

Steven A. Herum
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September 21, 2017

Via Electronic Mail and U.S. Mail

Ms. Mary Raterman-Doidge
Deputy City Attorney
City of Fresno
2600 Fresno Street, City Hall
Fresno, California 93721
Email: Mary.Raterman-Doidge@fresno.gov

Re: Your letter of September 20, 2017

Dear Ms. Raterman-Doidge:

This letter briefly and respectfully explains why my client disagrees with the opinion expressed in your September 20th letter.

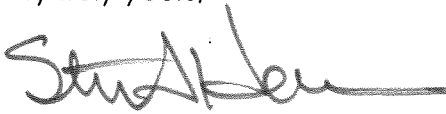
The overarching analysis contained in your letter focuses on the fact that the municipal code states a stay applies to "the matter appealed", including, if relevant, issuing building permits.

We do not disagree that an appealed matter is stayed during the pendency of the appeal but disagree with the implied conclusion you reach that an appeal of one planning commission decision means that all planning commission decisions, including planning commission decisions for which no appeal was perfected, are also stayed. There is no authority or logic for this conclusion and, indeed, it appears to conflict with the plain language of the ordinance.

The key language in the ordinance you cite is that the stay applies to "the matter appealed". Here the Fresno ordinance is designed to create separate appeal processes for a planning commission CEQA determination and a planning commission land use decision. In our situation an appeal of the CEQA determination was perfected and an appeal of the land use decision was not perfected. Hence "the matter appealed" was the Planning Commission CEQA determination and under the ordinance this decision is stayed. (Yet there is nothing practical to stay since building permits are not issued based upon CEQA determinations. CEQA is a procedural and not substantive statute.) In short, the stay provision does not reach the planning commission land use decision because it is not "the matter appealed".

In addition, the major thrust of our letter was the logically based conclusion that since the appeal of the land use decision was not perfected the City Council does not have jurisdiction over the Planning Commission approved land use decision. Your reliance on the stay provision of the municipal code, in the best possible circumstance, means the land use decision is stayed (a conclusion that is not supported by the language or the ordinance) but does not mean that jurisdiction has been conferred upon the City Council to modify or change the Planning Commission approval. Hence your analysis is truncated and unresponsive to the main issue: whether the City Council has jurisdiction to modify the Planning Commission decision.

Very truly yours,

A handwritten signature in black ink, appearing to read "Steven A. Herum", with a long horizontal stroke extending to the right.

STEVEN A. HERUM
Attorney-at-Law

SAH:lac

cc: Mayor Lee Brand
Honorable Members of the Fresno City Council
City Attorney
City Planning Director