter and submittal package regarding the Project’s Addendum and the HAA, and also following our January 9, 2019 letter regarding the Permit Streamlining Act and the HAA, we again respectfully make clear that Ms. Candell must recuse herself from participating in *any* part of the City’s ongoing processing of the Project. Such recusal must be total and include open meetings and closed sessions, formal and informal meetings or conversations with other City officials and staff, and otherwise, and it must include a public statement by Councilmember Candell that she has so recused. In fact, once recused, Councilmember Candell cannot even resume her role as a private citizen Project opponent. And until she has publicly recused we have every reason to fear Councilmember Candell will use her role and influence to improperly impede the Project.

Although we do not know what advice you have provided to Councilmember Candell to date, based on our prior correspondence, it is important to note that the City Attorney previously advised then-Councilmember Traci Reilly that she should recuse herself from considering the Project based on the fact Ms. Reilly had signed but a single petition against the Project while still a private citizen. The circumstances underlying Ms. Reilly’s recusal were admittedly far less extreme, but the advice the City Attorney provided and the decision Ms. Reilly made in response to that advice were appropriately conservative. Given the sound opinions you provided to the City Council at its August 13, 2018 meeting on other issues related to the Project, we are confident in anticipating you have provided meritorious conflict of interest advice here aimed at ensuring the City’s upcoming permitting process for the Project is fair, legally valid, and not tainted by the potential participation of biased adjudicators.

Finally, we note that at the City Council’s January 7, 2019 special meeting to interview applicants to fill the vacancy on the Council created by the passing of Councilmember Mark Mitchell, Councilmember Candell was tasked, ironically, with asking each applicant the following revealing question:

8. Have you taken positions, signed petitions or believe that you have any conflicts of interest regarding projects or matters that are before the Council as applications or as the subject of lawsuits? If you have, will you follow the City Attorney's advice if the attorney indicates you should recuse yourself from Council considerations of these issues?

Unsurprisingly, each applicant responded unequivocally that they would follow the City Attorney's advice on conflict of interest issues. At this point, however, given that she has yet to publicly state whether she will recuse herself regarding the Project six weeks after we first raised these critical issues, notwithstanding her long and unabated Project opposition, and the virtual certainty she has been advised to recuse herself as a result, it is unclear what Councilmember Candell will decide to do. It is certainly not clear whether she would follow the City Attorney's conflict of interest advice or yours. The community is well-aware, however, that Councilmember Candell is opposed to the Project and is committed to its demise by any means possible, and it is thus clear that she is required to recuse herself and allow the Project to be considered by the City's unbiased decisionmakers.

Thank you in advance for your prompt assistance with this important matter.

Sincerely,

MILLER STARR REGALIA

Bryan W. Wenter

Bryan W. Wenter, AICP

BWW/kli

cc: Honorable Mayor Cameron Burks and City Councilmembers
Niroop Srivatsa, Interim City Manager
Joanne Robbins, City Clerk
Dennis O'Brien
Caryn Kali
Dave Baker
Anna Maria Dettmer
Allan Moore, Esq.
Arthur F. Coon, Esq.