

To : Planning Commission

Dec. 8, 2020

From : Michael Belluomini

Ref: General Plan Amendment #20-03

**BACKGROUND:** The City Council approved a shopping center with 200 apartments on six acres (33 units/acre) of Neighborhood Commercial zoned land by Conditional Use Permit #1238. Advocates for the neighborhood around Yosemite Ave. and McKee demonstrated that the project did not comply with the General Plan criteria for residential density higher than 24 units/acre, among other issues.

A Writ of Mandamus law suit was filed in late October by the neighbors which is in process, demanding the City correct the project to comply with the General Plan zoning code, California Environmental Quality Act, and the Brown Act. There is evidence that council members communicated with the developer after the public hearing was closed and before the council voted. There is a probability that CUP #1238 will be required to be reheard by the City . If that happens, this Amendment #20-03 will provide definition to the number of apartments that can be allowed in Neighborhood Commercial General Plan designation.

**THE PROPOSAL :** The proposed change to the General Plan is to define the number of apartments allowed per acre in Regional/Community Commercial(RC) which is downtown or the mall, and in Neighborhood Commercial (CN) and Commercial Office (CO) designations.

Except for downtown there is no shopping center or office complex in Merced that has apartments on the same lot or on the second floor above shops or offices. This General Plan Amendment is a significant change of development practice . In the CN and CO plan designations the proposed allowed density is 12.1 to 24 apartments per acre. What does the lower end of the allowable density mean ? If a developer wanted to develop 40 apartments on five acres in combination with shops, will city policy be to require he build 60 apartments (12 units/acre) instead though the main project is not an apartment project ?

**ANALYSIS:** Just as the neighbors at McKee and Yosemite were dismayed , so will other residents be alarmed to learn that over a hundred apartments are allowed at their shopping center.

Recently changed state law require cities to allow the maximum residential density designated on the General Plan or face legal action. If the allowable density is expressed as 12 to 24 unit/acre, the developer has the right to build 24 units/acre, and the City cannot prevent it.

**RECOMMENDATION :** When the General Plan designates an area as Neighborhood Commercial or Office then the public should be able to rely on the future development being **predominantly** neighborhood shops or an office complex. To ensure that small office complexes and small shopping centers are not a contrivance or scheme to build apartments instead of the city plan desired shops and offices to serve the neighborhood, the General Plan should limit residential density to "residential floor area not to exceed the floor area of the commercial shops and offices on the site" instead of "12 to 24".