

# Court sides with EDC residents, against chain store

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This is a rendering of the Dollar General that would have faced Main Street in Georgetown, though there is no entrance here.

## By Joann Eisenbrandt

The anti-Dollar General store advocates in El Dorado County won in court.

El Dorado County Superior Court Judge Warren Curt Stracener on April 14 ruled in favor of the Georgetown Preservation Society to stop construction of a 9,100-square-foot Dollar General store on Main Street in the historic mining town of Georgetown.

Stracener's ruling requires the county to vacate its earlier approval of the project and its environmental documents, and take the steps needed to prepare a detailed environmental impact report. This is the latest development in a protracted David vs. Goliath battle playing out on the county's West Slope since late 2015.

Dollar General is a well-known national chain of stores that offers a variety of discounted merchandise and grocery items. They frequently choose locations in smaller towns with lower-income and senior residents who need to travel relatively long distances to shop at box store retailers.

Georgetown is a former Gold Rush mining town on the county's West Slope west of Placerville. The proposed site for the Dollar General store is on three parcels at the end of the central Main Street historic district. These parcels are zoned commercial but have been vacant for some time. In October 2015, the county approved the project put forth by Simon CRE Abbie, a commercial real estate company that applied on behalf of Dollar General and property owners Denton and Carolyn Beam.

Under the requirements of the California Environmental Quality Act (CEQA), the county prepared an initial study and issued a mitigated negative declaration (MND) identifying and providing mitigations for potential environmental impacts. An MND is at the lower end of possible environmental reviews under CEQA and says basically that any environmental impacts of the project are small and can be totally mitigated. This approval was appealed to the El Dorado County Planning Commission by Georgetown resident Dennis Smith. The Planning Commission denied the appeal and the issue was then appealed to the Board of Supervisors.

The **April 5, 2016, board meeting** brought out not only concerns from Georgetown-area

residents about potential environmental issues, but made it clear that beyond that it was clearly a “quality of life” issue. The chamber was packed with visibly upset residents who had traveled from Georgetown to Placerville to show the depth of their concern by their large physical presence.

Some did speak about environmental concerns, including impacts on the wetlands and biological resources on the properties, traffic, circulation and safety concerns, problems with the proposed septic system, water quality and the fact that an abandoned mine still remained underneath a portion of the proposed site. But the preponderance of comments focused on the impacts the out-of-proportion Dollar General store would have on the aesthetic and historical qualities of the small town. Some were very angry. Others were in tears. The board denied the appeal with Supervisor Shiva Frentzen dissenting.

On May 6, 2016, the Georgetown Preservation Society **filed a lawsuit** to force Dollar General and the county to do an EIR before proceeding further.

Of the court’s decision, Ron Sheckler of the Georgetown Preservation Society told Lake Tahoe News, “What was very obvious to me was that weight was given to the people who were not necessarily demonstrated experts. This is groundbreaking in that the judge took into consideration what many people who have lived there for their entire lives see and feel and love about Georgetown. He gave that the weight it was worthy of.”

Don Mooney, attorney for the Georgetown Preservation Society, agreed. “We are pleased with the ruling. It sends the message to Dollar General that you have to take into consideration and do an EIR if there is a real conflict (of the project) with the aesthetic values of these historic communities.”

From the beginning, the issue of the appropriateness of a single large building in an area of Georgetown comprised mainly of older historic buildings with Gold Rush era architecture, an historic bed and breakfast and residential properties was a key area of disagreement. The county’s own Historic Design Guidelines say that new buildings constructed in such areas need to “generally conform” to the types of architecture prevalent in California mining towns of the 1850s through 1910.

Interpreting those guidelines for this specific project proved challenging. In approving the project, the county found it did conform. When residents expressed concerns, project proponents made a number of design changes which they believed made it meet the intentions of the Historic Design Guidelines. For many Georgetown residents, nothing would make a Dollar General store on Main Street fit in. Sheckler put it simply when he pointed to the lyrics in the Joni Mitchell song, “Big Yellow Taxi” — “They paved paradise. And put up a parking lot.”

In his decision, Stracener referenced many similar comments made by residents at Planning Commission and Board of Supervisors meetings, and in a petition against the Dollar General store that many had signed.

“A resident on Main Street living across from the proposed store commented: the proposed

9,100 square foot, 26 foot high chain store is inappropriate for the historic downtown district.” Others noted that what would front on Main Street was not a period-compatible entrance but a blank stucco wall and a loading dock. It would have “no congruity” with the remainder of Main Street where each building had its own personal gold rush era character. The judge noted the project proponent’s very different view, “Respondents argue that the above cited comments are merely unsubstantiated opinions lacking any factual basis made by persons who are not experts in historic architecture.”

In CEQA-based lawsuits, the court’s decision is based on whether the petitioners have presented enough evidence in the record to conclude that there is a “fair argument” that the project will have significant effects on the environment that have not been adequately addressed and that the lead agency, in this case the county, had “abused their discretion” in approving the project. The Georgetown Preservation Society argued the county’s approval of the mitigated negative declaration was an “abuse of discretion” because it did not fully identify all potential environmental impacts or show how they could be successfully mitigated. They asked the court to require preparation of the more-detailed EIR.

The court concluded that, “the fact that the persons who commented did not set forth in the record a foundation of expertise in historic architecture does not bar the court from considering their comments ....” “In summary,” the decision continues, “the court finds there is substantial evidence to support a fair argument that the project may have significant aesthetic and historic quality environmental impacts that have not been mitigated.” The petitioner’s other claim that the traffic and circulation issues had not been fully addressed was not found to be supported by the record.

During the April 5, 2016, board meeting, District 4 Supervisor Michael Ranalli, in whose district Georgetown is located, asked the proponent’s attorney if they would be willing to prepare an EIR to help diffuse the controversy. “No, we won’t voluntarily do one,” was the response.

Ranalli also asked Deputy County Counsel David Livingston if the county could require them to move the project to another location. The project, Livingston responded, was consistent with the county’s General Plan. It was a commercial building going on a commercially zoned site so they had the right to build it there.

Some Georgetown residents had indicated they were not necessarily opposed to Dollar General itself, but to the location, and would be happy if it were just moved outside the town’s historic central district.

In a conversation with Lake Tahoe News following the court’s recent decision, Ranalli said, “I was surprised by the judge’s ruling and felt the applicant had met their burden. The property was commercially zoned in a commercial district. But now I have some unsettled questions.”

One of these, he explained, was what would happen if the project site were actually moved. Once they were outside the historic district, he noted, they would not have to follow those guidelines. He pointed to the fact that the applicant had, “already made about six revisions to

the building design ... I fear they would not invest that much in the style of the building if it were outside the historic district. There wouldn't be any incentive for them to not just put up the concrete block building you see everywhere else."

Ranalli also expressed concern at what other options there would be for the site that would fit in with existing buildings and "benefit the long-term health of the Georgetown community." He pointed to the concerns raised by residents themselves about the "perc rate" of the soil on the parcels. The percolation rate is a test of how well water drains through soil. It is important in regard to septic system leach fields and could be a problem for site uses that included large restroom facilities.

This same question had been raised by Supervisor Ron Mikulaco at the April 5, 2016, board meeting. Sheckler told Lake Tahoe News that he believes the best use of that area would be as open space. "That particular property is not suitable for any type of development. It's a wetland. It has a Swiss cheese of mines underneath it." What he'd prefer seeing is, "horseshoe pit, a wetland and a nice open space in Georgetown where people can come and enjoy being in downtown."

The other big unanswered question is what will the project proponents do following the court's ruling. Will they appeal the court's decision, agree to complete an EIR for the current location, look for another location in the Georgetown area, just give up, or even sue the county?

Attorney Don Mooney explained that they have 60 days from the date of the decision to appeal. The Georgetown Preservation Society will prepare, circulate and present to the court within 20 days of the decision a writ for the court's signature outlining the steps now required of the project proponents.

While very pleased with the court's decision, Sheckler told Lake Tahoe News that, "It's very important to note that the war isn't over. We may have won this battle, but until it is determined that the Dollar General store won't be built there we haven't won the war."

The attorneys for the project proponents were contacted for comment but did not respond.