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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF FRESNO

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13 Park 7, LLC, a California limited liability  
company, and,  
14 LandValue Management, LLC, a California  
limited liability company  
15

16 **Petitioners**

17 v.

18 City of Fresno; and City of Fresno City  
Council,  
19

20 **Respondents**

21 And Does 1-20, inclusive.  
22

Case No. **24CECG04298**

**VERIFIED PETITION FOR WRIT OF  
ADMINISTRATIVE MANDATE  
(Code of Civil Procedure Section 1094.5;  
Violation of Housing Accountability Act,  
Government Code Section 65589.5)**

23 **I. INTRODUCTION**

24 Park 7, LLC, a California limited liability company ("Park 7), and LandValue  
25 Management, LLC, a California limited liability company ("LandValue") (collectively, the  
26 "Petitioners") allege as follows:

27 1. Petitioner Park 7 is the owner of real property located in the City of Fresno (the  
28 "City") commonly referred to as 3311 West Fir Avenue, Fresno, California, Assessor Parcel

1 Numbers 500-200-26S, -27, and -28S (the "Real Property"). The Real Property is designated in  
2 the City's General Plan for Urban Neighborhood Residential land uses and is zoned in the City's  
3 Development Code for RM-2/EA, Multi-Family Residential, Urban Neighborhood/ Expressway  
4 Area Overlay residential land use. The RM-2 zoning district imposes both a minimum and  
5 maximum density standard of 16 to 30 dwelling units per acre. The Project described below  
6 proposes to develop the Real Property with 22.16 dwelling units per acre, in the lower half of the  
7 range of permissible minimum and maximum density standards.

8       2.     Petitioner Park 7 acquired ownership of the Real Property by a conveyance that  
9 constituted a capital contribution by the prior owners of the Real Property to Park 7.

10       3.     Petitioner LandValue initially served as an agent for the prior owners of the Real  
11 Property in submitting and pursuing applications with the City of Fresno for the entitlements  
12 described below. After the Real Property was conveyed to Park 7, LandValue continued such  
13 efforts and agency on behalf of Park 7.

14       4.     Respondent City of Fresno (the "City") is a California municipal corporation located  
15 within the County of Fresno. Through its governing body, the Fresno City Council (the "City  
16 Council"), the City wrongfully denied Petitioners' application for entitlements for a housing  
17 development project (the "Project") proposed for development on the Real Property. The City  
18 Council's denial violated California's Housing Accountability Act, Government Code Section  
19 65589.5 et seq. (the "Housing Accountability Act", or the "Act"). The record that details such  
20 violation is further described below.<sup>1</sup>

21       5.     The City bears the burden of proof that its decision in denying the Project complied  
22 with the requirements of the Act. (Government Section 65589.6.)

23 ///

24 ///

## 25                   **II. CALIFORNIA'S HOUSING ACCOUNTABILITY ACT**

26 \_\_\_\_\_  
27 <sup>1</sup> Petitioner is concurrently herewith submitting a preliminary record of the proceedings pursuant  
28 to Government Code Section 65589.5(n), which will be supplemented when Petitioners file their  
points and authorities.

1           6.     "The Legislature's intent in enacting [the Housing Accountability Act] in 1982 and in  
2 expanding its provisions since then was to significantly increase the approval and construction of  
3 new housing for all economic segments of California's communities by meaningfully and  
4 effectively curbing the capability of local governments to deny, reduce the density for, or render  
5 infeasible housing development projects and emergency shelters: That intent has not been  
6 fulfilled." (Government Code Section 65589.5(a)(2)(K).)

7           7.     The Housing Accountability Act requires, inter alia:

8                     When a proposed housing development project complies with  
9 applicable, objective general plan and zoning standards and criteria,  
10 including design review standards, in effect at the time that the  
11 housing development project's application is determined to be  
12 complete, but the local agency proposes to disapprove the project or  
13 to approve it upon the condition that the project be developed at a  
14 lower density, the local agency shall base its decision regarding the  
15 proposed housing development project upon written findings  
16 supported by substantial evidence on the record that both of the  
17 following conditions exist:

18                     (1) The housing development project would have a specific, adverse  
19 impact upon the public health or safety unless the project is  
20 disapproved or approved upon the condition that the project be  
21 developed at a lower density. As used in this paragraph, a "specific,  
22 adverse impact" means a significant, quantifiable, direct, and  
23 unavoidable impact, based on objective, identified written public  
24 health or safety standards, policies, or conditions as they existed on  
25 the date the application was deemed complete.

26                     (2) There is no feasible method to satisfactorily mitigate or avoid the  
27 adverse impact identified pursuant to paragraph (1), other than the  
28 disapproval of the housing development project or the approval of  
the project upon the condition that it be developed at a lower density.  
(Government Code Section 65589.5(j).)

8.     The Housing Accountability Act provides that a housing development project shall  
be:

                   "deemed consistent, compliant, and in conformity with an applicable plan,  
program, policy, ordinance, standard, requirement, or other similar  
provision if there is substantial evidence that would allow a reasonable  
person to conclude that the housing development project . . . is consistent,  
compliant, or in conformity."  
(Government Code Section 65889.5(f)(4).)

1 9. Further, the Housing Accountability Act must be construed broadly and "consistent  
2 with, and in promotion of, the statewide goal of a sufficient supply of decent housing to meet the  
3 needs of all Californians." (Government Code Section 65589(d).)

4 10. In order to deny a housing development project, the City has the burden of either  
5 proving that the "proposed project in some manner fails to comply with applicable, objective  
6 general plan and zoning standards and criteria, including design review standards. . .", or making  
7 the findings required by the Housing Accountability Act. (Honchariw v. County of Stanislaus  
8 (2011) 200 Cal.App.4th 1066, 1081.)

9 **III. THE SUBJECT HOUSING DEVELOPMENT PROJECT**  
10 **AND DEVELOPMENT DIRECTOR'S APPROVAL**

11 11. The housing project the City improperly denied sought to construct a new 82-unit  
12 private gated multi-family development, with three (3) three-story multifamily residential  
13 buildings, one four-story multifamily residential building, one approximately 1,907 square-foot  
14 community center building, one swimming pool area and one dog park area. This Project  
15 constitutes a "housing development project" under the Housing Accountability Act. (Government  
16 Code Section 65589.5.)

17 12. The Real Property holds both zoning and general plan land use designations that  
18 allow for the development of the Project. Therefore, the initial application submitted on February  
19 20, 2021, was originally limited to a request for an entitlement described in the City's  
20 Development Code as a "Development Permit". A Development Permit is the entitlement by  
21 which the City evaluates the site layout of intended improvements for a proposed project. This  
22 type of an entitlement is commonly referred to in other jurisdictions as a Site Plan.

23 13. The application initially proposed to develop a 88 unit multi-family housing project.  
24 The City determined, pursuant to Government Code Section 65943, that this application was  
25 substantially complete on May 4, 2021.

26 14. On May 26, 2021, Petitioner LandValue submitted an updated design to reduce the  
27 density to an 82-unit multi-family development. Pursuant to Government Code Section 65943(b)  
28

1 that updated application was deemed to be complete on June 3, 2021, thirty days after the City's  
2 receipt of the updated application materials.

3 15. Pursuant to Government Code Section 65589.5(j)(2)(A)(i), the City was required to  
4 provide the applicant a written notice within thirty days after the application was deemed  
5 complete, if the City determined that the intended Project was not in compliance with, or not in  
6 conformity with, an applicable plan, program, policy, ordinance, standard, requirement or other  
7 similar provision. That notice was required to provide the applicant with written documentation  
8 identifying those provisions and an explanation of the reason it considered the housing  
9 development to be inconsistent, not in compliance or not in conformity.

10 16. Where, as here, the City failed to timely provide the notice required by Government  
11 Code Section 65589.5(j)(2)(A)(i), the housing project is deemed consistent, compliant, and in  
12 conformity, with the applicable plan, program, policy, ordinance, standard, requirement, or other  
13 similar provision. (Government Code Section 65589.5(j)(2)(B).)

14 17. On December 8, 2022, substantially after the deadline specified in Government Code  
15 Section 65589.5(j)(2)(A)(i), the City provided Petitioner LandValue an initial set of Conditions of  
16 Approval. Those were detailed in a draft document that was predated as of April 15, 2022. This  
17 December 8, 2022 submittal of the predated draft Conditions of Approval was the first instance  
18 where the City indicated that the Project did not comply with setback requirements that are  
19 applicable to projects located within a unique Expressway Overlay zoning standard.

20 18. The Expressway Overlay zoning designation is unique because it only burdens  
21 streets adjacent to either expressways or super arterials in the City. (Fresno Municipal Code  
22 Section 15-1604-A.) Herndon Avenue is the sole street within the City that has any segment  
23 allocated with an expressway designation. Eight streets, including Herndon, have segments  
24 allocated with a super arterial designation.

25 19. The Expressway Overlay zoning standard is also unique because it establishes  
26 setback standards for housing development projects that are either 200 feet from the right of way,  
27 or 75 feet from the from the center line of the nearest moving traffic lane of the abutting roadway.  
28

1 Other land uses within the Expressway Overlay are only required to comply with a 30-foot  
2 setback standard. (Fresno Municipal Code Section 15-1604-C.)

3 20. The Express Overlay setback standard identified in the Conditions of Approval  
4 required that the Project satisfy a 75-foot set-back from the center line of the nearest moving  
5 traffic lane of the abutting roadway. The 75-foot set-back standard is applicable where, as here,  
6 an acoustical study is conducted to ensure that the Project would comply with the City's  
7 applicable interior noise standards. An acoustical study confirming compliance with those  
8 standards was obtained by the Petitioners and submitted in conjunction with the Project's  
9 application materials.

10 21. However, based on the constraints of the site, one of the proposed multi-family  
11 housing buildings is intended to be only 68 feet from the center line of the nearest moving traffic  
12 lane, which was seven feet less than the 75-foot set-back standard. The requirement to address  
13 this seven foot deviation from the 75-foot set-back standard was first identified by the draft  
14 Conditions of Approval for the Project delivered to Petitioner LandValue on December 8, 2022  
15 (which the City had predated as of April 15, 2022).

16 22. The proposed Conditions of Approval was updated on December 23, 2022, which  
17 among other things added additional details about the requirement to satisfy the relevant 75-foot  
18 setback standard.

19 23. The City's late notification of the applicable standard violation resulted in the Project  
20 being deemed compliant with that standard pursuant to Government Code Section  
21 65589.5(j)(2)(B). Petitioners nevertheless pursued entitlement applications to address the City's  
22 intended requirement. Specifically, the Petitioners submitted a Minor Deviation application. A  
23 Minor Deviation is a provision of the City's development code that allows the City to reduce an  
24 applicable development standard by up to 10%. The Minor Deviation proposed to reduce the 75-  
25 foot set-back requirement imposed by the Expressway Area Overlay District standards to 68 feet  
26 (a seven foot reduction in the standard).

27 24. On March 8, 2024, Petitioners filed the Minor Deviation application. On that same  
28 date it also obtained confirmation from the staff that such submittal would result in the

1 satisfaction of all requirements relating to the Herndon Avenue Expressway Overlay detailed in  
2 the Conditions of Approval. The Staff's assurance that attainment of the Minor Deviation would  
3 satisfy the requirements of setback standards of the Express Overlay, and the Staff's assurance  
4 that the Project satisfied the requirements for issuance of a Minor Deviation, confirmed that the  
5 Project conformed to all applicable plans, programs, policies, ordinances, standards,  
6 requirements, or other similar provisions pursuant to Government Code Section 65589.5(j)(2)(A).  
7 This circumstance, provides a separate and independent basis for this Court's determination that  
8 the Project satisfied all applicable standards.

9         25. On May 15, 2024, the Director approved the Development Permit (Site Plan)  
10 Application, based on the Projects' compliance with the required findings for Development  
11 Permits pursuant to Fresno Municipal Code Section 15-5206. The Director also approved the  
12 issuance of the Minor Deviation pursuant to Fresno Municipal Code Section 15-5607-B. In so  
13 doing, the Director expressly confirmed that the Project complied with all applicable objective  
14 general plan and zoning standards and criteria, including design review standards and the  
15 applicable Expressway Area Overlay setback requirements.

16         26. The Director also confirmed that the Project qualified as an infill project because it  
17 satisfied all standards of a Class 32 Categorical Exemption under the California Environmental  
18 Quality Act ("CEQA").

19                             **IV. APPEAL TO PLANNING COMMISSION AND**  
20                             **PLANNING COMMISSION DELIBERATIONS AND ACTIONS**

21         27. City of Fresno Municipal Code Section 15-5017-A-1 provides that decisions by the  
22 Development Director may be appealed by "aggrieved parties" for a hearing before the Planning  
23 Commission. Such appeals are required to identify the decision being appealed and shall clearly  
24 and concisely state the reasons for the appeal.

25         28. Eight individuals filed such appeals. Some appellants referred to the fact that the  
26 development would negatively affect the neighborhood, would have the potential to result in the  
27 increase in crime, including vehicle break-ins and property crime, on the basis that "a larger  
28 residential complex may attract unwanted attention from individuals with malicious intent,

1 putting our community's safety and security at risk". Complaints were also grounded on the  
2 claim that the "4-story building next to a school is dangerous. Also, it could make the children  
3 subjects of voyeurism." Another appellant argued that "there will be lots of windows from which  
4 people can look out and watch students when they are arriving, on recess, at lunch, or when they  
5 were leaving from the school grounds". They further argued "[T]his does not even account for the  
6 park next door where kids play soccer on weekends." That same appellant noted that "With 82  
7 new families moving in, I am sure that a portion of this will need to be section & (*sic*) housing.  
8 While I am not opposed to giving those people who need low income housing a break, it should  
9 be done in the correct neighborhoods." Other appellants argued that, while not against apartment  
10 complexes, they are simply against high-density apartments.

11       29. Other appellants raised issues related to traffic, parking, building heights, aesthetics,  
12 and not aligning "with the character" of the neighborhood. None of the appellants who sought the  
13 appeal to the Planning Commission stated that their appeal included any appeal of the issuance of  
14 the Minor Deviation.

15       30. Based on these appellant letters, the Planning Commission heard an appeal of the  
16 Project's Development Permit Application on May 15, 2024. At the hearing, the City Staff  
17 presented its report that recommended the Commission uphold the Director's approval based on  
18 substantial evidence in the record that the multi-family development was a permitted use subject  
19 to approval of a Development permit in the relevant zone district.

20       31. The Staff report, the Staff presentation, and other evidence presented at the hearing,  
21 confirmed that the Project complied with all objective standards regarding all matters that were  
22 raised in the appeal, and by other commenters, and by the Planning Commissioners. The Staff  
23 Report also advised the Planning Commissioners of operative provisions of the Housing  
24 Accountability Act.

25       32. Nevertheless, during their deliberations several Planning Commissioners stated that  
26 sometimes, even where all of the rules were followed, certain actions should not be approved  
27 regardless of what the applicable code allows.

28





1 cited applicable remedies that would be imposed under the Housing Accountability Act for its  
2 violation.

3 37. The City Council heard the appeal of the Project's Development Permit Application  
4 on July 25, 2024. At the hearing City Staff presented its report that recommended the Council  
5 grant the appeal, and uphold the Director's approval of the Development Permit Application and  
6 related findings confirming the applicable CEQA categorical exemption. The testimony and  
7 information provided at the hearing established substantial evidence in the record that the multi-  
8 family development was a permitted use subject to approval of a Development permit in the  
9 relevant zone district. That record further confirmed that the Project complies with all applicable  
10 objective general plan and zoning standards and criteria. This includes all design review  
11 standards, including the applicable Expressway Area Overlay setback requirements, which would  
12 be satisfied by the issuance of the Minor Deviation. The record further confirmed that the Project  
13 satisfies all applicable objective general plan and zoning standards and criteria applicable to the  
14 issuance of the Minor Deviation.

15 38. The Staff presentation included a detailed discussion regarding how the three  
16 findings required by Fresno Municipal Code Section 15-5607-B for the issuance of the Minor  
17 Deviation were satisfied. Fresno Municipal Code Section 15-5607-B-1 requires a finding that the  
18 deviation is necessary due to the physical characteristics of the property and the proposed use or  
19 structure or other circumstances, including, but not limited to, topography, noise exposure,  
20 irregular property boundaries, or other unusual circumstance. The Director confirmed that finding  
21 and the Staff supported it by testimony that the Expressway Area Overlay District is a "unique"  
22 overlay district in the City of Fresno, and that most housing development projects along major  
23 streets do not have a 75-foot set-back requirement. Other testimony during the hearing confirmed  
24 that other similarly situated residential projects in the vicinity and within this unique overlay  
25 district had been provided the benefit of the same Minor Deviation.

26 39. Fresno Municipal Code Section 15-5607-B-2 requires a finding that there are no  
27 alternatives to the requested deviation that could provide an equivalent level of benefit to the  
28 applicant with less potential detriment to surrounding owners and occupants or to the general

1 public. The Staff's testimony confirmed that finding was supported and the detailed that a  
2 relocation of the four-story building within the 75-foot setback area could result in relocating one  
3 or more of the three-story buildings towards the eastern boundary of the Project site. That eastern  
4 project boundary is adjacent to existing single family residences, and a reduced setback adjacent  
5 to those types of uses was found to create a greater detriment to such owners and occupants than  
6 the reduction by seven feet of the 75-foot setback adjacent to a major street. The Project's  
7 application proposed a ten foot set-back from such residences, double the development Code's  
8 required five foot setback from such residences, which was more desirable and beneficial to such  
9 owners and occupants.

10 40. Fresno Municipal Code Section 15-5607-B-3 requires a finding that the requested  
11 deviation would not be detrimental to the health or safety of the public or the occupants of the  
12 property or result in a change in land use or density that would be inconsistent with the  
13 requirements of this Code. Staff testified that the development code requires an eight foot block  
14 wall along Herndon Avenue to mitigate noise, and that this mitigation avoided any detrimental  
15 effects. This is supported by the fact that a primary purpose of the Expressway Overlay standard  
16 is to mitigate interior noise impacts. In addition, the grant of the Minor Deviation would not  
17 affect the Project's consistency with the land use or density standards because, as noted above, the  
18 Project falls within the lower half of the relevant density standards applicable to the RM-2 zone  
19 district.

20 41. During the hearing, Council Members were critical of the extent of notice given to  
21 residents about a rezoning of the subject Real Property that was conducted over a decade prior.  
22 That rezoning occurred as part of a city-wide rezoning that was conducted to conform all City  
23 zoning to the City's General Plan land use designations. Council Members also criticized  
24 Petitioners for not organizing neighborhood meetings regarding the Project. However, the  
25 Council was advised by City staff that no objective policy of the City required an applicant to  
26 conduct any neighborhood meetings in support of Development (Site Plan) Permits.

27 42. Prior to the Council's actions to deny the Project, the City Attorney advised the  
28 Council on the record that his staff had not finally confirmed whether the Housing Accountability

1 Act applied to the Project. He stated that his office had made inquiry about such matters to the  
2 State of California's Housing and Community Development Department, but had not yet received  
3 a reply to that inquiry. Despite those circumstances, the City Council moved forward with its  
4 intended action to deny the Project, without the benefit of having confirmed the applicable legal  
5 standards that applied to its action. That circumstance, and others detailed herein, reflect a failure  
6 of the City to act in good faith

7 43. At the conclusion of the Council Hearing, and nearly three years after the Project's  
8 application for a Development Permit (Site Plan) was deemed to be complete, the City Council  
9 voted to deny the Project. The denial was based on the contrived assertion that a finding required  
10 by Fresno Municipal Code Section 15-5206 for the issuance of a Development (Site Plan) Permit  
11 application could not be satisfied.

12 44. Specifically, the Council asserted that the finding required by Fresno Municipal  
13 Code Section 15-5206-C for issuance of a Development (Site Plan) Permit could not be made.  
14 The Council asserted that the finding could not be made because the Project did not comply with  
15 the applicable design guidelines, specifically the 75-foot setback standard imposed by the  
16 Expressway Overlay.

17 45. The Council found that design guideline was violated because it refused to approve  
18 the Minor Deviation. It based that refusal on the assertion that the finding required by Fresno  
19 Municipal Code Section 15-5607-B-1 could not be supported because "the sites (*sic*) physical  
20 characteristics were not unusual".

21 **VI. CITY COUNCIL'S AND THE CITY'S VIOLATIONS OF**  
22 **THE HOUSING ACCOUNTABILITY ACT**

23 ***A. The City Violated Government Code Sections 65589.5(j) and (o) by***  
24 ***Adopting an Unreasonable Interpretation in Violation of Section Government***  
***Code Section 65589.5(f)(4).***

25 46. The Housing Accountability Act imposes several important limitations on the  
26 discretion that a City Council may exercise when evaluating the issuance of entitlements for  
27 housing development projects. These limitations apply to a Council's consideration of any  
28

1 required land use approvals or entitlements necessary for the issuance of a building permit  
2 (Government Code Section 65589.5(g)(6)(A).)

3 47. Because the Minor Deviation is a land use approval required for the Project to  
4 ultimately be entitled to issuance of a building permit, the standards that govern approval of a  
5 housing development project under the Housing Accountability Act apply in full force to the  
6 Council's deliberations and denial of the Minor Deviation.

7 48. The City Council's subterfuge to illegally deny the subject housing development  
8 project is based on its wrongful interpretation and application of the findings requirement in  
9 Fresno Municipal Code Section 15-5607-B-1 for approval of the Minor Deviation. The Council  
10 then used this wrongful interpretation and application of the Minor Deviation standards as an  
11 artifice to assert that the findings required under Fresno Municipal Code Section 15-5206 for  
12 issuance of the Development Permit (Site Plan) could not be established. That unreasonable  
13 interpretation of applicable objective standards for issuance of the Minor Deviation resulted in the  
14 City's impermissible denial of this Project in violation of the Housing Accountability Act.

15 49. The Housing Accountability Act imposes a "reasonable person" standard of  
16 interpretation in evaluating compliance with applicable standards. Specifically, it requires that the  
17 Council issue a relevant permit (including a Minor Deviation) as consistent with a relevant  
18 ordinance, if there was substantial evidence that would allow a reasonable person to conclude that  
19 the housing development project complied with requisite standard. (Government Code Section  
20 65889.5(f)(4).) The City Council violated this standard in its evaluation of the Project's  
21 compliance with the Minor Deviation requirements.

22 50. This is evidenced, in part, by testimony provided by the City's Development  
23 Director, the City Attorney, and the City Manager, who all testified that the Project satisfied all  
24 State and City requirements (which necessarily encompasses satisfaction of the Minor Deviation  
25 requirements). These officials of the City are all ostensibly reasonable persons, who in various  
26 roles hold ostensible authority to bind the City. Their testimony thereby confirms that a  
27 reasonable person could conclude that the Project satisfies all relevant standards.

28

1           51. The Housing Accountability Act also confirms that the City, in considering a  
2 housing development project, can only apply objective standards that were in effect at the time  
3 the application was deemed complete. The only exception to this standard is where the decision to  
4 impose a new objective standard is supported by findings supported by a preponderance of the  
5 evidence on the record, that a specific, adverse impact on public health or safety would be created  
6 and there is no feasible means the avoid the impact. (Government Code Section 65589.5(j).) The  
7 Council made no such findings.

8           52. The City attempts to avoid these substantial finding requirements for imposing a new  
9 objective standard, by misinterpreting and misapplying existing standards set forth in Fresno  
10 Municipal Code Section 15-5607-B-1. The City's misinterpretation and misapplication violates  
11 the reasonable person standard that the Housing Accountability Act imposes on such actions.

12           53. Additional evidence that the City misinterpreted the requirements of Section 15-  
13 5607-B-1 is found in the language it adopted in its motion. The motion stated that Fresno  
14 Municipal Code Section 15-5607-B-1 could not be satisfied because "the subject site's physical  
15 characteristics are not unusual". In focusing solely on the subject site's physical characteristics,  
16 the City substantially limited the standards applicable to the issuance of a Minor Deviation.

17           54. Fresno Municipal Section 15-5607-B-1 allows the grant of relief from relevant  
18 standards where that relief is necessary "due to the physical characteristics of the property **and**  
19 **the proposed use or structure or other circumstances**, including, but not limited to,  
20 topography, noise exposure, irregular property boundaries, **or other unusual circumstance**"  
21 (*emphasis added*). The Development Director found that the requirements of Fresno Municipal  
22 Code Section 15-5607-B-1 were satisfied, based on the existence of the unusual existence and  
23 nature of the Expressway Area Overlay. A reasonable person reasonably determined that the  
24 Project's adjacency to the Expressway Area Overlay resulted in an extraordinary 75-foot setback  
25 requirement, and that the grant of a seven foot relief to that standard was necessary based on the  
26 proposed use and structures, and was in furtherance of the purposes of the Code.

27           55. The Development Director's interpretation of that provision was also consistent with  
28 the requirements of the Housing Accountability Act that relevant development standards "shall be

1 applied to facilitate and accommodate development at the density permitted on the site proposed  
2 by the development". (Government Code Section 65589.5(f)(1).) The City Council's alternative  
3 interpretation violates this statutory standard of interpretation.

4 ***B. The City Violated Government Code Sections 65589.5(j) and (o) by Applying a***  
5 ***Nonobjective Policy in Violation of Section Government Code Section 65589.5 (f)(4).***

6 56. The Housing Accountability Act's requirement that only preexisting objective  
7 standards can be reasonably interpreted and applied is bolstered by an important and limiting  
8 definition of what constitutes a relevant objective standard. Specifically, Government Code  
9 Section 65589.5(h)(9) defines "objective" as "involving no personal or subjective judgment by a  
10 public official and being uniformly verifiable by reference to an external and uniform benchmark  
11 or criterion available and knowable by both the development applicant or proponent and the  
12 public official."

13 57. Fresno Municipal Code Section 15-5607-B-1 allows its required findings to be  
14 satisfied where "other unusual circumstances" exist. The City's varied application of that standard  
15 demonstrates that it is not a standard that meets the Acts definition of an "objective standard".  
16 This is evidenced by the fact that the Development Director previously determined that an  
17 appropriate "other unusual circumstance" included the Project's adjacency to the Expressly Area  
18 Overlay. That determination was not challenged by any of the appeals filed by appellants to the  
19 Planning Commission, nor was it questioned or criticized by the Planning Commission.

20 58. Instead, the matter was raised at the end of the City Council hearing. The Council  
21 then found, without any evidentiary support or other deliberation as to the meaning and  
22 application of Fresno Municipal Code Section 15-5607-B-1, that the standard could not be  
23 satisfied because "the sites (*sic*) physical characteristics were not unusual". If the Council's  
24 interpretation of that standard is accurate then the Planning Director and City Attorney  
25 misinterpreted the relevant standards. This demonstrates that Fresno Municipal Code Section 15-  
26 5607-B-1 does not set forth an objective standard. That is because an objective standard must  
27 involve no personal or subjective judgment by a public official. It is a standard that must be  
28 uniformly verifiable by reference to an external and uniform benchmark or criterion available and

1 knowable by both the development applicant or proponent and the public official. Clearly, the  
2 requirements of the standard, as applied by the City Council, substantially varied from those  
3 applied by the City's relevant land use professionals and legal advisors. This is not the kind of  
4 circumstance that exists where an objective standard is being reasonably applied.

5 59. Under these circumstances Fresno Municipal Code Section 15-5607-B-1 is therefore  
6 not an objective standard. As a result, the City Council's denial of the housing development  
7 project for failing to satisfy the nonobjective standard violated the Housing Accountability Act.

8 ***C. The City Violated Government Code Sections 65589.5(j) and (o) by Failing to Confirm***  
9 ***Application of a CEQA Exemption in Violation of Section Government Code Section***  
10 ***65589.5(h)(6)(D).***

11 60. The Act limits the authority of a City Council to deny a housing development project  
12 by failing to properly confirm that the project satisfied an applicable CEQA exemption.  
13 (Government Code Section 66589.5(h)(6)(D).) Such a failure constitutes an abuse of discretion  
14 where, as here, there is substantial evidence in the record that all requirements of Government  
15 Code Section 65589.5(6)(D)(i), subclauses (I) to (IV), have been satisfied. Evidence that those  
16 requirements were satisfied is confirmed by the information detailed in the City of Fresno  
17 Categorical Exemption Environmental Assessment included in the Staff reports. It was also  
18 confirmed by testimony of the City Attorney, who confirmed that the applicable exemption was  
19 satisfied, and that any relevant exceptions to such exemptions were not applicable.

20 ***D. The City Violated Government Code Sections 65589.5(j) and (o) by Applying a***  
21 ***Standard Deemed Satisfied by Virtue of the City's Violations of the Notification***  
22 ***Requirements in Government Code Section 65589.5(j)(2)(A)(I).***

23 61. As detailed in Paragraphs 13 through 23 above, the City failed to provide written  
24 notice to the Petitioners that the proposed Project violated applicable land use standards within  
25 thirty (30) days after the revised Project application was determined to be complete under  
26 Government Code Section 65943. Therefore, the Project was deemed to satisfy the setback  
27 standards applicable to the Expressway Overlay District pursuant to Government Code Section  
28 Government Code Section 65589.5(j)(2)(A)(I). The City thereby violated Government Code



1 Sections 65589(j) and (o) by applying the standards required for approval of a Minor Deviation to  
2 satisfy a requirement that was otherwise already satisfied.

3 **VI. REMEDIES ESTABLISHED BY THE HOUSING ACCOUNTABILITY ACT**

4 Based on the foregoing, Petitioners pray for relief as follows:

5 1. For a Judgment that the City of Fresno abused its discretion by failing to proceed in the  
6 manner required by law, by denying the subject housing development project, in violation of  
7 Government Code Section 65589.5 (j) and (o), which violations included:

- 8 a. The Council's denial of the Development (Site Plan) Permit;
- 9 b. The Council's denial of the Minor Deviation; and,
- 10 c. The Councils failure to determine that the Project is exempt from the California  
11 Environmental Quality Act.

12 2. For a finding, pursuant to Government Code Section 65589.5(k)(1)(A)(i)(II), that the  
13 foregoing violations of Government Code Section 65589.5(j) was committed without the City  
14 having made the findings required by Government Code Section 65589.5.

15 3. For a finding, pursuant to Government Code Section 65589.5(k)(1)(A)(i)(III), that the  
16 foregoing violation of Government Code Section 65589.5(o) was committed by the City requiring  
17 the Project to comply with an ordinance, policy, or standard not adopted and in effect when the  
18 application was submitted.

19 4. For a finding, pursuant to Government Code Section 65589.5(k)(1)(A)(ii), that the City  
20 acted in bad faith when it disapproved the Project in violation of Government Code Section 65589.5  
21 (j) and (o).

22 5. For an Order pursuant to Government Code Section 65589.5(k)(1)(A)(ii) and California  
23 Code of Procedure Section 1094.5, that the City be commanded, within 60 days of the date of this  
24 Court's Order, to set aside the denials of the Project.

25 6. For an Order pursuant to Government Code Section 65589.5(k)(1)(A)(ii) and California  
26 Code of Procedure Section 1094.5, that the City reconsider its considerations of the Development  
27 (Site Plan) Permit, the Minor Deviation, and its failure to certify the Project's compliance with  
28 applicable exemptions under CEQA.

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7. For an Order, pursuant to Government Code Section 65589.5(k)(1)(A)(ii) and California Code of Procedure Section 1094.5, directing the City to approve the Development (Site Plan) Permit, the Minor Deviation, and the Project's compliance with applicable CEQA exemptions.

8. For an award of attorney's fees to Petitioners pursuant to Government Code Section 65589.5(k)(1)(A)(ii).

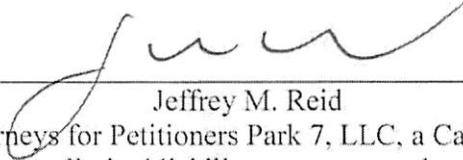
9. For an award of costs to Petitioners as allowed by law.

10. For an order confirming the Court's retention of jurisdiction to ensure its orders and judgments are carried out, pursuant to Government Code Section 65589.5(k)(1)(A)(ii).

11. For such other and further relief as the Court deems warranted based on the facts established at the hearing on the Writ, or other judicial resolution of this Petition.

Dated: October 1, 2024

McCORMICK, BARSTOW, SHEPPARD,  
WAYTE & CARRUTH LLP


By:   
Jeffrey M. Reid  
Attorneys for Petitioners Park 7, LLC, a California limited liability company, and LandValue Management, LLC, a California limited liability company

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**VERIFICATION**

The undersigned, is the Manager of LandValue Management, LLC, a California limited liability company, a Petitioner in this matter, and I am authorized to execute this verification on behalf of Petitioner LandValue Management, LLC. I verify I have read the foregoing Petition and am familiar with its contents. The facts recited in the Petition are true of my personal knowledge.

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

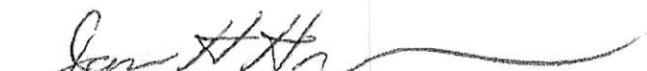
  
James H. Huelskamp

Dated: September 30, 2024

**VERIFICATION**

The undersigned is a Manager of Park 7, LLC, a California limited liability company, a Petitioner in this matter, and I am authorized to execute this verification on behalf of Petitioner Park 7. I verify I have read the foregoing Petition and am familiar with its contents. The facts recited in the Petition are true of my personal knowledge.

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

  
James H. Huelskamp

Dated: September 30, 2024