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YOLO SUPERIOR COURT

MAR 09 2019

By

Deputy

YOLO SUPERIOR COURT FOR THE STATE OF CALIFORNIA

OLD EAST DAVIS NEIGHBORHOOD
ASSOCIATION, petitioner

) Case No.: PT-17-2111

) DECISION and ORDER

v.

CITY OF DAVIS, CITY COUNCIL OF THE
CITY OF DAVIS, respondents

TRACKSIDE CENTER, LLC, real party in
interest.

1 This is the Court's TENTATIVE DECISION made pursuant to Rule of Court
2 3.1590. It will become the STATEMENT OF DECISION unless, within 10 days
3 after announcement or service of the tentative decision, a party specifies
4 those principal controverted issues as to which the party is requesting a
5 statement of decision or makes proposals not included in the tentative
6 decision.

7 This dispute is between the City of Davis and the Old East Neighborhood
8 Association. It raises the issue of the planned development of a large
9 mixed-use residential building on a track of land designated as a
10 "transition" area by the City. The Petitioner contends that the development
11 is not consistent with local planning provisions. The Respondent contends
12 otherwise, namely that the General Plan and Design Guidelines to the extent
13 applicable support this Project.

14 Factual Findings

- 15 1. The project at issue is known as the Trackside Center Project or
16 "Trackside" or the "Project."
- 17 2. It is a 47,983 square foot building.
- 18 3. It is designed to have 27 residential apartments located above 8,950
19 square feet of commercial and retail space.
- 20 4. The apartment units range from 705 square foot studio to 1,537 foot
21 2-bedroom units with balconies.
- 22 5. It is designed with 30 parking stalls.
- 23 6. The Project is located on a total of .69 acres of land at the
24 northeast corner of Third Street and the Union Pacific railroad
25 track.
- 26 7. The current site is comprised of two single story commercial
27 buildings covering .525 acres. The two buildings total
28

approximately 11,000 square feet. These two buildings would be demolished. The current addresses are 901-919 Third Street.

8. There is an additional .167 acres of property to be leased from Union Pacific Railroad. The parking and plaza is located on the leased property. The lease is a ten year lease and can be extended and can be terminated with notice.

9. The Project site improvements include surface and covered parking, an outdoor plaza on the West side, landscaping, drainage, sidewalks, pedestrian and bicycle facilities.

10. The Project density is 39 units per acre.

11. To the East of the property are single family homes located across a 30 foot alley. The nearest house is set back an additional 15 feet from the alley. The height of the nearest house is 24 feet.

12. To the West is a railroad track and across the track is a hardware store and the commercial center of the City of Davis. There are no single family residences for several blocks to the West.

13. To the South across Third Street are single story commercial properties.

14. To the North immediately adjacent is the rock yard for the hardware store across the tracks to the West.

15. The alley front façade of Trackside is an additional 8 feet from the alley, making the distance between the nearest home and the Trackside building equal to 53 feet.

16. Trackside is designed as a four story building.

Trackside's four stories are stepped back from the houses across the alley to the East. The first floor is 8 feet off the alley and 15 feet high. The second floor is 15 feet off the alley and 25.5 feet

1 high. The third floor is 32 feet off the alley and 36 feet high.
2 The fourth floor is 46 feet off the alley and 47.5 feet high. The
3 highest point on the top of the building is 50.5 feet high. The
4 architecture facing East is designed to present like residential
5 living. There are stepbacks also on the North side Third Street
6 front, which would be a traditional retail space on the first floor.
7 The parking would be underground and extend back on the West and
8 North side towards the track, which would have a more industrial
9 designed architecture.

10 17. Within three blocks of Trackside across the tracks to the
11 West, there are two four story mixed use
12 residential/commercial/retail buildings (Chen Building and McCormick
13 Building) and two five story parking garages.

14 18. The Chen Building is 48 feet 8 inches tall with a total of
15 23,703 square feet. It is a mix of first floor retail and upper
16 floor residential and is located across the street and railroad
17 tracks from the Amtrak train station and bus stop.

18 19. The detail on the McCormick Building is not contained in
19 the record, other than that it is mixed-use and it appears to be the
20 same size or slightly larger than the Chen Building.

21 20. The historical use of the Trackside property was industrial
22 up to the mid-20th century. For the past several decades, the
23 current commercial buildings have stood. The 30 foot alley has
24 separated the neighborhood from the industrial/commercial property
25 at issue for years.

26 21. Trackside is located within the City's Core Area Specific
27 Plan (CASP). The purpose of the CASP is "to provide for mixed-use
28 development of a variety of types in downtown Davis, in keeping with

1 the downtown's role as the commercial and social center of Davis."

2 Moreover, according to CASP, retention of residential units in the
3 Core Area is critical to maintaining a healthy downtown.

4 22. Within CASP, the Trackside property is identified as "Core
5 Retail with Offices." The CASP specifically promotes mixed use with
6 retail on the first floor and commercial and residential on the
7 upper floors.

8 23. Trackside is also located within a designated Conservation
9 District pursuant to Municipal Code sec. 40.13A. This is not a
10 Historic District. The Conservation District includes the downtown
11 and three adjacent traditional residential neighborhoods and is
12 subject to the Davis Downtown and Traditional Residential
13 Neighborhood Design Guidelines.

14 24. Trackside is also located within the Third Street Corridor.
15 This Corridor runs through the center of town, starting at the
16 University of California at Davis on A Street and extending 9 blocks
17 to the East. Trackside is at the far East end of the Corridor,
18 farthest from the University. The Corridor includes both the
19 Commercial Core Area and the Mixed-Use Transition Area. Trackside
20 is located in the transition area.

21 25. The neighborhood East of Trackside is known as "Old East
22 Davis." It is bound by the railroad tracks on the West and South, L
23 Street on the East, one block passed Fifth Street on the North. It
24 was one of the earliest neighborhoods in Davis to be developed,
25 dating back well into the 19th century. It retains some of the
26 City's oldest residences, including three designated historical
27 properties. Due to development patterns, however, a handful of
28 multi-story apartment buildings and townhouses/duplexes different

1 from the original single family residences have been built
2 throughout the neighborhood over the last few decades. There are
3 also additional commercial establishments both along the railroad
4 tracks on the West and along L Street on the East border side of the
5 neighborhood and around Fifth Street to the North.

6 26. In November and December 2017, the City of Davis by and
7 through the City Council voted to approve the Project and issued all
8 necessary Notice of Determinations and passed all necessary
9 Resolutions. Petitioner then filed a Petition for Writ of Mandate
10 challenging the City's decision to approve the Project.

11 Analysis

12 The dispute here really centers around whether the City has complied
13 with the General Plan. In other words, is the Project consistent with the
14 comprehensive, long-term plan for development of the City. The proper
15 standard of review is abuse of discretion. In reality, this is the same
16 standard as substantial evidence review under CEQA. (*California Native Plant*
17 *Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 635.) The
18 trial court must determine whether the City's decision to approve the Project
19 was arbitrary, capricious and lacking in evidentiary support, unlawful or
20 procedurally unfair. Under this standard, the Court must defer to the
21 factual findings on consistency of the City unless no reasonable person could
22 have reached the same conclusion on the evidence before it. (CNPS at 636-
23 637.)

24 A project is consistent with the general plan, if considering all its
25 aspects, it will further the objectives and policies of the general plan and
26 not obstruct their attainment. A given project need not be in perfect
27 conformity with each and every general plan policy. To be consistent, a
28 development project must be compatible with the objectives, policies, general

1 land uses and programs specified in the general plan. (CNPS at 637-638.)
2 There is a strong presumption of regularity as to the City's determination.
3 It is not the role of the Court to substitute its judgment for that of the
4 City. (Id.)

5 Once the general plan is in place, it is the province of elected
6 officials to examine the specifics of the proposed project to determine
7 whether it would be in harmony with the policies stated in the plan. (CNPS
8 at 638.) "It is emphatically not the role of the courts to micromanage these
9 development decisions." (Id.) The focus is on reasonableness. This is true
10 if even if there are more reasonable interpretations of the factual record.
11 In sum, so long as the City's conclusion is reasonable and based on the
12 factual record, it must be upheld.

13 One overarching principle set forth in the General Plan and the Design
14 Guidelines is that the subject property here serve as a "transition" from the
15 Core Commercial Area to the Old East Davis neighborhood. This principle is
16 reflected in Land Use Principle 4, which states: "Accommodate new buildings
17 with floor area ratios that can support transit use, especially within ¼ mile
18 from commercial areas and transit stops, but maintain scale transition and
19 retain enough older buildings to retain small city character." General Plan
20 Policy UD 2.3 supports this principle, requiring an architectural "fit" with
21 Davis' existing scale for new development projects. The standards set forth
22 mandate (1) a scale transition between intensified land uses and adjoining
23 lower intensity land uses, (2) stepped back upper floors on taller buildings
24 in areas with a relatively smaller-scale character, and (3) variance in size,
25 density and design in the new projects.

26 The concept of transition permeates the General Plan's designation of
27 the Core Area Specific Plan (CASP). The CASP is intended to promote
28 "building up the downtown core (the area between First and Third streets and

1 D Street and the railroad tracks east of G Street) before greatly increasing
2 densities in the remainder of the core area, thereby protecting existing
3 residential neighborhoods and their character." The General Plan goes on to
4 state that the Core Area Specific Plan encourages "appropriate scale
5 transition between buildings."

6 The CASP section entitled "New Buildings in Residential Neighborhoods"
7 states: "The single most important issue of infill development is one of
8 compatibility, especially when considering larger developments. When new
9 projects are developed adjacent to older single-family residences, concerns
10 exist that the height and bulk of these infill projects do not have a
11 negative impact on smaller scale buildings." Land Use Policy 7B similarly
12 provides: "The area along Third Street shall be treated with sensitivity
13 because of potential impacts on adjacent land uses. Development along this
14 corridor shall be of an appropriate scale and character in relation to the
15 surrounding and adjacent land uses."

16 The Davis Municipal Code also touches on the principle of transition by
17 incorporating restrictive standards set forth in the Davis Downtown and
18 Traditional Residential Neighborhoods Design Guidelines (DTRN). The City
19 ordinance set forth in section 40.13A.020 (b) states: "Wherever the
20 guidelines for the DTRN conflict with the existing zoning standards including
21 planned development, the more restrictive standard shall prevail." In light
22 of the provisions discussed above in the General Plan, it is fair conclusion
23 that the DTRN guidelines, to the extent they provide detailed direction and
24 restrict the mass and scale of development projects in the transition area,
25 are relevant here. The Guidelines were approved by the City pursuant to the
26 authority set forth in the Municipal Code. The DTRN summarizes its mission
27 for downtown: "[T]he community engaged in extensive public process to
28 discuss how the traditional center of Davis can accommodate housing and

1 economic development objectives in a way that is sensitive to the area's
2 traditional scale and character. This document provides a policy and urban
3 design framework that is shaped by design guidelines and a supporting design
4 review process."

5 As noted by the Petitioner, the guideline for Mixed-Use Design provides
6 that a new building should "maintain the scale of a new structure within the
7 context of existing buildings on the block." It further directs (1) a front
8 elevation similar in scale to those seen traditionally on the block, (2) a
9 minimization of the scale of the building by stepping down the height toward
10 the street and neighboring smaller structures, (3) a limit on the building
11 not to exceed the width of a typical single family building in a similar
12 context, and (4) a break in the perceived mass of the building by dividing
13 the building into modules or into separate structures.

14 The DTRN includes a specific guideline for the very property at issue,
15 going so far as to include a picture of one of the current commercial
16 buildings to be demolished. The Guideline sets forth objectives: (1) this
17 area should improve the visual and land use transition from the Commercial
18 Core to the Old East residential neighborhood, (2) new mixed use buildings
19 should be built to the sidewalk edge with landscape courtyards incorporated
20 to vary the building setbacks along the street, (3) building architecture
21 should respect the traditional residential character of the neighborhood, and
22 (4) parking should be incorporated off the alleys in private parking courts.

23 The parties dispute whether these guidelines are incorporated into the
24 zoning law or not. These are highly descriptive and restrictive guidelines
25 for this transition area project and thus, Municipal Code section 40.13A.020
26 (b) may be triggered. On the other hand, many of them are not unequivocal
27 and quantifiable and leave some flexibility and even room for interpretation.
28 The Court need not resolve the dispute. Either way, the guidelines remain

1 highly relevant. The City asserted that the Project was consistent with the
2 guidelines and that it substantially complied with and relied on them. Under
3 these circumstances, any meaningful evaluation of the Project must assess
4 compliance, at least in broad terms, with the DTRN Guidelines. As noted
5 above, a project need not comply with each and every guideline or each and
6 every provision of the General Plan or related Specific Plans.

7 Now we turn to the work of determining whether the Project was
8 consistent with these local planning provisions. The City relies on
9 Principle 4 of the DTRN which encourages mixed-use development downtown at
10 "opportunity sites" and other planning provisions including General Plan Land
11 Use 2.6.1.1 which promote transportation centered projects, infill projects,
12 increased density of downtown residential living, and preservation of
13 agricultural land. Trackside certainly meets those objectives. It has been
14 designated an opportunity site. It is less than two blocks from the Amtrak
15 train station. It sits on the railroad tracks on a site traditionally used
16 for manufacturing or commercial. It is within the mixed-use transition area
17 of downtown and two special districts. It will have 39 residential units per
18 acre of density and first floor retail space.

19 But what is the factual record as to whether the Project complies with
20 the mass and scale provisions for this transition area? In its Staff Report,
21 the City describes the step-back design of the upper floors of the building
22 away from the adjacent single-family homes in the neighborhood. The step-
23 back design feature means that the mass of the building is weighted away from
24 the neighborhood and towards the railroad track and commercial core district,
25 as provided for in the DTRN Guideline. The City details the 30 foot width of
26 the alley, which serves as a buffer to the adjacent single family homes. The
27 City explains that while the guidelines favor two and three story mixed-use
28 buildings, this four story project is consistent because the fourth floor is

1 small in size with only four residential units and stepped back. The City
2 adds that the height of the building is only ten feet higher than a nearby
3 single-family historic residence, and is similar to the nearby Chen Building
4 and that given all of the benefits of the Project, the height of the Project
5 building is reasonable. Finally, the City relies heavily on a Third Street
6 Corridor Special Character Area Case Study image which illustrates an ideal
7 and acceptable project from a mass and scale perspective. The image project
8 features 45 dwelling units per acre with ground level parking, predominantly
9 three stories in height with a fourth story element and includes private
10 decks. The third level is set back, there is a residential entry on the
11 sidewalk and 75 percent of the ground floor is retail with an outdoor café.
12 The City notes that other than architectural style differences, the image
13 project is virtually interchangeable with Trackside and thus, the Project is
14 consistent with the Guidelines.

15 Is that a sufficient factual basis to support a rational conclusion
16 that Trackside is a transition project between the Commercial Core Area and
17 the Old East Davis Neighborhood? The focus is really on the meaning of a
18 "transition" under the planning provisions set forth above. Thus, here is
19 the question: What is in the Core Commercial Area and what is in the Old
20 East Davis neighborhood and is Trackside a transition between the two.

21 The record identifies two comparators in the Core Area, namely the Chen
22 Building and the McCormick Building both four story buildings like Trackside.
23 Trackside, however, is double the size of the Chen Building and likely at
24 least 30 percent larger than the McCormick Building. There was a passing
25 reference also to the Roe Building, which is several blocks away and even
26 smaller than the other two comparators. The hardware store directly across
27 the tracks appears to be a single story building with a parking lot. There
28 is nothing on the Third Street Corridor that is even remotely near the size

1 of Trackside. From the record, other than two relatively large parking
2 garages in the Core Area, it would appear that Trackside would be the largest
3 mixed-use or commercial building in downtown Davis by a longshot.

4 Moreover, the reliance on the Third Street Corridor case study image is
5 misplaced. That case study is tied to the location of B Street and Third
6 Street, which is near the University and not near Old East Davis. The
7 transition from the University is an entirely different matter than the
8 transition to Old East Davis neighborhood. Also, the case study itself does
9 not promote a 47,000 square foot building; rather, taken in context of the
10 guidelines, it more reasonably is intended to refer to a building like the
11 Chen Building. The case study identifies the target density, but does not
12 discuss the square footage of the units or the size of the property. It
13 gives directions on features of a transition project on the other side of
14 downtown but does not really address the mass and scale of a project there or
15 across town on the railroad tracks. Finally, the case study is simply a case
16 study and there is no like building on the Corridor or anywhere near the
17 proposed Trackside project.

18 On the other side of the Project is the Old East Davis neighborhood.
19 As described above, it is a diverse predominantly residential neighborhood.
20 It includes single family residences, some lower level apartment buildings,
21 some duplexes and/or townhouses. It also includes some single story
22 commercial buildings around its rim. It is one of the oldest neighborhoods
23 in Davis dating back into the 19th Century. There are three historic homes in
24 Old East Davis remaining. Many of the other homes are single-story
25 bungalows. Obviously, it is much different from the University, and it is
26 much different than the Core Commercial Area.

27 Trackside itself is located in what might be called the railroad
28 corridor, next to a rock yard and across the street from single story

1 commercial buildings. The current buildings on site are single story
2 commercial. Trackside would be over 4 times larger than the current
3 commercial buildings.

4 Over the years, the City has paid a good deal of attention to this
5 particular location. It is an important lot to the future of the town. It
6 is within the Core Area Specific Plan. It has been designated an
7 "opportunity site" for infill residential development. It is located within
8 the Mixed-Use Transition Area and Third Street Special Character Area. It is
9 also part of a designated Conservation Overlay District, which is intended to
10 make some measured effort at recognition and preservation of the historical
11 nature of Old East Davis.

12 Based on the totality of circumstances and a review of the entire
13 record, it is the conclusion of this Court that Trackside is not consistent
14 with the City of Davis planning provisions governing the transition between
15 the Core Area to the Old East Davis neighborhood. Trackside is twice the
16 size of the nearby Chen Building. It is significantly larger than the
17 McCormick Building and the Roe Building. It is four times larger than the
18 current on-site buildings. There are no buildings inside the Core on the
19 Third Street Corridor remotely similar in size. Other than two parking
20 garages, it would be the largest building on the East side of downtown by a
21 large margin. All of the adjacent buildings, either commercial or
22 residential are single story. The guidelines repeatedly make reference to
23 two and three story buildings along the Third Street Corridor *in the actual*
24 Core Area. The features relied upon by the City to justify the Project, like
25 the step-backed design, do not really address the larger issue of the mass
26 and scale of the project. Nothing in the Staff Report or record rationally
27 explained how a 47,000 square foot building constituted a transition project.

1 Instead, the City relied on other provisions of the General Plan as a
2 basis for the Project. Those provisions generally address the need for more
3 mixed-use projects in the Core Area. There is a compelling case, as the City
4 has made, for a mixed-use, high density residential development at this
5 location near the train station. The General Plan and the various specific
6 plans and guidelines discussed above clearly support a mixed-use project at
7 that location. But the failure here is that the mass and scale of the
8 proposed project is not reasonable under the current law and factual
9 circumstances. There simply is not a logical and reasoned case to be made
10 that Trackside is a "transition" from the Core Area to the Old East Davis
11 neighborhood. The record lacks evidentiary support for the City's decision.

12 In reviewing the General Plan and other related planning provisions and
13 guidelines, it is evident to the Court that the "transition" requirement of
14 the General Plan is material to any planned development on that location. It
15 cannot be disregarded in the name of other important planning goals, such as
16 increased densification. Any reasoned and lawful decision, therefore, should
17 balance all of the goals in making a final determination on a proposed
18 project. Here, the goal and principles of "transition" development was not
19 properly incorporated into the City's decision.

20 The Petitioner presented other claims and arguments regarding
21 compliance with CEQA. The decision the Court has made today is dispositive
22 and, thus, the Court will not decide the other issues presented. It would,
23 however, be a fair reading of this decision that the most compelling argument
24 made by the Petitioner is the one decided by the Court. At oral argument and
25 throughout the briefing of this matter, the issue of mass and scale of the
26 Project was the central dispute. That issue has best been presented to the
27 Court by the claim raising the question of consistency with the General Plan
28 and that is why the Court chose to address that issue front and center.

1 For the reasons set forth above, the Petition for Writ of Mandate is
2 GRANTED on the Fourth Cause of Action under Government Code sec. 65000 et
3 seq. and the Respondent is ordered to set aside approval of the Final Planned
4 Development (#5-15), Design Review (#5-15) and Demolition (#5-15) and
5 withdraw the Notice of Determination of the Project. Petitioner is the
6 prevailing party and may be entitled to attorney's fees based on a properly
7 noticed motion.

8 To this end and in anticipation that both or either party may file a
9 request for a statement of decision, the Court hereby sets a status
10 conference for this purpose in Department 6 at 9:00 on Friday April 5, 2019.
11 The parties are ordered to appear. The Court encourages the parties to
12 identify any mistakes or material omissions in the Court's recitation of the
13 facts, any mistakes of law, any necessary and proper remedy that follows from
14 the Court's final decision. The goal of the Court is to provide the parties
15 with a reasoned decision based on the record and this process is designed to
16 achieve that goal. This is the Court's Tentative Decision and it is not
17 binding on the Court until either no request for a Statement of Decision is
18 filed or the process for resolving the final Statement of Decision is
19 completed.

20 IT IS SO ORDERED.

21 Signed in Woodland, California on
22 March 9, 2019

23 
24 The Honorable Samuel T. McAdam
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SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF YOLO
1000 MAIN STREET
WOODLAND, CA 95695

CASE TITLE: OLD EAST DAVIS NEIGHBORHOOD ASSOCIATION VS CITY OF DAVIS

CASE NO: CVPT-17-2111

I, the undersigned, certify under penalty of perjury that I am not a party to the within-entitled action; that on March 09, 2019 I served true and correct copies of the foregoing/attached DECISION AND ORDER FILED 03/09/19 by depositing the same, enclosed in sealed envelopes with postage thereon fully prepaid, in the United States Post Office at Woodland, California addressed as follows:

Donald B. Mooney, Esq.
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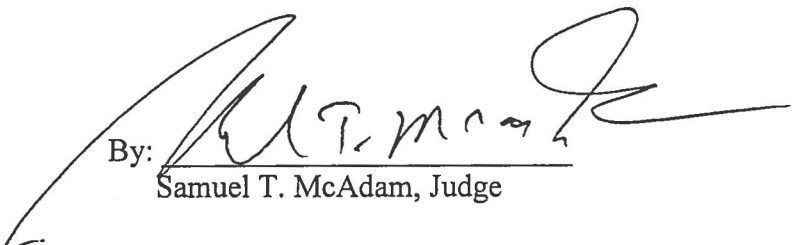
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At the time of said mailing there was regular communication by United States Mail between the said place of mailing and the places addressed.

Dated: March 09, 2019

By:


Samuel T. McAdam, Judge