

ANGEL LAW

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LAWSUIT FILED CHALLENGING MASSIVE MIRAMAR HOTEL & CONDO PROJECT IN DOWNTOWN SANTA MONICA

Santa Monica, CA, December 10, 2020 – Santa Monica-based Angel Law recently filed a [lawsuit](#) on behalf of the Santa Monica Bay Towers Homeowners Association (SMBT) challenging the controversial Miramar five-star hotel and luxury condo development project in Downtown Santa Monica.

Approved by the city council in the wee hours of September 30, 2020, the project proposes to redevelop the entire 4.4-acre Downtown city block now occupied by the Fairmont Miramar Hotel & Bungalows. Located in the California coastal zone, the hotel property faces the Palisades Bluffs between Wilshire Boulevard and California Avenue. Three of the four council members who voted for the project were voted out of office five weeks later.

The project proposes more than 500,000 sf² of development, including 312 high-cost rooms and suites, indoor and outdoor bars and restaurants, meeting and banquet spaces, pool, spa and fitness facilities, and retail shops. The existing Ocean Tower and the historic bungalows would be razed and replaced with two hulking buildings, the main one rising to 130 feet in height (11 stories), the other 80 feet (seven stories). Under the development agreement negotiated behind closed doors with Ocean Avenue LLC, the Delaware limited liability company that has been acting as the official developer, most of the net additional square footage (compared to the existing hotel space) is for a residential subdivision of sixty ultra-luxury condos. Spread over seven floors in the main building (floors four to ten), the condos come with amenities such as a private bowling alley, a golf simulator, pool/spa/jacuzzi deck areas, exercise/fitness rooms and private screening rooms. Based on an average unit sales price of \$7,780,000, the developer expects to cash in close to half a billion dollars (\$466,800,000) from the condo sales.

The lawsuit charges that the project violates both the coastal land use plan (LUP) the City and the California Coastal Commission approved for the area in the city that is part of the California coastal zone and the Downtown Community Plan (DCP). The lawsuit further charges that in approving the project, the city's officials violated the California Environmental Quality Act.

“Our lawsuit is not to say ‘no’ to any redevelopment activity on the Fairmont Miramar property,” said Kay Ward, President of the SMBT Board of Directors. “It is about requiring the Miramar hotel & condo developer to follow the law, just like other developers in the city must. This will greatly benefit not only the SMBT, but also many other California Avenue and Ocean Avenue residents, and countless residents and office workers in our Downtown, who will bear the brunt of the demolition and construction noise pollution, the air pollution, the traffic gridlock, and the traffic hazards this oversized project design imposes on the community. Millions of annual city visitors

who come to enjoy Palisades Park and the state beach below, too, will benefit from compliance with the planning and environmental laws our lawsuit seeks to enforce.”

The coastal LUP states that the stretch of Ocean Avenue north of the Santa Monica Pier “is one of the City’s most scenic boulevards because of [Palisades] Park and views of the shoreline and the Santa Monica mountains,” and the park and frontage along Ocean Avenue therefore “must be considered in tandem.” Accordingly, the LUP sets a 45-foot height limit and a maximum FAR (floor area ratio) of 2 for new development along the east side of Ocean Avenue. “The 130-foot building height and the 2.6 FAR are egregious violations of the coastal LUP,” said Frank P. Angel, SMBT’s lead attorney.

Charging that Ocean Avenue LLC never intended to conform its proposed development to the LUP, the lawsuit states:

“[The developer] proceeded as though it could make the tail (its development) wag the dog (the City and the Coastal Commission-approved Certified LUP). Ignoring California’s fundamental rule of vertical planning consistency, which holds that site-specific development in the coastal zone must conform with state-approved local coastal planning policy [citation], and ignoring that development planning in the coastal zone involves paramount state interests, [the developer] always intended for the City’s comprehensive local coastal planning to be dictated by the development intensity it wants, and the crass, exclusionary urban gentrification it desires to attract and cater to a narrow socio-economic hotel customer and condominium buyer demographic with the highest spending power.”

As concerns the DCP violations, the lawsuit points to the DCP drafters’ consensus that luxury housing and high rents “have frustrated many who wish to move into the Downtown.” (DCP at p. 40.) Like numerous Santa Monica citizens, including city officials who objected to the project, the lawsuit chastises the city’s approval of the 60 luxury condominiums. Noting that the DCP prioritizes affordable housing as the city’s “number one community benefit” (DCP at p. 42), especially in new development proposed within the DCP’s Established Large Site (ELS) Overlay Zone (DCP at p. 30), the lawsuit states:

“The Development Agreement is substantially inconsistent with the DCP in that it includes no affordable housing units anywhere onsite at the Hotel Parcel/ELS Overlay Zone. By steering all housing for persons and families in the low income ranges away from the Hotel Parcel in the blufftop Ocean Transition District to the Second Street Parcel in the Wilshire Transition District, and banning the affordable housing occupants from access to the pool, associated deck areas, exercise and fitness rooms, and other recreational amenities it allows for the luxury condominium units, the Development Agreement showcases modern-day housing segregation and exclusionary zoning of the worst sort.”

At the September 29-30 city council meeting, the playing field was badly slanted in favor of the developer. Project lobbyists Dustin Peterson and Ellis O'Connor were granted unlimited video access after the public hearing was closed. They were allowed to freely intervene in the council's deliberations until the roll call.

The four council members who sided with the developer expressed no interest in the impacts of their action on residents and coastal visitors in search of lower-cost, visitor-serving overnight facilities. They debated highly technical issues dealing with how to divvy up hoped-for project-generated revenue between the city and the powerful hotelier. "All they cared about was money," Angel said. "And all they did is convert a playground for the rich into a Taj Mahal for America's uber-wealthy elite. Guest rooms in a five-star, full-service hotel and \$7.5 million+ condominiums offer zero lower-cost overnight access to the Santa Monica coastal zone."

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[Angel Law](#) is a boutique law firm specializing in high-stakes environmental and land use litigation. Angel Law is proudly based in Santa Monica since 2002.