

RESOLUTION NO. 2005-108

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF ELK GROVE UPHOLDING AN APPEAL
AND REVERSING THE PLANNING COMMISSION APPROVAL OF DESIGN REVIEW
FOR THE ELK GROVE RETAIL CENTER
PROJECT NO. EG-04-639**

WHEREAS, The Elk Grove Retail Center, represented by Brett Del Valle (hereinafter referred to as Applicant) filed an application with the City of Elk Grove (hereinafter referred to as City) for Design Review for the development of property located in the City of Elk Grove (Assessor's Parcel Numbers 115-0180-007 & -008); and

WHEREAS, the Planning Commission considered the Applicant's request at a duly noticed public hearing on February 24, 2005 and approved the proposed project; and

WHEREAS, an appeal of the Planning Commission's action to approve the building orientation was filed by an adjacent property owner pursuant to Chapter 15, Article 3 of the City of Elk Grove Zoning Code; and

WHEREAS, the City Council is the appropriate authority to hear and take action on this project after an appeal of the approval by the Planning Commission.

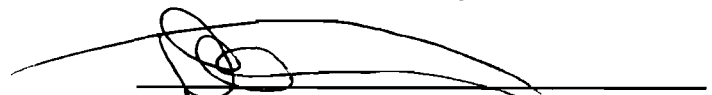
NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ELK GROVE HEREBY RESOLVES AS FOLLOWS:

Approve the Appeal Petition filed under application EG-04-824 and reverse the Planning Commission decision regarding the orientation of Pad 'C' on application EG-04-639 based on the following finding:

Finding: The approval of the appeal of the Design Review results in a superior design, which is consistent with the provisions of the Citywide Design Guidelines pertaining to Non-residential development.


Evidence: All other conditions pertaining to the project site, including exterior architectural treatment and enhanced pedestrian access throughout the project, have been adopted as part of the approval, in addition to the provisions of the Memorandum Regarding Development of Adjoining Projects entered into by SWC Calvine LLC and Petrovich Development Company LLC, dated April 27, 2005 offered by the adjoining property owners. These measures ensure that the project complies with the requirements of the Zoning Code, Citywide Design Guidelines and adequately addressed the concerns expressed by the Appellant.

PASSED AND ADOPTED by the City Council of the City of Elk Grove on the 27th day of April, 2005.



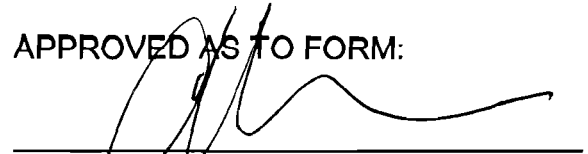
DANIEL BRIGGS, MAYOR of the
CITY OF ELK GROVE

ATTEST:



PEGGY E. JACKSON, CITY CLERK

APPROVED AS TO FORM:



ANTHONY B. MANZANETTI,
CITY ATTORNEY

MEMORANDUM REGARDING DEVELOPMENT OF ADJOINING PROJECTS

This MEMORANDUM REGARDING DEVELOPMENT OF ADJOINING PROJECTS ("Memorandum") is entered into by and between SWC CALVINE, LLC, a California limited liability company, a wholly separate entity of Peninsula Retail Development, LLC, 301 Ship Yard Way, Newport Beach, California 926633 ("Peninsula"), and PETROVICH DEVELOPMENT COMPANY, LLC, a California limited liability company, 5046 Sunrise Boulevard, Fair Oaks, California 95628 ("PDC"), and is dated for reference purposes only as of April 27, 2005.

FACTUAL CONTEXT

A. Peninsula is the Owner of approximately 2.2 gross acres of unimproved land fronting on Elk Grove-Florin Road in the City of Elk Grove, California (the "Peninsula Land"). Peninsula intends to develop the Peninsula Land with a retail shops building ("Retail Shops"), a Wendy's restaurant, and a CSK Kragen Auto store.

B. PDC is the owner of approximately twenty-three (23) gross acres of land (the "PDC Land") located contiguous to the Peninsula Land and having access to both Elk Grove-Florin Road and Calvine Road. PDC intends to develop the PDC Land as a retail shopping center commonly referred to as "Calvine Pointe."

C. Peninsula and PDC have discussed certain provisions relating to development of their respective properties. This Memorandum is for the purpose of setting forth provisions that would govern the development of their respective properties and by which their respective properties would be bound upon entering into and recording a Declaration of Covenants, Conditions, Restrictions and Reciprocal Easements (the "CC&R's").

D. Attached hereto and incorporated by this reference is an illustration (the "Plan") (Exhibit "A") showing the general relationship of the Peninsula Land to the PDC Land.

E. Attached hereto and incorporated by this reference is an illustration (the "Revised Plan") (Exhibit "B") showing a revised site plan for the Peninsula Land and PDC Land to which Peninsula agrees to develop the Peninsula Land subject to and as consideration for the satisfaction of all obligations described herein below.

NOW THEREFORE, Peninsula and PDC hereby agree as follows:

1. Architectural and Engineering Costs. Each party shall be responsible for all architectural and engineering costs related to its own property. Neither party shall be responsible for any cost sharing or reimbursement to the other with respect thereto.

2. Reciprocal Access Agreement. A provision for and granting of mutual easements for reciprocal access and parking shall be incorporated in the CC&R's. The provision shall be for reciprocal access and shall also provide for reciprocal parking privileges. The Peninsula Land must provide for adequate parking per code for the intended uses within the boundaries of the Peninsula Land and shall meet all City of Elk Grove parking requirements. The PDC Land must provide for adequate parking per code for the intended uses within the Calvine Pointe shopping center and shall meet all City of Elk Grove parking requirements.

3. Health Club Use Restriction. PDC shall not locate a health club in the buildings or in the location shown on Exhibit "A" as Major 5 or 6 on the Plan for such period of time as Peninsula

shall own the Peninsula Land and the improvements to be constructed thereon. Peninsula shall not lease space to a health club either such as Slender Lady or Curves type tenant so long as PDC or one of its entities owns all or a portion of Calvine Pointe.

BDV
BDV
4. Restaurant Use Restriction. Peninsula shall not locate a full service sit-down restaurant containing more than three thousand (3,000) square feet (including any outside seating area) within the Peninsula Land shop building shown on the attached plan.
IN TOTAL

5. Drive Aisle. In the event that the Peninsula Land should be developed prior to development of the PDC Land, PDC shall allow Peninsula to construct a drive Aisle ("Drive Aisle") on the PDC Land to allow access around the parking Aisles to be located on the Peninsula Land. The Drive Aisle shall be twenty-five feet in width unless required to be of a greater width by the City of Elk Grove, but in no event may the Drive Aisle be of a width greater than thirty five (35) feet. PDC shall have the absolute right to approve, prior to any entry upon the PDC Land and construction of the Drive Aisle, of all civil engineering plans for construction of the Drive Aisle, the specifications for construction of the Drive Aisle, and all costs for construction of the Drive Aisle. Subject to Peninsula's compliance with all of the foregoing, PDC to reimburse Peninsula for the actual cost of constructing the Drive Aisle (excluding any interest or financing charge), and only to the extent the Drive Aisle is actually located on the PDC Land, the reimbursement to be paid within thirty (30) days of issuance of the notice of completion by the City of Elk Grove for the Drive Aisle.

BDV
6. Possible Fence Construction. In the event that Peninsula proceeds with construction of improvements on the Peninsula Land prior to PDC proceeding with construction of improvements on the PDC Land, and the City of Elk Grove requires a fence to be placed around the perimeter of the Peninsula Land, the following shall apply:


BDV
Peninsula's sole cost
a. Peninsula may remove the existing fence on the boundary of the PDC Land and install at ~~PDC's sole cost~~ a temporary construction fence sufficiently within the boundary of the PDC Land so as to permit Peninsula's construction of the Drive Aisle.

b. PDC shall have the right to prior approval of the location of the temporary construction fence which may not be located so as to interfere with usefulness of the existing residential structures located on the PDC Land.

c. In the event that PDC's Land has been rezoned for retail shopping center use purposes and buildings have been constructed on the Peninsula Land and one or more tenants thereof are ready to open for business, PDC will assume the rental costs for the construction fence effective upon a tenant opening for business on the Peninsula Land and continuing until construction of improvements on the PDC Land have been completed. At PDC's option, it may require Peninsula to terminate its fence rental agreement and replace the temporary fence at PDC's sole cost with a vendor of PDC's choosing.

BDV
d. In the event that PDC's land is not approved for retail development by December 31, 2006, and if PDC does not have a pending application to rezone the property to commercial development, Peninsula and PDC will equally share the costs to construct and maintain a permanent wall or fence along their common boundary line as required by city zoning code, *and Peninsula builds a retail shop building*

7. Right of First Refusal. In the event that Peninsula desires to sell the Retail Shops, Peninsula shall sell the Retail Shops separately from any sale of the Wendy's restaurant and CSK Kragen Auto store, and PDC shall have a right of first refusal to purchase only the Retail Shops as follows:

binding  BNV

a. If Peninsula receives from a third party a bona fide offer that is acceptable to Peninsula in the form of a Letter of Intent (LOI) to purchase the Retail Shops, Peninsula agrees to and shall disclose in writing to PDC, within three (3) business days of receipt thereof, all of the terms and conditions of such offer. The disclosure shall include a photocopy of the LOI constituting such offer.

b. PDC shall have fifteen (15) days after receiving written disclosure of the bona fide offer within which to elect to purchase the Retail Shops on terms identical to those offered by the third party. Such election shall be made by written notice to Peninsula, the notice shall be accompanied by a check for the amount of the deposit stated in the third party offer, the check to be payable to and deposited in escrow with First American Title Company, 1610 Arden Way, Sacramento, California 95815. The deposit shall be applied to PDC's payment of the purchase price.

c. Within ten (10) days after deposit of the above-mentioned check in escrow with First American Title Company, the parties shall enter into a formal contract for purchase and sale of the Retail Shops containing the provisions normally used in such contracts in Sacramento County, California, expressly including the terms of the original bona fide offer, except that the purchase price shall be reduced by the amount of any real estate sales commission included in the third party offer (no real estate sales commission shall be applicable to PDC's purchase of the Retail Shops), and with such changes as the parties may mutually agree.

d. Ten (10) days prior to the close of escrow for purchase and sale of the Retail Shops, Peninsula shall deposit to escrow with First American Title Company a duly executed grant deed conveying the Retail Shops to PDC together with such other escrow instructions, consistent with the formal contract, as may be requested by First American Title Company.

e. If PDC should fail to give notice electing to exercise the right of first refusal to purchase the Retail Shops and/or if PDC fails to tender the deposit as provided above, Peninsula shall be relieved of all liability to PDC under the right of first refusal. In the event that Peninsula's third party buyer fails to close escrow for any reason, the first right of refusal shall apply to any and all subsequent purchase offers for the Retail Shops.

8. CC&R's. There shall be recorded against the Retail Shops portion of the Peninsula Land site and against the PDC Land a declaration of CC&R's incorporating the provisions of the Memorandum and containing such usual and customary provisions prohibiting hazardous substances, noxious uses, mutual enforcement rights, mutual lien rights, and such other provisions as the parties may agree upon.

9. Contingency of City of Elk Grove Approvals. All duties and obligations of Peninsula and PDC described herein are contingent upon and subject to receipt by Peninsula and PDC of all written and verbal approvals necessary from the City of Elk Grove in order to allow Peninsula and PDC to perform each and every item described herein which typically requires City approval.


This Memorandum is a summary of the provisions as discussed by Peninsula and PDC and is not binding and is intended solely as a summary of the terms that have been proposed. This Memorandum is not intended to be and shall not be construed to be an agreement and there shall be no enforceable rights pursuant to this Memorandum until a definitive Declaration of Covenants, Conditions, Restrictions and Reciprocal Easements to be recorded against the Peninsula Land and the PDC Land have been agreed upon, executed in writing and delivered by each of the parties.

[SIGNATURES ON NEXT PAGE]

PENINSULA:

SWC CALVINE, LLC,
a California limited liability company


Dated: April 27, 2005.


By: Brett Del Valle
Its: Managing member

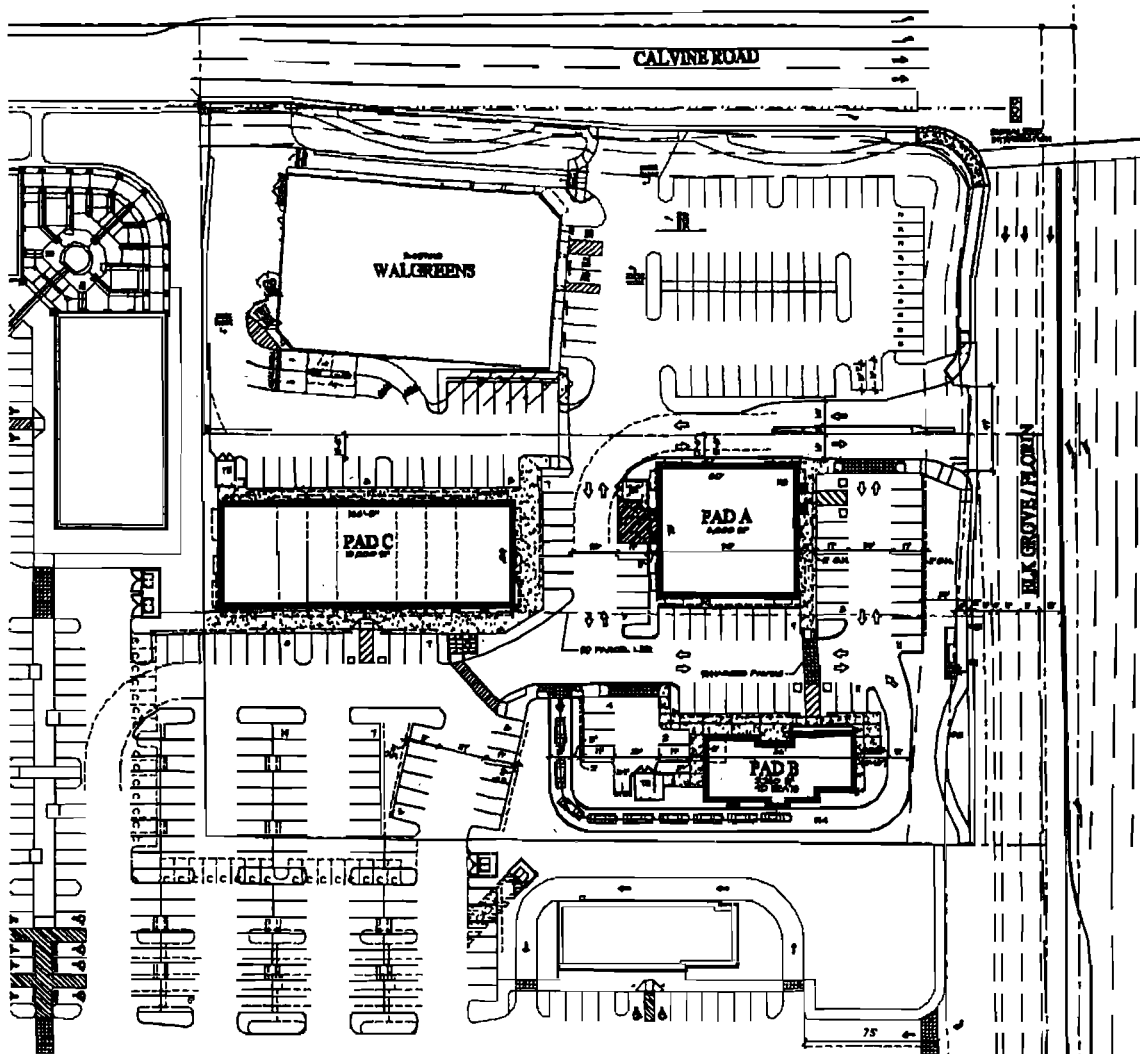
PDC:

PETROVICH DEVELOPMENT COMPANY, LLC,
a California limited liability company

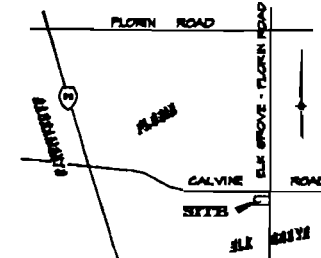
Dated: April 27, 2005.


By: Paul S. Petrovich
Its: President

T:\0485 Project\Commercial\Retail\Cairns & EB Green-Plan (BWC)\A03-112 Plan1 Only\Site Studies\A03112SITE_OPTION2-03-26-05.dwg, 04/20/2005 08:54:27 AM, 1 in., ALL MATERIAL APPEARING HEREIN CONSTITUTE



VICINITY MAP



STATISTICS

DEVELOPER: FERRIS/LLA RETAIL DEVELOPMENT
 501 SHIPYARD WAY - SUITE B
 NEWPORT BEACH, CA 92660

APN: 18-0180-007 AND 18-0180-008

ZONED: LC

PARCEL AREA: 2.241 GROSS ACRES

PAD A 145 STALLS PER 1,000 SF	27 STALLS
PAD B 5 STALL PER 3 SEATS	30 STALLS
PAD C 145 STALLS PER 1,000 SF	49 STALLS
TOTAL PARKING REQUIRED:	102 STALLS
TOTAL PARKING PROPOSED:	108 STALLS

**SITE PLAN
 OPTION 2**

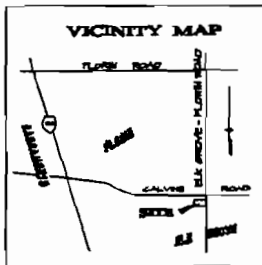
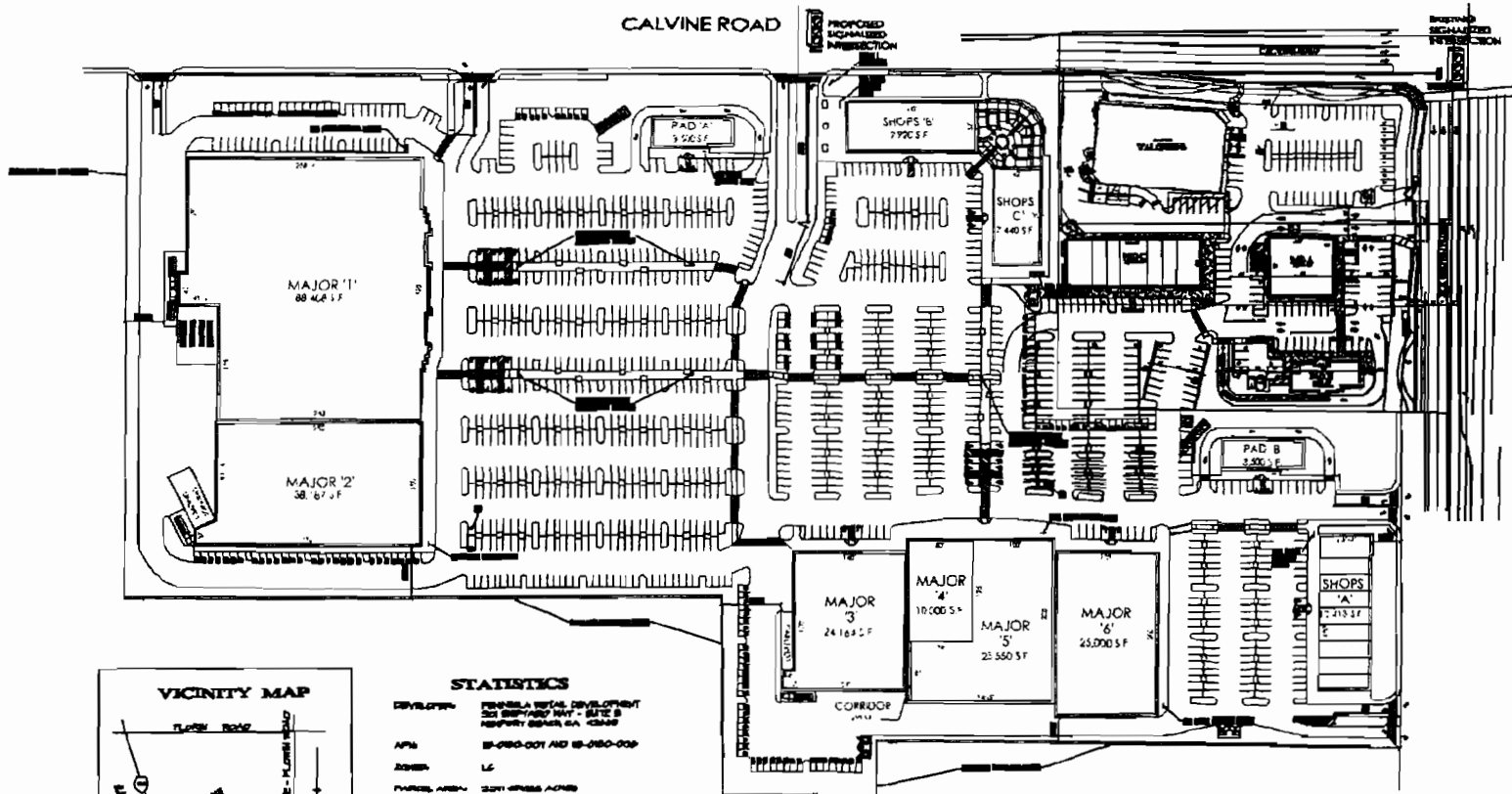
Job Number	APN	Sheet
Date	DATE	1
Drawn	BY	
Revised	LEAD	BY

**Rauschenbach
 Marvelli
 Becker**

2277 West Ave. - Second Floor - Sacramento, CA 95825
 916-443-0322 FAX 916-443-0500

**RETAIL CENTER
 CALVINE ROAD AND ELK GROVE / FLORIN ROAD
 ELK GROVE, CALIFORNIA**

B02



STATISTICS

DEVELOPER: PENINSULA RETAIL DEVELOPMENT
501 SEPULCRUM BLVD - SUITE B
HERNDON, VA 22069

APNs: 89-080-001 AND 89-080-002

ZONE: LC

PARCEL AREA: 320.1 ACRES APPROX

PAD A	27 STALLS
MAJOR 1	27 STALLS PER 1,000 SF
MAJOR 2	30 STALLS PER 1,000 SF
MAJOR 3	40 STALLS PER 1,000 SF
MAJOR 4	40 STALLS PER 1,000 SF
MAJOR 5	40 STALLS PER 1,000 SF
MAJOR 6	40 STALLS PER 1,000 SF
SHOPS 'A'	40 STALLS PER 1,000 SF
SHOPS 'B'	40 STALLS PER 1,000 SF
SHOPS 'C'	40 STALLS PER 1,000 SF
TOTAL PARKING PROVIDED	102 STALLS
TOTAL PARKING PROVIDED	102 STALLS

RETAIL CENTER
CALVINE ROAD AND ELK GROVE / FLORIN ROAD
ELK GROVE, CALIFORNIA

SITE PLAN

Scale: 1" = 100'

North Arrow

1

**Rosenbush
Marshall
Becker**

307 16th St., Second Floor, San Francisco, CA 94103
415-774-2200

This site plan subject to change as it relates to PDC's project.

**CERTIFICATION
ELK GROVE CITY COUNCIL RESOLUTION NO. 2005-108**

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) ss
CITY OF ELK GROVE)

I, Peggy E. Jackson, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing resolution was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on the 27th day of April 2005 by the following vote:

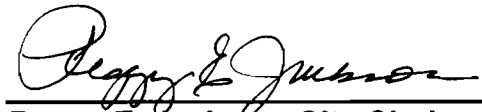
AYES: COUNCILMEMBERS: Scherman, Soares, Cooper, Leary

NOES: COUNCILMEMBERS: Briggs

ABSTAIN: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:





**Peggy E. Jackson, City Clerk
City of Elk Grove, California**