

The BOSTWO to: Cynthia C Johnson
Sent by: Kitty J. Miller

08/10/2009 03:44 PM

Do you have this one for tomorrow's agenda?

Kitty

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John Thomson
<doctorjet@aol.com>
08/10/2009 03:40 PM

To Ray Nutting <bostwo@co.el-dorado.ca.us>
cc
Subject

Dear Ray,

Attached is my comment letter on the subject Agenda Item.

Regards,

John Thomson, Ph.D.
501 Kirkwood Court
El Dorado Hills, CA 95762
530-677-3039



CSD Appeal 09-1004.pdf

August 10, 2009

El Dorado County Board of Supervisors
330 Fair Lane
Placerville, CA 95667

Dear Supervisor:

I am writing to you with respect to Item 33 on your Board of Supervisors agenda for August 11, 2009, the appeal from the decision of the Planning Commission to deny the El Dorado Hills Community Services district (CSD) a special use permit to erect a dynamic reader sign at the corner of El Dorado Hills Boulevard and Harvard Way in El Dorado Hills (09-1004).

I was one of those persons on the El Dorado Hills Area Planning Advisory Committee (APAC) that voted for non support of this special use permit in the APAC letter to the county dated March 15, 2009.

The dynamic sign requested by the CSD would be illuminated by light emitting diodes (LEDs) and may be programmed to show a changing display of text and pictures, though the CSD has applied only for a sign to display text. The corner of the intersection on which the sign would be located has a traffic signal. El Dorado Hills Boulevard is curved at that point. The sign would be across the street from residential neighborhoods to the west and to the south of the intersection.

The members of the Committee who voted non-support were concerned that (1) an illuminated sign on the corner of a busy signalized intersection on a curved road would be a distraction to passing motorists, (2) the LED sign would violate the dark skies policy of the county, and (3) set a precedent that would allow such signs to proliferate throughout the county. The members therefore voted against approving the application.

First, by its nature, an illuminated sign seeks to grab the attention of passers-by to communicate its message and thus could distract motorists. This is particularly troubling since the intersection is adjacent to the CSD's main recreational facility and near the local high school. The issue of driver distraction is important, as is shown by the fact that the county Department of Transportation will not place traffic signals at intersections that occur in quick succession because motorists can become confused, and may run a red light in the first intersection while looking at the green traffic light in the second intersection.

I call your attention to a 2006 study done by SRF Consulting Group, Inc. for the City of Minnetonka, Minnesota, *"Dynamic" Signage: Research related to Driver Distraction and Ordinance Recommendations*, which concluded, in part that, "In the interest of public safety, this report recommends that electronic signs be viewed as a form of driver distraction and a public safety issue." (Page 26, emphasis in the original.)

Second, the non-supporting members were concerned with aesthetics. They worried that LED signs are not consistent with the county's dark skies environment and thus voted to not support the application. They feel that the application does not fall into a category that has been thoroughly examined. They are concerned that supporting this application would be setting a precedent that may have serious unintended consequences, since no statutes appear to cover this application. In any case, County policy seems to lean against the erection of such an active illuminated sign.

The General Plan's vision for future growth in the County includes the goal to maintain and protect the County's natural beauty and environmental quality, vegetation, air and water quality, natural landscape features, cultural resource values, and maintain the rural character and lifestyle while ensuring the economic viability critical to promoting and sustaining community identity.

Objective 2.8.1 of the County General Plan, Lighting Standards, calls for providing standards, consistent with prudent safety practices, for the elimination of high intensity lighting and glare.

Policy 2.8.1.1 of the General Plan states that development shall limit excess nighttime light and glare from parking area lighting, signage, and buildings. Consideration will be given to design features, namely directional shielding for street lighting, parking lot lighting, sport field lighting, and other significant light sources, that could reduce effects from nighttime lighting. In addition, consideration will be given to the use of automatic shutoffs or motion sensors for lighting features in rural areas to further reduce excess nighttime light.

County Code 17.16.070, Lighting, provides that lighted signs shall not be blinking and shall be controlled so that visibility of vehicular traffic is not impaired, and objectionable glare is shielded from adjoining residential zones. (Prior code Section 9430(I)(7))

County Code 17.14.170, Outdoor Lighting, provides that it is the policy of the County that the creation of artificial light and glare be controlled to the extent that unnecessary and unwarranted illumination of an adjacent property be prohibited. The creation of light or glare by any person in violation of this Section shall constitute a public nuisance . . .

Legal precedent appears to support the ability of a jurisdiction, such as the county, to deny dynamic signs on the basis of public safety and aesthetics. The city of Concord, New Hampshire, enacted an ordinance prohibiting all dynamic signs, which the city found were detrimental to traffic safety and community aesthetics. Naser Jewelers, Inc., a Concord business, sought and was denied a permit for a dynamic sign. On appeal to the First Circuit Court of Appeals, the court in its 2007 opinion stated:

"Both traffic safety and community aesthetics have long been recognized to constitute significant governmental interests. *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 507-08 (1981) (plurality opinion) (collecting cases and concluding that

El Dorado Board of Supervisors
August 10, 2009
Page 3

there can be no "substantial doubt that the twin goals that the ordinance seeks to further—traffic safety and the appearance of the city—are substantial governmental goals"); see also, e.g., *City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 425 (1993) (acknowledging city's legitimate interest in the aesthetics of its sidewalks); *Members of City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 807 (1984) ("[T]he visual assault on the citizens of Los Angeles . . . constitutes a significant substantive evil within the City's power to prohibit."). Concord's stated justifications plainly constitute significant governmental interests."

Third, the present sign ordinance of the county does not now contemplate dynamic signs. Approval of the sign request would set a precedent in permitting the use of dynamic signs in the county.

The Planning Commission has requested that a study be done to give guidance to the County with respect to the regulation of dynamic signs. Hopefully that study will be the basis for an amendment to the sign ordinance to include the regulation of dynamic signs. Until that time, I urge the Board of Supervisors to place a moratorium on the placement of dynamic signs in El Dorado County.

With respect to the appeal in question, I urge the Board of Supervisors to deny the appeal of the CSD for the reasons pointed out above.

Sincerely,