

FILED  
YOLO SUPERIOR COURT

MAY 15 2019

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF YOLO  
1000 MAIN STREET  
WOODLAND, CA 95695

By

*L. Hancock*  
Deputy

CASE TITLE: OLD EAST DAVIS NEIGHBORHOOD ASSOCIATION VS CITY OF DAVIS

CASE NO: CVPT-17-2111

I, the undersigned, certify under penalty of perjury that I am a Deputy Clerk of the above-entitled Court and not a party to the within-entitled action; that on May 15, 2019 I served true and correct copies of the foregoing/attached STATEMENT OF DECISION by depositing the same, enclosed in sealed envelopes with postage thereon fully prepaid, in the United States Post Office at Woodland, California addressed as follows:

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At the time of said mailing there was regular communication by United States Mail between the said place of mailing and the places addressed.

Dated: May 15, 2019

SHAWN C. LANDRY  
COURT EXECUTIVE OFFICER

By:

*L. Hancock*  
L. Hancock, Deputy Clerk

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**YOLO SUPERIOR COURT**

MAY 15 2019

By *SAUNDERS*  
Deputy

YOLO SUPERIOR COURT FOR THE STATE OF CALIFORNIA

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10 OLD EAST DAVIS NEIGHBORHOOD )  
ASSOCIATION, petitioner )

Case No.: PT-17-2111

) STATEMENT OF DECISION  
)

11  
12 v. )

13 CITY OF DAVIS, CITY COUNCIL OF THE )  
CITY OF DAVIS, respondents )

14 \_\_\_\_\_ )  
15 TRACKSIDE CENTER, LLC, real party in )  
interest. )  
16 )  
17 )  
18 )  
19 \_\_\_\_\_ )

1 This dispute is between the City of Davis and the Old East  
2 Neighborhood Association. It raises the issue of the planned development of  
3 a large mixed-use residential building on a track of land designated as a  
4 "transition" area by the City. The Petitioner contends that the development  
5 is not consistent with local planning provisions. The Respondent contends  
6 otherwise, namely that the General Plan and Design Guidelines to the extent  
7 applicable support this Project. The facts are not in dispute.

8 Factual Findings

9 1. The project at issue is known as the Trackside Center Project or  
10 "Trackside" or the "Project."

11 2. It is a 47,983 square foot building.

12 3. It is designed to have 27 residential apartments located above  
13 8,950 square feet of commercial and retail space.

14 4. The apartment units range from 705 square foot studio to 1,537  
15 foot 2-bedroom units with balconies.

16 5. It is designed with 30 parking stalls.

17 6. The Project is located on a total of .69 acres of land at the  
18 northeast corner of Third Street and the Union Pacific railroad  
19 track.

20 7. The current site is comprised of two single story commercial  
21 buildings covering .525 acres. The two buildings total  
22 approximately 11,000 square feet. These two buildings would be  
23 demolished. The current addresses are 901-919 Third Street.

24 8. There is an additional .167 acres of property to be leased from  
25 Union Pacific Railroad. The parking and plaza is located on the  
26 leased property. The lease is a ten year lease and can be extended  
27 and can be terminated with notice.

28

1 9. The Project site improvements include surface and covered  
2 parking, an outdoor plaza on the West side, landscaping, drainage,  
3 sidewalks, pedestrian and bicycle facilities.

4  
5 10. The Project density is 39 units per acre with the leased land  
6 included and 51.4 units per acre without the leased land.

7 10a. The Proposed Floor-to-Area ratio for the project is 1.6 with  
8 the leased land included and 2.1 without the leased land.

9 11. To the East of the property are single family homes located  
10 across a 30 foot alley. The nearest house is set back an additional  
11 15 feet from the alley. The height of the nearest house is 24 feet.

12 12. To the West is a railroad track and across the track is a  
13 hardware store and the commercial center of the City of Davis.  
14 There are no single family residences for several blocks to the  
15 West.

16 13. To the South across Third Street are single story commercial  
17 properties.

18 14. To the North immediately adjacent is the rock yard for the  
19 hardware store across the tracks to the West.

20 15. Based on the Staff Report, the alley front façade of Trackside  
21 is an additional 8 feet from the alley, making the distance between  
22 the nearest home and the Trackside building equal to 53 feet.<sup>1</sup>

23 16. Trackside is designed as a four story building. Trackside's  
24 four stories are stepped back from the houses across the alley to  
25

26 <sup>1</sup> Petitioner points to an Accessory Dwelling Unit located at 321 I  
27 Street as the nearest residence. It is at a closer distance than the Staff  
28 Report reflects. See Petitioner's Final Brief, page 7. This effects the  
distances described in facts 15 and 16. The difference is not material.

1 the East. Based on the Staff Report, the first floor is 8 feet off  
2 the alley and 15 feet high. The second floor is 15 feet off the  
3 alley and 25.5 feet high. The third floor is 32 feet off the alley  
4 and 36 feet high. The fourth floor is 46 feet off the alley and  
5 47.5 feet high. The highest point on the top of the building is 50.5  
6 feet high. The architecture facing East is designed to present like  
7 residential living. There are setbacks also on the North side  
8 Third Street front, which would be a traditional retail space on the  
9 first floor. The parking would extend back on the West and North  
10 side towards the track, which would have a more industrial designed  
11 architecture.

12 17. Within three blocks of Trackside across the tracks to the West,  
13 there are two four story mixed use residential/commercial/retail  
14 buildings (Chen Building and McCormick Building) and two five story  
15 parking garages.

16 18. The Chen Building is 48 feet 8 inches tall with a total of  
17 23,703 square feet. It is a mix of first floor retail and upper  
18 floor residential and is located across the street and railroad  
19 tracks from the Amtrak train station and bus stop.

20 19. The detail on the McCormick Building is not contained in the  
21 record, other than that it is mixed-use and it appears to be the  
22 same size or slightly larger than the Chen Building.

23 20. The historical use of the Trackside property was industrial up  
24 to the mid-20th century. For the past several decades, the current  
25 commercial buildings have stood. The 30 foot alley has separated  
26 the neighborhood from the industrial/commercial property at issue  
27 for years.

28 21. Trackside is located within the City's Core Area Specific Plan  
(CASP). The purpose of the CASP is "to provide for mixed-use  
development of a variety of types in downtown Davis, in keeping with  
the downtown's role as the commercial and social center of Davis."

1 Moreover, according to CASP, retention of residential units in the  
2 Core Area is critical to maintaining a healthy downtown.

3 22. Within CASP, the Trackside property is identified as "Core  
4 Retail with Offices." The CASP specifically promotes mixed use with  
5 retail on the first floor and commercial and residential on the  
6 upper floors.

7 23. Trackside is also located within a designated Conservation  
8 District pursuant to Municipal Code sec. 40.13A. This is not a  
9 Historic District. The Conservation District includes the downtown  
10 and three adjacent traditional residential neighborhoods and is  
11 subject to the Davis Downtown and Traditional Residential  
12 Neighborhood Design Guidelines.

13 24. Trackside is also located within the Third Street Corridor.  
14 This Corridor runs through the center of town, starting at the  
15 University of California at Davis on A Street and extending 9 blocks  
16 to the East. Trackside is at the far East end of the Corridor,  
17 farthest from the University. The Corridor includes both the  
18 Commercial Core Area and the Mixed-Use Transition Area. Trackside  
19 is located in the transition area.

20 24a. Trackside is also designated as an Opportunity Site. These are  
21 identified underutilized downtown sites that could be redeveloped  
22 privately or through joint public/private partnership. The  
23 projected average density for these sites is 40 units per acre. The  
24 purpose is to promote a 24 hour life and social dimension to  
25 downtown and reduce the need for development of rural agricultural  
26 land.

27 25. The neighborhood East of Trackside is known as "Old East Davis."  
28 It is bound by the railroad tracks on the West and South, L Street  
on the East, one block beyond Fifth Street on the North. It was one  
of the earliest neighborhoods in Davis to be developed, dating back  
well into the 19th century. It retains some of the City's oldest  
residences, including three designated historical properties. Due

1 to development patterns, however, a handful of multi-story apartment  
2 buildings and townhouses/duplexes different from the original single  
3 family residences have been built throughout the neighborhood over  
4 the last few decades. There are also additional commercial  
5 establishments both along the railroad tracks on the West and along  
6 L Street on the East border side of the neighborhood and around  
7 Fifth Street to the North.

8 26. In November and December 2017, the City of Davis by and through  
9 the City Council voted to approve the Project and issued all  
10 necessary Notice of Determinations and passed all necessary  
11 Resolutions. Petitioner then filed a Petition for Writ of Mandate  
12 challenging the City's decision to approve the Project.

#### 13 Standard of Review

14 The dispute here really centers on whether the City has complied with  
15 the General Plan. In other words, is the Project consistent with the  
16 comprehensive, long-term plan for development of the City. (Gov't Code sec.  
17 65860; *Corona-Norco Unified School Dist. v. City of Corona* (1993) 17  
18 Cal.App.4th 985, 994 (consistency doctrine is linchpin of California land use  
19 and development laws).) The proper standard of review is abuse of  
20 discretion. In reality, this is the same standard as substantial evidence  
21 review under CEQA. (*California Native Plant Society v. City of Rancho*  
22 *Cordova* (2009) 172 Cal.App.4th 603, 635.) The trial court must determine  
23 whether the City's decision to approve the Project was arbitrary, capricious  
24 and lacking in evidentiary support, unlawful or procedurally unfair. Under  
25 this standard, the Court must defer to the factual findings on consistency of  
26 the City unless no reasonable person could have reached the same conclusion  
27 on the evidence before it. (CNPS at 636-637.)

28 / / /

1        Rule of Consistency

2        A project is consistent with the general plan, if considering all its  
3 aspects, it will further the objectives and policies of the general plan and  
4 not obstruct their attainment. A given project need not be in perfect  
5 conformity with each and every general plan policy. (CNPS at 637-638.)

6 There is a strong presumption of regularity as to the City's determination.

7 It is not the role of the Court to substitute its judgment for that of the

8 City. (*Id.*) Because the policies in a general plan reflect a range of

9 competing interests, the local agency must be allowed to weigh and balance a

10 plan's policies, and it has broad discretion to construe the policies in

11 light of the plan's purposes. (*East Sacramento Partnership for Livable City*

12 *v. City of Sacramento* (2016) 5 Cal.App.5th 281, 305.) General consistencies

13 with general plan policies, however, cannot overcome specific, mandatory and

14 fundamental inconsistencies. (*Families Unafraid to Uphold Rural El Dorado*

15 *County et al. v. Board of Supervisors of El Dorado County* (1998) 62

16 Cal.App.4th 1332, 1342; *San Bernardino Valley Audubon Society, Inc. v. County*

17 *of San Bernardino* (1984) 155 Cal.App.3d 738, 753.)

18        It is also fundamental that the general plan itself must be internally  
19 consistent, and any amendment may be invalid if it compromises the internally

20 consistency. One major exception to this rule is when addressing affordable

21 housing projects. In such a case, a local agency cannot reject an affordable

22 housing plan even if it is inconsistent with other general plan policies.

23 The project at issue here is not an affordable housing project and thus, the

24 internal consistency rule applies.

25        Once the general plan is in place, it is the province of elected  
26 officials to examine the specifics of the proposed project to determine

27 whether it would be in harmony with the policies stated in the plan. (CNPS

28 at 638.) "It is emphatically not the role of the courts to micromanage these



1 development decisions." (Id.) The focus is on reasonableness. This is true  
2 if even if there are more reasonable interpretations of the factual record.  
3 In sum, so long as the City's conclusion is reasonable and based on the  
4 factual record, it must be upheld.

#### 5 Land Use Regulation Hierarchy

6 Land use regulation is organized in a hierarchy that proceeds from the  
7 general to the specific. The general plan is the fundamental, controlling,  
8 and comprehensive source of local land use law and policy which sits atop the  
9 hierarchy as the "constitution" of future development. It is a mandatory  
10 requirement imposed by state law, requires public participation and a public  
11 process for adoption, and is the "yardstick" against which any planning  
12 decision for a particular parcel is measured.

13 The next level of land use regulation is the specific plan, which may  
14 be adopted to implement the general plan with more detailed provisions that  
15 must themselves be consistent with the general plan.

16 The next level of land use regulation is the zoning ordinance, which  
17 regulates the allowed uses of specific parcels of land and establishes the  
18 requirements for the development of improvements in accordance with the  
19 specific zoning designation.<sup>2</sup>

20 To support and supplement these land use provisions, the City of Davis  
21 also adopted design guidelines as a response "to community concerns about the  
22 manner in which new investment in the center of Davis can enhance, rather  
23 than erode its valued character." The guidelines do not trump the zoning  
24 laws unless there is a specific more restrictive quantitative statement that  
25 is in conflict with a zoning ordinance. More generally, the guidelines are  
26  
27

28 <sup>2</sup> See Miller & Star, 7 Cal.Real.Est. sec. 21.3 (4<sup>th</sup> Ed.).

1 intended to provide direction and flexibility and not rigid mandates when  
2 making development decisions.

### 3 A Transition Property

4 One overarching principle set forth in the General Plan and the Design  
5 Guidelines here is that the subject property serve as a "transition" from the  
6 Core Commercial Area to the Old East Davis neighborhood.

7 This principle is reflected in General Plan Land Use Principle 4, which  
8 states: "Accommodate new buildings with floor area ratios that can support  
9 transit use, especially within ¼ mile from commercial areas and transit  
10 stops, but maintain scale transition and retain enough older buildings to  
11 retain small city character."

12 General Plan Policy UD 2.3 supports this principle, requiring an  
13 architectural "fit" with Davis' existing scale for new development projects.  
14 The standards set forth mandate (1) a scale transition between intensified  
15 land uses and adjoining lower intensity land uses, (2) stepped back upper  
16 floors on taller buildings in areas with a relatively smaller-scale  
17 character, and (3) variance in size, density and design in the new projects.

18 The concept of transition permeates the General Plan's designation of  
19 the Core Area Specific Plan (CASP). The CASP is drafted to promote "building  
20 up the downtown core (the area between First and Third streets and D Street  
21 and the railroad tracks east of G Street) before greatly increasing densities  
22 in the remainder of the core area, thereby protecting existing residential  
23 neighborhoods and their character." The General Plan goes on to state that  
24 the Core Area Specific Plan encourages "appropriate scale transition between  
25 buildings."

26 The CASP section entitled "New Buildings in Residential Neighborhoods"  
27 states: "The single most important issue of infill development is one of  
28 compatibility, especially when considering larger developments. When new

1 projects are developed adjacent to older single-family residences, concerns  
2 exist that the height and bulk of these infill projects do not have a  
3 negative impact on smaller scale buildings." The General Plan and CASP  
4 underscores the importance of maintaining the small town character and the  
5 need to match new infill development with this goal.

6 Land Use Policy 7B similarly provides: "The area along Third Street  
7 shall be treated with sensitivity because of potential impacts on adjacent  
8 land uses. Development along this corridor shall be of an appropriate scale  
9 and character in relation to the surrounding and adjacent land uses."

10 The Davis Municipal Code also touches on the principle of transition by  
11 incorporating restrictive standards set forth in the Davis Downtown and  
12 Traditional Residential Neighborhoods Design Guidelines (DTRN). The City  
13 ordinance set forth in section 40.13A.020 (b) states: "Wherever the  
14 guidelines for the DTRN conflict with the existing zoning standards including  
15 planned development, the more restrictive standard shall prevail." In light  
16 of the provisions discussed above in the General Plan, it is a fair  
17 conclusion that the DTRN guidelines, to the extent they provide detailed  
18 direction and address the mass and scale of development projects in the  
19 transition area, are relevant here.

20 The Guidelines were approved by the City pursuant to the authority set  
21 forth in the Municipal Code. The DTRN summarizes its mission for downtown:  
22 "[T]he community engaged in extensive public process to discuss how the  
23 traditional center of Davis can accommodate housing and economic development  
24 objectives in a way that is sensitive to the area's traditional scale and  
25 character. This document provides a policy and urban design framework that  
26 is shaped by design guidelines and a supporting design review process."

27 As noted by the Petitioner, the guideline for Mixed-Use Design provides  
28 that a new building should "maintain the scale of a new structure within the

1 context of existing buildings on the block." It further directs (1) a front  
2 elevation similar in scale to those seen traditionally on the block, (2) a  
3 minimization of the scale of the building by stepping down the height toward  
4 the street and neighboring smaller structures, (3) a limit on the building  
5 not to exceed the width of a typical single family building in a similar  
6 context, and (4) a break in the perceived mass of the building by dividing  
7 the building into modules or into separate structures.

8 The DTRN includes a specific guideline for the very property at issue,  
9 going so far as to include a picture of one of the current commercial  
10 buildings to be demolished. The Guideline sets forth objectives: (1) this  
11 area should improve the visual and land use transition from the Commercial  
12 Core to the Old East residential neighborhood, (2) new mixed use buildings  
13 should be built to the sidewalk edge with landscape courtyards incorporated  
14 to vary the building setbacks along the street, (3) building architecture  
15 should respect the traditional residential character of the neighborhood, and  
16 (4) parking should be incorporated off the alleys in private parking courts.

17 The parties dispute whether these guidelines are incorporated into the  
18 zoning law. These are highly descriptive and restrictive guidelines for this  
19 transition area project, but it cannot be said that they are mandatory.<sup>3</sup> The  
20 City rightly contrasts these guidelines with ones for the Old North Davis  
21 neighborhood, which are more specific and intended to serve as mandatory  
22 zoning restrictions. Nonetheless, the guidelines at issue here remain highly  
23 relevant. The City asserted that the Project was consistent with the

24  
25 <sup>3</sup> For this reason, the Petitioner's Third Cause of Action fails. It is  
26 based solely on alleged non-compliance with the guidelines. The Petitioner  
27 has not established that the City had a mandatory duty to strictly comply  
28 with the design guidelines. Rather, as discussed below, the City did have a  
duty to comply with the overall fundamental planning policy of "transition  
development" which is expressed in the General Plan, the CASP, the zoning  
regulations and the design guidelines.

1 guidelines and that it substantially complied with and relied on them. Under  
2 these circumstances, any meaningful evaluation of the Project must assess  
3 compliance, at least in broad terms, with the DTRN Guidelines. As noted  
4 above, a project need not comply with each and every guideline or each and  
5 every provision of the General Plan or related Specific Plans.

6 In sum, the parties agree that the designated property is a transition  
7 parcel. In fact, in reviewing the transcript of the City Council meeting  
8 approving the project, the Major spoke at length about the nature of the  
9 property as a transition between the Core Area and the Old East Davis  
10 Neighborhood.

11 Analysis

12 Now we turn to the work of determining whether the Project was  
13 consistent with these local planning provisions. As noted above, it is the  
14 City who is best suited to balance the various interests of the General Plan.  
15 But a lawful plan should not have competing interests; rather, the plan  
16 should have complementing and coordinated interests. Moreover, the law  
17 dictates that the City cannot make decisions that frustrate the purpose of  
18 the general plan, even if a decision is consistent with other general  
19 principles set forth.

20 Given the above discussion, this Court finds that the conclusion above,  
21 that this property is a transition property, constitutes a fundamental policy  
22 of the General Plan. The references to transition throughout the general  
23 plan, the CASP and the guidelines are highlighted, numerous and detailed.  
24 The policy of designating transition properties to protect adjacent  
25 neighborhoods permeates the entire planning scheme for downtown Davis. The  
26 mass and scale of the building located on a transition property is as  
27 important as the proper use of the property. The planning provisions  
28 dictating a transition into the surrounding neighborhoods are not generally

1 stated but rather are specific provisions as set forth above. To say that a  
2 project satisfies other generally stated purposes of the General Plan such as  
3 densification is insufficient. The project must also truly be a transition  
4 project. If it is not, then the project as proposed would not be consistent  
5 with the General Plan and would impermissibly frustrate the attainment of a  
6 fundamental planning goal.

7 The City relies on Principle 4 of the DTRN which encourages mixed-use  
8 development downtown at "opportunity sites" and other planning provisions  
9 including General Plan Land Use 2.6.1.1 which promote transportation centered  
10 projects, infill projects, increased density of downtown residential living,  
11 and preservation of agricultural land. Trakside certainly meets those  
12 objectives. It has been designated an opportunity site. It is less than two  
13 blocks from the Amtrak train station. It sits on the railroad tracks on a  
14 site historically used for manufacturing or commercial. It is within the  
15 mixed-use transition area of downtown and two special districts. It will  
16 have 39 residential units per acre of density and first floor retail space.

17 But what is the factual record as to whether the Project complies with  
18 the mass and scale provisions for this transition area? In its Staff Report,  
19 the City describes the step-back design of the upper floors of the building  
20 away from the adjacent single-family homes in the neighborhood. The step-  
21 back design feature means that the mass of the building is weighted away from  
22 the neighborhood and towards the railroad track and commercial core district,  
23 as provided for in the DTRN Guideline. The City details the 30 foot width of  
24 the alley, which serves as a buffer to the adjacent single family homes. The  
25 City explains that while the guidelines favor two and three story mixed-use  
26 buildings, this four story project is consistent because the fourth floor is  
27 small in size with only four residential units and stepped back. The City  
28 adds that the height of the building is only ten feet higher than a nearby

1 single-family historic residence, and is similar to the nearby Chen Building  
2 and that given all of the benefits of the Project, the height of the Project  
3 building is reasonable. Finally, the City relies heavily on a Third Street  
4 Corridor Special Character Area Case Study image which illustrates an ideal  
5 and acceptable project from a mass and scale perspective. The image project  
6 features 45 dwelling units per acre with ground level parking, predominantly  
7 three stories in height with a fourth story element and includes private  
8 decks. The third level is stepped back, there is a residential entry on the  
9 sidewalk and 75 percent of the ground floor is retail with an outdoor café.  
10 The City notes that other than architectural style differences, the image  
11 project is virtually interchangeable with Trackside and thus, the Project is  
12 consistent with the Guidelines.

13 Is that a sufficient factual basis to support a rational conclusion  
14 that Trackside is a transition project between the Commercial Core Area and  
15 the Old East Davis Neighborhood? The focus is really on the meaning of a  
16 "transition" under the planning provisions set forth above. Thus, here is  
17 the question: What is in the Core Commercial Area and what is in the Old  
18 East Davis neighborhood and is Trackside a transition between the two.

19 The record identifies two comparators in the Commercial Core Area,  
20 namely the Chen Building and the McCormick Building both four story buildings  
21 like Trackside. Trackside, however, is double the size of the Chen Building  
22 and likely at least 30 percent larger than the McCormick Building. There was  
23 a passing reference also to the Roe Building, which is several blocks away  
24 and even smaller than the other two comparators. The hardware store directly  
25 across the tracks appears to be a single story building with a parking lot.  
26 There is nothing on the Third Street Corridor that is even remotely near the  
27 size of Trackside. From the record, other than two relatively large parking  
28

1 garages in the Core Area, it would appear that Trackside would be the largest  
2 mixed-use or commercial building in downtown Davis by a longshot.<sup>4</sup>

3 It would also be pure speculation to conclude that the Core Area might  
4 grow in the future under the current General Plan to include five and six  
5 story mixed-use buildings. As noted, there are none now. No evidence was  
6 presented that any have been proposed. Moreover, the guidelines reference  
7 buildings one-to-three stories tall with a fourth story element in the Core.

8 The most reasonable conclusion is that inside the Downtown Commercial Core  
9 Area, under the current general plan, there would be similar development like  
10 the Chen and McCormick buildings.

11 In fact, the mass and scale design guidelines for the Commercial Core  
12 say that new buildings should predominantly be two and three stories. As  
13 noted, there are a few four story buildings. The Trackside proposal is  
14 described as having a "fourth story element." The fact is that the fourth  
15 story is designed for four separate residences with balconies, equaling a  
16 total square footage of over 6,700. That is the functional equivalent of six  
17 or seven of the single family residences located one block away. The term  
18 "element" is not defined, but it likely is referring to some other type of  
19 design feature such as an extended roof line or tower and not a full floor of  
20 four 2-bedroom residences. The guidelines for the Core Commercial Area  
21 provide that new buildings shall not exceed 45 feet in height. Trackside is  
22 50 feet tall. In the end, this "fourth story element" makes the proposed  
23 building taller than any other mixed-use project inside the Core Commercial  
24 Area and taller than the guidelines even for the Core Commercial Area - a

25  
26 <sup>4</sup> The reference in the record in support of the project to a prior six  
27 story proposal, "Trackside 1.0" has no relevance on the question before the  
28 Court. Likewise, the fact that a large industrial complex was located once  
on the property is not relevant to the consistency issue. The General Plan  
has long since changed since that point in time.



1 place where the CASP dictates should be densified first before densifying the  
2 transition areas.

3 Moreover, the reliance on the Third Street Corridor case study image is  
4 overstated. The Third Street Character Area runs from the University nine  
5 blocks East to the site in question. The guidelines talk about densification  
6 at the University (West) end of the corridor and not at the East end. The  
7 guidelines state a preference for two and three story buildings. In fact, it  
8 states that one and two story buildings should predominate on certain  
9 segments outside the commercial core and away from B Street on the north side  
10 of Third Street. The Trackside property shares the same designation as the  
11 area on the corridor where smaller scale development should occur, namely  
12 mixed-use and not commercial core. The transition from the University is an  
13 entirely different matter than the transition to Old East Davis neighborhood.  
14 Also, the case study itself does not promote a 47,000 square foot building;  
15 rather, taken in context of the guidelines, it more reasonably is intended to  
16 refer to a three story model of the Chen Building. The case study identifies  
17 the target density, but does not discuss the square footage of the units or  
18 the size of the property. It gives directions on features of a transition  
19 project on the other side of downtown but does not really address the mass  
20 and scale of a project there or across town on the railroad tracks. Finally,  
21 the case study is simply a case study and there is no like building on the  
22 Corridor or anywhere near the proposed Trackside project.

23 On the other side of the Project is the Old East Davis neighborhood.  
24 As described above, it is a diverse predominantly residential neighborhood.  
25 It includes single family residences, some lower level apartment buildings,  
26 some duplexes and/or townhouses. It also includes some single story  
27 commercial buildings around its rim. It is one of the oldest neighborhoods  
28 in Davis dating back into the 19<sup>th</sup> Century. There are three historic homes in

1 Old East Davis remaining. Many of the other homes are single-story  
2 bungalows. Obviously, it is much different from the University, and it is  
3 much different than the Core Commercial Area.

4 Trackside itself is located in what might be called the railroad  
5 corridor, next to a rock yard and across the street from single story  
6 commercial buildings. The current buildings on site are single story  
7 commercial. Trackside would be over 4 times larger than the current  
8 commercial buildings.

9 Over the years, the City has paid a good deal of attention to this  
10 particular location. It is an important lot to the future of the town. It  
11 is within the Core Area Specific Plan. It has been designated an  
12 "opportunity site" for infill residential development. It is located within  
13 the Mixed-Use Transition Area and Third Street Special Character Area. It is  
14 also part of a designated Conservation Overlay District, which is intended to  
15 make some measured effort at recognition and preservation of the historical  
16 nature of Old East Davis. As noted, the site is even pictured in the  
17 guidelines discussing the Core Transition East. The case study for the  
18 specific transition areas shows a project with virtually no resemblance to  
19 Trackside - two mixed use, two story buildings situated on the 1/2 acre lot  
20 with retail on the first floor and residential upstairs.

21 In the final briefing, the City highlighted the fact that the property  
22 is an opportunity site and 40 units per acre is authorized for such sites.  
23 This is a relevant consideration, as mentioned above, but the opportunity  
24 site designation does not trump or outweigh the other consideration. In  
25 addition to mixed-use, the other fundamental consideration is that the  
26 project must be a transition, including as to mass and scale. Moreover, it  
27 is apparent that many of the opportunity sites are actually located in the  
28 Commercial Core Area, where the greater densification and larger mass and

1 scale buildings are proper. As noted in the CASP, those site should be  
2 densified first before the increasing density in other areas that are  
3 adjacent to neighborhoods. Also, the project would still qualify as a  
4 Transit Priority Project at 20 units per acre. Thus, a reasonable conclusion  
5 is that on a property serving as a transition to a residential neighborhood -  
6 compared to opportunity sites in the commercial core - the average unit per  
7 acre would be less.

8 The City and Trackside also highlighted the Floor-to-Area ratio of the  
9 proposed development. As noted, the proposed FAR for Trackside is 1.6 when  
10 the leased area is included and 2.1 when it is not included. A zoning  
11 amendment is necessary and was approved here to ensure FAR compliance in the  
12 event the leased area is lost to the project. The FAR represents a  
13 permissible densification of the property. However, the FAR like the  
14 designation of the site as an opportunity site does not change or satisfy the  
15 fundamental planning policy that the project must be a transition from the  
16 Core Commercial Area to the Old East Davis neighborhood. Notably, Land Use  
17 Principle 4 of the general plan makes this point by linking accommodation of  
18 FAR in new buildings to maintaining scale to retain small-city character.  
19 All of the necessary zoning amendments for the project must be consistent  
20 with the fundamental policies set forth in the general plan and the CASP.

21 The Petitioner, meanwhile, rely heavily on the design guideline that  
22 says that mixed-use projects should not exceed the width of a single family  
23 building in a similar context. The guideline goes onto say that if the  
24 façade is wider, then the wall plane should be divided into smaller  
25 subordinate planes. It adds that "dividing the total building mass into  
26 separate structures is encouraged." Even the guidelines for the Core  
27 Commercial Area promote breaking up the perceived mass of a building by  
28 dividing it into modules. Again, these are not mandatory provisions; rather,

1 they are merely guidelines. But considered within a scheme set forth in the  
2 CASP, that the transition area shall be sensitive to the adjacent  
3 neighborhoods, the guidelines are consistent and informative about what is a  
4 lawful project.

5       Based on the totality of circumstances and a review of the entire  
6 record, it is the conclusion of this Court that Trackside is not consistent  
7 with the City of Davis planning provisions governing the transition between  
8 the Core Area to the Old East Davis neighborhood. Trackside is twice the  
9 size of the nearby Chen Building. It is significantly larger than the  
10 McCormick Building and the Roe Building. These smaller buildings are all in  
11 the Core Commercial Area, where densification shall occur first. Trackside  
12 is four times larger than the current on-site buildings. There are no  
13 buildings inside the Core on the Third Street Corridor remotely similar in  
14 size. Other than two parking garages, it would be the largest building on  
15 the East side of downtown by a large margin. All of the adjacent buildings,  
16 either commercial or residential are single story. The guidelines repeatedly  
17 make reference to two and three story buildings along the Third Street  
18 Corridor in the actual Core Area. The features relied upon by the City to  
19 justify the Project, like the step-backed design, do not really address the  
20 larger issue of the mass and scale of the project. Nothing in the Staff  
21 Report or record rationally explained how a 47,900 square foot building  
22 constituted a transition project.

23       Instead, the City relied on other provisions of the General Plan as a  
24 basis for the Project. Those provisions generally address the need for more  
25 mixed-use projects in the Core Area.<sup>5</sup> There is a compelling case, as the City

26  
27       <sup>5</sup> These policies were listed in the Staff Report and also the legal  
28 briefs filed by the City. The policies include: promoting infill projects;  
siting large apartment complexes in the core; encouraging densification near  
activity centers; promoting the adequate supply of housing; encouraging a

1 has made, for a mixed-use, high density residential development at this  
2 location near the train station. The General Plan and the various specific  
3 plans and guidelines discussed above clearly support a mixed-use project at  
4 that location. But the failure here is that the mass and scale of the  
5 proposed project is not reasonable under the current law and factual  
6 circumstances. There simply is not a logical and reasoned case to be made  
7 that Trackside is a "transition" from the Core Area to the Old East Davis  
8 neighborhood. Trackside would overwhelm the existing residential  
9 neighborhood. It would not respect the traditional scale and character of  
10 the neighborhood. The record lacks evidentiary support for the City's  
11 decision.

12 In reviewing the General Plan and other related planning provisions and  
13 guidelines, it is evident to the Court that the "transition" requirement of  
14 the General Plan is fundamental to any planned development on that location.  
15 It cannot be disregarded in the name of other important planning goals, such  
16 as increased densification. When balancing the goals of the General Plan,  
17 the final project decision must protect and harmonize the goals and not  
18 frustrate a specific goal in the interest of another more generalized goal.  
19 Any reasoned and lawful development vote, therefore, should satisfy all of  
20 the fundamental goals in making a final determination on a proposed project.  
21 Here, the goal and principles of "transition" development was not properly  
22 protected.

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diverse housing supply; maintaining an adequate rental supply of housing;  
maintaining the Core Area as social cultural, retail and business center;  
adding apartments to the Core Area; promoting mixed-use in the Core Area;  
maximizing economic life and stability in the Core Area; promoting housing  
for senior citizens.

1 For this project as proposed to be approved, the City would necessarily  
2 have to amend the general plan and CASP to scrap or modify the policy of  
3 transition. The resolutions passed here did not accomplish this. Finally,  
4 one additional observation from the above analysis is that a smaller scale  
5 mixed-use project or a project where the mass and scale is broken up would  
6 effectively harmonize the policy of transition and infill, without requiring  
7 an amendment to the General Plan.

8 For these reasons, the Petitioner has proven its Fourth Cause of Action  
9 made pursuant to Government Code sec. 65300 et seq. The petition for writ of  
10 mandate is GRANTED.

11 CEQA and the SCEA/IS

12 Given that the Court has concluded that the project is not consistent  
13 with the General Plan, it follows that the SB 375 Sustainable Community  
14 Environmental Assessment conducted by the City was inadequate. The SCEA/IS  
15 did not properly assess the project inconsistency with the General Plan and  
16 related planning provisions. (Pub. Resources Code sec. 21155.2) The above  
17 conclusion would necessarily lead to changes to the SCEA/IS for the project  
18 in the areas of Aesthetics and Land Use/Planning. The initial study must  
19 identify all potentially significant impacts of the TPP. It shall also  
20 contain measures that either avoid or mitigate to a level of insignificance  
21 all potentially significant impacts.

22 For these reasons, the Petitioner has prevailed on its Second Cause of  
23 Action made pursuant to the Public Resources Code sec. 21155.2<sup>6</sup> The petition  
24 for writ of mandate on this basis is GRANTED.

25  
26 <sup>6</sup> Underlying this finding is the conclusion that the City has satisfied  
27 the elements of section 21155 (b). This is a Transit Priority Project (TPP)  
28 subject to section 21155.2. The record also supports the conclusion that the  
project satisfies subsection (a) of 21155.2 by addressing and incorporating  
all necessary matters from prior applicable environmental impact reports.  
Thus, the analysis then turned to compliance with subsection (b).

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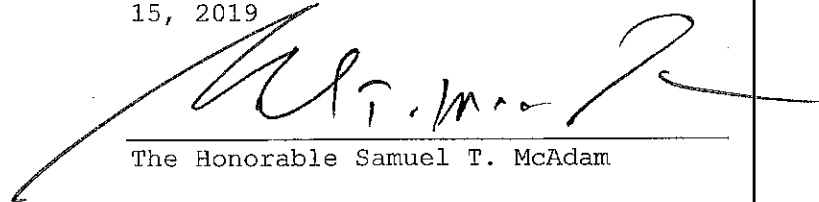
Conclusion

Based on the foregoing decision, it is the judgment of this Court that a writ of mandate shall issue directing the City to vacate and rescind all approvals associated with the project, including the SCEA/IS.

The Petitioner is hereby ordered to prepare a proposed WRIT OF MANDATE and a separate proposed JUDGMENT. Petitioner shall meet and confer with the City and Trackside regarding the proposed Writ and Judgment and shall submit the proposals within ten days with any objections to the Court.

IT IS SO ORDERED.<sup>7</sup>

Signed in Woodland, California on May 15, 2019



The Honorable Samuel T. McAdam

Note also, the project is not subject to section 21155.1 because there was no request for an exemption from the SCEA/IS requirement for a TPP. For these reasons, to the extent that the Petitioner attempted to state a separate cause of action in its First Cause of Action, the Petitioner's cause of action fails.

<sup>7</sup> This Statement of Decision was prepared after numerous reviews by the Court of the entire Administrative Record, after review of the opening and final briefs submitted by both parties and after holding two court hearings on the matter. The review has been thorough and every document and legal authority submitted by the parties has been carefully reviewed. The timing of this decision was consistent with the obligation to conduct a thorough review and to draft an order that would adequately explain the legal basis for the decision.