

NATHAN L. SCHEG
CHRISTOPHER C. M. WAUD

IRONHORSE LAW GROUP

A PROFESSIONAL LAW CORPORATION

2121 NORTH CALIFORNIA BLVD., SUITE 290
WALNUT CREEK, CA 94596
TELEPHONE: (925) 399-6108
FACSIMILE: (925) 215-8427

June 15, 2020

VIA EMAIL ONLY

CityCouncil@roseville.ca.us

City of Roseville City Council
311 Vernon Street
Roseville, CA 95678

**RE: WRSP PCL F-31 - The Plaza at Blue Oaks (File #PL17-0368)
Response to Associations' Appeal of Approval of Mitigated Negative Declaration**

Dear Council Members:

This office represents West Roseville Project Development Company, Inc., the project owner ("Owner"), and Signature Management Company, the project developer ("Developer"), of the above-referenced project. The purpose of this letter is to provide a response to the May 26, 2020 letter from the Law Offices of Robert M. Bone, representing an unincorporated association of Roseville community residents (the "Association"), to the City Council ("Council") appealing the May 14, 2020 decision of the Planning Commission to approve the Project's Initial Study/Mitigated Negative Declaration ("IS/MND") (the "Appeal"). Owner and Developer are real parties in interest.

The Project was heard by the Planning Commission on May 14, 2020. Prior to the hearing, the Planning Commission received a total of nine letters from the public in opposition of the project and two letters in support of the project. The letters in opposition of the project cited similar concerns regarding the environmental impacts of the project. Mr. Bone submitted additional correspondence on behalf of the Association that focused on additional concerns with the overall project design. These concerns are identical to those raised in the Appeal.

At the Planning Commission hearing, Mr. Bone spoke in opposition of the project and repeated the Association's concerns as stated in his prior correspondence, including effects of the project on the environment, the removal of oak trees, and increase in traffic. After receiving testimony, the Planning Commission deliberated on the item and ultimately voted to approve the Design Review Permit, Tentative Subdivision Map, and Tree Permit, with a vote of 6 aye, 0 nay, 1 absent.

On May 26, 2020, the City received the Association's appeal of the Planning Commission's decision from the Law Office of Robert M. Bone. In its Appeal, the Association challenges the adequacy of the City's environmental review, alleging the following grounds to reject the Planning Commission's decision: inconsistency with the General Plan, Bicycle Master Plan, and Pedestrian Master Plan; conflict with the City's site design guidelines; loss of oak trees; and inadequate environmental review.

Associate Planner Kinarik Shallow and Development Services Director Mike Isom are expected to submit a memo to the Council responding to the specific issues raised by the Appeal.

Owner and Developer agree with the Planning Commission that the Initial Study adequately evaluates, discloses, and mitigates the Project's environmental impacts and a Mitigated Negative Declaration is the appropriate environmental determination for the Project. Owner and Developer also assert that all aspects of CEQA with regard to the IS/MND have been fully complied with and that an Environmental Impact Report ("EIR") is not required for the Project. Owner and Developer further assert that the Project is consistent with the General Plan, Bicycle Master Plan, Pedestrian Master Plan; City site design guidelines; and tree protection ordinances.

CEQA requires the preparation of an EIR whenever an agency proposes to approve or implement a project that "may have a significant effect on the environment." (§§ 21100, 21151.) "If there is no substantial evidence of any significant environmental impact, however, the agency may [instead] adopt a negative declaration." (City of Redlands v. County of San Bernardino, (2002) 96 Cal.App.4th 398, 405.) A *mitigated* negative declaration may be utilized by an agency when a project as initially proposed may have a significant effect on the environment but will not have a significant environmental effect because changes have been made or agreed on that mitigate such potential effects. (Cal. Code Regs. tit. 14, § 15071(e)). In evaluating a claim that an agency improperly approved a project by using a negative declaration, rather than preparing an EIR, a trial court applies the "fair argument" test. (Porterville Citizens for Responsible Hillside Development v. City of Porterville, (2007) 157 Cal.App.4th 885, 899.) "Under this test, the agency must prepare an EIR whenever substantial evidence in the record supports a fair argument that a proposed project may have a significant effect on the environment." (Gentry v. City of Murrieta, (1995) 36 Cal.App.4th 1359, 1399-1400.) In that instance, a trial court's function is to decide whether substantial evidence supports the agency's conclusion as to whether a fair argument of environmental impact could be made. (Id. at p. 1399.)

Like any petitioner challenging an agency's decision to proceed by negative declaration, the Association bears the burden of proof "to demonstrate by citation to the record the existence of substantial evidence supporting a fair argument of significant environmental impact." Gentry v. City of Murrieta (1995) 36 Cal.App.4th 1359, 1379. The Association cannot meet this burden.

CEQA and its implementing regulations provide that facts, reasonable assumptions predicated on facts, and expert opinions supported by facts may constitute substantial evidence; whereas argument, speculation, unsubstantiated opinion or narrative, clearly inaccurate or erroneous factual statements or evidence of social or economic impacts that do not result in physical impacts on the environment may not. (§§ 21080, subd. (c); 21080. 2, subd (c); 14 Cal. Code Regs., §§ 15064, subd. (f)(5), 15384.) **"[I]n the absence of a specific factual foundation in the record, dire predictions by non-experts regarding the consequences of a project do not constitute substantial evidence."** (Porterville Citizens for Responsible Hillside Development, *supra*, 157 Cal.App.4th at p. 901 (emphasis added).)

In its Appeal, the Association relies on nothing more than argument, speculation, and unsubstantiated opinion and narrative in its attempt to claim that further environmental study is

June 15, 2020

Page 3

required. Such a dearth of substantiated evidence cannot and will not rise to the level of substantial evidence required to overcome the Planning Commission's discretionary and well-supported decision as set forth in its IS/MND. As such, Owner and Developer urge the Council to adopt the Plaza at Blue Oaks Initial Study/Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program; and adopt Resolution No. 20-xxx denying the Association's Appeal from the May 14, 2020 approvals by the Planning Commission; adopting the four (4) findings of fact and approving the design review permit subject to one hundred one (101) conditions of approval; adopting the three (3) findings of fact and approving the tentative subdivision map subject to thirty-nine (39) conditions of approval; and adopting the two (2) findings of fact and approving the tree permit subject to twenty (20) conditions of approval.

Lastly, in its Appeal, the Association states that it has "commissioned an environmental report and a traffic report" that it intends to submit to the Council in support of the Association's position. As of the drafting of this correspondence, said reports have not yet been submitted to the Council and are not part of the record. Owner and Developer submit that an adequate hearing can only be held once said reports are submitted and they and the City have had sufficient time to review, analyze, and, if necessary, respond to same.

Sincerely,

IRONHORSE LAW GROUP PC

A handwritten signature in black ink that reads "Nathan Scheg". The signature is written in a cursive, flowing style.

Nathan L. Scheg, Esq.

cc: Client (via email only)