

THIRD-PARTY APPEAL CONDITIONAL USE
PERMIT (PCPA 20110110) / TENTATIVE MAP /
AMENDMENT TO AUBURN BOWMAN
COMMUNITY / REZONING / ZONING TEXT
AMENDMENT / VARIANCES / MINOR USE
PERMIT (PMPA 20110145) TIMBERLINE AT
AUBURN, FINAL ENVIRONMENTAL IMPACT
REPORT, SUPERVISORIAL DISTRICT 3
(HOLMES)

Placer County Board of Supervisors

August 9, 2011
10:30 a.m.

Correspondence Received

As of
Rev 07/29/11

From: Dr Dale Smith [mailto:drdalesmith@aoaconsult.net]

Sent: Friday, June 03, 2011 3:55 PM

To: Placer County Planning; George Rosasco

Cc: Placer County Board of Supervisors; Auburn Journal; Bill Osborne; Bob Shallit; Dan Walters; Deric Rothe; Gus Thomson; Matt Weiser; Stuart Leavenworth

Subject: Demand to Withdraw the Timberline at Auburn Project

Importance: High

Dear Michael,

At 105PM today I delivered a two page document for admission into the Administrative Record of this Project to the CDRA. Now that I have had time to consult with several others on our team, I come forward with a Demand that Placer County withdraw this project application immediately, pending clarification of the situation of Mr. Martin Harmon, the principal funder for the project.

A copy of my first letter and the Channel 10 News Release is attached for your information.

We believe that to spend one more penny of the Taxpayers money to proceed with this Application now that this very heavy cloud hangs over the process would be a grave injustice to the public. This especially true when there are all of the drastic cut backs being made now by jurisdictions jeopardizing schools, police and fire forces, public safety, etc. the list is miles long.

There is enough information available now to believe that the people involved may well be prosecuted and go to jail or prison. Surely Placer County does not want to put more taxpayer money into this already very expensive project under these circumstances.

Our Appeal outlines clearly the solid reasons for not approving this project as it is now presented, especially the issue of whether or not the WCCC, Inc. has the financial ability to complete this project. The letter I put into the Administrative Record earlier today surely spells out clearly the current situation.

Sincerely yours,

/s/ Dale Smith

Dr. Dale Smith, Alfa Omega Associates and the North Auburn Ad Hoc Committee.

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Dr. Dale Smith, H.H.D., General Manager

June 3, 2011

DOCUMENT FOR INTRODUCTION INTO THE ADMINISTRATIVE RECORD FOR THE TIMBERLINE AT AUBURN PROJECT - PCPA 2011-0108 - CHAN. 10 REPORT

As stated in our appeal of 5-20-2011 there were ten reasons for the Appeal and two are the subjects of this document insertion into the Administrative record.

Alfa Omega Associates & the Ad-Hoc Committee specifically oppose the approval by the Planning Commission of the Timberline at Auburn project as delineated & identified on the first page of the appeal, and in particular the material in Item Nrs. 8 & 9 as follows:

8) - Financial Data Regarding the Gross & Net Revenue to be Generated by the Project During its Anticipated Life. There are several reasons for requiring the project applicant to submit financial information about the gross and net revenue to be generated by the project over its anticipated life. First, as previously pointed out, this financial data is absolutely essential in determining the "feasibility" of mitigation measures--particularly realignment of Richardson Drive and obtaining the larger access easement and the other special requests being made of Placer County for exceptions, variances and other conveyances that can only be obtained by a decision of the Board of Supervisors. Without such information an adequate analysis of these factors cannot take place.

9) - The particularly suspicious manipulation of the law on designation name does not make the dangerous problem go away and this is certainly not the end of this issue because there is a very important element in the Placer County Response to our Ad Hoc Committee Comments on the **DEIR, Comment 7-67**:

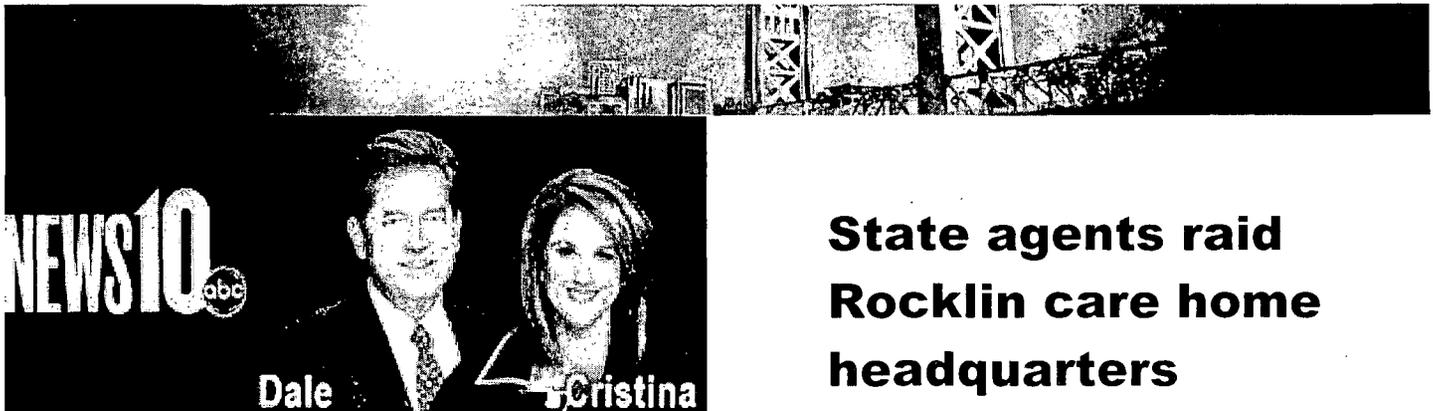
The County is in no way committed to approving the Timberline at Auburn project; this decision is solely within the discretionary purview of the Placer County Board of Supervisors. The hearing on the project before this elected body has not yet occurred.

Prior to making any decisions on the project, the Board of Supervisors will need to consider the adequacy of the Timberline at Auburn EIR (including both the Draft EIR and Final EIR).

Alfa Omega Associates believes the attached Channel 10 News Story speaks directly to these points and this document is filed as still another piece of evidence in this Case.

Dr. Dale Smith, Alfa Omega Associates

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State agents raid Rocklin care home headquarters

5:26 PM, May 25, 2011

ROCKLIN, CA - Agents with the California Department of Justice and Placer County Sheriff's Department raided the headquarters of Horizon West Healthcare Wednesday morning.

Authorities locked the gate at 4020 Sierra College Boulevard and were not allowing employees to enter. A telephone call to the company went straight to voicemail.

According to the company's Website, Horizon West Healthcare operates 34 care homes, including 17 in the Sacramento area.

The company employs roughly 3,000 people who care for about the same number of patients, according to a source familiar with the company who alerted News10 to the raid.

It was unclear how the Rocklin raid would impact the individual care homes.



Horizon West Healthcare was recently purchased by the San Diego-based Plum Healthcare Group, but the deal hasn't yet closed. A spokesman for Plum Healthcare declined to comment on the raid but said he did not anticipate it would affect the pending sale.

The source believed the raid was connected to a long-running investigation into possible Medicare and Medicaid fraud.

The attorney general's office did not immediately respond to a request for information from News10.

Horizon West Healthcare was founded 50 years ago in Auburn by Martin Harmon, who is still connected to the company. Harmon pulled up to the locked gate in a van and spoke on his cell phone for a few minutes before leaving. He told News 10 his lawyer advised him not to say anything to the media.

by George Warren News 10

This News Story Introduced into the Timberline at Auburn Project
Administrative Record on June 3, 2011 by Dr. Dale Smith, AOA

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Dr. Dale Smith, H.H.D., General Manager

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5 BOS Rec'd COB CoCo
TSI _____ CEO _____ Other _____

Friday, July 29, 2011

PLACER COUNTY BOARD OF SUPERVISORS

Clerk of the Board, Ann Holman
Senior Board Clerk, Gina Fleming

JUL 29 2011

Sup D1 _____ Sup D4 _____ Aide D1 _____ Aide D4 _____
Sup D2 _____ Sup D5 _____ Aide D2 _____ Aide D5 _____
Sup D3 _____ Aide D3 _____ * _____

Honorable Supervisors via Board Clerks

Alfa Omega Associates and the Save our Quality of Life Ad-Hoc Committee respectfully object to many elements of this notification starting with the following statement to the Notice of Public Hearing received by the appellants on the late afternoon of 05-27-11:

"Administrative remedies must be exhausted prior to an action being initiated in a court of law. If the proposed action is challenged in court, one may be limited to those issues raised at the public hearing described in this notice or in written correspondence delivered prior to the public hearing."

This is an incorrect, overly narrow and a potentially misleading statement of existing California Environmental Quality Act (CEQA) law on public notices of ultimate decision maker hearings where final project approvals are given.

Among other things, the proposed notice improperly limits the material constituting the project's administrative record, or record of proceedings, improperly requiring that (1) only issues raised at the public hearing or (2) only "written correspondence delivered prior to the public hearing" be included.

Under well established CEQA law, the administrative record is far broader, and includes not only "written correspondence," but also comments (oral as well as written), emails, memos, news articles, transcripts, reports and other information in any way relevant to the project.

We hereby object to the narrow and incorrect administrative record set forth in your erroneous public notice and by this reference we hereby incorporate all the material described above as if all that material was set forth herein.

Furthermore, we Object to the below statement contained in the Notice about Approval by the Planning Commission of this project:

"On May 12, 2011, the Placer County Planning Commission approved a Conditional Use Permit, a Minor Use Permit, a Tentative Subdivision Map, several variances; and recommended approval of an amendment to the Auburn-Bowman Community Plan, a Rezone, and a Zoning Text Amendment for the project."

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While the Placer County Planning Commission may have the legal authority to approve a Conditional Use Permit, a Minor Use Permit, and a Tentative Subdivision Map, we believe very strongly that they **do not** have the authority to “... **approve those several variances.**”

We also seriously challenge the Commission’s authority to recommended approval of an amendment to the Auburn-Bowman Community Plan, a Rezone, and a Zoning Text Amendment for the project, and we are willing to test this legality in court if necessary.

A Community Plan is only put in place after lengthy hearings in which a large number of the residents of the “community” in question have participated and many public hearings have been held, over many months and none of that has happened in this case. It might be technically possible for the Board to make said amendment, but without proper public hearings, it would be highly questionable from the standpoint of existing laws.

To make a major amendment and it would take just that “... *a major and most consequential move to do so, impacting and affecting many thousands of citizens living in that area.*”

We do not believe that this can be done on this project, because it would be showing extreme favoritism to an already financially questionable proponent. If the Board would do this for one, then it must do it for all and this is exactly why we have such strong laws on this issue. To set such a precedent in Placer County would instigate a chain reaction that could not be controlled.

Furthermore and most important, AOA/ADHOC COMM. have filed a number of documents since that hearing, documents that are extremely important to this project situation: We asked the Planning Department for answers and replies, but we have had absolutely no written responses. Some of those documents are:

May 18, 2011 - Letter to Mr. Michael J. Johnson

“We ask the Planning Department IF they have ever done the complete FIRE FLOW WATER DEMAND computations for ALL the fire water load in North Auburn, and that surely must include the demands for FIRE FLOW WATER at the new buildings and collectively for all the old buildings in DeWitt Center plus all the new construction and approved construction like Wal-Mart.”

We asked - In regard to potential impacts involving the airport, what's the difference between independent living units and assisted living units?

At pages 3-22 to 3-24 of the FEIR, containing the County's response to letter number 6 submitted by the PCTPA¹, there is a lengthy explanation and argument to the effect that even though the initially proposed "assisted" living units are inconsistent with the PCALUCP because assisted living units are analogous to "nursing homes," which "are

¹ Placer County Transportation Planning Agency, which submitted a 3-page DEIR comment letter dated 12-10-10.

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prohibited in all airport compatibility zones except Zone D ..." (FEIR at p. 3-22), the PCTPA apparently allowed WCCC to cure the defect by merely revising the site plan and "deleting the assisted living buildings and replacing them with independent living ones. As a future option, the applicant indicated he might go to the Commission for a determination on the assisting living use." (FEIR at p. 3-23.)

No reply, no explanation, and this is an extremely serious problem, totally ignored by the Planning Commission, but a problem that has serious repercussions if the County approves these three story buildings right on that Airport Perimeter Zone. Switching from "assisted living" to "independent living will also have a strong negative financial impact, which is very pertinent.

June 3, 2011 Alfa Omega Associates & the Ad-Hoc Committee specifically opposed the approval by the Planning Commission of the Timberline at Auburn project as delineated & identified on the first page of the appeal, and in particular the material in Item Nrs. 8 & 9 as follows:

8) - Financial Data Regarding the Gross & Net Revenue to be Generated by the Project During its Anticipated Life. There are several reasons for requiring the project applicant to submit financial information about the gross and net revenue to be generated by the project over its anticipated life. First, as previously pointed out, this financial data is absolutely essential in determining the "feasibility" of mitigation measures--particularly realignment of Richardson Drive and obtaining the larger access easement and the other special requests being made of Placer County for exceptions, variances and other conveyances that can only be obtained by a decision of the Board of Supervisors. Without such information an adequate analysis of these factors cannot and should not take place.

9) - The particularly suspicious manipulation of the law on designation name does not make the dangerous problem go away and this is certainly not the end of this issue because there is a very important element in the Placer County Response to our Ad Hoc Committee Comments on the DEIR, Comment 7-67:

"The County is in no way committed to approving the Timberline at Auburn project; this decision is solely within the discretionary purview of the Placer County Board of Supervisors. The hearing on the project before this elected body has not yet occurred.

Prior to making any decisions on the project, the Board of Supervisors will need to consider the adequacy of the Timberline at Auburn EIR (including both the Draft EIR and Final EIR)."

Please see the attached PDF Document of Wednesday October 1, 2008 and please direct me to anywhere in the DEIR or the FEIR or any other documents from the Placer County Planning Department where this information was in any way placed before the public since October 1, 2008 until today, May 16, 2011. (Said document was in that request not in this letter.)

Never was any response on this issue, but all these documents and many more are in the record.

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Ltr to Michel Johnson - 5-16-11 - There in the very first line we find these remarkable words:

John - thanks for the update on the Timberline project description adjustment - to remove the assisted living part of the proposal and to replace it with independent living residential units

The type on the PDF is indeed very small, so here is the sentence in regular font.

John - thanks for the update on the Timberline project description adjustment - to remove the “assisted living” part of the proposal and to replace it with independent living residential units.

Michael, will you please, as I have asked above, provide the exact information in any documents presented to the Public at any time by the Planning Department, along with the exact reasons why this change was made on such a brief statement from the proponent.

NO RESPONSE WAS EVER PROVIDED.

Late May 2011 - “Alfa Omega Associates believes the Channel 10 News Story speaks directly to these points and this document is filed as still another piece of evidence in this Case.”

With regard to the Channel 10 News Story which was presented to Placer County at that time, very little has ever been heard about the situation with Martin Harmon’s elderly care homes and the raid on his Headquarters as reported by Channel 10 on May 25, 2011.

We will not bore the Supervisors with any more details on all the materials that have been delivered by one means or the other to the Placer County Planning Department over these several months since the Appeal was filed, which is not only our legal right, but our imperative duty to our community and the citizens.

The appeal was filed on May 20, 2011, and we had these comments which are more pertinent now than when they were filed 70 days ago because of the peculiarity of the Commission actions and now this extremely short notice, with no warning whatsoever that this would come forward in the middle of the Summer. Here is what we wrote then:

10) - The pressing legal question is why did the Planning Commission make a statement at the hearing on the absolute necessity of filing a timely appeal?

That action put the public into a totally untenable position. If citizens do not file an appeal does it mean that we loose all our rights in any kind of subsequent and possibly forthcoming writ of mandate litigation to enforce CEQA?

Rather than take this risk, because of the double-speak of Placer County, we have raised the funds and are filing that Appeal, after consultation, to the Board of Supervisors, UNDER PROTEST.

We believe that the County, in making the statement above was going to take this matter forward to the Board of Supervisors. The Planning Commission declaration on the necessity to file an appeal threw that whole question into a muddled up state.

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Our appeal fee should be refunded under these circumstances, still another reason to appeal this oversized, possibly non-performing project that will cost we taxpayers dearly if the WCCC, Inc. fails to perform. Who IS watching the shop?

With this letter of 7-29-2011 we ask that this hearing be delayed until the first hearing date of the BOS in September 2011. It's hard to get people together on such short notice, particularly after the very long delay in the process so far, and in the middle of Summer.

If this project were to be approved now, it could absolutely result in a colossal waste of public as well as private resources if the applicant isn't able to go forward with the project. The County will try to deny that it is absolutely vital for the Proponent Harmon and Western Care Construction Company, Inc., to provide detailed financial info on how the applicant plans to perform its conditions of approval and mitigation measures in light of the ongoing nationwide recession and/or depression. CEQA requires Placer County to do this, and we the people demand it.

All one has to do is to look at the various websites of the Harmon Companies, and they are under many names but owned and operated by Martin Harmon and others, to find out just how many complaints and investigations have been carried out, some resulting in large fines over the past several years. Until now Placer County has failed to respond to the information, documents and comments regarding the principal person/entity financing situation. When large amounts of money are in play in a situation like this, the California Environmental Quality Act is very clear,

This project will call for a Statement of Overriding Considerations (SOC). An SOC requires a cost-benefit analysis involving environmental and socio-economic considerations, which can not be evaluated properly without knowing as precisely as possible the taxable revenue (gross and net) that the project will bring in during its estimated life and it must be based on substantial evidence in the record and evaluated by totally independent agencies.

The applicant should provide financial information showing that it has, and will continue to have in the foreseeable future, sufficient resources available to it to carry out all mitigation measures adopted. This may seem far-fetched, given the applicant's apparent resources, but in the wake of the Enron and similar corporate scandals such an analysis simply cannot legitimately be avoided.

In the wake of the Enron and similar corporate scandals such an analysis simply cannot be legitimately avoided. In the magazine Treasury and Risk Management, Pat Weschler articulates our concern on this topic:

“That is why the current scandals engulfing the U.S. business community are so particularly disquieting. It was revelations about Enron Corp. that made us look more closely at how businesses keep their books. But those disclosures have quickly led to a rash of similar confessions by other companies that they too may not be in as excellent financial health as their quarterly reporting and balance sheets suggest.”

Another very important element involved is that the wholesale grading of the whole site for what is advertised in the DEIR as a “phased project” would be extremely harmful to the area. The heavy storms in California last winter illustrate this point loud and clear.

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To denude that whole area for what is supposed to be savings through an "economy of scale" would result in an ecological disaster. The run off from totally graded property left open would be very deleterious and harmful to those locations at a lower level, would clog the small streams in the area and generally do irreparable damage to the whole area.

This scheme must be carefully re-considered, it is neither practical, economically sound or legal.

We who live in that immediate area must and will do everything possible to preserve as many of those several hundred heritage oaks in that plot, which is not 119 acres but 95 acres as was pointed out by Jeff Tupen in this comments the Timberline NOP on 9-25-2008.

There are many more very serious problems with this project, not the least of which is the very severe impact this huge facility will have on **area medical facilities**. We did not see one mention of this in the DEIR or the FEIR, but it is extremely important.

We have conferred with Legal Counsel and we believe that we have the legal right to call for an extension of the time period for the consideration of the appeal. We do not have a final count on the list of those who did not receive your notice, but it is probably between 50 and 80 home owners and renters living within the legal limits requiring written notification who did not receive this Appeal Hearing notice. The provisions of CEQA Guidelines 15200 and 15201 were not met by Placer County

We believe we have made a very strong, cogent and persuasive presentation and again ask for a continuance until the first Board Meeting in September, 2011.

Sincerely yours,



Dr. V. Dale Smith
Alfa Omega Associates

Sincerely yours,



Jon Forslund
Save our Quality of Life
Ad Hoc Committee

Appellants to this project

CC: Local Media
CalAware
First Amendment Coalition
CA Attorney General
League of California Cities
California Environmental Redevelopment Fund