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EDC COB <edc.cob@edcgov.us>

12-2-14 BOS Agenda Item #14-0769 - General Plan

1 message

Melody Lane <melody.lane@reagan.com> Sun, Nov 30, 2014 at 4:13 PM
To: edc.cob@edcgov.us, bosfive@edcgov.us, bosone@edcgov.us, bosthree@edcgov.us, bostwo@edcgov.us, Ron Briggs <bosfour@edcgov.us>

Dear Board of Supervisors,

In the event I cannot attend the December 2, 2014 meeting this email comment is to take the place of my personal attendance.

The citizens of El Dorado County have been asking for clarity and protections of our way of life for decades. These requests have mostly been ignored by the County and now you, the Board of Supervisors, are about to approve a project what will have a serious impact on our resources and the County's overall rural nature.

I urge you to deny this project and ask the developer of this project to return with a plan that at least contains the minimum requirements expected for mitigating traffic, water impacts, and of the design standards which only allows 24 units per acre for Multi-Family Residential.

Other jurisdictions have required that these same apartment developers reduce their footprint and yet this County has required nothing changed from their original proposal.

An ounce of prevention is better than a pound of cure. Please don't allow developers to turn EDC into another stack 'em and pack 'em bedroom community. We once again ask that this Board implement and restore the protective policies **promised** in our current General Plan before any more discretionary projects such as this are approved.

Thank you,

Melody Lane

Founder – ***Compass2Truth***

Conservatives Serving God in Truth and Liberty

"We, the people are the rightful masters of both Congress and the courts not to overthrow the Constitution, but to overthrow men who pervert the Constitution." ~ Abraham Lincoln ~

14-0769 Public Comment
BOS Rcvd 12-1-14

EDC COB <edc.cob@edcgov.us>

Comment on 12-2-14 BOS Agenda Item #14-0769, to amend the General Plan, to rezone parcels, to amend the El Dorado Hills Specific Plan, to amend the Town Center East Planned Development and to adopt the mitigated negative declaration.

1 message

Martin Morrison <mandrewmorrison@gmail.com> Sun, Nov 30, 2014 at 8:18 PM
To: bosone@edcgov.us, bostwo@edcgov.us, bosthree@edcgov.us, bosfour@edcgov.us, bosfive@edcgov.us, edc.cob@edcgov.us

Dear Board of Supervisors,

I cannot attend the December 2, 2014, meeting and this email comment is to take the place of my personal attendance.

The citizens of El Dorado County have been asking for clarity and protections of our way of life for decades. These requests have mostly been ignored by the County and now you, the Board of Supervisors, are about to approve a project what will have a serious impact on our resources and the County's overall rural nature. I urge you to deny this project and ask the developer of this project to return with a plan that at least contains the minimum requirements expected for mitigating traffic, water impacts, and of the design standards which only allows 24 units per acre for Multi-Family Residential. Other jurisdictions have required that these same apartment developers reduce their footprint and yet this County has required nothing changed from their original proposal. We once again ask that this Board implement and restore the protective policies promised in our current General Plan before any more discretionary projects such as this are approved.

Thank you,

Martin Morrison
El Dorado

EDC COB <edc.cob@edcgov.us>

BOS agenda 12/2/14_EDH Apts in Town Center (File no. 14-0769)

1 message

Ellen Van Dyke <vandyke.5@sbcglobal.net> Mon, Dec 1, 2014 at 7:58 AM
To: Brian Veerkamp <bosthree@edcgov.us>, Ron Mikulaco <bosone@edcgov.us>, Shiva Frentzen <bostwo@edcgov.us>, "Norma Santiago, Chair" <bosfive@edcgov.us>, Ron Briggs <bosfour@edcgov.us>, Jim Mitrisin <edc.cob@edcgov.us>, Roger Trout <roger.trout@edcgov.us>, robyn.drivon@edcgov.us, patricia.beck@edcgov.us
Cc:

Dear Members of the Board:

I am submitting this email on behalf of a coalition of El Dorado County residents opposed to the Town Center apartments project approval.

After many volunteered hours to let our representatives know of our concerns, the Board of Supervisors disregarded the negative recommendations of the Planning Commission, the local Area Planning Advisory Committee (EDH-APAC), the EDH-CEDAC community survey results, and general neighborhood opposition, in order to force multiple zoning and land use policy changes that will allow this project to move forward.

Attached you will find the letter from our attorney, Tom Infusino, outlining for you why you should withdraw your November 4th 'conceptual approval' and send the applicant back to reduce the density of this project, provide the necessary environmental analysis, and work with the community to achieve a design that works for everyone and not just the local businesses that would stand to benefit from a few additional shoppers.

Sincerely,

Ellen Van Dyke

Infusino Letter Re Town Center final_BOS 12.2.14 .pdf
629K

Thomas P. Infusino, Esq.
P.O. Box 792
Pine Grove, CA 95665

12/1/14

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

RE: I strongly recommend that the Board of Supervisors complete the proper environmental review, and demonstrate that the El Dorado Hills Specific Plan conforms to the 2004 General Plan, prior to approving the proposed Town Center Apartments.

Dear Supervisors,

I am writing to you on behalf of a number of local residents who have already expressed concerns about the proposed Town Center Apartments project. Their homes are nearby the proposed project in Fuller Sunset Mobilehome Park, Four Seasons, Versante, Crescent Hills, Ridgeview, Mormon Island Preserve, and Green Springs Ranch.

A number of objections have arisen regarding the proposed Town Center Apartments, leading to recommendations for denial from the El Dorado Hills Area Planning Advisory Committee (APAC) and the Planning Commission. These bodies gave the proposed project a great deal of focused evaluation and public review. Given the common sense nature of the objections, and the agreement of the advisory bodies to recommend project denial, nobody thought it necessary to refine these objections into legal arguments. Given the unusual decision of the Board of Supervisors on November 4 to defy the recommendations of their advisory bodies, and to direct the Planning Department to prepare for project approval, it has become necessary to explain why this project approval is not only ill advised, but also unlawful at this time.

I. There are at least six reasons the Board of Supervisors should not to approve the Town Center Apartments project on December 2, 2014.

First, the El Dorado Hills Specific Plan seems out of conformity with the 2004 General Plan. The documents must be brought into conformity before any further project approvals in the plan area.

Second, the improper Initial Study analyses and the Subsequent Mitigated Negative Declaration are the wrong CEQA documents to support approval of the Town Center Apartments. The proper CEQA documents must be completed prior to approval of the proposed Town Center Apartments.

Third, the CEQA documents for the Town Center Apartments improperly rely on outdated impact analyses completed in 1987 for the El Dorado Hills Specific Plan and for the 1995 Town Center East project. These impact analyses need to be updated prior to any approval of the Town Center Apartments, and any amendments to the El Dorado Hills Specific Plan.

Fourth, the project can still be improved to avoid the need for an EIR.

Fifth, the Board would be wise to direct the Planning Department to work collaboratively with the project proponent and concerned citizens to modify the proposed Town Center Apartments project to better address the concerns raised by the APAC, the Planning Commission, and concerned citizens.

Sixth, the County can fix the environmental review and project approval documentation and approve the project by the spring construction season. Approving the substandard documentation on December 2 will suspend this and other projects in the specific plan area while the legal challenges drag through the court system over the next three to four years.

II. The El Dorado Hills Specific Plan is not consistent with the 2004 General Plan.

The 2004 General Plan sits atop the land use hierarchy as the constitution for local land use. Virtually all other County land use decisions must be consistent with the 2004 General Plan. (*California Native Plant Society v. City of Rancho Cordova* (App. 3 Dist. 2009) 172 Cal.App.4th 603.) These decisions include, specific plan amendments, rezones, and planned development amendments like the ones needed for the proposed project. (See for example, Government Code, Section 65454, regarding specific plans.) Because a specific plan holds a subsidiary position relative to a general plan, a specific plan must be reviewed and amended to make it consistent with any changes in a county general plan. (Government Code, Section 65359.)

After approval of the 1987 El Dorado Hills Specific Plan, El Dorado County completed two comprehensive general plan updates in 1996 and in 2004. However, there is no evidence in the record to indicate that this specific plan was ever modified to conform to the 2004 General Plan. Similarly, there are no findings of fact that demonstrate that the El Dorado Hills Specific Plan conforms to the 2004 General Plan. To the contrary, the record does reflect inconsistencies between the two plans.

For example, the road system contemplated to serve the intense development in the El Dorado Hills Specific Plan is not the same as the road system contemplated by the 2004 General Plan. The El Dorado Hills Specific Plan calls for a road system in 2010 that includes a divided 6-lane portion of Green Valley Road, a divided 4 lane Bass Lake Road, and divided 6-lane White Rock Road west of the project. (Exhibit 1: El Dorado Hills Specific Plan Final EIR, Figure 7-21, page 2-2.) The Circulation Map for the 2004 General Plan reflects less road expansion for the specific plan area, and defers its development later in time. The 2004 General Plan, figure TC-1, depicts no portion of Green Valley Road with 6 lanes, Bass Lake Road as undivided with 4-lanes, and the aforementioned section of White Rock Road as 4 lanes. It is now 2014, the roads

in the plan area have still not expanded as called for in the specific plan, and as a result cannot provide free flowing and safe traffic for the existing level of development in the specific plan area. Thus, this lack of consistency between the specific plan and the general plan is a source of traffic impacts in the area. Since the traffic impacts associated with the proposed Town Center Apartments have been repeatedly voiced as a critical concern of neighbors and advisory bodies, there is a direct nexus between the proposed project and the lack of consistency between the plans.

We strongly recommend that the Board of Supervisors direct the Planning Department to compare each provision (maps and text) of the El Dorado Hills Specific Plan, its conditions of approval, its EIR, its mitigation measures, and any associated development agreements to the provisions of the 2004 General Plan, its EIR, and its mitigation measures. The Planning Department analysis should identify the areas of consistency and inconsistency. Where inconsistencies exist, the Planning Department should bring forth recommendations for resolving these inconsistencies. This analysis should be reviewed by the Area Planning Advisory Committee and the Planning Commission, prior to being acted on by the Board of Supervisors. **The County critically needs this analysis and action to form the lawful planning foundation for future Board of Supervisor approvals of the Town Center Apartments and the redevelopment of the El Dorado Hills golf course.**

We are confident that the County could complete this analysis and action by this spring, thus setting the stage for lawful project approvals in time for the construction season. However**, if the County approve the Town Center Apartments on December 2, and thereby force resolution of this issue by the thorough yet slow-moving courts, we anticipate that this issue will cloud future project approvals in the El Dorado Hills Specific Plan Area for the next three to four years.**

III. A Subsequent Mitigated Negative Declaration for the Town Center Apartments cannot use the 1995 Town Center East Negative Declaration as a basis.

The Town Center Apartments seeks to comply with CEQA using a subsequent mitigated negative declaration. The prior negative declaration was done in 1995 for the Town Center East project. Upon receipt of the Town Center Apartments application, the Planning Department staff followed the procedure in CEQA for determining if a *modified* project needed additional CEQA review. (Public Resources Code Section 21166; CEQA Guidelines Sections 15162 & 15163.) Planning Department staff completed an initial study and Subsequent Mitigated Negative Declaration (SMND). Staff determined that the current project, with mitigation, has no new or substantially more severe impacts than the 1995 Town Center East project, and therefore no EIR is needed. (See SMND, pp. 3, 7-8; December 2 Findings, pp. 1-6.) There is one major problem with this analysis; **the Town Center Apartments Project is not a modification of the 1995 Town Center East project, it is a completely different project.**

Our regional Third District Court of appeals has ruled that a lead agency can only use the truncated environmental review procedures when it proposed to **modify** an existing project. These procedures cannot be used to evaluate an entirely **new project that is unrelated to the previous project**. As a matter of law, a new project requires an independent environmental review. (*Save Our Neighborhood v. Kathi Lishman* (2006) 140 Cal.App.4th 1288, 1296-1301.) As some of you may recall, the case involved a project approval in your County seat of Placerville.

So what makes the 2014 Town Center Apartments unrelated to the 1995 Town Center East project?

First, the applicants are not related. The applicant for Town Center East was El Dorado Hills Investors LTD. The applicant for Town Center Apartments is the Spanos Corporation.

Second, the land in question is not the same. The Town Center East project included the entire 130-acre Village T of the El Dorado Hills Specific Plan. The Town Center Apartments is on one, isolated, 4.565 acre portion of Village T.

Third, land uses are not the same. The Town Center East project was a commercial and office complex with absolutely no residential component. The Town Center Apartments is an entirely residential project with no commercial or office component.

Fourth, the timing of the projects is not the same. Town Center East project was proposed in the 20th Century. The Town Center Apartments are being proposed in the second decade of the 21st century. (Exhibit 2: Compare: Britzman, Town Center East Staff Report; to Subsequent Initial Study Checklist, Town Center Apartments.)

Fifth, the environmental setting for the projects is not the same. The Town Center East project was approved for development in the El Dorado County of the late 1990's. The Town Center Apartments project will add cumulative impacts on a setting further compromised by an additional 15 years of degradation.

Sixth, the projects differ in their degree of consistency with existing development plans for the area. The Town Center East project was consistent with the specific plan and the zoning for the area. The Town Center Apartment requires rezoning and amendment of the specific plan.

Thus, the Planning Department staff and its consultants failed, as a matter of law, to follow the proper environmental review procedures for the Town Center Apartment's project. Failure to proceed in accord with the law in approving the project is an abuse of discretion. Thus, any Board of Supervisors' approval of the Town Center Apartments on December 2 will result in a court issuing a writ of mandate directing the County to revoke the approval.

The proper procedure is to complete an independent initial study for the Town Center Project to determine if it may have a significant impact on the human environment. (It is irrelevant whether that impact is greater or lesser than the 1995 Town Center project.) **If the Board of Supervisors wishes to validly approve the Town Center Project in the near future, it should**

direct the Planning Department to have such an independent environmental review prepared.

IV. The analyses in the 1987 El Dorado Hills Specific Plan EIR and the 1995 Town Center East Negative Declaration are outdated.

Even if the court ruled that the Planning Department's subsequent mitigated negative declaration procedure was correct, there is a second problem with tiering down from the 1995 Negative Declaration: it is a Negative Declaration left over from the previous century! In addition, that 1995 Negative Declaration tiered off of an even older CEQA document: the 1987 El Dorado Hills Specific Plan EIR. New information and changed circumstances have made the impact analyses and mitigation assumptions in those documents obsolete.

For example, not one but two comprehensive general plan updates have been completed by the County since those CEQA documents were produced. As noted above, those general plans have reduced the roadway improvements and lowered levels of service standards in the specific plan area, making traffic impacts greater than anticipated in 1987 and 1995. They have also delayed the date of construction for roadway improvements.

To exacerbate this traffic impact, the funding gap for transportation impact mitigation and improvements improvements has grown over time. Since the 1995, new traffic analyses and fee program reviews have painted a substantially bleaker picture of the traffic future for El Dorado County. In 2004, the County adopted a general plan indicating that 14 road segments would be allowed to operate at Level of Service F. In 2006, the County was unable to fully fund the road improvements required for 20 years of growth under the 2004 General Plan. The TIM Fee program was underfunded by $130 million. The anticipated result is that, despite spending over $840 million on road improvements over twenty years, people in peak period traffic on 94 of the 184 road segments in the County will experience, "severe restrictions in speed and freedom to maneuver," "poor levels of comfort and convenience," "frustration," and "queued traffic traveling in a stop-and- go fashion." (See 2004 General Plan, p. 56, description of LOS D, E, and F; 2006 TIM Fee Program Environmental Review.) The El Dorado County Regional Transportation Plan 2010 – 2030 estimates that the funding shortfall for roads needed through 2030 is now at $339 million. (RTP, Chapter 13, Table 13-5, p. 15.) It is this future of congested roadways and unfunded roadway improvements that the Town Center Apartments would be constructed in.

For another example, the county has completed multiple housing elements over the intervening decades, repeatedly failed to achieve the affordable housing targets, and yet no affordability covenants are included in the proposed project. (See Housing Elements covering years 1987 – 2014.)

In addition, the recent Grand Jury Report indicated that the County has not been enforcing its grading ordinance. Thus, the County's promise to mitigate impacts by applying the grading ordinance to the proposed project is highly questionable, in the absence of independent

monitoring and enforcement. (Exhibit 3: Grand Jury Report on failure to enforce grading ordinance.)

Thus, the outdated analyses in the 1987 El Dorado Hills Specific Plan EIR and the 1995 Town Center East Negative Declaration cannot form the basis of the analyses in the SMND for the Town Center Apartments.

V. Project improvements are needed to avoid the preparation of an EIR.

When a proper initial study is performed independent of the prior CEQA reviews, an EIR will be required if a "fair argument" can be made, based upon substantial evidence in the record, that the proposed project may have significant impacts. (*California Native Plant Society v. County of El Dorado* (App. 3 Dist. 2009) 170 Cal.App.4th 1026, 1058.) On the other hand, if the project were properly improved to avoid these impacts, the time and expense of an EIR could be avoided.

As noted in comments on the project, a fair argument can be made that the project may have significant impacts in its current form. The County Sheriff noted that the project poses significant impacts on law enforcement services. Neighbors have noted the significant traffic impacts of the project, and the long lead time for the mitigation measures. Recent reports indicate that the cumulative impacts of water supply are a problem countywide, and that various county officials disagree over how and whether to seek additional supplies. (Exhibit 4: Article on cumulative water shortage.)

The County and the applicant would be wise to revise the project and its conditions to fully address these issues and avoid the need for an EIR.

VI. Listen to the advice of the APAC and Planning Commission

Given the failure of the County's infrastructure development and mitigation plans to date for the El Dorado Hills Specific Plan area, given the ever growing funding deficit for road improvements, given the long delays and uncertainty regarding the construction of the necessary infrastructure and service capacity, and given the partial reliance on environmental reviews that are 27 and 19 years old respectively; the Area Planning Advisory Committee and the Planning Commission were wise to recommend denial of this project at this time. **The Board would be wise to direct the Planning Department to work collaboratively with the project proponent and concerned citizens to modify the proposed Town Center Apartments project to better address the concerns raised by the Area Plan Advisory Committee, the Planning Commission, and concerned citizens.**

VII. The County will find it faster and cheaper to fix the environmental review and project approval documents than to litigate the project approval.

We are confident that the County could complete the needed project approval and approval analyses by this spring, thus setting the stage for lawful project approvals in time for the construction season. However, should the County approve the Town Center Apartments on December 2, and thereby force resolution of the issues by the thorough yet slow-moving courts, we anticipate that these issues will cloud future project approvals in the El Dorado Hills Specific Plan Area for the next three to four years.

VIII. Provide a hearing that affords a meaningful opportunity to be heard, and the time for thoughtful Board deliberation.

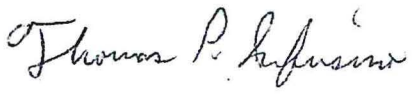
The meeting agenda for December 2 indicates that individual comments are limited to 3 minutes, and that individuals speaking for a group are limited to 5 minutes. In addition, Board permission is needed to speak more than once.

As should be evident from this letter, the proposed project is a matter of substantial importance to the residents of the area. For some, their home is their largest single investment. Any government decision that could impair the value that property should be preceded by a hearing that provides sufficient procedural due process, including a meaningful opportunity to be heard. The project proponent also has property interests at stake, and deserves a similar meaningful opportunity to be heard. **I respectfully request that the Board provide greater leeway in speaking time limits for this hearing. I would also ask that the Board provide me with an opportunity for rebuttal and sur-rebuttal following the presentations by staff and the project proponent.** If the hearing needs to be continued to another date to provide for these extended speaking opportunities, I would appreciate such a continuance.

In addition, I recognize that it is important for the Board to deliberate thoroughly on this matter. Whenever there is a risk of litigation, the Board is wise to take the time to get a thorough examination of the issues from County Counsel. Rather than rushing the decision, I encourage you to take the time to get advice from County Counsel in closed session prior to voting on this matter. If the hearing needs to be continued to provide for such thoughtful deliberation, I encourage you to so continue the hearing. Please keep a copy of this letter and the attached exhibits for the administrative record. Please incorporate into the administrative record the documents referenced in this letter that are already in the possession of the County. A list of these documents follows.

Thank you for your time and attention to this very important matter. As expressed during the past hearings on this project, many believe that a mixed-use project could be designed for this site that meets the objectives of the proposed project, while also eliminating most of the valid public concerns. I believe that if this project is instead approved with all of its current flaws, it will easily get bogged down in time consuming and costly litigation. Your choice and your leadership will determine the outcome.

Sincerely,



Thomas P. Infusino

cc. County Counsel, County Planning Director

Exhibits Incorporated by Reference

We incorporate by reference, into the record of proceedings for the approval of the proposed Town Center Apartments, those documents, in their entirety, that are already in the possession of the County, and are relevant to the County's compliance (or lack of compliance) with land use and environmental law.

The General Plan(s) under which the El Dorado Hills Specific Plan and the Town Center East project were approved.

El Dorado Hills Specific Plan and Final EIR

2006 TIM Fee Program Environmental Review

El Dorado County Regional Transportation Plan 2010 – 2030

Housing Elements covering years 1987 – 2014

2004 General Plan

2004 General Plan FEIR

2004 General Plan Findings

Superior Court Ruling Upholding the 2004 General Plan Findings

2014 TGPA/ZOU DEIR

Additional Exhibits

Exhibit 1: El Dorado Hills Specific Plan Final EIR, Figure 7-21, page 2-2.

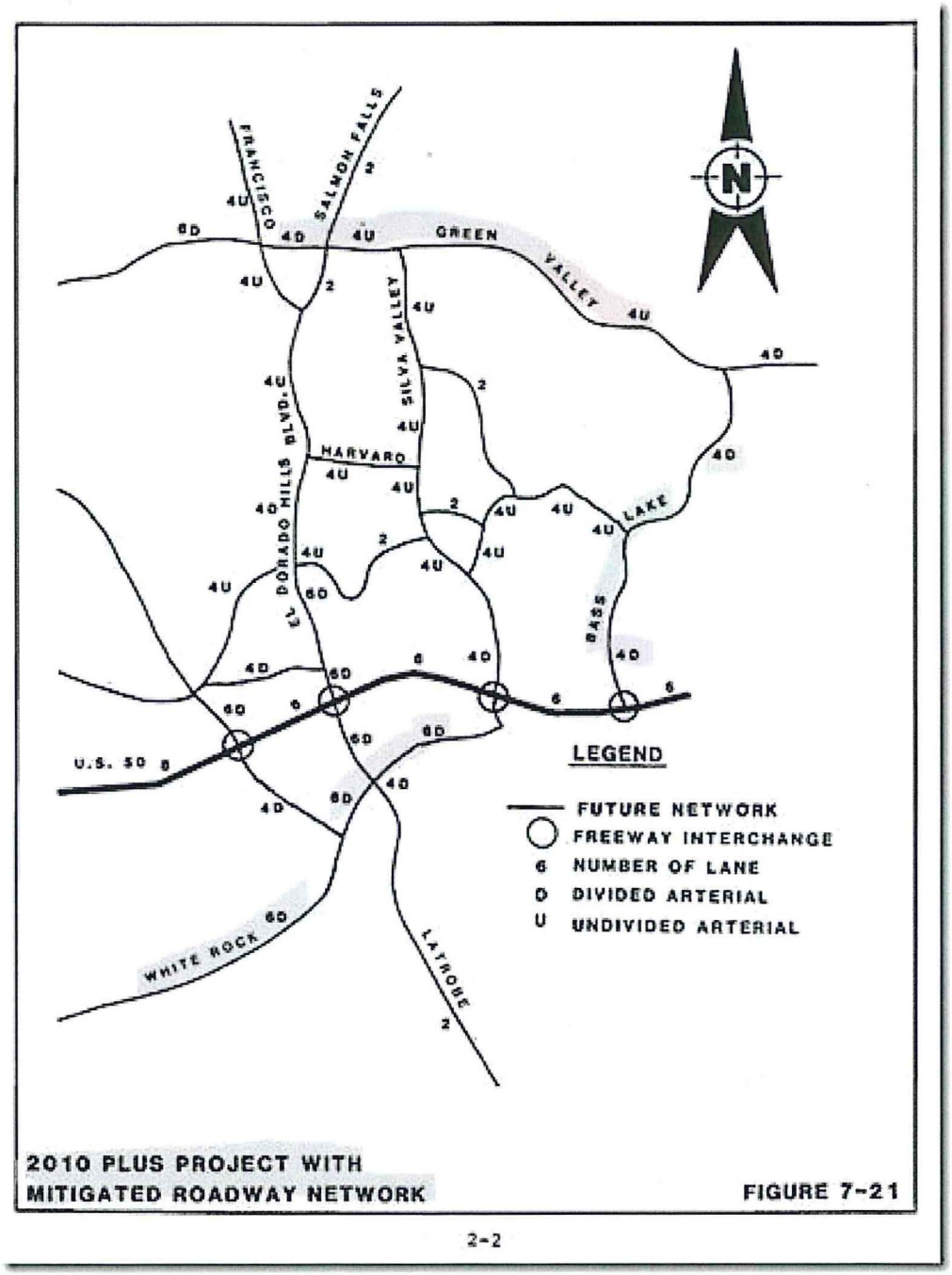


Exhibit 2: Compare: Britzman, Town Center East Staff Report; to Subsequent Initial Study Checklist, Town Center Apartments.

Agenda of: July 27, 1995

Item #: 9.a.

Staff: Robert Britzman

STAFF REPORT

FILE NO.: PD94-04 (Town Center East)

APPLICANT: El Dorado Hills Investors LTD.

AGENT: The Mansour Company

REQUEST: A phased Development Plan creating a planned commercial center with commercial, office, restaurant, hotel, and similar uses with a potential for approximately 925,000 square feet of floor area. The total site encompasses approximately 130 acres (Exhibit B).

LOCATION: On the northeast corner of Latrobe Road and White Rock Road, southerly of U.S. Highway 50 in the El Dorado Hills area (Exhibit A).

APN: 107-010-09, 107-010-12, 107-010-49 and 107-130-14

ACREAGE: 130 acres

LAND USE DESIGNATION PRD: Approved El Dorado Hills Specific Plan, Commercial designation (Exhibit C).

ZONING: General Commercial-Planned Development (CG-PD) (Exhibit D)

ENVIRONMENTAL DOCUMENT: Negative Declaration

SUMMARY RECOMMENDATION: Approval with conditions.

BACKGROUND

This project is described as Village T in the El Dorado Hills Specific Plan. The Specific Plan was approved by Resolution No. 227-88, and the related Environmental Impact Report (EIR) was certified by Resolution No. 226-88. These two actions were taken on July 18, 1988. On January 3, 1989, a Development Agreement was adopted between El Dorado Hills Investors and El Dorado County which established improvement obligations and entitlement for the Specific Plan. The Specific Plan area was zoned by Ordinance No. 3849 on July 18, 1988. At that time Village T was zoned General Commercial-Planned Development (CG-PD).

EL DORADO COUNTY PLANNING SERVICES
2850 FAIRLANE COURT
PLACERVILLE, CA 95667

SUBSEQUENT INITIAL STUDY
ENVIRONMENTAL CHECKLIST

Project File Nos./Title: A14-0001, SP86-0002-R, Z14-0001, PD94-0004-R-2/El Dorado Hills Apartments	
Lead Agency Name and Address: El Dorado County, 2850 Fairlane Court, Placerville, CA 95667	
Contact Person: Mel Pabalinas, Senior Planner	**Phone Number:** (530) 621-5355
Applicant's Name and Address: Alexandros Economou, Spanos Corporation, 10100 Trinity Parkway, 5th Floor, Stockton, CA 95219	
Project Agent's Name and Address: Chris Schulze, TSD Engineering, 31 Natoma Street Suite 160, Folsom, CA 95630	
Project Architect Name and Address: Kephart, 2555 Walnut Street, Denver, CO 80205	
Project Location: The property is located on the northwest corner of Town Center Boulevard and Vine Street within the Town Center East Commercial Center in El Dorado Hills.	
Assessor's Parcel Number: 121-290-60, -61, -62	**Acres:** 4.565 acres
Zoning: General Commercial-Planned Development (CG-PD)	
Sections: 11 **T:** 9N **R:** 8E MDM	
General Plan Designation: Adopted Plan (AP-El Dorado Hills Specific Plan)	

Description of Project:

1. General Plan Amendment to add a new policy under Objective 2.2.6 (Site-Specific Policy Section) that would increase the maximum residential density allowed in the General Plan from 24 dwelling units/acre (du/ac) to a maximum of 55 du/ac for the 4.565 acre site within the Town Center East Planned Development area identified as APNs 121-290-60, -61, -62;

2. El Dorado Hills Specific Plan Amendment incorporating multifamily residential use, density, and related standards for the project site. Subject site would be designated as "Urban Infill Residential" within the Village T area of the El Dorado Hills Specific Plan;

3. Rezone of project site from General Commercial-Planned Development (CG-PD) to Multifamily Residential-Planned Development (RM-PD) and revisions to the RM-zone development standards applicable to the proposed 250-unit apartment complex; and

4. Revisions to the approved Town Center East Development Plan incorporating multifamily residential use, density, and related design and development standards for the proposed 250-unit apartment complex within Planning Area 2 of the Town Center East Development Plan. The proposed apartment complex would be contained in 60-foot-tall, up to a maximum of five stories, apartment building and a five-tier, 60-foot-tall parking structure and other amenities.

Exhibit 3: Grand Jury Report on failure to enforce grading ordinance.

EL DORADO COUNTY GRAND JURY, 2013-2014 E L D ORADO C OUNTY F AILS TO E NFORCE I TS G RADING , E ROSION AND S EDIMENT C ONTROL O RDINANCE Case Number GJ-13/14-18

REASON FOR REPORT

The Grand Jury received a number of complaints involving improper grading of private property. Three specific complaints were investigated and addressed in three separate reports. One involves grading of a rural property, another involves grading of a suburban property and the third is grading by a commercial property owner. In each instance, persons other than the property owner suffered damage as a result of the county's failure to ensure compliance with its Grading Ordinance. The investigations of those cases caused the Grand Jury to question if there was a pattern and practice of failing to comply with the County Grading Ordinance.

The Grand Jury found that it did.

BACKGROUND

The Ordinance

The El Dorado County Grading, Erosion, and Sediment Control Ordinance (hereinafter "the Ordinance")

…for the purpose of regulating grading within the unincorporated area of El Dorado County to safeguard life, limb, health, property and public welfare; to avoid pollution of watercourses; and to ensure that the intended use of a graded site is consistent with the El Dorado County General Plan, any Specific Plans adopted thereto, the adopted Storm Water Management Plan, California Fire Safe Standards and applicable El Dorado County ordinances including the Zoning Ordinance and the California Building Code. (Section 15.14.110)

"This ordinance shall be implemented and enforced by the County…" (emphasis added)

A grading permit is required for all grading activities in the unincorporated area of El Dorado County unless a specific exemption applies. (Sections 15.14.130 and 15.14.140). An exemption did not apply to any of the specific instances investigated by the Grand Jury.

The Ordinance requires permit applications to include specific informational items. (Section 15.14.200)

Fees collected when a permit is issued are used to fund enforcement of the Ordinance. Violation fees of twice the regular permit fees are required whenever grading is done in violation of the Ordinance or without an approved permit. The language of the Ordinance is not discretionary; It mandates that this violation fee be charged. (Section 15.14.230 E)

It prohibits grading activities that cause or have the potential to result in itemized hazards including a threat to neighboring property or degradation of water quality. (Section 15.14.290)

The county is authorized to enter private property and conduct work necessary to abate and repair hazards from unlawfully created conditions. The County may conduct such work either using its own employees or through a licensed contractor. The County is required to bill the property owner for costs incurred and is authorized to recover those costs through a lien on the property and other legal means. (Section 15.14.410)

Enforcement of the Ordinance

Review of the permit application and subsequent inspection of the grading site only happens after permit fees are paid. Otherwise, no action is taken. When work is initiated without a valid permit a stop work order may be issued. If work is completed prior to issuance of a stop work order or if work continues without a valid permit, there is no inspection of the work done. Thus, someone who wants to perform work not authorized by county ordinances could well decide to not seek a permit in order to get away with that unauthorized work.

County employees interviewed were aware of the legal authority to charge violation fees but not that those fees were mandatory rather than discretionary. Further, violation fees were rarely charged and suggested that it would discourage the public from seeking a permit and encourage performing work without proper permits.

County employees were unaware of the County's authority to conduct necessary remedial work at the property owner's expense and knew of no instance when this action was taken.

Why is the Grading Ordinance Not Enforced?

Grading in violation of the Grading Ordinance resulted in substantial harm to property owners adjacent to or affected by improper grading in each of the cases investigated by the Grand Jury. The Grading Ordinance gives the Department of Transportation significant authority to correct improper grading. This authority could be a very effective tool for protecting other affected property owners if it were used, but it is not .... Why not?

Both County staff and officials reported that they perceived it to be the will of the Board of Supervisors that the Ordinance not be enforced. They stated that El Dorado is a property rights county; the will of the Board of Supervisors is that property owners not be burdened by strict compliance with requirements perceived to be onerous for some property owners. Several witnesses reported they believed the Ordinance imposed excessive burdens on property owners maintaining rural access roads

The public appears to understand that the Ordinance is not enforced. Neither of the contractors who performed illegal grading in Report No. 13-15 or 13-16 felt required to obtain a permit for the grading they performed. In Report No. 13-16 the Contractor appears to have understood that if he failed to pay the fee for a grading permit no action would be taken to enforce the terms of the permit.

The Ordinance is quite specific "...to safeguard life, limb, health, property and public welfare; to avoid pollution of watercourses..." The Grading Ordinance of the County of El Dorado is Chapter 15.14 of the County Code; it is the law of El Dorado County. Failure to enforce the Ordinance is failure to enforce the law; that failure benefits property owners who act unlawfully while denying the law's specific protections to others. It leads to a perception of corruption on the part of County officials and general disrespect for County government.

ACTIONS

□ The Grand Jury reviewed the El Dorado County Grading, Erosion and Sediment Control Ordinance.

□ The Grand Jury interviewed private parties who complained to having been adversely affected by the County's failure to enforce the Ordinance.

□ The Grand Jury interviewed County employees responsible for implementing and enforcing the Ordinance.

FINDINGS

1. When grading work is done in El Dorado County and no permit is obtained and no permit fee paid, and the county is made aware of the work being done before the work is complete, the county will issue a stop work order.

2. When work improperly continues after issuance of a stop work order or if work is completed before a stop work order is issued, no enforcement action is taken.

3. Only payment of a permit fee triggers inspection of grading work performed.

4. Grading work performed where no permit fee is paid is not inspected.

5. El Dorado County does not enforce its Grading, Erosion and Sediment Control Ordinance.

6. The County's failure to enforce its Grading, Erosion and Sediment Control Ordinance encourages illegal grading to the detriment of other property owners and residents.

RECOMMENDATIONS

1. The Board of Supervisors should review the Grading, Erosion and Sediment Control Ordinance and determine whether the Ordinance imposes overly burdensome requirements for rural access roads.

2. If the Board of Supervisors determines the requirements for grading of rural access roads are overly burdensome, it should amend the Ordinance to define appropriate requirements for the grading of those roads.

3. Whether or not the Ordinance is amended, the Grading, Erosion and Sediment Control Ordinance should be enforced.

RESPONSES

Responses to both findings and recommendations in this Report are required by law in accordance with California Penal Code §933 and §933.05. Address responses to:

The Honorable Suzanne N. Kingsbury, presiding judge of the El Dorado County Superior Court, 1354 Johnson Blvd., South Lake Tahoe, CA 96150.

This Report has been provided to the El Dorado County Board of Supervisors, Development Services Department and Department of Transportation.

The Presiding Judge of the El Dorado County Superior Court additionally requests that the responses be sent electronically as a "Word" file or "PDF" file to facilitate the economical and timely distribution of such responses. Please email responses to the El Dorado County Grand Jury at: courtadmin@eldoradocourt.org

Exhibit 4: Article on cumulative water shortage.

Water & Power JPA on the bubble

By Dawn Hodson

Mountain Democrat, From page A1 | November 19, 2014 |

Is the El Dorado County Board of Supervisors getting cold feet about going after additional water rights?

That was the question hanging in the air as an update on the status of an application for additional water rights turned into an extended discussion of whether or not the county should continue to be a part of the effort.

Currently the county, the El Dorado Water Agency and the El Dorado Irrigation District are part of a joint powers authority known as the El Dorado Water & Power Authority. EDWPA is in the process of pursuing an additional 40,000 acre-feet of water rights for the county.

An update on the project was requested following action by the Board of Supervisors on Oct. 14 when it directed the Community Development Agency and County Counsel to "evaluate the county's continuing participation as a member agency of the El Dorado Water and Power Authority."

As part of that motion, Supervisor Santiago suggested holding a discussion of the topic at the next regular meeting of EDWPA, which was Nov. 12. That meeting included all members of the Board of Supervisors as well as the entire board of EID.

EDWPA's roots

At the meeting, staff began with a history of EDWPA, noting it was originally formed as the county's negotiating arm during the relicensing of SMUD's hydroelectric operation on the Upper American River. Once those negotiations were concluded, EDWPA turned its attention to securing additional water rights for the county.

However, Supervisor Shiva Frentzen said while the county only has one vote, it appeared it was paying two-thirds of the cost of the project.

Fred Schaefer, who is EDWPA's legal counsel, responded by saying the county acts more as a pass-through mechanism for the money going to the Water Agency.

The Water Agency has the statutory authority to impose an ad valorem tax countywide, Schaefer said, but essentially that was replaced with Proposition 13, Prop. 8 and other things, so consequently the county is the assessing and taxing authority and it distributes a share to the Water Agency of funds the agency would have received if an ad valorem tax had been passed to support it.

Clarifying the point further, Water Agency General Manager Dave Eggerton added that the money the Water Agency receives doesn't come from the county General Fund but is similar to money the county collects and then distributes to special districts.

EID Director Greg Prada said his concern was that in supporting the EDWPA project, ratepayers were being charged for future benefits, which he said was illegal.

However, EID Director George Osborne countered his argument, saying he believes the money EID contributes to EDWPA comes from facility connection fees and not from ratepayers. He suggested the Water Agency's counsel talk to EID's counsel to clarify the issue.

Santiago went on to ask if EDWPA were abandoned, if it would affect the SMUD agreement and subsequently the payment the county receives from that agreement. Schaefer responded that even if the JPA were dissolved, the SMUD agreement would remain intact.

The price of dissolution

However, less clear was the question of how the application for additional water rights would be affected if the JPA were dissolved.

Providing more background on EDWPA's mission, Eggerton said the first time they tried for additional water rights was in 2008. But the EDWPA board decided to change direction after its application ran into considerable opposition. The cost of that initial effort was $3.1 million.

In 2013, the board adopted a resolution to submit a revised application to the state water board. Subsequently environmental work was approved and a contract awarded for the new application.

With the project divided into three phases and phase one expected to be completed by next year, Eggerton put the total price at between $8.1 million to $11.7 million by the time it's finished. He said as of now, the Water Agency has enough money to complete phase one regardless of what the county decides to do.

Emphasizing that the county won't have enough water at build-out if the application is not successful, Eggerton said, "I believe this is the paradigm for agencies like ours to get

additional water supplies. We need to pursue it because we have no groundwater supplies in time of drought."

According to an updated report just released by the Water Agency, El Dorado County's western slope is expected to be short approximately 69,000 acre-feet of water per year at full build-out even considering state-mandated water conservation.

Eggerton added that if the JPA is dissolved and the Water Agency has to take over the application, its budget and staff time would have to be almost entirely devoted to the project.

Criticizing the idea, Osborne said dissolving EDWPA would eliminate open and frank discussions among the different partners. "The real thing is what does the JPA cost?" he asked. "Virtually nothing. Staffing is done by the Water Agency. There's very little cost to operating the JPA. What do you save by disbanding it and losing those other benefits? That's the real issue."

The budget for EDWPA is only $15,000. In a separate category are funds for the water rights project, which is $3.16 million this year. The budget for the Water Agency, which is separate from EDWPA, is $4.3 million.

How soon?

However, seeming to push for an end to the JPA, Supervisor Shiva Frentzen asked what was the earliest date it could be dissolved with both she and Santiago less than happy to hear that the JPA would probably have to continue through the end of this year.

Supervisor Ron Mikulaco interjected he didn't want to discuss the merits of the application or the need for more water rights, but rather what happens if the JPA dissolves.

"The JPA spent $3.1 million on the original application with nothing to show for it," he said, adding that he believes the real cost of the water rights application will be closer to $11 million. "It's a big risk and we might have nothing to show for it," he said.

In response, Osborne said EDWPA did get something for its $3.1 million. "We learned an expensive and valuable lesson," he said. "With 53 percent of the Legislature coming from below the Tehachapi, if we don't acquire these rights, the chances of our ever being able to do so again are probably nil ... Yes, it's expensive and there's no guarantee, but we are getting a positive response from the staff at the state water board."

Schaefer added that of the $3.1 million originally spent, about $1 million was spent on the filing fees for the application so not all of the $3.1 million was lost.

Schaefer went on to suggest that one alternative would be to harmonize the cost sharing and inter-county coordination agreements with the Water Agency as the applicant under a dissolved JPA. Using this approach, if the water rights application was successful, the Water Agency would be the designated representative with SMUD to control the water that EDC received, with the water stored in SMUD's reservoirs. The Water Agency would also handle the allocations or sales of water as a wholesaler, not a purveyor of water.

However , EID Director Alan Day questioned whether it was a good idea to pursue additional water rights at all, saying they are massively over-subscribed in the state and EDWPA's application would just be one more. The state water board is also pushing to regulate a lot of these rights, he said, so we might spend a lot of money and then have the state telling us what to do with the water anyway.

However, EID Director Dale Coco pointed out that the state water agency can't do anything about stored water and "that's the beauty of the water rights application EDWPA is putting together," he said.

'This is it, ladies and gentlemen'

Arguing against dissolution of the JPA, Coco went on to say doing so would preclude the county and EID from getting together to hash things out in closed session. "Instead decisions will be left to administrators and attorneys," he said.

Coco maintained that about one-third of the additional water would go to EID with the rest going to agricultural interests or to those outside the county. "Should we give up a vehicle that allows us to do business?" he asked, saying that some of the information being circulated was based on speculation or assumption.

"This is it, ladies and gentlemen. This is it," said Coco. "The American River is 100 percent allocated ... (and) we don't have enough water to complete our General Plan."

Urging the county not to be hasty in its decision, Coco asked members of the Board of Supervisors to wait until they have solid supply and demand data. "Let's take our time and look at things objectively," he said. "We're the stewards of this county for the next 50 years," adding that the wrong decision could leave the county high and dry. Coco also reminded everyone that if the water rights application is not successful, their other option would be expanding the reservoirs which could cost $200 million to $300 million per reservoir.

Closing out the discussion were comments from members of the public.

One of those speaking was former supervisor Jack Sweeney, who is part of a group called Citizens for Water. Echoing comments made earlier, he said the county only supplies one-third of the cost of the project. "If you dissolve the JPA, that money will go back to the

taxpayers," he claimed, saying it's a tax collected by the county on behalf of the Water Agency.

Sweeney expressed concern that the water rights project would be killed just like the SOFAR Project and he urged the members of the JPA to think long-term, saying that if SOFAR had gone through, the county would have about $50 million a year in profits that could have gone towards road, parks and other uses.

Saying the benefits from the water application will show up 20 to 30 years from now, he warned, "We can't fail again."

EDC COB <edc.cob@edcgov.us>

BOS agenda 12/2/14_EDH Apts in Town Center (File no. 14-0769)

1 message

rick@cote.org <rick@cote.org> Mon, Dec 1, 2014 at 9:56 AM
To: Brian Veerkamp <bosthree@edcgov.us>, Ron Mikulaco <bosone@edcgov.us>, Shiva Frentzen <bostwo@edcgov.us>, "Norma Santiago, Chair" <bosfive@edcgov.us>, Ron Briggs <bosfour@edcgov.us>, Jim Mitrisin <edc.cob@edcgov.us>, Roger Trout <roger.trout@edcgov.us>, robyn.drivon@edcgov.us, patricia.beck@edcgov.us

I am opposed to the construction of the Town Center Apartments as "conceptually approved' by the BOS on November 4, 2014. The proposed project does not fit into the scheme and feel of the surrounding community and is contrary to the Planning Commission recommendation(s).

Rick Coté

El Dorado Hills, CA 95762

14-0769 Public Comment
BOS Rcvd 12-1-14