

File Number: DR-A21-0001  
Date Received: 5-21-2021

Receipt No.: R31575  
Amount: \$239-

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**APPEAL FORM**

(For more information, see Section 130.52.090 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 Woodcrest Real Estate Ventures  
ADDRESS 1410 Main St., Suite C, Ramona, CA 92065  
DAYTIME TELEPHONE (760) 789-5493

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

AGENT Sabrina Teller  
ADDRESS 555 Capitol Mall, Suite 800, Sacramento, CA 95814  
DAYTIME TELEPHONE (916) 443-2745

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 description of action being appealed.  
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DATE OF ACTION BEING APPEALED May 13, 2021

Sabrina Teller  
Signature

May 21, 2021  
Date

Sec. 130.52.090 - Appeals.

Any decision by the review authority of original jurisdiction may be appealed by the applicant or any other affected party, as follows:

- A. An appeal must be filed within 10 working days from the decision by the review authority by completing the appeal form and submitting said form together with the applicable fee, as established by resolution of the Board, to the Department. The appellant shall clearly identify on the appeal form the specific reasons for the appeal and the relief requested.
- B. The hearing body for the appeal shall consider all issues raised by the appellant and may consider other relevant issues related to the project being appealed. The hearing body for the appeal shall be as follows:
  1. All decisions of the Director are appealable to the Commission and then to the Board.
  2. All decisions of the Zoning Administrator and the Commission are appealable to the Board.
  3. All decisions of the Board are final.
- C. The hearing on an appeal shall be set no more than 30 days from receipt of a completed appeal form and fee. If the Board meeting is canceled for any reason on the date on which the appeal would normally be heard, the appeal shall be heard on the first available regularly-scheduled meeting following the canceled meeting date. The 30-day time limitation may be extended by mutual consent of the appellant(s), the applicant, if different from the appellant, and the appeals body. Once the date and time for the hearing is established the hearing may be continued only by such mutual consent.
- D. In any appeal action brought in compliance with this Section, the appellant(s) may withdraw the appeal, with prejudice, at any time prior to the commencement of the public hearing. For the purposes of this Section, the public hearing shall be deemed commenced upon the taking of any evidence, including reports from staff.
- E. Upon the filing of an appeal, the Commission or the Board shall render its decision on the appeal within 60 days.
- F. No person shall seek judicial review of a County decision on a planning permit or other matter in compliance with this Title until all appeals to the Commission and Board have been first exhausted in compliance with this Section.

**Woodcrest Real Estate Ventures**  
**Appeal of May 13, 2021 Planning Commission Decision**  
**Description of Action Being Appealed**

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Overview

Applicant Woodcrest REV (“Woodcrest”) appeals the Planning Commission decision reached on May 13, 2021 to add certain conditions (the “Conditions”) that were not recommended by staff to the approval the Cool General Retail project (DR19-0006) design review permit. Specifically, Woodcrest appeals the following changes (the “Conditions”) made by the Planning Commission to staff’s recommended actions:

1. The addition to Condition of Approval No. 12 of a requirement that the applicant construct a four (4)-foot-wide asphalt pedestrian path along Northside Drive from SR49 to the project driveway.
2. The change to Condition of Approval No. 13 removing the in-lieu fee option.
3. The revision to Condition of Approval No. 13 requiring Woodcrest to construct a Class 1 Bike Path (instead of a Class 2 bike lane) along the shoulder of SR49 from the southerly property line, north to Northside Drive.

Woodcrest appeals these Conditions on the basis that they violate several Federal and State laws, including, but not limited to, the Fifth Amendment of the United States Constitution as unconstitutional exactions, and the California Environmental Quality Act as an abuse of discretion. There is no nexus between the anticipated effects of the project and any real property exactions as presented by the Conditions imposed by the Planning Commission. Additionally, the Conditions are financially and technically infeasible, which Woodcrest will further address before the Board’s hearing on its appeal, and hereby reserves its right to due process by having the ability to present any and all evidence as may be necessary to support its claims, particularly in light of the timing and manner in which the Planning Commission presented and imposed the Conditions.

Procedural Background

Woodcrest submitted its pre-application in June 2019, followed by its official application in October 2019. Staff prepared a mitigated negative declaration (“MND”), and at a public hearing on May 28, 2020, the Planning Commission determined there were no significant effects on the environment, adopted the MND, and approved the Project by a vote of 4-0. Appeals were filed by members of the public, and the Board of Supervisors (“Board”) held a hearing on July 14, 2020. The Board neither approved nor denied the project, but instead required the preparation of a “focused Environmental Impact Report (EIR) pertaining at least to the impact of the project on traffic and public safety risks,” after which the project would return to the Planning Commission for consideration of any environmental impacts to traffic and public safety that the EIR might uncover. (July 14, 2020 Board Minutes at 18.)

Woodcrest went above and beyond the Board’s direction and asked County staff to prepare a complete, not just focused, EIR for the County in an effort to properly identify any and all possible environmental concerns, incurring in excess of \$100,000 in costs for the process. As it relates to the Conditions imposed by the Planning Commission, the final EIR, prepared under direction of the County (the “Final EIR”), extensively studied traffic conditions, both at the prescribed guidelines time of weekday afternoon peak, and at the additional weekend time which was suggested by public comment, including automobile, truck, bicycle, and pedestrian traffic, as well as public safety. (See Final EIR, §§ 3.11, 3.12, and 3.15.) This included an independent traffic impact analysis and addendum (the “TIA”) performed per County Department of

Transportation (“County DOT”) guidelines, which evaluated the actual traffic conditions at the site as they exist now, and all changes anticipated due to the project. (See Final EIR, pp. 3.12-1 – 3.12-5, 3.12-7 – 3.12-11, Appendix I.) The traffic impact analysis counted six total pedestrians walking by the site over two peak hours on a Saturday afternoon (Final EIR, p. 3.12-8), and counted no pedestrians over two peak hours on a weekday. (Final EIR, 21-0733 G, p. 1438 of 1566.) Similarly, the study counted less than four bicycles over the two peak hour period on a weekday. (Final EIR, p. 3.12-8.) The TIA was reviewed and accepted by the California Department of Transportation (“Caltrans”), a third-party peer reviewer employed by the County, and County DOT.

The Final EIR concluded that while “[s]ome employees or customers of the project may elect to walk to other commercial uses in the area,” based on midday studies, “*pedestrian activity between uses in the area is low.*” (Final EIR, p. 3.12-8 (emphasis added).) The Final EIR further concluded that the project will not substantially increase pedestrian activity. (*Ibid.* [“the project is not expected to result in appreciable numbers of pedestrians to and from the project site.”].) Similarly, the Final EIR concluded that “[t]he number of cyclists associated with this project is not likely to create any appreciable safety impacts on SR 49 where the paved shoulder is already available to provide access to the project.” (*Ibid.*)

The Draft EIR was noticed and released for a 45-day public review on January 6, 2021, with a February 23, 2021 deadline for public comments. Upon completion of the Final EIR, which incorporated public and agency comments received, County Planning Staff scheduled the remand hearing before the Planning Commission on May 13, 2021 (“Remand Hearing”) to reconsider the project in light of the EIR as directed by the Board.

Prior to the hearing, Woodcrest reached out to each Planning Commissioner individually to meet, discuss the project, and answer any questions each Commissioner might have. Woodcrest met with Commissioner Vegna via phone on April 26, 2021. Additional in-person meetings were held with Commissioner Clerici on April 28, 2021, and separately with Commissioners Williams and Bly-Chester on April 29, 2021. Commissioner Williams expressed concern at the meeting about pedestrian safety and access to the project. In subsequent follow-up emails, Woodcrest provided citations from the EIR and other staff memos as answers to Commissioner Williams’ questions.

On May 11, 2021, *just two (2) days before the Remand Hearing*, a member of the Planning Commission called at approximately 6:50 pm and informed Woodcrest that he would not approve the project without a Condition to provide pedestrian access both along and from Highway 49. A subsequent meeting was held with County Planning and County DOT staff to discuss the possible condition, and both departments agreed that the condition was not warranted by the EIR.

During the hearing on May 13, 2021, there was virtually no discussion about the EIR, which was the entire purpose of the Remand Hearing. Indeed, the neither the Planning Commission nor staff asked a single question of Brian Grattidge, the project manager for Dudek, the independent consultant *hired by the County* to prepare the EIR. The discussion focused almost entirely on the novel Conditions formally proposed the day of the Remand Hearing. Naturally, there was no time for Woodcrest to analyze these proposed Conditions, including the “nexus” or “rough proportionality” of the Conditions, let alone the cost and technical feasibility considerations of complying with said Conditions, in advance of, and then be prepared to discuss them with any substance during the Remand Hearing. Notably, input from the County’s Department of Transportation representative made it abundantly clear that a Class I bike path and pedestrian walkway along Northside Drive (a private road), was unlikely to be feasible due to site constraints.

### Legal Argument

The Conditions imposed by the Planning Commission, if upheld by the Board, violate the Fifth Amendment to the United States Constitution and are unconstitutional takings. Under *Nollan v. California Coastal Commission* (1987) 43 U.S. 825, and *Dolan v. City of Tigard* (1994) 512 U.S. 374, the United States Supreme Court has held that there must be a “nexus” between the anticipated effects of the project and any real property exactions in the form of conditions of approval demanded by the government in approving the project. (See *Nollan, supra*, pp. 837–38.) Further, the Supreme Court has held that there must be “individualized determinations” to show that there is “rough proportionality” between the impacts of the land use project and the real property exaction. (*Dolan, supra*, at p. 391 [rough proportionality requires the government “make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development”].)

In this case, there is neither a “nexus” between the above Conditions of approval and the anticipated effects of the project, nor is there any “rough proportionality” between the Conditions and the anticipated impacts of the project. Specifically, the Final EIR concluded that there are currently no significant safety risks to pedestrians or bicyclists at the site (because there are very few such pedestrians and bicyclists and as noted by staff and at least one of the Commissioners, the existing shoulder of SR49 is wide enough to accommodate the scant foot and bike traffic) and that the project will not change this. Therefore, there is no “nexus” between the anticipated impacts of the project and the above Conditions of approval. There are, simply put, no pedestrian or bicyclist safety or traffic impacts associated with the project. Therefore, there can be no “nexus,” or “logical connection” between the Conditions, which were added due to unfounded concerns about pedestrian and bicycle traffic and safety, and the anticipated impacts of the project. (See *Ocean Harbor House Homeowners Assn. v. California Coastal Com.* (2008) 163 Cal.App.4th 215, 232 [holding that “nexus” requires a “logical connection.”].) In short, the lack of any impacts was a clear determination of the final EIR, which the Planning Commission accepted and adopted, including staff’s recommended findings.

In addition, in arbitrarily adding the Conditions, the Planning Commission made no “individualized determination[s] that the required dedication is related *both in nature and extent* to the impact of the proposed development.” (*Dolan, supra*, p. 391.) In fact, the Commission made no determination at all that the required Conditions of approval are, in any way, related to the nature and extent of the impact of the project. Notably, even during discussion at the May 13 hearing, Commissioner Clerici, who is actually knowledgeable about transportation impacts and planning, noted that there was no evidence in the record upon which to base such a determination and warned the other Commissioners of going ahead with such arbitrary action. (See Hearing Video, at 7:09:25 – 7:10:20.) The Planning Commission approved the Conditions anyway, despite having made no such determination, individualized or other.

Finally, the Conditions were added by the Commission arbitrarily and capriciously, and in violation of the California Environmental Quality Act (“CEQA”). CEQA requires agencies making determinations to base those determinations on substantial evidence in the record. (Pub. Resources Code, § 21168.5.) “Substantial evidence” includes facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts. (Guidelines § 15384 (b).) An agency making a determination without substantial evidence in the record to back it up has committed an abuse of discretion. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1197.) As discussed above, there is *no* evidence in the record that there will be any pedestrian- or bicycle-related traffic or safety impacts associated with

the project. The evidence actually in the record indicates the *exact opposite* – that there is currently very little pedestrian traffic in the area (including in the vicinity of the project site, which is across Northside Drive from the existing post office and a restaurant) and given the development patterns of the area, a very low likelihood of any substantial increase in pedestrian and bike traffic resulting from the project. When presented with this evidence in the record, the Commissioners simply dismissed those conclusions, without any contrary supporting evidence, only speculation and opinion.

Conclusion

As set forth hereinabove, and as will be presented further prior to the appeal hearing, the Planning Commission's decision to impose the Conditions was arbitrary, capricious, and in violation of multiple Federal and State laws. Accordingly, Woodcrest respectfully requests that the Board reverse the Planning Commission's decision only as to the revised Conditions, and uphold the Planning Commission's approval of the design review permit by reinstating the originally recommended conditions 12 and 13 from the staff report dated May 13, 2021 and memorandum dated May 12, 2021.



WOODCREST REAL ESTATE VENTURES  
*A Division of Woodcrest Homes, Inc.*

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May 21, 2021

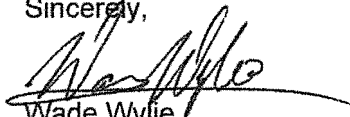
County of El Dorado  
2850 Fairlane Court  
Placerville, CA 95667

RE: Agent for Appeal of DR19-0006

To whom it may concern:

Woodcrest Real Estate Ventures ("Woodcrest") hereby authorizes Sabrina Teller of Remy Moose Manley, LLP, to act as its agent and counsel for the purposes of Woodcrest's appeal of the El Dorado County Planning Commission's conditions of approval for the design review permit for the Dollar General Store in Cool, California (DR19-0006).

Sincerely,

  
Wade Wylie  
Senior Analyst