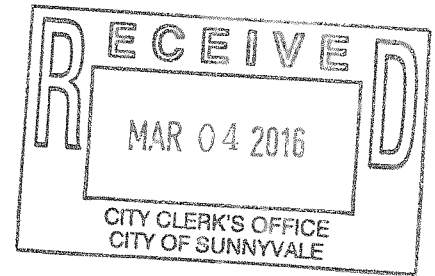


March 3, 2016

By FedEx

City Clerk
City of Sunnyvale
603 All America Way
Sunnyvale, CA 94088



**Re: Appeal to City Council of Planning Commission Approval of
Special Development Permit, 777 Sunnyvale-Saratoga Road**

To the City Clerk:

On behalf of Michael Howland this is to appeal the February 22, 2016 action by the Planning Commission approving Special Development Permit No. 2015-7399 for an 11,600 square foot drive-up retail grocery business located at 777 Sunnyvale-Saratoga Road. The appeal is taken pursuant to Sections 19.98.070(a)(2) and 19.90.040(c) of the Sunnyvale Municipal Code. A check for \$161.00 payable to the City of Sunnyvale is enclosed to cover the appeal fee. The reasons for the appeal are set forth in our February 22, 2016 letter to the Community Development Department, a copy of which is attached and whose contents are here incorporated by reference.

Please notify this office by fax or email of the date and time of any scheduled public hearing on this appeal.

Yours sincerely,

M. R. WOLFE & ASSOCIATES, P.C.

A handwritten signature in black ink, appearing to read "Mark R. Wolfe", with a long, sweeping underline.

Mark R. Wolfe
On behalf of Appellant Michael Howland

MRW:am
enclosures
cc: Michael Howland

February 22, 2016

By Fax & E-mail

Community Development Department
Attn: Trudi Ryan, Director
City of Sunnyvale
456 West Olive Avenue
Sunnyvale, CA 94086
Fax: 408-328-0710
Email: tryan@sunnyvale.ca.gov

**Re: Appeal of Zoning Administrator Decision | Protest of Mitigated
Negative Declaration for Special Development Permit, 777
Sunnyvale-Saratoga Road File No. 2015-7399**

Dear Ms. Ryan:

On behalf of Sunnyvale resident Michael Howland, the appellant in the above-referenced appeal, this is to protest the adoption of the above-referenced mitigated negative declaration. As you may recall, Mr. Howland previously objected to the City of Sunnyvale's proposed reliance on a CEQA categorical exemption for this same Project. Although we credit the City for agreeing to conduct an initial study, the proposed reliance now on a mitigated negative declaration ("MND") for this drive-through retail grocery outlet in lieu of a full environmental impact report ("EIR") is improper. As explained below, the current record before the City shows the Project may have significant impacts notwithstanding the mitigation measures identified in the MND. An EIR is therefore required before the City may approve it.

I. Traffic impacts

The Initial Study's discussion of traffic impacts relies on the "Transportation Operations Analysis" contained in Appendix D. That analysis estimates the Project's trip generation using the Institute of Transportation Engineers ("ITE") land use category 850, "Supermarket." For purposes of calculating daily, AM and PM peak trips, the analysis therefore assumes, necessarily, that the Project is an 11,600 SF conventional supermarket. This is inaccurate. It should go without saying that a

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11,600 SF structure devoted to receiving, storing, packaging, and distributing grocery items ordered online is substantially different from a retail supermarket of the same size. It will not have aisles, check-out stations, display cases, or other features that would occupy square footage in a conventional grocery store. Because the ITE's supermarket trip generation rates are based on total retail square footage, the Initial Study's reliance on them for this Project necessarily results in a significant underestimate of the total amount of traffic the Project will generate. The Initial Study's overall conclusions regarding Project impacts on Levels of Service at affected intersections is thus inaccurate.

In addition, the Initial Study and Appendix D inappropriately credit the Project with eliminating the trips that would otherwise be generated by 6,790 SF of the current OSH store. As the Initial Study itself acknowledges, "The proposed 11,600 square-foot grocery retail building would be located adjacent to the main OSH building in roughly the same location as the existing pick-up building." Because the existing OSH square footage that the Project would replace is actually not devoted to floor sales, it is not generating trips based on the rate assumed for a Home Improvement Superstore. Crediting the Project for eliminating 6,790 SF-worth of Home Improvement Superstore space is thus improper.

The Initial Study and MND's conclusion that the Project would have no significant unmitigated traffic impacts is therefore not supported by substantial evidence.

II. Adverse health effects from toxic air contaminant emissions

The Initial Study fails to include a health risk assessment for emissions of toxic air contaminants during the one-year construction period for the Project. The Initial Study states that emissions from construction would be negligible, but provides no supporting data or analysis as to why. Without a construction-phase risk assessment, the Initial Study's ultimate conclusion that the Project would have no significant unmitigated air quality impacts from toxic air contaminant emissions is not supported by substantial evidence.

III. Greenhouse gas emissions

We note that the Initial Study's Greenhouse Gas ("GHG") emissions model in Appendix C changed the default hauling trip length from 20 miles to 0.03 miles, while the Air Quality model in Appendix A relied upon the default hauling trip length of 20 miles. "User Entered Comments" in the GHG model state that this change is

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representative of the “length of the project site = 0.06 mi.” This change is improper, and results in an underestimate of the Project’s GHG emissions. Since impacts from GHG emissions are a large-scale (indeed global) problem, the analysis should not be restricted to just what is occurring on-site.

Furthermore, the Initial Study states that “The proposed grocery store would require up to four truck deliveries with transportation refrigeration units (TRU) per day...” (p. 33). However, it does not appear that these operational delivery trips were included in the GHG analysis. If indeed they were not, then emissions of GHGs (not to mention criteria air pollutants) were underestimated. The Initial Study’s conclusion that the Project would have no significant unmitigated GHG impacts is therefore not supported by substantial evidence.

IV. Hazardous materials

The Initial Study references and incorporates a Phase I Environmental Site Assessment performed by Moore Twining. The Phase I Assessment fails to identify past agricultural use (orchards) as a recognized environmental condition. Although the Assessment does acknowledge that pesticide residuals may be found in soils generally, it dismisses the concern without any provisions for future sampling. Our understanding is that in Santa Clara County, residual pesticides are seen commonly as a residual environmental condition, and that soil sampling is typically required as a part of the CEQA process.

Without soil sampling and/or a Phase II Assessment, the Initial Study’s conclusion that, the Initial Study’s ultimate conclusion that the Project would have no significant hazardous materials impacts is not supported by substantial evidence.

V. Conclusion

Under CEQA, an agency may rely on a negative declaration of mitigated negative declaration only if there is no substantial evidence whatsoever that a project may have a significant environmental impact. CEQA Guidelines, § 15064(f)(3). As a result of the analytic defects described above, there is insufficient evidence before the City that the Project will have no significant environmental effects. Under the circumstances, the City should require preparation of an EIR before considering whether to approve the Project.

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Thank you for your consideration of this protest.

Yours sincerely,

M. R. WOLFE & ASSOCIATES, P.C.

A handwritten signature in black ink, appearing to read 'MR Wolfe', with a long horizontal flourish extending to the right.

Mark R. Wolfe
On behalf of Appellant Michael Howland

MRW:am

cc: Gerri Caruso, Principal Planner (by email to: gcaruso@sunnyvale.ca.gov)
Ryan Kuchenig, Project Planner (by email to: rkuchenig@sunnyvale.ca.gov)
City Clerk (by email to: cityclerk@sunnyvale.ca.gov)
Planning Commission (by email to: PlanningCommission@sunnyvale.ca.gov)