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May 18, 2017

Mayor Robert Garcia
Lena Gonzalez - District 1
Jeannine Pearce - District 2
Suzie Price - District 3
Daryl Supernaw - District 4
Stacy Mungo - District 5
Dee Andrews - District 6
Roberto Uranga - District 7
Al Austin - District 8
Rex Richardson - District 9
LONG BEACH CITY COUNCIL
333 West Ocean Blvd. 14th Floor
Long Beach, CA 90802

Long Beach City Attorney
333 West Ocean Blvd.
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**Re: Appeal to the Long Beach City Council from the March 30, 2017
Decision of the Long Beach Planning Commission Granting a
Conditional Use Permit to Stephen Albrecht for
Stars Behavioral Health Group
(Application No. CUP-1611-08)
SP-1-CDR (Mid Town Specific Plan, Corridor District) and
CCA (Community Automobile Oriented Zoning in Council District 7)**

Dear Mayor Garcia, Councilmembers, and City Attorney,

This Firm, along with the Law Firm of Donald E. Karpel, represents the interests of Dr. Khaled A. Tawansy concerning his appeal of the decision of the Long Beach Planning Commission to not continue the hearing on March 30, 2017, and to grant of a Conditional Use Permit to Stephen Albrecht for Stars Behavioral Health Group for property located 3200-3220 Long Beach Blvd. in Long Beach.

Dr. Tawansy is the owner of the property located at 3200-3220 Long Beach Blvd. There are now pending in the Long Beach Superior Court two actions dealing with the ownership of this property. Further, a Lis Pendens has been filed on the property, protecting Dr. Tawansy's

rights. Neither the record owner of the property, nor the applicant for the Conditional Use Permit (Stars Behavioral Health Group) have good title to the real estate. The proposed use of the property pursuant to the Conditional Use Permit would dramatically change the property from a medical building, which is what it is today.

The appeal should be granted, or the hearing on the appeal should be continued, until there is a ruling on the cases in court as to the ownership of the property. What follows is a recent history of the property and the reasons the City Council should grant Dr. Tawansy's appeal or continue this matter until the issue of ownership of the property is decided by the courts.

Dr. Tawansy purchased the property on May 23, 2012. A copy of the deed is attached as Exhibit A. The site is being used now as a medical office for Dr. Tawansy. Any changes to the use of the building would adversely affect Dr. Tawansy, and his intended use of the building, which will be as medical offices.

On June 17, 2014, Dr. Tawansy executed a Grant Deed to JK Per Angusta Ad Felicitas, LLC. See Exhibit B. The JK Per Angusta Ad Felicitas, LLC, was to legally own the property and the agreement was that Dr. Tawansy was to equitably own the real estate. Dr. Tawansy would continue to own the property equitably, in an LLC name, with Jennifer Sohol running the LLC for Dr. Tawansy.

As part of this transaction, the property was to be refinanced. The Loan Closing Documents, identify Dr. Tawansy as the borrower. See Exhibit C. The property was worth somewhere between \$1,800,000 to \$2,000,000 at the time of the transaction in 2014. Dr. Tawansy had to pay \$99,412.28 to close this transaction. See Exhibit D. Nothing was paid by Jennifer Sohol or by JK Per Angusta Ad Felicitas, LLC, to purchase the property; nor has anyone but Dr. Tawansy expended any moneys on the property since May 2012.

After the deeding of the property to JK Per Angusta Ad Felicitas, LLC, Dr. Tawansy continued to make the mortgage payments, pay for the ordinary operational costs of the building, pay the property taxes, and pay for substantial rehabilitation of the property. See a partial list of vendors paid for the rehabilitation of the building by Dr. Tawansy in Exhibits I and V.

Dr. Tawansy and Jennifer Sohol, who were engaged to be married, separated in early 2015. Dr. Tawansy continued to build out the property into medical offices and occupied one of the medical suites. Dr. Tawansy spoke with JK Per Angusta Ad Felicitas, LLC and Jennifer Sohol's attorney, Ed Gelfand, and informed Attorney Gelfand that title was held legally in the JK Per Angusta Ad Felicitas, LLC name, but that title was owned equitably by Dr. Tawansy. In fact, Dr. Tawansy also met personally with Attorney Gelfand and told him that Dr. Tawansy was the equitable owner of the property.

In April or May of 2016, JK Per Angusta Ad Felicitas, LLC and Jennifer Sohol listed the 3200 Long Beach property with Marcus and Millichap Real Estate Investment Services. Thereafter, a sales brochure was created by Marcus and Millichap that clearly shows Dr. Tawansy's medical equipment and furniture in the property. See Exhibit E.

On May 11, 2016, Lee and Associates by Shaun McCullough and Jeff Coburn presented an offer by 2H Property 3060, LLC to purchase the 3200-3220 Long Beach Blvd. property for \$2,300,000. On May 12, 2016, another offer was made with a price of \$2,500,000. On May 27, 2016, another offer was presented by Lee and Associates on behalf of 2H Property to buy the property for \$2,600,000. See Exhibit F.

On May 25, 2016, an offer was made to sell the property for \$2,850,000. This offer required a 30-day period for the buyer to make a full investigation of the property and provided that the seller would cooperate with such investigation. It also provided that the seller would permit the buyer to conduct a reasonable investigation of the property, and would provide buyer and its agents with access to the seller's records, papers, and documents, including copies of all profit and loss statements, architectural and engineering plans, proposed development plans, environmental assessments, and rental history related to the property (if available). However, an unusual condition was also contained in the contract. It required confidentiality by Seller, Buyer, and their agents of the parties, terms, and conditions and the negotiations that may follow, if any. In the end, an agreement was entered into on May 27, 2016, for a purchase price of \$2,650,000. This agreement has no Due Diligence provision and states "NO PHYSICAL CONTINGENCY." See Exhibit G.

A Title Report dated in March of 2016 lists Dr. Tawansy as having tax liens on the property. See Exhibit H. Thus, the purchasers, 2H Properties 3060 and Sean Hitchcock were on notice of these liens.

On September 9, 2016, an action was filed in the Long Beach Superior Court by JK Per Angusta Ad Felicitas, LLC against several people, including Dr. Tawansy. A copy of the Complaint is attached hereto as Exhibit I. The Complaint deals specifically with the 3200-3220 Long Beach Blvd. property and asks for: 1) Declaratory Action; 2) Cancellation of Instrument; 3) Breach of Warranty/Implied Covenant, and 4) Breach of Contract.

This lawsuit was known to exist by 2H Properties 3060, LLC as of September 9, 2016. See Depositions of Sean Hitchcock and Erick Burton, principals of 2H Properties 3060, LLC, attached as Exhibits J and K, respectively. Further, both 2H Properties, LLC, and Sean Hitchcock knew that Dr. Tawansy was using the property as a medical office.

2H Properties 3060, LLC agreed to purchase the property for \$2,650,000 from JK Per Angusta Ad Felicitas, LLC, but Jennifer Sohol and JK Per Angusta Ad Felicitas, LLC did not want the purchasers to obtain an Estoppel Certificate on the property from Dr. Tawansy. Indeed, Jennifer Sohol and JK Per Angusta Ad Felicitas forbid the potential purchaser (2H) from having any contact with Dr. Tawansy, the tenant, the former legal owner, the current equitable owner, the person whose tax liens were on the property at the time of the purchase, and the persons and entities named in the lawsuit. A reasonable buyer would have wanted to talk to Dr. Tawansy so they could claim that they were bona fide purchasers for value.

The Lee and Associates Brokers were so concerned about the need for an Estoppel Certificate, that they referred 2H Properties 3060, LLC to the law firm of Kreiger and Kreiger regarding the issue of the Estoppel Certificate. A copy of the deposition of the broker from Lee and Associates, Jeff Cobern, is attached hereto as Exhibit L. The deposition of the broker from Marcus and Millichap, who represented JK Per Angusta Ad Feliciates, LLC, Ryan Rothstein-Serling, is attached hereto as Exhibit M. In these depositions, the issue as to obtaining an Estoppel Certificate was discussed. Therein, it is disclosed that Jennifer Sohol and JK Per Angusta Ad Felicitas, LLC dissuaded the buyers from obtaining an Estoppel Certificate. The deposition of Jennifer Sohol is attached at Exhibit N.

There were numerous reasons under the laws of the State of California as to why a reasonable purchaser would insist on obtaining an Estoppel Certificate. At the time of escrow, there were tax liens on the property in the name of Dr. Tawansy. There also was the action filed in the Long Beach Superior Court set forth as Exhibit I. Also, Dr. Tawansy was occupying the property. In fact, the listing memorandum for the property shows that Dr. Tawansy was occupying the property. See Exhibit E which shows Dr. Tawansy's office equipment in the property.

Notwithstanding the clear information that Dr. Tawansy occupied the property, was the legal owner of the property in the past, was making substantial improvements to the property, had tax liens on the property, and was involved in the JK Per Angusta Ad Felicitas, LLC litigation (Exhibit I), 2H purchased the property, when a reasonable purchaser would have obtained an Estoppel certificate and done further due diligence as to Dr. Tawansy's claims. As a result, 2H is not a bona fide purchaser for value without notice of the claims as to Dr. Tawansy and, therefore, could not enter into an agreement with Stars Behavioral, and apparently authorized them to seek a Conditional Use Permit to open a mental health facility on the property.

Dr. Tawansy answered the lawsuit on October 14, 2016. (See Exhibit O.) Dr. Tawansy also filed a Cross-Complaint on October 14, 2016, which names Jennifer Sohol, JK Per Angusta Ad Felicitas, LLC, 2H Properties 3060, LLC, 2H Construction, Inc., and Sean R. Hitchcock and Erika Burton as Cross-Defendants. See Exhibit P. No portion of the Application for Conditional Use Permit discusses the issue of title; nor was Dr. Tawansy noticed of the Application for

Conditional Use Permit, notwithstanding that he had continuously occupied the property since shortly after he purchased it in May 2012.

On October 14, 2016, a Lis Pendens was filed on the property by Dr. Tawansy. See Exhibit Q. This fact was not disclosed to the Department of Development Services or, indeed, to anyone in the City of Long Beach.

While the purported sale to 2H may have taken place in early October, any lease with the applicant was made after the filing of the Lis Pendens. As a result, any lease (if there is a lease) may not be valid, as Dr. Tawansy, if he prevails, will then own the property, and 2H may have to sue JK Per Augusta Ad Felicitas, LLC or Jennifer Sohol for their money.

In mid October of 2016, 2H was going to do some demolition to one portion of the property. Don Karpel, the attorney for Dr. Tawansy, wrote to 2H and Sean Hitchcock stating that any demolition would violate the rights of Dr. Tawansy. See Exhibit P. The demolition did not occur at that time. Sometime in November of 2016, after notice of the Lis Pendens and the claims of Dr. Tawansy to the real estate, 2H totally demolished all of the improvements that Dr. Tawansy had built-out in the middle suite of the property. This destroyed that portion of the property, was not done with the consent of Dr. Tawansy, interfered with Dr. Tawansy's rights as to the property, and interfered with his Quiet Enjoyment of the property.

Then a Notice of Cancellation of the Tenancy was posted on the property, but not served on Dr. Tawansy. See Exhibit S. 2H knows Dr. Tawansy's address, but did not even attempt to serve him.

On December 22, 2016 an Unlawful Detainer Action was filed against Khaled A. Tawansy, MD, Children's Retina Institute, and Renaissance Surgical Holdings, LLC. See Exhibit T. An Answer was timely filed. See Exhibit S. Both cases have been deemed related and are pending trial in the Long Beach Superior Court.

Eventually, in January 2017, there was a Stipulation entered into in the 2H lawsuit against Dr. Tawansy. See Exhibit U. In Paragraph 4, it states that Dr. Tawansy shall be entitled to continue in possession of one-third of the property which he currently occupies as a medical office.

Paragraph 5 of the stipulation states that 2H shall remain in control of the remainder of the building, and shall be entitled to construct improvements of high quality, so long as such activities do not interfere with Dr. Tawansy's use of the property. The agreement is that such improvements shall be relinquished to Dr. Tawansy and the other Defendants free and clear of all liens for labor and materials, if Dr. Tawansy obtains a final judgment against 2H in the lawsuit.

Dr. Tawansy has no interest in operating the property as a mental health facility. He wants the property only as medical office space.

In Paragraph 6 of the Stipulation, it states that the agreement provides that 2H shall be entitled to improve the facades and other exteriors of the buildings, and to make general site improvements, so long as such activities do not unreasonably interfere with Dr. Tawansy's use of the property as a Medical Office. Granting the Conditional Use Permit issued would change the building and should not be approved while the ownership litigation is pending.

A First Amended Cross-Complaint was then filed by Dr. Tawansy naming the brokers and the attorneys as additional cross-defendants. See Exhibit V.

In reviewing the appeal of the application for a Conditional Use Permit, the following issues need to be addressed. This letter is in conformity of the rights that Dr. Tawansy has under Long Beach Municipal Code [hereinafter LBMC], Section 21.21.401(B).

1. The use of the property according to the Conditional Use Permit is not what Dr. Tawansy wants at this property. The people who will use the premises can be violent or out of control. The patients that see Dr. Tawansy have severe eye problems and could encounter these people, who may have severe mental or psychiatric conditions and who will occupy other portions of the building. The patients seeing Dr. Tawansy have issues with their eyes and cannot avoid undesired contact with these people.

2. The proposed improvements of the exterior of the property contains signs where Dr. Tawansy currently conducts his medical practice. These signs would interrupt and unreasonably interfere with Dr. Tawansy's use of the property as a medical office. Patients and their families would find it difficult to see Dr. Tawansy's practice, as it would appear that Dr. Tawansy is part of the Stars Behavioral Health Center. In the materials submitted by Stephen Albrecht, the sign for Stars Behavioral Health Center is directly on the medical suite used by Dr. Tawansy. This would violate LBMC Section 21.15.2770, as it would advertise that the premises where Dr. Tawansy has his medical practice is part of Stars Behavioral Health Center. LBMC Section 1 of 21.15.2770 requires that there be only one sign per building elevation per business. Yet, the area where Dr. Tawansy does his medical practice would have the sign for Stars Behavioral Health Center, and thus, Dr. Tawansy could not put up a sign for his own medical practice. This unreasonably interferes with Dr. Tawansy's use of the property.

3. Applicant is not the owner of the property, as is required by LBMC Section 21.15.1940. There is a Lis Pendens and pending lawsuits in court to determine the actual owner of this property. Approving this Conditional Use Permit under these circumstances would violate Dr. Tawansy's rights with respect to the property.

4. The person who is making this request is not the "owners's authorized agent" in violation of LBMC Section 21.15.1950. In order to be an owner's authorized agent, one must not only act for the owner, but must show proof via a Notarized Statement of Authorization, and submit proof of a Contract to Purchase the Property, or a Lease to the Property. None of this is present in the materials made available. The Application for a Conditional Use Permit is in violation of LBMC Section 21.25.203, as there is no proof that the owners of the property are making the application, and there is no provision showing that the application is made by any owner's authorized agent. Furthermore, if Dr. Tawansy is deemed to own the property, he has not authorized this Application.

5. The property is a medical office. LBMC Section 21.15.1740 provides that it is a "Commercial land use involved in the practice of medicine (not including Psychiatric Medicine or Psychology Services)," which is exactly the use that the Conditional Use Permit would allow. Furthermore, the premises are to be used with people spending up to 23 hours and 59 minutes on the property, and not allowing anyone to leave the premises at night. As a result, the Conditional Use Permit would violate LBMC 21.15.1740, as it would include a violation of the section which does not allow the overnight care of a patient.

6. The Conditional Use Permit would essentially create a modified Residential Care Facility, as it would house people for 23 hours and 59 minutes each day. The practice would provide medical services, but also deal with persons requiring assistance essential to the activities of daily living or for the protection of the individual. This would violate Dr. Tawansy's rights to the property and violate his use and be a violation of LBMC Section 21.15.2290.

7. Dr. Tawansy is in possession of the property. There is a lawsuit pending on this matter, and a Lis Pendens and a Stipulation. Yet, Dr. Tawansy was not given any notice of this hearing. This is a violation of LBMC Section 21.21.302(A)(B) and (D).

8. Dr. Tawansy was not provided with evidence of notice, as is required by LBMC Section 21.21.306(2)

9. The conditions in Exhibit E, Section 1, state that the "property is currently a vacant medical building." However, Dr. Tawansy currently operates his practice in the building.

10. The plans submitted show that the facility will be using Dr. Tawany's offices, and that there will be access to the Facility. Dr. Tawany denies that he has agreed to allow the applicant to use his premises.

11. Page 8 of the Conditions of Approval at section 27 states that "In the event of the transfer of ownership of the property involved in this application, the new owner shall be fully informed of the permitted use and development of said property as set forth in this permit together with all conditions that are part thereof. These specific requirements must be recorded with all title conveyances documents at the time of closing." Dr. Tawany does not consent to the use of his property as is being done with the Conditional Use Permit. Dr. Tawany does not want the property used this way. The application should be denied until the issue as to the ownership of the property is determined by the courts. As a result, the conditions may violate Dr. Tawany's rights and thus, are inappropriate in light of section 21.52.100.

12. To the extent that this Conditional Use Permit allows for the treatment of persons who have served a conviction for any offense described in subdivision (c) of Penal Code Section 667.5 or subdivision (c) of Penal Code Section 1192.7 (excluding the offense of Burglary), it shall not be permitted as a violation of LBMC Section 21.52.220(6).

CONCLUSION

The granting of a Conditional Use Permit is a serious act by any government. It should be done only after careful consideration of the rights of the parties involved because such a permit continues with future owners of the property. My client believes that, if the City of Long Beach had simply inquired into the pending ownership issues with regard to this property, it would have concluded that it was premature to agendize this Application for a Conditional Use Permit. Based on the facts and arguments above, it is respectfully requested that the Long Beach City Council grant the appeal filed by Dr. Tawany or, if there is a legal basis to do so, continue the hearing on this appeal until the ownership of the property at 3200-3220 Long Beach Blvd. is decided by the courts. That decision is expected before the end of this year.

Very truly yours,


Douglas W. Otto

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Enclosures – Exhibits A through V