

November 8, 2018

SB 343

Senate Bill 343 mandates supplemental materials that have been received by the City Clerk's office that relate to an agenda item after the agenda packets have been distributed to the City Council be available to the public.

The attached documents were received in the City Clerk's office after distribution of the November 8, 2018, City Council meeting agenda packet.

Item 3.1

Gregory J. Rolen
direct: (415) 281-7654
grolen@hbblaw.com

Haight Brown & Bonesteel LLP
Three Embarcadero Center
Suite 200
San Francisco, California 94111
415.546.7500
415.546.7505 fax
www.hbblaw.com

November 7, 2018

VIA EMAIL

John D. Bakker, Esq.
Meyers Nave Riback Silver & Wilson, PLC
555 12th Street, Suite 1500
Oakland, CA 94607
Email: jbakker@meyersnave.com

Re: Concerns about Transparency in Government and Possible Brown Act
Violations-IKEA Retail Center Project (“Project”)

Dear Mr. Bakker:

My name is Gregory J. Rolen and I am a partner at the Haight Brown & Bonesteel office in San Francisco. Our office has been retained by a number of Dublin citizens who have serious concerns regarding the City of Dublin’s (“City”) manipulation of California public meeting laws in order to postpone the IKEA Project Council vote until after the November 6, 2018 election. My clients believe that this is a purposeful tactic to avoid public accountability for an unpopular vote on an unpopular project.

I. STATEMENT OF FACTS

Without belaboring the procedural history of the Project, suffice it to say it has been highly controversial. Recently, the Project has been opposed by local citizens, labor unions, the City of Pleasanton and environmental groups based on California Environment Quality Act (“CEQA”) concerns. CEQA litigation remains a real possibility. Furthermore, the Project has been a primary issue in elections for City Council, and a *change.org* website entitled, “say NO to IKEA in Dublin, California” has well over 3000 signatories. Two (2) online polls demonstrate over 60% opposition to the Project. Letters and email messages to the Council prior to the October 16 meeting were approximately 8:1 against the project. The public repeatedly requested Mayor David Haubert (“Mayor”) to place the Project on the ballot. The public’s concerns were not addressed. At the September 25, 2018 Planning Commission hearing, Commissioner Scott Mitton (“Mr. Mitton”) introduced a motion to deny all three (3) resolutions approving the project. However, your office interjected recommending Mr. Mitton revise his motion to recommend certification of the Environmental Impact Report (“EIR”).

John D. Bakker, Esq.
November 7, 2018
Page 2

Perhaps the most troubling fact is that two (2) members of the voting City Council (“Council”) have publicly announced that they are not seeking reelection. Janine Thalblum (“Ms. Thalblum”) and Abe Gupta (“Mr. Gupta”) are off the November 6, 2018 ballot. However, there are five (5) “slow growth” candidates on the upcoming November 6, 2018, ballot in which two (2) have expressed either opposition to, or reservations with, the Project based on environmental concerns including, but not limited to pollution, overcrowding and traffic. In addition the Mayoral position (1) member is up for reelection. Regardless of the election results, it is inevitable that three (3) “lame-duck” Council members would cast deciding votes on the Project, before the new Council is sworn in on December 4, 2018. Therefore, Councilmembers, with no public accountability, would be deciding a transformative, lifelong issue for Dublin.

II. OCTOBER 16, 2018 BOARD MEETING

Approval of the Project was placed on the agenda for the October 16, 2018 Council meeting (“Council meeting”). The public turned out in opposition to the Project. However, they were not given a full and fair opportunity to be heard. Additionally, the Council did not vote at the regularly scheduled Council meeting. This was ostensibly due in part to a letter dated October 10, 2018, from IKEA counsel David H Blackwell (“Mr. Blackwell”) to you threatening litigation if the Council did not approve the Project (“letter”). The letter was not included on the Council meeting agenda, although it was available over 72 hours prior to the October 16, 2018 meeting. The letter was only revealed by Mr. Gupta very late in the Council meeting. My clients are concerned that that was done in violation of the Ralph M Brown Act (“Brown Act”).

The legislative intent of the Brown Act was expressly declared in its original statute.

The Legislature finds and declares that the public commissions, boards and councils and other public agencies in this State exist to aid in the conduct of the people’s business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

(Chapter 1588, Regular Session. (Cal. 1983))

John D. Bakker, Esq.
November 7, 2018
Page 3

The concerns listed below demonstrate an intent to manipulate the Brown Act to deny the public an opportunity to meaningfully participate in the Council's decision on the Project.

A. Public Comment

The Brown Act undeniably exists to provide citizens the right to participate in public meetings. The public's participation is further enhanced by the Brown Act's requirement that a meaningful agenda be posted in advance of meetings. (See discussion *infra*.) Approximately ninety (90) members of the public, in which several openly stated they wished to speak on the Project, were relegated to the "overflow room" adjacent to the Council meeting room. Many requested public comment cards, staff denied that opportunity, in contravention of the letter and spirit of the Brown Act.

B. Incomplete Agenda

The letter was not included in the agenda packet, although it was available 72 hours prior to the October 16, 2018 meeting. The letter was revealed by Mr. Gupta very late in the Council meeting, most notably, *after* the close of public comment. My clients believe that this also was done in violation of the Brown Act. The public has the right to review agendas and other writings distributed by any person to a majority of the legislative body in connection with a matter subject to discussion or consideration at a meeting. Except for privileged documents, those materials are public records and must be made available upon request without delay. (Government Code §54957.5.) Simply put, the Council had the letter and did not attach it to the agenda. Although the letter was ultimately provided, albeit inadvertently, it was done so in a manner that intentionally reduced, if not eliminated, the public's ability to scrutinize and digest the letter. Had my clients, or members of the Dublin community, had an opportunity to review the letter they could have commented publicly that the letter provided no specific reasoning, legal or otherwise, to approve the project.

C. Adjournment

Finally, the adjournment of the meeting demonstrates pattern and practice to quell public opposition to the Project. Discussion on the Project was prematurely terminated. The regularly scheduled November 6, 2018, Council meeting was canceled. Instead, based on the Notice of the Adjournment, the Council meeting was adjourned to Thursday, November 8, 2018 at 6:30 PM, and for a duration of 30 minutes only. Thus, either staff, the Council or both made the conscious decision to cancel a regularly scheduled meeting, and adjourn the October 16, 2018 meeting to a later date. The meeting was canceled, and adjourned, to eliminate additional public comments against the Project.

John D. Bakker, Esq.
November 7, 2018
Page 4

The public was denied relevant information, denied an opportunity to speak, and will be denied an opportunity to be heard on November 8, 2018. This runs contrary to the legislative intent of the Brown Act and Dublin's commitment to transparency in government.

III. CONCLUSIONS/RECOMMENDATIONS

My clients respectfully submit that the Council can avoid the specter of "back room political dealings," by delaying the vote until after the new Council is sworn. The public was denied the opportunity to participate on October 16, 2018. The public will be denied the opportunity to participate on November 8, 2018. However, the aforementioned manipulations of the Brown Act will not deny the public its opportunity to vote on November 6, 2018. It is entirely possible that there will be three (3) new Council members. We respectfully submit that it is appropriate to allow duly elected officials decide an issue of such magnitude for Dublin's future. The Council has an opportunity to fulfill its commitment to transparency and restore faith in the Council's constituent responsiveness. The Project has been discussed for many years, there is no ethical reason that the Council cannot delay the decision for one (1) month.

By contrast, the Council can intentionally choose to have two (2) or possibly three (3) Council members who will only serve until December 4, 2018, ultimately decide the community's fate. My clients posit that if the Project is approved in such a manner that discounts and bypasses public opinion, input, and worth, it will cast eternally negative stigma on the Project. If the Council elects to move forward on November 8, 2018, they may be subject not only to a CEQA lawsuit, but also Brown Act challenges. If the Council elects to delay its decision democracy will be served. We believe the choice is clear.

Sincerely,



Gregory J. Rolen
Haight Brown & Bonesteel LLP

GJR:PH



PLEASANTON

November 8, 2018

Via Email:
amy.million@dublin.ca.gov

Amy Million, Principal Planner
City of Dublin Community Development Department
100 Civic Plaza
Dublin, CA 94568

RECEIVED

NOV 08 2018

DUBLIN PLANNING

RE: **City of Pleasanton Request for Mitigation Measure Modifications Prior to Consideration of Certification of Final SEIR for IKEA Retail Center Project State Clearinghouse No. 2017082047**

Dear Ms. Million:

The City of Pleasanton ("Pleasanton") has reviewed the responses to comments provided in the Final Supplemental Environmental Impact Report (Final SEIR) prepared for the IKEA Retail Center Project ("proposed project") – approximately 27.31 acres located at 5344 and 5411 Martinelli Way in the City of Dublin. CEQA requires the City of Dublin to identify and analyze the environmental effects of the proposed project, then mitigate those adverse environmental effects through the imposition of feasible mitigation measures. (See Cal. Public Resources Code § 21002.)

At least two of the three responses to comments on Final SEIR pages 3-21 to 3-22 do not adequately analyze mitigate measures to address the significant impacts of the proposed project as such impacts are described in Pleasanton's March 16, 2018 comment letter (pgs. 25-27 of the Final SEIR). The proposed project will generate significant traffic impacts that will result in a degraded level of service ("LOS") at the freeway interchanges and on local Pleasanton roadways that is not adequately mitigated. Therefore, Pleasanton is requesting that the City of Dublin address the following comments and mitigation measures prior to its consideration of certifying the Final SEIR:

1. Freeway Ramp Intersection Mitigations – Install Improvements with Project

The "fair share" contribution language that is sporadically found in the supplemental environmental impact report mitigation measures is not acceptable as an approach for the I-580/Santa Rita Road intersection. In this case, the proposed project applicant should be responsible for construction of the required mitigations at the freeway ramp intersections to mitigate the proposed project's significant effects.

The proposed project applicant should be responsible for construction of the mitigations because the proposed project would significantly impact Santa Rita Road at eastbound 1-580 ramp in the near-term PM as well as the cumulative traffic in the PM peak. *The aforementioned improvements must be completed prior to operation of the proposed project.* The applicant should work with the City of Dublin to arrange a re-imbusement program to recoup costs from future development in this area.

COMMUNITY DEVELOPMENT
www.cityofpleasantonca.gov

P. O. BOX 520 · 200 Old Bernal Avenue
Pleasanton, CA 94566-0802

Planning (925) 931-5600 Fax: 931-5483	Building & Safety (925) 931-5300 Fax: 931-5478	Code Enforcement (925) 931-5620 Fax: 931-5478	Permit Center (925) 931-5630 Fax: 931-5478	Traffic Engineering (925) 931-5677 Fax: 931-5487
---	--	---	--	--

2. Freeway and Ramp Operations

Pleasanton's comment letter on the Draft SEIR raised points regarding the proposed mitigation measures relating to the freeway ramp operations at Hopyard westbound on ramp, Hacienda westbound and Hacienda eastbound on ramp. The vehicle "spill-back" that will occur is a direct result of traffic generated by the proposed project. Additionally, Impacts/Mitigation Measures identify that the freeway mainline between Foothill Road and El Charro Road on I-580 and between Stoneridge Drive and Alcosta Boulevard on I-680 are impacted and worsen the LOS F condition, which is considered a significant impact. The Draft SEIR mitigation measures propose to increase metering rates to solve the queue "spill-back." Merely increasing ramp metering rates is not an adequate mitigation to the impact.

Additional freeway volume will further impact the freeway mainline. The Final SEIR does include the additional mitigation of a "fair-share contribution" to the construction of a second mixed-flow on-ramp lane from southbound Hacienda Drive to westbound I-580. The proposed project would add nearly 150 vehicles to the southbound Hacienda to westbound freeway on ramp. This would increase the volume by 25% over existing volumes. *Adding 25% to the existing volume is a significant effect and the proposed project must construct the improvements to the freeway ramps prior to operation of the proposed project.*

At this time, Pleasanton requests that the City of Dublin revise the mitigation measures referenced in this letter prior to consideration of certification of the Final SEIR for the proposed project. If you have any questions, please contact Mike Tassano, Traffic Engineer, at (925) 931-5670.

Sincerely,



Gerry Beaudin, AICP
Community Development Director

Electronic cc: Ellen Clark, Planning Manager
Mike Tassano, Traffic Engineer
Dan Sodergren, City Attorney
Nelson Fialho, City Manager

COMMUNITY DEVELOPMENT
www.cityofpleasantonca.gov

P. O. BOX 520 · 200 Old Bernal Avenue
Pleasanton, CA 94566-0802

Planning
(925) 931-5600
Fax: 931-5483

Building & Safety
(925) 931-5300
Fax: 931-5478

Code Enforcement
(925) 931-5620
Fax: 931-5478

Permit Center
(925) 931-5630
Fax: 931-5478

Traffic Engineering
(925) 931-5677
Fax: 931-5487