

October 11, 2021

**VIA EMAIL**

The Honorable Donna Meyers and City Council  
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**Re: 831 Water Street: CP20-0121 (APN 009-212-30, -31, -38)  
City Council Agenda for October 12, 2021**

Dear Mayor Meyers and Councilmembers:

This law firm represents “831 Responsible Development,” a local community group, with regard to the above referenced project. We recognize the difficulty the City is experiencing with the plethora of laws passed in Sacramento that dictate local zoning. The 831 Water Street development is perhaps the poster child for what is wrong with statewide edicts that ignore local planning and constraints. Nevertheless, for the reason stated below, there is still at least one item that is within the City’s control and discretion with respect to the 831 Water Street project.

The City is being asked to grant a concession to allow the segregation of the affordable housing units from the market-rate units contrary to local law. Segregating residents of affordable housing units from market-rate units weakens the community fabric. That is why the City recognizes through its code that segregating affordable housing from market-rate housing is poor public policy.

The City Staff and the applicant do not dispute that the applicant is seeking a concession to exempt the applicant from the anti-segregation policy in the City Code. (Notably, this is an admission that the policy is an objective standard.) The stated reason for the concession is that state regulations require the affordable housing to be on one site and consolidated. The Staff Report on page 18.8 states as follows:

SCMC 24.16.025(2) requires that “Inclusionary units shall be dispersed throughout the residential development to prevent the creation of a concentration of affordable units within the residential development.” The applicant is requesting an incentive/concession for locating all affordable units together in a single building **due to financing requirements for State affordable housing tax credits**. SCMC 24.16.260. Requirement to disperse affordable units throughout the development – 4 CCR section 10337(a) requires projects that receive state and federal affordable housing funds record a regulatory agreement against the property awarded the tax credits. **The affordable rental project cannot be deed restricted unless at least one parcel is created for all of the affordable units against which the regulatory agreement can be recorded.** (Emphasis added.)

However, the 4 CCR 10337(a) does not require segregation or otherwise prohibit a mix of affordable and market-rate housing. This section only requires that “a regulatory agreement ... which will be recorded against the property for which the Tax Credits are allocated.” This state regulation does not force segregation.

Paradoxically, the Staff Report on page 18.13 states as follows:

Staff has reviewed the proposed lot line adjustment and while it is consistent with the Zoning Ordinance, our Building Department is currently reviewing the location of the new lot line as it relates to Building and Fire Codes. With the lot line splitting the underground garage, in addition to the proposed pedestrian bridges connecting the two buildings, Building Department staff is working with the project architects to determine the feasibility of the lot line location. If this configuration was determined to not be feasible, another option would be to divide the buildings into airspace condominiums to achieve a similar result.

If “airspace condominiums” are feasible, then this tool can be used to achieve compliance with SCMC 24.16.025(2) by integrating different housing types with regulatory agreements being recorded against affordable units dispersed throughout the site. The creation of “airspace condominiums” to solve the Building and Fire Code issues is at odds with the Staff Report’s analysis for the need for the concession.

**While it may potentially be possible for the applicant to map the project as a condo complex and record regulatory agreements against each of the individual units dispersed throughout the project**, the additional costs associated with the mapping, development of Covenants, Conditions and Restrictions as part of a home owners association, Department of Real Estate approvals, and agreement processing would add to the project’s administrative costs. **Because the City cannot carry its burden of proof to refute these cost considerations** or prove that the requested concession would violate state or federal law or create a specific adverse impact on health and safety or the

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physical environment that cannot be mitigated, or adversely impact real property listed on the California Register of Historical Resources, **the City is required to grant the requested concession.** (Emphasis added.)

However, not every unit must be divided into an individual condominium unit. Instead, units could be bundled as an airspace condominium. For instance, if the garage and pedestrian bridge can be separated by a lot line, then it is axiomatic that the two buildings can be divided in a fashion, through airspace condominiums, so that affordable housing and market-rate housing can be located in both buildings. Airspace condominiums may be necessary to satisfy Building and Fire Codes in any event. Therefore, requiring a different configuration for airspace condominiums would not add additional costs as alleged.

The applicant is falsely claiming that state regulations require segregation. The City can deny a concession if “The concession or incentive does not result in identifiable and actual cost reductions.” Government Code § 65915(d)(1)(A). Therefore, the City can and should deny the concession because the applicant can still receive tax credits through other means of subdividing the property, which may be necessary in any event. Indeed, it is ironic that the density bonus law and SB 35, that are intended to create affordable housing, are being used as a wedge to separate affordable housing residents from those who live in market-rate housing.

For these reasons, we respectfully request that you direct staff to reject the SB 35 application unless and until the applicant can fix this infirmity. We urge you not to sow division in Santa Cruz.

Thank you for your consideration of these comments.

Very truly yours,  
WITTMER PARKIN LLP

A handwritten signature in blue ink, appearing to read 'W.P. Parkin', with a long horizontal flourish extending to the right.

William P. Parkin

cc: Samantha Haschert (via email)  
Anthony Condotti, Esq. (via email)