

November 1, 2019

Steven A. Amerikaner  
Attorney at Law  
805.882.1407 tel  
805.965.4333 fax  
samerikaner@bhfs.com**BY EMAIL (CITYCLERKGROUP@CITYOFGOLETA.ORG)**Honorable Mayor Paula Perotte and City Councilmembers  
City of Goleta  
130 Cremona Drive, Suite B  
Goleta, CA 93117

RE: New Zoning Ordinance

Dear Honorable Mayor Perotte and City Councilmembers:

This letter is submitted on behalf of SyWest Development, owner of the site of the former Goleta Drive-in Theatre at 907 S. Kellogg Avenue.<sup>1</sup> We write to respectfully request more time for affected stakeholders to digest the significant changes that the Planning Commission has recommended to the City of Goleta's New Zoning Ordinance ("NZO"), and to urge the City Council to consider the NZO's serious consequences for project applicants who have been diligently seeking permits under the existing code.

As noted in the staff report for your November 5, 2019 meeting, the NZO has been years in the making and subject to an extensive calendar of public hearings and workshops. Most recently in this years-long process, the Planning Commission during the course of the three hearings held in September and October 2019 recommended substantial and little-publicized changes with significant import to affected property owners. More time is needed for those affected to fully understand these provisions and have the opportunity to meaningfully participate in the public process. The City has spent too much time and resources developing the NZO to abruptly short-change the process in a rush to render a determination on key policy issues.

In particular, two areas of recently-made revisions are of particularly serious concern.

First, the exemption for Projects with a Completed Application has been narrowed to the point of creating serious risks and inequities. In the August 2019 draft, Projects with a Completed Application were exempted from the new NZO, which is a sound policy given the substantial investment required by a property owner who has achieved a completed application. In the most recent version, this exemption has been limited by a 27 month sunset provision (see section 17.01.040.E (4) and (5)). This short sunset provision is unrealistic and inequitable, given the fact that a project can take three or four years to get from Completed Application to Approval, particularly given the complexities of the environmental review process and the possibility of litigation that imposes substantially more delay.

In my experience, a jurisdiction that is enacting a comprehensive new code will recognize the legitimate investment-backed expectations of applicants who have been seeking permits under the old code. (An

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<sup>1</sup> A few days ago, SyWest submitted a letter directly to the City Attorney raising substantial legal issues. We understand that letter has been distributed to the City Council and staff.

example is the City of Santa Barbara, which enacted a comprehensive commercial growth limitation some years ago. The City allowed projects which were "in the pipeline" to proceed through to completion.) This type of planning policy is enacted as a matter of simple fairness and good planning. The recent NZO changes fail to honor this principle.

Second, Section 17.30.070 sets forth an elaborate framework for the City to consider a reduction to the required streamside protection area ("SPA") upland buffer. This framework provides no meaningful guidance to City decision-makers, no certainty to property owners, and no transparency to interested stakeholders. Instead, the proposed policy merely elevates determinations over SPA buffers to a labyrinthine level of complexity. As drafted, Section 17.30.070 would conscript the City Council and Planning Commission into applying legal standards as to what constitutes a regulatory taking – a task that confounds even judges and seasoned legal practitioners. The framework includes three sets of overlapping and ambiguous findings that provide fertile ground for litigation and dispute, many of which draw City decision-makers into the impossible task of adjudicating theoretical takings claims. For these reasons, and as set forth in further detail in our October 29, 2019 letter to the City Attorney, SyWest requests that the language of Section 17.30.070 be revised to address these fatal defects.

The recent changes to the NZO are both substantial and not well publicized in the community. There are many property owners who will be very interested in the new provisions applicable to properties near SPAs, but who do not know about those provisions. There are other property owners who have already achieved application completeness, but may not realize that they will be subject to a 27 month time limit to secure their permits. We respectfully suggest that the City should make specific efforts to notify these two classes of owners about the NZO changes that will have such a dramatic effect on them.

We urge the Council to defer action on the NZO until these issues can be fully addressed.

Thank you for your kind consideration.

Sincerely,



Steven A. Amerikaner

cc: Peter T. Imhof, Planning & Environmental Review Department Director (imhof@cityofgoleta.org)  
Anne Wells, Advance Planning Manager (awells@cityofgoleta.org)  
Winnie Cai, Assistant City Attorney (wcai@cityofgoleta.org)