



T R A I N O R F A I R B R O O K

A T T O R N E Y S A T L A W

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June 29, 2023

FEDEX AND
ELECTRONIC MAIL

Members of the City Council
City of Roseville
311 Vernon Street
Roseville, California 95678

Re: Owner's Response to the Appeal to the City Council
Appeal NRSP PCL WW 40 Grocery Outlet: File #PL22 0205

Dear Council Members:

This firm represents the Applicant and property owner, Inter-Cal Real Estate Corporation ("Applicant"), with respect to the appeal by Protect Our Roseville Neighborhoods ("Appellant") of the May 11, 2023 Planning Commission approval of the above-referenced Project on Pleasant Grove Boulevard at Fiddymont Road.

Preliminarily, our client would like to point out that the majority of the Appellant's appeal centers around a potential "ultra-popular brand," drive-through, fast-food restaurant. While Parcel 3 of our client's project was initially part of the application and included a fast-food restaurant, that Parcel and use were removed from the application in the first staff review of the Project. Our client presently has no plans for development of Parcel 3, and there is no fast-food restaurant on the site. The Project now consists of only two buildings. The first is a building for a Grocery Outlet of 16,000 square feet, and the second is an adjacent shops building consisting of 4,600 square feet. As each of you know, any development of Parcel 3 as a fast-food, drive-through restaurant, ultra-brand or not, will require approval by the City after public hearings and most likely a conditional use permit.

As a result of the foregoing facts, much of the Appellant's arguendo is speculative, has nothing to do with the Project which was approved by the Planning Commission, and, therefore, cannot be responded to substantively.

Our responses to the Appellant's May 17, 2023 letter, set forth in the same order as presented in Mr. Mooney's letter, are as follows:

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A. The Project Does Not Qualify for an Infill Exemption Under CEQA Guidelines Section 15332.

Appellant claims that the infill exemption does not apply because "the proposed Project will result in significant effects to traffic and noise."

With respect to traffic, Appellant is correct that the original traffic study included commentary on a drive-through restaurant. However, as previously stated, the proposal to include a fast-food restaurant was dropped and the remainder of the traffic study remains sufficient for the City's purposes to analyze this Project. The traffic study was a short-term study intended to examine turning movements and queuing, which are not considered impacts under CEQA. The Project was analyzed under the City's vehicle miles traveled ("VMT") standard and found to be consistent with the City's general plan and the analysis of the VMT included in the City's 2035 General Plan EIR. As a result, the City correctly concluded that the two-building project did not require any further environmental review with respect to traffic.

The second claim by the Appellant is that the Project does not qualify as an infill exemption because of a significant effect relating to noise. Again, the noise study created by Saxelby Acoustics was prepared when the Project initially included a fast-food restaurant as part of the Project which was subsequently removed very early in the approval process. There was no need to update the noise study. The two buildings that are part of the Project were found by the City to be within the City's allowable noise standards without mitigation. The staff did impose a condition, however, on the Applicant requiring a masonry wall adjacent to the buildings, which the Applicant accepted.

Based upon the fact that the Project will not result in the traffic and noise impacts speculated upon by Appellant, and based upon the fact that all parties understand that any such future use of Parcel 3 would be required to come before the City to obtain approval and most likely, a conditional use permit, the Council should reject the Appellant's appeal that the infill exemption is not applicable in this circumstance. There is no "significant effect on the traffic and noise" beyond the City's standards.

B. The Project Does Not Qualify for a Categorical Exemption Due to Unusual Circumstances.

The Applicant also appeals the approval of the Planning Commission by claiming that the categorical exemption does not apply because of (1) the placement of a fast-food restaurant adjacent to an existing neighborhood, and (2) the potential prescriptive easement on the property, which it claims are "unusual circumstances" under CEQA.

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It is difficult to provide a response to this allegation because the Project, as approved, is in compliance with the general plan, the zoning, design and all other elements of the City's approval process, with no variances requested or required. It is unclear how this is an "unusual circumstance," especially since there is no fast-food restaurant proposed adjacent to the existing neighborhood which is the allegation.

With respect to the Appellant's statement that unusual circumstances also include a potential prescriptive easement on the Property, there was no further mention of the prescriptive easement in Appellant's letter, so it is impossible to understand the argument or provide a response.

C. The Proposed Findings are Not Supported by Substantial Evidence.

Appellant's letter, on this point, argues exclusively that there is no sound wall next to the fast-food restaurant. Since there is no fast-food restaurant in the Project, this argument is nonsensical.

D. The Project Will Impact an Easement Held by the Nearby Homeowners Association.

Since 2006, the homeowners have had a recorded easement across the Project to Pleasant Grove Boulevard. The Project, as planned, retains that easement through the unrestricted drive aisles and driveway to Pleasant Grove Boulevard. It is unclear how the Applicant is "impacting" the easement. The Appellant's letter is correct that the Project does not have an easement through the homeowners' roadways (although there is an unrelated reciprocal easement along the joint property line between the Project and the homeowner association's property). The Planning Commission required signage and a speed bump to be placed at the entrance to Camino Real Way to discourage shopping center patrons from entering the Paseo Del Norte subdivision, to which the Applicant agreed. Based upon comments at the Planning Commission by the homeowners association, the Applicant is also agreeable, at the option of the homeowners association, to allow the homeowners association to install concrete bollards to prevent vehicles from entering the residential neighborhood in return for abandoning the easement through the shopping center (except for emergency access). The arguendo about the easement set forth in the Appellant's letter to be a civil matter, not a matter for the City. The Applicant remains willing to discuss any of the options with the homeowners association. However, as of the date of this letter, the homeowners association has not contacted either the City or the Applicant to discuss the condition added by the Planning Commission.

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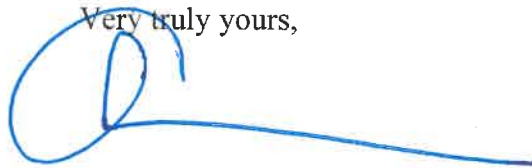
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The Appellant's unclear argument regarding protection of the homeowners' easement is not the City's obligation and has nothing to do with the CEQA challenge, which is the basis of the appeal. Frankly, we are not sure how to respond in this context.

Thank you for your consideration of the foregoing responses to the appeal of the Planning Commission's decision. We request that you reject the appeal. I will be available at your hearing on July 19, 2023, to respond to any questions concerning the foregoing responses or the Project.

Very truly yours,

A handwritten signature in blue ink, consisting of a large, stylized initial 'C' followed by a long horizontal line extending to the right.

Charles W. Trainor

CWT:skc

cc: Gregory W. Bitter, Planning Manager

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