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July 21, 2016

**Via Federal Express Overnight Delivery**

Mayor Diane Dixon  
& Members of the Newport Beach City Council  
City of Newport Beach  
100 Civic Center Drive  
Newport Beach, CA 92660

Re: The Residences at Newport Place (PA 2014-150)  
1701 Corinthian Way, 1660 Dove Street,  
4251, 4253, 4255 Martingale Way, and  
4200, 4220, 4250 Scott Drive

RECEIVED  
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OFFICE OF  
THE CITY CLERK  
CITY OF NEWPORT BEACH

**APPEAL OF PLANNING COMMISSION DENIAL OF PROJECT  
(RESOLUTION NO. 2019)**

Dear Mayor Dixon & Members of the Newport Beach City Council:

This law firm represents the applicant, Newport Place Residential, LLC (the “Applicant”), for the above-referenced Residences at Newport Place project (the “Residences Project”). The applicant has worked with City Staff for over two years on a mutually acceptable development plan, and proper entitlement applications, and invested \$1.5 million in City fees, consultant fees, costs, and non-renewal of leases prior to commencing re-development, based upon the input and guidance provided by City Staff.

**Background:**

The Residences Project is proposed on a 5.7 acre site, that is 45 years old, very “tired” and in NEED of redevelopment. The Applicant proposes redevelopment with a mixed use development, consisting of four buildings, four stories each, with a more costly podium design, with parking below the residences. The four buildings contain 384 rental units, 86 of which (30%) are for affordable housing, in compliance with the City’s redevelopment vision for the Residences Project site. The Residences Project also includes 5,677 square feet of retail uses. See attached Site Plan, attached as Exhibit A.

City Staff determined that the Project is consistent with its General Plan designation of Mixed Use Horizontal 2 (MU-H2), and supported three deviations from applicable site development standards, for setbacks, building height and how the 0.5-acre park is owned, consistent with the requirements of State Law, which entitles this project to three concessions from site development standards. Despite City Staff's recommendations for Project approval, and the caution of the City Attorney's office regarding the Planning Commission's repeated demand for a Development Agreement, the Planning Commission voted 4-1 to deny the Project, by its Resolution No. 2019.

The Planning Commission also denied the Applicant's request for a continuance to allow the Applicant time to revise its plan in response to some Commissioner's objection to the three development standard deviations supported by City Staff. This action by the Commission strongly suggests that any referral back to the Planning Commission at this stage, as recommended in the City Staff report, might be futile. Apparently the Planning Commission will oppose the Residences Project as is, or as revised to remove the three deviations to the development standards, if the Applicant does not relent and agree to the Commission's unlawful demand for a Development Agreement.

This letter responds to a letter sent to the Council by Shopoff Realty Investments ("Shopoff"), dated July 13, 2016, opposing the Applicant's appeal of the Planning Commission's June 23, 2016 denial of the Residences Project. A copy of the Shopoff letter is attached as Exhibit B (the "Shopoff Letter"). This letter is also offered in further support of the Applicant's appeal.

### **Introductory Observation about Shopoff Opposition:**

Before responding to the Shopoff Letter's four points, we generally note that the Shopoff project, Uptown Newport, is a direct competitor with the proposed Residences Project, albeit of much larger size (1,244 units for the Uptown Newport Project versus 384 units for the Residences Project). Shopoff's Uptown Newport site is also approximately 20 acres in size compared to the Residence Project which is 5.7 acres. Shopoff's four arguments, all of which have been rejected by City Staff, must be understood in that context when Shopoff demands the imposition of millions of dollars in additional "public benefit fees" upon the Residences Project, in the interest of "fairness" and "equity." A careful review of the facts demonstrates that Shopoff seeks to eliminate a much smaller competitor by imposing millions of dollars in additional financial obligations, and imposing strict physical constraints with respect to setbacks, height limits, etc., that will severely damage the proposed Residences Project.

We respond to Shopoff's arguments in the order presented.

### **Shopoff's Demand for a Development Agreement:**

Despite both City Staff and the City Attorneys' office repeatedly confirming that this much smaller project does not require a Development Agreement, because it does not require the "legislative approvals" that triggered the Development Agreement required for Shopoff's

Uptown Newport project, nevertheless, Shopoff argues that “fairness” requires the City to impose a Development Agreement on the Residences Project. Why? Because Shopoff knows that burdening this smaller Residences Project with \$12 million in Development Agreement related fees will likely kill it. Shopoff lets the “cat out of the bag” on the last page of its letter, third paragraph, when it states:

“The applicant’s requests for (setback) deviations are an attempt to circumvent the appropriate zone change, which would in itself trigger a legislative action requiring a Development Agreement.”

That statement is a tacit admission by Shopoff that it is a “legislative action,” for example, a change of zone or General Plan Amendment, that “triggers” the requirement for a Development Agreement, and thus the \$31.5 million in associated public benefit fees that Shopoff paid for its much larger project. Shopoff’s letter glosses over this key legal distinction in suggesting that the Residences Project is the same as the Uptown Newport project, and thus should also pay millions in additional Development Agreement related fees.

The matrix below compares the Residences Project with the Uptown Newport project, regarding necessary legislative approvals, and graphically shows how very different the two projects are in terms of what each project required to proceed. The Residences Project never required the legislative approvals that triggered the Development Agreement requirement for the Uptown Newport project.

<i><b><u>Development Agreement Requirement/Need Comparison</u></b></i>		
	<b>Residences at Newport Place</b>	<b>Uptown Newport</b>
<b><u>Pursuant to General Plan Section LU6.15.12</u></b>		
Utilizing additive units	<b>No</b>	<b>Yes</b>
<b><u>Pursuant to Municipal Code Section 15.045.020.A.2.a &amp; c</u></b>		
General Plan Amendment	<b>No</b>	<b>Yes</b>
Zoning Code Amendment	<b>No</b>	<b>Yes</b>
Legislative Action Required	<b>No</b>	<b>Yes</b>
<b><u>Other</u></b>		
Subdivision Map Required	<b>No</b>	<b>Yes</b>
Traffic Study Required	<b>No</b>	<b>Yes</b>
Vested Rights Required/Needed	<b>No</b>	<b>Yes</b>

The Uptown Newport project clearly required a series of “legislative actions” triggering a Development Agreement, which the Residences Project does not. City Staff and the City Attorney so found in repeatedly rejecting Shopoff’s assertions that the City must impose a similar Development Agreement obligation upon the Residences Project. Shopoff’s response to these undisputable facts? Total silence, because there is no persuasive response.

In making its fairness argument, Shopoff also glosses over a very important distinction between the public burdens imposed upon the two projects. The Residences Project, because of its location and acreage, must provide a 30% affordable housing component. In comparison, the Uptown Newport project only provides 15% affordable housing units, the burden of which is much more easily assumed by a much larger project with 1,244 residential units on a 20-acre site. By any objective measure, the much smaller Residences Project is shouldering a much greater public burden in terms of its affordable housing obligation, than is the Uptown Newport project.

The Planning Commission refused to accept these key distinctions, as reflected in the transcripts from its two hearings on the Residences Project. (A copy of the hearing minutes is being lodged concurrently with this letter). Despite being repeatedly informed by City Staff and the City Attorney's office that no Development Agreement could be required for the Residences Project, given the absence of any legislative action triggers; nevertheless, Planning Commissioners continued to demand one. For example, Commission Chair Kramer, after staff explained why no Development Agreement was required, stated: "...the General Plan clearly states that a development agreement is required." Commissioner Lawler expressed the same view. *See* attached minutes of the Planning Commission's June 9, 2016 hearing, attached as Exhibit C.

Interestingly, perhaps recognizing that their demand is not legally tenable, no such basis for denial is stated in the Planning Commission's Resolution No. 2019. However, the Planning Commission hearing transcripts show that the primary motivation for denial was the demand for a Development Agreement and the Applicant's refusal to succumb to that demand. In fact, when the Applicant asked to continue the hearing to work on a re-design, responding to the Commissioner's concerns about the proposed setback and height deviation, the Commission voted 3 to 2 against any continuance, suggesting again that the real issue for the Commission's majority was not the development standard deviations, but rather the Applicant's refusal to comply with the Commissioners' demand for a Development Agreement, and related fees. *See* Exhibit C.

The Shopoff Letter attempts to bolster the Planning Commission's Development Agreement demand, by defining the phrase "infill development" in a way that supports its argument that its Uptown Newport project and the Residences Project are both "infill," and thus, subject to the same Development Agreement trigger. *See* Shopoff Letter, page 2. Shopoff's letter provides no citation to any authority for its definition of "infill," that blurs the line between "infill" and "replacement units." Infill units, or "additive units," trigger the Development Agreement requirement, because of their new impacts upon the community, but "replacement units," for existing developed areas, do not.

Contrary to Shopoff's definition, the City's codes repeatedly refer to "infill development" as development of vacant land or parking lots, without any existing buildings, supporting City Staff's view that such units are truly "additive" over the existing uses being replaced. The Residences Project site is neither vacant land, nor a parking lot without buildings, which is why all of its proposed residential units are deemed by City Staff to be "replacement units," for

existing commercial development. *See* Birds eye view of the existing project site, Exhibit D hereto.

Again, in contrast to the 384 “replacement units” in the Residences Project, Shopoff’s letter admits that its 1,244 unit Uptown Newport project has both replacement units (954) and additive units (290). *See* Shopoff Letter, page 2.

Accordingly, Shopoff’s arguments regarding “fairness” and “equity” are not well taken. Indeed, the implied suggestion in the Shopoff Letter that it will be due a refund from the City, of \$31,537,665.90 in public benefit fees, if a similar obligation is not imposed upon the Residences Project, is baseless. Frankly, it is a rather obvious attempt to scare the City Council by raising the specious notion that the City will have to give up \$31.5 million dollars in monies owed, but not yet paid, by Shopoff.

To the extent the City nevertheless insists upon a Development Agreement, and the payment of millions in public benefit fees pursuant to a Development Agreement, the Applicant objects based upon the State’s Mitigation Fee Act, *Government Code* section 66000 *et. seq.*, and the United States and California Constitutions. *See Dolan v. City of Tigard* (1994) 114 S.Ct. 2309, which require nexus and proportionality for the imposition of fees and exactions by the City. Here, no such nexus or proportionality can be shown because the project actually generates fewer vehicle trips than the existing commercial uses, under the City’s trip count standards, as confirmed by City Staff in its Staff Report to the Planning Commission, and by the MND for the Project.

Generally, the demand for a Development Agreement, and related public benefit fees, would also violate *Government Code* sections 65008, 65589.5, 65913 and 65915, entitling the Residences Project to incentives and concessions for its 30% affordable housing component, not the imposition of millions of dollars in additional financial obligations which the City’s own staff, and City Attorney’s office, determined to be unlawful.

### **The Project’s 0.5-Acre Park:**

The Applicant proposed a 0.5-acre landscaped open space area owned and maintained by the Applicant, and open to non-residents in daylight hours. *See* 0.5-acre open space plan, attached as Exhibit E. Strikingly, the Applicant proposes to keep 53% of this small, 5.7-acre site, as both landscaped and paved open spaces and amenities, as compared to the norm for this type of project, which is approximately 15% to 20%.

The City Staff report to the Planning Commission quoted the relevant General Plan policy as follows:

“The General Plan requires a park dedication of at least 8 percent of land or 0.5-acre whichever is greater ... The policy allows a waiver where it can be demonstrated that the development parcels are too small to feasibly accommodate a park or inappropriately located to serve the needs of local residents.” Staff

Report to Planning Commission (5/5/2016), page 11, quoting General Plan LU6.15.13.

In applying this General Plan requirement to the Applicant's request for a waiver of the dedication requirement, *i.e.*, how the park is owned, City Staff stated:

"...the [0.5-acre open space area proposed] is too small to accommodate the desirable amenities that would qualify it as a neighborhood park. Additionally, the subject property is not located in an optimal location to serve the needs of local residents. As a result, staff supports the waiver provided the 0.5-acre open space is not enclosed and an access easement is established over the entire open space area for the lifetime of the project.... Additionally, the Applicant would pay a fee in-lieu of dedicating 0.5 acres of parkland of approximately \$1,250,000." (Staff Report, p. 12.)

In summary, the Applicant proposes that the City receive a 0.5-acre park and in-lieu fees of \$1.25 million, because the park will be governed by a perpetual easement rather than dedicated to the City in fee. The park will be physically the same; no difference. Why does that ownership distinction matter? It matters because a dedication of the 0.5-acre park to the City would reduce the small project site in a way that would legally require a reduction of 33 residential units (351 instead of 384), under the applicable density regulations.

The Shopoff letter demands a one acre public park on a project site totaling 5.7 acres, with no existing residences anywhere nearby. Shopoff does so because it understands that imposing a one acre park requirement, or even the dedication requirement of 0.5 acres, on such a small project site, along with the other Shopoff demand for \$12 million in Development Agreement public benefit fees, would help kill the Residences Project by reducing the number of units by 33 (a \$7 million dollar loss), and also driving up costs by \$12 million dollars in Development Agreement related fees. Shopoff knows its demand is a double poison pill.

City Staff disagreed with Shopoff's demand before the Planning Commission. Staff correctly explained that General Plan policy 6.15-13 requires a 0.5-acre parkland dedication for this site, but also authorizes a waiver under certain circumstances. The Applicant proposes a waiver, but conditions its request on very attractive terms for the City, which allows the City the benefit of a 0.5-acre public park, accessible to residents and non-residents alike in perpetuity by an easement, plus an in-lieu payment of \$1,125,000. So, the City gets a park and in-lieu fees, which is "a homerun" for the City. Of course, Shopoff does not care about "a homerun" for the City because its park demand is motivated by its anti-competitive goals to kill the Residences Project, not what is best for the City.

The public notice for the appeal hearing states: "In conjunction with the filing of an appeal, changes to the original project are proposed in response to comments raised by the Planning Commission and the public. In accordance with Zoning Code Section 20.64.030.D.2, the City Council has the option of referring the matter back to the Planning Commission or continuing the item to a future City Council meeting date for action." Consistent with that notice,

as will be made clear at the appeal hearing, the Applicant is willing to dedicate the 0.5-acre park to the City if the City Council prefers that's option, rather than the Applicant being responsible for owning and maintaining the park and paying the City a \$1,125,000 in-lieu fee. If that is the City's preference, the Applicant requests that the Council take action, as described in the Zoning Code section quoted above, rather than referring this project back to the Planning Commission.

### **The Project's Request For A Height Deviation:**

The Applicant proposes an exception to the 55' height limit, including architecturally attractive towers that will include the elevator banks and shield roof top equipment from view from nearby tall buildings. Nearby buildings include a 10 story Radisson Hotel and four story office building. Some surrounding buildings exceed 100 feet in height. The Residences Project proposes four residential buildings with a maximum height of 58 feet, with architectural elements up to a maximum of 83 feet. The site renderings show the enhanced architectural interest from allowing the deviation requested. (*See attached rendering, Exhibit F hereto*).

City Staff addressed this issue in its Staff Report to the Planning Commission, supporting the height deviation, stating:

"...Staff believes the findings can be made for approval of increased height...The semi-sub level parking structure necessitates the additional height to the buildings in providing vertical clearance and air ventilation to the garage structure. It is also necessary to allow all larger vehicles utilized for loading/unloading and deliveries...eliminating an unsightly loading area within public view...Additionally, architectural elements that exceed the 55-foot height limit serve dual purposes in providing the project with vertical articulations and space needed to house elevator/stair shafts and mechanical equipment."

The Shopoff letter disagrees and demands strict enforcement of the 55' height limit with zero deviation. What difference does it make for Shopoff? Is the Residence Project visible from the Uptown Newport site? No. Does it interfere with any views from Uptown Newport? No. Rather, this Shopoff objection letter is entirely motivated by its anti-competitive agenda to eliminate a high quality competitor from the rental apartment market.

Ultimately, the Council will decide whether the height deviation supported by City Staff is appropriate. However, as with the half-acre park issue, the Applicant will present an alternative design option to the Council at the appeal hearing next week, that eliminates the height deviation request. The Applicant believes the alternative option is not nearly as attractive or functional, as will be demonstrated by compare and contrast renderings, but the Council will have an alternative option if it disagrees.

### **The Project's Request For Marginally Reduced Setbacks, to Enhance Internal Amenities:**

The project proposes setbacks of 18 to 29 feet from the property lines on four sides and a 59 foot setback from the southerly property line between Dove Street and Martingdale Way, as reflected for each bordering street in the matrix below.

<i><b>Building Setback Comparison</b></i>				
<b><u>Setback location</u></b>	<b>Setback per Newport Place Planned Community (PC) Guidelines</b>	<b>Proposed Setback</b>	<b>Total Setback from street (including existing 10' City right-of-way)</b>	<b>Total Deviation from PC Setback to Proposed Setback</b>
Dove Street	30'	26' – 29'	36' – 39'	Reduction of 1' – 4'
Scott Drive	30'	24' – 30'	34' – 40'	Reduction of 0' – 6'
Corinthian Way	30'	18'	28'	Reduction of 12'
Martingale Way	30'	19' - 20'	29' – 30'	Reduction of 10' – 11'
South Property Line	10'	59'	N/A	Increase of 49'

The proposed reduction in applicable 30 foot setbacks, a vestige of the non-residential commercial uses in this area, does not result in an increase in even one residential unit. This is not a request designed to maximize density. The additional space was used to enhance the Project's internal amenities, including the large community pool, community clubhouse, fitness center, business center, entertainment courtyards, two children play areas, and the half-acre park. City Staff agreed that this deviation made sense in delivering a better project, that is also consistent with the City's desire for a more "walkable" and "livable" community. The enhanced amenities are depicted on attached Exhibit G.

Before the Planning Commission, the Project planner, Rosalinh Ung, stated Staff's view on the setback deviation request as follows:

"... [W]e thought that the variety of setbacks would be adequate in this case in exchange for the half acre open space that's being provided at the southerly edge of the property. The 30 foot setback usually would be more applicable to a major thoroughfare like MacArthur or Jamboree where you need to have that setback for it and if you've seen Uptown project that has that 30 foot setback and that's sufficient. In this case the project is located in more of the interior streets where we thought that the 30 foot setback would probably be a little bit abundant. So the variation of the setback in exchange for more of the interior open space and amenities area plus the southern [open space] portion of that will be sufficient."

The Shopoff letter disagrees and demands full 30' setbacks, again in the hope of physically squeezing this small project, to make it less attractive as a competitor to Uptown Newport. As with the other two deviations requested, the Applicant will present an alternative option to the Council at the appeal hearing, that strictly complies with the 30 foot setback

requirements, by shrinking the size of some of the internal Project amenities. If the Council prefers that course, it will have the option of taking action upon it as authorized by Zoning Code section 20.64.030.D.2, and as stated in the public notice of appeal.

### **CONCLUSION**

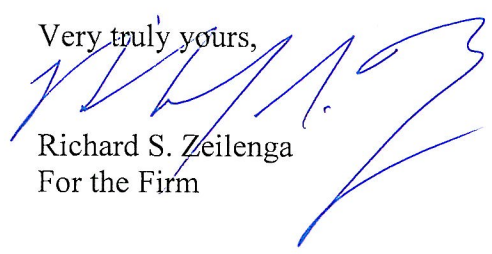
This is the first test case mixed use residential project to proceed in this area of the City, in close coordination with City Staff, and in compliance with its direction for how the entitlements should be processed, through a Planned Development Permit, allowing for relatively minor adjustments to applicable development standards. After over 2 years of work, and \$1.5 million dollars invested, it would send a terrible message to property owners in this area of the City, willing to invest in the City's stated re-development vision, if the City Council allows the Planning Commission's denial to stand.

We urge the Council to exercise its authority to take action on this application as proposed to the Planning Commission, without any revision, because it is by far the superior design for the community and for future residents. That fact will be made abundantly clear by the Project consultants, during the appeal hearing next week.

However, if the Council prefers to remove the three deviations supported by City Staff (*i.e.*, deviations to setbacks, building height and the dedication requirement for the 0.5 acre park), we urge the Council to continue this appeal hearing to a second hearing before the City Council, to allow City Staff time to prepare a new Resolution to approve the Residences Project as revised, to reflect Council direction to remove some or all of the three deviations. This procedure is expressly authorized by City Zoning Code section 20.64.030.D.2, and is stated in the public notice for the appeal hearing as an option for the Council.

Nevertheless, if the Council prefers to refer the project back to the Planning Commission, despite the problems with that approach outlined at the beginning of this letter, we strongly urge the Council to provide the Commissioners with some clear direction regarding their demand for a Development Agreement, lest that demand again result in a project denial and a further appeal back to the City Council.

Very truly yours,

  
Richard S. Zeilenga  
For the Firm

RSZ:bsm  
Enclosures

cc: Aaron C. Harp, Esq., City Attorney (*via e-mail – with encls.*)  
Michael Torres, Esq., Assistant City Attorney (*via e-mail – with encls.*)  
Rosalinh Ung, Associate Planner (*via e-mail – with encls.*)  
Shane Maguire, Esq.

# Site Plan



EXHIBIT A

193

March 3, 2016

Community Development Department - Planning Division

July 13, 2016

Mayor Diane Dixon  
& Members of the Newport Beach City Council  
City of Newport Beach  
1000 Civic Center Drive  
Newport Beach, CA 92660

**RE: The Residences at Newport Place (PA 2014-150)  
1701 Corinthian Way, 1660 Dove Street, 4251, 4253, 4255 Martingale Way, &  
4200, 4220, 4250 Scott Drive**

- Mitigated Negative Declaration No. MD2015-009
- Planned Development Permit No. PL2014-001
- Lot Merger No. LM2014-003
- Affordable Housing Implementation Plan No. AH2015-001

Dear Mayor Dixon & Members of the Newport Beach City Council:

We reviewed the above referenced application for The Residences at Newport Place (RNP) and previously expressed our concerns in a formal letter and during public comments to the Planning Commission, which voted to deny a motion to continue the hearing and voted to deny the project. Since the Planning Commission's June 23<sup>rd</sup> Final Denial (Resolution 2019) the applicant has exercised their rights to appeal the denial to City Council, so we wish to express our concerns to the council.

These concerns deal with the extent this Airport Area application is requesting waivers from General Plan requirements and Zoning requirements. While we recognize the Newport Place zoning standards provide for residential development on sites smaller than 10-acres with a 30% affordable component, we believe that a Development Agreement and a 1 acre park are required by the General Plan. Additionally, we believe the applicant needs to live within the height and setback standards as defined by the Newport Place Zoning.

Development Agreement Requirement

We believe there is no justification for the lack of a Development Agreement and the fees associated, which are required by the General Plan as follows:

Land Use Element-Airport Area-Mixed Use Districts (Subarea C. MU-H2 Designation)

LU 6.15.12 Development Agreements P. 3-109

"A Development Agreement shall be required for all projects that include infill residential units. The Development Agreement shall define the improvements and public benefits to be provided by the developer in exchange for the City's commitment for the number, density, and location of housing units." (Imp. 2.1, 3.1, 4.1, 13.1)

The common definition of "infill development" is the process of developing vacant or under-used parcels within existing urban areas that are already largely developed. This project is definitively infill residential in nature and should have a Development Agreement and the fees associated.

We disagree with staff's rationale that the General Plan Development Agreement requirements were only intended for "additive units" and not for those projects like the RNP that provide 384 "replacement units".

As the Planning Commission is aware, in February of 2013, Uptown Newport was the first Airport Area project to be approved by the City of Newport Beach, and was required to have a Development Agreement and Public Benefit Fee on all of its 1,244 units – both replacement and additive. These fees, originally set at \$32,500 per unit on the document effective date of April 2013, increase by CPI annually on each first day of January and as of January 1, 2016 have increased to \$33,798.05 per unit. CPI has increased from 232.531 in April 2013 to 236.525 at the end of December 2015, a 3.994 point increase, which equates to a 1.718% increase.

Based on staff's recommendation for the RNP project, the Uptown Newport project should only be paying fees for the 290 "additive" units and not the 954 "replacement units" and density bonus units.

With CPI-adjusted DA fees of \$33,058.35 per dwelling unit, that reduction in fees equates to approximately \$31,537,665.90 (Thirty-one Million, Five Hundred Thirty-seven Thousand, Six Hundred Sixty-five Dollars and Ninety Cents) for Uptown Newport.

**954 Dwelling Units x \$33,058.35 Per Unit = \$31,537,665.90**

Or said a different way, if the same DA Fees were imposed on the RNP project, the fees would be approximately \$12,694,406.40 (Twelve Million, Six Hundred Ninety-four Thousand, Four Hundred Six Dollars and Forty Cents).

**384 Dwelling Units x \$33,058.35 Per Unit = \$12,694,406.40**

Based on the magnitude of the fees in question here, we strongly urge the Planning Commission to seek the City Council's review of this project so that the requirement of a Development Agreement can be sought. Lack of a Development Agreement on this project would be unfair and inequitable to all other Airport Area residential projects.

Park Requirement: We believe there is no justification to grant a General Plan Land Use Policy (Neighborhood Parks (LU6.15.13) waiver of the park dedication. The General Plan states, "In every case, the neighborhood park shall be at least 8 percent of the total Residential Village Area or one acre in area, whichever is greater, and shall have a minimum dimension of 150 feet." We believe the General Plan clearly requires and anticipated all Airport Area residential communities would provide a public park. Granting a deviation from this requirement would create a precedent for future Airport Area residential projects and establishes an inequity in which the city is applying its standards.

The requested waiver of the 1 acre park for public dedication also allows the applicant to generate additional density on the site as the park acreage is not deducted from the total land. With a 1 acre park, the net acreage would be 4.7 acres creating a maximum of 235 units based on the maximum density of 50 upa before the density bonus and 317 units with the 35% density bonus. This is a reduction in 50 allowable units and 67 units with the density bonus.

#### Deviation from Newport Place Zoning Standards

The Newport Place zoning sets forth a maximum building height of 55 feet. The height of a structure can be increased with approval of a site development review and subject to required findings.

The height requested by the applicant exceeds the 55 foot height limit by 28 feet. We understand that the height deviations can be approved if the Planning Commission approves a set of findings and a Planned Development Permit. The staff report indicates that the additional height to 83 is only for architectural elements, but the plans indicate there are living spaces within the additional height. We believe the request is far reaching (over a 50% increase in height) and the findings can't be made.

Deviation from the Newport Place Setback Standards

The applicant is also requesting deviation from the 30' setback standard on all streets the project abuts; Corinthian Way, Martingale Way, Dove Street, and Scott Drive. The applicant's representative stated that the request was based on the fact that the Newport Place Zoning Standards never anticipated residential. The staff report suggests they are supportive of the setback deviation provided the applicant builds a 0.5 acre park with public access.

We contend if the zoning standards needed to be modified to accommodate residential, the applicant should have requested a Zone Change as part of its application as is the case with all other Airport Area residential projects.

In conclusion, we believe this project is too far reaching and doesn't meet the basic standards and requirements that are mandated for the Airport Area residential developments. This development project should be held to the same standards as others in the Airport Area and as such should have a Development Agreement and the associated fees; should adhere to the park requirement, which would reduce the density; and should comply with the Newport Place height and setbacks or submit for a zone change. The applicant's requests for deviations are an attempt to circumvent the appropriate zone change, which would in itself trigger a legislative action requiring a Development Agreement.

We are hopeful the City Council will uphold the Planning Commission's denial of this project or request the applicant significantly revise the project to be more in keeping with the standards and requirements being applied to all other Airport Area residential projects.

Thank you for considering our thoughts and concerns.

Sincerely,



John Santry

Executive Vice President- Acquisitions and Development

AYES: Kramer, Koetting, Lawler, Weigand, Zak  
ABSTAIN: None.  
ABSENT: Brown, Hillgren

**ITEM NO. 5 THE RESIDENCES AT NEWPORT PLACE (PA2014-150)**

**Site Location: West of MacArthur Boulevard and is bounded by Corinthian Way, Martingale Way, Dove Street & Scott Drive (1701 Corinthian Way, 1660 Dove Street, 4251, 4253, 4255 Martingale Way, 4200, 4220, & 4250 Scott Drive)**

Principal Planner Campbell presented a PowerPoint summarizing the proposed project, land use designations, General Plan requirements, and surrounding uses.

Associate Planner Ung provided an overview of the project details. She explained the General Plan Policy Waiver, Mitigated Negative Declaration, and Planning Commission study session. She discussed comments received on the project.

In response to Secretary Koetting, Principal Planner Campbell stated the proposed project was in keeping with the concept plan Figure LU23 of the General Plan. Secretary Koetting requested an explanation of the concept plan. Principal Planner Campbell stated the light green areas depicted potential parks, orange lines depicted future residential streets, and the dotted green lines were pedestrian ways. He explained that the concept plan shows a proposed linear park and pedestrian way across the project site. Secretary Koetting stated the concept of housing in the airport area was not new. Principal Planner Campbell discussed the zoning of the entire area, HCD requirements as the reason why the residential overlay was created in the Newport Placed Planned Community. Secretary Koetting asked about the affordable housing requirement. Principal Planner Campbell discussed the requested density bonus.

In response to Commissioner Lawler, Assistant City Attorney Torres explained that the project did not require a development agreement because it was replacement units rather than infill development. He stated they had asked the applicant if they would voluntarily enter into a development agreement to which they declined. Commissioner Lawler asked for clarification on the difference between replacement versus infill and why staff did not want a development agreement. Assistant City Attorney Torres stated a development agreement would be beneficial but was not required.

In response to Chair Kramer, Assistant City Attorney Torres stated the General Plan and Municipal Code provisions had been reviewed and approved by the Council and a development agreement was not required in the development. Chair Kramer asked if staff had canvassed the Council. Assistant City Attorney Torres stated staff had not canvassed the Council.

In response to Commissioner Lawler and Secretary Koetting, Principal Planner Campbell explained General Plan Policies 16.15.5 and 6.15.12 related to infill projects. He also discussed the conversion of commercial square footage to residential.

In response to Chair Kramer, Principal Planner Campbell explained the distinction between the proposed project and Uptown Newport project.

Commissioner Lawler asked if the applicant had made efforts to incorporate additional retail on the ground floor. Principal Planner Campbell stated the applicant had made no changes to the project to increase retail.

In response to Commissioner Zak, Principal Planner Campbell explained the allowance of additive units. Commissioner Zak clarified that the replacement units were calculated based on trip generation. Principal Planner Campbell explained the density bonus provision. Commissioner Zak expressed concern that the applicant was told that a development agreement was not necessary but it was now an issue.

Chair Kramer stated there were continuing issues with the development agreement.

In response to Secretary Koetting, Principal Planner Campbell explained the requirement for the dedication of a half-acre for public park purposes. He stated the applicant was attempting to adhere to the General Plan policy by providing a half-acre of open space, allowing limited public access and providing an in-lieu fee for the value of the land. He indicated the space was largely passive.

In response to Commissioner Weigand, Principal Planner Campbell explained the proposed walkway and parking.

Chair Kramer requested explanation regarding the waiver of dedication for the park and necessary lot line adjustment. Principal Planner Campbell explained the dedication would affect the density calculation and if required, it would reduce the project by 33 units. Chair Kramer explained that, if the Commission could not make the finding for the waiver, the applicant would have to redesign the project. Principal Planner Campbell confirmed that to be accurate.

Commissioner Zak asked why the public access easement was limited to the sidewalk. Principal Planner Campbell suggested asking the applicant. He indicated the applicant expressed a concern to staff about security for units fronting the park in relation to fencing and gating the park.

Chair Kramer asked about the traffic analysis. City Traffic Engineer Brine discussed the daily trips and indicated the threshold was not met for a detailed traffic study. Chair Kramer asked why an analysis was not conducted based on the project sensitivity. City Traffic Engineer Brine stated he did not expect any impacts to be discovered from a detailed study.

Britnae Jensen, Development Manager for Newport Place Residential, presented an overview of the proposed project. She explained why a development agreement was not required. She explained the overall architecture of the project, modified based on comments received at the study session.

In response to Secretary Koetting, Ms. Jensen described the retail on the corner of Scott Drive and Dove Street and community space above it.

Ms. Jensen discussed the modified setbacks and efforts to promote a more walkable neighborhood. She stated the project met the intent of the layout for the open space area as shown by Figure LU23. She showed a map showing retail uses in the area and petition from the surrounding businesses in support of the project.

In response to Commissioner Zak, Ms. Jensen explained the reason for proposing enclosure of the open space due to residential security needs. Commissioner Zak stated he would be more open to the proposal if the open space area was not being used to increase density.

Commissioner Weigand expressed concerns about the proposed main entrance and vehicular traffic from the businesses. Ms. Jensen stated they had concern about parking on Martingale Way. She stated 90 percent of the parking on Martingale Way was due to a rental car establishment on Birch Street. She discussed parking for the project. She discussed the proposed pet areas and construction timeframe. She discussed negotiations with the current tenants and explained the School District boundaries.

In response to Chair Kramer, Ms. Jensen discussed the schools for the proposed project. City Traffic Engineer Brine stated school traffic had not been studied specifically; however he noted that it would be included in the trip generation assumptions.

Commissioner Weigand asked if future residents would be provided notice on the schools. Ms. Jensen stated disclosures regarding schools and the airport would be provided.

In response to Secretary Koetting, Ms. Jensen explained the proposed singular quality restaurant use. She presented a diagram showing access and circulation and she explained the stoops and connectivity of the neighborhood.

Chair Kramer opened the public hearing.

Dennis Baker discussed traffic on Birch. He expressed concern about the lack of a proposed park and reduction of businesses that serve the area.

Joe Finnell, President of the Southern California Pilots Association, presented information and the opinion that the project was a bad idea due to noise and the flight pattern that takes planes over the site.

Fred Fourcher expressed concern about infill of parking lots, increasing density and traffic issues. He discussed noise from the airport and pollution from planes.

John Santry, Shopoff Realty Investment, requested all development be held to the same standards and it be equitable and fair.

Jan Hollis, Director of Sales and Marketing for Radisson Hotel, indicated opposition to the project due to loss of restaurant and retail options. She stated a residential complex would have a negative impact on the hotel and businesses.

Dorothy Kraus, Still Protecting Our Newport (SPON), requested a specific plan or comprehensive plan for the area. She expressed concern regarding loss of parking, lack of community amenities, and increased traffic. She stated a streetscape plan was necessary. She requested the Commission delay action until the character of the airport and impact of mixed use was understood.

John Petry stated the airport created a noise issue. He expressed concern regarding the loss of restaurant space and suggested a specific plan for the area.

Rick Roshan, owner of office building at 4299 MacArthur Boulevard, discussed the need for parking.

Jim Mosher reminded the Commission that its decisions were discretionary. He echoed the SPON sentiment for a specific plan. He discussed the idea of adding residences to the airport area. He questioned the proposed height.

SueAnn Challita, representing her parents, owners of Arnie's Deli, discussed the poor condition of the property and lack of upkeep. She discussed dangerous traffic conditions. She stated the property owner had not been in contact with the existing tenants.

Lori Trottier stated CEQA did not require responses to public comments on negative declarations but thanked staff for responding to her letter. She commended staff and the developer in its review of the project. She stated she visited the site and noted parking in the area. She discussed the deficiency in active parks in the area. She suggested additional traffic analysis. She questioned air quality and potential health risks from the airport. She expressed concern that there was no requirement for mixed use and it could end up as simply an apartment complex.

Javaid Ansari, Managing Partner of Compak Asset Management, expressed concern regarding traffic management and suggested installation of stop signs. He suggested additional retail development be included. He questioned the proposal for a gate around the park and traffic safety.

With no further speakers, Chair Kramer closed the public hearing.

Secretary Koetting requested information on the airport and height of the building, comprehensive plan, parking reduction, applicant's pro forma for bodies per apartment, and traffic analysis.

Ms. Jensen stated the required half-acre open space would be provided. She discussed the waiver for payment of in lieu fee for non-dedication of the open space. She explained the proposal to enclose the open space for increased security and maintenance. She stated the shopping center was struggling and it was not realistic to maintain it as a retail center. She acknowledged the concerns of the Radisson Hotel. She stated the project had FAA clearance and stated the impetus was on the development for appropriate sound proofing. She stated the variances would enhance the project. She discussed the comments suggesting the need for additional retail and a desire for a local market.

Associate Planner Ung discussed the proposed parking ratio. Secretary Koetting asked why it was less than the standard. Principal Planner Campbell explained the parking standard is established by density bonus ordinance and indicated the project was in compliance.

In response to Secretary Koetting, City Traffic Engineer Brine stated residential had obtained clearance. Secretary Koetting questioned potential traffic impacts. City Traffic Engineer Brine stated the traffic phasing ordinance was being followed.

Commissioner Lawler indicated support for cautious redevelopment. He suggested a development agreement and need for additional retail. He stated the open space should be open. He indicated opposition to the project.

Commissioner Zak indicated support for residential mixed-use in the area. He questioned Finding B. He stated a development agreement was warranted. He suggested adding a condition requiring public access cover the entire open space area and not allowing gates if the project were approved. He suggested requiring mature trees and ensuring adequate parking.

Commissioner Weigand stated the residents would be aware of the airport. He suggested staff review housing near airports in surrounding communities and impacts to residents.

Chair Kramer stated the parcel needed improvement and he indicated support for redevelopment of the parcel and residential use. He stated the project as currently designed had numerous flaws. He stated he could not make Findings A, 2, 3 and 5. He expressed concern about neighborhood compatibility. He stated he could not make Finding B, Finding F, nor Finding I. He expressed frustration with the inadequacy and practicality of the General Plan. He stated he could not support the project.

**Motion** made by Chair Kramer and seconded by Commissioner Lawler to deny the project and direct staff to return to the next Planning Commission meeting with a resolution containing the findings for denial.

Secretary Koetting suggested the applicant make modifications based on the Commissions and public comments. He indicated support for staff's determination that a development agreement was not required. He suggested continuing the hearing to allow the applicant to redesign the project.

Chair Kramer expressed concern with putting the project on hold.

Ms. Jensen requested a continuance to allow revisions based on comments.

Chair Kramer stated the purpose of the study session was to allow revisions to the project based upon Commissioner's input. Ms. Jensen stated they had reanalyzed the concerns and

provided justification on why some of the changes were not made. She stated there was opportunity to make additional changes.

**Alternate Motion** made by Secretary Koetting and seconded by Commissioner Zak to continue the hearing.

In response to Chair Kramer, Assistant City Attorney Torres explained additional staff time involved in continuing the project. Chair Kramer stated the decision to deny could be appealed to the City Council, during which time, the project could be redesigned. Chair Kramer recommended the alternate motion be denied.

The question was called on the alternate motion to continue the hearing and the motion failed by the following vote:

AYES: Koetting, Zak  
NOES: Kramer, Lawler, Weigand  
ABSTAIN: None  
ABSENT: Brown, Hillgren

The question was called on the original motion to deny the project and the motion carried by the following vote:

AYES: Kramer, Lawler, Weigand, Zak  
NOES: Koetting  
ABSTAIN: None.  
ABSENT: Brown, Hillgren

RECESS Chair Kramer called a recess at 10:10 p.m. The meeting reconvened at 10:15 p.m., with Vice Chair Tim Brown and Commissioner Bradley Hillgren absent.

#### **VIII. NEW BUSINESS**

##### **ITEM NO. 6 WEST NEWPORT MESA STREETSCAPE MASTER PLAN (PA2015-138) Site Location: West Newport Mesa**

Deputy Director Wisneski presented the staff report.

Chair Kramer discussed the proposed timeline for the plan.

Brian Hannegan, RRM Design Group, presented a PowerPoint updating the Commission on the progress of the plan.

In response to Chair Kramer and Commissioner Weigand, Mr. Hannegan discussed issues with power lines.

In response to Secretary Koetting, Deputy Director Wisneski explained assessment districts for the purpose of undergrounding. City Traffic Engineer Brine discussed conditions requiring undergrounding.

Mr. Hannegan concluded that the purpose was to create a master plan to help guide improvements along the streets.

Chair Kramer indicated support for the plan.

In response to Secretary Koetting, Deputy Director Wisneski stated a way finding sign program would be included. Secretary Koetting suggested medians where possible.

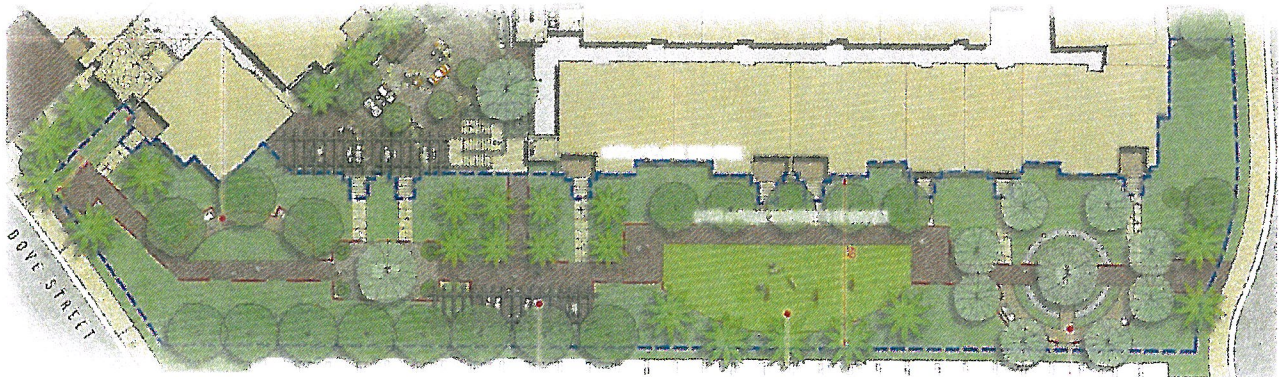
Jim Mosher suggested the possibility of undergrounding based on increased utility payments. He stated the Parks, Beaches and Recreation Commission should be included in review of the plan.

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The Residences at Newport Place (PA2014-150)



**EXISTING SITE**

## Revised Landscape Plan



0.5-acre open space (outlined in blue)  
Easement boundary for public access (outlined in red)  
Gated at either end at public sidewalk

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EXHIBIT F

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The Residences at Newport Place (PA2014-150)



**EXHIBIT G**

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Item No. 5k Additional Materials Presented at Meeting  
The Residences at Newport Place (PA2014-150)

