



Planning Department <planning@edcgov.us>

**Fwd: Saratoga Retail Project**

1 message

**Char Tim** <charlene.tim@edcgov.us>  
To: Planning Department <planning@edcgov.us>

Wed, Aug 22, 2018 at 10:43 AM

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From: **Craig Sandberg** <craig@sandberglaw.net>

Date: Wed, Aug 22, 2018 at 10:25 AM

Subject: Saratoga Retail Project

To: Jon Vegna <jvegna@edcgov.us>, "gary.miller@edcgov.us" <gary.miller@edcgov.us>, "jeff.hansen@edcgov.us" <jeff.hansen@edcgov.us>, James Williams <james.williams@edcgov.us>, "brian.shinault@edcgov.us" <brian.shinault@edcgov.us>

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Please see the attached correspondence relating to the Saratoga Retail project on August 23<sup>rd</sup> agenda.

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**Planning Commission 8-22-18.pdf**  
2239K

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August 22, 2018

Planning Commission  
El Dorado County  
2850 Fairlane Court  
Placerville, CA 95667

Re: Saratoga Retail Project  
DR-R18-0001 August 23, 2018 Agenda

Dear Members of the Planning Commission:

Quite a number of comments have been submitted on this project, many of which are quite voluminous and scholarly, but which, miss the mark on the purpose of the hearing and the process we are undertaking. This application is for a Design Review pursuant to Ordinance Code Section 130.52.030, which provides in relevant part, *“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.”* This Ordinance contains two key elements, one is the determination that the design review process is “ministerial” pursuant to CEQA, which essentially means that CEQA is not applicable and, two, the process is limited to a determination as to whether the project is consistent with established standards. Accordingly, the question is not whether a fast food drive through is allowed on the property, but rather, is the design of the project consistent with applicable standards, such as, parking, signage, setbacks and the like? This Ordinance is consistent with case law on the subject. In *San Diego Navy Broadway Complex Coalition v. City of San Diego* (2010) 185 Cal App 4<sup>th</sup> 925, in reviewing the design review of a 3,000,000 square foot office and hotel complex, the court concluded that to the extent there is some discretion associated with a design review approval, it was limited to design and aesthetics considerations and did not rise to the level of discretion necessary to trigger a need for a CEQA document. El Dorado County has essentially codified this legal concept in Ordinance Code Section 130.52.030. The project site has a General Plan Designation of Commercial and is zoned Commercial-Community Design Review District (CC-DC). All proposed uses for the project are allowed uses within the Commercial Community Design District. Further, this proposed site plan is consistent with a reasonable interpretation of all adopted/existing development standards applicable to the Commercial zoning district.

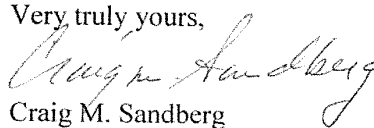
The purpose of this letter is to state for the record that the applicant does not waive their rights under Ordinance 130.52.030, nor should the election to provide an enhanced Initial Study/Mitigated Negative Declaration be construed as an implied waiver of the benefits of the Ordinance.

Planning Commission  
El Dorado County  
August 22, 2018  
Page 2

Notwithstanding the foregoing, if it can be construed that CEQA does apply to the Design Review process, the project would be analyzed in accordance with CEQA Guidelines Section 15183, which provides for a limited scope of review for projects which are consistent with the General Plan, a community plan or the zoning for the property for which an EIR had been prepared. In this case, the project, as proposed, is consistent with the General Plan and zoning which has been in place for many years. In such a case, the environmental analysis is limited to effects which are peculiar to the site or significant offsite and cumulative impacts which were not discussed in the prior EIRs. The numerous studies which are incorporated into the Initial Study/Mitigated Negative Declaration for the project reveal no significant impacts which were not considered with the adoption of the General Plan, or its recent updates. In fact, due to the significant reduction of commercial square footage on the site, the projected impacts arising from the use of the property were actually less than assumed in those prior studies. Accordingly, arguments related to cumulative impacts are inapplicable to the project as proposed, as such impacts were studied in prior EIRs and where determined that such impacts were significant and unavoidable, statements of overriding findings were made.

In light of the comments that have been coming in which relate to allowed uses on the property which go far beyond the relevant considerations for a Design Review, we felt it important to try to bring things back to where they belong.

Very truly yours,



Craig M. Sandberg

CMS/ms

cc: Mike Nihan  
Efren Sanchez  
David Livingston  
Client