Date: June 25, 2024

Honorable Mayor and Council Members:

Authors and title: Mike Ross, Chief Building Official; Jenna Gatto, Town Planner/Chief Code Enforcement Officer; Denyelle Nishimori, Community Development Director/Code Enforcement Director

Title: **Pioneer Commerce Center Building K-4, Boat Storage Building Appeal (Planning Application 2024-00000078); APN 019-700-025 (10730 Pioneer Trail)**

Jen Callaway, Town Manager

Recommended Action: That the Town Council adopt Resolution No. 2024-43 thereby taking the following actions:

1. Determine the project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15270 (Projects which are Disapproved);
2. Deny the appeal of the Community Development Director/Code Enforcement Director's determination that land use permit Planning Application No. 2016-00000035/DP is expired and that there are no valid land use permits, thereby upholding the Community Development Director/Code Enforcement Director's determination that approval of a new land use permit by the Planning Commission is required;
3. Deny the appeal of the Community Development Director/Code Enforcement Director's decision to issue a Notice of Violation and Notice and Order to Abate, and deny the request for Council to withdraw the May 1, 2024 Notice of Violation and May 28, 2024 Notice and Order to Abate, thereby upholding the Community Development Director/Code Enforcement Director's determination that demolition/deconstruction of unpermitted construction is required;
4. Deny the appellant's request to permit construction of Building K-4 to continue without delay, upholding the Community Development Director/Code Enforcement Director's determination that demolition/deconstruction of unpermitted construction, new land use permit approval and building permit approval are required;
5. Direct staff to issue a revised Notice and Order to Abate, extending the compliance deadline to July 25, 2024 and reaffirming the Community Development Director/Code Enforcement Director's determination that unpermitted work occurred without land use or building permit approval and that a building permit for demolition/deconstruction is required prior to July 25, 2024; and
6. Deny the appeal based on the findings contained in Resolution No. 2024-43 (Attachment #1).

Discussion and Analysis:

Summary of Appeal Request: The appellant requests that the Town Council direct staff to withdraw the Town's Notice of Violation, dated May 1, 2024, and to withdraw the Town's Notice and Order to Abate, dated May 28, 2024, for the Pioneer Commerce Center Building K-4 [boat storage building] and permit construction of Building K-4 to continue without further delay. The appellant also requests the following (as summarized by staff, the complete appeal application is included in this staff report as Attachments #2 and #3):

- That the Town Council find that the 2016 Development Permit [Planning Application No. 2016-00000035] remains in effect/is not expired and that the appellant has fundamental vested rights to complete construction under the prior land use approvals.
- That the Town Council overturn the Community Development Director/Code Enforcement Director's determination that there are no valid land use permits and that approval of a new land use permit (Development Permit) by the Planning Commission is not required prior to acceptance of a building permit application to the Building Division for construction of Building K-4.
- That the Town Council find that staff failed to provide the appellant with his Due Process rights, creating a substantive due process clause violation due to excessive delays, and that the delays deprived the appellant of use of his property and constituted a temporary takings for which compensation is due.
- That the Town Council find that staff proposed a remedy that violated California law and policy on not creating excessive waste.

Location/Setting

Pioneer Commerce Center is located west of the Pioneer Trail/Donner Pass Road intersection, within a developed industrial subdivision. The Phase II project is located on the north side of Pioneer Trail, near the intersection with Comstock Drive (APNs 19-700-17, -18, -19, -25, -26, and –27). The site is located in the M (Manufacturing) zoning district and the Industrial land use designation of the 2040 General Plan. **Figure 1** shows a project site vicinity map/aerial of the parcels.

Figure 1. Project Site Vicinity Map,

Google Earth Image dated June 23, 2023

Adjacent uses include the Truckee Industrial park to the north, a vacant Truckee Donner Public Utility District parcel and 9-unit apartment building [Pioneer Commerce Center Building M] to the east, Pioneer Commerce Center Building H [e.g.-gym, Tahoe Modern, Mountain Living Home Consignment, CAMP 1 Fitness], to the south and Pioneer Boat Storage to the west. **Photos 1-3** depict the as built construction of Building K-4 as viewed in October 2023.

Photo 1. As-Built Building K-4 (October 2023)

Photo 2. As-Built Building K-4 (October 2023)

Photo 3. As-Built Building K-4 (October 2023)

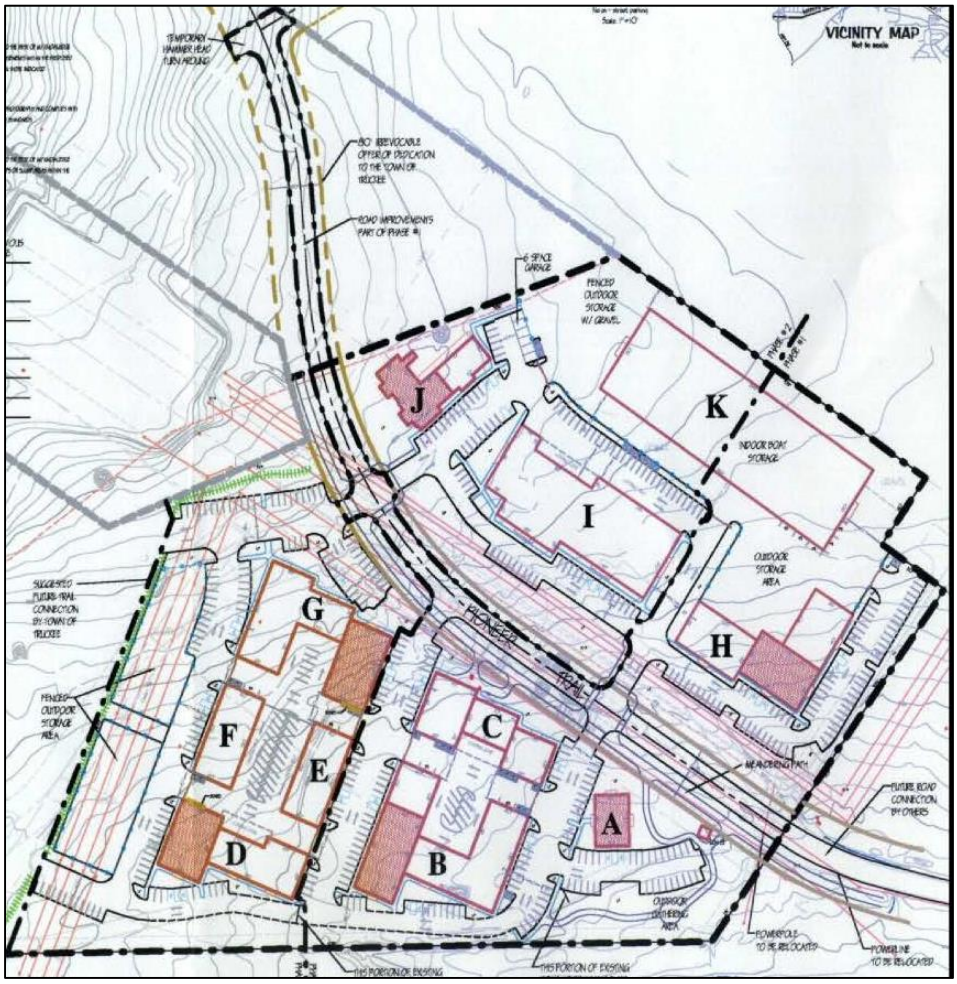
Background

The land underlying Pioneer Commerce Center (PCC) has been utilized for industrial purposes since the 1970s. Sha Neva, Inc. operated its construction equipment and trucking operations and established a concrete batch plant and propane storage facility under Nevada County's jurisdiction. In 2000 Sha Neva sold the land to its current owner, Ciro Mancuso, who submitted a land use application to the Town (Planning Application No. 00-0111/PD-UP-DP-LLA-ABN) for industrial development on the eastern portion of the property. On May 17, 2001 the Town Council approved a 235,600 sf industrial business park allowing approximately ¼ of the floor space to be devoted to commercial uses with six residential units (Council Resolution No. 2001-25, see Attachment #5). The Council's action included approval of the following land use permits:

- Planned Development – construction of 11 buildings ("Buildings A though K" as shown in **Figure 2**), scenic corridor reduction and allowance for a wider range of land uses than permitted in the Manufacturing zoning district.
- Use Permit – to allow churches/places of worship, schools and training, employee housing, live/work quarters, child day care center, veterinary clinic, animal hospital, boarding and kennels and commercial parking and storage
- Lot Line Adjustment
- Easement Abandonment

- Development Permit with Phasing – two phases. Phase I: construction of project infrastructure, construction of Buildings A, B, C, H, I and half of Buildings J and K. Phase II: construction of Buildings D, E, F, G and the remainder of Buildings J and K. Staff notes that this is the phasing plan that was analyzed in the adopted Mitigated Negative Declaration Project Description for Planning Application No. 00-111/PD-UP-DP-LLA-ABN (SCH# 2001042033).
    - Resolution No. 2001-25, Condition of Approval #1 further defines the approved phasing timing:
        a) The use permit/development permit for Phase I shall be exercised within two years from the date of approval of the land use permits [by May 17, 2003]. The permits shall not be deemed exercised until the applicant has obtained the necessary building permits for construction and, at a minimum, the installation of the infrastructure and foundations for all structures within that phase have been completed.
        b) Construction for Phase 2, consisting of obtaining the necessary permits and initiating grading or building construction, shall commence within two years after the construction is initiated on Phase 1 [Phase 1 construction was initiated in 2001 so Phase 2 is required to be initiated by 2003]. If construction for Phase 2 is not commenced within these time frames, the land use permits shall be deemed expired for Phase 2. Phase 2 shall be completed within two years after construction for Phase 2 has commenced.

Figure 2. Pioneer Commerce Center Site Plan, Buildings A though K, 2000



Staff notes that the phasing plan/land use entitlement approved with Planning Application No. 00-111 is expired. Phase I construction started in 2001 with Building Permit No. 01-12147 (Building A) and the installation of the infrastructure and foundations for all structures within Phase I (i.e.- Buildings A, B, C,

H, I and half of Buildings J and K) were required to be completed within two years or by 2003 per Resolution No. 2001-25, Condition of Approval #1. Buildings H, I. J and K foundations were not installed by 2003. Phase II was initiated in 2003 with Building D (Building Permit 03-16057), which started the Phase II time clock and required completion of Phase II by 2005. In 2005, only Building D and Building G (Building Permit 04-17581) were complete; Buildings H, I, J and K were not constructed. Land Use Application No. 00-111 was the only land use entitlement for PCC that had an approved phasing plan and based on the above, it expired in 2005.

In addition to Planning Application No. 00-111, five subsequent land use permits were considered and approved by the Planning Commission, in addition to the 2023 land use permit that was not considered/approved. A summary of the land use permits is provided below.

Planning Application No. 01-076/TM-PD AMD

- Approved by Planning Commission May 8, 2002, Resolution No. 2002-11 (see Attachment #8)
    - Tentative Map to create 14 parcels, Planned Development Amendment to allow for increased Floor Area Ratio.
    - No phasing approved; Condition of Approval #1 specified, "*The project shall comply with the time limits established by Chapter 18.84 [Permit Implementation, Time Limits and Extensions], and Sections 18.96.140 [Expiration of Approved Tentative Maps] and 18.96.150 [Extensions of Time for Tentative Maps] of the Development Code.*"

Planning Application No. 00-111/DP-TM-PD-UP AMD

- Approved by Planning Commission February 9, 2005, Resolution No. 2005-01 (Mitigated Negative Declaration), 2005-02 (Phase I & II Planned Development), 2005-03 (Amendments to the land use permits for Phase I & II), 2005-04 (Tentative Map to re-subdivide Phase I & II), and 2005-05 (Phase III Tentative Map). See Attachment #9 for Resolution No. 2005-03; Resolutions 2005-01, 02, 04 and 05 are on file with the Town Clerk and hereby incorporated by reference.
    - Project Amendment—For Phases I and II for 8,900 sf additional sf commercial, convert 6,100 sf of industrial to commercial, modify layout of Phase II
    - Planned Development—Changes to underlying Planned Development Permit
    - Tentative Map—Re-subdivision of Phases I and II
    - Tentative Map—Creation of Phase III subdivision
- The effective date of approval was February 21, 2005. Resolution No. 2005-03, Condition of Approval #1 specified: "*In accordance with Section 18.84.050 of the Development Code, the land use permit shall be exercised within two (2) years of the effective date of approval [February 21, 2007], and the project shall be completed within four (4) years of the effective date of approval [February 21, 2009]. Otherwise the approval shall become null and void unless and extension of time is granted by the Planning Commission.*" This timeline was not complied with and the land use approvals for Planning Application No. 00-111 expired; the approval was null and void because the project was not completed in four years and no Time Extension was applied for/approved.
- Resolution No. 2005-01, 02, 03, 04 and 05 superseded Resolution No. 2001-25

Planning Application No. 2016-00000035/DP

- Approved by Planning Commission July 19, 2016, Resolution No. 2016-13 (see Attachment #10)
    - Development Permit—For remaining six unconstructed buildings approved in 2005
- The effective date of approval was August 1, 2016. Resolution No. 2016-13, Condition of Approval #3 specified: "*In accordance with Section 18.84.050 of the Development Code, the land use permit shall be exercised within two (2) years of the effective date of approval [August 1, 2018], and the project shall be completed within four (4) years of the effective date of approval [August 1, 2020]. Otherwise the approval shall become null and void unless and extension of time is granted by the Planning Commission.*"

- This permit was needed because the 2005 land use approval expired (appellant stated as much in their application submittal). Appellant requested a 10-year phasing in their application submittal. Phasing was not discussed or approved by the Planning Commission and no appeal of the Planning Commission's decision was filed.

Planning Application No. 2017-00000052/PD-AMD

- Approved by Planning Commission September 19, 2017, Resolution No. 2017-16 (see Attachment #11)
    - Development Permit—for remaining six unconstructed buildings approved in 2005
    - Project Amendment – to increase the size of Building H (gym) from 12,135 sf to 18,834 sf; allow for construction of Building M as a nine-unit apartment complex
    - Planned Development Amendment to remove the existing health/fitness floor space maximum limit
- The effective date of approval was October 2, 2017. Resolution No. 2017-16, Condition of Approval #3 specified: "*In accordance with Section 18.84.050 of the Development Code, the land use permit shall be exercised within two (2) years of the effective date of approval [August 1, 2018], and the project shall be completed within four (4) years of the effective date of approval [August 1, 2020]. Otherwise the approval shall become null and void unless and extension of time is granted by the Planning Commission.*"
- This permit was unrelated to Building K-4 so Resolution 2016-13 for Building K-4 was not modified.

Planning Application No. 2019-00000050/AMD

- Approved by Planning Commission June 3, 2019, Resolution No. 2019-10 (see Attachment #12)
    - Project Amendment – to increase the existing floor space maximum limit for deli/restaurant uses from 2,500 sf to 7,264 sf.
- The effective date of approval was June 3, 2019, Resolution No. 2019-10, Condition of Approval #2 specified: *"In accordance with Section 1808.45.0 of the Development Code, the approval of the Project Amendment shall be valid for 24 months after its effective date. At the end of that time, the approval shall expire and become null and void unless the time limits of the Project Amendment are extended per section 1808.45.5 of the Development Code."*
- This permit was unrelated to Building K-4 so Resolution 2016-13 for Building K-4 was not modified.

Planning Application No.2 023-0000107/DP-ZC—THIS APPLICATION IS NOT APPROVED

- Development Permit—Allow construction of Building K-4, 11,840 sf boat storage building
- Zoning Clearance—Approval of commercial parking and vehicle storage (permitted by right through the original Planned Development)
- Time Limits—Effective date of approval October 3, 2023. Permits exercised within two years (October 20, 2025). Project construction complete within four years (August 1, 2020). Otherwise, null and void unless extended.
- Draft Resolution 2023-14 is unapproved (see Attachment #13)
- **Note:** The unpermitted construction was confirmed the day of the Planning Commission hearing and the Development Code prohibits approvals on properties with active code compliance cases so the hearing got continued.

Steps Leading to the Appeal

On July 6, 2023, a building permit application was submitted electronically to the Town Building Division via the Town's online submittal portal, Esuite, by the appellant's representative, LOT C Architecture. Online submittals are automated to a general email (cdd@townoftruckee.com) where they are opened in the order received by the Building Permit Technicians and then screened for completeness prior to acceptance for processing. On July 10, 2023, LOT C Architecture was notified that the application could

not be accepted for processing because the previously approved land use permit, Planning Application No. 2016-00000035, was expired and there was no land use approval. No building permit application was created, no fees were collected and there were no approved or valid building permits for 10370 Pioneer Trail as of July 10, 2024.

On July 27, 2023 the appellant's agent, Bill Quesnel, submitted a letter from Mr. Mancuso to the Planning Division (see Attachment #4) requesting Community Development Director approval to proceed under Planning Application No. 2016-00000035; the letter stated that the permit was not expired and that the 24-month timeframes contained within 2017 and 2019 project amendments also applied to the building construction timeframes. On August 1, 2023 the Community Development Director emailed the appellant and his agent, Bill Quesnel, confirmation that the land use permit is expired and that submittal of a new land use permit would be required. Subsequent correspondence is summarized below:

- August 3, 2023 – new land use permit application submitted to the Planning Division
- August 7, 2023 – land use permit application fee submitted and application was accepted by the Planning Division for processing
- September 5, 2023 – land use application routed to partner agencies and special districts for comments
- September 19, 2023 – end of routing comment period; staff reached out to agencies that had not yet provided comments/agency requirements
- September 25, 2023 – routing comments forwarded to project agent; agent notified of October Planning Commission hearing date
- October 2, 2023 – Planning Division mailed public notices to surrounding property owners/Sierra Sun newspaper of the October 17, 2023 Planning Commission hearing
- October 12, 2023 – land use application staff report published
- October 16, 2023 – unpermitted work on APN 19-700-025 (project site) observed by Town staff during pre-Planning Commission meeting site inspection
- October 17, 2023 – Property owner questioned about the construction by Laura Dabe, Associate Planner. Unpermitted construction confirmed.
- October 17, 2023 – Stop Work Order posted on-site by Town Code Compliance; Planning Commission took action to continue review of the project due to the active code case. This was per Development Code:
    - Development Code Section 18.200.080.F.3. – Any property owner notified of a Code violation shall correct the violation before issuance, processing, approval or completion, as appropriate, of any discretionary permit application; and
    - Development Section 18.200.040.D - In addition, the Code Enforcement Director may withhold the processing of and/or issuance of any and all ministerial permits and discretionary land use permits, where a documented Code violation(s) exists, until the subject property is found to be in complete compliance with any and all applicable Code sections.
- October 18, 2023 – Chief Building Official (CBO) and Community Development Director met with Ciro Mancuso on-site
- October 20, 2023 – CBO initiated investigation via email inquiry to Ciro Mancuso and requested the submission of additional information by Ciro Mancuso in support of the investigation
- October 20-November 1, 2023 – Investigation inquiry responses provided by email to CBO from Ciro Mancuso

- November 9, 2023 – Ciro Mancuso notified by CBO that vertical portion of the unpermitted construction is required to be disassembled
- February 12, 2024 – letter to the Town opposing CBO requirement to deconstruct the vertical unpermitted construction submitted by Ciro Mancuso
- February 28, 2024 – letter to Town on behalf of Ciro Mancuso submitted by Stoel Rives LLP acknowledging impasse regarding resolution of the Town's enforcement of unpermitted work at 19-700-025; response from Town Manager acknowledging that Ciro Mancuso is unwilling to dismantle the structure and advising the Town would be contacting the Contractor's State Licensing Board (CSLB) and that an abatement notice could be issued pending guidance from the State
- March 14, 2024 – CBO initiated complaint with CSLB
- April 11, 2024 - It is the Town's understanding that the CSLB is currently investigating the unpermitted construction and that they may take additional action(s) depending on the conclusions of the investigation.
- May 1, 2024 – Town issues informal Notice of Violation
- May 10, 2024 –Appeal of Notice of Violation submitted (Note: the appeal was incorrectly submitted as it appealed an Administrative Citation which was never issued by the Town)
- May 28, 2024 –Town issues formal Notice and Order to Abate
- June 5, 2024 – Appeal filed, accepted for processing

Overview of Appeal Process

In accordance with Development Code Section 18.200.050 (Initial Enforcement Action, Request for Reconsideration), any person aggrieved by the action of the Code Enforcement Director in issuing a notice and order in compliance with the Code may appeal. If no appeal is filed in the time prescribed, the action of the Code Enforcement Director shall be final.

At the hearing, in accordance with Development Code Section 18.200.050.F.3.c the Council may limit the issues on appeal to those identified in the appellant's notice of appeal, may consider the record produced before the Code Enforcement Director, and may allow additional evidence to be produced. At the close of the hearing on an appeal, the Council may reverse or modify the decision of the Code Enforcement Director and/or remand the matter to the Code Enforcement Director for further proceedings, in compliance with the directions of the Council. If the Council does not take any action reversing, modifying and/or remanding of the decision of the Code Enforcement Director within 45 days after the filing of the appeal, the Code Enforcement Director's action on the matter shall be final and conclusive.

Stoel Rives, LLC Appeal Comments

The following section addresses comments raised by the appellant's attorney, Stoel Rives, LLC in the appeal (see Attachments #2 and 3) and includes Town responses.

Appellant Comment #1: Phase II was approved in 2005 through a Development Permit and Planned Development (Town of Truckee Application #00-111b). Phase II allowed buildout of buildings K-1, K-3, K-4, H, L and M. The Planning Commission approved a new development permit in 2016 to construct the remaining six buildings – K-1, K-3, K-4, H, L and M (**Exhibit 2** [Town of Truckee Application#2016-00000035], **Exhibit 3** [Resolution 2016-13]) ("2016 Development Permit"). In conjunction with the 2016 Development Permit, Appellant requested a 10-year timeframe to allow a phased buildout of the remaining buildings. The Planning Commission approved subsequent project amendments in 2017 and 2019 for the Phase II development (**Exhibit 4** [Resolution 2017-16] and **Exhibit 5** [Resolution 2019-10]).1 Building K-1 was completed in 2017 and construction of Buildings K-3 and L were completed in 2018. Buildings H and M were completed in 2021.

Staff Response: Staff agrees that the appellant requested a 10-year timeframe within the 2016 permit application; however, this timeframe was not approved by the Planning Commission, nor was any phasing. Instead, the standard two-year timeframe to exercise the permit/four years to construct was approved with respective expiration dates of 2018 and 2020. This timeframe was not appealed by the appellant. Further, in the appellant's 2016 application submittal, the appellant acknowledged that the 2005 permits had expired and a new Development Permit was needed to complete construction. As discussed below, the subsequent 2017 and 2019 amendments mentioned by the appellant were unrelated to the Building K-4 approval and did not impact its underlying entitlement. These subsequent approvals explicitly did not include amendments to Building K-4 and did not extend the construction timeframe for this building.

Appellant Comment #2: Appellant began planning for construction of Building K-4 in 2020 but, due to COVID-19 restrictions and delays, had to pause work until 2022. In 2022, Appellant resumed planning and ordered the premanufactured steel frame building for delivery in August 2023. On July 6, 2023, Appellant, through Lot C Architecture, submitted an application package to the Building Department.

Staff Response: No comments.

Appellant Comment #3: Without waiving any rights and in order to commence construction in the 2023 building season, Appellant accordingly followed the CDD's direction and requested approval of a Development Permit and Zoning Clearance to re-approve Building K-4, the proposed boat storage building that was approved in 2016 and amended in 2017. Appellant submitted the land use application package on August 3, 2023, two days after receiving staff's email quoted above.[2] Appellant did not propose any changes to the previously approved building architecture or site design. Staff acknowledged receipt of the application on August 7, 2023 and deemed the application complete on September 5, 2023. (**Exhibit 10** [Letter from Laura Dabe dated September 5, 2023].)

Footnote 2: Shortly following the submittal of the application, 19 truckloads of the steel frame building were delivered to the project site which as referenced above had been ordered prior to the CDD's erroneous demand that a new land use permit was required.

Staff Response: If the appellant disagreed with staff's determination in July 2023, then an appeal was required to be filed within 10 days. No timely appeal was filed and by not filing this appeal, the appellant did waive his rights to appeal and did not exhaust the administrative remedies available to him. Further, at this time, this point of contention is now time barred because an appeal was not timely filed.

As discussed below in greater detail, the 2017 permit amendment was unrelated to the Building K-4 approvals and in no way amended the entitlement for this building or extended its construction timeframe. The amendment affected Buildings H and M only. The 2017 Planning Commission resolution explicitly stated that what was amended under the 2017 applied only to Buildings H and M, consistent with the project description in the September 19, 2017 Planning Commission staff report and as detailed in the approved plans.

Based on the above appellant statements, the building was ordered in 2022 well before any staff determination was made. This occurred in advance of any building permit review to ensure the structure complies with the California Building Code of Regulations (CBC) and all Town land use and building codes. As shown in the enclosed timeline (Attachment #16), and the appellant's engineer's statements (Attachment #15), grading and excavation work began on or about June 24, 2023 in advance of any staff determination on permit timeframes or permit expiration dates and before any correspondence with Town staff regarding Building K-4. Based on the administrative record, the unpermitted grading and excavation work can be confirmed and delivery of the concrete for the foundation installation occurred on July 22, 2023 and July 29, 2023 without any building permits to authorize this work. Based on the engineer's statements, it appears the appellant recognized the chance of getting caught working without permits was high and proceeded to take photos during the unpermitted construction. After-the-fact photos were

then provided to the engineer to verify the construction process and to remotely "vouch" for the work done. This letter was written in July 2023, a full four months before the Town became aware of the unpermitted construction and subsequent issuance of the Stop Work Order. Both concrete deliveries were made on Saturdays at a time when Town inspectors and code compliance staff were not working and a premium was paid for a Saturday delivery on both dates.

Appellant Comment #4: Despite staff assurances that it would be a quick process and Appellant's requests to process the application in a timely manner, due to staff delays, Appellant's application did not make it on the August or September Planning Commission meetings. (**Exhibit 11** [Emails between Ciro Mancuso and Town between September 21 and September 25, 2023.)

Staff Response: This statement is false. There were no delays associated with staff's processing of this project. The processing of this permit occurred very quickly (2-month processing timeframe vs. a typical 6-9-month timeframe for Development Permits) and was also done in accordance with staff "assurances", as indicated in the August 1, 2023 Community Development Director (CDD) email. In the email, the CDD indicated it would be a quick process and that once submitted, staff would place the project on the next available Planning Commission agenda—which is what occurred. At no time did staff ever commit to placing the project on either the August or September hearing dates as the appellant implies. The August hearing date would have been infeasible due to the public notice deadline on August 1st which is before the application was submitted on August 3, 2023. Further, the Planning Commission hearing date was August 15th or 12 calendar days following submittal of the application. Staff reports were required to be finalized on August 7th in order to be published in accordance with the Brown Act timelines. This would have provided a total of two working days to prepare the staff report which is not an adequate amount of time.

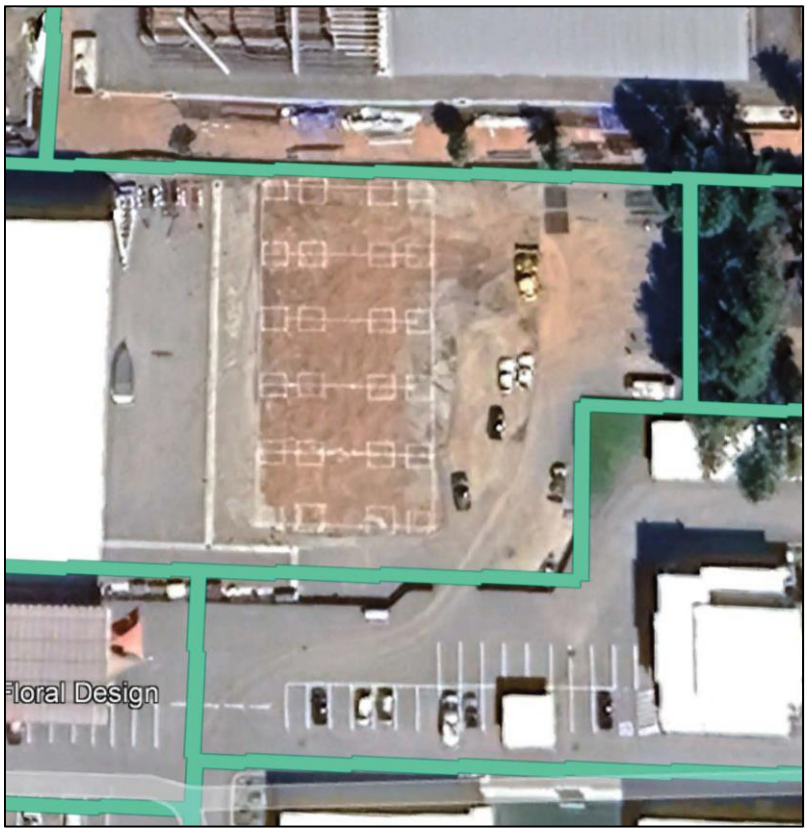
At time of application submittal on August 3rd, the September hearing date was already full and there was not capacity for an additional project. In other words, the next available hearing date was the October Commission hearing and the project was placed on that agenda as a minor item. Even though a project as large as the boat storage building would normally be classified as a major review item, staff placed this as a minor item (i.e. one that typically receives less scrutiny because it is less complex) in recognition that the project had been reviewed previously in 2016 though under a different General Plan and Development Code.

Appellant Comment #5: Based on the understanding that the 2016 Development Permit remained valid, all permits had been applied for with the Town, and staff's assurance that it would be a quick approval process, Appellant began construction of the foundation and related site work in early fall 2023 to ensure excavation and ground disturbance would be completed by October 15, 2023.

Staff Response: The claim that the appellant began work in early fall 2023 is false. As discussed above and as shown in the project timeline (Attachment 16), work started as soon as June 23, 2023, grading and excavation followed on or about June 24, 2023 and concrete for the foundation was delivered on July 22, 2023 and July 29, 2023. Receipts from these deliveries are enclosed in Attachment #19 and confirm both deliveries were done on Saturdays—at extra cost—when Town inspectors and code compliance staff are not working. Further, the appellant's engineer confirmed that the foundation's excavation, grading and installation occurred prior to July 28, 2023. Work definitively started on June 23, 2023 and is confirmed by aerial imagery from Google Earth (Imagery Date June 23, 2023) shown in **Figure 3.** The Chief Building Official (CBO) reviewed this aerial and notes that there are 12 sets of square ground markings on the raw dirt reflective of what is typically done in preparation for foundation installation. Per the CBO, the ground is marked with chalk, spray paint or similar material to identify future foundation grading work anticipated to occur within one to five days post-marking. This work is not typically done well in advance of grading as lines can be "erased" by wind or other dirt movement or activity on a job site. Building permits were not submitted until July 6, 2023. The soonest building permits would have been reviewed was within 25-days after initial submittal. This timeframe does not include a likely second submittal as a result of corrections required within the building permit. This secondary

review typically occurs within 15 additional days and these timeframes do not capture the time it takes for the applicant to incorporate the required corrections.

Figure 3. Google Earth Aerial Image,
June 23, 2023



The claim that the appellant started work "because all permits had been applied for" is also false as construction on the foundation started on or around June 24, 2023 and building permits were not submitted until July 6, 2023. No building permits were ever approved or acquired prior to the commencement of any work and all land use entitlements had expired in 2020. Mere "submittal of all permits with the Town" does not authorize commencement of grading or building activities and all licensed contractors are aware of this. As mentioned above, the appellant's engineer confirmed the foundation was installed prior to July 28, 2023, and the appellant stated in the appeal documents they intended to start installation in August 2023 which would not have been possible given the submittal of building permits and the plan check review timeframe. This contradicts the claim the appellant started work in fall 2023. In further contrast to the above statement, at the October 17, 2023 Planning Commission hearing, the appellant explicitly stated that no excavation had occurred to date on the project (Attachment 17). This statement is refuted by the appellant's engineer who stated that the final slab pour occurred prior to July 28, 2023 thereby ensuring all grading and excavation occurred before the installation of the final slab and the concrete delivery receipts (Attachment 19). Lastly, the aerial imagery from June 23, 2023 refutes that the appellant proceeded "based on the understanding that ... all permits had been applied for with the Town" as this work likely commenced following the chalking at the end of June in advance of the July 6, 2023 building permit submittal.

Appellant Comment #6: At the Planning Commission meeting, staff abruptly changed their recommendation and advised the Planning Commission that it could not hear the application request due to the pending enforcement. The minutes state, "Staff explained there have been new revelations today

related to unpermitted work on this project. The Development Code states the Commission cannot take action on projects for land use applications where there is an active code case." (**Exhibit 13** [Planning Commission Minutes for October 17, 2024 Meeting, p. 2].) Appellant disputes this conclusion, as the Truckee Code did not prohibit the Planning Commission from taking action.[3]

Footnote 3: The Development Code provides "any property owner notified of a Code violation shall correct the violation before issuing processing, approval or completion, as appropriate, of any discretionary permit application." (Development Code, § 18.200.080F.) Appellant readily corrected the violation with his immediate cessation of work. Moreover, the violation here would have been corrected by the issuance of the Development Permit and subsequent issuance of an after-the-fact building permit.

Staff Response: Staff did not abruptly change our recommendation during the Planning Commission hearing. Rather, staff recommended continuance of the project review in light of the unpermitted construction which was confirmed earlier in the day and due to the Development Code prohibition on approving projects while there is a code violation. This also occurred after staff discussed our finding with the property owner earlier in the day and informed him that our recommendation would be to continue the project review.

Footnote 3 is false. The correction of a violation does not occur with "immediate cessation of work". Rather, correction of the violation occurs though abatement of the actual violation, which is this case was a 50' tall, 11,840 sf building and foundation constructed without permits and without the required inspections throughout the construction process. Abatement occurs when the proper permitting channels have been gone through. The appellant's assumption that the violation would be corrected by the issuance of the Development Permit and subsequent issuance of an after-the-fact permit fully ignores the steps necessary to reach a point in time where the Development Permit can be approved followed by an after-the-fact permit. This includes determination of the construction methods used, compliance with the CBC and Town building codes, third party verification of the unpermitted work and in this case, consultation with the Contractor's State Licensing Board (CSLB). Only after this work occurs, can the Town determine if permits can be issued for the unpermitted construction. None of this work could have been done prior to the Planning Commission's review of the project on October 17, 2023 and is why staff recommended to continue the hearing.

It is through a review of the administrative record which includes the appellant's statements made directly to Town staff in October 2023 and during the October Planning Commission hearing and within his engineer's July 2023 statement that the appellant's clear intent was to commence construction before building permits were applied for and granted. And that issuance of an after-the-fact permit and nominal fine was what he expected to occur based on his perception of how the Town had resolved other building code violation cases. These statements included that the appellant made a strategic decision to not seek permits and was prepared to pay the fine and seek an after-the-fact permit if he got caught. This was apparently done in order to meet an August 2023 construction timeframe. Had the unpermitted construction not occurred, staff's recommendation would not have changed and a recommendation to approve the building would have been forwarded for the Commission's consideration and a Development Permit likely approved on October 17, 2023.

Appellant Comment #7: In direct contradiction to the information Appellant provided that confirmed the structure was built to plan and in a safe manner, the Chief Building Official ("CBO") requested that Appellant dismantle the steel structure. Appellant did not agree to this proposal. In effort to find a mutually beneficial and reasonable solution, Appellant proposed several other steps including to engage a Special Inspector to review and evaluate the assembly and bolting that has been completed to date and to have a licensed Structural Engineer monitor all future construction.(**Exhibit 14** [February 12, 2024 Letter to Town from Ciro Mancuso].) The CBO did not agree to these steps. Instead, the Town contacted the Contractor's State Licensing Board ("CSLB") to initiate a complaint against the unpermitted construction and to request state action. This is unprecedented in our experience with the Town. Historically, the Town has not required improvements to be demolished and rather issues a fine and/or takes other less drastic measures to ensure the improvements are code compliant.

Staff Response: In its 31 plus years, the Town has never experienced a property owner building a 50-foot tall, 11,840 sf building and foundation without permits. To compare this unpermitted construction with what the Town typically experiences (i.e. unpermitted interior remodels, ADU conversions, decks, sheds, re-roofs, re-siding, etc.) is not a valid comparison. However, there are numerous instances of the Town requiring demolition of unpermitted construction including demolition of unpermitted decks, patios, kitchens, additions to historic resources, and smaller scale construction. For an example similar to the unpermitted boat storage building, the Town spent seven years addressing construction of an unpermitted residence in Truckee. Extensive work was made to abate the violation which ultimately included Town Council action to declare the Town's intention to abate the public nuisance by authorizing Town demolition of the structure. In other words, the Council approved demolition of the unpermitted residence because the violation was not abated. This declaration followed the Town's finding that the property owner breached a settlement agreement with the Town, recordation of a notice of violation on the property, and imposition of a code compliance agreement amongst other code compliance efforts. In the end, the property owner reimbursed the Town over $24,000 in code compliance fees after the Town sought recovery of fees as allowed in the Development Code. Ultimately, authorization to demolish the building resulted in the property owner coming in to compliance and abating the violation. No demolition was required.

The Town's coordination with the CSLB and eventual filing of a complaint is also not an unprecedented action and we have periodically sought their input on building code violations. Further, the CBO has periodically corresponded with the Contractor's Association of Truckee-Tahoe and let their leadership know that the Town would be elevating cases of unpermitted work to the CSLB. This action is in response to a considerable increase in unpermitted work throughout the town and ongoing non-compliance within the contracting community.

It is staff's position that the appellant's perception of how the Town has historically addressed unpermitted construction is what led him to strategically decide to commence construction on or about June 24, 2023, without authorization—believing that any "punishment" would include a nominal penalty fee, after-the-fact permit and potentially some investigatory work (given that he took pictures prior to the foundation slab pour). After-the-fact fees for this type of permit are calculated at two times the required amount work done and regularly does not present a disincentive to commencing work without permits. However, after-the-fact permits are not the proper way to commence construction.

The Town strongly disagrees that the structure has been "confirmed to be built to plan and safe". With the appellant failing to obtain any permits and no plan review to ensure the structure complies with the current version of the CBC, all structures are deemed unsafe. After performing a comprehensive inspection with the appellant's permission, it was made clear by the appellant that this structure was considered much like an erector set that consisted of the installation and torquing of bolts and not welded methods in the field. The appellant also requested that the CBO allow the work on the structure to proceed without permits, torquing the bolts to make the structure safe while going through any required approval process. The CBO required the structure to be dismantled and reconstructed because he does not agree with the findings of the appellant's consultants and there is no definitive way to determine that construction was done properly. It is also unknown what photos were provided to the appellant's engineer, as the engineer was not there in person during the construction and he readily states that he did not review the dimensional verification of the anchor bolt placement but that his past experience with the appellant has shown that "close attention is paid to the bolt placement". These types of statements and similar documentation are entirely insufficient for the CBO to rely on and why this unpermitted construction is of great concern to the Town.

It is crucial to ask whether any plan review process has been conducted to confirm that the construction documents used to erect this structure comply with the latest version of the CBC. This also includes other approval requirements, such as an active land use permit approved by the Town's Planning and Engineering Divisions, the Truckee Fire Protection District, and the Tahoe Donner Public Utility District. The structure's safety is a significant concern that cannot be overlooked. Staff also understands that a

licensed professional has not peer-reviewed the information provided. At the time that the engineer provided details on the structural consistency of the foundation, the date of his certificate stamp had expired. Although this does happen from time to time, the Business and Professions Code (6700 through 6799) Page 6733 states, "Use of stamp or seal when certificate is not in force, is unlawful for anyone to stamp or seal any plans, specification, plats, reports, or other documents with a seal after the certification of the registrant, name thereon has expired or has been suspended or revoked." Had this been submitted with the official plan set, this would have been considered a worthless document and historically not accepted until a current seal (stamp) could be obtained or proof that the certificate had already been renewed, as allowed by the Business and Professions Code.

Appellant Comment #8: In February 2024, our office sent a letter to Andy Morris, Town Attorney, stating Town staff and Appellant appeared to be at an impasse regarding the enforcement dispute over Building K-4. We requested that Town staff either process Appellant's permit application or issue an abatement order so that Appellant could exercise his right to appeal staff's final action to Town Council. (**Exhibit 15** [February 28, 2024 Letter from Kristen Castanos to Andy Morris].) Town staff refused to take either action, placing Appellant in a legal limbo where he could not use his property, move forward with the project, or pursue appeals to reach final resolution of the issue.

Staff Response: This statement is false. At no time, did staff refuse to issue an abatement order on the project. As previously stated, staff did not process the Development Permit due to the unabated violation and the appellant's unwillingness to abate the violation in accordance with the Town's requirements. In May 2024, following internal conversations and consultation with the CSLB, the Town issued an informal violation in accordance with Development Code Section 18.200.050.B.11 requiring abatement of the violation. This notification was then followed later in the month by a formal notice after it was clear the appellant intended to submit an appeal and wanted to appeal to the Town Council.

Appellant Comment #9: In March 2024, Appellant submitted a Structural Steel and Welding Report from Youngdahl Consulting Group, Inc. that confirmed the building up to this point has been built per approved plans, all structural connections are fully visible and accessible for inspection, and that, due to the size of the structure dismantling and reassembling, demolition may cause unnecessary stress, damage, and safety hazards.

Brandon Helms from Maple Brook Engineering, Inc., one of Appellant's engineers, met with the CBO and sent follow-up inquires on several occasions in March and April 2024 in attempts to reach a reasonable resolution of this matter. The CBO did not respond to these communications.

Staff Response: The Town was not notified by the appellant or appellant's attorney that Mr. Helms was his legal representative and correspondence at that time was occurring between the Town Attorney and appellant's attorney therefore the CBO was not in a position to respond.

There are no approved plans for this project, nor any plans that have been reviewed by the Town. To determine the structural surety of the building, the Building Division would review the construction documents (plan review) for compliance with the CBC in effect at time of submittal, provided there is an active land use permit approval. In this case, structural safety in an as-built condition has to be determined without the benefit of the required inspections. Any structural deficiency that results from any required demolition is due to the unpermitted nature of the construction and the Town's inability to perform the required inspections throughout the construction process.

Appellant Comment #10:

On April 30, 2024, the CDD emailed Appellant's engineer and advised that the Town would not process a building permit application for Building K-4 until the existing structure and foundation were removed.

Appellant received the NOV on May 1, 2024 that purports to require Appellant to obtain a demolition permit and remove all unpermitted construction, including all vertical components and the foundation[4] by June 17, 2024.

Footnote 4: The inclusion of removal of the foundation in the NOV represents a reversal in staff opinion, as staff previously advised that foundation would not need to be removed. It is unclear why foundation is included in the NOV, as staff did not provide any explanation.

Staff Response: As per earlier direction from the CBO to the appellant, the foundation was initially allowed to remain because the CBO's direction was to dismantle the structure expeditiously and if done so, would have been done during a prohibition on grading activities during the winter months. In other words, had the appellant complied with the CBO's prior direction, the building foundation could have remained in place (following after-the-fact investigations and permitting if possible) because no grading activities were allowed between November 2023 and May 2024. Roughly a month after the CBO met with the appellant in the field, a meeting took place with the appellant and the appellant's legal team. One of the options discussed was directly related to retaining the concrete work. This option was considered a compromise based on Truckee's grading limitations which impact the placement or dismantlement of any concrete during the winter months. The requirement came with strict guidelines that the steel structure be dismantled, the site properly winterized, and the site cordoned off from any public access, which still has not been completed.

It was also stated that as the summer months approach, there will be no limitations on site disturbance, and that the project would then be subject to complete dismantlement. Furthermore, the appellant was informed that complete approvals would be required, which the Town would work to expedite. Had the appellant complied with the CBO's prior direction, the building foundation could have remained in place considering a third-party consultant to verify Chapter 18 of the CBC, (Reinforcement requirements, grounding and bonding requirements, special inspector's requirements (Witnessing and inspecting the placement of any concrete rated at 3000 psi or greater that require crush tests at 7, 14, 28 days for compressive strength)). At this point in time, grading activities are allowed until November 2024 and the CBO is requiring the foundation to be removed and reinstalled so inspections can be performed.

Appellant Comment #11: Appellant timely appeals the NOV to the Town Council. As further explained below, the Town's refusal to issue a building permit for Building K-4 based on the presumption that a new development permit is needed is unfounded, as the 2016 Development Permit remains in effect. In addition, staff has failed to provide Appellant with his Due Process rights, deprived Appellant of use of his property, and proposed a remedy that violates California law and policy[5] on not creating excessive waste.

Footnote 5: This law and policy includes CSLB's regulations. The Town sought to have CSLB enforce its regulations but then issued the NOV that squarely conflicts with CSLB regulations.

Staff Response: This statement is false; the 2016 Development Permit is not in effect and has expired. As described below, the Development Permit for Building K-4 expired in 2020 because Building K-4 had not been constructed in accordance with the required timeframes. No extended phasing plan was approved and the standard two years to exercise the permit and four years to construct all buildings was imposed and not appealed. The following was approved on July 19, 2016:

Building K-1: 5,556 square feet
Building K-3: 12,800 square feet
Building K-4: 12, 800 square feet
Building H: 12, 135 square feet
Building L: 12, 150 square feet
Building M: 12, 600 square feet

Condition of approval #1 describes the project:

> A Development Permit is hereby approved for the construction and development of the Phase II buildings as shown on the site plans, grading plans, elevations, floor plans and civil drawings approved by the Planning Commission on July 19, 2016 and on file in the Community Development Department except as modified by these conditions of approval.

Pursuant to Development Code Section 18.84.050 (Time Limits and Phasing) unless conditions of approval establish a different time limit, any land use permit or entitlement (with the exception of Use Permits and Minor Use Permits) not exercised within two years of approval, including any extension(s), whichever is greater, shall be deemed expired:

1. The permit shall not be deemed exercised until the permittee has obtained all necessary building permits and diligently pursued construction, or has actually commenced the allowed use on the subject property in compliance with the conditions of approval, for used that do not require a building permit. Diligent pursuit shall require, at a minimum, the completion of the installation of the foundation(s) for all structure(s) on the property.

2. For permits or entitlements without provisions for phasing, the use of the property including the construction of all structures and other features of the project, as shown in the approved permit, shall be completed within four years from the date of approval of the land use permit. Projects granted one two-year extension, in compliance with Section 18.84.055 (Time Extensions) shall require completion within six years from the original date of approval of the land use permit. Land use permits not completed within these time periods shall be deemed expired.

3. Use Permits and Minor Use Permits shall not be subject to the standard expiration timeframes for land use permits. The conditions of approval for the Use Permit and Minor Use Perit shall specify the timeframe under which the approved use shall commence. If the use is not exercised within the identified timeframe, the project shall be deemed to be out of compliance with the approved conditions of approval, and the Town may begin the process to revoke the permit in accordance with Development Code Chapter 18.190 (Revocations and Modifications).

   Staff Note: The prior Conditional Use Permit which was initially approved in 2001 allowed Churches/Places of Worship, School-Specialized Education and Training, Employee Housing, Live/Work Quarters, Child Day Care Facilities, Veterinary Clincs, Animal Hospitals. Kennels, and Boarding Uses and Commercial Parking and Vehicle Storage within PCC. This Conditional Use Permit is unrelated to the K-4 boat storage building as the building's construction was authorized through approval of a Development Permit (i.e. Development Permits authorize development while Use Permits authorize a conditionally allowed use). The use of the building for vehicle storage is not at question but rather the expiration of the Development Permit authorizing construction of Building K-4. Further, the use of the building is now authorized through a Zoning Clearance since a boat storage is permitted by right. The 2023 permit request was for a Development Permit (for building size and disturbance) and Zoning Clearance (to allow vehicle storage).

The appellant's March 2016 plan set that was approved by the Planning Commission depicted a proposed phasing plan on Sheet C1; however, as noted above in Condition of Approval #1 in the language—"except as modified by these conditions of approval"—the proposed phasing plan which extended beyond a 2018 permit exercise/2020 building construction timeframe was not approved. The condition of approval which modified Condition of Approval #1's language is Condition of Approval #3 which states:

> The effective date of approval shall be August 1, 2016, unless the approval is appealed to the Town Council. In accordance with Section 18.84.050 of the Development Code, the land use

permits shall be exercised within two (2) years of the effective date of approval, and the project shall be completed within four (4) years after the effective date of approval. Otherwise, the approval shall become null and void unless an extension of time is granted by the Planning Commission.

The appellant did not file an appeal of the 2018/2020 expiration dates nor did the appellant file a Time Extension request prior to the 2020 expiration of the 2016 Development Permit. Further, the 2016 Development Permit did not provide a different timeline for different buildings to be constructed. The staff report clearly stated that the entitlements for the remaining Phase II buildings had expired and that the applicant (now appellant) requested a new Development Permit approval for the remaining six unconstructed buildings. All six buildings were required to be constructed by 2020. As indicated, if the 2018/2020 timeframes were not successfully met, the approval shall become null and void. Moreover, the argument that PCC is phased is contradicted by the appellant's repeated requests to process subsequent land use permits in 2005 (which was expired), 2016 (which was expired), 2017 and 2019 amendments and furthermore, by the explicit timeframes outlined in the respective resolutions—none of which are phased.

The appellant's characterization of CSLB policy is incorrect and does not apply to unpermitted construction. Rather, the reference in the appeal regarding excessive waste applies to permitted construction and the CSLB does not extend this grace to unpermitted construction. The appellant's characterization of CSLB policy and practices was refuted during a recent conversation with the CBO and CSLB staff.

Lastly, the appellant is time barred from raising the issue of whether the 2016 Development Permit is still in effect. Staff made a determination in July 2023 that the 2016 Development Permit had expired. If the appellant disagreed with staff's determination, then an appeal was required to be filed to contest that determination. No appeal was filed. As noted above, the appellant did not appeal the 2016 Development Permit expiration date of 2018/2020 when the project was approved on July 19, 2016. The appellant specifically sought approval of a new Development Permit because there were no longer any land use entitlements in effect, which was stated throughout the March 2016 Planning Commission staff report and the appellant's own land use application. This contradicts the appellant's current position that PCC was a phased project and that his entitlements have not expired.

Appellant Comment #12: A New Permit Is Not Required to Construct Building K-4

Appellant does not need to obtain a new Development Permit to construct Building K-4, as the 2016 Development Permit has not expired as to subsequent phases of development under the Town's Code and Appellant has fundamental vested rights to complete construction under the prior approvals.

i. The Permit Approved Phased Development and Does Not Expire Under Development Code Section 18.84.050

Staff erroneously determined that the 2016 Development Permit expired in 2020. The 2005 and 2016 Development Permits, however, approved a phased development (Phases I, II, and III). Since Building K-4 is part of a subsequent phase of development, there is no construction completion date and no corresponding expiration date under the Code.

Development Code section 18.84.050 provides time limits and phasing for land use permits and entitlements. There are standard time limits that apply to permits and entitlements without provisions for phasing and separate time limits for phased projects. As explained above, the Center is a phased development. Phase II was approved in 2005. The first four of eleven buildings were constructed under

the 2005 permit. In 2016, the Planning Commission approved the next part of Phase II, consisting of buildings K-1, K-3, K-4, H, L, and M via the 2016 Development Permit. The Planning Commission then approved amendments to Phase II development in 2017 and 2019. The 2017 and 2019 permits do not provide an expiration date but rather cite section 18.84.050 and state approval is valid for 24 months, unless extended per section 18.84.055[6].

Pursuant to section 18.84.050 section (B), phased development projects must follow the following timeframes:

> • The first phase and subsequent phases are deemed expired if the land use permit for the first phase is not exercised within two years of approval. A permit is not deemed "exercised" until the permittee has obtained necessary building permits for the first phase and diligently pursued construction;
>
> • Construction of all structures and other features in the first phase must be completed within four years from the date of approval of the land use permit; and
>
> • For subsequent phases, the land use permit is deemed expired if it is not exercised within two years after the land use permit has been exercised on the previous phase. (Development Code, § 18.84.050.)

Building K-4 is part of a subsequent phase of development in the multi-phase development of the Center. As such, the only timing requirement that applies under section 18.84.050 is that the permit must be exercised within two years. Appellant exercised the Phase II approval within two years of issuance and amendment, as Building K-1 was completed in 2017, Buildings K-3 and L were completed in 2018, and Buildings H and M were completed in 2021. Section 18.84.050 does not require subsequent phases to be completed within 4 years.

In sum, there is no basis to support staff's conclusion that Appellant needs to obtain a new land use permit to build Building K-4, as the 2016 Development Permit, which was amended in 2017 and 2019, was exercised within two years and remains valid. It follows that there is no basis to require Appellant to demolish the 2023 construction, which was lawfully conducted under the2016, 2017, and 2019 land use approvals.

Footnote 6: Development Code section 18.84.055 governs extensions of time to establish a use, not construct buildings in each phase. (Development Code, § 18.84.055.)

Staff Response: These statements are false. PCC was only considered a phased project with its initial approval in 2001 for Phases I and II and that phasing expired in 2005 when the 2001 phasing timelines were not met by the appellant Per the 2001 phasing that was authorized in accordance with Development Code 18.84.050.B1, all Phase II buildings were required to be completed within two years following commencement of construction and construction of all of the Phase II buildings was required to be complete in 2005. As stated earlier, Buildings H, I, J and K foundations were not installed by 2003 (as was also required in the phasing plan) and were not constructed by 2005. In 2005, the appellant then sought a new Development Permit to construct all remaining Phase II buildings. This was required because pursuant to the 2001 permit Conditions of Approval #1, the entitlements had expired.

From 2005 on, no aspects of PCC were ever phased and all claims that the project was phased in either 2005 or 2016 are incorrect. In contrast, every subsequent land use permit beyond 2001 was approved with the standard Development Code timeframes of two years or 24 months and with no alternate phasing time limits. Importantly, the 2005 Planning Commission resolution explicitly superseded the 2001 Town Council resolution so even if the previously-authorized phasing had not expired in 2005, the 2005 conditions of approval supplanted the phasing that was authorized in 2001. As stated, the 2005 conditions of approval had the standard two years to exercise the permit/four years to construct time limits.

In order for a project to be phased, authorization from the Planning Commission and/or Town Council must be granted and the sole purpose of phasing is to "establish a condition of approval with a different time limit" from the standard time limits. This authorization was not granted within the 2016 permit and construction of all six buildings was required by 2020. The appellant's argument that there were multiple "phases" or "parts" within the 2016 permit is incorrect and importantly, there were no "subsequent phases". Individual buildings do not constitute "phases", nor does simply calling a development phased as was done with the titles of "Phase I", "Phase II" and "Phase III". In accordance with the Development Code, there must be an explicit phasing plan approved by a review body that differs from the standard timeframes and no such approval was granted in 2016 or 2005. The appellant correctly notes that Buildings H and M were completed in 2021 outside the 2020 construction timeframe. This was allowable due to the 2017 Development Permit Amendment which authorized a 10,029 square foot increase to the fitness gym building and construction of a standalone apartment complex. Portions of the 2016 Development Permit were exercised within two years/constructed in four years and Building K-4 was not one of them. To reiterate, all six buildings were required to be constructed by 2020 to keep the entitlements valid for all buildings and Building K-4 was never constructed within those timeframes.

It is helpful to look at other examples of project phasing to underscore how phasing works. Three months before PCC was approved in 2001, the Planning Commission approved phasing for Phases I-III of the Boulders residential subdivision. As outlined in Attachment 14, there were very explicit timeframes that were required to be met for the Boulders construction allowed within Phases I-III and those timeframes were clearly articulated within the resolution conditions of approval. Boulders Phase IV was approved in 2006 with the standard two years (24 months) to effectuate/four years to build timeframe. In contrast, Phase IV was not phased and the conditions of approval and timing requirements are starkly different for this phase—just as they were for PCC in 2005, 2016 and 2023.

The appellant's contention that the 2017 and 2019 amendments extended the life of the approval for Building K-4 is incorrect. Further, the appellant's statement that Building K-4 was "lawfully constructed under the 2016, 2017 and 2019 approvals" is false. The discussion above regarding the 2016 Development Permit demonstrates that the 2016 entitlement was expired for this building. Neither the 2017 nor the 2019 permit amendments extended the life of the Building K-4 land use entitlement as they both were unrelated to the building and both the staff report and conditions of approval explicitly state what was being amended within the 2016 permit. The amendments in 2017 and 2019 did not authorize any changes to the Building K-4 approval and instead were related to the following:

<u>2017 Amendment</u>

- Increase size of Building H from 12,135 square feet to 22,164 square feet for a standalone fitness gym (Initially the Planning Commission approved 18,834 square feet however, it was later determined that the plans had several errors when they were approved and a subsequent staff-level approval was required to authorize the increased square footage)
- Allow for construction of Building M as a 9-unit apartment complex
- Amend Planned Development to remove the existing maximum limit on floor space for health/fitness facilities.

<u>2019 Amendment</u>

- Amend Planned Development to increase the existing maximum limit on floor space for deli/restaurant uses from 2,500 square feet to 7,264 square feet.

The statement that the appellant has "fundamental vested rights" is false. As discussed above, the initial phasing for PCC expired in 2005 and so did the 2005 and 2016 approvals because the required construction timeframes were not met. Vested rights are generally granted when an applicant meets the construction requirements of the permit (i.e. installation of a building foundation). In particular, no rights

have been vested to Building K-4 because the most recent underlying land use entitlement expired in 2020 and the building was not constructed lawfully. Furthermore, vested rights are not granted through unpermitted construction of a foundation.

The appellant states that "the 2017 and 2019 permits do not provide an expiration date but rather cite section 18.84.050 and state approval is valid for 24 months, unless extended per section 18.84.055[6]." This statement is false and misleading because the appellant omitted language from the condition. The condition of approval stated the following:

> The approval of the project amendment shall be valid for 24 months after its effective date. At the end of that time, the approval shall expire and become null and void unless the time limits of the project amendment are extended per section 18.84.055 (language omitted by appellant underlined).

Accordingly, the amended permits were valid until 2019 and 2021 respectively and would have expired in 2019 and 2021 had the appellant not finished construction of the fitness gym and apartment complex and the required tenant improvements for the restaurant which was already constructed. Footnote 6 is not relevant as that comment references time extensions. No time extensions were requested for either amended permit. The appellant notes in Footnote 6 that language in the Development Code only governs the establishment of a use; however, that statement does not acknowledge that establishment of a use occurs within a newly constructed building or within an existing one. Further, Section 18.84.055.B (Findings and Decision) clearly references that time extensions apply to any land use entitlement.

Appellant Comment #13: ii. Appellant had Vested Rights in the 2016 Development Permit

In addition to the fact that a new land use permit is not required for Building K-4 under the Code, Appellant has a fundamental vested right in the 2016, 2017, and 2019 land use approvals that establishes the legal right to proceed with construction of Building K-4 without a new land use
permit.

Where a permit, such as use permit, is granted and the successful applicant thereafter acts upon itto its detriment, the landowner has a vested right. *HPT IHG-2 Properties Tr. v. City of Anaheim*(2015) 243 Cal.App.4th 188, 199 (citing *Malibu Mountains Recreation, Inc. v. County of LosAngeles* (1998) 67 Cal. App. 4th 359, 367). An entity acquires vested rights to continue its existing land use if it performs substantial work and incurs substantial liabilities in a good-faith reliance upon a permit issued by a government agency. (*Avco Cmty. Developers, Inc. v. S. Coast Reg'l Comm'n* (1976) 17 Cal.3d 785, 791.)

Goat Hill Tavern v. City of Costa Mesa (1992) 6 Cal.App.4th 1519 ("*Goat Hill*") is instructive. In *Goat Hill*, the plaintiff owner of a tavern, which had been in business for over 35 years, applied for a new conditional use permit for the purpose of refurbishing the tavern. (*Id.* at 1523.) The defendant City of Costa Mesa issued a permit with a six-month expiration date, and with the proviso that a renewal could be requested. (*Ibid*.) In reliance on the permit, the plaintiff owner invested more than $1.75 million to refurbish the tavern. (*Ibid.*) The city subsequently denied the owner's request for a renewal of the permit. (*Ibid.*)

The Court of Appeal found that the owner of Goat Hill Tavern had a fundamental vested right in the tavern's continued operation. The court reasoned that "[o]nce a use permit has been properly issued the power … to revoke it is limited.... Where a permit has been properly obtained and in reliance thereon the permittee has incurred material expense, he acquires a vested property right to the protection of which he is entitled." (*Id*. at 1530 (citations omitted).) The court found that "[b]y simply denying renewal of its conditional use permit, the city destroyed a business which has operated legally for 35 years." (*Id*. at 1531.) The court further explained that "[i]nterference with the right to continue an established business is far more serious than the interference a property owner experiences when denied a conditional use permit in the first instance." (*Id*. At 1529.)

Here, Appellant received a Development Permit to construct Phase II of the Center in 2005 and 2016 and performed substantial work and incurred expenses in good faith reliance on the permits. Development permits fall within the definition of "Land use permit" in the Development Code which is defined as "[a]uthority granted by the Town to use a specified site for a particular purpose, including Conditional Use Permits and Minor Conditional Use Permits, Development Plans and Minor Development Plans, Planned Development Permits, Temporary Use Permits, Variances and minor Variances, and Zoning Clearances, as established by Article IV (Land Use and Development Permit Procedures) of this Development Code." (Development Code, § 18.220.020(L).)

Like the owner of the tavern in *Goat Hill* acquired vested rights vis-à-vis its conditional use permit, Appellant acquired vested rights through the 2016 Development Permit. The effect of fundamental vested rights is that a nonjudicial body may not permit their extinction. (*Goat Hill*, *supra*, at p. 1527 ["… a review of cases considering the application of the independent judgment test and the definition of fundamental vested rights demonstrates that the rights affected by the city's refusal to renew Goat Hill Tavern's permit are sufficiently vested and important to preclude their extinction by a nonjudicial body."].) Appellant has the right to complete construction of Building K-4 via fundamental vested rights in prior land use approvals.

The Town's attempts to characterize the 2016 Development Permit as expired is thus both unsupported by the Development Code and unlawful in light of Appellant's vested rights.

Staff Response: In the present matter, reliance on the precedent set by Goat Hill Tavern v. City of Costa Mesa (1992) to claim a vested right is misplaced. There was simply no vested right acquired. The Goat Hill Tavern case involved a unique situation where the business had been operating legally for 35 years under a conditional use permit and had made significant investments based on a good faith and reasonable belief that the permit would be renewed. The court recognized a vested right due to the substantial reliance on the permit and the economic impact of its sudden revocation without sufficient grounds.

However, in this case, the conditions that justified the recognition of a vested right in Goat Hill Tavern are not present. The appellant has not demonstrated anywhere close to the same level of reliance on a long-standing valid permit or incurred substantial expenses under similar conditions. In fact, the appellant's permits had long been expired, the Town never gave any indication that they would be approved, and thus, he could not have relied on the expired permits at all. The fundamental principle of vested rights is that there must be a good faith basis for that belief and it must be fundamentally significant from an economic standpoint. The current situation does not meet these criteria, as the appellant's reliance on the expired permit(s) is not legitimate. He had no reasonable justification to rely on expired permits in order to begin construction on this project. This is clear from the administrative record and the appellant's acknowledgement of such, dating back to 2016 (when the appellant acknowledged that the 2005 permit had expired). The appellant's expenses were not incurred in reliance on any permit or suggestion of a permit approval. Therefore, the claim of a vested right is simply incorrect.

Accordingly, staff disagrees with the appellant's statements and disputes that the appellant acquired vested rights for Building K-4 in 2016 or at any time thereafter. The appellant did not fulfill the construction timeframes necessary to vest his rights for Building K-4 and the permit expired as a result. The 2016 Development Permit timeframes explicitly stated the construction timeframes to keep the permit active and the appellant did not meet that standard. No building construction occurred for Building K-4, including any construction that would have resulted in vested rights for this building. Subsequent amendments to the 2016 Development Permit did not impact Building K-4 and explicitly did not extend the life of this entitlement or provide vested rights.

Appellant Comment #14 B. There is No Rational Basis to Require Demolition

i. There Are No Safety Issues with Existing Construction

When government action is not rationally related to the goals sought to be achieved, it violates substantive due process and equal protection under the law. (See, e.g., *Roman Cath. etc. Corp. v. City of Piedmont* (1955) 45 Cal.2d 325, 331; see also *Lingle v. Chevron U.S.A. Inc.* (2005) 544 U.S. 528, 542 [Supreme Court holding "a challenge to land use regulation may state a substantive due process claim, so long as the regulation serves no legitimate governmental purpose."].)

As evidenced by the reports and information provided by Appellant and its two engineers, the existing structure presents no safety hazards. In contrast, dismantling the steel structure increases the potential safety hazards, including use of a large crane and disassembling massive steel beams. The structure has been built according to approved plans and is a prefabricated product that has been fully inspected and certified by qualified engineers. The structure is not at a place that the Town would have inspected it yet under other circumstances, as all inspections for the foundation and structural steel are done by a private Special Inspector.

Given the lack of safety concerns, there is no basis for the Town to require dismantling of the structure and foundation. The fact safety hazards will be created with the Town's directive and that this remedy is unprecedented in relation to prior Town practice highlights that this remedy is not reasonable or rationally related to any governmental purpose.

Staff Response: The appellant's reliance on the *Roman Catholic Etc. Corp.* and *Lingle* cases to argue that the Town's order to dismantle an unpermitted project violates their substantive due process rights is both factually and legally off base. In the *Roman Catholic Etc. Corp.* case, the court found that the zoning ordinance was invalid because it unjustly discriminated between public and private schools, without a substantial relationship to public health, safety, morals, or welfare. However, in the current situation, the Town's decision to order the removal of unpermitted construction is justified by legitimate and substantial safety concerns. There is simply no relation between schooling and unpermitted construction projects.

The work in question was performed without the necessary permits, preventing the Town from monitoring the construction process to ensure compliance with safety standards and regulations. This lack of oversight poses potential risks to public safety and welfare, which the Town is duty-bound to mitigate. Thus, the Town's action is not an arbitrary or capricious infringement on property rights but a necessary measure to uphold building standards and protect the safety of the community. Consequently, the appellant's claim of a substantive due process violation is unsupported in this context.

Per the CBO, safety is not up to a project engineer to determine. Safety is vetted through plan review by the local jurisdiction's Building Division through review and consistency with the CBC. In an October 18, 2023 on-site meeting among the CBO, appellant and Community Development Director, the appellant asked if the structural steel bolts could be torqued due to safety concerns; the CBO said "no" and stated that because there was not an approved building permit and no plans had been reviewed or approved by the Building Division that all work is stopped and that the site needs to be secured. As of the writing of this staff report, the site had not been secured and is accessible from the boat storage property to the west.

Staff notes that it is disingenuous to compare the ensuing code compliance efforts following the unpermitted construction of a 50-foot tall, 11,840 square foot steel structure with prior Town code compliance practices. There is no scenario by which to compare the different code compliance practices and this unpermitted construction is, in and of itself, unprecedented. That being said, as discussed earlier, the Town has gone through extensive code compliance efforts with prior unpermitted construction of partially-constructed or fully-constructed structures up to and including securing Town Council authorization to demolish an unpermitted residence.

Appellant Comment #15: Removing the Building Would Result in Improper, Excessive Waste

State law and CSLB regulations provide that before an order of correction may be included in a citation, due consideration must be given to the practical feasibility of correction in accordance with certain criteria. (Cal. Code Regs., tit. 16, § 880.) The first of these criteria is that "[a]n order of correction is appropriate ***where it would not result in excessive destruction of or substantial waste of existing acceptable construction***." (*Id.* at subd. (a), emphasis added.) CSLB's regulations derive from California Business and Professions Code sections 7099 and 7099.1 which state that, in lieu of an order of correction, the CSLB can impose a penalty. (Bus. & Prof. Code, § 7099.)

The Town advised Appellant that it contacted the CSLB to initiate a complaint and request state action. The Town then issued an NOV that squarely violates CSLB regulations. Requiring Appellant to remove the 2023 construction will result in excessive destruction of acceptable construction and accomplish nothing other than waste time, money, and send a significant amount of good construction materials, including concrete and steel, into the landfill. The process will create further waste by requiring Appellant to replace the construction with exactly the same materials. California law does not condone this type of excessive and unnecessary waste and neither should the Town.

Staff Response: Staff disagrees with these statements. The appellant was provided an opportunity to retain the foundation that would have resulted in no construction waste (if it could be deemed compliant with the CBC by the CBO) and he declined. At no time did the CBO mandate that the steel structure be destroyed and sent to a landfill. It was required to be dissembled and re-assembled once permitted. Had the appellant chosen to dissemble during the winter months when grading is prohibited, this would have resulted in minimal waste from a materials standpoint. At this point, inspections need to be made of both the foundation and steel structure and this may result in destruction of the foundation unless it can be determined the foundation and all associated infrastructure was installed in compliance with the CBC.

Further, based on recent correspondence with CSLB staff, the appellant's characterization of the CSLB policy with respect to "excessive waste" is incorrect and does not apply to unpermitted construction. Per the CSLB, construction has to be permitted in order for them to enforce this provision of their code. When enforcing this provision, their baseline assumption is that the property owner has complied with State and local regulations in approving the construction. As all parts of Building K-4 are unpermitted, CSLB staff stated that this policy does not apply.

Comment #16: In addition to the NOV being unlawful and unfounded, staff's demand that Appellant seek a new land use permit for Building K-4 when one is not required and staff's subsequent unreasonable delay in processing Appellant's request for a new development permit violated Appellant's Due Process rights and constituted a temporary takings for which compensation is due.

i. The Delay Violated Appellant's Due Process Rights

The state and federal due process clause prohibit "government from depriving a person of property without due process of law." (Cal. Const., art. I, §§ 7, 15; U.S. Const., 14th Amend., § 1.) These provisions guarantee appropriate procedural protections and place substantive limitations on legislative measures. A procedural due process claim occurs when there is a deprivation of a constitutionally protected interest and a denial of adequate procedural protections. (*Brewster v. Bd. of Educ. of Lynwood U. School Dist.* (9th Cir. 1998) 149 F.3d 971, 982; *Wright v. Riveland* (9th Cir. 2000) 219 F.3d 905, 913.) Procedural process "always requires a relatively level playing field, the 'constitutional floor' of a 'fair trial in a fair tribunal,' in other words, a fair hearing before a neutral or unbiased decision-maker." (*Shaw v. County of Santa Cruz* (2008) 170 Cal. App. 4th 229, 265-266.) A substantive due process violation occurs in the context of land use regulation when the government's delay in processing a property-related application "lacked a rational relationship to a government interest." (*Id.* at 266-267, quoting *N. Pacifica LLC v. City of Pacifica* (2008) 526 F.3d 478, 484.).)

There are two Due Process Clause violations present with the Town's processing of Appellant's

development permit application and issuance of the NOV: (1) procedural due process clause violations due to Town staff requiring Appellant to obtain a new land use permit for Building K- 4 when none was required and in depriving Appellant of use of his property and due process during the 10-month delay between Appellant's submission of application materials to the Building Department and the Town's issuance of this NOV without any procedural protections or rights; and (2) a substantive due process clause violation due to Town staff issuing an NOV after its excessive delay that lacks a rational relationship to a government interest.

Staff Response: As discussed in detail throughout the staff report, staff disagrees with the appellant's contention that there was still a valid Development Permit in effect for Building K-4. The administrative record does not support the appellant's position and there was no underlying land use entitlement in effect to authorize construction of Building K-4. Most importantly, there were no building permits in effect to authorize construction of Building K-4 in direct violation of the CBC.

Staff also disagrees with the appellant's position that issuing an NOV lacks a rational relationship to a governmental interest. One of government's primary functions is to ensure the public health, safety, and welfare of its citizens. Of utmost importance is the structural integrity and safety of its many structures. The Town's Building Division is tasked with upholding the CBC and unpermitted construction like Building K-4 fundamentally undermines their ability to do so.

Lastly, staff disagrees that there were excessive delays associated with the Town's response to the unprecedented construction of an almost 12,000 square foot building without any building inspections or building permits. As discussed above, over the course of the past several months, there have been multiple discussions with the appellant, his contractors, and attorney, and conversations with the CSLB regarding the code violation and the CSLB's process and determinations.

Appellant Comment #17 ii. The Delay Constitutes a Temporary Takings and Just Compensation is Required

In addition, to Due Process Clause violations, the Town's demand that Appellant obtain a new land use permit and unreasonable delay in issuing the new permit constitute a temporary taking. In *Ali v. City of Los Angeles*, the court held that unreasonable delay in issuing a demolition permit and the eventual denial of the permit was a temporary takings. (*Ali v. City of L.A.* (1999) 77 Cal.App.4th 246, 254-255.) The Court found that the City's attempt to enforce its ordinance in violation of state law and delay in issuing a permit was "so unreasonable from a legal standpoint as to be arbitrary, not in furtherance of any legitimate governmental objective, and for no purpose other than to delay any development…" (*Id.* at 255.) The Court held the delay was a temporary regulatory taking requiring compensation. (*Ibid*.)

Similarly here, the Town has engaged in an abnormal delay in the development process that has temporarily deprived Appellant of all use of his property. Appellant has not been able to continue construction of Building K-4 and stands to lose two full years of construction due to the Town's delay. Staff initially failed to process Appellant's application in time for the following two planning commission meetings and, since October 2023, has engaged in conduct that is unreasonable in light of the facts of the record. Staff could have taken several reasonable steps to resolve this matter, including issuing a new development permit, an after the fact permit, and/or a citation. Instead, the Town delayed the process for almost a year without basis, contacted the CSLB, and now purports to require demolition of a structure with no safety issues which will create excessive waste.

Like *Ali*, the Town's delay here has resulted in unreasonable delay that is not in furtherance of any legitimate governmental interests and is for no purposes other than to delay development. Should this matter not be resolved, Appellant reserves all rights to pursue legal claims and due compensation against the Town.

Staff response: As discussed above, staff did not create delays in processing a Development Permit and at this time, still has not reached a resolution with the appellant that satisfies the Town's requirements and the requirements of the CBC. The appellant did not submit the application in time for the August Planning Commission hearing and the September hearing was already booked when the appellant submitted in early August. Staff placed the application on the next available hearing date, which was the October Planning Commission hearing.

Staff strongly disagrees with the appellant's contentions regarding the building's purported safety. As discussed earlier, this determination has not been made and ultimately will be determined through plan check review and inspections. At no time has staff engaged in efforts to delay construction and the entirely of the 23-year administrative record for PCC squarely refutes that statement.

As discussed above, staff disagrees with the appellant's contentions related to processing of the Development Permit, the code compliance process, appropriate measures taken with the CSLB and what is required to correct the violation and ensure that the correct building permit process is followed.

Appellant Comment #18: The NOV Did Not Include Requisite Information and is Invalid

Development Code section 18.200.050(B) requires that notice to responsible parties of any Code violation include certain specified information, including a statement that a person having any interest or record title in property may request an administrative hearing of the notice and order within 10 days, a statement that the property owner may request and be provided with a meeting with the Code Enforcement Director to discuss possible methods and time limits or correction of the violations, and a statement that the Code Enforcement Director's determination is appealable to the Town Council. (Development Code, § 18.200.050(B).)

The NOV failed to include the above required items, including information on how Appellant could appeal the decision. This lack of notice of procedural rights is a further violation of Appellant's due process rights.

Staff response: As stated in the Town's May 28, 2024 notice and order to abate, the initial notice of violation sent on May 1, 2024 was an informal notice mailed pursuant to Development Section 18.200.050.B.11 and was sent in accordance with the Town's Code Enforcement Manual, Chapter 4, Section D(1) (Case Management, Enforcement Procedures, Informal Enforcement, Stage I) which explicitly authorizes informal notification as the first step in the case management process. At the outset of virtually all code compliance cases, the Town's practice is to send an informal notice to the property owner. As noted in Section 18.200.050.B.11, the Town utilizes this process with the expectation that it will save time, money and resources for all parties involved. Further, staff has found that this approach is highly successful in resolving code violation cases as it sets the stage for our practice of code compliance vs. code enforcement.

Stoel Rives, LLP 2nd Appeal, June 5, 2024

Appellant Comment #1: By way of background, on May 10, 2024, we submitted an appeal regarding the Town's Notice of Violation ("NOV"), dated May 1, 2024, for the Pioneer Commerce Center Building K-4. A copy of the NOV is enclosed as Exhibit 1. We inquired about a filing fee and staff notified us there was no filing fee. We then timely submitted an appeal on May 10, 2024. Staff confirmed receipt of the appeal via email and by file stamped copy on May 13, 2024.

Staff Response: On or around May 13th, the Town Clerk received a voicemail message from the appellant's law firm's paralegal regarding the appeal documentation filed by the firm. The Town Clerk called her back on May 14th or 15th and informed her that we were reviewing the submitted documents and would get back to her office once we confirmed the process going forward. The Town Clerk stated at the time the Town was not requiring a filing fee; however, that the Town would let them know if that changed once we internally confirmed the next steps of this appeal.

The application documentation submitted by the law firm was the incorrect form and process for this type of appeal and because the decision being appealed was an informal decision, Town staff had to determine if our decision is appealable. Ultimately, the CDD issued a formal notice and order to abate on May 28, 2024, provided the correct appeal forms and let the appellant's attorney know that there is a fixed fee to appeal to the Town Council.

Appellant Comment #2: After not hearing from the Town for approximately three weeks following submission of the appeal, we followed up with the Community Development Director ("CDD") to request an update on the status of the Town's review and the date the appeal would be scheduled for hearing. Later that day, for the first time, the CDD informed us that the Town's NOV was an "informal notice" that was not appealable. The CDD attached a "formal" Notice and Order to Abate with an appeal form that is different from the forms listed on the Code Compliance section of the Town's website. A copy of the Order is enclosed as Exhibit 3. The CDD also informed us that there is an appeal fee of $1,180. A copy of the CDD's email is enclosed as Exhibit 4.

Staff Response: As mentioned above, the initial appeal filed by Stoel Rives, LLP was submitted by using the incorrect form and process. The form submitted by Stoel Rives, LLP is the Administrative Citation Appeal Request. At no time throughout the Town's code compliance proceedings has an administrative citation been issued to the property owner so this was not the correct process and there is no administrative citation to appeal. Further, an administrative citation does not result in an appeal before the Town Council and based on the appellant's February 2024 request to "exercise his right to appeal staff's final action to the Town Council", the CDD issued a formal (i.e. final action) notice and order to abate. In accordance with Development Code Section 18.200.050.F.1 (Appeals), this is the correct process that will enable the appellant to have a hearing before the Town Council. There was a total of 10 working days between receipt of the appellant's initial appeal of an administrative citation and staff's issuance of a formal notice and order to abate.

Appellant Comment #3: The NOV was not labelled as "informal" and there was nothing to indicate the NOV was not appealable. The CDD's determination is inconsistent with Development Code section 18.200.050(F) which states, "[a]ny person entitled who is dissatisfied with a public nuisance **or code violation determination** of the Code Enforcement Director **shall have the right to appeal** to the Town Council within 10 days from the date of mailing of the decision…" (Dev. Code, § 18.200.050(F)(1) (emphasis added).) The NOV fits within this category, as it as a code violation determination that directed immediate action to correct the violation.

Staff Response: Labelling the initial property owner notice as "informal" undermines the Town's ability to abate the violation and inherently negatively impacts the effectiveness of the notice. It is also not required pursuant to the Town's Code Enforcement Manual which stipulates that informal notice is the first step in management of a code compliance case. As discussed above, the appellant's attorney appealed a non-existent administrative citation on May 10, 2024 so staff issued a formal notice which can be appealed to the Town Council (Note: administrative citations are not appealed to the Town Council but rather to a third-party hearing officer). Further, pursuant to Development Code 18.200.050.E, it is a notice and order which is required to be appealed, in accordance with the following:

> **Request for reconsideration.** Any person aggrieved by the action of the Code Enforcement Director in issuing a notice and order in compliance with this Section may appeal in compliance with Subsection F, below. If no appeal is filed within the time prescribed, the action of the Code Enforcement Director shall be final.

Section E establishes the framework for the process that has to occur before Section F cited by the appellant. Accordingly, staff determined that a notice and order to abate needed to be issued prior to submittal of an appeal. Staff also determined that the appellant's appeal of a non-existent administrative citation was incorrect and could not be heard by the Town Council.

Appellant Comment #4: The CDD claims the NOV was "informal notice" but based on the Town's own timeline provided in the NOV, it is clear that informal notice was provided in October 2023 with the Town's

stop work order. As detailed more fully in the enclosed appeal, Appellant and the Town have been working to resolve this issue informally for almost over six months. In February 2024, we sent a letter to the Town stating staff and Appellant appeared to be at an impasse and requested an appealable order at that time. For staff to claim the NOV constituted informal notice attempting to resolve the Code violation at this time is disingenuous and yet another example of the Town's unreasonable and inexcusable delay in this matter.1 This additional month of delay provides further basis for Appellant's legal claims and claims for damages against the Town, should this matter not be resolved in short order.

Footnote 1: It remains unclear why the Town did not treat the NOV as appealable. It may be that the Town sought to remedy prior procedural defects in the NOV that Appellant raised in its prior appeal, including that the Town failed to provide notice of Appellant's rights to appeal.

Staff Response: On October 17, 2023, the appellant was issued a Stop Work Order by Town code compliance officers. A Stop Work Order is not a Notice of Violation and explicitly does not serve as informal notice pursuant to Development Code Section 18.200.050.B.11. Rather, it is the order requiring immediate cessation of the unpermitted construction until the violation has been corrected and/or permitted. As stated above, both the Development Code and Town Code Enforcement Manual explicitly authorize issuance of an informal notice at the outset of code compliance proceedings and this is "standard operating practice" as part of the Town's code compliance program.

Staff disagrees that there was a procedural defect in the initial May 1, 2024 notice and also disagrees that the formal notice issued on May 28, 2004 was issued to remedy a prior procedural defect in the May 1, 2024 notice. As discussed in detail above, the initial notice was informal in accordance with Development Code Section 18.200.050.B.11 and the Code Enforcement Manual and is a standard notice provided in virtually all code compliance cases. The appellant was provided with notice of rights to appeal in accordance with Development Code Section 18.200.050.B within the May 28, 2024 formal notice and order to abate. Further, as also detailed above, the appellant's attorney appealed a non-existent administrative citation and the appeal process for this type of citation ends with a third-party hearing officer, not the Town Council.

Appellant Comment #5: While Appellant maintains that the prior appeal was valid and reserves all rights in this regard, Appellant further appeals the Order and incorporates all arguments in the May 10 appeal by reference. We have enclosed a copy of Appellant's appeal to the NOV as Exhibit 5 which should be treated by the Town as Appellant's appeal to the May 28 Order. We have also enclosed Appellant's signed verification and a copy of the completed form as Attachment A to this letter. Appellant is not limited to the arguments stated in the enclosed appeal and may provide additional arguments and facts as Appellant approaches the Town Council for hearing.

Staff Response: As discussed above, the appellant submitted an appeal of an administrative citation which was never issued by the Town. Staff disagrees that this appeal was valid. However, recognizing the appellant's stated interest in appealing before the Town Council, staff issued a formal notice and order to abate which allows the appellant to appear before the Town Council.

In accordance with Development Code Section 18.200.050F.3.c, the Town Council may limit the issue on appeal to those identified in the appellant's notice of appeal, may consider the record produced before the Code Enforcement Director, and may allow additional evidence to be produced. The appellant's assertion that they are not limited to arguments stated in the appeal and that he may provide additional arguments and facts is subject to the Town Council's discretion as stated above.

Staff Recommendation: For the above reasons, staff recommends that the Council deny the appeal of the Community Development Director/Code Enforcement Director's determination, and uphold the Community Development Director/Code Enforcement Director's actions, thereby issuing a revised Notice and Order to abate with an extended deadline of July 25, 2024 based on the findings contained in Resolution No. 2024-43.

Priority:

☐ Enhanced Communication	☐ Climate and Greenhouse Gas Reduction	☐ Housing
☐ Infrastructure Investment	☐ Emergency and Wildfire Preparedness	☒ Core Service

Fiscal Impact: The cost of submitting this appeal is paid for by the appellant through a fixed-fee application, the fee of which is set by Council in the Town's adopted fee schedule. However, the cost of processing the appeal has surpassed the amount of the fixed fee, which includes preparation of the staff report, legal fees with Best Best & Krieger (BBK) LLP and staff's and BBK's attendance at the hearing. Because the fixed-fee application is not adequate to cover the Town's expense to process the appeal, the remaining costs are borne by the Town's General Fund, through the Planning Division.

Public Communication: Stoel Rives, LLC was notified of the June 25, 2024 appeal hearing date in writing on June 5, 2024.

Attachments:

1. Draft Resolution No. 2024-43 – Denying the appeal of the Community Development Director/Code Enforcement Director's decision
2. Appellant appeal submittal dated May 10, 2024
3. Appellant appeal submittal dated June 5, 2024
4. Ciro Mancuso [Appellant] Letter dated July 27, 2023
5. Council Resolution No. 2001-25
6. Notice of Violation dated May 1, 2024
7. Notice and Order to Abate dated May 28, 2024
8. Planning Commission Resolution No. 2002-11
9. Planning Commission Resolution No. 2005-03
10. Planning Commission Resolution No. 2016-13
11. Planning Commission Resolution No. 2017-16
12. Planning Commission Resolution No. 2019-10
13. Draft Planning Commission Resolution No. 2023-14 (not approved)
14. The Boulders Subdivision—Example of Project Phasing
15. July 28, 2023 Letter from Maple Brook Engineering, Inc.
16. Building K-4 Construction Timeline
17. Link to October 17, 2023 Planning Commission hearing, includes testimony from Ciro Mancuso (appellant): https://ttm.ompnetwork.org/sessions/278489/truckee-planning-commission-october-17-2023
18. Email correspondence regarding Building K-4 construction
19. TNT Materials 2023 Receipts
20. Stop Work Order issued on October 17, 2023