

DEVELOPMENT SERVICES DEPARTMENT

COUNTY OF EL DORADO

<http://www.edcgov.us/devservices>



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TO: Planning Commission Agenda of: January 13, 2011

FROM: Gina Paolini, Senior Planner Item No.: 9

DATE: December 21, 2010

RE: Appeal of Development Services Director's Determination of Consistency/Determination of Similar Use with the Town Center West Development Plan (Planned Development PD95-0002) to allow a Drug Store use within the Plan Area as determined by Pre-application PA09-0011 / APN 117-180-12

BACKGROUND

On July 13, 2009, El Dorado Hills Investors submitted a pre-application request to Development Services to review a development proposal for Planning Area E of the El Dorado Hills Town Center West Planned Development (PD95-0002). Planning Area E of the El Dorado Hills Town Center West is located on the southwest side of White Rock Road southwest of the intersection with Latrobe Road. The purpose of the request was to determine whether the proposal was consistent with the Development Plan prior to securing users for the site.

On August 27, 2009, Development Services staff held a pre-application meeting with the property owner. The summary report of the pre-application is attached (Exhibit A). It was determined that Planning Area E of the Development Plan was allocated by the approved Development Plan for up to 35,000 square feet of commercial service and retail uses, as defined as Category C uses within the Development Plan's Design Guidelines and Development Standards. Staff concluded that although a retail drug store use had not been a use specified within the Development Plan, it was similar in nature to other uses established within the Development Plan. The proposed 14,900 square foot retail drug store; including a drive-up window, off-site beer and wine sales, retail health center, and 24-hour operation would be permitted within Planning Area E.

Building Permit No. 197682 and Grading Permit No. 197684 were submitted for a 14,550 square foot drug store on June 30, 2010. A hold was placed on these permits on December 15, 2010 pending the subject appeal.

PC STAFF MEMO 12-21-10
11-0155.F.1

DISCUSSION

On December 15, 2010, an appeal of staff's Determination of Consistency was submitted by Morgan Miller Blair, on behalf of Syers Properties III, LLC. The appellant's letter dated December 14, 2010 states that they believe staff's determination was unreasonable, constituted an abuse of discretion and was not supported by substantial evidence (Exhibit B). In particular, the appellant does not believe that a drug store use is "similar in nature to other Category C uses" listed within the Town Center West Development Plan or its Design Guidelines and Development Standards.

The Town Center West Development Plan was approved by the Board of Supervisors on May 23, 1995. The Development Plan for Town Center West included uses consistent with the El Dorado Hills Specific Plan and the General Commercial (CG) zone district. It was recognized at the time of approval that not all appropriate and viable uses could be listed. *"Within the regulatory framework of the Design Guidelines and Development Standards, additional uses may from time to time be found to be consistent with the intent and purpose of the Town Center West Planned Development"* (page 3 of the Design Guidelines and Development Standards). The Development Plan categorized the site uses into four distinct land use categories: Light Manufacturing (LM), Research and Development (RD), Business and Professional (BPO) and Commercial Service and Retail (C).

Section 1.4 of the Design Guidelines and Development Standards stated that uses of a service and retail nature would be limited to those which are ancillary to and in support of the primary uses within the development and would not exceed 60,000 square feet. Permitted uses would include:

Barber Shop	Newsstand	Boxing/Shipping Service
Office Supplies	Delicatessen	Restaurant
Dry Cleaner	Service Station	Fast Food Restaurant
Shoe Repair	Florist	Stationers
Hair Salon	Copy Printing Service	Hotel

Staff determined that although a drug store use was not a use specified within the Development Plan, it provided many of the services and goods listed as permitted. In addition, the retail use would be ancillary and supportive to primary uses within the Town Center West Development. Staff also determined that the maximum Category C uses within Planning Area E would be 35,000 square feet, and the proposal was for a 14,900 square foot drug store. The proposal complied with the planned square footage requirements.

Staff issued a letter dated September 28, 2009, stating that a retail drug store business, including a drive-up window, off-sale beer and wine sales, retail health center and 24-hour operation while not a use specifically listed in the Development Plan, would be similar in nature to other Category C uses and could be established within Planning Area E.

RECOMMENDATION

Planning Services recommends the Planning Commission take the following action:

1. Deny the appeal thereby upholding the Development Services Director's Determination of Consistency with the Town Center West Development Plan (PD95-0002) and allow Building Permit No. 197682 and Grading Permit No. 197684 to be issued by Building Services.

SUPPORT INFORMATION

Attachments:

Exhibit APre-application Worksheet/PA09-0011
Exhibit BAppeal Form



EL DORADO COUNTY PLANNING SERVICES

2850 Fairlane Court
Placerville, CA 95667

<http://co.el-dorado.ca.us/planning>

Phone: (530) 621-5355
Fax: (530) 642-0508

Pre-application Worksheet PA 09-0011

Prepared by: Gina Hunter

1. Project Preparation

All parcels (except APN 107-180-10) within Town Center West are located within Village U of the El Dorado Hills Specific Plan. The development of Town Center West is governed by Development Plan PD95-02. The Development Plan and Design Guidelines and Development Standards for Town Center West were approved by the Board of Supervisors on May 23, 1995. The zoning of the site includes General Commercial-Planned Development (CG-PD) and Research and Development-Community Design Review (RD-DC). Town Center West is divided into five distinct Planning Areas A through E. This Pre-application involves several parcels within Planning Area E only.

1.1 Drug Store Proposal- 14,900 square feet

APN: 117-180-10- 1.37 acres

General Plan: Research and Development

Zoning: Research and Development-Community Design Review

1.2 Other Commercial Uses- 20,100 square feet

APN: 117-160-59- 1.61 acres
117-160-15- 1.02 acres (Wetland Preserve)
117-160-58- 0.41 acres
117-160-17- 0.057 acres

General Plan: Area Plan (AP) - El Dorado Hills Specific Plan
Located within Village U

Zoning: General Commercial-Planned Development

1.3 Other resources to consider:

- El Dorado Hills Specific Plan
- APN page (attached)
- GIS layers (attached)
- LMIS data (attached)
- Determination of other Departments staff: DOT

2. Project Description/Location:

The project applicant proposes to develop a 14,900 square foot drug store use on a 1.37 acre site (APN 117-180-10) within Planning Area E of Town Center West. The Drug Store would be a 24-hour facility, which would include a drive-thru pharmacy, the sale of beer and wine,

and a retail health facility. The store would face the north east, with the truck delivery area facing southwest. Access to the site would be from White Rock and Latrobe Roads.

The remaining approximate 3 acres would be developed with 20,100 square feet of Category C uses, as provided within the Development Plan.

3. General Plan Land Use Designation/Specific Plan/Consistency:

The El Dorado Hills Specific Plan (EDHSP) Land Use Map anticipated Village U to be developed as a regional commercial center. The area was to provide for commercial uses of greater variety and at a higher intensity than provided elsewhere in the Specific Plan area or in the greater El Dorado Hills/Cameron Park area. Village U uses were to include but not be limited to hotel/convention center, restaurants, medical facilities, highway commercial, and office parks. The project would be subject to the 2004 General Plan.

4. Zoning Consistency:

Planning Area E presently contains two different zoning classifications.

4.1. Research and Development/Community Design Review (RD-DC)- Assessor's Parcel Number 117-180-10 is zoned Research and Development/Community Design Review. This parcel was not a part of the EDHSP; however, it was included in the Development Plan for Town Center West, therefore, the provisions of the Development Plan (PD95-02), would be applied to the project parcel. This parcel was not rezoned to Planned Development, as other Village U parcels had been through Ordinance No. 3849 on July 18, 1988.

4.2. General Commercial-Planned Development (CG-PD)- The remaining parcels in Town Center West are zoned General Commercial-Planned Development. The Phased Development Plan for Town Center West (PD95-02) planned for an employment center with commercial, office, research development and light manufacturing uses. Planning Area E was to be 7.1 acres with a planned 35,000 square feet of building area. Because of roadway improvements and wetland preserve areas, the development area within Planning Area E has been reduced well below 7.1 acres.

5. Development Plan Uses:

The Development Plan for Town Center West included uses consistent with the EDHSP and the CG zone district. It was recognized at the time of approval that not all appropriate and viable uses could be listed. Additional uses could from time to time be found to be consistent with the intent and purpose of the Town Center West Planned Development. The Development Plan categorized the site uses in four distinct land use categories, Light Manufacturing (LM), Research and Development (RD), Business and Professional (BPO) and Commercial Service and Retail (C), as further detailed below:

Research Development Uses

Blueprint services	Computer technologies
Data Processing	Digital Information Transfer Processes
Information Systems Research	Laboratories-scientific, research and testing
Materials research	Photocopying and Printing Services
Electronics component manufacture and assembly	
Precision instruments assembly and manufacturing	

Ancillary and support uses such as restaurants and retail sales may be approved from time to time in accordance with the regulatory framework of the Design Guidelines and Development Standards.

Light Manufacturing Uses

Data Processing technologies
 Digital information components manufacture and assembly manufacturing
 Electronics components manufacture and assembly
 Plastics molding processes and assembly
 Precision instruments assembly and manufacturing
 Printing and publishing plants

Ancillary and support uses such as restaurants and retail sales may be approved from time to time in accordance with the regulatory framework of the Design Guidelines and Development Standards.

Business and Professional Offices

Accountant	Architect	Attorney
Engineer	Financial Brokerage	Financial Institution
Graphic Designer	Investment Brokerage	
Medical/Dental	Professional Associations	
	Land Planner	
	Surveyor	

Ancillary and support uses such as restaurants and retail sales may be approved from time to time in accordance with the regulatory framework of the Design Guidelines and Development Standards.

Commercial Uses

Barber Shop	Newsstand	Boxing/Shipping Service
Office Supplies	Delicatessen	Restaurant
Dry Cleaner	Service Station	Fast Food Restaurant
Shoe Repair	Florist	Stationers
Hair Salon	Copy Printing Service	Hotel

Planning Area E was allocated 35,000 square feet of commercial use. Upon request of any project proponent, the Development Services Director could determine, based on the information requested and submitted through the Planned Development Site Plan Process, that a re-allocation of uses within or between Planning Area(s) would be appropriate. In no event shall the allowed square footage of Category C uses exceed 60,000 square feet throughout the Planning Area. See table below for clarification purposes:

Planned Square Footage by Use and Planning Area

	LM	RD	BPO	C	TOTAL
Planning Area A	250,000	200,000	27,000	10,000 ¹	477,000
Planning Area B	300,000	47,000			347,000
Planning Area C			237,000	250 room hotel	237,000
Planning Area D		150,000	194,000	15,000 ¹	344,000
Planning Area E			(60,000)	35,000 ¹	60,000
Total	550,000	397,000	458,000	60,000 ¹	1,465,000 ²

¹ The total planned square footage of Category C use throughout all the Planning Areas shall not to exceed 60,000 square feet. When allocated to a Planning Area other than Planning Area E, the number of square feet of Category C uses shall be deducted from Category BPO from that designated Planning Area and re-allocated to BPO within Planning Area E.

² The total Planned Square Footage, whether by use or Planning Area (except Category C), may be exceeded provided any project proposing such adheres to all other development standards of the Town Center West Planned Development and the impacts of such a proposed project do not preclude the development of the planned square footage of the remaining Uses or Planning Areas as determined by the Development Services Director.

6. Development Agreement

On January 3, 1989, the County entered into a Development Agreement (“Agreement”) with the El Dorado Hills Investors which established improvement obligations and entitlements for the Specific Plan area. The term of the Agreement was twenty years. Town Center West is within Village U of the Specific Plan area. The terms of that Agreement have expired.

7. Staff observations, issues and notes

- The maximum Category C uses allowed within Planning Area E would be 35,000 square feet. Any deviations from this would require further review and re-allocation.
- Staff has concluded that although a Drug Store use is not a use specified within the Development Plan, it is similar in nature to other uses established within the Development Plan. The proposed 14,900 square foot Drug Store would be permitted within Planning Area E.
- The remaining 3 acres shall be permitted 20,100 square feet of Category C uses.
- A rezone clean-up of Parcel Number 117-180-10 should occur and will be forwarded to the advanced planning section to be included on the County list of rezones that need to be cleaned up in the future.

8. Other Affected Agencies

Submittal of a formal application would be routed to the following agencies which were not consulted as part of this application:

- Resource Conservation District: Review of grading impacts and soil types
- Environmental Management
- Air Quality Management District: Review of short and long term air quality impacts
- Utility Companies: ATT&T, PG&E, Comcast, etc. to review impacts to utilities in area.
- Building Department: review of plans for streamlined permitting process upon approval
- EID
- Department of Transportation
- Surveyor
- Fish and Game
- California Department of Alcohol and Beverage Control

Disclaimer: The preliminary analysis by Planning Services is based upon the documentation provided at the Pre-Application Meeting. While Planning Services makes every attempt to provide a comprehensive review for future formal applications, often the information submitted by the applicant's changes over time. Additional information and studies may be required by the application at the time of submittal. Any re-design of the project or potential impacts not known at the time of Pre-Application may require additional information in order to process formal applications. A full review of a formal application may present issues and impacts not addressed in the Pre-Application Meeting.

**EL DORADO HILLS
TOWN CENTER**

**DESIGN GUIDELINES
and
DEVELOPMENT STANDARDS**

TOWN CENTER WEST

Approved
April 27, 1995
El Dorado County Planning Commission

Approved
May 9, 1995 (Development Plan)
May 23, 1995 (Master Signage Program)
El Dorado County Board of Supervisors

Prepared by:
THE MANSOUR COMPANY
1241 Hawks Flight Court, Suite 205
El Dorado Hills, California 95762
(916) 933-3013

Planning and Architectural Consultant:
MURRAY & DOWNS AIA Architects, Inc.
3025 Sacramento Street
Placerville, California 95667
(916) 626-1810

Signage Consultant:
DAVIES ASSOCIATES
9424 Dayton Way, Suite 217
Beverly Hills, California 90210
(310) 247-9572

Landscape Consultant:
CAPITAL DESIGN GROUP
1913 Capitol Avenue, Suite B
Sacramento, California 95814
(916) 973-0283

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Figure 1: Planning Areas and Planned Building Square Footage

	Area Acreage	Planned Building Square Footage
Planning Area A	36.3	477.000
Planning Area B	29.7	347.000
Planning Area C	24.4	237.000
Planning Area D	22.7	344.000
Planning Area E	7.1	60.000
Roads	10.9	
Totals	131.1	1.465.000

1. The Land Uses

Proposed by the Town Center West Planned Development are those uses consistent with the El Dorado Hills Specific Plan and the CG - General Commercial zoning granted at the time of adoption of the Specific Plan and the approval of the Development Agreement vesting the development rights. While the uses described below are intended to create a quality environment of complementary and compatible uses, it is recognized that not all appropriate and viable uses can be "listed" at any given time. Within the regulatory framework of the Design Guidelines and Development Standards, additional uses may from time to time be found to be consistent with the intent and purpose of the Town Center West Planned Development. Types of uses proposed are described below and tabulated in Figure 2.

1.1 "LM" - Uses of a light manufacturing and assembling nature including the warehousing and distribution of such goods when fully enclosed within the building and of a type which do not ordinarily cause more than a minimal amount of dust, smoke, odor, air or water pollutants, noise or electrical interference or other factors tending to disturb the peaceful enjoyment of the adjacent residential use will be permitted in those Planning Areas having the LM designation. Permitted uses include:

Data Processing Technologies	Plastics Molding Processes and Assembly
Digital Information Components Assembly and Manufacturing	Precision Instruments Assembly and Manufacturing
Electronics Component Assembly and Manufacturing	Printing and Publishing Plants

Ancillary and support uses such as restaurants and retail sales may be approved from time to time

in accordance with the regulatory framework of the Design Guidelines and Development Standards.

1.2 "RD" - Uses of a service, research or product development nature when fully enclosed within the building of a type which do not ordinarily cause more than a minimal amount of dust, smoke, odor, air or water pollutants, noise or electrical interference or other factors tending to disturb the peaceful enjoyment of the adjacent residential use and which cannot be accommodated within traditional office buildings will be permitted in those Planning Areas having the RD designation. Also permitted are uses of a light manufacturing nature which may generate a greater number of trip ends than those assumed for areas designated LM. Permitted uses include:

- | | |
|--|--|
| Blueprint Services | Information Systems Research |
| Computer Technologies | Laboratories - scientific, research and testing |
| Data Processing | Materials Research |
| Digital Information Transfer Processes | Photocopying and Printing Services |
| Electronics Component Assembly and Manufacturing | Precision Instruments Assembly and Manufacturing |

Ancillary and support uses such as restaurants and retail sales may be approved from time to time in accordance with the regulatory framework of the Design Guidelines and Development Standards.

1.3 "BPO" - Uses of a business and professional nature which can be accommodated within traditional office settings including administrative and governmental offices and corporate offices of businesses not otherwise allowed within the Town Center West Planned Development such as construction and engineering firms will be permitted in those Planning Areas having the BPO designation. These uses shall provide a transition and buffer zone between the adjacent residential use and the more intense uses within the Town Center West Planned Development. Permitted uses include:

- | | | |
|------------|-----------------------|---------------------------|
| Accountant | Financial Brokerage | Land Planner |
| Architect | Financial Institution | Medical/Dental |
| Attorney | Graphic Designer | Professional Associations |
| Engineer | Investment Brokerage | Surveyor |

Ancillary and support uses such as restaurants and retail sales may be approved from time to time in accordance with the regulatory framework of the Design Guidelines and Development Standards.

1.4 "C" - Uses of a service and retail nature will be limited to those which are ancillary to

and in support of the primary uses within the development and will not exceed 60,000 square feet in total. Permitted uses include:

- | | | |
|-------------------------|----------------------|-----------------|
| Barber Shop | Fast Food Restaurant | Office Supplies |
| Boxing/Shipping Service | Florist | Restaurant |
| Copy/Printing Service | Hair Salon | Service Station |
| Delicatessen | Hotel | Shoe Repair |
| Dry Cleaner | Newsstand | Stationers |

Figure 2: Planned Square Footage by Use and Planning Area

	LM	RD	BPO	C	Total
Planning Area A	250,000	200,000	27,000	10,000 ¹	477,000
Planning Area B	300,000	47,000			347,000
Planning Area C			237,000	250rm Hotel	237,000
Planning Area D		150,000	194,000	15,000 ¹	344,000
Planning Area E				35,000 ¹	60,000 ¹
Total	550,000	397,000	458,000	60,000¹	1,465,000

Note 1. The total Planned Square Footage of Category C use shall not exceed 60,000 square feet. When allocated to a Planning Area other than Planning Area E, the number of square feet of Category C uses allocated shall be deducted from Category BPO.

1.5 Uses Not Specified

Additional uses may be permitted when, by determination of the Director of Planning, such uses are found to be similar in nature to those established within the Town Center West Planned Development. Should the Director of Planning be unable to make such a determination, the Applicant may request the Planning Commission make a finding permitting such use based on the information requested and submitted through the Planned Development Site Plan process and, by resolution of record, set forth its findings and its interpretations.

1.6 Planned Square Footage

The Total Planned Square Footage for any Planning Area is shown in Figure 2. Total Planned Square Footage, whether by Use or Planning Area, may be exceeded provided any project proposing such adheres to all other development standards of the Town Center West Planned Development and the impacts of such a proposed project do not preclude the development of the Planned Square Footage of the remaining Uses or Planning Areas as determined by the Director of Planning. Should the Director of Planning be unable to make such a determination, the

Applicant may request the Planning Commission make a finding permitting such use based on the information requested and submitted through the Planned Development Site Plan process and, by resolution of record, set forth its findings and its interpretations.

1.7 Allocation of Uses

Upon request of any project proponent, the Director of Planning may determine, based on the information requested and submitted through the Planned Development Site Plan Process, that a re-allocation of uses within or between any Planning Area(s) is appropriate. In no event shall the Allowed Square Footage of Category C uses exceed 60,000 square feet. See Figure 2. Should the Director of Planning be unable to make such a determination, the Applicant may request the Planning Commission make a finding permitting such use based on the information requested and submitted through the Planned Development Site Plan process and, by resolution of record, set forth its findings and its interpretations.

1.8 Approval Process

Site specific project approvals shall be a ministerial act of the Director of Planning. Prior to submitting a building permit application to the County, site specific projects shall be approved by the Design Review Committee as defined in the Covenants, Conditions and Restrictions for the El Dorado Hills Town Center West. Prior to issuance of a building permit, County staff shall find the proposed site specific project has received approval from the Design Review Committee and is consistent with the Development Plan, the Development Standards and other conditions of approval of the Town Center West Planned Development.

2. The Development Standards

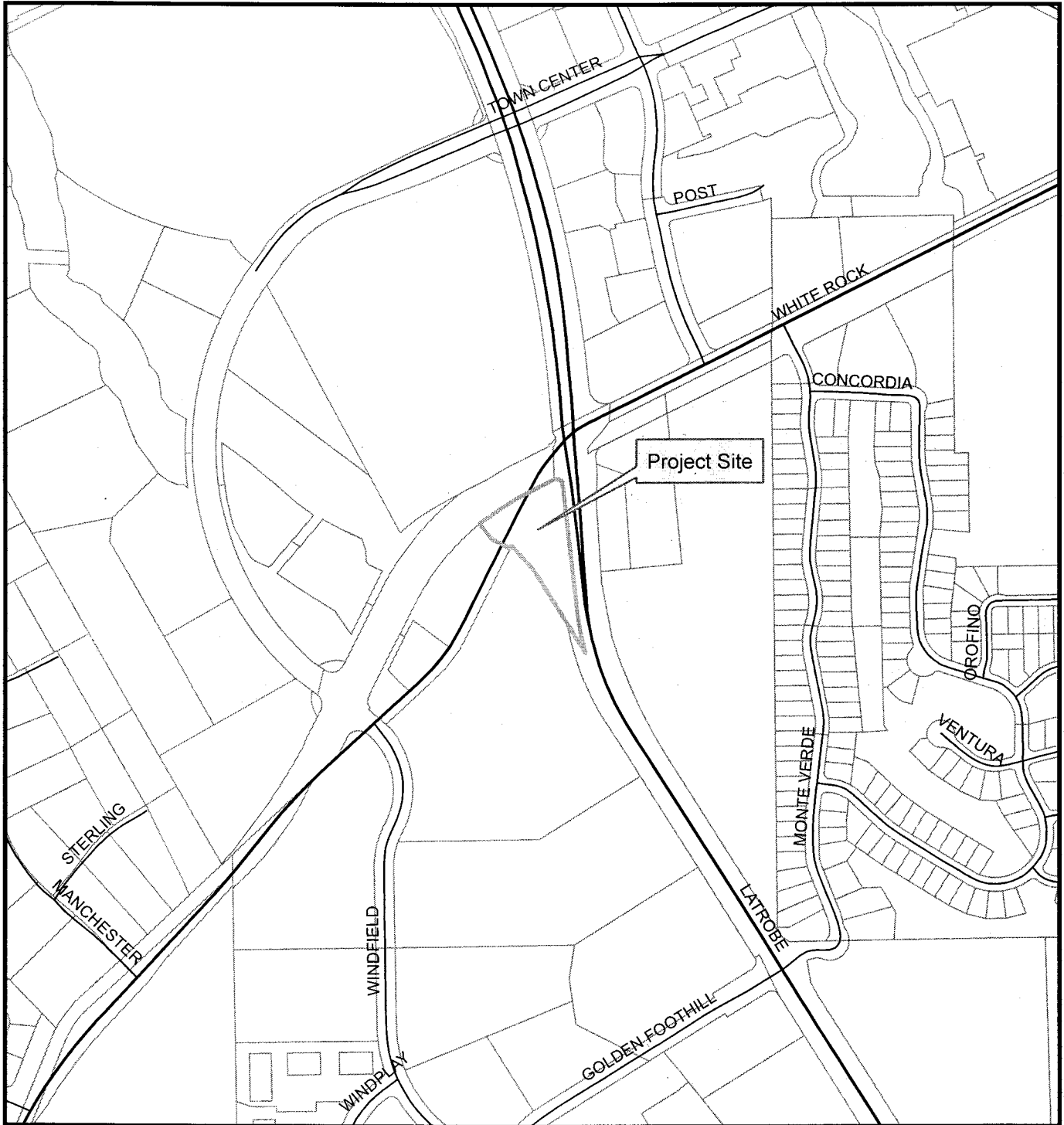
(Refer to the Improvements Phasing Plan for Planning sub-Areas.)

2.1 Planning Area A

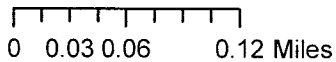
2.1.1 Building Height - Buildings situated in Planning sub-Area A1 and A2 shall be limited to 35 feet in height whereas buildings in Planning sub-Area A3 shall have a maximum height of 65 feet.

2.1.2 Minimum Front Setbacks - shall be applicable to all lots having frontage on any public or private street adjacent to and within Town Center West. See Appendix 1 - Street Cross Section criteria.

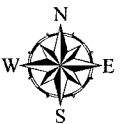
Location Map



PA09-0011-Town Center West
APN-117-180-12

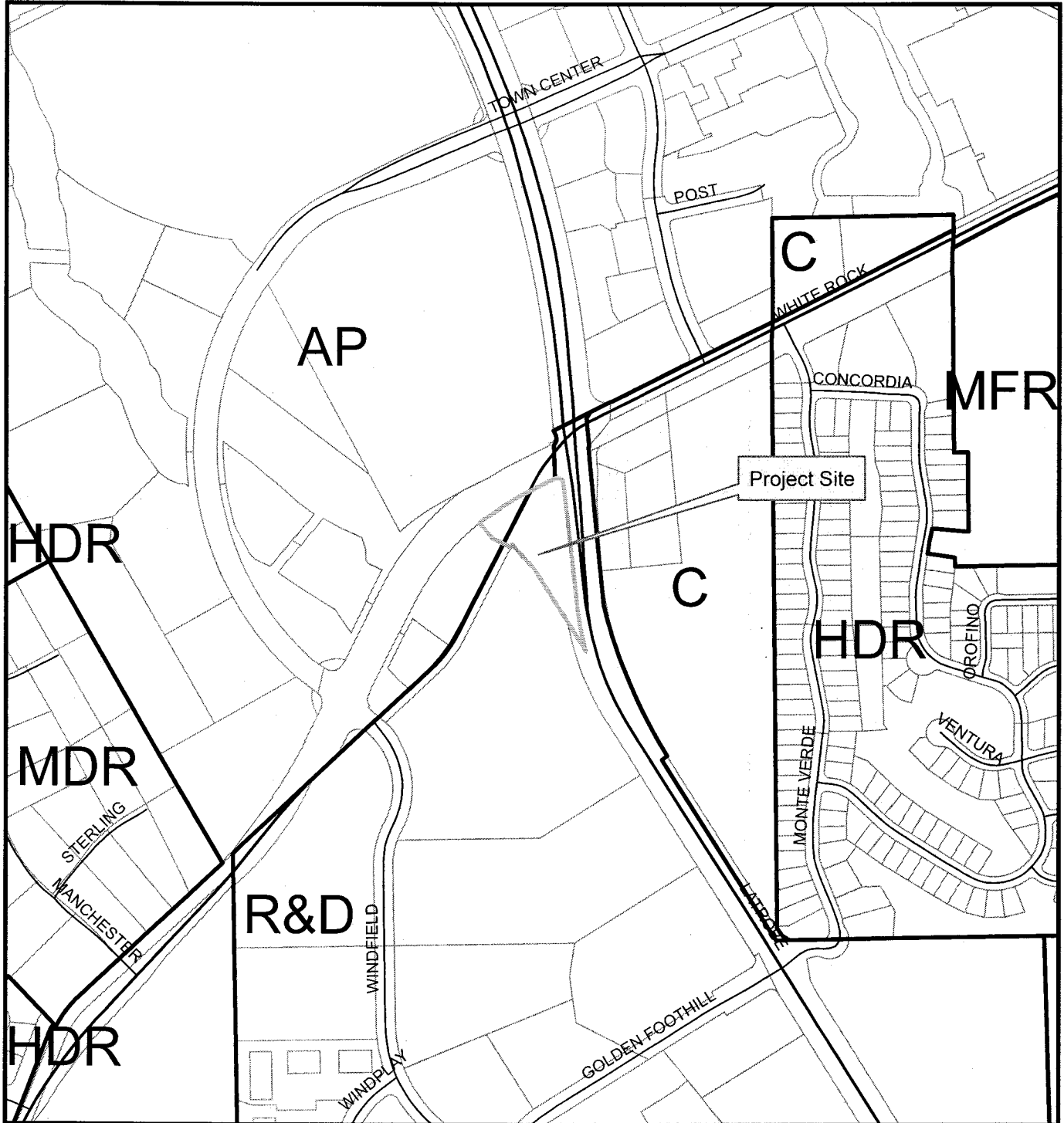


1:6,500

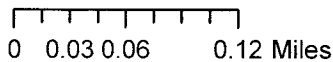


Prepared By:
Gina Paolini
Planning Services Department
December 21, 2010

General Plan Map



PA09-0011-Town Center West
APN-117-180-12



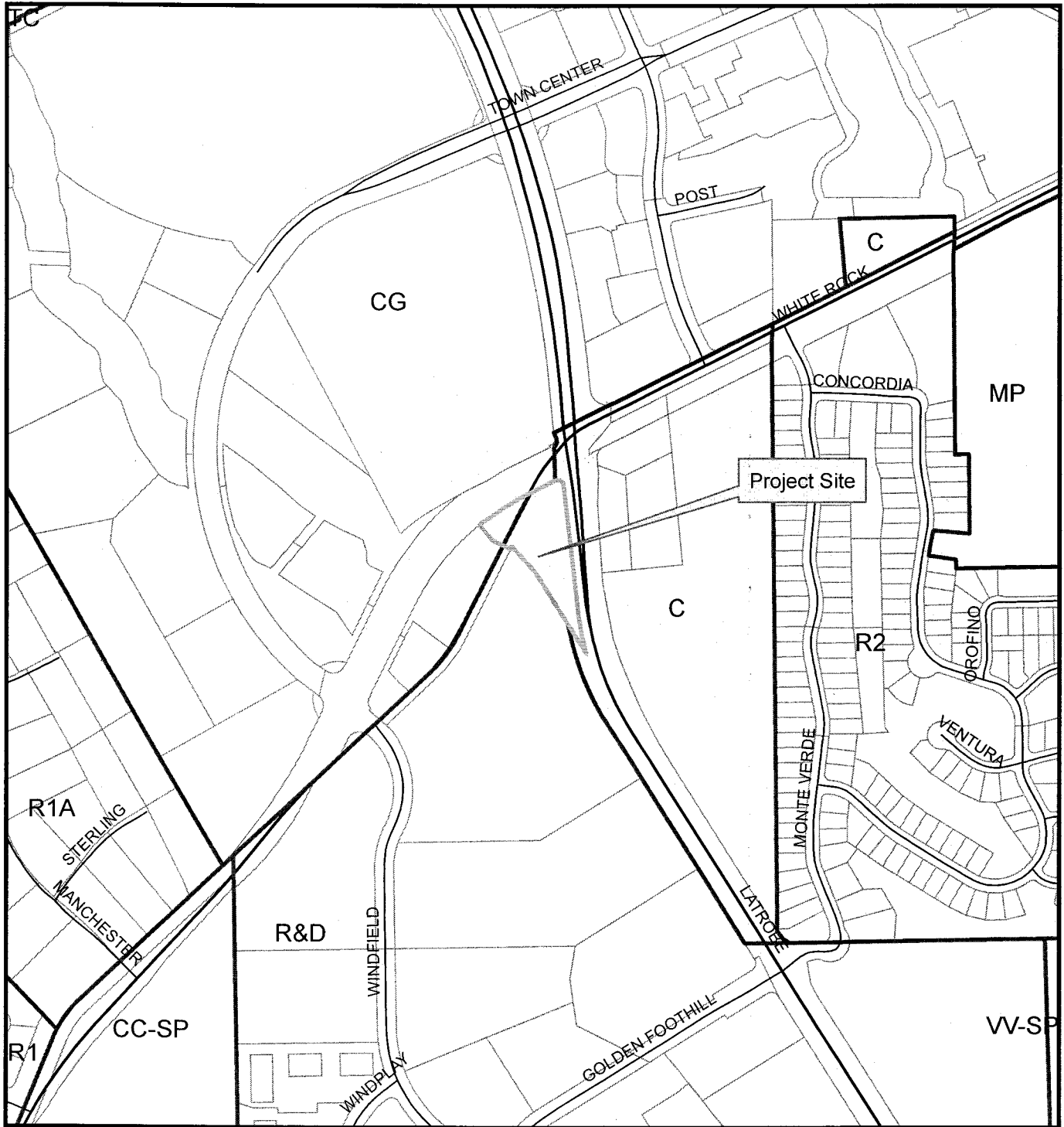
Land Use
AP- Area Plan - El Dorado Hills Specific Plan
C- Commercial
RD- Research and Development

1:6,500

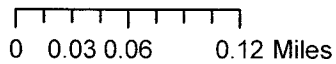


Prepared By:
Gina Paolini
Planning Services Department
December 21, 2010

Zoning Map



PA09-0011-Town Center West
APN-117-180-12



Zoning Districts
CG- General Commercial
C- Commercial
RD- Research and Development

1:6,500



Prepared By:
Gina Paolini
Planning Services Department
December 21, 2010

File Number: PD95-0002-A-2
Date Received: 12-14-10

Receipt No.: 26980
Amount: \$200.00

APPEAL FORM

(For more information, see Section 17.22.220 of the Zoning Ordinance)

Appeals must be submitted to the Planning Department with appropriate appeal fee. Please see fee schedule or contact the Planning Department for appeal fee information.

APPELLANT Syers Properties III, LLC

ADDRESS c/o Morgan Miller Blair, 1331 N. California Blvd., #200, Walnut Creek, CA 94596; Attn: Patricia E. Curtin

DAYTIME TELEPHONE (925) 937-3600

A letter from the Appellant authorizing the Agent to act in his/her behalf must be submitted with this appeal.

AGENT _____

ADDRESS _____

DAYTIME TELEPHONE _____

APPEAL BEING MADE TO: Board of Supervisors Planning Commission

ACTION BEING APPEALED (Please specify the action being appealed, i.e., approval of an application, denial of an application, conditions of approval, etc., and specific reasons for appeal. If appealing conditions of approval, please attach copy of conditions and specify appeal.)

Please see attached letter to the Planning Department dated December 14, 2010

DATE OF ACTION BEING APPEALED _____ (see attached letter)

Patricia E. Curtin
Signature

12/13/10
Date
12-13-10

December 14, 2010

VIA FEDERAL EXPRESS

Planning Department c/o Roger Trout
Development Services Director
County of El Dorado
2850 Fairlane Court, Building C
Placerville, CA 95667

Re: Appeal of Determination of Consistency with Town
Center West Development Plan re Permit Applications
of El Dorado Hills Investors for Proposed CVS Drug
Store in Town Center West
Our File No. 10093-001

Dear Planning Commission:

Syers Properties III, LLC ("Syers"), owner of the Market Place at Town Center East (south of Hwy. 50 at Latrobe Road) files this appeal and requests a hearing before the Planning Commission to contest the Planning Department's finding of compliance with the County of El Dorado Town Center West Development Plan PD95-02 (the "TCW Development Plan") in connection with the permit applications (Nos. 197682 and 197684) filed by El Dorado Hills Investors, Ltd c/o The Mansour Company to construct a CVS drug store in Town Center West (the "Project").

Syers maintains that the Planning Department's determination in finding that the proposed Project was in compliance with the TCW Development Plan, and thereby a permitted use within Town Center West was unreasonable, constituted an abuse of discretion and was not supported by substantial evidence.

I. The Planning Department Failed to Provide Notice.

This appeal of a Planning Department/Planning Director decision is timely because, despite a clear written request for notice of such decisions, the County failed to provide any timely notice to Syers that its finding of compliance was pending or had been made. As such, Syers was denied due process.

For years, Syers has expressly asked in writing to be informed of and provided notice concerning all applications regarding Town Center. In 2005, on behalf of Syers, Patricia Curtin specifically requested to be added to the mailing list for, and to receive notice of, any public meetings or hearings relating to Town Center and to receive notifications of "any other documents relating to a project" within Town Center East or West (dated June 3, 2005 and attached as Exhibit 1.) Despite this clear and unequivocal request and the requirements of Government Code section 65092, neither Syers nor Ms. Curtin was provided notice of any compliance findings made by the Planning Department in connection with the referenced application, or that such a determination has been requested.

Earlier this fall, Ms. Curtin was informed that a "preliminary" consistency finding was administratively made by Gina Hunter. In response, Ms. Curtin sent a letter to Ms. Hunter (dated October 29, 2010 and attached as Exhibit 2) questioning why Syers did not receive notice of this request, objecting to the Department's determination that a drug store is consistent with the Town Center West Development Plan, and repeating the earlier request for notice.

On November 15, 2010, Pierre Rivas (Principal Planner) called to inform Ms. Curtin that the Planning Department had not yet made a "final" consistency finding and that Syers still had an opportunity to object. Ms. Curtin sent a letter to Mr. Rivas dated November 19, 2010 (attached as Exhibit 3) confirming her conversation that no final consistency finding had been made.

On November 29, 2010, our office obtained a copy of plan check comments regarding the CVS permits indicating that Tom Purciel (Associate Planner) had found that the plans were "substantially consistent with PD 95-02 and prior discretionary/permit history" on or about September 9, 2010. No timely notice of this determination was provided to affected or adjacent property owners, including Syers despite the standing request for notice of any application for Town Center. As such, Syers was denied the opportunity to timely provide comment regarding the request for a compliance finding.

On December 1, 2010, we were informed by Mr. Rivas that a "final planning inspection" was still required for the CVS building permit and that as part of that review, the Planning Department would determine whether the permit plans comply with the standards as set forth in the zoning and approved development plan.¹

On December 10, 2010, I met, along with Syers' representative Katy Schardt, with Planning Director Roger Trout to discuss the planning process and determinations made pursuant to the proposed Project. During that meeting, Mr. Trout acknowledged that the Planning Department, pursuant to a letter dated September 28, 2009 from Ms. Hunter to El Dorado Hills

¹ On December 1, 2010, Ms. Curtin wrote to Mr. Trout to formally object and indicated that an appeal would be filed if one was required depending on the whether an actual finding of compliance had been made. (See December 1, 2010 letter attached hereto as Exhibit 4.)

Investors, Ltd. was a determination of compliance. (A copy of the September 28, 2009 letter from Ms. Hunter is attached hereto as Exhibit 5. A pre-application worksheet prepared by Planning Department staff is attached hereto as Exhibit 6.)

During our meeting Mr. Trout also acknowledged that that Ms. Curtin's notice request (see Exhibit 1) had been received by the Planning Department but that the requested notice had not been given in connection with the applications. Further, he stated that the Planning Department did not have a system in place at that time by which such notice requests could be tracked and satisfied.

Land use decisions which substantially affect the property rights of owners of neighboring parcels may constitute deprivations of property within the context of procedural due process. Notice must occur sufficiently prior to a final decision to permit a meaningful pre-deprivation hearing to affected landowners. Such was not done here despite Syers clear request.

II. The Planning Department Erred in Finding the Applications in Compliance with the TCW Development Plan.

Specifically, the Planning Department erred in that the proposed Project to construct a CVS drug store in Town Center West is inconsistent and not in compliance with the TCW Development Plan and its associated Design Guidelines and Development Standards. Town Center consists of two distinct components - Town Center East and Town Center West. Development Plans for these components were approved in the same time frame and pursuant to the El Dorado Hills Specific Plan.

Town Center West was planned as an employment center with very limited "support retail services" in Planning Area E (which includes the subject parcel). Such permitted uses, known as "Category C", were to be "uses of a service and retail nature" and "will be limited to those which are ancillary to and in support of the primary uses within the development" (i.e. office park and research and development facilities). The full list of permitted retail uses were as follows: barber shop, boxing/shipping service, copy/printing service, delicatessen, dry cleaner, fast food restaurant, florist, hair salon, hotel, newsstand, office supplies, restaurant, service station, shoe repair and stationers. (TCW Design Guidelines and Development Standards at p. 4-5.) The Town Center West approvals do not include "drug store," "pharmacy" or "market" as an ancillary "support retail service."

On the other hand, Town Center East was planned for "general retail and service commercial uses." The Town Center East approvals specifically include a "drug store," "pharmacy" or "market" as a permitted use. (TCE Design Guidelines and Development Standards at p. 6.) This is why a CVS store (formerly Longs) is located on the Syers' Property in Town Center East.

The TCW Design Guidelines and Development Standards allow for additional uses to be permitted on a limited basis:

[W]hen, by determination of the Director of Planning, such uses are found to be similar in nature to those established within the Town Center West Planned Development. Should the Director of Planning be unable to make such a determination, the Applicant may request the Planning Commission make a finding permitting such use based on the information requested and submitted through the Planned Development Site Plan process and, by resolution of record, set forth its findings and its interpretations.”

See TCW Design Guidelines and Development Standards at p. 5. Similarly the Conditions of Approval for PD95-02 provide as follows:

In those situations where in the opinion of the Planning Director there is a significant departure from the approved development plan, or if issues are discovered not readily clarified in the conditions of approval of the development plan, the Planning Director shall first present such changes to the Planning Commission at a regular meeting (not requiring hearing notification) to determine if the Planning Commission can make a finding of consistency. If such a finding cannot be made, plans shall be modified to be brought into consistency or an amendment application filed for Planning Commission consideration at a public hearing.

See PD95-02, Condition of Approval No. 2.

Syers has not been made aware of any written determination by the “Director of Planning” finding the Project in compliance with the TCW Development Plan. At our meeting on December 10, Mr. Trout indicated that Ms. Hunter’s September 28, 2009 letter was such a determination even though we were previously informed by Staff that this letter was only a preliminary determination. In reaching this determination, Ms. Hunter’s letter notes that Planning Area E was allocated to have up to 35,000 square feet of Commercial Service and Retail (“Category C”) uses. Specifically, it found that:

an approximately 15,000 square foot retail drug store business, including a drive-up window facility, off-sale beer and wine sales, retail health center, and 24-hour per day operation, while not a use specifically listed in the Development Plan, is similar in nature to other Category C uses established within the Development Plan, and that accordingly such a drug store operation is a permitted Category C use at the Property.

(See Exhibit 5.) Similarly, a Planning Department pre-application worksheet (also prepared by Ms. Hunter) indicated that “[s]taff has concluded that although a Drug Store use is not a use specified within the Development Plan, it is similar in nature to other uses established within the Development Plan.” (See Exhibit 6 at p. 4.)²

Thus, the Planning Department made a finding of compliance that the proposed CVS drug store was “similar in nature to other Category C uses” and therefore was permitted despite the following:

- A drug store was not included in the list of uses in the TCW Development Plan or its Design Guidelines and Development Standards;
- None of the listed uses were readily similar to a drug store;
- Drug store was a specifically enumerated use for Town Center East, where a drug store is currently situated;
- A ready procedure for referral to the Planning Commission existed to address such inconsistencies, but was not utilized.
- In my December 10, 2010 meeting with Mr. Trout, he indicated that in evaluating the applications’ compliance with the TCW Development Plan, the Planning Department did not consider the TCE Development Plan or its associated Design Guidelines and Development Standards, but confined its determination to the TCW Development Plan alone.

In my meeting with Mr. Trout, he indicated that the Planning Department would have found virtually any commercial use in compliance with the TCE Development Plan in Planning Area E because the property in question is not bordered by residences or other sensitive uses, and has good vehicular access so as not to create a traffic issue. However, neither of these considerations is set forth in the TCW Development Plan (or the TCE Development Plan) as factors in determining compliance, nor would this constitute substantial evidence to support such a finding. Rather, only those uses that are substantially similar to listed uses may be found in compliance.

Further, the Planning Department/Planning Director erred in that it failed to consider the Town Center East Development Plan which was approved in the same time frame as the TCW Development Plan, and, both plans were adopted pursuant to the El Dorado Hills Specific Plan.

² That document also notes that the current zoning and general plan designation for the proposed site is inconsistent with the TCE Development Plan as the site is designated Research and Development and zoned Research and Development-Community Design Review. (Exhibit 6 at p. 1.) The worksheet indicates that a “rezone clean-up” should occur in the future. (*Id.* at p. 4)

The proposed use would clearly and significantly change the character of that which was envisioned, planned, studied and approved in the El Dorado Hills Specific Plan and Town Center West Development Plan. Town Center West was intended to generally develop as a business park with a small amount of specialty support retail uses, while general retail and service commercial uses, including specifically a drug store, were expressly included in the Town Center East approvals.

Allowing for such an inconsistent use to be placed in Town Center West when such use was specifically envisioned and approved for Town Center East (and not included in Town Center West) is contrary to and undermines the planning approvals for both centers. Clearly, had it wanted to, the Board of Supervisors could have included larger retail uses such as a drug store or supermarket in the TCW Development Plan as evidenced by their express inclusion in the TCE Development Plan. The Planning Department erred by ignoring this clear and purposeful distinction.

In addition, the proposed CVS includes a drive-through facility that is not a specifically enumerated use in Town Center West but is conditionally allowed in Town Center East which state, "Drive-thru facilities may be permitted as a component of all permitted uses upon review and approval of the Design Review Committee." (See TCE Design Guidelines and Development Standards at p. 7.) The TCW Guidelines and Standards make no mention of permitting drive-thru facilities.

The clear dissimilarity between the proposed use and the TCW Development Plan, coupled with such use's clear and purposeful inclusion in the TCE Development Plan demonstrate that in this instance a finding of compliance cannot, and was not, supported by substantial evidence and constitutes an unreasonable interpretation of the TCW Development Plan and an abuse of discretion.

While the development of TCW has not progressed as quickly as TCE, no amendment to the TCW Development Plan has been approved. As such, approving a use that is not substantially similar to those set forth in the TCW Development Plan is improper and violates the TCW Development Plan.

It is our understanding that to date no building or grading permit has been issued for the CVS project at Town Center West. We request that, pursuant to the County Code, no permits

issue in connection to the applications until this appeal is heard and finally decided by the County.

Very truly yours,

MORGAN MILLER BLAIR



TODD A. WILLIAMS

TAW:taw
Attachments

cc: Client

EXHIBIT

1



Morgan Miller Blair
A LAW CORPORATION

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PATRICIA E. CURTIN
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pcurtin@mmbblaw.com

June 3, 2005

Gina Hunter
Senior Planner
EL DORADO COUNTY
Planning Services
2850 Fairlane Court
Placerville, CA 95667

Re: *Request to Receive Notices*
Town Center West and Town Center East

Dear Ms. Hunter:

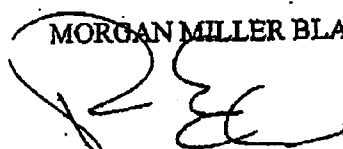
We represent the owners of The Marketplace at Town Center East in El Dorado Hills. The purpose of this letter is to request that I be added to the mailing list to receive notifications of any public meetings or hearings relating to Town Center West and/or Town Center East and to receive notifications of any project documents or documents generated in accordance with the California Environmental Quality Act (i.e., NOPs; scoping meeting notices; availability of negative declarations, DEIRs, FEIRs or exemptions) or any other documents relating to a project within these Centers. So that I receive notices as soon as possible, I would certainly appreciate receiving them by e-mail.

Please use the following address: Patricia E. Curtin, Esq., Morgan Miller Blair, 1676 N. California Blvd., Suite 200, Walnut Creek, CA 94596.

Thank you in advance for your time and consideration. If you have any questions, please feel free to call.

Very truly yours,

MORGAN MILLER BLAIR



PATRICIA E. CURTIN

PEC:klm

cc: Jo Ann Brillisour, Clerk
Client

Exhibit 1

MMB:10093-001:519706.1

EXHIBIT

2



MorganMillerBlair
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PATRICA B. CURTIN
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pcurtin@mmbllaw.com

October 29, 2010

Gina Hunter
Senior Planner
El Dorado County
Planning Services
2850 Fairlane Court
Placerville, CA 95667

Re: *Request to Receive Notices*
Town Center West and Town Center East

Dear Ms. Hunter:

As you may recall, we represent the owners of The Marketplace at Town Center East in El Dorado Hills. The purpose of this letter is to reiterate our request to receive notifications of any public meetings or hearings or notifications of development applications relating to Town Center West and/or Town Center East. This request includes notifications of any project documents or documents generated in accordance with the California Environmental Quality Act (i.e., NOPs; scoping meeting notices; availability of negative declarations, DEIRs, FEIRs or exemptions) or any other documents relating to a project within these Centers. So that I receive notices as soon as possible, I would certainly appreciate receiving them by e-mail.

We made this same request on June 3, 2005 (see attached letter).¹ Despite our request, we did not receive notification of The Mansour Company's application for a 15,000 square foot retail drive through drug store business with a 24-hour operation in Planning Area E of Town Center West (PA09-0011). We just learned that the County determined this drug store use to be consistent with the previously approved development plan and thus, no amendment to the development plan was required. This determination was articulated by you in a letter to The Mansour Company dated September 28, 2009 and we just learned of it last week. There is no evidence that this letter was mailed to any interested parties or adjacent property owners and it certainly was not mailed to us. For the record, we do not agree with the County's determination

¹ We have made subsequent requests and inquiries relating to our interest in development plans relating to Town Center East and West.

MMB:10093-001:1131443.1

Exhibit 2

as drug stores are not specifically allowed as a permitted use in Town Center West but were specifically allowed in Town Center East.

Very truly yours,

MORGAN MILLER BLAIR



PATRICIA E. CURTIN

PEC:klm
Enclosure

cc: Suzanne Allen de Sanchez, Clerk
Client

EXHIBIT

3



1501 NORTH CALIFORNIA BOULEVARD, SUITE 300 WALNUT CREEK, CALIFORNIA 94596-4504
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PATRICA E. CURTIN
Direct: (925) 979-3353
pcourtin@mmlb.com

November 19, 2010

Pierre Rivas
Principal Planner
El Dorado County
2850 Fairlane Court
Placerville, CA 95667

Re: Pre Application 09/0011-Town Center West
Consistency Finding re Drugstore Use
Request for Notice

Dear Mr. Rivas:

Thank you for calling me on Monday to discuss my letter to Gina Hunter dated October 29 requesting notice of yet to be filed development applications relating to Town Center West/Town Center East in El Dorado Hills. You informed me that the County does not have a system in place that would allow such notification. You did advise that I can go online to review and subscribe to Planning Commission and Board of Supervisor agendas.

As I explained, the agendas would not identify the request by El Dorado Hills Investors, Ltd/The Mansour Company on the above referenced application and also would not have provided us notice of Ms. Hunter's letter on that application dated September 28, 2009. Both of these actions were not agenda items so a review of the agenda would not have served my requested purpose.

Because my client is the owner of The Marketplace at Town Center East, they need to be aware of the development applications for Town Center West. As we discussed I will call you monthly to ask if any development applications have been filed since the County has no other way of notifying us.

Thank you for explaining to me that the County has not yet approved any development plans by El Dorado Hills Investors, Ltd/The Mansour Company confirming consistency or made a final consistency finding on actual development plans for the drug store use (PA 09/0011). As you explained, Ms. Hunter's letter was in response to a "pre application" meeting and the actual application has not yet been processed by the County. Now that a file exists on this matter can you put us on the mailing list for notices relating to this application?

MO:10093-001:1135756.1

Exhibit 3

Pierre Rivas
November 19, 2010
Page 2

As I explained during our call, we believe the County can't make the consistency finding to allow The Mansour Company to develop a drug store at Town Center West. When the County approved Town Center East and West specific uses were assigned to each Center. Drug store uses are specifically listed in the Town Center East approvals and are not listed in the Town Center West approvals. Drug stores were only to be developed in Town Center East. That is why CVS (formerly, Longs) is located at Town Center East and no such drug stores are in Town Center West.

Thank you also for informing me that The Mansour Company has discussed with the County the possibility of submitting an application to amend its existing development approvals for Town Center West. You explained that they may seek to substitute industrial uses for retail uses. So that we can better understand what the plans are of The Mansour Company, we would like to meet with you and discuss them in person.

Thank you again for your call and we will call you soon to schedule a meeting.

Very truly yours,

MORGAN MILLER BLAIR



PATRICIA B. CURTIN

PBC:dm

cc: Client

MMB:10091-001:1133734.1

EXHIBIT

4



MorganMillerBlair
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December 1, 2010

VIA EMAIL AND REGULAR U.S. MAIL

Roger Trout
Development Services Director
County of El Dorado
2850 Fairlane Court, Building C
Placerville, CA 95667

Re: Permit application of El Dorado Hills Investors re
proposed CVS Drug Store in Town Center West
Our File No. 10093-001

Dear Mr. Trout:

I represent Syers Properties III, LLC ("Syers"), owner of the Market Place at Town Center East (south of Hwy. 50 at Latrobe Road). My client owns that portion of Town Center anchored by CVS and Nugget ("Syers Property"). We believe El Dorado Hills Investors, Ltd/Mansour Company owns/controls the balance of Town Center East and all of Town Center West.

The purpose of this letter is to object to any finding of compliance that has been made or that is pending concerning an application for building and grading permits to construct a CVS drug store in Town Center West.

The basis for this objection is that a drug store at the proposed location is inconsistent and not in compliance with the previously approved development plans for Town Center and their associated design guidelines and development standards. Town Center consists of two distinct components - Town Center East and Town Center West. Town Center West was planned as an employment center with limited "support retail services." On the other hand, Town Center East was planned for "general retail and service commercial uses." The Town Center West approvals do not include "drug store," "pharmacy" or "market" as an ancillary "support retail service" whereas a drug store is specifically included in the Town Center East approvals. This is why a CVS store (formerly Longs) is located on the Syers Property in Town Center East. We also have not seen evidence that the required approval of the Architectural Control Committee (aka Design Review Committee) of the El Dorado Hills Master Property Owners Association was

MMB:10093-001:1138454.1

Exhibit 4

PC STAFF MEMO 12-21-10
11-0155.F.35

obtained as required under the El Dorado Hills Specific Plan Design Guidelines (at Section 1.1, p. B-1) prior to submission of the permit applications to the County.

The requested use would clearly and significantly change the character of that which was envisioned, planned, studied and approved in the specific plan and Town Center West Development Plan. Town Center West was intended to generally develop as a business park with a small amount of specialty support retail uses, while general retail and service commercial uses, including specifically a drug store, were expressly included in the Town Center East approvals. Allowing for such an inconsistent use to be placed in Town Center West when such use was specifically envisioned and approved for Town Center East (and not included in Town Center West) is contrary to and undermines the planning approvals for both centers. In addition, the proposed CVS includes a drive-through facility that is not a specifically enumerated use in Town Center West (but is conditionally allowed in Town Center East).

For years, Syers has expressly asked in writing to be informed of and provided notice concerning all applications regarding Town Center. In 2005, on behalf of Syers, I specifically requested to be added to the mailing list for, and to receive notice of, any public meetings or hearings relating to Town Center and to receive notifications of "any other documents relating to a project" within Town Center East or West (dated June 3, 2005 and attached as Exhibit 1.) Despite this clear and unequivocal request and the requirements of Government Code section 65092, my office was not provided notice of any compliance findings made by the planning department in connection with the referenced application.

Unfortunately, we have not received prompt or adequate notice regarding this project. Earlier this fall, we were informed that a "preliminary" consistency finding was administratively made by Gina Hunter. In response, I sent a letter to Gina Hunter of the Planning Department (dated October 29, 2010 and attached as Exhibit 2) questioning why Syers did not receive notice of this request, objecting to the Department's determination that a drug store is consistent with the Town Center West Development Plan, and repeating my earlier request for notice.

On November 15, 2010, Pierre Rivas (Principal Planner) called to inform me that the Planning Department had not yet made a "final" consistency finding and that Syers still had an opportunity to object. I sent a letter to Mr. Rivas dated November 19, 2010 (attached as Exhibit 3) confirming our conversation that no final consistency finding had been made, and stating that we would follow up with a phone call to meet with him to discuss this issue.

On November 23, Syers' representative Katy Schardt spoke with Mr. Rivas to schedule a meeting and learned that the Planning Department had already issued a "final" consistency finding on September 9, 2010. While this consistency finding was purportedly made in connection with the submittal of building and/or grading permits, it is our understanding that to date no building or grading permit has been issued for the CVS project at Town Center West.

On November 29, 2010, we received a copy of plan check comments regarding the CVS permits indicating that Tom Purciel (Associate Planner) had found that the plans were

"substantially consistent with PD 95-02 and prior discretionary/permit history...." This determination was made even though a drug store is not a specifically permitted use nor similar in nature to those established for Town Center West (as set forth in the Town Center West Development Plan and Design Guidelines), whereas such use is specifically listed and intended for Town Center-East. This determination was made without the benefit of a public hearing or any notice to the affected or adjacent property owners, including our client despite our standing request for notice of any application for Town Center.

Today we were informed by Mr. Rivas that a "final planning inspection" was still required for the CVS building permit and that as part of that review, the Planning Department would determine whether the permit plans comply with the standards as set forth in the zoning and approved development plan.

As stated above, Syers objects to any planning staff determination or finding that the pending application for CVS is consistent with the Town Center West Development Plan and, if required to do so because such a finding has in fact been made, desires to appeal such a finding to the Planning Commission.¹

Please call me tomorrow, and if I am not available, please speak with Todd Williams, so we can determine the status of the CVS applications and ensure that we will have the opportunity to be heard on the consistency issue. We ask that neither your Department nor any other County Department issue any permits relating to the CVS project until we have a hearing on this matter.

Very truly yours,

MORGAN MILLER BLAIR



PATRICIA E. CURTIN

PEC:taw

Attachments

cc: Supervisor Ray Nutting
Pierre Rivas, Principal Planner

¹ Syers maintains that such an appeal would be timely under the County Ordinance Code due to the lack of notice provided despite repeated requests, as well as the fact that such an appeal would be promptly filed within any deadlines from the time Syers was actually notified of such a decision by the Planning Director. Further, no permit has been issued or finally approved by the Planning Department. Syers stands prepared to immediately file such an appeal along with any required fee if the County determines and informs Syers that such an appeal is necessary.



Morgan Miller Blair
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pcurtin@mmlblaw.com

June 3, 2005

Gina Hunter
Senior Planner
EL DORADO COUNTY
Planning Services
2850 Fairlane Court
Placerville, CA 95667

Re: *Request to Receive Notices*
Town Center West and Town Center East

Dear Ms. Hunter:

We represent the owners of The Marketplace at Town Center East in El Dorado Hills. The purpose of this letter is to request that I be added to the mailing list to receive notifications of any public meetings or hearings relating to Town Center West and/or Town Center East and to receive notifications of any project documents or documents generated in accordance with the California Environmental Quality Act (i.e., NOPs; scoping meeting notices; availability of negative declarations, DEIRs, FEIRs or exemptions) or any other documents relating to a project within these Centers. So that I receive notices as soon as possible, I would certainly appreciate receiving them by e-mail.

Please use the following address: Patricia E. Curtin, Esq., Morgan Miller Blair, 1676 N. California Blvd., Suite 200, Walnut Creek, CA 94596.

Thank you in advance for your time and consideration. If you have any questions, please feel free to call.

Very truly yours,

MORGAN MILLER BLAIR



PATRICIA E. CURTIN

PEC:klm

cc: Jo Ann Brillisour, Clerk
Client

EXHIBIT: 1

MMB:10093-001:519706.1



MorganMillerBlair
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pcurtin@mmbblaw.com

October 29, 2010

Gina Hunter
Senior Planner
El Dorado County
Planning Services
2850 Fairlane Court
Placerville, CA 95667

Re: *Request to Receive Notices*
Town Center West and Town Center East

Dear Ms. Hunter:

As you may recall, we represent the owners of The Marketplace at Town Center East in El Dorado Hills. The purpose of this letter is to reiterate our request to receive notifications of any public meetings or hearings or notifications of development applications relating to Town Center West and/or Town Center East. This request includes notifications of any project documents or documents generated in accordance with the California Environmental Quality Act (i.e., NOPs; scoping meeting notices; availability of negative declarations, DEIRs, FEIRs or exemptions) or any other documents relating to a project within these Centers. So that I receive notices as soon as possible, I would certainly appreciate receiving them by e-mail.

We made this same request on June 3, 2005 (see attached letter).¹ Despite our request, we did not receive notification of The Mansour Company's application for a 15,000 square foot retail drive through drug store business with a 24-hour operation in Planning Area E of Town Center West (PA09-0011). We just learned that the County determined this drug store use to be consistent with the previously approved development plan and thus, no amendment to the development plan was required. This determination was articulated by you in a letter to The Mansour Company dated September 28, 2009 and we just learned of it last week. There is no evidence that this letter was mailed to any interested parties or adjacent property owners and it certainly was not mailed to us. For the record, we do not agree with the County's determination

¹ We have made subsequent requests and inquiries relating to our interest in development plans relating to Town Center East and West.

MMB:10093-001:1131443.1

EXHIBIT 2

Gina Hunter
October 29, 2010
Page 2

as drug stores are not specifically allowed as a permitted use in Town Center West but were specifically allowed in Town Center East.

Very truly yours,

MORGAN MILLER BLAIR



PATRICIA E. CURTIN

PEC:klm
Enclosure

cc: Suzanne Allen de Sanchez, Clerk
Client

MMB:10093-001:1131443.1



MorganMillerBlair
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November 19, 2010

Pierre Rivas
Principal Planner
El Dorado County
2850 Fairlane Court
Placerville, CA 95667

Re: Pre Application 09/0011-Town Center West
Consistency Finding re Drugstore Use
Request for Notice

Dear Mr. Rivas:

Thank you for calling me on Monday to discuss my letter to Gina Hunter dated October 29 requesting notice of yet to be filed development applications relating to Town Center West/Town Center East in El Dorado Hills. You informed me that the County does not have a system in place that would allow such notification. You did advise that I can go online to review and subscribe to Planning Commission and Board of Supervisor agendas.

As I explained, the agendas would not identify the request by El Dorado Hills Investors, Ltd/The Mansour Company on the above referenced application and also would not have provided us notice of Ms. Hunter's letter on that application dated September 28, 2009. Both of these actions were not agenda items so a review of the agenda would not have served my requested purpose.

Because my client is the owner of The Marketplace at Town Center East, they need to be aware of the development applications for Town Center West. As we discussed I will call you monthly to ask if any development applications have been filed since the County has no other way of notifying us.

Thank you for explaining to me that the County has not yet approved any development plans by El Dorado Hills Investors, Ltd/The Mansour Company confirming consistency or made a final consistency finding on actual development plans for the drug store use (PA 09/0011). As you explained, Ms. Hunter's letter was in response to a "pre application" meeting and the actual application has not yet been processed by the County. Now that a file exists on this matter can you put us on the mailing list for notices relating to this application?

MMB:10093-001:1135756.1

EXHIBIT 3

PC STAFF MEMO 12-21-10

11-0155.F.41

Pierre Rivas
November 19, 2010
Page 2

As I explained during our call, we believe the County can't make the consistency finding to allow The Mansour Company to develop a drug store at Town Center West. When the County approved Town Center East and West specific uses were assigned to each Center. Drug store uses are specifically listed in the Town Center East approvals and are not listed in the Town Center West approvals. Drug stores were only to be developed in Town Center East. That is why CVS (formerly, Longs) is located at Town Center East and no such drug stores are in Town Center West.

Thank you also for informing me that The Mansour Company has discussed with the County the possibility of submitting an application to amend its existing development approvals for Town Center West. You explained that they may seek to substitute industrial uses for retail uses. So that we can better understand what the plans are of The Mansour Company, we would like to meet with you and discuss them in person.

Thank you again for your call and we will call you soon to schedule a meeting.

Very truly yours,

MORGAN MILLER BLAIR



PATRICIA E. CURTIN

PEC:km

cc: Client

MMS:10093-001:1135756.1

EXHIBIT

5



EL DORADO COUNTY
PLANNING DEPARTMENT

2850 Fairlane Court
Placerville, CA 95687

<http://co.el-dorado.ca.us/planning>

Phone: (530) 621-5355
Fax: (530) 642-0508

September 28, 2009

FILE

El Dorado Hills Investors, Ltd.
c/o The Mansour Company
4364 Town Center Blvd. #213
El Dorado Hills, CA 95762

Re: Pre-application PA09-0011 – Town Center West

A pre-application meeting was held on the subject property on August 27, 2009. This letter is a follow-up of said meeting and is written at the request of El Dorado Hills Investors Ltd., El Dorado Hills, California ("EDHI"), owner of the real property ("Property") described and illustrated on Exhibit A to this letter, and is written for the benefit of Armstrong Development Properties, Inc., Pittsburgh, Pennsylvania ("Armstrong"), which intends to purchase the Property for commercial development.

The Property comprises Planning Area E of the County of El Dorado, California Town Center West Planned Development. The development of Town Center West is subject to and governed by County of El Dorado Town Center West Development Plan PD95-02. The Town Center West Development Plan and accompanying Design Guidelines and Development Standards (in the aggregate, the "Development Plan") were formally approved by the County of El Dorado Board of Supervisors on May 23, 1995.

Planning Area E of the Development Plan is allocated by the approved Development Plan for up to 35,000 square feet of Commercial Service and Retail (e.g. "Category C") uses. Category C uses are defined in the Development Plan's Design Guidelines and Development Standards.

The purpose of this letter is to provide affirmation by the County of El Dorado that an approximately 15,000 square foot retail drug store business, including a drive-up window facility, off-sale beer and wine sales, retail health center, and 24-hour per day operation, while not a use specifically listed in the Development Plan, is similar in nature to other Category C uses established within the Development Plan, and that accordingly such a drug store operation is a permitted Category C use at the Property. The purpose of this letter is additionally to provide affirmation by the County of El Dorado that the Development Plan comprises all discretionary County approvals necessary for the development of such Category C uses and that no further discretionary approvals will be required by the County for the proposed development of Planning Area E."

If you should have any questions, or need further information, please contact Planning Services at 530-621-5355.

Sincerely,

Gina Hunter
Senior Planner

Exhibit 5

EXHIBIT

6



EL DORADO COUNTY PLANNING SERVICES

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Pre-application Worksheet PA 09-0011

Prepared by: Gina Hunter

1. Project Preparation

All parcels (except APN 107-180-10) within Town Center West are located within Village U of the El Dorado Hills Specific Plan. The development of Town Center West is governed by Development Plan PD95-02. The Development Plan and Design Guidelines and Development Standards for Town Center West were approved by the Board of Supervisors on May 23, 1995. The zoning of the site includes General Commercial-Planned Development (CG-PD) and Research and Development-Community Design Review (RD-DC). Town Center West is divided into five distinct Planning Areas A through E. This Pre-application involves several parcels within Planning Area E only.

1.1 Drug Store Proposal- 14,900 square feet

APN: 117-180-10- 1.37 acres

General Plan: Research and Development

Zoning: Research and Development-Community Design Review

1.2 Other Commercial Uses- 20,100 square feet

APN: 117-160-59- 1.61 acres

117-160-15- 1.02 acres (Wetland Preserve)

117-160-58- 0.41 acres

117-160-17- 0.057 acres

General Plan: Area Plan (AP) - El Dorado Hills Specific Plan

Located within Village U

Zoning: General Commercial-Planned Development

1.3 Other resources to consider:

a. El Dorado Hills Specific Plan

b. APN page (attached)

c. GIS layers (attached)

d. LMIS data (attached)

e. Determination of other Departments staff: DOT

2. Project Description/Location:

The project applicant proposes to develop a 14,900 square foot drug store use on a 1.37 acre site (APN 117-180-10) within Planning Area E of Town Center West. The Drug Store would

Exhibit 6

be a 24-hour facility, which would include a drive-thru pharmacy, the sale of beer and wine, and a retail health facility. The store would face the north east, with the truck delivery area facing southwest. Access to the site would be from White Rock and Latrobe Roads.

The remaining approximate 3 acres would be developed with 20,100 square feet of Category C uses, as provided within the Development Plan.

3. General Plan Land Use Designation/Specific Plan/Consistency:

The El Dorado Hills Specific Plan (EDHSP) Land Use Map anticipated Village U to be developed as a regional commercial center. The area was to provide for commercial uses of greater variety and at a higher intensity than provided elsewhere in the Specific Plan area or in the greater El Dorado Hills/Cameron Park area. Village U uses were to include but not be limited to hotel/convention center, restaurants, medical facilities, highway commercial, and office parks. The project would be subject to the 2004 General Plan.

4. Zoning Consistency:

Planning Area E presently contains two different zoning classifications.

4.1. Research and Development/Community Design Review (RD-DC)- Assessor's Parcel Number 117-180-10 is zoned Research and Development/Community Design Review. This parcel was not a part of the EDHSP; however, it was included in the Development Plan for Town Center West, therefore, the provisions of the Development Plan (PD95-02), would be applied to the project parcel. This parcel was not rezoned to Planned Development, as other Village U parcels had been through Ordinance No. 3849 on July 18, 1988.

4.2. General Commercial-Planned Development (CG-PD)- The remaining parcels in Town Center West are zoned General Commercial-Planned Development. The Phased Development Plan for Town Center West (PD95-02) planned for an employment center with commercial, office, research development and light manufacturing uses. Planning Area E was to be 7.1 acres with a planned 35,000 square feet of building area. Because of roadway improvements and wetland preserve areas, the development area within Planning Area E has been reduced well below 7.1 acres.

5. Development Plan Uses:

The Development Plan for Town Center West included uses consistent with the EDHSP and the CG zone district. It was recognized at the time of approval that not all appropriate and viable uses could be listed. Additional uses could from time to time be found to be consistent with the intent and purpose of the Town Center West Planned Development. The Development Plan categorized the site uses in four distinct land use categories, Light Manufacturing (LM), Research and Development (RD), Business and Professional (BPO) and Commercial Service and Retail (C), as further detailed below:

Research Development Uses

Blueprint services
Data Processing
Information Systems Research
Materials research
Electronics component manufacture and assembly
Precision instruments assembly and manufacturing
Computer technologies
Digital Information Transfer Processes
Laboratories-scientific, research and testing
Photocopying and Printing Services
Ancillary and support uses such as restaurants and retail sales may be approved from time to time in accordance with the regulatory framework of the Design Guidelines and Development Standards.

Light Manufacturing Uses

Data Processing technologies
Digital information components manufacture and assembly manufacturing
Electronics components manufacture and assembly
Plastics molding processes and assembly
Precision instruments assembly and manufacturing
Printing and publishing plants
Ancillary and support uses such as restaurants and retail sales may be approved from time to time in accordance with the regulatory framework of the Design Guidelines and Development Standards.

Business and Professional Offices

Accountant
Engineer
Graphic Designer
Medical/Dental Professional Associations
Architect
Financial Brokerage
Land Planner
Surveyor
Attorney
Financial Institution
Investment Brokerage
Ancillary and support uses such as restaurants and retail sales may be approved from time to time in accordance with the regulatory framework of the Design Guidelines and Development Standards.

Commercial Uses

Barber Shop
Office Supplies
Dry Cleaner
Shoe Repair
Hair Salon
Newsstand
Delicatessen
Service Station
Florist
Copy Printing Service
Boxing/Shipping Service
Restaurant
Fast Food Restaurant
Stationers
Hotel

Planning Area E was allocated 35,000 square feet of commercial use. Upon request of any project proponent, the Development Services Director could determine, based on the information requested and submitted through the Planned Development Site Plan Process, that a re-allocation of uses within or between Planning Area(s) would be appropriate. In no event shall the allowed square footage of Category C uses exceed 60,000 square feet throughout the Planning Area. See table below for clarification purposes:

Planned Square Footage by Use and Planning Area

	LM	RD	BPO	C	TOTAL
Planning Area A	250,000	200,000	27,000	10,000 ¹	477,000
Planning Area B	300,000	47,000			347,000
Planning Area C			237,000	250 room hotel	237,000
Planning Area D		150,000	194,000	15,000 ¹	344,000
Planning Area E			(60,000)	35,000 ¹	60,000
Total	550,000	397,000	458,000	60,000 ¹	1,465,000 ²

¹ The total planned square footage of Category C use throughout all the Planning Areas shall not to exceed 60,000 square feet. When allocated to a Planning Area other than Planning Area E, the number of square feet of Category C uses shall be deducted from Category BPO from that designated Planning Area and re-allocated to BPO within Planning Area E.

² The total Planned Square Footage, whether by use or Planning Area (except Category C), may be exceeded provided any project proposing such adheres to all other development standards of the Town Center West Planned Development and the impacts of such a proposed project do not preclude the development of the planned square footage of the remaining Uses or Planning Areas as determined by the Development Services Director.

6. Development Agreement

On January 3, 1989, the County entered into a Development Agreement ("Agreement") with the El Dorado Hills Investors which established improvement obligations and entitlements for the Specific Plan area. The term of the Agreement was twenty years. Town Center West is within Village U of the Specific Plan area. The terms of that Agreement have expired.

7. Staff observations, issues and notes

- The maximum Category C uses allowed within Planning Area E would be 35,000 square feet. Any deviations from this would require further review and re-allocation.
- Staff has concluded that although a Drug Store use is not a use specified within the Development Plan, it is similar in nature to other uses established within the Development Plan. The proposed 14,900 square foot Drug Store would be permitted within Planning Area E.
- The remaining 3 acres shall be permitted 20,100 square feet of Category C uses.
- A rezone clean-up of Parcel Number 117-180-10 should occur and will be forwarded to the advanced planning section to be included on the County list of rezones that need to be cleaned up in the future.

8. Other Affected Agencies

Submittal of a formal application would be routed to the following agencies which were not consulted as part of this application:

- Resource Conservation District: Review of grading impacts and soil types
- Environmental Management
- Air Quality Management District: Review of short and long term air quality impacts
- Utility Companies: ATT&T, PG&E, Comcast, etc. to review impacts to utilities in area.
- Building Department: review of plans for streamlined permitting process upon approval
- EID
- Department of Transportation
- Surveyor
- Fish and Game
- California Department of Alcohol and Beverage Control

Disclaimer: The preliminary analysis by Planning Services is based upon the documentation provided at the Pre-Application Meeting. While Planning Services makes every attempt to provide a comprehensive review for future formal applications, often the information submitted by the applicant's changes over time. Additional information and studies may be required by the application at the time of submittal. Any re-design of the project or potential impacts not known at the time of Pre-Application may require additional information in order to process formal applications. A full review of a formal application may present issues and impacts not addressed in the Pre-Application Meeting.