

Case File Number DET200076-A01-A01 (DET200076)

March 3, 2021

Location:	Related to 2783 E. 12 th Street
Assessor's Parcel Number:	025 069700714, 025 069700715, 025 069700204, 025 069700306
Proposal:	Appeal of an Administrative Determination to reject an Appeal as untimely based upon insufficient payment of applicable fees by the appeal deadline.
Appellant:	Randall Whitney / (925) 298-5929
Case File Number:	DET200076-A01-A01
Original Case File Number:	DET200076
Planning Permits Required:	Appeal of an Administrative Determination
General Plan:	Mixed Housing Type Residential
Zoning:	M-30 General Industrial Zone
Environmental Determination:	N/A
Historic Status:	Non-Historic Property
City Council District:	5
Status:	Pending
Staff Recommendation:	Deny the Appeal and uphold the Zoning Manager's Determination that the Appeal was not timely filed.
Finality of Decision:	The decision of the Planning Commission is final immediately pursuant to Planning Code Section 17.132.030.
For Further Information:	Contact case Planner Gregory Qwan at (510) 238-2958 or gqwan@oaklandca.gov

SUMMARY

This report addresses an Appeal filed by the Appellant, Randall Whitney, of a Determination made by the Zoning Manager to reject a previous Appeal as untimely since full and valid payment of the appeal fee was not submitted before the end of the appeal period.

The attempted Appeal filing (DET200076-A01 or Appeal 1), which is **not** before the Planning Commission, was intended to be filed against a September 15, 2020 General Plan Determination for the property located at 2783 E. 12th Street under Planning case number DET200076. Specifically, the Zoning Manager made a Determination on September 15, 2020 that the proposed expansion of a Warehousing, Storage, and Distribution Industrial Activity (mini-storage) on this site, in an M-30 Zone, was consistent with the surrounding land uses, is appropriate for the area, and is in conformance with the written goals and policies of the General Plan notwithstanding the Mixed Housing Type Residential General Plan classification as shown on the Land Use Diagram.¹

The September 15th Determination letter included language from the City Administrator's Order No. 3 related to COVID procedures identifying the appeal deadline as September 25, 2020 at 4:00 p.m., with appeal fees due within five days after filing the appeal. Prior to the implementation of special procedure due to COVID, Planning Determination letters included standard language describing and implementing the appeal requirements of Planning Code Section 17.132.020, including that an aggrieved party must file an appeal in person at the Permit Center within 10 calendar days on the Planning Bureau's appeal form, followed by immediate in-person payment of applicable fees to the City's cashier. Because the Shelter-in-Place orders restrict the capacity for the City to receive in-person appeals of Planning Bureau decisions, Planning, through the City Administrator Order, adopted interim procedures that granted an additional five

¹ The arguments in Appeal 1 relate to the basis of the General Plan Determination and are not relevant to Appeal 2, which relates to the timeliness of the Appeal 1 filing. Therefore, the Appeal 1 arguments are not attached to this staff report.

days for appellants to make full timely payment of fees. The interim procedures state that “Failure to pay the appeal fee in full within the timeframe identified in Section 2 above will result in the rejection of appellant’s appeal and, if the appeal period has closed, will not allow for resubmittal of the appeal.”

Here, the Appellant submitted his Appeal on September 25, 2020, resulting in an appeal payment deadline of October 2, 2020. The Appellant submitted payment by October 2, 2020, but it included an invalid check. The City attempted to process the check and learned that it was invalid and/or had “bounced” on October 15, 2020. Valid payment of the appeal fee was not received until October 15, 2020, almost two weeks past the payment deadline, after the Cashier’s Office informed Appellant that his check had bounced. There is no exception in the Planning Code for good cause or clerical errors. Hence, on December 22, 2020, the Zoning Manager issued a Determination letter that Appeal 1 was untimely, and summarily rejected. That Determination letter, however, also included language allowing Mr. Whitney to appeal that Determination.²

On January 4, 2021, the Appellant filed a timely Appeal (DET200076-A01-A01 or Appeal 2), and on January 11, 2021 the appeal fee for Appeal 2 was paid in full.

It is staff’s opinion that if accepting voided checks were allowed as valid payment, it would set a dangerous precedent of permitting late filings, when the appeal directions set forth a clear payment deadline. If this practice were allowed, in theory, an Appellant could submit an invalid check, then request additional time to submit payment, then submit another invalid check, and extend the payment deadline indefinitely. The project applicant and interested parties need certainty as to when appeal periods have expired, and the City has a substantial interest in providing them with this certainty.

Furthermore, per Section 17.132.020 of the Oakland Planning Code, the Appellants must state where an error or abuse of discretion was made by the Zoning Manager or where the Zoning Manager’s decision is not supported by evidence in the record. As detailed in this report, the Appellant has not demonstrated an error or abuse of discretion by the Zoning Manager. As discussed below, payment of the appeal fee was not validly submitted by the appeal deadline. Accepting late payment when the requirements are clear, would be an abuse of discretion.

Therefore, staff recommends that the Planning Commission uphold the Zoning Manager’s Determination and deny Appeal 2, and subsequently uphold the rejection of Appeal 1, based upon insufficient payment and untimely filing by the appeal deadline.

BASIS OF THE REJECTION OF DET200076-A01 (Appeal 1)

In the December 22, 2020 Planning Determination letter, the Zoning Manger stated the following basis for the rejection of DET20076-A01:

1. The City’s September 15th Determination letter (*See Attachment A*), which was sent to Mr. Whitney on the same day, noted that interested parties wishing to appeal the City’s decision had ten calendar days from the date of the letter or September 25, 2020 to do so.
2. The September 15th Determination letter further stated that “Applicable appeal fees in the amount of \$3,638.72 in accordance with the City of Oakland Master Fee Schedule must be paid within five business days of filing the appeal.” The appeal fee is \$3,638.72 as appeals of General Plan Determinations require the Oakland City Planning Commission to make a recommendation to the

² Planning staff has, in two recent prior occasions, processed appeals challenging a rejection of an appeal filing as untimely, one for a project at 2100 M. L. King Jr. Way in 2007 and one more recently for a project at 88 Grand Avenue in 2020.

Oakland City Council who would make the final decision on the appeal.³ The City's Emergency Administrative Order No. 3 (*See Attachment B*) states in Section 2 that "Appellant will have five (5) calendar days from the date of appeal submittal to pay the appeal fee to the City's cashier. If the fifth (5th) calendar day falls on a weekend or City holiday, appellant will have until the end of the following City business day to pay the appeal fee." It further states: "Failure to pay the appeal fee in full within the timeframe identified in Section 2 above will result in the rejection of appellant's appeal and, if the appeal period has closed, will not allow for resubmittal of the appeal."

3. City staff received Mr. Whitney's Appeal (Appeal 1) on September 25, 2020 and promptly emailed Mr. Whitney with the appeal record ID and invoice number on that same day (*Attachment C*). At the same time, Mr. Whitney was also notified that failure to pay the appeal fee in full by October 2, 2020, will result in the rejection of the Appeal.
4. The Planning and Building Department's Cashier's Office received a check from Thomas Capital, Inc. for \$935 on September 21, 2020, despite the Determination letter listing the applicable fee as \$3,638.72. Because this payment was insufficient to cover the full cost of the Appeal, the Cashier's Office informed Mr. Whitney that the fee was not paid and held the check until payment to cover the full appeal fee was provided. Even though City of Oakland staff informed Mr. Whitney that the full payment of fees stated in the Determination letter was needed to avoid rejection of the Appeal, and Mr. Whitney had ample opportunity to ensure timely payment of fees, Mr. Whitney chose to wait until the final day that fees were due before attempting to complete payment.
5. On October 2, 2020, Mr. Whitney authorized a charge of \$2,703.72—the difference between the \$3,638.72 appeal fee and the \$935 check—to his credit card. As a result, City of Oakland receipts (*Attachment D*) document the appeal fee payment on October 2, 2020 in two forms.
6. On either October 5, 2020 or October 7, 2020, the Appellant contacted the Cashier's Office to inform them that, due to a clerical error at Thomas Capital, Inc., the \$935.00 check could not be processed. The City informed the Appellant that it could not take additional payment at that time as the check was now being processed due to supposed full payment on October 2nd and further payment could be received only after notification from the Finance Department's Treasury Bureau of invalid payment. It should be noted that at the time of this communication, the October 2, 2020 deadline for full payment of the appeal fee had already passed.
7. On October 9, 2020, the City of Oakland Finance Department received notification that the check could not be processed. Finance Department staff notified the Planning and Building Department Cashier's Office of the invalid payment on October 15, 2020. Additional payment was received from Mr. Whitney on October 15, 2020; however, this payment occurred almost two weeks past the October 2, 2020 deadline.

In sum, the City did not receive full and valid payment of the applicable appeal fee by the October 2, 2020 deadline. The check provided prior to the deadline was not able to be processed and the invalid payment could not be remedied within the time period for payment of the appeal fee. Therefore, based on Mr. Whitney's failure to make a valid payment of the appeal fee by the stated deadline, the Zoning Manager issued a Determination (*Attachment E*) on December 22, 2020 that his Appeal was untimely and summarily rejected. That Determination included language allowing Mr. Whitney to appeal this Determination.

On January 4, 2021, the Appellant filed a timely Appeal (*Attachment F*, Appeal 2)⁴, and on January 11,

³ While there was a recent proposal to change this solely to an appeal hearing before the Planning Commission, this proposed Code Amendment was rejected by the City Council.

⁴ Exhibit A10 of Appeal 2, submitted by Appellant, has been omitted from the Planning Commission materials as it contains privileged attorney work product that was inadvertently disclosed to the appellant. Attorney work product is absolutely privileged and the City cannot waive that privilege through inadvertent disclosure.

2021 the appeal fee was paid in full.

The Appellant's specific arguments in Appeal 2 (*Attachment F*) are discussed and responded to in detail in the *Basis of the Appeal 2* section of the report below, along with City staff's response to each argument.

BASIS OF APPEAL 2

The following is a summary of the specific issues raised in Mr. Whitney's Appeal, with the exact language found in *Attachment F*. Specifically, the Appeal alleges that:

1. The City committed clear error by applying an incorrect appeal fee for a Letter of Determination issued by the Oakland Planning Director pursuant to the City of Oakland Fiscal Year 2020-2021 Master Fee Schedule (effective July 1, 2020).
2. The City committed an abuse of discretion by applying an incorrect appeal fee for a letter of determination issued Oakland Planning Director pursuant to the City of Oakland Fiscal Year 2020-2021 Master Fee Schedule (effective July 1, 2020).
3. The City committed an abuse of discretion by charging Appellant a "Notification Fee" which does not appear in the City of Oakland Fiscal Year 2020-2021 Master Fee Schedule (effective July 1, 2020).
4. The component Notification Fee should not be charged during new protocols due to COVID-19.
5. The appeal fee charged by City of Oakland Planning Department exceeds the reasonable costs to the City of providing the services.
6. The City committed an abuse of discretion by not following the proper authority which designates the appeal fee for a Letter of Determination issued by the City of Oakland Planning Director.
7. The appellant filed a timely appeal in accordance with Oakland Municipal Code.
8. The appellant paid appeal fee in a timely manner in accordance with the City of Oakland Fiscal Year 2020-2021 Master Fee Schedule (effective July 1, 2020).
9. The City of Oakland Planning Department Cashier acceptance of Appellant's payment confirming appeal was sufficient to confirm appeal under Oakland Municipal Code.
10. The City committed an abuse of discretion by allowing a Zoning Manager to be signing on behalf of the Director of Planning.

Discussion of Appeal 2

The following is a discussion of the summarized issues raised in the Appeal along with staff's response to each point. Each Appeal allegation is shown in **bold** text, and staff's response follows each point in regular type. In some instances, the arguments have been grouped together or re-ordered as they relate to one topic.

1. **The City committed clear error by applying an incorrect appeal fee for a Letter of Determination issued by the Oakland Planning Director pursuant to the City of Oakland Fiscal Year 2020-2021 Master Fee Schedule (effective July 1, 2020).**
2. **The City committed an abuse of discretion by applying an incorrect appeal fee for a letter of determination issued Oakland Planning Director pursuant to the City of Oakland Fiscal Year 2020-2021 Master Fee Schedule (effective July 1, 2020).**
3. **The City committed an abuse of discretion by charging Appellant a "Notification Fee" which does not appear in the City of Oakland Fiscal Year 2020-2021 Master Fee Schedule (effective July 1, 2020).**
4. **The component Notification Fee should not be charged during new protocols due to COVID-19.**
5. **The appeal fee charged by City of Oakland Planning Department exceeds the reasonable costs to the City of providing the services.**

The above allegations generally contend that the appeal fee cited in the General Plan Determination letter was incorrect or unreasonable. Therefore, the City should have accepted a reduced fee in order to process the appeal request.

Staff Response

These arguments are not relevant to this Appeal. The Appeal that is currently the subject of this staff report and under consideration by the Planning Commission is a challenge to the Zoning Manager's determination that appellant failed to validly pay on time, not the amount of the appeal fee itself. It is inappropriate to consider the appeal fees as an argument for non-payment in the context of a particular development project and it is not a matter the Planning Commission has appropriate jurisdiction over as fees are set by the City Council.

First, the September 15th Determination letter included the fee for filing an appeal and was sent to the Appellant. The Appellant was invoiced the fee noted in the Determination letter and informed of the appeal deadlines. A timely, complete, and valid payment was not received by the appeal deadline as noted in the Basis of the Denial of DET200076-A01 (Appeal 1) as noted above.

Second, application fees are not appealable to the Planning Commission. Fees are adopted by City Council, and the Planning Commission has no authority to review or alter the fees. If the Appellant wished to challenge the appeal fee amounts in general (unreasonable costs, etc.), the appropriate process would have been to file a direct challenge of the Master Fee Schedule. In addition, if the Appellant wished to contest the appeal fee amount or items such as the notification fee, he should have paid the fee in full by the deadline, and then submitted a refund request form to the Zoning Manager for review and consideration. Paying in full under protest is the appropriate process as it allows for the Planning Commission to timely hear the appeal on the merits as it pertains to the development project or planning determination being challenged while creating a separate process to dispute fees as applied without resulting in delay on the underlying project. It is the City's typical practice to refund portions of application fees not used. There was no abuse of discretion in applying the fee outlined in the Master Fee Schedule in the September 15th Determination letter.

6. **The City committed an abuse of discretion by not following the proper authority which designates the appeal fee for a Letter of Determination issued by the City of Oakland Planning Director.**
7. **The City committed an abuse of discretion by allowing a Zoning Manager to be signing on behalf of the Director of Planning.**

(Issues 6 and 10 above)

This allegation contends that the Planning Director, not the Zoning Manager, should have signed the Determination Letter.

Staff Response

Planning Code Section 17.09.040 defines the "Planning official" to mean the Planning Official, or his or her designee. As such, the Planning Director can delegate authority to a designee, in this case the Zoning Manager, to act on his or her behalf. It is common practice for department heads to delegate signing authority on letters and reports and for management to re-assign duties without the need to alter the Planning Code, particularly for relatively minor and mundane issues such as this. All Determination Letters have been designated for signature by the Zoning Manager, and this has been the case for the last 16 years, when the Zoning Manager position was created (prior to that, there existed a Zoning Administrator which had essentially the same duties as the Zoning Manager and such letters would have been directed to him or her). There was no abuse of discretion.

8. The appellant filed a timely appeal in accordance with Oakland Municipal Code.
9. The appellant paid appeal fee in a timely manner in accordance with the City of Oakland Fiscal Year 2020-2021 Master Fee Schedule (effective July 1, 2020).
10. The City of Oakland Planning Department Cashier acceptance of Appellant's payment confirming appeal was sufficient to confirm appeal under Oakland Municipal Code.

The above allegations generally contend that the appeal fee was filed in a timely manner. Therefore, the City should accept and process Mr. Whitney's Appeal 1 request.

Staff Response

As discussed above in detail, valid payment of the appeal fee stated in the General Plan Determination letter was only provided on October 15, 2020, almost two weeks after the October 2, 2020 payment deadline. Submittal of an invalid check prior to the appeal deadline does not constitute payment of appeal fees. Furthermore, it should be noted that the City Administrator's Order does not include a remedy for untimely filings, but specifically allows an extra five days following the submittal of an appeal to address payment issues with the Cashier's Office due to COVID and the Shelter in Place Order and the logistics of taking online submittals and payments. This grace period did not exist under the normal process, which would have required a full and complete payment by the close of business on the final date of submittal for an appeal. So, in this case, the appellant had, as a result of the City Administrator order for the Covid Emergency, benefitted from a more relaxed time period by which to pay for the appeal. Even with this additional time, the appellant failed to pay the fee in a timely manner.

CONCLUSION

The Appellant has not demonstrated an error or abuse of discretion by the Zoning Manager in determining the timeliness of fees paid, thus City staff believes that the Determination on December 22, 2020 regarding Appeal 1 is valid and supported by evidence in the record. There is no clear basis for overturning staff's determination, as detailed in this report. As such, staff recommends that the Planning Commission uphold the Zoning Manager's Determination and deny Appeal 2.

If the Planning Commission denies Appeal 2, it would de facto uphold the rejection of the original appeal and that matter would not be heard. If the Planning Commission upholds Appeal 2 and denies the Zoning Manger's Determination, staff will prepare a staff report separately addressing the allegations in Appeal 1 and the item would be presented to the Planning Commission at a future hearing.

RECOMMENDATIONS:

1. Deny Appeal DET200076-A01-A01 and Uphold the Zoning Manager's Determination that Appeal DET200076-A01 was not filed and paid in a timely manner, based on the substantial evidence presented in the staff report and the testimony provided at the Planning Commission Hearing.

Prepared by:



GREGORY QWAN
Planner III

Reviewed by:



ROBERT MERKAMP
Zoning Manager

Approved for forwarding to the
City Planning Commission:



EDWARD MANASSE
Deputy Director
Bureau of Planning

ATTACHMENTS:

- A. Zoning Manager's Determination Letter – Dated September 15, 2020
- B. Interim City Administrator Emergency Order No. 3 and Interim Procedures for Appeals of City Planning Bureau Decisions for Development Projects
- C. Invoice and Record ID – Dated September 25, 2020
- D. City Cashier Receipts – Dated October 2, 2020
- E. Zoning Manager's Determination Letter – Dated December 22, 2020
- F. Appeal 2 Documents
- G. Public Comments

LEGAL NOTICE:

ANY PARTY SEEKING TO CHALLENGE THIS DECISION IN COURT MUST DO SO WITHIN NINETY (90) DAYS OF THE ANNOUNCEMENT OF A FINAL DECISION, PURSUANT TO THE CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 1094.6, UNLESS A SHORTER PERIOD APPLIES.

ATTACHMENT

A

CITY OF OAKLAND



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA • SUITE 3315 • OAKLAND, CALIFORNIA 94612

Planning and Building Department
Bureau of Planning

(510) 238-3941
FAX (510) 238-6538
TDD (510) 238-3254

September 15, 2020

Mr. Scott Bovard
1001 42nd Street, Suite 200
Oakland, CA 94608

RE: Case File No. DET200076; 2783 E. 12th Street; APN: 025 069700714, 025 069700715, 025 069700204, 025 069700306

This letter is in response to your request for a General Plan Determination for the property located at 2783 E. 12th Street. Specifically, you submitted a Determination on whether the proposed expansion of a Warehousing, Storage, and Distribution Industrial Activity (mini-storage) in an M-30 Zone is consistent with the surrounding land uses, is appropriate for the area, and is in conformance with the written goals and policies of the General Plan notwithstanding the General Plan classification shown on the Land Use Diagram.

Background

The subject property is classified as Mixed Housing Type Residential per the Land Use and Transportation Element (LUTE) of the General Plan. The subject property is adjacent to property classified as Business Mix Type Industrial to the northwest, Institutional to the northeast (across East 12th Street and the BART right of way), Regional Commercial to the southeast (across 29th Avenue), and Mixed Housing Type Residential to the southwest (across a rail right of way).

The Mixed Housing Type Residential classification is intended to create, maintain, and enhance residential areas typically located near the City's major arterials and characterized by a mix of single family homes, townhouses, small multi-unit buildings, and neighborhood businesses where appropriate. Future development within this classification should be primarily residential in character, with live-work types of development, small commercial enterprises, schools, and other small scale, compatible civic uses possible in appropriate locations.

The Business Mix Type Industrial classification is intended to create, preserve and enhance areas of the City that are appropriate for a wide variety of business and related commercial and industrial establishments. High impact industrial uses including those that have hazardous materials on-site may be allowed provided they are adequately buffered from residential areas. High impact or large scale commercial retail uses should be limited to sites with direct access to the regional transportation system.

The Regional Commercial classification is intended to maintain, support and create areas of the City that serve as region-drawing centers of activity.

The subject property is zoned M-30 and is intended to create, preserve, and enhance areas containing a wide range of manufacturing, industrial, and related establishments, and is typically appropriate to areas providing a wide variety of sites with good rail or highway access.

The Bureau of Planning went through a citywide process from 2009-2011 to update the Planning Code with new zones that would conform to the General Plan classifications adopted in 1998. As part of this process some areas of the City zoned M-30 were not modified. As such, the Zoning classification for the subject property is not consistent with the General Plan classification as shown on the Land Use Diagram.

General Plan and Zoning Analysis

Planning Code Section 17.01.120 describes the process and actions to be taken or considered for proposals clearly not in conformance with the General Plan or the Land Use Diagram such as this project. Specifically, subsection C notes that:

“If permitted or conditionally permitted by Zoning Regulations, and where determined by the Planning Director to be consistent with the surrounding land uses and appropriate for the area, notwithstanding that the project may not be consistent with the General Plan classification shown on the Land Use Diagram. It is recognized that the General Plan land uses have been broadly applied to areas without parcel by parcel specificity and that the Land Use Diagram details are largely illustrative of the Plan's written goals and policies. Because the Diagram is generalized, and does not necessarily depict the accuracy of each parcel or very small land areas, a determination of project consistency can be requested of the Director of City Planning. The applicant must demonstrate to the satisfaction of the Planning Director that the predominant use, or average density, is different from that shown on the Diagram and is appropriate for the area in question and that the project is in conformance with the written goals and policies of the General Plan. Written notice of the Director's determination shall be sent to all property owners within three hundred (300) feet of the property involved. The Director's determination may be appealed to the City Council pursuant to Section 17.01.080B.”

The predominant use in the area is different from the Mixed Housing Type classification.

As noted above, the project is permitted by the Zoning Regulations. The subject site is a corner lot containing mini-storage activities, which extend to the parcels to the northwest and into the parcels classified as Business Mix. Existing mini-storage uses are also present across the street to the southeast, on parcels classified as Regional Commercial. A large Goodwill headquarters and distribution and collection facility is also located across the street to the east on parcels classified as Community Commercial. Therefore, Warehouse, Storage, and Distribution Industrial Activities are the predominant use in the area, which is different than the Mixed Housing Type classification. The closest activities consistent with the Mixed Housing Type classification are located: to the southwest and separated from the subject property by an existing railway and a large Oakland Animal Services facility; to the northeast and separated from the subject property by East 12th Street, the existing BART right of way, an Institutional Civic activity, International Boulevard, and Commercial Retail activities; and to the east and separated from the subject property by East 12th Street, the existing BART right of way, and the Goodwill facility. The existing railway and BART tracks physically separate the subject property from all proximate activities that are consistent with the Mixed Housing Type Classification. Therefore, the predominant use in the area is more consistent with the adjacent Business Mix and Regional Commercial classifications, and is different than the Mixed Housing Type classification.

The project is in conformance with the written goals and policies of the General Plan.

Furthermore, the LUTE goals and policies that support the proposal, include but are not limited to the following:

Industry and Commerce Goals: “Ensure that the Oakland community has access to a wide variety of goods and services meeting daily and long term needs” and “Recognize and support industrial and commercial land use as a primary vehicle for the generation of the economic support required for the attainment of the physical, social, and community service goals of the Oakland General Plan.”

Objective I/C2: “Maximize the usefulness of existing abandoned or underutilized industrial buildings and land”.

These goals and policies are in line with the adjacent Business Mix and Regional Commercial General Plan designations.

Determination

Based on the subject property's location in an mostly industrial area, nearby uses including mini-storage, and the above General Plan policies, the Zoning Manager as designee of the Planning Director has determined that mini-storage located at 2783 E. 12th Street is consistent with the surrounding land uses and appropriate for the area, and therefore consistent with the overall objectives of the General Plan, notwithstanding that the project may not be consistent with the General Plan classification shown on the Land Use Diagram.

If you, or any interested party, seeks to challenge this decision, an appeal **must** be filed by no later than ten (10) calendar days from the date of this letter, by **4:00 pm on September 25, 2020**. An appeal shall be on a form provided by the Bureau of Planning of the Planning and Building Department, and submitted via email to: (1) **Gregory Qwan, Planner II**, at gqwan@oaklandca.gov, (2) **Robert Merkamp, Zoning Manager**, at Rmerkamp@oaklandca.gov, and (3) **Catherine Payne, Development Planning Manager**, at Cpayne@oaklandca.gov. The appeal form is available online at <https://www.oaklandca.gov/documents/appeal-application-form>. The appeal shall state specifically wherein it is claimed there was error or abuse of discretion by the Zoning Manager or decision-making body or wherein the decision is not supported by substantial evidence. Applicable appeal fees in the amount of **\$3,638.72** in accordance with the City of Oakland Master Fee Schedule must be paid within five business days of filing the appeal. Failure to timely appeal (or to timely pay all appeal fees) will preclude you, or any interested party, from challenging the City's decision in court. The appeal itself must raise each and every issue that is contested, along with all the arguments and evidence in the record which supports the basis of the appeal; failure to do so may preclude you, or any interested party, from raising such issues during the appeal and/or in court. However, the appeal will be limited to issues and/or evidence presented to the Zoning Manager prior to the close of the previously noticed public comment period on the matter. For further information, see the attached Interim City Administrator Emergency Order No. 3 and Interim Procedures for Appeals of City Planning Bureau Decisions for Development Projects.

If the ten (10) day appeal period expires without an appeal, you are expected to contact **Gregory Qwan** in order to receive the signed Notice of Exemption (NOE) certifying that the project has been found to be exempt from CEQA review. It is your responsibility to record the NOE and the Environmental Declaration at the Alameda County Clerk's office at 1106 Madison Street, Oakland, CA 94612, at a cost of **\$50.00** made payable to the Alameda County Clerk. Please bring the original NOE related documents and five copies to the Alameda County Clerk, and return one date stamped copy to the Bureau of Planning, to the attention of **Gregory Qwan, Planner II**. Pursuant to Section 15062(d) of the California Environmental Quality Act (CEQA) Guidelines, recordation of the NOE starts a 35-day statute of limitations on court challenges to the approval under CEQA. The NOE will also be posted on the City website at <https://aca.accela.com/OAKLAND/Welcome.aspx>.

If you have any questions, please contact the case planner, **Gregory Qwan, Planner II** at **(510) 238-2958** or gqwan@oaklandca.gov, however, this does not substitute for filing of an appeal as described above.

Very Truly Yours,



for
WILLIAM GILCHRIST
Planning Director

cc: Randall Whitney, whitwors@gmail.com
Michael Branson, MBranson@oaklandcityattorney.org

ATTACHMENT

B

Approved as to Form and Legality


Office of the City Attorney

**Emergency Order No. 3 of the City of Oakland
Interim City Administrator/Director of the Emergency Operations Center**

Whereas, due to the spread of COVID-19 (coronavirus) within the state, on March 1, 2020 the Alameda County Public Health Department, and on March 4, 2020, Governor Gavin Newsom, declared local and state public health emergencies due to the spread of COVID-19 locally and within the state, pursuant to Health & Safety Code section 101080 and Government Code section 8625, respectively, and

Whereas, on March 9, 2020, the City Administrator in her capacity as the Director of the Emergency Operations Center (EOC), issued a proclamation of local emergency due to the spread of COVID-19 in Oakland, and on March 12, the City Council passed Resolution No. 88075 C.M.S. confirming the existence of the local emergency proclaimed by the City Administrator pursuant to her power under Oakland Municipal Code section 8.50.050(C) to proclaim a local emergency provided that the local emergency proclamation shall remain in effect only if the City Council confirms the existence of the emergency within seven days; and

Whereas, on March 19, 2020, Governor Newsom issued Executive Order N-33-20, ordering “all individuals living in the State of California to stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors”, and further acknowledged that the “supply chain must continue, and Californians must have access to such necessities as food, prescriptions, and health care”; and

Whereas, the Order N-33-20 provides that, to mitigate/control the spread of COVID-19, when people need to leave their homes or places of residence to carry out specified essential functions or to facilitate necessary activities, they should at all times practice “social distancing”, which means remaining a distance of six (6) feet from other persons when in public places; and

Whereas, the City Administrator in his capacity as the Director of the EOC has authority “to promulgate orders, rules, and regulations on matters reasonably related to the protection of life and property and the preservation of public peace and order, in accordance with Article 14 of the California Emergency Services Act, [and such] rules and regulations must be confirmed at the earliest practicable time by the governing body as required by law;” and

Whereas, on March 23, 2020, the Interim City Administrator in his capacity as the Director of the EOC issued an emergency COVID-19 order (Emergency Order of the City Of Oakland), which, among other things, cancelled meetings of all City commissions, committees and boards related to the processing of planning and building applications, including the Planning Commission, Design Review Committee and Landmarks Advisory Board until further notice; and

Whereas, on April 29, 2020, the County Health Officer issued County Order No. 20-10, which defines the scope of construction activities deemed “Essential Businesses” to include “. . . construction, but only as permitted under the State Shelter Order [Order N-33-20] and only pursuant to the Construction Safety Protocols listed in Appendix B and incorporated into [the County Order] by reference”; and

Whereas, under Order N-33-20 Critical Infrastructure is allowed to continue, if remote working is not possible. Critical infrastructure includes: “Construction Workers who support the construction, operation, inspection, and maintenance of construction sites and construction projects (including housing, commercial, and mixed-use construction); and workers who support the supply chain of building materials from production through application/installation, including cabinetry, fixtures, doors, cement, hardware, plumbing, electrical, heating/cooling, refrigeration, appliances, paint/coatings, and employees who provide services that enable repair materials and equipment for essential functions”; and

Whereas, the City Administrator in his capacity as the Director of the EOC has determined that it is now necessary to amend his March 23, 2020 Order to allow City commissions, committees and boards related to the processing of planning and building applications, including the Planning Commission, Design Review Committee and Landmarks Advisory Board, to commence meetings in order to provide the reviews, hearings, approvals and/or other actions necessary for construction activities specified in Alameda County Order no. 20-10 as “Essential Businesses” to proceed; and

Whereas, on May 4, 2010, City Council passed Resolution No. 82727 C.M.S., urging City departments to refrain from, among other things, entering into any new or amended contracts for services or supplies with companies headquartered in Arizona until Arizona rescinds SB 1070 (“Arizona Boycott Policy”) when doing so will not result in significant additional costs to the City or conflict with law; and

Whereas, Oakland Municipal Code (“OMC”) section 2.22.010 directs the City Administrator to refrain from entering into any new or amended contracts for services or supplies with businesses that have entered into a contract to provide services, goods, materials or supplies to build the U.S.-Mexico border wall (“Border Wall Policy”) when doing so will not result in significant additional costs to the City or conflict with law; and

Whereas, O.M.C. section 2.22.050 authorizes the City Administrator to waive the Border Wall Policy for contracts within his/her authority when the policy conflicts with the law; and

Whereas, the City will be entering into contracts for the provision of emergency services and supplies to respond to the COVID-19 crisis; and

Whereas, the City intends to seek reimbursement, to the greatest extent practicable, from the Federal Emergency Management Agency or other federal agencies for its expenses related to providing COVID-19 emergency services and supplies; and

Whereas, the California Governor’s Office of Emergency Services has informed City staff that the City’s Arizona Boycott Policy and Border Wall Policy may conflict with federal regulations governing the award of federal financial assistance and may therefore jeopardize the City’s ability to secure federal funds and reimbursements; and

Whereas, the City Administrator has determined that it is necessary to waive application of the City’s Arizona Boycott Policy and Border Wall Policy to emergency contracts the City needs to execute to address the impacts of COVID-19 to avoid any potential conflict with federal law and to maximize the City’s ability to obtain reimbursement from the Federal Emergency Management Agency and/or other federal agencies for its COVID-19 emergency expenditures.

Now, Therefore, I, Steven Falk, Interim City Administrator/Director of the Emergency Operations Center of the City of Oakland, in accordance with the authority vested in me pursuant to Oakland’s Emergency Services Act, Oakland Municipal Code Chapter 8.50, specifically section 8.50.050.C.5.(a), hereby order the following:

1. Section 3 of the Interim City Administrator’s Emergency COVID-19 Order dated March 23, 2020, is deleted (see language with strike-throughs below) and new Building and Planning Department procedures are promulgated as follows:

~~“All time limits, shotlocks, and other deadlines associated with Planning Department and Building Department notices, application reviews, appeals, enforcement activities and other matters set forth in Titles 15 and 17 of the OMC and related administrative instructions, regulations and policies are suspended for the duration of the local emergency or until such time as this order is rescinded or the City Council terminates the emergency, whichever is earlier.”~~

All time-limits and deadlines associated with Planning and Building Department notices and appeals are hereby replaced by the notice and appeal procedures set forth in **Attachment A** and **Attachment B** respectively, which are attached hereto and incorporated as if fully set forth herein. The attached notice and appeal procedures shall remain in effect for the duration of this Order. Upon termination of this Order, all former procedures under the Oakland Municipal Code (O.M.C.) shall be reinstated, unless otherwise amended by subsequent orders.

2. Section 4 of the Interim City Administrator’s Emergency COVID-19 Order dated March 23, 2020, is deleted (see language with strikethroughs below):

~~Meetings of all City commissions, committees and boards related to the processing of planning and building applications, including the Planning Commission, the Design Review Committee and Landmarks Advisory Board, are cancelled until further notice~~

3. Application of the City’s Arizona Boycott Policy is hereby waived for emergency contracts the City executes to address the impacts of COVID-19 that may be eligible for reimbursement from the Federal Emergency Management Agency and/or other federal agencies.

4. Application of the City's Border Wall Policy is hereby waived for emergency contracts the City executes to address the impacts of COVID-19 that may be eligible for reimbursement from the Federal Emergency Management Agency and/or other federal agencies.

I FURTHER DIRECT that as soon hereafter as possible, this Order shall be filed in the Office of the City Clerk, posted on the City of Oakland website, and that widespread publicity and notice of this Order shall be provided to the public.

IN WITNESS WHEREOF I have hereunto set my hand this 13th day of May, 2020



Steven Falk
Interim City Administrator/Director of Emergency
Operations Center, City of Oakland, California

Attest:

LaTonda Simmons
City Clerk and Clerk of the City Council
City of Oakland, California

2930450v8
May 2020

Attachment A
Interim Procedures for Posting and Mailing Public Notice of Development Projects for the Duration of the Order

Pursuant to the shelter-in-place orders issued by both the Governor of California and the Alameda County Health Officer for the COVID-19 pandemic (“Emergency Orders”), the City of Oakland offices are closed to the public and non-essential personnel are required to work remotely. These requirements extend to the Planning Bureau, resulting in much of the Bureau’s personnel working remotely.

Without the ability for requisite staff to be present in the office, the City does not have the capacity to post and mail public notices for development projects on behalf of applicants, in accordance with its currently established procedures. As a result, it is necessary for development project applicants to demonstrate compliance with these established procedures, by posting and mailing requisite notices as outlined below and as may be further clarified by the Director of Planning and Building or his designee.

The following procedures set forth how development projects will be noticed by applicants for the duration of this Order, or until the previous procedure is restored or further amended:

1. The City hereby replaces the City’s 17-day notice period required under Title 17 of the Oakland Municipal Code (O.M.C.) with the 10-day notice period as set forth under Government Code sections 65905, 65090, 65091, 65092, and 65094.
2. For a development project ready for public notice, the staff planner for the project will prepare the public notice, using the City’s template.
3. The staff planner will verify that the entire file, including the most recent submitted plan set and any correspondence that would constitute public record, is available on the City’s Accela website in a publicly viewable format prior to the posting and mailing of the public notice.
4. The staff planner will send the completed public notice form and address labels to the applicant, with instructions on posting and mailing the public notice for interested parties.
5. The applicant will then be required to post and mail the public notice according to staff planner instruction. Thereafter, the applicant will e-mail the staff planner with proof of project site posting, PDFs of the mailing receipts, and a certificate of mailing evidencing that the public notice was posted and mailed on the date agreed upon with the staff planner. The staff planner must receive proof of posting, the mailing receipts and certificate of mailing on the date of posting and mailing, which the staff planner will place in the development file and upload to Accela.
6. Failure of the applicant to provide proof of posting and mailing of the public notice will result in the development project not moving forward until termination of the City Administrator’s Order and/or resumption of the normal public noticing procedures.
7. Interested parties who desire to comment on the development project will be encouraged to e-mail any questions or comments to the staff planner during the 10-day public notice period. Those members of the public who choose to send written comments must call the staff planner no later than the date of mailing but before the public comment period has ended, to inform the staff planner written comments are being mailed. The staff planner will work with on-site City staff to receive a copy of the written comments.
8. If an applicant or member of the public has any questions regarding the above public notice procedures, they shall direct the questions first to the staff planner, who may consult with the Director of Planning and Building or his designee for further direction.

Attachment B
Interim Procedures for Appeals of City Planning Bureau Decisions for Development Projects for the Duration of the Order

Pursuant to the shelter-in-place orders issued by both the Governor of California and the Alameda County Health Officer for the COVID-19 pandemic (“Emergency Orders”), the City of Oakland offices are closed to the public and non-essential personnel are required to work remotely. These requirements extend to the Planning Bureau, resulting in much of the Bureau’s personnel working remotely.

Without the ability for requisite staff to be present in the office, the City does not have the capacity to receive in-person appeals of Planning Bureau decisions. Under the City’s past practice, the City receives appeals by way of appellant’s physical submittal of the appeal form and documents at the Permit Center, followed by in-person payment to the City’s cashier.

Since Permit Center is not open to the public at this time, the City is altering its appeal submittal requirements to respond to the lack of onsite staff for the duration that this Order remains in effect.

The below appeal submittal requirements shall apply to all development projects processed under Titles 16 or 17 of the Oakland Municipal Code (O.M.C.) or O.M.C. Chapter 17.132 Planning Director determinations:

1. Planning Staff will accept written appeals by e-mail only, unless an alternative submittal process is arranged pursuant to Section 5 below and is accomplished before the appeal deadline.
2. To initiate an appeal, the appellant **must** email: a) the case planner, b) the Development Planning Manager (cpayne@oaklandca.gov) and c) the Zoning Manager (rmerkamp@oaklandca.gov) a signed copy of the Planning Bureau’s appeal application form, as well as all supporting documents, no later than 4:00 p.m. on the final appeal date stated in the City’s decision letter. Failure to submit the appeal form and supporting documents in a timely manner will result in the rejection of the appeal. Additional material may **not** be submitted at a later date. Within one (1) business day of the appeal submittal, the project’s staff planner will create the appeal record in Accela and email the appellant with the record ID and invoice numbers. Appellant will then have five (5) calendar days from the date of appeal submittal to pay the appeal fee to the City’s cashier. If the fifth (5th) calendar day falls on a weekend or City holiday, appellant will have until the end of the following City business day to pay the appeal fee.
3. Failure to pay the appeal fee in full within the timeframe identified in Section 2 above will result in the rejection of appellant’s appeal and, if the appeal period has closed, will not allow for resubmittal of the appeal.
4. Once the appeal documents are uploaded onto Accela and payment of the appeal fee is verified, the staff planner will notify the original applicant of the appeal (assuming the applicant is not also the appellant).
5. **No Appellant E-mail Access:** If the appellant does not have internet access so that appellant is effectively prevented from e-mailing the appeal, the appellant shall contact the staff planner as soon as possible following the decision date to arrange an alternative appeal submittal process. Upon approval by the staff planner, it may be acceptable to submit the appeal, all related documents, and the appeal fee via U.S. Mail, provided the postmark date is no later than the last date of appeal and the appellant has alerted the staff planner of the appeal in a timely manner.
6. Appellant is solely responsible for adherence to the above timelines. If an applicant or member of the public has any questions regarding the above public notice procedures, they shall direct the questions first to the staff planner, who may consult with the Director of Planning and Building or his designee for further direction.

ATTACHMENT

C

Invoice Detail

Permit ID #: DET200076-A01

Invoice #: 4179431

Invoice Date: 09/25/2020 16:19:27

Period	Fee Item	Qty	Fee
FINAL	Appeal Filing Fee	2,011	\$2,011.00
FINAL	Notification Fee	1,160	\$1,160.00
FINAL	Recrd Mangmnt & Tech Enhancement Fee	467.72	\$467.72

Total Fee: \$3,638.72

ATTACHMENT

D



City of Oakland

City of Oakland
Transaction Receipt# 5323192
Record ID: DET200076-A01

250 FRANK H. OGAWA PLAZA
OAKLAND, CALIFORNIA 94612-2031

Date: 10/02/2020

ADDRESS: 2783 E 12TH ST, Oakland, CA 94601

PARCEL: 025 069700204

DESCRIPTION	AMOUNT DUE	TRAN AMOUNT
Notification Fee	\$ 1,160.00	\$ 935.00
	\$ 1,160.00	\$ 935.00

PAYMENT TYPE	PAYEE	PAYMENT AMOUNT	AMOUNT NOT ALLOCATED
Check	THOMAS CAPITAL INC	\$ 935.00	\$ 0.00
1173710-3			
Comments: THOMAS CAPITAL INC		\$ 935.00	\$ 0.00

TOTAL TRANSACTION AMOUNT: \$ 935.00



City of Oakland

City of Oakland
Transaction Receipt# 5323193
Record ID: DET200076-A01

250 FRANK H. OGAWA PLAZA
OAKLAND, CALIFORNIA 94612-2031

Date: 10/02/2020

ADDRESS: 2783 E 12TH ST, Oakland, CA 94601

PARCEL: 025 069700204

DESCRIPTION	AMOUNT DUE	TRAN AMOUNT
Appeal Filing Fee	\$ 2,011.00	\$ 2,011.00
Notification Fee	\$ 1,160.00	\$ 225.00
Recrd Mangmnt & Tech Enhancement Fee	\$ 467.72	\$ 467.72
	\$ 3,638.72	\$ 2,703.72

PAYMENT TYPE	PAYEE	PAYMENT AMOUNT	AMOUNT NOT ALLOCATED
Credit Card 1173712-3	RANDALL C WHITNEY	\$ 2,703.72	\$ 0.00
Comments: RANDALL C WHITNEY		\$ 2,703.72	\$ 0.00

TOTAL TRANSACTION AMOUNT: \$ 2,703.72

ATTACHMENT

E

CITY OF OAKLAND



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA • SUITE 3315 • OAKLAND, CALIFORNIA 94612

Planning and Building Department
Bureau of Planning

(510) 238-3941
FAX (510) 238-6538
TDD (510) 238-3254

December 22, 2020

Mr. Randall Whitney
Thomas Capital Investments
P.O. Box 4186
1818 Mt Diablo Blvd.
Walnut Creek CA 94596

RE: Case File No. DET200076-A01; 2783 E. 12th Street; APN: 025 069700714, 025 069700715, 025 069700204, 025 069700306

This letter is in response to your Appeal, submitted on September 24, 2020, of the City's decision regarding a General Plan Determination request for the property located at 2783 E. 12th Street issued on September 15, 2020. As detailed below, your Appeal did not include sufficient payment by the required due date. Therefore, your Appeal is not complete and is summarily rejected as untimely.

Specifically:

1. The City's September 15th decision letter (*See Attachment A*), which was sent to you on the same day, noted that interested parties wishing to appeal the City's decision had 10 calendar days from the date of the letter or September 25, 2020 to do so.
2. The September 15th decision letter further stated that "Applicable appeal fees in the amount of \$3,638.72 in accordance with the City of Oakland Master Fee Schedule must be paid within five business days of filing the appeal." The appeal fee is \$3,638.72 as appeals of General Plan Determinations require the Oakland City Planning Commission to make a recommendation to the Oakland City Council who would make the final decision on the Appeal. The City's Emergency Administrative Order No.3 (*See Attachment B*) states in Section 2 that "Appellant will have five (5) calendar days from the date of appeal submittal to pay the appeal fee to the City's cashier. If the fifth (5th) calendar day falls on a weekend or City holiday, appellant will have until the end of the following City business day to pay the appeal fee." It further states: "Failure to pay the appeal fee in full within the timeframe identified in Section 2 above will result in the rejection of appellant's appeal and, if the appeal period has closed, will not allow for resubmittal of the appeal."
3. City staff received your Appeal on September 25, 2020 and promptly emailed you with the appeal record ID and invoice number on that same day (*Attachment C*). At the same time, you were also notified that failure to pay the appeal fee in full by October 2, 2020, will result in the rejection of the appeal.
4. The Department of Planning and Building Cashier Office received a check from Thomas Capital, Inc. for \$935 on September 21, 2020, despite the decision letter listing the applicable fee as \$3,638.72. Because this payment was insufficient to cover the full cost of appeal, the Cashier Office informed you that the fee was not paid and held the

check at the Cashier Station until payment to cover the full appeal fee was provided. Even though City of Oakland staff informed you that the full payment of fees stated in the decision letter was needed to avoid rejection of the appeal, and you had ample opportunity to ensure timely payment of fees, you chose to wait until the final day that fees were due before attempting to complete payment.

5. On October 2, 2020, you authorized a charge of \$2,703.72—the difference between the \$3,638.72 appeal fee and the \$935 check—to your credit card. As a result, City of Oakland receipts (*Attachment D*) document the appeal fee payment on October 2, 2020 in two forms.
6. On either October 5, 2020 or October 7, 2020, you contacted the City of Oakland's Cashier to inform them that due to a clerical error at Thomas Capital, Inc., the \$935.00 check could not be processed. The City could not take additional payment at this time as the check was being processed and further payment can be received only after notification from the Finance Department's Treasury Bureau of invalid payment. Further, at the time of this communication, the October 2, 2020 deadline for full payment of the appeal fee had already passed.
7. On October 9, 2020, the City of Oakland Finance Department received notification that the check could not be processed. Finance staff notified the Planning and Building Department Cashier's Office of the invalid payment on October 15, 2020. Additional payment was received from you on October 15, 2020; however, this payment occurred almost two weeks past the October 2, 2020 deadline.

In sum, the City did not receive full payment of the applicable appeal fee by the October 2, 2020 deadline. The check provided prior to the deadline was not able to be processed and the invalid payment could not be remedied within the time period for payment of the appeal fee. Therefore, based on your failure to pay the appeal fee in full by the stated deadline, your Appeal has been rejected. Because the Appeal period has now closed, resubmittal of the Appeal will not be permitted.

For a refund of the appeal fees charged, please submit the completed Refund Request Form (*Attachment E*) by mail to **Planning & Building Cashier Station 250 Frank H. Ogawa Plaza 2nd floor, Oakland CA 94612** or by email to hchu@oaklandca.gov. Please note that these previous charges can only be refunded and cannot be re-allocated to cover other payments due to the City of Oakland.

If you, or any interested party, seeks to challenge this decision, an appeal **must** be filed by no later than ten (10) calendar days from the date of this letter, by **4:00 pm on January 4, 2021**. An appeal shall be on a form provided by the Bureau of Planning of the Planning and Building Department, and submitted via email to: (1) **Gregory Qwan, Planner III, at gqwan@oaklandca.gov**, (2) **Robert Merkamp, Zoning Manager, at Rmerkamp@oaklandca.gov**, and (3) **Catherine Payne, Development Planning Manager, at Cpayne@oaklandca.gov**. The appeal form is available online at <https://www.oaklandca.gov/documents/appeal-application-form>. The appeal shall state specifically wherein it is claimed there was error or abuse of discretion by the Zoning Manager or decision-making body or wherein the decision is not supported by substantial evidence. Applicable appeal fees in the amount of **\$2,404.01** in accordance with the City of Oakland Master Fee Schedule must be paid within five (5) calendar days (January 11, 2021) of filing the appeal. Failure to timely appeal (or to timely pay all appeal fees) will preclude you, or any interested party, from challenging the City's decision in court. The appeal itself must raise each and every issue that is contested, along with all the arguments and evidence in the record which supports the basis of the appeal; failure to do so may preclude you, or any interested party, from raising such issues during the appeal and/or in court. However, the appeal will be limited to issues and/or evidence presented to the Zoning Manager prior to the close of the appeal period listed in this paragraph. For further information, see the attached Interim Procedures for Appeals of City Planning Bureau Decisions for Development Projects.

However, please be aware that due to City processes, the City cannot transfer the appeal fees for DET200076-A01 to an appeal of the City's determination to reject the appeal. In addition, if you choose to file an appeal of the City's determination to reject the appeal and that appeal is considered timely, the final decision will be before the Planning Commission. As such, this appeal fee is smaller than the DET200076-A01 appeal fee noted in the

discussion above as staff would not need to present the matter before both the Planning Commission and City Council.

If you have any questions, please contact the case planner, **Gregory Qwan, Planner III** at (510) 238-2958 or gqwan@oaklandca.gov, however, this does not substitute for filing of an appeal as described above.

Very Truly Yours,



for
WILLIAM GILCHRIST
Planning Director

cc: Terry McGrath, terry@mcgrathproperties.com
Scott Bovard, scott@mcgrathproperties.com
Michael Branson, MBranson@oaklandcityattorney.org
Hartini Chu, Account Clerk
Diana Rex, Counter Manager
Ed Manasse, Deputy Director, Planning and Building Department
William Gilchrist, Director Planning and Building Department

Attachments:

- A. Decision Letter – Dated September 15, 2020
- B. Interim City Administrator Emergency Order No. 3 and Interim Procedures for Appeals of City Planning Bureau Decisions for Development Projects
- C. Invoice and Record ID – Dated September 25, 2020
- D. City Cashier Receipts – Dated October 2, 2020
- E. Refund Request Form

ATTACHMENT

F



**CITY OF OAKLAND
 APPEAL FORM
 FOR DECISION TO PLANNING COMMISSION, CITY
 COUNCIL OR HEARING OFFICER**

PROJECT INFORMATION

Case No. of Appealed Project: 200076-A01
 Project Address of Appealed Project: 2783 EAST 12TH ST, OAKLAND CA.
 Assigned Case Planner/City Staff: GREGGORY QWAN / R MERKAMP.

APPELLANT INFORMATION:

Printed Name: RANDALL WHITNEY Phone Number: 925 298 5929
 Mailing Address: P.O. Box 4186 Alternate Contact Number: 415 716 9898
 City/Zip Code WALNUT CREEK CA Representing: SELF
 Email: whitwors@gmail.com

An appeal is hereby submitted on:

AN ADMINISTRATIVE DECISION (APPEALABLE TO THE CITY PLANNING COMMISSION OR HEARING OFFICER)

YOU MUST INDICATE ALL THAT APPLY:

- Approving an application on an Administrative Decision
- Denying an application for an Administrative Decision
- Administrative Determination or Interpretation by the Zoning Administrator
- Other (please specify) LETTER OF DETERMINATION DATED DEC. 22ND, 2020.

Please identify the specific Administrative Decision/Determination Upon Which Your Appeal is Based Pursuant to the Oakland Municipal and Planning Codes listed below:

- Administrative Determination or Interpretation (OPC Sec. 17.132.020)
- Determination of General Plan Conformity (OPC Sec. 17.01.080)
- Design Review (OPC Sec. 17.136.080)
- Small Project Design Review (OPC Sec. 17.136.130)
- Minor Conditional Use Permit (OPC Sec. 17.134.060)
- Minor Variance (OPC Sec. 17.148.060)
- Tentative Parcel Map (OMC Section 16.304.100)
- Certain Environmental Determinations (OPC Sec. 17.158.220)
- Creek Protection Permit (OMC Sec. 13.16.450)
- Creek Determination (OMC Sec. 13.16.460)
- City Planner's determination regarding a revocation hearing (OPC Sec. 17.152.080)
- Hearing Officer's revocation/impose or amend conditions (OPC Sec. 17.152.150 &/or 17.156.160)
- Other (please specify) Rejection of Appeal 200076-A01
LETTER by Wm. Gilchrist dated 12/22/20
 (Continued on reverse)

(Continued)

- A DECISION OF THE CITY PLANNING COMMISSION (APPEALABLE TO THE CITY COUNCIL)** Granting an application to: **OR** Denying an application to:

YOU MUST INDICATE ALL THAT APPLY:

Pursuant to the Oakland Municipal and Planning Codes listed below:

- Major Conditional Use Permit (OPC Sec. 17.134.070)
- Major Variance (OPC Sec. 17.148.070)
- Design Review (OPC Sec. 17.136.090)
- Tentative Map (OMC Sec. 16.32.090)
- Planned Unit Development (OPC Sec. 17.140.070)
- Environmental Impact Report Certification (OPC Sec. 17.158.220F)
- Rezoning, Landmark Designation, Development Control Map, Law Change (OPC Sec. 17.144.070)
- Revocation/impose or amend conditions (OPC Sec. 17.152.160)
- Revocation of Deemed Approved Status (OPC Sec. 17.156.170)
- Other (please specify) _____

FOR ANY APPEAL: An appeal in accordance with the sections of the Oakland Municipal and Planning Codes listed above shall state specifically wherein it is claimed there was an error or abuse of discretion by the Zoning Administrator, other administrative decisionmaker or Commission (Advisory Agency) or wherein their/its decision is not supported by substantial evidence in the record, or in the case of Rezoning, Landmark Designation, Development Control Map, or Law Change by the Commission, shall state specifically wherein it is claimed the Commission erred in its decision. The appeal must be accompanied by the required fee pursuant to the City's Master Fee Schedule.

You must raise each and every issue you wish to appeal on this Appeal Form (or attached additional sheets). Failure to raise each and every issue you wish to challenge/appeal on this Appeal Form (or attached additional sheets), and provide supporting documentation along with this Appeal Form, may preclude you from raising such issues during your appeal and/or in court. However, the appeal will be limited to issues and/or evidence presented to the decision-maker prior to the close of the public hearing/comment period on the matter.

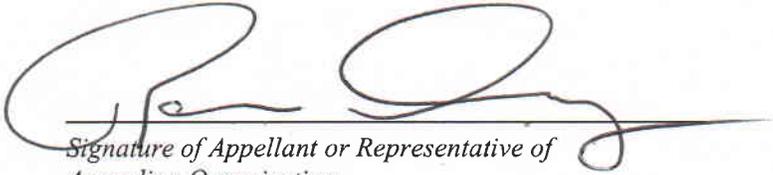
The appeal is based on the following: *(Attach additional sheets as needed.)*

See Appeal - Attachment "A"

Supporting Evidence or Documents Attached. *(The appellant must submit all supporting evidence along with this Appeal Form; however, the appeal will be limited evidence presented to the decision-maker prior to the close of the public hearing/comment period on the matter.)*

(Continued on reverse)

(Continued)


Signature of Appellant or Representative of
Appealing Organization

JANUARY 2, 2021
Date

TO BE COMPLETED BY STAFF BASED ON APPEAL TYPE AND APPLICABLE FEE

APPEAL FEE: \$ _____

Fees are subject to change without prior notice. The fees charged will be those that are in effect at the time of application submittal. All fees are due at submittal of application.

Date/Time Received Stamp Below:

Below For Staff Use Only

Cashier's Receipt Stamp Below:

1 **ATTACHMENT “A”**

2 Randall Whitney
3 P.O. Box 4186
4 Walnut Creek, CA 94596
5 Telephone: 925.298.5929
6 Facsimile: 925.262.0017
7 Email: whitwors@gmail.com

8 *Appellant*

9 **CITY OF OAKLAND**

10 **APPEAL FORM FOR DECISION TO PLANNING COMMISSION, CITY**

11 **COUNCIL OR HEARING OFFICER**

12
13 Randall Whitney, an individual

14 Appellant

15 Vs.

16 City of Oakland, Department of
17 Planning and Building, a State of
18 California municipal agency

19 Appellee

Case File No. DET200076-A01

2783 E. 12th Street, Oakland Ca

APNs: 25 0697 007 014, 25 0697 007 15, 25
0697 002 04, 25 0697 003 06

Letter dated: Dec 22, 2020

APPEAL (Attachment A)

20
21 **APPEAL (Attachment A)**

22
23 Appellant Randall Whitney hereby submits this Attachment A to the appeal filed from the
24 determination issued by City of Oakland Planning Director, William Gilchrist, in his letter dated
25 December 22, 2020.¹

26
27 ¹ Decision letter(“Determination 2”) appears to be an administrative decision related to subject
28 appeal filed under same case number(DET200076-A01). Letter appears to be signed by City of
Oakland zoning manager, Robert Merkamp, *on behalf of* Planning Director William Gilchrist.

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INTRODUCTION

This appeal, the “A02 Appeal”, relates directly to an appeal from the City Oakland Planning and Building case file Determination 200076-A01(“A01 Appeal”), which is taken from the September 15th 2020 Letter of Determination issued by Planning Director William Gilchrist(“Determination #1”).

This appeal(A02 Appeal¹) is taken from the December 22, 2020 determination letter(“Determination #2”) issued by same Planning Director, William Gilchrist, and based upon an *appeal fee* claimed insufficiently paid by due date. A01 Appeal was determined to be “not complete” and “rejected as untimely” even though Appellant had filed a timely appeal in accordance with the Determination 1 and OPC 17.01.080, and furthermore made payment in accordance with the *City of Oakland Fiscal Year 2020-2021 Master Fee Schedule*(“MFS”).

Apparently, the A01 Appeal was mishandled by the Planning staff confused by how to proceed with Emergency Orders and Shelter in Place government orders. During this chaotic 2020 year, the City Council approved significant amendments to the appeals process as well as the Master Fee Schedule(“MFS”). Not only had a new City ordinance been voted into the Oakland Planning Code, amending the very same statute relied upon by Appellant, but the Master Fee Schedule had also been amended and revised impacting the subject appeals fees. The debate and dispute over the appeals fees, as well as the actual appeals process, is at the very center of this A02 Appeal.

¹ Appellant has named this appeal the “A02 Appeal” as distinguished from the “A01 Appeal” named above and within the caption. A02 Appeal should be based upon OPC 17.132.020 while the A01 Appeal is namely based upon OPC 17.01.080

1 Appeal fee charged by staff was overstated and based on erroneous information.
2 Furthermore, Appellant filed a timely appeal and paid appeal fees in accordance with Oakland
3 Municipal Code and pursuant to the Fiscal Year 2020-2021 Master Fee Schedule.

4 Appellant now hereby submits this appeal based on clear error and an abuse of discretion.
5 Clear error in not being able to read and understand the most updated rules directly impacting this
6 case. Abuse of Discretion for the City's senior officers not adhering to the most updated policies
7 established by their own City Council. Essentially, not following procedures to ensure the proper
8 handling of the original A01 Appeal. Abuse of Discretion for not responding to Appellant in a
9 more timely, responsible manner over the several months leading up to this appeal. And further,
10 for ignoring Appellant's earliest communications, dating as far back as 2018, requesting
11 transparency and information related to a property with several outstanding legal issues. This
12 same property and ownership parties currently have cases being adjudicated within both the
13 Alameda Superior Court as well as the U.S. Federal Court – each of which were disclosed and
14 brought to the attention of City of Oakland senior management and City attorneys.

15
16 Hence, all of this wasted time and resource...

17
18 ...amongst the Covid19 global pandemic and existing Shelter in Place related government
19 orders issued by CDC, State of California Governor, the Judicial Council, the six Bay Area health
20 officials, and Alameda County...

21
22 ...notwithstanding the evolving housing crisis and homelessness impacting the City of Oakland;

23
24 ...notwithstanding the ongoing property damage inflicted by the public #BlackLivesMatter
25 protests;

26
27 ...notwithstanding the public announcements by Mayor Libby Schaaf that her City of Oakland is
28 a leader in both transparency and socially justice.

1 Whether City of Oakland committed an abuse of discretion by allowing a Zoning
2 Manager to be signing on behalf of the Director of Planning.

3 Whether the **appeal fee** charged by City of Oakland Planning Department exceeds the
4 reasonable costs to the City of providing the services.

5
6 **FACTUAL BACKGROUND**

7
8 Oakland’s City Council Amends Key Appeals Ordinances and Master Fee Schedule

9 On June 2, 2020, Oakland City Council approves Ordinance No. 13596 which
10 dramatically changes the appeal procedures within City of Oakland Planning Building
11 department, specifically OPC 17.01.080B and related 17.01.120C, including designation of
12 Planning Commission being the sole appointed decision-making body to review all appeals under
13 these sections. [See p.6, Sec2(exh A), Ord. No. 13596, Exhibit __A1__]

14 On June 16, 2020, Oakland City Council approves Ordinance No. 13599, which revises
15 the *City of Oakland Fiscal 2020-2021 Master Fee Schedule(effective July 1 2020)* and deletes the
16 disputed **Notification Fee** component from being included within the appeal charges. [See item
17 12, PBD-26(exh A11), Exhibit __A2__, City of Oakland Ordinance 13599]

18 Appellant Files Appeal and Pays Appeal Fee Before Due Date

19 On September 15, 2020, Planning Director William Gilchrist issues his Letter of
20 Determination(“Determination #1”) declaring the subject project to be consistent with the
21 General Plan. [See Exhibit _A3 , Determination #1]

22 On September 24, 2020, Appellant Whitney files a timely appeal in accordance with OPC
23 §§ 17.01.080B and 17.132.020. [See Exhibit A4, DET200076-A01]

24 On September 25, 2020, City of Oakland staff planner Gregory Qwan issues email notice
25 to Appellant acknowledging receipt of timely filed appeal form and responding with appeal
26
27
28

1 invoice number and fee charges to be paid within 5 *business days* due October 02, 2020¹. [See
2 GQwan emails with Receipt attached, Exhibit A5]

3 On September 25, 2020, Appellant immediately questions charges and appeal fee –
4 Appellant seeks clarification from planning staffer Gregory Qwan [in accordance with CAO
5 Emergency Order No. 3, item 6].

6 On or about September __A6__, 2020, City Oakland planning cashier notifies
7 Appellant(by email) that the appeal fee \$935 has been received by cashier department and agrees
8 with Appellant (by phone) the fee is correctly stated as \$935.²

9 On October 1, 2020, Planning department cashier acknowledges that Appellant has
10 disputed the appeals fee and notifies Zoning Manager Robert Merkamp. [See emails by Robert
11 Merkamp, Exhibit __A7_]

12 On October 1, 2020, Zoning Manager Robert Merkamp(“Merkamp”) sends email
13 confirming the appeal fee and explaining the basis for how the appeal fee is calculated. Merkamp
14 includes a new excel spreadsheet titled “Zoning Counter Fee Schedule” apparently compiled by
15 Zoning department. [See Section “XIV. Appeals”, Zoning Counter Fee Schedule, Exhibit A8] .
16 Email delivered day before deadline for *paying* the appeal fee by 4:00pm on October 2nd 2020.

17 On October 2nd, 2020, prior to 4:00pm, Appellant pays appeal fee balance due in full
18 \$2703.72 under protest from several disputed emails challenging appeal fee. Oakland Planning
19 cashier issues receipt and email acknowledging receipt and confirming appeal. City attorney
20 Michael Branson further confirms payment in full received on October 2nd 2020. [See City of
21 Oakland acknowledging receipts and online based confirmation, See Exhibits __A9_ & _A10_]

25 ¹ Apparently, actual practice by Planning and Building department is to allow five(5) business
26 days to make appeal fee payment

27 ² Appellant contacted cashier department by phone on several occasions to discuss appeal fee
28 and concurrence with Master Fee Schedule supporting proper appeal fee for a Letter of
Determination.

1 On October 5, 2020, Appellant contacts cashier's office to advise that \$935 check was
2 cancelled due to not being cashed so a stop payment was issued. Appellant attempted to pay
3 \$935 by credit card charge. Cashier would not accept payment, but instead, processed the
4 original \$935 check received prior. On October 15th, Appellant called cashier office and paid
5 \$935 credit card payment. [See cashier receipt, Exhibit A11__]

6 Following this payment, City Oakland staff advised Appellant that an investigation would
7 be conducted concerning the issues identified concerning this A01 Appeal. [See emails between
8 Appellant and City Oakland staff , Exhibit A12 and A5]

9 On December 22, 2020, City of Oakland Planning Director William Gilchrist issues a
10 Letter of Determination rejecting appeal based on insufficient appeal fees paid. From this
11 determination, this appeal is now taken. [Determination #2, See Exhibit A13]

12 13 **HISTORICAL BACKGROUND**

14 Constructive Notice Delivered to City of Oakland in November 2018

15 Appellant filed a letter to Mssrs Gilchrist and Merkamp after exhausting all efforts with
16 assigned planning staffer Gregory Qwan – who was not responding to requests for information.
17 Moe Hackett had previously been notified to provide Appellant with any and all land use related
18 communications regarding the subject parcels – primarily, due to an ongoing dispute within the
19 State and Federal courts concerning ownership issues at these subject properties and involving
20 the applicant's alter ego business enterprise(also being the prior ownership of the subject parcels).
21 [See Exhibit A14 emails with Moe Hackett]

22 Upon a diligent pursuit, Appellant discovered that not only had the City of Oakland not been
23 responding but worse, the Planning and Building department assigned a new planner to the
24 project, Mr Gregory Qwan.

25 Appellant made several inquiries concerning any land use activities related to the subject
26 property, however, did not receive response from staff planner Gregory Qwan [See Exhibit A15,
27 emails]. Nonetheless, Appellant was able to obtain copies of communications between staff
28 planner Qwan and developer Terry McGrath aka My Storage LLC("developer") notifying of

1 Appellant’s inquiries on the same day emails were sent to planner Qwan and even though planner
2 Qwan chose not to respond to Appellant. Essentially, planner Qwan was routing messages to the
3 project sponsor and ignoring Appellant’s multiple inquiries about status. Appellant sent
4 communications direct to senior managers Catherine Payne, Robert Merkamp, and William
5 Gilchrist[Emails between Appellant and City of Oakland, See Exhibits A5,].

6
7 Appellant Followed Attachment B to Chief Administrative Officer Interim Procedures for
8 Appeals of City Planning Bureau Decisions For Development Projects for the Duration of the
9 Order

10 Appellant Whitney submitted numerous email communications to the staff planner,
11 Gregory Qwan, to dispute the \$3638.72 appeal fee shown on the Letter of Determination dated
12 9/15/2020. No response came from planning staff even though Attachment B of the Emergency
13 Orders provides that Appellant “shall direct the questions first to the staff planner, who may
14 consult with the Director of Planning and Building. However, NO OTHER REMEDY exists if
15 that staff planner does not communicate.

16 Appellant Whitney instead maintained an ongoing dialogue with the department lead in
17 the Planning Cashier’s office as well as making direct calls and emails to the Zoning
18 Administrator Robert Merkamp. [See Exhibit – A15, emails]

19 **STATUTORY BASIS FOR APPEAL AND APPEAL FEES**

20 In accordance with **17.01.080 Appeal of Director's determination** the appeal shall be
21 accompanied by a fee as prescribed in the City Master Fee Schedule(“MFS”). [OMC 17.01.080]
22 This statement is again repeated in Section B. “Such appeal shall be accompanied by a fee as
23 prescribed in the City master fee schedule.” [OPC 17.01.080B] This Ordinance was amended
24 and revised by City Council on June 2, 2020 under Ordinance 13596.
25
26
27
28

1 Administrative Appeal Procedure defined by OPC 17.132.020 - Appeal

2 Letter of Determination issued December 22, 2020(“Determination #2”) issued by
3 Oakland’s Planning Director is an administrative decision appealable under Oakland Planning
4 Code Section 17.132.020 governing all administrative appeals.

5 OPC § 17.132.020 - Appeal.

6 “Within ten (10) calendar days after the date of any administrative determination or
7 interpretation made by the Director of City Planning under the zoning regulations, an
8 appeal from such decision may be taken to the City Planning Commission by any
9 interested party. ... Such appeal shall be made on a form prescribed by the City Planning
10 Department and shall be filed with such Department and shall be **accompanied by such a**
11 **fee as specified in the City fee schedule.** The appeal shall state specifically wherein it is
12 claimed there was an error or abuse of discretion by the Director or wherein his or her
13 decision is not supported by the evidence in the record. The appeal shall be accompanied
14 by such information as may be required to facilitate review”. [OPC 17.132]

13 City Oakland Acknowledges Inconsistency Between Actual Appeals Process and What is
14 “outlined in the (Oakland) Planning Code”

15 City of Oakland made significant changes to the Appeals Process within Planning and
16 Building when Ordinance 13596 was voted into Oakland Planning Code legislation as of June 02,
17 2020 [c.f Exhibit Ord No 13596, §2(Exh A)(6-2-20)]. Within the recitals the City admits:

18
19 “ WHEREAS, there is an inconsistency between the appeal submission process outlined
20 in the Planning Code and the actual practice of submitting appeals to the Planning and
21 Building Department”

22 This new legislation caused a fundamental change to the overall appeals process and the
23 finality of any decision making by the tribunal reviewing appeals – shifting from the City Council
24 to the Planning Commission. Most relevant, the appeals code under 17.01.080B was
25 fundamentally changed to allow the appeal to be heard by the Planning Commission as a final
26 conclusion. Prior to this ordinance(before 2020), the City Planning Commission would review
27 the appeal for form and substance prior to making recommendations to the City Council for final
28

1 review. This change was consistent with how, in 2016, City Council approved Ordinance 13357,
2 whereat the Planning Commission abandoned using the guideline on how Planning Directors
3 would review Letters of Determination for General Plan conformity.

4 Record on Appeal Limitations Should Not Apply

5 Note concerning the appeal record: This appeal was based on a determination letter,
6 Determination #2, rejecting an appeal from a separate determination letter, Determination #1.
7 A01 Appeal was authorized within procedures found under OPC 17.01.080B *Appeal of*
8 *Director's Determination*. However, this appeal, based upon rejection of A02 Appeal, did not
9 have a comment period or a public hearing. The record is comprised of the ongoing
10 communications between Appellant and interested parties which is limited to only those
11 communications available at time of this appeal deadline.
12

13 Appellant seeks to include other relevant evidence to incorporate into the record prior to
14 any planning commission hearing including but not limited to the response from City of Oakland
15 to Appellant's **Public Records Request #21-37** submitted January 4, 2021.
16

17 **CONCLUSION**

18 Appellant further seeks to have this A02 Appeal(or DET200076-A01-A01) adjudicated
19 and replaced with the reinstated *original* Appeal 01(DET200076-A01) due to City Oakland's
20 clear error and abuse of discretion.
21

22 Executed in Walnut Creek, California, on Saturday, January 2nd, 2021
23

24
25 By: _____ s/_____
26 Randall Whitney
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EXHIBIT A1

INTRODUCED BY COUNCILMEMBER _____

Brian Meloy
CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. 13596 C.M.S.

ADOPT AN ORDINANCE, AS RECOMMENDED BY THE PLANNING COMMISSION, AMENDING OAKLAND PLANNING CODE REGULATIONS RELATED TO: THE APPEALS PROCESS; EXPIRATION OF A VARIANCE; HOME OCCUPATION REGULATIONS; GROUP ASSEMBLY COMMERCIAL ACTIVITIES IN THE D-BV ZONE; FRONT SETBACKS ON SMALL LOTS IN THE RM ZONES; LOCATION OF COMMERCIAL FACILITIES ABOVE RESIDENTIAL FACILITIES; CONSIDERATION OF DESIGN REVIEW AND CONDITIONAL USE PERMIT APPLICATIONS WITH SUBDIVISIONS; USE OF BARBED AND RAZOR WIRE AT CONSTRUCTION SITES; HEIGHT AND DISTANCE OF WALLS FROM OPEN SPACE ZONES AND THE RIGHT OF WAY; PERMIT REQUIREMENTS FOR A CHANGE IN ALCOHOL LICENSES; CARSHARE REQUIREMENTS IN THE DOWNTOWN ZONES; TIMEFRAME REQUIRED TO APPROVE A FINAL PLANNED UNIT DEVELOPMENT PERMIT; DEFINING SMALL PROJECT DESIGN REVIEW AS A DISCRETIONARY PROJECT UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; AND PARKING REQUIREMENTS FOR GROUP ASSEMBLY COMMERCIAL ACTIVITIES; AND MAKE APPROPRIATE CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATIONS.

WHEREAS, in March of 1998, the City adopted the Land Use and Transportation Element (LUTE) of the Oakland General Plan; and

WHEREAS, one of the objectives of the LUTE is to create a 'user friendly' Planning Code document that minimizes the complexity of regulations; and

WHEREAS, City staff has identified, and the Planning Commission has recommended, several proposed amendments to Title 17 of the Oakland Municipal Code ("Planning Code Amendments") that should be made pursuant to the City's police power to encourage orderly development, fair and efficient administrative processing of projects and appeals, and compatibility of land uses in the City; and

WHEREAS, the reasoning for the proposed Planning Code amendments are set

forth in the following recitals and Staff Report, incorporated herein, with said Planning Code amendments set forth in *Exhibit A* attached hereto; and,

WHEREAS, there is an inconsistency between the appeal submission process outlined in the Planning Code and the actual practice of submitting appeals to the Planning and Building Department; and

WHEREAS, the granting of variances for activities that do not expire after disuse can have a lasting negative impact on neighborhoods; and

WHEREAS, citywide expansion of activities allowed as home occupations will provide greater flexibility for citizens to open small businesses in their homes; and

WHEREAS, performing automotive and truck repair at home as a home occupation can create nuisances in a neighborhood; and

WHEREAS, Group Assembly Commercial Activities can provide valuable amenities to a neighborhood with high density residential development; and

WHEREAS, some tables in the Planning Code regarding front setbacks are inconsistent; and

WHEREAS, allowing Commercial Activities above Residential Facilities provides more flexibility in the location of businesses and will provide opportunities for business incubator spaces within mixed-use buildings; and

WHEREAS, considering Design Review and Conditional Use Permit applications with subdivisions will provide for a more orderly project review process; and

WHEREAS, construction sites require security fencing due to their vulnerability to theft, vandalism, and arson; and

WHEREAS, tall fences and walls require additional review and landscape screening since they can be unsightly and remove "eyes on the street"; and

WHEREAS, there are no longer restricted areas where restaurants require a Conditional Use Permit to sell alcohol; and

WHEREAS, carshare services reduce the need for vehicle ownership in Downtown; and

WHEREAS, one year is not a sufficient timeframe to require the approval of a Final Planned Unit Development Permit after approval of a Preliminary Planned Unit Development Permit; and

WHEREAS, Small Project Design Review is a discretionary entitlement process because it requires findings and includes conditions of approval; and

WHEREAS, one parking space per 100 square feet of floor area is too stringent of a requirement for gyms, fitness clubs, and similar activities; and

WHEREAS, this Ordinance will serve the public necessity, convenience and welfare for the reasons set forth in the accompanying staff report, and incorporates such reasons herein by reference; and

WHEREAS, after a duly noticed meeting on March 4, 2020, the Planning Commission recommended that the City Council adopt the proposed amendments by a vote of 6-0 (one abstention); and

WHEREAS, the City Council held a duly noticed public hearing on May 19, 2020 to consider the proposal, and all interested parties were provided an ample opportunity to participate in said hearing and express their views; and

WHEREAS, the proposed amendments to the Planning Code rely on the previous set of applicable California Environmental Quality Act (CEQA) documents including previously certified Final Environmental Impact Reports (EIRs) for the Coliseum Area Specific Plan (2105); Broadway Valdez Specific Plan (2014); West Oakland Specific Plan (2014); Central Estuary Area Plan EIR (2013); Land Use and Transportation Element of the General Plan (1998); the Oakland Estuary Policy Plan (1998); the West Oakland, Central City East, Coliseum, and Oakland Army Base Redevelopment Areas; the 1998 Amendment to the Historic Preservation Element of the General Plan; the 2007-2014 Housing Element Final EIR (2010); and various Redevelopment Plan Final EIRs (collectively, "Previous CEQA Documents"). No further environmental review is required under CEQA Guidelines Sections 15162 and 15163; and

WHEREAS, the Previous CEQA Documents provide analysis of the environmental impacts of the proposed amendments and support all levels of approval necessary to implement the Planning Code amendments; and

WHEREAS, the proposed amendments to the Planning Code would not result in any significant effect that has not already been analyzed in the Previous CEQA Documents, and there will be no significant environmental effects caused by the change that have not already been analyzed in the Previous CEQA Documents; and

WHEREAS, the City Council hereby finds and determines on the basis of substantial evidence in the record that none of the circumstances necessitating preparation of additional environmental review, as specified in CEQA and the CEQA Guidelines, including, without limitation, Public Resources Code Section 21166 and CEQA Guidelines Sections 15162 and 15163 are present in that (1) there are no substantial changes proposed in the project or the circumstances under which the project is undertaken that would require major revisions of the Previous CEQA Documents due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and (2) there is no "new information of substantial importance," as defined in CEQA Guidelines Section 15162(a)(3); and

WHEREAS, each as a separate and independent basis, this action is exempt from CEQA pursuant to CEQA Guidelines Sections 15183 (projects consistent with General Plan and Zoning) and 15061(b)(3) (no significant effect on the environment); and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council ("Council") finds and determines the foregoing recitals to be true and correct and an integral part of the Council's decision, and hereby adopts such recitals as findings.

SECTION 2. Planning Code Amendments. Title 17 of the Oakland Municipal Code is hereby amended pursuant to *Exhibit A* attached hereto, which is incorporated by reference herein. Additions to Titles 17 of the Oakland Municipal Code are shown as underline and omissions are shown as ~~striketrough~~ (Planning Code Amendments").

SECTION 3. California Environmental Quality Act. The Council finds and determines the adoption of this Ordinance complies with CEQA and relies on the previous CEQA Documents. No further environmental review is required under CEQA Guidelines Sections 15162 and 15163. Further, the Council finds the adoption of this Ordinance is exempt, pursuant to CEQA Guidelines section 15183 (projects consistent with General Plan and Zoning) and 15061(b)(3) (general rule, no significant effect on the environment). Each of these provides a separate and independent basis for CEQA clearance and when viewed collectively provide an overall basis for CEQA clearance.

SECTION 4. Direction to Environmental Review Officer to File NOD. The Environmental Review Officer shall file a Notice of Exemption/Notice of Determination, and an Environmental Declaration under the California Fish and Game Code (Section 711.4) with the County of Alameda.

SECTION 5. Effective Date. The code amendments contained in Section 17.148.120 of the Planning Code shall be effective immediately. The remainder of this Ordinance shall be effective 30 days from the date of final passage by the Council, shall not apply to: (a) building/construction related permits already issued and not yet expired, (b) zoning applications approved by the City and not yet expired, or (c) zoning applications deemed complete by the City as of the date of final passage. However, zoning applications deemed complete or approved by the City prior to the date of final passage of this Ordinance may be processed under provisions of these Planning Code Amendments if the applicant chooses to do so.

SECTION 6. No Conflict with State and Federal Law. Nothing in this Ordinance shall be interpreted or applied to create any requirement, power, or duty in conflict with any federal or state law.

SECTION 7. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance. The Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

SECTION 8. Preservation of Public, Health, Safety and Welfare. This Ordinance serves the public interest and is necessary to protect the health, safety

and/or general welfare of the citizens of Oakland, and is enacted pursuant to the City of Oakland's general police powers, Section 106 of the Charter of the City of Oakland, and Article XI, Sections 5 and 7 of the California Constitution.

SECTION 9. City Administrator Authorization to Make Non-Substantive Changes. The Council hereby authorizes the City Administrator or designee to make non-substantive, technical conforming changes (essentially correction of typographical and clerical errors), prior to formal publication of the amendments in the Oakland Planning Code.

IN COUNCIL, OAKLAND, CALIFORNIA,

JUN 02 2020

PASSED BY THE FOLLOWING VOTE:

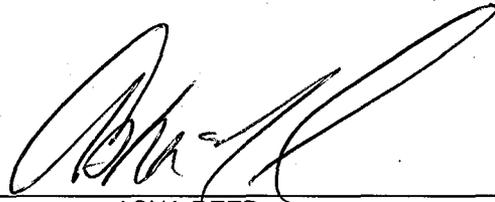
AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO AND
PRESIDENT KAPLAN - 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

ATTEST:



ASHA REED

Acting City Clerk and Clerk of the Council of
the City of Oakland, California

Date of Attestation:

June 5, 2020

EXHIBIT A: PROPOSED AMENDMENTS TO THE PLANNING CODE

The following are the proposed Planning Code amendments. Deletions are in ~~strike-out~~ and additions are underlined.

Chapter 17.01 GENERAL PROVISIONS OF PLANNING CODE AND GENERAL PLAN CONFORMITY

Sections:

17.01.080 Appeal of Director's determination.

17.01.120 Proposals clearly not in conformance with the General Plan or the Land Use Diagram.

17.01.080 Appeal of Director's determination.

- B. Within ten (10) calendar days of a written determination by the Director of City Planning pursuant to Subsection 17.01.120.C. an appeal of such determination may be taken to the City Planning Commission Council by the applicant or any other interested party. Such appeal shall be accompanied by a fee as prescribed in the City master fee schedule. In event the last date of appeal falls on a weekend or holiday when City offices are closed, the next date such offices are open for business shall be the last date of appeal. Such appeal shall be made on a form prescribed by the Director and shall be filed with the Planning and Building Department. City Clerk. The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Planning Director or wherein his or her decision is not supported by the evidence in the record. Upon receipt of such appeal, the Secretary of the City Planning Commission Council shall set the date for consideration thereof. ~~After the hearing date is set, the Planning Director shall refer the matter to the Planning Commission for its review and advice.~~ The Planning Commission shall consider the matter at its next available meeting. ~~Such referral shall be only for the purpose of issue clarification and advice to the City Council.~~ The Secretary City Clerk shall not less than seventeen (17) days prior to the Commission Council hearing, give written notice of the date and place of the hearing on the appeal to the applicant; the appellant in those cases where the applicant is not the appellant; adverse party or parties, or to the attorney, spokesperson, or representative of such party or parties; other interested groups and neighborhood associations who have requested notification; and to similar groups and individuals as the Secretary deems appropriate. In considering the appeal, the Commission Council shall determine whether the proposal conforms to the provisions of Subsection 17.01.120.C., and may approve or disapprove the proposed determination. The decision of the City Planning Commission Council ~~shall be made by resolution and~~ shall be final.

17.01.120 Proposals clearly not in conformance with the General Plan or the Land Use Diagram.

- C. If permitted or conditionally permitted by Zoning Regulations, and where determined by the Planning Director to be consistent with the surrounding land uses and appropriate for the area, notwithstanding that the project may not be consistent with the General Plan classification shown on the Land Use Diagram. It is recognized that the General Plan land uses have been broadly applied to areas without parcel by parcel specificity and that the Land Use Diagram details are largely illustrative of the Plan's written goals and policies. Because the Diagram is generalized, and does not necessarily depict the accuracy of each parcel or very small land areas, a determination of project consistency can be requested of the Director of City Planning. The applicant must demonstrate to the satisfaction of the Planning Director that the predominant use, or average density, is different from that shown on the Diagram and is appropriate for the area in question and that the project is in conformance with the written goals and policies of the General Plan. Written notice of the Director's determination shall be sent to all property owners within three hundred (300) feet of the property involved. The Director's determination may be appealed to the City ~~Planning Commission~~ Council pursuant to Section 17.01.080B.

EXHIBIT A2



CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. 13599 C.M.S.

ORDINANCE AMENDING ORDINANCE NO. 13533 C.M.S. (THE FISCAL YEAR 2019-20 MASTER FEE SCHEDULE), AS AMENDED, TO ESTABLISH, MODIFY AND DELETE FEES AND PENALTIES ASSESSED BY OFFICES, DEPARTMENTS, BUREAUS, AND AGENCIES OF THE CITY OF OAKLAND, REFERENCED HEREIN

WHEREAS, the City of Oakland periodically amends and updates its Master Fee Schedule to account for the various cost increases relating to municipal programs, services and activities; and

WHEREAS, the City has experienced and anticipates continuing increases in the costs to operate and maintain municipal government citywide; and

WHEREAS, Animal Services Department, Contract & Compliance Department, Department of Transportation, Economic & Workforce Development, Housing & Community Development, Oakland Fire Department, Oakland Police Department, Oakland Public Library, Oakland Public Works, Office of the City Attorney, and the Planning & Building Department (“the Departments”), undertook analysis and evaluation of the revenue requirements to fund ongoing municipal services, programs and activities and the fee structure necessary to proportionately allocate the costs of providing these government services and programs; and

WHEREAS, the Agenda Report accompanying this ordinance, including Attachments A-1, A-2, A-3, A-4, A-5, A-6, A-7, A-8, A-9, A-10, and A-11, (herein “the Agenda Report”) provided by staff of the Departments in support of the amendments to this ordinance, includes proposed fees and charges, and documentation supporting the estimated and reasonable costs for continuing to provide the various government services; and

WHEREAS, the investigations conducted by staff of the Departments reflected in the Agenda Report show that existing revenues are and will be insufficient to cover the current and projected costs of operating and maintaining identified City government activities, services and programs; and

WHEREAS, the fee modifications and additions proposed by the Departments, and the facts and analysis in support thereof are identified in the Agenda Report; and

WHEREAS, the Agenda Report shows that the amounts of the proposed fees and charges will not exceed the proportional cost of service provided or benefit attributable to each fee payer; and

WHEREAS, the Agenda Report shows that the proposed fees and charges for a product, benefit or service are imposed for a specific government service, benefit or product provided directly to the payer that is not provided to those not charged, and does not exceed the reasonable costs to the City of providing the service, benefit or product; and

WHEREAS, at the Public Hearing held on June 2, 2020, the Oakland City Council reviewed and considered the proposed fee changes; and

WHEREAS, based upon all written and oral reports and presentations to Oakland City Council, including the Agenda Report and each of the Attachments thereto, the City Council finds and determines that the proposed modifications and additions to the Master Fee Schedule set forth herein are necessary to reimburse the City for the costs of performing the various municipal and regulatory functions;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council finds and determines that the foregoing recitals are true and correct and are hereby incorporated herein as findings and determinations of the City Council.

SECTION 2. The Master Fee Schedule as set forth in Ordinance Number 13533 C.M.S. as amended, is hereby amended to modify and establish the fees assessed by the Animal Services Department, Contract & Compliance Department, Department of Transportation, Economic & Workforce Development, Housing & Community Development, Oakland Fire Department, Oakland Police Department, Oakland Public Library, Oakland Public Works, Office of the City Attorney, and the Planning & Building Department, as set forth in Exhibit A, attached hereto, incorporated into and made a part hereof.

SECTION 3. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional

SECTION 4. Effective Date. With adoption of this ordinance all fees shall hereby be effective July 1, 2020.

June 16, 2020

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO AND
PRESIDENT KAPLAN **-8**

NOES - **0**

ABSENT - **0**

ABSTENTION - **0**

ATTEST: *Asha Reed*

ASHA REED

Acting City Clerk and Clerk of the Council of the City of
Oakland, California

Date of Attestation: **June 30, 2020**

DEPARTMENT PROPOSED FEES

FY 2020-21 MASTER FEE SCHEDULE

Exhibits:

- A-1 ANIMAL SERVICES DEPARTMENT
- A-2 CONTRACT & COMPLIANCE DEPARTMENT
- A-3 DEPARTMENT OF TRANSPORTATION
- A-4 ECONOMIC & WORKFORCE DEVELOPMENT
- A-5 HOUSING & COMMUNITY DEVELOPMENT
- A-6 OAKLAND FIRE DEPARTMENT
- A-7 OAKLAND POLICE DEPARTMENT
- A-8 OAKLAND PUBLIC LIBRARY
- A-9 OAKLAND PUBLIC WORKS
- A-10 OFFICE OF THE CITY ATTORNEY
- A-11 PLANNING & BUILDING DEPARTMENT

EXHIBIT A

Animal Services Department

FY 2020-21 MASTER FEE SCHEDULE

EXHIBIT A: A-1

ANIMAL SERVICES DEPARTMENT



**City of Oakland
Master Fee Schedule
Effective July 1, 2020**

PLANNING & BUILDING

FEE DESCRIPTION	FY 2019-20 Actual	FY 2020-21 Proposed	% CHANGE	Justification
a. Report Fee - Track One	448.00 Report	<u>470.00</u> Report	<u>5%</u>	Cost of Living Adjustment
b. Report Fee - Track One (signs & fences)	373.00 Report	<u>392.00</u> Report	<u>5%</u>	Cost of Living Adjustment
c. Report Fee - Track One (Secondary Units between 500 and 900 Sq. Ft.)	586.00 Report	<u>615.00</u> Report	<u>5%</u>	Cost of Living Adjustment
d. Report Fee - Track Two	566.00 Report	<u>594.00</u> Report	<u>5%</u>	Cost of Living Adjustment
e. Report Fee - Track Three	1,041.00 Report	<u>1,093.00</u> Report	<u>5%</u>	Cost of Living Adjustment
<u>f. Notification Fee - Small Project Design Review (if notice required)</u>	570.00 Notification	<u>9.00</u> Notification	<u>-499%</u>	Relocation of fee for clarification
10 Special Residential Design Review				
a. Design Review Exemption				
1 Report Fee Not Involving changes to the Building Envelope or	244.00 Report	<u>256.00</u> Report	<u>5%</u>	Cost of Living Adjustment
2 Report Fee Involving Changes to the Building Envelope or Exterior	259.00 Report	<u>272.00</u> Report	<u>5%</u>	Cost of Living Adjustment
3 Report Fee for Secondary Units under 500 square feet	406.00 Report	<u>426.00</u> Report	<u>5%</u>	Cost of Living Adjustment
4 Report Fee for matching exterior changes only	74.00 Report	<u>78.00</u> Report	<u>5%</u>	Cost of Living Adjustment
b. S-11 Design Review - Special Fees				
1 North Oakland Hill Area Specific Plan Recovery Fee Per Dwelling	408.00 Report	<u>428.00</u> Report	<u>5%</u>	Cost of Living Adjustment
<u>e. Notification Fee - Development Agreement</u>	1,105.00 Notification	<u>9.00</u> Notification	<u>-499%</u>	Relocation of fee for clarification
d. Development Agreement	12,074.00 Report	<u>12,678.00</u> Report	<u>5%</u>	Cost of Living Adjustment
11 Development Agreement: Annual Review	3,518.00 Report	<u>3,694.00</u> Report	<u>5%</u>	Cost of Living Adjustment
12 Appeals				
a. Report Filing Fee: Appeal to Planning Commission	890.00 Appeal	<u>935.00</u> Appeal	<u>5%</u>	Cost of Living Adjustment
b. Report Filing Fee: Appeal to City Council	1,124.00 Appeal	<u>1,180.00</u> Appeal	<u>5%</u>	Cost of Living Adjustment
c. Billboard Amortization	1,725.00 Appeal	<u>1,811.00</u> Appeal	<u>5%</u>	Cost of Living Adjustment
<u>d. Notification Fee - Appeals to Planning Commission</u>	524.00 Notification	<u>9.00</u> Notification	<u>-499%</u>	Relocation of fee for clarification
<u>e. Notification Fee - Appeals to City Council</u>	524.00 Notification	<u>9.00</u> Notification	<u>-499%</u>	Relocation of fee for clarification
13 Requests				
a. For Extension of Time of Approved Permit	314.00 Request	<u>330.00</u> Request	<u>5%</u>	Cost of Living Adjustment
1. Exhausted Administrative Extensions - sent to Planning Commission	1,225.00 Request	<u>1,286.00</u> Request	<u>5%</u>	Cost of Living Adjustment
b. For Reconsideration of Existing Approval	50% of the current base	50% of the current base	0%	Cost of Living Adjustment
c. For General Plan Determination	1,078.00 Request	<u>1,132.00</u> Request	<u>5%</u>	Cost of Living Adjustment
d. For Written Determination by Zoning Administrator	384.00 Request	<u>403.00</u> Request	<u>5%</u>	Cost of Living Adjustment
14 Business Tax Certificate	49.00 Report	<u>51.00</u> Report	<u>5%</u>	Cost of Living Adjustment
15 General Plan Amendment				
<u>a. Notification Fee - Request for General Plan Amendment</u>	1,105.00 Notification	<u>9.00</u> Notification	<u>-499%</u>	Relocation of fee for clarification
b. General Plan Amendment	5,736.00 Report	<u>6,023.00</u> Report	<u>5%</u>	Cost of Living Adjustment



**City of Oakland
Master Fee Schedule
Effective July 1, 2020**

PLANNING & BUILDING

FEE DESCRIPTION	FY 2019-20 Actual	FY 2020-21 Proposed	% CHANGE	Justification
16 New construction & Activity Surcharge				
a. Minor Permits involving the new construction of 25-49 units:	876.00 Permit	<u>920.00</u> Permit	<u>5%</u>	Cost of Living Adjustment
b. Minor Permits involving the new construction of 50-99 units:	1,215.00 Permit	<u>1,276.00</u> Permit	<u>5%</u>	Cost of Living Adjustment
c. Minor Permits involving the new construction of 100+ units:	1,697.00 Permit	<u>1,782.00</u> Permit	<u>5%</u>	Cost of Living Adjustment
d. Major Permits involving the new construction of 25-49 units:	2,084.00 Permit	<u>2,188.00</u> Permit	<u>5%</u>	Cost of Living Adjustment
e. Major Permits involving the new construction of 50-99 units:	2,461.00 Permit	<u>2,584.00</u> Permit	<u>5%</u>	Cost of Living Adjustment
f. Major Permits involving the new construction of 100+ units:	3,629.00 Permit	<u>3,810.00</u> Permit	<u>5%</u>	Cost of Living Adjustment
g. Minor Permits involving the new construction of 10,000 sq.ft. - 49,999 sq.ft. of	876.00 Permit	<u>920.00</u> Permit	<u>5%</u>	Cost of Living Adjustment
h. Minor Permits involving the new construction of 50,000 sq.ft. + of non-residential	1,697.00 Permit	<u>1,782.00</u> Permit	<u>5%</u>	Cost of Living Adjustment
i. Major Permits involving the new construction of 10,000 sq.ft. - 49,999sq.ft. of	2,084.00 Permit	<u>2,188.00</u> Permit	<u>5%</u>	Cost of Living Adjustment
j. Major Permits involving the new construction of 50,000 sq.ft. + of non-residential	3,629.00 Permit	<u>3,810.00</u> Permit	<u>5%</u>	Cost of Living Adjustment
k. Major Permits involving an Extensive Impact Civic Activity:	3,292.00 Permit	<u>3,457.00</u> Permit	<u>5%</u>	Cost of Living Adjustment
l. Projects involving construction on a lot sloped 20% or more	1,542.00 Permit	<u>1,619.00</u> Permit	<u>5%</u>	Cost of Living Adjustment
m. Determination of Public Convenience or Necessity (w/CUP)	1,090.00 Permit	<u>1,145.00</u> Permit	<u>5%</u>	Cost of Living Adjustment
n. Determination of Public Convenience or Necessity (without CUP)	1,356.00 Permit	<u>1,424.00</u> Permit	<u>5%</u>	Cost of Living Adjustment
o. Special Findings Fees for Complex Projects	561.00 Permit	<u>589.00</u> Permit	<u>5%</u>	Cost of Living Adjustment
17 Commence or Complete Work for which Permits are required by the Oakland:		<u>0.00</u>	<u>-100%</u>	Only used for Inspections fees; planning has no inspection fees permits
18 Application Notification Fee	Double Fee			
a. Major-Conditional-Use-Permit	1,105.00 Notification	<u>0.00</u> Notification	<u>-100%</u>	New Categories for Notification for clarity - see Planning A.18
b. Major-Variance	1,105.00 Notification	<u>0.00</u> Notification	<u>-100%</u>	New Categories for Notification for clarity - see Planning A.18
c. Rezoning / Zoning Text Amendment	1,105.00 Notification	<u>0.00</u> Notification	<u>-100%</u>	New Categories for Notification for clarity - see Planning A.18
d. Development Agreement	1,105.00 Notification	<u>0.00</u> Notification	<u>-100%</u>	New Categories for Notification for clarity - see Planning A.18
e. Tentative Map	1,105.00 Notification	<u>0.00</u> Notification	<u>-100%</u>	New Categories for Notification for clarity - see Planning A.18
f. Request for General Plan Amendment	1,105.00 Notification	<u>0.00</u> Notification	<u>-100%</u>	New Categories for Notification for clarity - see Planning A.18
g. Private Access Easement	1,105.00 Notification	<u>0.00</u> Notification	<u>-100%</u>	New Categories for Notification for clarity - see Planning A.18
h. Minor Variance	1,105.00 Notification	<u>0.00</u> Notification	<u>-100%</u>	New Categories for Notification for clarity - see Planning A.18
i. Minor-Conditional-Use-Permit	1,105.00 Notification	<u>0.00</u> Notification	<u>-100%</u>	New Categories for Notification for clarity - see Planning A.18



City of Oakland
Master Fee Schedule
 Effective July 1, 2020

PLANNING & BUILDING

FEE DESCRIPTION	FY 2019-20 Actual	FY 2020-21 Proposed	CHANGE %	Justification
<u>1. Appeals to City Council</u>				
<u>1.1. Request for Environmental Review (REQ/NERA)</u>				
<u>1.1.1. Parcel Map</u>	524.00 Notification	0.00 Notification	-100%	New Categories for Notification for clarity - see Planning A.18
<u>1.1.2. Planned Unit Development - Preliminary Planning Commission Action</u>	1,105.00 Notification	0.00 Notification	-100%	New Categories for Notification for clarity - see Planning A.18
<u>1.1.3. Planned Unit Development - Final Planning Commission Action</u>	1,105.00 Notification	0.00 Notification	-100%	New Categories for Notification for clarity - see Planning A.18
<u>1.1.4. S-11 Site Development and Design Review - No Public Hearing</u>	1,105.00 Notification	0.00 Notification	-100%	New Categories for Notification for clarity - see Planning A.18
<u>1.2. Appeals to Planning Commission</u>				
<u>1.2.1. Regular Design Review (Except for Landmarks)</u>	524.00 Notification	0.00 Notification	-100%	New Categories for Notification for clarity - see Planning A.18
<u>1.2.2. Accessory Signage for Civic Activities</u>	1,105.00 Notification	0.00 Notification	-100%	New Categories for Notification for clarity - see Planning A.18
<u>1.2.3. Challenge to Negative Declaration/Environmental Assessment</u>	1,105.00 Notification	0.00 Notification	-100%	New Categories for Notification for clarity - see Planning A.18
<u>1.2.4. Appeal of Director's Determination that EIR/EIS is Required</u>	1,105.00 Notification	0.00 Notification	-100%	New Categories for Notification for clarity - see Planning A.18
<u>1.2.5. Category III Creek Permit</u>	1,105.00 Notification	0.00 Notification	-100%	New Categories for Notification for clarity - see Planning A.18
<u>1.2.6. Category IV Creek Permit</u>	1,105.00 Notification	0.00 Notification	-100%	New Categories for Notification for clarity - see Planning A.18
<u>1.2.7. Notification - Category 1 (Notification of properties adjacent and across the street. City creates mailing list but applicant mail notices)</u>	570.00 Notification	94.00 Notification	-506%	New Categories for Notification for clarity
<u>1.3. Notification - Category 2 (Notification of property owner within 300 ft. City creates the list and does the mailing.)</u>	1,105.00	1,160.00 Notification	5%	New Categories for Notification for clarity
<u>1.4. Notification - Category 3 (Notification of regulatory change plus actual cost of advertisement)</u>	1,105.00	1160.00 + Notification plus actual cost of advertisement	5%	New Categories for Notification for clarity
<u>1.5. DIRAC Surcharge for scheduled items</u>				
<u>1.5.1. NO - Show fee for Zoning Intake or Intake Processing</u>	795.00 Report	835.00 Report	5%	Moved to Administration
<u>1.5.2. In-Lieu Fee for Parking</u>	135.00 Occurrence/ Per Space	142.00 Occurrence-per-hour/ Per Space	5%	Moved to Administration
<u>1.5.3. In-Lieu Fee for Open Space in a Residential Project</u>	20,000.00 Per Square Foot	21,000.00 Per Square Foot	5%	Cost of Living Adjustment
<u>1.5.4. Filing and Review (Intake) for All Applications in Addition to Above</u>	30.00 Per Square Foot	32.00 Per Square Foot	5%	Cost of Living Adjustment
<u>1.5.5. APPLICATIONS UNDER THE OAKLAND SUBDIVISION REGULATIONS (42512)</u>	70.00 Permit	9.00 Permit	-100%	See Admin A1
<u>1.6. Tentative Map (In Connection with Planned Unit Development or Use Permit)</u>	6,500.00 Report	6,825.00 Report	5%	Cost of Living Adjustment
<u>1.7. All Other Tentative Maps (Other than Condominium Conversions)</u>				
<u>1.7.1. Basic Fee</u>	6,500.00 Report	6,825.00 Report	5%	Cost of Living Adjustment
<u>1.7.2. Surcharge (Per Lot)</u>	177.00 Lot	186.00 Lot	5%	Cost of Living Adjustment

EXHIBIT A3

CITY OF OAKLAND



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA • SUITE 3315 • OAKLAND, CALIFORNIA 94612

Planning and Building Department
Bureau of Planning

(510) 238-3941
FAX (510) 238-6538
TDD (510) 238-3254

September 15, 2020

Mr. Scott Bovard
1001 42nd Street, Suite 200
Oakland, CA 94608

RE: Case File No. DET200076; 2783 E. 12th Street; APN: 025 069700714, 025 069700715, 025 069700204, 025 069700306

This letter is in response to your request for a General Plan Determination for the property located at 2783 E. 12th Street. Specifically, you submitted a Determination on whether the proposed expansion of a Warehousing, Storage, and Distribution Industrial Activity (mini-storage) in an M-30 Zone is consistent with the surrounding land uses, is appropriate for the area, and is in conformance with the written goals and policies of the General Plan notwithstanding the General Plan classification shown on the Land Use Diagram.

Background

The subject property is classified as Mixed Housing Type Residential per the Land Use and Transportation Element (LUTE) of the General Plan. The subject property is adjacent to property classified as Business Mix Type Industrial to the northwest, Institutional to the northeast (across East 12th Street and the BART right of way), Regional Commercial to the southeast (across 29th Avenue), and Mixed Housing Type Residential to the southwest (across a rail right of way).

The Mixed Housing Type Residential classification is intended to create, maintain, and enhance residential areas typically located near the City's major arterials and characterized by a mix of single family homes, townhouses, small multi-unit buildings, and neighborhood businesses where appropriate. Future development within this classification should be primarily residential in character, with live-work types of development, small commercial enterprises, schools, and other small scale, compatible civic uses possible in appropriate locations.

The Business Mix Type Industrial classification is intended to create, preserve and enhance areas of the City that are appropriate for a wide variety of business and related commercial and industrial establishments. High impact industrial uses including those that have hazardous materials on-site may be allowed provided they are adequately buffered from residential areas. High impact or large scale commercial retail uses should be limited to sites with direct access to the regional transportation system.

The Regional Commercial classification is intended to maintain, support and create areas of the City that serve as region-drawing centers of activity.

The subject property is zoned M-30 and is intended to create, preserve, and enhance areas containing a wide range of manufacturing, industrial, and related establishments, and is typically appropriate to areas providing a wide variety of sites with good rail or highway access.

The Bureau of Planning went through a citywide process from 2009-2011 to update the Planning Code with new zones that would conform to the General Plan classifications adopted in 1998. As part of this process some areas of the City zoned M-30 were not modified. As such, the Zoning classification for the subject property is not consistent with the General Plan classification as shown on the Land Use Diagram.

General Plan and Zoning Analysis

Planning Code Section 17.01.120 describes the process and actions to be taken or considered for proposals clearly not in conformance with the General Plan or the Land Use Diagram such as this project. Specifically, subsection C notes that:

“If permitted or conditionally permitted by Zoning Regulations, and where determined by the Planning Director to be consistent with the surrounding land uses and appropriate for the area, notwithstanding that the project may not be consistent with the General Plan classification shown on the Land Use Diagram. It is recognized that the General Plan land uses have been broadly applied to areas without parcel by parcel specificity and that the Land Use Diagram details are largely illustrative of the Plan's written goals and policies. Because the Diagram is generalized, and does not necessarily depict the accuracy of each parcel or very small land areas, a determination of project consistency can be requested of the Director of City Planning. The applicant must demonstrate to the satisfaction of the Planning Director that the predominant use, or average density, is different from that shown on the Diagram and is appropriate for the area in question and that the project is in conformance with the written goals and policies of the General Plan. Written notice of the Director's determination shall be sent to all property owners within three hundred (300) feet of the property involved. The Director's determination may be appealed to the City Council pursuant to Section 17.01.080B.”

The predominant use in the area is different from the Mixed Housing Type classification.

As noted above, the project is permitted by the Zoning Regulations. The subject site is a corner lot containing mini-storage activities, which extend to the parcels to the northwest and into the parcels classified as Business Mix. Existing mini-storage uses are also present across the street to the southeast, on parcels classified as Regional Commercial. A large Goodwill headquarters and distribution and collection facility is also located across the street to the east on parcels classified as Community Commercial. Therefore, Warehouse, Storage, and Distribution Industrial Activities are the predominant use in the area, which is different than the Mixed Housing Type classification. The closest activities consistent with the Mixed Housing Type classification are located: to the southwest and separated from the subject property by an existing railway and a large Oakland Animal Services facility; to the northeast and separated from the subject property by East 12th Street, the existing BART right of way, an Institutional Civic activity, International Boulevard, and Commercial Retail activities; and to the east and separated from the subject property by East 12th Street, the existing BART right of way, and the Goodwill facility. The existing railway and BART tracks physically separate the subject property from all proximate activities that are consistent with the Mixed Housing Type Classification. Therefore, the predominant use in the area is more consistent with the adjacent Business Mix and Regional Commercial classifications, and is different than the Mixed Housing Type classification.

The project is in conformance with the written goals and policies of the General Plan.

Furthermore, the LUTE goals and policies that support the proposal, include but are not limited to the following:

Industry and Commerce Goals: “Ensure that the Oakland community has access to a wide variety of goods and services meeting daily and long term needs” and “Recognize and support industrial and commercial land use as a primary vehicle for the generation of the economic support required for the attainment of the physical, social, and community service goals of the Oakland General Plan.”

Objective I/C2: “Maximize the usefulness of existing abandoned or underutilized industrial buildings and land”.

These goals and policies are in line with the adjacent Business Mix and Regional Commercial General Plan designations.

Determination

Based on the subject property's location in an mostly industrial area, nearby uses including mini-storage, and the above General Plan policies, the Zoning Manager as designee of the Planning Director has determined that mini-storage located at 2783 E. 12th Street is consistent with the surrounding land uses and appropriate for the area, and therefore consistent with the overall objectives of the General Plan, notwithstanding that the project may not be consistent with the General Plan classification shown on the Land Use Diagram.

If you, or any interested party, seeks to challenge this decision, an appeal **must** be filed by no later than ten (10) calendar days from the date of this letter, by **4:00 pm on September 25, 2020**. An appeal shall be on a form provided by the Bureau of Planning of the Planning and Building Department, and submitted via email to: (1) **Gregory Qwan, Planner II**, at gqwan@oaklandca.gov, (2) **Robert Merkamp, Zoning Manager**, at Rmerkamp@oaklandca.gov, and (3) **Catherine Payne, Development Planning Manager**, at Cpayne@oaklandca.gov. The appeal form is available online at <https://www.oaklandca.gov/documents/appeal-application-form>. The appeal shall state specifically wherein it is claimed there was error or abuse of discretion by the Zoning Manager or decision-making body or wherein the decision is not supported by substantial evidence. Applicable appeal fees in the amount of **\$3,638.72** in accordance with the City of Oakland Master Fee Schedule must be paid within five business days of filing the appeal. Failure to timely appeal (or to timely pay all appeal fees) will preclude you, or any interested party, from challenging the City's decision in court. The appeal itself must raise each and every issue that is contested, along with all the arguments and evidence in the record which supports the basis of the appeal; failure to do so may preclude you, or any interested party, from raising such issues during the appeal and/or in court. However, the appeal will be limited to issues and/or evidence presented to the Zoning Manager prior to the close of the previously noticed public comment period on the matter. For further information, see the attached Interim City Administrator Emergency Order No. 3 and Interim Procedures for Appeals of City Planning Bureau Decisions for Development Projects.

If the ten (10) day appeal period expires without an appeal, you are expected to contact **Gregory Qwan** in order to receive the signed Notice of Exemption (NOE) certifying that the project has been found to be exempt from CEQA review. It is your responsibility to record the NOE and the Environmental Declaration at the Alameda County Clerk's office at 1106 Madison Street, Oakland, CA 94612, at a cost of **\$50.00** made payable to the Alameda County Clerk. Please bring the original NOE related documents and five copies to the Alameda County Clerk, and return one date stamped copy to the Bureau of Planning, to the attention of **Gregory Qwan, Planner II**. Pursuant to Section 15062(d) of the California Environmental Quality Act (CEQA) Guidelines, recordation of the NOE starts a 35-day statute of limitations on court challenges to the approval under CEQA. The NOE will also be posted on the City website at <https://aca.accela.com/OAKLAND/Welcome.aspx>.

If you have any questions, please contact the case planner, **Gregory Qwan, Planner II** at **(510) 238-2958** or gqwan@oaklandca.gov, however, this does not substitute for filing of an appeal as described above.

Very Truly Yours,



for
WILLIAM GILCHRIST
Planning Director

cc: Randall Whitney, whitwors@gmail.com
Michael Branson, MBranson@oaklandcityattorney.org

EXHIBIT A4



PAID

**CITY OF OAKLAND
APPEAL FORM**

APPROVED

**FOR DECISION TO PLANNING COMMISSION, CITY
COUNCIL OR HEARING OFFICER**

PROJECT INFORMATION

Case No. of Appealed Project: DET 200076
Project Address of Appealed Project: 2783 E. 12TH STREET, OAKLAND CA
Assigned Case Planner/City Staff: G. QWAN / R. MERKAMP

APPELLANT INFORMATION:

Printed Name: RANDALL WHITNEY Phone Number: (925) 298 5929
Mailing Address: P.O. Box 4186 Alternate Contact Number: (415) 716 9898
City/Zip Code WALNUT CREEK, 94596 Representing: community / self
Email: whitwors@gmail.com

An appeal is hereby submitted on:

**AN ADMINISTRATIVE DECISION (APPEALABLE TO THE CITY PLANNING
COMMISSION OR HEARING OFFICER)**

YOU MUST INDICATE ALL THAT APPLY:

- Approving an application on an Administrative Decision
- Denying an application for an Administrative Decision
- Administrative Determination or Interpretation by the Zoning Administrator
- Other (please specify) LETTER of DETERMINATION by Planning Director

Please identify the specific Administrative Decision/Determination Upon Which Your Appeal is Based Pursuant to the Oakland Municipal and Planning Codes listed below:

- Administrative Determination or Interpretation (OPC Sec. 17.132.020)
- Determination of General Plan Conformity (OPC Sec. 17.01.080)
 - Design Review (OPC Sec. 17.136.080)
 - Small Project Design Review (OPC Sec. 17.136.130)
 - Minor Conditional Use Permit (OPC Sec. 17.134.060)
 - Minor Variance (OPC Sec. 17.148.060)
 - Tentative Parcel Map (OMC Section 16.304.100)
- Certain Environmental Determinations (OPC Sec. 17.158.220)
 - Creek Protection Permit (OMC Sec. 13.16.450)
 - Creek Determination (OMC Sec. 13.16.460)
 - City Planner's determination regarding a revocation hearing (OPC Sec. 17.152.080)
 - Hearing Officer's revocation/impose or amend conditions (OPC Sec. 17.152.150 &/or 17.156.160)
 - Other (please specify) _____

(Continued on reverse)

APPROVED

(Continued)

A DECISION OF THE CITY PLANNING COMMISSION (APPEALABLE TO THE CITY COUNCIL) Granting an application to: OR Denying an application to:

YOU MUST INDICATE ALL THAT APPLY:

Pursuant to the Oakland Municipal and Planning Codes listed below:

- Major Conditional Use Permit (OPC Sec. 17.134.070)
- Major Variance (OPC Sec. 17.148.070)
- Design Review (OPC Sec. 17.136.090)
- Tentative Map (OMC Sec. 16.32.090)
- Planned Unit Development (OPC Sec. 17.140.070)
- Environmental Impact Report Certification (OPC Sec. 17.158.220F)
- Rezoning, Landmark Designation, Development Control Map, Law Change (OPC Sec. 17.144.070)
- Revocation/impose or amend conditions (OPC Sec. 17.152.160)
- Revocation of Deemed Approved Status (OPC Sec. 17.156.170)
- Other (please specify) _____

FOR ANY APPEAL: An appeal in accordance with the sections of the Oakland Municipal and Planning Codes listed above shall state specifically wherein it is claimed there was an error or abuse of discretion by the Zoning Administrator, other administrative decisionmaker or Commission (Advisory Agency) or wherein their/its decision is not supported by substantial evidence in the record, or in the case of Rezoning, Landmark Designation, Development Control Map, or Law Change by the Commission, shall state specifically wherein it is claimed the Commission erred in its decision. The appeal must be accompanied by the required fee pursuant to the City's Master Fee Schedule.

You must raise each and every issue you wish to appeal on this Appeal Form (or attached additional sheets). Failure to raise each and every issue you wish to challenge/appeal on this Appeal Form (or attached additional sheets), and provide supporting documentation along with this Appeal Form, may preclude you from raising such issues during your appeal and/or in court. However, the appeal will be limited to issues and/or evidence presented to the decision-maker prior to the close of the public hearing/comment period on the matter.

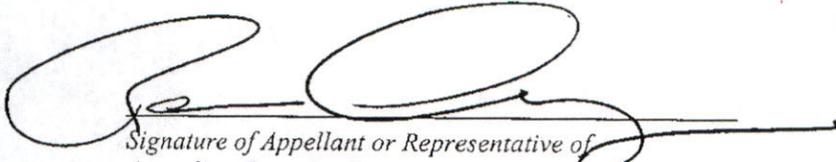
The appeal is based on the following: (Attach additional sheets as needed.)

- SEE ATTACHED LETTER IN OPPOSITION (EXHIBIT A)
 - NOT IN CONFORMANCE WITH GENERAL PLAN OR LAND USE DIAGRAM
 - DUE PROCESS VIOLATIONS - INSUFFICIENT PUBLIC NOTICE IN RECORD
 - APPLICATION INCOMPLETE - STATUTORY REQUIREMENTS NOT MET
 - ERRORS IN APPLICATION AND SO DETERMINATION NOT SUPPORTED BY
 - ABUSE OF DISCRETION IN CEQA EXEMPTION
- Supporting Evidence or Documents Attached. (The appellant must submit all supporting evidence along with this Appeal Form; however, the appeal will be limited evidence presented to the decision-maker prior to the close of the public hearing/comment period on the matter. Record)

(Continued on reverse)

(Continued)

PAID
CK NO.
DATE


Signature of Appellant or Representative of
Appealing Organization

~~9-22-2000~~
Date

TO BE COMPLETED BY STAFF BASED ON APPEAL TYPE AND APPLICABLE FEE

APPEAL FEE: \$ _____	
Fees are subject to change without prior notice. The fees charged will be those that are in effect at the time of application submittal. <u>All fees are due at submittal of application.</u>	
Date/Time Received Stamp Below:	Cashier's Receipt Stamp Below:
Below For Staff Use Only	



Randall Whitney <whitwors@gmail.com>

Letter of Determination per 17.01.070 re 2783 East 12th Street, Oakland CA DET200076 PLN19160 TMP 10632 PLN 17003

32 messages

Randall Whitney <whitwors@gmail.com>

Mon, Jul 6, 2020 at 1:32 PM

To: wgilchrist@oaklandca.gov, "Merkamp, Robert" <RMerkamp@oaklandca.gov>

Cc: "Merkamp, Robert" <RMerkamp@oaklandnet.com>, cpayne@oaklandca.gov, emanasse@oaklandca.gov

Bcc: sford@oaklandca.gov, hklein@oaklandca.gov, Jill Worsley <worsleyjill@hotmail.com>, randall.worsley <whitwors@gmail.com>

Bill Gilchrist, Director of Planning (% S Ford attn: wgilchrist@oaklandca.gov)

cc: Ed Manasse(emanasse@oaklandca.gov),

Robert Merkamp(rmerkamp@oaklandca.gov), Catherine Payne(CPayne@oaklandca.gov), Heather Klein(hklein@oaklandca.gov)

City of Oakland

Planning and Building

250 Frank Ogawa Plaza

Oakland California

Re PLN19160

DET200076, PLN 17003-R01, TPM 10632

APNs: 25-697-002-04 / 25-697-003-06 / 25-697-007-15 / 25-697-007-14

Property Addresses: 2615 – 2783 East 12th Street, 1111 29th Avenue Oakland CA

Opposition to Letter of Determination re Conformity with General Plan

This opposition is being sent to the Director of Planning contesting that a *Letter of Determination* for proposed development at 2783 East 12th Street (under application no. DET200076 for projects related to PLNs 17003-R01, PLN19160 and TPM10632) should not issue as the proposed project has an express conflict with the City of Oakland General Plan.

Introduction: Letter of Determination under PC 17.01.070 should not issue

A *Letter of Determination* should **not** issue until the property title issues underlying this project have been resolved, the application completed and a comprehensive public review allowed.

The subject properties have been under ongoing title disputes since the applicant/developer has alleged ownership. The City of Oakland and it's City Engineer are respondents in a pending mandamus petition which includes several of the same subject properties(c.f. Alameda County Superior Court, RG14-745452).

This general plan determination is premature as the developer's application is deficient and without the necessary support required by your planning guidelines. Upon review of the limited publicly available case files,

several required components do not support this application. Most importantly, the required information is deficient to deem this project statutorily exempt under the CEQA Environmental Declaration.

Available project information continues to be limited primarily due to lack of access and confusion within City of Oakland files. Assessment of the project is confusing since the developer has submitted multiple planning agendas which are classified under different cases. As of this writing, the City Oakland planning has not provided access to the PLN19160 information referenced. The confusion has been compounded as this project is processing during the COVID19 lockdown. As such, public notice for this major project has not met the statutory requirements and needs a more careful assessment.

For the above reasons, a *Letter of Determination* can not be issued in accordance with Chapter 17.01 requirements, and specifically not supported under Chapter 17.01.030 *Conformity with General Plan Required* wherein an express conflict exists between the General Plan and the Zoning Regulations.

Active Mandamus Petition Has Not Resolved Property Title Issues

Active litigation continues concerning title to these subject properties through a Mandamus Petition, with City of Oakland and City Engineer as Respondents, and currently under review at the Alameda County Superior Court. This legal action is a direct result of the errors and omissions asserted when several erroneous *Certificates of Compliance* were issued and recorded by the unauthorized engineering staff at City of Oakland.

This matter has not been adjudicated and remains unresolved.

Additional to this litigation, but involving the same properties at issue, several open lawsuits exist which include the wrongful eviction of a lifetime Oakland resident, a black man, who was forcefully removed from this same property against his will and forced into homelessness. That Alameda County Superior Court case is still open and outstanding.

In addition, existing leasehold rights on the exact same APN parcels as shown on this project remain at issue and under remand order issued by the 9th Circuit court of appeals and being reviewed on appeal.

All in all, this property continues to have active litigation which could include the current ownership as a potential defendant.

Application Fails Statutory and City Oakland Planning Requirements

Notwithstanding the above, this application for conforming with general plan continues to be worth further discovery given the limited supporting documentation. The City of Oakland planning department encountered difficulties in producing the files which support this application even after numerous requests. The due process issues are outlined below, but the application appears to be deficient of the standard documentation required to gain approval for a letter of determination supporting that the project is consistent with the zoning and the General Plan.

Attached as Exhibit A is a list of the items which could not be located in review of this application – notwithstanding the multiple direct email requests for information and the Public Records Requests under CPRA case no. 20-1201 and 20-3681.

Developer Ignores Community Housing Updates

Developer ignores any reference to the Oakland Planning Code issued in 1997, subsequently updated by Supplement No. 31 updated June 5, 2019. Under this code, general plan ordinance under chapter 17 codifies

requirements for conformity with general plan(Sec 17.01.030), Exceptions to requirements for General Plan conformity(Sec 17.01.040), and how General Plan prevails over Planning Code and Subdivision Regulations.

This developer does not reference the *Guidelines for Determining Project Conformity with the General Plan and Zoning Regulations* adopted May 6, 1998 and amended March 15, 2011. Contained within this is *Zoning Code Bulletin No C-002* issued 4/20/2000 by CEDA Planning and Zoning. C.f. Tables 3 and 3A for allowable FAR intensity for each land use classification.

Three Story, 120,000 Square Feet Industrial “small commercial enterprise” does not harmonize with City of Oakland Mixed Housing Residential

Most alarming is how this applicant has submitted this 120,000 square foot monolith as a “small project” within this culturally diverse yet sensitive residential community. Worse, the applicant seeks to persuade the City planning staff that this property is a mixed bag of confused zoning and land use designations. This property is currently surrounded by CC-2, CIX-2, and RM-4 – each would allow for some form of housing to be built. However, the applicant failed to acknowledge this relevant fact. M-30 is a legacy zoning policy which has been in need of updating to bring consistent with the general plan based on the needs of the changing community .

However, this applicant surprisingly misplaced their analysis for the needs of this community. This property has always been directly linked to the success story surrounding the Fruitvale BART station redevelopment led by Unity Council and the leadership provided by Councilman Noel Gallo and Ignacio dela Fuente. This fragile community recalls the large industrial behemoths which were abandoned during economic downturns to the detriment of the community. This subject property sits between what was once the blighted Del Monte plant and the vacated Montgomery Ward site. In fact, this property sat in the shadows of the empty Montgomery Ward for decades. Years later and millions of City redevelopment resources to finally demolish to make way for a new thriving elementary school to serve the community.

Developer unaware of recent local housing initiatives

Further this applicant has apparently not been very familiar with the recent actions of the City of Oakland planning department. Primarily, the City of Oakland has recently organized the “Oakland at Home” or also known as the 17K/17K plan. This policy guide was issued as an emergency reaction to the housing crisis facing many of the Oakland communities.

How could the applicant draft a memorandum about General Plan consistency without comment about the General Plan’s Housing Element issued in 2014 for years 2015-2023. This report clearly specifies that all City of Oakland industrial zones were updated in July 2008. Furthermore, the report summarizes the outcomes of the residential zoning districts yielded from the multi-year community outcomes that brought the zoning standards up to the current General Plan.

In the updated General Plan, the City clearly highlights policies supporting retention of housing sites versus non residential uses. (See Policy 5.5, Housing Element 2015-2023, City of Oakland General Plan). Limit conversion of residential to non residential is the common theme.

Further, this report highlights the ABAG Regional Housing Needs allocation and calls for action to provide further residential development.[see Policy 1.2, Housing Element 2015-2023, City of Oakland General Plan).

Joshua Tree - Not Relevant to This 120,000 Square Foot Major Project

This developer and his attorneys seek to persuade the City of Oakland planning department with citations to case law that apparently they believe support their "small commercial enterprise" analysis. This developer and his attorney fail to distinguish the proper holding in the *Joshua Tree* case. The Court of Appeals reversed and changed the course based on the facts in this case. This case involved a small Dollar Tree retail location being built in Joshua Tree, California – a small rustic town of less than 10,000 residents in the high desert north of Palm Springs. This hardly compares to Oakland's metropolitan diversity of nearly 500,000 residents. This case reviews a Dollar Store retail building being proposed in a small town -- not a relevant case when comparing to a 120,000 SF three story warehouse in East Oakland's vibrant neighborhood.

City Oakland Planning Process Not Transparent or Consistent

I continue to be an interested party seeking information for these properties and possibly interrupting my property rights.

You will find multiple communications being sent to City Oakland planning, primarily Maurice Hackett, since 2017 seeking information concerning the subject properties.

No disclosure or handover to planner Greg Qwan when he apparently took over PLN 19160 and DET200076 -- even though i communicated with planner Maurice Hackett asking for any relevant information. As of this date, i have not been provided any communications with planner Greg Qwan.

Based on my inquiries, i was instructed to perform a Public Records Request to obtain information. I submitted an inquiry as of March 2, 2020, under public records request 20-1201, however City Records show March 12th deadline was bypassed and an insufficient response. Soon afterward, City Oakland came under government ordered lockdown on or about March 17, 2020. Your planning department did not provide the complete files related to my request.

The recent government emergency orders, primarily due to COVID 19 pandemic health crisis, further interrupts the public's due process to the advantage of this developer and detriment to the Fruitvale and Oakland community. .

For the reasons outlined above your *Letter of Determination* should deny conformance with General Plan, or alternatively, should not issue until further information is provided.

Respectfully,

/s/

Randall Whitney

Cc: City Councilman Noel Gallo,

Darin Ranelletti, Housing Security Policy, Office of Mayor

EXHIBIT A

1. Environmental Notice of Determination – EIR or Negative Declaration?
2. Planning File PLN 19160 [p1 RJR Memo]
3. RWQCB No Further Action Letter referenced by developer [T10000006483]
4. [pp2 RJR Memo]

5. 2001 CU 01-478 – Conditional Use Authorization – “City Oakland has already made a determination that expanded storage facility was consistent with Gen Plan classification
6. Email communications between Maurice Hackett and Gregory Qwan and developer agents
7. Requirements by City surveying engineer: G Har/ Grassick?(sp?)
8. Final Parcel Map recordation [“Specific Conditions of Approval” item 14, Final Map]
9. Three Dimensional Exhibits per Application for Determination [item. 5(m)]
10. Final responses to the Conditions of Approval for **TMP 10632** – [issued by Gil Hayes, City Surveyor on March 13, 2017] – these Conditions of Approval were issued when Developer sought to build condo units and obtained TMP 10632 in 2017, but then, a year later reapproached to change development scheme to build storage facility under the “lot line merger” application.
 - a. TM not on NGVD datum if cited benchmark used
 - b. City Monuments or Private Monuments to be installed per City requirements;

END//



Randall Whitney <whitwors@gmail.com>

**Letter of Determination per 17.01.070 re 2783 East 12th Street, Oakland CA
DET200076 PLN19160 TMP 10632 PLN 17003**

Randall Whitney <whitwors@gmail.com>

Wed, Jul 22, 2020 at 9:07 AM

To: "Gilchrist, William" <wgilchrist@oaklandca.gov>, "Merkamp, Robert" <RMerkamp@oaklandca.gov>, "Merkamp, Robert" <RMerkamp@oaklandnet.com>

Cc: "Payne, Catherine" <cpayne@oaklandca.gov>, "Manasse, Edward" <emanasse@oaklandca.gov>

Bcc: Jill Worsley <worsleyjill@hotmail.com>

Mssrs Gilchrist and Merkamp

I understand that the COVID19 pandemic has caused an interruption in communications, however, i still have not received a response from either of you from my earlier communication concerning this subject case.

Even given my finding your department's notice to be non-compliant and my submitting this formal letter of opposition, your department staff continue to ignore the requirements under our Oakland Municipal Code(OMC). Most importantly, rather than responding to my concerns raised, your staff approved the City of Oakland Public Notice to be reposted and broadcast *once again* as of July 3rd 2020 with another 10 day window notice period. However, your staff failed to provide notice to all registered property owners within a 300 foot radius of this proposed project. As of today, the City of Oakland sponsored Public Notice shows a new posting for July 3rd with an expiration date of July 13th - so apparently immediately after my prior complaint was logged. I still have not received any updated notices and have only received piecemeal responses to my prior inquiries which include several Public Records Requests under CPRA requirements.

Additionally, your staff disregarded my earlier notice that should have given pause to allowing this project to be prepared for another Public Notice period. Namely, i highlighted the key missing project issues in my prior email with an attached Exhibit A listing each of the missing items in the code compliance. Your staff should focus on the attached Exhibit A sent prior as this holds the very essential and key information that is required under OMC. If more information is needed please let me know.

I am sending this constructive notice to your planning staff to alert of my opposition as well as additional request to be notified for any and all planning activities related to these sites. This can either be considered as an interested party, neighboring property owner representative, existing owner and/or public records request. Nothing less than i expect to be provided notice about all activities related to the subject properties involved with this opposition.

Randall Whitney

[Quoted text hidden]

CITY OF OAKLAND



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA • SUITE 3315 • OAKLAND, CALIFORNIA 94612

Planning and Building Department
Bureau of Planning

(510) 238-3941
FAX (510) 238-6538
TDD (510) 238-3254

September 15, 2020

Mr. Scott Bovard
1001 42nd Street, Suite 200
Oakland, CA 94608

RE: Case File No. DET200076; 2783 E. 12th Street; APN: 025 069700714, 025 069700715, 025 069700204, 025 069700306

This letter is in response to your request for a General Plan Determination for the property located at 2783 E. 12th Street. Specifically, you submitted a Determination on whether the proposed expansion of a Warehousing, Storage, and Distribution Industrial Activity (mini-storage) in an M-30 Zone is consistent with the surrounding land uses, is appropriate for the area, and is in conformance with the written goals and policies of the General Plan notwithstanding the General Plan classification shown on the Land Use Diagram.

Background

The subject property is classified as Mixed Housing Type Residential per the Land Use and Transportation Element (LUTE) of the General Plan. The subject property is adjacent to property classified as Business Mix Type Industrial to the northwest, Institutional to the northeast (across East 12th Street and the BART right of way), Regional Commercial to the southeast (across 29th Avenue), and Mixed Housing Type Residential to the southwest (across a rail right of way).

The Mixed Housing Type Residential classification is intended to create, maintain, and enhance residential areas typically located near the City's major arterials and characterized by a mix of single family homes, townhouses, small multi-unit buildings, and neighborhood businesses where appropriate. Future development within this classification should be primarily residential in character, with live-work types of development, small commercial enterprises, schools, and other small scale, compatible civic uses possible in appropriate locations.

The Business Mix Type Industrial classification is intended to create, preserve and enhance areas of the City that are appropriate for a wide variety of business and related commercial and industrial establishments. High impact industrial uses including those that have hazardous materials on-site may be allowed provided they are adequately buffered from residential areas. High impact or large scale commercial retail uses should be limited to sites with direct access to the regional transportation system.

The Regional Commercial classification is intended to maintain, support and create areas of the City that serve as region-drawing centers of activity.

The subject property is zoned M-30 and is intended to create, preserve, and enhance areas containing a wide range of manufacturing, industrial, and related establishments, and is typically appropriate to areas providing a wide variety of sites with good rail or highway access.

The Bureau of Planning went through a citywide process from 2009-2011 to update the Planning Code with new zones that would conform to the General Plan classifications adopted in 1998. As part of this process some areas of the City zoned M-30 were not modified. As such, the Zoning classification for the subject property is not consistent with the General Plan classification as shown on the Land Use Diagram.

General Plan and Zoning Analysis

Planning Code Section 17.01.120 describes the process and actions to be taken or considered for proposals clearly not in conformance with the General Plan or the Land Use Diagram such as this project. Specifically, subsection C notes that:

"If permitted or conditionally permitted by Zoning Regulations, and where determined by the Planning Director to be consistent with the surrounding land uses and appropriate for the area, notwithstanding that the project may not be consistent with the General Plan classification shown on the Land Use Diagram. It is recognized that the General Plan land uses have been broadly applied to areas without parcel by parcel specificity and that the Land Use Diagram details are largely illustrative of the Plan's written goals and policies. Because the Diagram is generalized, and does not necessarily depict the accuracy of each parcel or very small land areas, a determination of project consistency can be requested of the Director of City Planning. The applicant must demonstrate to the satisfaction of the Planning Director that the predominant use, or average density, is different from that shown on the Diagram and is appropriate for the area in question and that the project is in conformance with the written goals and policies of the General Plan. Written notice of the Director's determination shall be sent to all property owners within three hundred (300) feet of the property involved. The Director's determination may be appealed to the City Council pursuant to Section 17.01.080B."

The predominant use in the area is different from the Mixed Housing Type classification.

As noted above, the project is permitted by the Zoning Regulations. The subject site is a corner lot containing mini-storage activities, which extend to the parcels to the northwest and into the parcels classified as Business Mix. Existing mini-storage uses are also present across the street to the southeast, on parcels classified as Regional Commercial. A large Goodwill headquarters and distribution and collection facility is also located across the street to the east on parcels classified as Community Commercial. Therefore, Warehouse, Storage, and Distribution Industrial Activities are the predominant use in the area, which is different than the Mixed Housing Type classification. The closest activities consistent with the Mixed Housing Type classification are located: to the southwest and separated from the subject property by an existing railway and a large Oakland Animal Services facility; to the northeast and separated from the subject property by East 12th Street, the existing BART right of way, an Institutional Civic activity, International Boulevard, and Commercial Retail activities; and to the east and separated from the subject property by East 12th Street, the existing BART right of way, and the Goodwill facility. The existing railway and BART tracks physically separate the subject property from all proximate activities that are consistent with the Mixed Housing Type Classification. Therefore, the predominant use in the area is more consistent with the adjacent Business Mix and Regional Commercial classifications, and is different than the Mixed Housing Type classification.

The project is in conformance with the written goals and policies of the General Plan.

Furthermore, the LUTE goals and policies that support the proposal, include but are not limited to the following:

Industry and Commerce Goals: "Ensure that the Oakland community has access to a wide variety of goods and services meeting daily and long term needs" and "Recognize and support industrial and commercial land use as a primary vehicle for the generation of the economic support required for the attainment of the physical, social, and community service goals of the Oakland General Plan."

Objective I/C2: "Maximize the usefulness of existing abandoned or underutilized industrial buildings and land".

These goals and policies are in line with the adjacent Business Mix and Regional Commercial General Plan designations.

Determination

Based on the subject property's location in an mostly industrial area, nearby uses including mini-storage, and the above General Plan policies, the Zoning Manager as designee of the Planning Director has determined that mini-storage located at 2783 E. 12th Street is consistent with the surrounding land uses and appropriate for the area, and therefore consistent with the overall objectives of the General Plan, notwithstanding that the project may not be consistent with the General Plan classification shown on the Land Use Diagram.

If you, or any interested party, seeks to challenge this decision, an appeal **must** be filed by no later than ten (10) calendar days from the date of this letter, by **4:00 pm on September 25, 2020**. An appeal shall be on a form provided by the Bureau of Planning of the Planning and Building Department, and submitted via email to: (1) **Gregory Qwan, Planner II**, at gqwan@oaklandca.gov, (2) **Robert Merkamp, Zoning Manager**, at Rmerkamp@oaklandca.gov, and (3) **Catherine Payne, Development Planning Manager**, at Cpayne@oaklandca.gov. The appeal form is available online at <https://www.oaklandca.gov/documents/appeal-application-form>. The appeal shall state specifically wherein it is claimed there was error or abuse of discretion by the Zoning Manager or decision-making body or wherein the decision is not supported by substantial evidence. Applicable appeal fees in the amount of **\$3,638.72** in accordance with the City of Oakland Master Fee Schedule must be paid within five business days of filing the appeal. Failure to timely appeal (or to timely pay all appeal fees) will preclude you, or any interested party, from challenging the City's decision in court. The appeal itself must raise each and every issue that is contested, along with all the arguments and evidence in the record which supports the basis of the appeal; failure to do so may preclude you, or any interested party, from raising such issues during the appeal and/or in court. However, the appeal will be limited to issues and/or evidence presented to the Zoning Manager prior to the close of the previously noticed public comment period on the matter. For further information, see the attached Interim City Administrator Emergency Order No. 3 and Interim Procedures for Appeals of City Planning Bureau Decisions for Development Projects.

If the ten (10) day appeal period expires without an appeal, you are expected to contact **Gregory Qwan** in order to receive the signed Notice of Exemption (NOE) certifying that the project has been found to be exempt from CEQA review. It is your responsibility to record the NOE and the Environmental Declaration at the Alameda County Clerk's office at 1106 Madison Street, Oakland, CA 94612, at a cost of **\$50.00** made payable to the Alameda County Clerk. Please bring the original NOE related documents and five copies to the Alameda County Clerk, and return one date stamped copy to the Bureau of Planning, to the attention of **Gregory Qwan, Planner II**. Pursuant to Section 15062(d) of the California Environmental Quality Act (CEQA) Guidelines, recordation of the NOE starts a 35-day statute of limitations on court challenges to the approval under CEQA. The NOE will also be posted on the City website at <https://aca.accela.com/OAKLAND/Welcome.aspx>.

If you have any questions, please contact the case planner, **Gregory Qwan, Planner II** at (510) 238-2958 or gqwan@oaklandca.gov, however, this does not substitute for filing of an appeal as described above.

Very Truly Yours,



for
WILLIAM GILCHRIST
Planning Director

cc: Randall Whitney, whitwors@gmail.com
Michael Branson, MBranson@oaklandcityattorney.org

EXHIBIT A5



Randall Whitney <whitwors@gmail.com>

DET200076 Appeal - Planning Dept - City of Oakland

6 messages

Randall Whitney <whitwors@gmail.com>

Mon, Sep 21, 2020 at 7:47 AM

To: "Qwan, Gregory" <gqwan@oaklandca.gov>, gqwan@oaklandnet.com

Bcc: "Chu, Hartini" <hchu@oaklandca.gov>, Jill Worsley <worsleyjill@hotmail.com>

Mr Qwan

In response to the Planning Director's Letter of Determination, your email is listed as the contact person for appeal procedure.

Please help me understand a few questions on procedure:

How do I file a timely appeal with Planning Dept during this Covid19 pandemic since the City of Oakland offices remain closed?

Also, Where do I submit this appeal to ensure a timely delivery?

If I have questions about the appeal fee being charged, who should I contact within City of Oakland?

Please let me know if I should call another staff member concerning the above.

thank you for any assistance.

Randall

--

Randall Whitney
Thomas Capital Investments
P.O. Box 4186
1818 Mt Diablo Blvd
Walnut Creek CA 94596
(925) 298-5929

“Your time is limited, so don't waste it living someone else's life...”

--**Steve Jobs**, Stanford graduation commencement speech

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Qwan, Gregory <GQwan@oaklandca.gov>

Mon, Sep 21, 2020 at 12:01 PM

To: Randall Whitney <whitwors@gmail.com>

Mr. Whitney,

Please see the attached determination letter for DET200076 with detailed appeal instructions on page 3, which cover the required forms, fees, and the persons to submit the appropriate materials.

For questions about fees, you would contact the Finance Department. You might try calling the City Cashier (510) 238-4774 and asking about the appropriate person in the Finance Department that can help you.

Best regards,

Greg

From: Randall Whitney <whitwors@gmail.com>
Sent: Monday, September 21, 2020 7:48 AM
To: Qwan, Gregory <GQwan@oaklandca.gov>; Qwan, Gregory <GQwan@oaklandca.gov>
Subject: DET200076 Appeal - Planning Dept - City of Oakland

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

[Quoted text hidden]

 **Determination Letter - 2783 E. 12th St. 09152020.pdf**
264K

Randall Whitney <whitwors@gmail.com>
To: "Chu, Hartini" <hchu@oaklandca.gov>

Mon, Sep 21, 2020 at 3:11 PM

Ms Chu.

I believe I followed your instruction. Greg Qwan now asks me to contact you again.

pls see his email below.

Randall
[Quoted text hidden]

 **Determination Letter - 2783 E. 12th St. 09152020.pdf**
264K

Chu, Hartini <HChu@oaklandca.gov>
To: Randall Whitney <whitwors@gmail.com>

Mon, Sep 21, 2020 at 3:14 PM

Please call me 510-238-6433

[Quoted text hidden]

Randall Whitney <whitwors@gmail.com>
To: "Qwan, Gregory" <GQwan@oaklandca.gov>

Mon, Sep 21, 2020 at 3:18 PM

Greg

The planning director letter states the following:

" ... Applicable appeal fees in the amount of \$3,638.72 **in accordance with the City of Oakland Master Fee Schedule...**"

Can you please identify where within the Master Fee Schedule that this amount is supported?

I have reviewed the most recently adopted Master Fee Schedule and could not locate this appeal fee.

Randall

[Quoted text hidden]

Qwan, Gregory <GQwan@oaklandca.gov>
To: Randall Whitney <whitwors@gmail.com>

Mon, Sep 21, 2020 at 3:22 PM

Mr. Whitney,

For questions related to the fees/master fee schedule, you would work with the Finance Department.

Best regards,

Greg

From: Randall Whitney <whitwors@gmail.com>
Sent: Monday, September 21, 2020 3:18:08 PM
To: Qwan, Gregory <GQwan@oaklandca.gov>
Subject: Re: DET200076 Appeal - Planning Dept - City of Oakland

[Quoted text hidden]



Randall Whitney <whitwors@gmail.com>

**Case File No DET200076 City Oakland Public Notice at 2783 East 12th Street
Oakland CA**

2 messages

Randall Whitney <whitwors@gmail.com>
To: gqwan@oaklandca.gov

Wed, Jun 24, 2020 at 12:24 PM

Mr Qwan

re Case File No DET200076 City Oakland Public Notice at 2783 East 12th Street Oakland CA

Please provide me the current status on the subject case file referenced above - i noticed the public notice posted on a fence near this property.

Randall

--

Randall Whitney
Thomas Capital Investments
P.O. Box 4186
1818 Mt Diablo Blvd
Walnut Creek CA 94596
(925) 298-5929

“Your time is limited, so don't waste it living someone else's life...”
--**Steve Jobs**, Stanford graduation commencement speech

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Randall Whitney <whitwors@gmail.com>
To: gqwan@oaklandnet.com

Wed, Jun 24, 2020 at 12:26 PM

FYI -- this is the email shown at the base of your email communications - however, the City Oakland public notice held a different email ...i sent to both.

Randall

[Quoted text hidden]



Randall Whitney <whitwors@gmail.com>

**Letter of Determination per 17.01.070 re 2783 East 12th Street, Oakland CA
DET200076 PLN19160 TMP 10632 PLN 17003**

Qwan, Gregory <GQwan@oaklandca.gov>
To: Randall Whitney <whitwors@gmail.com>

Mon, Sep 28, 2020 at 12:06 PM

Mr. Whitney,

Questions related to fees should be directed to the City Cashier/Finance, by calling (510) 238-4774. However, if the fees stated in the Determination Letter for 2783 E. 12th St. (DET200076) are not paid in full, the appeal will be rejected and resubmittal of an appeal for this case would not be allowed.

Best regards,

Gregory Qwan, Planner II | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa Plaza, Suite 2114 | Oakland, CA 94612 | Phone: (510) 238-2958 | Fax: (510) 238-4730 | Email: gqwan@oaklandca.gov | Website: www.oaklandnet.com/planning

From: Randall Whitney <whitwors@gmail.com>

Sent: Monday, September 28, 2020 12:01 PM

To: Qwan, Gregory <GQwan@oaklandca.gov>

Subject: Re: Letter of Determination per 17.01.070 re 2783 East 12th Street, Oakland CA DET200076 PLN19160 TMP 10632 PLN 17003

I reviewed the invoice you sent earlier today.

You sent your support for the invoiced appeal fee of **\$3,638.72** with three(3) separate charges:

1. Appeal Filing Fee of \$2,011 -- this amount is not shown within the Master Fee Schedule
2. Notification Fee of \$1,160 -- this appears to be sourced from Master Fee Schedule under Planning at #17 but includes charges for notice to neighbors within 300 feet of project? Why is appellant burdened with this charge?
3. Record Management and Tech Enhance Fee of \$467.72 -- this fee is not shown in Master Fee schedule. Can you cite under what authority City Oakland charges appellants for a record management and tech enhancement?

[Quoted text hidden]

Randall

[Quoted text hidden]

EXHIBIT A6



Randall Whitney <whitwors@gmail.com>

Appeal - DET20076

Chu, Hartini <HChu@oaklandca.gov>
To: "Qwan, Gregory" <GQwan@oaklandca.gov>

Fri, Oct 2, 2020 at 2:14 PM

Good afternoon Gregory,

Attached is Appeal Document DET200076-A01. Payment has been received in full. Please let me know if I shall route this document to a different staff. Thank you.

Respectfully submitted,

Hartini Chu

Planning & Building Department

Bureau Operations & Administration

510-238-6433

 **DET200076-A01 Appeal.pdf**
5646K

EXHIBIT A7



Randall Whitney <whitwors@gmail.com>

**Letter of Determination per 17.01.070 re 2783 East 12th Street, Oakland CA
DET200076 PLN19160 TMP 10632 PLN 17003**

Merkamp, Robert <RMerkamp@oaklandca.gov>

Wed, Aug 26, 2020 at 1:01 PM

To: Randall Whitney <whitwors@gmail.com>, "Klein, Heather" <HKlein@oaklandca.gov>

Cc: "Payne, Catherine" <CPayne@oaklandca.gov>, "Gilchrist, William" <WGilchrist@oaklandca.gov>, "Manasse, Edward" <EManasse@oaklandca.gov>

Mr. Whitney,

You're correct, neither Heather, Catherine or I are involved in your PRR. You should contact Tiffany Curotto, who heads that unit, for a status update. She can be reached at tjimenez@oaklandca.gov. At this point we haven't taken action on the determination. When we do, I'll ensure you receive a copy of the determination letter when it goes out.

Robert

Robert D. Merkamp, Zoning Manager | City of Oakland | Bureau of Planning | [250 Frank H. Ogawa, Suite 2214 | Oakland, CA 94612](https://www.oaklandca.gov/2214/Oakland-CA-94612) | Phone: (510) 238-6283 | Fax: (510) 238-4730 | Email: rmerkamp@oaklandca.gov | Website: www.oaklandca.gov/departments/planning-and-building

From: Randall Whitney <whitwors@gmail.com>

Sent: Tuesday, August 25, 2020 4:25 PM

To: Klein, Heather <HKlein@oaklandca.gov>

Cc: Payne, Catherine <CPayne@oaklandca.gov>; Merkamp, Robert <RMerkamp@oaklandca.gov>

[Quoted text hidden]

[Quoted text hidden]



Randall Whitney <whitwors@gmail.com>

**Letter of Determination per 17.01.070 re 2783 East 12th Street, Oakland CA
DET200076 PLN19160 TMP 10632 PLN 17003**

Randall Whitney <whitwors@gmail.com>
To: "Merkamp, Robert" <RMerkamp@oaklandca.gov>

Fri, Oct 23, 2020 at 3:53 PM

Robert

You mentioned about the appeal being processed through both City of Oakland Planning Commission as well as City Council. However, i am unable to find any procedural guidelines that highlight this dual review standard. Please summarize the actual process and/or cite to where i could locate more information about the procedural logistics involved with this type of appeal.

I have not received any response to my prior emails asking for clarification to this appeal fee. Your earlier email attached the "Counter Guide to Master Fee Schedule", and i reviewed line 292(as you suggested) as well as line 289 -- which seems most applicable as the "Appeal of Determination of General Plan Conformity". However, in the City of Oakland *Master Fee Schedule* (effective July 1 2020) i am not able to find or support the appeal fees charged as shown in the Counter Guide you provided. My review shows \$935 charged while you show \$2011. I am also curious why the appeal would include a Notice requirement(charging \$1160) and any other administrative charges. These charges seem to be calculated into the appeal cost.

Lastly, i was told that this appeal has been under some type of review by either senior management or by City of Oakland attorney's office - please clarify the current status and if any other discretionary review awaits.

On Thu, Oct 1, 2020 at 10:18 AM Merkamp, Robert <RMerkamp@oaklandca.gov> wrote:

Mr. Whitney,

Unfortunately the Master Fee Schedule is not organized in a manner that all the component fees for a type of request, such as an appeal, are all grouped as one line item. I don't know why it's done that way and it's not something I can do anything about. Zoning creates a separate sheet that takes the fees from the Master Fee Schedule and arranges them so they're more understandable. I am providing this to you. The fee you're being assessed is I believe is on line 292 as you're appealing a Determination of General Plan Conformity. That includes the report fee, the public notice fee and then a surcharge for records management and technology enhancement which are assessed for all permits.

Your appeal is more expensive than others as the Planning Code requires this appeal to go both through Planning Commission and City Council. Most other appeals are simply one step, not two.

Robert D. Merkamp, Zoning Manager | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 2214 | Oakland, CA 94612 | Phone: (510) 238-6283 | Fax: (510) 238-4730 | Email: rmerkamp@oaklandca.gov | Website: www.oaklandca.gov/departments/planning-and-building

From: Chu, Hartini <HChu@oaklandca.gov>

Sent: Thursday, October 1, 2020 10:09 AM

To: Randall Whitney <whitwors@gmail.com>

Cc: Merkamp, Robert <RMerkamp@oaklandca.gov>; Merid, Albert <AMerid@oaklandca.gov>; Rex, Diana <DRex@oaklandca.gov>

Subject: RE: FW: Letter of Determination per 17.01.070 re 2783 East 12th Street, Oakland CA DET200076 PLN19160 TMP 10632 PLN 17003

Mr. Whitney,

Cashier Unit received a check of \$935.00 and per Zoning Fee assessment, total Appeal fee due is \$3,638.72, your check is currently on **hold** and will be processed once additional check is received. You also may pay by Credit Card by calling Planning & Building Cashier line 510-238-4774.

My apologies that I am not able to answer your fee question as Cashier Unit only is authorized to process payment.

Thank you,

Hartini

From: Randall Whitney [mailto:whitwors@gmail.com]

Sent: Thursday, October 1, 2020 9:48 AM

To: Chu, Hartini <HChu@oaklandca.gov>

Subject: Re: FW: Letter of Determination per 17.01.070 re 2783 East 12th Street, Oakland CA DET200076 PLN19160 TMP 10632 PLN 17003

As i stated, i am ready willing and able to make a full payment of the appeal fee -- as supported by the July 2020 City Council approved Master Fee Schedule. I am not negotiating to pay a discounted fee.

Mr Merkamp highlights: "The fees are from the Master Fee Schedule which is adopted by City Council"

If this is true, please specify whereabouts these fees are being sourced. I did a detailed search with my accountant and we could not locate any of the charges indicated by Mr Qwan's prior email - as i stated in my email response.

IF the appeal fee is determined by some formula, please provide me the authorizing policy or procedure which highlights that an appeal will be charged on some assessment based on several components involving the case. I am unable to locate such a policy, procedure or guideline within City of Oakland ordinances.

thank you for your assistance in this matter.

Randall

On Thu, Oct 1, 2020 at 9:39 AM Chu, Hartini <HChu@oaklandca.gov> wrote:

Mr. Whitney,

Please see Zoning Manager, Robert Merkamp' s response below.

Thank you,

Hartini

From: Merkamp, Robert
Sent: Thursday, October 1, 2020 9:13 AM
To: Chu, Hartini <HChu@oaklandca.gov>
Cc: Qwan, Gregory <GQwan@oaklandca.gov>
Subject: Re: Letter of Determination per 17.01.070 re 2783 East 12th Street, Oakland CA DET200076 PLN19160 TMP 10632 PLN 17003

The fees are from the Master Fee Schedule which is adopted by City Council. I don't think there's anyone for him to argue with because the fees are non-negotiable and staff has no authority to alter them for any reason. There is a specialized procedure for this type of appeal as it needs hearings before both Planning Commission and City Council. There isn't a mechanism for him to get a reduced fee.

Robert D. Merkamp, Zoning Manager | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 2214 | Oakland, CA 94612 | Phone: (510) 238-6283 | Fax: (510) 238-4730 | Email: rmerkamp@oaklandca.gov | Website: www.oaklandca.gov/departments/planning-and-building

From: Chu, Hartini <HChu@oaklandca.gov>
Sent: Thursday, October 1, 2020 8:55 AM
To: Merkamp, Robert <RMerkamp@oaklandca.gov>
Cc: Qwan, Gregory <GQwan@oaklandca.gov>
Subject: RE: Letter of Determination per 17.01.070 re 2783 East 12th Street, Oakland CA DET200076 PLN19160 TMP 10632 PLN 17003

Robert,

Customer is challenging the fee, I don't have the authority nor knowledge to answer it. To whom should I direct him? Please advise!

Hartini

From: Merkamp, Robert
Sent: Thursday, October 1, 2020 8:52 AM
To: Chu, Hartini <HChu@oaklandca.gov>
Cc: Qwan, Gregory <GQwan@oaklandca.gov>
Subject: Re: Letter of Determination per 17.01.070 re 2783 East 12th Street, Oakland CA DET200076 PLN19160 TMP 10632 PLN 17003

Yes, he was directed to contact the cashiering unit to pay his fee on his appeal. The case number is DET200076-A01. Can he do that by phone and credit card?

Robert D. Merkamp, Zoning Manager | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 2214 | Oakland, CA 94612 | Phone: (510) 238-6283 | Fax: (510) 238-4730 | Email: rmerkamp@oaklandca.gov | Website: www.oaklandca.gov/departments/planning-and-building

From: Chu, Hartini <HChu@oaklandca.gov>
Sent: Thursday, October 1, 2020 8:50 AM
To: Merkamp, Robert <RMerkamp@oaklandca.gov>
Cc: Qwan, Gregory <GQwan@oaklandca.gov>
Subject: FW: Letter of Determination per 17.01.070 re 2783 East 12th Street, Oakland CA DET200076 PLN19160 TMP 10632 PLN 17003

Good morning Robert,

Customer was being referred to Cashier Unit for fee question by Gregory Qwan. I have no knowledge nor authority to review this. Please advise.

Thank you,

Hartini

From: Randall Whitney [<mailto:whitwors@gmail.com>]
Sent: Monday, September 28, 2020 12:01 PM
To: Qwan, Gregory <GQwan@oaklandca.gov>
Subject: Re: Letter of Determination per 17.01.070 re 2783 East 12th Street, Oakland CA DET200076 PLN19160 TMP 10632 PLN 17003

I reviewed the invoice you sent earlier today.

You sent your support for the invoiced appeal fee of **\$3,638.72** with three(3) separate charges:

1. Appeal Filing Fee of \$2,011 -- this amount is not shown within the Master Fee Schedule
2. Notification Fee of \$1,160 -- this appears to be sourced from Master Fee Schedule under Planning at #17 but includes charges for notice to neighbors within 300 feet of project? Why is appellant burdened with this charge?
3. Record Management and Tech Enhance Fee of \$467.72 -- this fee is not shown in Master Fee schedule. Can you cite under what authority City Oakland charges appellants for a record management and tech enhancement?

Please clarify the above charges prior to October 2nd 2020. I am disputing this appeal fee as either incorrect or unsupported by the Master Fee Schedule published by City of Oakland and adopted by City Council as of July 2020. I have sent payment for \$935 appeal fee as shown in the Master Fee Schedule.



Randall Whitney <whitwors@gmail.com>

**Letter of Determination per 17.01.070 re 2783 East 12th Street, Oakland CA
DET200076 PLN19160 TMP 10632 PLN 17003**

Merkamp, Robert <RMerkamp@oaklandca.gov>

Thu, Oct 15, 2020 at 1:53 PM

To: Randall Whitney <whitwors@gmail.com>

Cc: "Klein, Heather" <HKlein@oaklandca.gov>, "Qwan, Gregory" <GQwan@oaklandca.gov>

Randall,

Yes, you're looking at the correct section, 17.01.080B that you sent me in a prior email.

From the City's perspective, an appeal is indeed a record and these fees are collected on all submitted records. We work on it, review it, produce documents such as staff reports going along with it and then store it as a record, both physical and digital, forever. Therefore, your appeal, like every other appeal that gets applied for, gets charged the Records Management and Technology Enhancement fees that are customary for all zoning matters. This is correctly shown on the fee schedule I provided you and is consistent with every other appeal we've charged for.

Robert D. Merkamp, Zoning Manager | City of Oakland | Bureau of Planning | [250 Frank H. Ogawa, Suite 2214 | Oakland, CA 94612](#) | Phone: (510) 238-6283 | Fax: (510) 238-4730 | Email: rmerkamp@oaklandca.gov | Website: www.oaklandca.gov/departments/planning-and-building

From: Randall Whitney <whitwors@gmail.com>

Sent: Wednesday, October 14, 2020 3:48 PM

To: Merkamp, Robert <RMerkamp@oaklandca.gov>

[Quoted text hidden]

[Quoted text hidden]



Randall Whitney <whitwors@gmail.com>

**Letter of Determination per 17.01.070 re 2783 East 12th Street, Oakland CA
DET200076 PLN19160 TMP 10632 PLN 17003**

Randall Whitney <whitwors@gmail.com>

Mon, Sep 28, 2020 at 12:00 PM

To: "Qwan, Gregory" <GQwan@oaklandca.gov>

Bcc: "Chu, Hartini" <hchu@oaklandca.gov>

I reviewed the invoice you sent earlier today.

You sent your support for the invoiced appeal fee of **\$3,638.72** with three(3) separate charges:

1. Appeal Filing Fee of \$2,011 -- this amount is not shown within the Master Fee Schedule
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Please clarify the above charges prior to October 2nd 2020. I am disputing this appeal fee as either incorrect or unsupported by the Master Fee Schedule published by City of Oakland and adopted by City Council as of July 2020. I have sent payment for \$935 appeal fee as shown in the Master Fee Schedule.

Randall

[Quoted text hidden]

EXHIBIT A8

Zoning Permit Fees Schedule

Counter Guide to Master Fee Schedule

Effective July 1, 2020 - June 30, 2021

I. Explanation of Fees

RPT	Basic application or "report" fee. This includes analysis, review, correspondence, and the preparation of reports by Planning Bureau staff
NOT	Basic notification fee. This includes the preparation of notification maps, public notice posters and mailers, and the mailing and posting of public notices
ER EXMT	Environmental review (CEQA) fee for projects which are determined to be statutorily or categorically exempt pursuant to Sections 15260-15285 and 15300-15332 of the State CEQA guidelines.
ER IS/EIR	Environmental review (CEQA) fee for projects which are not statutorily or categorically exempt and require the preparation of an Initial Study (IS) and/or an Environmental Impact Report (EIR).
ER NOT	Additional notification fees for projects which require the preparation of an Initial Study and/or an EIR.
NEW CONST. PLAN CK	Building Bureau fee for site plan review of projects involving a wholly new constructed structure, or additions that are equal to or greater than the footprint of the existing structure. Based on New Construction up to \$200,000.
14.75% TECH/REC FEE	Technology Enhancement / Records Management Fee to support permit tracking equipment and software, and, records retention equipment, software, and facilities. This fee is a percentage calculation based on the other fixed fees.
ENG SVC	DOT Engineering Services fee for engineering review of projects involving subdivisions, lot line adjustments, and easements.
NOHASP FEE	Recovery fee to recoup the cost of preparation of the North Oakland Hills Area Specific Plan (NOHASP) and related Environmental Impact Report (EIR).
Minor Permit	Any administrative level Conditional Use Permit / CUP, Variance, or Regular Design Review / DR application.
Major Permit	Any Planning Commission level CUP, Variance, or Regular Design Review application.
SVY SVC	DOT Surveying Services fee for reviewing Tentative Maps (Parcel Map, Tract Map, Condominium Map, Air Rights, etc.) for compliance with the Subdivision Map Act and City of Oakland Title 16 requirements.

II. Administrative Permits, Major and Minor

Application for 1 minor permit	RPT	NOT	ER EXMT	PLAN CK	14.75% TECH/REC	Sub Total	Sign Deposit	Grand Total
ER Exempt	1523.00	1160.00	366.00	n/a	449.73	3498.73	50.00	3548.73
ER Exempt (Sec. 15332)	1523.00	1160.00	1,078.00	n/a	554.75	4315.75	50.00	4365.74
Initial Study and/or EIR required*	1523.00	1160.00	0	n/a	395.74	3,078.75	50.00	3128.75

* See Section VII for calculations of EIR and IS fees

Application for 2 minor permits	RPT	NOT	ER EXMT	PLAN CK	14.75% TECH/REC	Sub Total	Sign Deposit	Grand Total
ER Exempt	3046.00	1160.00	366.00	n/a	674.37	5246.37	50.00	5296.37
ER Exempt (Sec. 15332)	3046.00	1160.00	1078.00	n/a	779.39	6063.39	50.00	6113.39
Initial Study and/or EIR required*	3046.00	1160.00		n/a	620.39	4826.39	50.00	4876.39

Application for 3 minor permits	RPT	NOT	ER EXMT	PLAN CK	14.75% TECH/REC	Sub Total	Sign Deposit	Grand Total
ER Exempt	4569.00	1160.00	366.00	n/a	899.01	6994.01	50.00	7044.01
ER Exempt (Sec. 15332)	4569.00	1160.00	1078.00	n/a	1004.03	7811.03	50.00	7861.03
Initial Study and/or EIR required*	4569.00	1160.00		n/a	845.03	6574.04	50.00	6624.04

* See Section VII for calculations of EIR and IS fees

Application for 1 major permit (CUP or Variance)	RPT	NOT	ER EXMT	PLAN CK	14.75% TECH/REC	Sub Total	Sign Deposit	Grand Total
ER Exempt	3082.00	1160.00	366.00	n/a	679.68	5287.68	50.00	5337.68
ER Exempt (Sec. 15332)	3082.00	1160.00	1078.00	n/a	784.70	6104.71	50.00	6154.71
Initial Study and/or EIR required*	3082.00	1160.00		n/a	625.70	4867.70	50.00	4917.70

Application for 1 major permit (Design Review)	RPT	NOT	ER EXMT	PLAN CK	14.75% TECH/REC	Sub Total	Sign Deposit	Grand Total
ER Exempt	2781.00	1160.00	366.00	n/a	635.28	4942.29	50.00	4992.29
ER Exempt (Sec. 15332)	2781.00	1160.00	1078.00	n/a	740.30	5759.31	50.00	5809.31
Initial Study and/or EIR required*	2781.00	1160.00		n/a	581.30	4522.30	50.00	4572.30

ER Exempt (Sec. 15332)	5721.00	1160.00	1078.00	0.02	14.75%	**
Initial Study and/or EIR required*	5721.00	1160.00	1078.00	0.02	14.75%	**

* See Section VII for calculations of EIR and IS fees

** Fees must be calculated based on site area and floor area proposed.

X. Rezoning & General Plan/GP Amendments

Rezoning	RPT	NOT	ER EXMT	14.75% TECH/REC	GRAND TOTAL
ER Exempt (all others)	4852.00	1160.00	366.00	940.76	7318.77
ER Exempt (Sec. 15332)	4852.00	1160.00	1078.00	1045.78	8135.79
Initial Study and/or EIR required*	4852.00	1160.00	1078.00	1045.78	8135.78

GP Amendment	RPT	NOT	ER EXMT	14.75% TECH/REC	GRAND TOTAL
ER Exempt (all others)	5736.00	1160.00	366.00	1071.15	8333.15
ER Exempt (Sec. 15332)	5736.00	1160.00	1078.00	1176.17	9150.17
Initial Study and/or EIR required*	5736.00	1160.00	1078.00	1176.17	9150.17

* See Section VII for calculations of EIR and IS fees

XI. Development Agreements

	RPT	NOT	14.75% TECH/RE	GRAND TOTAL
Application	12074.00	1160.00	1952.02	15186.03
Annual Review	3518.00		518.91	4036.91

XII. Tree Permits

	Zoning	PWA	PWA - PER TREE	HOURLY RATE	14.75% TECH/REC	GRAND TOTAL
1-10 Trees	0.00	503.53			74.27	577.80
11-100 Trees	0.00	503.53	10.00		*	*
More than 100 Trees	0.00	503.53	10.00	174.00/HR	*	*

* Total fee must be calculated based on the number of hours

XIII. Creek Protection Permits

	RPT	NOT	ER EXMT	14.75% TECH/REC	GRAND TOTAL
Creek Determination	782.42			115.41	897.83
Category I (No Charge)	0.00			0.00	0.00
Category II	146.00			21.54	167.54
Category III - ER Exempt (all others)	716.00	1160.00	366.00	330.70	2572.70
Category III - ER Exempt (Sec. 15332)	716.00	1160.00	1078.00	435.72	3389.73
Category III - ER Required*	716.00	1160.00		276.71	2152.71
Category IV - ER Exempt (all others)	1398.00	1160.00	366.00	431.29	3355.29
Category IV - ER Exempt (Sec. 15332)	1398.00	1160.00	1078.00	536.31	4172.32
Category IV - ER Required*	1398.00	1160.00		377.31	2935.31
Each additional hour of staff work over 8 hrs (Cat IV only)	160.00			23.60	183.61

* Separate ER application is required (see Section VII).

XIV. Appeals

Appeal of Zoning Administrator decision	RPT	NOT	14.75% TECH/REC	GRAND TOTAL
To Planning Commission	935.00	1160.00	309.01	2404.01

Appeal of Planning Commission decision	RPT	NOT	14.75% TECH/REC	GRAND TOTAL
To City Council	1180.00	1160.00	345.15	2685.15

	RPT	NOT	14.75% TECH/REC	GRAND TOTAL
ER Appeals (to Planning Commission/PC or City Council)				
Appeal of ER Determination	935.00	1160.00	309.01	2404.01
Appeal of Negative Declaration	935.00	1160.00	309.01	2404.01
Appeal of Determination that EIR is required	1180.00	1160.00	345.15	2685.15
Request for Notification for Environmental Determination/Review/Challenge/Appeal		1160.00	171.10	1331.10

	RPT	NOT	14.75% TECH/REC	GRAND TOTAL
Creek Protection Permit				
Appeal of Creek Determination (Watershed) 4 hours	2417.15	1160.00	527.63	4104.78
Appeal of Creek Determination to Building Official	559.00	1160.00	253.55	1972.55
Appeal to the planning Commission	935.00	1160.00	309.01	2404.01

XIV. Appeals, continued

	RPT	NOT	14.75% TECH/REC	GRAND TOTAL
Determination of General Plan Conformity				
Appeal of Determination	2011.00	1160.00	467.72	3638.72

	RPT	NOT	14.75% TECH/REC	GRAND TOTAL
Revocations and Imposing/Amending Conditions				
To Planning Commission or City Council	2011.00	1160.00	467.72	3638.72

	RPT	NOT	14.75% TECH/REC	GRAND TOTAL
Revocation of Deemed Approved Status to City Council				
To City Council		1160.00	171.10	1331.11

	RPT	NOT	14.75% TECH/REC	GRAND TOTAL
Billboard Amortization				
Appeal of Billboard amortization	1811.00	1160.00	438.22	3409.22

XV. Small Applications

	RPT	NOT	14.75% TECH/REC	Deposit	GRAND TOTAL
Pre-Applications					
Standard Pre-application (0-3 hours)	835.00		123.16		958.16
Additional hourly fee for over 3 hours	257.00		37.91		294.92
Major Pre-application	3082.00		454.60		3536.61
Letters/Other					
Standard, no research needed	46.00		6.79		52.79
Research Required - hourly rate (1/2 hr min)	186.00		27.44		213.44
Written Determination by ZA	403.00		59.44		462.44
GP Determination by Director - hourly rate	1132.00	1160.00	338.07		2630.07

Time Extensions & other small applications					
Time Extension of approved permit	330.00		48.68		378.68
Time Extension requiring Planning Commission hearing	1286.00	1160.00	360.79	50.00	1678.31
Request for OT Plan Check - hourly rate	350.00		51.63		401.63
Revision Plan Check - hourly rate	257.00				*
Zoning Clearance for Business License	51.00		7.52		58.52

XVI. Mills Act Applications

	RPT	14.75% TECH/RE C	GRAND TOTAL
Application	524.00	77.29	601.29
Inspection	245.00	36.15	281.15

XVII. Documents and Subscriptions

EXHIBIT A9

EXHIBIT A9



City of Oakland

City of Oakland
Transaction Receipt# 5323192
Record ID: DET200076-A01

250 FRANK H. OGAWA PLAZA
OAKLAND, CALIFORNIA 94612-2031

Date: 10/02/2020

ADDRESS: 2783 E 12TH ST, Oakland, CA 94601

PARCEL: 025 069700204

DESCRIPTION	AMOUNT DUE	TRAN AMOUNT
Notification Fee	\$ 1,160.00	\$ 935.00
	\$ 1,160.00	\$ 935.00

PAYMENT TYPE	PAYEE	PAYMENT AMOUNT	AMOUNT NOT ALLOCATED
Check	THOMAS CAPITAL INC	\$ 935.00	\$ 0.00
1173710-3			
Comments: THOMAS CAPITAL INC			
		\$ 935.00	\$ 0.00

TOTAL TRANSACTION AMOUNT: \$ 935.00



City of Oakland

City of Oakland
Transaction Receipt# 5323193
Record ID: DET200076-A01

250 FRANK H. OGAWA PLAZA
OAKLAND, CALIFORNIA 94612-2031

Date: 10/02/2020

ADDRESS: 2783 E 12TH ST, Oakland, CA 94601

PARCEL: 025 069700204

DESCRIPTION	AMOUNT DUE	TRAN AMOUNT
Appeal Filing Fee	\$ 2,011.00	\$ 2,011.00
Notification Fee	\$ 1,160.00	\$ 225.00
Recrd Mangmnt & Tech Enhancement Fee	\$ 467.72	\$ 467.72
	\$ 3,638.72	\$ 2,703.72

PAYMENT TYPE	PAYEE	PAYMENT AMOUNT	AMOUNT NOT ALLOCATED
Credit Card 1173712-3	RANDALL C WHITNEY	\$ 2,703.72	\$ 0.00
Comments: RANDALL C WHITNEY		\$ 2,703.72	\$ 0.00

TOTAL TRANSACTION AMOUNT: \$ 2,703.72

Invoice Detail

Permit ID #: DET200076-A01

Invoice #: 4179431

Invoice Date: 09/25/2020 16:19:27

Period	Fee Item	Qty	Fee
FINAL	Appeal Filing Fee	2,011	\$2,011.00
FINAL	Notification Fee	1,160	\$1,160.00
FINAL	Recrd Mangmnt & Tech Enhancement Fee	467.72	\$467.72

Total Fee: \$3,638.72

EXHIBIT A11



Randall Whitney <whitwors@gmail.com>

Receipt DET200076-A01

1 message

Coleman, Thomas <TColeman3@oaklandca.gov>
To: "whitwors@gmail.com" <whitwors@gmail.com>

Fri, Oct 2, 2020 at 2:07 PM

Hi!

Attached is the receipt for your permit.

If you require any additional information about the permit process or a copy of your permit, please email: permitinfo@oaklandca.gov

To schedule an inspection, please contact the correct department by calling the permit scheduling line at (510) 238-3444.

If you need to pick up DOT Notification Signs, please email and schedule a pickup: DOTOnlinePermits@oaklandca.gov

Property Owners and Licensed Contractors are welcome to apply for permits online : <https://aca.accela.com/OAKLAND/Welcome.aspx>

For help with Online Permits, contact: OnlineBuildingPermits@oaklandnet.com

* **COVID-19 Update:** Conditions and information relating to Planning and Building Department's operations are changing rapidly. Please check our [priority services during shelter-in-place webpage](#) for regular updates.

Please let me know if you have any questions, comments, or concerns.

Thank you for being patient and working with the City of Oakland electronically. Stay safe and stay healthy!

Sincerely,

Tom Coleman

Account Clerk II

City of Oakland, Office of Planning and Building

(510) 238-4774



City of Oakland

City of Oakland
Transaction Receipt# 5323193
Record ID: DET200076-A01

250 FRANK H. OGAWA PLAZA
OAKLAND, CALIFORNIA 94612-2031

Date: 10/02/2020

ADDRESS: 2783 E 12TH ST, Oakland, CA 94601

PARCEL: 025 069700204

DESCRIPTION	AMOUNT DUE	TRAN AMOUNT
Appeal Filing Fee	\$ 2,011.00	\$ 2,011.00
Notification Fee	\$ 1,160.00	\$ 225.00
Recrd Mangmnt & Tech Enhancement Fee	\$ 467.72	\$ 467.72
	\$ 3,638.72	\$ 2,703.72

PAYMENT TYPE	PAYEE	PAYMENT AMOUNT	AMOUNT NOT ALLOCATED
Credit Card 1173712-3	RANDALL C WHITNEY	\$ 2,703.72	\$ 0.00
Comments: RANDALL C WHITNEY		\$ 2,703.72	\$ 0.00

TOTAL TRANSACTION AMOUNT: \$ 2,703.72



Account#	Location	Amount	Reason	Account# Charged
0103995346	0	935.00	NSF 2X	0103995346

Payer Bank Routing#	Maker Account#	Sequence#	Submitted by:
121042882	8243870329	99000429	

THOMAS CAPITAL, INC
PO BOX 4186
WALNUT CREEK, CA 94596-3186

1022
11-4288/1210 4344

DATE Sep. 25, 2020

PAY TO THE ORDER OF CASHIER, CITY OF OAKLAND \$ 935.00

NINE HUNDRED THIRTY FIVE AND 00/100 DOLLARS

WELLS FARGO
Wells Fargo Bank, N.A.
California
wellsfargo.com

FOR DET 200076 Appeal Fee

⑈0000001022⑈ ⑆121042882⑆ 8243870329⑈

Security Features Included

PAY TO THE ORDER OF
FOR DEPOSIT ONLY
0103995346
CITY OF OAKLAND
Planning & Building
122000496

City of Oakland
Accela
City of Oakland
Oakland, CA 94612

#362676

Oct 15 2020 04:43 pm Trans#382093

TRANSACTION RECORD

Card Number : *****0970
Expiry Date : **/**
Card Entry : KEYED
Account : VISA
Trans Type : PURCHASE
Amount : \$966.85

Auth # : 124331
Sequence # : 510600028
Reference # : 10500028
Trace # : GZKF
Merchant ID : 000018410191
Terminal # : 00106
Date : 20/10/15
Time : 16:43:01

APPROVED

Cardholder Signature

I agree to pay above total amount
according to the card issuer agreement.

*** MERCHANT COPY ***

City of Oakland
Planning and Building Department

250 Frank H. Ogawa Plaza
510-238-4774

=====
City Invoice

Invoice #: 8100001018 1x 966.85 966.85

Payer Name: RANDALL WHITNEY

=====
SubTotal: 966.85
Total: 966.85

=====
Visa Card 966.85
Number : *****0970
Date : 01/24

10/15/2020 16:40
#1176985 /77/24

Thank You

EXHIBIT A12

IMPORTANT Re: CASE FILE No DET200076 Re: PLN 17003-R01

30 messages

Randall Whitney <whitwors@gmail.com>

Wed, Jun 24, 2020 at 12:22 PM

To: "Hackett, Maurice" <MHackett@oaklandca.gov>

Cc: gqwan@oaklandca.gov, "Merkamp, Robert" <RMerkamp@oaklandnet.com>, cpayne@oaklandca.gov

Bcc: Jill Worsley <worsleyjill@hotmail.com>

Maurice re Case No DET200076 City Oakland Planning
re Properties situated in or around 2783 East 12th Street Oakland CA

I am just now coming to find out that the City of Oakland Planning and Zoning Department has been considering an active application concerning the properties you and i spoke about several months ago. Since sending you this email on May 11th, 2020, i am also discovering that a City of Oakland Public Notice has been posted on the subject property even though the State of California continues to be operating under the Emergency Executive Orders issued by the State Governor, the County Supervisors and the City of Oakland City Council in addition to the County Health Department.

Please review my below email request and provide me with ALL the file information related to the subject properties which i previously listed. Your associate Mr Qwan must be holding additional information as his name appears at the bottom of the public notice.

On Wed, Jun 24, 2020 at 12:16 PM Randall Whitney <whitwors@gmail.com> wrote:
Maurice

On Wed, Jun 24, 2020 at 12:15 PM Randall Whitney <whitwors@gmail.com> wrote:
cpayne@oaklandca.gov

On Mon, May 11, 2020 at 12:57 PM Randall Whitney <whitwors@gmail.com> wrote:
Moe

Do you have any updates on what might be actively happening on the properties i asked about prior? I copied the email i sent to you prior with the relevant APN's listed below:

Case File Number: PLN17003-R01 OR any other recent cases since 2017

**0- 26th Ave
1111-29th Ave
2615 E 12th st
2783 E 12th st**

APNs 025-069700204; 025-069700306; 025-069700714; 025-069700715; 025-070100604; 025-070101100;025-070701402

"Revision of Tentative Parcel Map Subdivision to reconfigure existing lots into two new lots"

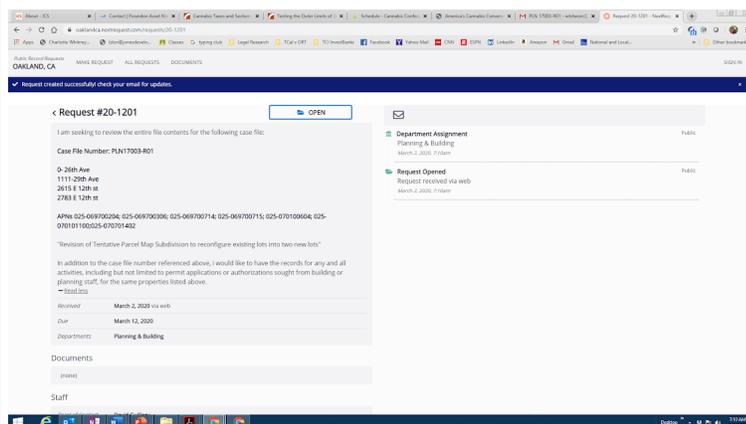
if any protocol exists for requesting file information, e.g. copy fees, please advise or point me to where to find more information.

please also provide any further information for any cases related to this case, especially the referenced Tentative Parcel Map Subdivision referenced above and showing in the June 1, 2018 "Applications on file" issued by your planning department.

Thank you.

On Mon, Mar 2, 2020 at 7:11 AM Randall Whitney <whitwors@gmail.com> wrote:
Moe

I also submitted following:



On Thu, Nov 14, 2019 at 4:12 PM Hackett, Maurice <MHackett@oaklandca.gov> wrote:

Hi Randall.

I spoke to Dave Guillory in our records department.

He ask me to have you submit a Public Records Request via the following link:

<https://oaklandca.nextrequest.com/requests/new>

I tried to call but got your office voice mail. I will try to follow up with again.

Regards

Moe

From: Randall Whitney [mailto:whitwors@gmail.com]

Sent: Wednesday, November 13, 2019 1:32 PM

To: Hackett, Maurice <MHackett@oaklandca.gov>; Hackett, Maurice <MHackett@oaklandca.gov>

Subject: [EXTERNAL] Re: PLN 17003-R01

CAUTION: This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

Moe Hackett

I am reviewing my emails and finding that i have sent you several prior email requests and i even attempted to wait at the planning counter to review the same files.

Please advise when would be appropriate to obtain the files related to this string of emails sent to your attention. If someone else should be handling this case, please let me know.

Randall Whitney

On Fri, Nov 2, 2018 at 2:04 PM Randall Whitney <whitwors@gmail.com> wrote:

Moe

today, I waited at Planning Zoning counter to review this file, however you were unavailable during this time...i arrived at 11am and had to leave by 2pm...i waited 3 hours.

I assume there exists an easier manner for me to obtain the case file contents referenced in my prior email shown on this email thread.

pls advise easier procedure.

Randall

On Fri, Nov 2, 2018, 12:30 PM Randall Whitney <whitwors@gmail.com> wrote:

Moe

I would like to request a copy of the entire file contents for the following case file:

Case File Number: PLN17003-R01

0- 26th Ave

1111-29th Ave

2615 E 12th st

2783 E 12th st

APNs 025-069700204; 025-069700306; 025-069700714; 025-069700715; 025-070100604; 025-070101100;025-070701402

"Revision of Tentative Parcel Map Subdivision to reconfigure existing lots into two new lots"

if any protocol exists for requesting file information, e.g. copy fees, please advise or point me to where to find more information.

please also provide any further information for any cases related to this case, especially the referenced Tentative Parcel Map Subdivision referenced above and showing in the June 1, 2018 "Applications on file" issued by your planning department.

Thank you.

Randall

----- Forwarded message -----

From: Mail Delivery Subsystem <mailer-daemon@googlemail.com>
Date: Fri, Nov 2, 2018, 12:25 PM
Subject: Delivery Status Notification (Failure)
To: <whitwors@gmail.com>

Address not found

Your message wasn't delivered to mhackett@oakland.net because the address couldn't be found, or is unable to receive mail.

The response from the remote server was:

```
554 5.7.1 <mhackett@oakland.net>: Recipient address rejected: user mhackett@oakland.net does not exist
```

----- Forwarded message -----

From: Randall Whitney <whitwors@gmail.com>
To: mhackett@oakland.net
Cc:
Bcc:
Date: Fri, 2 Nov 2018 12:25:04 -0700
Subject: PLN17003-R01

Moe

I would like to request a copy of the entire file contents for the following case file:

Case File Number: PLN17003-R01

0- 26th Ave

1111-29th Ave

2615 E 12th st

2783 E 12th st

APNs 025-069700204; 025-069700306; 025-069700714; 025-069700715; 025-070100604; 025-070101100;025-070701402

"Revision of Tentative Parcel Map Subdivision to reconfigure existing lots into two new lots"

if any protocol exists for requesting file information, e.g. copy fees, please advise or point me to where to find more information.

please also provide any further information for any cases related to this case, especially the referenced Tentative Parcel Map Subdivision referenced above and showing in the June 1, 2018 "Applications on file" issued by your planning department.

Thank you.

Randall

--

To schedule calendar date, please link to following:

calendly.com/whitwors

Randall Whitney

Thomas Capital Investments

P.O. Box 4186
1818 Mt Diablo Blvd
Walnut Creek CA 94596
(925) 298-5929

"Your time is limited, so don't waste it living someone else's life..."

--**Steve Jobs**, Stanford graduation commencement speech

Confidentiality, Limitation Of Use, And No Binding Effect

The preceding message contents and any attachments (collectively "Contents") are solely for the benefit of the person(s) or entity(ies) addressed (collectively "Recipient") and may not be relied upon by any other person(s) or entity(ies) for any purpose without specific written permission of Randall C.M. Whitney

--

To schedule calendar date, please link to following:

calendly.com/whitwors

Randall Whitney

Thomas Capital Investments

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Randall Whitney <whitwors@gmail.com>
To: "Hackett, Maurice" <MHackett@oaklandca.gov>
Cc: gqwan@oaklandca.gov, "Merkamp, Robert" <RMerkamp@oaklandnet.com>, cpayne@oaklandca.gov

Give the below website announcements from the planning and zoning department, please explain how the public notice and responses to those notices have been impacted:

Planning & Building's Response to Alameda County Shelter in Place Orders

24-48 Hour Response Time

Building Permits & Plan Review Services

Planning Application Services

Code Enforcement Services

Fire Prevention Services

Public Records Requests

Planning & Building Online Resources and Services

Date Posted: **May 3rd, 2020 @ 9:00 PM**
Last Updated: **June 19th, 2020 @ 6:19 PM**

In compliance with [Alameda County Office Health Officer's April 29, 2020 Shelter in Place Order No 20-10](#) and its subsequent [June 5, 2020 Order No 20-14](#) (revised June 18, 2020) the City of Oakland has resumed inspection services for all project types identified in the April 29 Order, which cites the [State of California Executive Order N-33-20](#) as its source reference for this purpose.

This Order does not grant the City of Oakland authority to interpret project compliance on Alameda County's behalf; therefore, if after reviewing Alameda County Office of Health Officer Order No 20-10, the **project representative has any question concerning a project's eligibility, it shall be the project representative's responsibility** to confirm the eligibility through the **Alameda County Office of the Health Officer.**

Compliance:

It is **required** that each project site **comply with the protocols** for operations that the County Orders cites under its Site Specific Protection Plan, Appendices B-1 and B-2. The Planning & Building Department shall ask **all** project representatives requesting inspections to confirm that they:

1. have read the County Orders; and
2. are adhering to the site work conditions mandated under the County Order.

If any project representative **cannot** confirm that is the case, then the Planning and Building Department shall **hold off on that project inspection until the project representative can confirm adherence** to the Order for site operations and working conditions. Please find the relevant appendices here (updated from the June 18, 2020 Order):

- [Appendix A: Site Specific Protection Plan Template](#)
- [Appendix B-1: Small Construction Project Safety Protocol](#)*[Covers residential projects ≤ 10 units, commercial projects ≤ 20,000 sq. ft.]*
- [Appendix B-2: Large Construction Project Safety Protocol](#)*[Covers residential projects > 10 units, commercial projects > 20,000 sq. ft.]*
- [Appendix C: Additional Businesses Permitted to Open \(Outdoor Dining, Retail, Etc.\)](#)

Inspection:

Upon arrival at the project site, each City Inspector will request that the site superintendent **provide a copy of the County Order's site operations and work condition requirements** from the Appendices. If the relevant Appendices **are not produced**, the inspection will need to be **rescheduled** until the documents can be produced on site.

To prepare your digital plans for the job site prior to an inspection, please read our [Issuance Guidelines for Plans Required from Digital Sources for City Project Site Inspections](#).

The City Inspector also **reserves the right to cancel any inspection** at the project site if the Inspector observes any **violation of the County Order pertaining to site operations**.

The project representative may request an inspection once the violation has been addressed.

Applications:

The City will **continue to process** applications across all categories of project for **permit approval** consistent with the City's development regulations. To submit your application through our online [Digital Inbox](#), please read our [Electronic Submission Guidelines](#) and [Digital Inbox Instruction Guide](#).

Planning Commission Meetings:

With the revised [Emergency Order No. 3 of the City of Oakland](#), the City began **reconvening Planning Commission meetings (online only) on June 3, 2020 at 3 pm** ([see full schedule here](#)). As such, the Planning Bureau has **resumed making administrative decisions** on projects appealable to the Planning Commission and **scheduling entitlement cases** to come before that body.

Projected Response and Service Times:

We understand this unprecedented time has been challenging for many of our customers. We thank you for your support and understanding. Due to the County Orders to cease some work during Shelter In Place (SIP), we will inevitably have a considerable backlog of inspection needs to address. We ask for your continued patience in the coming weeks as we adapt our services and personnel to stay in compliance. It is our intention to return to the response times established prior to the Alameda County Shelter-In-Place Orders going into effect, as they are updated.

Conditions and information continue to change rapidly. Please check back regularly for [City updates relating to COVID-19](#).

24-48 Hour Response Time

Note: Emails and phone calls are processed and responded to during normal business hours. Please allow 24-48 hours for response.

[Quoted text hidden]

Good Afternoon,

Your email was forwarded to me. It looks like back on Mar 2 2020, you were informed to request a records request with our records department at <https://oaklandca.nextrequest.com/>, did you do this? If so, do you have your number? If you did not request the information from the portal, please do so now. Please be specific on the information you want to receive to make sure you receive the correct information.

Although, the Planning and Building department's building is closed. Our staff is diligently working to complete projects throughout the City. We have created an appeals process and a virtual Planning Commission Meeting. This is outlined on our website which you attached below under Emergency Order Number 3, Attachment A & B. The next planning commission meeting is on July 1st.

Regards,

Diana Rex
Administrative Services Managers
Planning & Building Department - Operations Division
[Quoted text hidden]

 **Emergency Order No 3.pdf**
186K

Randall Whitney <whitwors@gmail.com> Wed, Jun 24, 2020 at 2:00 PM
To: "Rex, Diana" <DRex@oaklandca.gov>
Cc: "Guillory, David" <DGuillory@oaklandca.gov>, "Merkamp, Robert" <RMerkamp@oaklandca.gov>, "Hackett, Maurice" <MHackett@oaklandca.gov>, "Qwan, Gregory" <GQwan@oaklandca.gov>

Do you have a response to the question asked about the project identified?
[Quoted text hidden]

Merkamp, Robert <RMerkamp@oaklandca.gov> Wed, Jun 24, 2020 at 3:40 PM
To: Randall Whitney <whitwors@gmail.com>, "Rex, Diana" <DRex@oaklandca.gov>
Cc: "Guillory, David" <DGuillory@oaklandca.gov>, "Hackett, Maurice" <MHackett@oaklandca.gov>, "Qwan, Gregory" <GQwan@oaklandca.gov>

Mr. Whitney,

I believe I understand your question to be how we were able to put it out for public notice given the shelter in place. The emergency order from the City Administrator that Ms. Rex provided you gives us the authority to do that very thing as described by the process contained in the attachments to that document (which were included in the scan provided to you by Ms. Rex). The public comment period has closed for the determination you're interested in but the letter has not yet been issued. Please let myself and the case planner, Mr. Qwan, know if you wish to be copied on the decision.

Robert D. Merkamp, Zoning Manager | City of Oakland | Bureau of Planning | [250 Frank H. Ogawa, Suite 2214 | Oakland, CA 94612](#) | Phone: (510) 238-6283 | Fax: (510) 238-4730 | Email: rmerkamp@oaklandca.gov | Website: www.oaklandca.gov/departments/planning-and-building

From: Randall Whitney <whitwors@gmail.com>
Sent: Wednesday, June 24, 2020 2:00 PM
To: Rex, Diana <DRex@oaklandca.gov>
Cc: Guillory, David <DGuillory@oaklandca.gov>; Merkamp, Robert <RMerkamp@oaklandca.gov>; Hackett, Maurice <MHackett@oaklandca.gov>; Qwan, Gregory <GQwan@oaklandca.gov>
[Quoted text hidden]

[Quoted text hidden]

Randall Whitney <whitwors@gmail.com> Wed, Jun 24, 2020 at 3:44 PM
To: "Merkamp, Robert" <RMerkamp@oaklandca.gov>
Cc: "Rex, Diana" <DRex@oaklandca.gov>, "Guillory, David" <dguillory@oaklandca.gov>, "Hackett, Maurice" <MHackett@oaklandca.gov>, "Qwan, Gregory" <GQwan@oaklandca.gov>

yes. As I have previously put City of Oakland on notice prior to this email, I am seeking notice on any and all documents related to this property (and surrounding properties) especially since our company is listed as applicant in the case referenced to M Hackett(PLN 17003-R01)
[Quoted text hidden]

Randall Whitney <whitwors@gmail.com> Thu, Jun 25, 2020 at 5:43 PM
To: "Merkamp, Robert" <RMerkamp@oaklandca.gov>
Cc: "Rex, Diana" <DRex@oaklandca.gov>, "Guillory, David" <dguillory@oaklandca.gov>, "Hackett, Maurice" <MHackett@oaklandca.gov>, "Qwan, Gregory" <GQwan@oaklandca.gov>

Mr Merkamp and Ms Rex

You asked about IF I had previously submitted a CPRA records request -- yes, I submitted a request on March 2nd 2020 under case no. 20-1201. If you review the case file, you will find the following language:

"The file has been retrieved by the Planner and will be available to view over the counter for 10 days when Planning & Building Dept. is open to the public again (250 Frank Ogawa Plaza, Second Floor-Records) "

-- this was apparently posted on March 24, 2020 which would make gaining access to any file information impossible given the shutdown at City of Oakland Planning department.

IN that request, I asked for **any and all information related to the properties specified**. I would have expected that at very least, the project sponsor and/or applicant would have been in the process of obtaining the subject DET200076 determination letter.

More concerning, the Authorization referenced in your email and outlined within Exhibit A attached to the Order (issued by Interim City Administrator Steven Falk) seems to adjust the statutory public notice requirements to the detriment of the public at large. Primarily, the Order suggests that the project applicant becomes an agent for the City of Oakland in handling the posting requirements. And worse, the Order shortens the statutory timing from 17 days to 10 days without any basis or authority. I am hoping to avoid a detailed search for the public notice requirements, but I am having a challenge to believe that the City is authorized to shorten the window of time from 17 days to 10 days WHILE A GLOBAL HEALTH CRISIS PANDEMIC has caused government to order that same public to remain indoors under a Shelter in Place Order -- which means, LESS people will have the opportunity to witness the public notice being posted and advertised.

Help me understand if i am mischaracterizing the situation, but i am not in agreement with your above justifications and moreso i am disputing the timing shown on the subject public notice.
As you can acknowledge, i have been in direct communications with your department staff, i have submitted public notice requests as directed, and i have still not received any sufficient information to help me understand what is being proposed on properties which i continue to hold an ownership interest.

Randall Whitney

[Quoted text hidden]

Randall Whitney <whitwors@gmail.com>
To: permitinfo@oaklandca.gov

Thu, Jun 25, 2020 at 6:10 PM

Please advise if any information is available for the subject file case numbers listed below and within this email subject caption.

Re: CASE FILE No DET200076 Re: PLN 17003-R01

Randall Whitney

----- Forwarded message -----

From: **Randall Whitney** <whitwors@gmail.com>
Date: Wed, Jun 24, 2020 at 12:22 PM
Subject: IMPORTANT Re: CASE FILE No DET200076 Re: PLN 17003-R01
To: Hackett, Maurice <MHackett@oaklandca.gov>

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

Merkamp, Robert <RMerkamp@oaklandca.gov>
To: Randall Whitney <whitwors@gmail.com>

Thu, Jun 25, 2020 at 6:52 PM

Cc: "Rex, Diana" <DRex@oaklandca.gov>, "Guillory, David" <DGuillory@oaklandca.gov>, "Hackett, Maurice" <MHackett@oaklandca.gov>, "Qwan, Gregory" <GQwan@oaklandca.gov>

Hello Mr. Whitney,

For clarity, I didn't ask you about that at all. I just clarified how we were operating under the CAO order and clarified if you wished to be notified of decisions on the property, which you affirmed. I'm not involved in any other aspects of this thread.

Thanks,
Robert

Sent from my iPhone

[Quoted text hidden]

Randall Whitney <whitwors@gmail.com>
To: Jill Worsley <worsleyjill@hotmail.com>

Thu, Jun 25, 2020 at 6:54 PM

see email below...i am very focused on turning this upside down.

[Quoted text hidden]

Guillory, David <DGuillory@oaklandca.gov>

Fri, Jun 26, 2020 at 8:58 AM

To: Randall Whitney <whitwors@gmail.com>, "Merkamp, Robert" <RMerkamp@oaklandca.gov>
Cc: "Rex, Diana" <DRex@oaklandca.gov>, "Hackett, Maurice" <MHackett@oaklandca.gov>, "Qwan, Gregory" <GQwan@oaklandca.gov>

Good Morning Mr. Whitney,

I will follow up with the other aspects of your Public Records Request.

David Guillory

Senior Public Service Representative

City of Oakland

Planning and Building Department

Building Services/Records

(P) 510-238-6143

From: Randall Whitney <whitwors@gmail.com>
Sent: Thursday, June 25, 2020 5:43 PM
To: Merkamp, Robert <RMerkamp@oaklandca.gov>

[Quoted text hidden]

[Quoted text hidden]
[Quoted text hidden]

[Quoted text hidden]
[Quoted text hidden]
[Quoted text hidden]
[Quoted text hidden]

[Quoted text hidden]
[Quoted text hidden]

Maurice

[Quoted text hidden]

cpayne@oaklandca.gov

[Quoted text hidden]

[Quoted text hidden]
[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

Randall Whitney <whitwors@gmail.com>

Fri, Jun 26, 2020 at 11:02 AM

To: "Guillory, David" <DGuillory@oaklandca.gov>

Cc: "Merkamp, Robert" <RMerkamp@oaklandca.gov>, "Rex, Diana" <DRex@oaklandca.gov>, "Hackett, Maurice" <MHackett@oaklandca.gov>, "Qwan, Gregory" <GQwan@oaklandca.gov>

David

thanks for your response. I am still unable to access the files involved with these properties/cases. Since the March 17th closing of City Oakland planning department, can you provide the file contents through an alternative source? e.g. cloud based system?

Randall

[Quoted text hidden]

PermitInfo <PermitInfo@oaklandca.gov>
To: Randall Whitney <whitwors@gmail.com>

Wed, Jul 1, 2020 at 7:32 PM

Hello Randall,

Here you are:

Sincerely,
Aubrey Rose AICP
Planner III

From: Randall Whitney <whitwors@gmail.com>

Sent: Thursday, June 25, 2020 6:10 PM

To: PermitInfo <PermitInfo@oaklandca.gov>

Subject: Fwd: IMPORTANT Re: CASE FILE No DET200076 Re: PLN 17003-R01

[Quoted text hidden]

4 attachments

-  **decision letter.pdf**
1440K
-  **MS2 GP Determination Application 2020.pdf**
2707K
-  **Plans 05192020.pdf**
13699K
-  **Self Storage GP Consistency - Final Draft (5-18-2020).pdf**
3361K

Randall Whitney <whitwors@gmail.com>
To: Jill Worsley <worsleyjill@hotmail.com>

Wed, Jul 1, 2020 at 11:13 PM

read thru this...just fell into my inbox at 733pm tonight...funny how nobody would discuss w me

[Quoted text hidden]

4 attachments



Outlook-image.png.png
186K

-  **decision letter.pdf**
1440K
-  **MS2 GP Determination Application 2020.pdf**
2707K
-  **Plans 05192020.pdf**
13699K

Randall Whitney <whitwors@gmail.com>
To: PermitInfo <PermitInfo@oaklandca.gov>

Thu, Jul 2, 2020 at 9:43 AM

Aubrey

Thank you for sending me this information...long time since last crossing paths with you - i was more familiar with your being involved in larger housing projects. Can you tell me how you came about being involved with this matter?

Randall

[Quoted text hidden]

Randall Whitney <whitwors@gmail.com>
To: "Merkamp, Robert" <RMerkamp@oaklandnet.com>, "Merkamp, Robert" <RMerkamp@oaklandca.gov>, cpayne@oaklandca.gov
Bcc: Jill Worsley <worsleyjill@hotmail.com>, paul mccarthy <p_mccarthy@sbcglobal.net>

Thu, Jul 2, 2020 at 10:08 AM

Ms Payne and Mr Merkamp

I am seeking a comprehensive review of the internal process managed by your planning and zoning departments in managing these subject land use permit applications/cases.

Your planner, Aubrey Rose, just forwarded this below information to me late last evening which clearly highlights a much more active planning/zoning application file than was previously communicated by your department.

You have multiple written communications (showing on your records) as well as my personal visits to the Planning Counter -- at no time was this information been provided to myself, or anyone involved with our group, even though you have held this detailed application in your offices since August 2018 -- and most recently, your offices have been actively processing this application without any notice notwithstanding my most recent requests for file information.

I am sending this specific and constructive notice that no further action should be taken on this application, or anything involved with this property matter, until this application has been fully reviewed under the statutory protocols available, and further, until a proper public notice has been made available to the community.

Your office should be aware of the current dispute to the recorded City of Oakland Certificates of Compliance which were issued in error by your engineers on these exact same properties and are currently being reviewed by the Superior Court.

[Quoted text hidden]

4 attachments

-  **decision letter.pdf**
1440K
-  **MS2 GP Determination Application 2020.pdf**
2707K
-  **Plans 05192020.pdf**
13699K
-  **Self Storage GP Consistency - Final Draft (5-18-2020).pdf**
3361K

Randall Whitney <whitwors@gmail.com>
To: hklein@oaklandca.gov, "Merkamp, Robert" <RMerkamp@oaklandnet.com>, "Merkamp, Robert" <RMerkamp@oaklandca.gov>

Thu, Jul 2, 2020 at 10:42 AM

Heather

Your name was provided by Robert Merkamp's email as acting in his stead. Please see below email which is both important and urgent.

subject property even though the State of California continues to be operating under the Emergency Executive Orders issued by the State Governor, the County Supervisors and the City of Oakland City Council in addition to the County Health Department.

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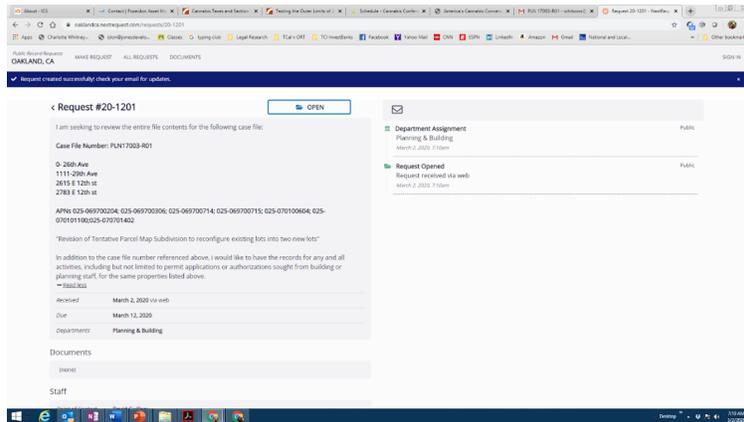
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I tried to call but got your office voice mail. I will try to follow up with again.

Regards

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Sent: Wednesday, November 13, 2019 1:32 PM

To: Hackett, Maurice <MHackett@oaklandca.gov>; Hackett, Maurice <MHackett@oaklandca.gov>

Subject: [EXTERNAL] Re: PLN 17003-R01

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pls advise easier procedure.

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To schedule calendar date, please link to following:

calendly.com/whitwors

Randall Whitney

Thomas Capital Investments

P.O. Box [4186](#)
1818 Mt Diablo Blvd
Walnut Creek CA 94596
(925) 298-5929

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--**Steve Jobs**, Stanford graduation commencement speech

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Randall Whitney

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Date: Wed, Jul 1, 2020 at 7:33 PM
Subject: Re: IMPORTANT Re: CASE FILE No DET200076 Re: PLN 17003-R01
To: Randall Whitney <whitwors@gmail.com>

Hello Randall,

Here you are:

Sincerely,
Aubrey Rose AICP
Planner III

From: Randall Whitney <whitwors@gmail.com>
Sent: Thursday, June 25, 2020 6:10 PM
To: PermitInfo <PermitInfo@oaklandca.gov>
Subject: Fwd: IMPORTANT Re: CASE FILE No DET200076 Re: PLN 17003-R01

Please advise if any information is available for the subject file case numbers listed below and within this email subject caption.

Re: CASE FILE No DET200076 Re: PLN 17003-R01

Randall Whitney

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Date: Wed, Jun 24, 2020 at 12:22 PM
Subject: IMPORTANT Re: CASE FILE No DET200076 Re: PLN 17003-R01
To: Hackett, Maurice <MHackett@oaklandca.gov>
Cc: <gqwan@oaklandca.gov>, Merkamp, Robert <RMerkamp@oaklandnet.com>, <cpayne@oaklandca.gov>

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re Properties situated in or around 2783 East 12th Street Oakland CA

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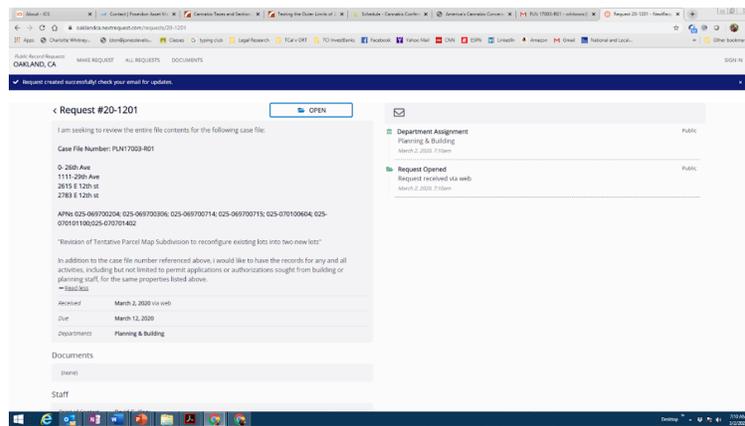
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The screenshot shows a web browser window with multiple tabs. The active tab is titled "Request #20-1201" and displays the following content:

- Header: "Request #20-1201" with an "OPEN" button.
- Text: "I am seeking to review the entire file contents for the following case file:
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"Revision of Tentative Parcel Map Subdivision to reconfigure existing lots into two new lots"
- Text: "In addition to the case file number referenced above, I would like to have the records for any and all activities, including but not limited to permit applications or authorizations sought from building or planning staff, for the same properties listed above."
"BIDDING"
- Table:
| Action | Date |
|---|---|
| Archived | March 2, 2020 via web |
| Due | March 12, 2020 |
| Department | Planning & Building |
- Documents: (empty list)
- Staff: (empty list)
- Notifications:
- Department Assignment: Planning & Building (Public), March 2, 2020 7:00am
- Request Opened: Request received via web (Public), March 2, 2020 7:00am

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--

Randall Whitney
Thomas Capital Investments
P.O. Box 4186
1818 Mt Diablo Blvd
Walnut Creek CA 94596
(925) 298-5929

"Your time is limited, so don't waste it living someone else's life..."
--**Steve Jobs**, Stanford graduation commencement speech

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PermitInfo <PermitInfo@oaklandca.gov>
To: Randall Whitney <whitwors@gmail.com>

Sat, Jul 4, 2020 at 10:19 AM

Hi Randall,

You're welcome -- I worked on applications for 8 years ago -- 5.5 years ago I was made the zoning counter supervisor -- for SIP, I'm responded to all zoning related inquiries -- take care

Sincerely,
Aubrey

*****Please note that these emails are not reviewed in conversation format nor is it reviewed by the same person, so please include all required attachments in all new emails or replies if you are trying to provide additional supporting documentation. Thank you.*****

From: Randall Whitney <whitwors@gmail.com>
Sent: Thursday, July 2, 2020 9:43 AM
To: PermitInfo <PermitInfo@oaklandca.gov>
Subject: Re: IMPORTANT Re: CASE FILE No DET200076 Re: PLN 17003-R01

[Quoted text hidden]

Randall Whitney <whitwors@gmail.com>
To: PermitInfo <PermitInfo@oaklandca.gov>

Sat, Jul 4, 2020 at 10:28 AM

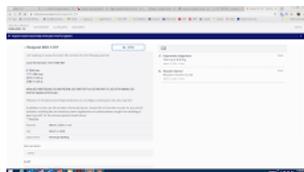
thanks for this awesome reply on your July4th dayoff...

just curious...how did you choose those 4 items you emailed me?

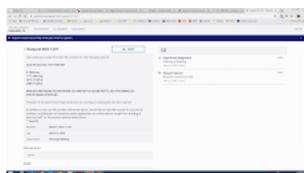
I'm not remembering what inquiry I sent or what you might be responding to since City Oakland has several various methods to obtain data.

again. thanks
[Quoted text hidden]

2 attachments



Outlook-image.png.png
186K



Outlook-image.png.png
186K

Randall Whitney <whitwors@gmail.com>
To: Donald Schwartz Law Offices <donaald@lawofficedonaldschwartz.com>

Wed, Jul 8, 2020 at 8:41 PM

From: Randall Whitney <whitwors@gmail.com>

Sent: Saturday, July 4, 2020 10:28 AM

[Quoted text hidden]

[Quoted text hidden]

Randall Whitney <whitwors@gmail.com>
To: PermitInfo <PermitInfo@oaklandca.gov>

Mon, Jul 13, 2020 at 3:18 PM

OK thanks Aubrey.

Can you tell me if any other documents were available -- meaning, was that the entire set of available documents?

Randall

[Quoted text hidden]

PermitInfo <PermitInfo@oaklandca.gov>
To: Randall Whitney <whitwors@gmail.com>

Thu, Jul 16, 2020 at 8:42 AM

Hi Randall,

No problem -- no, no other documents available, that was everything available

Sincerely,
Aubrey

*****Please note that these emails are not reviewed in conversation format nor is it reviewed by the same person, so please include all required attachments in all new emails or replies if you are trying to provide additional supporting documentation. Thank you.*****

From: Randall Whitney <whitwors@gmail.com>

Sent: Monday, July 13, 2020 3:18 PM

To: PermitInfo <PermitInfo@oaklandca.gov>

[Quoted text hidden]

[Quoted text hidden]

Randall Whitney <whitwors@gmail.com>
To: PermitInfo <PermitInfo@oaklandca.gov>

Thu, Jul 16, 2020 at 11:55 AM

Aubrey

I understand you sent me all documents available. But what about all the communications between the sponsor/developer and the City Oakland planning & engineering staff?

For instance, i wanted to obtain the Zoom meeting notes/outtakes/video held on Friday June 26th at approx 4pm -- apparently a "team meeting" transpired which this project was discussed with the sponsor.

How would I obtain this information? or the emails between Greg Qwan and the sponsor/developer representative?

Randall

[Quoted text hidden]

PermitInfo <PermitInfo@oaklandca.gov>
To: Randall Whitney <whitwors@gmail.com>

Fri, Jul 24, 2020 at 8:25 AM

Randall,

My only other thoughts are to contact Gregory Qwan or to submit a Public Records Request -- not sure what this would accomplish simply because I'm not sure what other records if any there may be

Sincerely,
Aubrey

*****Please note that these emails are not reviewed in conversation format nor is it reviewed by the same person, so please include all required attachments in all new emails or replies if you are trying to provide additional supporting documentation. Thank you.*****

From: Randall Whitney <whitwors@gmail.com>

Sent: Thursday, July 16, 2020 11:55 AM

[Quoted text hidden]

[Quoted text hidden]

Randall Whitney <whitwors@gmail.com>
To: PermitInfo <PermitInfo@oaklandca.gov>, "Rose, Aubrey" <arose@oaklandnet.com>
Bcc: Jill Worsley <worsleyjill@hotmail.com>

Fri, Jul 24, 2020 at 9:17 AM

Thank you Aubrey. I do understand your process and your attempts to exhaust what is available to you.

However, more information must exist within this file since i have multiple communications that reference other meetings and documents related to either this project and/or these specific properties, but which are not showing up in either your responses or the several public records requests lodged to date.

Just so you know...i have sent several requests for information related to this project(and involved properties) to planner Greg Qwan. He did not reply to my requests, but he sent my communications to the sponsor/developer(S Bovard) and even hosted a conference call Friday June 24th discussing my inquiries...but never replied back to my questions or requests for information.

I hope you can understand how frustrating to be blocked from a project wherein i spent over 20 years doing business in the challenging community, assembling properties and gaining land use approvals.

Randall

[Quoted text hidden]

EXHIBIT A13

CITY OF OAKLAND



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA • SUITE 3315 • OAKLAND, CALIFORNIA 94612

Planning and Building Department
Bureau of Planning

(510) 238-3941
FAX (510) 238-6538
TDD (510) 238-3254

December 22, 2020

Mr. Randall Whitney
Thomas Capital Investments
P.O. Box 4186
1818 Mt Diablo Blvd.
Walnut Creek CA 94596

RE: Case File No. DET200076-A01; 2783 E. 12th Street; APN: 025 069700714, 025 069700715, 025 069700204, 025 069700306

This letter is in response to your Appeal, submitted on September 24, 2020, of the City's decision regarding a General Plan Determination request for the property located at 2783 E. 12th Street issued on September 15, 2020. As detailed below, your Appeal did not include sufficient payment by the required due date. Therefore, your Appeal is not complete and is summarily rejected as untimely.

Specifically:

1. The City's September 15th decision letter (*See Attachment A*), which was sent to you on the same day, noted that interested parties wishing to appeal the City's decision had 10 calendar days from the date of the letter or September 25, 2020 to do so.
2. The September 15th decision letter further stated that "Applicable appeal fees in the amount of \$3,638.72 in accordance with the City of Oakland Master Fee Schedule must be paid within five business days of filing the appeal." The appeal fee is \$3,638.72 as appeals of General Plan Determinations require the Oakland City Planning Commission to make a recommendation to the Oakland City Council who would make the final decision on the Appeal. The City's Emergency Administrative Order No.3 (*See Attachment B*) states in Section 2 that "Appellant will have five (5) calendar days from the date of appeal submittal to pay the appeal fee to the City's cashier. If the fifth (5th) calendar day falls on a weekend or City holiday, appellant will have until the end of the following City business day to pay the appeal fee." It further states: "Failure to pay the appeal fee in full within the timeframe identified in Section 2 above will result in the rejection of appellant's appeal and, if the appeal period has closed, will not allow for resubmittal of the appeal."
3. City staff received your Appeal on September 25, 2020 and promptly emailed you with the appeal record ID and invoice number on that same day (*Attachment C*). At the same time, you were also notified that failure to pay the appeal fee in full by October 2, 2020, will result in the rejection of the appeal.
4. The Department of Planning and Building Cashier Office received a check from Thomas Capital, Inc. for \$935 on September 21, 2020, despite the decision letter listing the applicable fee as \$3,638.72. Because this payment was insufficient to cover the full cost of appeal, the Cashier Office informed you that the fee was not paid and held the

check at the Cashier Station until payment to cover the full appeal fee was provided. Even though City of Oakland staff informed you that the full payment of fees stated in the decision letter was needed to avoid rejection of the appeal, and you had ample opportunity to ensure timely payment of fees, you chose to wait until the final day that fees were due before attempting to complete payment.

5. On October 2, 2020, you authorized a charge of \$2,703.72—the difference between the \$3,638.72 appeal fee and the \$935 check—to your credit card. As a result, City of Oakland receipts (*Attachment D*) document the appeal fee payment on October 2, 2020 in two forms.
6. On either October 5, 2020 or October 7, 2020, you contacted the City of Oakland's Cashier to inform them that due to a clerical error at Thomas Capital, Inc., the \$935.00 check could not be processed. The City could not take additional payment at this time as the check was being processed and further payment can be received only after notification from the Finance Department's Treasury Bureau of invalid payment. Further, at the time of this communication, the October 2, 2020 deadline for full payment of the appeal fee had already passed.
7. On October 9, 2020, the City of Oakland Finance Department received notification that the check could not be processed. Finance staff notified the Planning and Building Department Cashier's Office of the invalid payment on October 15, 2020. Additional payment was received from you on October 15, 2020; however, this payment occurred almost two weeks past the October 2, 2020 deadline.

In sum, the City did not receive full payment of the applicable appeal fee by the October 2, 2020 deadline. The check provided prior to the deadline was not able to be processed and the invalid payment could not be remedied within the time period for payment of the appeal fee. Therefore, based on your failure to pay the appeal fee in full by the stated deadline, your Appeal has been rejected. Because the Appeal period has now closed, resubmittal of the Appeal will not be permitted.

For a refund of the appeal fees charged, please submit the completed Refund Request Form (*Attachment E*) by mail to **Planning & Building Cashier Station 250 Frank H. Ogawa Plaza 2nd floor, Oakland CA 94612** or by email to hchu@oaklandca.gov. Please note that these previous charges can only be refunded and cannot be re-allocated to cover other payments due to the City of Oakland.

If you, or any interested party, seeks to challenge this decision, an appeal **must** be filed by no later than ten (10) calendar days from the date of this letter, by **4:00 pm on January 4, 2021**. An appeal shall be on a form provided by the Bureau of Planning of the Planning and Building Department, and submitted via email to: (1) **Gregory Qwan, Planner III, at gqwan@oaklandca.gov**, (2) **Robert Merkamp, Zoning Manager, at Rmerkamp@oaklandca.gov**, and (3) **Catherine Payne, Development Planning Manager, at Cpayne@oaklandca.gov**. The appeal form is available online at <https://www.oaklandca.gov/documents/appeal-application-form>. The appeal shall state specifically wherein it is claimed there was error or abuse of discretion by the Zoning Manager or decision-making body or wherein the decision is not supported by substantial evidence. Applicable appeal fees in the amount of **\$2,404.01** in accordance with the City of Oakland Master Fee Schedule must be paid within five (5) calendar days (January 11, 2021) of filing the appeal. Failure to timely appeal (or to timely pay all appeal fees) will preclude you, or any interested party, from challenging the City's decision in court. The appeal itself must raise each and every issue that is contested, along with all the arguments and evidence in the record which supports the basis of the appeal; failure to do so may preclude you, or any interested party, from raising such issues during the appeal and/or in court. However, the appeal will be limited to issues and/or evidence presented to the Zoning Manager prior to the close of the appeal period listed in this paragraph. For further information, see the attached Interim Procedures for Appeals of City Planning Bureau Decisions for Development Projects.

However, please be aware that due to City processes, the City cannot transfer the appeal fees for DET200076-A01 to an appeal of the City's determination to reject the appeal. In addition, if you choose to file an appeal of the City's determination to reject the appeal and that appeal is considered timely, the final decision will be before the Planning Commission. As such, this appeal fee is smaller than the DET200076-A01 appeal fee noted in the

discussion above as staff would not need to present the matter before both the Planning Commission and City Council.

If you have any questions, please contact the case planner, **Gregory Qwan, Planner III** at (510) 238-2958 or gqwan@oaklandca.gov, however, this does not substitute for filing of an appeal as described above.

Very Truly Yours,



for
WILLIAM GILCHRIST
Planning Director

cc: Terry McGrath, terry@mcgrathproperties.com
Scott Bovard, scott@mcgrathproperties.com
Michael Branson, MBranson@oaklandcityattorney.org
Hartini Chu, Account Clerk
Diana Rex, Counter Manager
Ed Manasse, Deputy Director, Planning and Building Department
William Gilchrist, Director Planning and Building Department

Attachments:

- A. Decision Letter – Dated September 15, 2020
- B. Interim City Administrator Emergency Order No. 3 and Interim Procedures for Appeals of City Planning Bureau Decisions for Development Projects
- C. Invoice and Record ID – Dated September 25, 2020
- D. City Cashier Receipts – Dated October 2, 2020
- E. Refund Request Form

EXHIBIT A14



Randall Whitney <whitwors@gmail.com>

PLN 17003-R01

11 messages

Randall Whitney <whitwors@gmail.com>
To: mhackett@oaklandnet.com

Fri, Nov 2, 2018 at 12:30 PM

Moe

I would like to request a copy of the entire file contents for the following case file:

Case File Number: PLN17003-R01

**0- 26th Ave
1111-29th Ave
2615 E 12th st
2783 E 12th st**

APNs 025-069700204; 025-069700306; 025-069700714; 025-069700715; 025-070100604; 025-070101100;025-070701402

"Revision of Tentative Parcel Map Subdivision to reconfigure existing lots into two new lots"

if any protocol exists for requesting file information, e.g. copy fees, please advise or point me to where to find more information.

please also provide any further information for any cases related to this case, especially the referenced Tentative Parcel Map Subdivision referenced above and showing in the June 1, 2018 "Applications on file" issued by your planning department.

Thank you.

Randall

----- Forwarded message -----

From: Mail Delivery Subsystem <mailer-daemon@googlemail.com>
Date: Fri, Nov 2, 2018, 12:25 PM
Subject: Delivery Status Notification (Failure)
To: <whitwors@gmail.com>



Address not found

Your message wasn't delivered to **mhackett@oakland.net** because the address couldn't be found, or is unable to receive mail.

The response from the remote server was:

554 5.7.1 <mhackett@oakland.net>: Recipient address rejected: user mhackett@oakland.net does not exist

----- Forwarded message -----

From: Randall Whitney <whitwors@gmail.com>
To: mhackett@oakland.net
Cc:
Bcc:
Date: Fri, 2 Nov 2018 12:25:04 -0700
Subject: PLN17003-R01
Moe

I would like to request a copy of the entire file contents for the following case file:

Case File Number: PLN17003-R01

**0- 26th Ave
1111-29th Ave
2615 E 12th st
2783 E 12th st**

APNs 025-069700204; 025-069700306; 025-069700714; 025-069700715; 025-070100604; 025-070101100;025-070701402

"Revision of Tentative Parcel Map Subdivision to reconfigure existing lots into two new lots"

if any protocol exists for requesting file information, e.g. copy fees, please advise or point me to where to find more information.

please also provide any further information for any cases related to this case, especially the referenced Tentative Parcel Map Subdivision referenced above and showing in the June 1, 2018 "Applications on file" issued by your planning department.

Thank you.

Randall



icon.png
2K

Randall Whitney <whitwors@gmail.com>
To: mhackett@oaklandnet.com

Fri, Nov 2, 2018 at 2:04 PM

Moe

today, I waited at Planning Zoning counter to review this file, however you were unavailable during this time...i arrived at 11am and had to leave by 2pm...i waited 3 hours.

I assume there exists an easier manner for me to obtain the case file contents referenced in my prior email shown on this email thread.

pls advise easier procedure.

Randall
[Quoted text hidden]

Randall Whitney <whitwors@gmail.com>
To: mhackett@oaklandnet.com, mhackett@oaklandca.gov

Wed, Nov 13, 2019 at 1:32 PM

Moe Hackett

I am reviewing my emails and finding that i have sent you several prior email requests and i even attempted to wait at the planning counter to review the same files.

Please advise when would be appropriate to obtain the files related to this string of emails sent to your attention. If someone else should be handling this case, please let me know.

Randall Whitney
[Quoted text hidden]

--
To schedule calendar date, please link to following:
calendly.com/whitwors

Randall Whitney
Thomas Capital Investments
P.O. Box 4186
1818 Mt Diablo Blvd
Walnut Creek CA 94596
(925) 298-5929

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--**Steve Jobs**, Stanford graduation commencement speech

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Hackett, Maurice <MHackett@oaklandca.gov>
To: Randall Whitney <whitwors@gmail.com>

Thu, Nov 14, 2019 at 4:12 PM

Hi Randall.

I spoke to Dave Guillory in our records department.

He ask me to have you submit a Public Records Request via the following link:

<https://oaklandca.nextrequest.com/requests/new>

I tried to call but got your office voice mail. I will try to follow up with again.

Regards

Moe

From: Randall Whitney [mailto:whitwors@gmail.com]
Sent: Wednesday, November 13, 2019 1:32 PM
To: Hackett, Maurice <MHackett@oaklandca.gov>; Hackett, Maurice <MHackett@oaklandca.gov>
Subject: [EXTERNAL] Re: PLN 17003-R01

CAUTION: This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

[Quoted text hidden]

Address not found

Your message wasn't delivered to mhackett@oakland.net because the address couldn't be found, or is unable to receive mail.

The response from the remote server was:

```
554 5.7.1 <mhackett@oakland.net>: Recipient address rejected: user mhackett@oakland.net does not exist
```

[Quoted text hidden]

[Quoted text hidden]

Randall Whitney <whitwors@gmail.com>
To: "Hackett, Maurice" <MHackett@oaklandca.gov>

Thu, Nov 14, 2019 at 4:13 PM

thanks Moe.

Can you tell me if an application has been submitted to gain approval for a self storage facility addition to this site or nearby?

[Quoted text hidden]

Randall Whitney <whitwors@gmail.com>
To: mhackett@oaklandnet.com

Mon, Mar 2, 2020 at 7:06 AM

Moe

Can you tell me if any further action has happened on the listed properties since you provided me the files to review at City of Oakland?

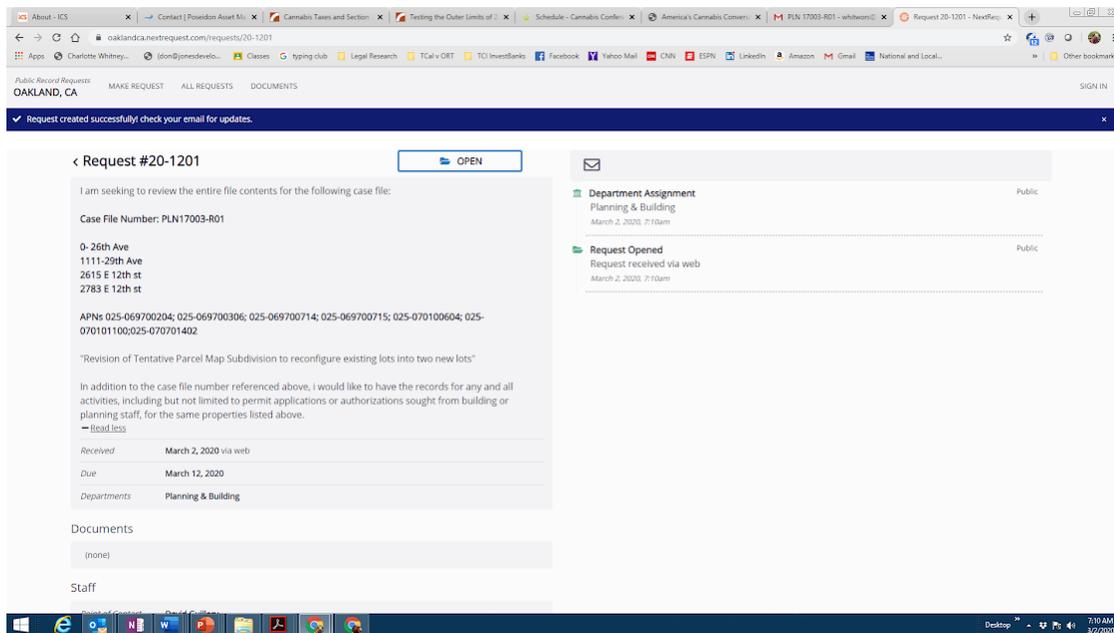
Randall
[Quoted text hidden]
[Quoted text hidden]

Randall Whitney <whitwors@gmail.com>
To: "Hackett, Maurice" <MHackett@oaklandca.gov>

Mon, Mar 2, 2020 at 7:11 AM

Moe

I also submitted following:



[Quoted text hidden]

Randall Whitney <whitwors@gmail.com>
To: "Hackett, Maurice" <MHackett@oaklandca.gov>

Mon, May 11, 2020 at 12:57 PM

Moe

Do you have any updates on what might be actively happening on the properties i asked about prior? I copied the email i sent to you prior with the relevant APN's listed below:

Case File Number: PLN17003-R01 OR any other recent cases since 2017

**0- 26th Ave
1111-29th Ave
2615 E 12th st
2783 E 12th st**

APNs 025-069700204; 025-069700306; 025-069700714; 025-069700715; 025-070100604; 025-070101100;025-070701402

"Revision of Tentative Parcel Map Subdivision to reconfigure existing lots into two new lots"

if any protocol exists for requesting file information, e.g. copy fees, please advise or point me to where to find more information.

please also provide any further information for any cases related to this case, especially the referenced Tentative Parcel Map Subdivision referenced above and showing in the June 1, 2018 "Applications on file" issued by your planning department.

Thank you.

[Quoted text hidden]

--

[Quoted text hidden]

Randall Whitney <whitwors@gmail.com>
To: mhackett@oaklandnet.com, "Hackett, Maurice" <mhackett@oaklandca.gov>

Mon, May 11, 2020 at 12:58 PM

Copy sent to both of your emails at CityOak

[Quoted text hidden]

Randall Whitney <whitwors@gmail.com>
To: "Hackett, Maurice" <MHackett@oaklandca.gov>
Cc: gqwan@oaklandca.gov, "Merkamp, Robert" <RMerkamp@oaklandnet.com>

Wed, Jun 24, 2020 at 12:15 PM

cpayne@oaklandca.gov

[Quoted text hidden]

Randall Whitney <whitwors@gmail.com>
To: "Hackett, Maurice" <MHackett@oaklandca.gov>
Cc: gqwan@oaklandca.gov, "Merkamp, Robert" <RMerkamp@oaklandnet.com>, cpayne@oaklandca.gov

Wed, Jun 24, 2020 at 12:16 PM

Maurice

[Quoted text hidden]

EXHIBIT A15

IMPORTANT Re: CASE FILE No DET200076 Re: PLN 17003-R01

30 messages

Randall Whitney <whitwors@gmail.com>

Wed, Jun 24, 2020 at 12:22 PM

To: "Hackett, Maurice" <MHackett@oaklandca.gov>

Cc: gqwan@oaklandca.gov, "Merkamp, Robert" <RMerkamp@oaklandnet.com>, cpayne@oaklandca.gov

Bcc: Jill Worsley <worsleyjill@hotmail.com>

Maurice re Case No DET200076 City Oakland Planning
re Properties situated in or around 2783 East 12th Street Oakland CA

I am just now coming to find out that the City of Oakland Planning and Zoning Department has been considering an active application concerning the properties you and i spoke about several months ago. Since sending you this email on May 11th, 2020, i am also discovering that a City of Oakland Public Notice has been posted on the subject property even though the State of California continues to be operating under the Emergency Executive Orders issued by the State Governor, the County Supervisors and the City of Oakland City Council in addition to the County Health Department.

Please review my below email request and provide me with ALL the file information related to the subject properties which i previously listed. Your associate Mr Qwan must be holding additional information as his name appears at the bottom of the public notice.

On Wed, Jun 24, 2020 at 12:16 PM Randall Whitney <whitwors@gmail.com> wrote:
Maurice

On Wed, Jun 24, 2020 at 12:15 PM Randall Whitney <whitwors@gmail.com> wrote:
cpayne@oaklandca.gov

On Mon, May 11, 2020 at 12:57 PM Randall Whitney <whitwors@gmail.com> wrote:
Moe

Do you have any updates on what might be actively happening on the properties i asked about prior? I copied the email i sent to you prior with the relevant APN's listed below:

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"Revision of Tentative Parcel Map Subdivision to reconfigure existing lots into two new lots"

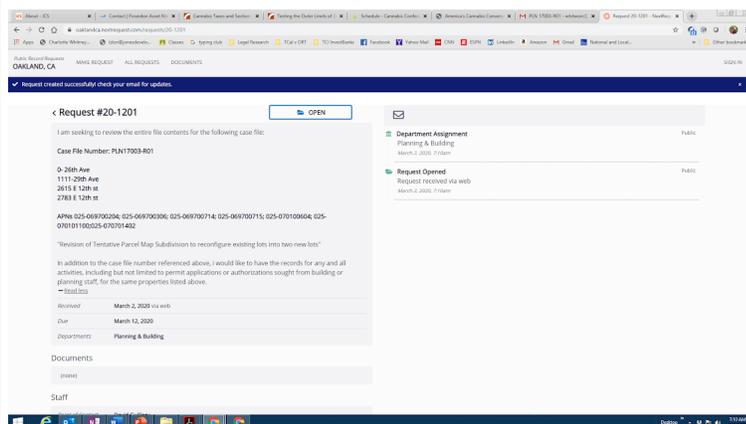
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I tried to call but got your office voice mail. I will try to follow up with again.

Regards

Moe

From: Randall Whitney [mailto:whitwors@gmail.com]

Sent: Wednesday, November 13, 2019 1:32 PM

To: Hackett, Maurice <MHackett@oaklandca.gov>; Hackett, Maurice <MHackett@oaklandca.gov>

Subject: [EXTERNAL] Re: PLN 17003-R01

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Randall Whitney

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pls advise easier procedure.

Randall

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Moe

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0- 26th Ave

1111-29th Ave

2615 E 12th st

2783 E 12th st

APNs 025-069700204; 025-069700306; 025-069700714; 025-069700715; 025-070100604; 025-070101100;025-070701402

"Revision of Tentative Parcel Map Subdivision to reconfigure existing lots into two new lots"

if any protocol exists for requesting file information, e.g. copy fees, please advise or point me to where to find more information.

please also provide any further information for any cases related to this case, especially the referenced Tentative Parcel Map Subdivision referenced above and showing in the June 1, 2018 "Applications on file" issued by your planning department.

Thank you.

Randall

----- Forwarded message -----

From: Mail Delivery Subsystem <mailer-daemon@googlemail.com>
Date: Fri, Nov 2, 2018, 12:25 PM
Subject: Delivery Status Notification (Failure)
To: <whitwors@gmail.com>

Address not found

Your message wasn't delivered to mhackett@oakland.net because the address couldn't be found, or is unable to receive mail.

The response from the remote server was:

```
554 5.7.1 <mhackett@oakland.net>: Recipient address rejected: user mhackett@oakland.net does not exist
```

----- Forwarded message -----

From: Randall Whitney <whitwors@gmail.com>
To: mhackett@oakland.net
Cc:
Bcc:
Date: Fri, 2 Nov 2018 12:25:04 -0700
Subject: PLN17003-R01

Moe

I would like to request a copy of the entire file contents for the following case file:

Case File Number: PLN17003-R01

0- 26th Ave

1111-29th Ave

2615 E 12th st

2783 E 12th st

APNs 025-069700204; 025-069700306; 025-069700714; 025-069700715; 025-070100604; 025-070101100;025-070701402

"Revision of Tentative Parcel Map Subdivision to reconfigure existing lots into two new lots"

if any protocol exists for requesting file information, e.g. copy fees, please advise or point me to where to find more information.

please also provide any further information for any cases related to this case, especially the referenced Tentative Parcel Map Subdivision referenced above and showing in the June 1, 2018 "Applications on file" issued by your planning department.

Thank you.

Randall

--

To schedule calendar date, please link to following:

calendly.com/whitwors

Randall Whitney

Thomas Capital Investments

P.O. Box 4186
1818 Mt Diablo Blvd
Walnut Creek CA 94596
(925) 298-5929

"Your time is limited, so don't waste it living someone else's life..."

--**Steve Jobs**, Stanford graduation commencement speech

Confidentiality, Limitation Of Use, And No Binding Effect

The preceding message contents and any attachments (collectively "Contents") are solely for the benefit of the person(s) or entity(ies) addressed (collectively "Recipient") and may not be relied upon by any other person(s) or entity(ies) for any purpose without specific written permission of Randall C.M. Whitney

--

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calendly.com/whitwors

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Randall Whitney <whitwors@gmail.com>
To: "Hackett, Maurice" <MHackett@oaklandca.gov>
Cc: gqwan@oaklandca.gov, "Merkamp, Robert" <RMerkamp@oaklandnet.com>, cpayne@oaklandca.gov

Give the below website announcements from the planning and zoning department, please explain how the public notice and responses to those notices have been impacted:

Planning & Building's Response to Alameda County Shelter in Place Orders

24-48 Hour Response Time

Building Permits & Plan Review Services

Planning Application Services

Code Enforcement Services

Fire Prevention Services

Public Records Requests

Planning & Building Online Resources and Services

Date Posted: **May 3rd, 2020 @ 9:00 PM**
Last Updated: **June 19th, 2020 @ 6:19 PM**

In compliance with [Alameda County Office Health Officer's April 29, 2020 Shelter in Place Order No 20-10](#) and its subsequent [June 5, 2020 Order No 20-14](#) (revised June 18, 2020) the City of Oakland has resumed inspection services for all project types identified in the April 29 Order, which cites the [State of California Executive Order N-33-20](#) as its source reference for this purpose.

This Order does not grant the City of Oakland authority to interpret project compliance on Alameda County's behalf; therefore, if after reviewing Alameda County Office of Health Officer Order No 20-10, the **project representative has any question concerning a project's eligibility, it shall be the project representative's responsibility** to confirm the eligibility through the **Alameda County Office of the Health Officer.**

Compliance:

It is **required** that each project site **comply with the protocols** for operations that the County Orders cites under its Site Specific Protection Plan, Appendices B-1 and B-2. The Planning & Building Department shall ask **all** project representatives requesting inspections to confirm that they:

1. have read the County Orders; and
2. are adhering to the site work conditions mandated under the County Order.

If any project representative **cannot** confirm that is the case, then the Planning and Building Department shall **hold off on that project inspection until the project representative can confirm adherence** to the Order for site operations and working conditions. Please find the relevant appendices here (updated from the June 18, 2020 Order):

- [Appendix A: Site Specific Protection Plan Template](#)
- [Appendix B-1: Small Construction Project Safety Protocol](#)*[Covers residential projects ≤ 10 units, commercial projects ≤ 20,000 sq. ft.]*
- [Appendix B-2: Large Construction Project Safety Protocol](#)*[Covers residential projects > 10 units, commercial projects > 20,000 sq. ft.]*
- [Appendix C: Additional Businesses Permitted to Open \(Outdoor Dining, Retail, Etc.\)](#)

Inspection:

Upon arrival at the project site, each City Inspector will request that the site superintendent **provide a copy of the County Order's site operations and work condition requirements** from the Appendices. If the relevant Appendices **are not produced**, the inspection will need to be **rescheduled** until the documents can be produced on site.

To prepare your digital plans for the job site prior to an inspection, please read our [Issuance Guidelines for Plans Required from Digital Sources for City Project Site Inspections](#).

The City Inspector also **reserves the right to cancel any inspection** at the project site if the Inspector observes any **violation of the County Order pertaining to site operations**.

The project representative may request an inspection once the violation has been addressed.

Applications:

The City will **continue to process** applications across all categories of project for **permit approval** consistent with the City's development regulations. To submit your application through our online [Digital Inbox](#), please read our [Electronic Submission Guidelines](#) and [Digital Inbox Instruction Guide](#).

Planning Commission Meetings:

With the revised [Emergency Order No. 3 of the City of Oakland](#), the City began **reconvening Planning Commission meetings (online only) on June 3, 2020 at 3 pm** ([see full schedule here](#)). As such, the Planning Bureau has **resumed making administrative decisions** on projects appealable to the Planning Commission and **scheduling entitlement cases** to come before that body.

Projected Response and Service Times:

We understand this unprecedented time has been challenging for many of our customers. We thank you for your support and understanding. Due to the County Orders to cease some work during Shelter In Place (SIP), we will inevitably have a considerable backlog of inspection needs to address. We ask for your continued patience in the coming weeks as we adapt our services and personnel to stay in compliance. It is our intention to return to the response times established prior to the Alameda County Shelter-In-Place Orders going into effect, as they are updated.

Conditions and information continue to change rapidly. Please check back regularly for [City updates relating to COVID-19](#).

24-48 Hour Response Time

Note: Emails and phone calls are processed and responded to during normal business hours. Please allow 24-48 hours for response.

[Quoted text hidden]

Rex, Diana <DRex@oaklandca.gov>

To: "whitwors@gmail.com" <whitwors@gmail.com>

Cc: "Guillory, David" <DGuillory@oaklandca.gov>, "Merkamp, Robert" <RMerkamp@oaklandca.gov>, "Hackett, Maurice" <MHackett@oaklandca.gov>, "Qwan, Gregory" <GQwan@oaklandca.gov>

Wed, Jun 24, 2020 at 1:37 PM

Good Afternoon,

Your email was forwarded to me. It looks like back on Mar 2 2020, you were informed to request a records request with our records department at <https://oaklandca.nextrequest.com/>, did you do this? If so, do you have your number? If you did not request the information from the portal, please do so now. Please be specific on the information you want to receive to make sure you receive the correct information.

Although, the Planning and Building department's building is closed. Our staff is diligently working to complete projects throughout the City. We have created an appeals process and a virtual Planning Commission Meeting. This is outlined on our website which you attached below under Emergency Order Number 3, Attachment A & B. The next planning commission meeting is on July 1st.

Regards,

Diana Rex
Administrative Services Managers
Planning & Building Department - Operations Division
[Quoted text hidden]

 **Emergency Order No 3.pdf**
186K

Randall Whitney <whitwors@gmail.com> Wed, Jun 24, 2020 at 2:00 PM
To: "Rex, Diana" <DRex@oaklandca.gov>
Cc: "Guillory, David" <DGuillory@oaklandca.gov>, "Merkamp, Robert" <RMerkamp@oaklandca.gov>, "Hackett, Maurice" <MHackett@oaklandca.gov>, "Qwan, Gregory" <GQwan@oaklandca.gov>

Do you have a response to the question asked about the project identified?
[Quoted text hidden]

Merkamp, Robert <RMerkamp@oaklandca.gov> Wed, Jun 24, 2020 at 3:40 PM
To: Randall Whitney <whitwors@gmail.com>, "Rex, Diana" <DRex@oaklandca.gov>
Cc: "Guillory, David" <DGuillory@oaklandca.gov>, "Hackett, Maurice" <MHackett@oaklandca.gov>, "Qwan, Gregory" <GQwan@oaklandca.gov>

Mr. Whitney,

I believe I understand your question to be how we were able to put it out for public notice given the shelter in place. The emergency order from the City Administrator that Ms. Rex provided you gives us the authority to do that very thing as described by the process contained in the attachments to that document (which were included in the scan provided to you by Ms. Rex). The public comment period has closed for the determination you're interested in but the letter has not yet been issued. Please let myself and the case planner, Mr. Qwan, know if you wish to be copied on the decision.

Robert D. Merkamp, Zoning Manager | City of Oakland | Bureau of Planning | [250 Frank H. Ogawa, Suite 2214 | Oakland, CA 94612](#) | Phone: (510) 238-6283 | Fax: (510) 238-4730 | Email: rmerkamp@oaklandca.gov | Website: www.oaklandca.gov/departments/planning-and-building

From: Randall Whitney <whitwors@gmail.com>
Sent: Wednesday, June 24, 2020 2:00 PM
To: Rex, Diana <DRex@oaklandca.gov>
Cc: Guillory, David <DGuillory@oaklandca.gov>; Merkamp, Robert <RMerkamp@oaklandca.gov>; Hackett, Maurice <MHackett@oaklandca.gov>; Qwan, Gregory <GQwan@oaklandca.gov>
[Quoted text hidden]

[Quoted text hidden]

Randall Whitney <whitwors@gmail.com> Wed, Jun 24, 2020 at 3:44 PM
To: "Merkamp, Robert" <RMerkamp@oaklandca.gov>
Cc: "Rex, Diana" <DRex@oaklandca.gov>, "Guillory, David" <dguillory@oaklandca.gov>, "Hackett, Maurice" <MHackett@oaklandca.gov>, "Qwan, Gregory" <GQwan@oaklandca.gov>

yes. As I have previously put City of Oakland on notice prior to this email, I am seeking notice on any and all documents related to this property (and surrounding properties) especially since our company is listed as applicant in the case referenced to M Hackett(PLN 17003-R01)
[Quoted text hidden]

Randall Whitney <whitwors@gmail.com> Thu, Jun 25, 2020 at 5:43 PM
To: "Merkamp, Robert" <RMerkamp@oaklandca.gov>
Cc: "Rex, Diana" <DRex@oaklandca.gov>, "Guillory, David" <dguillory@oaklandca.gov>, "Hackett, Maurice" <MHackett@oaklandca.gov>, "Qwan, Gregory" <GQwan@oaklandca.gov>

Mr Merkamp and Ms Rex

You asked about IF I had previously submitted a CPRA records request -- yes, I submitted a request on March 2nd 2020 under case no. 20-1201. If you review the case file, you will find the following language:

"The file has been retrieved by the Planner and will be available to view over the counter for 10 days when Planning & Building Dept. is open to the public again (250 Frank Ogawa Plaza, Second Floor-Records) "

-- this was apparently posted on March 24, 2020 which would make gaining access to any file information impossible given the shutdown at City of Oakland Planning department.

IN that request, I asked for **any and all information related to the properties specified**. I would have expected that at very least, the project sponsor and/or applicant would have been in the process of obtaining the subject DET200076 determination letter.

More concerning, the Authorization referenced in your email and outlined within Exhibit A attached to the Order (issued by Interim City Administrator Steven Falk) seems to adjust the statutory public notice requirements to the detriment of the public at large. Primarily, the Order suggests that the project applicant becomes an agent for the City of Oakland in handling the posting requirements. And worse, the Order shortens the statutory timing from 17 days to 10 days without any basis or authority. I am hoping to avoid a detailed search for the public notice requirements, but I am having a challenge to believe that the City is authorized to shorten the window of time from 17 days to 10 days WHILE A GLOBAL HEALTH CRISIS PANDEMIC has caused government to order that same public to remain indoors under a Shelter in Place Order -- which means, LESS people will have the opportunity to witness the public notice being posted and advertised.

Help me understand if i am mischaracterizing the situation, but i am not in agreement with your above justifications and moreso i am disputing the timing shown on the subject public notice.
As you can acknowledge, i have been in direct communications with your department staff, i have submitted public notice requests as directed, and i have still not received any sufficient information to help me understand what is being proposed on properties which i continue to hold an ownership interest.

Randall Whitney

[Quoted text hidden]

Randall Whitney <whitwors@gmail.com>
To: permitinfo@oaklandca.gov

Thu, Jun 25, 2020 at 6:10 PM

Please advise if any information is available for the subject file case numbers listed below and within this email subject caption.

Re: CASE FILE No DET200076 Re: PLN 17003-R01

Randall Whitney

----- Forwarded message -----

From: **Randall Whitney** <whitwors@gmail.com>
Date: Wed, Jun 24, 2020 at 12:22 PM
Subject: IMPORTANT Re: CASE FILE No DET200076 Re: PLN 17003-R01
To: Hackett, Maurice <MHackett@oaklandca.gov>

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

Merkamp, Robert <RMerkamp@oaklandca.gov>
To: Randall Whitney <whitwors@gmail.com>

Thu, Jun 25, 2020 at 6:52 PM

Cc: "Rex, Diana" <DRex@oaklandca.gov>, "Guillory, David" <DGuillory@oaklandca.gov>, "Hackett, Maurice" <MHackett@oaklandca.gov>, "Qwan, Gregory" <GQwan@oaklandca.gov>

Hello Mr. Whitney,

For clarity, I didn't ask you about that at all. I just clarified how we were operating under the CAO order and clarified if you wished to be notified of decisions on the property, which you affirmed. I'm not involved in any other aspects of this thread.

Thanks,
Robert

Sent from my iPhone

[Quoted text hidden]

Randall Whitney <whitwors@gmail.com>
To: Jill Worsley <worsleyjill@hotmail.com>

Thu, Jun 25, 2020 at 6:54 PM

see email below...i am very focused on turning this upside down.

[Quoted text hidden]

Guillory, David <DGuillory@oaklandca.gov>

Fri, Jun 26, 2020 at 8:58 AM

To: Randall Whitney <whitwors@gmail.com>, "Merkamp, Robert" <RMerkamp@oaklandca.gov>
Cc: "Rex, Diana" <DRex@oaklandca.gov>, "Hackett, Maurice" <MHackett@oaklandca.gov>, "Qwan, Gregory" <GQwan@oaklandca.gov>

Good Morning Mr. Whitney,

I will follow up with the other aspects of your Public Records Request.

David Guillory

Senior Public Service Representative

City of Oakland

Planning and Building Department

Building Services/Records

(P) 510-238-6143

From: Randall Whitney <whitwors@gmail.com>
Sent: Thursday, June 25, 2020 5:43 PM
To: Merkamp, Robert <RMerkamp@oaklandca.gov>

[Quoted text hidden]

[Quoted text hidden]
[Quoted text hidden]

[Quoted text hidden]
[Quoted text hidden]
[Quoted text hidden]
[Quoted text hidden]

[Quoted text hidden]
[Quoted text hidden]

Maurice

[Quoted text hidden]

cpayne@oaklandca.gov

[Quoted text hidden]

[Quoted text hidden]
[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

Randall Whitney <whitwors@gmail.com>

Fri, Jun 26, 2020 at 11:02 AM

To: "Guillory, David" <DGuillory@oaklandca.gov>

Cc: "Merkamp, Robert" <RMerkamp@oaklandca.gov>, "Rex, Diana" <DRex@oaklandca.gov>, "Hackett, Maurice" <MHackett@oaklandca.gov>, "Qwan, Gregory" <GQwan@oaklandca.gov>

David

thanks for your response. I am still unable to access the files involved with these properties/cases. Since the March 17th closing of City Oakland planning department, can you provide the file contents through an alternative source? e.g. cloud based system?

Randall

[Quoted text hidden]

PermitInfo <PermitInfo@oaklandca.gov>
To: Randall Whitney <whitwors@gmail.com>

Wed, Jul 1, 2020 at 7:32 PM

Hello Randall,

Here you are:

Sincerely,
Aubrey Rose AICP
Planner III

From: Randall Whitney <whitwors@gmail.com>

Sent: Thursday, June 25, 2020 6:10 PM

To: PermitInfo <PermitInfo@oaklandca.gov>

Subject: Fwd: IMPORTANT Re: CASE FILE No DET200076 Re: PLN 17003-R01

[Quoted text hidden]

4 attachments

-  **decision letter.pdf**
1440K
-  **MS2 GP Determination Application 2020.pdf**
2707K
-  **Plans 05192020.pdf**
13699K
-  **Self Storage GP Consistency - Final Draft (5-18-2020).pdf**
3361K

Randall Whitney <whitwors@gmail.com>
To: Jill Worsley <worsleyjill@hotmail.com>

Wed, Jul 1, 2020 at 11:13 PM

read thru this...just fell into my inbox at 733pm tonight...funny how nobody would discuss w me

[Quoted text hidden]

4 attachments



Outlook-image.png.png
186K

-  **decision letter.pdf**
1440K
-  **MS2 GP Determination Application 2020.pdf**
2707K
-  **Plans 05192020.pdf**
13699K

Randall Whitney <whitwors@gmail.com>
To: PermitInfo <PermitInfo@oaklandca.gov>

Thu, Jul 2, 2020 at 9:43 AM

Aubrey

Thank you for sending me this information...long time since last crossing paths with you - i was more familiar with your being involved in larger housing projects. Can you tell me how you came about being involved with this matter?

Randall

[Quoted text hidden]

Randall Whitney <whitwors@gmail.com>
To: "Merkamp, Robert" <RMerkamp@oaklandnet.com>, "Merkamp, Robert" <RMerkamp@oaklandca.gov>, cpayne@oaklandca.gov
Bcc: Jill Worsley <worsleyjill@hotmail.com>, paul mccarthy <p_mccarthy@sbcglobal.net>

Thu, Jul 2, 2020 at 10:08 AM

Ms Payne and Mr Merkamp

I am seeking a comprehensive review of the internal process managed by your planning and zoning departments in managing these subject land use permit applications/cases.

Your planner, Aubrey Rose, just forwarded this below information to me late last evening which clearly highlights a much more active planning/zoning application file than was previously communicated by your department.

You have multiple written communications (showing on your records) as well as my personal visits to the Planning Counter -- at no time was this information been provided to myself, or anyone involved with our group, even though you have held this detailed application in your offices since August 2018 -- and most recently, your offices have been actively processing this application without any notice notwithstanding my most recent requests for file information.

I am sending this specific and constructive notice that no further action should be taken on this application, or anything involved with this property matter, until this application has been fully reviewed under the statutory protocols available, and further, until a proper public notice has been made available to the community.

Your office should be aware of the current dispute to the recorded City of Oakland Certificates of Compliance which were issued in error by your engineers on these exact same properties and are currently being reviewed by the Superior Court.

[Quoted text hidden]

4 attachments

-  **decision letter.pdf**
1440K
-  **MS2 GP Determination Application 2020.pdf**
2707K
-  **Plans 05192020.pdf**
13699K
-  **Self Storage GP Consistency - Final Draft (5-18-2020).pdf**
3361K

Randall Whitney <whitwors@gmail.com>
To: hklein@oaklandca.gov, "Merkamp, Robert" <RMerkamp@oaklandnet.com>, "Merkamp, Robert" <RMerkamp@oaklandca.gov>

Thu, Jul 2, 2020 at 10:42 AM

Heather

Your name was provided by Robert Merkamp's email as acting in his stead. Please see below email which is both important and urgent.

subject property even though the State of California continues to be operating under the Emergency Executive Orders issued by the State Governor, the County Supervisors and the City of Oakland City Council in addition to the County Health Department.

Please review my below email request and provide me with ALL the file information related to the subject properties which i previously listed. Your associate Mr Qwan must be holding additional information as his name appears at the bottom of the public notice.

On Wed, Jun 24, 2020 at 12:16 PM Randall Whitney <whitwors@gmail.com> wrote:
Maurice

On Wed, Jun 24, 2020 at 12:15 PM Randall Whitney <whitwors@gmail.com> wrote:
cpayne@oaklandca.gov

On Mon, May 11, 2020 at 12:57 PM Randall Whitney <whitwors@gmail.com> wrote:
Moe

Do you have any updates on what might be actively happening on the properties i asked about prior? I copied the email i sent to you prior with the relevant APN's listed below:

Case File Number: PLN17003-R01 OR any other recent cases since 2017

**0- 26th Ave
1111-29th Ave
2615 E 12th st
2783 E 12th st**

APNs 025-069700204; 025-069700306; 025-069700714; 025-069700715; 025-070100604; 025-070101100;025-070701402

"Revision of Tentative Parcel Map Subdivision to reconfigure existing lots into two new lots"

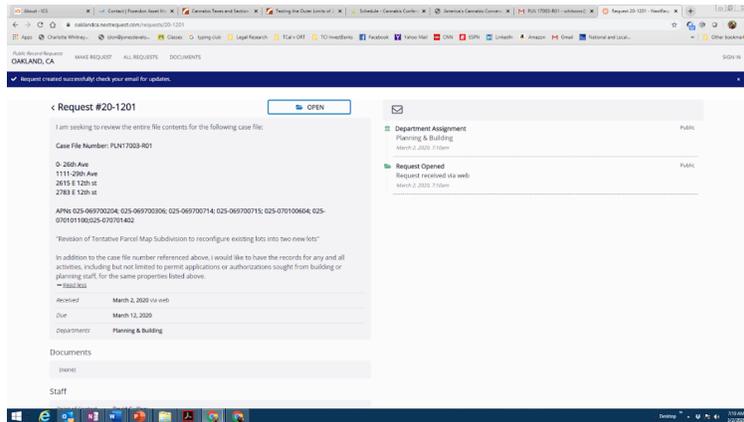
if any protocol exists for requesting file information, e.g. copy fees, please advise or point me to where to find more information.

please also provide any further information for any cases related to this case, especially the referenced Tentative Parcel Map Subdivision referenced above and showing in the June 1, 2018 "Applications on file" issued by your planning department.

Thank you.

On Mon, Mar 2, 2020 at 7:11 AM Randall Whitney <whitwors@gmail.com> wrote:
Moe

I also submitted following:



On Thu, Nov 14, 2019 at 4:12 PM Hackett, Maurice <MHackett@oaklandca.gov> wrote:

Hi Randall.

I spoke to Dave Guillory in our records department.

He ask me to have you submit a Public Records Request via the following link:

<https://oaklandca.nextrequest.com/requests/new>

I tried to call but got your office voice mail. I will try to follow up with again.

Regards

Moe

From: Randall Whitney [mailto:whitwors@gmail.com]

Sent: Wednesday, November 13, 2019 1:32 PM

To: Hackett, Maurice <MHackett@oaklandca.gov>; Hackett, Maurice <MHackett@oaklandca.gov>

Subject: [EXTERNAL] Re: PLN 17003-R01

CAUTION: This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

Moe Hackett

I am reviewing my emails and finding that i have sent you several prior email requests and i even attempted to wait at the planning counter to review the same files.

Please advise when would be appropriate to obtain the files related to this string of emails sent to your attention. If someone else should be handling this case, please let me know.

Randall Whitney

On Fri, Nov 2, 2018 at 2:04 PM Randall Whitney <whitwors@gmail.com> wrote:

Moe

today, I waited at Planning Zoning counter to review this file, however you were unavailable during this time...i arrived at 11am and had to leave by 2pm...i waited 3 hours.

I assume there exists an easier manner for me to obtain the case file contents referenced in my prior email shown on this email thread.

pls advise easier procedure.

Randall

On Fri, Nov 2, 2018, 12:30 PM Randall Whitney <whitwors@gmail.com> wrote:

Moe

I would like to request a copy of the entire file contents for the following case file:

Case File Number: PLN17003-R01

0- 26th Ave

1111-29th Ave

2615 E 12th st

2783 E 12th st

APNs 025-069700204; 025-069700306; 025-069700714; 025-069700715; 025-070100604; 025-070101100;025-070701402

"Revision of Tentative Parcel Map Subdivision to reconfigure existing lots into two new lots"

if any protocol exists for requesting file information, e.g. copy fees, please advise or point me to where to find more information.

please also provide any further information for any cases related to this case, especially the referenced Tentative Parcel Map Subdivision referenced above and showing in the June 1, 2018 "Applications on file" issued by your planning department.

Thank you.

Randall

----- Forwarded message -----

From: Mail Delivery Subsystem <mailer-daemon@googlemail.com>

Date: Fri, Nov 2, 2018, 12:25 PM

Subject: Delivery Status Notification (Failure)
To: <whitwors@gmail.com>

Address not found

Your message wasn't delivered to mhackett@oakland.net because the address couldn't be found, or is unable to receive mail.

The response from the remote server was:

554 5.7.1 <mhackett@oakland.net>: Recipient address rejected: user mhackett@oakland.net does not exist

----- Forwarded message -----

From: Randall Whitney <whitwors@gmail.com>
To: mhackett@oakland.net
Cc:
Bcc:
Date: Fri, 2 Nov 2018 12:25:04 -0700
Subject: PLN17003-R01

Moe

I would like to request a copy of the entire file contents for the following case file:

Case File Number: PLN17003-R01

0- 26th Ave

1111-29th Ave

2615 E 12th st

2783 E 12th st

APNs 025-069700204; 025-069700306; 025-069700714; 025-069700715; 025-070100604; 025-070101100;025-070701402

"Revision of Tentative Parcel Map Subdivision to reconfigure existing lots into two new lots"

if any protocol exists for requesting file information, e.g. copy fees, please advise or point me to where to find more information.

please also provide any further information for any cases related to this case, especially the referenced Tentative Parcel Map Subdivision referenced above and showing in the June 1, 2018 "Applications on file" issued by your planning department.

Thank you.

Randall

To schedule calendar date, please link to following:

calendly.com/whitwors

Randall Whitney

Thomas Capital Investments

P.O. Box [4186](#)
1818 Mt Diablo Blvd
Walnut Creek CA 94596
(925) 298-5929

"Your time is limited, so don't waste it living someone else's life..."
--**Steve Jobs**, Stanford graduation commencement speech

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--

Randall Whitney
Thomas Capital Investments
P.O. Box [4186](#)
1818 Mt Diablo Blvd

I am sending this specific and constructive notice that no further action should be taken on this application, or anything involved with this property matter, until this application has been fully reviewed under the statutory protocols available, and further, until a proper public notice has been made available to the community.

Your office should be aware of the current dispute to the recorded City of Oakland Certificates of Compliance which were issued in error by your engineers on these exact same properties and are currently being reviewed by the Superior Court.

Randall Whitney

----- Forwarded message -----

From: **PermitInfo** <PermitInfo@oaklandca.gov>
Date: Wed, Jul 1, 2020 at 7:33 PM
Subject: Re: IMPORTANT Re: CASE FILE No DET200076 Re: PLN 17003-R01
To: Randall Whitney <whitwors@gmail.com>

Hello Randall,

Here you are:

Sincerely,
Aubrey Rose AICP
Planner III

From: Randall Whitney <whitwors@gmail.com>
Sent: Thursday, June 25, 2020 6:10 PM
To: PermitInfo <PermitInfo@oaklandca.gov>
Subject: Fwd: IMPORTANT Re: CASE FILE No DET200076 Re: PLN 17003-R01

Please advise if any information is available for the subject file case numbers listed below and within this email subject caption.

Re: CASE FILE No DET200076 Re: PLN 17003-R01

Randall Whitney

----- Forwarded message -----

From: **Randall Whitney** <whitwors@gmail.com>
Date: Wed, Jun 24, 2020 at 12:22 PM
Subject: IMPORTANT Re: CASE FILE No DET200076 Re: PLN 17003-R01
To: Hackett, Maurice <MHackett@oaklandca.gov>
Cc: <gqwan@oaklandca.gov>, Merkamp, Robert <RMerkamp@oaklandnet.com>, <cpayne@oaklandca.gov>

Maurice re Case No DET200076 City Oakland Planning
re Properties situated in or around 2783 East 12th Street Oakland CA

I am just now coming to find out that the City of Oakland Planning and Zoning Department has been considering an active application concerning the properties you and i spoke about several months ago. Since sending you this email on May 11th, 2020, i am also discovering that a City of Oakland Public Notice has been posted on the subject property even though the State of California continues to be operating under the Emergency Executive Orders issued by the State Governor, the County Supervisors and the City of Oakland City Council in addition to the County Health Department.

Please review my below email request and provide me with ALL the file information related to the subject properties which i previously listed. Your associate Mr Qwan must be holding additional information as his name appears at the bottom of the public notice.

On Wed, Jun 24, 2020 at 12:16 PM Randall Whitney <whitwors@gmail.com> wrote:
Maurice

On Wed, Jun 24, 2020 at 12:15 PM Randall Whitney <whitwors@gmail.com> wrote:
cpayne@oaklandca.gov

On Mon, May 11, 2020 at 12:57 PM Randall Whitney <whitwors@gmail.com> wrote:
Moe

Do you have any updates on what might be actively happening on the properties i asked about prior? I copied the email i sent to you prior with the relevant APN's listed below:

Case File Number: PLN17003-R01 OR any other recent cases since 2017

**0- 26th Ave
1111-29th Ave
2615 E 12th st
2783 E 12th st**

APNs 025-069700204; 025-069700306; 025-069700714; 025-069700715; 025-070100604; 025-070101100;025-070701402

"Revision of Tentative Parcel Map Subdivision to reconfigure existing lots into two new lots"

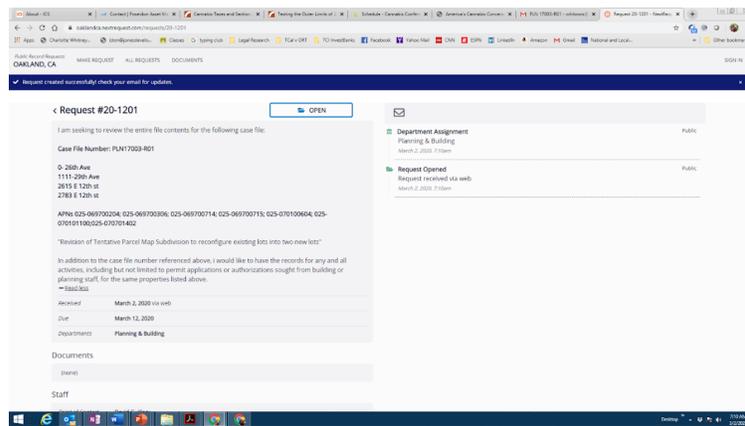
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please also provide any further information for any cases related to this case, especially the referenced Tentative Parcel Map Subdivision referenced above and showing in the June 1, 2018 "Applications on file" issued by your planning department.

Thank you.

On Mon, Mar 2, 2020 at 7:11 AM Randall Whitney <whitwors@gmail.com> wrote:
Moe

I also submitted following:



On Thu, Nov 14, 2019 at 4:12 PM Hackett, Maurice <MHackett@oaklandca.gov> wrote:

Hi Randall.

I spoke to Dave Guillory in our records department.

He ask me to have you submit a Public Records Request via the following link:

<https://oaklandca.nextrequest.com/requests/new>

I tried to call but got your office voice mail. I will try to follow up with again.

Regards

Moe

From: Randall Whitney [mailto:whitwors@gmail.com]

Sent: Wednesday, November 13, 2019 1:32 PM

To: Hackett, Maurice <MHackett@oaklandca.gov>; Hackett, Maurice <MHackett@oaklandca.gov>

Subject: [EXTERNAL] Re: PLN 17003-R01

CAUTION: This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

Moe Hackett

I am reviewing my emails and finding that i have sent you several prior email requests and i even attempted to wait at the planning counter to review the same files.

Please advise when would be appropriate to obtain the files related to this string of emails sent to your attention. If someone else should be handling this case, please let me know.

Randall Whitney

On Fri, Nov 2, 2018 at 2:04 PM Randall Whitney <whitwors@gmail.com> wrote:

Moe

today, I waited at Planning Zoning counter to review this file, however you were unavailable during this time...i arrived at 11am and had to leave by 2pm...i waited 3 hours.

I assume there exists an easier manner for me to obtain the case file contents referenced in my prior email shown on this email thread.

pls advise easier procedure.

Randall

On Fri, Nov 2, 2018, 12:30 PM Randall Whitney <whitwors@gmail.com> wrote:

Moe

I would like to request a copy of the entire file contents for the following case file:

Case File Number: PLN17003-R01

0- 26th Ave

1111-29th Ave

2615 E 12th st

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To: <whitwors@gmail.com>

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Randall

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calendly.com/whitwors

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Aubrey Rose AICP
Planner III

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Sent: Thursday, June 25, 2020 6:10 PM
To: PermitInfo <PermitInfo@oaklandca.gov>
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Please advise if any information is available for the subject file case numbers listed below and within this email subject caption.

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To: Hackett, Maurice <MHackett@oaklandca.gov>
Cc: <gqwan@oaklandca.gov>, Merkamp, Robert <RMerkamp@oaklandnet.com>, <cpayne@oaklandca.gov>

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re Properties situated in or around 2783 East 12th Street Oakland CA

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Thank you.

On Mon, Mar 2, 2020 at 7:11 AM Randall Whitney <whitwors@gmail.com> wrote:
Moe

I also submitted following:

The screenshot shows a web browser window with multiple tabs. The active tab is titled "Request #20-1201" and displays the following content:

- Request #20-1201** (with an "OPEN" button)
- Text: "I am seeking to review the entire file contents for the following case file:"
- Case File Number:** PLN17003-R01
- Address:** 0- 26th Ave, 1111-29th Ave, 2615 E 12th st, 2783 E 12th st
- APNs:** 025-069700204, 025-069700306, 025-069700714, 025-069700715, 025-070100604, 025-070101100, 025-070701402
- Subject:** "Revision of Tentative Parcel Map Subdivision to reconfigure existing lots into two new lots"
- Text: "In addition to the case file number referenced above, I would like to have the records for any and all activities, including but not limited to permit applications or authorizations sought from building or planning staff, for the same properties listed above."
- Timeline:**
 - Requested: March 2, 2020 via web
 - Due: March 12, 2020
 - Department: Planning & Building
- Documents:** (empty list)
- Staff:** (empty list)
- Notifications:**
 - Department Assignment: Planning & Building (Public), March 2, 2020 7:00am
 - Request Opened: Request received via web (Public), March 2, 2020 7:00am

On Thu, Nov 14, 2019 at 4:12 PM Hackett, Maurice <MHackett@oaklandca.gov> wrote:

Hi Randall.

I spoke to Dave Guillory in our records department.

He ask me to have you submit a Public Records Request via the following link:

<https://oaklandca.nextrequest.com/requests/new>

I tried to call but got your office voice mail. I will try to follow up with again.

Regards

Moe

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Sent: Wednesday, November 13, 2019 1:32 PM

To: Hackett, Maurice <MHackett@oaklandca.gov>; Hackett, Maurice <MHackett@oaklandca.gov>

Subject: [EXTERNAL] Re: PLN 17003-R01

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To: mhackett@oakland.net
Cc:
Bcc:
Date: Fri, 2 Nov 2018 12:25:04 -0700
Subject: PLN17003-R01

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please also provide any further information for any cases related to this case, especially the referenced Tentative Parcel Map Subdivision referenced above and showing in the June 1, 2018 "Applications on file" issued by your planning department.

Thank you.

Randall

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calendly.com/whitwors

Randall Whitney

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PermitInfo <PermitInfo@oaklandca.gov>
To: Randall Whitney <whitwors@gmail.com>

Sat, Jul 4, 2020 at 10:19 AM

Hi Randall,

You're welcome -- I worked on applications for 8 years ago -- 5.5 years ago I was made the zoning counter supervisor -- for SIP, I'm responded to all zoning related inquiries -- take care

Sincerely,
Aubrey

*****Please note that these emails are not reviewed in conversation format nor is it reviewed by the same person, so please include all required attachments in all new emails or replies if you are trying to provide additional supporting documentation. Thank you.*****

From: Randall Whitney <whitwors@gmail.com>
Sent: Thursday, July 2, 2020 9:43 AM
To: PermitInfo <PermitInfo@oaklandca.gov>
Subject: Re: IMPORTANT Re: CASE FILE No DET200076 Re: PLN 17003-R01

[Quoted text hidden]

Randall Whitney <whitwors@gmail.com>
To: PermitInfo <PermitInfo@oaklandca.gov>

Sat, Jul 4, 2020 at 10:28 AM

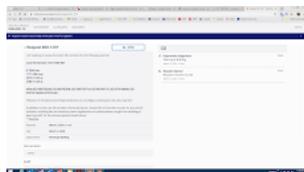
thanks for this awesome reply on your July4th dayoff...

just curious...how did you choose those 4 items you emailed me?

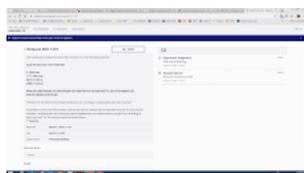
I'm not remembering what inquiry I sent or what you might be responding to since City Oakland has several various methods to obtain data.

again. thanks
[Quoted text hidden]

2 attachments



Outlook-image.png.png
186K



Outlook-image.png.png
186K

Randall Whitney <whitwors@gmail.com>
To: Donald Schwartz Law Offices <donaald@lawofficedonaldschwartz.com>

Wed, Jul 8, 2020 at 8:41 PM

From: Randall Whitney <whitwors@gmail.com>

Sent: Saturday, July 4, 2020 10:28 AM

[Quoted text hidden]

[Quoted text hidden]

Randall Whitney <whitwors@gmail.com>
To: PermitInfo <PermitInfo@oaklandca.gov>

Mon, Jul 13, 2020 at 3:18 PM

OK thanks Aubrey.

Can you tell me if any other documents were available -- meaning, was that the entire set of available documents?

Randall

[Quoted text hidden]

PermitInfo <PermitInfo@oaklandca.gov>
To: Randall Whitney <whitwors@gmail.com>

Thu, Jul 16, 2020 at 8:42 AM

Hi Randall,

No problem -- no, no other documents available, that was everything available

Sincerely,
Aubrey

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From: Randall Whitney <whitwors@gmail.com>

Sent: Monday, July 13, 2020 3:18 PM

To: PermitInfo <PermitInfo@oaklandca.gov>

[Quoted text hidden]

[Quoted text hidden]

Randall Whitney <whitwors@gmail.com>
To: PermitInfo <PermitInfo@oaklandca.gov>

Thu, Jul 16, 2020 at 11:55 AM

Aubrey

I understand you sent me all documents available. But what about all the communications between the sponsor/developer and the City Oakland planning & engineering staff?

For instance, i wanted to obtain the Zoom meeting notes/outtakes/video held on Friday June 26th at approx 4pm -- apparently a "team meeting" transpired which this project was discussed with the sponsor.

How would I obtain this information? or the emails between Greg Qwan and the sponsor/developer representative?

Randall

[Quoted text hidden]

PermitInfo <PermitInfo@oaklandca.gov>
To: Randall Whitney <whitwors@gmail.com>

Fri, Jul 24, 2020 at 8:25 AM

Randall,

My only other thoughts are to contact Gregory Qwan or to submit a Public Records Request -- not sure what this would accomplish simply because I'm not sure what other records if any there may be

Sincerely,
Aubrey

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From: Randall Whitney <whitwors@gmail.com>

Sent: Thursday, July 16, 2020 11:55 AM

[Quoted text hidden]

[Quoted text hidden]

Randall Whitney <whitwors@gmail.com>
To: PermitInfo <PermitInfo@oaklandca.gov>, "Rose, Aubrey" <arose@oaklandnet.com>
Bcc: Jill Worsley <worsleyjill@hotmail.com>

Fri, Jul 24, 2020 at 9:17 AM

Thank you Aubrey. I do understand your process and your attempts to exhaust what is available to you.

However, more information must exist within this file since i have multiple communications that reference other meetings and documents related to either this project and/or these specific properties, but which are not showing up in either your responses or the several public records requests lodged to date.

Just so you know...i have sent several requests for information related to this project(and involved properties) to planner Greg Qwan. He did not reply to my requests, but he sent my communications to the sponsor/developer(S Bovard) and even hosted a conference call Friday June 24th discussing my inquiries...but never replied back to my questions or requests for information.

I hope you can understand how frustrating to be blocked from a project wherein i spent over 20 years doing business in the challenging community, assembling properties and gaining land use approvals.

Randall

[Quoted text hidden]



Randall Whitney <whitwors@gmail.com>

NOTICE OF APPEAL Re: Letter of Determination per 17.01.070 re 2783 East 12th Street, Oakland CA DET200076 PLN19160 TMP 10632 PLN 17003

Randall Whitney <whitwors@gmail.com>

Thu, Sep 24, 2020 at 11:55 PM

To: "Merkamp, Robert" <RMerkamp@oaklandca.gov>, "Payne, Catherine" <cpayne@oaklandca.gov>, "Qwan, Gregory" <gqwan@oaklandca.gov>

Cc: "Manasse, Edward" <emanasse@oaklandca.gov>, "Gilchrist, William" <wgilchrist@oaklandca.gov>, "Merkamp, Robert" <RMerkamp@oaklandnet.com>

Corrected Subject

On Thu, Sep 24, 2020 at 11:39 PM Randall Whitney <whitwors@gmail.com> wrote:
Mr Merkamp, Ms Payne, and Mr Qwan

In accordance with the instructions found on the Planning Director's Letter of Determination (dated September 15, 2020), please find the attached APPEAL notice and supporting documents.

Please advise next steps.

Randall Whitney

On Mon, Jul 6, 2020 at 1:32 PM Randall Whitney <whitwors@gmail.com> wrote:

Bill Gilchrist, Director of Planning (% S Ford attn: wgilchrist@oaklandca.gov)

cc: Ed Manasse(emanasse@oaklandca.gov),

Robert Merkamp(rmerkamp@oaklandca.gov), Catherine

Payne(CPayne@oaklandca.gov), Heather Klein(hklein@oaklandca.gov)

City of Oakland

Planning and Building

250 Frank Ogawa Plaza

Oakland California

Re PLN19160

DET200076, PLN 17003-R01, TPM 10632

APNs: 25-697-002-04 / 25-697-003-06 / 25-697-007-15 / 25-697-007-14

Property Addresses: 2615 – 2783 East 12th Street, 1111 29th Avenue Oakland CA

Opposition to Letter of Determination re Conformity with General Plan

This opposition is being sent to the Director of Planning contesting that a *Letter of Determination* for proposed development at 2783 East 12th Street (under application no. DET200076 for projects related to PLNs 17003-R01, PLN19160 and TPM10632) should not issue as the proposed project has an express conflict with the City of Oakland General Plan.

Introduction: Letter of Determination under PC 17.01.070 should not issue

A *Letter of Determination* should **not** issue until the property title issues underlying this project have been resolved, the application completed and a comprehensive public review allowed.

The subject properties have been under ongoing title disputes since the applicant/developer has alleged ownership. The City of Oakland and its City Engineer are respondents in a pending mandamus petition which includes several of the same subject properties(c.f. Alameda County Superior Court, RG14-745452).

This general plan determination is premature as the developer's application is deficient and without the necessary support required by your planning guidelines. Upon review of the limited publicly available case files, several required components do not support this application. Most importantly, the required information is deficient to deem this project statutorily exempt under the CEQA Environmental Declaration.

Available project information continues to be limited primarily due to lack of access and confusion within City of Oakland files. Assessment of the project is confusing since the developer has submitted multiple planning agendas which are classified under different cases. As of this writing, the City Oakland planning has not provided access to the PLN19160 information referenced. The confusion has been compounded as this project is processing during the COVID19 lockdown. As such, public notice for this major project has not met the statutory requirements and needs a more careful assessment.

For the above reasons, a *Letter of Determination* can not be issued in accordance with Chapter 17.01 requirements, and specifically not supported under Chapter 17.01.030 *Conformity with General Plan Required* wherein an express conflict exists between the General Plan and the Zoning Regulations.

Active Mandamus Petition Has Not Resolved Property Title Issues

Active litigation continues concerning title to these subject properties through a Mandamus Petition, with City of Oakland and City Engineer as Respondents, and currently under review at the Alameda County Superior Court. This legal action is a direct result of the errors and omissions asserted when several erroneous *Certificates of*

Compliance were issued and recorded by the unauthorized engineering staff at City of Oakland.

This matter has not been adjudicated and remains unresolved.

Additional to this litigation, but involving the same properties at issue, several open lawsuits exist which include the wrongful eviction of a lifetime Oakland resident, a black man, who was forcefully removed from this same property against his will and forced into homelessness. That Alameda County Superior Court case is still open and outstanding.

In addition, existing leasehold rights on the exact same APN parcels as shown on this project remain at issue and under remand order issued by the 9th Circuit court of appeals and being reviewed on appeal.

All in all, this property continues to have active litigation which could include the current ownership as a potential defendant.

Application Fails Statutory and City Oakland Planning Requirements

Notwithstanding the above, this application for conforming with general plan continues to be worth further discovery given the limited supporting documentation. The City of Oakland planning department encountered difficulties in producing the files which support this application even after numerous requests. The due process issues are outlined below, but the application appears to be deficient of the standard documentation required to gain approval for a letter of determination supporting that the project is consistent with the zoning and the General Plan.

Attached as Exhibit A is a list of the items which could not be located in review of this application – notwithstanding the multiple direct email requests for information and the Public Records Requests under CPRA case no. 20-1201 and 20-3681.

Developer Ignores Community Housing Updates

Developer ignores any reference to the Oakland Planning Code issued in 1997, subsequently updated by Supplement No. 31 updated June 5, 2019. Under this code, general plan ordinance under chapter 17 codifies requirements for conformity with general plan(Sec 17.01.030), Exceptions to requirements for General Plan conformity(Sec 17.01.040), and how General Plan prevails over Planning Code and Subdivision Regulations.

This developer does not reference the *Guidelines for Determining Project Conformity with the General Plan and Zoning Regulations* adopted May 6, 1998 and amended March 15, 2011. Contained within this is *Zoning Code Bulletin No C-002* issued 4/20/2000 by CEDA Planning and Zoning. C.f. Tables 3 and 3A for allowable FAR intensity for each land use classification.

Three Story, 120,000 Square Feet Industrial “small commercial enterprise” does not harmonize with City of Oakland Mixed Housing Residential

Most alarming is how this applicant has submitted this 120,000 square foot monolith as a “small project” within this culturally diverse yet sensitive residential community. Worse, the applicant seeks to persuade the City planning staff that this property is a mixed bag of confused zoning and land use designations. This property is currently surrounded by CC-2, CIX-2, and RM-4 – each would allow for some form of housing to be built. However, the applicant failed to acknowledge this relevant fact. M-30 is a legacy zoning policy which has been in need of updating to bring consistent with the general plan based on the needs of the changing community .

However, this applicant surprisingly misplaced their analysis for the needs of this community. This property has always been directly linked to the success story surrounding the Fruitvale BART station redevelopment led by Unity Council and the leadership provided by Councilman Noel Gallo and Ignacio dela Fuente. This fragile community recalls the large industrial behemoths which were abandoned during economic downturns to the detriment of the community. This subject property sits between what was once the blighted Del Monte plant and the vacated Montgomery Ward site. In fact, this property sat in the shadows of the empty Montgomery Ward for decades. Years later and millions of City redevelopment resources to finally demolish to make way for a new thriving elementary school to serve the community.

Developer unaware of recent local housing initiatives

Further this applicant has apparently not been very familiar with the recent actions of the City of Oakland planning department. Primarily, the City of Oakland has recently organized the “Oakland at Home” or also known as the 17K/17K plan. This policy guide was issued as an emergency reaction to the housing crisis facing many of the Oakland communities.

How could the applicant draft a memorandum about General Plan consistency without comment about the General Plan’s Housing Element issued in 2014 for years 2015-2023.

This report clearly specifies that all City of Oakland industrial zones were updated in July 2008. Furthermore, the report summarizes the outcomes of the residential zoning

districts yielded from the multi-year community outcomes that brought the zoning standards up to the current General Plan.

In the updated General Plan, the City clearly highlights policies supporting retention of housing sites versus non residential uses. (See Policy 5.5, Housing Element 2015-2023, City of Oakland General Plan). Limit conversion of residential to non residential is the common theme.

Further, this report highlights the ABAG Regional Housing Needs allocation and calls for action to provide further residential development.[see Policy 1.2, Housing Element 2015-2023, City of Oakland General Plan).

Joshua Tree - Not Relevant to This 120,000 Square Foot Major Project

This developer and his attorneys seek to persuade the City of Oakland planning department with citations to case law that apparently they believe support their “small commercial enterprise” analysis. This developer and his attorney fail to distinguish the proper holding in the *Joshua Tree* case. The Court of Appeals reversed and changed the course based on the facts in this case. This case involved a small Dollar Tree retail location being built in Joshua Tree, California – a small rustic town of less than 10,000 residents in the high desert north of Palm Springs. This hardly compares to Oakland’s metropolitan diversity of nearly 500,000 residents. This case reviews a Dollar Store retail building being proposed in a small town -- not a relevant case when comparing to a 120,000 SF three story warehouse in East Oakland’s vibrant neighborhood.

City Oakland Planning Process Not Transparent or Consistent

I continue to be an interested party seeking information for these properties and possibly interrupting my property rights.

You will find multiple communications being sent to City Oakland planning, primarily Maurice Hackett, since 2017 seeking information concerning the subject properties.

No disclosure or handover to planner Greg Qwan when he apparently took over PLN 19160 and DET200076 -- even though i communicated with planner Maurice Hackett asking for any relevant information. As of this date, i have not been provided any communications with planner Greg Qwan.

Based on my inquiries, i was instructed to perform a Public Records Request to obtain information. I submitted an inquiry as of March 2, 2020, under public records request 20-

1201, however City Records show March 12th deadline was bypassed and an insufficient response. Soon afterward, City Oakland came under government ordered lockdown on or about March 17, 2020. Your planning department did not provide the complete files related to my request.

The recent government emergency orders, primarily due to COVID 19 pandemic health crisis, further interrupts the public's due process to the advantage of this developer and detriment to the Fruitvale and Oakland community. .

For the reasons outlined above your *Letter of Determination* should deny conformance with General Plan, or alternatively, should not issue until further information is provided.

Respectfully,

/s/

Randall Whitney

Cc: City Councilman Noel Gallo,

Darin Ranelletti, Housing Security Policy, Office of Mayor

EXHIBIT A

1. Environmental Notice of Determination – EIR or Negative Declaration?
2. Planning File PLN 19160 [p1 RJR Memo]
3. RWQCB No Further Action Letter referenced by developer [T10000006483]
4. [pp2 RJR Memo]
5. 2001 CU 01-478 – Conditional Use Authorization – “City Oakland has already made a determination that expanded storage facility was consistent with Gen Plan classification
6. Email communications between Maurice Hackett and Gregory Qwan and developer agents
7. Requirements by City surveying engineer: G Har/ Grassick?(sp?)
8. Final Parcel Map recordation [“Specific Conditions of Approval” item 14, Final Map]
9. Three Dimensional Exhibits per Application for Determination [item. 5(m)]

10. Final responses to the Conditions of Approval for **TMP 10632** – [issued by Gil Hayes, City Surveyor on March 13, 2017] – these Conditions of Approval were issued when Developer sought to build condo units and obtained TMP 10632 in 2017, but then, a year later reapproached to change development scheme to build storage facility under the “lot line merger” application.

- a. TM not on NGVD datum if cited benchmark used
- b. City Monuments or Private Monuments to be installed per City requirements;

END//

--

Randall Whitney
Thomas Capital Investments
P.O. Box 4186
1818 Mt Diablo Blvd
Walnut Creek CA 94596
(925) 298-5929

“Your time is limited, so don't waste it living someone else's life...”

--**Steve Jobs**, Stanford graduation commencement speech

Confidentiality, Limitation Of Use, And No Binding Effect

The preceding message contents and any attachments (collectively "Contents") are solely for the benefit of the person(s) or entity(ies) addressed (collectively "Recipient") and may not be relied upon by any other person(s) or entity(ies) for any purpose without specific written permission of Randall C.M. Whitney

--

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Randall Whitney <whitwors@gmail.com>

Related matters Re: Letter of Determination per 17.01.070 re 2783 East 12th Street, Oakland CA DET200076 PLN19160 TMP 10632 PLN 17003

Randall Whitney <whitwors@gmail.com>

Tue, Jul 14, 2020 at 4:58 PM

To: "Klein, Heather" <HKlein@oaklandca.gov>

Cc: "Gilchrist, William" <WGilchrist@oaklandca.gov>, "Manasse, Edward" <EManasse@oaklandca.gov>, "Payne, Catherine" <CPayne@oaklandca.gov>, "Merkamp, Robert" <RMerkamp@oaklandca.gov>

thank you Heather for this prompt response and information.

I will address some of the other comments in separate emails. But i push back on the following statement:

Documents pertaining to the entire property and other case file projects (PLN19160 TMP 10632 PLN 17003) have not been uploaded as 1. decision was already rendered on them and 2. they are not related to this case.

Please understand, I am discovering these cases as i continue to request more information -- although my initial requests were comprehensive and broad, i found the Determination Letter application only because of a posted sign on the property.

Your comment "**2. they are not related to this case**" is misplaced - if you review the files for each of those applications, you will find a direct relationship with the subject Determination Letter application. In fact, the references contained within the Determination rely upon those exact prior decisions. Hence, my frustration with any further actions being taken until concluding the issues raised in my 2014 mandamus action.

Again, i do appreciate your taking time and attention to this important land use matter.

Randall

On Tue, Jul 14, 2020 at 3:08 PM Klein, Heather <HKlein@oaklandca.gov> wrote:

Randall,

The permit system is set up to create individual permits related to individual applications. It is not really meant to be a central depository for all documents related to a project site. Furthermore, we have only recently started digitizing our files and adding them to the permit system. As such, not all permit documents are uploaded and available.

That said, because the DET200076 is a recent case and still active (meaning no decision has been made) all the DET project documents have all uploaded.

Documents pertaining to the entire property and other case file projects (PLN19160 TMP 10632 PLN 17003) have not been uploaded as 1. decision was already rendered on them and 2. they are not related to this case.

The best way to search Oakland Citizen Access is via permit.

- 1.Go to the main page
2. Click on building, planning, enforcement or fire records
- 3.Choose the filing dates (start and end) for the permits – if you don't know leave blank -add the address or the APN
4. A list of all the permits will come up at the bottom.
- 5.Click each permit noted in red you want to access

6. The permit will come up

7. Under record info at the top is an attachment button. Any attachments will be here.

You could search by property address on the home page but it essentially takes you back to bullet 2 above. The only method to retrieve documents not uploaded or pertaining to an entire property is to make a public records request through the website. Please do so if you have not already.

I do not handle those requests and unfortunately cannot provide those documents to you.

Best,

Heather

From: Randall Whitney <whitwors@gmail.com>

Sent: Tuesday, July 14, 2020 2:36 PM

To: Klein, Heather <HKlein@oaklandca.gov>

Cc: Gilchrist, William <WGilchrist@oaklandca.gov>; Manasse, Edward <EManasse@oaklandca.gov>; Payne, Catherine <CPayne@oaklandca.gov>; Merkamp, Robert <RMerkamp@oaklandca.gov>

Subject: Re: Letter of Determination per 17.01.070 re 2783 East 12th Street, Oakland CA DET200076 PLN19160 TMP 10632 PLN 17003

Heather,

thank you for this information. I am still awaiting a response from either Mr Gilchrist or Mr Manasse concerning the issues presented in my email/letter.

I understood from your email that the uploaded documents sent to me by Aubrey Rose was only a partial subset of the files requested. I am asking for a complete copy of any and all documents related to the properties identified along with the applications submitted. You might recall that i was directed by your planning staff to submit a public records request -- which i performed in March and again just this recent June*(see below). Based on my inquiries and my recent communications, i would expect to see any and all information available.

You might know about a recent Zoom "team meeting" held on Friday June 26th approx 4pm where apparently project requirements discussed -- along with additional documentation. I am sending this email as my constructive notice that i would like to review any communications, including electronic files, that have been exchanged between the sponsor/developer and City Oakland planning staff.

How does anyone within the public domain know how or where to obtain information through the "Oakland Citizens Access" you mentioned in your email?

Please note that on June 25th 2020 i also made the additional public records request as shown below:

Request #20-3681

OPEN

I am requesting to review any records available relating to the City of Oakland issued public notice and/or City of Oakland Planning department case file no. DET200076 concerning the following properties:

Address: 2783 East 12th Street, Oakland Ca or 1113 29th Avenue

APNs:

- 025-0697-007-014
- 025-0697-007-015
- 025-0697-003-006
- 025-0697-002-004

Please let me know if you have any questions.

Thank you for your assistance

Randall Whitney

Read less

Received

June 25, 2020 via web

Due

July 6, 2020

Departments
City Attorney

The screenshot shows a web browser window displaying a public record request portal for Oakland, CA. The page title is "Request #20-3681" and it is marked as "OPEN". The request details include the following text:

I am requesting to review any records available relating to the City of Oakland issued public notice and/or City of Oakland Planning department case file no. DET200076 concerning the following properties:
Address: 2783 East 12th Street, Oakland Ca or 1113 29th Avenue
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• 025-0697-002-004
Please let me know if you have any questions.
Thank you for your assistance
Randall Whitney
Read less

The page also shows a list of documents released and department assignments:

- Document(s) Released:** 2783 East 12th St - GP Consistency Determination.msg (July 14, 2020, 8:11am) - Public
- Department Assignment:** Added: City Attorney, Removed: Planning & Building (July 10, 2020, 2:08pm) - Public
- Department Assignment:** Planning & Building (June 25, 2020, 5:10pm) - Public
- Request Opened:** Request received via web (June 25, 2020, 5:10pm) - Public

The page also shows a "Documents" section with a "none" entry and a "Staff" section with a "Point of Contact" named "Mark Forte".

On Mon, Jul 6, 2020 at 3:07 PM Klein, Heather <HKlein@oaklandca.gov> wrote:

Randall,

I got your email from Thursday.

We have developed a new project noticing procedure during Shelter in Place to account for the fact that staff is not in office. This procedure has city staff providing the mailing lists, which we get from Alameda County, to the applicant for them to mail out as well as physical posting of the site. In addition, planning staff loads the project file onto Oakland Citizen Access.

Some of the documents that Aubrey gave you, related to this case file, were not loaded up and so we are redoing the notification to ensure transparency with the public and to ensure their access to the project file. All documents related to this particular case (PLN19160) have been loaded into the system. While Aubrey Rose did provide information to you regarding other actions on the property from 2018, those are not the subject of this case file. We are not retroactively upload documents.

As far as management of land use permit applications, Greg Qwan, Robert Merkamp and I reviewed our internal process regarding verification of ownership for this project. It was confirmed that we followed our typical process which is to check the owner against what is recorded with or noted by the County. This is the same process that the Building Department also uses to verify ownership prior to issuing building permits. However, based on your emails which questioned the ownership of the property, we also requested submittal of a title report.

We have not made a decision on the application. We are currently continuing to review information regarding property ownership.

Best,

Heather Klein, Planner IV | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 2114 | Oakland, CA 94612 | Phone: (510)238-3659 | Fax: (510) 238-6538 | Email: hklein@oaklandca.gov | Website: <https://www.oaklandca.gov/departments/planning-and-building>

From: Randall Whitney <whitwors@gmail.com>

Sent: Monday, July 6, 2020 1:32 PM

To: Gilchrist, William <WGilchrist@oaklandca.gov>; Merkamp, Robert <RMerkamp@oaklandca.gov>

Cc: Merkamp, Robert <RMerkamp@oaklandca.gov>; Payne, Catherine <CPayne@oaklandca.gov>; Manasse, Edward <EManasse@oaklandca.gov>

Subject: Letter of Determination per 17.01.070 re 2783 East 12th Street, Oakland CA DET200076 PLN19160 TMP 10632 PLN 17003

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

Bill Gilchrist, Director of Planning (% S Ford attn: wgilchrist@oaklandca.gov)

cc: Ed Manasse(emanasse@oaklandca.gov),

Robert Merkamp(rmerkamp@oaklandca.gov), Catherine

Payne(CPayne@oaklandca.gov), Heather Klein(hklein@oaklandca.gov)

City of Oakland

Planning and Building

250 Frank Ogawa Plaza

Oakland California

Re PLN19160

DET200076, PLN 17003-R01, TPM 10632

APNs: 25-697-002-04 / 25-697-003-06 / 25-697-007-15 / 25-697-007-14

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Conformity with General Plan Required wherein an express conflict exists between the General Plan and the Zoning Regulations.

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This developer and his attorneys seek to persuade the City of Oakland planning department with citations to case law that apparently they believe support their “small commercial enterprise” analysis. This developer and his attorney fail to distinguish the proper holding in the *Joshua Tree* case. The Court of Appeals reversed and changed the course based on the facts in this case. This case involved a small Dollar Tree retail location being built in Joshua Tree, California – a small rustic town of less than 10,000 residents in the high desert north of Palm Springs. This hardly compares to Oakland’s metropolitan diversity of nearly 500,000 residents. This case reviews a Dollar Store retail building being proposed in a small town -- not a relevant case when comparing to a 120,000 SF three story warehouse in East Oakland’s vibrant neighborhood.

City Oakland Planning Process Not Transparent or Consistent

I continue to be an interested party seeking information for these properties and possibly interrupting my property rights.

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No disclosure or handover to planner Greg Qwan when he apparently took over PLN 19160 and DET200076 -- even though i communicated with planner Maurice Hackett asking for any relevant information. As of this date, i have not been provided any communications with planner Greg Qwan.

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The recent government emergency orders, primarily due to COVID 19 pandemic health crisis, further interrupts the public’s due process to the advantage of this developer and detriment to the Fruitvale and Oakland community. .

For the reasons outlined above your *Letter of Determination* should deny conformance with General Plan, or alternatively, should not issue until further information is provided.

Respectfully,

/s/

Randall Whitney

Cc: City Councilman Noel Gallo,

Darin Ranelletti, Housing Security Policy, Office of Mayor

EXHIBIT A

1. Environmental Notice of Determination – EIR or Negative Declaration?
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 - a. TM not on NGVD datum if cited benchmark used
 - b. City Monuments or Private Monuments to be installed per City requirements;

END//

--

Randall Whitney
Thomas Capital Investments
P.O. Box 4186
1818 Mt Diablo Blvd
Walnut Creek CA 94596
(925) 298-5929

“Your time is limited, so don't waste it living someone else's life...”
--**Steve Jobs**, Stanford graduation commencement speech

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Randall Whitney <whitwors@gmail.com>

**Letter of Determination per 17.01.070 re 2783 East 12th Street, Oakland CA
DET200076 PLN19160 TMP 10632 PLN 17003**

Randall Whitney <whitwors@gmail.com>

Mon, Jul 6, 2020 at 1:32 PM

To: wgilchrist@oaklandca.gov, "Merkamp, Robert" <RMerkamp@oaklandca.gov>

Cc: "Merkamp, Robert" <RMerkamp@oaklandnet.com>, cpayne@oaklandca.gov, emanasse@oaklandca.gov

Bcc: sford@oaklandca.gov, hklein@oaklandca.gov, Jill Worsley <worsleyjill@hotmail.com>, randall worsley <whitwors@gmail.com>

Bill Gilchrist, Director of Planning (% S Ford attn: wgilchrist@oaklandca.gov)

cc: Ed Manasse(emanasse@oaklandca.gov),

Robert Merkamp(rmerkamp@oaklandca.gov), Catherine Payne(CPayne@oaklandca.gov),
Heather Klein(hklein@oaklandca.gov)

City of Oakland

Planning and Building

250 Frank Ogawa Plaza

Oakland California

Re PLN19160

DET200076, PLN 17003-R01, TPM 10632

APNs: 25-697-002-04 / 25-697-003-06 / 25-697-007-15 / 25-697-007-14

Property Addresses: 2615 – 2783 East 12th Street, 1111 29th Avenue Oakland CA

Opposition to Letter of Determination re Conformity with General Plan

This opposition is being sent to the Director of Planning contesting that a *Letter of Determination* for proposed development at 2783 East 12th Street (under application no. DET200076 for projects related to PLNs 17003-R01, PLN19160 and TPM10632) should not issue as the proposed project has an express conflict with the City of Oakland General Plan.

Introduction: Letter of Determination under PC 17.01.070 should not issue

A *Letter of Determination* should **not** issue until the property title issues underlying this project have been resolved, the application completed and a comprehensive public review allowed.

The subject properties have been under ongoing title disputes since the applicant/developer has alleged ownership. The City of Oakland and its City Engineer are respondents in a pending mandamus petition which includes several of the same subject properties(c.f. Alameda County Superior Court, RG14-745452).

This general plan determination is premature as the developer's application is deficient and without the necessary support required by your planning guidelines. Upon review of the limited publicly available case files, several required components do not support this application. Most importantly, the required information is deficient to deem this project statutorily exempt under the CEQA Environmental Declaration.

Available project information continues to be limited primarily due to lack of access and confusion within City of Oakland files. Assessment of the project is confusing since the developer has submitted multiple planning agendas which are classified under different cases. As of this writing, the City Oakland planning has not provided access to the PLN19160 information referenced. The confusion has been compounded as this project is processing during the COVID19 lockdown. As such, public notice for this major project has not met the statutory requirements and needs a more careful assessment.

For the above reasons, a *Letter of Determination* can not be issued in accordance with Chapter 17.01 requirements, and specifically not supported under Chapter 17.01.030 *Conformity with General Plan Required* wherein an express conflict exists between the General Plan and the Zoning Regulations.

Active Mandamus Petition Has Not Resolved Property Title Issues

Active litigation continues concerning title to these subject properties through a Mandamus Petition, with City of Oakland and City Engineer as Respondents, and currently under review at the Alameda County Superior Court. This legal action is a direct result of the errors and omissions asserted when several erroneous *Certificates of Compliance* were issued and recorded by the unauthorized engineering staff at City of Oakland.

This matter has not been adjudicated and remains unresolved.

Additional to this litigation, but involving the same properties at issue, several open lawsuits exist which include the wrongful eviction of a lifetime Oakland resident, a black man, who was forcefully removed from this same property against his will and forced into homelessness. That Alameda County Superior Court case is still open and outstanding.

In addition, existing leasehold rights on the exact same APN parcels as shown on this project remain at issue and under remand order issued by the 9th Circuit court of appeals and being reviewed on appeal.

All in all, this property continues to have active litigation which could include the current ownership as a potential defendant.

Application Fails Statutory and City Oakland Planning Requirements

Notwithstanding the above, this application for conforming with general plan continues to be worth further discovery given the limited supporting documentation. The City of Oakland planning department encountered difficulties in producing the files which support this application even after numerous requests. The due process issues are outlined below, but the application appears to be deficient of the standard documentation required to gain approval for a letter of determination supporting that the project is consistent with the zoning and the General Plan.

Attached as Exhibit A is a list of the items which could not be located in review of this application – notwithstanding the multiple direct email requests for information and the Public Records Requests under CPRA case no. 20-1201 and 20-3681.

Developer Ignores Community Housing Updates

Developer ignores any reference to the Oakland Planning Code issued in 1997, subsequently updated by Supplement No. 31 updated June 5, 2019. Under this code, general plan ordinance under chapter 17 codifies requirements for conformity with general plan (Sec 17.01.030), Exceptions to requirements for General Plan conformity (Sec 17.01.040), and how General Plan prevails over Planning Code and Subdivision Regulations.

This developer does not reference the *Guidelines for Determining Project Conformity with the General Plan and Zoning Regulations* adopted May 6, 1998 and amended March 15, 2011. Contained within this is *Zoning Code Bulletin No C-002* issued 4/20/2000 by CEDA Planning and Zoning. C.f. Tables 3 and 3A for allowable FAR intensity for each land use classification.

Three Story, 120,000 Square Feet Industrial “small commercial enterprise” does not harmonize with City of Oakland Mixed Housing Residential

Most alarming is how this applicant has submitted this 120,000 square foot monolith as a “small project” within this culturally diverse yet sensitive residential community. Worse, the applicant seeks to persuade the City planning staff that this property is a mixed bag of confused zoning and land use designations. This property is currently surrounded by CC-2,

CIX-2, and RM-4 – each would allow for some form of housing to be built. However, the applicant failed to acknowledge this relevant fact. M-30 is a legacy zoning policy which has been in need of updating to bring consistent with the general plan based on the needs of the changing community .

However, this applicant surprisingly misplaced their analysis for the needs of this community. This property has always been directly linked to the success story surrounding the Fruitvale BART station redevelopment led by Unity Council and the leadership provided by Councilman Noel Gallo and Ignacio dela Fuente. This fragile community recalls the large industrial behemoths which were abandoned during economic downturns to the detriment of the community. This subject property sits between what was once the blighted Del Monte plant and the vacated Montgomery Ward site. In fact, this property sat in the shadows of the empty Montgomery Ward for decades. Years later and millions of City redevelopment resources to finally demolish to make way for a new thriving elementary school to serve the community.

Developer unaware of recent local housing initiatives

Further this applicant has apparently not been very familiar with the recent actions of the City of Oakland planning department. Primarily, the City of Oakland has recently organized the “Oakland at Home” or also known as the 17K/17K plan. This policy guide was issued as an emergency reaction to the housing crisis facing many of the Oakland communities.

How could the applicant draft a memorandum about General Plan consistency without comment about the General Plan’s Housing Element issued in 2014 for years 2015-2023. This report clearly specifies that all City of Oakland industrial zones were updated in July 2008. Furthermore, the report summarizes the outcomes of the residential zoning districts yielded from the multi-year community outcomes that brought the zoning standards up to the current General Plan.

In the updated General Plan, the City clearly highlights policies supporting retention of housing sites versus non residential uses. (See Policy 5.5, Housing Element 2015-2023, City of Oakland General Plan). Limit conversion of residential to non residential is the common theme.

Further, this report highlights the ABAG Regional Housing Needs allocation and calls for action to provide further residential development.[see Policy 1.2, Housing Element 2015-2023, City of Oakland General Plan).

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Randall Whitney <whitwors@gmail.com>

**Letter of Determination per 17.01.070 re 2783 East 12th Street, Oakland CA
DET200076 PLN19160 TMP 10632 PLN 17003**

Klein, Heather <HKlein@oaklandca.gov>

Tue, Jul 14, 2020 at 3:08 PM

To: Randall Whitney <whitwors@gmail.com>

Cc: "Gilchrist, William" <WGilchrist@oaklandca.gov>, "Manasse, Edward" <EManasse@oaklandca.gov>, "Payne, Catherine" <CPayne@oaklandca.gov>, "Merkamp, Robert" <RMerkamp@oaklandca.gov>

Randall,

The permit system is set up to create individual permits related to individual applications. It is not really meant to be a central depository for all documents related to a project site. Furthermore, we have only recently started digitizing our files and adding them to the permit system. As such, not all permit documents are uploaded and available.

That said, because the DET200076 is a recent case and still active (meaning no decision has been made) all the DET project documents have all uploaded.

Documents pertaining to the entire property and other case file projects (PLN19160 TMP 10632 PLN 17003) have not been uploaded as 1. decision was already rendered on them and 2. they are not related to this case.

The best way to search Oakland Citizen Access is via permit.

1. Go to the main page
2. Click on building, planning, enforcement or fire records
3. Choose the filing dates (start and end) for the permits – if you don't know leave blank -add the address or the APN
4. A list of all the permits will come up at the bottom.
5. Click each permit noted in red you want to access
6. The permit will come up
7. Under record info at the top is an attachment button. Any attachments will be here.

You could search by property address on the home page but it essentially takes you back to bullet 2 above. The only method to retrieve documents not uploaded or pertaining to an entire property is to make a public records request through the website. Please do so if you have not already.

I do not handle those requests and unfortunately cannot provide those documents to you.

Best,

Heather

[Quoted text hidden]

[Quoted text hidden]

Public Record Request
OAKLAND, CA

Request #20-3681

Requesting to review any records available relating to the City of Oakland issued public notice and/or City of Oakland Planning Department Case File No. 07202016 concerning the following properties:
Address: 2783 East 12th Street, Oakland Ca or 1113 29th Avenue

City: Oakland
City-County: Oakland
City-County: Oakland
City-County: Oakland
City-County: Oakland

Please let me know if you have any questions.
Thank you for your assistance!
Respectfully,
[Redacted Name]

Received: June 25, 2020 via web
Date: July 6, 2020
Department: City Attorney

Documents
(none)

Staff
Point of Contact: Mark Forte

Document(s) Released
2783 East 12th St - GP Consistency Determination.msg
July 14, 2020, 8:11 am
Public

Department Assignment
Added: City Attorney, Removed: Planning & Building
July 13, 2020, 2:08 pm
Public

Department Assignment
Planning & Building
June 25, 2020, 5:10 pm
Public

Request Opened
Request received via web
June 25, 2020, 5:10 pm
Public

Taskbar: 2783 East 12th St...msg, DOC256 OPP Ma...pdf, DOC260 MRA RW...pdf, DOC255 NOTIC K...pdf, DOC256 AFF RW...pdf, DOC254 Met DG...pdf, 1099 Fabela 2018...pdf

[Quoted text hidden]

ATTACHMENT

G

REUBEN, JUNIUS & ROSE, LLP

John Kevlin
jkevin@reubenlaw.com

February 22, 2021

Delivered Via Email (gqwan@oaklandca.gov)

Gregory Qwan
Planning and Building Department
250 Frank H. Ogawa Plaza
Oakland, CA 94612

**Re: 2783 E. 12th Street
Opposition to Appeal
Case File No. DET200076-A01**

Dear Mr. Qwan:

This office represents McGrath Properties regarding a General Plan Determination (the “Determination”) for the property located at 2783 E. 12 Street issued on September 15, 2020.

As detailed in the City’s letter in this matter dated December 22, 2020 (the “Appeal Rejection Letter”), Mr. Randall Whitney failed to meet the basic timing requirements to properly initiate an appeal of the Determination. Per the appeal guidelines currently in place due to the pandemic (the “Interim Procedures”), an appellant must pay the applicable appeal fee in full within 5 business days after filing the appeal. Mr. Whitney failed to pay the required appeal fee within this time, and the City properly confirmed this in its Appeal Rejection Letter. While that should have settled the matter, the City has allowed for an appeal of the Appeal Rejection Letter, and Mr. Whitney’s appeal now asserts that the City’s appeal fee is improperly calculated and not good policy.

The Determination, and its related development project, is not the forum to challenge City fees. The Mitigation Fee Act provides a very clear process for challenging such fees in Superior Court. Mr. Whitney’s appeal of the Appeal Rejection Letter challenging the fees is not allowed by the Planning Code and is not the forum to challenge the City’s fees.

A. You Cannot Appeal the Rejection of an Appeal

The Oakland Planning Code does not provide for an appeal of the timeliness determination of an administrative appeal filing. The Administrative Appeal Procedure in Chapter 17.132 details the “procedure by which an appeal may be taken to the City Planning Commission...from any *determination or interpretation* made by the Director of City Planning under the zoning regulations.” (Oakland Planning Code Section 17.132.01.) This means that the Administrative

Appeal Procedure only applies when the Planning Director makes an interpretation of a zoning regulation or makes a determination that is expressly authorized by the zoning regulations.

The City's Appeal Rejection Letter outlines the facts of Mr. Whitney's attempted appeal and confirms that such facts evidence an untimely appeal filing. No interpretation of the zoning regulations is being made in the Appeal Rejection Letter. While the Planning Director's original General Plan conformity determination, dated September 15, 2020, was a determination (subject to appeal) under the zoning regulations, the conclusion in the Appeal Rejection Letter that Mr. Whitney's appeal is untimely is not. The Planning Director is expressly authorized to make a determination of General Plan conformity under Oakland Planning Code Section 17.01.070; that determination served as the basis for Mr. Whitney's initial attempted appeal. In direct contrast, there is no express authorization for the Planning Director to make a determination on whether an appeal is timely filed. Therefore, the Planning Director did not make an interpretation or determination, and therefore the Planning Code doesn't allow for Mr. Whitney to appeal.

The rejection of Mr. Whitney's untimely appeal was a ministerial, non-discretionary decision. Despite the atypical facts and circumstances of Mr. Whitney's attempted appeal, the process for deciding whether his appeal was timely is no different here than if he had simply filed the appeal a week late – this was a ministerial decision made based on the limited available facts and not subject to Planning Commission review.

The California Supreme Court has recently affirmed that “[a] mandatory [i.e. ministerial] duty is created only when an enactment requires an act that is clearly defined and not left to the public entity's discretion or judgment.” (State Dep't of State Hosps. v. Superior Court, 61 Cal. 4th 339, 350, 349 P.3d 1013, 1020 (2015).) The Interim Procedures explicitly explain that failure to pay the appeal fee in full five calendar days from the date of appeal submittal will result in the rejection of an appellant's appeal. Here, the fee was not received in time. As such, no discretion or judgment was necessary to determine that the appeal was not timely.

The Planning Code does not allow an appeal of staff's rejection of an appeal. This is a decision that the California Supreme Court has determined to be “ministerial,” meaning that staff must apply the rules without a review by the Planning Commission. Here, Mr. Whitney failed to pay the appeal fee by the time required by Oakland's procedures. There is no further consideration of this fact.

B. The Appeal Fee Charged by the City was Clear and Correct

Mr. Whitney was charged the correct appeal fee in accordance with the Oakland Fiscal Year 2020-2021 Master Fee Schedule (“Master Fee Schedule”), effective July 1, 2020. The \$3,638.72 appeal fee is comprised of a Report Fee of \$2,011, a Notification Fee of \$1,160, and Technology and Records Fee of \$467.72. These fees are all very clearly outlined in the City's Zoning Permit Fee Schedule (see immediately below). The appeal fee was also very clearly stated in the General Plan Conformity Letter.

XIV. Appeals, continued

Determination of General Plan Conformity	RPT	NOT	14.75% TECH/REC	GRAND TOTAL
Appeal of Determination	2011.00	1160.00	467.72	3638.72

Source: Zoning Permit Fee Schedule, <https://cao-94612.s3.amazonaws.com/documents/Zoning-Fees-7-1-2020-final-vdlr.pdf>

Mr. Whitney’s appeal states the fee was not properly calculated but then provides no basis or explanation for this assertion. At one point he indicates that the Notification Fee was eliminated by the City Council last summer. It did not. Rather, the Notification Fee, which was previously referred to throughout the Master Fee Schedule, was consolidated into one place, Page N-18, Line 17b.

The appropriate appeal fee was both provided directly to Mr. Whitney in the General Plan Determination, confirmed by City staff, and is clearly available in Zoning Permit Fee Schedule. In addition to the fee being clearly communicated to him, Mr. Whitney fails to even cite a reason why the appeal fee was improper.

C. A Specific Project Approval is Not the Proper Place to Challenge Citywide Fee

In his appeal of the Appeal Rejection letter, Mr. Whitney hints at several potential legal and policy challenges to the appeal fee. However, such challenges are inappropriate to raise in the process of filing an appeal of a specific project’s General Plan Conformity Letter, and now in an appeal of the Appeal Rejection Letter.

Pursuant to the Mitigation Fee Act, local agencies are authorized to charge fees for “filing and processing applications and petitions” and these fees cannot exceed the estimated cost to provide the services for which the fees cover. (Govt. Code section 66014(a), 66016(a).) A resolution, or motion that modifies or adopts a new service charge or fee may be judicially challenged within 120 days of the effective date of such legislation. (Govt Code section 66022.) The remedy for fees or service charges that exceed actual costs is a prospective reduction of the fee or service charge in question. (*See Barratt American Inc. v. City of Rancho Cucamonga*, 37 Cal.4th 685, 727 (2005).)

Here, the time for Mr. Whitney to challenge the Appeal Fee was within 120 days of July 1, 2020, when the Master Fee Schedule became effective. In late September, Mr. Whitney could have appropriately brought a judicial action against the ordinance adopting the fee he wished to challenge. However, he failed to do so. Further, even if Mr. Whitney had brought an appropriate judicial action in accordance with the Mitigation Fee Act and the Appeal Fee was found unreasonable, his remedy would have been a prospective reduction of the fee — meaning he would have been required to pay the \$3,638.72 Appeal Fee in full, regardless of the result of a judicial action. The Mitigation Fee Act is clear both in the process for challenging and the remedy for

inappropriate fees and service charges imposed by a local agency, yet Mr. Whitney failed to follow the outlined process.

State law provides a clear process to challenge city fees. A challenge to the fees, on legal or policy grounds, is completely inappropriate as part of an individual project's entitlement process.

D. Conclusion

There is no authority that allows Mr. Whitney to appeal the ministerial decision that his initial appeal was untimely. Mr. Whitney was charged the proper appeal fee, but he did not pay the fee in full by the City's deadline. As required by the Interim Procedures, Mr. Whitney's failure to pay the Appeal Fee in full in the allotted timeframe resulted in the rejection of his appeal. Mr. Whitney could have appropriately challenged the reasonableness of the appeal fee through a judicial action, not through an appeal in this matter. As such, this appeal of the Appeal Rejection Letter should be denied.

Very truly yours,

REUBEN, JUNIUS & ROSE, LLP



John Kevlin