

000018505

File Number: PD95-0002-A
Date Received: 1/20/11

Receipt No.: 27043
Amount: 100-

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.)

Appeal of January 13, 2010 Planning Commission denial of appeal re Development
Services Director's Determination of Consistency/Determination of Similar Use
(Pre-application PA 09-0011) of retail drug store within Town Center West Development
Plan area (PD95-0002)
Please see attached letter regarding the substance and reasons for this appeal.

DATE OF ACTION BEING APPEALED January 13, 2010


Signature

1/21/11
Date

RECEIVED
PLANNING DEPARTMENT
11 JAN 26 PM 1:35

TODD A. WILLIAMS
(925) 979-3352
twilliams@mmlaw.com

January 27, 2011

VIA FEDERAL EXPRESS

Board of Supervisors
c/o Clerk of the Board of Supervisors
County of El Dorado, Government Center
330 Fair Lane
Placerville, CA 95667

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

Re: Appeal of 1/13/11 Planning Commission Determination of
Consistency with Town Center West Development Plan
Our File No. 10093-001

Dear Honorable Supervisors and Planning Department:

We submit this letter on behalf of Syers Properties III, LLC ("Syers"), owner of the Market Place at Town Center East (south of Hwy. 50 at Latrobe Road in El Dorado Hills), along with the required form and fee to appeal the Planning Commission's January 13, 2011 decision finding that a 15,000 square foot, 24-hour drug store including a drive-thru and beer and wine sales is "similar in nature" to support retail uses set forth in the Town Center West Development Plan (PD95-002, "TCW Development Plan). Syers asks that an appeal hearing be set per the County Code, and requests that the appeal be heard during the Board's regular meeting of February 15, 2011.

This appeal concerns pre-application (PA 09-0011) filed by El Dorado Hills Investors, Ltd c/o The Mansour Company requesting that a retail drug store (as described above and referred to herein as "the "Project") is a permitted use under the TCW Development Plan.¹ After the planning department found that it was "similar in nature" to the listed uses in that plan, Syers appealed that determination to the Planning Commission. The Planning Commission denied the appeal.

¹ The Project is now identified to consist of a CVS drug store, however, the user was not identified at the time the pre-application was filed.

As described below, Syers appeals on the grounds that the determination of the Planning Department and Planning Commission is unreasonable, constitutes an abuse of discretion and is not supported by substantial evidence.²

A. Town Center West and East are “Distinct Yet Complimentary” Developments

The Town Center West Development Plan (“TC West”) and the Town Center East Development Plan (“TC East”) each grew out of the El Dorado Hills Specific Plan, were processed concurrently and approved in 1995. (See Ex. C and Ex. 1 thereto (map of TC West and TC East), and Exhibits 2 and 3 thereto [excerpts of the TC West and TC East Design Guidelines and Development Standards].)

As both Board-approved plans make clear, “The Town Center consists of **two distinct yet complimentary components – Town Center East and Town Center West.**” (Ex. C and Ex. 2 thereto at p. 1 (emphasis added), see also Ex. C and Ex. 3 thereto at p. 1.) They explain:

Retail and service commercial uses are concentrated within Town Center East. It is [within Town Center East] that highway commercial uses are sited so as to achieve a high degree of visibility from U.S. Highway 50 while neighborhood and community uses are located in areas of convenient access and within the Town Square – the heart of Town Center East. Larger, more regionally oriented uses are accommodated within the Major Retail area and can be accessed from both Latrobe and White Rock Roads. **Town Center West** is planned as an employment center of mid- and low-rise buildings within five planning areas. **Ancillary uses** which could be accommodated include a conference hotel facility and **support retail services.**

(Ex. C and Ex. 2 thereto at p. 1 (emphasis added), Ex. C and Ex. 3 thereto at p. 1.)

TC West was approved as a business park and never envisioned as containing “major retail” such as a “drug store,” “supermarket” or “department store.” To the contrary, those “general merchandise” uses were specifically *included* as permitted TC East uses.

² We have enclosed our previous correspondence for inclusion in the administrative record, including Syers appeal to the Planning Commission (attached hereto as Exhibit A), Syers letter dated December 30, 2010 to the Board (attached as Exhibit B), and Syers letter dated January 11, 2011 to the Planning Commission (attached as Exhibit C), as well as the letter in support of the appeal submitted on January 10, 2011 by Robin Mizell as official representative of the Market Place at Town Center to the Town Center Merchants’ Association (attached as Exhibit D and noting support from 10 merchants). These exhibits are incorporated to this appeal by this reference.

TC West was approved for 1,465,000 square feet of building space, 96 percent of which (1,405,000 sf) was designated for light manufacturing, research and development, and business and professional office use. The remaining 4 percent is to be **“uses of a service and retail nature ... limited to those which are ancillary to and in support of the primary uses within the development.”** (Ex. C and Ex. 2 thereto at pp. 4-5.) The full list of 15 permitted support retail uses in TC West (identified as “Category C” uses) are: “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.” (*Id.*)

Thus, TC West retail **“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). (*Id.*)

By contrast, TC East was approved to be the “central ‘people gathering place’ for El Dorado Hills. It is planned as an urban commercial precinct to simultaneously address several retail markets thus maximizing the potential variety of functional shopping, dining and leisure time activities available to meet the needs of residents of El Dorado Hills and the surrounding communities.” (Ex. C and Ex. 3 thereto at p. 2.) Rather than limited to “ancillary” “support” retail, TC East includes a broad variety – in excess of 70 – permitted retail and commercial uses categorized as “Highway and Neighborhood Services,” “Town Square,” and “Major Retail.” (*Id.* at pp. 2-7.)

Expressly listed “Major Retail” uses in TC East include **“Supermarket”** and **“Drug/Super Drug,”** as well as **“General Merchandise”** uses such as **“Department Store,” “Jr. department store,” “Variety Store”** and **“Discount department store.”** (*Id.* at p. 6.) This is why a CVS store (formerly Longs) is currently located in TC East, along with a Nugget market and Target.

These differing uses between the two plans demonstrate how they are to be “distinct yet complimentary,” with retail uses, including “Major Retail” like a drug store placed in TC East to “maximiz[e] the potential variety of functional shopping ... activities” and promote it as a “central gathering place.” The intent of the ancillary retail allowed in TC West is simply to support business park uses, not to create a competing major retail center to conflict with TC East.

B. Pre-Application and Planning Department and Commission Determination

The applicant proposes to place a 24-hour, 15,000 square foot drug store with a drive-thru, including beer and wine sales within TC West. 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 Ex. C and Ex. 2 thereto at p. 5.)

No written determination by the “Director of Planning” finding the Project in compliance with the TCW Development Plan was made. Rather, in response to the pre-application request, planning staff issued a letter that concluded as follows:

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 Ex. A and Ex. 5 thereto (staff letter); see also Ex. A and Ex. 6 thereto at p. 4.) The Planning Department’s letter did not provide any evidentiary support for this determination.

At the appeal to the Planning Commission, the Commission considered the issue de novo but denied the appeal, presumably upholding the Planning Department determination. However, the Commission did not adopt a resolution or set forth any written findings or interpretations as required by the TCW Design Guidelines and Development Standards.

C. The Planning Department and Planning Commission Erred in Finding a Drug Store “Similar In Nature” to Permitted TCW Retail Uses

The Planning Department and Planning Commission erred in concluding that a drug store use in Town Center West is “similar in nature” to the permitted retail uses in the TCW Development Plan. In fact, such a use is inconsistent and not in compliance with the TCW Development Plan and its associated Design Guidelines and Development Standards. Allowing such a use would be a major modification to that Plan requiring the processing of an amendment, including appropriate review pursuant to the California Environmental Quality Act.

The Planning Department’s and Commission’s determination that the proposed CVS drug store is “similar in nature” to other uses established in the development plan is not supported by any substantial evidence.

To the contrary:

- A drug store is not included in the limited list of permitted 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” along with other “General Merchandise” uses were specifically enumerated for TC East, where a CVS drug store, supermarket and other department stores (Target) are located;
- In a December 10, 2010 meeting with Planning Director Roger Trout, he indicated that in evaluating the pre-application, the Planning Department did not consider the TC East Development Plan or its associated Design Guidelines and Development Standards whatsoever, but confined its determination to the TCW Development Plan alone.³ (See Ex. A at p. 5.)
- Mr. Trout also indicated that the Planning Department would have found virtually any commercial use in compliance with the TCW Development Plan at the Project Site because the property in question is not bordered by residences or other sensitive uses, and is located on a major street.

The failure to consider the TCE Development Plan is clear error and demonstrates that the consideration of this issue was flawed from the start. Both the TCW and TCE plans state a clear intent that they are “complimentary,” and that TCE is to be a retail center including major regional-serving retail like a drug store, supermarket, and general merchandise whereas TCW is to be a business park with limited support retail.

The only way to determine if the two plans are being interpreted in a complimentary fashion is to take both into account in order to avoid a conflicting determination. Clearly, there was a reason that one plan included limited support retail uses, while the other included broad major retail uses, including specifically drug store and general merchandise uses. The proposed use would clearly and significantly change the character and intent of what was envisioned, planned, studied and approved in the Town Center West and East Development Plans.

Similarly, the County has used an erroneous standard, i.e. whether the proposed use can be accommodated at the site. The TCW Design Guidelines and Development Standards only allow uses other than the limited ones established when the proposed use is “similar in nature” to the established uses. Whether a site could conceivably accommodate the proposed use is not the standard and ignores the clear direction set forth in the plan.

³ At the Planning Commission hearing on the appeal, planner Gina Paolini, in presenting the staff report, confirmed that the TCE Development Plan was not considered.

The County's only potential support for finding a drug store "similar in nature" to the listed uses is that it contains some products that the listed uses include. For instance, the current CVS has a limited selection of magazines and office supplies.

However, solely because a drug store may contain some products offered by the listed uses, does not mean it is "similar in nature." The standard is whether the proposed use is similar in nature to the retail uses listed. The nature of a drug store is akin to a general merchandise discount department store or grocery store, targeting neighborhood residents. Unlike the listed TC West uses, its intent is not to support business uses.

This fact is clear considering that the nearby CVS, which is approximately 20,000 square feet and includes 18 two-sided aisles, devotes less than one collective aisle to magazine, office supply and stationary products (i.e., 5 percent). It devotes significantly more space to toys, home accessories, cookware, toiletries, and grocery items. A multi-department, general merchandise drug store is expressly intended to be in TC East, and is qualitatively different and dissimilar from the "ancillary" "support retail" allowed in TC West.

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) would not only establish a bad precedent, but is contrary to and undermines the planning approvals for both centers. Rather than compliment the major retail component of TC East, placing such a general merchandise retail anchor drug store in TC West would put the two centers at cross-purposes and serve to cannibalize and draw customers away from the TC East retail center to its detriment, increasing vacancies and ultimately blight in what is supposed to be a vibrant central retail hub at a major and visual entrance to the community.

Clearly, had it wanted to, the Board of Supervisors could have included major retail and general merchandise uses such as a drug store, variety store, department store or supermarket in the TCW Development Plan as evidenced by their express *inclusion* in the TCE Development Plan. Their exclusion was purposeful since including such retail in TCW would be contrary to TCE's approval as a retail center. The Planning Department and Commission erred by ignoring this clear and purposeful distinction.⁴

The considerations relied on by the Planning Department and upheld by the Planning Commission are not those set forth in the TCW Development Plan to determining compliance,

⁴ 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 Ex. C and Ex. 3 thereto at p. 7.) The TCW Guidelines and Standards make no mention of permitting drive-thru facilities.

nor do they constitute substantial evidence in support of such a finding.⁵ The clear dissimilarity between the proposed use and those set out in the TCW Development Plan, coupled with the purposeful inclusion of a drug store and general merchandise store in the TCE Development Plan demonstrate that 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.

D. The County Has Not Complied with CEQA

The TCW Development Plan states that site specific project approvals are a ministerial act of the planning department. However, as noted above, approval of the proposed use is inconsistent with the approved plan and would represent a significant change and modification to the plan through the exercise of discretion. The plan's self-serving statement that project approvals are ministerial is not conclusive; an agency must act in accordance with the CEQA guidelines and the objectives of CEQA. (See *Friends of Westwood, Inc. v City of Los Angeles* (1987) 191 Cal.App.3d 259, 270.)

The County has not performed any CEQA analysis regarding this determination as required. (See Pub. Res. Code § 21166; 14 Cal.Code Regs § 15162(c).)⁶ In addition, the negative declaration adopted for the TCW Development Plan did not purport to include the entirety of the Project site. (Compare APN numbers in TCW environmental review project description (at p. 2) [attached hereto as Exhibit E] and Ex. A and Ex. 6 thereto at p. 1 [Pre-Application Worksheet].)

E. The Proposed Use is Inconsistent with the Current General Plan and Zoning Map Designations

Staff acknowledges that the current zoning and General Plan designation for the Project is inconsistent with the TCW Development Plan and the proposed Project as the site's General Plan designation Research and Development and zoned Research and Development-Community Design Review. (Ex. A and Ex. 6 thereto at pp. 1-2.) The planning department worksheet indicates that a "rezone clean-up" should occur in the future (*Id.* at p. 4), however the County has not adopted the required legislation to make these required changes. Further, a county may not grant an ad hoc zoning exception to benefit one parcel. (*Neighbors in Support of Appropriate Land Use v. County of Tuolumne* (2007) 157 Cal.App.4th 997.)

⁵ Further, no use "similar in nature" to a drug store has been "established" in TC West. Current uses include a large Blue Shield office complex and a manufacturing facility.

⁶ For example, allowing a major retail anchor such as a large drug store would have far different traffic impacts than the support retail uses listed and studied in the environmental review done in connection with adoption of the TC West Development Plan over 15 years ago and the Specific Plan over 22 years ago.

F. The Applicant is Attempting to Amend the TC West Development Plan Without Public Scrutiny

The applicant is seeking to approve a use in TC West clearly contrary to those permitted in the plan and fundamentally in conflict with the purpose behind the two complimentary plans. The proper procedure to make such a change is to process an amendment to the development plan, allowing for a public process, including a noticed hearing, input from neighbors, affected merchants and owners, as well as compliance with CEQA.

Here, in seeking a determination that a drug store use complies with the TCW Development Plan, the applicant incorrectly represented to staff that the TC West plan allows for a “convenient store” and “drug stores.” (*See Ex. C and Ex. 5 thereto at p. 1 [7/13/09 letter from Mansour Company].*) As noted above, such uses are not included in the TC West Development Plan, but are expressly *included* in the TC East plan. Further, the applicant’s request did not identify that the proposal involved relocation of an existing CVS Drug Store from TC East to TC West (nor did staff’s determination mention CVS).

This is not the first time this applicant has attempted to avoid public scrutiny and substantively amend the TCW Development Plan without processing an amendment. In 2005, the applicant sought a planning department finding – without any public notice or Planning Commission review – that (1) “warehouse type retail” was similar in nature to allowed TC West uses, (2) that there was no square footage limitation for any particular use within the allowed 1,465,000 square feet (i.e., that TC West could be entirely retail); and (3) permitting a large home improvement center in TC West. (*See Ex. C and Ex. 4 thereto at p. 2.*) The applicant made this request even though, like here, “Home Improvement” retail was specifically included among the TC East permitted uses, but not included among TC West uses. (*See Ex. C and Ex. 3 thereto at p. 6.*)

In that instance, staff and the Planning Commission correctly identified that a consistency finding could not be made and that an amendment to the development plan was necessary to approve such a use since the Board of Supervisors had “made a distinct decision when developing the list of permitted uses...” (*See Ex. C and Ex. 4 thereto at p. 3.*)

The same is true here. Owners and merchants in TC East have made significant investments based on the approved TCE and TCW planning documents and depend on the correct exercise of discretion when an unlisted use is proposed.

Under the applicant’s theory (and the planning department’s conclusion), virtually any retail use should be allowed at the Project site. Such a view would make irrelevant the careful planning and approval that went into the TC West and East plans.

Any attempt to transform TC West from a business park with limited ancillary support retail, into a development with a “Major Retail” general merchandise anchor such as a drug store requires an amendment to the plan. *See County Code § 17.04.070 (change in use or intent of*

development plan is a “major change”). If the passage of time and current circumstances has made the approved plans outdated, then an amendment should be processed pursuant to the County Code, rather than promoting a tortured and unsubstantiated interpretation to approve an unpermitted use. The approved TC West Development Plan does not allow anything remotely approaching a 24-hour, drug store with wine and beer sales and a drive-thru.⁷

G. Threat of Litigation Should Not Be a Basis for Denial of the Appeal

This item was presented to the Board in closed session on January 4, 2011. The Board voted to allow the appeal to be heard de novo by the Planning Commission. Though no litigation had been threatened, the Planning Commission also recessed into closed session for nearly 30 minutes regarding this item during its January 13, 2011 hearing. No action was reported out of closed session.

We are concerned about the appropriateness of a closed session hearing to the Planning Commission in absence of a threat of litigation (particularly in light of the Board waiving the 10-day appeal period after concluding that the County did not provide notice of the planning department’s original decision as requested by Syers). County Counsel may be concerned that the project applicant or parcel owner may sue if the Board grants the appeal and finds that a drug store use is not a permitted use under the TC West Development Plan. However, such a claim is without merit for several reasons.

First, the applicant (El Dorado Hills Investors) obtained the pre-application letter from staff in September 2009. However, no permit application was filed until the following summer and no permits were issued prior to the filing of the appeal. In addition, no development agreement applies to the Project site, nor does any basis for vested rights exist.

Further, as the County’s Pre-Application and Conceptual Review handout (available on the County’s website) clearly cautions “while staff will take utmost care to accurately represent County Codes, policies and applicable past positions of staff, the Planning Commission and the Board of Supervisors, it should be noted that matters discussed in the Pre-Application meeting should be not construed to bind, restrict or obligate the staff or review boards when processing a subsequent application.” (See also Ex. A and Ex. 6 thereto at p. 5 [pre-application worksheet disclaimer].) As such any reliance by the applicant, or other parties not referenced in the pre-application request, on pre-application statements by the planning staff would not estop the Board from ultimately concluding that drug store is not a permitted use under the TCW Development Plan.

H. Conclusion

⁷ Syers has submitted preliminary plans for a 15,000 drug store location (including a drive-thru pharmacy) within the Town Center East Market Place, thereby accommodating the proposed project consistent with the TC East Development Plan. (See Ex. C and Ex. 6 thereto.)

For the reasons stated herein, as well as those set forth in the appeal, we respectfully ask the Board of Supervisors to grant the appeal and find that a drug store is not a permitted use pursuant to the TC West Development Plan.

Very truly yours,

MORGAN MILLER BLAIR



TODD A. WILLIAMS

TAW:st

Attachments (with Appeal Form and Appeal Fee of \$200 sent to the Planning Department only)

cc: Client

File Number: _____
Date Received: _____

Receipt No.: _____
Amount: _____

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

EXHIBIT A

Morgan Miller Blair

A Law Corporation
1331 N. California Blvd. Suite 200
Walnut Creek, CA 94596
Telephone : (925) 937-3600

The Mechanics Bank
Walnut Creek Office
Walnut Creek, CA 94596

124227

*** Two Hundred & No/100 Dollars

Check Date	Control No.	Amount
12/14/2010	124227	***\$ 200.00

PAY County of El Dorado
to the
Order of

2 Signatures Required over \$5,000
Void after 90 Days

Steven R. Hansen

Security Features Details on back

Morgan Miller Blair
A Law Corporation

Check No. 124227

Invoice Date	Invoice No.	Description	Amount
12/14/2010	12/14/10	re #10093-001	200.00

Check Date	Check Number	** Check Total **
12/14/2010	124227	200.00

TODD A. WILLIAMS
(925) 979-3352
twilliams@mmlaw.com

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



Morgan Miller Blair
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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:

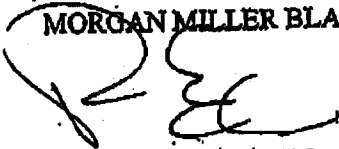
We represent the owners of The Marketplace at Town Center East in El Dorado Hills. The purpose of this letter is to request that I be added to the mailing list to receive notifications of any public meetings or hearings relating to Town Center West and/or Town Center East and to receive notifications 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

APPEAL FORM TO BOS
11-0155.D.21



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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:10093-001:1131449.1

Exhibit 2

APPEAL FORM TO BOS
11-0155.D.22

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



Morgan Miller Blair
A LAW CORPORATION

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pecurtin@mmbblaw.com

November 19, 2010

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

Re: Pts 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?

MOAB:10083-001:1035756.1

Exhibit 3

APPEAL FORM TO BOS
11-0155.D.24

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

PBC:dm

cc: Client

MRB:10093-001:1139794.1



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pcurtin@mmbblaw.com

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

APPEAL FORM TO BOS
11-0155.D.26

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

Roger Trout
December 1, 2010
Page 3

"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.

MMB:10093-001:1138454.1



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pecurtin@mmblaw.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

MMD:10093-001:519706.1



MorganMillerBlair
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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

APPEAL FORM TO BOS
11-0155.D.30

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:10693-001:1131443.1



Morgan Miller Blair
A LAW CORPORATION

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PATRICK E. CURTIN
Direct: (925) 979-3353
pcurtin@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?

MMD:10093-001:1135756.1

EXHIBIT 3

APPEAL FORM TO BOS
11-0155.D.32

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

MMB:10093-001:1133736.1



EL DORADO COUNTY
PLANNING DEPARTMENT

2850 Fairlane Court
Placerville, CA 95667

<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

APPEAL FORM TO BOS
11-0155.D.34



EL DORADO COUNTY PLANNING SERVICES

2850 Fairlane Court
Placerville, CA 95667

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Phone: (530) 621-5955
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:

- 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
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.

Computer technologies
Digital Information Transfer Processes
Laboratories-scientific, research and testing
Photocopying and Printing Services

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 Investment Brokerage
Medical/Dental Professional Associations
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.

Architect
Financial Brokerage
Land Planner
Surveyor

Attorney
Financial Institution

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	60,000¹	1,465,000²

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.



TODD A. WILLIAMS
(925) 979-3352
twilliams@mmlblaw.com

December 30, 2010

VIA E-MAIL, FACSIMILE AND FEDERAL EXPRESS

Board of Supervisors
c/o Clerk of the Board of Supervisors
County of El Dorado, Government Center
330 Fair Lane
Placerville, CA 95667

Re: January 4, 2011 Board of Supervisors Meeting, Closed
Session Agenda Item re Appeal of Determination of
Consistency with Town Center West Development Plan
Our File No. 10093-001

Dear Honorable Supervisors:

We submit this letter on behalf of Syers Properties III, LLC ("Syers"), owner of the MarketPlace at Town Center East (south of Hwy. 50 at Latrobe Road). Earlier this month, Syers appealed a decision made by the planning department in connection with the Town Center West Development Plan.

Typically this appeal would go to the Planning Commission; however, under County Counsel's direction, an item has first been put on your January 4, 2011 closed session agenda to decide whether to allow this appeal to be heard by the Planning Commission at its January 13, 2011 meeting.¹

We understand Syers' full appeal letter will be placed in your agenda packet. The purpose of this letter is to focus on the narrow question of why the appeal should be allowed to go forward and be heard. (Attached hereto are bullet points that summarize the issues involved.)

Background: The Town Center West Development Plan ("TC West") was approved in 1995 (along with a TC East Development Plan). (See attached map of TC West and TC East.)

¹ Although this is a closed session item, neither the appeal, nor the documents submitted in support of it, threaten litigation. They simply, as required, raise the grounds upon which the appeal is based.

EXHIBIT B

TC West was approved as a business park with limited "support" retail services such as a barber shop, nail salon, copy center, dry cleaners, gas station, deli, etc. However, drug store and supermarket were not among the included uses. TC East, on the other hand, was approved as a retail center, specifically listed drug store and supermarket among numerous other allowed retail uses, and in fact contains a drug store and supermarket. (See attached TC East and MarketPlace site plans.)

Under the TC West Development Plan, an applicant can request a determination that a proposed use is in compliance with the plan. An applicant proposed a 15,000 square foot drug store in TC West, and the planning department ultimately found that the use, while not included in the TC West approval documents, was "similar in nature" to those listed and found that it complied. However, no permits have been issued for this proposed use to actually be constructed.

The planning department determination was made in September 2009. In June 2005, Syers lodged a written request for notice of any planning department action or requested action concerning TC East and TC West. Although this notice request was received, the planning department did not notify Syers of its decision concerning the drug store application or that a compliance finding was requested.

Syers recently became aware of the project and inquired whether a compliance finding had been made, believing that the proposed use was inconsistent with the TC West approvals. The planning department indicated that the determination was "preliminary" and that he would have an opportunity to object. However, when Syers' representatives met with the planning director on December 10, 2010, they learned that the compliance finding was not preliminary and that the only avenue to object was through an appeal. An appeal was then filed on December 15, 2010, challenging the basis of the compliance finding.

Why the Appeal Should Go Forward: Syers is concerned about its property interests as well as those of the TC East merchants that may be impacted by nearby TC West developments, including installation of a large drug store. As stated, Syers has had a request for notice on file in the planning department regarding decisions such as the one at issue. The planning department acknowledged it received this request, but no notice was provided. Once Syers learned the determination had been made – and was not preliminary – it immediately filed an appeal.

The TC West Development Plan allows for Planning Commission consideration regarding compliance determinations made by the planning department. It does not specify a deadline to request such consideration. As noted, Syers filed the appeal as soon as it was definitively informed that a compliance finding had been made (after earlier being told that there would be an opportunity to object).

No permits have been issued for the project about which the compliance finding was requested, and no other basis exists that would provide vested rights. Approximately 10

MarketPlace merchants have already indicated their support for the appeal to Syers and ask that it be heard.²

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. (*Horn v. County of Ventura* (1979) 24 Cal.3d 605, 612; *Scott v. City of Indian Wells* (1972) 541, 548-549.) Such notice was not given to anyone despite Syers' clear request.

In summary, there are several compelling reasons to allow the Planning Commission to hear the appeal as it raises legitimate concerns that were timely raised under the circumstances, including a the failure to provide the requested notice so affected parties could voice their concerns. As such, we ask that you allow the appeal to move forward.

Very truly yours,

MORGAN MILLER BLAIR



TODD A. WILLIAMS

TAW:st
Attachment

cc: Paula Frantz, Esq., Deputy County Counsel
Client

² In addition, Syers has submitted preliminary plans for a 15,000 drug store location (including a drive-thru pharmacy) within MarketPlace, thereby accommodating the proposed project (new CVS drug store) within TC East as envisioned by the development approvals. (See attached preliminary site plans.)

Bullet Points for Supervisors re Appeal

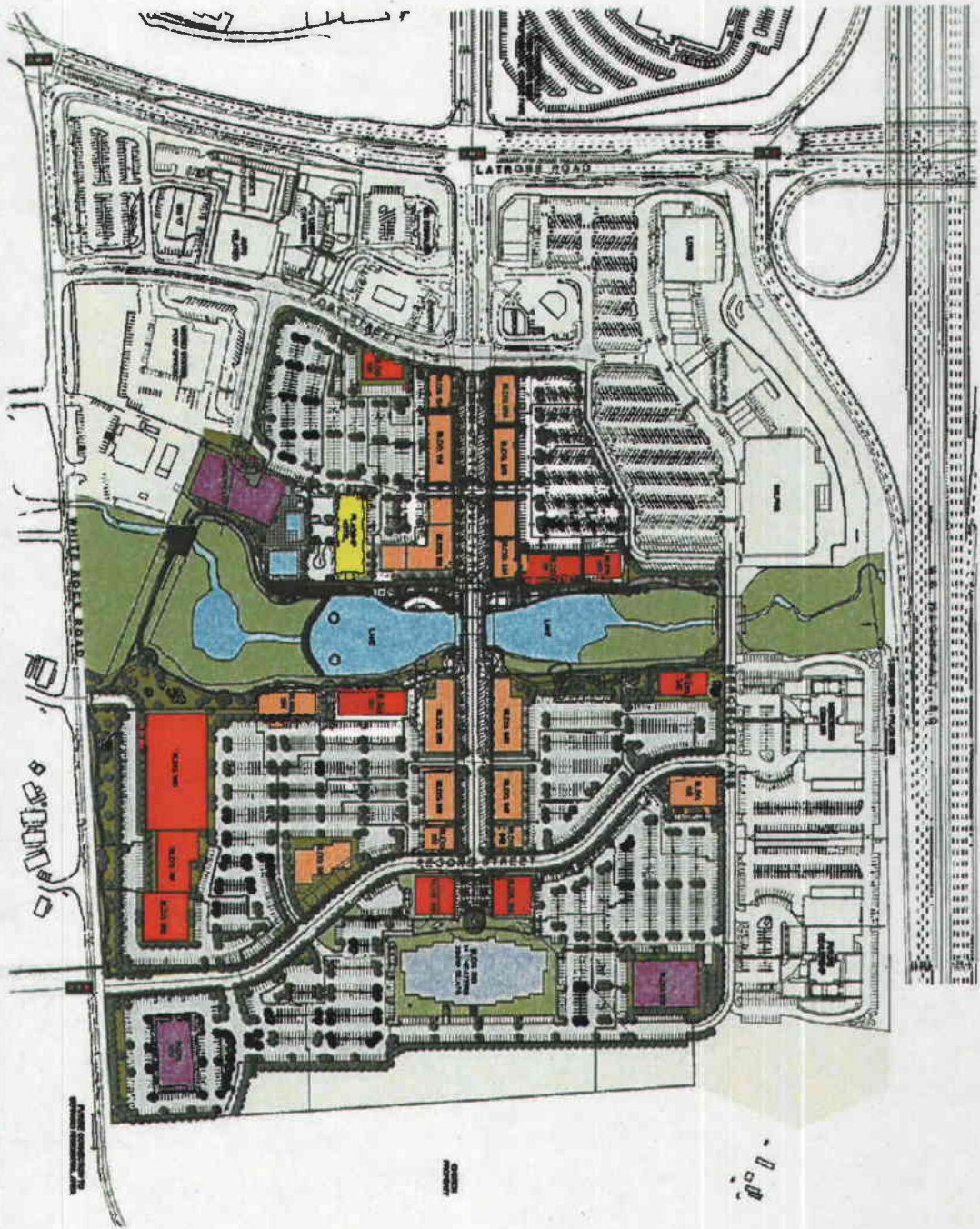
- Owners and tenants in Town Center East ("TC East") invested based on planning documents. Planning documents for Town Center West ("TC West") allow for very limited "support retail services" uses, and do not include anything remotely approaching a 24-hour, drug store with wine and beer sales and a drive-thru pharmacy.
 - TC East (as approved by Board) approved for "general retail and service commercial uses;" specifically included "drug store," "pharmacy" and "market"
 - TC West (as approved by Board) planned and approved as an employment center with ancillary and limited "support retail services" including, "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."
 - TC East purposefully includes larger-scale retail. Board's inclusion of large-scale multi-department retail like "drug store" and "market" in TC East - but not TC West - shows an intent that such uses don't belong in TC West.
- Planning staff found that while drug store was not specifically permitted, it was "similar in nature" to uses established for Town Center West. No support for this conclusion as it is contrary to, and inconsistent with what is in TC West and TC East approvals.
- This determination is a major concern to Town Center East owners and businesses and was made without any notice or chance to comment as we requested.
- This is not a landlord-tenant issue. Objection is about drug store being found consistent, not about CVS. We would make the same objection if it were Walgreens, Rite-Aid, etc.
- Syers has tried to stay on top of this and asked for notice, but didn't receive any. Once we found that a compliance finding had been made, we acted as quickly as possible.
 - Standing request for notice in 2005, staff acknowledged it was in the file, but no explanation why it wasn't acted upon;
 - Got differing info this fall when we followed up, i.e. that compliance determination was preliminary and that we'd have an opportunity to object, then told it was final
- Not our intent to delay anyone. No permits issued yet. We just want a chance to voice our concerns that a drug store is not within the type of contemplated uses in TC West.
- We have not threatened litigation, just pointed out what we believe were errors by planning department in making finding of compliance.
- Owners and tenants deserve the opportunity to be heard on this, and have acted responsibly in promptly requesting a hearing once informed a determination was made.



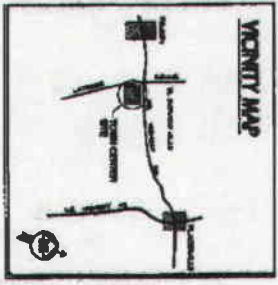


EL DORADO HILLS TOWN CENTER

El Dorado Hills, California



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LEGEND	
[Symbol]	RETAIL/RESTAURANT SPACE
[Symbol]	HOOD USE RETAIL, 1ST FLOOR
[Symbol]	HOOD
[Symbol]	OFFICE/OTHER
[Symbol]	TRUCKS
[Symbol]	PARKING
[Symbol]	EXISTING TOWN CENTER DEVELOPMENT
[Symbol]	SIGNAL LIGHT

CONCEPTUAL SITE PLAN

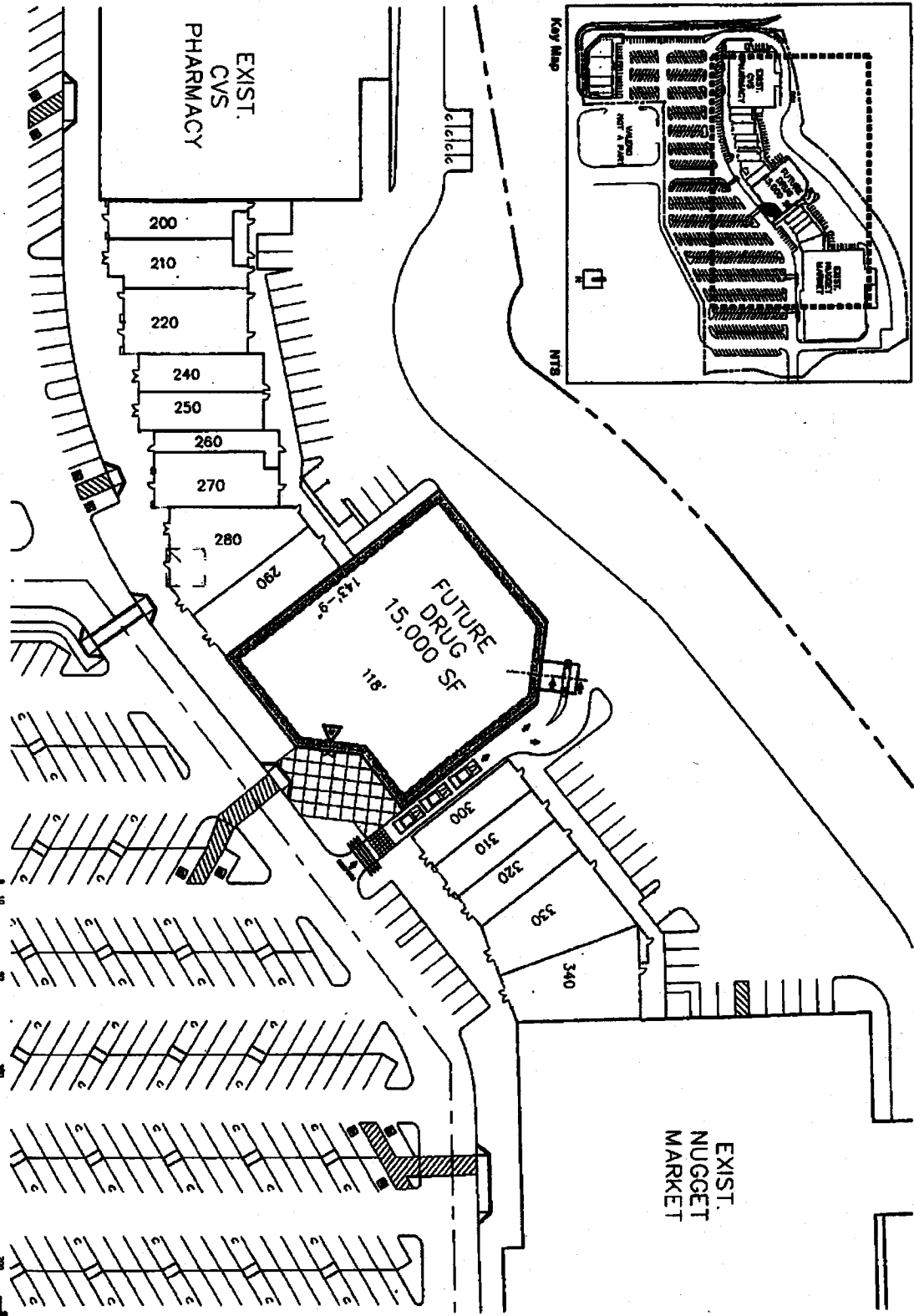
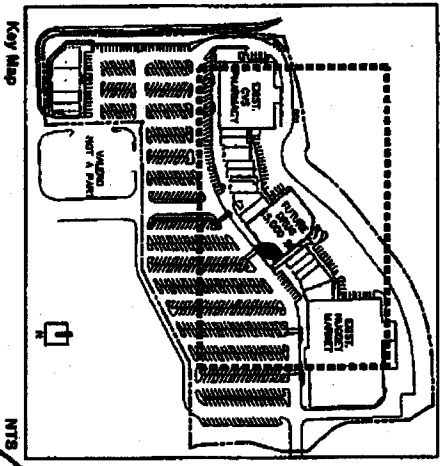
12.08
3 October, 2013





EXISTING SITE PLAN

MarketPlace
 Et Dornio Hills, CA



Town Center Marketplace

NEC Lafayette Road and Town Center Boulevard
El Dorado Hills, California

Scale: 1" = 50'-0"

Project:
Town Center Marketplace
NEC Lafayette Road and Town Center Blvd
El Dorado Hills, California

Architect:
The Group Architects
1700 North Main Street
Orange, CA 92667
Tel: 714.761.1111

Site Plan - Option 1

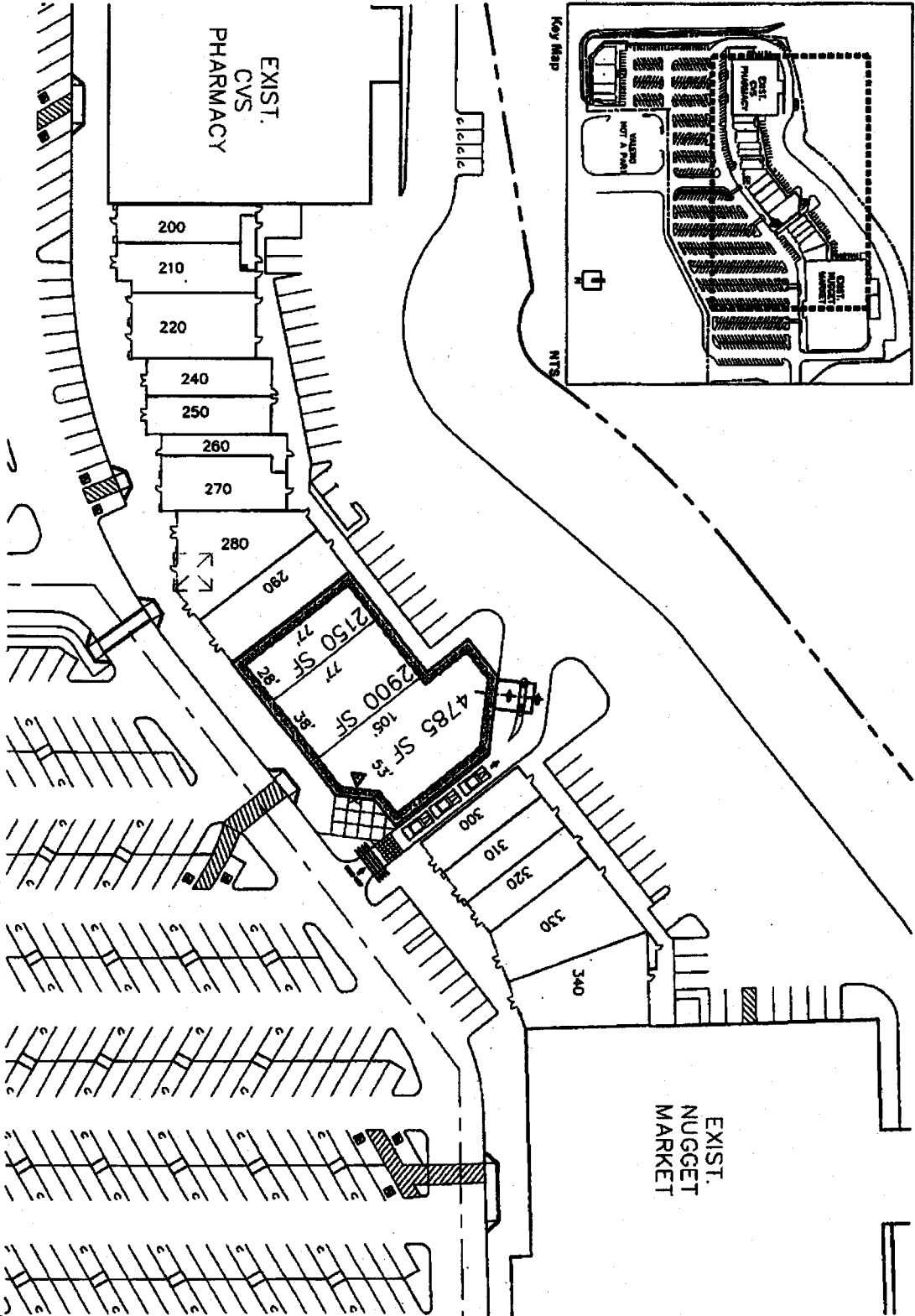
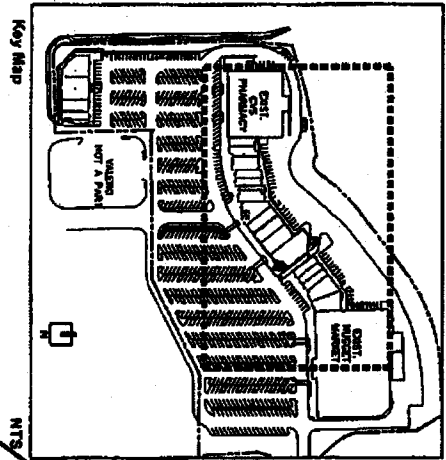
Site Number:	SP.01
Date:	12/21/10
Project Name:	Town Center Marketplace
Project Type:	Commercial
Project Address:	NEC Lafayette Road and Town Center Blvd, El Dorado Hills, CA

APPROVED: [Signature]

APPROVED: [Signature]

APPROVED: [Signature]

APPROVED: [Signature]



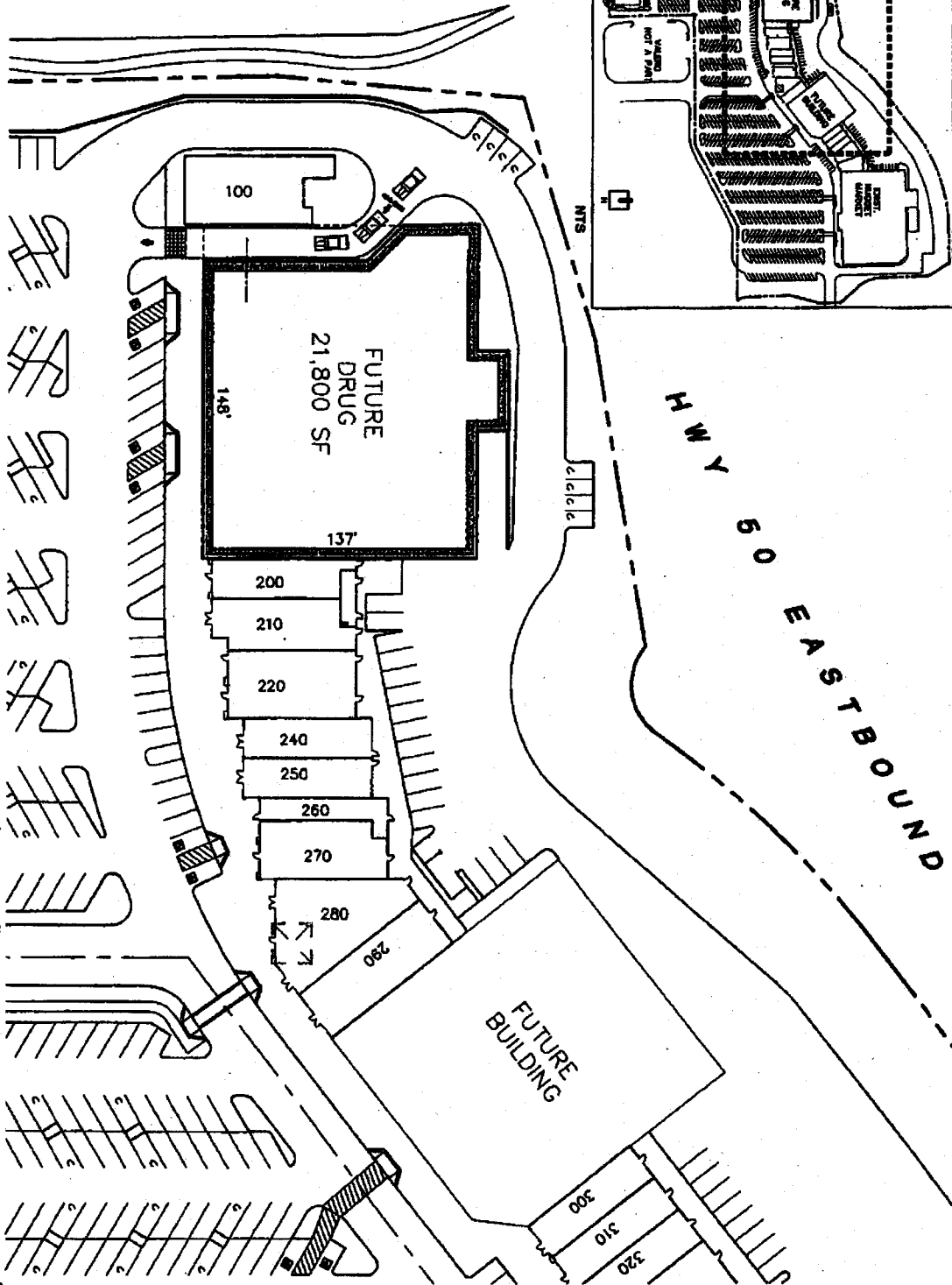
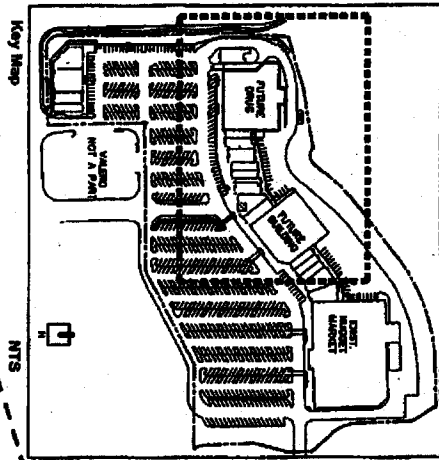
Town Center Marketplace

NEC Lathrop Road and Town Center Boulevard
El Dorado Hills, California

Scale: 1" = 50'-0"



Project:	
Town Center Marketplace	
14700 Lathrop Rd. and Town Center Blvd. El Dorado Hills, California	
Developer:	
Town Center Marketplace 14700 Lathrop Rd. and Town Center Blvd. El Dorado Hills, California	
Site Plan - Option 2	
Site:	SP.01
Scale:	1" = 50'-0"
RAUSCHENBACH HANTRILL SECKEN	
14700 Lathrop Rd. and Town Center Blvd. El Dorado Hills, California	



Town Center Marketplace ■ NEC Larcaba Road and Town Center Boulevard
 El Dorado Hills, California

Scale: 1" = 50'-0"

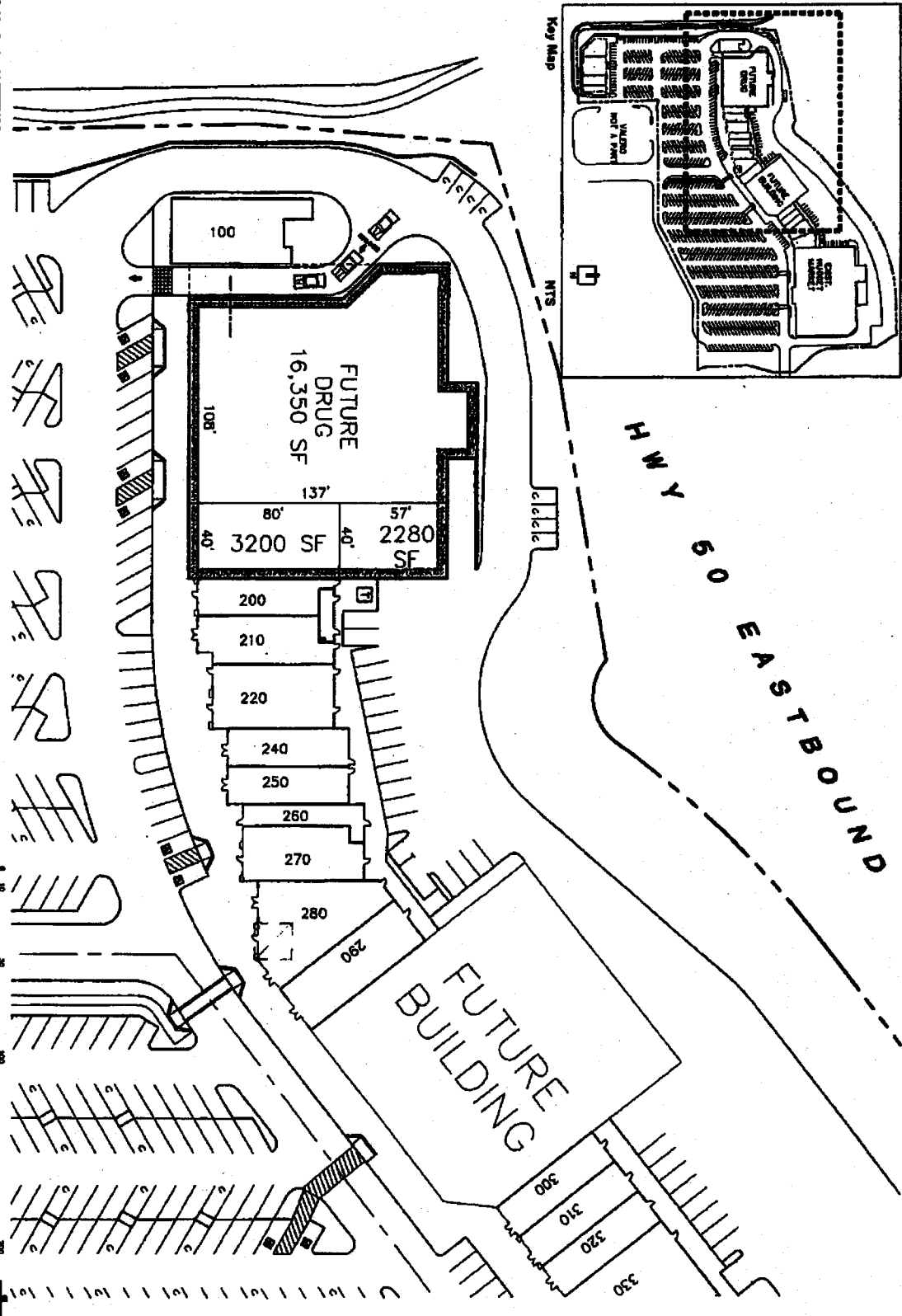
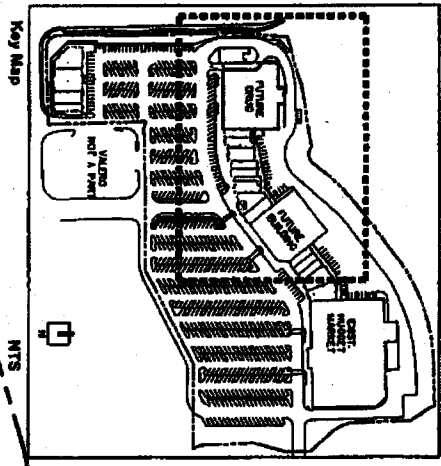
Project:
 Town Center Marketplace
 1000 Larcaba Road and Town Center Blvd.
 El Dorado Hills, California

Developer:
 Town Center Marketplace
 1000 Larcaba Road and Town Center Blvd.
 El Dorado Hills, California

Site Plan - Option 3

Scale:
 1" = 50'-0"

ARCHITECTURAL MATERIALS SECTION
 ARCHITECT: [Logo]
 1000 Larcaba Road and Town Center Blvd., El Dorado Hills, CA 95761
 Telephone: (916) 437-1111



Town Center Marketplace ■ NEQ Lathrop Road and Town Center Boulevard
El Dorado Hills, California

Scale: 1" = 50'-0"



Project:
Town Center Marketplace
NEQ Lathrop Road and Town Center Boulevard
El Dorado Hills, California

Developer:
Town Center Marketplace
NEQ Lathrop Road and Town Center Boulevard
El Dorado Hills, California

Site Plan - Option 4

Scale:
1" = 50'-0"

DATE:
1/25/01

PROJECT:
TOWN CENTER MARKETPLACE

DESIGNER:
GORDON KERR ARCHITECTS
10000 LATHROP ROAD, SUITE 100
EL DORADO HILLS, CALIFORNIA 95762
TEL: (916) 438-1100 FAX: (916) 438-1101



TODD A. WILLIAMS
(925) 979-3352
twilliams@mmblaw.com

January 11, 2011

VIA E-MAIL, FACSIMILE AND FEDERAL EXPRESS

Planning Commission
c/o County of El Dorado Planning Services
2850 Fairlane Court, Building C
Placerville, CA 95667

Re: January 13, 2011 Planning Commission Meeting,
Item No. 9: Appeal of Determination on Pre-application
PA09-0011 within Town Center West
Our File No. 10093-001

Dear Honorable Commissioners:

We submit this letter on behalf of the appellant Syers Properties III, LLC ("Syers"), owner of the Market Place at Town Center East (south of Hwy. 50 at Latrobe Road). Syers appeals a planning department determination that a 15,000 square foot, 24-hour drug store with a drive-thru and beer and wine sales is "similar in nature" to permitted uses in the Town Center West Development Plan (PD95-002). On January 4, 2011, the Board of Supervisors voted to allow this appeal to heard by the Planning Commission. This letter focuses on the reasons why the appeal should be granted.¹

I. Town Center West and East are "Distinct Yet Complimentary" Developments.

The Town Center West Development Plan ("TC West") and the Town Center East Development Plan ("TC East") each grew out of the El Dorado Hills Specific Plan, were processed concurrently, and were both approved 1995. (See Ex. 1, attached map of TC West and TC East.) Relevant excerpts of the TC West and TC East Design Guidelines and Development Standards are attached hereto as Exhibits 2 and 3, respectively.

¹ Although the Board decision was made in closed session, neither the appellant, nor the appeal itself nor documents submitted in support, threaten litigation.

EXHIBIT C

As both plans make clear, "The Town Center consists of two distinct yet complimentary components – Town Center East and Town Center West." (Ex. 2 at p. 1 (emphasis added), see also Ex. 3 at p. 1.) They explain:

Retail and service commercial uses are concentrated within Town Center East. It is here that highway commercial uses are sited so as to achieve a high degree of visibility from U.S. Highway 50 while neighborhood and community uses are located in areas of convenient access and within the Town Square – the heart of Town Center East. Larger, more regionally oriented uses are accommodated within the Major Retail area and can be accessed from both Latrobe and White Rock Roads. **Town Center West** is planned as an employment center of mid- and low-rise buildings within five planning areas. Ancillary uses which could be accommodated include a conference hotel facility and support retail services.

(Ex. 2 at p. 1 (emphasis added), see also, Ex. 3 at p. 1.)

Thus, TC West was approved as a business park. That plan approved 1,465,000 square feet of building space, 96 percent of which (1,405,000 sf) was designated for light manufacturing, research and development, and business and professional office use. (Ex. 2 at pp. 3-5.) The remaining 4 percent is to be "uses of a service and retail nature ... limited to those which are ancillary to and in support of the primary uses within the development." (Ex. 2 at pp. 4-5.) The full list of permitted support retail uses are: "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." (Ex. 2 at p. 5) "Drug store," "supermarket," and "department store" are not included.

By contrast, TC East was approved to be the "central 'people gathering place' for El Dorado Hills. It is planned as an urban commercial precinct to simultaneously address several retail markets thus maximizing the potential variety of functional shopping, dining and leisure time activities available to meet the needs of residents of El Dorado Hills and the surrounding communities." (Ex. 3 at p. 2.) Rather than be limited to "ancillary" "support" retail, TC East includes a broad variety of permitted retail and commercial uses categorized as "Highway and Neighborhood Services," "Town Square," and "Major Retail." (Ex. 3 at pp. 2-7.)

Expressly permitted "Major Retail" uses in TC East include "Supermarket," "Drug/Super Drug," "Department Store," and "Variety Store." (Ex. 3 at p. 6.)

These differing uses between the two plans demonstrate how they are to be "distinct yet complimentary," with retail, including "Major Retail," and service commercial uses contained in TC East, while business park uses and ancillary support retail uses are contained in TC West.

II. A 15,000 SF Drug Store is not "Similar in Nature" to Ancillary Support Retail Uses, but is a "Major Retail" Use.

The applicant proposes to place a 24-hour, 15,000 square foot drug store with a drive-thru, including beer and wine sales within TC West. Planning staff concluded that such a use, while not among those listed in TC West, was "similar in nature" to other uses established in the TC West development plan. (See appeal (attached as Ex. B to the 12/21/10 Staff Report, and Ex. 5 thereto). No evidentiary support was provided or cited for this conclusion.²

The Planning Director stated that in making this determination, staff did not consider the TC East Development Plan or take it into account. (See 12/14/10 appeal letter at p. 5.) Further, he indicated that staff would have found virtually any proposed retail use in compliance with the TC West Development Plan based on the location of the project site along a major street and not immediately adjacent to residences.

Staff's determination, including its failure to consider the TC East Development Plan and that virtually any retail use would be allowed, is contrary to the approved plans, an abuse of discretion, unreasonable and unsupported by substantial evidence.

These two companion development plans are "distinct, yet complimentary" and were processed at the same time pursuant to the same specific plan. Clearly, each is relevant to the other when it comes to which uses may be permitted. Nothing in the TC West plan suggests that "Major Retail" uses such as a supermarket, drug store or variety store like the one being proposed, would be allowed or are "similar in nature" to the ancillary support retail uses that are permitted under that plan.

In fact, the opposite is true. Such uses are expressly permitted in Town Center East but not included in Town Center West suggesting a purposeful exclusion. The Planning Staff has reached this conclusion previously. "The Board of Supervisors made a distinct decision when developing the list of permitted uses within the Development Plan...." (Staff memo dated 5/3/05, attached as Exhibit 4.)

Both plans allow for the possibility of unspecified uses, but only when such uses are found to be "similar in nature to those established" within the applicable development. (Ex. 2 at p. 5, Ex. 3 at p. 8.) Here, no general merchandise, supermarket or drug store uses are included within the limited uses set forth in the TC West Development Plan, but are *expressly included* in the TC East plan.

Had such uses been intended for TC West as well, they could have and would have been included. The reason they are not is obvious: the two plans are to be "distinct yet

² Although the planning department determination was made in September 2009, no permits were applied for until June 2010 and none have been issued at the time this appeal was filed. No bases for vested rights exist regarding the project site.

complimentary.” Allowing major retail anchors like a drug store, supermarket or department store in TC West violates the fundamental concept behind the two plans. Rather than compliment the major retail component of TC East, placing such uses in TC West would put the two centers at cross-purposes and serve to cannibalize and draw customers away from the TC East retail center to its detriment, increasing the chance of vacancies and ultimately blight in what is supposed to be a central retail hub.

In addition, finding that a large drug store is “similar in nature” to the other uses would set a troubling precedent for other “Major Retail” uses such as a supermarket and department store, further pitting the two developments against each other and eroding the purpose behind these complimentary plans.³ That such stores may, for instance, sell flowers or pens does not make them “similar in nature” to the listed TC West retail uses like a florist or a stationary store. Instead, such major variety and department stores are – by their nature – dissimilar and qualitatively different from “ancillary” “support retail.” This is made clear by their classification as “Major Retail” in the TC East Development Plan.

III. The Applicant is Attempting to Amend the TC West Development Plan Without Public Scrutiny.

The applicant is seeking to approve a use in TC West that is clearly contrary to those permitted in the plan and fundamentally in conflict with the purpose behind the two complimentary plans. The proper procedure to make such a change would be to process an amendment to the development plan, allowing for a public process, including a noticed hearing, input from neighbors, affected merchants and owners, as well as compliance with CEQA.⁴

Here, in seeking a letter from the planning department that the proposed drug store use complied with the TC West development plan, the applicant did not identify that the proposal involved relocation of an existing CVS Drug Store from Town Center East to Town Center West. (Nor does staff’s determination mention CVS.) Further, the applicant’s request incorrectly represented to staff that the TC West plan allows for a “convenient store” and “drug stores.” (See 7/13/09 letter from Mansour Company at p. 1, attached hereto as Exhibit 5.) As noted above, such uses are not included in the TC West Development Plan, but are expressly included in the TC East plan.⁵

³ Further, no use “similar in nature” to a drug store has been “established” in TC West. Current uses include a large Blue Shield office complex and a manufacturing facility.

⁴ Though the planning department compliance review is designed to be ministerial, when an inconsistent use is approved it is akin to a discretionary determination made without the required environmental review. For instance, allowing a major retail anchor such as a large drug store would have far different traffic impacts than the support retail uses listed and studied in the environmental review performed in connection with adoption of the TC West Development Plan.

⁵ In addition, Syers has submitted preliminary plans for a 15,000 drug store location (including a drive-thru pharmacy) within the Town Center East Market Place, thereby accommodating the

This is not the first time the applicant has attempted to avoid public scrutiny and substantively amend the TC West Development Plan without processing an amendment. In 2005, the applicant sought a planning department finding – without any public notice or Planning Commission review – that (1) “warehouse type retail” was similar in nature to allowed TC West uses, (2) that there was no square footage limitation for any particular use within the allowed 1,465,000 square feet (i.e., that TC West could be entirely retail); and (3) permitting a large home improvement center in TC West. (See Exhibit 4 at p. 2 (and attached letter thereto).)

In that instance, staff, and ultimately the Planning Commission, correctly identified that a finding of consistency could not be made, that an amendment to the development plan was necessary in order to approve such a use since the Board of Supervisors had “made a distinct decision when developing the list of permitted uses,” and that the request was “beyond the scope of the original [TC West] Development Plan.” (Exhibit 4 at p. 3.)

The same is true here. Owners and merchants in TC East have made significant investments based on these approved planning documents and depend on the correct exercise of discretion when an unlisted use is proposed. This application and staff’s determination were made without any notice or chance to comment.

Any attempt to transform TC West from a business park with limited ancillary support retail, into a development with “Major Retail” uses requires the processing of an amendment to the plan. The approved TC West Development Plan does not allow anything remotely approaching a 24-hour, drug store with wine and beer sales and a drive-thru pharmacy.

IV. Conclusion

For the reasons stated herein, as well as those set forth in the appeal, we respectfully ask the Planning Commission to grant the appeal and find that the proposed drug store is not in compliance with the TC West Development Plan.

Very truly yours,

MORGAN MILLER BLAIR



TODD A. WILLIAMS

TAW:st
Attachments

proposed project consistent with the TC East Development Plan. (See Exhibit 6 attached hereto [Market Place site plans].)

EXHIBIT 1



EXHIBIT 2

**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

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Purpose

The purpose of these Design Guidelines is to direct the orderly development of the El Dorado Hills Town Center consistent with the goals and policies of the El Dorado Hills Specific Plan. These Design Guidelines reflect those presented in the Specific Plan while providing additional development criteria to encourage innovative design and creative expression in meeting the needs and demands of the community.

It is intended that these Design Guidelines allow for the creation of a character at the Town Center appropriate to and in keeping with that of El Dorado County, its landscape and its historic building types. The intention is not to dictate a style of building but rather to encourage, within the context of modern materials and methods, an architectural style expressive of the simple forms found in the historic buildings of the area.

Introduction

In adopting the nearly 4,000 acre El Dorado Hills Specific Plan, the County of El Dorado approved a commercial site along U.S. Highway 50 at the El Dorado Hills Boulevard/Latrobe interchange designated in the Specific Plan as Villages T and U. Now known as the El Dorado Hills Town Center, these villages were "intended 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." The site is zoned General Commercial - Planned Development and the zoning is secured by a Development Agreement between the property owner and the County of El Dorado. The Town Center ultimately can be expected to be the "hub of economic development in western El Dorado County" and "a major node of economic and retail activity on the eastern side of the Sacramento Metropolitan region."

The Land Use element of the Specific Plan recognizes the pivotal role of the Town Center in the overall scheme of the community and refers to the area as the "major commercial area." Use of the broad category CG - General Commercial zoning enables the Town Center to respond to rapidly re-defining and evolving markets and to take advantage of the demands of new technologies for quality business settings within a well-planned and definitively regulated environment. The use of the Planned Development Overlay Zone provides the County a "level of review" to ensure consistency with the Design Guidelines and Standards set forth within the Specific Plan.

The Town Center consists of two distinct yet complimentary components - Town Center East and Town Center West. Retail and service commercial uses are concentrated within Town Center East. It is here that highway commercial uses are sited so as to achieve a high degree of visibility from U.S. Highway 50 while neighborhood and community uses are located in areas of convenient access and within the Town Square - the heart of Town Center East. Larger, more regionally oriented uses are accommodated within the Major Retail area and can be accessed from both Latrobe and White Rock Roads. Town Center West is planned as an employment center of mid- and low-rise buildings within five planning areas. Ancillary uses which could be accommodated include a conference hotel facility and support retail services.

Uses stated and depicted within the Specific Plan for Town Center West included hotel/convention center, restaurants, medical facilities, highway commercial, office parks, retail, business, professional and research development. The Specific Plan explicitly states that the types of uses to be allowed at Town Center West "include but are not necessarily limited to" those listed. Uses allowed within the CG - General Commercial zoning include a wide variety of "sales, storage, distribution and light manufacturing businesses of the type which do not ordinarily cause more than a minimal amount of noise, odor, smoke, dust or other factors tending to disturb the peaceful enjoyment of adjacent residential or agricultural land uses" (El Dorado County Code Chapter 17.32.170). Light manufacturing is also allowed in the C - Commercial land use category under the 1981 El Dorado County Long Range Plan in effect at the time of adoption of the Specific Plan and the Development Agreement for Town Center West in 1989.

TOWN CENTER WEST

Town Center West consists of approximately 130 acres along U.S. Highway 50 at the El Dorado Hills Boulevard/Latrobe interchange. Access to Town Center West is provided from Latrobe Road via Town Center Boulevard, a landscape enhanced, divided parkway, and from White Rock Road at D Street. Limited and/or restricted driveway access from White Rock Road may also be provided. Pedestrian and bicycle access is provided by means of sidewalks and bicycle lanes within the right-of-way for both Latrobe and White Rock Roads.

The Town Center West Planned Development provides for an employment center of five planning areas briefly described below and summarized in Figure 1.

Planning Area A is located in the southeast quadrant of Town Center West with access provided by Town Center Boulevard. Planning Area A consists of approximately 36 acres. Planned building square footage is 477,000 square feet.

Planning Area B is located in the northwest quadrant of the Town Center West adjacent to U.S. Highway 50 with access provided by D Street. Planning Area B consists of approximately 30 acres. Planned building square footage is 347,000 square feet.

Planning Area C is located in the northeast quadrant of Town Center West with access provided by Town Center Boulevard. Planning Area C consists of approximately 24 acres. Planned building square footage is 237,000 square feet.

Planning Area D is located along the eastern boundary of Town Center West with access provided by D Street. Planning Area D consists of approximately 23 acres. Planned building square footage is 344,000 square feet.

Planning Area E is located at the southern boundary of Town Center West and is separated from the northern planning areas by White Rock Road. Access is provided by driveways from White Rock Road and Latrobe Road. Planning Area E consists of approximately 7 acres. Planned building square footage is 60,000 square feet.

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 I - Street Cross Section criteria.

EXHIBIT 3

EL DORADO HILLS TOWN CENTER

DESIGN GUIDELINES and DEVELOPMENT STANDARDS

TOWN CENTER EAST

Revised
July 10, 1995

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Town Center East
Design Guidelines and Development Standards
adopted _____ : revised _____

Purpose

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TOWN CENTER EAST

Town Center East consists of approximately 130 acres with nearly one-half mile of frontage along U.S. Highway 50. Approximately 100 acres are addressed in the current Development Plan. The remaining 30 acres will be addressed at a future time. Access to Town Center East is provided from Latrobe Road via Town Center Boulevard, a landscape enhanced, divided parkway, and from White Rock Road at B Street. Driveway access(es) from White Rock Road is(are) also provided. Pedestrian and bicycle access is provided by means of sidewalks and bicycle lanes within the right-of-way of Latrobe Road, White Rock Road, Town Center Boulevard, B Street and C Street. In addition, a recreational trail is provided within the existing 102' Pacific Gas and Electric Company easement along the north side of White Rock Road and within the central creek corridor.

Town Center East is envisioned to be the central "people gathering place" for El Dorado Hills. It is planned as an urban commercial precinct to simultaneously address several retail markets thus maximizing the potential variety of functional shopping, dining and leisure time activities available to meet the needs of the residents of El Dorado Hills and the surrounding communities. The Town Center East Development Plan defines a commercial center of three planning areas described below and summarized in Figure 1.1.

Figure 1.1 Approximate Acreage and Planned Building Square Footage

	Approximate Acres	Planned Building Square Footage
Planning Area One	23.6	(plus 150 rm hotel) 143,000
Planning Area Two	18.8	211,000
Planning Area Three	46.3	571,000
Central Creek Corridor	4.4	
Roads	7.6	
Total	100.7	925,000

1. The Development Standards

1.1 **Planning Area One - Highway and Neighborhood Services** - is located in the western portion of Town Center East and is bounded by Latrobe Road, White Rock Road, B Street and U.S. Highway 50. The Highway and Neighborhood Services area is planned to address the needs of highway oriented users, independent retail users and community facilities that benefit from convenient arterial access and direct highway and arterial road visibility. Located within Planning Area One is a site for the County Multi Modal Transportation Facility and a future United States Post Office. Planning Area One consists of approximately 23.6 acres. Planned building square footage is 143,000 square feet. Also allowed is a 150 room hotel. Lots may

range from as little as 3,000 square feet to over 1 acre and will have access from B Street and/or internal access easements.

Planning Area One - Permitted Uses

Auto Care

- Auto Parts
- Auto Repair
- Auto Speciality
- Auto wash and detail
- Lube & Tune

Highway Commercial

- Fast food restaurant
- Sit-down restaurant
- Service station
- Mini-mart
- Hotel/Motel

Retail

- Book store
- Newsstand/magazine shop
- Speciality gifts
- Stationers
- Video Store
- Office supplies/ equipment

Financial Services

- Bank
- Savings & Loan
- Finance company
- Brokerage
- Title company

Foods

- Bakery
- Candy shop
- Delicatessan
- Ice Cream/Yogurt
- Speciality foods

Personal Services

- Barber
- Cleaners/Laundry
- Hair Salon
- Florist
- Tailor/Alterations
- Travel Agent

Offices

- Medical
- Dental
- Optometric

- Legal
- Accounting
- Professional services

- Insurance
- Real Estate
- Government Services

Drive-thru facilities are allowed as a component of all permitted uses.

1.1.1 Building Height - 35 feet except that within Planning sub-Area G, building height shall be limited to 50 feet.

1.1.2 Minimum Front Setbacks - shall be applicable to all lots having frontage on a public street.

Front Setbacks - Planning Area One

	Building		Parking	
	from ROW	from toe/top of slope	from ROW	from toe/top of slope
Latrobe Road	25'	30'	25'	5'
Town Center Boulevard	15'	5'	10'	5'
B Street	15'	5'	7'	5'
Private Roads	10'	5'	5'	5'

1.1.3 Minimum Side lot and Rear lot Setback - When not abutting a public street, side and rear lot setback for buildings and parking shall be 10 feet except that zero feet setback shall be allowed upon approval of the Design Review Committee, the El Dorado Hills Fire Department and when in conformance with county building codes. For every building or portion of a building of which an exterior wall of the first floor is located more than 150 feet from a fire access roadway, as measured by an approved route around the exterior of the building, an approved fire access roadway shall be provided.

1.1.4 Maximum Impervious Surface - eighty-five percent.

1.1.5 Minimum Lot Area - 3,000 square feet.

1.1.6 Minimum Lot Width - 50 feet.

1.1.7 PG&E Easement - a 102 foot PG&E easement affects the southern boundary of Planning Area One. Uses within the easement are limited to roadways, driveways, walkways, bikeways, parking and landscape and are subject to approval by PG&E.

1.2 Planning Area Two - Town Square - is located at the heart of Town Center East and is bounded by B Street and the Major Retail Area. A central feature of the Town Square is the Central Creek Corridor, an area of open space with pedestrian access. Town Square is the focal point of Town Center East with a traditional "Main Street" element, oriented along Town Center Boulevard to connect the Town Square with the Highway and Neighborhood Services Area and the Major Retail Area. The uses permitted at Town Square are intended to take full advantage of the pedestrian orientation of the planning area. Outdoor eating and display areas, plazas and courtyards will be oriented to the Central Creek Corridor as well as storefronts and entry areas. Buildings at Town Square may be multiple stories; professional offices may be located over retail uses. Planning Area Two consists of approximately 18.8 acres. Planned building square footage is 211,000 square feet. Building pads in this area will have a broad range of sizes due to the variety of uses allowed and the probability of both user ownership and leased space. Access shall occur from Town Center Boulevard, B Street and C Street.

Planning Area Two - Permitted Uses

Financial Services

Bank
Savings & Loan
Finance company
Brokerage
Title company

Offices

Medical
Dental
Optometric

Foods

Bakery
Candy
Delicatessen
Ice Cream/Yogurt
Specialty foods

Legal
Accounting
Professional services

Liquor/wine/cheese

Restaurants
Recreation/Entertainment
Cinema
Sports club
Arcade

Insurance
Real Estate
Government Services

Sports/Hobby/Special Interest

Camera/Photography
 Coins/Cards
 Collectibles

Toys/Games
 Pet/pet supplies
 Arts/Crafts
 Fabrics

Bicycle shop
 Outfitters
 Ski shop
 Sporting goods

Retail

Clothing
 Shoes/Athletic footwear
 Fashion Accessories
 Jewelry & Cosmetics
 Home furnishings/accessories
 Interior design
 Floor coverings
 Drapes/blinds
 Bath Shop

Book store
 Box/packing store
 Copying/Printing services
 Newstand/magazine shop
 China/glassware/crystal/
 cutlery
 Gourmet cookware

Stationers
 Video store
 Office supplies/equipment
 Gifts/Specialty
 Art Gallery
 Luggage/leather
 Imports

Personal Services

Barber shop
 Cleaners/Laundry
 Hair Salon
 Florist

Formalwear rental
 Shoe repair
 Tailor/Alterations

Travel agent
 Photography studio
 Key shop
 Eyeglasses/optician

Drive-thru facilities may be permitted as a component of all permitted uses upon review and approval of the Design Review Committee.

1.2.1 Building Height - 50 feet.

1.2.2 Minimum Front Setback - shall be applicable to all lots having frontage on a public street.

Front Setbacks - Planning Area Two

	Buildings		Parking	
	from ROW	from toe/top of slope	from ROW	from toe/top of slope
Town Center Boulevard	0'	NA	10'	5'
B Street	15'	5'	7'	5'
C Street	7'	5'	7'	5'
Private Streets	7'	5'	7'	5'
Central Creek Corridor	25' (from edge of corridor)		15' (from edge of corridor)	

1.2.3 Minimum Side lot and Rear lot Setback - when not abutting a public street, side and rear lot setback for buildings and parking shall be 10 feet except that zero feet setback shall be allowed upon approval of the Design Review Committee and when in conformance with county building codes. When abutting the Central Creek Corridor, building and parking setback shall be 25 feet from the nearest edge of the Corridor. For every building or portion of a building of which an exterior wall of the first floor is located more than 150 feet from a fire access roadway, as measured by an approved route around the exterior of the building, an approved fire access roadway shall be provided.

1.2.4 Maximum Impervious Surface - eighty-five percent.

1.2.5 Minimum Lot Area - 2,500 square feet.

1.2.6 Minimum Lot Width - 50 feet.

1.3 Planning Area Three - Major Retail - is located in the eastern portion of Town Center east and is bounded by Highway 50 on the north, White Rock Road on the south, Town Square on the west and the limits of the property to the east. The Major Retail Area is suited to large users and provides the opportunity for regional-type uses to serve the greater area. Planning Area Three consists of approximately 46.3 acres. Planned building square footage is 571,000 square feet. Access shall occur from Town Center Boulevard and from two or more driveways/access points along White Rock Road as shown on the Development Plan or as approved by the Director of the Department of Transportation. Buildings within the Major Retail Area may be multiple stories; professional offices may be located over retail uses.

Planning Area Three - Permitted Uses

Supermarket	General Merchandise	Home Improvement
Drug/Super Drug	Department store	Building Materials
Liquor	Jr. department store	Paint/Wallpaper
Restaurant	Variety store	Hardware
Fast Food restaurant	Discount department store	Nursery
Service Station	Recreation	Offices
Auto Care	Bowling center	Medical
Auto Parts	Skating center	Dental
Auto Repair	Arcade	Optometric
Auto Speciality	Cinema	Legal
Auto wash and detail	Sports/Exercise Club	Accounting
Lube & Tune		Professional services
		Insurance
		Real Estate
		Government Services

Sports/Hobby/Special Interest

Camera/Photography
 Coins/Cards
 Collectibles

Toys/Games
 Pet/pet supplies
 Arts/Crafts
 Fabrics

Bicycle shop
 Outfitters
 Ski shop
 Sporting goods

Retail

Clothing
 Shoes/Athletic footwear
 Fashion Accessories
 Jewelry & Cosmetics
 Home furnishings/accessories
 Interior design
 Floor coverings
 Drapes/blinds
 Bath Shop

Book store
 Box/packing store
 Copying/Printing services
 Newstand/magazine shop
 China/glassware/crystal/
 cutlery
 Gourmet cookware

Stationers
 Video store
 Office supplies/equipment
 Gifts/Specialty
 Art Gallery
 Luggage/leather
 Imports

Personal Services

Barber shop
 Cleaners/Laundry
 Hair Salon
 Florist

Formalwear rental
 Shoe repair
 Tailor/Alterations

Travel agent
 Photography studio
 Key shop
 Eyeglasses/optician

Drive-thru facilities may be permitted as a component of all permitted uses upon review and approval of the Design Review Committee.

1.3.1 Building Height - 50 feet.

1.3.2 Minimum Front Setback - shall be applicable to all lots having frontage on a public street.

Front Setbacks - Planning Area Three

	Buildings		Parking	
	from ROW	from top/toe of slope	from ROW	from top/toe of slope
White Rock Road	N/A (0' from PG&E easement)	5'	30'	5'
U.S. Highway 50	50'	5'	20'	5'
Private Street	0'	5'	7'	5'

1.3.3 Minimum Side lot and Rear lot Setback - when not abutting a public street, side and rear lot setback for buildings and parking shall be 10 feet except that zero feet

setback shall be allowed upon approval of the Design Review Committee and when in conformance with county building codes. When abutting the Central Creek Corridor, building and parking setback shall be 25 feet from the nearest edge of the Corridor.

1.3.4 Maximum Impervious Surface - eighty-five percent.

1.3.5 Minimum Lot Area - 2,500 square feet.

1.3.6 Minimum Lot Width - 50 feet.

1.3.7 PG&E Easement - a 102 foot PG&E easement affects the southern boundary of Planning Area Three. Uses within the easement are limited to roadways, driveways, walkways, bikeways, parking and landscape and are subject to approval by PG&E.

1.4 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 East 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 pursuant to El Dorado County Zoning Ordinance Section 17.32.220 and, by resolution of record, set forth its findings and its interpretations.

1.5 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 East. 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 East Planned Development.

2. The Overall Development Guidelines

Note: Throughout this document, Italics are used to present statements, policies and guidelines expressed in the EL Dorado Hills Specific Plan.

In keeping with the Commercial Design Guidelines presented in the Specific Plan, it is intended that Town Center East "create an aesthetically pleasing environment" while providing for "commercial uses of a greater variety and at a higher intensity" than elsewhere in the community or greater area. The following Overall Development Guidelines are intended to foster

EXHIBIT 4



EL DORADO COUNTY PLANNING SERVICES

2850 Fairlane Court
Placerville, CA 95667

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

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

MEMORANDUM

DATE: May 3, 2005

TO: Chair and Planning Commission

FROM: Gina Hunter, Senior Planner

SUBJECT: Finding of Consistency to allow a Warehouse Home Improvement Center/Design Center and Nursery within the Town Center West Planned Development. The Town Center West is governed by Planned Development Permit PD 95-02 and the Design Guidelines and Development Standards for Town Center West.

BACKGROUND

The Town Center West site is located within the El Dorado Hills Specific Plan area (Exhibit A). The Board of Supervisors approved the Development Plan and "Design Guidelines and Development Standards" for the Town Center West site on May 23, 1995. The zoning of the site is General Commercial (CG), with the Planned Development further differentiating the site with four distinct land use categories, Light Manufacturing (LM), Research and Development (RD), Business and Professional (BP) and Commercial Service and Retail (C). The site has been divided into five distinct Planning Areas, A through E.

The Development Plan allocates the planned square footage for the site by use and Planning Area, with the total square footage for the development to be 1,465,000 square feet. Condition No. 4 states that, "The identified planned floor area within any one of the five Planning Areas and the total for the Development Plan may be exceeded as long as all of the other requirements of the Development Plan are satisfied". Although the Planning Director or Planning Commission may re-allocate the uses and square footages from one Planning Area to another, the planned square footage of Category C (service and retail nature) cannot exceed 60,000 square feet throughout the development.

The Board of Supervisors found that many of the uses permitted by right in the CG zone district were to have substantially more objectionable operational characteristics than the research development and light manufacturing uses and were excluded from the list of uses permitted within the Development Plan. The research and development and light manufacturing uses proposed within the Development Plan were limited to uses that are fully enclosed and emit minimal amounts of dust, smoke, odor, air or water

pollutants, noise and electrical interference. The uses permitted with the Development Plan are attached in Exhibit B.

The site is currently developed with a Blue Shield office complex in Planning Area C and a manufacturing facility in Planning Area A. The development in Planning Area C includes a commercial office development encompassing 243,308 square feet, with an additional 9,000 square feet of restaurant/cafeteria use. The Development Plan originally allocated 237,000 square feet of BPO uses within Planning Area C. As permitted by the conditions of approval, the square footage allotted could be exceeded provided that the other requirements of the development plan had been satisfied. The development in Planning Area A includes a building originally constructed for Atlanta Precision Molding, which encompassed 89,470 square feet of warehouse. Atlanta Precision Molding has vacated the building, and it remains vacant at this time.

FINDING OF CONSISTENCY REQUEST

The Mansour Company submitted a Finding of Consistency request on April 19, 2005 (Exhibit C). The applicant has requested that the Planning Commission make three (3) findings to allow the future development of a warehouse home improvement retail center development within the Town Center West. These findings include the following:

1. Adding an additional allowable use within Town Center West of "Warehouse Type Retail" by determining such use is found to be similar in nature to those already established within PD95-02; and
2. Determining that there is no square foot limitation on the amount of "Light Manufacturing (LM);, Research Development (RD), Business and Professional (BPO) and Commercial uses that may be constructed within any of the a Planning Areas (A through E) identified in PD95-02, provided that the total square of footage of development within Town Center does not exceed 1,465,000 square feet; and
3. Permitting the home improvement center; home design center and nursery within Town Center West.

The applicant has stated that the proposed home improvement center will be a mixture of commercial and light manufacturing uses within the same building, totaling approximately 120,000 square feet. Of the 120,000 square feet, 60,000 square feet will be commercial retail and the balance of the project would be design center, wholesale warehousing and distribution of such goods. The architectural character and design of this project would be developed in a manner that is consistent with the Town Center West Design Guidelines and Development Standards.

In addition, the applicant has requested an overall clarification regarding the uses that are permitted within the Town Center, or more specifically would like the restriction of uses to be removed. The applicant has requested that there be no specific limitation on the amount of retail and other general commercial uses that can be developed within Town Center West, provided that the total square footage of Town Center West does not exceed 1,465,000 square feet.

RECOMMENDATION

The Board of Supervisors made a distinct decision when developing the list of permitted uses within the Development Plan, stating that many of the uses permitted by right in the CG district have substantially more objectionable operational characteristics than the research development and light manufacturing uses proposed and are thereby excluded from the list of uses permitted within the Development Plan. The Development Plan does allow for additional uses to be permitted when, it can be determined that such uses are found to be similar in nature as those established within the Town Center West Planned Development. However, after reviewing the uses permitted by right within the Town Center West Planned Development and that proposed by the applicant, it has been determined that the home improvement warehouse development/design center is not similar in nature to those uses established on the permitted uses list.

It can be recognized that building materials, including storage and sales, and greenhouse/nursery uses are allowed by right within the CG zoning district according to Section 17.32.190.A of the County Code (Exhibit D). However, the Conditions of Approval were clear on the use limitations within the Development Plan, and these uses were considered to have more objectionable operational characteristics which would require additional review. It is believed that an amendment to the Development Plan is required to consider the home improvement warehouse development/design center use and that a Finding of Consistency cannot be made.

The applicant has also requested a generalized request to remove the limitation on uses within the Development Plan area. An important factor to consider when reviewing this request is that the project is located adjacent to residential development. The neighboring property owners understood the uses that would be located adjacent to their properties and the protection that would be afforded them through the "Design Guidelines and Development Standards". It is believed that this request is beyond the scope of the original Development Plan and that a revision to the Development Plan would be warranted.

SUPPORT INFORMATION

Attachments to Staff Report:

- Exhibit A..... Vicinity Map
- Exhibit B..... Uses Permitted Within Development Plan
- Exhibit C Finding of Consistency request dated 4/19/05
- Exhibit D General Commercial (CG) District Regulations

EXHIBIT B

USES PERMITTED WITHIN DEVELOPMENT PLAN

Research Development Uses

Blueprint services
Data Processing
Information Systems Research
Materials research
Ancillary and support uses such as restaurants and retail sales
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

Light Manufacturing Uses

Data Processing technologies
Digital information components manufacture and assembly
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

Business and Professional Offices

Accountant
Engineer
Graphic Designer
Medical/Dental
Ancillary and support uses such as restaurants and retail sales
Architect
Financial Brokerage
Investment Brokerage
Professional Associations
Attorney
Financial Institution
Land Planner
Surveyor

Commercial Uses

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



107 Mansour Road
 El Dorado Hills
 California
 Telephone
 (916) 938-0000
 Fax
 (916) 938-0000

RECEIVED
 PLANNING DEPARTMENT
 APR 20 PM 02:53

April 19, 2005

Mr. Peter Maurer
 El Dorado County Planning Department
 2850 Fairlane Court
 Placerville, CA 95667

Subject: Town Center West PD 95-02

Dear Peter:

As a follow up on recent meetings with the County's Planning Department Staff and on prior correspondence with the County's Planning Director regarding use of remaining undeveloped land at Town Center West.

Please accept this letter advising the Planning Department of an upcoming home improvement center development project within Town Center West, and to request that the Planning Department or the Planning Commission make the following three (3) "Findings of Consistency."

1. Adding an additional allowable use within Town Center West of "Warehouse Type Retail" by determining such use is found to be similar in nature to those already established within PD95-02; and
2. Determining that there is no square foot limitation on the amount of "Light Manufacturing (LM)", Research Development (RD), Business and Professional (BPO) and Commercial (C) uses that may be constructed within any of the Planning Areas (A through E) identified in PD95-02, provided that the total square of development within Town Center does not exceed 1,465,000 square feet; and
3. Permitting the home improvement center; home design center and nursery within Town Center West.

Background Information

The Town Center West Development is regulated by Town Center West Planned Development Ordinance PD95-02 and by its underlying documents: the El Dorado Hills

Specific Plan (County Resolution 226-88), and by the property's General Commercial (CG) zoning granted at the time of adoption of the Specific Plan and approval of the 1989 El Dorado County/El Dorado Hills Investors Development Agreement vesting development rights.

As stated under Section 1 "The Land Uses" of the Design Guidelines and Development Standards: "The land uses proposed by the Town Center West (TCW) Planned Development (PD95-02) are those consistent with the El Dorado Hills Specific Plan and the General Commercial (CG) 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 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 Standard, additional uses may from time to time be found to be consistent with the intent and purpose of the Town Center West Planned Development." See Attachment 1.

The approved TCW PD95-02 provides for a total of approximately 1.5 million square feet of floor area to be developed. The total square footage is divided into five separate planning area (A through E), each has its own planned square footage by Use as shown in Figure 1 "Planning Areas and Planned Building Square Footage" within Section 1 of the TCW Design Guidelines and Developments Standards. Figure 2 "Planned Square Footage by Use and Planning Area" within Section 1 of the TCW Design Guidelines and Development Standards specifically defines a total of 1,465,000 square feet of development within Town Center West; of that total 60,000 square feet is defined as commercial. See Attachment 1. (NOT Attached)

According to Section 1.6 "Planned Square Footage" within the TCW Design Guidelines and Developments Standards the total Planned Square Footage for any planning area within Figure 2, Total Planned Square Footage whether by Use or Planning Area may be exceeded provided any project proposing such adheres to the other development standards of PD95-the Town Center West Planned Development and the impacts of such 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. See Attachment 1.

In Conrad B. Montgomery, then El Dorado County's Planning Director, letter dated July 16, 2001, the County offered clarification of PD95-02 and its underlying documents, as follows. See Attachment 2 for the full letter:

- that Town Center West's can be developed with "up to 1,465,000 square feet of business and professional uses (research and development uses, light manufacturing uses and commercial uses) throughout Town Center West's Plan Areas A through E," and

- "... that there are no square foot limitations on the amount of business and professional office uses that may be constructed within each of the five Planning Areas (A through E) identified in PD95-02, provided that the total square footage of development within Town Center West does not exceed 1,465,000 square feet."

Mr. Montgomery's 2001 clarification was made based on the provisions of PD95-02 which note that while the uses described in PD95-02 are intended to create a quality environment of complementary and compatible uses, not all appropriate and viable specific uses can be listed at any given time, and that within the regulatory framework of the TCW PD's Design Guidelines and Development Standard, additional uses may from time to time be found to be consistent with the intent and purpose of the Town Center West Planned Development.

Home Improvement Center Project

The proposed project will be a mixture of Commercial and Light Manufacturing uses within the same building, totaling approximately 120,000 square feet. Of the 120,000 square feet, 60,000 square feet will be commercial retail and the balance of the project would be design center, wholesale warehousing and distribution of such goods, as defined in the Design Guidelines and Development Standards.

In that light, we write to advise that we intend shortly to submit to the Town Center West Owner's Association Design Review Committee, and subsequently to the El Dorado County Building Department, plans for an approximately 120,000 square foot home improvement center, home design center and nursery to be located within Town Center West. The project will be a mixture of Commercial and Light Manufacturing (retail, wholesale warehouse, planning/design, distribution) uses within one single building on an approximately thirteen-acre site.

The proposed project is planned to be developed within Planning Area D. See attachment 3. Planning Area D as defined within the PD95-02 is located on the easterly side of the development between the future extension of Town Center Blvd (Street D) and an adjacent residential project, starting at White Rock Road and stretching northerly up towards Highway 50. The architectural character and design of this project would be developed in a manner that is consistent with the TCW Design Guidelines and Development Standards. A landscape buffer shall be provided along the western boundary adjacent to the neighboring residential project. The landscape buffer shall be 20 feet in width where the adjacent residential project is required to provide a 10-foot buffer and 30 feet in width where no buffer is required of the adjacent residential project. The landscape buffer shall incorporate elements of height such as berms and hedges and may include decorative and security fencing. Access to this project would be provided solely from the planned extension of Town Center Boulevard

from its current terminus to White Rock Road at the White Rock Road/Windfield Way Intersection.

The addition of this project to TCW will continue in keeping with PD95-02's vision of creating an aesthetically pleasing environment while providing for commercial uses of greater variety and at a higher intensity than elsewhere in the El Dorado Hills community.

Additional Findings of Consistency

We also write to request a more overall clarification, a "Findings of Consistency" of the provisions of TCW PD95-02 and its underlying documents, that there is no specific limitation on the amount of retail and other general commercial uses that can be developed within Town Center West, provided that the total square footage of Town Center West does not exceed 1,465,000 square feet and, of course, that all of the other regulating provisions of PD95-02 (e.g. as to height limitations, setbacks, parking ratios, etc.) are observed.

Should you have any questions or need additional information on the forgoing, please feel free to contact Tulen Emery of my staff at (916) 933-3013.

Sincerely,
El Dorado Hills Investors
By: The Mansour Company, Its General Partner


Louis Mansour
President

LM/te

EXHIBIT 5



4364 Town Center Blvd., Suite 213
El Dorado Hills, CA
95782-7101
Telephone
(916) 933-3013
Facsimile
(916) 933-3018

JUL 13 PM 4:30
RECEIVED
PLANNING DEPARTMENT

July 13, 2009

Roger Trout, Director
EDC Development Services
2850 Fairlane Court
Placerville, CA 95667

**Subject: Town Center West PD 95-02 Letter of Consistency Request
Planning Area E – Retail Use**

Dear Roger:

Per our conversation, please find the enclosed completed pre-application and conceptual review process application, accompanying documents and a check in the amount of \$365.00. This packet is being submitted based on our conversation to enable El Dorado Planning Department to complete their review regarding the development Planning Area E of El Dorado Hills Town Center West Planned Development 95-02 (PD95-02).

As discussed, we are not requesting the approval of a site plan at this time, only a letter of consistency that the proposed development is consistent to PD95-02 Exhibit B – Development Plan. Building envelopes as shown on the enclosed plan are conceptual only and indicate the area where building massing may be located. The purpose of gaining the letter of consistency is to obtain site improvement funding and to secure users; by ensuring that all the discretionary approvals and entitlements have been obtained for commercial use on Planning E.

PD95-02 and the Design Guidelines & Development Standard, Planning Area E allow 60,000 square feet of commercial uses such as fast food establishments, convenient store, drug stores and service stations. Section 1 – Land Uses on page 3 of the Design Guidelines & Development Standards states, "While the uses approved 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." A copy of this page is enclosed for your review and use.

PA 09-0011

Roger Trout - Town Center West PD 95-02 Letter of Consistency Request
July 13, 2009
Page 2

Also enclosed are previous correspondences to you from Tulen and a letter issued by Gina Hunter to Panattoni. This letter is similar to the letter we are current requesting for Planning Area E.

Thank you for your time and attention to our request. I look forward in receiving your response. Should you have any questions please feel free to contact myself or Tulen Emery.

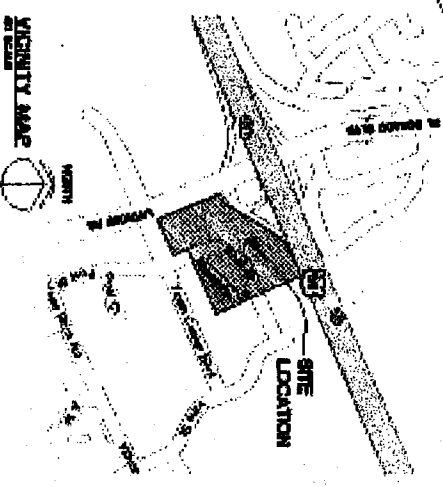
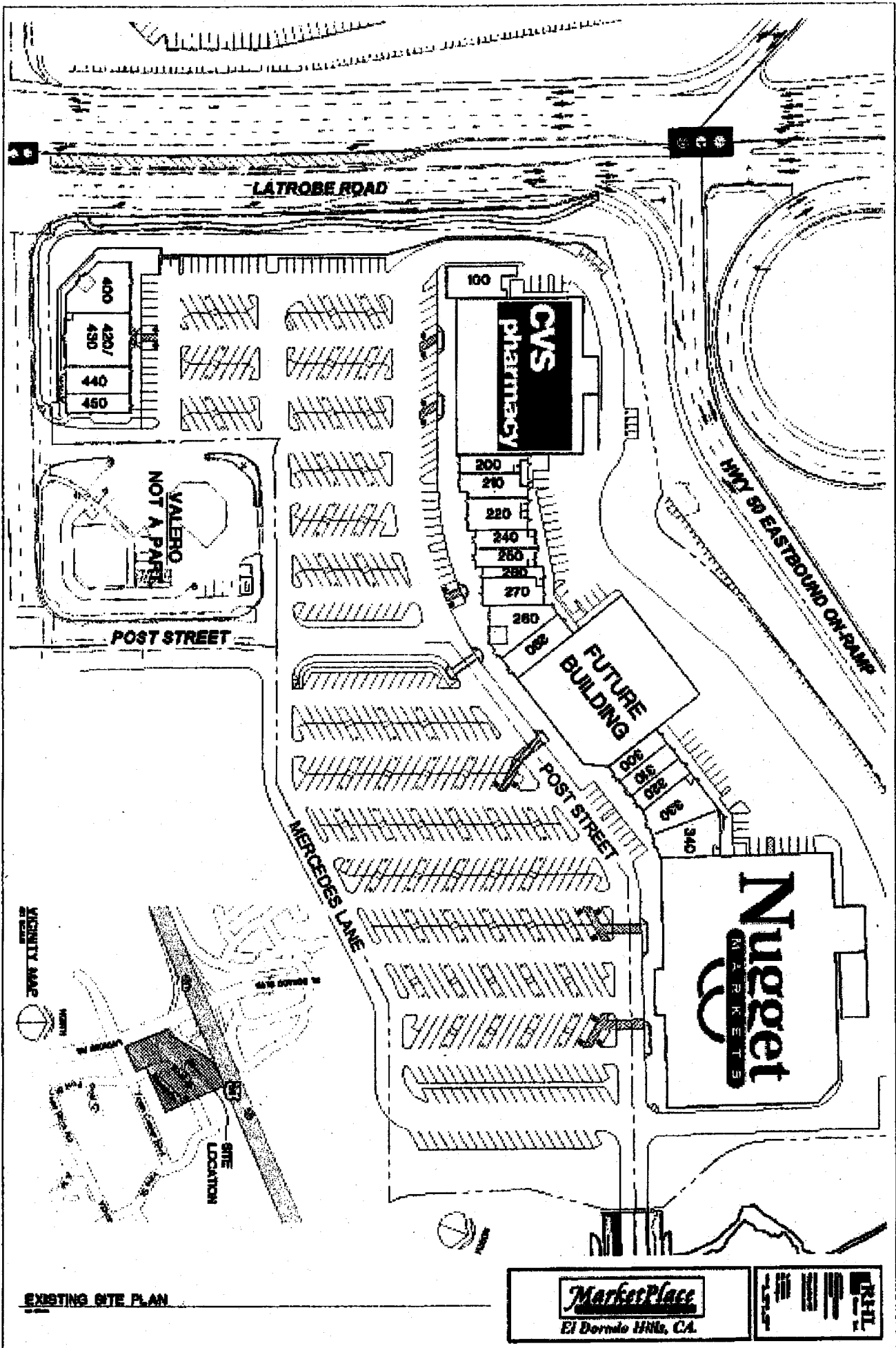
Sincerely,
El Dorado Hills Investors, Ltd.
By: The Mansour Company, Its General Partner

Anthony Mansour by: Tulen Emery
Anthony Mansour, CEO

enclosures

RECEIVED
PLANNING DEPARTMENT
JUL 13 PM 4:35

EXHIBIT 6



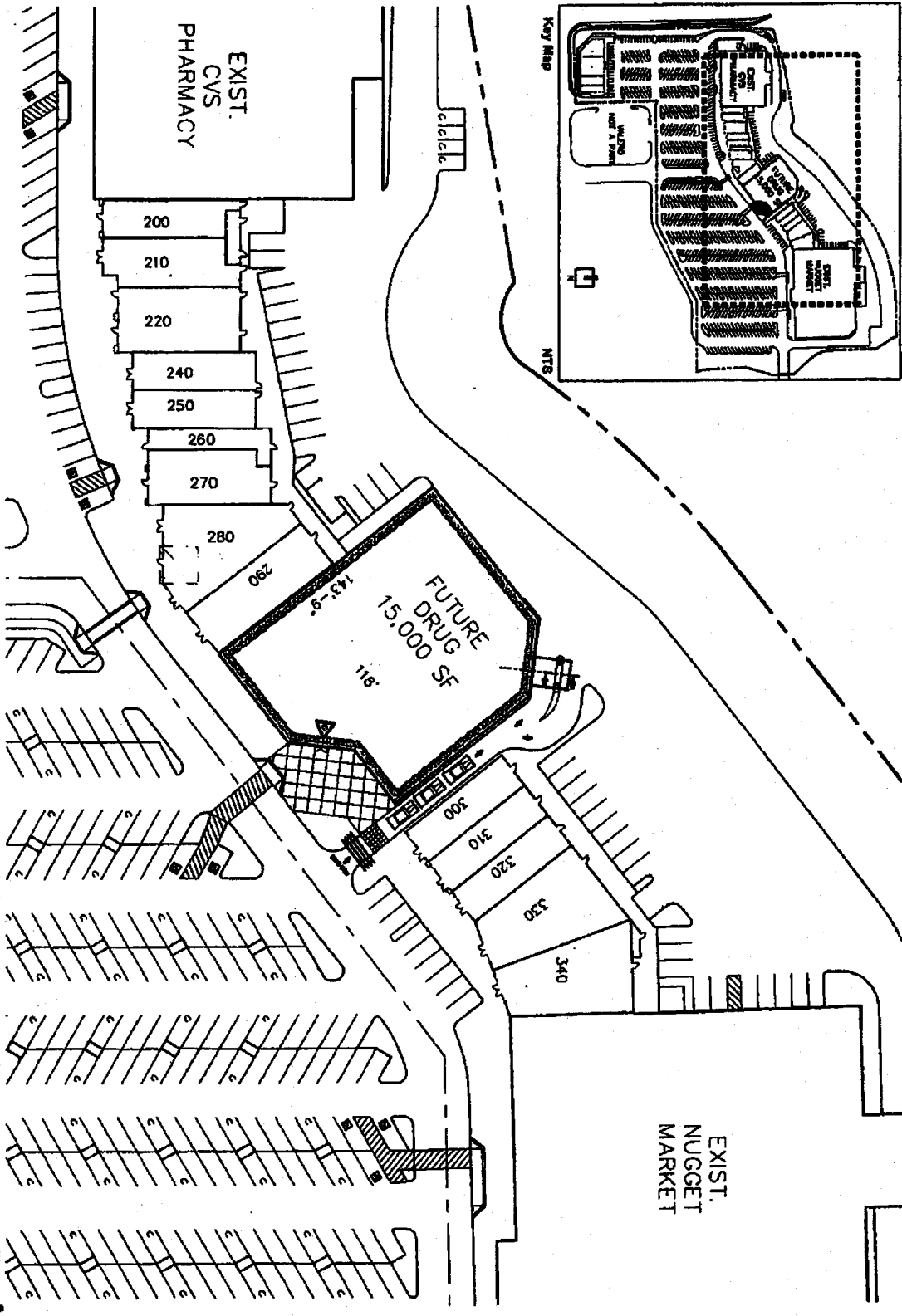
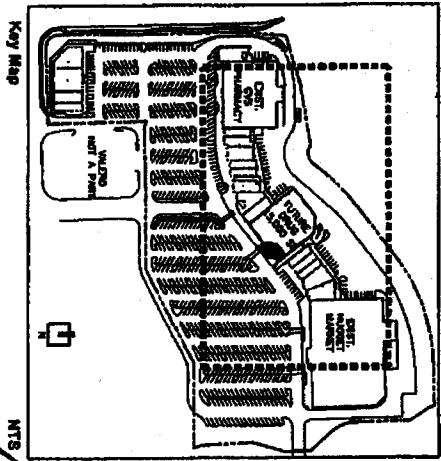
EXISTING SITE PLAN

MarketPlace

El Dorado Hills, CA.

DATE: _____

SCALE: _____



Town Center Marketplace ■ NEC Latcha Road and Town Center Boulevard
 El Dorado Hills, California

Scale: 1" = 50'-0"

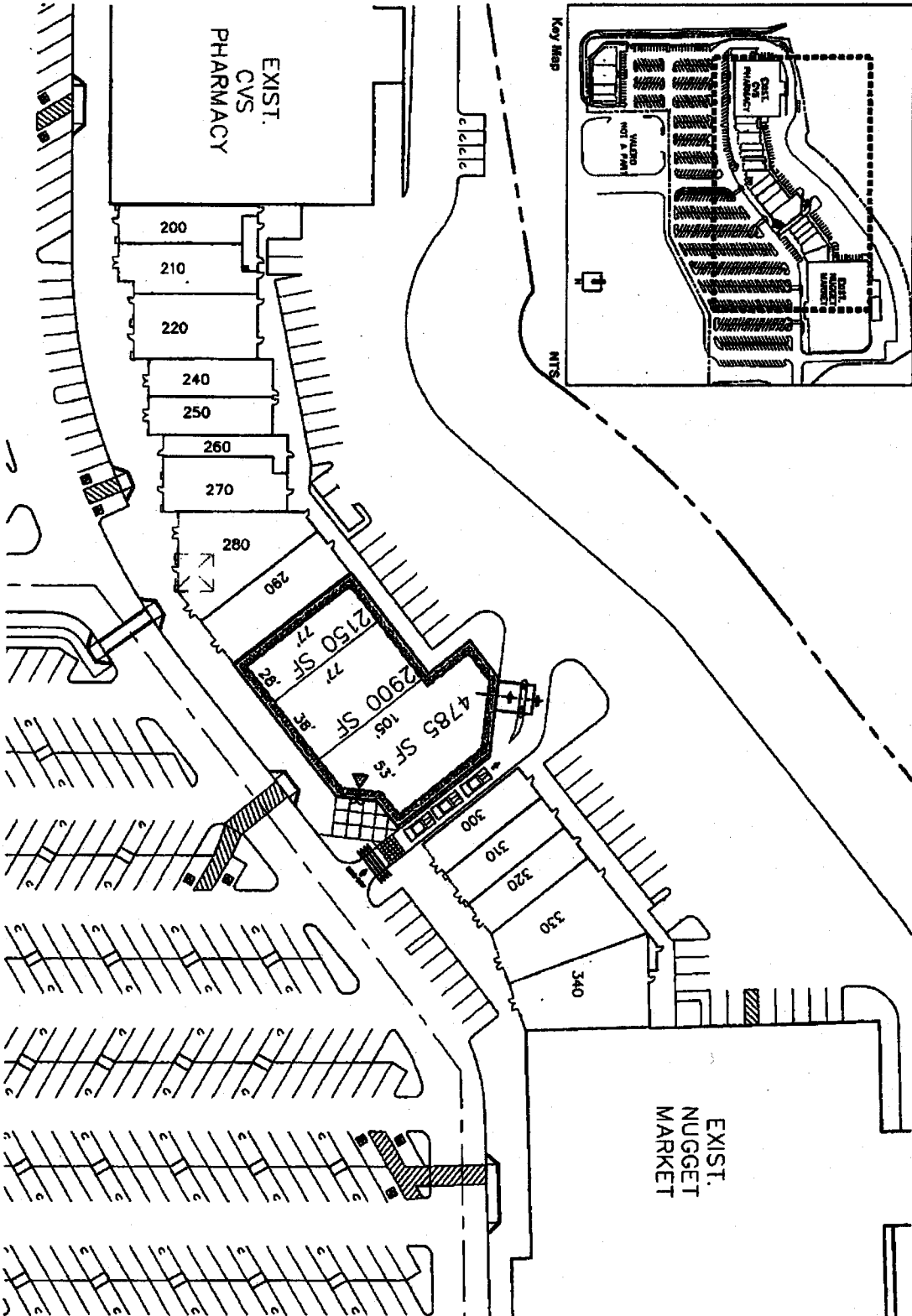
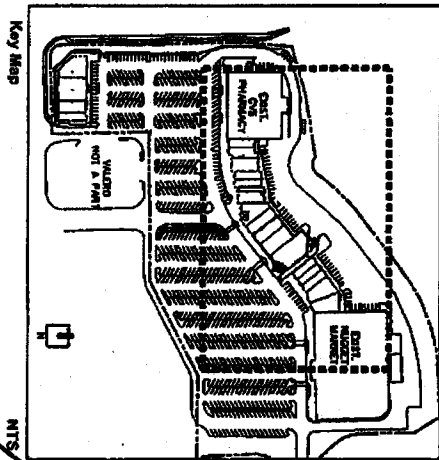
Project: **Town Center Marketplace**
 10000 Latcha Road, El Dorado Hills, CA 95762

Developer: **Town Center Marketplace**
 10000 Latcha Road, El Dorado Hills, CA 95762

Site Plan - Option 1

Site Number: **SP.01**
 Date: **10/1/10**
 Drawn By: **JL**
 Revised: **10/1/10**

Architect: **MARCONI MARINELLI BOSCHER ARCHITECTS**
 10000 Latcha Road, El Dorado Hills, CA 95762
 Phone: (916) 438-1100
 Fax: (916) 438-1101
 Website: www.marconimarinelloboscher.com



Town Center Marketplace

NEC Ladera Road and Town Center Boulevard
 El Dorado Hills, California



Town Center Marketplace
 NEC Ladera Rd. and Town Center Blvd.
 El Dorado Hills, California

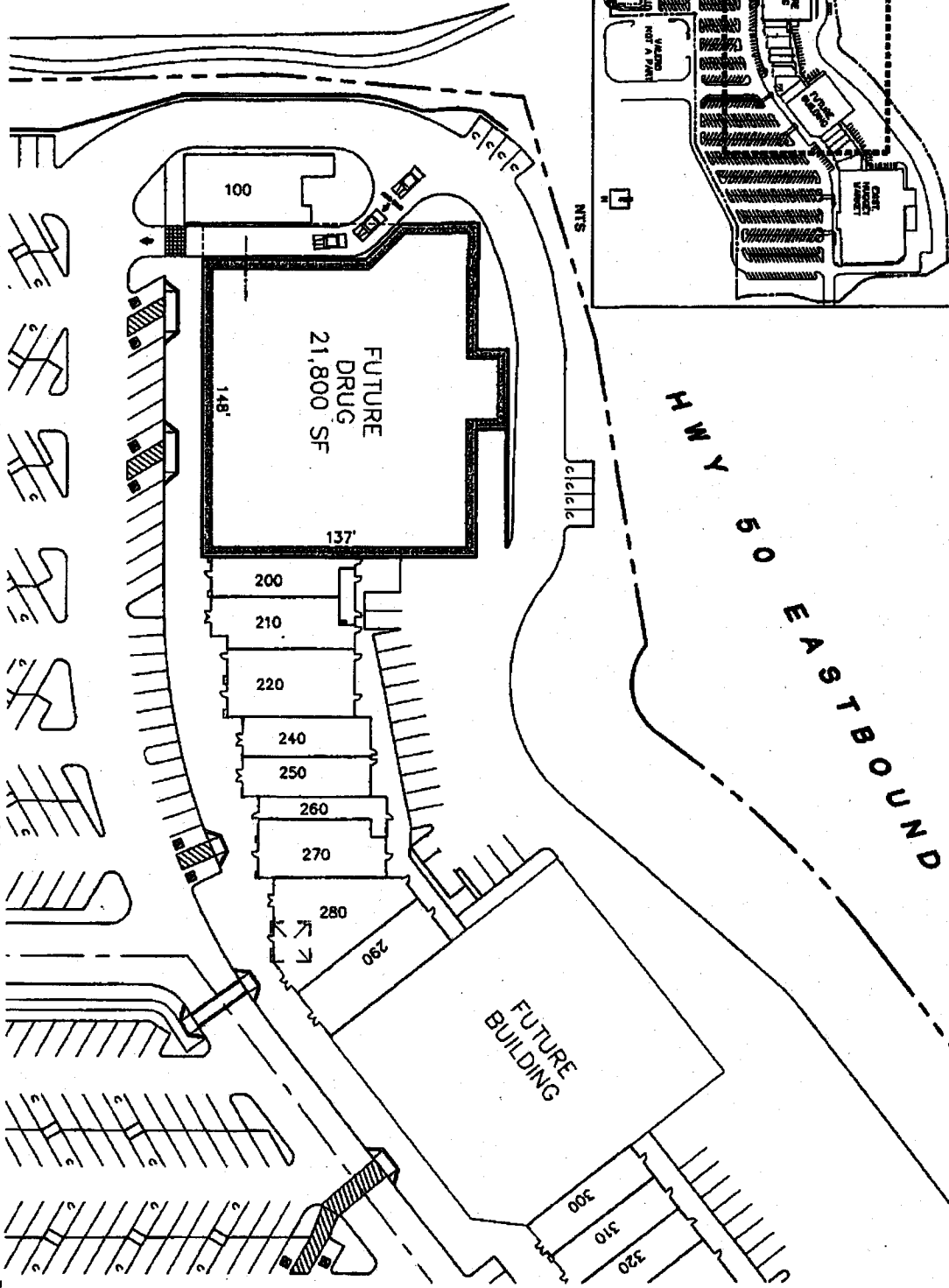
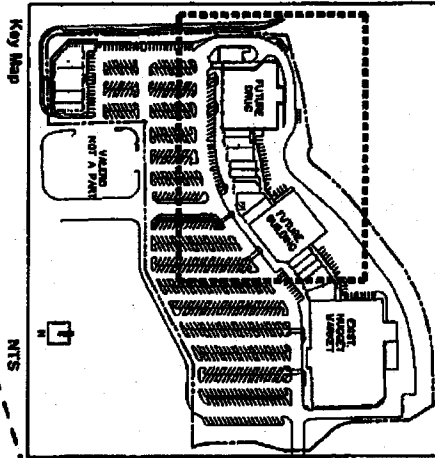
Site Plan - Option 2

Site Plan
 Date: **SP.01**

RAUCHENBACH HARTWILL BECKER
 ARCHITECTS

Project: **Town Center Marketplace**
 NEC Ladera Rd. and Town Center Blvd.
 El Dorado Hills, California

Architect: **RAUCHENBACH HARTWILL BECKER**
 11000 Rockwood Drive, Suite 100
 El Dorado Hills, California 95762
 Phone: (916) 932-1100
 Fax: (916) 932-1101
 Website: www.rhb.com



Town Center Marketplace

NEC L Street Road and Town Center Boulevard
El Dorado Hills, California

Scale: 1" = 50'-0"



Project:
Town Center Marketplace
NEC L Street Road and Town Center Boulevard
El Dorado Hills, California

Owner:
Town Center Marketplace
11111 L Street Road
El Dorado Hills, California

Site Plan - Option 3

Scale:
SP.01

Architect:
MANNINGNAUBACH MANNRELL BECKER

DATE:
11/11/11

PROJECT NO.:
11-0155

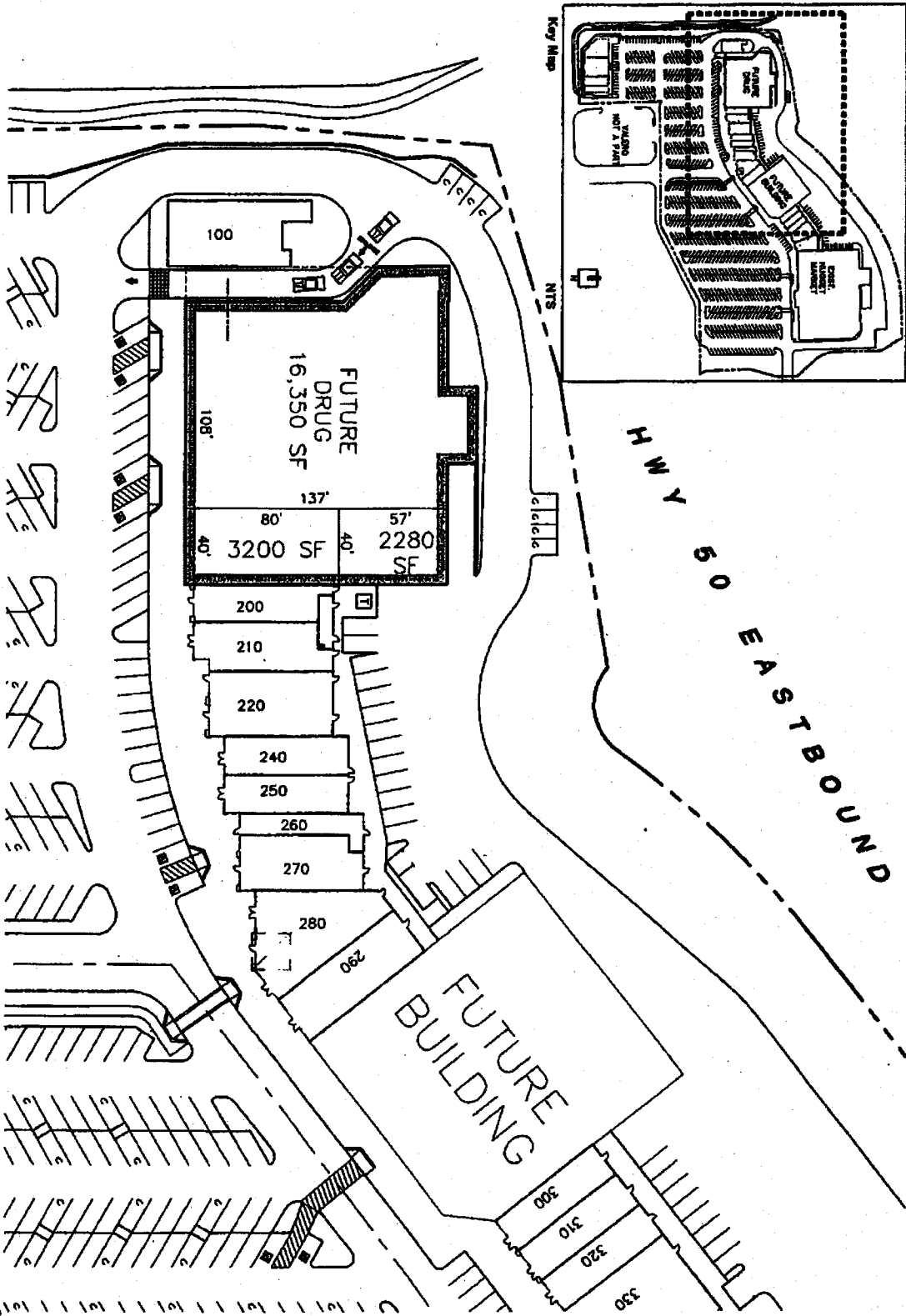
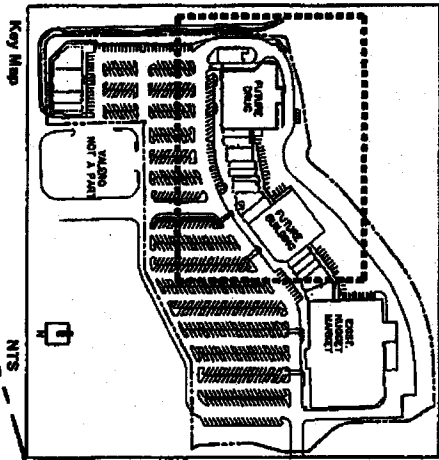
DATE:
11/11/11

SCALE:
AS SHOWN

BY:
[Signature]

CHECKED BY:
[Signature]

DATE:
11/11/11



Town Center Marketplace

NEC Ladera Road and Town Center Boulevard
El Dorado Hills, California

Scale: 1" = 50'-0"

Project:
Town Center Marketplace
1000 Ladera Rd., El Dorado Hills, CA 95762

Developer:
Town Center Marketplace
1000 Ladera Rd., El Dorado Hills, CA 95762

Site Plan - Option 4

Job Number: 1000
Drawn By: [Signature]
Checked By: [Signature]
Scale: SP.01

RAUSCHENBACH MARZOLI DESIGN
ARCHITECTS
2077 Ladera Lane, El Dorado Hills, California 95762
Tel: (916) 437-1000
Fax: (916) 437-1001

*** TX REPORT ***

TRANSMISSION OK

TX/RX NO 1268
RECIPIENT ADDRESS 15306420508
DESTINATION ID
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TIME USE 12'32
PAGES SENT 45
RESULT OK



1331 NORTH CALIFORNIA BOULEVARD, SUITE 200 WALNUT CREEK, CALIFORNIA 94596-0044
925.937.3600 925.943.1100 fax www.mmbblaw.com

FACSIMILE COVERSHEET

Date: January 11, 2011 Client-Matter: 10093-001
No. of Pages (including this page): 45
To: Planning Commission Fax: (530) 642-0508
From: Todd A. Williams Tel: (925) 979-3352
Re: January 13, 2011 Planning Commission Meeting,
Item No. 9: Appeal of Determination on Pre-application PA09-0011 within Town
Center West
Comments: Please distribute the attached letter with attachments dated today to all interested
parties. Thank you.



January 10, 2011

El Dorado Planning Commission
c/o County of El Dorado Planning Services
2850 Fairlane Court
Placerville, CA 95667

Subject: January 13, 2011 Planning Commission Meeting, Agenda Item No. 9:
Appeal of Determination of Consistency

Dear Planning Commissioners:

I am the official representative of the Market Place at Town Center shopping center to the Town Center Merchants' Association. I, along with my husband, Ken own and operate Bark Avenue – a store within the Market Place offering pet supplies and grooming services. I understand that the Planning Commission will consider the appeal filed by Syers Properties (owner of the Market Place) at its January 13, 2011 meeting. The appeal is over a planning department decision that a large 24-hour drug store with a drive-thru pharmacy and beer and wine sales (a new CVS) is consistent with permitted uses set out in the Town Center West Development Plan.

I'm writing to express my strong support, along with that of several other members of the merchants association, in favor of the appeal and in opposition to the planning department determination. A majority of the merchants in the Market Place (located in Town Center East) have likewise expressed support for this appeal and includes the following:

Eric Stille – Nugget
Dennis Lindsay – Nugget
Ken Mizell – Bark Avenue
John Budd – Roundtable Pizza
Laurie Vaqueiro – Massage Envy
Marvin Frace - Marketplace Vet
Hannah Han – Fresh Cleaners
Mike James – Supercuts
Emmy Farrand – Golden 1 Credit Union
Sandy Nguyen – Luxury Nails
Leslie Bethancourt – Salon Capelli

When locating businesses in Town Center East, merchants such as myself, especially smaller merchants, rely on the presence of general retail anchor stores such as Nugget and CVS to drive foot traffic to the shopping center. In locating

EXHIBIT D

here, we relied on the fact that Town Center East was approved as a retail shopping center with a range of general retail uses including large major retail anchor stores.

A CVS exists in the Market Place. I object to the idea of placing a new CVS (or large drug store, or supermarket-type major retail use) in Town Center West. That type of major general retail use was not listed in the development plan approved for Town Center West, but was specifically included and exists in Town Center East.

The approved retail in Town Center West is limited to ancillary "support retail" for the office and manufacturing uses that are the focus of that development. I strongly disagree with the planning department's conclusion that a 15,000 square foot, 24-hour drug store with a drive thru – which is clearly "major retail" – is "similar in nature" to the listed uses for Town Center West such as a barber shop, shipping service, copy center, deli, dry cleaner, restaurant, office supply store or stationers. Those uses are clearly "support retail" for an employment center like Town Center West, whereas a 24-hour drug store including beer and wine sales like a CVS is clearly a general "major retail" use of the type expressly approved and intended for Town Center East.

Town Center West and East were approved as distinct and complimentary developments. Putting a large major retail drug store like CVS in Town Center West conflicts with the development plan adopted by the County. Relocating CVS out of Town Center East and into Town Center West, would draw customers away from Town Center East merchants. There is space to accommodate such a store within Town Center East in keeping with the Town Center East approvals and promoting its vitality. Placing it in Town Center West conflicts with that development plan and undermines the planned general retail center that is Town Center East.

For these reasons, I and the above-listed merchants, ask that you grant the appeal.

Sincerely,



Robin Mizell
Market Place at Town Center representative to the Town Center East Merchants'
Association

Exhibit I

AMENDED ENVIRONMENTAL EVALUATION

File No. PD95-02, El Dorado Investors Inc.
(March 10, 1995)

PROJECT: A phased Concept Development Plan on a 130-acre site for office, commercial, research development and light manufacturing uses, located within Village U of the El Dorado Hills Specific Plan.

As a potential major employment center, the project called "Town Center West" is proposed with design guidelines which expand on those already included within the El Dorado Hills Specific Plan. The guidelines address such matters as: landscaping, sidewalks and pedestrian paths, shading of parking lots, buffers, architectural design, grading, drainage, and signing concepts.

The plan proposes five distinct planning areas, designated as follows:

Area A: Research development and light manufacturing uses, on 36.3 acres, with an allowable 487,000 square feet of floor area.

Area B: Research development and light manufacturing uses, on 29.7 acres, with an allowable 347,000 square feet of building area.

Area C: Hotel/conference center and business office uses, on 24.4 acres, with an allowable 237,000 square feet of building area, plus a 250 room hotel.

Area D: Research development, business office, and commercial uses, on 22.7 acres with an allowable 359,000 square feet of building area.

Area E: Commercial uses on 7.1 acres with an allowable 35,000 square feet of building area.

Roads: 10.9 acres

Uses within these planning areas are further defined and listed within the Concept Development Plan. Generally, those uses of a research development and light manufacturing nature, are those which ordinarily do not cause more than a minimal amount of noise, odor, smoke, dust, or other offenses. The floor area total for the Concept Development Plan is approximately 1.4 million square feet. This is an approximate number and may be exceeded by an additional 10-15 percent, as long as the standards of the Concept Development Plan are met. Further, the allowable floor areas within each Area noted above could also vary by 10-20 percent, as long as the standards of the Concept Development Plan are met.

EXHIBIT E

The anticipated first phase of the Concept Development Plan is being processed under a separate application (PD95-0007), which proposes a 65,000 square foot light manufacturing facility on approximately 20 acres.

Access to the site will be provided from a new street constructed approximately 1000 feet north of White Rock Road on Latrobe Road. This intersection will be signalized when warranted based on traffic demands.

Supporting infrastructure is also included within the project description. This includes the necessary extension of water, sewer, and other utility lines from Village T across Latrobe Road into Village U; and the construction of an on-site loop road system in phases. The widening and improvement of Latrobe Road is currently part of the Department of Transportation capital improvement program scheduled for completion in 1995. White Rock Road would eventually be improved as the demand warrants such improvement. The Concept Development Plan anticipates White Rock Road will eventually be realigned to create a more uniform intersection with Latrobe Road.

Initial grading of the total site will involve moving approximately 386,000 cubic yards of cut and fill material. This activity will affect most of the site, leaving moderately sloping building pads and parking areas in most instances. The graded area will be seeded to minimize erosion and dust. Additional earth will be moved as deemed necessary to accommodate actual buildings as they are proposed. To the extent possible, individual sites will be designed to minimize the appearance of extensive cut-and-fill. Slope banks will be re-vegetated and edges contoured in conformance with landscape requirements of the design guidelines, and Resource Conservation District standards.

Project approval would pave the way for processing of ministerial building permits. Prior to issuance of building permits, County staff must find the proposed plans are consistent with the plans, guidelines, standards, and conditions of approval of the Concept Development Plan.

LOCATION: On the northwest and southwest side of Latrobe Road and White Rock Road, between U.S. Highway 50 and White Rock Road, immediately west of Village T in the El Dorado Hills Specific Plan.

APN: 107:010-10, 107-120-07, 107:130:11 and 108:030:13

DISCUSSION OF ENVIRONMENTAL IMPACTS

Note: The headings and numbers indicated below refer to the attached Environmental Checklist. The "yes," "maybe," and "no" answers have the following meaning:

A "yes" response is only used when a significant impact is identified and there are no measures to reduce the impact to less than significant.