

**From:** Lily Jow [mailto:jowpartyofsix@sbcglobal.net]  
**Sent:** Tuesday, September 18, 2012 9:05 AM  
**To:** City Mgr; Brandt Grotte; David Lim  
**Subject:** Re: 7-Eleven

Dear City Manager Loftus, Mayor Grotte, and Deputy Mayor Lim,

We are writing you this letter on the behalf of our entire family, to express concern and voice opposition over the possible placement of a 7-Eleven store at 501 N. San Mateo Drive.

Our Family has lived in this neighborhood since 1996. We purchased our small home at 355 E. Bellevue Avenue with great excitement as we moved into our new home. Since then, we have invested greatly into this neighborhood. Our family has grown from 2 members to 6, our four children have all attended the local elementary school, our house has been improved, and we have made wonderful connections with many of our neighbors beyond our 300 block. One of the attributes about this neighborhood that we enjoy is the community that has grown by building relationships with our neighbors. We have more families on the 300 block of East Bellevue with school-aged children than there has been in the last 25 years. We believe that the placement of a 7-Eleven type store in this neighborhood would bring new issues to this neighborhood that would be in direct conflict with the sense of community that has been developed in recent years.

Our main concern is over the safety for pedestrians at the intersection of East Bellevue and San Mateo drive. At this intersection, East Bellevue Avenue, with two lanes of traffic, crosses San Mateo Drive, with four lanes of traffic. This busy intersection has just a stop sign to prompt drivers to stop at the intersection. We have personally seen, on several occasions vehicles on San Mateo Drive pass through the intersection, traveling at the speed limit of 40mph without stopping or even slowing down. We see San Mateo Police cars and motorcycles staked out at this corner weekly, waiting to catch these very drivers, which allows us to believe that this is not new information to any of you. Since, hazards at this intersection already exist, allowing a 7-Eleven store at this intersection will only make it worse. The store will bring more traffic to the intersection, present a distraction to drivers wondering if they have enough time to make a purchase, and increase the number of pedestrians using the intersection (distracted by their purchases). High School kids walk through this intersection to San Mateo High on the East end. Bayside middle school kids walk through, headed to the bus stop on E. Poplar and N. Eldorado. Elementary School children (and many of them without a guardian) walk through this intersection Westward to San Mateo Park Elementary. The 7-Eleven will serve as a magnet during morning rush hour, drawing pedestrians and vehicles to a common location, increasing the danger at an already hazardous location.

Another concern we wish to convey, is the presence of a 7-Eleven store will take away from the neighborhood community we have developed in this area. The store will not serve as a gathering place for locals to frequent and meet each other. We see no sustainable benefit to the neighborhood. This store will attract customers who are not from the neighborhood and a high transient clientele will develop. This is of particular concern at night, since a 7-Eleven will be the only place open late, it will definitely be a gathering place for nighttime activity, potentially increasing crime in our very neighborhood. This will detract from the quiet community we have in our neighborhood.

It is for these reasons that we voice our opposition to the consent given the owners of the property to place a 7-Eleven store at this location. Furthermore, we ask that you join my family and my neighbors in this opposition.

We are aware that there has been some consideration given to the owners of this property based on the previous use as a grocery store and therefore, no basis for the city to reject a permit or a business license or require review by the city council. There has been some explanation given, citing municipal codes and a long standing variance from the city. However, we expect the leaders of our city not to behave just as executors, reading and citing code. We expect that leaders will seek to hear and act in the best interest of the community and challenge existing conventions, bringing what the community desires and needs. It is this same activity, which granted the variance in the 1920's to allow a grocery store in the neighborhood, that we are now asking each of you to exercise in joining with the neighborhood in opposition to allowing a 7-Eleven store at 501 N. San Mateo Drive.

Respectfully,  
Kevin and Lily Jow  
Residence  
355 E. Bellevue Avenue,  
San Mateo, CA

**From:** Roy Nikolai [mailto:roy.nicolai@gmail.com] **On Behalf Of** Roy Nikolai  
**Sent:** Tuesday, September 18, 2012 10:05 PM  
**To:** bgrotte@cityofsanmateo.org; dlim@cityofsanmateo.org; citymanager@cityofsanmateo.org  
**Subject:** Opposition to plans to open 7Eleven store at 501 North San Mateo Drive

Dear Mayor Grotte,

Please consider with great thought how all the neighboring residents will be impacted if a 7Eleven is permitted to be built in our small, tight-knit neighborhood. Would you want to have a 7Eleven in your neighborhood? We have all seen the stereotypical convenient store depicted in film as a place that attracts crime. Stereotypes become stereotypes for a reason; most of the time they are true. After I learned there were plans in place for a 7Eleven in our neighborhood, I drove over to the 7Eleven in quaint Burlingame to take a look at the operation. I was not surprised to see oil stained pavement with skid marks decorating the parking lot and litter in the nearby street and gutters. The garbage container was stained with spilled beverages that looked to have been spilled years ago. The windows to the store were dirty. This is exactly the type of scenario I do not want in my neighborhood!

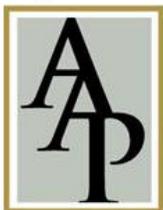
I work hard to have my almost 100 year old home look beautiful. All my neighbors work hard to keep their almost 100 year old homes looking beautiful as well. I feel that since the homeowners keep up their places with pride, so do the renters. I believe in the broken window theory, and I believe that it works both ways. A 7Eleven will bring down the charm of our area, increase the litter, invite transients to buy cheap \$1.00 dinners, and become a new mark for gang graffiti. Enough is enough! We already have a 7Eleven in San Mateo on 3rd street and plenty of liquor stores in our surrounding area. One savvy realtor should not be able to make a quick buck and leave us with a long term eyesore that brings down the charm and value of our historic area.

I have only more questions than answers. Why did I receive notification about other proposed projects on the property, but nothing regarding the 7Eleven? Why doesn't the owner have to go through the planning commission to get the store approved? I was informed the non-conforming use of the property expired because the property was not leased within six months from the date the property became vacant and the use reverted back to a 4r residential property. If that's true, how does the 7Eleven get approved so quickly and without transparency and communication to the residents who live near the property? Is there enough parking for the store? What are the proposed hours of operation? Has there been an evaluation of the ingress/egress to the property?

I am against putting a 7Eleven smack in the middle of a historic San Mateo neighborhood. I hope the City of San Mateo will recognize a 7Eleven will only hurt our property values and decrease our quality of life.

Sincerely,

*Roy Nikolai*



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*"Specializing in first and last impressions"*

**From:** Daren [mailto:redducksoup@gmail.com]  
**Sent:** Wednesday, September 19, 2012 8:01 AM  
**To:** bgrotte@cityofsanmateo.org  
**Subject:** 7-Eleven on San Mateo Dr

Dear Mayor Grotte,

My wife and I just recently purchased a house in the North Central neighborhood in San Mateo (having previously lived nearby). We live on Bellevue Ave and we are really enjoying our neighborhood. But we are concerned about what will happen to the neighborhood once the planned 7-Eleven opening at 501 N San Mateo Dr happens. The neighborhood is residential. So if any new commercial businesses were to open in this residential area we would expect them to serve the neighborhood. 7-Eleven is more of a drive-to-and-park business than a neighborhood shop. We are concerned that increased traffic at this intersection will be a safety hazard (the intersection is already a bit dangerous as many motorists do not realize that there is a 4-way stop there) and the presence of a late-night business may lead to higher crime in the neighborhood. Is there anything that the city can do to find a better commercial alternative for 501 N San Mateo Dr? Thank you for your time.

--

Daren Nicholson and Michelle Lee  
409 E Bellevue Ave

Dear City Manager Loftus, Mayor Grotte, and Deputy Mayor Lim

I am sure that you have received our letters expressing concern and opposition over the placement of a 7-Eleven store at 501 N. San Mateo Drive.

As I stated in our previous letter, my husband and I both believe that the placement of a 7-Eleven type store in this neighborhood would be in direct conflict with the community that has developed in our 17 years of living here. We mentioned our serious concern over traffic safety and the type of transient customers that 7-Eleven attracts.

Today, as I drove past this store, to drive my children to San Mateo Park Elementary, I saw the signage that 7-eleven has placed. What struck me was a deep sense of disgust because the advertisement signs posted are highlighting foods that are notoriously sold at convenience markets. There is the “Big Gulp”, the “Slurpee”, a hot dog and a donut on their advertising signs. I realize that my frustration level is increasing on so many different fronts.

As a mother of four, I try my best to provide healthy meals for my children. The majority of food items, if not everything sold at a 7-Eleven, is unhealthy. Most of their products have no nutritional value and this goes against our core family value to eat healthy and take care of our bodies. Our children are already inundated with fast foods, sugary cereals and junk food aisles in the supermarkets. I am not saying that I, or the members of my family do not partake of chips, and cookies and the like, but we do this with moderation. However, having a store dedicated with selling only these food items, is in direct conflict with the message we are establishing with our children. As a community, our schools are trying to establish that same important message, by having a school policy to not bring large bags of chips, sodas and candy for lunch and recess. The childhood obesity and Type 2 Diabetes rates are as high as it has ever been. So, why would a 7-Eleven be necessary in a residential neighborhood? Our lower-income residents are the target for the unhealthy, sugary foods because they are cheaply sold and in bulk. Do your research, make some calls to the school surrounding this neighborhood and you will find evidence of children who are overweight, who have poor dental history even at this early stage. You will already find lunches filled with unhealthy snacks. Please help us fight this epidemic and not add to this problem.

The 7-Eleven store was granted city permits because city officials viewed this as a same use as the previous Deli/Market. Based on what I have stated in this letter, can you really say that the foods being sold at a 7-Eleven is in the same category as a Italian deli/market? There is already a 7-Eleven store at the corner of East 3<sup>rd</sup> Avenue, which is one mile away from this corner. We do not need two 7-Eleven stores targeting the people of Central San Mateo.

As a concerned parent, I urge to step in and represent this neighborhood community. Please exercise your authority to save this neighborhood from the horrible food choices sold at 7-Eleven stores, in particular at 501 N. San Mateo Drive.

Respectfully,

Lily Jow  
Residence  
355 E. Bellevue Ave.  
San Mateo, CA

**From:** Espinoza, Gabriela [mailto:GabrielaEspinoza@MergisGroup.com]

**Sent:** Wednesday, September 19, 2012 11:44 AM

**To:** City Mgr; Brandt Grotte; David Lim

**Subject:** Opposition to open a 7-Eleven on N.San Mateo Drive

Hello,

I am writing to express my concern regarding the opening of a 7-Eleven on the corner of N San Mateo Drive. I believe the input of the people who live in this neighborhood should be highly taken into consideration. 7-Eleven should not be located in small residential neighborhoods. They are known to be on busy, open space commercial areas. This will attract more litter, noise and disruption, transient people and potential opportunity for violent crimes impacting the safety of the children and people who live in the neighborhood. As you know, most 7-Eleven's have liquor licenses which in such a small community means more influenced disruptive people.

Please put yourselves in our shoes and think about what this would mean to you if you were a hard working professional with a family trying to enjoy nice walks on weekends in a quiet, safe neighborhood.

Thank you.

**Gabriela Espinoza**

Sr. Staffing Consultant

**The Mergis Group, a Randstad Company**

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From: Alexis Ercoli <aercoli@earthlink.net<mailto:aercoli@earthlink.net>>  
Date: September 19, 2012 8:10:26 PM PDT  
To: "bgrotte@cityofsanmateo.org<mailto:bgrotte@cityofsanmateo.org>"  
<bgrotte@cityofsanmateo.org<mailto:bgrotte@cityofsanmateo.org>>  
Subject: RE: 501 N. San Mateo Drive

Dear Mayor Grotte,

I am writing to you to express my utter dismay and vehement opposition to the imminent installation of a 7- Eleven convenience store at the corner of San Mateo Drive and Bellevue. I have lived in this neighborhood for ten years, and I have witnessed the steady increase of graffiti, litter, and menacing transients in the area. For you to consent to the construction of a "business" that will serve as a tremendous multiplier of these destructive elements is absolutely unconscionable. This neighborhood is already struggling with blight and ever encroaching crime. If you are truly dedicated to serving the interests of San Mateo and its tax payers you will not allow this establishment to plant itself in our midst.

Sincerely,

Alexis Ercoli  
200 Elm Street, #303  
San Mateo, CA 94401

**From:** CHRISTINE Y Stiles [mailto:cpstiles@sbcglobal.net]

**Sent:** Thursday, September 20, 2012 11:18 AM

**To:** silverfarb@smdailyjournal.com; David Lim; Community Development Distribution; Robert Ross; Brandt Grotte; Maureen Freschet; John "Jack" Matthews; City Mgr; Planning Commission

**Subject:** NO to 7-11 on North San Mateo Drive !

To: Bill Silverfarb/San Mateo Daily Journal, San Mateo City Council, San Mateo Planning Commission, and Susan Loftus San Mateo City Manager

From: Stiles Family, (Nadina Street, 22 year residents of San Mateo, all of us born and raised on the Peninsula)

Thank you Bill Silverfarb for your article in the Wednesday Daily Journal re: the proposed 7-11 on North San Mateo Drive. Thank you too Vice Mayor David Lim for asking that this proposal be reviewed in more detail.

We want to express our MAJOR concern with the proposed 7-11 on North San Mateo Drive. We were shocked to read in the paper yesterday that this was even being considered in that area of our City. **Terrible idea to put a 7-11 in our San Mateo neighborhoods!!!** Please do not allow this to go forward. **This is a completely inappropriate business for that area of our City.**

Just returned from Baltimore in August. In Baltimore you will find a 7-11 and a Dunkin Donuts on every other corner of the downtown area of that city. The City of Baltimore is one of the most crime-ridden, unhealthy cities in our Nation. We do not need a 7-11 in our San Mateo neighborhoods. The 7-11 will NOT improve the quality of life in our city (including the **HEALTH and WELL BEING of our residents, most especially our children - how many "healthy options" have you found in a 7-11??** Ironically, that is an area that is not just residential, but occupied by many medical practices and not far from the Hospital....we should have a **HEALTHY business in that spot, serving healthy food and options to our residents**). In addition, the 7-11 is **not attractive to look at, and completely out of place with the area.**

You are each hired or elected to maintain and improve the **quality of life of the residents** of our City, and **we are trusting you to do that.** Please do not let the citizens of San Mateo down.

**Please say NO to the 7-11 on North San Mateo Drive!**

Sincerely,  
Stiles Family  
Nadina Street, San Mateo

**From:** Lory Lorimer Lawson [mailto:lorylawson@gmail.com]  
**Sent:** Saturday, September 22, 2012 11:10 AM  
**To:** Ronald "Ron" Munekawa  
**Cc:** Shawn Mason; Gabrielle Whelan; Stephen Scott; Lisa Grote; Lisa Ring; Susan Loftus  
**Subject:** RE: 501 North San Mateo Drive

Hello Ron,

Can you please help me understand the timeline of this project at 5001 North San Mateo Drive? Lisa kindly sent me a copy of the Neighborhood Meeting Notice dated 2/17/2012 for a meeting held 2/29/2012. This notice referenced to Portfolio Development Partners. Not sure who they are in this issue.

In the file related to this property there are numerous letters from Code Enforcement regarding debris and noncompliance with the City's sign codes. These letters indicate several owners over the years with the most recent Public Nuisance Warning letter being addressed to Mr. Oojin and Ms. Lin of 1265 La Canada Rd in Hillsborough.

These letters are followed by an application for a building permit dated January 21, 2011 followed by the Construction & Demolition Waste Reduction Plan dated February 1, 2011.

These bring up a couple of questions for me:

The Permit application lists an expiration date of 7/31/2011 - is there a open permit currently? When was it issued?

The Permit application shows the Business as Hilltop Market - did they buy the business or just the building?

What steps can be taken to stop further work at the site pending the hearings before the Planning Commission and City Council?

It is our fear that we will be told at the November 19<sup>th</sup> City Council Meeting "since the 7/11 is open there isn't anything to be done."

As a person who is engaged in our community, I am confused by the process that has played out regarding this particular property.

Please understand that I am trying to understand and appreciate your efforts and help.

Sincerely,

Lory

*Lory Lorimer Lawson*  
650.218.7282

**From:** Martin Peter [mailto:petetwin@pacbell.net]

**Sent:** Saturday, September 22, 2012 2:47 PM

**To:** Ronald "Ron" Munekawa

**Cc:** Shawn Mason; Gabrielle Whelan; Stephen Scott; Lisa Grote; Lisa Ring; Susan Loftus

**Subject:** Re: 501 North San Mateo Drive

Dear Mr. Munekawa,

Thank you for your response (below) regarding the neighborhood concern that we have regarding 7 Eleven and the property at 501 North San Mateo Drive. At a most inopportune time my email and internet service was unavailable for the last week or so just now I am responding to the emails that have received from you and other members of the San Mateo City Council

In the attached letter that you referred to below, is it correct to assume that Isaac Choy and Susan Lin were the most previous owners of that property and that they have since sold it to someone(s) whom you are now trying to contact? I've noticed in the past week that work is continuing to be done inside the building and also that signs have been posted on the property telling of the upcoming arrival of a 7 Eleven.

Can you tell me a date yet when the matter has been scheduled for public hearing before both the Planning Commission and the City Council? In order to prepare for those meetings should those of us who oppose this 7 Eleven be sending you and the City Council members our reasons now (as we may not have enough opportunity at those meetings), or will we only be able to approach you with our reasons at those meetings.

I would appreciate any answers and suggestions that you may have.

Regards,

Peter Martin

From: Carole Nickolai [mailto:cnickolai@siprep.org]  
Sent: Tuesday, September 18, 2012 9:07 PM  
To: City Mgr; Brandt Grotte; David Lim  
Subject: Opposition to 7Eleven store at 501 North San Mateo Drive

Dear Mayor Grotte,

I am writing to express my concern that a 7 Eleven store might open around the corner from my home. Despite having received notice about another proposed market in the area, we never were informed about a 7 Eleven opening. The process for approval seems suspect. I ask that you reconsider allowing this business to open as it will have a detrimental effect upon the community. That business is better suited to a more commercial area and not our residential neighborhood.

Thank you for listening to my concern. I am hopeful that you can represent my neighbors and me in this matter.

Sincerely,

Carole Nickolai  
459 Wisnom Avenue  
San Mateo, CA 94401

**From:** Martin Peter [mailto:petetwin@pacbell.net]

**Sent:** Sunday, September 16, 2012 11:18 PM

**To:** David Lim

**Cc:** Community Development Distribution; Susan Loftus; Shawn Mason; Gabrielle Whelan; Ronald "Ron" Munekawa; Stephen Scott; Stephen Lau; Brandt Grotte; Brandt Grotte Photomask; Robert Ross; David Lim; Maureen Freschet; John "Jack" Matthews; Laurie Strange

**Subject:** Re: 7-11 Store, 501 N. San Mateo Drive, San Mateo, CA

Dear Mr. Lim,

Thank you for your prompt and informative reply to my/our concern. I also received a reply (see below) from Lisa Grote, the Community Development Director, on behalf of the the City Council Members, which sadly, does not appear to have much hopeful language in it.

Without having much significant experience dealing with important legal matters, and having even less desire to study law, I feel that I am at a disadvantage when it comes to this matter regarding 7 Eleven and our neighborhood. It seems that when San Mateo issued a nonconforming permit for commerce for the property at 501 N. San Mateo Drive sometime around 1920, the consideration taken by the City Council back then must have included at least a thread of concern for meeting the neighborhood's need for a local place to purchase products necessary for everyday living. Perhaps it was a Mom and Pop store of some sort that decreased the need for people to travel a significant distance and as it then changed hands a few times over the years, it kept the profile low and fitting for the neighborhood, even up to two years ago. Now, however, here comes a type of business with a significantly different feel that no longer addresses the bigger needs of a neighborhood, but instead invites shoppers (some local, some transient) who conveniently need to purchase things like fast food, cigarettes, beer and alcohol, and other types of similar goods. I am not opposed to a business that desires to provide those needs to people, but am opposed to that type of business setting up in our mostly quiet neighborhood. Do you know if there was any consideration taken by the city staff/City Attorney who approved that project to what the original intent of the nonconforming use was?

Again, I don't have legal expertise, but I wonder if the original voice of approval for the 1920 request for nonconformity could be resurrected and considered before we are dealt a final decision. In reviewing Lisa Grote's response I note that she addresses the minor changes that were made to improve the interior of the building. I am not challenging those improvements and whether or not they met some code to guarantee the continuation of commerce at that property. Instead, I ask that she and the council consider the potentially dramatic change in effect on our neighborhood from such a different type of commerce being given permission to now operate there than was originally intended.

Ms. Grote mentions that all other relevant Municipal Code requirements were met and therefore there was no discretion under which the City could deny the building permit. I trust that they were met from the city's perspective, but our neighborhood was never given mention of what those Municipal Codes are, never mind the chance to look at them more closely than a potentially very busy and distant City Council would. She also mentions that she recognizes that this is a difficult situation for many residents in our neighborhood and that part of that difficulty is the result of there being no advance notification of the process or the decision about the continuation of a legal nonconforming use. What an understatement!

At this point, her condolence is that the Community Development Department is exploring ways in which we neighborhoods can be notified in the future when similar issues like ours come up. In other words, the current leaders and decision makers of San Mateo have already decided to allow one of its neighborhoods to be negatively changed forever and the salve for that neighborhood is to know that in the future the leaders will look into warning neighborhoods in San Mateo that they may have a voice in determining the outcome of how their neighborhood will look and feel. Is there anything that you can do to appeal for us?

I know that I asked you already somewhat rhetorically (and hopefully you do not think it cynically), how you would feel if you lived in our neighborhood. Now, I forward that sentiment to you again, but also to the other people who have a say in this decision as well. Please know that over the years some of the immediate neighbors of mine on the 300 block of E. Bellevue Ave. have grown leery of the various leaders of San Mateo. Approximately ten years ago we were told by the City that we would have our road repaved within two years. Then we were told that we would have to wait another few years due to some issue with the railroad tracks, but an issue that was not related to the bullet train because that had not even been considered yet. So where are we now? No further along (actually worse) than we were a decade ago, with one of the worst paved streets in San Mateo. And, we have faithfully paid our property taxes with diligence (over \$100,000) since moving in to our home in 1992.

Over the years we have encountered disappointment with the City of San Mateo regarding different issues with CalTrain, i.e: all night CalTrain work being done for weeks, installing islands at the crossing which decreased precious parking places, etc. all without warning from either Caltrain or the City of San Mateo. I realize and appreciate that the relationship between a city and an entity such as CalTrain can be difficult to manage, but I hope you can feel the frustration that we've felt in the past and feel presently. I mention these things with an awareness that we chose to move into this neighborhood knowing full well that the train runs nearby. In addition, I recognize that the economy makes for difficult decisions for the leaders of San Mateo and that residents must be patient and understanding. Where I have the hardest time is thinking about the slap in the face that awaits us knowing that the 7- Eleven issue that we were never informed about may be a permanent and done deal.

Again, thanks for your consideration and response. I am grateful for your time and sensitivity to us and our neighbors.

Sincerely,

Peter and Jennifer Martin

**From:** Millie.A.Darville@wellsfargo.com [mailto:Millie.A.Darville@wellsfargo.com]

**Sent:** Thursday, September 20, 2012 7:38 PM

**To:** Ronald "Ron" Munekawa; David Lim

**Cc:** Jeffrey.A.Darville@wellsfargo.com

**Subject:** Re: 501 North San Mateo Drive

Ron/David,

We anxiously await to hear back on the confirmed hearing date as construction on the site began a few days ago. In fact, 7-11 banners have been posted around the premises indicating soon to come.

As a homeowner, we would like assurance that the construction is not sign of a pre-determined decision. We expect a fair hearing.

Thank you,  
Millie

~Millie

**From:** Erin Kennealy [mailto:ernie\_ken@yahoo.com]

**Sent:** Wednesday, September 19, 2012 7:59 AM

**To:** Ronald "Ron" Munekawa

**Cc:** Lisa Ring; Stephen Scott; Toni Dicapua

**Subject:** Re: FW: 501 North San Mateo Drive

Mr. Munekawa,

What time are contractors allowed to begin work? At 7:40 this morning I began to hear the construction noise and I live two blocks from the site. Is this in violation of any local ordinances and will this developer and/or owner be required to follow any laws at all during this construction?

Thanks.

Erin

**From:** Debra SANDINO [mailto:thesandinos@sbcglobal.net]

**Sent:** Thursday, September 20, 2012 7:29 PM

**To:** Ronald "Ron" Munekawa

**Subject:** Re: 501 North San Mateo Drive--help

Hi Ron-

I have received this email as well as mail regarding this property and the "nonconforming use" etc. Not sure what is going on and then when my husband came home tonight he told me there is a "COming soon-7 Eleven' sign at this location. Very,very disturbing since I was one of the few people who were at the last meeting who were even in favor of a neighborhood deli, most were opposed to even that use. Can you please tell me in simple terms what is going on? I already feel so totally steam-rolled over the huge apartment complex on the corner of Peninsula ave-followed this one and thought it wasnt going thru only to find out-here it is. Thank you !

Debbie Sandino

Sept 17-12  
San Mateo, CA

City Manager Loftus,

Dear Susan, Council Linn

Having property in the area,  
I can't believe that we need  
another liquor store, with in 1000 ft  
from our property, we already have two

The neighborhood was not  
asked to give some input at any  
stage.

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The impact on our neighborhood  
with a 24 hour store will be  
devastating, also, being a few blocks  
from our high school is not  
sending the right message!

The lack of city oversight and  
care for any neighborhood is  
not right. We also believe that  
this project was done, and  
approved from the start, by  
saying a market, but keeping in  
the dark, what it really was  
a 7-11.

Very Truly  
John Chiappe

**From:** Len Flaherty [mailto:leonard1068@gmail.com]  
**Sent:** Friday, September 21, 2012 3:43 PM  
**To:** City Mgr  
**Subject:** Proposed 7-Eleven store opposition

Attn: Susan Loftus

Dear Ms. Loftus:

We just returned from vacation to find the attached announcement, missing the 9/18 meeting by a day. The proposed 7-Eleven store (APN: 032-153-140 ) will be only eight house lots from our own. Parking, litter, potential crime, etc. will diminish the quality of our neighborhood.

Please consider this a registration of our opposition to this plan for a 7-Eleven store. We also request your guidance on the most effective action residential neighbors such as ourselves can take to prevent such development? Thank you in advance for your assistance.

Sincerely,

*Len Flaherty*

Deborah and Leonard Flaherty  
459 Turner Terrace  
San Mateo, CA 94401  
APN: 032-177-24

**From:** Nick Rogers [mailto:narogers@att.net]  
**Sent:** Tuesday, September 25, 2012 6:33 PM  
**To:** Susan Loftus; Ronald "Ron" Munekawa  
**Subject:** Re: 501 North San Mateo Drive

Susan

Thank you for your time on the telephone today. I appreciate your input on the concerns that I, and my neighbors, share regarding the 7-11 at Bellevue and San Mateo Drive that was labeled by the owner as a "convenience grocery store." As a volunteer for the city of San Mateo's financial committee, I have San Mateo's (and our small community's) best interest in forefront of my mind. Please feel free to forward this letter to anyone concerned at the city of San Mateo.

I have been in this community since the early 1980's when I attended San Mateo High School, and deepened my roots here when my wife and I bought our house on Grand Blvd in 1998. A 24-hour liquor store (7-11) within a block of our home was not part of our plan when decided to remodel our home and raise our young children in this community. I have never objected to a project in this community, because I understand the revenue side of the equation, but this project is completely out of place in this quiet family neighborhood. I also feel that the owner of this property has been less than forthcoming and honest about their plans for this property.

Please continue to keep me in the loop of communication regarding this project; as I, and my neighbors, will go to great lengths to ensure that this owner remain mindful of the safety and impact of this store upon our San Mateo community, instead of focusing only on profits and greed. We would like strict limitations, and complete transparency, of the proposed hours (which should mirror Stangelini's hours if that is how they obtained their variance), and the items proposed to be sold in this establishment. To allow this owner to either operate this 7-11 during late hours, or to offer for sale inappropriate items for any time frame at all sets a precedence and is completely unacceptable. To say that they may operate 24 hours a day for a year or two is not a valid compromise. The introduction of the unsavory and unsafe activities that accompany 24 hour stores selling questionable merchandise will introduce a criminal element into this community; which, once introduced, will be difficult to remove.

I look forward to your continued input and guidance on this matter.

Sincerely yours, long-time residents, Nick Rogers and family

**From:** Meredith Yeh [mailto:yehmeredith@gmail.com]  
**Sent:** Saturday, September 22, 2012 3:07 PM  
**To:** David Lim  
**Cc:** City Mgr; Brandt Grotte  
**Subject:** 501 N. San Mateo Drive

Vice Mayor David Lim,

First I would like to add my thanks to you for bringing the proposed 7-11 at 501 N. San Mateo Drive to the City Council and allowing input from the residents of San Mateo regarding that proposal.

However, I am greatly concerned at what will come out of the process - I'm wondering how much of a formality it is and if at the end the 7-11 will open as approved by the City without any notice or input from the public. Construction on the project is in full swing, including signs announcing "7-11 coming soon" posted on the site. When one of our neighbors asked the foreman at the site about the construction, he said the plans were to have the store open in 6 weeks. That is before the scheduled City Council meeting and vote on Nov. 19.

Our home is very close to the proposed 7-11 site, and I recall a few months ago receiving a notice from the city announcing a meeting concerning the zoning of the site to allow a "corner market" on the site. Being naïve and believing that the City would not "falsely advertise", I was pleased to hear that something similar to Stangelini's would be returning to that site and I did not attend that meeting. I was completely shocked when I heard that "corner market" was to be a 7-11.

The list of reasons for not wanting a 7-11 around the corner is long – including but not limited to increased traffic, people loitering around the store, crime associated with convenience stores, the sale of alcohol, cigarettes, high sugar, high fat junk food, and the lack of healthy options, the hours the store would be open, and I have not ever been in a 7-11 that was clean or well maintained. I would ask the entire city council, the city manager and city attorney if they would like to have a 7-11 around the corner from their home?

I was quite pleased to read your replies to Mr. John Berdoulay and your requests that this be brought to the City Council for a vote. I was encouraged that perhaps the residents of the affected neighborhood would have a voice in a decision that directly affects them. Then, I attended the City Council meeting last week where folks were allowed 1 minute to comment, and I agreed with all the comments and concerns that were voiced. What made me so very angry is hearing that someone had purchased the property 2 years ago to open a neighborhood restaurant and was told by the city that the possibility of being able to be zoned for that use was next to impossible. And yet, 2 short years later, somehow, without notice to or comment from residents, a large corporation was able to get non-conforming use approved without any problems.

I am hoping that you can help me understand the process that is happening – why the construction and opening of the 7-11 is going forward before residents are having an opportunity to comment and before the city council votes on the approval of the non-conforming use. I am very disheartened by what I am experiencing of the San Mateo City Government. I am trying not to lose my respect for the process or my belief that the city government has the best interests of its' residents as its priority. However, what I have experienced so far is leading me to believe that the City practiced deceit (the flyer mentioning a "corner market" rather than a 24 hour convenience store) and chose a corporation and the money associated with it over the best interests and desires of the residents the City is supposed to be representing.

I will continue to actively participate in this process and hope that the opinions I am forming of my city government are proven wrong. I look forward to your reply.

Regards,  
Meredith Yeh

518 Highland Avenue  
[yehmeredith@gmail.com](mailto:yehmeredith@gmail.com)  
[650.343.8876](tel:650.343.8876)

cc: Mayor Brandt Grotte  
Susan Loftus, City Manager

**From:** Glen Thomson [mailto:glenthomson2000@gmail.com]  
**Sent:** Wednesday, September 19, 2012 8:50 AM  
**To:** Lisa Ring  
**Subject:** New 7-11 store, corner N. San Mateo Dr. and Bellevue

Hi Lisa,

I'm contacting you today because I noticed just last night that there is a 7-11 coming to my neighborhood at the corner of N. San Mateo Dr. & Bellevue. This is shocking to me, and I'm very concerned about what a 7-11 will do to the neighborhood. I'm particularly concerned about the stores hours and signage as well as the usual loitering that occurs around 7-11s, by youth, etc. I've never seen a 7-11 that wasn't somewhat of a blight on a neighborhood. I also don't recall ever seeing one in the center of a neighborhood like this one. Further, I don't recall ever having an opportunity to voice my opinion against a 7-11 in my neighborhood, but then again, maybe I have no voice.

I left you a phone message as well, about 10 minutes ago. My number is 650-401-3619.

I look forward to hearing back from you.

Kind Regards,

Glen Thomson

From: Erin Kennealy [ernie\_ken@yahoo.com]

Sent: Monday, September 17, 2012 8:57 PM

To: Ronald "Ron" MuneKawa

Cc: Brandt Grotte; City Mgr; David Lim; John "Jack" Matthews; Maureen Freschet; Robert Ross

Subject: 501 No. San Mateo Drive

Mr. MuneKawa,

I am a property owner in San Mateo. I live at 412 Williams Place. I was very concerned to find out recently that there is a 7-Eleven store planned for the intersection of San Mateo Drive and Bellevue at 501 No. San Mateo Drive.

In the past I have received notice regarding tree removal, street paving and sewer work. I am extremely disappointed and alarmed that the City of San Mateo would not give notice to a community when a 24-hour convenience store is planned for a residential neighborhood.

I am particularly concerned with the effects a 24-hour convenience store would have on neighborhood safety. I also believe that concerns regarding crime statistics associated with 24-hour convenience stores would adversely affect property values in the neighborhood.

If there are any hearings (public or legal) regarding this issue, I would like to be given notice so that I or my representative could attend.

Thank you.

Erin Shannon

412 Williams Place

San Mateo, CA 94401

**From:** Lane Kashiwahara [mailto:lanekash@sbcglobal.net]  
**Sent:** Tuesday, September 11, 2012 1:10 PM  
**To:** City Mgr; Brandt Grotte; David Lim  
**Subject:** 501 N. San Mateo Drive

*From: Mrs. Lane Kashiwahara  
437 W. Ellsworth Court  
San Mateo CA 94401*

To: Mayor Brandt Grotte  
[bgrotte@cityofsanmateo.org](mailto:bgrotte@cityofsanmateo.org)  
Deputy Mayor David Lim  
[dlim@cityofsanmateo.org](mailto:dlim@cityofsanmateo.org)  
City Manager Susan Loftus  
[citymanager@cityofsanmateo.org](mailto:citymanager@cityofsanmateo.org)

Dear Mayor Grotte, Deputy Mayor Lim and City Manager Loftus:

I am a San Mateo resident/property owner, writing to you regarding the proposed project at 501 North San Mateo Drive. This site is currently under review and pending approval for a building permit. The current plan is to allow a long-time vacant property (zoned residential) to become a '7-11' Store.

Approval of this project would raise our suspicions regarding the integrity of the building approval process in the City of San Mateo. 501 N. San Mateo Drive is zoned residential and when it was Stangelini's Deli it was considered a "non-conforming use". It has now sat vacant for approximately 2 years. The San Mateo Code states (see section b, specifically)

**27.72.020 DISCONTINUANCE OF USE.** (a) *Whenever any part of a building, structure or land occupied by a nonconforming use is changed to or replaced by a use conforming to the provisions of this title, such premises shall not thereafter be used or occupied by a nonconforming use, even though the building may have been originally designed and constructed for the prior nonconforming use.*

(b) *Whenever a nonconforming use of a building or structure, or part thereof, has been discontinued for a period of six consecutive months, such use shall not after being discontinued or abandoned be reestablished, and the use of the premises thereafter shall be in conformity with the regulations of the district.*

(c) *Where no enclosed building is involved, discontinuance of a nonconforming use for a period of six months constitutes abandonment, and the use of such premises shall thereafter conform with the regulations of the district and shall not thereafter be used in a nonconforming manner.*

(d) *A nonconforming use not authorized by the provisions of this code and amendments thereto in effect at the time this title becomes effective, shall be discontinued and not reestablished unless, pursuant to the provisions of this title, the use is conforming to the district in which it is then located. (Prior code § 144.02).*

Allowing a '7-11' store raises serious concerns for the neighborhood at large, including:

- Increase in crime
- Increase in traffic
- Sacrificing the integrity of the neighborhood and its charm
- Saturation of convenience stores within a 4 block Poplar Avenue area (existing: La Raza Market, Consumer Liquors, Arco Gas Station)

We ask that you deny the proposed Building Permit and deny any pending or prior approval. In addition we ask that you request an immediate meeting with the developers to discuss their proposed project.

DEVELOPERS: Portfolio Development Partners, LLC  
Jeffrey Neustadt, Principal/CEO  
Josh Amoroso, VP  
433 Airport Dr., Ste. 426  
Burlingame, 94010  
650-224-9172  
[amo@portfoliudevco.com](mailto:amo@portfoliudevco.com)  
Sincerely,  
Lane Kashiwahara  
Concerned San Mateo Resident

From: Fred Chiappe [mailto:fchiappelock@yahoo.com]  
Sent: Tuesday, September 11, 2012 1:05 PM  
To: City Mgr  
Subject: proposed project for 501 SM dr

Susan Loftus

A letter of concern regarding the proposed 711 store at 501 North San Mateo Dr.

Parking and setbacks according to city ordinance is not my greatest concern regarding this project, It is not a neighborhood friendly store, it is a convenience store, it offers nothing or very little to an area with already gas stations and 2 small markets which locals frequent for fresh produce and other, these markets open and close with the neighborhood. I can assure you operating hours of a 711 are not going to coincide with the residents of this area.

Thank you,

sincerely

Fred L Chiappe  
445 W. Ellsworth Crt

From: sharonmcken [sharonmcken@gmail.com]  
Sent: Sunday, September 09, 2012 5:47 AM  
To: Planning Commission  
Subject: Meeting Agenda for Seven Eleven on N. San Mateo Drive

Hello -

I would like to know if there was a city meeting in regards to the new seven-eleven store that is apparently opening at 501 N. San Mateo Drive in January. I have looked online and have not been able to find any archived documents.

This is disturbing news for the neighborhood in regards to property value, parking, hours of operation, etc.

I would like to know what kind of notices, if any, were sent to home owners in the neighborhood, when meetings were held and what was approved.

Thank you.

Sincerely,

Sharon McKenzie  
413 Williams Place  
San Mateo, CA

**From:** Jeffrey.A.Darville@wellsfargo.com [mailto:Jeffrey.A.Darville@wellsfargo.com]

**Sent:** Thursday, September 13, 2012 3:27 PM

**To:** City Mgr; Brandt Grotte; David Lim

**Subject:** Construction of 7-11 at N San Mateo Drive and Bellevue

**Importance:** High

City Leaders,

My wife and I own the home at 438 N San Mateo Drive in San Mateo, and we would like to express our displeasure at the possibility of the potential placement of a 7-11 store at the corner of N San Mateo Drive and Bellevue. While we understand that much of N San Mateo Drive is mixed use, the area around this location is almost entirely residential. Having a 'round the clock store here would be disruptive and would be a detriment to the residents, due to the increased traffic, noise and possible crime.

We hope that you will take into consideration the opinion of the residents in the area.

Thank you for your attention.

***Jeff and Millie Darville***

***Homeowners***

***438 N San Mateo Dr., San Mateo, CA 94401***

***[650-413-4228](tel:6504134228)***

**From:** Cindy Jen [mailto:cjenrun@gmail.com]  
**Sent:** Thursday, September 13, 2012 3:15 PM  
**To:** City Mgr; Brandt Grotte; David Lim  
**Subject:** Construction of 7-11 at N San Mateo Drive and Bellevue

Dear City Leaders,

I own the home at 436 N San Mateo Drive in San Mateo, and I would like to express my displeasure at the possibility of the potential placement of a 7-11 store at the corner of N San Mateo Drive and Bellevue. While I understand that much of N San Mateo Drive is mixed use, the area around this location is almost entirely residential. Having a 'round the clock store here would be disruptive and would be a detriment to the residents, due to the increased traffic, noise and possible crime.

I hope that you will take into consideration the opinion of the residents in the area.

Thank you for your attention.

Regards,  
Cindy Jen  
Homeowner  
436 N San Mateo Dr., San Mateo, CA 94401  
650-400-3403

**From:** Troy Pesutich [mailto:tmvp@hotmail.com]  
**Sent:** Wednesday, September 12, 2012 7:11 PM  
**To:** City Mgr; Brandt Grotte; David Lim  
**Subject:** Proposed 7-11 at 501 N San Mateo Drive

Good evening San Mateo City leaders,

I am writing to you to express my concern for a proposed 7-11 at 501 N San Mateo Drive. I have lived at 430 N San Mateo Drive for nearly 10 years and for the past two years I have been looking forward to whatever might be moving in to the space someday. I never imagined a corporate store would ever be proposed in this type of neighborhood. It is very upsetting to me as 7-11 brings a different kind of crowd that I am not hoping to see in my residential neighborhood. Although San Mateo Drive feels more like a thoroughfare these days, it is by no means a place for a 7-11 market.

I was unable to attend the meeting at King Center awhile back, but from what I understand, the community was all for a market of some type. Now I understand that this permit has slipped through unnoticed by the community which to me sounds quite unnerving. A market of some type would be fantastic, but I understand in this economy, there may not be a host of buyers interested. I was dreading the possibility that more "affordable" housing would be built, but if it came down to a 7-11 or an apartment building, I would be all for the housing.

It is encouraging to me that there is still a sense of community in this corner of San Mateo, as I was notified by a concerned neighbor who I have never met. Funny enough, I was walking my dog this evening and walked by purposefully to see what was posted at the storefront. An hour later came a knock on my door, and thankfully I heard about what process was taking place. It is extremely disappointing that the City of San Mateo failed to alert this community properly. And I can't help but to notice that I was well informed of the community forum earlier this year, but it is clear that somehow the developers were involved in that one.

I am a proud San Mateo resident, and make it a point to shop San Mateo rather than cross the few block border into Burlingame. We all know that this 7-11 would not be happening on the other side of Peninsula Avenue. And it should definitely not happen on this side either. It just doesn't fit. It makes no sense. I will be attending the September 18th meeting to support my neighbors and protect this corner from such a ill proposed project.

Thank you for your time and consideration,

Troy Pesutich  
430 N San Mateo Drive  
650 375 8963

**From:** jackie jones [mailto:[grafis@att.net](mailto:grafis@att.net)]  
**Sent:** Tuesday, September 11, 2012 2:44 PM  
**To:** City Mgr  
**Cc:** Brandt Grotte; David Lim  
**Subject:** Proposed 7 - eleven building at 501 san mateo drive

Dear Susan:

I am a long time resident of Ellsworth Court (since 1988) and I am joining with other San Mateo residents in opposing the project. I have reviewed the multiple instances of crimes against 7-eleven stores throughout the Bay area and I'm concerned for the safety of residents, and especially the children. I am also mindful of our property values and the degree of gang-related crimes that took place several years ago, including a shooting in the parking lot of an apartment building on N. Ellsworth.

I feel that our high property taxes should have, at the very least, guaranteed some notice from the City as to intent. Instead, we have relied on rumor and, finally, at note dated September 6 on the subject property door.

We look forward to the next meeting regarding this matter this coming Thursday, at which time we hope to alert other residents and have the opportunity to voice our opinions.

Thank you,

Resident: 424 E. Ellsworth Court

jackie jones, Principal  
Grafis Design

(650) 315-2317  
[grafis@att.net](mailto:grafis@att.net)

<http://www.grafisdesign.com>  
<http://www.poochpix.com>



Dear Mayor Grotte and Deputy Mayor Lim:

I am a San Mateo resident/property owner, writing to you regarding the proposed project at 501 North San Mateo Drive. This site is currently under review and pending approval for a building permit. The current plan is to allow a long-time vacant property (zoned residential) to become a '7-11' Store.

[Approval of this project would raise our suspicions regarding the integrity of the building approval process in the City of San Mateo.](#)

501 N. San Mateo Drive is zoned residential and when it was Stangelini's Deli it was considered a "non-conforming use". It has now sat vacant for approximately 2 years. The San Mateo Code states (see section b, specifically)

**27.72.020 DISCONTINUANCE OF USE.** (a) *Whenever any part of a building, structure or land occupied by a nonconforming use is changed to or replaced by a use conforming to the provisions of this title, such premises shall not thereafter be used or occupied by a nonconforming use, even though the building may have been originally designed and constructed for the prior nonconforming use.*  
(b) *Whenever a nonconforming use of a building or structure, or part thereof, has been discontinued for a period of six consecutive months, such use shall not after being discontinued or abandoned be reestablished, and the use of the premises thereafter shall be in conformity with the regulations of the district.*  
(c) *Where no enclosed building is involved, discontinuance of a nonconforming use for a period of six months constitutes abandonment, and the use of such premises shall thereafter conform with the regulations of the district and shall not thereafter be used in a nonconforming manner.*  
(d) *A nonconforming use not authorized by the provisions of this code and amendments thereto in effect at the time this title becomes effective, shall be discontinued and not reestablished unless, pursuant to the provisions of this title, the use is conforming to the district in which it is then located. (Prior code § 144.02).*

Allowing a '7-11' store raises serious concerns for the neighborhood at large, including:

- Increase in crime
- Increase in traffic
- Sacrificing the integrity of the neighborhood and its charm
- Saturation of convenience stores within a 4 block Poplar Avenue area (existing: La Raza Market, Consumer Liquors, Arco Gas Station)

We ask that you deny the proposed Building Permit and deny any pending or prior approval. In addition we ask that you request an immediate meeting with the developers to discuss their proposed project.

DEVELOPERS: Portfolio Development Partners, LLC  
Jeffrey Neustadt, Principal/CEO  
Josh Amoroso, VP  
433 Airport Dr., Ste. 426  
Burlingame, 94010  
[650-224-9172](tel:650-224-9172)  
[amo@portfoliodevco.com](mailto:amo@portfoliodevco.com)

Sincerely,  
Claire Mariani  
Concerned San Mateo Resident

To: Mayor Brandt Grotte  
[bgrotte@cityofsanmateo.org](mailto:bgrotte@cityofsanmateo.org)  
Deputy Mayor David Lim  
[dlim@cityofsanmateo.org](mailto:dlim@cityofsanmateo.org)

Dear Mayor Grotte and Deputy Mayor Lim:

I am a San Mateo resident/property owner, writing to you regarding the proposed project at 501 North San Mateo Drive. This site is currently under review and pending approval for a building permit. The current plan is to allow a long-time vacant residential property to become a '7-11' Store.

Approval of this project would raise our suspicions regarding the building approval process in the City of San Mateo.

510 N. San Mateo Drive is zoned residential and is considered a "non-conforming use". It has sat vacant for approximately 2 years. The City Code of San Mateo states (see section b, specifically)

**27.72.020 DISCONTINUANCE OF USE.** (a) Whenever any part of a building, structure or land occupied by a nonconforming use is changed to or replaced by a use conforming to the provisions of this title, such premises shall not thereafter be used or occupied by a nonconforming use, even though the building may have been originally designed and constructed for the prior nonconforming use.  
(b) Whenever a nonconforming use of a building or structure, or part thereof, has been discontinued for a period of six consecutive months, such use shall not after being discontinued or abandoned be reestablished, and the use of the premises thereafter shall be in conformity with the regulations of the district.  
(c) Where no enclosed building is involved, discontinuance of a nonconforming use for a period of six months constitutes abandonment, and the use of such premises shall thereafter conform with the regulations of the district and shall not thereafter be used in a nonconforming manner.  
(d) A nonconforming use not authorized by the provisions of this code and amendments thereto in effect at the time this title becomes effective, shall be discontinued and not reestablished unless, pursuant to the provisions of this title, the use is conforming to the district in which it is then located. (Prior code § 144.02).

Allowing a '7-11' store raises serious concerns for the neighborhood at large, including:

- Increase in crime
- Increase in traffic
- Sacrificing the integrity of the neighborhood and its charm
- Saturation of convenience stores within a 4 block Poplar Avenue area (existing: La Raza Market, Consumer Liquors, Arco Gas Station)

We ask that you deny the proposed Building Permit and deny any pending or prior approval. In addition we ask that you request an immediate meeting with the developers to discuss their proposed project.

Yours truly,

Art Lierman  
401 West Ellsworth Ct.  
San Mateo CA 94401

**From:** mpriv@comcast.net [mailto:mpriv@comcast.net]

**Sent:** Thursday, September 06, 2012 3:00 PM

**To:** City Mgr

**Subject:** 501 N San Mateo Drive

Susan;

I am writing as a concerned homeowner on Ellsworth Court as it relates to the proposed addition of a new business at 501 N SM Drive a 7-11.

What next steps does the neighborhood need to take to combat this concept of introducing this business into our neighborhood?

Per the code below there seems to be a conflict. In addition when one of the local neighbors was interested in purchasing the building they were denied conversion approval from the city. It appears a local small business owner in hopes of opening up a resteraunt was denied due to the fact the building could not convert, rather remain as Residential property seems like the city of San Mateo is not in favor of the small local business owner, or 7-11 is given special disposition over the previous request to convert.

I am in need of direction and next steps for homeowners to voice our concern. I look forward to your response.

Michelle Privitera

650-759-8116

**From:** Todd Rafalovich [mailto:info@toddrafalovich.com]  
**Sent:** Friday, September 14, 2012 10:45 AM  
**To:** City Mgr  
**Subject:** 7-11

To Susan Loftus,

I agree that we do not need a convenience store at that corner. I am not sure if I will be able to make the City Hall meeting but let me know what else can be done. Thank you.

Todd Rafalovich  
Resident 208 Grand Blvd. San Mateo, 94401 (650.685.8070).

--

**Todd Rafalovich Photography**

[www.toddrafalovich.com](http://www.toddrafalovich.com)

Phone: 650.685.8070

Fax: 650.685.8030

[info@toddrafalovich.com](mailto:info@toddrafalovich.com)

**From:** jackie jones [mailto:GRAFIS@ATT.NET]

**Sent:** Friday, September 14, 2012 12:55 PM

**To:** Congresswoman Jackie Speier

**Cc:** mark smith; Annieme O'rourke; Francis Hollis; kathy artoux; jennifer johnston; jackie jones; mark borella; Jennifer O'brien; margaret price; Dave Privitara; Patrick O'halloran; lane kashiwahara; Art Lierman; richard smith; jerry persons; Paul Mclean; Lori Walth; freddy chiappe; dave moore; ron baker; jeanette oberholster; susan munroe; bill lapcevic; Nancy Hoebelheinrich; David Lim; City Mgr; Brandt Grotte

**Subject:** Proposed 7-Eleven Project

Dear Congresswoman:

I live on a quiet cul de sac on Ellsworth Court, San Mateo. Surrounding residents picked up on a rumor a few weeks ago that a 7-Eleven was to be developed at 501 San Mateo Drive, one block away, currently zoned for residential use. My neighbors on the court and many surrounding the court are strongly opposed to this project. Firstly, the project was approved, not by the City Council, but it bypassed the normal vetting and was approved directly by the City Attorney with no notice given to our neighborhood and secondly we feel this will negatively affect our neighborhood in the following ways:

More automobile traffic

More transient traffic

More potential for criminal activity (we've seen how many 7-Eleven's are robbed, some at gunpoint)

More litter

...and more importantly, we already have a family-owned convenient store and liquor store just two blocks away whose business could be negatively affected.

I am writing to seek your help in investigating why this project was approved, under the radar, and to find out what we can do to discourage the project. We are not against having a commercial enterprise or residences, but we feel strongly that a 7-Eleven would negatively impact our neighborhood. There is a meeting scheduled at City Hall on September 18, but it seems from the email below that the project is a "go" and our hands are tied.

I hope that you might be able to help in this matter. Thank you.

Jackie Jones

Dear Ms. Jones,

Thank you for your email expressing concern about the 7-11 being proposed at [501 N. San Mateo Drive](#). I wanted to respond directly to your concerns.

Unfortunately, the zoning application for the 7-11 store was approved on August 30 by city staff. The City Attorney determined that this project, although a non-conforming use, was not a project that required City Council approval, and so the City Council was not part of the decision-making process.

Based on the concerns you raise along with the concerns raised by many of your neighbors, I have asked for all the application documents and memos regarding this project for my personal review.

The City Manager has already asked the Community Development Director to prepare a more detailed response to your concerns, and to explore ways to better inform all of us about these projects in the future.

After I review all the documents related to this project, I would be happy to speak with you further. Please feel free to contact me any time via this email address or on my cell phone at [\(415\) 290-4044](#).

Sincerely,

David Lim  
Deputy Mayor  
San Mateo City Council

jackie jones, Principal  
Grafis Design

(650) 315-2317  
[grafis@att.net](mailto:grafis@att.net)

<http://www.grafisdesign.com>  
<http://www.poochpix.com>



From: globalconscience@sbcglobal.net [mailto:globalconscience@sbcglobal.net]  
Sent: Sunday, September 16, 2012 11:24 PM  
To: David Lim  
Cc: City Mgr  
Subject: Reasons Why a 7-Eleven Should Not Be Located at 501 North San Mateo Drive

To: David Lim, Deputy Mayor  
CC: Susan Loftus, City Manager  
Brandt Grotte, Mayor

As a townhome owner representing the six townhome owners (503 through 513 N. San Mateo Dr.) whose units overlook 501 North San Mateo Drive, I urge you to consider the following reasons for not converting the lot to a 7-Eleven:

- 1) Further degradation of traffic flow at the intersection of North San Mateo Drive and Bellevue Ave. The stop signs at this intersection are often ignored, requiring San Mateo police to frequently be on-site to pull over transgressors. We had another accident just last week.
- 2) Exacerbation of an existing shortage of parking spaces in the area.
- 3) The foot traffic of students going to and from San Mateo High at this intersection increases the odds of pedestrian injuries from the increased traffic.
- 4) An increase in crime is very likely. The Deli which previously occupied this lot attracted vandals (which frequently sprayed graffiti on the Deli, and our property), and the Deli typically closed in the evening. The 7-Eleven would be open 24 hours per day. The murder of a 7-Eleven employee last week at the 7-Eleven in Milpitas underscores the increased crime.
- 5) The noise from Deli traffic at 501 N. San Mateo Drive was often very disturbing, but will be several times greater with a 7-Eleven open 24 hours per day.
- 6) Pests, particularly rats and raccoons, were persistent when the Deli was open, especially because of the necessary outdoor trash receptacles and large food waste bins for pick-up. This will be even worse with a 7-Eleven.
- 7) Litter from the Deli users was annoying at best, but will multiply several times with a 7-Eleven open 24 hours per day.
- 8) The possibility of the 7-Eleven serving alcohol, even if no license is initially sought, is quite high, given the profitability of alcohol sales. Yet there is already a "Consumer Liquor" store just one block away, and the Raza convenience store 2 blocks away. These two stores can already serve the local demand for alcohol and convenience items, and certainly bring more "character" to the neighborhood than a 7-Eleven store. And they will certainly suffer reduced profits, and may go out of business, if there is a nearby 7-Eleven Store.
- 9) Property values will certainly be diminished by the 7-Eleven store, which financially harms homeowners in the vicinity, and reduces San Mateo tax revenues.
- 10) There are certainly better locations for a 7-Eleven. Generally speaking mini-shopping centers and malls, with 5-10 stores sharing a large parking lot, are much better sited for handling the increased traffic and noise. Police patrols of these mini-shopping areas are more economical than having many individual stores in separate areas. Similarly, just 1/2 mile further down North San Mateo Drive, just prior to the intersection with Peninsula Ave, there are several stores across the street from the very large new apartment complex being constructed. A 7-Eleven located there would be more convenient, and inflict fewer of the negative attributes in this list.
- 11) A medical office, or a non-chain grocery store, would certainly be welcomed by our immediate neighborhood, as opposed to the very strong opposition to the 7-Eleven. Tax revenues from these preferred businesses should be similar to tax revenues from a 7-Eleven.
- 12) If the 7-Eleven is a "non-conforming use", should not the City Council make the final decision?

Please consider the net benefits and costs to the neighborhood, as well as to the government of the City of San Mateo, in assessing whether to grant 7-Eleven permission to operate at 501 North San Mateo Drive.

Very Sincerely,  
Edward Howard  
509 North San Mateo Drive  
[globalconscience@sbcglobal.net](mailto:globalconscience@sbcglobal.net)  
cell #: 650-430-4800

**From:** Jude Lawrence [mailto:jude.lawrence@gmail.com]

**Sent:** Sunday, September 16, 2012 9:47 PM

**To:** City Mgr; Brandt Grotte; David Lim

**Subject:** Strong concerns over proposed 7-11 Store on 501 N. San Mateo Dr

Dear Ms. Loftus, Mr. Grotte, and Mr. Lim,

I am terribly concerned to have discovered today that there are plans to open a 7-11 store at 501 N. San Mateo Drive. I am a resident of Prospect Row and I am alarmed that the neighborhood has not been consulted about this project. A 7-11 is neither necessary, nor desirable in this location. It is not necessary because there are already two local convenience stores in the immediate area. It is not desirable from the perspective of increased traffic in the local area, which will threaten our children's safety. It is also not desirable from a health perspective. Our neighborhood houses a high school, and the youth population does not need another store selling high sugar, high fat, low nutrition products. I am not a home-owner, but have lived in this neighborhood for nearly 10 years, and I suspect that a 7-11 opening in our residential enclave is likely to have a detrimental impact on property values, which will also adversely affect all current residents.

I would strongly urge you to reconsider the suitability of this project, and to consult with the neighborhood before allowing the 7-11 to open.

Thank you for your consideration of my email.

Yours sincerely,

Mrs. Jude Lawrence

From: Bob Scott [mailto:bobscott313@gmail.com]  
Sent: Sunday, September 16, 2012 9:23 PM  
To: City Mgr  
Subject: Opposition to Proposed 7-Eleven at 501 N. San Mateo Drive

To Ms. Loftus,

My wife and I are local residents writing to formally state our opposition to the proposal to allow a 7-Eleven convenience store at 501 N. San Mateo Drive. We only recently learned of this proposed development. The next city council meeting is Sep 18th, however I will be on business travel and my wife cannot attend as we have a 16-month old child to care for. I hope you will consider this email adequate to record our opposition to the project, but please let us know if there is other action we can take.

In relation to the proposed development we, along with our neighbors that we have consulted with, agree that this would drastically change the feel of the immediate neighborhood which is largely residential.

It would seem very out of place to have a 7-Eleven just around the corner. We are particularly concerned about the negative effect such a high profile convenience store would have on local traffic and litter on our secluded residential court which lies within a block of the proposed business.

We believe that this type of business is already over-represented in this heavily-residential area. Market La Raza is at the corner of Poplar and Ellsworth (378 N. Ellsworth) and Consumer Liquor is at 220 Poplar. Both of these businesses are within one block of our residence, as is the proposed 7-Eleven at 501 N. San Mateo Drive. The distance between the existing businesses and the proposed 7-Eleven is less than 500 ft. These existing local businesses should already be more than adequate to serve the neighborhood while a 7-Eleven would draw unwanted traffic to the area.

Thank you for your time,

Robert and Leah Scott  
449 W. Ellsworth Ct.  
San Mateo, CA 94401

**From:** Sharon Windust [mailto:swindust@gmail.com]  
**Sent:** Sunday, September 16, 2012 2:59 PM  
**To:** City Mgr; Brandt Grotte; dlim@cityorsanamteo.org  
**Subject:** proposed 7-Eleven on Bellevue Ave

Dear Ms. Loftus, Ms. Grotte and Mr. Lim,

I have been a resident of San Mateo for 51 years and a resident of the San Mateo Heights neighborhood for the past 29 years. The neighborhood ***does not need or want*** a 7-Eleven store on the corner of East Bellevue Ave and San Mateo Drive. This is a family neighborhood with a Consumer's Liquor Store, La Raza Market and AM/PM Mini Mart with in 3 block radius. Not to mention a Safeway on Delaware Avenue and a 24 hour Safeway on El Camino Real and Howard Ave in Burlingame (seven blocks away). We already have major traffic issues at the intersection of East Bellevue and San Mateo Drive with motorists running the 4-way stop. The proposed site is between two schools, Park Elementary and San Mateo High School with many children on bikes and walking. We also have issues with illicit drug buying and selling, a store such as a 7-Eleven will increase the automotive traffic as well as loitering that this family oriented neighborhood ***does not need nor will it tolerate!***

I would like to know why we have not been involved in your process for approving this 7-Eleven store. I look forward to your responses.

Sincerely,  
Sharon Windust  
San Mateo resident

**From:** lynn harvin [mailto:lynn.harvin@gmail.com]

**Sent:** Sunday, September 16, 2012 11:31 AM

**To:** City Mgr; Brandt Grotte; David Lim

**Subject:** Proposed 7-Eleven Store

Dear Ms. Loftus, Mayor Grotte and Deputy Mayor Lim,

I represent my family and the Hundley family. We live and own six homes here on E Bellevue Ave, San Mateo. We love our community and want you to know we vehemently oppose the suggestion of a 7-Eleven store being opened at 501 N San Mateo Dr. We believe the increased traffic, noise, litter and potential for crime all make this a terrible idea. As we all know the neighborhood children walk past this corner everyday on their way to and from Park Elementary and San Mateo High Schools.

Mr. Hundley attended these schools and remembers well that there has always been a small family-owned business in this location. We imagine a more modern version of the Hilltop Market or Stangelini's Deli reopening here. A place that offers convenience yes, but in a family friendly environment and not open 24 hours a day. Our neighborhood is quiet in the evenings and we know each other and we wish it to remain as such.

Please say no to the franchise or corporation who is interested in this neighborly location. Bring on the small business owner who is anxious to try his hand at a new endeavour!

Sincerely,

Mark and Lynn Harvin

Kent W. Hundley

--

**Best Regards,**  
**Lynn Harvin**

**From:** John Berdoulay [mailto:johnberdoulay@sbcglobal.net]  
**Sent:** Saturday, September 15, 2012 6:32 AM  
**To:** City Mgr  
**Subject:** 7-Eleven 501 N. San Mateo Dr.

Dr. Ms. Loftus:

I am writing to state my concerns about the pending sale of 501 N. San Mateo Dr. to 7-Eleven. This site was formerly Stangelini's, a neighborhood deli and grocery store.

I am concerned about the vagrancy, drunkenness, crime, litter and parking problems that seems to come along with a 24 hour convenience store such as this one. I do not object to new business in our community, but I am concerned about the location. It is blocks away from our local high school. I feel that a store such as this one doesn't improve the quality of life in our neighborhood.

I am not alone in my concerns. As we drove past the location the other day, I mentioned to my 12 year old daughter that there was going to be a new 7 Eleven here. I am always careful about how I say things to my children as I don't want to put my preconceptions upon them. I like to hear what their unadulterated opinions are. My daughter said, "Oh Dad, that's not a good idea. 7 Elevens have creepy looking people hanging out them.". Obviously here experience is limited, but I think it is worth considering.

Thank you for listening.

John Berdoulay  
603 Prospect Row  
San Mateo

From: Annie Coull [mailto:coullannie@gmail.com]  
Sent: Saturday, September 15, 2012 1:39 AM  
To: City Mgr; David Lim; Brandt Grotte  
Subject: 7-Eleven at 501 N. San Mateo Drive

Susan Loftus, City Manager  
Deputy Mayor David Lim  
Mayor Brandt Grotte

I own the townhouse at 503 N. San Mateo Drive immediately adjacent to the planned 7-Eleven at 501 N. San Mateo Drive.

I did not get any notice of this plan from the city of San Mateo, finding out about it only through the sign that is now mounted on the door of the property.

There are myriad reasons for my serious concern about having a 7-Eleven immediately next door:

--While a small market with normal business hours was a convenience, a 7-Eleven with extended hours will be a disruption

--Increased traffic and noise of frequent stops and starts during evening hours when I and my neighbors are at home

--Increased litter by transient customers

--Increased potential for crime (this week saw a murder at the 7-Eleven at a neighboring Peninsula town further south)

--More impact on street parking which is already limited

--More noise from people hanging around the store before and after their transactions

I am very opposed to the location of a 7-Eleven at the 501 N. San Mateo Drive location. I will not be able to attend the planning meeting on September 18th, however, neighbors from my townhouse association, Townhomes of San Mateo, will be there to express their views and concerns.

Sincerely  
Annie Coull  
503 N. San Mateo Drive  
San Mateo, CA 94401

**From:** David Tsai [mailto:design@davidtsai.com]  
**Sent:** Monday, September 24, 2012 12:12 PM  
**To:** dlim@cityofsanmateo.org  
**Cc:** bgrotte@cityofsanmateo.org; Carrie Tsai  
**Subject:** No 7-Eleven at 501 N. San Mateo Drive

September 24, 2012

Dear Deputy Mayor Lim,

I commend you for initiating a hearing regarding usage of the property located at 501 N. San Mateo Drive. Earlier this year my wife and I attended the February neighborhood meeting and we left with the impression that when a plan for the property was determined the neighborhood would be invited to voice their opinion or approval. Unfortunately this was not the case and we were never notified until I drove by the property and saw a sign reading "7-Eleven coming soon" then finding out that the city staff approved it. We live one block away and are strongly against any type of convenience store, in particular one that would be open late in the evening selling alcohol. There's research that confirms these types of stores increase crime, namely robberies and shoplifting since they are usually staffed by only one or two people at most with mostly cash transactions. 7-Eleven does not bring any unique service or product that the community needs. We don't need more alcohol, high sugar and salty snacks that are no good for or citizens. What we need are produce items, sandwiches and healthy foods, products that make us better citizens, thus making our community a place we can be proud of. As many of my neighbors agree, there are numerous places that do sell similar items as 7-Eleven does and all within a three block radius. Our neighbor is a residential community and we welcome family owned businesses that bring positivity and enrich our lives. Corporations and chains (whether franchised or not) will only scar the area.

So again I thank you for letting our voices be heard. I look forward to attending the public hearing next month. Your integrity sets a great example of what a community leader should be doing as you listen to the voices of the people and NOT finding the fastest and easiest path to get something off your to-do list.

Sincerely,  
David & Carrie Tsai

**From:** Kathryn Bullock [mailto:kayb0602@sbcglobal.net]

**Sent:** Sunday, September 30, 2012 12:32 PM

**To:** citymanger@cityofsanmateo.org

**Cc:** bgrotte@cityofsanmateo.org; dlim@cityofsanmateo.org; leonard1068@gmail.com

**Subject:** Proposed 7-Elevenstore (APN:032-153-140)

We never received from the City the notice of the proposed 7-Eleven store until we saw the signing on the lot. Neighbor Leonard Flaherty gave us the full scoop.

We are not necessarily against the store. However, here is what is troubling and what you as part of the planning commission should take into account.

(1) WHY open all night? There are plenty places in the main business districts where you can go to buy something all night. In our neighborhood it's quiet at night. No one hanging around or maybe making trouble. AND

(2) All night will generate twice as much litter. We know. We live on the corner of Bellevue and Turner Terrace. We pick up litter (beer cans, liquor bottles, food waste) on a daily basis. And that is just day work!

AND

(3) Parking. When we moved here in the early 70's there were hardly any cars on the street. Now it is bumper to bumper. Night traffic will just generate more. AND

(4) What about the corner lot across the street, formerly a convalescent home, now sold. Are you going to give them a similar permit; what, maybe a bowling alley, another major store? How is that going to impact what is going on here?

There is just so much space in our area. Let's not let it go to rack and ruin!

William and Kathryn Bullock

458 Turner Terrace

San Mateo, Ca., 94401

650 347 9268

From: meeslichter [mailto:meeslichter@comcast.net]  
Sent: Monday, October 01, 2012 8:32 PM  
To: bgrotte@cityofsanmateo.org  
Subject: Proposed 7-11 at former Hilltop Market location, Bellevue and San Mateo Drive

To the Honorable Mayor Grotte,

I would like to lodge my opposition to the introduction of a 7-11 store at the intersection of Bellevue Avenue and North San Mateo Drive. I understand from reading the San Mateo County Times that others have weighed in on this issue with serious concerns not only about the appropriateness of such an establishment in our predominantly residential neighborhood, and also about the potential issues the introduction of a 7-11 into any neighborhood would have. I would like to echo those concerns and voice a few others that I have not seen mentioned.

1. 7-11's stay open 24 hours a day. Not only does this cause noise and light abatement issues, but it also invites people into the neighborhood late at night who might not otherwise come into the neighborhood, and studies have shown that such people are typically of a criminal element, who might then take advantage of an otherwise quiet and safe neighborhood to prey on the homes in or around the 7-11.
2. The location for the proposed 7-11 is right across the street from a nursing home. I can't imagine that the added noise, traffic and lighting issues that would be caused by a 24-hour-a-day store would be very welcome at the nursing home.
3. The introduction of a 7-11 will necessarily cause a reduction of our property values. Such establishments only drag down surrounding property values. This reduction in property values will then have a direct effect on the amount of property taxes received by the county of San Mateo, which will then drastically affect the ability for the County to provide public services, such as fire, water, and public schools.
4. The neighborhood is zoned R-3, so multi-unit residences. I understand that the former Hilltop Market/Stangelini Market had a variance from the current zoning, and that the new 7-11 is attempting to utilize this variance. This shouldn't be allowed, particularly since the original variance was granted over 40 years ago. The former Hilltop market was a neighborhood market, offering deli sandwiches and the like. It was open reasonable hours and catered to our neighborhood in a way that was friendly and frankly neighborly. That type of market was acceptable to the neighborhood, because it didn't invite crime. A 7-11 is a far different animal.

7-11s are appropriate, if at all, in business districts, not in residential neighborhoods. I hope that the City will follow through on additional public meetings promised by the Deputy Mayor, so that people can weigh in on this important issue, and that the public meetings will be sufficiently advertised so as many people as possible can attend. I was not informed of the prior public meeting, though I live just two blocks from the site, so there was clearly an insufficient public meeting announcement for the original meeting. I hope this will be remedied for the next meeting.

I would also like to be advised of what, if anything, else the city intends to do about addressing these issues.

FYI, I emailed the Deputy Mayor, and all three council people early last week, about this issue, but none has bothered yet to reply to my email. I also left a voice mail message for the planning department employee who was apparently responsible for approving the "tenant improvements," (I understood from speaking with the planning department that because there were simply "tenant improvements," no public meetings were required), but he has also failed to respond to my call. I would appreciate some response so that I know that the public's concerns about this issue are being taken seriously.

Thank you,

Emily K. Slichter

**From:** Nick Rogers [mailto:narogers@att.net]  
**Sent:** Friday, October 05, 2012 3:29 AM  
**To:** Ronald "Ron" Munekawa; Lisa Ring  
**Subject:** Re: Information on 501 N. San Mateo Drive

Ron and Lisa:

Can you please forward me the non-conforming details of the property at 501 N. San Mateo Drive. Our neighborhood is still trying to wrap our minds around how this all transpired.

Does the update below on the website suggest that the owner is proposing 24 hour operation at this property? Who approved these building permits, and was it clear to those approving the project that this was going to be a 7-11 with 24 hour operating hours selling alcohol in our neighborhood? I know how careful I was with the planning and adherence to the strict building codes during my simple garage remodel. It would seem that our city would be equally as diligent with an out of town owner/developer.

I have spoken to many neighbors since my email below, and we are all wondering how this got past the planning commission. To say that my neighbors are upset is an understatement. We are all wondering: who is protecting our interests in maintaining a safe, family-oriented neighborhood? I am also looking at relocating my family in Burlingame or Hillsborough in the event that our neighborhood interests are not protected.

As I was raised in this community, and attended S.M. High School, this is the last thing that I want to do; but I must think about the safety of my young family. I also strongly doubt that this type of project would have been approved in those neighborhoods.

Eliminating a variance two to five years from now is not a solution; the unsavory elements and crime from this operation will be ingrained by that time; to say nothing of our property values. Again, thank you for your input and understanding of how out of place this development is in our neighborhood. Best, Nick Rogers (yes, I did write this email in the middle of the night; that too should tell you something)

*Susan*

*Thank you for your time on the telephone today. I appreciate your input on the concerns that I, and my neighbors, share regarding the 7-11 at Bellevue and San Mateo Drive that was labeled by the owner as a "convenience grocery store." As a volunteer for the city of San Mateo's financial committee, I have San Mateo's (and our small community's) best interest in forefront of my mind. Please feel free to forward this letter to anyone concerned at the city of San Mateo.*

*I have been in this community since the early 1980's when I attended San Mateo High School, and deepened my roots here when my wife and I bought our house on Grand Blvd in 1998.*

*A 24-hour liquor store (7-11) within a block of our home was not part of our plan when decided to remodel our home and raise our young children in this community. I have never objected to a project in this community, because I understand the revenue side of the equation, but this project is completely out of place in this quiet family neighborhood. I also feel that the owner of this property has been less than forthcoming and honest about their plans for this property.*

*Please continue to keep me in the loop of communication regarding this project; as I, and my neighbors, will go to great lengths to ensure that this owner remain mindful of the safety and impact of this store upon our San Mateo community, instead of focusing only on profits and greed. We would like strict limitations, and complete transparency, of the proposed hours (which should mirror Stangelini's hours if that is how they obtained their variance), and the items proposed to be sold in this establishment. To allow this owner to either operate this 7-*

*11 during late hours, or to offer for sale inappropriate items for any time frame at all sets a precedence and is completely unacceptable. To say that they may operate 24 hours a day for a year or two is not a valid compromise. The introduction of the unsavory and unsafe activities that accompany 24 hour stores selling questionable merchandise will introduce a criminal element into this community; which, once introduced, will be difficult to remove.*

*I look forward to your continued input and guidance on this matter.*

*Sincerely yours, long-time residents, Nick Rogers and family*

Community Development Office  
City of San Mateo

I ask that you forward my email on to whoever is responsible for the decision process of 501 N. San Mateo Drive, San Mateo.

I am deeply concerned and angry about the 7-11 planned for the old Stangellini's Deli at 501 N. San Mateo Drive. When I purchased my house on Grand Blvd 4 years ago, I believed I was moving into a charming San Mateo neighborhood. Moving from Burlingame, I purchased this house with a vision that after some much needed work, I would have the perfect house in a perfect neighborhood. After investing a considerable amount of time, effort, and money, I am very disgusted that an all night liquor store will now be a block and half away from my home.

How did this get past the neighborhood without anyone knowing until construction has started? Why is there a Sale Pending sign posted on the door yet construction has begun already? How did this all night liquor store get approved in a family oriented neighborhood? As a property owner, there are many hoops to go through and it takes months for approval to do anything to a home and requires consent from neighbors before work can be done. It seems to me and most of my neighbors that this slipped through quietly and frankly very underhandedly. Was there ever a neighborhood meeting to review the plans for the 7-11???

I frequently enjoy a late night walk with my dog without looking over my shoulder. A liquor store around the corner will change that forever. If this 7-11 is going to be in our community, I will not support this store and will encourage all my neighbors to boycott as well. Without a doubt, this will bring a very bad element to a neighborhood filled with families. I am seriously thinking of moving.

This is unacceptable and disappointing!

Sincerely

Liz Erickson

Liz Erickson / Professional Services Manager, Project Management

[iTradeNetwork, Inc.](#)

4155 Hopyard Road, Suite 100 Pleasanton, CA 94588

**P:** 925.660.1339 | **C:** 650.766.5158 | **E:** [lerickson@itradenetwork.com](mailto:lerickson@itradenetwork.com)

**From:** Julee Bailly [mailto:jbailly@finescience.com]

**Sent:** Tuesday, October 09, 2012 1:19 PM

**To:** Ronald "Ron" Munekawa; Lisa Ring; Community Development Distribution

**Subject:** 501 N San Mateo Drive - Proposed 7-11

We are writing this letter to let you know how unhappy and angry we are about the 7-11 moving into 501 N San Mateo Drive. We have lived here since 1992 and have owned the property since 1986. This is a residential neighborhood and not a fast food or 24 hour retail operation. This 7-11 came to my attention early one morning while walking my dog. There were workmen in the store working at 6:30 AM and no indication of what was being done. A few days later, while walking my dog, there was a banner posted saying that this was going to be a 7-11 store. We were never notified of this, and there is still a "Sale Pending" sign on the door. We want to express our opposition to this sale.

Several years ago the City came in and closed two of our units down, stating that they were illegal. However, when we purchased the property we were not told that they were illegal. We wanted to retain the water and electricity in one of the units as my husband is a photographer and needed the utilities for processing his work. We had to file for a variance, which was then mailed to all residences for several blocks before it could be approved. So, my point is where is the notification of the construction before it was started?

In closing, we want to again, state that we disapprove of this 7-11 coming into our neighborhood.

Denny and Julee Bailly

**From:** globalconscience@sbcglobal.net [mailto:globalconscience@sbcglobal.net]  
**Sent:** Tuesday, September 18, 2012 11:35 PM  
**To:** David Lim  
**Cc:** City Mgr  
**Subject:** Re: Reasons Why a 7-Eleven Should Not Be Located at 501 North San Mateo Drive

Dear Mr. Lim:

We appreciate your efforts to give the neighborhood "due process" However, construction work has started as early as 6 AM in recent days, a chain link fence has gone up around the perimeter, and a sign proclaims this is a future 7-Eleven. Apparently, 7-Eleven feels very confident that they will have their store here. Is the neighborhood going to get true "due process"? Is there any way this construction can be delayed, at least in part, until after the City Council meeting on November 19th?

Sincerely,

Edward Howard

On Sep 17, 2012, at 10:45 AM, David Lim wrote:

Mr. Howard,

Thank you for your email on this issue. I wanted to give you an update on my efforts to address your concerns.

Yesterday I sent an email to the City Manager asking for a hearing under San Mateo Municipal Codes section 27.72.050 and 27.72.052 to determine whether the City Council should terminate and remove the non-conforming use at 501 N. San Mateo Drive. A copy of my email to the City Manager is contained below.

Under the City Municipal Code, the City Council and Planning Commission will now schedule a public hearing to determine whether to terminate the non-conforming use at 501 N. San Mateo Drive, which would effectively prohibit a 7-11 from operating at that location.

City Staff will be working on the logistics for setting this hearing, but as of today no hearing date has yet been scheduled, and the decision on whether or not to terminate the non-conforming use in that area could take some time. I will keep you informed as dates get set, but ask you to be patient through the process.

If you have any questions, please do not hesitate to contact me.

Sincerely,

David Lim  
San Mateo City Council  
[dlim@cityofsanmateo.org](mailto:dlim@cityofsanmateo.org)

Sent from my iPad  
Apologies for brevity and typos

\*\*\*\*\*

LETTER TO CITY MANAGER REQUESTING HEARING ON TERMINATION AND REMOVAL OF  
NON-CONFORMING USE AT 501 N. SAN MATEO DRIVE.

I am formally requesting a hearing pursuant to San Mateo Municipal Code sections 27.72.050 and 27.72.052 regarding the possible termination and removal of non-conforming use of land at [501 N. San Mateo Drive in San Mateo](#). Under section 27.72.062, a hearing may be initiated by any Councilmember.

In requesting this hearing, I wish to stress that I believe that City Staff had no choice but to issue the building permits to the owners of [501 N. San Mateo Drive](#). Based on the memo from the City Attorney's Office, and the actions of the owners, a denial of the permit may have subjected the City of San Mateo to legal liability, and so I hope you will thank staff for their work and impress upon them that my request for a hearing does not in any way imply that I think their decision was wrong.

However, section 27.72.050 provides the City Council the opportunity to terminate and remove a non-conforming use of land under the finding of certain factors. Without prejudging the outcome of such a hearing, I believe a hearing at this particular time is warranted because:

- 1) The prior use (an Italian Deli) was authorized over 20+ years ago, and changes to the surrounding neighborhood warrant a review of the non-conforming use.
- 2) The current owners have not yet invested large amounts of money into a revitalization of the non-conforming use. Now is the time to determine whether the non-conforming use is proper, so as to minimize the impact on the property owners.
- 3) The surrounding community deserves a public hearing to weigh in on whether the current non-conforming use should remain in the community.

I realize that the Council agenda is already very full for the remainder of the year, but I would request a hearing as soon as possible to allow the owner to be put on notice before they put more work into rehabilitation of the existing property.

David Lim  
San Mateo City Council  
[dlim@cityofsanmateo.org](mailto:dlim@cityofsanmateo.org)

On Sep 16, 2012, at 11:23 PM, "[globalconscience@sbcglobal.net](mailto:globalconscience@sbcglobal.net)" <[globalconscience@sbcglobal.net](mailto:globalconscience@sbcglobal.net)> wrote:

To: David Lim, Deputy Mayor

CC: Susan Loftus, City Manager  
Brandt Grotte, Mayor

As a townhome owner representing the six townhome owners (503 through 513 N. San Mateo Dr.) whose units overlook 501 North San Mateo Drive, I urge you to consider the following reasons for not converting the lot to a 7-Eleven:

- 1) Further degradation of traffic flow at the intersection of North San Mateo Drive and Bellevue Ave. The stop signs at this intersection are often ignored, requiring San Mateo police to frequently be on-site to pull over transgressors. We had another accident just last week.
- 2) Exacerbation of an existing shortage of parking spaces in the area.
- 3) The foot traffic of students going to and from San Mateo High at this intersection increases the odds of pedestrian injuries from the increased traffic.
- 4) An increase in crime is very likely. The Deli which previously occupied this lot attracted vandals (which frequently sprayed graffiti on the Deli, and our property), and the Deli typically closed in the evening. The 7-

Eleven would be open 24 hours per day. The murder of a 7-Eleven employee last week at the 7-Eleven in Milpitas underscores the increased crime.

5) The noise from Deli traffic at 501 N. San Mateo Drive was often very disturbing, but will be several times greater with a 7-Eleven open 24 hours per day.

6) Pests, particularly rats and raccoons, were persistent when the Deli was open, especially because of the necessary outdoor trash receptacles and large food waste bins for pick-up. This will be even worse with a 7-Eleven.

7) Litter from the Deli users was annoying at best, but will multiply several times with a 7-Eleven open 24 hours per day.

8) The possibility of the 7-Eleven serving alcohol, even if no license is initially sought, is quite high, given the profitability of alcohol sales. Yet there is already a "Consumer Liquor" store just one block away, and the Raza convenience store 2 blocks away. These two stores can already serve the local demand for alcohol and convenience items, and certainly bring more "character" to the neighborhood than a 7-Eleven store. And they will certainly suffer reduced profits, and may go out of business, if there is a nearby 7-Eleven Store.

9) Property values will certainly be diminished by the 7-Eleven store, which financially harms homeowners in the vicinity, and reduces San Mateo tax revenues.

10) There are certainly better locations for a 7-Eleven. Generally speaking mini-shopping centers and malls, with 5-10 stores sharing a large parking lot, are much better sited for handling the increased traffic and noise.

Police patrols of these mini-shopping areas are more economical than having many individual stores in separate areas. Similarly, just 1/2 mile further down North San Mateo Drive, just prior to the intersection with Peninsula Ave, there are several stores across the street from the very large new apartment complex being constructed. A 7-Eleven located there would be more convenient, and inflict fewer of the negative attributes in this list.

11) A medical office, or a non-chain grocery store, would certainly be welcomed by our immediate neighborhood, as opposed to the very strong opposition to the 7-Eleven. Tax revenues from these preferred businesses should be similar to tax revenues from a 7-Eleven.

12) If the 7-Eleven is a "non-conforming use", should not the City Council make the final decision?

Please consider the net benefits and costs to the neighborhood, as well as to the government of the City of San Mateo, in assessing whether to grant 7-Eleven permission to operate at 501 North San Mateo Drive.

Very Sincerely,

Edward Howard

509 North San Mateo Drive

[globalconscience@sbcglobal.net](mailto:globalconscience@sbcglobal.net)

cell #: 650-430-4800

From: Lory [mailto:lorylawson@gmail.com]  
Sent: Sunday, September 16, 2012 6:11 PM  
To: bgrotte@cityofsanmateo.org; dlim@cityofsanmateo.org; mfreschet@cityofsanmateo.org;  
jmatthews@cityofsanmateo.org; rross@cityofsanmateo.org  
Subject: Imagine my surprise....

Dear San Mateo Council members,

Imagine my surprise when (while coordinating our Leadership Community Issues Tour last Saturday) when I learned that a 7/11 Store is headed to the corner of N. San Mateo Drive and East Bellevue Avenue!?

I live up the street at 119 East Bellevue Avenue.

For many years we had a lovely, locally owned, family Italian deli on this corner. Slowly, as they struggled to survive, it became less and less a deli and more a "convenience store" - we noticed the change because more wrappers and garbage ended up on our front lawn - folks and kids, (perhaps walking up the street towards El Camino) had just enough time to consume the stuff they had bought there. We have been enjoying the improved situation since the space has been empty.

I am trying to understand how this application moved through the process without a discussion with the neighborhood???? This corner is zoned residential, I believe. Does the zoning get changed without discussion because there was a market there before? I must point out that a 7/11 is very different than an Italian Deli!

I would be happy to hear from you and look forward to any assistance you can offer.  
Sincerely,

Lory Lawson  
650.218.7282

**From:** Mark Dillon [mailto:mark\_dillon16@hotmail.com]  
**Sent:** Wednesday, October 10, 2012 2:42 PM  
**To:** Susan Loftus  
**Cc:** Community Development Distribution; Lisa Ring; Ronald "Ron" Munekawa  
**Subject:** Concern Over New 7-11 to be Located at 501 North San Mateo Drive

Susan,

We are writing you as the City Manager of San Mateo to express our family's anger and concern about the proposed 7-11 being built at 501 North San Mateo Drive. How did this get past the planning commission and why wasn't anyone in the surrounding area notified? We feel that a convenience store located 2 blocks from our house, selling alcohol and tobacco products 24hrs a day, will increase crime and traffic on our residential street, while at the same time decreasing our property's value.

When we were looking to buy our first house 7 years ago, we were drawn to the charm and transformation taking place in San Mateo Heights. We have since worked very closely with the city to rehab this 1930's home, going through the permit application, approval and sign off process every step of the way. While costly and time consuming, we understand that this process exists to ensure safe living conditions and adherence to the city vision for San Mateo, both short and long term.

We've also been encouraged by the fact that we've been continuously notified of and given the opportunity to weigh in on any development projects in the area, including major home additions, redevelopments and subdivisions of existing lots. Until recently, it had appeared that the city had the best interests of this small community in mind.

Unfortunately, this project seems to be a complete reversal of this mind set. It appears that not only were the local residents not informed, but that they were purposely kept out of the process to avoid the fact that this 7-11 would not be welcomed. There was nothing from the city, nothing from the builder, and nothing from the new tenant at any point explaining the project and it's impact on the surrounding area.

If we are reading the cities response to previously raised concerns by other neighbors posted here - <http://www.cityofsanmateo.org/index.aspx?NID=2503>, this 7-11 is being treated as a continuation of the variance granted to the former tenant, Stangelini's Deli. We find it hard to believe that a convenience store selling alcohol and tobacco 24 hours a day falls into the same category as a family owned deli/market open from 9-5. In addition, while we are encouraged by Ron Munekawa's call to review this project, it appears that even if the project is deemed non-conforming, the store would still be able to operate unchanged for at least 2 years. By that point, the impact on the neighborhood could be irreversible.

Our family urges the City of San Mateo to reconsider this Project and disallow the 7-11 to be opened and operated 24 hours a day. This project and its handling have given us no choice but to re-evaluate our decision to stay in San Mateo. In the short term, our family will not be a customer of this business and we will urge our fellow neighbors to do the same. In the long term, we will likely be moving away from San Mateo to another city on the Peninsula.

Sincerely,  
Mark and Lindsay Dillon  
Residents/Owners  
116 Grand Blvd.

**From:** Linda Segervall [mailto:linda@iconbranding.com]

**Sent:** Thursday, November 01, 2012 8:56 AM

**To:** bgrotte@cityofsanmateo.org; dlim@cityofsanmateo.org; mfreschet@cityofsanmateo.org;  
jmatthews@cityofsanmateo.org; rross@cityofsanmateo.org

**Subject:** No to the 7-Eleven!

**Importance:** High

Dear City Council Members,

I am writing you to urge you to terminate zoning that allows for a 7-Eleven to operate on San Mateo Drive as soon as possible. We believe that this store will create additional crime, trash, pollution, noise and unhealthy choices in our City.

Many thanks!

Linda Segervall-Baldini

411 Sonora Drive

San Mateo, CA 94402



Linda Segervall

Principal

650.312.0205 T

650.312.0206 F

650.619.1265 W

From: Jen Rubinstein <jrubinstein@vmware.com<mailto:jrubinstein@vmware.com>>  
Date: November 1, 2012 9:25:55 AM PDT  
To: "bgrotte@cityofsanmateo.org<mailto:bgrotte@cityofsanmateo.org>"  
<bgrotte@cityofsanmateo.org<mailto:bgrotte@cityofsanmateo.org>>,"  
"dlim@cityofsanmateo.org<mailto:dlim@cityofsanmateo.org>"  
<dlim@cityofsanmateo.org<mailto:dlim@cityofsanmateo.org>>,"  
"mfreschet@cityofsanmateo.org<mailto:mfreschet@cityofsanmateo.org>"  
<mfreschet@cityofsanmateo.org<mailto:mfreschet@cityofsanmateo.org>>,"  
"jmatthews@cityofsanmateo.org<mailto:jmatthews@cityofsanmateo.org>"  
<jmatthews@cityofsanmateo.org<mailto:jmatthews@cityofsanmateo.org>>,"  
"rross@cityofsanmateo.org<mailto:rross@cityofsanmateo.org>"  
<rross@cityofsanmateo.org<mailto:rross@cityofsanmateo.org>>  
Subject: Say NO to 7-11

Dear City Council Members,

I am writing you to urge you to terminate zoning that allows for a 7-Eleven to operate on San Mateo Drive as soon as possible. We believe that this store will create additional crime, trash, pollution, noise and unhealthy choices in our City.

Thank you.

Jen Rubinstein

**From:** Erin Kennealy [mailto:ernie\_ken@yahoo.com]

**Sent:** Friday, November 02, 2012 9:03 AM

**To:** dlim@cityofsanmateo.org; bgrotte@cityofsanmateo.org; mfreschet@cityofsanmateo.org; rross@cityofsanmateo.org; jmatthews@cityofsanmateo.org

**Subject:** 7-Eleven

Council Members,

I know that the City Council is reviewing information regarding the illegal use of the space at 501 No. San Mateo Drive as a convenience store and the possible financial repercussions to the City of San Mateo if it upholds the law in its upcoming vote, I hope the City Council will take into consideration the following points:

First, it's now well documented that the citizens, the San Mateo police and the Planning Commission are all worried about the increased traffic that will result from a convenience store at 501 N. San Mateo Drive and 7-Eleven has been made aware of the concerns. That will now open up both 7-Eleven and the city to liability for accidents and injuries that occur at that intersection should they go forward with their illegal use of the space. Students who are traveling to Park Elementary School and San Mateo High School via E. Bellevue will be particularly at risk as commuters "dash" in and out of the convenience store parking lot that exits onto E. Bellevue.

Secondly, 7-Eleven is well aware that this "neighborhood" convenience store is not welcome. I believe they will have to disclose that to any potential franchisees. And if they don't, I believe the franchisee wouldn't be long figuring it out and that would open them up to further litigation.

One more thing I don't believe 7-Eleven has done anything to mitigate their losses. They've gone full steam ahead hoping the neighborhood concerns would go away. Any judge or jury would take that into consideration when awarding damages. 7-Eleven ignoring the law and skirting the issues has cost them the money. Had the developer been honest and forthright from the beginning, they wouldn't be in this position.....perhaps they can pursue their developer for damages.

Homeowners in the City of San Mateo have already seen dramatic decreases to property values. 7-Eleven is a billion-dollar corporation that is expanding rapidly as it takes over mom-and-pop stores that are suffering in our economy. Please do not let them further depreciate my property value. 7-Eleven has 46,000 stores. I have 1 home.

Respectfully,

Erin Shannon

-----Original Message-----

From: Gene Bordegaray [mailto:genebordegaray1@att.net]

Sent: Wednesday, November 07, 2012 4:57 PM

To: Lisa Ring; Ronald "Ron" Munekawa; Brandt Grotte; David Lim; Maureen Freschet; John "Jack" Matthews; Robert Ross

Subject: 501 N. San Mateo Drive

Dear Planning Commission and City Council Members,

I own an apartment building located at 331 E. Bellevue Ave. in San Mateo. The building is located one half block away from the subject market site.

I am very concerned about the proposed use of the 501 N. San Mateo Dr. site as a 7-Eleven market. The development of the site as a 7-Eleven market will possibly bring several negative impacts to the site and surrounding neighborhood.

OPERATING HOURS - The previous operator (Stangelini's Italian Deli) operated the market at reasonable hours. They closed early enough, avoiding late night loitering. The 7-Eleven hours of operation ARE NOT prone to avoid late night/ early morning gathering and loitering. Operating until 2:00 a.m. in the morning will provide for a meeting place for activities that are NOT beneficial to the neighboring residential community. In addition, having late night/early morning activity will no doubt contribute to traffic noise, patron noise, and disruption to the local residents. If in fact 7-Eleven upholds its promise NOT TO exercise its 24-hour operation, I don't see the need to have a "grocery" store operating until 2:00 a.m. in the morning. If the concerns of the local residents regarding this project are not important enough to the City Council/Planning Dept., and this use IS allowed, the City should mandate closure of the store by 10:00 p.m.

PARKING - It does not appear that there is sufficient parking to support site usage as a market. Lack of sufficient parking will force patrons to park in the residential areas nearby creating parking difficulties for the local residents. In addition, access in and out of the small parking lot will cause disruption to the flow of traffic along N. San Mateo Dr.

ALCOHOL SALES - Hard liquor sales must be prohibited. In addition, the sale of wine and/or beer must also be PROHIBITED. Although it has been stated that "This store will open without the sale of beer and wine", nothing is said about the sale of beer and wine AFTER the store has been operating for a while. Selling any kind of alcoholic beverage in this residential community is asking for trouble and is a recipe for late night policing problems.

For these reasons, I object to the use of the site as a 7-Eleven store and wholeheartedly support the TERMINATION of the nonconforming use of the site.

Gene Bordegaray  
1236 Cabrillo Ave.,  
Burlingame, CA 94010

Owner of property at:  
331 E. Bellevue Ave.  
San Mateo, CA 94401

**From:** [globalconscience@sbcglobal.net](mailto:globalconscience@sbcglobal.net) [<mailto:globalconscience@sbcglobal.net>]

**Sent:** Saturday, November 03, 2012 4:57 PM

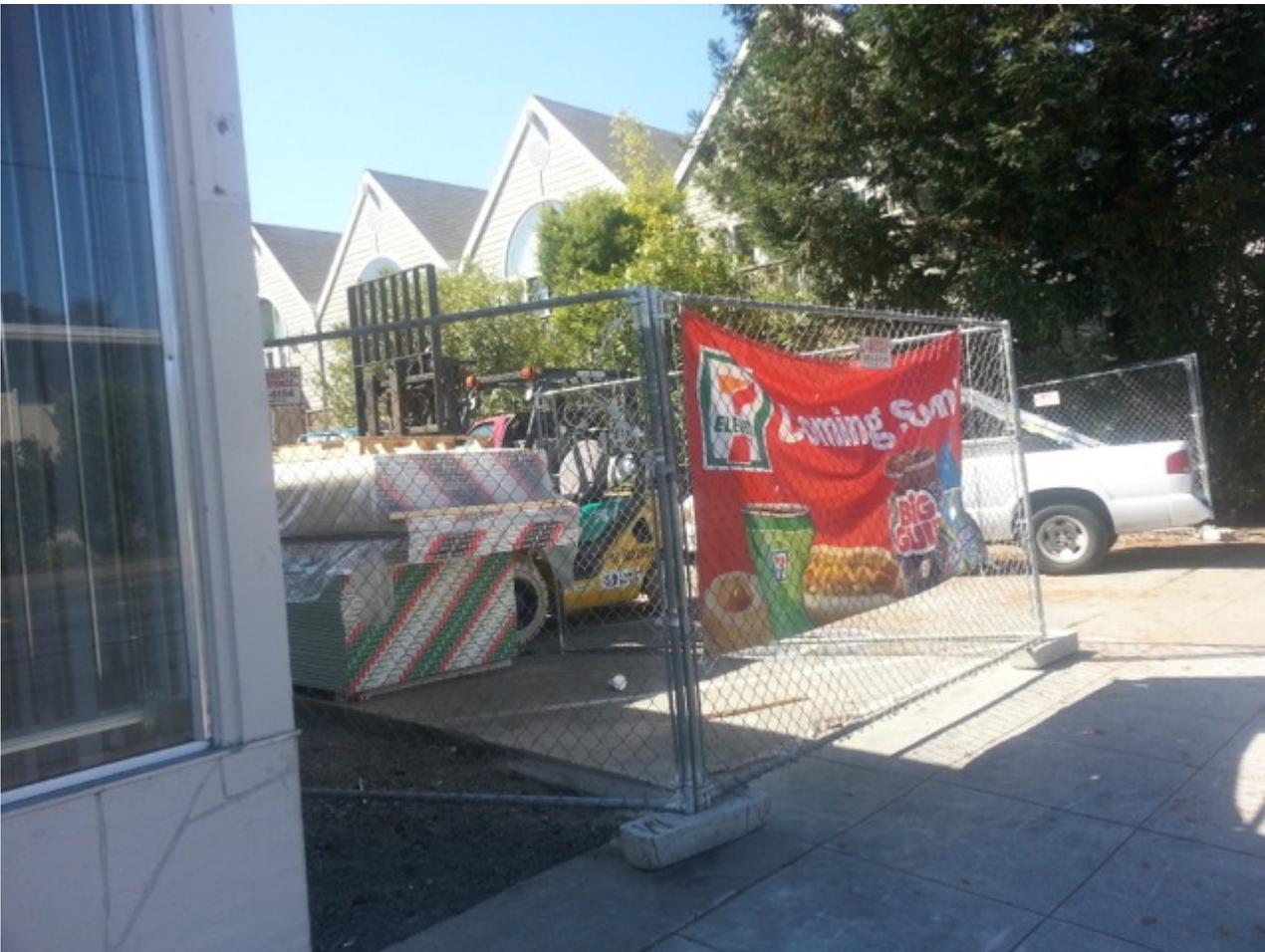
**To:** David Lim; Planning Commission; Brandt Grotte; Maureen Freschet; John "Jack" Matthews; Robert Ross

**Cc:** City Mgr; jackie jones; [cpstiles@sbcglobal.net](mailto:cpstiles@sbcglobal.net)

**Subject:** The Many Compelling Reasons Why a 7-Eleven Store Should NOT be Located at 501 North San Mateo Drive

Dear San Mateo City Leaders:

After attending the City Meeting on October 30th, I was very impressed by the passion shown by many neighbors in the "San Mateo Heights" area. Unfortunately, the City's apparent decision to move forward with the 7-Eleven (a Japanese-owned multi-national company) at 501 North San Mateo Drive was the spark which stimulated such a united neighborhood. Clearly, "Due Process" is not yet a concern for the City, as it continues to ignore the pleading from the neighborhood to stop further construction at the site until a final decision has been made. The best the City could do in response was to finally take down the embarrassing sign (see image below) which demonstrated a 7-Eleven was indeed "Coming Soon"!



The City of San Mateo website proudly displays the following Organizational Principles at your website (<http://www.cityofsanmateo.org/index.aspx?NID=56>). My editorial remarks are inserted in red font:

## Organizational Principles

Committed \* Responsive \* Creative

The City of San Mateo is an organization of individuals dedicated to serving the San Mateo community. Our goals are to provide quality municipal services and responsive city government (**The city government has been**

entirely responsive to 7-Eleven, while being transparently non-responsive to the citizens in the impacted neighborhood). To achieve these goals, we are committed to the following principles for the conduct of our business:

**Service to the community is our purpose.** Take time to communicate, understand, and involve the community. There was no communication, no attempt to involve the community in the decision to allow a 7-Eleven to be inserted into our lives.

**We all work for one organization.** Respect and value the people who work here; be supportive of each other. But apparently such respect and value for people in the San Mateo Heights neighborhood are not a consideration.

**Look at the long term.** Take actions which will maintain our ability to serve the community in the future while appreciating our heritage and history. The Long Term should include, above all else, the people living in the impacted neighborhood, and there is no consideration of heritage or history in locating the 7-Eleven in our neighborhood.

**Seek constant improvement.** Be receptive to new ideas; encourage creativity, innovation, and experimentation. The City is not improving the neighborhood by permitting a 7-Eleven there. To the contrary, it is creating an extraordinary burden and decreased quality of life. Certainly the City has not been receptive to the neighborhood's new ideas, creativity, innovation, or experimentation.

**Lead by example.** Let the community and our colleagues judge our commitment to these principles by our individual actions. Oh yes, you will indeed be judged by the community.....

Clearly, the City, in this case, has woefully failed to meet its own Organizational Principles. And at the October 30th meeting, only one economic analysis (from Economic Planning & Analysis Systems) was considered as evidence. Indeed, Vice-Chair Massey felt compelled to ignore several flaws in the analysis, and insisted that the analysis be seriously considered as the only economic analysis, for determining the outcome of this myopic decision, completely counter to the neighborhood's well-being. To only consider the Economic Planning & Analysis Systems (hereinafter "the economic analysis") simply because it was the only analysis in evidence would result in an extraordinarily incomplete, biased, and flawed decision.

Indeed, the economic analysis by Economic Planning & Analysis Systems is fatally flawed in several aspects. As an Economist who has undertaken dozens of Net Present Value analyses, and cross-examined experts on rate of return theory and practice in regulatory proceedings, I am qualified to provide some examples of these flaws.

1) Any transparent and objective economic analysis, recognizes the numerous assumptions of economic theory are often violated. For example, the assumption that "people act independently on the basis of [full and relevant information](#)"--sadly was not the case, as the neighborhood was not informed of the City's decision. Similarly, the assumption that "people have [rational preferences](#) among outcomes that can be identified and associated with a value" has been thoroughly ignored--the people (i.e. the neighborhood) may have rational (and some irrational) preferences, but these were completely ignored by the analysis.

2) Most economists will stipulate that the many assumptions behind their analysis, and the inability to predict the future for the variables included in their analysis (e.g. projected economic growth, real estate values, income and costs of this particular store, future interest rates, future taxes, population growth) requires a Sensitivity Analysis. Instead of assuming an exact figure (with a false sense of precision) for each of the variables over a multi-year planning horizon, [a Sensitivity Analysis recognizes the highly uncertain likelihood of these variables, and projects a lower and upper bound.](#)

3) Economists widely agree that external benefits and costs not recognized by the private sector ("externalities") should be estimated and included in the analysis. There have been many significant external costs identified by the neighborhood to the City, which are absolutely ignored in the analysis. [Some of these very significant ignored costs include, but are not limited to:](#)

- a) increased crime
- b) increased noise
- c) increased air (and visual) pollution
- d) increased congestion (more cars; trucks double-parked while delivering products)
- e) increased traffic flow
- f) increased need for police patrols and responses
- g) increased incidence of trash
- h) increased incidence of pests such as raccoons and rats
- i) decrease of neighborhood character and quality of living
- j) decreased property values
- k) increase of transients in the area
- l) increased likelihood of children and adults in the neighborhood consuming unhealthy and fattening foods
- m) sale of beer and wine immediately, and quite possibly hard liquor ultimately, has many possible negative consequences
- n) profits from the 7-Eleven not invested in the neighborhood, but instead returned to the headquarters in Tokyo
- o) decreased revenues for existing local (and locally-owned) convenience stores in the neighborhood (e.g. La Raza; Consumer Liquor)
- p) increase in foul odors from a very large trash receptacle (which happens to be located right next to my back deck)
- q) the hours of operation for the 7-Eleven are much longer than any alternative, and will disrupt the quiet and peaceful neighborhood into very early hours in the morning
- r) an exacerbation of limited parking in the surrounding streets

These, and other, external costs have been entirely excluded from the analysis, but [would clearly add significant costs which should be included in the analysis.](#)

4) The City of San Mateo, as the responsible government entity, should use a "public" or "social" discount rate in quantifying the benefits and costs (including externalities) to the community it serves. Instead, the economic analysis evaluates benefits and costs to 7-Eleven solely. Consequently, not only are externalities ignored entirely, but a higher discount rate than the social discount rate is used. This results in a discounting of all public benefits, and because the higher discount rate of a private sector company is used instead of the lower discount rate of the public sector, the analysis will favor shorter term benefits and costs over longer term benefits and costs. [In other words, entirely contrary to the City's self-stated objective of "Looking at the Long Term".](#)

5) [Use of questionable data.](#) For example, the analysis utilizes the property values of the six townhomes overlooking the 7-Eleven without question, or adjustment. However, as one of those six townhome owners, I find it unbelievable that the property value (i.e. excluding improvements) of the four townhomes with the exact same property size and dimension (and sharing walls), could have the assumed values ranging from \$69,000 to \$156,000!!!

6) Any thorough economic analysis would compare the net benefits of the chosen project, against the [next best alternative](#). The economic analysis chooses a residential use as the comparative alternative. However, more likely to be the next best alternative is a medical office. In comparison to a 7-Eleven, [a medical office would be preferred, particularly when considering the external costs identified above.](#)

7) Another "next best alternative", from the perspective of 7-Eleven, would be to locate this store at a strip-mall, or even 1/2 mile down North San Mateo Drive near or across from the very large new apartment complex being developed (at Peninsula & N. San Mateo), [where there would be more of the critical buffer between 7-Eleven and local residences which typically is required.](#)

8) Including sunken costs in an economic analysis is widely considered faulty by economists. The appropriate decision is made with respect to marginal benefits and costs. It is at the margin that economic analysis is appropriate, and what is already done, should be ignored, as the decision is based upon that which can still be influenced. Consequently, the City's ill-conceived decision to allow construction on the site, even before "due process" has been afforded to the neighborhood (if ever), amounts to increasing costs incurred by 7-Eleven, and these sunken costs are, in turn, being used as a reason why the 7-Eleven must proceed. [However, the error of allowing 7-Eleven to proceed with substantive construction before the neighborhood has been given "due process" is not a cost which should be considered in the final analysis.](#)

**It is not too late to make the right decision.**

Sincerely,

Edward (Ted) Howard  
509 North San Mateo Drive  
San Mateo  
[globalconscience@sbcglobal.net](mailto:globalconscience@sbcglobal.net)

**From:** meeslichter <[meeslichter@comcast.net](mailto:meeslichter@comcast.net)>

**Date:** November 5, 2012 12:39:29 PM PST

**To:** David Lim <[dlim@cityofsanmateo.org](mailto:dlim@cityofsanmateo.org)>

**Cc:** Peter Breining <[pbreining@yahoo.com](mailto:pbreining@yahoo.com)>

**Subject:** Fwd: San Mateo Heights meeting, agenda item, etc. re: 7-Elevent

Dear Deputy Mayor Lim:

Peter Breining requested that I forward to you his earlier email addressed to you, as he understood you had deleted it. He further asked me to redact any information related to discussions with Councilman Robert Ross, which I have done.

As you can see from the below email, we are requesting that the upcoming November 15th City Council meeting have an agenda item the issue of the legality of the non-conforming use. During the planning commission meeting on October 30th, Commissioner Moran was a strong proponent for the City Counsel to address the legality issue, and it appeared that the other Commissioners concurred in this assessment. Ms. Moran inquired of the city attorney present at the meeting whether a Council member could put the legality issue on the agenda so that it could be discussed and voted upon, and the City Attorney said yes.

We received a Notice of City Council Public Hearing by email today from the city, and it states "Public hearing to consider Planning Commission recommendations with regard to: 1) nonconforming use at 501 North San Mateo Drive (market use in R-4 zone) including potential termination or alternative actions in accordance with Municipal Code Chapter 27.72 and state law; and 2) addressing nonconforming uses and 24-hour uses in general."

It is unclear to use whether this means that the legality issue is now an agenda item or not. Can you clarify whether the legality issue is an agenda item?

Thank you very much.

Respectfully,

Emily Slichter

**From:** Annie Coull [mailto:coullannie@gmail.com]  
**Sent:** Wednesday, November 07, 2012 9:26 AM  
**To:** Brandt Grotte; David Lim; Maureen Freschet; John "Jack" Matthews; Robert Ross; City Mgr  
**Subject:** Fwd: Meeting is on for Nov. 15

I am the owner and resident of the townhome at 503 N. San Mateo Drive, immediately adjacent to 501. I am forwarding you my message to my neighbors as written below.

I feel that you should be aware of this activity in light of the Planning Commission recommendation recently and the upcoming November 15 City Council meeting.

Sincerely,  
Annie Coull

Sent from my iPad

Begin forwarded message:

**From:** Annie Coull <coullannie@gmail.com>  
**Date:** November 6, 2012, 11:42:55 PM PST  
**To:** jackie jones <grafis@att.net>  
**Cc:** freddy chiappe <fchiappelock@yahoo.com>, cheryl Breining <cjbreining@yahoo.com>, meeslichter <meeslichter@comcast.net>, jeanne <jammin@speakeasy.net>, sharon <jmccarthy@smuhsd.org>, richard <richardsmith8338@gmail.com>, "ekingston@sideman.com 1" <ekingston@sideman.com>, "swindust@gmail.com" <swindust@gmail.com>, Paul Mclean <dash.mclean@dlapiper.com>, lane kashiwahara <lanekash@sbcglobal.net>, peter Breining <pbreining@yahoo.com>, sean Johnston <sfjohnstons@gmail.com>, jennifer johnston <jennchef@msn.com>, jackie jones <grafis@att.net>, richard smith <richard.smith@electro-venture.com>, pete martin <petetwin@pacbell.net>, glen <glenthomson2000@gmail.com>, erin <ernie\_ken@yahoo.com>, kay <kay0602@sbcglobal.net>, susan munroe <susanmunroephoto@gmail.com>, teague <teague114@yahoo.com>, neighbor11 <cpstiles@sbcglobal.net>, neighbor15 <jowpartyofsix@sbcglobal.net>, john duff <duff\_john@comcast.net>, kathy mcconnel <kathy@kathymcconnel.com>, Annieme O'rourke <kork@sbcglobal.net>, gabriel <gabrielaspinoza@merisgroup.com>, jeanette oberholster <joberholster@comcast.net>, neighbor19 <bunadr@aol.com>, Kathy2 <kmcccon@sbcglobal.net>, marco <marco@inxite.com>, Julie Muller <gjigikami@gmail.com>, neighbor14 <redducksoup@gmail.com>, geno Caccia <gc@cacciaplumbing.com>, jerry persons <jpersons@kmotifs.com>, Darrell <dblouie@yahoo.com>, NEIGHBOR4 <globalconscience@sbcglobal.net>, bill lapcevic <blapcevic@mac.com>, Francis Hollis <nwynkoop@yahoo.com>, Karen Shibata <karikeda@aol.com>, leonard <leonard1068@gmail.com>, NEIGHBOR2 <sharonmcken@gmail.com>, Kerri <kerribeffa@klwines.com>, Ted <howted@gmail.com>, lu young <luyoung@hotmail.com>, todd <info@toddrfalovich.com>, neighbor5 <jbailly@finescience.com>, tessa simone <Tessa.simone@hotmail.com>, neighbor8 <tmvp@hotmail.com>, mark smith <mdsmitty2169@gmail.com>, ron baker <rlbaker8@yahoo.com>, jen <jenkalkbrenner@gmail.com>, neighbor12 <aercoli@earthlink.net>, sandinos <thesandinos@sbcglobal.net>, neighbor9 <cjenrun@gmail.com>, Jennifer O'brien <jenniferleeobrien@gmail.com>, Lori Walth <lawalth@bechtel.com>, Art Lierman <alierman@bayrps.com>, neighbor7 <design@davistsai.com>, jeff gilbert <cardman49@aol.com>, john <johnberdoulay@sbcglobal.net>, mark borella <mrborella@gmail.com>, jude <jude.lawrence@gmail.com>, Stephanie <shamilton@apple.com>, bob <bobscott313@gmail.com>, margaret price <margaretprice317@comcast.net>, Clyde <clydebeffa@klwines.com>, jeffrey <jeffrey.a.darville@wellsfargo.com>, Susan Monroe <susan@writtenright.com>, lisa <lisanicolemckenna@hotmail.com>, Gabby <gabbyespinoza5547@sbcglobal.net>, lory <lorylawson@gmail.com>, len flaherty <leonard1@astound.net>, greta <grejoegre@yahoo.com>, Michelle Privitera <mpriv@comcast.net>, Dave Privitera <davepriv@comcast.net>, susan munroe <susanmunroephoto@gmail.com>, lynn <lynn.harvin@gmail.com>, dave moore <celindamoore@yahoo.com>,

Patrick O'halloran <[officiantpatrick@comcast.net](mailto:officiantpatrick@comcast.net)>, neighbor6 <[lerickson@itradenetwork.com](mailto:lerickson@itradenetwork.com)>, meredith <[yehmeredith@gmail.com](mailto:yehmeredith@gmail.com)>, neighbor10 <[cnickolai@siprep.org](mailto:cnickolai@siprep.org)>, Barbara <[barbaram@cisco.com](mailto:barbaram@cisco.com)>, Mark dillon <[mark\\_dillon16@hotmail.com](mailto:mark_dillon16@hotmail.com)>, Cindy Skelton <[Skelton4@earthlink.net](mailto:Skelton4@earthlink.net)>, jimmy <[wasimalomaisi@yahoo.com](mailto:wasimalomaisi@yahoo.com)>

**Subject: Re: Meeting is on for Nov. 15**

It's 11:35 PM. a tractor trailer (McLane Distribution Services) is double parked on San Mateo Drive across from my townhouse at 503 N. San Mateo Drive immediately adjacent to the 7Eleven site. Very noisy deliveries being made to the store. I guess this is how they are going to be doing deliveries. Totally unacceptable. I will let you all know how long it takes when they leave.

I sorry I will not be at the meeting next week as I will be out if the country. Please feel free to report this unbelievably disruptive activity at a sensitively late hour in our neighborhood.

Annie Coull

Sent from my iPhone

On Nov 5, 2012, at 1:20 PM, jackie jones <[grafis@att.net](mailto:grafis@att.net)> wrote:

<PA12 071 CC Public Hearing 11-15-12 postcard sent to interested parties 11\_05\_12.pdf>

PLEASE UPDATE YOUR ADDRESSES.

jackie jones, Principal  
Grafis Design

(650) 315-2317  
[grafis@att.net](mailto:grafis@att.net)

<http://www.grafisdesign.com>  
<http://www.poochpix.com>

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**PETITION AGAINST INTRODUCTION  
OF 7-11 STORE AT 501 N. SAN MATEO DRIVE**

Addressed to: San Mateo City Counsel and Planning Commission

Purpose of Petition: By signing this Petition, the signatories register their opposition to the introduction of a 7-11 convenience store at 501 N. San Mateo Drive, the former location of Hilltop Market/Stangelini's Italian Deli, at the corner of Bellevue Avenue and North San Mateo Drive.

Reasons for Opposition: A 7-11 store will be detrimental to our neighborhood for a number of reasons, including but not limited to:

- |   |   |
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| <p>1) As a 24-hour convenience store, its introduction will add traffic, noise and light pollution to our otherwise quiet neighborhood</p> <p>(2) 7-11's are notorious magnets for crime and unsightly graffiti</p> <p>(3) It will encourage teenagers who walk by the location from San Mateo High School to congregate, loiter and litter</p> <p>(4) It will cause a severe decrease in the property values of surrounding properties, which will have the added effect of decreasing property taxes, thus further diminishing the amount of funds available for schools, public safety and government services</p> | <p>(5) It will add an element of crime and invite people into the neighborhood at all hours of the day and night who would not otherwise frequent the neighborhood</p> <p>(6) This neighborhood is zoned R-3, allowing multi-unit residences. It is a quiet neighborhood. The original occupant, Hilltop Market/Stangelini's Deli was required to obtain a variance for the operation of a local market. This variance was granted over 40 years ago. The so-called "tenant improvements" should not have been permitted without taking into consideration the public's input</p> <p>(7) A 7-11 convenience store is an entirely different sort of store from a neighborhood market</p> |
|---|---|

SIGNATURE	ADDRESS
1. Annie Coull	503 N. San Mateo Drive San Mateo
2. Stephanie Hanchus	507 N. San Mateo DR., San Mateo
3. Don BZ	511 N. SAN MATEO DR SAN MATEO
4. Edward Howard	509 N. San Mateo Dr. San Mateo
5. R. [unclear]	229 C. Bellevue Ave. San Mateo, CA
6. Anna Loeb	229 E. Bellevue Ave. #10, San Mateo CA
7. Mary J. Anzell	517 NO SAN MATEO DR.
8. Robert Smith	" " "
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1809 ~~1818~~ Total Signatures

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SIGNATURE	ADDRESS
1. Christine Mendez	425 Williams Place #1, San Mateo CA 94401
2. Craig McDonald	710 Highland, San Mateo, CA 94401
3. <del>[Signature]</del>	107 Grand Blvd San Mateo, CA 94401
4. <del>[Signature]</del>	425 Williams Pl., #10 San Mateo CA
5. <del>[Signature]</del>	42B E. Ellsworth Ct. SAN MATEO 94401
6. <del>[Signature]</del>	194 E BELLEVUE AVE. SM 94401
7. <del>[Signature]</del>	351 E Bellevue Ave SM 94401
8. LEONARD FERRERY	459 TURNER TER SM 94401
9. <del>DEBORAH FERRERY</del>	459 TURNER TER SM 94401
10. TIM BENDER	125 E. Bellevue SAN MATEO 94401
11. DEVI'S KRUGER	43 GRAND BLVD 94401
12. <del>[Signature]</del>	407 WEST ELLSWORTH CT. 94401
13. Courtney Medrano	425 E. Bellevue Ave 94401
14. <del>[Signature]</del>	10 Dwight Ave Burlingame, CA
15. <del>[Signature]</del>	Same as above
16. <del>[Signature]</del>	415 Williams Pl, SM. (handlone)
17. Lily Jow	355 E. Bellevue Ave San Mateo 94401
18. Kevin Jow	355 E. Bellevue Ave San Mateo 94401

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SIGNATURE

ADDRESS

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|--------------------------------------|---|
| 1. <u>Heaven &amp; Heumill</u>       | <u>425 Williams R. #5 San Mateo, CA 94401</u> |
| 2. _____                             | _____   |
| 3. <u>JOHN DUFF</u>                  | <u>464 3rd Ave Half Moon Bay CA 94019</u>     |
| 4. <u>SEAN O'BRIEN</u>               | <u>714 Highland Ave San Mateo 94401</u>       |
| 5. <u>Bob Scott</u>                  | <u>449 W. Ellsworth Ct</u>                    |
| 6. <u>NICK ROGERS</u>                | <u>112 GRAND BLVD SM 94401</u>                |
| 7. <u>Thomasina Russaw</u>           | <u>1660 Amphlett Blvd. #219</u>               |
| 8. <u>Ronald G. Baker</u>            | <u>419 West Ellsworth Ct., San Mateo, CA</u>  |
| 9. <u>SALLY PRATAI</u>               | <u>111 9th AVE #301, SM, CA 94401</u>         |
| 10. <u>ANTHONY PRATAI</u>            | <u>111 9th AVE #301, SM, CA 94401</u>         |
| 11. <u>MARCO T SANCHEZ</u>           | <u>316 N. EL CAMINO R. #107, SM CA 94401</u>  |
| 12. <u>Susan Monroe</u>              | <u>522 N. San Mateo Dr # 4 94401</u>          |
| 13. <u>Jennifer O'Brien</u>          | <u>436 E. Ellsworth Ct. San Mateo CA</u>      |
| 14. <u>NANCY BRAUN</u>               | <u>340 GRAND BLVD #1 S-M 94401</u>            |
| 15. <u>DAVID &amp; CELINDA MOORE</u> | <u>433 W. Ellsworth Ct. San Mateo</u>         |
| 16. <u>Michelle Lee</u>              | <u>409 E Bellevue Ave, San Mateo,</u>         |
| 17. <u>Lori Koda</u>                 | <u>500 N. San Mateo Dr. SM 94401</u>          |
| 18. <u>Mike Caggiano</u>             | <u>234 Elm #102 S.M.</u>                      |

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|---|---|

SIGNATURE	ADDRESS
1. <i>Dayna Rose</i>	<i>425 Williams Place #8, SM 94407</i>
2. _____	_____
3. _____	_____
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SIGNATURE

ADDRESS

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|--------------------|--|
| 1. Jonathan Marosh | 425 Williams Pl, Apt 4, San Mateo CA 94401 |
| 2. Jordan Ferber   | 425 Williams Pl, Apt 2, San Mateo CA 94401 |
| 3. H. H. H. H.     | 425 Williams Pl. #5 San Mateo              |
| 4.                 | CA 94401                                   |
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145 Total  
Signatures + 8 +

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<u>SIGNATURE</u>	<u>ADDRESS</u>
1. <i>James McCarty</i>	416 Williams Place S.M. 94401
2. <i>Ally Dyer</i>	420 Williams Place SM 94401
3. <i>Danielle Lee</i>	420 Williams Place, SM 94401
4. <i>Brian McKenzie</i>	413 Williams Place, SM 94401
5. <i>Al Kenney</i>	408 Williams Place sm 94401
6. <i>De Shannon</i>	412 Williams SM 94401
7. <i>Rory Shannon</i>	412 WILLIAMS PL SM 94401
8. <i>Kathy McConnell</i>	411 Williams Place sm 94401

9. Seamus & Sherry 412 Williams Place
10. Valerie Corby 419 Williams Pl.
11. Arthur Arlet 421 Williams PL
12. Denise Schittkane 407 Williams Pl.
13. Kathleen & Ray 417 Williams PL
14. Virginia Owen 418A Williams PL
15. Appalunya B. Jones 418A Williams Place  
94401
16. Gayle 415 Williams Place Se. 7.06.
17. Nancy Hodges 235 N. Ellsworth Ave. Sm 94401
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SIGNATURE	ADDRESS
1. Patrick J. O'Halloran	444 E. Ellsworth Ct SMCA 94401-2429
2. <del>Robert Stiles</del>	1537 Nadina St San Mateo 94402
3. <del>Stiles</del>	1537 Nadina St, San Mateo, CA 94402
4. <del>millie</del> Jeff Darville	438 NO. San Mateo Dr. 94401
5. <del>andy</del> <del>Stien</del>	<del>438</del> 436 No. San Mateo Dr. 94401
6. Cindy Dick	218 State St, San Mateo 94401
7.	
8. Jennifer Johnston	420 E. Ellsworth Court San Mateo 94401
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SIGNATURE	ADDRESS
1. Liz Erickson	103 Grand Blvd San Mateo CA 94401
2. Joel Bailey	40 Grand Blvd San Mateo CA 94401
3. Dennis Bailey	40 Grand Blvd, San Mateo, CA 94401
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SIGNATURE

ADDRESS

1. *[Signature]* 437 W. ELLSWORTH CT. SAN MATEO, CA 94401
2. *[Signature]* 437. W. ELLSWORTH CT San Mateo CA 94401
3. *[Signature]* 461 Wisconsin Ave. San Mateo, CA 94401
4. *[Signature]* JACKIE JONES - 424 E. ELLSWORTH CT.
5. *[Signature]* 316 E. BELLEVUE AV., SAN MATEO, 94401
6. *[Signature]* 445 W. ELLSWORTH CT SML94401
7. ~~*[Signature]*~~ RICHARD SMITH 316 E. BELLEVUE
8. *[Signature]* FRED CHIAPPE 445 W. ELLSWORTH *[Signature]*

9. Paul A. McLean, 416 E. Ellsworth Ct., San Mateo

10. John Chiappe 1425 Tolia St San Mateo

11. Richard DeLuna 146 West 3rd Ave, San Mateo

12. Kerstin Hufnagl 146 W. 3rd Ave #10 San Mateo

13. BRIAN ROUSPIL 441 W. ELLSWORTH CT., SAN MATEO

14. Laurie Rouspil 441 W. Ellsworth Ct. San Mateo

15. LEAH EASTON-SCOTT 449 W. ELLSWORTH CT. SAN MATEO

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Total  
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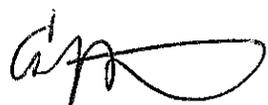
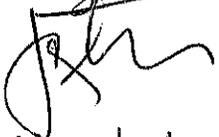
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SIGNATURE

ADDRESS

- |  |                                      |
|--|--------------------------------------|
| 1.  | 618 Highland Avenue, SM, CA 94401    |
| 2. Julie Duffy   | 117 Grand Blvd. #6 SM, CA 94401      |
| 3. Cheryl Brien  | 616 Prospect Row San Mateo, CA 94401 |
| 4.  | 615 Prospect Row SM, CA 94401        |
| 5. Sha Kuey  | 612 Prospect Rd. SM CA 94401         |
| 6.  | 612 Prospect Rd. SM CA 94401         |
| 7. Joe Marie   | 52 Grand Blvd SM 94401               |
| 8. Lindsay Dillon  | 116 Grand Blvd., San Mateo, CA 94401 |

9. Mark Dillon - ~~Mark~~ 116 Grand Blvd. San Mateo
10. Mona Reeves ~~John~~ 525 Highland Ave. San Mateo, CA
11. Meredith Yeh ~~Wynne~~ 518 Highland Ave. SM 94401
12. SHZYUAN BU ~~Wen~~ 626 Prospect Row  
San Mateo, CA 94401
13. Signe Michael ~~William~~ 729 Prospect Row
14. LISA McDonald ~~Wesley McDonald~~ 710 Highlands Ave  
San Mateo, CA 94401
15. Anheer Travisano ~~Michelle~~ 715 Highland Ave  
San Mateo CA 94401
16. A. Man ~~John~~ 618 Highland Ave. SM CA 94401
17. ~~Patricia O'Brien~~ 714 Highland Ave. 94401  
Pea Hughes - 6114
18. MG Noble 621 Highland Ave
19. P. M. R. 616 Prospect Row,
20. ~~Ann D. Dupont~~ 237 GRAND BLVD.
21. Paul A. McLean 416 E. Ellsworth Court, San Mateo 94401
22. Frances Follis 412 E. Ellsworth Ct " " 94401
23. Jennifer Johnston 420 E. Ellsworth Ct San Mateo 94401
24. Sean Johnston 420 E. Ellsworth Ct San Mateo CA 94401
25. Catherine Griffith 612 Highland San Mateo 94401

26.  657 Highland Avenue #1, San Mateo Ca

27.  212 Villa Terr #2 San Mateo 94407

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OF 7-11 STORE AT 501 N. SAN MATEO DRIVE**

Addressed to: San Mateo City Counsel and Planning Commission

Purpose of Petition: By signing this Petition, the signatories register their opposition to the introduction of a 7-11 convenience store at 501 N. San Mateo Drive, the former location of Hilltop Market/Stangelini's Italian Deli, at the corner of Bellevue Avenue and North San Mateo Drive.

Reasons for Opposition: A 7-11 store will be detrimental to our neighborhood for a number of reasons, including but not limited to:

- 1) As a 24-hour convenience store, its introduction will add traffic, noise and light pollution to our otherwise quiet neighborhood
- 2) 7-11's are notorious magnets for crime and unsightly graffiti
- 3) It will encourage teenagers who walk by the location from San Mateo High School to congregate, loiter and litter
- 4) It will cause a severe decrease in the property values of surrounding properties, which will have the added effect of decreasing property taxes, thus further diminishing the amount of funds available for schools, public safety and government services
- 5) It will add an element of crime and invite people into the neighborhood at all hours of the day and night who would not otherwise frequent the neighborhood
- 6) This neighborhood is zoned R-3, allowing multi-unit residences. It is a quiet neighborhood. The original occupant, Hilltop Market/Stangelini's Deli was required to obtain a variance for the operation of a local market. This variance was granted over 40 years ago. The so-called "tenant improvements" should not have been permitted without taking into consideration the public's input
- 7) A 7-11 convenience store is an entirely different sort of store from a neighborhood market

SIGNATURE

ADDRESS

1. *[Signature]* 837 N. Idaho St SM
2. *Christine Alford* 800 N. Delaware St #203 San Mateo 94401
3. *Francisco Angeles* 101 S. Fremont St. San Mateo CA 94401
4. *Tracy Debyes* 44 N Fremont St
5. \_\_\_\_\_
6. \_\_\_\_\_
7. \_\_\_\_\_
8. \_\_\_\_\_
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15. \_\_\_\_\_
16. \_\_\_\_\_
17. \_\_\_\_\_
18. \_\_\_\_\_

jackie jones, Principal  
Grafis Design

(650) 315-2317  
[grafis@att.net](mailto:grafis@att.net)

<http://www.grafisdesign.com>  
<http://www.poochpix.com>



**San Mateo Residents**  
**Opposition to plans to open a 7-Eleven**  
**store at 501 N. San Mateo Drive**  
**Residentes de San Mateo**  
**La oposición a sus planes de abrir una tienda**  
**7-Eleven? En el 501 N. San Mateo Drive**

**That is what is planned for the vacant property on the north corner of Bellevue and San Mateo Drive, in the planning stage, under the radar and with no notification or input from the neighborhood.**

**How might this impact us? More transient people and traffic; more litter; kids safety, lower property values and the potential for crime.**

**Do we REALLY need another 7-Eleven when we already have La Raza and Consumer Liquor to take care of our "convenience" needs?**

**PLEASE attend the next hearing on October 30 at 7.30 p.m. at City Hall in San Mateo to express your views on this proposed project. It's very important.**

**Eso es lo que está previsto para la propiedad vacante en la esquina norte de Bellevue y San Mateo Drive, en la etapa de planificación, bajo el radar y sin notificación o la entrada del barrio. ¿Cómo podría esto nos afectará? Las personas más transitorios y de tránsito, más basura, seguridad de los niños, menores valores de las propiedades y el potencial para el crimen.**

**¿Realmente necesitamos otro 7-Eleven cuando ya tenemos La Raza y Consumer Liquor para cuidar de nuestras necesidades "conveniencia"?**

**POR FAVOR asista a la próxima reunión el 30 de Octubra a las 7.30 pm en el City Hall de San Mateo para expresar sus puntos de vista sobre este proyecto propuesto. Es muy importante.**

**HEARING**

**City Hall, 330 W. 20th Avenue  
10/30/2012 - 7.30 p.m.**

*JAN*

42

72  
113  
85

# **PETITION AGAINST INTRODUCTION OF 7-11 STORE AT 501 N. SAN MATEO DRIVE**

Addressed to: San Mateo City Counsel and Planning Commission

Purpose of Petition: By signing this Petition, the signatories register their opposition to the introduction of a 7-11 convenience store at 501 N. San Mateo Drive, the former location of Hilltop Market/Stangelini's Italian Deli, at the corner of Bellevue Avenue and North San Mateo Drive.

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(3) It will encourage teenagers who walk by the location from San Mateo High School to congregate, loiter and litter

(4) It will cause a sever decrease in the property values of surrounding properties, which will have the added effect of decreasing property taxes, thus further diminishing the amount of funds available for schools, public safety and government services

(5) It will add an element of crime and invite people into the neighborhood at all hours of the day and night who would not otherwise frequent the neighborhood

(6) This neighborhood is zoned R-3, allowing multi-unit residences. It is a quiet

night who would not otherwise frequent the neighborhood

- (6) This neighborhood is zoned R-3, allowing multi-unit residences. It is a quiet neighborhood. The original occupant, Hilltop Market/Stangelini's Deli was required to obtain a variance for the operation of a local market. This variance was granted over 40 years ago. The so-called "tenant improvements" should not have been permitted without taking into consideration the public's input
- (7) A 7-11 convenience store is an entirely different sort of store from a neighborhood market

SIGNATURE

ADDRESS

- 1. *Katharina Messing* 449 Wisnom Ave.
- 2. *[Signature]* 430 WISNOM AVE
- 3. *Jan Elmer Christensen* 437 Wisnom Ave
- 4. *Mark J. Cummins* 414 WISNOM AVE
- 5. *Kathalina Ho* 432 Wisnom Ave. S.M 94401
- 6. *MARCO WISE Owner* 432 WISNOM AVE
- 7. *[Signature]* 431 WISNOM AVE
- 8. *Madeleine M. Palacin* 454 WISNOM AVE

neighborhood. The original occupant, Hilltop Market/ Stangelini's Deli was required to obtain a variance for the operation of a local market. This variance was granted over 40 years ago. The so-called "tenant improvements" should not have been permitted without taking into consideration the public's input

(7) A 7-11 convenience store is an entirely different sort of store from a neighborhood market

SIGNATURE    ADDRESS

1. Steven Windust    461 Wisconsin Ave.
2. TERRY WINDUST  
James P. Windust    461 WISCONSIN AVE S.M.
3. Miles Lehman  
Mh. Lee    459 Wisconsin Ave SM
4. Jeff Borlin    456 Wisconsin Ave SM.
5. [Signature]    456 Wisconsin Ave SM
6. Peter F. Wells    131 Warren Road, San Mateo
7. Steve Lytle    7 E. POPLAR AVE. SAN MATEO
8. Monica Luppke    7 E. Poplar Ave. San Mateo
9. Carolyn Catt    418 WISCONSIN AVE. SAN MATEO

13  
8

~~23. Clark Allan Lawson  
119 East Bellevue Ave.~~

24. ~~Mark F. Lawson  
119 E. Bellevue Ave.~~

25. Andrew Aquino  
449 Highland Ave  
San Mateo CA 94401

26. Graciela Quisada  
316 N. El Camino Real #11A

27. San Mateo CA 94401

28. Susan 315 Ramona St. 94401

29. Michelle St 315 Ramona St. 94401

30. Ronald A. McGoldrick 434 Highland Ave, 94401

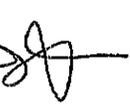
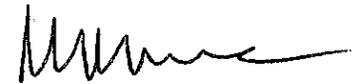
31. Lisa McGoldrick 434 Highland Ave 94401

32. [Signature] 430 Highland Ave. 94401

33. [Signature] 430 HIGHLAND AVE 94401

34. Michael J. Fry 437 Highland Ave 94401

35. June B. Lee 414 William Place, San Mateo
36. James Lee 414 William Place, San Mateo
37. ~~Wm M~~ 461 Wisnom Ave. San Mateo
38. Frances Ohden 8 E Bellevue SM
39. MARC. OHIDEN 8 E BELLEVUE AV SM
40. Lizandro Ponce 6 E BELLEVUE AVE SM.
41. Fern Filner 10 E Bellevue Ave S.M.
42. Marty Cole 101<sup>E</sup> Bellevue - S.M.
43. Wendy Jacobson 111 E Poplar Ave #209 SM *W Jacobson*
44. Elena Espinoza 458 WISNOM. AV - S.M.
45. *D. Ponce* 458 WISNOM AVE. S.M. CA.
46. *Carol* 459 Wisnom Ave SM CA
47. Carol & Richard 459 Wisnom Ave SM CA

- 9. Stephen Ghularducci 431 Grand Blvd
- 10. Sandy Ghularducci 431 Grand Blvd.
- 11. KATHY W. Kuo  439 WISNOM AVE.
- 12. Kevin Helenius 442 Highland Ave
- 13. FIONA MCKENNA 434 HIGHLAND AVE.
- 14. DAVID HUGHES 431 Highland Ave.
- 15. IRMA C. Campas 453 Highland Ave
- 16.  813 N Idaho St.  
San Mateo CA
- 17.
- 18.
- 19.
- 20.
- 21.
- 22.
- 23.
- 24.

10. Gary Gross 424 Wisconsin Ave San
11. Arthur Brown 119 East Bellevue Ave 94401
12. Yolanda Gomez 438 Wisconsin Ave.
13. Sham Wisniewski 461 Wisconsin Ave San Mateo 94401
14. David Amann 135 East Bellevue S.M
15. Pat Ann 135 East Bellevue SM
16. Robert Belmont 20 E. Bellevue S.M.
17. Eric J Bell 125 E. Bellevue S.M
18. Nina Gross 194 E BELLEVUE AVE, SM
19. Kathleen M. Martin 446 State St S.M.
20. John Martin 446 State St. San Mateo.
21. Scott Zarnit 448 Highland Ave San. Mateo
22. Jennifer Aquino 449 Highland Ave. San Mateo  
Garcia

501 N. San Mateo Drive

“Do The Right Thing”

San Mateo Heights  
Neighborhood Association



# A High-Intensity Convenience Store is Burdensome to the Neighborhood

- Contributes to Impairment of Property Values
- The use is detrimental to the public health, safety, and general welfare of the neighborhood and city



# (1) Contributes to Impairment of Property Values

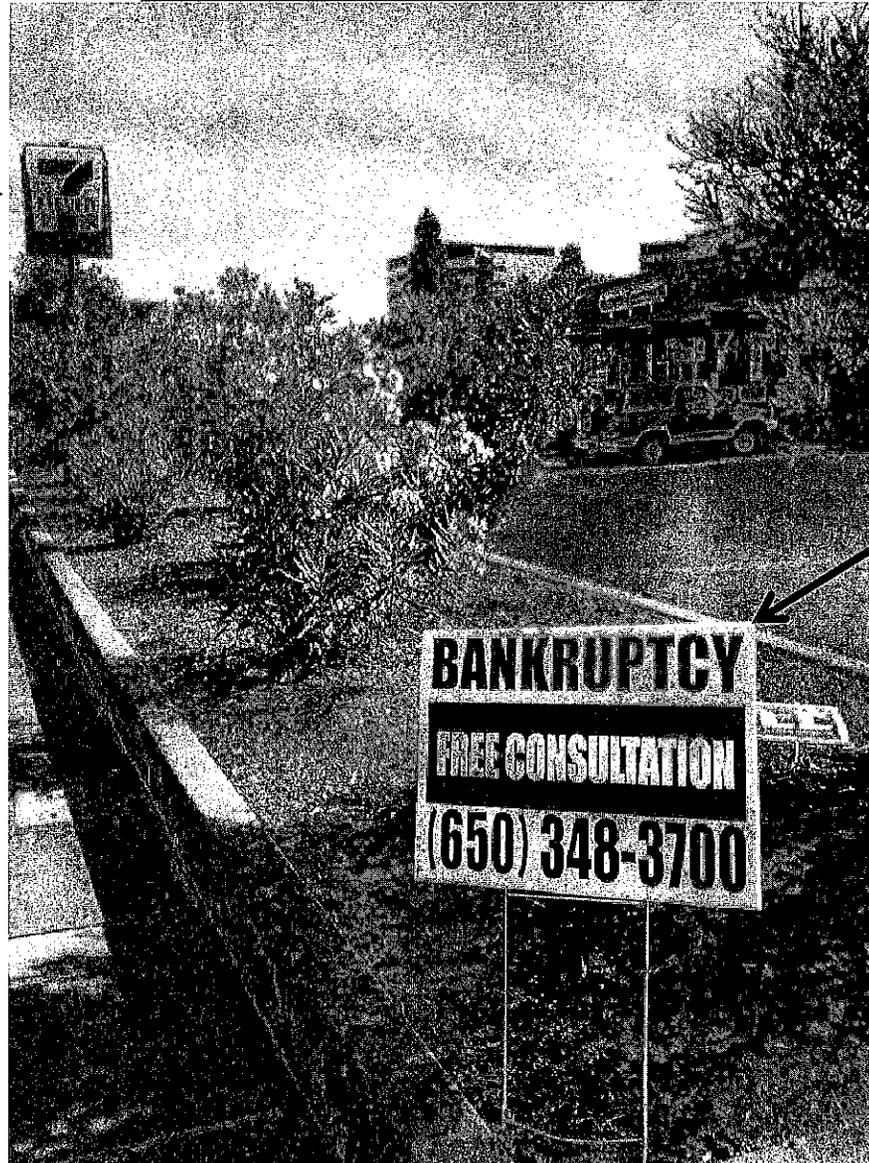
- Transient, region-wide clientele has little regard for neighborhood
- “Overall, it appears that [convenience stores]...contribute to both crime and urban decay”.<sup>1</sup>
- Urban decay = impaired property values
- 7-Eleven is proven to add to blight and urban decay in San Mateo

1. Teh, B., Do Liquor Store Increase Crime and Urban Decay? Evidence from Los Angeles, 2007.



# 7-Eleven Is Proven to Attract Blight in San Mateo

7-Eleven at Concar  
and Grant in San  
Mateo



Blight



# 7-Eleven Increases Neighborhood Blight, Decreasing Property Values



# (1) Contributes to Impairment of Property Values

- Blight and urban decay = impaired property values
- Increased light, traffic, noise, graffiti, etc.
- As a result on the decline in property values, assessed values and property taxes will go down, diminishing the amount of funds for schools, public safety, and government services.



### (3) Said use is otherwise detrimental to the public health, safety, and general welfare

- “For a variety of reasons, convenience stores are often very popular targets for a variety of crimes”<sup>2</sup>
- Convenience stores are renowned as being magnets for crime



(3) Said use is otherwise detrimental to the public health, safety, and general welfare

- “Door height markers” are an acknowledgement by 7-Eleven itself



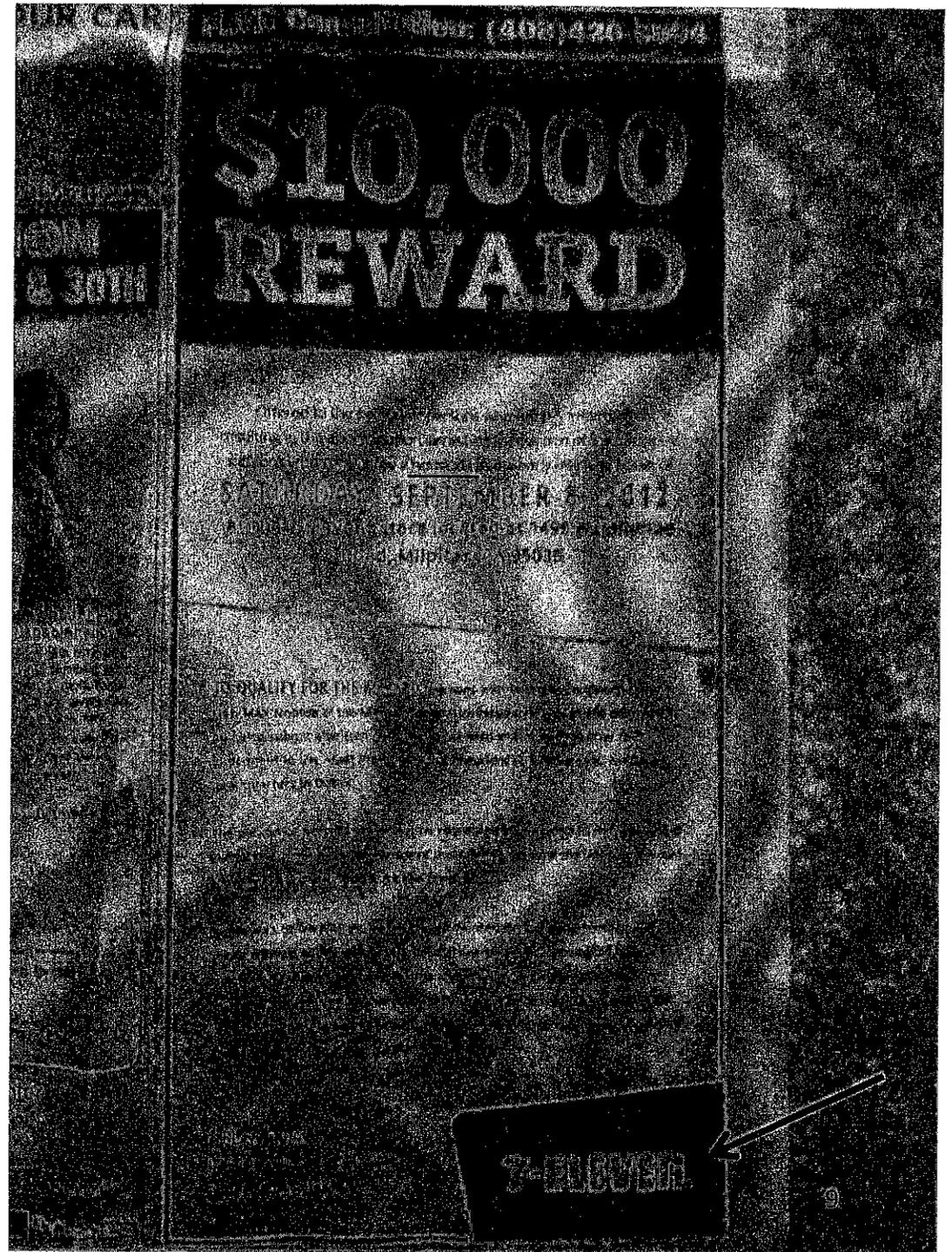
SMHNA

# 7-Eleven Offers Rewards for Murders Conducted at Its Stores

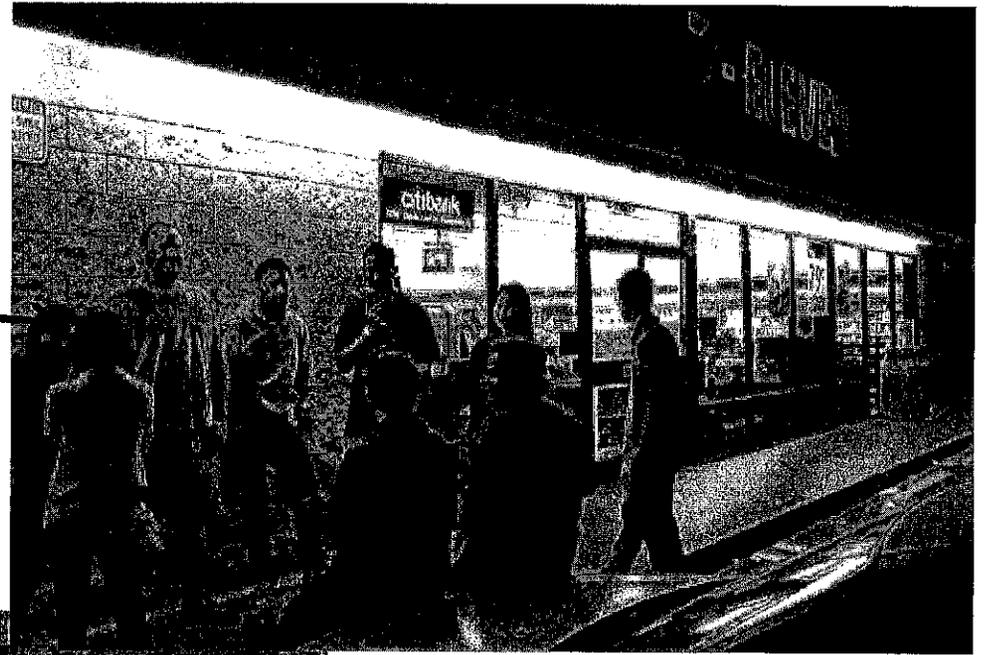
This murder was in Milpitas  
on September 8.

San Jose Mercury News  
9/24/12  
p. A7

(Murders are detrimental to public safety).



7-Elevens are know for loitering



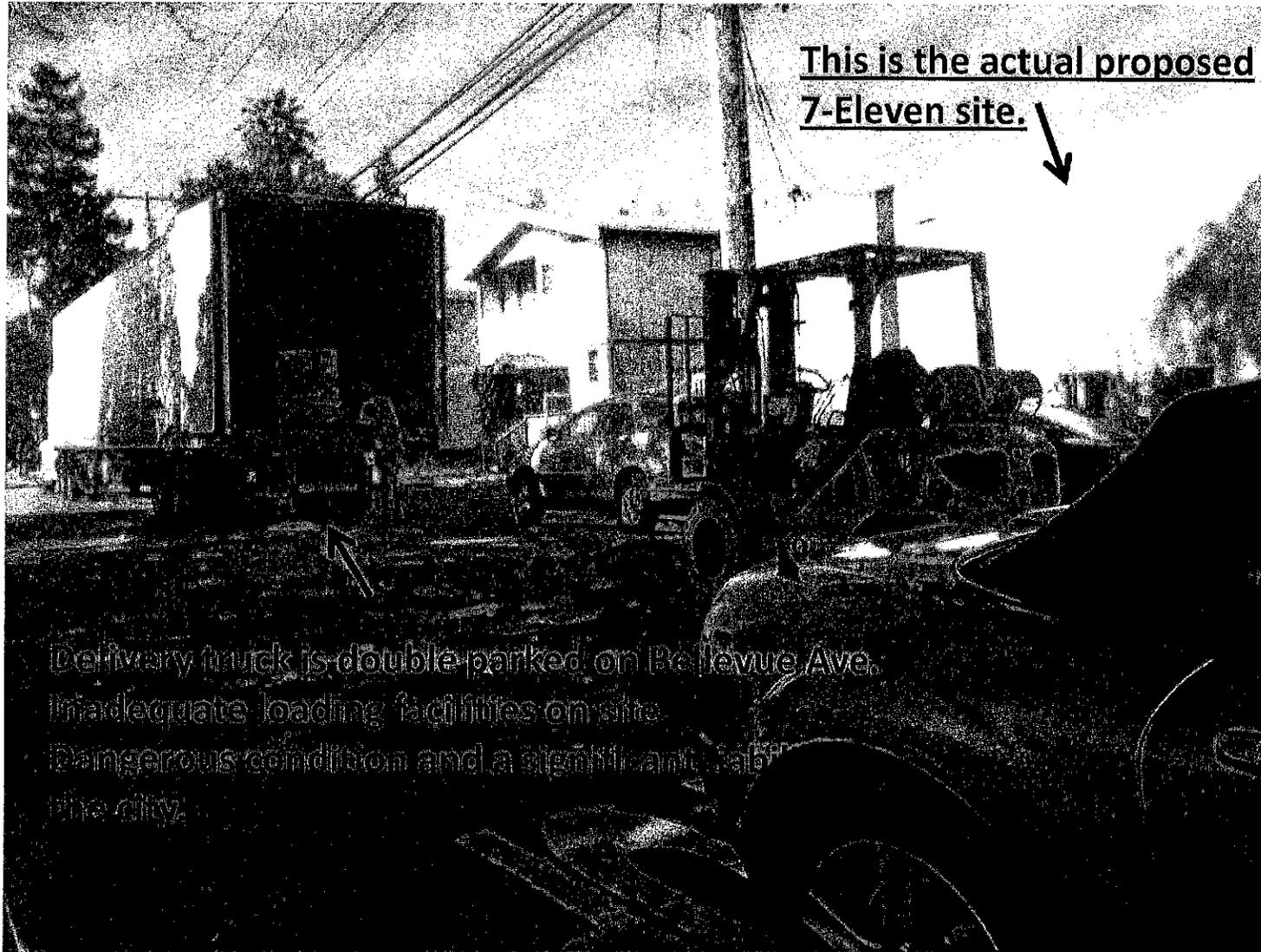
7-Elevens are magnets for crime

(3) Said use is otherwise detrimental to the public health, safety, and general welfare

- Even “routine” operations are unsafe
- Streets and facilities are not designed for safe deliveries in quantities expected of a 7-Eleven
- City will be exposed to considerable liability if a pedestrian or motorist is injured
  - Building owner and lessor will also be exposed to significant liability.
  - Enhanced liability since this is a known issue?



# Routine Delivery Operations Are Dangerous

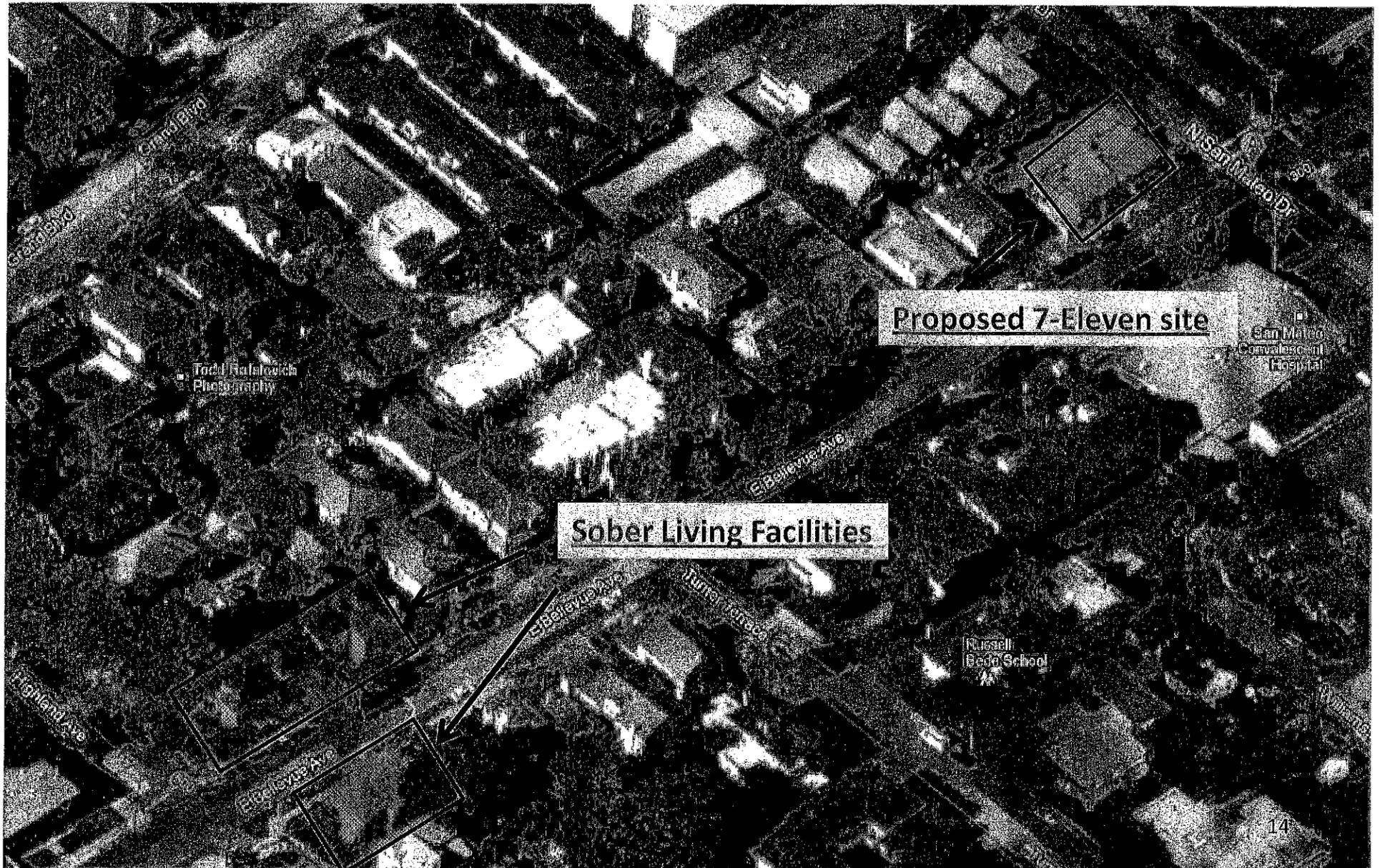


### (3) Said use is otherwise detrimental to the public health, safety, and general welfare

- Two facilities for recovering substance abusers is located on the same block.
- Is it in the general welfare (or even moral?) to locate a store that makes it easy and convenient to buy alcohol and cigarettes next to sober living facilities?



# A Short Walk Back to Addiction



# A Convenient Out for the Convenience Store

- The convenient out is to try to force fit a process via §27.72.050.
- The Right decision is harder, but is the only legal one
  - Admit a mistake was made by City Staff
  - A building permit should not have been issued
  - Multiple codes have been violated in an apparent end-run around the planning commission
    - Did the developer or their agent conceal information from City Staff? Was influence improperly used?
  - Rescind the building permit, work through the normal planning process





November 14, 2012 3:00 p.m.

## Attachment 9a Addendum

For: City of San Mateo City Council Special Meeting  
501 N. San Mateo Drive Nonconforming Use (PA12-071)  
November 15, 2012 7:00 pm

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Correspondence received since the release of the Administrative Report on Friday November 9, 2012 mid-day.

Note that any additional correspondence received after 3:00 p.m. on Wednesday, November 14, 2012 will be collected and be available at the meeting on Thursday, November 15, 2012 at 7:00 p.m. It will then be uploaded to the website as Attachment 9b along with any correspondence submitted at the meeting.

cc: Interested Parties List

**From:** meeslichter <[meeslichter@comcast.net](mailto:meeslichter@comcast.net)>  
**Date:** November 5, 2012 12:39:29 PM PST  
**To:** David Lim <[dlim@cityofsanmateo.org](mailto:dlim@cityofsanmateo.org)>  
**Cc:** Peter Breining <[pbreining@yahoo.com](mailto:pbreining@yahoo.com)>  
**Subject:** Fwd: San Mateo Heights meeting, agenda item, etc. re: 7-Elevent

Dear Deputy Mayor Lim:

Peter Breining requested that I forward to you his earlier email addressed to you, as he understood you had deleted it. He further asked me to redact any information related to discussions with Councilman Robert Ross, which I have done.

As you can see from the below email, we are requesting that the upcoming November 15th City Council meeting have an agenda item the issue of the legality of the non-conforming use. During the planning commission meeting on October 30th, Commissioner Moran was a strong proponent for the City Counsel to address the legality issue, and it appeared that the other Commissioners concurred in this assessment. Ms. Moran inquired of the city attorney present at the meeting whether a Council member could put the legality issue on the agenda so that it could be discussed and voted upon, and the City Attorney said yes.

We received a Notice of City Council Public Hearing by email today from the city, and it states "Public hearing to consider Planning Commission recommendations with regard to: 1) nonconforming use at 501 North San Mateo Drive (market use in R-4 zone) including potential termination or alternative actions in accordance with Municipal Code Chapter 27.72 and state law; and 2) addressing nonconforming uses and 24-hour uses in general."

It is unclear to me whether this means that the legality issue is now an agenda item or not. Can you clarify whether the legality issue is an agenda item?

Thank you very much.

Respectfully,

Emily Slichter

Begin forwarded message:

**From:** Peter Breining <[pbreining@yahoo.com](mailto:pbreining@yahoo.com)>  
**Date:** November 4, 2012 5:37:44 PM PST  
**To:** "[dlim@cityofsanmateo.org](mailto:dlim@cityofsanmateo.org)" <[dlim@cityofsanmateo.org](mailto:dlim@cityofsanmateo.org)>  
**Subject:** San Mateo Heights meeting, agenda item, etc.  
**Reply-To:** Peter Breining <[pbreining@yahoo.com](mailto:pbreining@yahoo.com)>

Dear David,

I hope you got your friend taken care of at this morning's race. Looks like you did

pretty well - in the front half of the pack. I have a friend who races lots of tris and I find it amazing how rapidly the stats are posted.

Anyway, one of our main concerns is that the City Council meeting's agenda includes a discussion regarding the "legality" of the non-conforming use and not simply whether or not it is "burdensome". City Council has the ability to add this to the agenda and make the determination under 27.72.030 of the City Code and we want to make sure this is added to the agenda before the 10 day notice goes out. Otherwise, we feel that we are "putting the cart before the horse" and the meeting will be ineffective.

To date we have not heard anything back regarding the status of the agenda item. Our concern is that Monday is the 10 day limit. Would it be possible for you to inquire whether or not this item has been added to the agenda? If not, can you please advocate for its inclusion?

I look forward to meeting you at your convenience and I know I speak for the entire San Mateo Heights community when I thank you for your help.

Best,

Peter Breining

November 9, 2012

Shawn Mason, Esq.  
City Attorney  
City of San Mateo  
330 West 20<sup>th</sup> Avenue  
San Mateo, CA 94403

Re: Existing Grocery Use of 501 North San Mateo Drive, San Mateo, California

Dear Mr. Mason:

This firm represents Portfolio Development Partners (“Portfolio”), owners of the property located at 501 North San Mateo Drive (the “Property”), San Mateo, California (the “City”). This responds to the letter dated October 29, 2012 from Ms. Camas J. Steinmetz, Esq., written on behalf of certain neighbors of the Property, requesting that the San Mateo Planning Commission determine that the existing grocery store use (the “Existing Grocery Use”) of the Property is an illegal nonconforming use pursuant to City’s Zoning Code (“the Zoning Code”) section 27.72.30.

We disagree with the legal conclusions reached by Ms. Steinmetz, both in her letter and as expressed at the recent hearing. For the reasons stated below, we respectfully submit that a determination by either the Planning Commission or the City Council that the Existing Grocery Use of the Property is an illegal nonconforming use would violate state law because such a decision would illegally extinguish Portfolio’s vested right to the Existing Grocery Store Use.

**I. The legal nonconforming use was neither discontinued nor abandoned.**

Ms. Steinmetz first contends that unlike “abandonment” of a nonconforming use, “discontinuance” of a legal nonconforming use does not require intent, and that the Existing Grocery Use has been discontinued by the mere temporary vacancy. As a matter of law, we disagree with Ms. Steinmetz’s contention because (i) binding case law counsels that discontinuance, like abandonment, requires intent to discontinue the legal nonconforming use and that (ii) the owners, at no time, evinced the intent to discontinue the Existing Grocery Use.

# GIBSON DUNN

Shawn Mason, Esq.  
November 9, 2012  
Page 2

Ms. Steinmetz contends, without citing to any binding authority, that discontinuance does not require intent. Binding state case law contradicts this assertion. Specifically, the California Supreme Court has said that:

The term “discontinued” in a zoning regulation dealing with a nonconforming use is sometimes deemed to be synonymous with “abandoned.” Cessation of use alone does not constitute abandonment. [A]bandonment of a nonconforming use ordinarily depends upon a concurrence of two factors: (1) An intention to abandon; and (2) an overt act, or failure to act, which carries the implication the owner does not claim or retain any interest in the right to the nonconforming use. Mere cessation of use does not of itself amount to abandonment although the duration of nonuse may be a factor in determining whether the nonconforming use has been abandoned.

*Hansen Bros. Enter., Inc. v. Bd. of Supervisors*, 12 Cal. 4th 533, 569 (1996) (internal citations omitted). Although Ms. Steinmetz quotes, without citing, the Ninth Circuit<sup>1</sup> for the proposition that “abandonment” is different from “discontinuance,” the Ninth Circuit has also said that where, as here, the highest state court has spoken on a matter of state law, the state court’s decision is binding. *See, e.g., Matter of McLinn*, 739 F.2d 1395, 1401-02 (9<sup>th</sup> Cir. 1984). Here, the California Supreme Court has spoken, and it is reasonable to consider the two terms to be synonymous. *Hansen Bros.*, 12 Cal. 4th at 569.

In that light, case law is clear that the determination of whether a use has been “discontinued” requires more than simply determining whether a business is currently closed. Courts have imposed an obligation to assess why a legal nonconforming use is closed, and to analyze whether such closure reflects an intention not to re-establish the use of the property. A discontinuance of operations requires intent by the operator to permanently stop or abandon the use of the property. *See Stokes v. Board of Permit Appeals*, 52 Cal. App. 4th 1348, 1354 (1997) (finding discontinuance where the “facts establish more than a temporary vacancy, but rather an intentional decision to abandon the premises”) (emphasis added).

In particular, the court in *Stokes* noted that the evidence of discontinuance of the use included the fact that:

Stokes’s predecessors had completely vacated the building for seven years and the building had not been used for *any* purpose at the time plaintiff took possession. There are no facts to which Stokes can point as evidence the prior

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<sup>1</sup> We identified the applicable case as *League to Save Lake Tahoe v. Crystal Enterprises*, 685 F.2d 1142 (9<sup>th</sup> Cir. 1982).

# GIBSON DUNN

Shawn Mason, Esq.  
November 9, 2012  
Page 3

owners intended to and in fact did continue to operate the property as a bathhouse or for a related use.

(*Stokes v. Board of Permit Appeals, supra*, 52 Cal.App.4th at pp. 1355-1356.)

Here, even though no market was operating on the property for a period of over six months, the owners at no point evinced the intent to discontinue or abandon the nonconforming market use, but rather acted to ready the property for safe continued use as a market. Indeed, according to the Staff Report, changes to the Property were made in 2011, shortly after Stangelini's Market closed, "to prepare the space for another market use and the work completed as approved." In addition, "[t]he property was marketed continuously for sale or rental as a retail market use" before Portfolio purchased the Property after the City Attorney and Planning Commission jointly concluded that the legal nonconforming use had been neither discontinued nor abandoned.

Indeed, we believe that consistent with *Stokes*, the property was merely temporarily vacant while the owners remediated the physical conditions and subsequently marketed the property for use consistent with the legal nonconforming use. As indicated in the attached letter dated March 19, 2012 to the City from Stanley Lo, the prior owner of the Property:

From the time Stangelini's Italian Deli vacated and the necessary nonstructural improvements completed, the property has been consistently toured by prospective tenants most of whom have been retailers in search of space consistent with the previous use. Due to an unprecedented downturn in the economy, none of the tenants were able to consummate a lease.

Moreover, Portfolio applied for, and the City approved, building permits that authorized continuation of the legal nonconforming use. These facts do not support the conclusion that the nonconforming use has been discontinued or abandoned. Instead, the owner's efforts to prepare the property for continued nonconforming use, along with the efforts to market the property as a market space for lease and sale, evince the owner's intent to continue the legal nonconforming use.

Ms. Steinmetz has provided a listing from a real estate broker as evidence that the owner of the property expressed intent to abandon or discontinue the Existing Grocery Use. As a preliminary matter, this statement by a real estate broker about the uses permitted at the property are not relevant to the intent of the property's owner about whether to abandon or discontinue the Existing Grocery Use. Moreover, even if the property owner approved this portion of the listing, when read carefully, the listing does not actually indicate intent to discontinue or abandon the Existing Grocery Use. Rather, the listing merely indicates that

# GIBSON DUNN

Shawn Mason, Esq.  
November 9, 2012  
Page 4

“the building qualifies for medical/dental office.” (emphasis added). The fact that the property could have potentially been used for such use does not indicate that the owner had intent to abandon the retail use. The listing clearly indicates intent to continue to use the property for commercial purposes. Moreover, the listing’s statement that the building qualifies for medical or dental uses is potentially legally erroneous. As staff indicated at the Planning Commission hearing held on October 30, 2012, such medical/dental office use is arguably not permitted at the property, due to its underlying residential zoning.

Finally, the value of the Existing Grocery Use was built into the purchase price for the Property. Portfolio did not purchase the Property until after the City issued building permits for the 7-Eleven, such that the purchase price not only reflected (i) the prior owner’s intent not to abandon or discontinue the Existing Grocery Use, but also (ii) the City’s confirmation that the Existing Grocery Use remained a legal nonconforming use.

## **II. Portfolio has a vested right in the legal nonconforming use of the Property.**

We believe that Portfolio has obtained a vested right to the Existing Grocery Use, because (i) the City has issued building permits for the Property’s legal nonconforming use as a 7-Eleven store, and (ii) significant sums of hard constructed costs have been expended in reliance on that building permit issuance.

Ms. Steinmetz argues, however, that the building permits were invalid based on the unsupported argument that the legal nonconforming use was discontinued. We disagree and submit that, as discussed above, it is far from obvious that the legal nonconforming use was discontinued. Accordingly, even if the building permits were deemed invalid by the Planning Commission or the City Council under a discontinuance theory, Portfolio’s vested right in the property survives because, under the circumstances, Portfolio had reason to rely in good faith on the City’s opinion and subsequent issuance of the building permits.

The state court has said that, “[w]here a property owner has performed substantial work and incurred substantial liabilities in good faith reliance upon a permit issued by the government, he acquires a vested right to complete construction in accordance with the terms of the permit. The rule is founded upon the constitutional principle that property may not be taken without due process of law.” *City of Sonoma v. Rex*, 231 Cal. App. 3d 1289, 1298 (App. Ct. 1991) (internal quotation marks and citations omitted); *see Avco Cmty. Developers, Inc. v. S. Coast Reg’l Comm’n*, 17 Cal. 3d 785, 791 (1976) (“It has long been the rule in this state and in other jurisdictions that if a property owner has performed substantial work and incurred substantial liabilities in good faith reliance upon a permit issued by the government, he acquires a vested right to complete construction in accordance with the terms of the permit.”). We agree that an invalid permit may defeat the vesting of rights where the

# GIBSON DUNN

Shawn Mason, Esq.  
November 9, 2012  
Page 5

individual claiming the right had reason to know of a permit's invalidity. The case of *Strong v. Cty. of Santa Cruz*, 15 Cal. 3d 720 (1975) is instructive as to why the purported invalidity of the building permits would not defeat Portfolio's vested right here.

In *Strong*, Strong contracted in March 1972 to buy a property with the intention of constructing a mobile home park with 177 spaces. *Id.* at 722. Prior to buying the property, Strong knew that the approval permitting 177 spaces was set to expire in April 1972. *Id.* at 722-23. A new ordinance, that passed while the permit was still valid, limited the number of mobile home spaces on the property to 142, but the county had a liberal extension policy that would have permitted Strong to renew the terms of the permit notwithstanding the new ordinance. *Id.* at 723-24. Although fully aware of the expiration date of his permit, all the relevant ordinances, and the county's liberal extension policy, Strong did not apply for an extension. *Id.* at 724. When the county applied the 142-space limit to Strong's property after he sought further approvals in 1973, he filed suit. The trial court ruled that because the county had ratified Strong's plan while his permit was still valid, Strong had attained a vested right. *Id.* The state supreme court disagreed, however, ruling that because Strong knew that his permit was invalid when he sought the approvals he had no vested right. In other words, where the property owner has reason to know that a permit may be invalid, he cannot rely on the doctrine of vested rights.

Here, Portfolio purchased the Property *after* the City endorsed via phone and email the continuance of the legal nonconforming use and then approved the building permits which were consistent with the nonconforming use. At no point was it reasonably evident to Portfolio that the legal nonconforming use had been discontinued especially because the previous owners had marketed the property for lease and sale for use as market. Moreover, in reliance on the City's own confirmation of the continuation of the legal nonconforming use, Portfolio (i) purchased the property and (ii) entered into a lease agreement with 7-Eleven, Inc. which requires the Property to continue to function as a grocery store, and preparation of the premises for the execution of this agreement has begun. "[W]here a permit or license has been granted and the successful applicant has thereafter acted upon the grant to his or her detriment. In such instance, the applicant has acquired a vested right." *Malibu Mountains Recreation, Inc.*, 67 Cal. App. 4<sup>th</sup> at 367. Thus, the law does not support Ms. Steinmetz's argument that Portfolio does not have a vested right because the building permits were invalid.

**III. The City may not terminate Portfolio's vested right under section 27.72.030 because the administrative record does not support that the Existing Grocery Use constitutes a public nuisance or that public necessity requires termination.**

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Given that as discussed Portfolio rights in the property have vested, we respectfully submit that as a matter of state constitutional law, the City cannot now legally simply determine that the Existing Grocery Use is an illegal nonconforming use under section 27.72.030 *unless* the City establishes that the use is a public nuisance or demonstrates a compelling public necessity requiring its termination. *Goat Hill Tavern v. City of Costa Mesa*, 6 Cal. App. 4th 1519, 1525 (App. Ct. 1992) (declining to review the trial court's decision to that effect); *O'Hagen v. Bd. of Zoning Adjustment*, 19 Cal. App. 3d 151, 161 (App. Ct. 1971) ("In the present case we perceive that since plaintiff acquired a vested right in the use permit we must equate the term 'good cause' with 'compelling public necessity.' Such 'compelling public necessity,' in turn, must be viewed in the context of a public nuisance, i.e., whether the operation of plaintiff's drive-in restaurant constituted a public nuisance in fact."). Quite simply, the evidence currently in the administrative record does not support a nuisance finding.

California Civil Code section 3480 defines a public nuisance as "one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal." Cal. Civ. Code § 3480. "[P]ublic nuisances are offenses against, or interferences with, the exercise of rights common to the public . . . [N]ot every interference with collective social interests constitutes a public nuisance. To qualify, and thus be enjoined [or abatable], the interference must be both substantial and unreasonable. It is substantial if it causes significant harm and unreasonable if its social utility is outweighed by the gravity of the harm inflicted." *Cty. of Santa Clara v. Atlantic Richfield Co.*, 137 Cal. App. 4th 292, 305 (App. Ct. 2006) (internal citation omitted). Simply put, there is no evidence to support the characterization of the nonconforming use at issue here as rising to the level of a public nuisance. Moreover, where there is no public nuisance it follows that there is no compelling public necessity to terminate the legal nonconforming use. *See O'Hagen v. Bd. of Zoning Adjustment*, 19 Cal. App. 3d 151, 160-61 (App. Ct. 1971) ("'compelling public necessity' . . . must be viewed in the context of a public nuisance"). Here, we agree with the Staff Report's conclusion that no actual evidence exists to support such a finding that the presence of a 7-11 would constitute a public nuisance or that public necessity compels its termination.<sup>2</sup> Ms. Steinmetz's letter implicitly concedes as much insofar as it relies on mere generalizations about the purported impacts of convenience stores and unsupported generalizations about the 7-Eleven brand instead of proffering actual empirical evidence that could credibly support a specific finding here that a 7-Eleven specifically located at the Property would constitute a public nuisance. *See, e.g., Beck Dev. Co. v S. Pac. Trans. Co.*, 44 Cal. App. 4th 1160, 1209-10 (App. Ct. 1996) (noting the lack of specific evidence necessary to support a nuisance

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<sup>2</sup> To that end, Ms. Steinmetz's reliance on dubious sources like Wikipedia and empirically unsupported speculation is indicative of the lack of credible evidence supporting termination.

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finding). In truth, such evidence does not exist because the 7-Eleven has yet to open, and, as the Staff Report concludes, any conclusions are necessarily predictive.

Moreover, a decision by the City to terminate Portfolio's vested right would be reviewed under the independent judgment test, in which "the trial court must not only examine the administrative record for errors of law, but also must exercise its independent judgment upon the evidence." See *Hardesty v. Sacramento Metropolitan Air Quality Management Dist.*, 202 Cal. App. 4<sup>th</sup> 404, 414 (App. Ct. 2011); *Goat Hill Tavern*, 6 Cal. App. 4<sup>th</sup> at 1525 ("If an administrative decision substantially affects a fundamental vested right, the trial court must exercise its independent judgment on the evidence and find an abuse of discretion if the findings are not supported by the weight of the evidence."); see also *Autopsy/Post Servs., Inc. v. City of Los Angeles*, 129 Cal. App. 4<sup>th</sup> 521, 526 (App. Ct. 2005) ("If the City's grant of APS's permit and if APS's reliance on it created a fundamental vested right, the subsequent permit revocation would be subjected to judicial review under the independent judgment test."). Here, given the complete lack of evidence, a decision by the City to terminate Portfolio's vested right here would not withstand review under the independent judgment test.

Finally, in light of Portfolio's constitutionally protected vested right at issue here, we believe that a decision by the City to terminate the nonconforming use would also be contrary to section 27.72.050 itself, which by its own terms counsels that the City may not terminate a nonconforming use within its statutory two to five-year amortization period where such an action would "constitute a denial of a constitutionally guaranteed right." We now turn to the remainder of Ms. Steinmetz's untenable arguments.

#### **IV. Ms. Steinmetz's remaining arguments are without merit.**

Ms. Steinmetz makes several other arguments that we believe are either not relevant to the issue at hand or are simply unpersuasive. First, she argues termination of the legal nonconforming use is appropriate here due to purportedly unnecessary physical changes made to the building on the Property in violation of section 27.72.010(b). The relevant issue in these proceedings is the legality of the present nonconforming use, which is a separate consideration from a nonconforming structure, the focus of section 27.72.010(b). To that end, it is section 27.72.010(a) (nonconforming uses) that is the relevant provision, and Ms. Steinmetz's arguments based on nonconforming structure are inapposite.

Ms. Steinmetz next argues that the 7-Eleven would be an illegal intensification of the legal nonconforming grocery/market use. She primarily contends that because the 7-Eleven will be open for more hours each day than was the Stangelini market, this results in an intensification of the use. We submit that this difference is not legally significant. The cases

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that she cites to support the notion that the use has been intensified here are distinguishable as a factual matter because, unlike here, there was some material change in the legal nonconforming use.

For example, in *Wilson v. Edgar*, 64 Cal. App. 654, 657 (App. Ct. 1923), the court stated that for the purpose of determining when there has been an improper intensification of a legal nonconforming use, “the word ‘use’ plainly refers to the particular business conducted in the building.” Accordingly, the court found an improper intensification of the legal nonconforming use where the use went from milk bottling to a dyeing and cleaning business. *Id.* Similarly, in *Orange Cty. v Goldring*, 121 Cal. App. 2d 442 (App. Ct. 1953), the court concluded there was a “material change in the condition of the use” where the legal nonconforming use changed from some crop growing and the feeding and maintenance of approximately 50 head of cattle for a week to ten days in one year to the proposed feeding and maintenance of approximately 3,600 cattle. *Id.* at 444-45. Here, there is no similar intensification in the legal nonconforming use. Like Stangelini’s market before it, and like the other markets/delis that have occupied the Property for much of the last century, the 7-Eleven proposes to be a small neighborhood store selling a variety of grocery items and offering salads, fruits and sandwiches. This is unlike the material change in operations in both *Wilson* or *Goldring*.

Moreover, to the extent that Ms. Steinmetz’s argument for an intensification determination is predicated on the fact that 7-Eleven is a national chain that proposes longer hours of operation and an increase in the volume of customers, that argument is also flawed. The state supreme court has averred that a mere increase in volume of business does not constitute an intensification of a legal nonconforming use:

[O]f the meaning of the term “enlarged or intensified,” the general rule appears to be that an increase in business volume alone is not an expansion of a nonconforming use. Consistent with that understanding and the presumption that the intent was to enact a reasonable ordinance that would not be applied arbitrarily or unreasonably, we conclude that [the applicable rezoning ordinance] does not prohibit a gradual and natural increase in a lawful, nonconforming use of a property, including quarry property. By way of example, we assume that a grocery store operating as a lawful, nonconforming use in an area of increasing population would not be restricted to the same number of customers and volume of business conducted when the zoning ordinance was enacted. Neither an increase in the number of patrons or in the volume of goods sold would be considered an enlargement or intensification of the use.

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*See Hansen Bros., 12 Cal. 4<sup>th</sup> at 573 (internal citations omitted) (emphasis added).*

Moreover, according to San Mateo law, there is no material difference between the previous market/deli and the proposed 7-Eleven even where the hours of operation differ. As the Staff Report confirms:

The City's Zoning Code does not distinguish between the types of markets (e.g., supermarkets, convenience stores, delis). The proposed 7-Eleven use falls within the land use category of "market" in the City's Zoning Code. Therefore, as a land use, a market and convenience store have the same requirements for development standards including setbacks, parking requirements, floor area and height restrictions. In addition, the Zoning Code does not regulate or make distinctions based [on] hours of operation for markets. Therefore, a convenience store is considered to be the same use as a market and is considered a continuation of the market use on the site.

Therefore, we submit that notwithstanding a change in the hours of operation or the volume of business, the legal nonconforming use, as a matter of law, is neither an illegal intensification of nor substantially different from the legal nonconforming use.

In sum, given that Portfolio's rights to the Existing Grocery Use have vested, we respectfully submit that the determination by either the City Council or the Planning Commission that the use is illegal nonconforming (pursuant to section 27.72.020) would violate state law and Portfolio's constitutional rights.

Sincerely,



Jim M. Abrams

JMA/lcr

cc: Mr. Brant Grotte, Mayor  
Ms. Susan M. Loftus, City Manager  
Ms. Gabrielle Whelan, Esq., Assistant City Attorney  
Ronald Munekawa, Chief of Planning  
Ms. Camas Steinmetz, Esq.

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November 9, 2012

Ms. Patrice Olds  
City Clerk  
City of San Mateo  
330 W. 20<sup>th</sup> Avenue  
San Mateo, CA 94403

Re: Violation of Notice Requirements for Proposed City Council Hearing Regarding 501 North San Mateo Drive

Dear Ms. Olds,

This firm represents Portfolio Development Partners (“Portfolio”), owners of the property located at 501 North San Mateo Drive (the “Property”), San Mateo, California (the “City”). Our understanding based on verbal representations with City staff is that the City Council has proposed to consider at a special hearing scheduled for November 15, 2012 whether to terminate the existing grocery store use (the “Existing Grocery Use”) of the Property, pursuant to the City’s Zoning Code (“the Zoning Code”) sections 27.72.050 and 27.72.052. An agenda has not yet been posted for this hearing.

We wish to underscore the grave importance of this matter to Portfolio’s constitutional rights. We understand that many of the neighbors of 501 North San Mateo Drive are strongly opposed to the continuance of the Existing Grocery Use. However, termination of the Existing Grocery Use would violate California law. As indicated in our October 23, 2012 letter to Assistant City Attorney Gabrielle Whelan, the overall damages to Portfolio and its tenant 7-Eleven created by the termination of the Existing Grocery Use would approximate \$8,600,000.

In light of the significance of this matter, this is a request that the City Council continue the proposed hearing to a later date, as the City has not provided adequate notice of the hearing as required by Zoning Code section 27.72.052(b). That section reads as follows:

(b) Procedure. The commission and council shall each hold at least one public hearing, notice of the nature, purpose, time and place of which shall be given to the owner and occupant of the property in question by mail at least ten days in advance of the date of hearing. Said notice shall also be published and posted in the manner prescribed in Section 27.08.090 of this code. At the time and place set for hearings the commission or council as the case may be shall proceed to hear all persons

# GIBSON DUNN

November 9, 2012

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interested in the matter. In the case of the commission, its decision shall be recommendatory to the Council. The decision of the Council shall be final. (Ord. 1972-12 § 2, 1972).

As of today, which is six days prior to the proposed November 15, 2012 hearing, no such written notice regarding the hearing has been provided to this firm or Portfolio.<sup>1</sup> We also understand that no such written notice has been provided to the 7-Eleven, who is the current occupant of the Property. As a result, neither Portfolio nor 7-Eleven understand what matters would be considered by the City Council at the proposed November 15<sup>th</sup> hearing. Proceeding with the proposed hearing would violate the Zoning Code, as well as our client's due process rights as guaranteed by California law. We respectfully request that the City Council postpone the hearing to a later date after the above referenced notice requirements have been satisfied.

We also note that no notice was provided in accordance with Zoning Code section 27.72.052(b) to this firm, Portfolio, or 7-Eleven prior to the Planning Commission hearing held on October 30, 2012.

Sincerely,



Jim M. Abrams

JMA/lcr

cc: Mr. Brant Grotte, Mayor  
Ms. Susan M. Loftus, City Manager  
Mr. Shawn Mason, City Attorney  
Ms. Gabrielle Whelan, Assistant City Attorney  
Ronald Munekawa, Chief of Planning

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<sup>1</sup> We received email from Assistant City Attorney Gabrielle Whelan on November 5, 2012, informing us that a City Council hearing would be held on November 15, 2012, but that email did not meet the requirements of Zoning Code section 27.72.052(b) in form or in substance, in particular because this email did not state that the City Council would consider whether to terminate the Existing Grocery Use pursuant to Zoning Code section 27.72.050 and 27.72.052.

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OF COUNSEL

November 9, 2012

Mayor Grotte and Members of the City Council  
City of San Mateo  
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Re: Gibson Dunn Letter to City Attorney Shawn Mason Dated October 3 re 7-Eleven Use of 501 North San Mateo Drive, San Mateo, California

Dear Honorable Mayor Grotte and Members of the City Council:

This firm represents the San Mateo Heights Neighborhood Association and its members who are neighbors to the former Stangelini's Deli building located at 501 N. San Mateo Dr., San Mateo (the "Property") which is being physically modified to facilitate use of the building as a 7-Eleven. We submit this letter in response to the attached October 3, 2012 letter to the City Attorney from Gibson Dunn (Attachment A), submitted on behalf of Portfolio Development Partners ("Portfolio"), the new owners of the Property. Note that this letter was not included in the Planning Commission packet or otherwise made available to the public and, despite our earlier requests to the City for all correspondence between Portfolio and the City, we were not provided the Gibson Dunn letter until late afternoon on Monday, November 9.

- 1. Substantial Evidence Supports that (a) no Nonconforming Use Determination Pursuant to Zoning Code Section 27.72.030 Has Ever Been Made and (b) if Staff Had the Authority to Make a Legal Nonconforming Use Determination, the Determination was that the 7-Eleven Use Was Illegal Nonconforming**

The Gibson Dunn letter erroneously states that Portfolio "relied on the City Council's approval of a continued nonconforming use" and that "the applicable permits for continued

nonconforming use had been duly approved." As stated in our letter dated October 29, 2012 to the Planning Commission to which you were each copied (Attachment B) there is no evidence in the record of any such City Council approval or other City approval authorizing the 7-Eleven use. All there is in the record are building permits. The Gibson Dunn letter falsely states that "the City Council approved the building permits facilitating continuation of the nonconforming use." The City Council does not issue or approve building permits; building permits – including the ones issued for Property -- are issued by the City's building department. Furthermore, building permits only authorize physical modifications to a property pursuant to their terms. While building permits may authorize physical modifications that can *facilitate* a property's use, building permits do not authorize *use* of a property. As explained in *In re Application of Ruppe* (1927) 80 Cal.App. 629, a building department only has the authority to sanction physical modifications to structures; it cannot sanction the intended use of such structures in violation of the zoning ordinance. Use of a property is governed by the property's underlying zoning and applicable regulations, not a building permit. As such, Portfolio could not reasonably rely on the building permits as authorization of the Property's use.

Per Zoning Code Section 27.72.030, a legal nonconforming use may be established by application by the property owner or by initiation by the council or the commission. There is no evidence in the record that Portfolio or the prior owner ever submitted an application for this determination per Section 27.72.030 and such a determination has never been initiated by the Commission or by Council.

If any legal nonconforming use determination was made by the City despite these omissions, it was made by planning staff in October of 2011 via the email and letter from Senior Planner Stephen Graves (Attachment 2 to Attachment B) which clearly conclude that the nonconforming use had been terminated. There is no evidence in the record that this determination was ever appealed by the property owner or reversed by staff. All that is found in the record is an email from special outside counsel while the Assistant City Attorney was on maternity leave (Attachment C). This email gives Ms. Quick's interpretation of the code (that intent to abandon is required because the terms "discontinuance" and "abandon" are synonymous, despite the plain language that these terms are used in the alternative). However, Ms. Quick's email makes no determination or conclusion. In fact, it explicitly opens up the questions as to whether there was intent to abandon (evidence presented in my letter to the Planning Commission shows that there was) and whether unnecessary physical changes made to the property precluded continuance of the nonconforming use (again, evidence presented in my letter to the Planning Commission shows that there were).

As such, no legal nonconforming use determination was ever made per Section 27.72.030 (and could not be made for the reasons set forth in my letter to the Planning Commission). If staff had the authority to make a legal nonconforming use determination outside of Section 27.72.030 (and it is not clear that it did), the determination was made in October 2011 by Senior Planner Stephen Scott and the determination was that such use was illegal.

## **1. Substantial Evidence Supports that the 7-Eleven Use Is Illegal Nonconforming**

The Gibson Dunn Letter, which addresses whether or not the 7-Eleven use should be terminated pursuant to Zoning Code Section 27.72.050, erroneously presumes that the 7-Eleven use of the Property is legal nonconforming in the first place. As established in our letter to the Planning Commission (Attachment B), the intended 7-Eleven Use of the Property is not legal nonconforming for four separate and independent reasons:

- (1) The previous legal nonconforming use of the property as a deli/market was terminated by discontinuance pursuant to Zoning Code Section 27.72.020(b);
- (2) Unnecessary physical changes were made to the building on the property; therefore, in accordance with Code Section 27.72.010(b), the legal nonconforming use may not be continued;
- (3) 7-Eleven Would be an Illegal Extension and Intensification of the Previous Legal Nonconforming Market/Deli use Per Code Section 27.72.060(a) and California Case Law; and
- (4) The 7-Eleven use is so substantially different from the previous use by Stangelini's that it would be "a change to another nonconforming use" requiring a special use permit per Code Section 27.72.040.

## **2. Even if the 7-Eleven Use Were Legal Nonconforming (Which It is Not), It Should be Terminated Per Zoning Code Section 27.72.050**

Even if the 7-Eleven Use were legal nonconforming (which we have established it is not), it should be terminated pursuant to Zoning Code Section 27.72.050 because evidence in the record establishes that it is "especially burdensome upon the surrounding neighborhood or community at large" and "will not be unduly oppressive or constitute a denial of constitutionally guaranteed rights".

### **(a) The 7-Eleven Use Would Be Excessively Burdensome Upon the Surrounding Neighborhood**

As presented in the attached power point document presented to the Planning Commission at its October 30 meeting by Emily Slichter (Attachment D), the 7-Eleven use of the Property would be "especially burdensome upon the surrounding neighborhood or community at large". It would trigger all three of the factors set forth in Zoning Code Section 27.72.050 to be considered for determining whether or not the use is especially burdensome:

#### **(1) It would be detrimental to the public health, safety and general welfare.**

As concluded in the October 11 San Mateo Police Department Report, "calls for police responses and nuisance would increase, particularly overnight." The report states that 24-hour "off-sale" retailers in the City generate between 75 - 122 police responses per year with the existing 7-Eleven Delaware Center generating 192 police responses per year with over 50% of

the responses between the hours of 9pm and 8am. According to Area Lieutenant Pat Malloy the proposed 7-Eleven "location is adjacent to residential uses are with almost no buffer" and therefore complaints regarding noise (from diesel trucks, vehicles, patrons and loud music), panhandling and other disturbances will increase "due to the residences being right on top of the business and parking lot." Further, "there would be no way to handle an incident and the resulting police responses without disturbing surrounding residences." Further, the Lieutenant notes that 24-hour uses generate the presence of panhandling by transients and [q]uality of life issues that accompany an increased transient population include public intoxication, drinking in public, public urination and defecation, and panhandling." Finally, the Lieutenant notes that "a 24-hour use would cause increased vehicle and pedestrian traffic (especially in the late night hours) and impact resident's quality of life." The Staff Report also notes that pursuant to the Institute of traffic Engineers, Trip Generation Manual, 9th Edition the traffic generated by a convenience market is higher than that of a market and that it is anticipated that a 24-hour convenience market would generate about 47% more traffic than a 16-hour convenience market.<sup>1</sup>

(2) It would cause or contribute to impairment of property values or economic stability of the surrounding area.

Clearly, the above mentioned negative impacts on the neighborhood's health, safety and welfare would in turn negatively impact property values in the surrounding area and there is no evidence in the record to the contrary. The memorandum by Economic Planning Systems, Inc. dated October 24, 2012 completely fails to address the impact of a 24-hour convenience store use on property values. Instead it states -- without any supporting evidence -- that it "believes" that "a 'foodmarket' -- as a general use category -- should not be considered to be a clearly de-stabilizing feature of a neighborhood." This is not the issue. The issue is whether the 7-Eleven 24-hour convenience store use would negatively impact property values and this analysis is grossly absent.

(3) It would inhibit the type of development in the surrounding neighborhood contemplated by the General Plan and the Zoning Code;

Also glaringly absent from the staff report to the Planning Commission is Property's General Plan and Zoning designations which govern the use and development of the Property. The Property is located in the R4 Zone Zoning District which permits only residential uses, including

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<sup>1</sup> Note that the Staff Report does not address the percentage increase compared to a "market" which was the prior use of the Property and deceptively compares apples to oranges by comparing peak hour trips to total average daily trips. Further, the Staff Report notes that the project has not changed circulation or parking on the site with the exception of converting two spaces into one handicapped space, but completely fails to address the parking demand generated by the 24-hour convenience store use and whether the parking provided would be adequate. As such, it completely fails to address and acknowledge the parking impacts resulting from the project.

multi family residential development, and prohibits commercial development. It is reasonably foreseeable that the negative economic impacts resulting from the 7-Eleven use and consequential decline in property values, would inhibit investment in and any continued improvement to the existing residential development that is contemplated by the General Plan and the Zoning Code. These consequences are not addressed in the Economic Planning Systems, Inc. memorandum; instead, the memorandum simply concludes that the neighborhood is already built out.

**(b) Terminating the 7-Eleven Use Will Not be Unduly Oppressive or Constitute a Denial of Constitutionally Guaranteed Rights**

The Gibson Dunn Letter argues that Portfolio has a fundamental vested property right to use the Property as a 7-Eleven and that terminating the 7-Eleven use would deprive Portfolio of this vested right. This is not the case. Portfolio has no vested right to use the Property as a 7-Eleven. Even if the legal nonconforming status of the former Stangelin's deli/market use had not been terminated in accordance with the Zoning Code (by discontinuance or by unnecessary physical changes), the Gibson Dunn Letter admits that "[t]he nonconforming use protected by constitutional guarantees is limited to that use as it existed at the time of the adoption of the zoning ordinance." *Paramount Rock Co. v. San Diego Cty.*, 180 Cal.App. 2d 217, 234. Because the intended 7-Eleven use did not exist at the time of the adoption of the zoning ordinance and would illegally extend and intensify the former legal nonconforming market/deli use that did exist at the time of the adoption of the zoning ordinance (as discussed in detail in our to the Planning Commission, Attachment B), Portfolio has no vested right to use the Property 24 hours a day, seven days a week as a 7-Eleven.<sup>2</sup>

As explained in our letter to the Planning Commission (Attachment B), California courts have routinely disallowed the intensification or expansion of a nonconforming use. See *Wilson v. Edgar* (1923) 64 Cal.App. 654, 657 (holding that change from milk bottling to dyeing and cleaning is an illegal expansion of a nonconforming use); *Orange County v. Goldring* (1953) 121 Cal.App.2d. 442, 446 (holding that change from crop growing and occasional grazing to feeding and watering three thousand head of cattle – a formidable change which added noise and odors - is an illegal expansion of a nonconforming use); *County of San Diego v. McClurken* (1951) 37 Cal.App.2d 683 (holding that change from bulk storage with movable gasoline tanks to larger oil storage tanks for a filling station is an illegal expansion of a nonconforming use); *Paramount Rock Co. v. County of San Diego* (1960) 180 Cal.2d 217 (holding that change from form sand pit and concrete mixing to rock crushing was an illegal expansion of a nonconforming use); and *Walnut Properties, Inc. v. City Council* (1980) 100 Cal.App. 3d 1018, 1024 (holding that change from usual neighborhood theater to adult entertainment theater was an illegal expansion of a nonconforming use).

Furthermore, contrary to the argument in the Gibson Dunn Letter, the building permits issued by the City building department for the Property do not grant a vested right to use the Property

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<sup>2</sup> The case upon which the Gibson Dunn Letter relies, *Goat Hill Tavern v. City of Costa Mesa* (1992) 6 Cal.App.4<sup>th</sup> 1519, is not applicable because it concerned whether the nonconforming use of an *existing* tavern that had been in existence for 35 years should be terminated – not whether a former legal nonconforming use that had been discontinued and then expanded and intensified should be terminated, as is the case here.

as a 7-Eleven. As discussed above, building permits only authorize physical modifications to the property; building permits do not govern or authorize use. As explained in *In re Application of Ruppe* (1927) 80 Cal.App. 629, a building department only has the authority to sanction physical modifications to structures; it cannot sanction the intended use of such structures in violation of the zoning ordinance.

Moreover, to the extent the building permits issued by the City building department facilitated use of the Property as a 7-Eleven, they were invalid because, as demonstrated above, the 7-Eleven use of the Property is an illegal non-conforming use, and therefore violates the City's zoning code. California case law is firmly established that an invalid permit does not construe a vested right. For example, in *Millbrae Assn. for Residential Survival v. City of Millbrae* (1968) 262 Cal.App.2d 222, 69 Cal.Rptr. 251 the court held that a developer who had spent in excess of \$600,000 in developing property pursuant to invalid permits issued in violation of a city zoning ordinance had no vested rights. In *Markey v. Danville Warehouse & Lbr., Inc.* (1953) 119 Cal.App.2d 1, the court held that land use permits and building permits for a concrete plant issued in violation of the City's zoning ordinance were of no force or effect and thus the defendants did not acquire a vested right to continue to so use the property.

Similarly, in *In re Application of Ruppe* (1927) 80 Cal.App. 629, the petitioners had obtained a building permit and erected an undertaking establishment in a residential zone, contrary to the provisions of the Los Angeles city zoning ordinance. They were convicted and imprisoned for violating the zoning ordinance and brought a writ of habeas corpus seeking their discharge. They contended in part that since they had secured a building permit and expended some \$35,000 in erecting the building, the city had impliedly acquiesced in their use of the building and therefore could not later assert the violation and to permit them to do so was equivalent to a confiscation of their property. The court disagreed, holding that the building department which issued the permit had authority to do no more than sanction the erection of the building and could not thereby sanction petitioners' intended use of the building in violation of the zoning ordinance.

As explained *Petitt v. City of Fresno* (1973) 34 Cal.App. 3d 813 (which concerned issuance of a building permit for the discontinued nonconforming use of a hair salon) -- a city cannot be estopped from denying the validity of a building permit issued in violation of a zoning ordinance. "Permitting the violation to continue gives no consideration to the interest of the public in the area nor to the strong public policy in favor of eliminating nonconforming uses and against expansion of such uses." *Petitt v. City of Fresno* (1973) 34 Cal.App. 3d 813.

Furthermore, the Property is usable for purposes permitted in the applicable R4 Zoning District. As stated in the October 25, 2012 staff report to the Planning Commission, "it is physically feasible and prospectively financially viable that a residential developer could build up to two dwelling units on the 6,375-square foot parcel, per the "minimum parcel area per dwelling unit," maximum floor-area-ratio, and yard setback requirements of the R4 district." Finally, as explained above, to the extent Portfolio relied upon the building permits as authorization for the 7-eleven use, such reliance was completely unreasonable. As such, any hardship to Portfolio as a result of the termination could and should have been easily avoided.

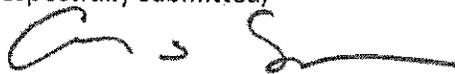
Therefore, even if the 24-hour, seven days per week 7-Eleven use is determined to be legal nonconforming (which we have established it cannot be), it should be terminated within no less than two years because it meets both prongs of Zoning Code Section 27.72.050 -- the use is unduly burdensome to the surrounding neighborhood and termination thereof would not deny constitutionally guaranteed rights.

### 3. Requested City Council Action

In light of the foregoing, we respectfully request that the City Council take the following actions at its meeting on November 15, 2012:

- (1) Formally determine that use of 501 N. San Mateo as a 7-Eleven is an illegal nonconforming use (and therefore refrain from taking action per Section 27.72.050 as such action would be moot);
- (2) Issue a stop work order on all further construction at 501 N. San Mateo Ave.;
- (3) Withdraw all building permits issued to date that authorized work facilitating the 7-Eleven use; and
- (4) Instruct the applicant, if it wishes to still pursue the 7-Eleven use, to submit a zone change application (which will require review under the California Environmental Quality Act, notice and the opportunity for the neighborhood to be heard prior to consideration of the application).

Respectfully submitted,



Camas J. Steinmetz

cc: Shawn Mason, City Attorney  
Gabrielle Whelan, Assistant City Attorney  
Susan Loftus, City Manager  
Lisa Grote, Community Development Director  
Ron Munekawa, Planning Director  
Robert J. Lanzone, Esq.  
Client

#### Attachments:

- A. Gibson Dunn Letter dated October 3, 2012
- B. Aaronson Dickerson Cohn & Lanzone Letter dated October 29, 2012
- C. Email from special Counsel Cecilia Quick
- D. Power Point Presentation from San Mateo Heights Neighborhood Association

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October 3, 2012

Shawn Mason, Esq.  
City Attorney  
City of San Mateo  
330 West 20<sup>th</sup> Avenue  
San Mateo, CA 94403

Re: 7-Eleven Use of 501 North San Mateo Drive, San Mateo, California

Dear Mr. Mason:

This firm has been retained by Portfolio Development Partners ("Portfolio") to represent its interests regarding 501 North San Mateo Drive (the "Property"), San Mateo, California (the "City"). I write with respect to the upcoming San Mateo Planning Commission and City Council hearings to consider termination of the present legal nonconforming convenience store/ market use (the "Existing Convenience Store/ Market Use") of the Property, pursuant to the City of San Mateo's Zoning Code ("the Zoning Code") sections 27.72.050 and 27.72.052. Our understanding is that the Property has been used for a convenience store/ market for approximately 50 years.

For the reasons stated below, we respectfully submit that the termination and removal of the Existing Convenience Store/ Market Use would violate state law. Section 27.72.050 authorizes the termination and removal of a nonconforming use of land only when two conditions are met: first, the City Council must determine that the nonconforming use is "especially burdensome" and, if so, a termination must not be "unduly oppressive or constitute a denial of constitutionally guaranteed rights." Section 27.72.052 sets forth the procedural requirements necessary before termination and removal of a nonconforming use.

We believe that termination and removal of the Existing Convenience Store/ Market Use fails to meet these requirements and is contrary to state law because: (1) there is a lack of evidence to support the conclusion that the continuation of the nonconforming use is "especially burdensome," as that term is assessed under the Zoning Code, and (2) even if the nonconforming use could properly be characterized as "especially burdensome" in accordance with the Zoning Code, termination of the nonconforming use constitutes denial of Portfolio's fundamental vested constitutional rights, particularly because (i) Portfolio

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ATTACHMENT A

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relied on the City's approval of a continuation of the nonconforming use (ii) prior to Portfolio purchasing the Property and entering into a lease agreement.

The Property is located in an area that was originally zoned for residential use. The previous convenience store/ market obtained a legal variance and operated as a legal nonconforming use for several decades. Portfolio bought the Property with the intent to continue the Existing Convenience Store/ Market Use, only after receiving written confirmation from the City that the applicable permits for continued nonconforming use had been duly approved. Portfolio subsequently entered into a lease agreement with 7-Eleven, Inc. for use of the Property as a convenience store/ market. Improvements intended to ready the opening of the 7-Eleven pursuant to that lease agreement have been ongoing in light of the City's approval of the requisite building permits.

**I. Substantial evidence does not support that the present nonconforming use is "especially burdensome."**

The City Council's decision to terminate a nonconforming use is subject to a significantly higher standard of judicial scrutiny than its typical legislative actions for two reasons.

First, when acting to terminate a nonconforming use, the City Council acts in an *administrative and quasi-judicial* capacity. See *Goat Hill Tavern v. City of Costa Mesa*, 6 Cal. App. 4th 1519, 1525 (App. Ct. 1992); *Topanga Ass'n for a Scenic Community v. City of Los Angeles*, 11 Cal. 3d 506, 517 (1974). In contrast, when adopting ordinances, such as a zoning ordinance, the City Council functions in a legislative capacity. *Id.* When serving in an administrative or quasi-judicial capacity (such as in the instant situation), the California Supreme Court has held that the City Council's decisions must be accompanied by factual findings that support the outcome and that facilitate meaningful judicial review. *Topanga Ass'n for a Scenic Community*, 11 Cal. 3d at 517 ("The availability of careful judicial review may help conduce [zoning] boards to insure that all parties have an opportunity fully to present their evidence and arguments . . . . Vigorous judicial review thus can serve to mitigate the effects of insufficiently independent decision-making.").

Second, when, as in the instant case, termination of a nonconforming use would adversely affect a *vested property right* protected by the California constitution, the courts must use their independent judgment to consider the City Council's decision. *Goat Hill Tavern*, 6 Cal. App. 4th at 1525. In other words, in contrast to its typical consideration of a legislative action, the court *does not* defer to the City Council's interpretation of the facts. "If an administrative decision substantially affects a fundamental vested right, the trial court must exercise its independent judgment on the evidence and find an abuse of discretion if the findings are not supported by the weight of the evidence." *Id.*

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Although we believe that a decision to terminate the Existing Convenience Store/ Market Use would in fact improperly deprive Portfolio of its fundamental vested property rights, and thus be subject to the stricter independent judgment test on judicial review, for the reasons stated below we also believe that substantial evidence does not support a decision by the City Council to terminate the nonconforming use.

When determining whether a nonconforming use is especially burdensome, the City Council must consider five factors and must rely on *actual* evidence that shows that the presence of a convenience store/ market use is especially burdensome as defined by the Zoning Code. The fact-specific basis necessary to support an "especially burdensome" determination is similar to the fact-specific basis necessary to establish a public nuisance, discussed below, in which facts must be established in order to show an offense against, or interference with, the exercise of rights common to the public. *See, e.g., Beck Dev. Co. v S. Pac. Trans. Co.*, 44 Cal. App. 4<sup>th</sup> 1160, 1209-10 (App. Ct. 1996) (noting the lack of specific evidence necessary to support a nuisance finding).

As a preliminary matter, it is important to note that the five required findings discussed below must pertain to the *use* of the Property as a convenience store/ market, and not a *particular tenant* of the Property (in this case, 7-Eleven). Section 27.72.050 only permits the termination of a "nonconforming use of land" if the five factors are met, and does not permit the termination of a specific tenant. Therefore, the City cannot lawfully terminate the 7-Eleven use unless it finds that the general use of the Property as a convenience store/ market is particularly burdensome. Given that the Property is located in a mixed-use neighborhood that contains both residential and commercial uses, we respectfully suggest that the Existing Convenience Store/ Market Use cannot reasonably be said to represent a burden to the neighborhood.

First, the City Council must consider whether the nonconforming use impairs property values or the economic stability of the surrounding area. Zoning Code § 27.72.050. Here, there is no evidence that this is the case, and any such evidence is likely to be impossible to obtain. The Existing Convenience Store/ Market Use has operated on the Property for many decades, and no data have been presented showing that its presence and operation has had any negative impact on nearby property values. Moreover, as the Property is located in a mixed-use neighborhood that consists of both commercial and residential uses, the effect of a single retail use on property values in the neighborhood is likely to be insignificant or impossible to determine.

Second, the City Council must consider whether the nonconforming use inhibits the development of the surrounding area contemplated by the general plan and the Zoning Code.

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Zoning Code § 27.72.050. Again, no data have been proffered that suggest that the Existing Convenience Store/ Market Use has or would inhibit the residential development of the surrounding area. If anything, the data are more likely to reveal that the presence of the Existing Convenience Store/ Market Use had no negative effect on the residential growth in the surrounding area, which experienced a boom in residential development over the last several decades. Property values in the City are among the highest in the nation.

Third, the City Council must consider whether the nonconforming use is detrimental to the public health, safety and general welfare. Zoning Code § 27.72.050. No data have been proffered to show that the Existing Convenience Store/ Market Use has been or will be detrimental to the public. Instead, the availability to the neighborhood of a convenience store that provides a larger variety of goods and services, including fresh food, is more properly characterized as a benefit to the public welfare and to the neighborhood. The location of a convenience store within walking distance to residences also reduces the necessity to drive to purchase groceries and other convenience items. For this reason, the Existing Convenience Store/ Market Use may actually serve to reduce automobile traffic in the neighborhood.

Fourth, the City Council must consider the usability of the land or the improvements for purposes permitted in the applicable zone. Zoning Code § 27.72.050. This Property has been used as a convenience store/ market for decades, and all improvements made to the Property have been geared toward this use and not for residential use. Accordingly, significant demolition and rehabilitation of the land would mostly likely be necessary before it would be suitable for use as presently permitted in the applicable zone.

Finally, the City Council must consider the amount of hardship caused to the present user by the termination, and we believe that this factor weighs heavily against termination of the nonconforming use. Zoning Code § 27.72.050. Portfolio, in reliance on the City's approval of the nonconforming use, purchased the Property and subsequently incurred a contractual obligation for the Property's use as a convenience store/ market. In addition, Portfolio has incurred significant construction costs in light of the City's prior approval of the building permits. In light of these facts, termination of the nonconforming use would result in significant hardship to Portfolio.

Accordingly, because the factors set forth in section 27.72.050 do not support termination of the nonconforming use, the City Council would likely have great difficulty issuing the requisite findings to support the legal termination of the nonconforming use. *See Topanga Ass'n for a Scenic Community*, 11 Cal. 3d at 509-10 ("We conclude that variance boards . . . must render findings to support their ultimate rulings.").

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## II. Even if the nonconforming use could be characterized as “especially burdensome,” termination by the City Council would constitute a denial of Portfolio’s constitutionally guaranteed rights.

When determining whether to terminate the Existing Convenience Store/ Market Use, the City Council must not only consider whether the factual findings support its decision, but must also consider additional standards imposed by the California state constitution with respect to property interests in nonconforming uses. *See Paramount Rock Co. v. San Diego Cty.*, 180 Cal. App. 2d 217, 234 (App. Ct. 1960) (“The nonconforming use protected by constitutional guarantees is limited to that use as it existed at the time of the adoption of the zoning ordinance.”). In order to terminate legally a property owner’s vested right to a nonconforming use, the City must establish that the use is a public nuisance or demonstrate a compelling public necessity requiring its termination. *Goat Hill Tavern v. City of Costa Mesa*, 6 Cal. App. 4th 1519, 1525 (App. Ct. 1992).

The courts will apply the independent judgment test, a *significantly less* deferential standard of review to this determination than to other local land use decisions. “If an administrative decision substantially affects a fundamental vested right, the trial court must exercise its independent judgment on the evidence and find an abuse of discretion if the findings are not supported by the weight of the evidence.” *Goat Hill Tavern*, 6 Cal. App. 4th at 1525; *see also Autopsy/Post Servs., Inc. v. City of Los Angeles*, 129 Cal. App. 4th 521, 526 (App. Ct. 2005) (“If the City’s grant of APS’s permit and if APS’s reliance on it created a fundamental vested right, the subsequent permit revocation would be subjected to judicial review under the independent judgment test.”).

We believe that Portfolio has acquired a fundamental vested right in the nonconforming use. “In determining whether a right is ‘fundamental’ and ‘vested,’ the question is whether the affected right is deemed to be of such significance that it should not be extinguished by a body lacking in judicial power.” *Malibu Mountains Recreation, Inc.*, 67 Cal. App. 4th at 367. Indeed, “[w]here a property owner has performed substantial work and incurred substantial liabilities in good faith reliance upon a permit issued by the government, he acquires a vested right to complete construction in accordance with the terms of the permit. The rule is founded upon the constitutional principle that property may not be taken without due process of law.” *Cty. of Sonoma v. Rex*, 231 Cal. App. 3d 1289, 1298 (App. Ct. 1991) (internal quotation marks and citations omitted).

Here, Portfolio purchased the Property *after* the City Council approved the building permits facilitating continuation of the nonconforming use. Moreover, relying on the City Council’s approval of the continued nonconforming use, Portfolio entered into a lease agreement with 7-Eleven, Inc. which requires the Property to continue to function as a convenience store/

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market, and preparation of the premises for the execution of this agreement has begun. “[W]here a permit or license has been granted and the successful applicant has thereafter acted upon the grant to his or her detriment. In such instance, the applicant has acquired a vested right.” *Malibu Mountains Recreation, Inc.*, 67 Cal. App. 4<sup>th</sup> at 367.

*Goat Hill Tavern v. City of Costa Mesa* is illustrative. In that case, a tavern in the City of Costa Mesa that had been in existence for 35 years and operated as a legal nonconforming use under the local zoning ordinance was denied a renewal of a conditional use permit that allowed the tavern to use an adjoining space as a game room. *Goat Hill Tavern*, 6 Cal. App. 4<sup>th</sup> at 1522-23. The tavern sought a writ of administrative mandamus under section 1094.5, and the trial court concluded that the tavern had a fundamental vested right. *Id.* at 1525. In affirming the trial court’s decision that the tavern had a fundamental vested right, the appellate court noted that “the rights affected by the city’s refusal to renew Goat Hill Tavern’s permit [we]re sufficiently vested and important to preclude their extinction by a nonjudicial body,” in part because the termination of the right would force the tavern to close. *Id.* at 1527-28. Here, a termination of the nonconforming use would force the end of the preparations to open the 7-Eleven, jeopardizing Portfolio’s ability to perform its contractual obligations. For these reasons, we believe that Portfolio has acquired a fundamental vested right in the present nonconforming use which cannot be terminated without due process of law.

*Goat Hill Tavern v. City of Costa Mesa* is again illustrative with respect to what due process requires here. In that case, the trial court stated that because the tavern has a fundamental vested right in the nonconforming use, the city had to “establish [that] Goat Hill Tavern was a public nuisance or demonstrate a compelling public necessity” in order to terminate the use. *Id.* at 1525. The trial court then concluded that the evidence did not support the city’s decision to deny the renewal. *Id.* The appellate court declined to address the city’s argument on appeal that it was not required to prove that the tavern was a public nuisance or demonstrate a compelling public necessity weighing in favor of termination. *Id.* at 1531. Consequently the trial court’s reasoning with respect to what due process requires remains good law. In other words, because Portfolio has a fundamental vested right in the nonconforming use, the City Council may only terminate that right if the nonconforming use constitutes a public nuisance or by demonstrating a compelling public necessity. We respectfully believe that the City Council can show neither.

California law characterizes nuisances as either public or private in nature. California Civil Code section 3480 defines a public nuisance as “one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.” Cal. Civ. Code § 3480. “[P]ublic nuisances are offenses against, or interferences with, the exercise of rights common

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to the public . . . [N]ot every interference with collective social interests constitutes a public nuisance. To qualify, and thus be enjoined [or abatable], the interference must be both substantial and unreasonable. It is substantial if it causes significant harm and unreasonable if its social utility is outweighed by the gravity of the harm inflicted." *Cty. of Santa Clara v. Atlantic Richfield Co.*, 137 Cal. App. 4<sup>th</sup> 292, 305 (App. Ct. 2006) (internal citation omitted). Simply put, there is no evidence to support the characterization of the Existing Convenience Store/ Market Use at issue here as rising to the level of a public nuisance. Some residents may strongly dislike the presence of the Existing Convenience Store/ Market Use, but such a use does not cause "substantial and unreasonable" interference, particularly because the Property is located in a mixed-use neighborhood.

Moreover, where there is no public nuisance it follows that there is no compelling public necessity to terminate the legal nonconforming use. See *O'Hagen v. Bd. of Zoning Adjustment*, 19 Cal. App. 3d 151, 160-61 (App. Ct. 1971) ("compelling public necessity" . . . must be viewed in the context of a public nuisance").

The requisite findings for private nuisance also cannot be met. State law provides that "[a] private person may maintain an action for a public nuisance if it is specifically injurious to himself, but not otherwise." *Oliver v. AT&T Servs.*, 76 Cal. App. 4<sup>th</sup> 521, 533 n.8 (App. Ct. 1999) (quoting Cal. Civ. Code § 3493). "The damage suffered [in order for a private party to maintain an action for a public nuisance] must be different in kind and not merely in degree from that suffered by other members of the public." *Id.* (quoting *Koll-Irvine Ctr. Property Owners Ass'n v. Cty. of Orange*, 24 Cal. App. 4<sup>th</sup> 1036, 1040 (App. Ct. 1994)). Here, the primary concern identified is the purported negative effect of the nonconforming use on property values. Even if there was actual evidence to show such a result, "[a] diminution in value does not interfere with the present use of property and cannot alone constitute a [private] nuisance." *Id.* at 534. Moreover, where "plaintiffs cannot make out a claim for injury from a private nuisance . . . , it follows that they cannot show special injury for purposes of maintaining an action for public nuisance." *Id.* at 533 n.8

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In sum, should the City Council terminate the nonconforming use, we believe that a reviewing court would apply the independent judgment test to conclude that such a termination constitutes a denial of Portfolio's fundamental vested right in the nonconforming use because the weight of the evidence does not support that the legal nonconforming use is either especially burdensome or a public nuisance whose termination is compelled by public necessity.

Sincerely,

GIBSON, DUNN & CRUTCHER LLP

A handwritten signature in black ink, appearing to read "Jim M. Abrams", with a long horizontal flourish extending to the right.

Jim M. Abrams

JMA/acr

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October 29, 2012

Chair Whitaker and Member of the Planning Commission

[PlanningCommission@cityofsanmateo.org](mailto:PlanningCommission@cityofsanmateo.org)

San Mateo City Hall  
330 W. 20th Ave.  
San Mateo, CA 94403

**Re: 7-Eleven, 501 N. San Mateo Ave., San Mateo (PA 12-071)**

Dear Chair Whitaker and Member of the Planning Commission:

This law firm represents certain neighbors of the former Stangelini's Deli building located at 501 N. San Mateo which, despite its residential zoning designation, operated as a market/deli for over seventy years until it closed nearly two years ago and has since remained vacant. We understand that the property has been leased by the current owners for use as a 7-Eleven 24-hours a day, seven days a week, and that the City has issued building permits (on 10/16/12, 9/13/12 and (presumably) 6/02/12)<sup>1</sup> authorizing certain physical modifications of the building to facilitate use of the building as a 7-Eleven. (Attachment 1.) Our clients are gravely concerned about the impact this unprecedented use in their neighborhood would have on their lives with respect to safety, noise, traffic, aesthetics, and property values. They are quite frankly outraged that the City would permit use of the former Stangelini's deli as a 7-Eleven without any discretionary approval, environmental review, notice or opportunity to comment.

We understand that the Planning Commission will take action next Tuesday night on whether or not to recommend termination of the 7-Eleven use of the property within two to five years pursuant to San Mateo City Code ("Code") Section 27.72.050. While our clients appreciate this effort to respond to their concerns, this action is premature. Before considering whether or not to terminate a legal nonconforming use pursuant to Section 27.72.050, the use

<sup>1</sup> Contrary to the Staff Report, and as confirmed by Senior Planner Stephen Scott, there was no building permit issued on August 30, 2012.

must first be established as legal nonconforming pursuant to Section 27.72.030 and this status has not and cannot be established for the reasons set forth in this letter.

Based on our review of the public records related to this property and our analysis of the applicable Code provisions and governing case law, we conclude that the previous legal nonconforming use of the property as a deli/market has been terminated for the following independent reasons, each of which is discussed in detail below:

1. **The previous legal nonconforming use of the property as a deli/market was terminated by discontinuance pursuant to San Mateo City Code ("Code") Section 27.72.020(b).**
2. **Unnecessary physical changes were made to the building on the property; therefore, in accordance with Code Section 27.72.010(b), the legal nonconforming use may not be continued.**

Therefore, because the former legal nonconforming use has been terminated by discontinuance and/or physical changes to the property, use of the property must now adhere to the residential zoning district regulations governing the property.

Moreover, even if the legal nonconforming use had not been terminated, use of the property as a 7-Eleven is not and cannot be classified as a continuance of the previously legal nonconforming market/deli use for the following reasons:

3. **Even if the Nonconforming Use Was Not Terminated, The 7-Eleven Would be an Illegal Extension and Intensification of the Previous Legal Nonconforming Market/Deli use Per Code Section 27.72.060(a) and California Case Law**
4. **The 7-Eleven use is so substantially different from the previous use by Stangelini's that it would be "a change to another nonconforming use" requiring a special use permit per Code Section 27.72.040**

Therefore, for all of the foregoing reasons, the building permits which facilitate use of this property as a 7-Eleven were erroneously issued by the City's Building Department and the ultimate use of the property as a 7-Eleven – without obtaining a zone change -- would violate the City's laws and regulations. As such, we respectfully urge you to reject the recommendation set forth in the Planning Commission Staff Report dated 10/25/2012 ("Staff Report"). Instead, we urge you to initiate a determination and ultimately determine, pursuant to Code Section 27.72.030, that the intended 7-Eleven use of the property is an illegal nonconforming use that may not occur unless a zoning amendment is obtained.

**1. The Previous Legal Nonconforming Use of the Property as a Deli/Market was Terminated by Discontinuance Pursuant to San Mateo City Code ("Code") Section 27.72.020(b)**

Code Section 27.72.020(b) provides that "[w]henver a nonconforming use of a building or structure, or part thereof, has been discontinued for a period of six consecutive months, such use shall not after being discontinued or abandoned be reestablished, and the use of the premises thereafter shall be in conformity with the regulations of the district." Strangelini's deli closed in the fall of 2010 and has remained vacant ever since. Therefore, the previous legal

nonconforming market/deli use has been discontinued for approximately 24 months or four times the requisite period of time required by the Code. As such, the legal nonconforming market/deli use of the property terminated in the spring of 2011 and use of the property must comply with the regulations of the property's residential zoning district. These regulations preclude use of the property as a 7-Eleven. (Code §§ 27.24.010, 27.24.020.)

This was the exact same conclusion that planning staff reached in October of 2011 after consulting with the City Attorney's office. In an email dated October 14, 2011 (See Attachment 2, p.1.) from Senior Planner Stephen Scott to the architect of the intended 7-Eleven project (John Lucchesi of Councilmember John Matthew's architectural firm John Matthews Architects), Mr. Scott stated "we do not see how a new retail use can go back onto that site given the existing language in the non-conforming section of the Zoning Code. As we've discussed, if the property has been vacant for more than 6 months, it needs to revert to a conforming use, and we can't see any way of interpreting that language and this particular situation in any way that would allow a retail use to be re-established." Mr. Scott reiterated this position in a letter dated October 26, 2011 to the property owners, stating "According to Zoning Code Section 27.72.020 the site must now revert to a use that conforms to the R4 standards... after further consultation with the Chief of Planning and the Assistant City Attorney, we see no way of interpreting this situation any differently at this time, given that code provision. "

Over seven months later in June of 2012, the City made a surprising 180 degree turnaround by issuing a building permit<sup>2</sup> for "[i]nterior remodel for new 7-Eleven store of 2,103sf to replace previous Italian market. S1-Install wall sign to storefront. "7-Eleven" sign. 8 square feet area." There is nothing in the record which adequately explains this changed position. The only apparent explanation is an email to the Assistant City Attorney from Cecilia Quick, who we understand was acting as special outside counsel to the city. Ms. Quick's email states that while the Code uses both the words "discontinue" and "abandon", "it appears that the code intends for those words to be synonymous." She then states when determining whether a use has been "abandoned", there must be evidence of an "intent" to abandon and merely ceasing use is not enough to prove this intent.

While we agree that *abandonment* requires intent, *discontinuance* does not. We adamantly disagree with Ms. Quick's underlying assumption that the Code intended for the use of the words "discontinue" and "abandon" to be synonymous. The Code uses the terms "discontinue" and "abandon" in the alternative. It states "[w]henver a nonconforming use of a building or structure, or part thereof, has been discontinued for a period of six consecutive months, such use shall not after being discontinued or abandoned be reestablished, and the use of the premises thereafter shall be in conformity with the regulations of the district." (Code § 27.72.020(b).) As such, abandonment and discontinuance are alternative grounds for termination. In other words, termination can be triggered either by abandonment or discontinuance. As explained in one Ninth Circuit court of appeal case, discontinuance does not require intent: "[a] nonconforming use may be terminated by ordinance after the lapse of a reasonable period of time regardless of whether the property owner intends to abandon that use." (citations omitted)." Here, the code provides that a nonconforming use be terminated

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<sup>2</sup> While the "Issue date" is blank, it expired on 12/03/12 so, like the subsequent building permits issued on the property, it was presumably issued six months prior on 6/02/12.

after a reasonable period of six months and therefore, Intent to abandon is not required. (Code § 27.72.020(b).)

Even if intent to abandon were required to terminate the nonconforming use (which as just discussed, it is not), evidence in the record demonstrates such intent. Attachment 3 includes a series of photos of Stangelini's immediately before and after it closed. Note the linoleum flooring, partition walls, deli counter and shed which housed cooling and evaporation units to chill market products. In February of 2011, the property owners obtained a building permit for "general demolition of interior walls; partitions; and removal of rear shed." (see Attachment 4.) As you will see in Attachment 5, the photos listing the property for lease show that the interior walls, partition walls, deli counter, and linoleum flooring were removed and carpeting was installed. Carpeting in and of itself is clearly inconsistent with a market/deli use. As such, contrary to the Staff Report, the February 2011 building permit was *not* issued to prepare the space for another market use but to change the use to office. Further, the MLS listing markets the property as a "MEDICAL/DENTAL OFFICE". The physical modifications to the building combined with the MLS listing of the property for "MEDICAL/DENTAL OFFICE" evidence the property owner's purposeful intent to abandon use of the property as the previously legal nonconforming market use and instead convert it to a medical/dental office use.

**2. Unnecessary physical changes were made to the building on the property; therefore, in accordance with Code Section 27.72.010(b), the legal nonconforming use may not be continued.**

Code Section 27.72.010(b) states that "[a]ny legal nonconforming building or structure may be continued in use provided there is no physical change other than necessary maintenance and repair, except as otherwise permitted herein." As just discussed, the February 2011 building permit authorized "general demolition of interior walls; partitions; and removal of rear shed." (Attachment 6.) As shown in Attachment 6, these physical modifications to the building were completed. These modifications are structural changes that were not "necessary for maintenance and repair" of the building. Moreover, they were inconsistent with the previous nonconforming market use. Furthermore, additional physical changes to the building are being carried out pursuant to the building permits the City just issued in violation of its own Code.<sup>3</sup> (Attachment 1.) Because these physical changes were not necessary for maintenance and repair of the building, the former legal nonconforming use of the property as a market may not be continued pursuant to Code Section 27.72.010(b).

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<sup>3</sup> It is important to note that while these building permits reference the "7-Eleven", building permits only authorize physical modifications to a property; they do not authorize use of a property. The staff report states that the building permits and the improvements made based on the issuance of these permit grant the property owner "a vested right to continue to operate a market at this location." This is not the case given the building permits were issued in violation of the City's own Code, and in any event, it certainly does not grant the property owner a vested right to use the property for a 24-hour 7-Eleven.

**3. Even if the Nonconforming Use Was Not Terminated, The 7-Eleven Would be an Illegal Extension and Intensification of the Previous Legal Nonconforming Market/Deli use Per Code Section 27.72.060(a) and California Case Law**

Code Section 27.72.060(a) states that "[n]ormal maintenance of a building or other structure containing a nonconforming use is permitted, including necessary nonstructural repairs and incidental alterations which do not extend or intensify the nonconforming use."

The physical alternations to accommodate the 7-Eleven use (pursuant to building permits issued in June, September and October of 2012) extend and intensify the former use of the property as a small, quiet corner deli/ market that operated during normal business hours to a national chain store operating 24 hours a day, seven days a week. According to Wikipedia, "7-Eleven, primarily operating as a franchise, is the world's largest operator, franchisor and licensor of convenience stores, with more than 46,000 outlets, surpassing the previous record-holder McDonald's Corporation in 2007 by approximately 1,000 retail stores."

The 7-Eleven use would greatly intensify the impacts on the neighborhood with respect to safety, noise, traffic, aesthetics, and property values. As acknowledged in the Staff Report, "alcohol sales and late night operations typical of convenience stores have been shown to be correlated with such incidents and subsequent reductions in property value" and the "traffic generated by a convenience market is higher than that of (*sic*) market."<sup>4</sup> It further states that the San Mateo Police Department "anticipates that the proposed use could generate 50-60 responses for service calls or as many as 160" per year" and "off-sale retailers that are open 24 hours per day generate 89 responses per year."<sup>5</sup> While the Staff Report tries to downplay these impacts by stating that 7-Eleven "is proposing to consider voluntarily agreeing to limit hours of operation" and "the store will open without the sale of beer and wine", the Staff report later states that "the City does not have the ability to condition the project, because there is no planning application and the property owner does not need any approvals from the City." As such, according to the City, if you follow Staff's recommendation to allow the 7-Eleven use, there is no mechanism to restrict and/or enforce operations to minimize the intensified impacts of the 7-Eleven use on the neighborhood.

Given the objective of zoning to ultimately eliminate all nonconforming uses, the California courts have generally followed a strict policy against their extension or enlargement. As stated by the court in *Paramount Rock Co. v. County of San Diego* (1960) 180 Cal.2d 217, 228 "[t]he ultimate purpose of zoning to confine certain classes of buildings and uses to particular localities and to reduce all nonconforming uses with the zone to conformity as speedily as is consistent with property safeguards for the interests of those affected."

Accordingly, courts have routinely disallowed the intensification or expansion of a nonconforming use. See *Wilson v. Edgar* (1923) 64 Cal.App. 654, 657 (holding that change from

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<sup>4</sup> The Staff Report does not even address other public health safety and welfare impacts such as noise and aesthetics.

<sup>5</sup> Glaringly absent from the Staff Report is how these numbers compare to the data from the former Stangelini's -- i.e. how many service calls per year the former market use generated.

milk bottling to dyeing and cleaning is an illegal expansion of a nonconforming use); *Orange County v. Goldring* (1953) 121 Cal.App.2d. 442, 446 (holding that change from crop growing and occasional grazing to feeding and watering three thousand head of cattle – a formidable change which added noise and odors - is an illegal expansion of a nonconforming use); *County of San Diego v. McClurken* (1951) 37 Cal.App.2d 683(holding that change from bulk storage with movable gasoline tanks to larger oil storage tanks for a filling station is an illegal expansion of a nonconforming use); *Paramount Rock Co. v. County of San Diego* (1960) 180 Cal.2d 217 (holding that change from form sand pit and concrete mixing to rock crushing was an illegal expansion of a nonconforming use); and *Walnut Properties, Inc. v. City Council* (1980) 100 Cal.App. 3d 1018, 1024 (holding that change from usual neighborhood theater to adult entertainment theater was an illegal expansion of a nonconforming use).

Expansion of the previously legal nonconforming use of the property as a small, quiet locally owned deli/ market that operated during normal business hours into a 7-Eleven, the world's largest operator of convenience stores chain store operating 24 hours a day, seven days a week clearly would constitute an illegal expansion of a nonconforming use which is prohibited by Code Section 27.72.060(a) and California case law. It would also be contrary to public policy of phasing out and eliminating uses that do not comply with the underlying zoning designation.

**4. Even if the Nonconforming Use Was Not Terminated, The 7-Eleven use is so substantially different from the previous use by Stangelini's that it would be "a change to another nonconforming use" requiring a special use permit per Code Section 27.72.040**

Code Section 27.72.040(a) provides that "[t]he nonconforming use of any building, structure, or portion thereof, which is designed or intended for a use not permitted in the district in which it is located, may be changed to another nonconforming use thereof under the procedure provided for obtaining a special use permit." As previously discussed, the 7-Eleven so expands and intensifies the envelope of the previously nonconforming market use and its impacts that it essentially converts the nonconforming market use to "another nonconforming use." As such, it would not be a "continuation" of a legal nonconforming use under Code Section 27.72.010(b), and, accordingly, Code Section 27.72.040(a) requires that discretionary approval (which would require environmental review under the California Environmental Quality Act (CEQA), notice and a public hearing, and compliance with certain findings) be obtained to allow the 7-Eleven use.

Therefore, for all of the foregoing reasons, the building permits which facilitate use of this property as a 7-Eleven were erroneously issued by the City and the use of the property as a 7-Eleven – without obtaining a zone change -- would violate the City's laws and regulations. As such, we respectfully urge you to reject the recommendation set forth in the Staff Report. Instead, we urge you to initiate a determination and ultimately determine, pursuant to Code Section 27.72.030, that the intended 7-Eleven use of the property is an illegal nonconforming use that may not occur unless a zoning amendment is obtained. Unless this City takes this next step, our clients will have no other recourse but to take all legal action necessary to protect their rights and the rights of the surrounding neighborhood.

Sincerely,



Camas J. Steinmetz

cc: Mayor and City Council Members  
Shawn Mason, City Attorney  
Gabrielle Wheler, Assistant City Attorney  
Susan Loftus, City Manager  
Lisa Grote, Community Development Director  
Ron Munekawa, Planning Director  
Robert J. Lanzone, Esq.  
Client

Attachments:

1. Building Permits issued between June and October of 2012
2. Staff correspondence to property owner/ architect
3. Photos of property prior to unnecessary physical changes
4. February 2011 building permit for demolition
5. MLS property listing and photos

**Attachment 1**

T.I.



City of San Mateo  
 Application & Permit  
 Development Review Counter  
 330 West 20th Avenue  
 San Mateo, CA 94403-1388  
 (650) 522-7172

**Building Project**

Project # bd2012-243155

PA:

Project										
Project Location:					Parcel Number:	Total Project Valuation:				
1	501	N	SAN MATEO DR	1490	032-153-140	\$ 180,000.00				
Structure ID	Street #	Dir.	Street Name	Unit #	Business #					
Project Description: Interior remodel for new 7-Eleven store of 2,103sf to replace previous Italian market. S1-Install well align to storefront. "7-Eleven" sign. 8 square feet area.										
Issued Date	Previous Use			Occupancy Code UBC						
Expiration Date	Proposed Use									
	12/03/2012			Retail sales, basement and ground floor			Retail sales, basement and ground floor			

PERMIT EXPIRATION: This project becomes null and void if work is not commenced within 180 days from date of project issuance if work is suspended at any time for more than 180 days or if work is done in violation of any city or state laws relating thereto.

#2 WHO WILL PERFORM THE WORK:

2a - CALIFORNIA LICENSED CONTRACTOR'S DECLARATION

I hereby affirm under penalty of perjury that I am licensed under provisions of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and my license is in full force and effect.

License Class and No. 422096-B

Print Name: x DUSTIN SMITH

Contractor Signature: x [Signature]

#3 IDENTIFY WORKERS' COMPENSATION COVERAGE AND LENDING AGENCY:

WARNING: FAILURE TO SECURE WORKERS' COMPENSATION COVERAGE IS UNLAWFUL, AND SHALL SUBJECT AN EMPLOYER TO CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED THOUSAND DOLLARS (\$100,000), IN ADDITION TO THE COST OF COMPENSATION, DAMAGES AS PROVIDED FOR IN SECTION 3708 OF THE LABOR CODE, INTEREST, AND ATTORNEY'S FEES.

WORKERS' COMPENSATION DECLARATION

I hereby affirm under penalty of perjury one of the following declarations:

I have and will maintain a certificate of consent to self-insure for workers' compensation, issued by the Director of Industrial Relations as provided for by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued. Policy No. \_\_\_\_\_

I have and will maintain workers' compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued. My workers' compensation insurance carrier and policy number are:

Carrier: CHARTIS Policy No: WC065256240 Expiration Date: 5/8/13

I certify that, in the performance of the work for which this permit is issued, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of California, and agree that, if I should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, I shall forthwith comply with those provisions.

DECLARATION REGARDING CONSTRUCTION LENDING AGENCY

I hereby affirm under penalty of perjury that there is a construction lending agency for the performance of the work for which this permit is issued (Section 3997, Civil Code).

Lender's Name and Address: \_\_\_\_\_

#4 DECLARATION BY CONSTRUCTION PERMIT APPLICANT:

By my signature below, I certify to each of the following:

I am  a California licensed contractor or  the property owner\* or  authorized to act on the property owner's behalf\*\*.

I have read this construction permit application and the information I have provided is correct.

I agree to comply with all applicable city and county ordinances and state laws relating to building construction.

I authorize representatives of this city or county to enter the above-identified property for inspection purposes.

California Licensed Contractor, Property Owner\* or Authorized Agent\*\*:

Signature: x [Signature] Date: 8/2/12

**Contacts**

Issued To:

Contractor  
 SMITH DEVELOPMENT AND CONSTRUCTION COMPANY  
 SMITH DEVELOPMENT AND CONSTRUCTION COMPANY  
 7803 MADISON AVENUE #700C  
 CITRUS HEIGHTS CA 95610-0000  
 (916) 966-7325

Owner:

CHOY ISAAC OOJIN  
 1265 LA CANADA ROAD  
 HILLSBOROUGH CA 94010-0000

5054



City of San Mateo  
Application & Permit  
Development Review Counter  
330 West 20th Avenue  
San Mateo, CA 94403-1388  
(650) 522-7172

**Building Project**

Project # bd2012-243155

PA:

**Project**

Project Location:					Parcel Number:	Total Project Valuation:
1	501	N	SAN MATEO DR	1490	032-163-140	\$ 180,000.00
Structure ID	Street #	Dir.	Street Name	Unit #	Business #	

Project Description: Interior remodel for new 7-Eleven store of 2,103sf to replace previous Italian market. S1-Install wall sign to storefront. "7-Eleven" sign. 8 square feet area.

Issued Date: 09/13/2012      Previous Use: Retail sales, basement and ground floor      Occupancy Code UBC: \_\_\_\_\_

Expiration Date: 08/12/2013      Proposed Use: Retail sales, basement and ground floor

**PERMIT EXPIRATION:** This project becomes null and void if work is not commenced within 180 days from date of project issuance if work is suspended at any time for more than 180 days or if work is done in violation of any city or state laws relating thereto.

**#2 WHO WILL PERFORM THE WORK:**

2a - CALIFORNIA LICENSED CONTRACTOR'S DECLARATION  
I hereby affirm under penalty of perjury that I am licensed under provisions of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and my license is in full force and effect.

License Class and No. 826051-045

Print Name: STEVE PETERSON      Contractor Signature: [Signature]

**#3 IDENTIFY WORKERS' COMPENSATION COVERAGE AND LENDING AGENCY:**

**WARNING: FAILURE TO SECURE WORKERS' COMPENSATION COVERAGE IS UNLAWFUL, AND SHALL SUBJECT AN EMPLOYER TO CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED THOUSAND DOLLARS (\$100,000), IN ADDITION TO THE COST OF COMPENSATION, DAMAGES AS PROVIDED FOR IN SECTION 3706 OF THE LABOR CODE, INTEREST, AND ATTORNEY'S FEES.**

**WORKERS' COMPENSATION DECLARATION**  
I hereby affirm under penalty of perjury one of the following declarations:

I have and will maintain a certificate of consent to self-insure for workers' compensation, issued by the Director of Industrial Relations as provided for by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued. Policy No.: \_\_\_\_\_

I have and will maintain workers' compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued. My workers' compensation insurance carrier and policy number are:

Carrier: TRAVELERS      Policy No: 4B6B758462      Expiration Date: 4/30/13

I certify that, in the performance of the work for which this permit is issued, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of California, and agree that, if I should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, I shall forthwith comply with those provisions.

**DECLARATION REGARDING CONSTRUCTION LENDING AGENCY**  
I hereby affirm under penalty of perjury that there is a construction lending agency for the performance of the work for which this permit is issued (Section 3097, Civil Code).

Lender's Name and Address: \_\_\_\_\_

**#4 DECLARATION BY CONSTRUCTION PERMIT APPLICANT:**

By my signature below, I certify to each of the following:

I am  a California licensed contractor or  the property owner\* or  authorized to act on the property owner's behalf\*\*.

I have read this construction permit application and the information I have provided is correct.

I agree to comply with all applicable city and county ordinances and state laws relating to building construction.

I authorize representatives of this city or county to enter the above-identified property for inspection purposes.

California Licensed Contractor, Property Owner\* or Authorized Agent\*\*:

Signature: [Signature]      Date: 9-13-12

\*requires separate verification form  
\*\*requires separate authorization form

**Contacts**

<p>Issued To:</p> <p>Contractor</p> <p>AD ART SIGN/STEVE PETERSON AD ART 652 LOCKHAVEN DRIVE PACIFICA CA 94044-0000 (650) 255-9187</p>	<p>Owner:</p> <p>CHOY ISAAC OJIN 1268 LA CANADA ROAD MILLSBOROUGH CA 94010-0000</p>
--	---

Special Use



City of San Mateo  
Application & Permit  
Development Review Counter  
330 West 20th Avenue  
San Mateo, CA 94403-1388  
(650) 522-7172

Building Project

Project # bd2012-243155

PA:

Project						
Project Location:					Parcel Number:	Total Project Valuation:
1	501	N	SAN MATEO DR	1490	032-153-140	\$ 189,690.00
Structure ID	Street #	Dir.	Street Name	Unit #	Business #	

Project Description: Interior remodel for new 7-Eleven store of 2,103sf to replace previous Italian market. S1-Install wall sign to storefront. "7-Eleven" sign. 8 square feet area. F1; Fire sprinkler system; 40 heads "7-Eleven".

Issued Date: 10/16/2012 Previous Use: Retail sales, basement and ground floor Occupancy Code UBC:   
 Expiration Date: 04/14/2013 Proposed Use: Retail sales, basement and ground floor

PERMIT EXPIRATION: This project becomes null and void if work is not commenced within 180 days from date of project issuance if work is suspended at any time for more than 180 days or if work is done in violation of any city or state laws relating thereto.

#2 WHO WILL PERFORM THE WORK:

2a - CALIFORNIA LICENSED CONTRACTOR'S DECLARATION  
 I hereby affirm under penalty of perjury that I am licensed under provisions of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and my license is in full force and effect.  
 License Class and No. 686091-016  
 Print Name: ANTHONY ABARCA Contractor Signature: [Signature]

#3 IDENTIFY WORKERS' COMPENSATION COVERAGE AND LENDING AGENCY:

WARNING: FAILURE TO SECURE WORKERS' COMPENSATION COVERAGE IS UNLAWFUL, AND SHALL SUBJECT AN EMPLOYER TO CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED THOUSAND DOLLARS (\$100,000), IN ADDITION TO THE COST OF COMPENSATION, DAMAGES AS PROVIDED FOR IN SECTION 3706 OF THE LABOR CODE, INTEREST, AND ATTORNEY'S FEES.  
 WORKERS' COMPENSATION DECLARATION  
 I hereby affirm under penalty of perjury one of the following declarations:  
 I have and will maintain a certificate of consent to self-insure for workers' compensation, issued by the Director of Industrial Relations as provided for by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued. Policy No.:  
 I have and will maintain workers' compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued. My workers' compensation insurance carrier and policy number are:  
 Carrier: TECH. INS. CO Policy No: TWC3318713 Expiration Date: 3/1/14  
 I certify that, in the performance of the work for which this permit is issued, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of California, and agree that, if I should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, I shall forthwith comply with those provisions.

DECLARATION REGARDING CONSTRUCTION LENDING AGENCY

I hereby affirm under penalty of perjury that there is a construction lending agency for the performance of the work for which this permit is issued (Section 3097, Civil Code).

#4 DECLARATION BY CONSTRUCTION PERMIT APPLICANT:

By my signature below, I certify to each of the following:  
 I am  a California licensed contractor or  the property owner\* or  authorized to act on the property owner's behalf\*\*.  
 I have read this construction permit application and the information I have provided is correct.  
 I agree to comply with all applicable city and county ordinances and state laws relating to building construction.  
 I authorize representatives of this city or county to enter the above-identified property for inspection purposes.  
 California Licensed Contractor, Property Owner\* or Authorized Agent\*\* \*requires separate verification form \*\*requires separate authorization form  
 Signature: [Signature] Date: 10-10-12

Contacts

Issued To: Fire Sprinkler Contractor TRIAD FIRE PROTECTION TRIAD FIRE PROTECTION 35465 DUMBARTON COURT NEWARD CA 94560-0000 (510) 972-0004	Owner: CHOY ISAAC OOJIN 1266 LA CANADA ROAD HILLSBOROUGH CA 94010-0000
--	---

ATTACHMENT B

## Attachment 2

**Stephen Scott**

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**From:** Stephen Scott  
**Sent:** Friday, October 14, 2011 1:13 PM  
**To:** John Lucchesi  
**Cc:** Ronald "Ron" Muneakawa  
**Subject:** 501 N. San Mateo Drive

John --

I've discussed the 501 issue with Ron, and we do not see how a new retail use can go back onto that site given the existing language in the non-conforming section of the Zoning Code. As we've discussed, if the property has been vacant for more than 6 months, it needs to revert to a conforming use, and we can't see any way of interpreting that language and this particular situation in a way that would allow a retail use to be re-established.

Whether a 6-month period is appropriate given current economic conditions may be debatable, but we need to administer the code given the language that we have at this time.

I've attached the relevant code section below. Please contact me with any further questions.  
Stephen

**27.72.020 DISCONTINUANCE OF USE.** (a) Whenever any part of a building, structure or land occupied by a nonconforming use is changed to or replaced by a use conforming to the provisions of this title, such premises shall not thereafter be used or occupied by a nonconforming use, even though the building may have been originally designed and constructed for the prior nonconforming use.

(b) Whenever a nonconforming use of a building or structure is discontinued for a period of six consecutive months, such use shall not be reinstated or abandoned or reestablished, and the use on the premises thereafter shall be in conformity with the regulations of the district.

(c) Where no enclosed building is involved, discontinuance of a nonconforming use for a period of six months constitutes abandonment, and the use of such premises shall thereafter conform with the regulations of the district and shall not thereafter be used in a nonconforming manner.

(d) A nonconforming use not authorized by the provisions of this code and amendments thereto in effect at the time this title becomes effective, shall be discontinued and not reestablished unless, pursuant to the provisions of this title, the use is conforming to the district in which it is then located.

**Stephen Scott**  
Principal Planner/Zoning Administrator  
City of San Mateo, Planning Division  
330 W. 20th Avenue  
San Mateo, CA 94403  
(650) 522-7207  
[scott@cityofsanmateo.org](mailto:scott@cityofsanmateo.org)



DEPARTMENT OF COMMUNITY DEVELOPMENT  
PLANNING DIVISION  
OFFICE OF THE ZONING ADMINISTRATOR

330 W. 20<sup>th</sup> Avenue  
San Mateo, CA 94403-1388  
(650) 522-9202/fax (650) 522-7201  
Web Site: [www.cityofsanmateo.org](http://www.cityofsanmateo.org)

October 26, 2011

Isaac O. Choy  
Susan Lin  
1265 La Canada Rd.  
Hillsborough, CA 94010

501  
Re: 510 N. San Mateo Dr. (APN 032-753-1412)

Dear Mr. Choy and Ms. Lin:

This is in response of your letter of October 18<sup>th</sup>. I am guessing that your letter was generated due to an email I sent to Jack Matthews office regarding the former grocery store use on this property. To summarize, the grocery store was considered a legally non-conforming use because it was a commercial use on a property zoned R4 -- High Density Multiple Family. According to Zoning Code Section 27.72.020, the site must now revert to a use that conforms to the R4 standards.

The Planning staff sees both sides of this issue. We support the general concept that over time, non-conforming uses should evolve into conforming uses to fulfill the vision provided by our General Plan as implemented by the Zoning Code. We also see that the economic times that we are in make such code provisions difficult to meet and may also result in undesirable consequences for the City.

Your letter makes a number of good points, with which staff would not necessarily disagree. However, after further consultation with the Chief of Planning and the Assistant City Attorney, we see no way of interpreting this situation any differently at this time, given that code provision. The only recourse we see is for the code to be amended.

Processing a code amendment is not necessarily a quick and easy task. There is generally some amount of research and groundwork necessary to properly present the issue to the Planning Commission and City Council. We would typically need to be given direction to take on a new item that was not already on our work program, which would need to be done in this case. If you wish to proceed, we would identify the best way for you to proceed.

Sincerely,

Stephen Scott  
Zoning Administrator

cc: Lisa Grote, Community Development director  
Ronald Muneakawa, Chief of Planning  
Gabrielle Whelan, Assistant City Attorney

ATTACHMENT B

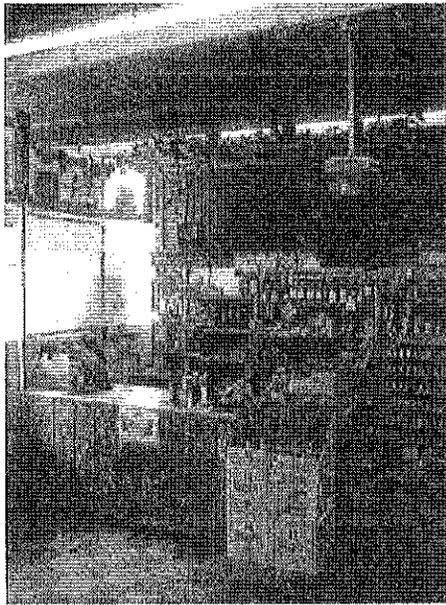
Attachment 3

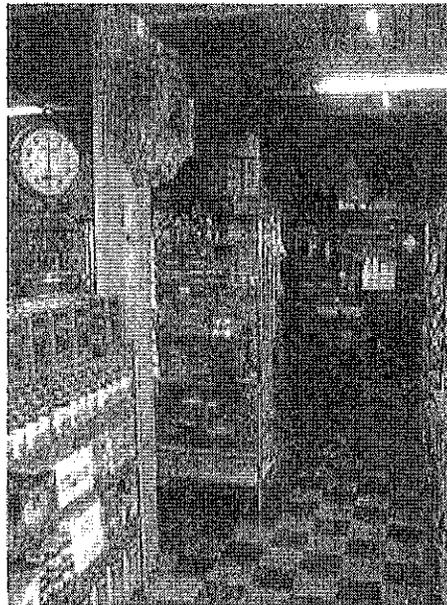
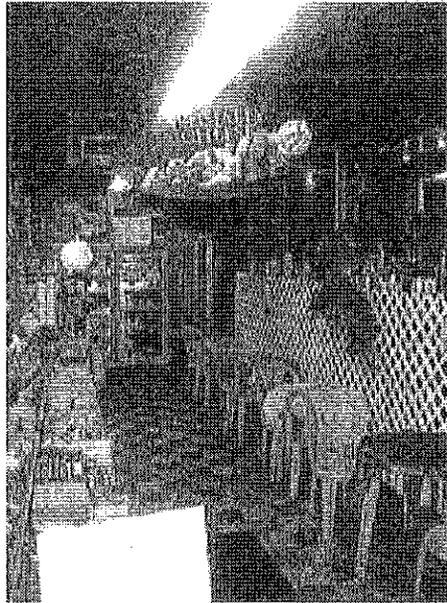
**Camas Steinmetz**

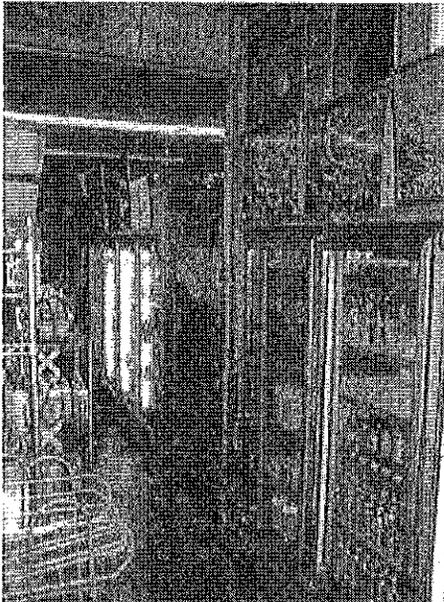
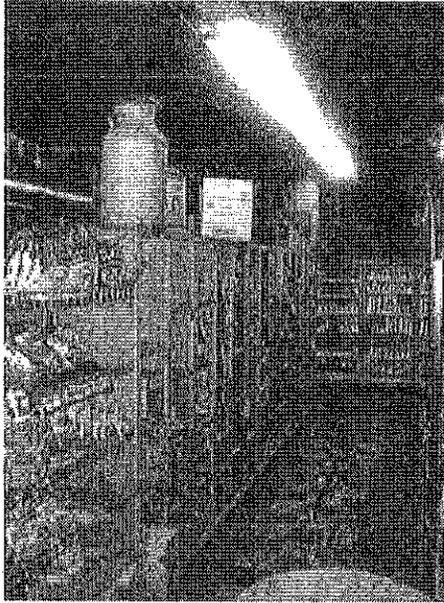
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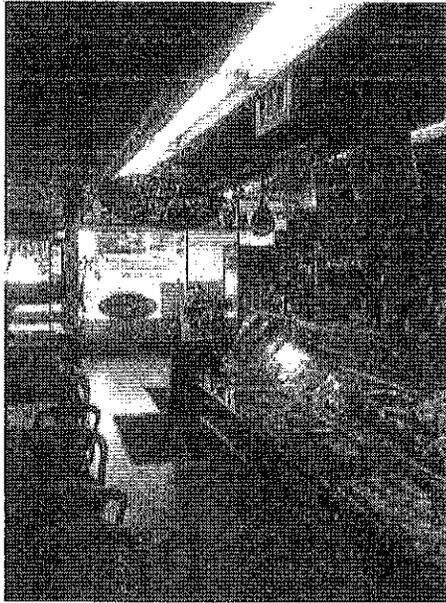
**From:** [redacted]  
**Sent:** Friday, October 26, 2012 7:30 AM  
**To:** [redacted]; [redacted]@com;  
**Subject:** Photos from Stangelinis Before :

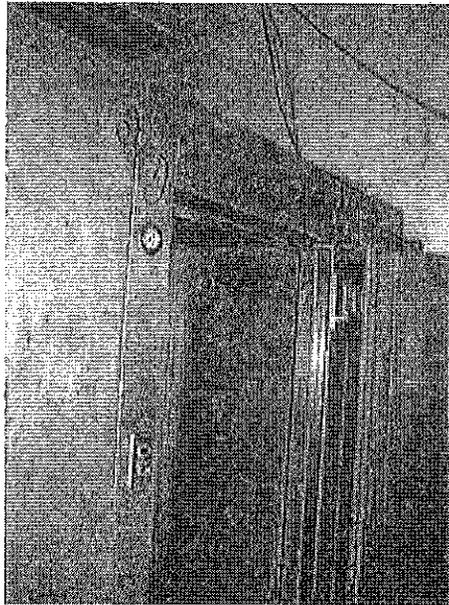
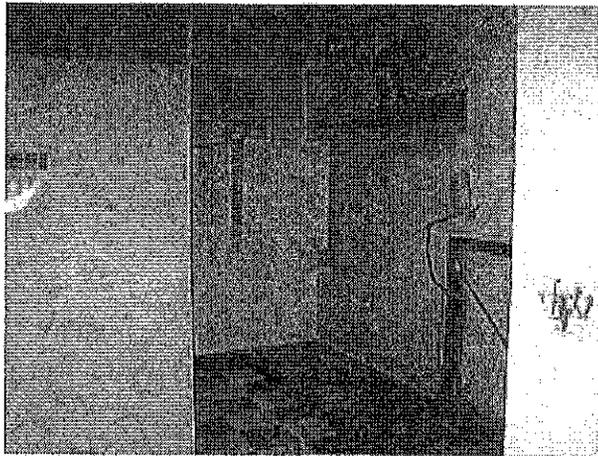
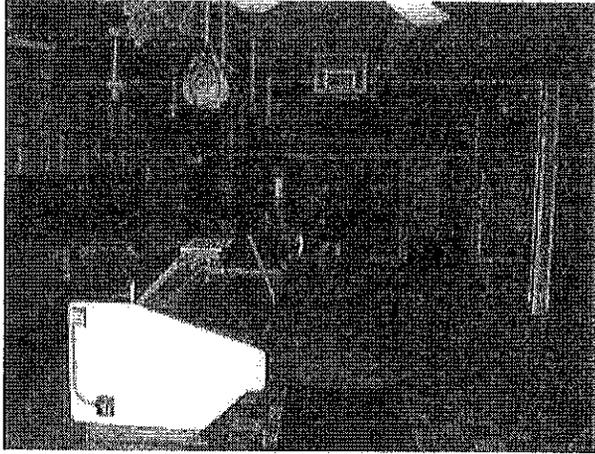












**Attachment 4**



City of San Mateo  
 Application & Permit  
 Development Review Counter  
 330 West 20th Avenue  
 San Mateo, CA 94403-1380  
 (650) 522-7172

**Building Project**

Project # **BD2011-239070**

PA:

Project										
Project Location:					Parcel Number:	Total Project Valuation:				
1	601	N	SAN MATEO DR	1490	032-153-140	\$ 25,000.00				
Structure ID	Street #	Dir.	Street Name	Unit #	Business #					
Project Description: General demolition of interior walls, partitions, and removal of rear shed.										
Issued Date	02/01/2011		Previous Use	Retail sales, basement and ground floor			Occupancy Code	UBC		
Expiration Date	07/31/2011		Proposed Use	Other						

**PERMIT EXPIRATION:** This project becomes null and void if work is not commenced within 180 days from date of project issuance. If work is suspended at any time for more than 180 days or if work is done in violation of any city or state laws relating thereto.

**#2 WHO WILL PERFORM THE WORK:**

**2a - CALIFORNIA LICENSED CONTRACTOR'S DECLARATION**  
 I hereby affirm under penalty of perjury that I am licensed under provisions of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and my license is in full force and effect.

License Class and No. 95492D & B

Print Name: X Yao Lin Zhang Contractor Signature: X [Signature]

**#3 IDENTIFY WORKERS' COMPENSATION COVERAGE AND LENDING AGENCY:**

**WARNING: FAILURE TO SECURE WORKERS' COMPENSATION COVERAGE IS UNLAWFUL, AND SHALL SUBJECT AN EMPLOYER TO CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED THOUSAND DOLLARS (\$100,000), IN ADDITION TO THE COST OF COMPENSATION, DAMAGES AS PROVIDED FOR IN SECTION 3706 OF THE LABOR CODE, INTEREST, AND ATTORNEY'S FEES.**

**WORKERS' COMPENSATION DECLARATION**  
 I hereby affirm under penalty of perjury one of the following declarations:

I have and will maintain a certificate of coverage or self-insure for workers' compensation, issued by the Director of Industrial Relations as provided for by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued. Policy No.:

I have and will maintain workers' compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued. My workers' compensation insurance number and policy number are:

Carrier: \_\_\_\_\_ Policy No: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

I certify that, in the performance of the work for which this permit is issued, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of California, and agree that, if I should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, I shall forthwith comply with those provisions.

**DECLARATION REGARDING CONSTRUCTION LENDING AGENCY**  
 I hereby affirm under penalty of perjury that there is a construction lending agency for the performance of the work for which this permit is issued (Section 3007, Civil Code).

Lender's Name and Address: \_\_\_\_\_

**#4 DECLARATION BY CONSTRUCTION PERMIT APPLICANT:**

By my signature below, I certify to each of the following:

I am a California licensed contractor or  the property owner\* or  authorized to act on the property owner's behalf\*\*.

I have read this construction permit application and the information I have provided is correct.

I agree to comply with all applicable city and county ordinances and state laws relating to building construction.

I authorize representatives of this city or county to enter the above-identified property for inspection purposes.

California Licensed Contractor, Property Owner\* or Authorized Agent\*\*:

Signature: X [Signature] Date: X 2/1/11

Contacts	
<b>Issued To:</b> Contractor YAO LIN CONSTRUCTION YAO LIN CONSTRUCTION 640 ROLPH STREET SAN FRANCISCO CA 94112-0000 (415) 585-3718	<b>Owner:</b> CHOY ISAAC OOJIN 1266 LA CANADA ROAD HILLSBOROUGH CA 94010-0000

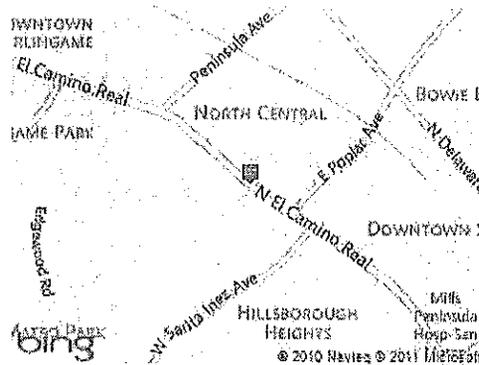
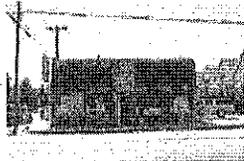
This report prepared for you by Linda Trinidad

These listings were manually emailed to you on Thursday, October 25, 2012 10:14 AM.

1 of 1

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☐



1 / 5

General Property Information

<b>501 NORTH SAN MATEO DRIVE, San Mateo 94401</b>		Status:	<b>Expired</b>	MLS #:	<b>81115345</b>
Class:	<b>Commercial Lease</b>	Orig Price:	<b>\$4,999</b>	List:	<b>04/08/2011</b>
Area:	<b>Eastern Addition/Downtown Area (417)</b>	List Price:	<b>\$3,999</b>	Original:	<b>04/08/2011</b>
County:	<b>SAN MATEO COUNTY</b>			Sale:	
Complex:				COE:	
Approx SqFt:	<b>2,100 (Seller (Unverified))</b>			DOM:	<b>366</b>
Approx Lot:	<b>6,488 Sqft (Seller (Unverified))</b>			Green doc:	<b>No</b>
Bullt/Age:	<b>1961(Seller)/50</b>			Walk Score:	<b>57</b>
Parcel:		Zone:	<b>RM100</b>	Trnsf Tx:	
MLS City:	<b>San Mateo</b>	Lot/Blk:		Tax Amt:	
Tract:		City Limits:	<b>Yes</b>		
Unincorp:	<b>No</b>				
List Info:					
Remarks:	<b>BUILDING QUALIFIES FOR MEDICAL/DENTAL OFFICE GREAT LOCATION AT THE CORNER OF SAN MATEO AND BELLEVUE.</b>				

Commercial Information

Tenants:	Mezz SF:	# Bldg:	<b>1</b>
Rollup Door:	Net Lse SF:	# Unit:	
Min Ht Clr:	Office SF:	# Park:	
Max Ht Clr:	Warehs SF:	# DrIn:	
Ceiling Ht:	Yard Sz SF:	# Docks:	
Owner Pays:			
Tenant Pays:			

Commercial Lease Details

Date Avail:	<b>04/08/2011</b>	Security Dep:	<b>\$6,000</b>
Min Lse Mo:	<b>12</b>	Last Mo Rent:	
Max Lse Mo:		Rent per SF:	<b>\$1.90</b>
Load Factor:		Imprv Allow:	
Lse Info:	<b>Security Deposit Required, Call L/A before writing Deposit Receipt, Credit Check Fee Required</b>		

Features

Construct:	<b>Wood Construction</b>
Cool:	<b>No Heating/Cooling</b>
Energy Feat:	
Flooring:	<b>Tile</b>
Foundation:	
Heating:	<b>Gas Central Forced Air Heat</b>
Levels:	<b>1 Story</b>
Loading:	
Location:	<b>Residential Location</b>
Meters:	<b>Master Electric Meter</b>
Misc:	
Parking:	
Present Use:	<b>Other</b>
Roof:	<b>Tar and Gravel Roof</b>
Sewer:	<b>Sewer In Street &amp; Connected</b>
Utilities:	<b>Three Phase Electricity, Over 200 Amps</b>
Water:	<b>Water Company</b>

Commercial Financials

Annual Expenses	Annual Income & Other Info
-----------------	----------------------------

Prop Taxes:  
 Insurance: **\$1,161**  
 Prop Mgmt:  
 Utilities:  
 Wtr & Swr:  
 Maintenance:  
 Garbage:  
 Landscape:  
 Misc:  
 Total Exp: **\$1,161**  
 Data Source:  
 Lse Period: 1+ to 3 Year Lease  
 Lse Type: Triple Net Lease  
 Operating:

Rental Inc:  
 Other Inc:  
 Grs Sc Inc:  
 Vac Factor:  
 Vac Amount:  
 Grs Ann Inc:  
 Ann Net Inc:  
 Cap Rate:  
 GRM:  
 Inc Includes:

Listed By: **Stanley Lo, Green Banker Realty**

Property History

 [Click Arrow for Property History](#)

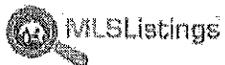
Additional Photos

 [Click Arrow for Photos](#)

[1] [Previous](#) [Next](#) [Top](#) [Back to Client Line display](#)

 Print  Map

Display:  at  per page.



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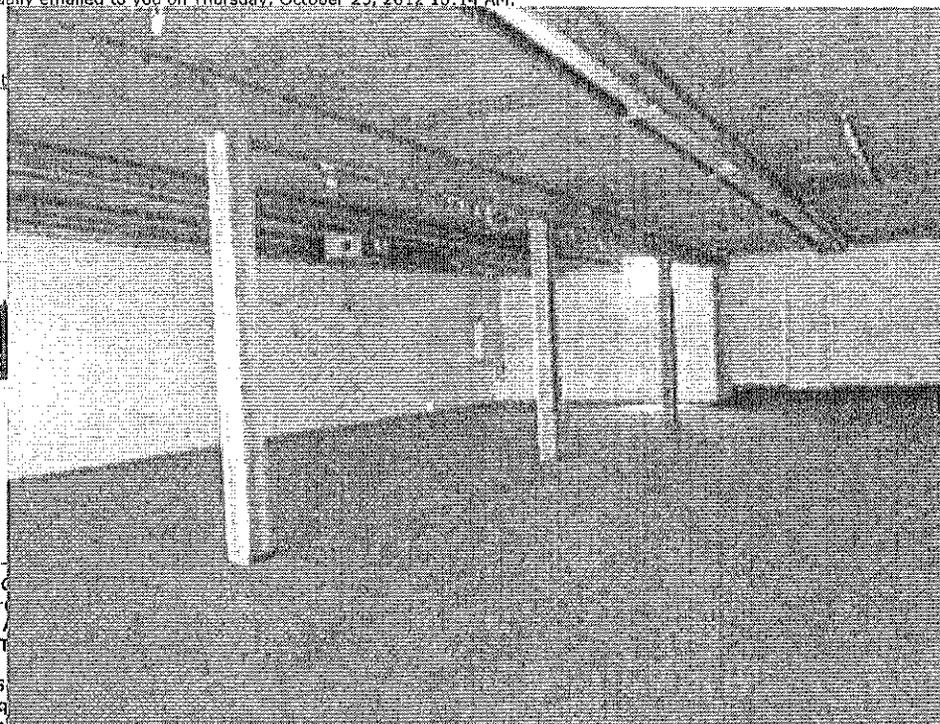
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1 of 1

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1 / 5

**501 NORTH SAN MATEO**

Class: **Commercial**  
 Area: **Eastern**  
 County: **SAN MATEO**  
 Complex:  
 Approx SqFt: **2,100 (S**  
 Approx Lot: **6,488 Sq**  
 Built/Age: **1961 (Se**  
 Parcel:  
 MLS City: **San Mateo**  
 Tract:  
 Unincorp: **No**  
 List Info:  
 Remarks: **BUILDING QUALIFIES FOR MEDICAL/DENTAL OFFICE, GREAT LOCATION AT THE CORNER OF SAN MATEO AND BELLEVUE.**

Parcel: **2 / 5** Zone: **RM100** DOM: **500**  
 Lot/Blk: Green doc: **No**  
 Walk Score: **57**  
 Transf.Tx:  
 City Limits: **Yes** Tax Amt:

Commercial Information

Tenants:	Mezz SF:	# Bldg:	<b>1</b>
Rollup Door:	Net Lse SF:	# Unit:	<b>0</b>
Min Ht Clr:	Office SF:	# Park:	<b>2100</b>
Max Ht Clr:	Warehs SF:	# DrIn:	<b>0</b>
Ceiling Ht:	Yard Sz SF:	# Docks:	<b>0</b>
Owner Pays:			
Tenant Pays:			

**10'+ to 15' Ceilings**  
**Gas, Water, Electric**

Commercial Lease Details

Date Avail:	<b>04/08/2011</b>	Security Dep:	<b>\$6,000</b>
Min Lse Mo:	<b>12</b>	Last Mo Rent:	
Max Lse Mo:		Rent per SF:	<b>\$1.90</b>
Load Factor:		Imprv Allow:	
Lse Info:	<b>Security Deposit Required, Call L/A before writing Deposit Receipt, Credit Check Fee Required</b>		

Features

Construct: **Wood Construction**  
 Cool: **No Heating/Cooling**  
 Energy Feat:  
 Flooring: **Tile**  
 Foundation:  
 Heating: **Gas Central Forced Air Heat**  
 Levels: **1 Story**  
 Loading:  
 Location: **Residential Location**  
 Meters: **Master Electric Meter**  
 Misc:  
 Parking:  
 Present Use: **Other**  
 Roof: **Tar and Gravel Roof**  
 Sewer: **Sewer in Street & Connected**  
 Utilities: **Three Phase Electricity, Over 200 Amps**  
 Water: **Water Company**

Commercial Financials

Annual Expenses Annual Income & Other Info

ATTACHMENT B

Prop Taxes:		Rental Inc:	
Insurance:	\$1,161	Other Inc:	
Prop Mgmt:		Grs Sc Inc:	
Utilities:		Vac Factor:	
Wtr & Swr:		Vac Amount:	
Maintenance:		Grs Ann Inc:	
Garbage:		Ann Net Inc:	
Landscape:		Cap Rate:	
Misc:		GRM:	
Total Exp:	\$1,161	Inc Includes:	
Data Source:			
Lse Period:	1+ to 3 Year Lease		
Lse Type:	Triple Net Lease		
Operating:			

Listed By: **Stanley Lo, Green Banker Realty**

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 [Click Arrow for Property History](#) Property History

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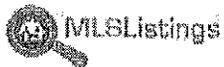
 [Click Arrow for Photos](#) Additional Photos

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 Print  Map

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1 of 1

[1] Previous Next Post

1 / 5



**501 NORTH SAN MATEO**

Class: **Commert**  
 Area: **Eastern /**  
 County: **SAN MAT**  
 Complex:  
 Approx SqFt: **2,100 (S**  
 Approx Lot: **6,488 Sq**  
 Built/Age: **1961 (Sel**  
 Parcel:  
 MLS City: **San Mateo**  
 Tract:  
 Unincorp: **No**  
 List Info:  
 Remarks: **BUILDING QUALIFIES FOR MEDICAL/DENTAL OFFICE. GREAT LOCATION AT THE CORNER OF SAN MATEO AND BELLEVUE.**

5 / 5 Zone: **RM100**  
 Lot/Blk:

Green doc: **No**  
 Walk Score: **57**  
 Trnsf.Tx:  
 Tax Amt:

Commercial Information

Tenants:	Mezz SF:	# Bldg:	1
Rollup Door:	Net Lse SF:	# Unit:	
Min Ht Clr:	Office SF:	# Park:	
Max Ht Clr:	Warehs SF:	# DrIn:	
Ceiling Ht:	Yard Sz SF:	# Docks:	
Owner Pays:			
Tenant Pays:	<b>Gas, Water, Electric</b>		

Commercial Lease Details

Date Avail:	04/08/2011	Security Dep:	\$6,000
Min Lse Mo:	12	Last Mo Rent:	
Max Lse Mo:		Rent per SF:	\$1.90
Load Factor:		Imprv Allow:	
Lse Info:	<b>Security Deposit Required, Call L/A before writing Deposit Receipt, Credit Check Fee Required</b>		

Features

Construct: **Wood Construction**  
 Cool: **No Heating/Cooling**  
 Energy Feat:  
 Flooring: **Tile**  
 Foundation:  
 Heating: **Gas Central Forced Air Heat**  
 Levels: **1 Story**  
 Loading:  
 Location: **Residential Location**  
 Meters: **Master Electric Meter**  
 Misc:  
 Parking:  
 Present Use: **Other**  
 Roof: **Tar and Gravel Roof**  
 Sewer: **Sewer in Street & Connected**  
 Utilities: **Three Phase Electricity, Over 200 Amps**  
 Water: **Water Company**

Commercial Financials

Annual Expenses Annual Income & Other Info

Prop Taxes:		Rental Inc:	
Insurance:	\$1,161	Other Inc:	
Prop Mgmt:		Grs Sc Inc:	
Utilities:		Vac Factor:	
Wtr & Swr:		Vac Amount:	
Maintenance:		Grs Ann Inc:	
Garbage:		Ann Net Inc:	
Landscape:		Cap Rate:	
Misc:		GRM:	
Total Exp:	\$1,161	Inc Includes:	
Data Source:			
Lse Period:	1+ to 3 Year Lease		
Lse Type:	Triple Net Lease		
Operating:			

Listed By: **Stanley Lo, Green Banker Realty**

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Print Map

Display:  at  per page.



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## Gabrielle Whelan

---

**From:** Cecillia Quick  
**Sent:** Tuesday, March 06, 2012 11:58 AM  
**To:** Gabrielle Whelan  
**Subject:** FW: question re possible nonconforming use of market

Here were my thoughts re the market. Best, Cecilia

---

**From:** Cecillia Quick  
**Sent:** Friday, March 02, 2012 6:24 PM  
**To:** Lisa Ring; Ronald "Ron" Munekeawa; Stephen Scott  
**Cc:** Gabrielle Whelan  
**Subject:** question re possible nonconforming use of market

Hi Lisa-this memorializes our conversation regarding the issues regarding the vacant market in an area which is zoned for residential. As we discussed, the area was zoned for residential even when the market opened for business decades ago, but the market obtained a use variance, which is no longer allowed. The market went out of business more than six months ago, but the owner did some demolition work in the interior of the structure without obtaining permits. He subsequently obtained building permits, and is now looking to find another operator for the market.

The issue we discussed was whether the market still qualifies as a legal nonconforming use under the City's municipal code. The first question is whether the use was "abandoned". Under SMMC Section 27.72.020(b), "whenever a nonconforming use of a building or structure, or part thereof, has been discontinued for a period of six consecutive months, such use shall not after being discontinued or abandoned be reestablished, and the use of the premises thereafter shall be in conformity with the regulations of the district." My understanding is that the market has been out of operation for more than six months.

Although the code uses the word "discontinue", it also uses the word "abandoned." It appears the code intends for those words to be synonymous. Caselaw clarifies that when looking to determine if a use has been "abandoned", merely ceasing the use is not enough to prove the abandonment. Rather, there must be evidence of both an intent to abandon, AND an overt act, or failure to act, which carries the implication that the owner does not seek to claim the protection of the nonconforming use status. "Mere cessation of use alone is not enough, although the duration of nonuse may be a factor in determining the abandonment." *Longtin's California Land Use* at 3.83[1], citing *Palco Enters. Inc. v. Beam* (2005) 132 Cal. App. 4<sup>th</sup> 1482. Here, the fact that the owner demolished portions of the interior to ready the building for a tenant, and obtained building permits, suggests that there is no intent to abandon. It would be helpful if the owner could supply a letter documenting his efforts to rent the building or otherwise continue the use even during the times the building has stood vacant.

Assuming the use was not discontinued or abandoned, the next question is whether the owner removed the use from nonconforming status by his actions in demolishing part of the interior. SMMC Section 27.72.010(a) states that a legal nonconforming use may be continued except as otherwise provided by the code. Subsection (b) states that any legal nonconforming use or structure may be continued provided there is no physical change "other than necessary maintenance and repair, except as otherwise permitted herein." This raises the question of whether the demolition was a part of "necessary maintenance and repair." SMMC Section 27.72.060 expands this, and states that "normal maintenance of a building or other structure containing a nonconforming use is permitted, including necessary nonstructural repairs and incidental alterations which do not extend or intensify the nonconforming use. (Emphasis added.)" Section 27.04.460 defines "Structural alterations" to mean "any change other than incidental repairs to a building or structure, involving foundations, bearing walls, columns, beams or girders." According to the building staff, the demolition and work done did not involve the foundations, bearing walls, columns, beams, or girders, and thus was nonstructural. Thus the question is whether the repairs were "normal maintenance" or if the repairs were "necessary" repairs, and "incidental alterations which do not extend or intensify the nonconforming use." It would be helpful if the

owner could supply evidence to support an affirmative answer to those questions. The Building Division may also have an opinion about those factual question. It is possible that the answer is yes, in which case the owner has a credibly argument that the market is still a nonconforming use.

Please let me know if I may be of further assistance.

Best, Cecilia Quick

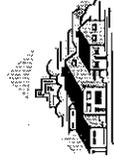
# 501 N. San Mateo Drive An Illegal Non-Conforming Property

San Mateo Heights  
Neighborhood Association



# Termination of Non-Conforming Use per §27.72.050

- “Burdensome to Neighborhood and City”
  - (1) Contributes to Impairment of Property Values
  - (2) Said use is inhibitive of the type of development in the surrounding contemplated by the general plan
  - (3) Said use is otherwise detrimental to the public health, safety, and general welfare
  - (4) Usability of the land for purposes permitted in the zoning district
  - (5) The amount of hardship, if any, to the user of the land



SMHNA

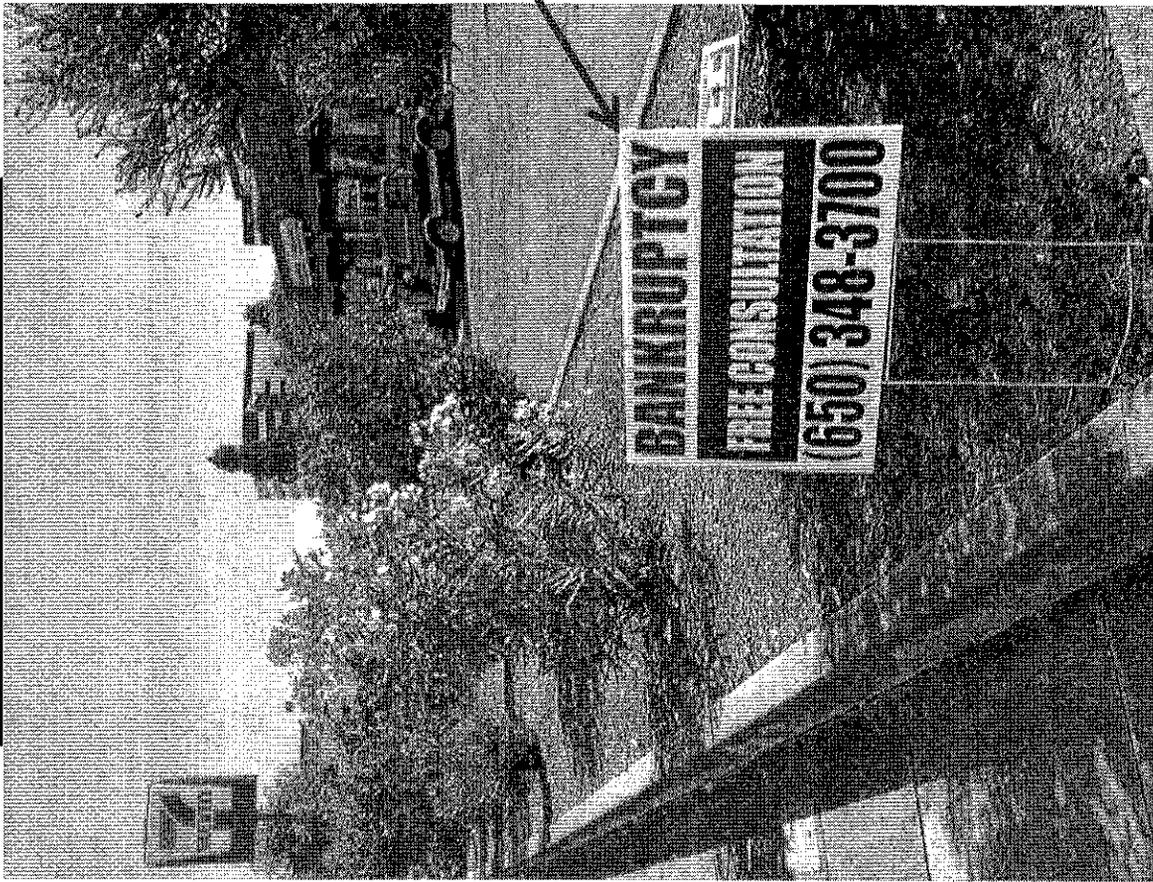
# (1) Contributes to Impairment of Property Values

- Transient, region-wide clientele has little regard for neighborhood
- “Overall, it appears that [convenience stores]...contribute to both crime and urban decay”<sup>1</sup>.
- Urban decay = impaired property values
- 7-Eleven is proven to add to blight and urban decay in San Mateo



# 7-Eleven Is Proven to Attract Blight in San Mateo

7-Eleven at Concar  
and Grant in San  
Mateo



Blight

# 7-Eleven Increases Neighborhood Blight, Decreasing Property Values



# (1) Contributes to Impairment of Property Values

- As a result on the decline in property values, assessed values and property taxes will go down, diminishing the amount of funds for schools, public safety, and government services.



SMHNA

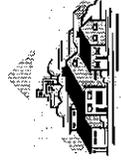
- (2) Said use is inhibitive of the type of development in the surrounding contemplated by the general plan
- Surrounding area is medium-density residential
  - Residential property owners will be hesitant to invest near this now high-intensity commercial use
  - High-intensity commercial use will inhibit growth contemplated by the general plan



SMHNA

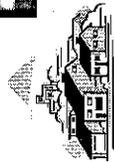
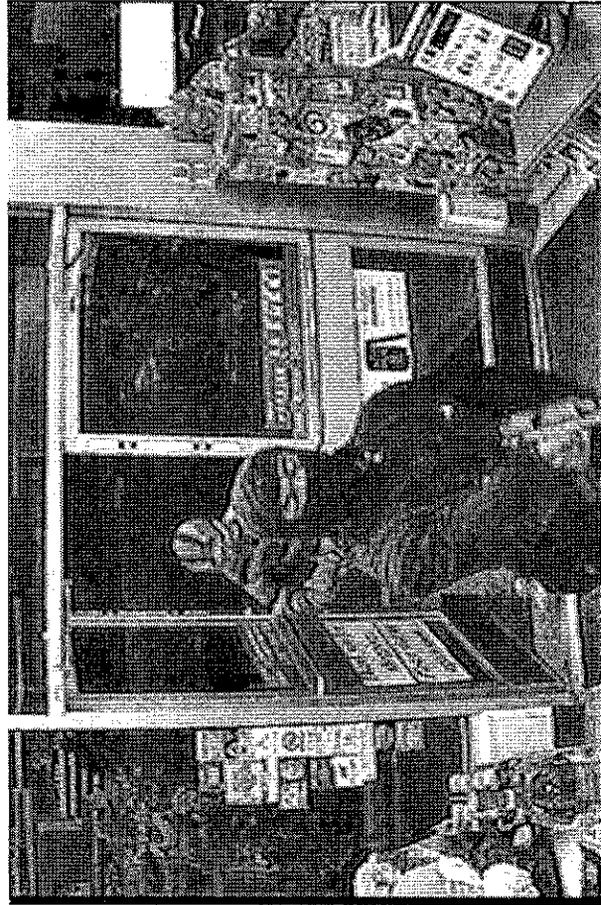
(3) Said use is otherwise detrimental to the public health, safety, and general welfare

- “For a variety of reasons, convenience stores are often very popular targets for a variety of crimes”<sup>2</sup>
- Convenience stores are renowned as being magnets for crime



(3) Said use is otherwise detrimental to the public health, safety, and general welfare

- “Door height markers” are an acknowledgedgement by 7-Eleven itself



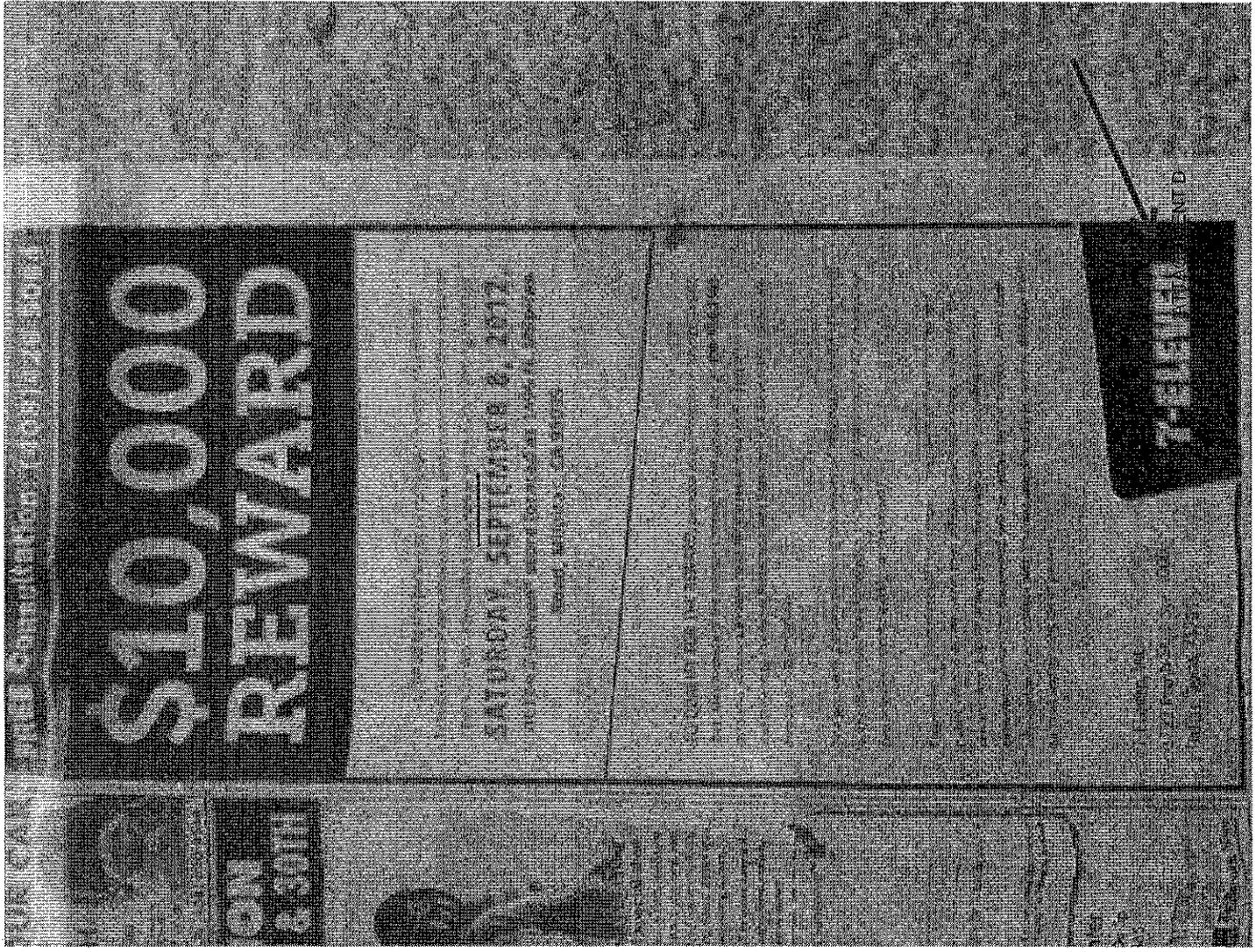
SMHNA

# 7-Eleven Offers Rewards for Murders Conducted at Its Stores

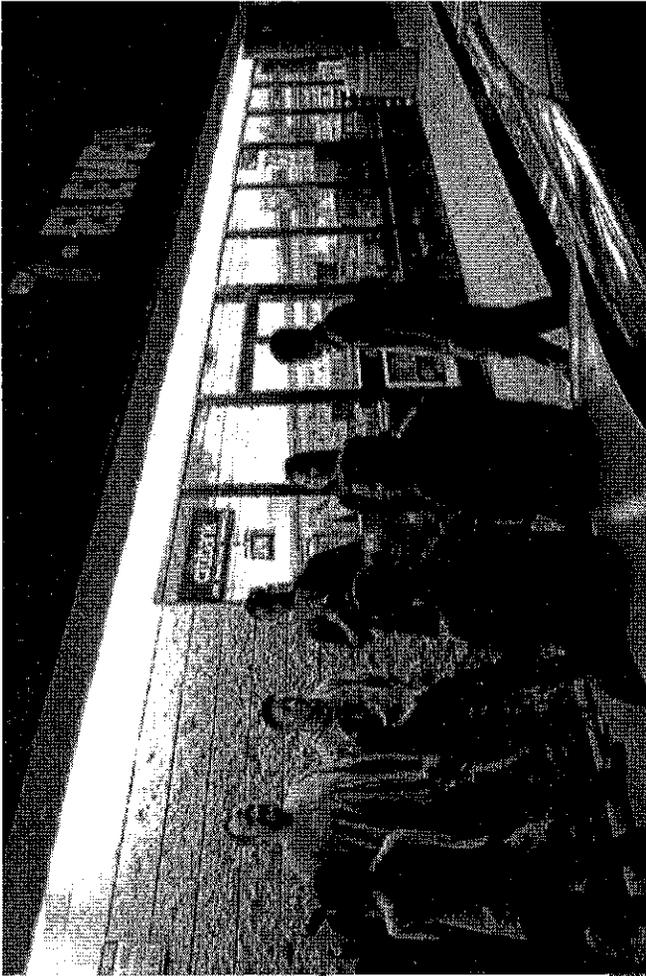
This murder was in Milpitas  
on September 8.

San Jose Mercury News  
9/24/12  
p. A7

(Murders are detrimental to public safety).



7-Elevens are know for  
loitering



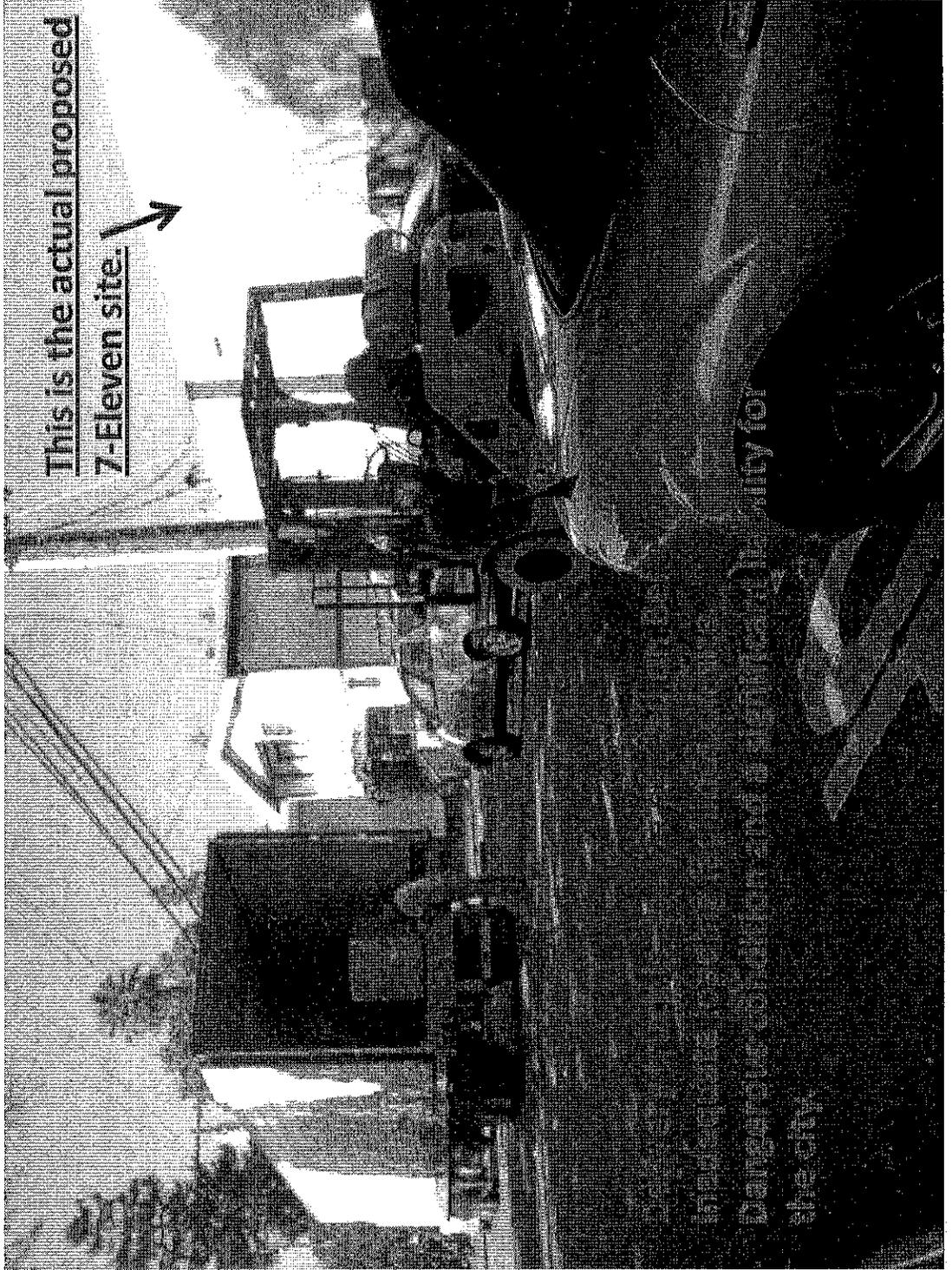
7-Elevens are  
magnets for  
crime

(3) Said use is otherwise detrimental to the public health, safety, and general welfare

- Even “routine” operations are unsafe
- Streets and facilities are not designed for safe deliveries in quantities expected of a 7-Eleven
- City will be exposed to considerable liability if a pedestrian or motorist is injured
  - Building owner and lessor will also be exposed to significant liability.
  - Enhanced liability since this is a known issue?



# Routine Delivery Operations Are Dangerous



- (3) Said use is otherwise detrimental to the public health, safety, and general welfare
- Two facilities for recovering substance abusers is located on the same block.
  - Is it in the general welfare (or even moral?) to locate a store that makes most of its income selling alcohol and cigarettes next to detox facilities?



SMHNA



## (4) Usability of the land for purposes permitted in the zoning district

- Perfectly flat plot, good residential access with full utilities
- Near CalTrain and walkable to both downtown San Mateo and Burlingame
- Very desirable residential plot
- No issues affecting residential usability



SMHNA

**(5) The amount of hardship, if any, to the user of the land**

- Likely that owner will be able to make more money conforming with the zoning code and building R4 residential units.
- Existing structure is very limited, with no real value. A box and a slab.
- No significant hardship to owner.



SMHNA

It is abundantly clear that the intensified use caused by the 7-Eleven is “especially burdensome upon the surrounding neighborhood and the community at large and that a termination within such time will not be unduly oppressive or constitute a denial of constitutionally guaranteed rights”.



SMHNA

# Neighborhood Demand

- Minimize the burden to the neighborhood caused by the intensified use
  - Stipulate the minimum 2 year operation period
  - Provide limitations on:
    - Hours of operation (7 am to 7 pm – Stangalini’s hours)
    - Signage, both on building, in windows, and around property
    - Operations (delivery times and locations)
  - Require enhanced police patrols or private security (paid for by owner)
  - Require neighborhood cleaning (paid for by owner)
  - Work with neighborhood to help deny a liquor license so as to protect sensitive populations.



SMHNA

# End – History Slides Follow



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# An Easy Decision and the Right

## Decision

- The easy decision is to terminate the Non-Conforming Use via §27.72.050, with use limitations in an attempt to mitigate the increased intensity.
- The Right Decision is Harder
  - Admit a mistake was made by the City
  - A building permit should not have been issued
  - Multiple illegalities
  - Rescind the building permit immediately



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