

From: [Kelly Wheaton](#)
To: [St. Claire, Linda](#)
Subject: To be included in Packet RE: Inglewood Village
Date: Monday, April 23, 2012 8:07:35 PM
Attachments: [Inglewood Nursery View 9-25-98](#)

Dear Linda St. Claire, John McDowell and Planning Commissioners,

We received letters from Donna Oldford and Phil Smith dated February 15, 2012 and January 24, 2012 regarding the Inglewood Village Use Permit Modification. We must respond to the mischaracterizations and mistruths. Again apologies for the length of this response. In a matter of such critical importance to the neighborhood we cannot allow these assertions to stand unchallenged.

First, is an attempt to minimize what a building would look like from our property. The photograph attached to their letter was shot with a fish-eye lens (wide angle) that distorts the impact of a fourth building and makes it seem smaller and less obtrusive than it would be. Frankly, what the project looks like from our driveway is not a neighborhood issue, it is our issue. **The neighborhood issue regarding the appearance of the project is how it will look from Inglewood Avenue and what impact it will have on traffic and quality of life for ALL the residents of Inglewood Ave, Stanton, Tokay and Lydia Lane.**

Second, the plans attached to the letters from Phil Smith and Donna Oldford **are not correct**. If we assume that the Landscape Plan/Floor Plan is accurate then the North and South Elevations must be in error and appear to be switched. **This lack of attention to detail in something this important to the neighborhood and in a letter designed to allay the neighbors fears is inexcusable.**

Third, the original application back in 1998 and all subsequent applications **NEVER had (4) four buildings**. The first proposal was for **(3) three-- single story buildings**. The 2004 Proposal included Building A which was to be a Garden Center (Phase one); Building B was a one story office building (Phase 2) and Building C was a two story Office Building (Phase 3). We were told that a Nursery tenant could not be found and that Building A was now going to be an office building and moved for "safety reasons." **The neighbors were never presented with a Four Building Proposal.** It may have been the intent of the owners/developers, but it is one that they obviously did not wish to share with the neighbors.

It is only after Building A was completed and sewer/water lines were seen going to the vineyard area that we found evidence in the files that the Developer had intended to ask for a fourth building at a future date. It was at that time that the neighbors put forward their clear opposition through letters and 59 signatures on a petition. **That opposition was recently underscored by 73 residents in their petition opposing a fourth building.** If the developer thought that the opposition would dissipate they were sorely mistaken. We would suggest that the developer tried to slip this through on a "Minor Modification" and hoped the neighbors wouldn't notice.

In fairness to all we will quote directly from Phil and Donna's letters.

Phil: "I have tried to stay on the sidelines during the processing of our Use Permit Modification request for a fourth and final building at

Inglewood Village Business Park. I retained Donna Oldford to represent us for two reasons. The first is because in all my previous dealings with Donna as a representative of neighbors along Inglewood she was straight forward and fair and seemed to have a good rapport with the neighborhood."

Response: At the time that Phil is referring to (over 15 years ago) Donna had been retained by one of the absentee neighbors to work with Phil for an equitable solution. Now she has been retained by Phil to get his project through--in the interim many things have taken place that Ms. Oldford is unaware of and she is currently working on the Developers behalf, clearly NOT that of the neighborhood. **Mr Smith may not be aware of Ms. Oldford's tactics such as "This Fourth Building is going in whether you like it or not and you better work with me to get the project you can live with."** She is clearly not a person to be trusted by the neighbors. One of those receiving a copy of the letter told us they had no intention of calling Ms. Oldford and "giving her the opportunity to twist my words around."

Phil: *"This property was zoned commercial long before the Wheaton's or the Beltrami's purchased their property. The Inglewood frontage was occupied by a corrugated metal building housing an automotive repair shop, and next to the Wheatons was a dilapidated old garden center with accompanying parking lots. We have not tried to ever expand the zoning, only to use what is there."*

Response: The Property was originally zoned Commercial Limited and was supposed to be two office buildings and a Nursery on Inglewood Ave. The change in location of the Nursery building, we were told, was to make the ingress/egress safer ---not to accommodate a fourth building. Phil is in error the Zoning was changed from CL (Commercial Limited) to CN (Commercial Neighborhood) to allow Office Use by Inglewood Village. He also sought to expand Office use to include Medical Offices. Then he asked to change from leases to condos---at every turn we did not oppose the changes. We had cordial and frequent communication until the current proposal.

Phil is mistaken about the Garden Center. When we moved here it was a thriving Nursery and Kelly even worked there for a couple of years. The Building was old but definitely not dilapidated.(please see attached photo taken in 1998 and attached to the 2000 EIR.) It was only after the Nursery was forced out because the Mori's wanted to develop the property that it fell into disrepair.

Phil: *"We will be removing a portion of the grape vines that we planted voluntarily."*

Response: **To be blunt the Landscaping was a condition of Inglewood Village's Use Permit and not a good deed by the applicant.**

Use Permit Conditions of Approval December 15, 2004:

"1. a. replacing the garden center building and nursery with a 4,034 sq. ft. office building and vineyard as shown on the site plan dated November 8, 2004"

The vineyard was a cheap alternative to more extensive landscaping and it was the

neighbors who sought landscaping in keeping with the rural neighborhood and as a buffer for adjacent residences and the County agreed. Mr. Smith did not voluntarily install the vineyard, it was the very first CONDITION of his Use Permit. **It was supposed to be installed in Phase One and he did not comply. It was our complaint to the County that forced it to be installed before Phase Two would be given occupancy.**

Phil: "I agreed to defer the fourth building until the other three buildings were built in the hope that once the neighbors could see what an improvement the project was for the neighborhood and that all the impacts were mitigated and in fact were far less than projected, they would feel they we had earned the right to complete the development. And since we were committed to building the project one building at a time as we leased the buildings, I knew it would take a while. Therefore I volunteered to plant the vineyard so the neighbors would not have to look at a weed patch, and we would get a little revenue off of it. It turns out we get about \$3,500 for all the grapes, which does not cover the cultural costs, but the property is well maintained , and we are fully leased and occupied"

Response: Obviously we can not speak to Phil's intent. We told Phil directly that we would not support the project with a fourth building. While Phil may feel he has earned the "right" to expand his project the Neighborhood feels it **is complete**. He may have intended all along to go for a fourth building but that is not what he told us and not what the neighborhood understood. As soon as we became aware of his intent the Neighborhood was on the record opposing any removal of vineyard and any fourth building and 59 residents made their opposition known.

Phil: "The project is well planned and meets and in some cases exceeds the County's standards. This fourth building is a mirror image of the first building we built, which is occupied by Dean and DeLucca. We have had nothing but compliments on that building."

Response: It is possible to have an attractive building in an inappropriate space. Three buildings on the periphery of a residential neighborhood are not the same as adding a fourth building immediately adjacent residences and when opposed by the neighborhood.

Phil: "We have spent in excess of \$150,000.00 to mitigate drainage issues."

Response: How much it costs a developer to mitigate impacts is a cost the developer must bear to get their project approved. It is unfortunate that the applicant spent this money on a system that does not work, but this is not the County's nor the neighborhood's responsibility. The applicant was warned in the 2000 EIR which states: "The project would increase runoff, but it is not expected to exceed the capacity of the State Route 29 system or result in flooding. **However, drainage to Inglewood Avenue could aggravate existing conditions. This would be a significant impact.**"

The County was aware of these issues when it approved a drainage plan that allowed Inglewood Village to discharge its water into an overly taxed system. The Applicant had contended this would not aggravate existing conditions, the truth is that it has. A condition of the Use Permit was that the applicant gain easements

from all effected property owners---something they failed to do. The only easement they secured was from Storage Pro whose property they crossed with their drainage pipes.

Phil: "We retain our storm drain water in a bladder tank that meters out the flow. "

Response: This is what was *supposed* to happen but the system does not work because the capacity of the bladder tank is not sufficient to retain water until it is safe to discharge it. Repeated requests for a copy of what is installed finally got this verbal response from Public works---"no plans exist other than some scribbled notes."

Phil: "I am now led to believe that the County has changed their criteria and that we may have to adjust to it. Suffice it to say that the improvements we have installed are working just as they are supposed to work. We are not the problem when it comes to drainage."

Response: The County has not changed the criteria for the original Use Permit. The County however has been made aware that the system was not installed as per manufacturer's recommendations. Changes in criteria for a fourth building are something the applicant should have anticipated. A fourth building and subsequent mitigations required ARE NOT a part of the original Use Permit. As photographs that we have provided show---a 3.5 inch storm filled the tank and water was then diverted from Inglewood Village to the drainage ditch exceeding its capacity.

Phil: Maybe we took for granted all of the compliments we have received on the project and have not reached out to the neighbors as we should have.

Response: We are in total agreement. We look forward to a change in attitude and tactics, however if these letters were supposed to suggest a change they have had the opposite effect on all the neighbors we have spoken with.

Phil: "We will correct that as we can. There has been no change in the applicant's behavior as evidenced by the way the property is maintained. Only his energy level has changed."

Response: As to the applicant's behavior we can only comment on the change in behavior. There has been a complete absence of communication from Phil since he embarked on the fourth building. Regular emails, notes and phone calls have been replaced with dead silence. One threatening phone call from Donna Oldford, where she went on to mischaracterize that conversation, is all the communication we have received until the letters we are addressing here. Honest and open dialog is one thing--- bullying is quite another.

Phil: "The Environmental Impact Report was done by the County, and I have never said anything about impacts other than we would comply with any necessary mitigation measures. Some desires of the neighborhood were not allowed by the County."

Response: This is a bit of a misstatement. The County required an EIR. The applicant pays for the EIR which in this case was prepared by Nichols Berman Environmental Planning of San Francisco as per Napa County's requirements. The

mitigation measures were incorporated into the Inglewood Village Use Permit.

Phil: *My response to the Requests for Mitigation and Conditions of Approval is as follows:*

- 1. We have spent \$150,000 on special features in order to mitigate the effects on drainage.*
- 2. These improvements are the County's responsibility*

Response: It doesn't matter what it costs for the applicant to come into compliance with their Use Permit. and the improvements are NOT the County's responsibility. This assertion suggests a lack of understanding or unbelievable arrogance. The County is responsible for investigating compliance issues and making sure the applicant abides by the conditions of their Use Permit.

Phil: *3. We see no reason to extend the block wall. The building will provide a sound barrier.*

Response: **The proposed building is 15 feet from our East Property line as with other commercial projects it is a reasonable request that the developer mitigate the sound, light, and separation between commercial projects and residences with a wall.** The screening proposed involves a ground cover of manzanita and some viburnum that might reach 4-6 feet in 20 years. We have previously and repeatedly, pointed out the violation of the terms of the original Use Permit which required evergreen trees. This had been noted by the then Planning manager Sean Trippi. The 4 deciduous red oak trees now more than 5 years in the ground provide absolutely no screening whatsoever. The evergreen trees on the boundary were existing trees.

The plans show a door exiting the building immediate adjacent our property as well as four windows and a sidewalk. There is also an outside picnic area adjacent us--- so a wall is not an inappropriate request. **We respectfully disagree with Phil's conclusions and reassert our request that should a fourth building ever be approved that a continuation of the existing wall be required at least 30 feet and an evergreen screen extend to the buildings terminus on the north side.**

Phil: *4. We are not agreeable to relocate the building, nor would it make sense to do so from a functionality perspective. We will take care with equipment.*

5. We will not eliminate parking adjacent the building. It would make it un-leaseable

6. We have no control over garbage collection hours.

7. Street parking is under the Control of the County. We will implement whatever is requested within reason.

Response: The Mitigations were requested from the County to mitigate impacts of the proposed project expansion. It is up to the County to decide which mitigations are appropriate. In our previous dealings with Inglewood Village they were amenable to addressing our concerns in order to receive neighborhood support and County

approval.

So this is clearly more evidence that *there has been a change in the applicant's behavior*. **The Developer is unwilling to do anything to address the neighborhood's concerns and seems to believe it is their "right" to do whatever they want and furthermore that it is the neighbors and the County who are at fault. We aren't convinced this is an honest attempt to seek neighborhood support.** In the approval of the Hall Winery the neighbors requested and the County required that their Garbage bins be serviced at a reasonable hour. The neighbor's are requesting that the project not be allowed to service their garbage at 3:00 AM as is the current practice. We continue to believe this is a reasonable request.

Phil: "Finally, the timing of the process will likely jeopardize the existing interest we have by tenants. However, with an approval we will be able to successfully market the space. We will not build a final phase until we have it substantially leased."

Response: Since when is it up to the Developer to pressure the County into circumventing the Public process for approval?

Phil: "This is not about Politics. It is about return on investment. The Mori family has owned the property for over seventy years. They are entitled to use their property to the best of their ability while doing a quality job with the development. And they have done so."

Response: Everyone is entitled to protect their investment. And everyone is entitled to try to make money off their investments, but we all have to live within the rules and we all must take context into consideration. We are not allowed to put three residences on our property and the applicants are not allowed to exceed unmitigated environmental impacts of their project on the neighborhood. Their desire to make *more* money and to have the project "fast tracked" does not supersede the Neighbor's rights or the County's responsibility for due diligence. **We have property values and rights to protect too. We can be treated respectfully, but to date the applicant's have only managed to manipulate the facts and alienate the neighbors.**

Donna Oldford: "The reason for the continuance is to allow our project design team the opportunity to study drainage issues that were presented to the County by one of the neighbors about two weeks before the previously scheduled hearing."

Response: The neighbors received notice three weeks before the scheduled hearing. Upon investigating the drainage plans we were informed that the County would not look at the cumulative impacts of a fourth building. We tried to work with the County to find an equitable solution but were advised our only option was to file a formal complaint. It was not filed by "one" of the neighbors. It was filed by Michael and Kelly Wheaton who had together met with County representatives.

Donna: "We also wish to explain how the fourth building fits within the context of the agreement that was reached between the developer and some of the neighbors some years back, when the project was initially approved by the County."

Response: **There was NEVER any agreement that included FOUR BUILDINGS and the removal of the established greenbelt / vineyard.** If there is such a document we are sure the developer would have provided it. This is another attempt at revisionist history which is refuted by the written record.

Donna: "The drainage issue is a problem created when a drainage ditch on two nearby properties was filled in and replaced with an 8-inch drainage pipe. This results in storm water being diverted onto nearby properties when there is a significant storm event that an 8-inch pipe is inadequate to accommodate."

Response: This is true but this problem was recognized in the EIR and has subsequently been exacerbated by the diversion of water from Inglewood Village into this same 8-inch pipe. It does not take a "significant storm event" to exceed its capacity.

Donna: "This is not a drainage problem that is caused by Inglewood Village Business. as Napa County Public Works has confirmed. Nonetheless, our engineer is looking at some way of helping to mitigate the problem until such time as the vineyard owners can be required to rectify the problem."

Response: The issue is not who created the problem---we are not blaming Inglewood Village for replacing a drainage ditch with an 8-inch culvert. Inglewood Village is required by their current Use Permit to not add to the flooding and drainage problems. **They are required by the current Use Permit to have secured drainage easements from all effected property owners. Something they failed to do.**

Donna: "Second is the matter of a fourth building being consistent with the agreement reached with some of the neighbors when the Inglewood Business Center was initially proposed.The agreement did not stipulate that the fourth building would never be developed....."

Response: If such an agreement exists why has it not been put forward as a part of the record supporting the applicant's contentions? We have already addressed the contents of Phil's letter and will not repeat again.

Donna: "During the ensuing years, the County has not received a single nuisance complaint about the Inglewood Business Center."

Response: This is materially incorrect. There may be no enforcement complaints filed **but there were complaints regarding the pouring of the concrete pad for the large building in the middle of the night, the failure to install the Vineyard in Phase One and the failure to install "evergreen trees" along the west boundary.** The full impact of the project has only been felt recently when the Women's Center moved in and fully occupied the two story building. As with all change people have a tendency to live with things they don't like until they become untenable.

Donna: "Intensive landscaping will be installed at the Northwest corner of the project in order to screen it from the views of nearby residents."

Response: **Obviously the applicant has not read their own plans or is not**

familiar with the plant material in their Landscape Plan. The three trees proposed along Inglewood Ave (Lagerstroemia-Crepe Myrtle) are DECIDIOUS and will provide little or no screening in summer or winter. The other plant material would not provide *substantive screening even at maturity*. The proposed plants are practically identical with that of the existing building on Inglewood and a quick drive by will inform the viewer as to how "*intensive*" that screening is. There are no additional trees or substantive shrubs proposed beyond the current landscaping between Inglewood Village and our Property. The existing evergreen oaks were either there prior to the project or subsequently planted by the Wheatons not Inglewood Village. **We again reiterate our request, should this project be approved, for a 30 foot extension of the existing wall and a substantial evergreen shrub screen of a minimum 6-8 feet along Inglewood Ave.**

Donna: "As some of you know we did reach out to every person who was involved in the original agreement."

Response: So was this the four people originally alluded to? Subsequent responses from Ms. Oldford reveal there was **only one part time resident** and there is no written agreement. What about the 73 others who do not support a fourth building?

Donna: "In fairness to the developer and the property owners, the impression was that since there has been no complaints about the project over the years and the Planning Commission had been so complimentary and enthusiastic when approving the project originally, that completing the project with the fourth building would not be met with opposition."

Response: **In fairness to the neighbors the project IS COMPLETE as proposed and approved.** That the developer and owners did not include a fourth building in their original proposal suggests that the Developer knew that it would not get neighborhood support. They are again engaging in wishful thinking and revisionist history

Donna: "The Mori family has owned this property for more than 70 years and wishes only to realize a fair return on their investment, having agreed upon a less intensive commercial project at the location."

Response: A thorough search of deeds shows the **Mori family has not owned the property for 70 years**, but rather first acquired the property from George Beckner September 4, 1967, **which is 45 years** ago. The first building was built on a parcel obtained in a lot line adjustment in 2000.

As to whether this is a less intensive commercial project is debatable. The original proposal of 3 single story retail buildings would be less intensive than doctor's offices. The reason that a fourth building was not included in the original proposal is that the Developer would have faced enormous opposition. Now they want to come back and act as if this was agreed to all along----another clear indication of bad faith.

The rights of the Moris is not greater than the rights of the families that live in the neighborhood. Rather than be satisfied with what they got the Moris insist on going for an additional building and making it seem as if the neighborhood supported this all along. They contend that the

neighbors have been unreasonable when in fact it is the greediness of the owners that is unreasonable.

Given the bad faith the Developer and his agents have shown to date it is not the Neighborhood's responsibility to help the Developer get their project approved. If no one contacts Donna Oldford or Phil Smith directly it is not a reflection of disinterest--but rather a lack of interest in dealing with people who will so blatantly misrepresent the facts.

We are deeply concerned that the applicant's proposal to turn over maintenance to a tenant owner's association will make it more difficult to enforce their Use Permit. We would appreciate a more thorough discussion and explanation for this request.

Sincerely,

Michael Wheaton & Kelly Wheaton

1335 Inglewood Ave. St. Helena, Ca 94574

707-963-9609

Exhibit 4.6-10
Inglewood Avenue looking East (28mm lens) -- Existing View



4.6-16

Source: Matt Brockway

Photo Date: September 25, 1998