

1 BOARD OF SUPERVISORS, COUNTY OF LAKE, STATE OF CALIFORNIA

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3 In the Matter of the Appeal
4 of Cross Development, LLC.
5 (AB 16-02)

6 FINDINGS OF FACT AND DECISION

7 This proceeding was commenced by virtue of an appeal by Cross Development,
8 LLC. (the "Appellant") of the Planning Commission's determination on April 28, 2016, to
9 deny the Appellant's request for a Major Use Permit (UP 16-02) to allow construction of an
10 approximately 9100 square foot Dollar General retail store at 20900 S. State Highway 29
11 in Middletown, California.

12 A duly noticed public hearing before the Board of Supervisors was initially
13 scheduled for June 21, 2016, but continued to July 19, 2016. On July 19, 2016, evidence,
14 both oral and documentary, was presented. Based upon the evidence and applicable law,
15 we find the following:

- 16 1. That the Lake County Planning Commission held a public hearing on April 28,
17 2016. The Planning Commission unanimously denied the Major Use Permit (UP
18 15-09) of Cross Development, LLC. to allow construction of an approximately 9100
19 square foot Dollar General retail store at 20900 S. State Highway 29 in Middletown,
20 California (the "Project"). The Planning Commission found that the Project did not
21 meet the requirements of Section 51.4 of the Lake County Zoning Ordinance.
- 22 2. That the Appellant is Cross Development, LLC and the Appellant filed an appeal of
23 the above-described decision of the Planning Commission on April 28, 2016.
- 24 3. Staff of the Community Development Department presented evidence both
25 documentary and testimonial. Staff submitted a staff report dated May 24, 2016,
26 with attachments which included the appeal form, the draft minutes of the hearing on
27 the Project before the Planning Commission, and the staff report to the Planning
28 Commission, and the Major Use Permit conditions. The staff report to the Planning

1 Commission included as attachments a vicinity map, the site plan and building
2 elevations, the Middletown Area Plan Commercial Design Guidelines, agency
3 comments, Proposed Use Permit conditions, and Initial Study IS 15-10. Staff
4 additionally submitted Dollar General's Economic Analysis, the Cross Development
5 Plans, and the written opposition to the Project of a number of Middletown area
6 residents. Testimony included:

- 7 a. Senior Planner Michalyn DelValle presented the May 24, 2016 staff report.
8 Ms. DelValle testified that the Project site is surrounded by various
9 commercial uses with a cemetery located at the eastern end and some
10 residences behind it. She further testified that the Planning Commission
11 denied the Mitigated Negative Declaration, the Design Review, and the
12 Major Use Permit for this Project on April 28, 2016 and the appeal was filed
13 by the Appellant that same day. Ms. DelValle testified that there are six
14 required findings for the approval of a Major Use Permit. First, there must
15 be a finding that the use is not detrimental to the health, safety, morals,
16 comfort, and general welfare of persons residing or working in the area or
17 detrimental to property and improvements in the neighborhood or the
18 general welfare of the County. Ms. DelValle testified that staff had
19 determined that a Major Use Permit for this Project would provide
20 goods and services to the public which would be a benefit. Second, there
21 must be a finding that the site for the Project was adequate in size and staff
22 had determined that it was. Third, there must be a finding that the streets,
23 highways, and pedestrian facilities were adequate and staff had determined
24 that they were. Ms. DelValle noted that CalTrans had required that curb,
25 gutter, and sidewalk be installed. Fourth, there must be a finding that there
26 are adequate services to serve the Project and staff determined there were
27 adequate services, noting that the Callayomi Water District, the Lake County
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1 Sanitation District, and the Lake County Sheriff's Office would serve the
2 Project. Fifth, there must be a finding that the Project is consistent with the
3 Lake County General Plan, the Middletown Area Plan, and the Zoning
4 Ordinance. Ms. DelValle testified that the Project is consistent with most of
5 the General Plan and Area Plan policies. Ms. DelValle noted that the Project
6 may not be consistent with the Middletown Area Plan Objective that strip
7 commercial development should be discouraged. Sixth, there must be a
8 finding that there had been no violations of the enumerated Chapters of the
9 Lake County Code. Ms. DelValle testified that no violations had occurred.
10 Ms. DelValle testified that because of revisions to the Project made by the
11 Appellant after the Planning Commission hearing, it was staff's
12 recommendation that this matter go back to the Planning Commission for
13 further consideration.

14 b. Audrey Knight, Principal Planner, testified that had the Project size been
15 8000 square feet or less, there would be no requirement for a Major Use
16 Permit.

17 4. Appellant presented evidence, both documentary and testimonial. Appellant
18 presented documentary evidence in the form of an economic analysis conducted by
19 its consultant, Amy Herman of ALH Urban and Regional Economics. Testimony
20 included:

21 a. Joe Dell, the representative for the Appellant, testified that they agreed with
22 a Mitigated Negative Declaration for this Project, they agreed with the
23 findings and he urged granting of the appeal. He testified that they had
24 made design modification to address the Middletown Area Plan after
25 hearing comments at the Planning Commission hearing. Mr. Dell
26 acknowledged that initially, their architectural adaptation for the building was
27 pretty far off, but they have adapted it again. The sign will no longer be back-

1 lit; it will be front-lit. The facade will now have a western feel in keeping with
2 the Middletown area. They have adapted the elevation a little more and they
3 will now use red brick rather than cement block. Mr. Dell testified that they
4 have met with the Middletown Area Merchants' Association and other
5 community groups and have spent considerable time and energy in making
6 sure the building fits with the objectives of the Middletown Area Plan. They
7 are trying to do everything necessary to mitigate the concerns expressed by
8 the public. He testified that this Project will keep people shopping locally
9 and will bring dollars back to the unincorporated areas of the County. It will
10 stop the retail bleeding out to the incorporated areas such as Santa Rosa
11 and Lakeport.

12 5. Numerous members of the public who are area business persons and/or residents
13 testified in opposition to the Project and urged the denial of this Appeal, including
14 but not limited to:

- 15 a. Victoria Brandon, of the Lake County Sierra Club, testified there is no doubt
16 that the zoning supports the Project as an appropriate commercial use.
17 However, the General Plan and the Middletown Area Plan must also be
18 considered. New development should be compatible with the traditions and
19 character of each community. This Project is not compatible.
- 20 b. Ava Kennedy, a resident of Middletown, testified that she probably lives
21 closer to the Project location than anyone else. She believes the Project
22 would create a different configuration of foot traffic. The high school is her
23 main concern and the safety of children crossing to get to the Dollar General
24 store. The residents of Middletown have a vision of how the town will look
25 going forward and it is not in the direction of a Dollar General store. The
26 community wants to be more like Calistoga.
- 27 c. Gloria Cox read into the record a letter from Lisa Caplan who could not
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1 attend the hearing. Ms. Caplan asked that Dollar General be kept out of
2 Middletown and that it be located instead on the Highway 29 corridor near
3 Hidden Valley. Middletown needs to look at Calistoga as its example.

4 d. Mark Borghesani, a Kelseyville business owner, testified that he believes
5 there were three reasons a Dollar General store was rejected in Kelseyville:
6 The location, the lack of content in the Appellant's economic analysis, and
7 public input. He noted that Calistoga has a formula store ordinance to
8 protect the nature of their town. He testified that it is his opinion that the
9 qualify of Appellant's data is questionable. He does not support the appeal
10 and would like to see it denied.

11 e. Palani Velloo, a Middletown business owner, testified that the economic
12 affects of Dollar General would affect the economic health of sixteen
13 businesses in Middletown alone. He believes \$3 million would disappear
14 from Middletown every year if the Project goes forward.

15 f. Hal Muskatt testified that he opposes the Project and hopes that public input
16 is respected beyond all land use.

17 g. Laura Hershey, a Lake County native, testified that the location for the
18 Project is the poorest location possible for this type of business because of
19 the proximity to the school and to homes.

20 h. Fletcher Thornton testified that the Middletown Town Hall considered the
21 Major Use Permit for this Project and twenty-nine to thirty people were
22 opposed to it, three approved it, and ten abstained. He encouraged the
23 Board to review the matter fairly and with courage.

24 i. Monica Rosenthal testified that she was concerned about the cumulative
25 effects of a number of Dollar General stores going in throughout the County.

26 j. Additionally, Christine Laurenberg, Melissa, and Fairlight Ahlgren, testified in
27 opposition to the Project and urged denial of the appeal.
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1 6. That this Board finds, based on substantial evidence in the record of these
2 proceedings, that all the findings of Section 51.4 of the Lake County Zoning
3 Ordinance required for approval by this Board of a Major Use Permit for this Project
4 can be made. For those reasons hereinafter provided, this Board can make the
5 following findings required by Section 51.4:

- 6 a. That the establishment, maintenance, or operation of the use applied for will
7 not under the circumstances of this particular case, be detrimental to the
8 health, safety, morals, comfort, and general welfare of the persons residing
9 or working in the neighborhood of such proposed use, or be detrimental to
10 property and improvements in the neighborhood or the general welfare of the
11 County. (Zoning Ordinance Sec. 51.4(a)(1).)

12 County staff presented evidence, both through testimony and in documents
13 admitted into evidence during these proceedings, that the Project will bring
14 in merchandise at an affordable price to a large number of residents living in
15 close proximity to the Project. The Project will generate sales tax revenue
16 and bring some job opportunities to the area. Staff indicated there were no
17 evident threats to public health and safety as a result of the proposed use.
18 Although some concern was expressed by the public that the Project was
19 located too close to the school, thereby attracting students to cross a heavy
20 traffic area, there are other commercial establishments nearby, such as the
21 Jolly Cone and a Store 24, which do not appear to pose a threat to student
22 safety.

- 23 b. That the site for the project is adequate in size, shape, location, and physical
24 characteristics to accommodate the type of use and level of development
25 proposed. (Zoning Ordinance Sec. 51.4(a)(2).)

26 County staff presented evidence, both through testimony and documentary
27 evidence, that the Project is adequate in size, shape, location, and physical
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1 characteristics to accommodate the proposed use and there was no
2 countervailing evidence presented.

- 3 c. That the streets, highways and pedestrian facilities are reasonably adequate
4 to safety accommodate the specific proposed use. (Zoning Ordinance Sec.
5 51.4(a)(3).)

6 County staff presented evidence, both through testimony and documentary
7 evidence, that the streets, highways, and pedestrian facilities are reasonably
8 adequate to accommodate the proposed use. Cal Trans is requiring that
9 curb, gutter, and sidewalk be installed for this Project. Additionally, a left-
10 hand turn lane is to be installed.

- 11 d. That there are adequate public or private services, including but not limited
12 to fire protection, water supply, sewage disposal, and police protection to
13 serve the project. (Zoning Ordinance Sec. 51.4(a)(4).)

14 County staff presented evidence, both through testimony and documentary
15 evidence, that there are adequate public and private services to serve this
16 Project. Callayomi Water District , the Lake County Sanitation District, and
17 the Lake County Sheriff's Office will provide services to this Project. Prior to
18 occupancy, the permit holder will be required to comply with all requirements
19 of the Southlake Fire Protection District.

- 20 e. That the project is in conformance with the applicable provisions and
21 policies of the Zoning Code, the General Plan, and the Middletown Area
22 Plan. (Zoning Ordinance Sec. 51.4(a)(5).

23 County staff presented evidence, both through testimony and documentary
24 evidence, that the Project is generally consistent with the Lake County
25 General Plan, the Middletown Area Plan, and the Zoning Ordinance. County
26 staff stated that the Project may not be consistent with the Middletown Area
27 Plan Objective 3.7.2f that strip commercial development shall be
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1 discouraged because of its negative impact to scenic resources and
2 negative impacts. This Board does not agree that one Dollar General store
3 constitutes strip commercial development. No strip mall is being created by
4 this Project which results in one retail store.

5 Public testimony indicated a concern as to whether the Project was
6 consistent with Middletown Area Plan Objective 6.1.1 to expand economic
7 activity in Middletown that builds on the community's strengths and reinforces
8 its small town character. Testimony from many members of the public
9 indicated strong doubts as to the Project's consistency with this Objective.
10 Testimony by both staff and Mr. Dell, the representative for the Appellant,
11 pointed to the benefit to the public of a retail concern providing these goods
12 and services to the public. Mr. Dell testified that the Project would keep
13 people shopping locally and would stop the bleeding of retail dollars to
14 incorporated area cities. Mr. Dell acknowledged that their initial
15 architectural adaption of the building for this Project was not in keeping with
16 the character of Middletown, but since then the architectural design has been
17 readapted to make certain the building fits within the objectives of the
18 Middletown Area Plan. The sign will be front-lit rather than back-lit. The
19 facade will be in keeping with the western feel of the community. The
20 elevation has been adapted. Some of these changes were devised after the
21 Planning Commission hearing. Mr. Dell testified that the Appellant wishes to
22 do everything necessary to mitigate the concerns of the public. Although the
23 Planning Commission did not have the opportunity to review and consider
24 these design changes, this Board finds that the Appellant has taken and is
25 willing to take those steps necessary for this Project to be compatible to the
26 small town character of Middletown.

27 Public testimony indicated a concern as to whether the about whether the
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1 Project was consistent with Middletown Area Plan Objective 5.1.2c that
2 formula or franchise business structures, signs, and box stores within and
3 surrounding the Planning Area that detract from the small-town rural
4 character shall be generally discouraged unless the architecture and
5 signage are made compatible with local themes. Testimony from many
6 members of the public indicated strong doubts as to the Project's
7 consistency with this Objective.

8 Again, Mr. Dell acknowledged in his testimony before this Board that their
9 initial architectural adaption of the building for this Project was not
10 compatible with the character of Middletown. However, they have adapted
11 the architectural design for the building to achieve that compatibility. The
12 sign will be front-lit rather than back-lit. The facade will be in keeping with the
13 western feel of the community. The elevation has been adapted somewhat
14 more. Although the Planning Commission did not have the opportunity to
15 review and consider these design changes, this Board finds that the
16 Appellant has taken and is willing to take those steps necessary for this
17 Project to be compatible to the local themes of Middletown.

- 18 f. That no violations of Chapters 5, 17, 21, 23, or 26 of the Lake County Code
19 currently exist on the property. (Zoning Ordinance Sec. 51.4(a)(6).)

20 County staff presented evidence, both through testimony and in documentary
21 evidence submitted to this Board, that no violations of the above-described
22 Chapters of the Lake County currently exist and there was no countervailing
23 evidence presented.

- 24 7. That this Board has considered and incorporates by reference the Community
25 Development staff memorandum and attachments thereto as well as the written
26 submissions by the Appellant and members of the public for public hearing of this
27 matter.
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1 8. Based upon the foregoing and for the reasons set forth hereinabove, this Board
2 grants the appeal of Appellant Cross Development, LLC. and approves Major Use
3 Permit UP 15-09) subject to further design and environmental review by the
4 Planning Commission. This Board hereby remands this matter to the Planning
5 Commision for said purposes.
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7 **NOTICE TO APPELLANT:** You are hereby given notice that the time within which any
8 judicial review of the decision herein may be sought is governed by the provisions of the
9 Code of Civil Procedures Section 1094.5.
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12 Dated: _____

CHAIR, Board of Supervisors

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15 CAROL J. HUCHINGSON
16 Clerk to the Board
17 of Supervisors

APPROVED AS TO FORM:

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19 By: _____
20 Deputy

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ANITA L. GRANT
County Counsel