

**Town of Truckee
California**

RESOLUTION 2024-43

A RESOLUTION OF THE TOWN OF TRUCKEE TOWN COUNCIL UPHOLDING THE COMMUNITY DEVELOPMENT DIRECTOR'S DECISION ON PIONEER COMMERCE CENTER BUILDING K-4, DENYING THE APPEAL OF THE COMMUNITY DEVELOPMENT DIRECTOR'S DECISION TO ISSUE A NOTICE OF VIOLATION AND A NOTICE AND ORDER TO ABATE, DENY THE REQUEST TO WITHDRAW THE NOTICE OF VIOLATION AND NOTICE AND ORDER TO ABATE AND DENY APPELLANT'S REQUEST TO PERMIT CONSTRUCTION OF BUILDING K-4 TO CONTINUE WITHOUT DELAY AND UPHOLD THE COMMUNITY DEVELOPMENT DIRECTOR/CODE ENFORCEMENT DIRECTOR'S DETERMINATION THAT DEMOLITION OF UNPERMITTED CONSTRUCTION, NEW LAND USE PERMIT APPROVAL AND BUILDING APPROVAL ARE REQUIRED

WHEREAS, on May 17, 2001, the Town of Truckee Town Council adopted Resolution 2001-25, thereby approving a Development Permit, Conditional Use Permit, Planned Development, Lot Line Adjustment and Easement Abandonment for Phases I and II of the Pioneer Commerce Center authorizing construction of an 11 building industrial/mixed-use development: and

WHEREAS, on May 8, 2002, the Planning Commission approved a Tentative Map for the subdivision of 14 parcels and a Project Amendment to allow for an increase in floor area ratio, and

WHEREAS, in 2003, the phasing plan/land use entitlements approved under Resolution 2001-25 expired because the construction timeframes that were established within the resolution were not met; and

WHEREAS, on February 9, 2005, the Planning Commission approved a new Development Permit and Use Permit for Phases I and II, a Planned Development to allow changes to the underlying Planned Development, a Tentative Map for resubdivision and Phases I and II, a Tentative Map for creation of the Phase III subdivision, a Project Amendment to allow 8,900 square feet of commercial space, convert 6,100 square feet of industrial space to commercial space and modify the layout of Phase II; and

WHEREAS, Planning Commission Resolution 2005-03 (adopted on February 9, 2005) superseded Town Council Resolution 2001-25; and

WHEREAS, Planning Commission Resolution 2005-03 expired in 2009 because the project was not completed in accordance with Condition of Approval #2; and

WHEREAS, on July 19, 2016, the Planning Commission approved a new Development Permit for the remaining six unconstructed buildings approved in 2005, including the following:

- 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

WHEREAS, in 2020, the Development Permit approved under Planning Commission Resolution 2006-13 expired because the construction timeframes that were established within the resolution were not met; and

WHEREAS, on September 19, 2017, the Planning Commission approved a Project Amendment to increase the size of Building H from 12,135 square feet to 18, 834 square feet for a standalone gym (Note: It was later discovered that the permit application included the incorrect building square footage and the actual size of the building was 3,330 square feet larger at 22,164 square feet. This additional square footage was approved by the Community Development Director through limited discretion granted by the Development Code) and to allow for the construction of Building M as a nine-unit apartment complex and amended the Planned Development to remove the existing maximum limit on floor space for health/fitness facilities; and

WHEREAS, on May 21, 2019, the Planning Commission approved a Project Amendment to increase the existing maximum limit on floor space for deli/restaurant uses from 2,500 square feet to 7,264 square feet; and

WHEREAS, on July 6, 2023 a building permit application was submitted electronically to the Town Building Division via the Town's online submittal portal, by the appellant's representative; and

WHEREAS, on July 10, 2023, the appellant's representative was notified that the application could not be accepted for process because the previously approved land use permit, Planning Application No. 2016-00000035, was expired and there was no land use approval; and

WHEREAS, on July 27, 2023 the appellant's attorney submitted a letter to the Planning Division requesting Community Development Director approval to proceed under the 2016-00000035 contending that the permit was not expired; and

WHEREAS, on August 1, 2023 the Community Development Director emailed the appellant and the appellant's attorney confirmation that the land use permit was expired and that submittal of a new land use permit would be required; and

WHEREAS, on August 3, 2023 a new land use permit application was submitted to the Planning Division and on August 7, 2023 the land use permit application fee was submitted to the Planning Division and was accepted for processing; and

WHEREAS, on October 17, 2023, the project was scheduled to be reviewed by the Planning Commission at a regularly scheduled meeting; and

WHEREAS, on October 17, 2023 during a pre-Planning Commission meeting site inspection it was discovered that unpermitted construction was occurring and a Stop Work Order was issued to the property owner; and

WHEREAS, at the October 17, 2023 Planning Commission meeting, the Commission took

action to continue review of the project due to the active code compliance case; and

WHEREAS, from October 18, 2023, the Town has worked with the appellant to abate the existing code and building violation without finding resolution; and

WHEREAS, on May 1, 2024, the Community Development Director issued an informal Notice of Violation to the appellant requiring abatement of the code and building violations; and

WHEREAS, on May 10, 2024, the appellant appealed the Notice of Violation and submitted an administrative citation appeal; and

WHEREAS, no administrative citation was issued in response to the code and building violations and due to the appellant's stated interest in appealing staff's determinations to the Town Council, the Community Development Director/Code Enforcement Director issued a formal Notice and Order to Abate on May 28, 2024; and

WHEREAS, on June 5, 2024 a timely appeal of the Notice and Order to Abate was filed; and

WHEREAS, this appeal was noticed in accordance with the Town's procedures for regularly scheduled Town Council hearings; and

NOW THEREFORE BE IT RESOLVED, the Town Council hereby takes the following actions on Application No. 2024-00000078/APL (Appeal of Pioneer Commerce Center Building K-4):

1. Determine the Community Development Director's decision to be exempt pursuant to CEQA Guidelines Section 15061(b)(3), which states that CEQA applies only to projects which have the potential for causing a significant effect on the environment;
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 in Exhibit A.

BE IT FURTHER RESOLVED, the Town Council adopts the findings set forth in Exhibit A (Findings),

in support of denial of the appeal.

The foregoing resolution was introduced by Council Member _____, seconded by Council Member _____, at a regular meeting of the Truckee Town Council, held on the 25th day of June, 2024 and adopted by the following vote:

AYES:

NOES:

ABSENT:

Dave Polivy, Mayor

ATTEST:

Kelly Carpenter, Town Clerk

Attachments:

Exhibit A – Findings

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FINDINGS

1. **The Town Council finds that there was no issued building permit at time of foundation installation or vertical construction which is a violation of the California Building Code:**

CBC Section 105.1 Required: Any owner or owner's authorized agent who intends to repair, add to, alter, relocate, demolish, or change the occupancy of a building or to repair, install, add, alter, remove, convert, or replace any electrical, gas, mechanical, or plumbing system, the installation of which is regulated by this code, or to cause any such work to be performed, shall first make application to the code official and obtain the required permit.

This finding is further supported by the discussion contained in the "Discussion and Analysis" section of the June 25, 2024 Town Council staff report.

2. **The Town Council finds that there were no valid land use entitlements or phasing in place on APN 19-700-025 to allow construction of Building K-4 and that construction of the building is in violation of Development Code Section 1801.040.A:**

New land uses or structures, changes to land uses or structures: It shall be unlawful, and a violation of this Development Code, for any person to establish, construct, reconstruct, alter or replace any use of land or structure, except in compliance with the requirements of Section 18.02.020 (Requirements for Development and New Land Uses) and Chapter 18.130 (Nonconforming Uses, Structures and Parcels).

This finding is further supported by the discussion contained in the "Discussion and Analysis" section of the June 25, 2024 Town Council staff report.

3. **The Town Council finds that there were no valid land use entitlements or phasing in place on APN 19-700-025 to allow construction of Building K-4 and that construction of the building is in violation of Development Code Section 18.02.020—Requirements for Development and New Land Uses:**

A. Allowable use. The land use shall be identified by Article II (Zoning Districts and Allowable Land Uses) as being allowable in the zoning district applied to the site.

B. Permit requirements. Any land use permit required by this Development Code shall be obtained before the proposed use is constructed, otherwise established or put into operation, unless the proposed use is listed in Section 18.02.030 (Exemptions from Land Use Permit Requirements). The land use permit requirements of this Development Code are established by Article II (Zoning Districts and Allowable Land Uses).

C. Development standards. The use and/or structures shall comply with all other applicable requirements of this Development Code, including the development standards of Article II (Zoning Districts and Allowable Land Uses), the provisions of Article III (Site Planning and General Development Standards), and the regulations of chapter 18.130 (Nonconforming Uses, Structures, and Parcels).

D. Legal parcel. The use and/or structures shall only be established on a parcel of land which has been legally created in compliance with the Subdivision Map Act, Article V (Subdivisions), and Chapter 18.86 (Lot Line Adjustments), as applicable at the time the parcel was created. Development and Land Use Approval Requirements

E. Previous approvals and agreements. The use and/or structures shall comply with applicable provisions and requirements of any of the following permits, entitlements or agreements:

1. **Conditions of approval.** Any conditions of approval imposed by any land use permit previously granted by the County or Town and still in effect;
2. **Development Agreements.** Any Development Agreement approved by the Town in compliance with Chapter 18.150 (Development Agreements) and still in effect;
3. **Planned Developments.** Any conditions of approval or other provisions imposed by a Planned Development previously approved by the County or Town and still in effect; and
4. **Subdivisions.** Any conditions of approval, restrictions or other provisions imposed by a subdivision map previously approved by the County or Town and recorded in the Nevada County Recorder's Office except as set forth in Section 18.03.020.G.4.

This finding is further supported by the discussion contained in the "Discussion and Analysis" section of the June 25, 2024 Town Council staff report.

4. **The Town Council finds that a new Development Permit is required to allow construction of Building K-4 in the Pioneer Commerce Center.**

This finding is further supported by the discussion contained in the "Discussion and Analysis" section of the June 25, 2024 Town Council staff report.

5. **The Town Council finds that the Chief Building Official's mandate to dismantle and reassemble the vertical construction and demolish and rebuild the foundation is correct and that a building permit is required to allow construction of Building K-4 in the Pioneer Commerce Center.**

This finding is further supported by the discussion contained in the "Discussion and Analysis" section of the June 25, 2024 Town Council staff report.

6. **The Town Council finds that the Community Development Director/Code Enforcement Director's decision to issue a Notice of Violation and Notice and Order to Abate is correct and that the project must be subjected to the standard plan check and inspection process as part of receiving a building permit.**

This finding is further supported by the discussion contained in the "Discussion and Analysis" section of the June 25, 2024 Town Council staff report.

7. **The Town Council finds that a revised Notice and Order to Abate, extending the compliance deadline to July 25, 2024 is necessary.**

This finding is further supported by the discussion contained in the "Discussion and Analysis" section of the June 25, 2024 Town Council staff report.

8. **The Town Council finds and reaffirms 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.**

This finding is further supported by the discussion contained in the "Discussion and Analysis" section of the June 25, 2024 Town Council staff report.