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City of Placerville

3101 Center Street, Placerville, CA 95667
(530) 642-5200

NOTICE OF APPEAL OF A DECISION BY THE PLANNING COMMISSION TO THE PLACERVILLE CITY COUNCIL

File Number of Application Decision Being Appealed: CUP 204-04 and SPR 20-04

Date of Planning Commission Decision: December 1, 2020

A. APPELLANT INFORMATION

Appellants /Company Name: Placerville Downtown Association and
Friends of Historic Hangtown

Address: c/o Soluri Meserve, 510 8th Street

City, State, Zip Code: Sacramento, CA 95814

Contact Name: Patrick M. Soluri

Contact Title: Attorney

Telephone Number: (916) 455-7300 Email: patrick@semlawyers.com

APPELLANT AUTHORIZATION

_____	December 10, 2020
Appellant Signature(s)	Date
<u>Sue Taylor</u>	<u>12/10/20</u>
Appellant Signature(s)	Date
<u>[Signature]</u>	<u>12/10/2020</u>
Appellant Signature(s)	Date

For City Use Only:		
Date Received: _____	Received By: _____	Filing Fee: _____

B. APPELLANT APPLICATION SUBMITTAL REQUIREMENTS

- 1. Signed application form.
- 2. Processing fee pursuant to the latest adopted fee schedule.
- 3. Ten (10) copies of any supporting materials and a letter signed and dated by the appellant applicant that addresses each of the following:
 - a. Specific action appealed
 - b. Specific grounds of the appeal
 - c. Relief or action sought from the City Council
 - d. Address where notice can be sent to the appellant

C. APPELLANT APPLICANT NOTIFICATIONS

1. An appeal application must be filed within ten calendar days of the Planning Commission's decision.
2. The appeal will be scheduled for a public hearing before the City Council as soon as reasonably possible, but no later than 40 days after a complete notice of appeal has been filed.
3. The City Council may affirm, modify, or reverse the Planning Commission's decision, making findings required by the Placerville Municipal Code and/or State law. The decision of the City Council is final.



tel: 916.455.7300 • fax: 916.244.7300
510 8th Street • Sacramento, CA 95814

December 10, 2020

SENT VIA FEDERAL EXPRESS AND EMAIL

Hon. Michael Saragosa and
Members of the Placerville City Council
City of Placerville
3101 Center Street
Placerville, CA 95667

**RE: Notice of Appeal of Planning Commission Action on
Conditional Use Permit (CUP) 20-04 & Site Plan Review
(SPR) 20-04, 339 Main Street - Therapy Stores**

Dear Hon. Michael Saragosa and Members of the City of Placerville City Council:

This Appeal is submitted on behalf of our clients, the Placerville Downtown Association (“PDA”) and the Friends of Historic Hangtown (“FOHH,” and collectively, “Appellants”), regarding the Planning Commission’s December 1, 2020 approval of Conditional Use Permit 20-04, and Site Plan Review 20-04 authorizing a Therapy Store proposed for 339 Main Street in the City of Placerville’s historic central business district (“CBD”).

The following information is provided as set forth in the City’s appeal form.

I. Specific Action Appealed

This Appeal challenges the Planning Commission’s approval of Conditional Use Permit 20-04, and Site Plan Review 20-04.

II. Specific Grounds of the Appeal

This Appeal is based on the following grounds as well as any others that our ongoing investigation may reveal and supported with evidence as may be transmitted to the Council up to its hearing on appeal. (Placerville Appeal Process, section (C) (“The Council may affirm or reverse the decision of the Commission and may substitute its decision for that of the Commission based on the record of appeal and the evidence received at the hearing on appeal”).)

Hon. Michael Saragosa and Members of the
Placerville City Council
December 10, 2020
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- The Project is not “essential or desirable to the public convenience or welfare” because the Project, as a formula business, is inconsistent with the character of the City’s CBD.
- The Project is not “essential or desirable to the public convenience or welfare” because the Project, as a formula business, may result in business closures and resulting urban decay in the CBD.
- The City may not lawfully approve the Project because it has not adequately complied with the California Environmental Quality Act (“CEQA”). The Project is not exempt from CEQA because there is substantial evidence in the record that the Project will result in significant urban decay impacts in the CBD.
- The Planning Commission’s decision may have been the result of an unfair hearing. Specifically, some or all of the Planning Commissioners may have impermissibly prejudged the matter.

These claims are supported in Exhibits 1, 2, 3, and 4. Consistent with the City’s appeal process, Appellants are continuing their investigations and reserve the right to submit additional supporting evidence up to the hearing on the Appeal.

III. Relief or Action Sought from the City Council

This Council has authority to “affirm or reverse the decision of the Commission and may substitute its decision for that of the Commission.” This Appeal seeks the Council’s denial of Conditional Use Permit 20-04. This Appeal also seeks a determination that the Project is not exempt from CEQA, and based on the potentially significant urban decay impact in the CBD, this Appeal seeks a remand back to staff for adequate CEQA review of the Project.

IV. Address Where Notice Can Be Sent to the Appellant

Notices to the Appellants can be addressed as follows:

Patrick Soluri
Soluri Meserve
510 8th Street
Sacramento, CA 95814

Hon. Michael Saragosa and Members of the
Placerville City Council
December 10, 2020
Page 3 of 3

Please feel free to contact the undersigned with any questions or requests regarding this Appeal.

Very truly yours,

SOLURI MESERVE
A Law Corporation

By: 
Patrick M. Soluri

PS/wra

cc: Regina O'Connell, City Clerk (via email only roconnell@cityofplacerville.org)
Pierre Rivas, Director, Development Services
(via email only privas@cityofplacerville.org)

Attachments (10 copies each):

1. Letter from Soluri Meserve to Planning Commission dated October 30, 2020
2. Letter from Soluri Meserve to Planning Commission dated November 16, 2020
3. Public Records Act request to City Clerk dated December 7, 2020
4. Public Records Act request to El Dorado County Clerk dated December 7, 2020

EXHIBIT 1



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October 30, 2020

SENT VIA EMAIL (pv.planning@gmail.com)

Honorable John List, Chair
Placerville Planning Commission
Development Services Department Division
3101 Center Street, 2nd Floor
Placerville, CA 95667

**RE: Conditional Use Permit 20-04, Site Plan Review 20-04
Therapy Stores**

Dear Chair List and Members of the Planning Commission:

These comments are submitted on behalf of our client, the Placerville Downtown Association (“PDA”). PDA is a California a non-profit entity that includes 39 members with the mission to “enhance and promote business on Main Street through special events and activities that attract visitors to the historic downtown business district.” Consistent with its mission, PDA submits the following comments on the requested conditional use permit (“CUP”) 20-04 and Site Plan Review (“SPR”) 20-04 authorizing a Therapy Stores location (“Project”) in the City’s historic central business district (“CBD”).

PDA opposes the Project, and respectfully requests that the Planning Commission exercise its discretionary authority to deny the Project. Even if the Planning Commission is inclined to approve the Project, it may not lawfully do so without an environmental assessment or based on the “common sense” exemption from CEQA review.

1. The Planning Commission Should Exercise Its Discretionary Authority to Deny the Requested CUP

The Project requires a CUP specifically because Therapy Stores is a “formula business” under the City’s General Plan Development Guide and Zoning Code. The City defines a formula business as one having five or more locations. (City Code, § 10-1-4.) There are eleven Therapy Store locations presently operating, and the proposed Project would be the 12th location. The use being requested is therefore unquestionably a formula business and requires a discretionary approval from the City.

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It is first necessary to address some apparent confusion regarding the City authority to deny CUPs, and CUPs for formula business in particular. It is well settled in California that CUPs are subject to denial by a local agency. (*BreakZone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1224 (*BreakZone*) [“[a] CUP is discretionary by definition”].) The City’s decision to deny the Project would be afforded great deference by a reviewing court. (Code Civ. Proc., § 1094.5(b).) The agency’s decision will be overturned only if no reasonable person would have reached the same conclusions. (*Harris v. City of Costa Mesa* (1994) 25 Cal.App.4th 963, 969 (*Harris*); *BreakZone, supra*, 81 Cal.App.4th at 1244.) A reviewing court presumes a city’s decision is correct, and will resolve all reasonable doubts in favor of the administrative findings and decision; the party challenging the decision bears the burden to demonstrate otherwise. (Evid. Code, § 664; see *Breneric Associates v. City of Del Mar* (1998) 69 Cal.App.4th 166, 175.)

The broad authority to approve or deny a CUP also applies to a request for a formula business under the City Code. We understand some have suggested that denial of a CUP for a formula business may only be based on the exterior design of the building and not the underlying use. This is incorrect. The City maintains discretion to deny a formula business based on considerations and impacts of the formula business as a land use itself. This authority is confirmed in Ordinance 1597 itself, which provides in relevant part:

WHEREAS, THE City Council finds that these policies are necessary to preserve the unique and historic character of the City’s Central Business District, including ***regulating the aspect of businesses, services and merchandise which reflects the history of the community*** and which has become a cornerstone of the tourist industry, is an important component of the City’s overall economy;

WHEREAS, the City Council further finds that certain Formula Business establishments do not reflect the unique character of the community and the desired aesthetic ambience of the Central Business District in that they offer standardized architecture, ***use*** and character identical to similar Formula Businesses located in other communities and, thus, cannot contribute to the established uniqueness of the Central Business District.

(Emphasis added.)

The above-emphasized language is critical because it confirms that a formula business may be inconsistent with the character of the community as a land use – and

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may be denied on that basis – separate from any consideration of design and architecture. In other words, the City’s discretionary authority over a CUP for a formula business is not somehow more limited than all other CUPs. (*People v. Canty* (2004) 32 Cal.4th 1266, 1280 (“[i]n considering the purpose of legislation, statements of the intent of the enacting body contained in a preamble, while not conclusive, are entitled to consideration” and thus “properly may be utilized as an aid in construing a statute”); see also *Khan v. Los Angeles City Employees’ Retirement System* (2010) 187 Cal.App.4th 98, 119 (“legislative intent clearly expressed in the preamble”).)

While the City’s legislative intent in adopting Ordinance 1597 is clear and controlling, it might nevertheless be reassuring that a recent City Council staff report reiterated the broad scope of the City’s review and approval authority for a formula business CUP:

The purpose of requiring a conditional use permit and a site plan review is to allow the City *discretion over the business operation* and the design, architecture, and materials of the proposed formula business/development.

(City Council meeting dated December 10, 2019, agenda item 12.3 (emphasis added).)

It is therefore beyond any reasonable debate that the Planning Commission may deny the requested formula business CUP as a land use. Further, the law is settled that only *one reason* is required to justify that denial. (*Desmond v. County of Contra Costa* (1993) 21 Cal.App.4th 330, 336-337.) *Desmond* explains with clarity:

Because we are reviewing a *denial* of a requested land use permit, it is not necessary to determine that *each* finding by the Board was supported by substantial evidence. As long as the Board made a finding that any one of the necessary elements enumerated in the ordinances was lacking, and this finding was itself supported by substantial evidence, the Board’s denial of appellant’s application must be upheld.

(*Id.* at 336-337 [italic in original]; see also *Saad v. City of Berkeley* (1994) 24 Cal.App.4th 1206, 1213 [inadequacy of a single finding does not undermine denial of permit when other adequate findings were made].) What is more, a single finding to deny a CUP may be based solely on neighborhood opposition. The court in *Harris* explains:

“It is *appropriate and even necessary* for the [agency] to consider the interest of neighboring property owners in reaching a decision whether to

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grant or deny a land use entitlement, and the opinions of neighbors may constitute substantial evidence on this issue.”

(*Harris, supra*, 25 Cal.App.3d at 973, emphasis added; *Dore v. County of Ventura* (1994) 23 Cal.App.4th 320, 328-329.) Many neighboring property owners have already reached out to the City, explaining that a formula business does not reflect the unique character of the community and desired aesthetic ambience of the CBD. The PDA, representing its 39 members, affirms this position.

Finally, denial of a CUP based on consideration of character is allowed despite a project’s “technical compliance” with the City’s Zoning Code, General Plan or other planning documents. (*Desmond, supra*, 21 Cal.App.4th 330 at 338.) The *Desmond* decision explains:

This finding of unsuitability to the character of the surrounding neighborhood is sufficient by itself to support the denial of appellants’ application for a land use permit. (*Guinnane v. San Francisco City Planning Com.*, *supra*, 209 Cal.App.3d at pp. 740-743 [local agency denied permit on basis of finding that large size of house was “not in character” with surrounding neighborhood even though in technical compliance with zoning and building codes; upheld].)

(*Ibid.*)

In short, the Planning Commission is vested with wide discretion to approve or deny the requested CUP based on broad considerations of public welfare and character of the Project in relation to its setting. Only one reason is necessary to deny the Project, which can be supplied by public opposition and will be upheld by a reviewing court unless no reasonable person could reach the same conclusion. We urge the Planning Commission to carefully consider these issues and deny the requested CUP for a formula business at this location.

2. The City Has Failed to Perform Adequate Environmental Review

A. The application is incomplete and must be remanded back to staff.

As established above, approval of the requested CUP is unquestionably a discretionary action triggering review under the California Environmental Quality Act (“CEQA”) unless an exemption applies. In order to determine the proper level of CEQA review, or the applicability of an exemption, the City requires the applicant for every

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discretion action to prepare and submit an environmental assessment along with the application package submittal. To wit:

Requirements and procedures governing applications of Conditional Use Permits, Variances, Rezoning, General Plan Land Use Amendments, Tentative Subdivision or Parcel Maps, Preliminary Plan Check or Site Plan Review are summarized in Appendix “E” of this document. *All of these applications require an Environmental Assessment . . .*

(Development Guide, p. III-1 (emphasis added).)

A request for a Conditional Use Permit includes a properly completed City of Placerville Planning Application, a properly completed Conditional Use Permit form, and fifteen (15) copies of the Plot Plan, a properly completed Environmental Assessment Forms Packet, and the required application fees.

(Development Guide, p. E-8.)

Any application for a discretionary permit must be accompanied by a properly completed ENVIRONMENTAL ASSESSMENT FORM, as indicated on the City of Placerville Planning Application.

(Development Guide, p. E-16.)

For any project which requires a discretionary action by the City of Placerville, an Environmental Assessment is required.

(Exhibit 1 (memo to “All Applicants of Discretionary Permits, p. 2.)

The City requires the applicant for every discretionary permit to complete the environmental assessments regardless of whether the discretionary action is ultimately determined to fall under a statutory or categorical exemption. The reason for this is obvious: information from the assessment may be relevant to determining whether a proposed project may fall outside of a particular categorical exemption due to the possibility of potential environmental impacts, unusual or unique circumstances, etc. (See *Salmon Protection & Watershed Network v. County of Marin* (2004) 125 Cal.App.4th 1098; *World Business Academy v. State Lands Commission* (2018) 24 Cal.App.5th 476, 491; CEQA Guidelines, § 15300.2.) Here, the applicant has failed to

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submit the required environmental assessment.¹ Accordingly, the application is not yet complete, and may not yet be acted on by the Planning Commission. The application must be remanded back to staff to consider information in the applicant's environmental assessment to determine whether CEQA review is required for the Project and, if so, the proper form of such review.

B. Reliance on a CEQA exemption is improper under the present facts.

According to the City's public notice for the Project, the City intends to rely on the so-called "common sense exemption" that applies only where "it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment." (CEQA Guidelines, § 15061, subd. (b)(3).) We respectfully submit that the City has failed to demonstrate the absence of impacts with this level of certainty.

"Whether a particular activity qualifies for the common sense exemption presents an issue of fact, and the agency invoking the exemption has the burden of demonstrating that it applies." (*Muzzy Ranch Co. v. Solano County Airport Land Use Commission* (2007) 41 Cal.4th 372, 386.) As explained above, the applicant has failed to prepare and submit a properly completed environmental assessment that the City requires to assess environmental impacts. The City cannot hide behind its failure to gather relevant data to study an impact – particularly where, as here, City policy is to mandate the collection of that very data. (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311 (failure to gather data expands the scope of a fair argument of environmental impacts because the "agency should not be allowed to hide behind its own failure to gather relevant data").) Information from the environmental assessment may reveal that the common sense exemption is inapplicable, as well as the "existing facilities" and "in-fill" categorical exemptions newly-asserted in the staff report released today. (CEQA Guidelines, § 15300.2 9 (exceptions to categorical exemptions).)

Despite the City's failure to gather relevant data, nature of the Project and its proposed location implicates a serious question whether the proposed Therapy Stores formula business may lead to urban decay within the CBD. (*Joshua Tree Downtown Business Alliance v. County of San Bernardino* (2016) 1 Cal.App.5th 677, 689.) And while the majority of published cases concerning urban decay address so-called "big box" stores, the recent *Joshua Tree* decision confirms that consideration of urban decay is not limited to such instances. (*Id.* at 689.) As the Planning Commission knows full well, the unique character of the CBD is based on small, independent shops along Main street. A

¹ See <https://evogov.s3.amazonaws.com/media/17/media/5792.pdf>

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large formula business such as Therapy Stores will have an unfair advantage over these much smaller stores that may be forced to close due to competition. Such long-term closures are the touchstone of urban decay. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1212.)²

In summary, consideration of the Project cannot be based on the “common sense exemption” and must be informed by adequate CEQA review including, at minimum, analysis of potential urban decay to the CBD. If the Planning Commission chooses to ignore the requirements of its own Development Guide and approves the Project based on the “common sense exemption,” PDA will be forced to file an appeal and retain its own expert who will be able to advise the City Council regarding the potentially significant impact of urban decay within the CBD resulting from the Project.

* * *

We respectfully urge the Planning Commission to deny the requested CUP authorizing a formula business in the CBD. Alternatively, we ask the Planning Commission to remand the application back to staff for preparation of an adequate CEQA review document.

Thank you for your consideration.

Very truly yours,

SOLURI MESERVE
A Law Corporation

By: 
Patrick M. Soluri

PS/wra

² An alternative to long-term closures might be for the closed storefronts to be leased by additional formula businesses that could compete with Therapy Stores. This, of course, would further degrade the character of the CBD.

EXHIBIT 2



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510 8th Street • Sacramento, CA 95814

November 16, 2020

SENT VIA EMAIL (pv.planning@gmail.com)

Honorable John List, Chair
Placerville Planning Commission
Development Services Department Division
3101 Center Street, 2nd Floor
Placerville, CA 95667

**RE: Conditional Use Permit 20-04, Site Plan Review 20-04
Therapy Stores**

Dear Chair List and Members of the Planning Commission:

These comments, submitted on behalf of the Placerville Downtown Association (“PDA”) and Friends of Historic Hangtown (“FOHH”), concern the requested conditional use permit (“CUP”) 20-04 and Site Plan Review (“SPR”) 20-04 authorizing a Therapy Stores location (“Project”) in the City’s historic central business district (“CBD”). PDA and FOHH urge the Planning Commission exercise its discretionary authority to deny the Project or, alternatively, remand the matter back so that adequate CEQA review is prepared including analysis and mitigation for the Project’s potentially significant urban decay impact within the CBD.

1. Continuing Procedural Deficiency

As a threshold matter, it appears that the Planning Commission may not lawfully take action on November 17, 2020. Our prior letter, dated October 30, 2020, explained that the City could not lawfully consider the Project application because the applicant had not completed an Environmental Assessment. Following receipt of that letter, it appears that City staff and the applicant attempted to correct that defect by preparing and posting an Environmental Assessment dated November 2, 2020. That attempted correction, however, is inadequate. The City’s mandatory procedures regarding review and consideration of an Environmental Assessment are clear:

Applicant shall submit the attached Environmental Assessment Application if the project requires a discretionary permit. The Environmental Quality Officer or his representative will check for completeness and will complete a Preliminary Assessment or Environmental Impact.

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Members of the Planning Commission
November 16, 2020
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...

The Environmental Quality Officer, after the above determination is made, shall file said determination at the County Clerk's Office and file said determination with the Official Files of the Planning Commission. ***Public review periods of 21 days shall be provided before scheduling said environmental assessment before the Planning Commission.***

(See Soluri Meserve comment letter dated October 30, 2020, Exh. 1 (emphasis added).)

This mandatory process has not been followed here. The Environmental Quality Officer's determination must be based upon, and therefore follow, completion of the applicant's Environmental Assessment; and must thereafter be posted for public review at least 21 days before scheduling the matter before the Planning Commission. Here, the applicant's Environmental Assessment was completed and submitted to the City merely 15 days before the scheduled Planning Commission action on the Project. Neither the applicant's Environmental Assessment nor the Environmental Quality Officer's determination based on that Environmental Assessment would have been posted for the required 21 days as of November 17, 2020.

Put simply, the City's rush to approve the Project on November 17, 2020 violates the City's own rules of procedure – rules that are designed specifically to promote informed decision-making and public participation. We urge the City to follow its own procedures and reschedule Planning Commission consideration for an appropriate day.

2. Potentially Significant Urban Decay Impacts to the CBD

Our prior letter stated that we would consult with an expert in urban decay if the Planning Commission approved the requested CUP, with the goal of informing the City Council's decision on an administrative appeal. Since the Planning Commission continued its hearing on the Project, we sought to obtain an analysis before the next hearing date. Economist Philip King, Ph.D., an expert in urban decay, was able to prepare a preliminary assessment of the Project's impacts in the CBD. Dr. King's report and curriculum vitae are attached as Exhibits 1 and 2, respectively.

Dr. King states, "I believe there is a serious and significant possibility that the proposed Therapy store in downtown Placerville would create urban decay in the downtown due to the closure of several local businesses, identified above." There are two legal implications from this conclusion. The first implication is that the Project's potentially significant impact on urban decay in the CBD, an area of the City long-recognized for its unusual historical character, precludes reliance on an exemption from

Hon. John List, Chair and
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CEQA. (CEQA Guidelines, §§ 15061, subd. (b)(3), 15300.2, subd. (c); *Muzzy Ranch Co. v. Solano County Airport Land Use Commission* (2007) 41 Cal.4th 372, 386.) The second implication is that the Project's negative impact on the character of the CBD provides a substantive basis to deny the requested CUP. Thus, Dr. King's comments constitute substantial evidence of environmental impacts under CEQA and separately for denial of the CUP under the City's Zoning Code.

* * *

The Planning Commission should reschedule its hearing on the Project to a day that satisfies the City's Environmental Procedures Manual. Failing that, we respectfully urge the Planning Commission to deny the requested CUP authorizing a formula business in the CBD or, alternatively, to remand the application back to staff for preparation of an adequate CEQA review document.

Thank you for your consideration.

Very truly yours,

SOLURI MESERVE
A Law Corporation

By: 
Patrick M. Soluri

PS/wra

Attachments:

Exhibit 1: Memo from Philip King, Ph.D., dated November 16, 2020
Exhibit 2: Curriculum vitae for Philip King, Ph.D.

EXHIBIT 1

November 16, 2020

Memo

To: City of Placerville

From: Philip King, Ph.D.

Re: Proposed Therapy Store in Placerville, California

Introduction

Patrick Soluri, Attorney at Law, asked me to examine the potential impacts of a proposed Therapy store in Placerville, California. In particular I was asked, as an economist, to examine the potential for urban decay. I have examined the Placerville Planning Commission Staff report as well as some materials prepared by the Placerville Downtown Association (PDA) who Mr. Soluri represents. I have also conducted independent research. I am also familiar with downtown Placerville and have visited it numerous times, though not recently.

My understanding of the law is that the Therapy store is a “formula” store, which is defined by Placerville City Ordinance 1597. According to the Placerville Planning Commission:

“Ordinance No. 1597 was adopted by City Council in 2004. This ordinance amended City Code to permit Formula Businesses in the Central Business District with a Conditional Use Permit and Site Plan Review approval by the Planning Commission. A Formula Business was defined under this Ordinance as any business with a proposed or existing exterior design (appearance, colors, signage) that is essentially identical to five (5) or more other business sites using the same or similar name or identity.¹”

According to this same staff report the applicant, Therapy stores, currently operate ten other stores, nine of them in northern California. Consequently, the applicant, Therapy stores, meets the definition of a formula store.

I am an economist, not a lawyer, and the purpose of this memo is to examine the potential economic and urban decay impacts of this proposal. **It is my professional opinion, based on my examination**

¹ Placerville Planning Commission Staff Report, Nov. 3, 2020, p. 3.

of these materials, as well as an examination of downtown Placerville, that a formula store, such as a Therapy store, does indeed have the potential to close other local (non-formula) businesses in the historic Placerville downtown area, which will damage the unique, local character of downtown Placerville. Ultimately the closing of local businesses downtown can lead to urban decay, explained further in this memo.

I am particularly concerned that this store has been approved in the middle of the worst pandemic the United States has experienced in over 100 years. As is well known, the pandemic has limited travel, caused many stores to close or limited business for many retail stores, especially small independent stores. As I will discuss later in this memo, many businesses, particularly “bricks and mortar” retail (other than retail related to groceries or pharmacies) are struggling.

Project Description: According to the Placerville Planning Commission Staff Report, the Therapy store will be located in two buildings that are each two stories in height. The total square footage is approximately 4000 square feet; roughly half of that area (2000 square feet) will be retail space; the rest will be office space and storage. The location is 339 Main Street, the heart of downtown Placerville.

Analysis of Downtown Placerville

I am familiar with downtown Placerville, having visited it several times. I also conducted a brief analysis of downtown retail and I was provided materials from Heidi Mayerhofer, of the Placerville Downtown Association. All of my conclusions are independent.

Appendix 1 contains a list of all downtown Placerville stores. Overall downtown Placerville contains approximately one hundred businesses. The *vast* majority of these businesses are locally owned and operated. There are a few exceptions. All of the banks appear to be regional/national. However, this is common in downtown areas to have national/regional banks and given the importance of tourism in Placerville’s local economy, it makes sense, and this allows visitors and local customers to obtain cash (w/o fees) through ATMs or by visiting their bank. These banks can also serve to draw local visitors on a regular basis to the downtown area, as opposed to other retail areas and shopping centers. In addition, a few other stores, such as Mel’s Diner, have been “grandfathered in” –they existed before Ordinance 1597 restricting formula stores.

My analysis in this section will focus on the stores downtown which I believe are directly impacted by the proposed Therapy store. Indeed,

in my conversations with PDA, it is apparent that many downtown Placerville stores (discussed below) will carry *exactly* the same product lines as carried by Therapy stores. Many downtown merchants are concerned that a formula store will have additional buying power as well as the financial resources to stay open, even during the worst pandemic in a century.

**Table 1: Local Stores Negatively Impacted
by Proposed Therapy Store**

Store	Product Lines Impacted by Therapy Store	Information Sources
Mattywags	Whiskey River (Candles, soaps)	Direct from Business Owner
Mattywags	Compedium (cards, books)	Direct from Business Owner
Mattywags	Blue Q (socks, towels, etc.)	Direct from Business Owner
Mattywags	San Francisco Co.. (bottles, stickers, toys)	Direct from Business Owner
Mattywags	Jelly Cat (stuffed toys)	Direct from Business Owner
Mattywags	Fine Lines (books, journals)	Direct from Business Owner
Mattywags	Nelson Line (cards, magnets)	Direct from Business Owner
The Bookery	Books	Direct from Business Owner
Panic and Swoon	Cavalini (paper and gift products)	Direct from Business Owner
Panic and Swoon	Viski Glassware (glassware)	Direct from Business Owner
Panic and Swoon	Last Craft Designs (candles)	Direct from Business Owner
Panic and Swoon	Larissa Loden (jewelry)	Direct from Business Owner
Panic and Swoon	Blue Q (socks, towels, etc.)	Direct from Business Owner
Midnight Kin	Various Brands (blankets and rugs)	Direct from Business Owner
The Treehouse	Root Candles (candles)	Direct from Business Owner
The Treehouse	Hester and Cook (cards)	Direct from Business Owner
The Treehouse	Molly and Rex (Stationary)	Direct from Business Owner
The Treehouse	Finelines (home décor)	Direct from Business Owner
The Treehouse	Various (holiday décor)	Direct from Business Owner
The Treehouse	Various (jewelry)	Direct from Business Owner
Ambiance	Women's Clothing	Online
My Martha Boutique	Women's Clothing	Online
My Martha Boutique	jewelry	Online
Blue Skies	Women's Clothing	Online
Blue Skies	jewelry	Online
Placerville Newsstand	gifts, printed materials	Online
Ambiance	Women's Clothing	Online
Kollective	Children's Clothing	Online
Brass and Oak	Home Goods	Online
Body Basics	Bath and Body	Online
T.W. Bonkers	Toys, Stuffed Animals	Online
Lighthouse	Gifts, cards jewelry	Online
Ultimate Kitchen Design	Kitchen Accessories	Online
Robinson's Pharmacy	Candles, sundries	Online

My analysis of downtown businesses in Placerville is based on communications with the Placerville Downtown Association as well as examining many of the downtown retail stores' websites or other information online. In some cases (Table 1, column 3 above) local merchants identified specific product lines where they compete

directly with Therapy—that is Therapy stores carry *exactly* the same products as local Placerville businesses. In these cases, it is quite clear that a sale (e.g., candles) of exactly the same product at a Therapy store in downtown Placerville will directly displace sales at an already existing, locally owned store.

The result of opening a Therapy store is clear—local businesses will lose sales and some local stores will close. **Table 1 above lists 17 downtown businesses that will be negatively impacted—close to one fifth of all downtown businesses.** I cannot predict which stores will close. However, it is clear that a number will come under pressure and many local merchants are coming forward to say they could close. In my experience, business owners are very reluctant to state if their business will possibly close, so these statements should be taken very seriously by the City of Placerville.

It is likely that several stores will eventually close as a direct result of the Therapy store opening. Indeed, the addition of 2000 square feet of retail space in downtown Placerville may actually lead to more than 2000 square feet of store closings. Moreover, in my professional opinion, the “branding” of downtown Placerville as a haven for locally owned businesses will be seriously damaged which could lead to further store closings.

I would like to emphasize that my analysis is preliminary and based on limited time, information and budget. However, it is very clear, even with this limited time and budget, that the potential for urban decay, in the form of closing downtown businesses in Placerville, is significant and that the City of Placerville should take this threat seriously. Greater time and budget may refine this conclusion, but will not change it.

I’d also like to emphasize that this is not simply a matter of encouraging competition. As a number of local merchants have pointed out, a formula store often has greater buying power with suppliers. For example, one local merchant, Adrienne Beatty, who owns Panic and Swoon downtown has pointed out that Therapy stores buying power, as well as its larger selection of items (including online ordering) give the larger Therapy store an advantage, strictly based on size. Economists sometimes refer to this as “monopsony power.” Given the Therapy stores larger number of stores, it can negotiate with suppliers (many of whom are also small since the downtown Placerville stores cater to niche products) for better deals, just as Wal-Mart and Costco are able to drive harder bargains with larger companies such as Procter and Gamble, for valuable “shelf space.” This is *not* a competitive market, but rather one where larger stores can dominate smaller ones with their buying power.

COVID and Downtown Businesses

We are currently in the midst of a serious pandemic which has led to many retail closings already including the bankruptcy of many national retail chains such as J. Crew, Pier 1 Imports, J.C. Penney and more.² Although these stores have very different profiles, they have one thing in common with downtown Placerville business—they are retail stores not engaged in grocery or pharmacy operations. As stay and place orders have been put in place, then taken off, and as citizens across the US have been told to restrict activities to “essential” tasks such as work, school, and grocery shopping, these restrictions have clearly harmed businesses across the US. Small businesses, who often have lower margins and less access to finance capital, are particularly vulnerable, and the compliance costs of coping with COVID are particularly cumbersome for small businesses. **Allowing a formula store to enter the downtown Placerville market at this time places other local businesses in downtown Placerville, who are already struggling, at serious risk of closure.**

Urban Decay and Physical Deterioration

The concept of urban decay was originally applied to Big Box stores, in particular Wal-Mart Supercenters. Numerous studies³ concluded that these large stores have NEGATIVE economic benefits to local communities. These larger stores displace jobs and local businesses, and lead to store closings, particularly in downtowns.

Urban decay in urban areas can include several possible adverse impacts on the quality of life in the local community. This includes visible symptoms of physical deterioration, capital stock and buildings in impaired condition, and involves aspects of “broken window” theory—that run-down, abandoned buildings signal lack of public policy concern and invite vandalism, loitering, graffiti, high crime rates, and arson for profit. They signal hopelessness for nearby residents who may lose faith in local government. Such sites also pose significant policing problems and fire protection issues. They could become sites for dangerous rodent infestation and avoidable public health issues. The outward manifestations and visual evidence of

² See From Friendly’s to J Crew, many Main Street Businesses Close, By Emily Pandise, MSNBC News, May 15, 2020, 8:40 AM PDT / Updated Nov. 2, 2020, 8:54 AM PST.

³ See for example, “The Impact of Big Box Grocers on Southern California: Jobs, Wages and Municipal Finance,” by Marlon Boarnet and Randall Crane, prepared for the Orange County Business Council, September 1999.

urban environmental urban decay and physical deterioration, but are not limited to, such markers as:

- Plywood boarded doors and windows;
- Parked trucks and long term unauthorized use of property and parking lot;
- Extensive gang graffiti and offensive words painted on the buildings;
- Dumping of refuse on site;
- Overturned dumpsters;
- Broken parking barriers;
- Broken glass, litter of liquor or beer bottles;
- Dead trees and shrubbery together with weeds;
- Unsightly and permanent "For Lease" signs;
- Homeless encampments on the property or doorways; and
- Lack of building maintenance, paint peeling, or property encased in an unsightly chain-link fence.
- Closed Stores.

Conclusion

In my professional opinion the proposed Therapy store in downtown Placerville poses a significant potential for urban decay in the form of store closings. **I believe there is a serious and significant possibility that the proposed Therapy store in downtown Placerville would create urban decay in the downtown due to the closure of several local businesses, identified above.**

Moreover, urban decay often has an avalanche effect. While the Therapy store might only close a few stores, the decline in local business activity can lead to fewer visitors, fewer sales and ultimately more store closings. Nationally and in California, we have seen this in one downtown after another. Some local authorities have mistakenly assumed that any competition is good, without considering what economists call "market failure." In this case the historic downtown Placerville area is not just a shopping center. It's a destination for local residents and visitors who come to gold rush country. Part of downtown Placerville's charm is its unique character. One only need to look at the names of downtown businesses to see that we are not at a local mall.

As a CEQA matter I find very a compelling case of urban decay. However, the City of Placerville separately maintains discretionary authority to deny this formula business based on concerns about

impacts to existing businesses in the CBD, and I also find that a compelling case exists to deny this proposal on that basis.

Street number	Business name	Member status
232	The Original Mel's Diner	No
248	Thai Noodle Express	No
250	Hangtown Tattoo	No
254	Man Cave	Yes
260	Elements	No
262	Ambiance	Yes
266	Kollektive	Yes
300	Cary House	No
304	Empty	
312	Dedrick's Cheese Shop	Yes
312	My Martha Boutique	No
312	Totem Coffee House	Yes
312	Marilyn's Salon	No
312	Legal Docs on Main	No
316	Hangtown Originals	No
318	Flowers on Main	Yes
320	Brass and Oak	Yes
326	The Bookery	Yes
346	The Wine Smith	No
348	River City Bank	No
352	Placerville Art Gallery	Yes
360	Art Studio 360	Yes
364	Body Basics	No
366	Vibes Up	No
372	Enchanted Forest	No
374	Ye Olde Pie Shop	No
376	Mattywags	Yes
384	Cascada	No
398	TW Bonkers	No
400	Ancient Gold	no
404	Sierra Consignment	Yes
414	Public House	Yes
416	Home Inspirations	Yes
430	Panic and Swoon	Yes
434	Scarlet Halo	Yes
436	Eureka Gem	No
440	Artistic Beads and Studio	No
442	Cuppa Coffee and More	No
444	Old Town Grill	No
448	Placerville Antiques	Yes
450	Violets are Blue	No
452	Volution Gallery	No
460	Window Box Antiques	Yes
460	PHEME Natural Boutique	No
460	Rose's Alterations	No
460	Memory Lane Antiques	No
462	Hangtown Trading Post	No

464	Wild Pea	No
466	Blue Skies	No
470	Studio B	No
474 & 476	Law Offices	No
482	Brick's	No
484	empty	
492	Realty Office	No
496	Wealth Guard	No
North Side		
209	The Tap House	No
247	El Dorado Savings Bank	No
251	Empty	
255	The Liar's Bench	No
259	Bow Tie Barber	No
263	Lofty Lou's	No
301	Placerville's Main Event	Yes
305	Hangman's Tree Ice Cream Saloon	Yes
311	Empty	
321	Winterhill Olive Oil	No
325	Heyday	Yes
327	Tree House	No
339	empty	
359	Robinson's Pharmacy	Yes
369	Sanitex Dry Cleaners	No
375	Roman's Jewelers	No
379	Gold Country Artist's Gallery	Yes
385	Sandwich Shop	No
409	Placerville Newsstand	Yes
413	Hangtown Cyclery	No
423	Bene	No
425	Powell's Steamers	yes
433	Pop Art Gallery	Yes
435	Midnight Kin	No
437	Thomas Kincaid Gallery	No
441	Placerville Hardware	Yes
447	Kelsey's Needlecrafts	Yes
447	Main Street Yoga	Yes
451	The Lighthouse	No
451	Timmy's Brown Bag	No
451	Lana Lane	No
451	Ultimate Kitchen Design	No
451	Amore Mio Italian Bistro	No
459	Lobos Del Mar	Yes
465	Sierra Mountain Outfitter	No
469	Supply Sargeant	no
489	El Dorado Arts and Culture	no
533	Vaught, Wright and Bond Insurance	No
541	Bagel Works	No

545	Iron Wok	No
573	Alta Services	No
577	Sweetie Pies	No
	Main Street Market	No
589	Main Street Melters	No

EXHIBIT 2

PHILIP G. KING
Economics Department, San Francisco State University
E-mail: pgking@sfsu.edu

Education:

July, 87 **Ph.D. in ECONOMICS** **CORNELL UNIVERSITY**
Fields: Applied Microeconomics, Economic Development, International Economics
Dissertation: Bargaining between Multinational Corporations and Less Developed Countries over Mineral Concessions Contracts.

May, 78 **B. A. in PHILOSOPHY & ECONOMICS** **WASHINGTON UNIVERSITY**
Nominated to Omicron Delta Epsilon (Economics Honor Society.)

Professional Experience:

9/93-present **Associate Professor & Former Chair** **Economics Dept., San Francisco State University**

9/87-9/93 **Assistant Professor** **Economics Dept., San Francisco State University**

4/2014-present **Journal of Ocean and Coastal Economics, Editorial Board Member**

Legal Work related to Urban Decay:

Economic Analysis of the Urban Decay Impacts of a Dollar Store in Clearlake, CA, April 2017

Economic Analysis of a General Plan Update in Visalia, CA, April 2017

Economic Analysis of the Urban Decay Impacts of a Dollar Store in Pine Grove, CA Fall 2014

Economic Analysis of a Proposed Hanford Station Planned Commercial Development Project in Hanford, California, May 2004.

Economic Analysis of a Proposed Wal-Mart in Yuba City, California, April 2004.

Economic Analysis of a Proposed Wal-Mart in Gilroy, California, March 2004.

Economic Analysis of a Proposed Wal-Mart in Redding, California, 2003.

Economic Analysis of a Proposed Wal-Mart in Anderson, California, 2003.

Selected Academic Papers:

"Valuing Beach Ecosystems in an Age of Retreat," w. C. Nelsen, J. Dugan, D. Hubbard, K. Martin, R. Battalio, *Shore and Beach*, v. 86, No. 4, Fall 2018, pp. 45-59.

"The Market Transfer Effect in the Hawaiian Longline Fishery: Why Correlation Does Not Imply Causation," w. J. Scorse, S. Richards. *Journal of Ocean and Coastal Economics*: Vol. 4, 2017.

"Can California Coastal Managers plan for sea-level rise in a cost-effective way?" w. Aaron McGregor and Justin Whittet, *Journal of Environmental Planning and Management*, v. 59, pp. 98-119. January 2015.

"Estimating the Potential Economic Impacts of Climate Change on Southern California Beaches with L. Pendleton, C. Mohn, D. G. Webster, R. Vaughn, and P. Adams, *Climatic Change*, , November 2011, pp. 277-298.

"Who's Counting: An Analysis of Beach Attendance Estimates in Southern California," w. A. McGregor, *Ocean and Coastal Management*, March 2012, Pages 17-25.

"Size Matters: The Economic Value of Beach Erosion and Nourishment in Southern California', with L. Pendleton, C. Mohn, R. Vaughn, and J. Zoulas., *Contemporary Economic Policy*, April 2012.

"Economic Analysis of Reconfiguring the Long Beach Breakwater," w. A. McGregor, R. Boudreau, *Shore and Beach*, April/May 2011.

EXHIBIT 3



tel: 916.455.7300 • fax: 916.244.7300
510 8th Street • Sacramento, CA 95814

December 7, 2020

SENT VIA EMAIL (roconnell@cityofplacerville.org)

Regina O'Connell
City Clerk
City of Placerville
City Hall, 3101 Center Street
Placerville, CA 95667

RE: Public Records Act Request

Dear Ms. O'Connell:

This letter is submitted on behalf of our clients Placerville Downtown Association ("PDA") and Friends of Historic Hangtown ("FOHH").

Our clients have received information suggesting that representatives of El Dorado County ("County") and/or the City of Placerville ("City") recruited Jing Chen and Wayne Whelan to open a Therapy Store storefront in the City's Central Business District ("CBD") and, as part of that effort, induced purchase of 339 Main Street by providing assurances that the Therapy Store would receive the discretionary conditional use permit ("CUP") needed to operate in the CBD. These facts, if true, would appear to support a claim of improper prejudgment. (*Breakzone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1241.)

In light of the above, we are requesting public records under the California Public Records Act (Gov. Code, § 6250 et seq.) to ascertain whether any such improper activity occurred. Accordingly, please make available for inspection and copying public records pertaining to the following matters:

- Public records of any and all telephone calls, meetings or other communications between City representatives and County representatives regarding the Therapy Store or its applicants Jing Chen and Wayne Whelan.
- Public records of any and all telephone calls, meetings or other communications between City representatives and Jing Chen or Wayne Whelan.
- Public records of any and all telephone calls, meetings or other communications

Regina O'Connell
City Clerk, City of Placerville
December 7, 2020
Page 2 of 3

between City elected or appointed officials and staff regarding the Therapy Store or its applicants Jing Chen and Wayne Whelan.

“Public records” includes all letters, memoranda, electronic mail (“e-mail”) communications, text messages, or other written or recorded materials pertaining to the requested topic in the possession, custody or control of the City, including any such communications contained on personal and handheld devices of City representatives. (*City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 617.) City or County “representatives” includes all elected and appointed officials as well as all officers, representatives, agents, employees, affiliates, and consultants.

This request is made pursuant to both the California Public Records Act and Article I, section 3(b) of the California Constitution, which provides a Constitutional right of access to information concerning the conduct of government. Article I, section 3(b) provides that any statutory right to information shall be broadly construed to provide the greatest access to government information and further requires that any statute that limits the right of access to information shall be narrowly construed. The City must provide access to its records unless the records fall within one of the specific exemptions enumerated in the Public Records Act. (*State of California Ex. Rel. Division of Industrial Safety v. Superior Court* (1974) 43 Cal.App.3d 778, 783.)

The overarching policy of the Public Records Act favors disclosure, and a refusal to disclose information can only be based on specific exceptions enumerated in the Act. (*Lorig v. Medical Board* (2000) 78 Cal.App.4th 462, 467.) If the City believes any of the records are exempt from disclosure by the Public Records Act and withholds any documents, then the agency must notify the requestor that some documents were withheld and provide the exemption(s) that justified withholding the documents. (See Gov. Code, § 6255; *Haynie v. Superior Court* (2001) 26 Cal.4th 1061, pp. 1072–74.) The City is obligated to make the records “promptly available,” as well as to promptly respond to the individual making the request. (Gov. Code, § 6253.)

Regina O'Connell
City Clerk, City of Placerville
December 7, 2020
Page 3 of 3

I prefer to receive the documents in electronic format. If responsive materials must be copied, please contact me with an estimate of duplication costs. Thank you very much for your assistance.

Very truly yours,

SOLURI MESERVE
A Law Corporation

By:



Patrick M. Soluri

PMS/wra

EXHIBIT 4



tel: 916.455.7300 • fax: 916.244.7300
510 8th Street • Sacramento, CA 95814

December 7, 2020

SUBMITTED VIA ONLINE PORTAL

Janelle K. Horne
Recorder-Clerk
County of El Dorado
330 Fair Lane
Placerville, CA 95667

RE: Public Records Act Request

Dear Ms. Horne:

This letter is submitted on behalf of our clients Placerville Downtown Association (“PDA”) and Friends of Historic Hangtown (“FOHH”).

Our clients have received information suggesting that representatives of El Dorado County (“County”) and/or the City of Placerville (“City”) recruited Jing Chen and Wayne Whelan to open a Therapy Store storefront in the City’s Central Business District (“CBD”) and, as part of that effort, induced purchase of 339 Main Street by providing assurances that the Therapy Store would receive the discretionary conditional use permit (“CUP”) needed to operate in the CBD. These facts, if true, would appear to support a claim of improper prejudgment. (*Breakzone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1241.)

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Janelle K. Horne
Recorder-Clerk, County of El Dorado
December 7, 2020
Page 2 of 3

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Janelle K. Horne
Recorder-Clerk, County of El Dorado
December 7, 2020
Page 3 of 3

I prefer to receive the documents in electronic format. If responsive materials must be copied, please contact me with an estimate of duplication costs. Thank you very much for your assistance.

Very truly yours,

SOLURI MESERVE
A Law Corporation

By:



Patrick M. Soluri

PMS/wra