



# **RESOLUTION No. \_\_\_\_\_**

## **OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA**

**RESOLUTION DENYING THE APPEAL FILED BY PETER LEMMON, ATTORNEY ON BEHALF OF SIMON CRE, CJS DEVELOPMENT II, LLC REGARDING THE PLANNING COMMISSION'S NOVEMBER 9, 2017 DENIAL OF DEVELOPMENT PERMIT (DP14-001) AND MANAGEMENT PLAN (MGT14-010) FOR A PROPOSED 9,100 SQUARE FOOT DOLLAR GENERAL STORE AND ASSOCIATED IMPROVEMENTS LOCATED AT 10166 ALTA SIERRA DRIVE (APN 25-430-08); SEPTIC LINE LOCATED AT 10120 ALTA SIERRA DRIVE (APN 25-430-10); AND SEPTIC LEACH FIELD LOCATED AT 15675 JOHNSON PLACE (APN 25-430-12) GRASS VALLEY, CALIFORNIA AND SUSTAINING THE PLANNING COMMISSION'S DENIAL OF THE DEVELOPMENT PERMIT (DP14-001) AND MANAGEMENT PLAN (MGT14-010) PROPOSING TO ALLOW DISTURBANCE OF 1.40-ACRES OF LANDMARK OAK GROVE AND FOUR INDIVIDUAL LANDMARK OAK TREES**

WHEREAS, on July 17, 2014 Simon CRE, CJS Development, LLC applied for a Development Permit proposing to construct a 9,100 square foot Dollar General Retail Store, including associated improvements (parking, lighting, retaining walls, landscaping and signage) on an approximately 1.0-acre privately-owned and undeveloped parcel located at 10166 Alta Sierra Drive, Grass Valley (APN 25-430-08); to install a septic line through developed property located at 10120 Alta Sierra Drive (APN 25-430-10); and to install an offsite septic leach field on developed property located at 15675 Johnson Place (25-430-12). The project included the consideration of an Oak Tree Management Plan (14-010) to allow for disturbance of 1.40-acres of landmark oak grove (oak woodlands with a canopy closure greater than 33%) and four individual landmark oak trees (oak trees 36" or greater dbh); and

WHEREAS, At 9,100 square feet, this project fell just short of the threshold for being considered a Planning Commission project (typically 10,000 square feet), however, the Planning Director in his role as Zoning Administrator on July 1, 2017 determined that this project along with the other two Dollar General proposals should be reviewed and considered by the Planning Commission instead of the Zoning Administrator consistent with the provisions of Nevada County Land Use and Development Code (LUDC) Section L-II 5.5.E.4; and

WHEREAS, the County and the applicant agreed to pursue an Environmental Impact Report (EIR15-001/ SCH2016012009) for all three of the Dollar General Stores as a way to ensure all potential cumulative impacts could be considered under one environmental document. While only one EIR was prepared, the EIR was structured to allow the Planning Commission to take individual actions on each separate project and each project is considered an independent entitlement; and

WHEREAS, on October 26, 2017, the Nevada County Planning Commission held a public hearing to consider the certification of an Environmental Impact Report for all three projects, including the Alta Sierra Project (DP14-001) and the Planning Commission on a 5-0 vote certified an Environmental Impact Report (EIR15-001/ SCH2016012009) as adequate environmental review for the project, making project specific CEQA Findings of Fact, but not making a Statement of Overriding Considerations for the project's identified significant and unavoidable aesthetic and land use compatibility impacts; and

WHEREAS, on October 26, 2017, the Nevada County Planning Commission conducted a public hearing, considered the entire public record before them and after deliberating on the project made a motion of intent to deny the proposed Management Plan (MGT14-010) and Development Permit (DP14-001) continuing the project to November 9, 2017 to allow staff to prepare project denial findings based on the direction of the Planning Commission; and

WHEREAS, on November 9, 2017, the Nevada County Planning Commission in taking action to deny the project entitlements found that the projects size, scale and massing was incompatible with the adjacent rural residential neighborhood, was overbuilt for the site as the project required an offsite septic system, significant grading requiring the use of large retaining walls and a reduction in the minimum required number of parking spaces, that the project management plan did not adequately provide methods to avoid the resource and did not clearly minimize the project impacts on landmark oak trees and groves and that the project was inconsistent with central and supportive themes of the Nevada County General Plan that are intended to protect the rural character of existing neighborhoods making specific denial findings pursuant to Section 4.3 and 4.3.15 (Management Plan) and Section L-II 5.2.2.D (Development Permit) of the Nevada County Land Use and Development Code as documented in the Planning Commission Staff Memo dated November 2, 2017; and

WHEREAS, pursuant to Section L-II 5.12.D of the Nevada County Land Use and Development Code, the Planning Commission's approval of the Application is appealable to the Board of Supervisors within 10 days after the date of the decision; and

WHEREAS, on November 16, 2017, Mr. Peter Dunn Lemmon, Esq., Attorney (Representative) on behalf of the Appellant Simon CRE, CJS Development II, LLC (Applicant) filed a timely appeal of the Planning Commission's decision; and

WHEREAS, on December 12, 2017, the Board of Supervisors adopted Resolution 17-618 to accept the appeal as to the Planning Commission's actions on the Project and scheduled the appeal for hearing on February 27, 2018 at 1:30 p.m.; and

WHEREAS, on February 27, 2018, the Board of Supervisors held a duly noticed public hearing at which the Board considered all evidence both oral and written regarding the appeal and denied the appeal, upholding the Planning Commission's November 9, 2017 denial of Management Plan MGT14-010 and Development Permit DP14-001.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of the County of Nevada that it hereby finds and determines that:

1. The facts set forth above are true and correct.
2. That the potential environmental impacts of the project have been adequately reviewed, disclosed and mitigated for pursuant to the project specific certified Environmental Impact Report (EIR15-001/ SCH2016012009) as required by the California Environmental Quality Act Guidelines, California Code of Regulations Title 14, Chapter 3, Section 15090.

3. That the proposed Development Permit (DP14-001) requesting entitlements to construct a 9,100 square foot retail store with a maximum height of 26-feet, 34 parking spaces, two large retaining walls up to 12-feet tall, parking lot and wall mounted lighting, grading, landscaping, and drainage improvements is inconsistent with Nevada County General Plan Central Theme of fostering a rural quality of life, by introducing a significant amount of light and glare and an urban development within an area designated as a “Rural Center” by the General Plan;
4. The proposed Development Permit, as described above, is inconsistent with the Supportive Themes of the General Plan, which provide for minimizing conflicts due to incompatible uses. This finding is supported by the impact analysis 4.1.3 of the Project EIR (EIR15-001) which found that this project will have a significant and unavoidable visual impact and would substantially degrade the visual character of the site and surrounding area even after the application of mitigation measures intended to reduce the aesthetic impact of the proposed project;
5. That the site is not physically suitable for the size, mass and scale of the proposed retail commercial development because the development would cause land use compatibility issues related specifically to visual resources which cannot be avoided through appropriate site planning or without a significant reduction in the height and square footage of the proposed development for which the applicant is not amenable. Existing residential units are within close proximity to the project site that could experience interruption to enjoyment of their residential property by the induction of a commercial use of a significant size;
6. That the proposed use and facilities are not compatible with, and could be detrimental to, existing and anticipated future uses on-site, on abutting property and in the nearby surrounding neighborhood or area due to its overall size, scale and mass;
7. That this development permit, proposing a 9,100 square foot commercial building with associated improvements does not fit on project site due to the overall size and mass of the development because the building will require significant grading estimated at 4,776 cubic yards of soil needed to be exported from the site creating the need for large retaining walls, particularly in the southeastern corner, where the predominate building wall will be 18-foot-tall and sit on top of a 12-foot-tall retaining wall. In designing the site, the applicant failed to utilize the sites topography to accommodate necessary grades, such as providing a step foundation or stepped retaining walls.
8. That the proposed development will result in significant and unavoidable aesthetic impacts as a result of the overall size, mass and scale of the building partly because the proposed structure is orientated to the north, which exposes the developed site to residences to the northeast. On March 11, 2015, the Nevada County Zoning Administrator requested that the applicant redesign the project site plan to remove the secondary access to Little Valley Road and re-orientate the building to the west. The applicant removed the secondary access, but did not re-orientate the front of the building to the west citing that they could not do so because the project would not be able to meet truck turning radii and parking lot circulation standards if the building were re-orientated;

9. That the proposed project requires an approximately 26% reduction in parking from 46 stalls required to 34 stalls provided as a result of the limited size of the site and the overall size of the proposed building at 9,100 square feet. The applicant has been unwilling to provide a smaller building with a smaller footprint stating that the 9,100 square foot model is the only prototype for a rural area;
10. That the proposed project is over developed on the project site and therefore the project cannot accommodate its own onsite infrastructure requiring an offsite septic system two parcels removed to the north because the overall building footprint, storm drainage facilities and parking areas dominate the 1.0-acre site making an onsite septic system infeasible as designed; and
11. That the Board of Supervisors recognizes that although some economic, legal, social, technological, or other benefits of the project exists, after balancing against the unavoidable environment impacts, determines that the unavoidable adverse environmental effects outweigh those benefits because the overall size, mass and scale of the proposed development is not designed to fit on the site and would be incompatible with, and could be detrimental to, existing and anticipated future uses on-site, on abutting property and in the nearby surrounding neighborhood or area.
12. These findings are supported by substantial evidence in the record, as detailed in this Resolution, in the staff report for the February 27, 2018 appeal hearing before the Board, and as discussed at the hearing. That evidence includes but is not limited to the professional expert advice of staff of the County's Planning Department, County Counsel, as well as the judgment of the Board of Supervisors.
13. The location and custodian of the documents which constitute the record of these proceedings is the Nevada County Planning Department, 950 Maidu Avenue, Nevada City, California.

BE IT FURTHER RESOLVED that the Board of Supervisors hereby denies the appeal of the Appellants and upholds the decision of the Planning Commission to deny Management Plan (MGT14-010) and Development Permit (DP14-001) located at 10166 Alta Sierra Drive, 10120 Alta Sierra Drive and 15675 Johnson Place in unincorporated Nevada County, based on the findings as set forth herein.

The Clerk of the Board shall mail the Appellant a copy of this Resolution, and any appeal of this decision shall be governed by California Code of Civil Procedure section 1094.6.