

1 BRIGGS LAW CORPORATION [FILE: 1593.18]
Cory J. Briggs (State Bar no. 176284)
2 Mekaela M. Gladden (State Bar no. 253673)
Anthony N. Kim (State Bar no. 283353)
3 99 East "C" Street, Suite 111
Upland, CA 91786
4 Telephone: 909-949-7115
5 Attorneys for Plaintiff and Petitioner San Diegans
for Open Government
6
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO--HALL OF JUSTICE
10

11 SAN DIEGANS FOR OPEN GOVERNMENT,)
12 Plaintiff and Petitioner,)
13 vs.)
14 CITY OF SAN DIEGO and DOES 1 through 100,)
15 Defendants and Respondents;)
16 UTC VENTURE, LLC; WESTFIELD, LLC; and)
DOES 101 through 1,000,)
17 Defendants and Real Parties in Interest.)
18

CASE NO. 37-2013-00044155-CU-TT-CTL

VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF UNDER THE CALIFORNIA
ENVIRONMENTAL QUALITY ACT, THE
SAN DIEGO MUNICIPAL CODE, AND
OTHER LAWS

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23 Plaintiff and Petitioner SANDIEGANS FOR OPEN GOVERNMENT is informed and believes
24 and on that basis alleges as follows in this Verified Petition for Writ of Mandate and Complaint for
25 Declaratory and Injunctive Relief:
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Parties

1. Plaintiff and Petitioner SAN DIEGANS FOR OPEN GOVERNMENT ("Petitioner") is a non-profit organization formed and operating under the laws of the State of California. At least one of Petitioner's members resides in and pays taxes within the geographical jurisdiction of Defendant and Respondent CITY OF SAN DIEGO and has an interest in, among other things, ensuring open, transparent, and accountable government decision-making, and protecting the region's environment.

2. Defendant and Respondent CITY OF SAN DIEGO ("Respondent") is a public agency under Section 21063 of the Public Resources Code. Respondent is authorized and required by law to hold public hearings to determine whether the California Environmental Quality Act ("CEQA") applies to development within its jurisdiction, to determine the adequacy of and certify environmental documents prepared pursuant to CEQA, and to determine whether a project is compatible with the objectives, policies, general land uses, and programs specified in the General Plan.

3. Petitioner is informed and believes and on that basis alleges that UTC VENTURE, LLC, is a Real Party in Interest insofar as it is named as the Owner of the property for which Neighborhood Use Permit No. 1049315 has been granted by Respondent.

4. Petitioner is informed and believes and on that basis alleges that WESTFIELD, LLC, is a Real Party in Interest insofar as it is named as the Permittee for which Neighborhood Use Permit No. 1049315 has been granted by Respondent.

5. The true names and capacities of the Defendants and Respondents identified as DOES 1 through 100 are unknown to Petitioner, who will seek the Court's permission to amend this pleading in order to allege the true names and capacities as soon as they are ascertained. Petitioner is informed and believes and on that basis alleges that each of the fictitiously named Respondents and Defendants 1 through 100 has jurisdiction by law over one or more aspects of the proposed project that is the subject of this proceeding and that each of the fictitiously named Real Parties in Interest 101 through 1,000 either claims an ownership interest in the proposed project or has some other cognizable interest in the proposed project.

Background Information

6. The project is a request for a Neighborhood Use Permit for a Comprehensive Sign Plan for the Westfield UTC Shopping Center ("Project") in La Jolla.

7. The Project includes deviations from Respondents' regulations on wall sign copy area, including allowing for maximum sign area of 672 square feet for individual signs, covering a 75.86-acre shopping center.

8. Under the San Diego Municipal Code ("SDMC"), the maximum wall sign copy area for commercially zoned property is 350 square feet. The Westfield UTC Shopping Center is commercially zoned property.

9. On November 20, 2012, Respondents issued a Notice of Right to Appeal its Environmental Determination that the Project is exempt from CEQA pursuant to CEQA Guidelines, Section 15301. Respondents' CEQA determination was timely appealed ("Appeal") by Linda Colley, who is not a party to this action.

10. On Tuesday, February 26, 2013, Respondents published a notice of a public hearing regarding the Appeal, which was to occur, and which did occur, nine business days after publication of the notice, on March 11, 2013.

11. Under the SDMC, notice of a public hearing must be published 10 business days before the public hearing.

12. On March 11, 2013, Respondents denied the Appeal and approved the Project.

13. Approval of the Project will result in illuminated signage nearly double the size allowed by the SDMC, covering a roughly 75.86-acre shopping center.

14. Approval of the Project will result in inconsistencies with the University Community Plan, which specifically calls for the number and size of signs to conform to the City's sign regulations.

15. Petitioner opposes the Project and challenges certain actions taken by Respondents. In particular, Petitioner seeks to invalidate the approval with respect to the Project on the grounds that Respondent has violated CEQA and the SDMC.

1 **Notice Requirements and Time Limitations**

2 16. This proceeding is being commenced not more than 35 days after the notice authorized
3 by Public Resources Code Section 21152(b).

4 17. Petitioner has caused a Notice of Commencement of Action to be served on Respondent,
5 as required by Public Resources Code Section 21167.5. A true and correct copy of the Notice of
6 Commencement of Action is attached to this pleading as Exhibit "A."

7 18. Petitioner will have caused a copy of this pleading to be served on the Attorney General
8 not more than 10 days after the commencement of this proceeding, as required by Public Resources
9 Code Section 21167.7 and Code of Civil Procedure Section 388.

10 **Jurisdiction and Exhaustion of Administrative Remedies**

11 19. Petitioner seeks review by and relief from this Court under Public Resources Code
12 Section 21168 or 21168.5, as applicable, and Code of Civil Procedure Sections 1060 *et seq.* and 1084
13 *et seq.*, among other provisions of law.

14 20. Petitioner exhausted administrative remedies to the extent required by law.

15 21. Additionally and alternatively, no exhaustion-of-administrative-remedies requirement
16 may be applied to Petitioner.

17 22. Respondents' conduct in approving this Project without complying with CEQA and the
18 SDMC constitutes a prejudicial abuse of discretion because, as alleged in this pleading, they failed to
19 proceed in a manner required by law.

20 23. Petitioner has no plain, speedy, and adequate remedy in the ordinary course of law, since
21 its members and other members of the public will suffer irreparable harm as a result of Respondents'
22 violations of CEQA and the SDMC. Respondents' approval of the Project also rests on their failure to
23 satisfy a clear, present, ministerial duty to act in accordance with those laws. Even when Respondents
24 are permitted or required by law to exercise their discretion in approving projects under those laws, they
25 remain under a clear, present, ministerial duty to exercise their discretion within the limits of and in a
26 manner consistent with those laws. Respondents have had and continue to have the capacity and ability
27 to approve the Project within the time limits of and in a manner consistent with those laws, but
28

1 Respondents have failed and refused to do so and have exercised their discretion beyond the limits of
2 and in a manner that is not consistent with those laws.

3 24. Petitioner has a beneficial right and interest in Respondents' fulfillment of all their legal
4 duties, as alleged in this pleading.

5 **FIRST CAUSE OF ACTION:**
6 **Failure to Subject Project to the California Environmental Quality Act**
7 **(Against All Respondents and Real Parties in Interest)**

8 25. Paragraphs 1 through 24 are fully incorporated into this paragraph.

9 26. CEQA applies to every discretionary project proposed to be carried out or approved by
10 a public agency, unless the project is exempt from CEQA. Generally speaking, the public agency must
11 review the potentially significant environmental impacts of every discretionary project subject to CEQA
12 that the agency proposes to carry out or approve. Such review involves determining whether the
13 proposal is exempt, should be the subject of a negative declaration, or should be the subject of an
14 environmental impact report.

15 27. The Project as approved by Respondents is a "discretionary project" within the meaning
16 of CEQA.

17 28. The Project has the potential to cause significant direct, indirect, or cumulative adverse
18 impacts (if not all such impacts) on the environment, including, among other things, aesthetic impacts,
19 traffic impacts, and inconsistencies with Respondents' land use policies and regulations.

20 29. The potential of the Project to cause significant direct, indirect, or cumulative adverse
21 impacts on the environment makes CEQA applicable to the Project and gives rise to Respondents' legal
22 obligation to subject it to environmental review.

23 30. Respondents' refusal to apply CEQA to the Project and subject it to environmental
24 review constitutes a violation of CEQA.

25 31. As a result of Respondents' violation of CEQA, Petitioner has been harmed insofar as
26 Petitioner, its members, other members of the public, and the responsible decision-makers were not
27 fully informed about the potential adverse environmental impacts of the Project, and insofar as
28 Petitioner, its members, and other members of the public did not have an opportunity to participate
meaningfully in the analysis of such impacts prior to approval of the Project.

1 **SECOND CAUSE OF ACTION:**
2 **Violation of the San Diego Municipal Code**
3 **(Against All Respondents)**

3 32. Paragraphs 1 through 31 are fully incorporated into this paragraph.

4 33. A Neighborhood Use Permit may be approved or conditionally approved only if the
5 decision-maker makes findings that the proposed development will not adversely affect the applicable
6 land use plan, not be detrimental to the public health, safety, and welfare, and will comply with the
7 regulations of the Land Development Code.

8 34. Respondents failed to make the findings required by SDMC Section 126.0205 before
9 approving Neighborhood Use Permit No. 1049315.

10 35. Additionally and alternatively, the Project was approved by Respondents based on
11 findings that were not supported by sufficient evidence in the record. By way of example, and without
12 limitation:

13 A. Approval of the Project will result in inconsistencies with the University
14 Community Plan.

15 B. Approval of the Project will result in public safety issues stemming from traffic
16 hazards created by 692-square-foot illuminated billboards in an area affected by heavy traffic.

17 36. In approving the Project, Respondents were legally obligated to support their findings
18 under SDMC Section 126.0205 with sufficient evidence in the record.

19 37. Respondents' approval of the Project based on findings under SDMC Section 126.0205
20 that were not supported by sufficient evidence in the record constitutes a violation of the SDMC.

21 38. Petitioner has been harmed insofar as Petitioner, its members, and other members of the
22 public have been denied the benefits and protections provided by compliance with this statute.

23 **THIRD CAUSE OF ACTION:**
24 **Violation of the San Diego Municipal Code**
25 **(Against All Respondents)**

25 39. Paragraphs 1 through 38 are fully incorporated into this paragraph.

26 40. SDMC Section 112.0301(c)(3) requires that notice of a public hearing be published at
27 least 10 business days before the public hearing takes place.
28

2. A judgment determining or declaring that Respondents failed to comply with CEQA as it relates to the Project and that its approval (including all associated entitlements) was illegal in at least some respect, rendering the approval null and void;

B. *On the Second and Third Causes of Action:*

1. A judgment determining or declaring that Respondents failed to comply with the San Diego Municipal Code in approving the Project;

2. A judgment determining or declaring that Respondents failed to comply with the San Diego Municipal Code and that its approval was illegal in at least some respect, rendering the approval null and void.

C. *On All Causes of Action*

1. Injunctive Relief prohibiting Respondents and Real Parties in Interest (and any and all persons acting at the request of, in concert with, or for the benefit of one or more of them) from taking any action on any aspect of, in furtherance of, or otherwise based on the Project unless and until Respondents comply with all applicable provisions of CEQA, the San Diego Municipal Code, and all other applicable laws, as determined by the Court.

2. Any and all other relief that may be authorized by CEQA, the San Diego Municipal Code, or both, but is not explicitly or specifically requested elsewhere in this Prayer; and

3. All legal fees and other expenses incurred by Petitioner in connection with this proceeding, including but not limited to reasonable attorney fees as authorized by the Code of Civil Procedure.

4. Any and all further relief that this Court may deem appropriate.

Date: April 10, 2013.

Respectfully submitted,

BRIGGS LAW CORPORATION

Original Signed

By:

Cory J. Briggs

Attorneys for Plaintiff and Petitioner San Diegans for Open Government

**Verified Petition for Writ of Mandate and Complaint for
Declaratory and Injunctive Relief**

Exhibit "A"

BRIGGS LAW CORPORATION

San Diego Office:
814 Morena Boulevard, Suite 107
San Diego, CA 92110

Telephone: 619-497-0021
Facsimile: 619-515-6410

Please respond to: Inland Empire Office

Inland Empire Office:
99 East "C" Street, Suite 111
Upland, CA 91786

Telephone: 909-949-7115
Facsimile: 909-949-7121

BLC File(s): 1593.18

11 April 2013

Elizabeth Maland, City Clerk
City of San Diego
202 C Street, 2nd Floor
San Diego, CA 92101

Via E-mail to cityclerk@sandiego.gov
Via Fax to (619) 533-4045

Re: Notice of Commencement of Action

Dear City Clerk:

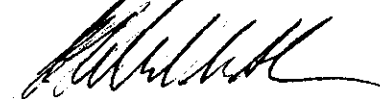
I represent San Diegans for Open Government and am sending this Notice of Commencement of Action on my client's behalf.

Please be advised that an action is to be commenced by my client in San Diego Superior Court against your agency. This action will challenge your agency's approval of the project (and all associated entitlements and certifications) that was the subject of Item-200, commonly known as the Westfield UTC Sign Project, on the City Council's Agenda for March 11, 2013, on the grounds that the approval violated the California Environmental Quality Act (Public Resources Code Section 21000 *et seq.*) and the State's Planning and Zoning Law (Government Code Section 65300 *et seq.*) This action may also challenge your agency's approval of the Project based on one or more violations of other laws.

If you have any questions, please feel free to contact me.

Sincerely,

BRIGGS LAW CORPORATION



Mekaela M. Gladden



TRANSMISSION VERIFICATION REPORT

TIME : 04/11/2013 13:56
NAME :
FAX :
TEL :
SER. # : 000M3J198110

DATE, TIME
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BRIGGS LAW CORPORATION

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Upland, CA 91786

Telephone: 909-949-7115
Facsimile: 909-949-7121

FACSIMILE COVER SHEET

Recipient: Elizabeth Maland City Clerk

Recipient's fax number: 619-533-4045

Date: April 11, 2013 BLC File: 1593.18

Total Pages (including cover sheet): 2

Sender: Brandon Ivey

Sender's fax number: 619-515-6410 X 909-949-7121

Message: Notice of Commencement of Action

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814 Moreno Boulevard, Suite 107
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Message: Notice of Commencement of Action

Original Document to Follow? ☐ Yes ☒ No

CONFIDENTIALITY

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VERIFICATION

STATE OF CALIFORNIA, COUNTY OF San Bernardino

I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief under the California Environmental Quality Act, San Diego Municipal Code, and other laws and know its contents.

☒ CHECK APPLICABLE PARAGRAPH

☐ I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☐ I am ☐ an Officer ☐ a partner _____ ☐ a _____ of _____

_____,
a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. ☐ I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. ☐ The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☒ I am one of the attorneys for San Diegans for Open Government

a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on April 10, 20 13, at Upland, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Original Signed

Cory J. Briggs

Type or Print Name

Signature

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF

I am employed in the county of _____, State of California.

I am over the age of 18 and not a party to the within action; my business address is, _____

On _____, 20 _____, I served the foregoing document described as _____

_____ on _____ in this action

☐ by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:

☐ by placing ☐ the original ☐ a true copy thereof enclosed in sealed envelopes addressed as follows:

☐ BY MAIL

☐ * I deposited such envelope in the mail at _____, California.

The envelope was mailed with postage thereon fully prepaid.

☐ As follows I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing.

Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at _____ California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on _____, 20 _____, at _____, California.

☐ **(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on _____, 20 _____, at _____, California.

☐ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct. I

☐ (Federal) declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Type or Print Name

Signature

* (By MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG)

** (FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)