

EL DORADO COUNTY GRAND JURY 2013-2014

GOLDEN CENTER PLAZA APPROVED IN VIOLATION OF LEGAL REQUIREMENTS

Case Number GJ-13-11

Reason for Report

The Grand Jury received a complaint from a purchaser of property in the Golden Center Plaza on Missouri Flat Road who complained that he was unable to keep tenants. He lost the property through foreclosure because the El Dorado County Planning Department and Planning Commission failed to review the project plans as required by the County's ordinance and accepted standards.

The Grand Jury found that the Golden Center Plaza was approved in violation of legal requirements.

Background

The complainant observed the shopping center being built in 2006 and purchased a portion of the property in 2006/07 with the expectation that proper design review had been followed by the Planning Department and Planning Commission. Only after he had acquired the property did he realize that there were no on-site loading zones and a shortage of parking stalls with inadequate distribution of those stalls based upon the uses and locations of the stores in the center.

To rectify the absence of on-site loading space, the complainant applied for permission to create a loading zone on the public right of way. Upon the intervention of (now) former Board of Supervisors member Jack Sweeney, permission was granted.

The complainant painted the curbs at the location approved for the loading zone and posted a loading zone sign on the public street adjacent to the shopping center.

Actions

The Grand Jury interviewed the complainant and County staff.

The Grand Jury reviewed:

- Planning Department files.
- Staff Report-Parcel Map/Planned Development PD03-006/P03-0013 Golden Center Plaza

- Planning Commission Minutes of May 12, 2005
- Board of Supervisor Resolution 236- 2007 (September 25, 2007)
- Parking Restriction Survey Golden Center Drive (No. 1471) (August 15, 2007)
- Board of Supervisor Resolution 236- 2007 (September 25, 2007)
- County Zoning Ordinance
- Planning Services Discretionary Review Process

The Grand Jury visited the site at various times.

Discussion

El Dorado County adopted a Zoning Ordinance, Title 17, El Dorado County Code, hereinafter “the Zoning Ordinance”. Section 17.12.010 requires

“All departments, officials and public employees of the county which are vested with the duty or authority to issue permits or licenses **shall** conform to the provisions of this article and all other zoning laws and ordinances ...” (emphasis added)

Required staff review

Section 17.04.010 of the Zoning Ordinance provides

The planning division staff shall review the proposed plan(s) and make appropriate comments and suggested changes in the plan and shall forward the plan with the staff report to the planning commission for their consideration.

Planning staff told the Grand Jury that the ordinance means projects evolve once they are submitted to the County for approval. Staff review the site plans submitted by developers, suggest changes and plans are commonly modified to ensure compliance with County zoning ordinances and accepted standards. Changes are likely to be made to the buildings, encroachments, parking, landscape design and various other components of the project. After the projects have been adopted, minor changes to the development plan may be approved by the Planning Department. Major changes must be approved by the Planning Commission.

In the case of Golden Center Plaza, the Planning Department files indicate only one change was made to the developer-submitted site plan. That change was a revision of the McDonald's building footprint for which there was no explanation.

Proper review of the plan by planning staff including an internal operations analysis may have alleviated deficiencies in the plan that have since adversely affected the success of the shopping center. However, no such analysis appears to have been performed. The site plan of the project was essentially approved exactly as submitted by the developer.

Requirements for Off Street Parking and Loading

Chapter 17.18 of the Zoning Ordinance imposes requirements for the provision of off street parking and loading. Section 17.18.010 states that the purpose of these standards is ...to promote the health, safety, and welfare by reducing street congestion, traffic hazards, and to provide safe and convenient access to businesses, public services and places of public assembly, and to ensure compatibility with surrounding land uses.

Specific requirements delineate the number and kinds of parking spaces that must be provided. Recreational vehicle parking is required for restaurant uses and loading spaces are required for commercial uses. In addition, when a combination of uses is developed on a single site, parking shall be provided based on each of the various uses proposed. Golden Center was approved without provision for either a loading zone or recreational vehicle parking.

There are provisions in the ordinance for exceptions to the parking requirements for a shopping center... However, those provisions include safeguards to ensure the intent of the Zoning Ordinance is met. Each project must be evaluated on a case-by-case basis, notifications must be made to adjacent property owners and findings made to ensure the exception is consistent with the General Plan, Zoning, and Improvement Standards. There was no indication that the failure to follow the requirements of the Zoning Ordinance was made pursuant to an authorized exception.

Project Approval

The original planner assigned to the project left County employment during the processing of the project. A Principal Planner completed the review, signed off on the project, and submitted the project to the Planning Commission without review by the Planning Director.

Golden Center Plaza was approved by the Board of Supervisors on June 7, 2005. The staff report submitted in support of the project indicated that parking for the site was based on a total square footage of proposed development (38,339 square feet) and a parking ratio for neighborhood shopping centers (one on-site parking space per 200 square feet of floor area).

The staff report stated the project required 192 on-site parking spaces. Neither the requirement for loading spaces nor for recreational vehicle parking spaces was addressed.

Project As Built

The project parking approval was initially based on requirements for a general neighborhood shopping center of one on-site parking space per 200 square foot area; yielding 192 required spaces. There are only 188 spaces on site.

As permits for tenant improvements and certificates of occupancy are issued, adequacy of parking must be continually re-evaluated based on parking requirements for each specific use to ensure adequate parking for the project as a whole. Upon completion of tenant improvements and issuance of certificates of occupancy for Golden Center Plaza, a County planner evaluated parking requirements and determined there was a significant shortfall in spaces. Despite a Development Services Memorandum dated December 12, 2006, no County action was taken.

A parking analysis reflecting the final build out of the project was **not** completed.

No provision was ever made for recreational vehicle parking.

The only loading zone ever provided was that which the complainant sought to have created on the public roadway.

Members of the Grand Jury visited the shopping center at various times of the day and week and observed

- Semi-trailer trucks parked in traffic lanes within the shopping center impeding traffic, obstructing parking spaces and preventing cars from entering and leaving those spaces.
- The loading zone on the public roadway has not been used as a loading zone; instead it largely sits empty and is occasionally used by cars for parking.

These observations suggest that vehicular and pedestrian safety is compromised. These deficiencies may have been corrected had a timely internal operations analysis been performed.

Findings

1. Both the Planning Department and Commission failed to properly review the Golden Center Golden Center Plaza design based on County Zoning Ordinances and accepted standards.
 - a) The shopping center has significantly fewer parking spaces provided than are required by the Zoning Ordinance.
 - b) There is no loading zone on site as required by Zoning Code 17.18.080.
 - c) There are no recreational vehicle spaces as required by Zoning Code 17.18.060
 - d) No internal operations analysis was performed resulting in a highly congested shopping center which does not function well for pedestrians, vehicular traffic or tenants.

Response: The respondent disagrees with the finding. The minutes from the May 12, 2005 Planning Commission clearly state that parking was reviewed, including the fact that there was reciprocal parking agreement in place with adjoining properties to alleviate any concerns of inadequate parking. Condition 6 of the permit (PD03-0006) required a minimum of 191 parking stalls, 30 percent which could be compact size stalls, and a minimum of 5 ADA stalls. The Parking Ordinance for Neighborhood shopping centers requires 1 parking space per 200 square feet of gross floor area and does not require recreational vehicle spaces. Parking for shopping centers is not additive to other sections of the Parking Ordinance that identifies specific uses and standards. It is a separate and distinct parking standard designed for multi-building and multi-tenant facilities that are called "shopping centers." The parking for the site was not calculated on an individual use basis, as the Grand Jury may have interpreted. For example, the Parking Ordinance states that a Restaurant is required to provide 1 space per 3 fixed seats plus 3 spaces per drive-up window and one recreational vehicle space per 10 spaces. Similarly, Office space requires 1 space per 250 square feet and a Barber or Beauty Shops: 2 spaces per chair or station; etc. The Neighborhood Shopping standard of 1 space per 200 gross square feet supersedes those other standards and serves as the comprehensive standard for all the business uses in the shopping center. Therefore, the recreational vehicle space required normally for fast food restaurants is not applicable within a shopping center.

Loading zones are often omitted for shopping centers where there is a mix of small shops and tenants where there is no logical location for a single or central loading zone. It would be illogical to require a large loading zone for each and every building. For these types of shopping centers and their types of businesses, typical deliveries are by smaller vehicles and trucks and occur during off-peak hours. Therefore, areas specifically designated as loading zones are often omitted from these types of shopping centers as allowed by Section 17.18.040.D (Increases and Decreases in Requirements) and Section 17.18.080.D (Modification of Loading Zone Requirements) of the County Code.

There is no requirement in the Zoning Ordinances for an “internal operations analysis.” The project had two public hearings, May 12, 2005 with the Planning Commission and June 7, 2005 with the Board of Supervisors. Both made findings of consistency with the County Zoning Ordinance after reviewing the staff report, site plan, and receiving public comments. The County has authority under section 17.18.040.D and 17.18.080.D to adjust the requirements in the Parking Ordinance. There is no violation of the Zoning Ordinance.

2. The lack of professional review by the Planning Department and Planning Commission along with failure to require proper parking, loading zones and recreational vehicle parking resulted in material benefits to the developer in terms of increased building coverage.

Response: The respondent disagrees with the finding. See response to finding number 1.

3. The action of (now) former Board of Supervisors member Jack Sweeney, interceding with the Director of Transportation to have a loading zone approved on Golden Center Drive, a public right of way, for the benefit of a private development, was inappropriate.

Response: The respondent disagrees with the finding. See response to finding number 1.

4. When deficiencies in the project became apparent no action was taken to require the developer to fix the deficiencies and bring the project into compliance with mandatory legal requirements.

Response: The respondent disagrees with the finding. See response to finding number 1.

Recommendations

1. The Planning Department and Planning Commission need to reevaluate Golden Center Plaza parking as built based upon County ordinances and standards and report to the Planning Commission and Board of Supervisors detailing any shortfall of parking based on County requirements.

Response: The recommendation will not be implemented because it is not warranted since there is no violation of the zoning ordinance.

2. If it is found by Planning Department and Planning Commission that any shortage of parking exists of any type at Golden Center Plaza, the Director of Development

Services should notify the developer of the violation and require the developer to correct such zoning violations through site modifications to parking or other mitigation.

Response: The recommendation will not be implemented because it is not warranted since there is no violation of the zoning ordinance.

3. If the developer fails to correct the violation, the Director of Community Development or District Attorney should proceed with actions defined under Paragraph 17.12.030 Penalty of Violation of the Zoning Ordinance.

Response: The recommendation will not be implemented because it is not warranted since there is no violation of the zoning ordinance.

4. The Department of Transportation should not allow private citizens to perform painting of public curbs and erection of signage in a public right of way

Response: The recommendation will not be implemented because it is not warranted. The Transportation Division has authority in Section 10.12 (Parking) to designate loading zones and Section 12.08 (Encroachments) to authorize signage and parking restrictions.

5. The Planning Services Discretionary Review Process should be modified to include review of projects by the Department Director as well as the Principal Planner.

Response: The recommendation has been implemented. All discretionary applications are reviewed by a Principal Planner and the Development Services Division Director since October 2008.