

RECEIVED
OCT 27 2008
DEPT. 86

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

AARON M. EPSTEIN, an individual,

Petitioner,

vs.

CITY OF LOS ANGELES, a municipal
corporation; the CITY OF LOS ANGELES
PLANNING COMMISSION; and DOES 1
through 10, inclusive,

Respondents

Case No. BS108652

**PEREMPTORY WRIT OF
MANDATE**

Date: October 6, 2008
Dept. 86

[Hon. David P. Yaffe]

TO RESPONDENTS CITY OF LOS ANGELES AND CITY OF LOS ANGELES
PLANNING COMMISSION, INCLUDING ITS AREA PLANNING COMMISSIONS:

YOU ARE HEREBY COMMANDED immediately upon receipt of this writ:

1. To describe in all of the Planning Commission and Area Planning Commission's posted agendas the actions that the Planning Commission and Area Planning Commissions are requested to take at their meetings and hearings under CEQA with the same degree of clarity, particularity, and detail as used to describe the non-CEQA actions to be taken at the same meetings and hearings, as quoted and described in Exhibit 1 hereto.
2. To identify in all of the Planning Commission and Area Planning Commission's posted agendas the CEQA actions as actions that the Planning Commission and Area Planning Commissions have been requested or that they propose to take at their meetings and hearings.
3. Not to take any actions or to discuss any items under CEQA that are not described in the Planning Commission and Area Planning Commission's posted agendas with the clarity, particularity, and detail as quoted and described in Exhibit 1 hereto.

YOU ARE HEREBY FURTHER COMMANDED that you shall, through an authorized officer(s), make a return to the peremptory writ of mandate under oath specifying what the City, Planning Commission and Area Planning Commissions have done to comply with the writ and to file that return with the Court, and serve that return by hand or facsimile upon Petitioner's counsel of record in this proceeding, within 90 days of service of the writ on the City, Planning Commission and Area Planning Commissions.

Let the foregoing writ issue. David P. Zupke

COUNTY CLERK

JOHN A. CLARKE, CLERK

DATED: NOV 12 2008



By *K.W. Kam* K.W. Kam
Deputy County Clerk, Clerk of Superior Court

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 10/06/08

DEPT. 86

HONORABLE DAVID P. YAFFE

JUDGE

C. HUDSON

DEPUTY CLERK

B. JAUREGUI, COURTROOM ASST.

HONORABLE
3.

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

C. CRUZ, CSR # 9095

Reporter

9:30 am

BS108652

Plaintiff

Counsel

ROBERT P. SILVERSTEIN (X)

LA MIRADA AVENUE NEIGHBORHOOD

Defendant

Counsel

TERRY P. K. MACIAS (X)

VS

CITY OF LOS ANGELES ET AL

NATURE OF PROCEEDINGS:

HEARING ON PETITION FOR WRIT OF MANDATE;

Matter comes on for trial and is argued.

The Petition for Writ of Mandate is granted.

This is a proceeding under the Ralph M. Brown Act, Government Code section 54950 et seq, which is California's Local Agency Public Meeting Law. The legislative purpose of the law is to require local commissions, boards, and councils and other public agencies of the state to conduct the people's business in public (section 54950). One of the requirements of the law is that a public agency post an agenda 72 hours before each regular meeting that contains a brief general description of each item of business to be transacted or discussed at the meeting, and to prohibit the legislative body of a local agency from undertaking any action or discussion on any item that does not appear on such posted agenda (section 54954.2(a)).

The evidence before the court, which is uncontradicted, shows that the City Planning Commission of the City of Los Angeles repeatedly posted agendas of its meeting during the year 2007 that clearly disclosed each action that it intended to take or discuss at a meeting except actions to be taken or

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considered under the California Environmental Quality Act (Public Resources section 20000 et seq). Non-CEQA items were described under the heading "Requested Action" in terms such as the following: "Permit 11,373 square feet of alleys to be vacated and added to the billable area used to calculate floor area"; "permit zero foot side yard setbacks in lieu of the minimum sixteen foot side yards otherwise required"; "permit a mixed use development with a floor area ratio of 9.9:1 throughout the entire site in lieu of the maximum allowed ratio of 6:1"; "change the land use designation (by general plan amendment) from light manufacturing to regional commercial"; "permit a residential density of one unit per 136 square feet of net lot area throughout the entire site in lieu of the minimum allowed one unit per 200 square feet of net lot area."

In each of the foregoing meetings, the Planning Commission also took important action required by CEQA consisting of the adoption of a statement of overriding considerations, certification of a Final Environmental Impact Report, or the adoption of findings required by CEQA (Public Resources Code section 21081(a)). These actions were not described in the agenda in the same manner as the non-CEQA actions above quoted, nor were they placed under a heading of Requested Actions. The only information in the agenda that in any way identified the actions to be taken under CEQA was a cryptic reference like the following: "CEQA: ENV-2005-7720-EIR." Such cryptic

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references are meaningless to most members of the public and do not in any way describe the particular action to be taken at the meeting under the California Environmental Quality Act.

Such descriptions not only violate the Ralph M. Brown Act, but they also violate the fundamental purpose of CEQA. "If CEQA is scrupulously followed, the public will know the basis on which its responsible officials either approve or reject environmentally significant action, and the public, being duly informed, can respond accordingly to action with which it disagrees.... The court does not pass upon the correctness of the EIR's environmental conclusions, but only upon its sufficiency as an informative document." LAUREL HEIGHTS IMPROVEMENT ASSOCIATION v. REGENTS OF UNIVERSITY OF CALIFORNIA, 47 Cal.3d 376, 392(1988).

Petitioners are entitled to the issuance of a writ of mandate that commands the City Planning Commission to describe in its posted agendas the actions that it is requested to take at the meeting under CEQA with the same degree of clarity, particularity, and detail that it uses to describe the non-CEQA actions to be taken at the same meeting, as quoted above. The Planning Commission is also commanded to identify the CEQA actions as actions that it has been requested or that it proposes to take at the meeting. The Planning Commission is also to be commanded not to take any action or discuss any item under CEQA that is not

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described with the clarity, particularity, and detail herein ordered. Petitioners are also entitled to a judgment that declares that the method that has been used to describe CEQA actions to be taken or discussed at Planning Commission meetings is unlawful and is to be discontinued.

Counsel for petitioners are to submit a proposed judgment and a proposed writ to this department within ten days with a proof of service showing that copies of said documents have been served upon opposing counsel by hand delivery or facsimile. The court will hold said documents for ten days before signing and filing the judgment and causing the clerk to issue the writ.