

# LAKE COUNTY PLANNING COMMISSION

## MINUTES

### REGULAR MEETING

January 26, 2017

#### Commission Members

P John Hess, District I  
P Bob Malley, District II  
P Eddie Crandall, District III  
P Matt Levesque, District IV  
P Daniel Suenram, District V

#### Staff Members

P Robert Massarelli, CDD Director  
P Michalyn DelValle, Principal Planner  
P Shanda Harry, Deputy County Counsel  
P Danae Bowen, Office Assistant III

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**9:29a.m. Public Hearing on consideration of a mitigated negative declaration based on Initial Study (IS 15-10) for Design Review Permit for Major Use Permit (UP 15-08). The project applicant is CROSS DEVELOPMENT on behalf of DOLLAR GENERAL proposing construction of a +/- 9,100 square foot retail store. The project is located at 20900 State Highway 29, Middletown and further described as APN 024-301-18 (Continued from 12-8-2016) (Michalyn DelValle)**

Michalyn DelValle, Principal Planner, provided background information and a power point presentation of the project application. She said that staff recommends approval for the Design Review Permit for Major Use Permit UP 15-08.

Comm. Hess asked what window is being looked at during the day for construction, with concerns with dust and school hours

Ms. DelValle said that construction activities would be from 7:00am to 7:00pm and any construction generating dust is required to be done before or after school hours.

#### **10:17am Opened Public Hearing**

Ed Robey, former District 1 Planning Commissioner (8 years) and Board of Supervisor (12 years), said they developed the original Middletown Area Plan and he understands the Area Plan very thoroughly and the wishes of the Middletown community who have actually written the plan. He said the Middletown community has been very clear for over twenty years that they want to have the same kind of rules that Calistoga and St. Helena have. He quoted from the Middletown Area Plan and said that the community would like to maintain small local retail shops and discourage fast food restaurants and chain stores. He said he is here to promote good government and he is in opposition of the project. He said the original Planning Commission voted correctly to unanimously oppose the project and the Board of Supervisors were split on it,

EXHIBIT E

so it was sent back to the Planning Commission to meet with the developer to come up with a better design and meet with the Middletown Town Hall (MATH) and Middletown Area Merchants Association (MAMA). He was not certain that those meetings had taken place.

Mark Hamilton addressed esthetic and architectural design issues. He said because of the proximity to the schools, we as elders have responsibility to the children to give them more nutritional options to consume. He said anything they could do to conceal that this store exists would help. He said hard working people put the Middletown Area Plan together, and hoped that the Commission could look at any technical glitches to help derail this impending construction project.

Kimberly Haynie, Lake County resident, presented a letter to the Commission and reviewed the myths of the development and points of lack of compliance with the Middletown Area Plan. She read through important points of her memo for the record and said this development does not comply with the Middletown Area Plan.

Lisa Kaplin, Director of the Middletown Art Center, submitted three petitions to the Commission against the project development. She said she is on the MATH Board and she said MATH is against this project development, and they were not invited to a meeting with Cross Development. She spoke against strip malls and chain stores.

Julie Richardson, Real Estate Agent, said she was shocked that this was approved by the Board of Supervisors and did not feel the community was being represented by the Board. She said this development does not meet the Middletown Area Plan.

Victorian Brandon, Lake County Sierra Club, said that they have submitted a detailed list of inconsistencies with the Middletown Area Plan and General Plan. She said the Board of Supervisors approved this, but suggested to wait for the Planning Commission to approve the Design Review, which then the Planning Commission would have the authority to approve or reject the project based on its view not only of the design review, but also the environmental review and that this was not a done deal. She said the fundamental issue is whether this conforms to the will of the community, as expressed in the General Plan provisions, which say that Middletown wants to be; small, rural, western and local and that is the basis for the future of the Middletown people.

Mr. Robey addressed environmental concerns and said they are not just traffic they have to do with quality of life. He said this project will affect the quality of life of the Middletown community. Once something like this goes in there, the County says they do not care what the people think and it will change the Middletown community and the way people live and feel about their community.

Beth Rudigar, Middletown Area Merchants Association (MAMA) president, said they believe the design as it stands does not meet the Middletown Area Plan. She said the Middletown Area Plan was adopted in 2010 and this is the first major development project since its adoption. She said the decision made today will set a precedent for future decisions and most everyone in the

community is against this store going in and it does not fit the Middletown Area Plan Design Review.

Ms. Haynie said that there are five schools near this proposed development and the intersection is dangerous and there are concerns with children crossing the road, along with environmental concerns.

Comm. Malley said for the record he wanted to state that from the beginning of this hearing about the Middletown Dollar General project, he has raised concerns, because of his wife's involvement as the Principal of East Lake Elementary in the Oaks.

Comm. Malley pointed out that the Dollar General in the oaks is next to school property and the Kelseyville Dollar General's first proposal was across from Kelseyville High School and now the Middletown project is across from five schools. He said he was assured by the developer Cross Development that the proximity to the schools was not the reason for buying these properties. He stated that these concerns have been addressed from the beginning and nothing has changes in his mind of it not being a good match for the community, just on that level.

Mike Stilts, Cross Development Representative for Dollar General, said that he has listened to the community and said their intentions are to meet all the recommendations from staff for compliance. He said and they believe they have met per the staff repor those recommendations for Design Review for the Commission's approval. He said there will be three million dollars invested into the community and they think this community is the right investment for this store. He said there was outreach from the architect to the community and he did present a plan to them with significant reduction of scale and the changes recommended to Cross Development have been applied.

Comm. Malley said that there are two stores in this County already, and asked Mr. Stilts how Cross Development has interacted with the schools in the areas of the other two stores so far.

Mr. Stilts said for the Design Review he did not have that knowledge of what happens after a store opens in the community.

Comm. Malley said the problem we have had from the beginning is that a Dollar General Representative is never here. He said he would like to know at a corporate level what involvement Dollar General has had in the communities of Nice and Clearlake Oaks.

Mr. Stilts said that he was here to represent the development of Dollar General. He did not have an answer to the involvement of the other stores, but asked if there was a condition that could be made to make Dollar General a participant in the Middletown community.

Comm. Malley said as far as design review, this looks exactly the same as when we first started. He said some elements have been changed, but he does not see a major change from where we started. He said it was not acceptable when it started.

Mr. Stilts understands that the Commission and the community want the store to look nothing like a Dollar General and they will continue to modify per any recommendations provided to them that they can accommodate.

Sabrina Teller, Cross Development Attorney, acknowledged that the discussion today was focused on the land use plans and design guidelines. She said the staff report and the Initial Study explains in exhaustive detail how the project meets and in many instances exceeds the minimum standards set forth in your plans and guidelines. She said the staff materials also note that some of these policies are not terribly specific or mandatory and therefore are open to reasonable interpretation, which they have tried to do. She said staff has done an excellent job of explaining why they have interpreted some of the more subjective or vaguer policies the way that they have and they would encourage to follow these recommendations. She said as your Community Development Director and others have noted, and the recurring theme today is; "words matter", and they do, and the area plan says discourage not prohibit, formula businesses, unless architecture and signage are made compatible with local themes and today's focus per the Board of Supervisors action is on the esthetics and design elements of the project. She said staff has noted the design changes the applicant has made to meet the previous recommendations and she is hearing some skepticism about that and if there is a decision to be made today on the design review, they would like specific direction on how to meet those guidelines. She said the Commission's findings should be specific, detailed and explicit. She said just telling them they don't like the design is not very helpful in trying to meet the community's concerns or any concerns that the Commission has about the design, so if there are different architectural features that Commission would like to see, please let Cross Development know.

Ms. Kaplin said there is a letter from a lawyer representing the Middletown community in the Planning Commission packet, which is the counter position just to be fair, she also refutes the Cross Development representative and said that she has an email from Wade Skiles, which outlines a few of the items on the store design that were never returned by the applicant and there was no outreach from Cross Development to the community and it was not about Mr. Skiles saying I don't like your project, it was about an unwillingness of Cross Development to work with the community. She said MAMA provided alternative designs that Dollar General had in other locations, and we are providing guidance and direction. She said they did their job and it was stopped by Dollar General. She said they did not dialogue with them.

Comm. Hess said that he was not at the previous hearings, but he has listened to all the tapes and has read the transcripts. He said the Commission did not just ask for Cross Development to work with Wade Skiles, they asked for MATH and MAMA to work with them also.

Ms. Kaplin said yes and she was one of the members.

Ms. Rudigar, MAMA Representative, said MAMA has made specific recommendations and they were invited to those meetings, but she chose not to attend because meetings are time consuming and she had a lot of things on her plate. She believed it was on Cross Development's to bring designs to us, not for us to design the building for them. She said it is up to them to come up with several more designs instead of putting little changes on their original plan.

**11:41 a.m      Closed Public Hearing**

Comm. Suenram said he agrees with most of the people in Middletown and that it does not fit the Middletown Area Plan. He said views from residents near this project and the street view from Highway 29 are not something people are going to enjoy looking at and did not think that this store is a good fit for the neighborhood. He thought placement in a different direction from the left elevation might make it better, and appreciated the canopy and the posts to give it more of a western feel.

Comm. Levesque shared his concerns are with environmental impacts, the additional traffic in an area that is already congested and that the Planning Commission directed Cross Development to work with MATH and MAMA on the design of the building and there is no evidence of that happening. He said if the Commission is going to communicate that the applicant is to do something, especially in light of the controversy of this meeting and the Middletown Area Plan. He said the applicant needs to speak with MATH and MAMA to work this out.

Comm. Hess agreed with Comm. Suenram and Levesque and if this is about design review and there is a motion for a mitigated negative declaration in terms of what the Commission might vote on and the last and best opportunity Cross Development had was to work in good faith with those designated representatives of the community and they have had that opportunity since July of 2016. He said he did not hear anything today that a good faith effort was made. He said the design we are looking at with the posts, were received just yesterday. He did not think they were at the point to consider a motion, but to simply talk about refining design seems to be an endless activity. He said the Planning Commission is the authority as designated by the Board of Supervisors to certify the design and environmental issues.

Comm. Crandell said the Board of Supervisors has sent this project back to the Planning Commission with conditions that Cross Development agreed to meet with MATH and MAMA on the design of the building. He said if those meetings did not take place he could not make a decision until that was done. He said there are two Dollar Generals in his district and the Dollar General in Nice seems to draw a lot of business, but there is no school there, so there is no danger to children. He said he was not in support of the location of this Dollar General near the schools in Middletown

Mr. Massarelli clarified that it was the recommendation of the previous Planning Commission Chair, not the Board of Supervisors, that Cross Development meet with MATH and MAMA. He said it was staffs understanding that there was an effort made and MAMA did not want to participate. He said the effort was made, but was it as complete as it should be and did all the parties participate in good faith and you can use that as a way to weigh how you will decide on that.

Comm. Levesque said in light of the unclear directive to work with MATH and MAMA he said the design did not substantially changed and they do not seem to meet the spirit of the letter of the Middletown Area Plan and the large Steele sections are opposed in the Middletown Area Plan. He said if it were just a matter of them not meeting with MATH and MAMA, and because

MAMA did not want to meet with them, that is different than not developing a plan that meets the Middletown Area Plan.

Comm. Malley said the Middletown Area Plan specifically says to stay away from browns and tans. He said Cross Development has submitted a brown and tan design; his major problem is that Cross Development does not care what is in the Middletown Area Plan and they have not tried to change the structure of the physical building other than adding a few pieces of gingerbread and they have not worked in good faith with the community to try to come up with something that would be passible. He said from what he has seen it has been store after store after store and the design comes out looking pretty much the same. He said when pictures were shown of what these stores look in different places; Cross Development acknowledged that they could make it look like that, but it still looks like this. He said he does not see that they have worked diligently with anybody in the community and they certainly have not sent us any plans that are significantly different. He said if you take the plans they submitted from day one and hold them up to the plans that were submitted yesterday, there is some gingerbread additions and the colors have stayed the same. He asked staff about the discussion in the past about the highway and the design with Caltrans, the schools across the street, the amount of extra traffic that will be generated, and asked if that all been covered to staffs satisfaction.

Mr. Massarelli said within the CEQA checklist in reference to Transportation XVI on pages 20-24, of the CEQA Document, the series of topics are to be addressed and staff's recommendation is based upon those problems identified. He said there is a series of topics addressed and staff's recommendation is based upon those topics identified. He said there are eight mitigation activities are identified and read from Mitigation 3; *"Construction, circulation, access and pedestrian improvements including sidewalks to the site shall be provided."* and mitigation 2; *"All handicap parking areas, routes of travel (pedestrian paths, walkways and sidewalks), building access and bathrooms shall meet ADA requirements and be subject to review and approval of a CASP, Certified Accessibility Access Specialist."* He said this is how pedestrian protection is addressed in CEQA Document.

Ms. DelValle stated that Caltrans did not have any concerns about the pedestrians crossing the highway.

Comm. Hess said that this does not alleviate his concerns about kids taking a shortcut across Highway 29.

Mr. Massarelli said that there are other attractions in the area on the opposite side of the road that attract kids and to single out that Dollar General is the attraction that will cause harm to kids is not doing a swing analysis of the attractions that exist on the other side of the road.

Comm. Hess moved, 2<sup>nd</sup> by Comm. Crandell that the Planning Commission find that , despite the mitigation measures and conditions of approval which were added to the project, that the use permit and design review as applied for by Cross Development do not meet the requirements of Sections 51.4(a), findings 1,3 & 5 and Section 54.5(a), findings 4,5,6 & 7 of the Lake County Zoning Ordinance, respectively, and will have a significant effect on the environment and therefore a mitigated negative declaration shall not be issued

**MITIGATED NEGATIVE DECLARATION DENIAL 5 Ayes 0 Noes**

Comm. Hess moved, 2<sup>nd</sup> by Comm. Crandell that the Planning Commission find that the Design Review applied for by Cross Development on property located at 20900 South State Highway 29, in Middletown does not meet the requirements of Section 54.5(a), findings 4, 5, 6 & 7 of the Lake County Zoning Ordinance and the Design Review be denied.

**DESIGN REVIEW DENIAL 5 Ayes 0 Noes**

Comm. Malley noted that there is a seven (7) calendar day appeal period provided by the Lake County Zoning Ordinance.