

Danville Citizens for Responsible Growth
Appeal of Resolution 2017-01
March 9, 2017

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DANVILLE CITY CLERK

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Julie Glaser, Danville Resident and Taxpayer
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March 9th, 2017

To: City of Danville, Planning Committee and City Council
City of Danville, Danville, California
510 La Gonda Way
Danville, CA 94526
373-383 Diablo Road/Property Development Complex (Applicant: Danville Office Partners, LLC)
By Personal Delivery

Re: Appeal of Development Plan to construct 150 unit multi family for-rent residential development R 373-383 Diablo Road, Danville, CA.

We are appealing the above- referenced Planning Commission decision. At the direction of Staff, we are providing this appeal in letter form.

A description of the project being appealed and the basis for the appeal are set forth below. The Project was approved February 28th, 2017, and this appeal is timely filed within 10 days thereafter. A filing check in the amount of \$300.00 is provided.

Description of Project and Decision Being Appealed:

Appellants appeal Planning Commission Resolution No. 2017-01, which approved Final Development Plan Request DEV16-0014, on February 28th, 2017. The Project applied for by DANVILLE OFFICE PARTNERS, LLC and approved by Resolution No. 2017-01 is described as a request to construct a 150-unit multifamily for-rent residential project located on a 3.68 +/- acre (net) property located at 373-383 Diablo Road. The applicant is requesting a density bonus be applied to the project and is seeking up to a 35.0% increase to the otherwise allowable maximum project density. As a development incentive or concession, the applicant is requesting, consistent with regulations governing a density bonus project, relief from the maximum applicable floor area ratio (FAR) standard for conditioned space (i.e., the applicant is seeking approval of a FAR in excess of allowed maximum FAR standard of 80.0% FAR). As a waiver of reduction of development standards, consistent with regulations governing a density bonus project, the applicant is requesting relief from the maximum allowable building height standard set forth for the project site by the Danville 2030 General Plan (i.e., the applicant is

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*Received Deane Fudmann
For City Clerk*

seeking authorization to observe a 37' maximum building height where the Danville 2030 General Plan sets the maximum allowable building height at 35') (General Plan: Residential - Multifamily – High) (Zoning: DBD; Downtown Business District Area 12 - Multifamily Residential High Density) (Address and Assessor's Parcel Number: 373-383 Diablo Road/APN 216-120-037) (Project Planner: Kevin Gailey).

Justifications for Appeal by Citizens and Taxpayers:

1. *Improper determination of use-by-right and CEQA exemption.*

In approving the Project, the Planning Commission found the Project fell within the scope of Government Code Section 65583.2(i), and was therefore a "use by right" and thus exempt from the Town's usual processing for a Final Development Permit, or CEQA review. Government Code Section 65583.2(i) was improperly applied to the Project for a variety of reasons, including because the Project will exceed density for zoning restrictions per the 2030 General Plan for this property. The previous environmental impact report is therefore not sufficient for this project due to exceeding the allowable zoning restrictions with respect to density. Further, Government Code Section 65583.2(i) provides differing standards for proposed rental units, as here, stating, that "Use by right for all rental multifamily residential housing shall be provided in accordance with subdivision (f) of Section 65589.5," which, in turn, states:

Nothing in this section shall be construed to prohibit a local agency from requiring the development project to comply with objective, quantifiable, written development standards, conditions, and policies appropriate to, and consistent with, meeting the jurisdiction's share of the regional housing need pursuant to Section 65584. However, the development standards, conditions, and policies shall be applied to facilitate and accommodate development at the density permitted on the site and proposed by the development.

Accordingly, Danville must ensure that this project conforms to all local regulations and standards. While the staff report asserts that the Project "will have no adverse effects," substantial evidence below, not fully evaluated and incorporated into the final Project approval requirements, or General Plan EIR, demonstrates that as proposed the Project would have significant and adverse environmental effects that must be studied and mitigated or avoided.

Further, the Project may not qualify for this exemption since existing CC&Rs for the property do not allow for residential units at all, thus rendering the Project infeasible and ultra vires, even as against the General Plan designation. Indeed, there is a lawsuit pending in Contra Costa County Superior Court involving this Project and its surrounding properties/owners, and any approval of the Project could be subject to future challenge pending the outcome of the present litigation.⁴

Finally, future conversion to condominium units is a foreseeable consequence of the proposed

Project. However, any such future conversion would require further discretionary approval, but would consider the existing structure as the baseline environment. Therefore, for any CEQA review to be meaningful, this outcome must be evaluated pursuant to CEQA now, before any construction may occur. Alternatively, any Project approval must be expressly conditioned upon no future allowance for condominium conversion.

A recommendation for retail/business/hotel use would be appropriate given the CC&R's that are currently in place and current infrastructure and environmental limits of Downtown Danville.

2. *Impacts to creek and habitat could be significant and should be studied and mitigated or avoided.*

CA Fish and Wildlife code section 1602 requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following:

- Substantially divert or obstruct the natural flow of any river, stream or lake;
- Substantially change or use any material from the bed, channel or bank of any river or stream; or
- Deposit debris, waste or other materials that could pass into any river, stream or lake.

The Town of Danville has never seen a project gain approval without the assessment of CDFW. The staff report and findings provide that *"The project will be required to work with the Contra Costa County Flood Control District to ensure continued safety along San Ramon Creek,"* but this fails to provide any specific or binding requirements to ensure any flood or creek related impacts will be avoided. Due to the location and scale of this Project, there will be significant impacts to nearby waterways. Run-off associated with the construction and operation of the Project may include: industrial materials, pet fecal material, oil from cars and runoff, litter and other toxic, hazards or other pollutant materials due to high density of residential units planned. This is of particular concern because a creek is directly adjacent to the Project site.

Accordingly, at a minimum, we need to see the full mitigations and impact of both CDFW and Flood Control requirements for this. This should include an assessment of the creek directly adjacent to the project and 2 miles up and down stream of the creek in each direction, and assessment of its stability for flood conditions (in particular during a 100 year flood). We also request the developer to contribute to a monetary fund which will be used to maintain the infrastructure on the Danville creek collection pool at Diablo and Front street. The developer should also contribute to a fund which will provide a nature preserve viewing area of the creek with benches and a path which will allow residents and visitors to admire the natural creek bed and all of its animal and plant diversity. Again, the removal of any existing trees and its impact on soil stability needs to be considered and reviewed as it relates to the creek and the consequences of the impact on creek integrity and natural animal life within the creek.

It is not sufficient to say that this assessment will be done after the project is built as this would not be satisfactory due to the building already being in place. It would not be possible to retrospectively alter the building's distance/position in relation to the creek, or remedy any untoward consequences of the building as it relates to the fish, wildlife or habitat. Once the building is in place it will become part of the "baseline" conditions for the purpose of any future environmental review, which will necessarily limit potential mitigation measures that could be considered.

In addition, it appears required creek setbacks will not be met. Danville Municipal Code section 32-22.12(c) requires that:

For properties that abut major channels, all additions and/or new structures shall meet the creek current structure setback requirements as defined by Contra Costa County Flood Control and Water Conservation District or as determined by the City Engineer. . . All structures shall observe the minimum creek setback or the property line setback otherwise established under the applicable zoning district, whichever is greater.

Similarly, the General Plan provides:

Policy 22.01 - Maintain and enhance the natural quality of Danville's creeks, including the riparian vegetation along the banks. Setbacks should be maintained along creeks to maintain their natural appearance, reduce erosion and flood hazards, and protect their ecological functions.

Here, the proposed Project's placement abutting the bank of San Ramon Creek indicates that such required setback may not be maintained. While the conditions of approval do include a pedestrian easement, this additional development may not inherently "maintain and enhance the natural quality" of "riparian vegetation along the banks." To the contrary, and as discussed below, the staff report indicates that this would be a section subject to tree removal.

The creek is a valued natural asset to the Town of Danville for its natural beauty, plant and animal life. This project must not be approved without full knowledge of the impact on the creek and indigenous trees and landscape. It has not been demonstrated how the creek is going to be restored and what is the detailed plan for restoration of indigenous plants along the creek.

We request a full assessment of landscape and impact on environment in and around the creek, including but not limited to the creek bed, indigenous and nonindigenous plants and animal life. It is requested that this report be utilized to determine an appropriate set back from the creek as well as advise on environmental impact a structure or structures would have on the creek with recommendations on steps needed to preserve and prevent a negative environmental impact on the creek and surrounding area. In addition, a plan should be put forth by the

Developer to provide pathways, benches and natural landscape which will preserve the beauty of the creek and allow for appreciation by residents and visitors. A set back should be included which will preserve the integrity of the creek and prevent negative human environmental impact to the any components of the creek.

3. *Impacts to trees should be studied and mitigated or avoided.*

We request that a totally independent arborist without relationships with the Town of Danville, the developer or any of the legal entities affiliated in any way with this project be appointed to do a thorough and unbiased assessment of the impact of this project on the existing trees. Assessment of the trees impacted by this project and if there are any protected trees (e.g. heritage oak trees). Also, we want an assessment of what impact the tree removal may have on soil stability, drainage and creek stability.

4. *Traffic impacts could be significant, and should be studied and mitigated or avoided.*

Traffic is a public safety issue as well as impacts quality of life for residents in the Town of Danville. The current traffic study is inadequate for current and projected traffic conditions. Given the rapid expansion of the economy the data needs to be updated to use traffic in the projectable future which shows a 15-20% increase in traffic demand. Currently CalTrans and Contra Costa Transportation Authority are planning to implement metering lights on Diablo Road on ramps which will also significantly increase in congestion of arterial roads (Diablo Rd; westbound and eastbound). In addition, the intersection on Diablo Road and 680 Fwy North and Southbound and near Green Valley Shopping Center needs to be studied. Peak hours for the purpose of the traffic study include both work and school commute hours. The peak hours should at minimum include to and from school traffic around, Vista Grande (680 North onramp off Diablo Rd and intersection Diablo and Camino Tassajara where it remains a two lane road with no sidewalks for pedestrians to allow for children to get to school or pedestrians to walk into town). All of the downtown area around morning and afternoon/evening school and commute hours needs to be studied. The credit given in the traffic report assumes people will be utilizing the bus system. This is an inaccurate assumption as individuals renting at market rate in the Town of Danville will not be utilizing buses and will be utilizing their personal vehicles on a daily basis. Thus, the credit was based on faulty assumptions.

We request a new traffic study that uses a totally independent agency without relationships to the Town of Danville, the developer or any of the legal entities affiliated in any way with this project being a thorough and unbiased traffic assessment which takes into account current and future traffic projections. It should consider the increase of street traffic from 2015 to 2017 and then extrapolate this rate of growth into the future in order to estimate expected traffic volume once the apartment units are occupied. The baseline used in the previous assessment was for about half the units and the proposed plan is double the number of units are being built (80 units vs 150 units).

A parking assessment and remediation has not been adequately addressed in this proposal. We request a parking assessment and proposal by the developer to address the parking needs of a development on this property. It has been suggested the parking will either be provided in the development proposal or through 'parking in lieu' fees. This clearly illustrates that the developer may be able to avoid providing any parking in exchange for small fee. This will make the parking situation adjacent to the project worse as it spills onto neighboring or arterial streets/areas or business. This would eventually put the burden on the Town of Danville to provide additional infrastructure.

- 5. Pedestrian and bike safety impacts could be significant and should be studied and mitigated or avoided.*

There is clear evidence in the Town of Danville that children do not walk to school on arterial streets due to safety issues. Children who live in this complex will be unable to walk to school (Montair Elementary or Diablo Vista School) due to lack of sidewalks and current traffic safety concerns. Also, based on evidence, adult pedestrians will not be utilizing public buses and will be utilizing cars around town for trips (not limited to) pick up/drop children, shopping, banking and activities of daily living, etc.

It is also commonly known that Danville residents bike in and around downtown. The increased traffic would result in increased danger to bikers.

- 6. Air quality impacts could be significant and should be studied and mitigated or avoided.*

Residential buildings that have been developed less than 500 feet away from a major traffic source have been shown and documented by major medical organizations to contribute or cause serious long term health issues, not limited to "black lung", high blood pressure, asthma in children, higher incidence of childhood leukemia.^{1\2} This property is 40 feet away from the onramp at the NE corner and 65 feet away at the SE corner of the 680 Freeway. "Children are especially vulnerable to auto-emission health impacts because, among other reasons, they breathe more air relative to their body weight than adults, are more physically active, and spend more times outdoors during times when pollutant levels are at their highest. (Hulsey, et al., 2004) Additionally, children have many more years ahead of them in which the cumulative damage caused by auto emissions can manifest itself in disease or disability. Women who live near areas of high automobile traffic during pregnancy have a 20 – 30% higher chance of having children with lung impairment. (Morales, et al., 2014) Auto emission PM exposure from nearness to high traffic during the the third trimester of pregnancy doubles the risk for autism. (Raz, et al., 2014)."

The General Plan requires that:

Policy 34.04 - Consistent with CEQA and the measures necessary to mitigate General Plan impacts, require site-specific air quality studies for future development under the

Plan that includes sensitive receptors (such as schools, hospitals, daycare centers, or retirement homes) located within a designated buffer area along Interstate 680.

And further requires that:

Policy 34.06 – Consistent with CEQA measures necessary to mitigate General Plan impacts, require indoor air filtration systems to reduce particulate concentrations to acceptable levels for projects where there would be a significant cancer risk exposure as defined by BAAQMD.

Given the extreme proximity of this proposed high density development to Interstate 680, additional air quality and human health impact studies must take place prior to any project approval.

Conclusion:

Thank you for your earnest consideration of these issues. We look forward to working closely with Danville Town Council during the appeal. We would like to work closely to schedule the appeal hearing on a mutually acceptable date to insure the we have sufficient time to fully prepare.

Sincerely,

Julie Glaser, Danville Resident and Taxpayer
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Michelle Harris, Danville Resident and Taxpayer
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Danville Residents for Responsible Growth

1. <https://www.ncbi.nlm.nih.gov/pubmed/16222162>
2. <http://www.laweekly.com/news/black-lung-lofts-2164048>
3. <http://www.danville.ca.gov/Services/Planning-Services/General-Plan/Housing-Element-2014-2022/>
4. <http://icms.cc-courts.org/tellme/tellme/tellmecasereport.asp?language=ENGLISH&courtcode=A&casenumber=MSC15-01539&casetype=CIV>
5. <http://www.usatoday.com/story/news/nation/2014/03/20/childhood-leukemia-linked-to-heavy-traffic-exposure-cdc-says/6658919/>
6. <http://www.dot.ca.gov/trafficops/tm/docs/RampMeteringDevelopmentPlan.pdf>
7. <http://sandiego.urbdzine.com/2015/05/28/what-is-a-safe-distance-to-live-or-work-near->

high-auto-emission-roads/

8. Raz, R., Roberts, A.L., Lyall, K., Hart, J.E., Just, A.C., Laden, F., and Weisskopf, M.G., Autism Spectrum Disorder and Particulate Matter Air Pollution before, during, and after Pregnancy: A Nested Case–Control Analysis within the Nurses’ Health Study II Cohort, Environmental Health Perspectives (2014)

9. All the cases involving Danville office partners in Contra Costa County superior court.

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&searchtype=NAME&casenumber=&firstname=&middlename=&lastname=&businessname=DA
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