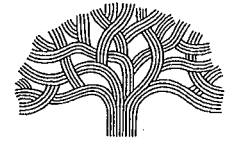


Attachment C

CITY OF OAKLAND



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA, SUITE 2114 • OAKLAND, CALIFORNIA 94612-2032

Department of Planning and Building
Zoning Division

(510) 238-3911
FAX (510) 238-4730
TDD (510) 238-3254

NOTICE OF DETERMINATION

VIA E-MAIL AND US MAIL

May 5, 2015

Dennis Malone
Chief Financial Officer
Board of Trustees
Head Royce School
4315 Lincoln Ave.
Oakland, CA 94602

RE: Compliant No: 0906270
Violation No: 1303434
Case File No.: PUD04-400; PUDF05-339; ER04-0014
Project Address: 4233, 4309, and 4315 Lincoln Ave. and 4274 Whittle Ave.

Dear Mr. Malone:

This letter addresses the actions taken by Head Royce School (HRS) in response to the City's February 11, 2014 letter notifying HRS that it was not in full compliance with its Conditions of Approval of the Planned Unit Development (PUD) Permit. The purpose of this letter is to inform you that the City has reviewed the actions taken and the documents submitted by HRS and made a determination that, with the exception of meeting the conditions for Phase III enrollment, HRS has come into compliance with its Conditions of Approval as detailed below.

Condition 1: Approved Use

This Condition requires HRS to operate in accordance with the authorized use of the property as described in the project description and PUD plans, and as amended by the Conditions of Approval. It is the City's determination that since the School has exceeded its Phase III enrollment, the School is still non-compliant with Condition 1.

Condition 6c: Conformance to Approved Plans; Modifications of Conditions or Revocation

Similar to Condition 1, this Condition states that violation of any term, Condition or Mitigation Measure is unlawful, prohibited, and a violation of the Oakland Municipal Code. Any violation permits the City to initiate enforcement or alter the Conditions of Approval. It is the City's

determination that since the School has exceeded its Phase III enrollment, the School is still non-compliant accordance with Condition 6c.

Condition 8: Compliance with Conditions of Approval

Similar to Condition 1 and 6c, this Condition requires compliance with all Conditions of Approval. It is the City's determination that since the School has exceeded its Phase III enrollment, the School still non-compliant with Condition 8.

Condition 38: Student Enrollment (Maximum Enrollment and Phase I and II Enrollment)

This Condition states that the maximum student enrollment shall be 880 students plus 3% for a total of 906 students. The enrollment increases are to be implemented in three phases based on completion of certain conditions. The City has determined that HRS has implemented the required actions to be entitled to the first and second phases of enrollment (for a maximum of 845 students).

Condition 39: Student Enrollment for Final Phase - 2021

The third phase of enrollment (880 plus 3% for a maximum enrollment of 906 students) is permitted 15 years after the approval of the 2006 Master Plan. HRS's current student enrollment is approximately 875 students, which is more than it is permitted under Phase II enrollment. HRS has applied for an amendment to its PUD to remove the timing restriction on Phase III enrollment. That application is pending. However, unless and until that application is approved, it is the City's determination that HRS is non-compliant with the requirements of Condition 39.

Condition 45: Special Inspector

This Condition requires HRS to submit a deposit for ongoing costs associated with peer reviews, monitoring, inspections, violations of Conditions of Approval, etc. HRS has submitted funds and is in compliance with this Condition.

Condition 46: Neighborhood Agreements

This Condition incorporates the Neighborhood Agreements between HRS and the Whittle, Alida, and Lincoln neighborhoods into the Conditions of Approval.

Whittle Agreement Item 5: Alida Agreement Item 5

This item, in both Agreements, requires "HRS to use its good faith efforts to clarify, monitor, and enforce the traffic, parking, and drop-off rules" and includes nine actions. The City has determined that HRS has submitted additional written procedures containing its traffic rules and is now in compliance with actions 1 through 9.

Whittle Agreement Item 7

This item requires the School to improve landscaping on the hillside adjacent to the athletic field. The landscaping has been installed and the City's Zoning Compliance Division has inspected the

landscaping. Per the discussion above regarding Condition 38: Student Enrollment, the City has determined that HRS is in compliance with this Condition. Whittle Agreement Item 2, Part II
See the discussion above regarding Condition 38: Student Enrollment.

Lincoln Agreement Item 5

This item requires the design of the Master Plan to provide for bulk delivery access from the Whittle Gate and small packages be delivered to the administration building on Lincoln. Specifically, bulk items (such as bulk food, large book shipments, and other bulk items) will be directed to the bulk delivery site accessed from Whittle. Parcel and packages from overnight delivery services and the U.S. Postal Service shall be accessed from Lincoln Avenue. The City has reviewed HRS's directives to its delivery vendors as well as the delivery practices and has determined HRS is currently in compliance with this Condition.

Lincoln Agreement 13

This item requires that HRS increase monitoring at the intersection of Lincoln and Burlington and adjust the monitoring as needed. In response to the City's February 7, 2014 letter, HRS submitted a clear set of procedures for monitoring this intersection and evaluating the need for an increase or a reduction in monitoring. The City has reviewed the procedures and has determined HRS is in compliance with this Condition.

Condition 47: Traffic Rules

Condition 47 states the applicant shall distribute packages containing traffic rules clearly outlined in the enrollment contract for that year. In response to the City's February 7, 2014 letter, HRS submitted a written set of procedures for training, monitoring, recordation and enforcement which meets the overall intent of Condition of Approval 4. The City has reviewed the procedures and determined HRS is in compliance with this Condition.

Condition 51: Monitoring Whittle Avenue

Condition 51 states that HRS shall randomly monitor Whittle Avenue and ensure that students, parents, and teachers are not parking in residential permit parking only spaces. In response to the City's February 7, 2014 letter, HRS has submitted written procedures for monitoring this area. The City has reviewed the procedures and determined HRS is in compliance with this Condition.

ADDITIONAL INFORMATION REQUESTED IN THE FEBRUARY 7, 2014, LETTER TO DETERMINE COMPLIANCE

Condition 13: Subsequent Conditions and Requirements and Condition 36: Mitigation Monitoring and Reporting Program

This Condition requires conformance with the Mitigation Measure contained in the Mitigated Negative Declaration (MND) adopted by the Oakland Planning Commission on January 4, 2006. Mitigation Measure T1 requires HRS to monitor the extent of the after-school pick-up queue along Lincoln Avenue. If the queue extends past the upper driveway and the "no parking" zone above the driveway, HRS would implement specific actions to reduce the queue, if necessary. To

confirm compliance with this Condition, the City also requested videos of queuing during the after-school pick up period in its February 7, 2014 letter. HRS has delivered the videos.

SUMMARY

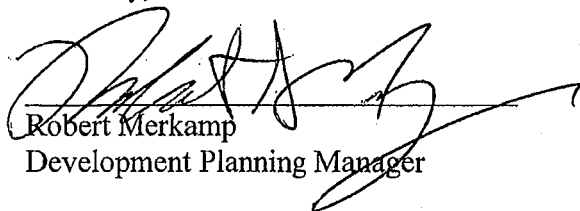
The City has determined HRS is compliant with all Conditions of Approval except Condition 39, concerning Phase III enrollment and 1, 6c and 8 as the School is non-compliant with Condition 39. Each item above explains the City's determination and the justification for the City's determination.

This determination may be appealed pursuant to the administrative appeal procedure in Oakland Planning Code Chapter 17.132. If you, or any interested party, seek to challenge this decision, an appeal **must** be filed by no later than ten (10) calendar days from the date of this letter, by **4:00 pm on May 15, 2015**. An appeal shall be on a form provided by the Bureau of Planning of the Department of Planning and Building, and submitted to the same at 250 Frank H. Ogawa Plaza, Suite 2214, to the attention of **Heather Klein, Planner III**. The appeal shall state specifically wherein it is claimed there was error or abuse of discretion by the City or wherein the City's decision is not supported by substantial evidence. The appeal itself must raise each and every issue that is contested, along with all the arguments and evidence in the record, which supports the basis of the appeal. The appeal must include payment of **\$1,352.91** in accordance with the City of Oakland Master Fee Schedule. Failure to timely appeal will preclude you, or any interested party, from challenging the City's decision in court. The appeal will be limited to issues and/or evidence presented to the City prior to the close of the previously noticed public comment period on the matter.

If you choose to proceed with an Appeal, please be aware that the Planning Commission will only be considering whether there was error or abuse of discretion or wherein this interpretation/determination is not supported by substantial evidence.

Please don't hesitate to contact me if you have any questions regarding this letter.

Sincerely,



Robert Merkamp
Development Planning Manager

cc: Head Royce Neighborhood Liaison Committee
Rachel Flynn, Director of Planning and Building
Heather Klein, Planner III
Heather Lee, Deputy City Attorney
Robert Lake, Head of Head Royce School
Anne Mudge, Cox, Castle & Nicholson LLP
Annie Campbell Washington, Councilmember for District 4

Klein, Heather

From: Klein, Heather
Sent: Tuesday, May 05, 2015 10:56 AM
To: 'Dennis Malone'
Cc: 101550@msn.com; Flynn, Rachel; Merkamp, Robert; Lee, Heather; Annie Mudge; 'rlake@headroyce.org'; Campbell Washington, Annie
Subject: Head Royce Notice of Determination
Attachments: Head Royce Compliance Letter 05-05-15.pdf

Mr. Malone,

Attached is the City's Notice of Determination which responds to the actions the School has taken to address our letter, dated February 11, 2014. A hard copy of the letter is in the mail.

If you have questions regarding the letter don't hesitate to contact me.

Best,

Heather Klein, Planner III | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 2114 | Oakland, CA 94612 | Phone: (510)238-3659 | Fax: (510) 238-6538 | Email: hklein@oaklandnet.com | Website: www.oaklandnet.com/planning

 Please consider the environment before printing this email

Klein, Heather

From: Leila H. Moncharsh <101550@msn.com>
Sent: Friday, May 08, 2015 11:00 AM
To: Klein, Heather; Campbell Washington, Annie; Simons, Adam J.
Subject: Your determination letter - Head Royce School
Attachments: PRA request. May 8, 2015.pdf

Hi Heather,

I emailed this request through proper channels this morning. We need to get the documents as quickly as possible to meet the May 15th deadline for an appeal, if we decide one is necessary. We also need an extension beyond just ten days from May 5th to file the appeal.

Thank you for considering my requests,

Leila

RecordTrac (/landing)

City of Oakland login ▾

**Your request has been submitted!**

You can expect a response from the City of Oakland in the next 10 days. You will be contacted via e-mail with any updates.



All messages from the City of Oakland and/or the information and documents you requested will be posted to this page. You can access this page (</new/request/9598>) at any time.

Request #9598

Under the Public Records Act, I am requesting the following records: 1. All documents and videos that were relied upon by the planning department in its letter of May 5, 2015 to Dennis Malone at Head Royce School and referenced in the first paragraph; 2. On page 2 of the same letter, under "Whittle Agreement Item 5, any and all documents and videos described as "HRS has submitted additional written procedures containing its traffic rules and is now in compliance"; Continuing with the same letter, 3. Lincoln Agreement on page 3, Item 5, any and all documents that constitute "directives to its delivery vendors as well as the delivery practices"; 4. Lincoln Agreement 13 - all documents that correspond with the statement: "The City has reviewed the procedures and has determined HRS is in compliance with this Condition"; 5. Condition 47 Traffic Rules: all documents that correspond with the statement: "HRS submitted a written set of procedures for training, monitoring, recordation and enforcement which meets the overall intent of Condition of Approval 4. The City has reviewed the procedures and determined HRS is in compliance with this Condition"; 6. Condition 51: Monitoring Whittle Avenue - Documents that are referenced by the City as "HRS has submitted written procedures for monitoring this area"; 7. Condition 13 and Condition 36 - the videos referenced as "the City also requested videos of queuing during the after-school pick up period in its February 2, 2014 letter. HRS has delivered the videos."

...less

Response

No records uploaded yet.

Klein, Heather

From: Leila H. Moncharsh <101550@msn.com>
Sent: Tuesday, May 12, 2015 12:15 PM
To: Klein, Heather
Subject: RE: Status of HRS' permit app

Hi Heather,

I will check to make sure we have these documents and that they are organized by Exhibit tabs as below. If not, I'll need to come back to you. I can't remember for sure, but I think that these documents date back to September 2013, we probably already have them and they sound familiar to me.

Thanks for the assistance,

Leila


From: HKlein@oaklandnet.com
To: 101550@msn.com
CC: ATodd@oaklandnet.com
Subject: RE: Status of HRS' permit app
Date: Tue, 12 May 2015 18:50:46 +0000

Leila,
There are 98 pages of documents. At 10 cents each that will be \$9.80.
Per our phone conversation this morning, you don't need the HRS 2012-2013 Compliance Matrix which staff also used to make our May 5th determination. Several of the exhibits, including but not limited Exhibit 11 which is the School's Transportation Policy Guide, Exhibit 16 related to a valet parking contract, Exhibit 21 related to parking at the Greek Orthodox Church, Exhibit 22 with letter to parents regarding violation of school rules, and Exhibit 23 related to monitoring. Can you also tell Hollis to bring a flash drive which will have the video?

In addition, the flash drive also has the 3 document of the May 8th HRS submittal which Annie was trying to send me and kept bouncing back.

If you could let me know when Hollis will be here I'll make sure I'm around.

Heather Klein, Planner III | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 2114 | Oakland, CA 94612 |
Phone: (510)238-3659 | Fax: (510) 238-6538 | Email: hklein@oaklandnet.com | Website: www.oaklandnet.com/planning

 Please consider the environment before printing this email

From: Leila H. Moncharsh [mailto:101550@msn.com]
Sent: Friday, May 08, 2015 4:26 PM
To: Klein, Heather; hollisanddeborah@att.net; Campbell Washington, Annie
Cc: Merkamp, Robert; Lee, Heather HLee@oaklandcityattorney.org
Subject: RE: Status of HRS' permit app

Thank you for the response. As soon as the documents and video(s) are ready, we will send someone with a check for the copy costs to pick them up. I understand the situation with the appeal date and we will make it

work.

Thanks, Leila

From: HKlein@oaklandnet.com

To: 101550@msn.com; hollisanddeborah@att.net

CC: RMerkamp@oaklandnet.com; HLee@oaklandcityattorney.org; amudge@coxcastle.com

Subject: RE: Status of HRS' permit app

Date: Fri, 8 May 2015 23:20:00 +0000

Leila,

Thank you for your e-mail. I also received your public records request and will begin working on it immediately to get you the documents that you need in order to determine whether to appeal staff's May 5th letter to the School.


To answer your questions:

1. The status of the HRS's application for Lincoln Childcare Center has not changed. However, we have been in contact with the School and it is our understanding that within the next couple of days the School will withdraw the previous application on that property and submit an application that only addresses the third enrollment increase per Condition of Approval #39.

2. I apologize for not getting back to Hollis promptly. The School has submitted documents that address our February 11, 2014 letter. We can put these documents together as part of the public records request and have them available shortly.

3. Robert Merkamp has already addressed the appeal extension concept.

Heather Klein, Planner III | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 2114 | Oakland, CA 94612 | Phone: (510)238-3659 | Fax: (510) 238-6538 | Email: hklein@oaklandnet.com | Website: www.oaklandnet.com/planning

 Please consider the environment before printing this email

From: Leila H. Moncharsh [<mailto:101550@msn.com>]

Sent: Thursday, May 07, 2015 12:58 PM

To: Klein, Heather; hollisanddeborah@att.net

Subject: Status of HRS' permit app

Hi Heather,

Can you let me know the status of HRS' permit application for use of the former Lincoln property? Does the city intend to grant a permit related to that property anytime soon? If the application is moving forward to a permit, can you give me the timeline?

Also, Hollis Matson wrote an email to you recently requesting updated documents and I see that she never received anything. I will prepare a PRA request today or tomorrow, but it will not leave the NSC much time to file an appeal of the city's determination letter if we disagree with HRS' representations listed in the letter. Is there a way to get an extension of the appeal date?

Should the PRA request go to you or to the city's assigned PRA recipient?

Thanks, Leila

Klein, Heather

From: Don Dunning <don@eastbayrealtypro.com>
Sent: Wednesday, May 13, 2015 5:14 PM
To: Klein, Heather
Cc: Flynn, Rachel; Campbell Washington, Annie; Schaaf, Libby; patillo@pgadesign.com; Moore, Jim; jahazielbonillaoaklandpc@gmail.com; Coleman, Michael; jmyres.oakplanningcommission@gmail.com; nagrajplanning@gmail.com; ew.oakland@gmail.com; Kalb, Dan; Guillen, Abel; McElhaney, Lynette; Gallo, Noel; Brooks, Desley; Reid, Larry; At Large
Subject: Head-Royce School, Complaint No. 0906270
Attachments: Steering Comm ltr to Planning 05-13-2015.pdf

Ms Klein,

Please see attached PDF regarding Head-Royce School and confirm that you have received it.

Regards,
Don Dunning, for the Neighborhood Steering Committee

Klein, Heather

From: Don Dunning <don@eastbayrealtypro.com>
Sent: Friday, May 15, 2015 11:16 AM
To: Klein, Heather
Subject: FW: Head-Royce School, Complaint No. 0906270
Attachments: Steering Comm ltr to Planning 05-13-2015.pdf

Hi Heather,

Please confirm you received this email.

Thanks,
Don Dunning

From: Don Dunning [<mailto:don@eastbayrealtypro.com>]
Sent: Wednesday, May 13, 2015 5:14 PM
To: Heather Klein (HKlein@oaklandnet.com)
Cc: rlynn@oaklandnet.com; acampbellwashington@oaklandnet.com; lschaaf@oaklandnet.com; patillo@pgadesign.com; jmoore.ocpc@gmail.com; jahazielbonillaoaklandpc@gmail.com; michael@mbcarch.com; jmyres.oakplanningcommission@gmail.com; nagrajplanning@gmail.com; ew.oakland@gmail.com; dkalb@oaklandnet.com; aguillen@oaklandnet.com; lmcelhaney@oaklandnet.com; ngallo@oaklandnet.com; dbrooks@oaklandnet.com; lreid@oaklandnet.com; atlarge@oaklandnet.com
Subject: Head-Royce School, Complaint No. 0906270

Ms Klein,

Please see attached PDF regarding Head-Royce School and confirm that you have received it.

Regards,
Don Dunning, for the Neighborhood Steering Committee

May 13, 2015

Dear Ms Klein:

The Neighborhood Steering Committee (NSC) has reviewed the Planning Department's Notice of Determination sent to Head-Royce School (HRS) on May 5, 2015. After careful consideration, our committee has determined that we will not be filing an appeal. Looking back on many years of the school's failure to comply with conditions of the use permit, and suffering no consequences for it, we do not see any advantage to the neighborhood in organizing our efforts this way.

Neighbors agree the current use permit is written in a way that benefits the school and is detrimental to the neighborhood. Instead of filing an appeal, we respectfully ask the City to renew efforts to rewrite the use permit, as was the original plan.

Some years ago, in good faith, we dropped our request for an administrative hearing officer to oversee a revocation hearing for HRS. This was in exchange for the school's commitment to work in collaboration with neighbors to rewrite use permit language. With the City's support, and after nearly a year of meetings between neighbors and the school, we reached an impasse, after which HRS and neighbors separately submitted draft language to the Planning Department.

We requested City assistance in moving forward with changing use permit language to make it clearer, quantifiable, enforceable and to include penalties against the school for future violations. Nothing ever came of this. Meanwhile, as we later learned, HRS had developed a plan to increase student enrollment to a number not authorized by the use permit until 2020.

The school has recently submitted a request to legalize their enrollment levels. This is an incontrovertible aspect of the current use permit where HRS has been determined to be out of compliance. It is disappointing, but predictable, that the school would defy this requirement and ask, long after the fact, that the rules be changed for their benefit.

HRS has been out of compliance with aspects of its use permit for decades, but, due to many ambiguous clauses, it manages to disregard the rights of neighbors without penalty. We believe that, until the current use permit is properly rewritten, this behavior will continue to demand unnecessary hours of neighborhood and City staff time.

The revised use permit needs to be rewritten with clearly defined expectations, will require third party monitoring for compliance and must include meaningful financial or other penalties. Otherwise, the school will continue to expand its footprint and contribute further to the institutionalization of our residential neighborhood.

Finally, we ask that the City provide at least three months of time for community review, input and comment before the Planning Commission considers Head-Royce's application. In 2005, problems with the current use permit arose in great part because neighbors were provided an inadequately short time frame to peruse applicable documents and meet to discuss details.

At the time, neighbors were told they needed to either sign agreements prepared by HRS or forego any opposition to the application. This is what has lead to many present problems with the use permit and we do not want a recurrence of this failed process.

It is our understanding that Head-Royce has been in discussions with the City for many months. The TDM is not new to HRS, but it is new to the community. With hundreds of homes impacted by the school's desire to continue expanding and its history of use permit noncompliance, our request for sufficient time to participate meaningfully in the City process is reasonable.

Cordially,

Don Dunning, for the Neighborhood Steering Committee

cc:

Rachel Flynn

Annie Campbell-Washington

Libby Schaaf

Planning Commission

City Council