

Toni Dicapua

From: jackie jones [grafis@att.net]
Sent: Sunday, November 11, 2012 3:03 PM
To: Brandt Grotte
Cc: David Lim; Maureen Freschet; John "Jack" Matthews; Robert Ross; City Mgr; Planning Commission
Subject: Re: Say NO to 7-Eleven, Letter to City Council
Attachments: pastedGraphic.tiff

On Nov 11, 2012, at 11:34 AM, CHRISTINE Y Stiles wrote:

Dear San Mateo City Council:

I am writing to ask that you represent our community in the way we elected you to do. You are all intelligent and highly respected individuals, who we believe care about our community. It is under this premise that you each have been elected to City Council positions.

I join many other citizens of our community who are very disturbed about the lobbying / special interests that we believe have resulted in the situation of the impending opening of a 7-Eleven on San Mateo Drive. We, as did other fellow citizens in our community, observed the special interests in action at the recent Planning Commission meeting. Please, do not be intimidated by the lobbyists representing 7 Eleven, do what is right for the community you represent. Most importantly, protect the children of our community.

Please remember the Citizens of San Mateo you were elected to represent. You were not elected to represent 7-Eleven/foreign multinational conglomerates, landlords who live and raise their families outside of our City, nor special interests/lobbyists who also reside outside of both our city and county boundaries.

Do what is right and reject the 7-Eleven. It is an ILLEGAL INTENSIFICATION of the property at 501 North San Mateo Drive. This use of the property is also BURDENSOME to the community, as it endangers the health and welfare of our citizens. There can be no denying that 7-Eleven offers MANY unhealthy options per square foot, AND also will cause increased crime, traffic, noise in our City. We also ask that you ensure that until you can quickly shut down the 7-Eleven, that you ensure it is NEVER licensed for alcohol sales. This is irresponsible in light of its extended hours of operation, the proximity to San Mateo High School, and the fact that it is in the midst of a neighborhood of children and families.

In addition, PLEASE ENSURE THIS DOES NOT HAPPEN IN ANY OTHER SAN MATEO NEIGHBORHOOD.

The residents of San Mateo who elected you each to office are counting on you to do the right thing for the community that you have been given the honor to represent.

jackie jones, Principal
Grafis Design

(650) 315-2317
grafis@att.net

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



Toni Dicapua

From: Tammie Medeiros [tammie_medeiros@hotmail.com]
Sent: Sunday, November 11, 2012 8:01 PM
To: Brandt Grotte; David Lim; Maureen Freschet; John "Jack" Matthews; Robert Ross
Cc: City Mgr; Planning Commission
Subject: Please Consider!

Dear San Mateo City Council:

We are writing to ask that you represent our community in the way we elected you to do. You are all intelligent and highly respected individuals, who we believe care about our community. It is under this premise that you each have been elected to City Council positions.

We join many other citizens of our community who are very disturbed about the lobbying / special interests that we believe have resulted in the situation of the impending opening of a 7-Eleven on San Mateo Drive. We, as did other fellow citizens in our community, observed the special interests in action at the recent Planning Commission meeting. Please, do not be intimidated by the lobbyists representing 7 Eleven, do what is right for the community you represent. Most importantly, protect the children of our community.

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In addition, PLEASE ENSURE THIS DOES NOT HAPPEN IN ANY OTHER SAN MATEO NEIGHBORHOOD.

The residents of San Mateo who elected you each to office are counting on you to do the right thing for the community that you have been given the honor to represent.

RECEIVED

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OFFICE OF CITY CLERK
CITY HALL
SAN MATEO, CA

RICHARD D. GIVENS
Lawyer
617 Veterans Boulevard, Suite 106
Redwood City, CA 94063
650 365 6144
650 351 1723 (Fax)
rgivens4298@att.net

November 12, 2012

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

Patrice Olds
City Clerk
City of San Mateo,
330 West 20th Avenue
San Mateo, CA 94403

RE: 501 North San Mateo Drive. 7-11 – PDP Bayfair, LLC.

Dear Mr. Mason and Ms. Olds:

This office has been retained to represent PDP Bayfair LLC (hereafter "PDP") the owner of 501 N. San Mateo Drive (hereafter the "Property") in the matters currently scheduled to be heard by the City Council (hereafter "City") on November 15, 2012. The following is an executive summary of PDP's position with regard to the various issues relating to the Property. This letter will discuss:

1. The City Attorney's findings with regard to San Mateo City Code §27.72.030;
2. The Staff findings and conclusions with regard to San Mateo City Code §27.72.050;
3. The fact the City is estopped from taking any action that would interfere with use of Property as a 7-Eleven market. The estoppel is based on the PDP's expenditure of over One Million Dollars in reliance on oral and written representations made by the City that the proposed use of the Property was a legal non-conforming use and further good faith reliance on tangible representations as to

the validity of the nonconforming use by the issuance of a building permit and other permits for the build out of the 7-Eleven.

As I understand it the City Council will consider the following issues on November 15, 2012:

1. Whether to initiate a hearing to consider if the use as a market is a legal nonconforming use in accordance with Code §27.72.030. If the Council decides to initiate the process under the cited code section then all further matters regarding the Property would be tabled or continued pending the outcome of the §27.72.030 hearing.
2. If the Council decides not to initiate a §27.72.030 process than a hearing pursuant to the provisions of §27.72.050 will go forward.

A. San Mateo City Code §27.72.030

On October 25, 2012 Senior Planner Ring filed her report with the Planning Commission and informed it that in conjunction with the City Attorney's office a determination had been made that the nonconforming use of the Property as a convenience market was legal and in existence as of the date of her report. On Friday November 9, 2012, subsequent to the Planning Commission meeting of October 30, 2012, the Community Development Department reiterated the opinion of Senior Planner Ring stating that the arguments and materials presented by the attorney for some of the residents in the neighborhood..... ***"Do not support the conclusion that the market use had been in fact abandoned."*** (Community Development Report, pg 8. 11.15.12). It is respectfully submitted that the §27.72.30 issue has been decided but should the Council wish to pursue it in the face of the two opinions PDP is prepared to present evidence of intent and vigorously defend the legal status of the nonconforming use. Further, PDP will contend that for the reasons stated above the City is estopped from making any finding that will interfere with PDP's vested property right.

B. San Mateo City Code §27.72.050

Code §27.72.050 authorizes the termination of a legal non-conforming use if two conditions are met. The City has the burden of proving the existence of both of those conditions. On two occasions the City Attorney and the Staff of the City of San Mateo have concluded that the City cannot meet the burden of proof required by the statute and therefore cannot terminate the non-conforming use. Prior to reaching its opinions and conclusions the City retained the firm of Economic & Planning Systems, Inc., (EPS) a recognized expert in the field. Based on an investigation and report by EPS the ***"Staff concludes that the market use will not be "especially burdensome" on the neighborhood or the community"*** and recommended ***"not to terminate the existing legal non-conforming market located at 501 N. San Mateo Drive."*** The report, its conclusions, and the Staff recommendations were submitted to the Planning Commission for its consideration at its October 30, 2012 meeting. Nevertheless, the Planning Commission

chose to ignore the Staff recommendations, the report by experts in the field and chose to substitute its judgment in place of those who are expert in the field and ruled contrary to the recommendations.

1. **Burden of Proof on Issue of "Especially Burdensome"**: In order to terminate the legal nonconforming use of the Property the City has the burden of proving that the use of the property is "especially burdensome" on the neighborhood and the surrounding community. The City has admitted that it cannot meet that burden and has recommended that the existing legal nonconforming use not be terminated. The only admissible evidence presented on this issue was the report prepared by EPS which concluded that the elements necessary to terminate the legal nonconforming use of the Property did not exist.

While the Code only permits evidence pertaining to the use of the Property as a market not the user it is anticipated that testimony will be offered to show that 7-Eleven stores, as a category of users generate negative community impacts. PDP objects to any proffered evidence of this sort on the basis of relevance (Cal. Evidence Code §210). Further, to be relevant the proponent of any comparison evidence must lay a foundation that establishes that the 7-Eleven or other entity being compared operates in an identical or substantially similar environment, setting, or neighborhood as the Property. (Cal. Evidence Code §§ 403 & 405). In short the City Council should not permit evidence of location comparison unless it is established that the locations are identical or substantially similar.

Finally, the use of the word "especially" places a higher threshold of proof than had the code simply said "burdensome." According to Webster's, New Collegiate Dictionary the word "especially" means "*unusually great or significant.*" EPS and the Staff concluded that there is no evidence to support a finding of "especially burdensome" and the only admissible evidence on the issue confirms the Staff opinion.

It is respectfully submitted that the legal nonconforming use is not "especially burdensome" and that the City Council enter its finding to that effect.

2. **The City cannot meet the Burden of Proof required by Code §27.72.050 on the Issue of Amortizing PDP's Damages over a 5 year period.**

By the terms of Code Section 27.72.050 the City may terminate a nonconforming use within 5 years from the date it determines (a) that the use is 'especially' burdensome upon the surrounding neighborhood or surrounding community at large **and (b) that the termination [within the 5 year period] will not be duly oppressive or constitute a denial of constitutionally guaranteed rights.** By the terms of the statute the City has the burden of proving both (a) and (b) before it can terminate the nonconforming use. Based on the report of the expert retained by the City the City Staff determined that the current market use was not 'especially burdensome' as that term is used in §27.72.050. After the hearing be-

fore the Planning Commission the Staff asked EPS to review its opinions and conclusions and EPS affirmed its earlier findings and conclusions and saw no reason to change them. Further EPS found that PDP could not recoup its investment "within the five-year period, the maximum allowed by the code" (EPS Report, p.6. 10.24.12)¹. In short EPS found that the neither of the two elements necessary to terminate a nonconforming use could be proved.

It is the position of PDP that if either one of the elements set forth in §27.72.050 cannot be proved by substantial evidence the terms of the section prevent the Council from terminating of the non-conforming use.

3. Issue of Amortization for a period longer than 5 years: Absent statutory authority authorizing the City to amortize the loss to PDP over a period longer than 5 years, it cannot do so. There is no statutory authorization allowing the City to go beyond the 5 year maximum set forth in §27.72.050. Therefore any discussion of amortizing the loss of PDP over a period greater than 5 years is objected to on the basis that §27.72.050 is the exclusive remedy and it limits the amortization period to 5 years.

It is the position of PDP that if the hardship or loss cannot be amortized over a 5 year period the legal nonconforming use cannot be terminated.

CONCLUSION

I have reviewed the letter from Ms. Camas Steinmetz, Esq., dated November 9, 2012 but not received until November 13, 2012. Each of the arguments made by Ms. Steinmetz were considered, analyzed, and rejected in the Staff report prepared for the November 15, 2012 meeting. Ms. Steinmetz argues that the nonconforming use was never established pursuant to the terms of 27.72.030 and therefore there never was a nonconforming use. As such, according to Ms. Steinmetz's argument, any building permits issued in reliance on the existence of a non conforming use are invalid and grant to rights to PDP because the underlying nonconforming use is nonexistent. Ms, Steinmetz argument is raised by its own heat. The cases she cites in support of her argument hold that building permits issued pursuant to an illegal or invalid ordinance or code section are themselves invalid. While that seems a sensible proposition it does not apply to the factual situation before the City Council. In this case Ms. Steinmetz ignores the fact that the use of the

¹ PDP objects to the formula used by EPS to calculate PDP's financial damage. The EPS formula did not consider the 7-Eleven lease and the effect that a termination of the nonconforming use would have on PDP with the lease in place. It must be remembered that PDP purchased the property and entered into the lease based on representations made by the City that the nonconforming use was legal and currently in place. The hardship to PDP [see Code §27.72.050 (5)] is not only the purchase price but the economic damages it will suffer from a loss of the long term lease benefits as well as damage exposure it might suffer from 7-Eleven.

Property as a market commenced in the 1920's predating the City's earliest zoning code² and continued as a market for some 75 years thereafter and as pointed out at pg. 3 in the Report prepared for the hearing on November 15, 2012: "*The subject property was zoned Fourth Residential District in 1937 so the market has been a nonconforming use for approximately 75 years.*" The fact that the City did not institute a determination hearing pursuant to 27.72.030, or the fact that no formal determination of a nonconforming use was made until the question came up in 2011-2012 when it was determined by the City that the Property was subject to a nonconforming use is not prejudicial to the decision that the Property was subject to a nonconforming use. In *West Washington Properties, LLC v. California Department of Transportation - [filed October 10, 2012, publication ordered November 5, 2012, Second District, Div. Eight. Cite as 2012 S.O.S. 5683]* it was held that the passage of time does not stop the government from making a determination as was done in this case.

With the exception of the portion on amortization PDP agrees with the Staff analysis contained in the report prepared for the November 15, 2012 meeting.

The City of San Mateo has the burden of proving that the existing legal nonconforming use is especially "burdensome" to the community. All admissible evidence is evidence that supports a contrary conclusion. The City Staff has warned the City not to consider evidence directed against a particular user, in this case 7-Eleven as the code does not permit it. It is a form of profiling and as such is inadmissible evidence. The consideration is the use of the property not the user. PDP objects to any testimony or documentation that will or has been presented directed at a particular user as it is not relevant and contrary to the code section. The City of San Mateo cannot meet its burden and the weight of its own evidence dictates that a finding that the use is not "especially burdensome" be entered.

If the City of San Mateo finds that it has met its burden of proving that the existing nonconforming use is "especially burdensome" it then has the burden of proving that PDP can be compensated for all of the hardship and financial loss it would suffer within 5 years. The City has admitted that it cannot meet that burden. Because there is no provision in the San Mateo City Code that permits amortization over a period greater than 5 years and the City lacks the authority to terminate the legal nonconforming use of the Property and by its terms San Mateo City Code §27.72.050 dictates that the Council enter its finding that the use is a legal nonconforming use.

It is respectfully submitted that the law and the facts dictate that the Council enter its finding that it has not met its burden of proof to terminate the nonconforming use and that the legal nonconforming use is good valid and in existence.

² This is what a non conforming use is and how it gets established. 27.72.030 provides for the establishment of a nonconforming use but it is not exclusive. A nonconforming use can, as was done here, be established by a use of property in a way that is contrary to a zoning act passed subsequent to the commencement of the use.

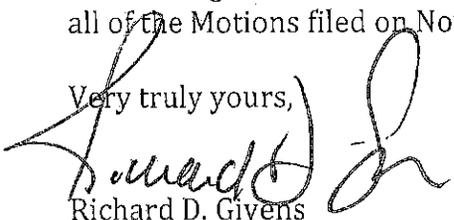
Finally, it is the position of PDP that it has acquired a fundamental vested right in the nonconforming use. Mr. Amoroso's testimony, (submitted orally and in writing and attached hereto as Exhibit A) establishes that PDP purchased the Property for a price in excess of One Million Dollars *after* receiving oral and written assurances that the nonconforming use legally existed and after receiving building permits from the City. Further, relying in good faith on the representations of the City PDP entered into a long term lease with 7-Eleven which, if cancelled, could expose PDP to substantial liability.

"Where 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 principal that property may not be taken without due process." City of Sonoma v. Rex, (1991)231 CA 3rd 1289, 1298.

The law is quite clear that a court will set aside any order interfering with an established vested right on the basis that the government is estopped to interfere with a vested right that it was responsible for creating. PDP insists that its rights be respected and honored by the City Council.

As a closing matter, and with the greatest respect to the Council, PDP adopts and joins in all of the Motions filed on November 13, 2012 by 7-Eleven.

Very truly yours,


Richard D. Givens

CITY COUNCIL OF THE CITY OF SAN MATEO

In re:)
) Declaration of Josh Amoroso
)
) Hearing Date: November 15, 2012
)
 The matter of 501 N. San Mateo Drive) Time: 7:00 p.m.
)
)
)
)

I, Josh Amoroso declare:

1. That I am a principal of PDP Bayfair, LLC (hereafter "PDP") the owner of record of 501 North San Mateo Drive (hereafter "Property").
2. On September 15, 2011, PDP entered into a contract to purchase the Property. The obligation to close was conditioned on the ability to obtain City approval and building permits for the projected use of the property as a market and legality of the non-conforming use to use the property as a market.
3. On September 16, 2011, a person at the counter of the Planning Department of the City of San Mateo (hereafter "City") informed me that the property had been vacant for more than six (6) months and as a result the previous use of the property as a market was no longer a legal non conforming use but rather a non conforming use. We were further informed that the property was now considered residential.
4. In early October of 2011, I scheduled a meeting with the City's Zoning Administrator Steve Scott to discuss options to extend the legal non conforming use of the Property.
5. On October 18, 2011, the owner/seller of the property sent a letter to Mr. Scott protesting the loss of the Property's legal non conforming use status and requested a

1 chance to discuss the matter with Mr. Scott. In the letter the owner/seller pointed out
2 that PDP's obligation to purchase the Property was...*"predicated upon a commercial use*
3 *and more particularly a neighborhood convenience market."*

4 6. On October 26, 2011, Mr. Scott replied that while he sympathized with the posi-
5 tions taken in letter of October 18, 2011 he felt the only recourse was an amendment to
6 the San Mateo City Code.

7 7. On December 6, 2011, I met with members of the City to discuss code amendment
8 procedure or a special use permit to extend the legal non conforming use status of the
9 Property. At the meeting 7-Eleven as a potential tenant was discussed. The City did not
10 voice any objection to 7-Eleven as a tenant. The City felt that a Code amendment proce-
11 dure would be the most efficacious method of proceeding and pointed out that it would
12 require a neighborhood meeting and a Planning Commission and City Council hearing.
13 Present at the meeting were: 1. Ron Munekawa-City of San Mateo; 2. Steve Scott-City of
14 San Mateo; 3. Stanley Lo-Real Estate Broker for seller/owner Isaac Choy; 4. Isaac Choy -
15 seller /owner; 5. Jeff Neustadt-PDP; 6. Josh Amoroso-PDP, and; 7. Steve Cutter-PDP.

16 8. A determination by PDP was made to pursue the route of amending the Code. On
17 February 17, 2012 I caused to be sent to the people living in the neighborhood a notice
18 inviting them to attend and participate in a meeting to be held on February 29, 2012 at
19 which reestablishing the former use for the site and extending the legal non-conforming
20 use for period beyond six (6) months would be discussed.

21 9. At approximately 3 pm on the afternoon of February 29, 2012, I received a tele-
22 phone call from Lisa Ring, Senior Planner for the City, informing me that the City Attor-
23 ney had made a determination that the legal non conforming use was indeed still a legal
24 non conforming use based on the fact that the owner/seller had not intended to aban-
25 don the use of the Property as a market. PDP did not receive formal notification of this
26 ruling until March 2, 2012.

27 10. Based on the fact that we had no formal ruling from the City on the issue of the non
28 conforming use the meeting with the neighbors scheduled for that evening went for-
ward.

1 11. On March 2, 2012, we received a copy of an email from Senior Planner Lisa Ring
2 forwarding the legal opinion of City Attorney Cecilla Quick in which Ms. Quick opined
3 that non conforming use was still legal and that there was no "discontinuance" or "aban-
4 donment" as those terms are used in the San Mateo City Code. Based on the email and
5 assurances from Ms. Ring and the March 2, 2012 email I discontinued any further activi-
6 ty with regard to a Code amendment.

7 12. On June 6, 2011, 7-Eleven submitted its building plans for its grocery store to be
8 located at 501 North San Mateo Drive.

9 13. On July 20, 2012, I received an email from Steve Scott of the City that the 7-Eleven
10 tenant improvement plans for the Property had been approved.

11 14. On August 30, 2012 the City issued a number of permits, including a building per-
12 mit. The Project Description was for "*Interior Remodel for new 7-Eleven store of 2,103sf
13 to replace previous Italian market.*"

14 15. Based on the representations of the City that the nonconforming use was a legal
15 non conforming use and based on the issuance of the various permits I closed escrow
16 and title was transferred to PDP.

17 16. Had it not been for the assurances by the City that the non conforming use was le-
18 gal and that the property could be used for a retail market and had it not been for the is-
19 suance of the building permits by the City for the very purpose of tenant improvements
20 for a retail market PDP would have not have purchased the Property.

21 17. Based on the representations of the City and the issuance of the permits, PDP en-
22 tered into a long term lease (30 years) with 7-Eleven. Under the terms of the lease there
23 is potential liability to 7-Eleven should the lease be terminated prior to its expiration by
24 the proposed action of the City Council.

25 18. I have read and studied the Staff Report prepared for the October 30, 2012 Plan-
26 ning Commission meeting and the Staff Report prepared for the November 15, 2012 City
27 Council meeting. I have read the Report of Economic & Planning Systems Inc, (hereafter
28 "EPS") prepared for the October 30, 2012 Planning Commission meeting and the sup-
plement prepared subsequent to the Planning Commission meeting and while I agree

1 with the findings of the Staff Report and the EPS report that the 7-Eleven market will
 2 not constitute an "especially" burdensome use of the property as that term is used in
 3 Code §27.72.050 I take exception to EPS opinion regarding amortization and the metrics
 4 used by EPS to determine the dollar amount that must be amortized. First, Code
 5 §27.72.050 does not permit amortization beyond 5 years. The Code clearly states that if
 6 the loss or hardship of the owner cannot be amortized over a 5 year period the legal non
 7 conforming use may not be terminated. Further, there is no statutory authority in the
 8 San Mateo City Code that permits the City to extend the amortization period beyond 5
 9 years. Finally, EPS failed to consider the 7-Eleven leases in its calculation of damages or
 10 hardship that would be suffered PDP if the legal non conforming use was terminated by
 11 the City. Because the lease was entered into in the good faith belief that the Property
 12 was subject to a legal non conforming use that would permit a 7-Eleven to operate on
 13 the Property any damages resulting from a premature termination of the non conform-
 14 ing use would be incurred as the result of reliance placed on the City's representations
 15 and must be considered when calculating the hardship or damages suffered by PDP. We
 16 have Calculated those damages or PDP's hardship to be as follows (includes potential
 exposure to 7-Eleven):

17	• PDP Loss of Rent	3,400,000.00
18	• PDP Land/Building Acquisition Cost	1,009,000.00
19	• PDP Loss of NNN Expenses	775,000.00
20	• PDP Soft Cost Associated w/Acquisition	50,000.00
21	• 7-Eleven Loss of income 30 yr	2,400,000.00
22	• 7-Eleven hard/soft Building Costs	475,000.00
23	• 7-Eleven Equipment Cost	320,115.00
24	• 7-Eleven Loss of Franchise Fee	500,000.00
25	TOTAL	\$8,929,115.00
26		<Residual Land Value 300,000.00>
27	GRAND TOTAL	\$8,629.115.00

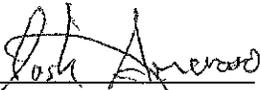
1 19. I have reviewed the various submittals made by the property owners in the
2 neighborhood. The Code requires that the City Council consider the use of the Property
3 by category-e.g. "food market" and does not allow the Council to consider prospective
4 users or the use by a particular tenant. Nevertheless, testimony was entered at the
5 Planning Commission stage as to 7-Elevens located in neighborhoods in San Mateo that
6 were markedly dissimilar to the neighborhood of 501 North San Mateo Drive. Selected
7 negative statistics regarding police calls to the dissimilarly situated 7-Eleven markets
8 were entered into evidence at the Planning Commission to prove that the same statistics
9 could be expected if the 7-Eleven were permitted to operate at 501 North San Mateo
10 Drive. While improper and illogical it is anticipated that the same tactic will be used at
11 the City Council meeting on November 15, 2012. Initially it is well to point out that only
12 negative statistics will be presented and there will be no effort to lay a foundation that
13 the negative statistics relate to a 7-Eleven that is similarly situated to the 7-Eleven at
14 501 North San Mateo Drive. Logically then, for the negative statistics to have meaning
15 evidence will have to be introduced to show that compared stores are in substantially
16 similar neighborhoods. It is submitted that this cannot be done. In short PDP objects to
17 the introduction of any evidence of police calls or negative statistics that relate to other
18 store or 7-Eleven's unless the proponent of those statistics can show that the environ-
19 ment surrounding the store is identical or substantially similar to that existing at 501
20 North San Mateo Drive.

21 20. Finally, PDP contends that it has proceeded in the good faith reliance upon the rep-
22 resentations both orally and through the permitting process that the 7-Eleven project
23 has been fully approved and that should the legal non conforming use be terminated by
24 the proposed action of the City Council PDP will suffer substantial damage as set forth
25 and explained in paragraph 18. In view of the foregoing it is PDP's position that it has a
26 "vested right" as that term is defined in the case law and that the City is estopped from
27 changing the legal non conforming use to a non conforming use.
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Date: November 14, 2012

PDP Bayfair, LLC



Josh Amoroso

6
DECLARATION OF JOSH AMOROSO
EX. A

Joan Diskin

From: Brandt Grotte Photomask
Sent: Monday, November 12, 2012 6:17 AM
To: Patrice Olds
Cc: Shawn Mason; Susan Loftus
Subject: FW: Opposition to 7-11 on San Mateo Drive

Please add to Public Record

Regards,
Brandt

From: Chris Tong [<mailto:christong@outlook.com>]
Sent: Sunday, November 11, 2012 11:53 PM
To: bgrotte@cityofsanmateo.org; dlim@cityofsanmateo.org; mfreschet@cityofsanmateo.org; jmatthews@cityofsanmateo.org; rross@cityofsanmateo.org
Subject: Opposition to 7-11 on San Mateo Drive

Dear All,

Please add me to the list of residents in the San Mateo Heights area who are opposed to the 7-11 store currently being built on San Mateo Drive. I understand that you have all received numerous emails from other residents expressing the various concerns related to the 7-11, so I will not repeat the numerous reasons why letting a 7-11 open in our neighborhood is a horrible idea.

As officials elected by residents of San Mateo, please listen to the concerns of those who you represent (and not outside developers or foreign corporations) and stop this store from opening.

Chris Tong
Poplar Avenue homeowner

PRIVILEGE AND CONFIDENTIALITY NOTICE: This message, together with any attachments, is intended only for the use of the individual or entity to which it is addressed. It may contain information that is confidential and prohibited from disclosure. If you are not the intended recipient, you are hereby notified that any dissemination or copying of this message or any attachment is strictly prohibited. If you have received this message in error, please notify the original sender immediately by telephone or by return e-mail and delete this message along with any attachments from your computer. Thank you.

Joan Diskin

From: David Lim
Sent: Monday, November 12, 2012 10:04 AM
To: Kathy McConnell
Cc: Patrice Olds; Shawn Mason; Lisa Grote; Susan Loftus
Subject: Re: 7-11 Cancer

Ms McConnell

Thank you for your email. I am forwarding your email to City staff for inclusion in the public record.

David Lim
Sent from my iPhone

On Nov 12, 2012, at 8:48 AM, "Kathy McConnell" <kmcon@sbcglobal.net> wrote:

Dear San Mateo City Council Members,

I attended the Planning Commission meeting on October 30 and was pleasantly surprised at how well the **public** represented itself in its case against allowing a 24 hour cancer to invade our community. This kind of cancer is fed by people from outside the area and is not a "neighborhood market" as it is being portrayed by the 7-11 Corporation and the City Staff. The approval of the project and interpretation of Code were made **without public input** because it is clear the store is **not in the public interest**.

The members of the Planning Commission agreed that opening a 7-11 store in this residential neighborhood is **especially burdensome**. This is an example of the **public** asking those of you working for the **public**, elected by the **public**, to **rule in favor of the public**.

The circumstances around the approval of this project have created the **perception of corruption**, whether or not corruption actually took place. Ethical behavior is the glue that holds a democratic society together. Ethical behavior and transparency are what differentiate us from struggling third world countries wherein the **public** have no say in matters that affect them.

We respectfully request you not allow that store to open. Please, consider executing your leadership from a big picture-visionary perspective. You would certainly serve many more people that way.

Thank you for your time and consideration,

Kathy McConnell
411 Williams Place
San Mateo, CA 94401
650-784-5681

Joan Diskin

From: Brandt Grotte Photomask
Sent: Monday, November 12, 2012 1:47 PM
To: Patrice Olds; Ronald "Ron" Munekawa
Subject: FW: Hello from a concerned resident of San Mateo

Please accept as public comment

Regards,
Brandt

From: Lisa McKenna [<mailto:lisanicolemckenna@hotmail.com>]
Sent: Monday, November 12, 2012 1:45 PM
To: bgrotte@cityofsanmateo.org
Subject: Hello from a concerned resident of San Mateo

Hello,

I am writing to let you know of our family's concern about the new 7 Eleven that is planning to open at 501 N San Mateo Drive. We have lived in this neighborhood since 2003 and feel as if this 24 hour store was secretly placed in there without our knowledge. We are concerned about the intensification this will cause to our little, quiet community. We are concerned about crime, litter, loitering, potential drug use, traffic, congestion, public intoxication and overall safety. We also know that most potential buyers do not want to live close by to a 7 Eleven and we are concerned about our property value. We have worked hard to live in this neighborhood and now feel as if the neighborhood will not have the quiet charm it once had.

Please please hear us! We are sickened over the fact that this 24 hour store will open shortly and the potential degradation of our neighborhood is about to happen in front of our very own eyes. It is sad to think about.

I know that you have heard from several residents in my community. Although I do not expect a personalized return email, I do expect you to do the right thing and help us.

Sincerely,

Lisa McGoldrick
650-759-9559 cell
434 Highland Ave
San Mateo

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Joan Diskin

From: Brandt Grotte Photomask
Sent: Monday, November 12, 2012 8:50 AM
To: Patrice Olds; Ronald "Ron" Munekawa
Subject: FW: No on 7-Eleven

Public comment please

B

From: Millie Castillo [<mailto:dartillo06@yahoo.com>]
Sent: Monday, November 12, 2012 8:46 AM
To: bgrotte@cityofsanmateo.org; dlim@cityofsanmateo.org; mfreschet@cityofsanmateo.org; jmatthews@cityofsanmateo.org; rross@cityofsanmateo.org
Subject: No on 7-Eleven

Dear Mayor and City Council Members:

As a homeowner living directly on San Mateo Drive, the establishment of a 7-Eleven extremely concerns me for the SAFETY of my family, the DECLINE in our property value and the INCREASE in the already heavy traffic street. The very close proximity to San Mateo High School further heightens our concern of loitering, litter and noise disturbance to our quiet neighborhood.

7-Eleven's reputation is known for attracting crime and as evidenced by the latest DEADLY robbery at a 7-Eleven in Malf Moon Bay. This proposed store is literally ACROSS the street from a senior citizen residence! Does this not keep you awake at night, for their safety?

Jeff & Millie

PRIVILEGE AND CONFIDENTIALITY NOTICE: This message, together with any attachments, is intended only for the use of the individual or entity to which it is addressed. It may contain information that is confidential and prohibited from disclosure. If you are not the intended recipient, you are hereby notified that any dissemination or copying of this message or any attachment is strictly prohibited. If you have received this message in error, please notify the original sender immediately by telephone or by return e-mail and delete this message along with any attachments from your computer. Thank you.

Joan Diskin

From: David Lim
Sent: Tuesday, November 13, 2012 9:39 AM
To: Chris Tong
Cc: Shawn Mason; Patrice Olds; Susan Loftus; Lisa Grote
Subject: Re: Opposition to 7-11 on San Mateo Drive

Mr Tong

Thank you for your input. I will make sure your email is made part of the public record.

David Lim
Sent from my iPhone

On Nov 11, 2012, at 11:52 PM, "Chris Tong" <christong@outlook.com> wrote:

Dear All,

Please add me to the list of residents in the San Mateo Heights area who are opposed to the 7-11 store currently being built on San Mateo Drive. I understand that you have all received numerous emails from other residents expressing the various concerns related to the 7-11, so I will not repeat the numerous reasons why letting a 7-11 open in our neighborhood is a horrible idea.

As officials elected by residents of San Mateo, please listen to the concerns of those who you represent (and not outside developers or foreign corporations) and stop this store from opening.

Chris Tong
Poplar Avenue homeowner

Joan Diskin

From: David Lim
Sent: Tuesday, November 13, 2012 9:41 AM
To: dartillo06@yahoo.com
Cc: Patrice Olds; Shawn Mason; Susan Loftus; Lisa Grote
Subject: Fwd: No on 7-Eleven

Ms Castillo,

Thank you for your input. I will make sure your email is made part of the public record.

David Lim
Sent from my iPhone

Begin forwarded message:

From: Millie Castillo <dartillo06@yahoo.com>
Date: November 12, 2012 8:46:17 AM PST
To: Brandt Grotte <bgrotte@cityofsanmateo.org>, David Lim <dlim@cityofsanmateo.org>, Maureen Freschet <mfreschet@cityofsanmateo.org>, "John \"Jack\" Matthews" <jmatthews@cityofsanmateo.org>, Robert Ross <rross@cityofsanmateo.org>
Subject: No on 7-Eleven

Dear Mayor and City Council Members:

As a homeowner living directly on San Mateo Drive, the establishment of a 7-Eleven extremely concerns me for the SAFETY of my family, the DECLINE in our property value and the INCREASE in the already heavy traffic street very close proximity to San Mateo High School further heightens our concern of loitering, litter and noise disturb to our quiet neighborhood.

7-Eleven's reputation is known for attracting crime and as evidenced by the latest DEADLY robbery at a 7-Eleven Malf Moon Bay. This proposed store is literally ACROSS the street from a senior citizen residence! Does this not you awake at night, for their safety?

Jeff & Millie

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2012 NOV 13 A 10:48

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CITY HALL
SAN MATEO, CA

1 STEPHEN A. JAMIESON (SBN 115805)
2 JULIA H. SULLIVAN (SBN 239219)
3 SOLOMON, SALTSMAN & JAMIESON
4 426 Culver Boulevard
5 Playa Del Rey, CA 90293
6 (310) 822-9848

7 Attorneys for 7-Eleven, Inc.
8 Real Party in Interest

BEFORE THE CITY OF SAN MATEO

9 IN THE MATTER OF:)

10 ACTION TO TERMINATE LEGAL)
11 NONCONFORMING USE OF 501 NORTH)
12 SAN MATEO DRVE)

13 Portfolio Development Partners, LLC,)
14 Respondent.)

15)
16 7-Eleven, Inc.,)

17 Real Party in Interest)
18)

**MOTION AND BRIEF REQUIRING
COMPLIANCE WITH RULES OF
EVIDENCE AND THE RIGHT TO
CALL WITNESSES FOR ANY
PURPOSE IN PROCEEDING TO
TERMINATE LEGAL
NONCONFORMING USE**

19 **TO THE CITY OF SAN MATEO, THE CITY ATTORNEY, CITY COUNCIL,**
20 **AND ALL OTHER INTERESTED PERSONS:**

21 7-Eleven, Inc., Real Party in Interest, in the above-captioned matter, herewith moves
22 the City of San Mateo as follows:

23 The City of San Mateo shall grant all parties to the Action to Terminate Legal
24 Conforming Use presently scheduled for hearing on November 15, 2012 and any other
25 continued or alternative hearing dates, the right to cross-examine any and all witnesses called
26 to testify before the City Council, any and all individuals responsible for recording,
27 compiling, maintaining, or drafting any documents which are offered or to be offered, upon

1 which the City intends to rely, and any and all individuals whose names appear in any
2 document offered or relied upon in said hearing.

3 This Motion is made without waiving Real Party in Interest’s objection and contention
4 that there is no constitutionally adequate notice and opportunity to be heard in this matter.

5 Real Party in Interest brings this Motion pursuant to the Fifth and Fourteenth
6 Amendments of the United States Constitution, Article 1, Section 7(a) of the California
7 Constitution, and the Brief Authorities in support of this Motion as follows:

8 //
9 //
10 //

11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12
13 **A. DOCUMENTS OFFERED BY ANYONE IF CONSIDERED OR RELIED UPON**
14 **BY THE CITY COUNCIL, MUST COMPLY WITH BASIC EVIDENTIARY**
15 **STATEMENTS TO ENSURE DUE PROCESS**

16 “[D]ue process of law requires that any order of demolition of private property under the
17 police power must be based upon competent sworn evidence.” Leppo v. City of Petaluma,
18 97 Cal.Rptr. 840, 843 (Cal. Ct. App. 1971) (citation omitted). The City of San Mateo (“City”)
19 cannot admit City-authored documents, whether purportedly generated by the San Mateo
20 Police Department or any other City entity, office, or agent, or documents authored by anyone
21 else, for purposes of establishing substantive facts it believes justify termination of the legal
22 nonconforming use of the real property, commonly known as 501 North San Mateo Drive
23 located in San Mateo, California, without complying with the Rules of Evidence and
24 principles of fair play and substantial justice.

25 At any hearing convened in the above-captioned matter, where the City’s stated
26 purpose is terminating the legal nonconforming use of the subject property, it may not deny
27 the parties’ ability to refute or rebut evidence through the crucible of cross-examination.

1 Anything less will result in an egregious violation of due process rights as granted by the
2 California and United States Constitutions.

3 The City must be accountable for the evidence it intends to consider and allow and be
4 able assure that documents relied upon in determining the feasibility of the remedy sought by
5 the City possess sufficient indicia of trustworthiness.

6 In a proceeding initiated by the City for the express purpose of terminating the zoning
7 status of the subject property as a legal nonconforming use, due process sufficient to protect
8 the vested property rights implicated by the zoning status and reliance thereon must attach to
9 any such proceeding. See U.S. Const., amend V; U.S. Const., amend XIV, § 1; Cal. Const.,
10 art. 1, § 7(a); see also Mohilef v. Janovici, 51 Cal.App.4th 267, 285-86 (Cal. Ct. App.
11 1996). Due process “is flexible and calls for such procedural protection as the particular
12 situation demands.” Southern California Underground Contactors, Inc. v. City of San Diego,
13 108 Cal.App.4th 533, 543 (Cal. Ct. App. 2003) (internal quotation marks omitted) (citation
14 omitted). “The opportunity to be heard must be tailored to the capacities and circumstances
15 of those who are to be heard.” Goldberg v. Kelly, 397 U.S. 254, 268-69 (1970).

16 Based on the nature of the constitutional property rights at issue in this matter,
17 comprehensive and extensive due process protections must be accorded to the parties. The
18 right to cross-examine witnesses, a concept accepted as fundamental and integral to minimum
19 due process standards, is one such protection. See Burrell v. City of Los Angeles, 209
20 Cal.App.3d 568, 577 (Cal. Ct. App. 1989). No facts may be allowed in the record without the
21 benefit of cross-examination or the City is necessarily condoning a constitutionally unsound
22 policy and practice.

23 If the City admits into the record any document without the parties being able to
24 cross-examine the author of that document, the parties will be unable to adequately and
25 meaningfully defend this matter. See Mohilef v. Janovici, 51 Cal.App.4th 267, 289 (Cal. Ct.
26 App. 1996) (quoting Mathews v. Eldridge, 424 U.S. 319, 348-49 (1976)); see also Petrus v.
27 Department of Motor Vehicles, 123 Cal.Rptr.3d 686, 688 (Cal. Ct. App. 2011) (due process

1 includes the ability to mount a meaningful defense); see also Riverside County Sheriff's
2 Department v. Stiglitz, 147 Cal.Rptr.3d 292, 310 (Cal. Ct. App. 2012) (due process rights
3 include a meaningful defense). Denying the ability to cross-examine the statements made in
4 documents eviscerates the right to cross-examination, thereby rendering the hearing
5 procedure a nullity.

6 The City cannot terminate constitutionally protected property rights based on
7 statements or documents without the benefit of cross-examination. Due process clearly
8 requires more before important, fundamental, and constitutionally protected entitlements can
9 be taken away.

10 Here, where the City will base most of its case on statements largely made by
11 neighbors or employees of the City, the City cannot rest solely on the veracity of written
12 documents it produces and a presumption of trustworthiness. Instead, cross-examination is
13 the only proper mechanism to achieve this end.

14 Therefore, Real Party in Interest, 7-Eleven, Inc., respectfully requests that the City be
15 compelled to produce at hearing for cross-examination all witnesses appearing in any and all
16 City-authored documents upon which the City intends to rely. As to the author of documents
17 not authored by City employees or agents the Real Party in Interest requests subpoena power
18 to compel attendance of those persons, or alternatively an Order by the City Council
19 excluding all such documents.

20 **B. THE RIGHT TO CALL WITNESSES FOR ANY PURPOSE IN A PROCEEDING**
21 **TO TERMINATE LEGAL NONCONFORMING USE.**

22 Due process, at a minimum, requires notice and a meaningful opportunity to be heard.
23 See Goldberg v. Kelly, 397 U.S. 254, 267-68 (1970). As the interest implicated in a given
24 matter increases, so does the level of the due process required to obviate an unconstitutional
25 deprivation of that interest. See Santosky v. Kramer, 455 U.S. 745, 754-58 (1982) (discussing
26 various levels in burdens of proof depending on the implicated interest); see also Mohilef, 51
27 Cal.App.4th at 288 (acknowledging the heightened interest where government action

1 “threaten[s] to shut down an existing business concern.”). Due to the property rights at issue
2 in this matter, due process here must be comprehensive, including the right to present
3 different types of evidence for myriad purposes.

4 In Burrell v. City of Los Angeles, *supra*, a case dealing with disciplinary actions
5 brought against City employees, minimum due process rights included “the right to present
6 witnesses and to confront adverse witnesses.” (citations omitted). There is no limitation on
7 the meaning of “presenting witnesses” and no limitation on the ability “to confront adverse
8 witnesses” offered by the Burrell court. Thus, testimony offered by any witness called by any
9 party should and could encompass various goals or purposes integral to adjudicating the
10 underlying proceeding.

11 The overarching consideration must be the relevance of the testimony offered. One
12 witness may testify in order to establish facts usable for mitigation purposes – an arguably
13 relevant purpose. Another witness may testify in order to offer an alternate set of facts to
14 those set forth during the other party’s case-in-chief – another arguably relevant
15 purpose. Another witness may testify for purposes of impugning the credibility of a witness
16 called by the other party during its case-in-chief – yet another arguably relevant purpose. The
17 parties have a right to put on a defense. See Petrus, *supra*, 123 Cal.Rptr.3d at 688; see also
18 Stiglitz, *supra*, 147 Cal.Rptr.3d at 310.

19 In fact, a discussion of procedural fairness in Cason v. The Glass Bottle Blowers
20 Assoc., 37 Cal.2d 134 (1951), a case involving the expulsion of a union member from the
21 union, a far less important interest than that implicated in the instant matter, helps illuminate
22 the concept of presenting and confronting witness. The Cason Court found the expulsion
23 procedure to be unfair where the union member was “allowed to appear and testify, [but] he
24 was not permitted to confront Minton, [his accuser], to hear his evidence or to refute it.” 37
25 Cal.2d at 144-45; see also Hackethal v. California Medical Assoc., 138 Cal.App.3d 435, 442
26 (1982) (“There must be an opportunity to confront and cross-examine the accusers and to
27 examine and refute the evidence”) (citing Cason v. The Glass Bottle Blowers Assoc.).

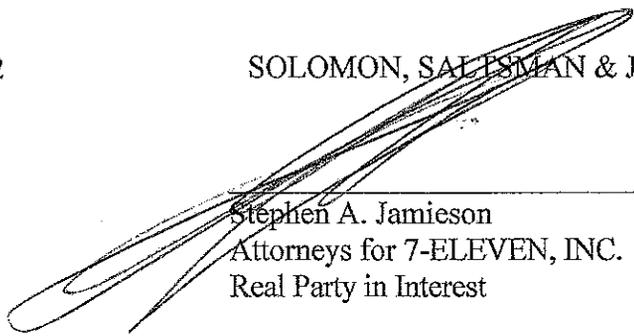
1 The same procedural fairness requirements apply to the instant matter. The parties can
2 and should be allowed to respond to the City's allegations. That response includes the ability
3 to refute any evidence offered by the City, or others, whether in direct factual contravention of
4 the information or to cast doubt on the veracity of the witnesses, or for any other purpose
5 otherwise relevant to the proper adjudication of the underlying proceeding. To find otherwise
6 is to deny the parties to the above-captioned matter the due process rights required by law.

7 Thus, Real Party in Interest, 7-Eleven, Inc., respectfully requests (a) the ability to
8 cross-examine any and all witnesses who offer testimony in the above-captioned matter, and
9 (b) the ability to subpoena (for persons and documents per Motion to Demand Subpoena
10 Power For Parties Before The City of San Mateo In Proceeding To Terminate Legal
11 Nonconforming Use of 501 North San Mateo Drive and the Points and Authorities submitted
12 in support thereof), and call any and all relevant witnesses required to adequately and
13 meaningfully defend the instant matter and for any documents offered by anyone in the
14 proceeding to have a proper evidentiary foundation or be excluded.

15
16 Respectfully submitted,

17
18 Dated: November 12, 2012

SOLOMON, SALESMAN & JAMIESON



Stephen A. Jamieson
Attorneys for 7-ELEVEN, INC.
Real Party in Interest

25
26
27
28

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SAN MATEO, CA

1 STEPHEN A. JAMIESON (SBN 115805)
2 SOLOMON, SALTSMAN & JAMIESON
3 426 Culver Boulevard
4 Playa Del Rey, CA 90293
5 (310) 822-9848

6 Attorney for 7-Eleven, Inc.
7 Real Party in Interest

8 BEFORE THE CITY OF SAN MATEO

9			
10	IN THE MATTER OF:)	PA 12-071, 501 NORTH SAN MATEO
)	DRIVE
11	ACTION TO TERMINATE LEGAL)	
12	NONCONFORMING USE)	CALIFORNIA PUBLIC RECORDS
)	ACT REQUEST, REQUEST FOR
13	Portfolio Development Partners, LLC,)	DISCOVERY, SET #1, AND
14)	DEMAND THAT DOCUMENTS BE
15	Respondent.)	PRODUCED AT ANY AND ALL
16	7-Eleven, Inc.,)	HEARINGS CONCERNING THIS
17	Real Party in Interest)	PROPERTY

18
19 7-Eleven, Inc., lessees under a long term written Lease from Respondent for 501 North
20 San Mateo Drive, San Mateo, CA 94401, hereby submits this request for discovery for
21 documents and information which are necessary and essential in preparing for and defending
22 against the action seeking to terminate the zoning status of 501 North San Mateo Drive
23 (hereinafter, the "Property") as a legal nonconforming use and therefore requests from the
24 City of San Mateo the immediate production to Respondent and 7-Eleven, Inc. (albeit
25 California Government Code requires production within ten (10) business days), as well as
26
27

-1-

28 CALIFORNIA PUBLIC RECORDS ACT REQUEST, REQUEST FOR DISCOVERY, SET #1, AND
DEMAND THAT DOCUMENTS BE PRODUCED AT ANY AND ALL HEARINGS CONCERNING THIS
PROPERTY

1 production at any and all hearings, each and every and all of the documents, identity of
2 witnesses, and other information requested herein. Without waiving any arguments that any
3 notice before the San Mateo City Council on November 15, 2012 is constitutionally
4 inadequate,¹ the date for a hearing to terminate or vitiate the legally existing nonconforming
5 use of the Property is presently scheduled to take place on November 15, 2012 at 6 p.m. This
6 Demand, however, is for production of such documents at that and any and all other hearings
7 that may be convened for such purpose relating to the Property.
8

9 This Request for Production, Request for Discovery, and Demand for Production at
10 Hearing(s) is made pursuant to applicable municipal ordinances, rules, regulation, policies,
11 procedures, precedent, case law and governing statutes, including but not limited to the
12 California Public Records Act (CPRA), Government Code Section 6250, *et seq.*
13

14 Additionally, if the City of San Mateo has adopted the Administrative Procedure Act
15 (APA) or enacted any enabling discovery ordinances, then this Request for Discovery is made
16 pursuant to the APA and any specific city ordinances.

17 For the purpose of this CPRA Request, Request for Discovery, and Demand for
18 Production of Documents at Hearing(s), the term "City of San Mateo" shall include San
19 Mateo's City Manager's Office, San Mateo's City Attorney's Office, City of San Mateo's
20 Police Department, City of San Mateo's Community Development Department, including, but
21 not limited to the Planning and Building Divisions, City of San Mateo's Planning
22 Commission, and any other municipal agency, board, or commission specifically relating
23 and/or pertaining to this matter and/or the decisions carried out by the City of San Mateo's
24 Departments and Staff since July 1, 2010 with respect to the Property. To Wit:
25
26

27
28 ¹ Under no circumstances should it be construed that 7-Eleven, Inc. waives the right to assert and argue the constitutional insufficiency of any notice thus far provided for any hearing before the San Mateo City Council.

1 1. Please provide all notes, correspondence, memoranda, documents and other writings
2 relating and/or pertaining to the zoning status of the Property, and/or the property rights of Real
3 Party in Interest and/or Respondent pertaining to the Property.

4 2. Please provide all notes, correspondence, memoranda, documents and other writings
5 relating and/or pertaining to the application or petition (or other appropriately titled request) to
6 terminate the Property's zoning status as a legal nonconforming use , and/or the property rights
7 of Real Party in Interest and/or Respondent pertaining to the Property.
8

9 3. Please provide all documents, writings, and correspondence relating and/or
10 pertaining to any standard and/or criteria upon which the City of San Mateo based its decision
11 to evaluate, pursue, and/or permit termination of the Property's zoning status, and/or the
12 property rights of Real Party in Interest and/or Respondent pertaining to the Property.
13

14 4. Please provide all documents, writing, and correspondence relating and/or pertaining
15 to the procedure adopted by the City of San Mateo for terminating a legal nonconforming use
16 under the law, including, but not limited to the City of San Mateo's Municipal Code, City
17 Charter, California law, and the United States Constitution
18

19 5. Please provide any and all documents, exhibits or other writings upon which the
20 City of San Mateo intends to rely on during any public hearing to consider the zoning status
21 of the Property, including, but not limited, grounds for terminating the Property's zoning
22 status, and/or the property rights of Real Party in Interest and/or Respondent pertaining to the
23 Property.
24

25 6. Please provide true and correct copies of all staff reports concerning or related to
26 the Property, and/or the property rights of Real Party in Interest and/or Respondent pertaining to
27 the Property.
28

 7. Please provide true and correct copies of all minutes and records of past hearings

1 concerning the Property, including, but not limited to, those relating and/or pertaining to the
2 zoning status of the Property, and/or the property rights of Real Party in Interest and/or
3 Respondent pertaining to the Property.

4 8. Please identify all witnesses which the City of San Mateo believes can support its
5 contention, if in fact it has such contention, that there is a basis to terminate the zoning status
6 of the Property including, but not limited to those persons the City of San Mateo intends to
7 call to testify at the hearing concerning the review of the zoning status of the Property.
8

9 9. Please provide true and correct copies of any and all documents, writings, reports,
10 data, correspondence, emails, notes, meeting minutes, and statements pertaining to the review
11 of the zoning status of the Property, and/or the property rights of Real Party in Interest and/or
12 Respondent pertaining to the Property.
13

14 10. Please provide true and correct copies of any and all documents, writings, reports,
15 data, correspondence, emails, notes, meeting minutes, and statements pertaining to the request
16 to terminate the Property's zoning status, and/or the property rights of Real Party in Interest
17 and/or Respondent pertaining to the Property.
18

19 11. Please provide true and correct copies of any and all documents, writings, reports,
20 data, correspondence, emails, notes, meeting minutes, and statements pertaining to the action
21 to terminate the Property's zoning status, and/or the property rights of Real Party in Interest
22 and/or Respondent pertaining to the Property.
23

24 12. Please provide any writings or things which are relevant to the Property's zoning
25 status and/or the property rights of Real Party in Interest and/or Respondent pertaining to the
26 Property which would be admissible in evidence.

27 13. Please provide true and correct copies of any investigative reports made by or on
28

1 behalf of the City of San Mateo relating and/or pertaining to the zoning status of the Property,
2 and/or the property rights of Real Party in Interest and/or Respondent pertaining to the Property.

3 14. Please provide true and correct copies of any written notices, documents, writings,
4 or correspondence pertaining to the review of or potential review of the zoning status of the
5 Property, and/or the property rights of Real Party in Interest and/or Respondent pertaining to the
6 Property.
7

8 15. Please provide true and correct copies of any written notices, documents, writings,
9 or correspondence pertaining to the termination of or potential termination of the zoning
10 status of the Property, and or considering whether or not there exists a legally existing
11 conforming use at the Property, and all efforts by the City to come to such conclusion at any
12 time.
13

14 16. Please provide true and correct copies of any and all San Mateo Police Department
15 reports, incident reports, investigative reports, calls for service, witness statements, logs,
16 computer data, e-mail, memoranda, correspondence, statistics, and notes of any meetings or
17 communications referenced in or which formed the basis for the information credited to the
18 San Mateo Police Department in the following written documents:
19

20 a. Staff Report (dated 10/30/2012) for PA 12-071, 501 North San Mateo Drive;

21 b. Interoffice Communication: San Mateo Police Department Support Services
22 (dated October 11, 2012) from Sergeant Dave Norris to Police Chief Susan Manheimer
23 (attached to the aforementioned Staff Report as Attachment 2); and,

24 c. Memorandum from Darin Smith and Ashleigh Kanat of Economic & Planning
25 Systems, Inc. to Ronald Munekawa, Chief of Planning entitled "Non-Conforming Use
26 Analysis – 501 North San Mateo Drive; EPS # 121124" (dated October 24, 2012).
27

28 17. Please provide true and correct copies of any and all San Mateo Police Department

1 reports, incident reports, investigative reports, calls for service, witness statements, video
2 tapes, audio tapes, logs, computer data, e-mail, memoranda, correspondence, and notes of any
3 meetings or communications which formed the basis for the information testified to by the
4 Police Department representative at the San Mateo Planning Commission meeting held on
5 Tuesday, October 30, 2012, as well as all such documents upon which any Staff member,
6 including but not limited to testimony or information upon which any member of the San
7 Mateo Police Department intends to or will provide, produce, or discuss at the City Council
8 hearing presently scheduled for November 15, 2012 and all other or continued dates for
9 hearing pertaining to the zoning status of the Property , and/or the property rights of Real Party
10 in Interest and/or Respondent pertaining to the Property.
11

12 18. Please provide true and correct copies of any and all City of San Mateo
13 Community Development Department reports, writings, logs, computer data, e-mail,
14 memoranda, correspondence, and notes of any meetings or communications referring or
15 relating to the Property from July 1, 2010 to the present.
16

17 19. Please provide true and correct copies of any and all City of San Mateo Planning
18 Department reports, writings, logs, computer data, e-mail, memoranda, correspondence, and
19 notes of any meetings or communications referring or relating to the Property from July 1,
20 2010 to the present.
21

22 20. Please provide true and correct copies of any and all City of San Mateo Building
23 Department reports, writings, logs, computer data, e-mail, memoranda, correspondence, and
24 notes of any meetings or communications referring or relating to the Property from July 1,
25 2010 to the present.
26

27 21. Please provide true and correct copies of any and all writings, reports, logs,
28

1 computer data, e-mail, memoranda, correspondence, and notes of any meetings from the City
2 of San Mateo City Manager's Office referring or relating to the Property from July 1, 2010 to
3 the present.

4 22. Please provide true and correct copies of any and all writings, reports, logs,
5 computer data, e-mail, memoranda, correspondence, and notes of any meetings from the City
6 of San Mateo City Clerk's Office referring or relating to the Property from July 1, 2010 to the
7 present.

8
9 23. Please provide true and correct copies of any documents or writings referring or
10 relating to correspondence since July 1, 2010 between the City of San Mateo and **Portfolio**
11 **Development Partners, LLC.**

12 24. Please provide true and correct copies of any documents or writings referring or
13 relating to correspondence since July 1, 2010 between the City of San Mateo and **PDP**
14 **Mayfair, LLC.**

15
16 25. Please provide true and correct copies of any documents or writings referring or
17 relating to correspondence since July 1, 2010 between the City of San Mateo and **7-Eleven,**
18 **Inc.**

19
20 26. Please provide a true and correct copy of email correspondence as between
21 **Deputy Mayor David Lim** and **Edward Howard** from September 1, 2012, including but not
22 limited to email correspondence on September 16, 2012, September 17, 2012, and September
23 18, 2012.

24 27. Please provide a true and correct copy of email correspondence as between
25 **Deputy Mayor David Lim** and City of San Mateo's City Manager from August 15, 2012;
26

27 28. Please provide a true and correct copy of email correspondence as between
28 **Deputy Mayor David Lim** and **Peter Breining** from September 1, 2012.

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29. Please provide a true and correct copy of email correspondence as between
Deputy Mayor David Lim and City of San Mateo's City Clerk from August 15, 2012.

30. Please provide a true and correct copy of email correspondence as between
Deputy Mayor Lim and **Councilman Robert Ross** relating and/or pertaining to the Property
from September 1, 2012.

31. Please provide a true and correct copy of email correspondence as between
Councilman Robert Ross and **Peter Breining** from September 1, 2012.

32. Please provide a true and correct copy of email correspondence by and between
all members of the San Mateo City Council that relate and/or pertain to the Property.

33. Please provide a true and correct copy of email correspondence by and between
any members of the San Mateo City Council that relate and/or pertain to the Property.

34. Please provide true and correct copies of any and all reports, writings, logs,
computer data, e-mail, memoranda, correspondence, and notes of any meetings or
communications referring or relating to the Property from July 1, 2010 to the present by and
between the San Mateo Planning Commission and/or members of the San Mateo Planning
Commission and/or:

- a. San Mateo Police Department and/or,
- b. City of San Mateo Community Development Department and/or,
- c. City of San Mateo Planning Division and/or,
- d. City of San Mateo Building Division and/or,
- e. City of San Mateo City Manager's Office and/or,
- f. City of San Mateo City Clerk and/or,
- g. Members of the public.

35. Please provide true and correct copies of any and all reports, writings, logs,

1 computer data, e-mail, memoranda, correspondence, and notes of any meetings or
2 communications referring or relating to the Property from July 1, 2010 to the present by and
3 between the San Mateo City Council and/or members of the San Mateo City Council and/or:

- 4 a. San Mateo Police Department and/or,
5 b. City of San Mateo Community Development Department and/or,
6 c. City of San Mateo Planning Division and/or,
7 d. City of San Mateo Building Division and/or,
8 e. City of San Mateo City Manager's Office and/or,
9 f. City of San Mateo City Clerk and/or,
10 g. Members of the public.

11
12 36. Please provide the legislative history, including, but not limited to any notes,
13 correspondence, memoranda, meeting minutes, documents, Resolutions, staff reports, and other
14 writings, for the enactment and or use of interpretation of San Mateo Municipal Code Section
15 27.72.050, and any and all other San Mateo Municipal Code Section(s) upon which the City
16 intends to or may rely to terminate the legally existing nonconforming use designation of the
17 Property, or upon which the City will rely in order to render opinion of or decisions about
18 whether or not this Property is a legally existing nonconforming use, and whether or not the City
19 Council may re visit and make that decision at this point in time.
20
21

22 37. Please provide the legislative history, including, but not limited to any notes,
23 correspondence, memoranda, meeting minutes, documents, Resolutions, staff reports, and other
24 writings, for the enactment and or use of interpretation of San Mateo Municipal Code Section
25 27.72.030, and any and all other San Mateo Municipal Code Section(s) upon which the City
26 intends to or may rely to terminate the legally existing nonconforming use designation of the
27 Property, or upon which the City will rely in order to render opinion of or decisions about
28

1 whether or not this Property is a legally existing nonconforming use, and whether or not the City
2 Council may re visit and make that decision at this point in time.

3 38. Please provide a true and correct copy of the City of San Mateo's City Council's
4 procedures as of the date of this Demand.

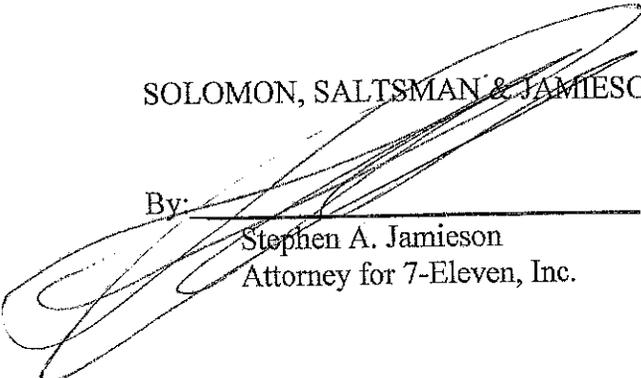
5 39. Any other writing or thing which is relevant and would be admissible in evidence
6 pursuant to Government Code Section 11507.6, the San Mateo Municipal Code, and all other
7 relevant precedent, case law, statute or other codified law.
8

9 This CPRA Request, Discovery Request, and Demand to Produce such Documents
10 at the Hearing(s) of this matter, is a continuing request which shall include all documents and
11 other material obtained by the City of San Mateo during the pendency of this matter.
12

13 PLEASE TAKE NOTICE that if the CPRA demand is not complied with within ten
14 (10) business days, and or if the Discovery demand, and or the Demand to Produce these
15 Documents at the Hearing(s), is not produced immediately and otherwise in a timely fashion
16 in order to allow due process and other constitutional protections to be accorded, 7-Eleven,
17 Inc. will invoke all appropriate legal remedies to which it is entitled. This shall include but
18 may not be limited to a Petition to the Superior Court for Writ of Mandamus.
19
20
21

22 DATED: November 12, 2012

SOLOMON, SALTSMAN & JAMIESON

23
24 By: 

25 Stephen A. Jamieson
26 Attorney for 7-Eleven, Inc.
27
28

RECEIVED

2012 NOV 13 A 10:48

OFFICE OF CITY CLERK
CITY HALL
SAN MATEO, CA

1 STEPHEN A. JAMIESON (SBN 115805)
2 JULIA H. SULLIVAN (SBN 239219)
3 SOLOMON, SALTSMAN & JAMIESON
4 426 Culver Boulevard
5 Playa Del Rey, CA 90293
6 (310) 822-9848

7
8 Attorneys for 7-Eleven, Inc.,
9 Real Party in Interest

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BEFORE THE CITY OF SAN MATEO

10 IN THE MATTER OF:)
11)
12 ACTION TO TERMINATE LEGAL)
13 NONCONFORMING USE OF 501 NORTH)
14 SAN MATEO DRIVE)
15 Portfolio Development Partners, LLC,)
16 Respondent.)
17 7-Eleven, Inc.,)
18 Real Party in Interest)

MOTION AND POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO DEMAND SUBPOENA
POWER FOR PARTIES BEFORE
THE CITY OF SAN MATEO IN A
PROCEEDING TO TERMINATE
LEGAL NONCONFORMING USE

20 TO THE CITY OF SAN MATEO, CITY COUNCIL, CITY ATTORNEY, CITY CLERK,
21 AND ALL OTHER INTERESTED PERSONS:

22 COMES NOW, 7-Eleven, Inc., Real Party in Interest, in the above-captioned matter,
23 and herewith moves the City of San Mateo as follows:

24 The City of San Mateo shall grant all parties to the Action to Terminate Legal
25 Conforming Use presently scheduled for hearing on November 15, 2012, (but for all dates and
26 times of such hearing as well) be granted subpoena powers to compel the production of
27 documents and witnesses at the aforementioned hearing.

MOTION AND POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DEMAND SUBPOENA POWER FOR PARTIES
BEFORE THE CITY OF SAN MATEO IN A PROCEEDING TO TERMINATE LEGAL NONCONFORMING USE



1 Real Party in Interest, 7-Eleven, Inc., brings this Motion pursuant to City of San
2 Mateo Municipal Code Section 27.06.070. The City Council for the City of San Mateo
3 maintains the power to issue subpoenas and subpoenas duces tecum for proceedings under
4 Title 27 of the Municipal Code. See San Mateo, Municipal Code § 27.06.070. This Motion is
5 further supported by the Fifth and Fourteenth Amendments of the United States Constitution,
6 Article 1, Section 7(a) of the California Constitution, and California Government Code
7 Sections 11450.10 and 11450.05.

8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9 **I. SUBPOENA TO COMPEL WITNESS AND DOCUMENTS TO BE**

10 **PRODUCED MUST BE GRANTED**

11 7-Eleven, Inc. possesses an actual, substantial interest of the subject matter of the
12 above-captioned matter as action by the City of San Mateo to terminate the legally existing
13 non-conforming use directly impacts the rights and obligations of 7-Eleven, Inc. implicated
14 by and set forth in its long-term lease with Respondent, Portfolio Development Partners,
15 LLC, to occupy and conduct business 501 North San Mateo Drive.

16 In a proceeding initiated by the City of San Mateo for the express purpose of
17 terminating the zoning status of Respondent's real property, commonly known as 501 North
18 San Mateo Drive in the City of San Mateo, as a legal nonconforming use, Real Party in
19 Interest is entitled to due process sufficient to protect the vested property rights to continue
20 the legal nonconforming use of the subject property. See U.S. Const., amend V; U.S. Const.,
21 amend XIV, § 1; see also Mohilef v. Janovici, 51 Cal.App.4th 267, 285-86 (Cal. Ct. App.
22 1996). Due process "is flexible and calls for such procedural protection as the particular
23 situation demands." Southern California Underground Contractors, Inc. v. City of San Diego,
24 108 Cal.App.4th 533, 543 (Cal. Ct. App. 2003) (internal quotation marks omitted) (citation
25 omitted). "The opportunity to be heard must be tailored to the capacities and circumstances
26 of those who are to be heard." Goldberg v. Kelly, 397 U.S. 254, 268-69 (1970). Moreover,
27

1 due process requires the ability for a party subject to an administrative proceeding to have a
2 meaningful opportunity to defend against the allegations made therein, as well as to
3 adequately present their own case. See Petrus v. Department of Motor Vehicles, 123
4 Cal.Rptr.3d 686, 688 (Cal. Ct. App. 2011) (quoting Mohilef, supra, and holding that due
5 process rights violated where driver precluded from mounting meaningful defense by DMV
6 failure to timely produce evidence necessary to establish its case in chief); see also Riverside
7 County Sheriff's Department v. Stiglitz, 147 Cal.Rptr.3d 292, 310 (Cal. Ct. App. 2012) (due
8 process required Pitchess discovery in officer disciplinary proceeding as part of meaningful
9 defense).

10 Allowing the parties access to subpoenas and subpoenas duces tecum will put both
11 the City of San Mateo and Respondent on an even playing field with respect to the procedural
12 right to call and examine witnesses at hearing.

13 A proceeding convened for purposes of terminating a legal nonconforming use
14 involving vested constitutional property interest rights requires the ability to compel
15 witnesses to appear at the proceeding to testify on behalf of either party. The nature of the
16 interests at stake is of such great import that ensuring the ability to defend against any
17 accusation that may justify revocation of such a permit with testimony from witnesses
18 percipient to the facts giving rise to such accusations, especially where those witnesses have
19 no direct interest in appearing absent being percipient to alleged events, is integral to
20 protecting affected constitutional rights, including the right to due process.

21 Real Party in Interest cannot compel its witnesses to appear and testify in a manner
22 similar to that available to the City of San Mateo. Witnesses essential to its defense may not
23 be Real Party in Interest's employees or agents, as are many of the witnesses Real Party in
24 Interest expects the City to use during its case-in-chief. Affording the parties the right to
25 issue subpoenas or subpoenas duces tecum is the only mechanism appropriate to achieve the
26 level of parity required to ensure that all Constitutional rights at issue in this matter are
27 sufficiently protected and that Respondent can ensure that its witnesses will appear at any

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1 proceeding in this matter. Otherwise, Real Party in Interest is at a comparative disadvantage
2 to the City of San Mateo that violates Real Party in Interest's rights and deprives it of a
3 meaningful opportunity to defend this matter, including, but not limited to the meaningful
4 ability to confront and cross-examine witnesses against it.

5 The City Council is entrusted with the right and the power to issue subpoenas and
6 subpoenas duces tecum in zoning actions, see San Mateo, Municipal Code § 27.06.070, to
7 further the interests of a proceeding before any City board, commission, or committee, or to
8 investigate the affairs and conduct of the City, its employees or its agents. Because the instant
9 matter involves the termination of a legal nonconforming use under Title 27 of the Municipal
10 Code, Section 27.06.070 directly applies and states:

11 "The City Council and Planning Commission shall each have the power to
12 issue subpoenas for, and to require the attendance of witnesses, the production
13 of records and documents and to administer oaths and certify to all official acts
under this Title."

14 Certainly, the City cannot avail itself of this explicit, tremendous, and far-reaching
15 power without similarly granting the same rights to parties appearing before it. The due
16 process implications of disallowing such parity are immense.

17 Since the Municipal Code seems to provide no rules or procedures for the
18 implementation of the City's subpoena power or the issuance of subpoenas and subpoenas
19 duces tecum, rules governing proceedings convened under the Administrative Procedure Act
20 (hereinafter, "APA") provide guidance for the use of subpoenas in the instant matter. See
21 Nightlife Partners v. City of Beverly Hills, 108 Cal.App.4th 81, 91 (Cal. Ct. App. 2003) ("to
22 the extent citizens generally are entitled to due process in the form of a fair trial before a fair
23 tribunal, the provisions of the APA are helpful as indicating what the Legislature believes are
24 the elements of a fair and carefully thought out system of procedure for use in administrative
25 hearings.")(citation omitted). Section 11450.10 of the California Government Code provides
26 that "[s]ubpoenas and subpoenas duces tecum may be issued for attendance at a hearing and
27 for production of documents at any reasonable time and place or at a hearing." Cal. Gov't

1 Code § 11450.10. The ability to issue a subpoena applies to any administrative proceeding,
2 whether formal or informal. See Cal. Gov't Code § 11450.05. The subpoena or subpoena
3 duces tecum must be issued in a manner consistent with California Code of Civil Procedures
4 Sections 1985 to 1985.4 and must be served in a manner consistent with Civil Procedure
5 Code Sections 1987 and 1988. See id. at § 11450.20. Thus, the privacy interests of the
6 individuals or inherent to the document sought will be adequately protected and the
7 obligations on the party issuing the subpoena are clear and unequivocal.

8 Also, it is clear that the California Government Code vests subpoena power in local
9 and county authorities. For example, California Government Code Section 37104 provides
10 for the issuance of legislative subpoenas by city government. In pertinent part, Section 37104
11 provides that "[t]he legislative body may issue subpoenas requiring attendance of witnesses
12 or production of books or other documents for evidence or testimony in any action or
13 proceeding pending before it." Therefore, the legislature clearly envisioned the use of
14 subpoenas by local authorities in the governance of their affairs, including enforcement
15 actions such as the instant matter.

16 Moreover, a subpoena form developed by the Office of Administrative Hearings could
17 be easily adopted for use in this proceeding without difficulty. See Attachment A (OAH-1
18 (Rev. 10/06); available at <http://www.oah.dgs.ca.gov/Forms/GJ+Forms.htm>; see also
19 Attachment B (modified OAH-1 form used for matters before the State of California,
20 Department of Alcoholic Beverage Control); see also Attachment C (modified OAH-1 form
21 for purposes of a hearing before the City of San Mateo).

22 Real Party in Interest requires the ability to craft a case that defends against allegations
23 lodged by the City of San Mateo, not solely in a manner meant to address the City's or
24 neighbor's allegations from a defensive posture that assumes that the City's facts and
25 argument are above reproach, but to ensure that the proceedings adequately protect Real Party
26 in Interest's due process rights. Real Party in Interest must be able to compel witnesses for
27 purposes of an affirmative challenge to the City's allegations. If disallowed, Real Party in
28

1 Interest will be unable to adequately and meaningfully defend this matter.

2 Therefore, Real Party in Interest respectfully requests that the ability to issue
3 subpoenas or subpoenas duces tecum be afforded to the parties and encourages the City
4 Council or hearing officer to use the California Administrative Procedure Act as guidance for
5 doing so. As such, it is respectfully submitted that the City of San Mateo should cause the
6 attached subpoena form to be executed and issued immediately for use by parties to the
7 above-captioned matter to compel witnesses to the hearing.

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9 Dated: November 7, 2012

SOLOMON, SALTSMAN & JAMIESON

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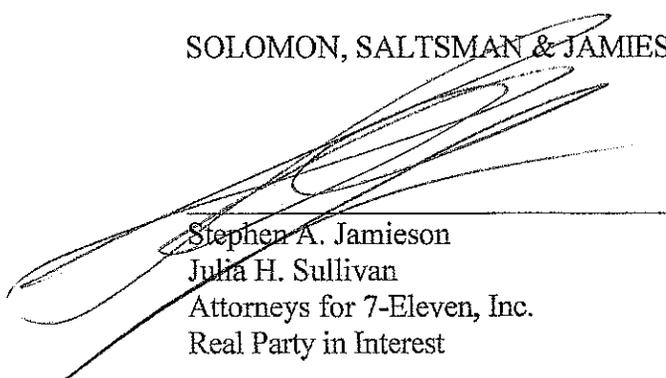
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Stephen A. Jamieson
Julia H. Sullivan
Attorneys for 7-Eleven, Inc.
Real Party in Interest

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS**



In the Matter of:

Agency / Agency Case No.

OAH No.

SUBPOENA: *Requesting Testimony* **SUBPOENA DUCES TECUM:** *Requesting the Production of Records or Things*

THE PEOPLE OF THE STATE OF CALIFORNIA SEND GREETINGS TO:	<i>(name and address of person being subpoenaed)</i>
1. At the request of <input type="checkbox"/> Petitioner <input type="checkbox"/> Respondent <i>(party name)</i>	<i>(name, address and telephone number of contact person)</i>

2. You are hereby commanded, business and excuses being set aside, to appear as a witness on:

(date) _____, *at (time)* _____, **and then and there to testify at:** *(location)*

OAH, 2349 Gateway Oaks Drive, Suite 200, Sacramento CA 95833 OAH, 320 West Fourth Street, Room 630, Los Angeles CA 90013

OAH, 1515 Clay Street, Suite 206, Oakland CA 94612 OAH, 1350 Front Street, Room 3005, San Diego CA 92101

Other: _____, California.

3. You are not required to appear in person if you produce the records described in the accompanying affidavit and a completed declaration of custodian of records in compliance with Evidence Code sections 1560, 1561, 1562, and 1271. (1) Place a copy of the records in an envelope (or other wrapper). Enclose your original declaration with the records. Seal them. (2) Attach a copy of this subpoena to the envelope or write on the envelope the case name and number, your name and date, time, and place from item 2 (the box above). (3) Place this first envelope in an outer envelope, seal it, and mail it to the Office of Administrative Hearings at the address checked in item 2. (4) Mail a copy of your declaration to the attorney or party shown in item 1.

4. You are not required to appear in person if you produce the records described in the accompanying affidavit and a completed declaration of custodian of records in compliance with Evidence Code section 1561.
By _____ *(date)*, send the records to:

NOTE: This manner of production may not satisfy the requirements of Evidence Code section 1561 for admission at hearing.

5. You are ordered to appear in person and to produce the records described in the accompanying affidavit. The personal appearance of the custodian or other qualified witness and the production of the original records is required by this subpoena. The procedure authorized by subdivision (b) of section 1560, and sections 1561 and 1562 of the Evidence Code will not be deemed sufficient compliance by this subpoena.

6. **Disobedience to this subpoena will be punished as contempt of court in the manner prescribed by law.**
7. **Witness Fees:** Upon service of this subpoena, you are entitled to witness fees and mileage actually traveled both ways, as provided by law, if you so request. You may request them before your scheduled appearance from the person named in item 1. See Government Code sections 11450.05, 11450.50, 68092.5-68093, and 68096.1-68097.10.
8. **IF YOU HAVE ANY QUESTIONS ABOUT WITNESS FEES OR THE TIME OR DATE YOU ARE TO APPEAR, OR TO BE CERTAIN THAT YOUR PRESENCE IS REQUIRED ON THE DATE AND TIME SPECIFIED ABOVE, CONTACT THE PERSON REQUESTING THIS SUBPOENA, LISTED IN ITEM 1 ABOVE, BEFORE THE DATE LISTED IN ITEM 2 ABOVE.**

(Date Issued) _____ *(Signature of Authorizing Official)* _____

(Printed Name) _____ *(Title)* _____

DECLARATION FOR SUBPOENA DUCES TECUM

(Any party issuing a subpoena for production of books and/or records must complete this section.)

The undersigned states that the books, papers, documents and/or other things named below and requested by this subpoena are material to the proper presentation of this case, and good cause exists for their production by reason of the following facts:

(Use additional pages, if necessary, and attach them to this subpoena.)

Executed _____, 20____, at _____, California.

I declare under penalty of perjury that the foregoing is true and correct.

(Signature of Declarant)

METHOD OF DELIVERY of this subpoena:

Personal Service – In accordance with Code of Civil Procedure sections 1987 and 1988, delivery was effected by showing the original and delivering a true copy thereof personally to:

Messenger Service – In accordance with Government Code section 11450.20, an acknowledgement of the receipt of this subpoena was obtained by the sender after it was delivered by messenger to:

Certified Mail, Return Receipt Requested – I sent a true copy of this subpoena via certified mail, return receipt requested to:
(name and address of person)

at the hour of _____ m., on _____, 20_____.

City of _____, State of _____.

(Signature of Declarant)

**BEFORE THE
CITY OF SAN MATEO**



**In the Matter of:
THE PROCEEDING BY THE CITY OF SAN MATEO
TO TERMINATE THE LEGALLY EXISTING
NONCONFORMING USE AT 501 N. SAN MATEO
DR., SAN MATEO, CA**

Agency / Agency Case No. _____
OAH No. _____

SUBPOENA: *Requesting Testimony* **SUBPOENA DUCES TECUM:** *Requesting the Production of Records or Things*

<p>THE PEOPLE OF THE STATE OF CALIFORNIA SEND GREETINGS TO:</p>	<p><i>(name and address of person being subpoenaed)</i></p>
<p>1. At the request of <input type="checkbox"/> Petitioner <input type="checkbox"/> Respondent <i>(party name)</i></p>	<p><i>(name, address and telephone number of contact person)</i></p>

2. You are hereby commanded, business and excuses being set aside, to appear as a witness on:

(date) November 15, 2012, *at (time)* 7:00 p.m., and then and there to testify at: *(location)*

OAH, 2349 Gateway Oaks Drive, Suite 200, Sacramento CA 95833 OAH, 320 West Fourth Street, Room 630, Los Angeles CA 90013

OAH, 1515 Clay Street, Suite 206, Oakland CA 94612 OAH, 1350 Front Street, Room 3005, San Diego CA 92101

Other: City Council Chambers, 330 West 20th Street, San Mateo, Ca, California.

3. You are not required to appear in person if you produce the records described in the accompanying affidavit and a completed declaration of custodian of records in compliance with Evidence Code sections 1560, 1561, 1562, and 1271. (1) Place a copy of the records in an envelope (or other wrapper). Enclose your original declaration with the records. Seal them. (2) Attach a copy of this subpoena to the envelope or write on the envelope the case name and number, your name and date, time, and place from item 2 (the box above). (3) Place this first envelope in an outer envelope, seal it, and mail it to the Office of Administrative Hearings at the address checked in item 2. (4) Mail a copy of your declaration to the attorney or party shown in item 1.

4. You are not required to appear in person if you produce the records described in the accompanying affidavit and a completed declaration of custodian of records in compliance with Evidence Code section 1561.
By _____ *(date)*, send the records to:

NOTE: This manner of production may not satisfy the requirements of Evidence Code section 1561 for admission at hearing.

5. You are ordered to appear in person and to produce the records described in the accompanying affidavit. The personal appearance of the custodian or other qualified witness and the production of the original records is required by this subpoena. The procedure authorized by subdivision (b) of section 1560, and sections 1561 and 1562 of the Evidence Code will not be deemed sufficient compliance by this subpoena.

6. **Disobedience to this subpoena will be punished as contempt of court in the manner prescribed by law.**
7. **Witness Fees:** Upon service of this subpoena, you are entitled to witness fees and mileage actually traveled both ways, as provided by law, if you so request. You may request them before your scheduled appearance from the person named in item 1. See Government Code sections 11450.05, 11450.50, 68092.5-68093, and 68096.1-68097.10.
8. **IF YOU HAVE ANY QUESTIONS ABOUT WITNESS FEES OR THE TIME OR DATE YOU ARE TO APPEAR, OR TO BE CERTAIN THAT YOUR PRESENCE IS REQUIRED ON THE DATE AND TIME SPECIFIED ABOVE, CONTACT THE PERSON REQUESTING THIS SUBPOENA, LISTED IN ITEM 1 ABOVE, BEFORE THE DATE LISTED IN ITEM 2 ABOVE.**

(Date Issued) _____ *(Signature of Authorizing Official)* _____
(Printed Name) _____ *(Title)* _____

DECLARATION FOR SUBPOENA DUCES TECUM

(Any party issuing a subpoena for production of books and/or records must complete this section.)

The undersigned states that the books, papers, documents and/or other things named below and requested by this subpoena are material to the proper presentation of this case, and good cause exists for their production by reason of the following facts:

(Use additional pages, if necessary, and attach them to this subpoena.)

Executed _____, 20____, at _____, California.
I declare under penalty of perjury that the foregoing is true and correct.

(Signature of Declarant)

METHOD OF DELIVERY of this subpoena:

Personal Service – In accordance with Code of Civil Procedure sections 1987 and 1988, delivery was effected by showing the original and delivering a true copy thereof personally to:

Messenger Service – In accordance with Government Code section 11450.20, an acknowledgement of the receipt of this subpoena was obtained by the sender after it was delivered by messenger to:

Certified Mail, Return Receipt Requested – I sent a true copy of this subpoena via certified mail, return receipt requested to:
(name and address of person)

at the hour of _____ m., on _____, 20____,
City of _____, State of _____.

(Signature of Declarant)

Joan Diskin

From: Brandt Grotte Photomask
Sent: Tuesday, November 13, 2012 11:13 AM
To: Patrice Olds; Ronald "Ron" Munekawa
Subject: FW: San Mateo resident against 7-Eleven

As a public record please

Regards,
Brandt

From: Lily Jow [<mailto:jowpartyofsix@sbcglobal.net>]
Sent: Monday, November 12, 2012 7:43 PM
To: bgrotte@cityofsanmateo.org
Subject: San Mateo resident against 7-Eleven

Dear Mr. Grotte

We are writing you because you were elected to represent our community. We hope that you sincerely care about the welfare of our San Mateo Heights neighborhood. It is under this premise that we are urging each one of you to exercise your authority as City Council to protect the residents of this neighborhood by upholding the laws and procedures established for the city of San Mateo.

We join many other citizens of our community who are very disturbed about the special interests that have been served, resulting in the opening of a 7-Eleven on 501 N. San Mateo Drive, against the wishes of the neighborhood. We are urging that you do what is right for the community you represent, and this would not be inconsistent with the opinion of Principal City Planner, Steven Scott who wrote, "*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.*" Most importantly, please protect the residents, the families and the children of this community from the serious dangers and threats a 7-Eleven 24 hour convenience store would create.

The codes we have in the city are present to bring balance between the residence of the city and the business owners who wish to do business within the city. However, when these codes are disregarded, the balance is upset and in this case, it is the residence who are being oppressed. Please remember the citizens of San Mateo that you were elected to represent. You were not elected by 7-Eleven, a foreign multinational conglomerate, or landlords who live outside of our city.

Do what is right and reject the extension of the legal non-conforming use of this property as a 7-Eleven. It is an ILLEGAL INTENSIFICATION of the property at 501 North San Mateo Drive. This use of the property is clearly BURDENSOME to the community, as it endangers the health and welfare of our citizens. There can be no denying that 7-Eleven offers MANY unhealthy food options that directly target the two schools in it's immediate pathway. And to 7-Eleven's own admission, it will attract criminal activity, which is why they have a Crime Deterrence Program needed for this proposed store location. Furthermore, an addition BURDEN of traffic, noise, the sale of alcohol and sale of cigarettes is irresponsible in light of its, the proximity to San Mateo High School, San Mateo Park Elementary, and a neighborhood full of children and families. The burden of these safety concerns will be bore by the residence of this neighborhood during the extended hours of operation

A 24 hour convenience store, such as 7 Eleven in a residential zoning area is not consistent with the City of San Mateo General Plans for this neighborhood, and clearly the neighborhood does not see where a variance for this use would be of a benefit. We are pleading with you to shut down the proposed 7-Eleven immediately.

The residents of San Mateo who elected you to office are counting on you to DO THE RIGHT THING for the community that you have been given the honor to represent.

Sincerely,

Kevin & Lily Jow

355 E. Bellevue Ave.

PRIVILEGE AND CONFIDENTIALITY NOTICE: This message, together with any attachments, is intended only for the use of the individual or entity to which it is addressed. It may contain information that is confidential and prohibited from disclosure. If you are not the intended recipient, you are hereby notified that any dissemination or copying of this message or any attachment is strictly prohibited. If you have received this message in error, please notify the original sender immediately by telephone or by return e-mail and delete this message along with any attachments from your computer. Thank you.

Joan Diskin

From: Brandt Grotte Photomask
Sent: Tuesday, November 13, 2012 11:26 AM
To: Patrice Olds; Ronald "Ron" Munekawa
Subject: FW: 7-11 at 501 N. San Mateo Drive

Please manage as public comment

Thank you

Brandt

From: MADELEINE454@comcast.net [<mailto:MADELEINE454@comcast.net>]
Sent: Tuesday, November 13, 2012 11:09 AM
To: bgrotte@cityofsanmateo.org; bgrotte@cityofsanmateo.org; dlim@cityofsanmateo.org; mfreschet@cityofsanmateo.org; jmatthews@cityofsanmateo.org; rross@cityofsanmateo.org
Cc: swindust@gmail.com
Subject: 7-11 at 501 N. San Mateo Drive

Dear City Officials,

Please accept this as my STRONG protest against the 7-11 at 501 N. San Mateo Drive. It is unthinkable to me that such a facility would be built in our neighborhood and appalling to me that it is directly across the street from an elder-care home. Please stop this aberration from insinuating itself in to our lovely neighborhood.

My sincere thanks for your time and efforts.

Madeleine M. Palacin
454 Wisnom Ave
San Mateo, CA 94401

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Joan Diskin

From: David Lim
Sent: Tuesday, November 13, 2012 2:56 PM
To: David Reeves
Cc: Shawn Mason; Patrice Olds; Susan Loftus; Lisa Grote
Subject: Re: Please support San Mateo neighborhood, and not 7-Eleven

Mr Reeves,

Thank you for your input. I will make sure your email is made part of the public record.

David Lim
Sent from my iPhone

On Nov 13, 2012, at 10:56 AM, "David Reeves" <dareev@gmail.com> wrote:

Dear Mayor Grotte and San Mateo City Council,

I'm writing to request your support on the side of San Mateo Heights residents, and not the side of 7-Eleven. They apparently have used deceptive tactics and questionable practices to sneak in permission to open a new store at 501 N. San Mateo Drive.

Stangelini's Deli was a nice neighborhood deli. They were open 9 a.m. to 6 p.m. and were not burdensome for the neighborhood. I thought that the city reverted the property back to residential.

How was a 7-Eleven approved? We had a neighborhood meeting in February and there was no mention of a 7-Eleven as a possibility. Now it appears that the neighborhood residents were deceived. While there had been some community involvement early on, we didn't learn what was really happening until it appeared too late for the residents to have any say in the matter.

Is this legal nonconforming use? Was the process of obtaining permits done legally? 7-Eleven is extremely different than Stangelini's, and shouldn't be considered the same nonconformance use. Their business model is to be open when other stores are closed.

7-Eleven says they will be open for 21 hours, from 5 a.m to 2 a.m. Will 7-Eleven ever be allowed to open for 24 hours? Stangelini's was only open for 9 hours a day. What say do we really have in the hours that 7-Eleven is open?

Isn't the purpose of zoning to prevent disagreements among neighbors, so we all have to follow the same rules? Isn't the purpose of zoning to prevent our neighbors from making significant changes to the neighborhood and affecting property values?

Twice I have lived next to 7-Eleven:

For 2 years, I rented a condo in Milpitas on Marylinn Dr. It was next door to 7-Eleven and the closest unit in the complex to 7-Eleven on 596 N. Abel St.

For 1.5 years, I rented a house in San Jose on 10th St. We lived 5 houses away from the 7-Eleven 452 East Santa Clara St.

I was attracted to both places because of low rents, which justified the inconvenience of convenience stores. I knew that I wouldn't be there for long. My wife and I shopped for our new house in 2006. We looked from San Jose to Burlingame and one of our requirements was not to be close to 7-Eleven! We decided to buy in this neighborhood on Highland Ave because of the quiet neighborhood. I have been very happy with our decision for over 5 years. It is a nice neighborhood and I walk my dog every morning. My house is 1 block away from the former Stangelini's Deli.

Here is what I observed in the 7-Eleven neighborhoods where I lived before, which are reasons why and I am very disappointed that these activities will be introduced into our neighborhood.

1. Customers purchase their convenience food or beer and find a nice place to park to eat their food. After they are finished, they open their door and drop the trash on street or lawn and drive away.
2. Lots of candy wrappers, used scratchers lottery tickets, cigarette butts, and empty alcoholic beverage containers in paper bags in yards and gutters.
3. Several times a week, the police pull up with flashing lights and spot lights. They leave their lights on and their engines running.
4. Customers that want to do something illegal go off the store's property so that 7-Eleven doesn't hassle them. It becomes the burden of the neighborhood to call the police or intervene.
5. The store clerk doesn't care about what's going on in the neighborhood. They avoid confrontation with unruly customers, which seems to attract unruly customers. They know they can get away with it.

What recourse do I have if property values drop? I'm currently in the process of re-financing, which will include a property appraisal, so I will have a baseline before 7-Eleven opens.

I really hope that you can do the right thing for the neighborhood. Please don't let 7-Eleven get away with deceptively introducing a store and allow them the increased noise and crime that accompany their stores.

Sincerely,

David Reeves

525 Highland Ave

From: globalconscience@sbcglobal.net [mailto:globalconscience@sbcglobal.net]

Sent: Tuesday, November 13, 2012 8:11 PM

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

Cc: Emily Kingston; meeslichter; CHRISTINE Y Stiles; jackie jones

Subject: One More Example of Unacceptable Disruption to the Neighborhood Surrounding the 7-Eleven at 501 North San Mateo Drive

Dear San Mateo City Leaders:

The flood lights from the 7-Eleven at 501 North San Mateo Drive were turned-on for the first time last night, all night, and they shone through my fully-closed plantation blinders, producing a night-long bright glow in my bedroom. I lost a few hours of sleep as a result, even with a sleep mask, which can not block out all light.

Many studies in recent years have concluded that exposure to artificial nighttime light during sleeping hours suppresses melatonin (an important hormone which regulates sleep cycles), disrupting the circadian cycle, thereby reducing the quality and quantity of sleep. This results not only in depression, weight gain, decreased productivity, diminished alertness, and other mental and physical problems, but also can increase the likelihood of various cancers. Here's just a sample of the several dozens of articles covering the scientific research on this issue, all confirming these harmful impacts.

http://vitals.nbcnews.com/_news/2012/06/21/12346145-light-at-night-can-harm-your-health-docs-say?lite

<http://www.medicaldaily.com/articles/10410/20120622/night-light-sleep-cancer.htm>

<http://www.cnn.com/2012/07/25/health/time-light-depression/index.html>

http://www.cbsnews.com/8301-504763_162-57479970-10391704/sleeping-with-dim-light-may-cause-depressive-behaviors-in-rodents-what-about-humans/

In the photograph below, by visually comparing the luminance of the single street light with the six flood lights (which, despite facing the pavement, manage to glow upwards and outwards), it can be conservatively estimated that these flood lights collectively emit luminance several dozen times brighter than the streetlight. This is just one more example of extraordinary intensification of use at this location, and is clearly a violation of basic public nuisance regulations, never mind harmful to mental and physical health.

Sincerely,

Edward Howard
509 North San Mateo Drive
San Mateo
globalconscience@sbcglobal.net



Toni Dicapua

From: CHRISTINE Y Stiles [cpstiles@sbcglobal.net]
Sent: Tuesday, November 13, 2012 9:16 PM
To: Brandt Grotte; Maureen Freschet; John "Jack" Matthews; Robert Ross; Planning Commission; City Mgr; David Lim; globalconscience@sbcglobal.net
Cc: Emily Kingston; meeslichter; jackie jones
Subject: Re: One More Example of Unacceptable Disruption to the Neighborhood Surrounding the 7-Eleven at 501 North San Mateo Drive
Attachments: IMG_0055.jpeg

Dear City Council, it is obvious to everyone with whom we have spoken that this 7 Eleven at North San Mateo Drive is an "intensification of use of this property". There can be no question of that, any reasonable group of people would come to this conclusion, and the community of San Mateo sure has. The reasons are endless, and Ted in his message to you tonight points out yet another reason for this conclusion.

Hoping you do the right thing for the Citizens of San Mateo whom you represent. We believe in each of you and have placed our trust in you, and are counting on you to do the right thing for our community. Many of us have shared this story with our children and many of them are old enough to understand the issues. Please set the right example of fair, truthful and responsible government, that acts in the best interest of its citizens. Do not let the citizens, including the children, of San Mateo down.

Sincerely,

Christine and Peter Stiles

--- On Tue, 11/13/12, globalconscience@sbcglobal.net <globalconscience@sbcglobal.net> wrote:

From: globalconscience@sbcglobal.net <globalconscience@sbcglobal.net>
Subject: One More Example of Unacceptable Disruption to the Neighborhood Surrounding the 7-Eleven at 501 North San Mateo Drive
To: bgrotte@cityofsanmateo.org, mfreschet@cityofsanmateo.org, jmatthews@cityofsanmateo.org, rross@cityofsanmateo.org, PlanningCommission@cityofsanmateo.org, citymanager@cityofsanmateo.org, "David Lim" <dlim@cityofsanmateo.org>
Cc: "Emily Kingston" <ekingston@sideman.com>, "meeslichter" <meeslichter@comcast.net>, "CHRISTINE Y Stiles" <cpstiles@sbcglobal.net>, "jackie jones" <grafis@att.net>
Date: Tuesday, November 13, 2012, 8:11 PM

Dear San Mateo City Leaders:

The flood lights from the 7-Eleven at 501 North San Mateo Drive were turned-on for the first time last night, all night, and they shone through my fully-closed plantation blinders, producing a night-long bright glow in my bedroom. I lost a few hours of sleep as a result, even with a sleep mask, which can not block out all light.

Many studies in recent years have concluded that exposure to artificial nighttime light during

sleeping hours suppresses melatonin (an important hormone which regulates sleep cycles), disrupting the circadian cycle, thereby reducing the quality and quantity of sleep. This results not only in depression, weight gain, decreased productivity, diminished alertness, and other mental and physical problems, but also can increase the likelihood of various cancers. Here's just a sample of the several dozens of articles covering the scientific research on this issue, all confirming these harmful impacts.

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http://www.cbsnews.com/8301-504763_162-57479970-10391704/sleeping-with-dim-light-may-cause-depressive-behaviors-in-rodents-what-about-humans/

In the photograph below, by visually comparing the luminance of the single street light with the six flood lights (which, despite facing the pavement, manage to glow upwards and outwards), it can be conservatively estimated that these flood lights collectively emit luminance several dozen times brighter than the streetlight. This is just one more example of extraordinary intensification of use at this location, and is clearly a violation of basic public nuisance regulations, never mind harmful to mental and physical health.

Sincerely,

Edward Howard
509 North San Mateo Drive
San Mateo
globalconscience@sbcglobal.net



Joan Diskin

From: Brandt Grotte Photomask
Sent: Wednesday, November 14, 2012 6:12 AM
To: Patrice Olds; Ronald "Ron" Munekawa
Subject: FW: 7-Eleven at 501 N. San Mateo Drive

Please manage as public comment for the record.

Thank you,

Brandt

From: myr [mailto:myreeves@gmail.com]
Sent: Wednesday, November 14, 2012 1:30 AM
To: bgrotte@cityofsanmateo.org
Subject: 7-Eleven at 501 N. San Mateo Drive

Dear Mayor Grotte,

I write you as a San Mateo Heights resident, parent of a young toddler, and working professional with a background in architecture/urbanism. The planning permit approval of the 7-Eleven at 501 N. San Mateo Drive was a huge mistake and it is in your power to remedy the situation for the immediate neighborhood, as well as San Mateo taxpayers overall.

I urge you to 1) revoke the non-conforming use status of the parcel and 2) set an expeditious time limit (no more than 3- years) to bring the property back to the R-4 designation that is consistent with adjoining R-4 zoned properties along San Mateo Drive.

Reasons to revoke the non-conforming use status:

- The new 7-Eleven will be "especially burdensome" to the narrow streets and quiet residential setting of San Mateo Heights. It is completely unlike the former market that was there, Stangelini's Deli, which was a long-time family establishment with limited daytime hours of 9am-6pm. The proposed 7-Eleven will initially be open from 5am-2am and, based on the business model from thousands of other 7-Eleven stores nationwide, there is little doubt that they will migrate over to 24-hour operation as soon as possible. The type of business that the non-conforming use grandfathered in 40+ years ago bears no resemblance to a 24-hour convenience store like 7-Eleven. It's time to revert the parcel back to R-4, in keeping with the intentions of San Mateo's General Plan and adjoining properties.

- The parcel's "market" use was "discontinued" between 2010 when Stangelini's closed, and 2012 when 7-Eleven sought its permit. You will hear the current property owner and 7-Eleven deny this, however publicly-posted photos of the property on Zillow from 2010-2012 clearly show that all market-related store fixtures were removed and the whole space was carpeted to look more like an office space (photos presented at 10/30 public hearing). If there was any "intent" to keep the building as a market, then why put in wall-to-wall blue carpeting in the entire space? No legitimate "market" use would ever do that.

- The Impact Study prepared by the City of San Mateo used inappropriate benchmarks to defend the City's approval for the project. Here are just 2 examples why you cannot take the Study's findings at face value:

1) The Study determined that the anticipated traffic of 7-Eleven was not "especially burdensome" based on traffic levels of San Mateo Drive alone. However the property is right at the corner of San Mateo Drive AND Bellevue Avenue. Bellevue Avenue is highly residential and a preferred pedestrian route for school-aged children of Park Elementary School. The traffic light at Bellevue and El Camino (only 2 blocks away from 7-Eleven) is the closest stoplight for kids of Park Elementary School to cross busy El Camino. Parents and their young kids have no other safe and viable pedestrian route other than Bellevue Avenue. Also, cars already frequently run the stop sign at that intersection, making it a dangerous location to put a high-traffic business. Just ask the police department – they regularly station officers there at that intersection. Please do not kill Bellevue Avenue by allowing a high-traffic 7-Eleven to go in a location that once had a quiet, neighborhood business. Will the increased traffic from 7-Eleven be "especially burdensome" to Bellevue Avenue? Absolutely.

2) The Study determined that the number of calls to police (an indicator of crime) anticipated of this 7-Eleven was not "especially burdensome" *compared to other 24-hour convenience stores*. This is completely the wrong benchmark for evaluating crime. We should be comparing the anticipated police activity to current levels of police activity in this area. Even the San Mateo Police admitted during the 10/30 Planning Commission Public Hearing that the addition of 7-Eleven will create a new "hotspot" for policing. The location is particularly troublesome also because the L-shaped parking lot obstructs the ability of an police officer to do a visual drive-by from San Mateo Drive. Vehicular officers will need to drive down Bellevue (creating more traffic). This new hotspot will also divert police from other areas of the City and stress San Mateo's resources.

- Unlike the three other 7-Elevens in San Mateo, this one has ZERO-BUFFER to the surrounding neighborhood. On both the San Mateo Drive and Bellevue Avenue sides, there is no setback from the public sidewalk. The current 7-Elevens at East 3rd, Concar, and Laurie Meadows are located in shopping centers with large parking lots between the store and sidewalk. Additionally, the Bellevue side of the building doesn't even have windows. Neither does the building's rear and the parking lot. This is especially problematic with loitering and littering. When people loiter, it will be directly on the sidewalk or in hidden areas perfect for illicit activity, and store staff will not even see it. It will become "especially burdensome" to the neighborhood and City to enforce and manage.

Reasons to terminate the use ASAP:

- Public health and safety. Russell Bede School is 1 block away. Highland Montessori is 2 blocks away. San Mateo High School is 2-3 blocks away, visible from the store. San Mateo Park Elementary and Preschool is 4 blocks away, with Bellevue serving as the main pedestrian and vehicular traffic access across El Camino. I urge you not to expose our kids to the cigarettes, alcohol, loitering, unhealthy foods, and imminent crime that gravitate around convenience stores. Remember, this property has ZERO-BUFFER. Incidents *will* occur and our local families and taxpayers will be the ones paying for it. Let's put an end to it as soon as possible.

- High traffic. The average convenience store visit is between 3-4 minutes (Source: Nielson via NACSONline.com), versus 41 minutes for a traditional supermarket. Think about that. How many cars need to go in and out of that parking lot to sustain the business? An “especially burdensome” amount, I’d say.

- Litter. There are no other stores or public spaces near this location, and thereby no trash cans for the public to use. Where will all the cigarettes, food wrappers, napkins, Big Gulp containers, drink bottles, and other packaging end up? Where it’s most convenient... on the streets, gutters, and yards of our neighborhood.

- Noise. During the 10/30 Planning Commission Public Hearing, the corporate 7-Eleven representative talked about how this store will have daily deliveries and that the corporate office is considering keeping the store closed initially between the hours of 2am-5am. When do you think those deliveries (large, idling trucks) will happen? 7-Eleven was unable and unwilling to answer that question. I’ll bet it’s between 2am-5am.

- Continued operation at this location will create liability for the City and tax its already stressed services (police, fire, waste management).

- Decreased property values will reduce property tax revenue to the City.

- Sense of community. The San Mateo Heights Neighborhood is currently unique and cohesive despite its tight geographic boundaries. On the map, we are a ‘long and linear’ neighborhood. 7-Eleven and its resulting traffic/blight for Bellevue Avenue will slice our neighborhood in half. We are a diverse neighborhood of both established and young families working hard to raise their children safely. We are not a neighborhood in decline. Please don’t let 7-Eleven bring undue stress to our quiet pocket of San Mateo.

- Park, Drink, then Litter. Our neighborhood is beautiful with its tree-lined streets and vintage mix of architectural styles. We already experience occasional outsiders who like to park in our neighborhood to lunch in the daytime or drink at night, only to toss their trash out the window and drive away when done. I’ve seen it happen in front of my house and it’s happened to my neighbors also. I have no doubt that this ‘park, drink, then litter’ phenomenon will happen more regularly with 7-Eleven so conveniently nearby.

- 7-Eleven created their own hardship. By not being forthright about their business when applying for a building permit, and intentionally pursuing a path that eschewed public input, they knew that this extended-hours, alcohol-selling convenience store was completely inappropriate to this site. Since taking down the “7-Eleven is Coming!” banner back in September, their actions have been even less transparent than before (paper covering up the construction, fencing off the site, etc). And with increasing protest from the neighbors, it appears that they are hurrying to finish the store at as fast a pace as possible, rather than slowing their resources until a final decision is made. Please take their financial data with a grain of salt. 7-Eleven has 8000+ stores in the U.S. alone and knew fully well the risks

of leasing this non-conforming space. The City should not be responsible for bearing the full burden of the financial "hardship" they created.

A mistake was made when the building permit was issued. The best thing you can do is to now help remedy it to the full extent possible. It's in your power to do the right thing.

Sincerely,

Mona Ying Reeves

Highland Avenue

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Joan Diskin

From: Brandt Grotte Photomask
Sent: Wednesday, November 14, 2012 7:45 AM
To: Patrice Olds; Ronald "Ron" Munekawa
Subject: FW: 7-11 store at 501 So. San Mateo Dr.

Please manage as public comment

Regards,
Brandt

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

From: jeanne [mailto:jammin@speakeasy.net]
Sent: Tuesday, November 13, 2012 5:17 PM
To: bgrotte@cityofsanmateo.org
Subject: 7-11 store at 501 So. San Mateo Dr.

Dear Mayor Grotte:

I need to add my voice to my esteemed neighbors and citizens of the San Mateo Heights neighborhood who are protesting the permitting of the 7-Eleven store at 501 South San Mateo Drive in San Mateo. I am a homeowner within a block of the store and vehemently oppose its opening on procedural grounds, on behalf of the safety of our citizens within and around this quaint neighborhood, and for its violation of the city's stated mission and strategic direction.

The attorney hired to represent the citizens of San Mateo put forth a strong argument about the illegality of the 7-Eleven permit at our previous meeting. I will not belabor the salient points of that presentation, but questions remain as to whether it was a legal action. (I simply can not imagine having to hire an attorney to protect the rights of citizens ~ I thought that was what a city was supposed to do.) The city should be concerned about the legal aspects of this case.

However, as an educator, parent, and pedestrian, I am also concerned about safety, particularly for the group of students who congregate at the opposite corner each morning waiting for their bus. It is already an extremely busy intersection; I have almost been hit several times by drivers who do not stop for the stop signs. Not only has the city failed in its stated mission, but it has also failed its strategic direction, i.e., to provide for "safe, clean, and attractive neighborhoods... by ensuring high levels of public safety..."

The city has failed in its mission to be dedicated to serving the San Mateo community and to provide responsive city government. The city did not communicate, involve, and it certainly did not respond to this community's needs. If it did, the city would have known (or learned) that a 7-Eleven is burdensome on the neighborhood and significantly decreases the quality of life for those who live and work in this small, quiet enclave. Further, please explain to me how the insertion of a 7-Eleven will "...enhance the quality of residential neighborhoods by encouraging improved appearance and more community involvement." Contrary to this stated strategic goal, the opening of a 7-Eleven and its attendant crime, strewn garbage, and unhealthy food offerings only serve to degrade this charming neighborhood.

The strategic direction also included the commitment to "increase the economic vitality of the City with strengthened ties between business and the general community." As is abundantly clear from the letters and comments you have received, there will be no strengthened ties between this 7-Eleven and the general community of the San Mateo Heights neighborhood. As one astute observer noted, the community will likely have the police department phone number on speed dial. I don't doubt the veracity of that statement.

Lastly, please remove the statement on your website that you will "take actions which will maintain our ability to serve the community in the future while appreciating our heritage and history". The city's actions in this matter have spoken volumes about how it intends on serving the community. There is no interest on behalf of the city to appreciate or preserve our heritage

and history. I can no longer support a city government that does not take action on behalf of its citizens. Please do the right thing on behalf of the citizens of the San Mateo Heights neighborhood.

Thank you.

Jeanne McCarthy

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Joan Diskin

From: Brandt Grotte Photomask
Sent: Wednesday, November 14, 2012 9:35 AM
To: Patrice Olds; Ronald "Ron" Munekawa
Subject: FW: 7-11 in backyard

Please treat as public comment

Thank you,
Brandt

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

From: Kerry McArdle [<mailto:kerry@smdailyjournal.com>]
Sent: Wednesday, November 14, 2012 9:16 AM
To: bgrotte@cityofsanmateo.org; dlim@cityofsanmateo.org; mfreschet@cityofsanmateo.org; jmatthews@cityofsanmateo.org; rross@cityofsanmateo.org; letters@smdailyjournal.com; Bill Silverfarb
Cc: SM Heights
Subject: 7-11 in backyard

I am a resident of the San Mateo Heights neighborhood.
I am against having a new 7-11 on N. San Mateo Dr. I cannot attend the 11-15 meeting.

When you are considering the 7-11 please know that I do not want 7-11 in my neighborhood.
- It was made clear that the approval of the site should revert back to residential.
- There is already liquor store on Poplar, near San Mateo Dr, just a few blocks from the proposed 7-11 location. (I know 7-11 is calling themselves a 'market,' but it is common knowledge that is not the case).

No one in the neighborhood wants this 7-11. We are making a great effort to come together and even hire a lawyer to fight this. We are going through the correct legal process to stop this. But in the end we are appealing to you as families and neighbors, to save our neighborhood. Would YOU want a 7-11 in your backyard? Why not??

Do the right thing for your city.

Thank you

Kerry McArdle
Daily Journal
Cell 650-303-6735
kerry@smdailyjournal.com
[facebook.com/smdailyjournal](https://www.facebook.com/smdailyjournal)

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Toni Dicapua

From: Sean Johnston [sfjohnstons@gmail.com]
Sent: Wednesday, November 14, 2012 2:39 PM
To: Brandt Grotte; David Lim; Maureen Freschet; John "Jack" Matthews; Robert Ross; Ronald "Ron" Munekawa; Stephen Scott; policechief@cityofsanmateo.org; Planning Commission
Cc: silverfarb@smdailyjournal.com; Fred Chiappe; Peter Breining; Richard Smith; CHRISTINE Y Stiles
Subject: A vision of the Future for 501 N San Mateo Drive

Good Afternoon City of San Mateo,

Here is what I witnessed for a full 30+ minutes plus this morning. Total disregard for public safety, no traffic cones or personnel set up to at least make an effort, illegally parked and facing on coming traffic, cyclists having to take to the footpath almost colliding with pedestrians and deliveries of merchandise.

I don't want to see an accident or loss of life but with this situation I think it will be inevitable.

I pray that is not the time you wait until before reversing this egregious decision.

Sean Johnston

Law Abiding City of San Mateo Tax Payer



