

#40  
#41

Adena Blair  
3903 Hills Court  
El Dorado Hills, CA 95630

**LATE DISTRIBUTION**  
**DATE** 10/9/2018  
BUS 10/9/2018

September 28, 2018

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

Concerning the plan to develop a drive-through Chick-Fil-A on Saratoga Way in El Dorado Hills:

Dear El Dorado County Board of Supervisors,

I implore you to stop the plans to put a Chick-Fil-A at this site. There are plenty of sites better suited to a high-volume drive-through restaurant, that do not impact nearby homes. The second story master bedroom of my townhouse faces the area to be developed.

I will have car lights shining in the sliding glass door on my balcony late at night. I am sure I will hear the loudspeaker loud and clear in my bedroom, since it's facing the site to be developed. The traffic will be congested, making it difficult to get in and out of the neighborhood. And with a volume target of 100-200 cars per hour, there will be unhealthy exhaust in my own backyard.

I only purchased this property about 6 months ago, and would never have done so had I known about this haphazard proposal. Our property values will be greatly affected. I bought this place because it happens to be in a very quiet secluded area. It is beyond irresponsible to even consider allowing this development to move forward. Please help the developer find a more suitable site.

Respectfully,

Adena Blair, RN, PHN

10/9/2018

Edcgov.us Mail - Saratoga drive through



EDC COB <edc.cob@edcgov.us>

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## Saratoga drive through

1 message

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**Cory Smart** <cbsmarty23@yahoo.com>

Mon, Oct 8, 2018 at 9:33 PM

Reply-To: "cbsmarty23@yahoo.com" <cbsmarty23@yahoo.com>

To: "edc.cob@edcgov.us" <edc.cob@edcgov.us>

Hello, I am unable to attend the meeting tomorrow but would like to resend my strong opposition to the Saratoga fast food project in El Dorado Hills. This is not an area to build fast food restaurants that will cause traffic congestion and noise pollution in our residential neighborhoods. Not only is this a very small area for these kinds of establishments, it is essentially the entrance to our community as a whole. El Dorado Hills is a top tier community and it deserves better than fast food restaurants at its forefront. It is also violating design standard laws that were implemented for projects just like this. Please consider the vast opposition to this development when it comes to vote. Thank you  
Cory Smart.

Sent from Yahoo Mail on Android



EDC COB &lt;edc.cob@edcgov.us&gt;

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**Fwd: proposed Chick-fil-a restaurant approval**

2 messages

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**The BOSONE** <bosone@edcgov.us>  
To: EDC COB <edc.cob@edcgov.us>

Tue, Oct 9, 2018 at 8:01 AM

Kind Regards,

***Cindy Munt***

Assistant to Supervisor John Hidahl, District 1  
Board of Supervisors, County of El Dorado  
Phone: (530) 621-5650  
CLICK HERE to follow Supervisor Hidahl on Facebook  
CLICK HERE to visit Supervisor Hidahl's web page

----- Forwarded message -----

From: **Myrna Sparks** <myrnacttravel@hotmail.com>

Date: Mon, Oct 8, 2018 at 9:46 PM

Subject: proposed Chick-fil-a restaurant approval

To: bosone@edcgov.us &lt;bosone@edcgov.us&gt;, bostwo@edcgov.us &lt;bostwo@edcgov.us&gt;, bosthree@edcgov.us &lt;bosthree@edcgov.us&gt;, bosfour@edcgov.us &lt;bosfour@edcgov.us&gt;, bosfive@edcgov.us &lt;bosfive@edcgov.us&gt;, efrensanchez@edcgov.us &lt;efrensanchez@edcgov.us&gt;, john.hidahl@edcgov.us &lt;john.hidahl@edcgov.us&gt;

Hello to the El Dorado County Board of Supervisors,

My mother, Katherine Midkiff, and I own the townhome located at 3913 Hills Court in El Dorado Hills. Saratoga Way is located on the other side of our fence that borders our property and the proposed Chick-fil-a restaurant would be located just across the street from our townhouse.

We have a two story townhouse with the bedrooms located on the second story. The master bedroom with a small deck off the bedroom faces the proposed Chick-fil-a. It is my understanding that the speakers for the drive through window will be in operation beginning at 6:30 a.m. to 10:30 p.m. six days a week. This is a period of time of sixteen hours for six days a week.

Twenty years ago when Saratoga was widened the county installed double pane glass in the lower story of our townhome. This double pane glass was not installed in the second story windows which face the proposed Chick-fil-a restaurant.

I ask each of the Board of Supervisors to ask themselves if the speaker noises would be what you would want to hear from your bedroom sixteen hours six days a week. I can't imagine that you would want to live at 3913 Hills Court in El Dorado Hills when Chick-fil-a opens it's doors with the speaker noise being present sixteen hours each day.

Chick-fil-a data states that 500,000 customers on the average visit each of their restaurants annually. A majority of these customers are using the speakers to order their food.

I am not opposed at all to development on the property on Saratoga. I am opposed to Chick-fil-a restaurant being approved for this location due to the long hours they are open (6:30 a.m. to 10:30 p.m.) and the speakers they have for ordering their food.

10/9/2018

Edcgov.us Mail - Fwd: proposed Chick-fil-a restaurant approval

Approval of this restaurant with the speakers for ordering will negatively impact the homes across the street and the Park village neighborhood.

I have lived in El Dorado Hill for the past 41 years and have seen our community grow into the city it is today. Of all the businesses that have opened over the years I have lived in El Dorado Hills I cannot think of one that is a restaurant with speakers for ordering that is directly across the street from homes.

Please cast your vote to not approve this project. The voters have elected youcted to do what is best for the citizens of El Dorado County. Bringing this restaurant with it's speakers to our neighborhood would not be in the best interest of our citizens who reside in Park Village and in the El Dorado Hills Townhomes.

Respectfully submitted,

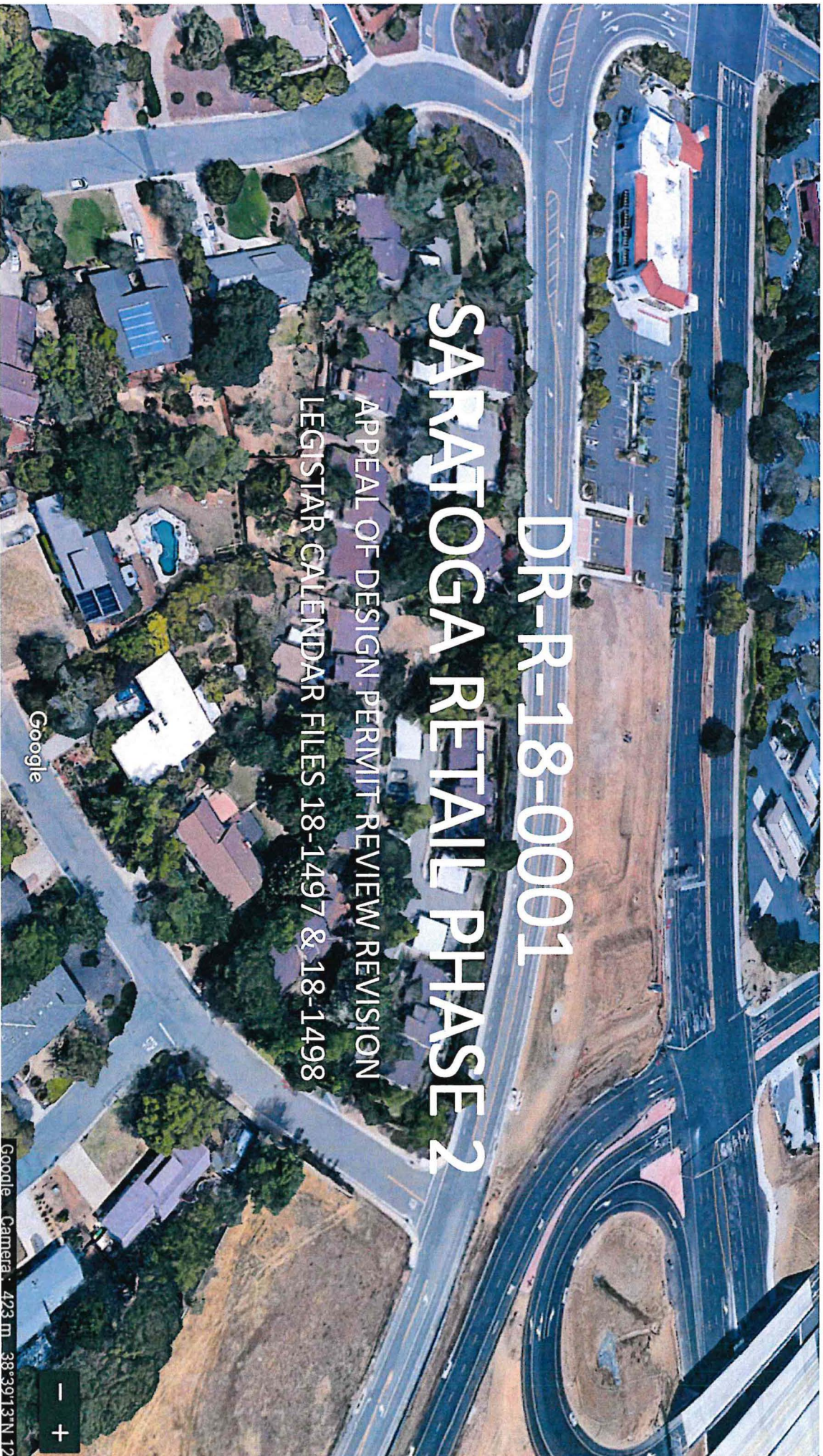
Myrna Midkiff Sparks  
Tel: 916-933-0747

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The **BOSFOUR** <bosfour@edcgov.us>  
To: EDC COB <edc.cob@edcgov.us>

Tue, Oct 9, 2018 at 8:09 AM

[Quoted text hidden]



DR-R-18-0001

# SARATOGA RETAIL PHASE 2

APPEAL OF DESIGN PERMIT REVIEW REVISION

LEGISTAR CALENDAR FILES 18-1497 & 18-1498

Google

Google Camera 473 m 38°39'13"N 122°



## LEGALLY THE SARATOGA RETAIL – PHASE 2 REVISED DESIGN REVIEW PERMIT MUST BE DENIED

### 1. LEGAL GROUNDS FOR DENIAL:

1. THE 2009 DESIGN DID NOT COMPLY WITH DESIGN STANDARDS, SO THE COUNTY CONDITIONED THE APPROVAL OF THE PERMIT ON THE SITE'S FACILITIES BEING **NON-TOURIST** SERVING. THE REVISED DESIGN DOES NOT COMPLY WITH THE CONDITIONED "USE" OR SPECIFIC ADMINISTRATIVE RELIEF GRANTED BY THE COUNTY, AND THEREFORE THE REVISION CANNOT BE APPROVED AS A MINOR MODIFICATION.
2. THE 2018 REVISED DESIGN **ALSO** FAILS TO COMPLY WITH THE COUNTY'S DESIGN STANDARDS AND ADMINISTRATIVE RELIEF WAS NOT SOUGHT, NOR IS ANY AVAILABLE BECAUSE THE NON-COMPLIANCE SIGNIFICANTLY INCREASES THE HARM TO THE DESIGN STANDARDS WERE ADOPTED TO PREVENT.
3. AS WRITTEN THE SPECIFIC DRIVE-THROUGH DESIGN STANDARDS REQUIRE MANDATORY COMPLIANCE. THOSE PROJECTS THAT ARE UNABLE TO COMPLY ARE SUBJECT TO A CONDITIONAL USE PERMIT. A CONDITIONAL USE PERMIT HAS NOT BEEN ISSUED FOR THE NON-CONFORMING DRIVE-THROUGH FACILITY AS REQUIRED BY LAW.
4. DESIGN REVIEW PERMITS ARE DISCRETIONARY WHEN THE PROPOSED DESIGN IS NON-COMPLIANT WITH THE COUNTY'S DESIGN STANDARDS. DISCRETIONARY PERMITS ARE SUBJECT TO CEQA REVIEW, AND APPELLANTS HAVE PREVIOUSLY DEMONSTRATED THAT A FAIR ARGUMENT CAN BE MADE THAT THE PROPOSED PROJECT WILL HAVE A SIGNIFICANT IMPACT ON THE ENVIRONMENT, THUS AN E.I.R. IS REQUIRED.

# DESIGN REVIEW PERMIT ORDINANCE

- **Sec. 130.52.030 - Design Review Permit.**
- A. Applicability. The design review permit process is established in specific areas of the County to ensure compatibility with historical, scenic, or community design criteria. This process is applied only to commercial, industrial, mixed-use, and multi-unit residential projects in the following areas:
  - 1. Meyers Area Plan.
  - 2. Land adjacent to designated State Scenic Highway Corridors.
  - 3. Other areas where the Design Review-Community (-DC), -Historic (-DH), or Scenic Corridor (-DS) Combining Zones have been applied.
  - 4. Mixed use development projects in Community Regions.
- B. Review Authority, Procedure, and CEQA. The Director shall have the review authority of original jurisdiction for those projects not adjacent to or visible from designated State Scenic Highway Corridors. The procedure shall be staff-level with public notice. The Commission shall have the review authority of original jurisdiction for those projects that are adjacent to or visible from designated State Scenic Highway Corridors. **The adoption of design standards in accordance with Section 130.27.050.F (Establishment of Community Design Review Areas; Guidelines and Standards) is a discretionary project pursuant to CEQA.** The approval of a design review permit is a ministerial project pursuant to CEQA, **when in compliance with adopted design standards.** The design review process shall be limited to consideration of compliance with established standards, provided that the use proposed for the project site is an allowed use within the zone.
- C. Design Review Committee. If a project is located within a district for which a design review committee has been established in compliance with Section 130.60.070 (Design Review Committee), the Director shall transmit the application to the committee prior to rendering a written decision or making a recommendation to the Commission. The application review process by the committee shall provide an opportunity for the applicant or other interested persons to provide testimony. **After public testimony, the committee shall discuss the proposed project and by motion present a recommendation to the Director.** The Director may approve or deny the permit, and may incorporate conditions to ensure compliance with the applicable design standards.

# WHAT IS EL DORADO COUNTY'S DESIGN REVIEW PERMIT PROCESS?

- **DESIGN REVIEW PURPOSE:** The design review process has been established in many areas of the County to insure a proposed project is compatible with historical, scenic, or community values; provides for good site design and safety; is compatible with applicable General Plan policy; and conforms to applicable County ordinances.
- These projects are considered **discretionary** and are therefore subject to the procedures of the California Environmental Quality Act (CEQA). This process requires an extended review period to develop an initial study where environmental impacts are assessed, and to provide public notice of the project and its potential impacts on the environment.
- **Applications Along State Highways** - Planning Commission Review 1. Applicant receives the staff report at least two weeks prior to the public hearing which includes staff recommendation and proposed conditions of approval or mitigation measures. 2. Public hearing is conducted before the Planning Commission where a final decision is made unless appealed. 3. An appeal may be filed by either the applicant or affected party within ten working days after decision. 4. Board of Supervisors public hearing is held on the appeal and a final decision is made (about 30 days after Planning Commission decision). (*El Dorado County Planning Department, Design Review Form, as revised November 17, 2017.*)



## 2009 DESIGN REVIEW PERMIT

- **Project Description:** Design Review request to construct three (3) commercial buildings totaling 30,628 square feet. Building 1 would be 13,368 square feet, Building 2 would be 11,539 square feet and Building 3 would be 5,775 square feet.
- **BACKGROUND:** Section 17.14.130.A of the Zoning Ordinance requires any permit for a building in a commercial zone district that is adjacent to a State Highway shall be considered by the Planning Commission in an endeavor to provide that the architectural and general appearance of the buildings be in keeping with the character of the neighborhood. As the project is adjacent to Highway 50, a Design Review application for planning commission review was submitted on May 15, 2008 and deemed complete on June 15, 2008.
- The Planning Commission should be aware that as a result of the Saratoga Way realignment project undertaken by El Dorado County, **an odd-shaped parcel was created**. The applicant has adapted the project to this odd-shape, **but unique circulation issues exist with respect to the site's ability to handle large vehicles due to the narrow width of the parcel in certain locations**. As a result of the parcel's limitations, a number of administrative relief findings have been requested. *(2009 Staff Findings.)*

## 2009 DESIGN REVIEW PERMIT

- “Due to the **odd-shaped lot** that resulted from the Saratoga Way expansion project, **onsite circulation is limited as discussed earlier in the staff report.**” (*p. 6 Staff Report 2009, DR08-0003.*)
- “However, the project parking exceeds the County requirements and would be sufficient to serve the proposed commercial use given that **the project is not a regional retail center, nor is it a tourist-serving facility, and it is unlikely that it would draw recreational vehicles to the site. Administrative relief findings from the strict compliance with the provisions for commercial use have been made and are included in the Findings for Approval, Attachment 2.**” (*p. 8 Staff Report 2009, DR08-0003.*)

## 2009 CONDITIONS OF DESIGN PERMIT APPROVAL

- “This Design Review is based upon and limited to compliance with the project description, the Planning Commission exhibits marked D through N, dated January 22, 2009, and conditions of approval set forth below. Any deviations from the project description, exhibits or conditions must be reviewed and approved by the County for conformity with this approval. **Deviations may require approved changes to the permit and/or further environmental review.** Deviations without the above-described approval will constitute a violation of permit approval.” (*EX. 1- Conditions of Approval 2009.*)

# PERMIT REVISIONS

## Sec. 130.54.070 - Revision to an Approved Permit or Authorization.

All structures and uses shall be constructed or otherwise established only as approved by the review authority, **and in conformance with all conditions of approval**, except as provided herein. Modifications of the conditions of approval provided for in this Chapter, including alteration of the project design, expansion, reduction, or phasing of the development, or further disturbance of the site, may be allowed as follows:

- A. An application for a revision to an approved permit or authorization may be submitted to the Department either before or after the commencement of construction or establishment of an approved use. The application shall consist of a written description of the proposed modifications, appropriate supporting documentation, plans, or other information deemed necessary by the Director to evaluate the proposed change.
- B. The Director may approve a minor modification(s) when the findings can be made that the modification(s):
  - 1. **Does not involve a feature of the project that was specifically addressed in the conditions of approval**, mitigation measures, or **findings for approval** of the project;
  - 2. Does not result in an expansion of the project;
  - 3. Does not substantially alter the original approval decision; and
  - 4. **Does not result in changed or new impacts to the surrounding environment that would necessitate modifications to the CEQA document approved for the project.**
- C. Revisions to a permit or authorization which result in an expansion or substantial alteration of the project, or which may affect a condition of approval, mitigation measure, or finding that was specifically addressed by the review authority, **may only be approved by said authority following a public hearing.**
- D. Director approval of minor modifications shall be processed using the Staff Review with Notice procedures. If the Director determines that the request requires a public hearing by the review authority of original jurisdiction, notice shall be given in compliance with the same noticing requirements of the original application.
- E. The review authority may modify or impose new conditions to the permit revision when necessary to carry out the original permit or when necessary to protect the public health and safety or to comply with provisions of state or federal law.
- F. Appeal of a decision on a Revision to an Approved Permit or Authorization shall be processed in compliance with Section 130.52.090 (Appeals).

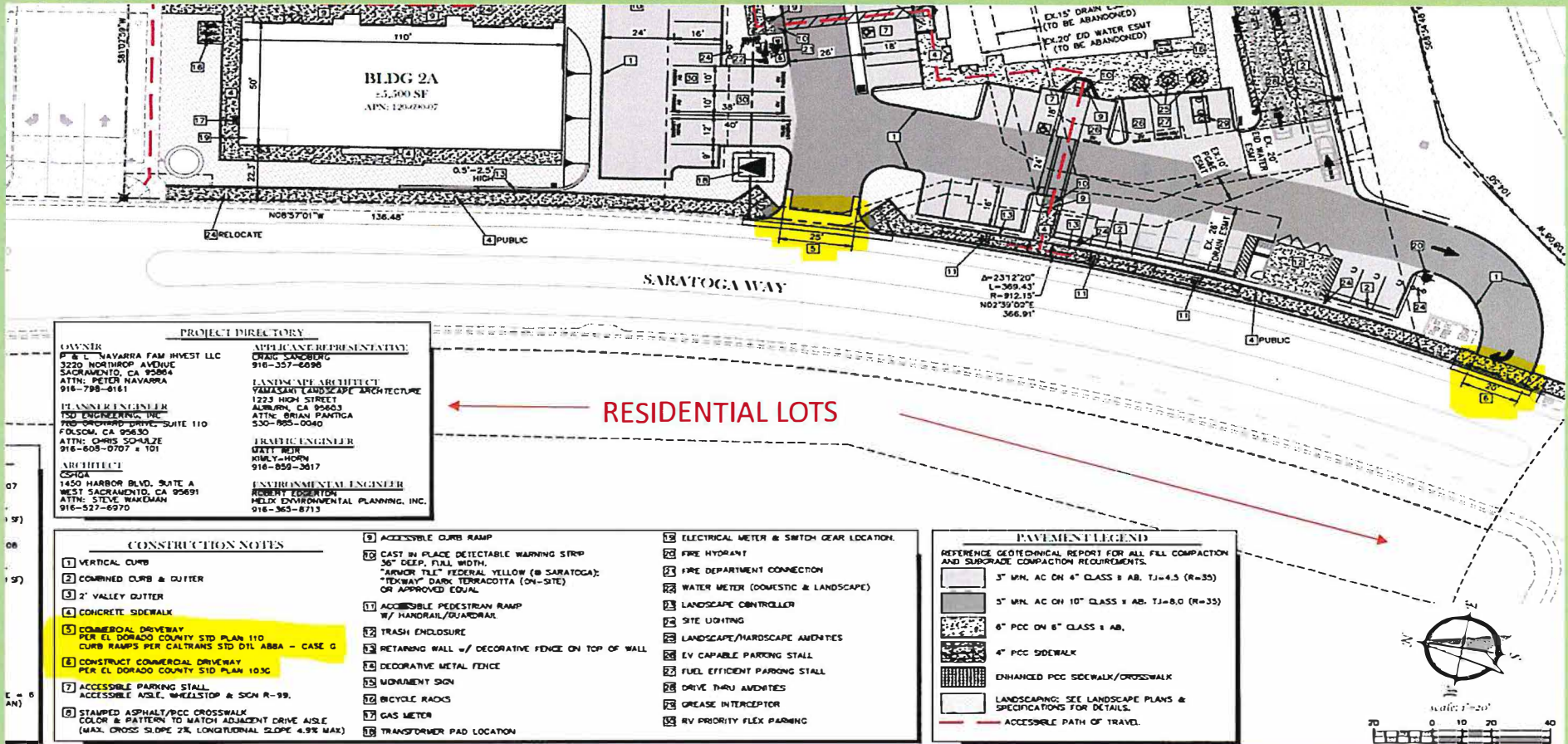
# REVISED DESIGN DOES NOT COMPLY WITH DESIGN STANDARDS

- Traffic and circulation was at issue in 2009; and remains the primary issue of non-compliance in 2018.
- 2015 Community Design Standards -Parking and Loading Design govern the Revised Design.
- Eight (8) Specific Conditions **shall** be in compliance with any Drive-Through facility.
- “Drive-Through Facilities. Sites containing these facilities shall be in compliance with the following **circulation and traffic control standards.**” **Site** – meaning the commercial lot containing a drive-through facility.

# REVISED DESIGN DOES NOT COMPLY WITH DESIGN STANDARDS

- **SPECIFIC DRIVE-THROUGH CONDITIONS THAT ARE NOT MET:**
- Ingress to and egress from a drive-through facility shall be **prohibited** from **driveway(s) directly facing a residential zone.** (H.2)
  - DRIVEWAY – only a single common meaning, no other alternative definition provided in the ordinance or county code.
  - DRIVEWAY – common definition: “paved portion of a public street providing unobstructed passage from the road to an off-street area.”
  - On the plans submitted for the Project “commercial driveways” are located at the point where the lot meets Saratoga Way.
  - All 4 driveways for this development are directly facing a residential zone.
  - There is no way to comply with this condition of approval for a drive-through.
  - Purpose of the condition is to minimize traffic and circulation in and around a residential area- as clearly stated in the design standard preamble.

# REVISED PROJECTS DRIVEWAY LOCATIONS



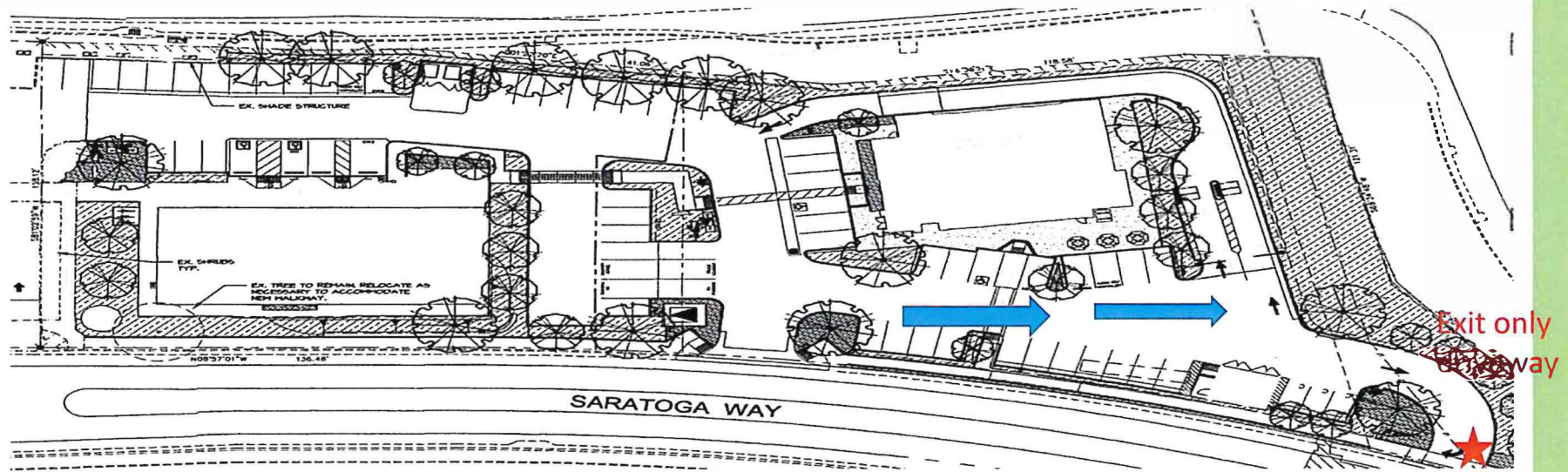
# REVISED DESIGN DOES NOT COMPLY WITH DESIGN STANDARDS

- Once enacted, a county ordinance and/or regulation has the same force within county limits as a statute passed by the legislature has throughout the state. Accordingly, rules pertaining to the construction of statutes apply also to construction of ordinances. *Evola v. Wendt Const. Co.*, 170 Cal. App. 2d 21, 338 P.2d 498 (1st Dist. 1959).
- Statutory terms should be construed in accordance with the usual or ordinary meaning of the words used. (*People ex rel. Younger v. Superior Court*, 16 Cal. 3d 30, 43; *Moyer v. Workmen's Comp. Appeals Bd.*, 10 Cal. 3d 222, 230; *Estate of Richartz*, 45 Cal. 2d 292, 294.)
- When the language is clear, the court should follow its plain meaning, except in the case of uncertainty, or if necessary to avoid absurd results. (*Great Lakes Properties, Inc. v. City of El Segundo*, 19 Cal. 3d 152, 155; *Holder v. Superior Court*, 269 Cal. App. 2d 314, 317; *Silver v. Brown*, 63 Cal. 2d 841, 845.)
- Public officials are compelled to obey the law. (*Wirin v. Parker*, 48 Cal. 2d 890, 894.)



# REVISED DESIGN DOES NOT COMPLY WITH DESIGN STANDARDS

- Stacking areas shall not block access to any parking area or space required of a business. Lane striping to separate drive-through traffic from parking areas shall be provided from the nearest point of site access, as feasible, to the stacking lane(s). (H.6)



# REVISED DESIGN DOES NOT COMPLY WITH DESIGN STANDARDS

- Where a facility **exceeds** the standards of Paragraphs 1 through 6 above, and is not located within a development that is subject to a discretionary permit, such as a Conditional Use, Design Review, or Development Plan Permit, **a Conditional Use Permit shall be required.** (H.7.)

C. Specific Findings for Conditional Use Permits. In addition to findings of consistency with the requirements and standards of this Title, the review authority shall make the following findings before approving a Conditional Use Permit application:

1. The proposed use is consistent with the General Plan; and
2. **The proposed use would not be detrimental to the public health, safety and welfare, or injurious to the neighborhood; and**
3. The proposed use is specifically allowed by a conditional use permit pursuant to this Title.

D. If there is any single use that triggers the need for a Conditional Use Permit, the Conditional Use Permit will include and address, as long as it remains active, all existing and subsequent uses allowed by discretionary permit.

# ENVIRONMENTAL REVIEW

- When a fair argument can be made that a project will have significant effect on the environment, and evidence of such impact exists in the lead agency's record, the agency's decision to adopt a mitigated negative declaration will be set aside. (*Gentry v. City of Murrieta* (1995) 36 CA4th 1359. Further, a mitigated negative declaration will be set aside if there is substantial evidence in the record that the conditions attached to its adoption are insufficient to mitigate project impacts. *California Native Plant Soc'y v. County of El Dorado*, (2009) 170 CA4th 1026.
- A significant effect on the environment is substantial adverse change in the physical environment in the area affected by the project. The effect need not be momentous, important, or long lasting to be significant. The term "significant" covers a spectrum ranging from "not trivial" through "appreciable" to "important" and even "momentous." (See, *No Oil Inc. v. City of Los Angeles* (1974) 13 C3d 68, 83.) An agency's determination whether to classify a particular impact as significant involves the exercise of discretion. Further, it calls for careful judgment on the part of the public agency involved, based to the extent possible, on scientific and factual data. (14 Cal. Code Regs. §15064(b).) Distinguishing between substantial and insubstantial environmental effects requires that the agency make a policy decision based in part on the setting. (*WM Barr & Co. v. South Coast Air Quality Mgmt. Dist.* (2012) 207 CA4th 406, 433.)

# ENVIRONMENTAL REVIEW

- Findings from the county do not address the fact that there are sensitive receptors within .4 miles: children, schools and the elderly.
- Findings for traffic do not include realistic effects of future projects including Saratoga Estates.
- Findings do not include a review in accordance with Measure E.
- Mitigation is dependent upon future mitigation, which is not allowed under CEQA.

## 2018 STAFF REPORT AND FINDINGS

- Clearly erroneous findings/reports must be set aside; and cannot be given deference as a basis for upholding approval of a project.
- Presumption that county findings are accurate is defeated when on their face the reports/findings are FALSE.
- Where the county regulation/ordinance requires a ministerial act to be done by a municipal officer or employee, and the officer neglects or refuses to do that act, the officer/employee may be compelled to respond in damages to the extent of the injury arising from the officer/employees conduct. *Ellis v. City Counsel of Burlingame* (1963) 222 Cal.App.2d 490.

## REBUTTAL ARGUMENTS

- Ministerial exception to environmental review- FALSE.
- Prior environmental review adequate for revisions- FALSE.
- Parking and Lodging Community Design Standards were intended to limit noise and light nuisance – FALSE.
- The project does comply with the design standards for a drive-through- FALSE.
- The applicant has made enough concessions and should be allowed to build a non-compliant drive-through – FALSE, and terrible precedent.
- Neighbors just don't like chick-fil-a- FALSE.

# CONCLUSION

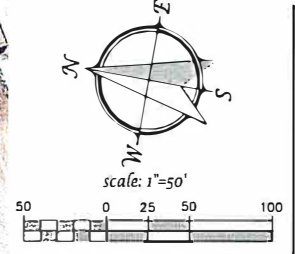
- This oddly shaped lot cannot accommodate the heightened circulation that occurs with fast food drive-through facilities.
- The county created a much needed residential buffer when designing and adopting the Design Standards. Eliminated this buffer and reading into the statute an intent that is not apparent, and is conflicting with the stated purpose of the design standards is a horrible precedent to set for further development.
- The BOS is tasked with protecting the welfare, safety, and health of its residents. This duty must outweigh the profitability of a retail – for profit development that will permanently harm the neighboring community.

PRELIMINARY CONTEXT EXHIBIT - DESIGN REVIEW  
**SARATOGA RETAIL - PHASE 2**  
 EL DORADO HILLS, EL DORADO COUNTY



Saratoga Retail Phase 2:  
 DR-R18-001  
 Exhibit F  
 Aerial Site Plan

PRELIMINARY CONTEXT EXHIBIT  
 JUNE 26, 2018



**TSD ENGINEERING, INC.**  
 expect more.  
 785 Orchard Dr, Suite 110  
 Folsom, CA 95630  
 Phone: (916) 608-0707  
 Fax: (916) 608-0701

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