

1 Bern Steves (SBN #214454)
2 19925 Stevens Creek Blvd. #100
3 Cupertino, CA 95014
4 Telephone: 408 253 6911
5 Email: bernsteves@californiabizlaw.com

6 Stuart M. Flashman (SBN #148296)
7 Law Offices of Stuart M. Flashman
8 5626 Ocean View Drive
9 Oakland, CA 94618-1533
10 Telephone: (510) 652-5373 (voice & fax)
11 Email: stu@stuflash.com

12 Attorneys for Petitioners Friends of Better Cupertino,
13 Kitty Moore, Ignatius Ding, and Peggy Griffin

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **IN AND FOR THE COUNTY OF SANTA CLARA**

16 FRIENDS OF BETTER CUPERTINO,
17 KITTY MOORE, IGNATIUS DING, and
18 PEGGY GRIFFIN

19 Petitioners

20 vs.

21 CITY OF CUPERTINO, GRACE
22 SCHMIDT, and DOES 1-20, inclusive,
23 Respondents

24 VALLCO PROPERTY OWNER LLC
25 Real Party in Interest

Case No. 18CV330190

**DECLARATION OF STUART M.
FLASHMAN**

Hearing Date: November 1, 2019

Time: 9:00 a.m.

Dept.: 10

**ASSIGNED FOR ALL PURPOSES TO:
HON. HELEN E. WILLIAMS, DEPT. 10**

26 I, Stuart M. Flashman, hereby declare as follows:

27 1. I am an attorney licensed to practice in the State of California. I am one of the attorneys
28 representing the Petitioners in this case. I have also represented Better Cupertino Action
29 Committee and Better Cupertino in related cases also involving land use in the City of Cupertino.
30 I have also represented other parties in land use litigation involving the VALLCO Fashion Mall
31 over the past ten years. I have personal knowledge of the facts stated in this declaration, and am
32 competent to testify as to them if called as a witness.

33 2. I have been an attorney practicing in the area of California land use law since 1990. Over
34 the term of my practice, I have engaged in legal representation in well over two-dozen land use

1 disputes, both in the Bay Area and elsewhere in California. I have been involved in the legal
2 aspects of land use disputes in the Counties of Alameda, Contra Costa, San Francisco, San
3 Mateo, Santa Clara, Solano, and Marin, as well as in the Cities of San Jose, Cupertino, Monte
4 Sereno, Saratoga, San Mateo, Fremont, Hayward, Pleasanton, Livermore, Dublin, Oakland,
5 Berkeley, Emeryville, Albany, El Cerrito, Richmond, Martinez, Danville, Walnut Creek, San
6 Ramon, Pleasant Hill, Pittsburg, Vallejo, Vacaville, Dixon, and Novato.

7 3. In addition to what I have learned about California land use through the practice of law, I
8 have also attended and participated in multiple seminars and symposia on topics involving
9 California land use law, including some given by the State Bar of California - Environmental
10 Law Section, the University of California at Davis School of Law, and the California Planning
11 and Conservation League.

12 4. I received a Bachelor of Arts and Masters of Science (Biology) from Brown University, a
13 Ph.D. in Biochemistry and Molecular Biology from Harvard University, and my Doctor of Laws
14 degree from the New College of California School of Law. I also taught a course in Urban
15 Environmental Law at the New College of California School of Law and served on the advisory
16 committee for the University of California Extension's Program in Environmental Management.

17 5. I have been recognized for my expertise and excellence in my legal areas of practice. I
18 have been designated as a Northern California "Superlawyer" in the area of environmental
19 litigation for the past seven years, and recognized by the Martindale-Hubble peer review process
20 as "AV-Preeminent," the highest available rating, for the past eight years.

21 6. In addition to my legal background in land use, I have also been involved in California
22 urban land use from a public policy perspective. I have served on the Emeryville City Council
23 and the Emeryville Planning Commission, during which time I received land use policy training
24 from the League of California Cities, and specifically from Mr. Daniel Curtin, the primary author
25 of *Curtin's California Land Use and Planning Law*. I served on a citizens advisory committee in
26 the City of Emeryville during its revision of its general plan, and served on the City of Oakland's
27 Technical Advisory Committee for commercial zoning during that city's citywide rezoning
28 process from 2008 to 2011. I also served on the Board of Directors of the East Bay Municipal
29 Utilities District and on the legal committee of the Association of California Water Agencies.
30 While in those positions, the two groups were grappling with how to deal with the relationship
31 between water supply and land use, and I was heavily involved in that discussion.

1 7. In addition to the above, I have served on the elected Board of Directors of the Rockridge
2 Community Planning Council (“RCPC”) for ten years during the years between 2007 and the
3 present, including five years as chair of that board. The Rockridge Community Planning Council
4 is a 501(c)(3) membership community organization whose membership consists of the
5 approximately 10,000 residents of the Rockridge section of Oakland. The RCPC Board of
6 Directors advises the City of Oakland staff, Planning Commission, and City Council on matters,
7 and specifically land use decisions, affecting the Rockridge section of North Oakland.

8 8. In addition, for the period from 2008 through the present, I have chaired the RCPC Land
9 Use Committee, which meets monthly to consider land use issues affecting Rockridge and makes
10 recommendations on those issues to the RCPC Board of Directors.

11 9. As the result of the all above training and experience, I have become very well-versed in
12 California urban land use, including its terminology.

13 10. Based on my training and experience, I am very familiar with the term “active use” as
14 applied to urban land use, and specifically general plans and zoning. That term is commonly
15 used in areas where the predominant ground-level use is intended to be retail use.

16 11. Within California urban land use, It has long been recognized that even in districts
17 designated for retail use, not every parcel’s ground-level floor space can be expected to be filled
18 by retail uses – that is, the direct sale of goods to consumers. However, it is also well understood
19 that in order for a retail district to be successful, there must be a predominance of retail uses, or
20 at least of other uses that will support and promote retail uses by bringing consumers to the retail
21 district.

22 12. Such retail supporting and promoting uses are commonly referred to as “active uses,” and
23 include, for example, entertainment uses such as movie theaters, theatrical performances, and
24 arcades, public assembly uses such as exercise and dance studios, personal services uses such as
25 hair and nail salons, barber shops, etc. and food and beverage consumption uses such as
26 restaurants, ice cream shops, soda fountains, and bars.

27 13. Such “active uses” contrast with other commercial uses such as offices, warehouses,
28 wholesale merchandising, etc., as well as with residential or industrial uses, none of which will
29 bring large numbers of consumers to a retail district during normal business hours.

30 14. While a residential/mixed-use complex might have associated with it retail or “active
31 uses.” including, for example, a grocery store, an exercise center, a beauty salon, or a

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34

performance center, they would not qualify as “active uses” unless they were open to the general public, rather than being restricted to residents of the complex and their guests.

I declare under penalty of perjury under the laws of the State of California that the statements made in the above declaration are true.

Executed this 14th Day of October at Oakland, California.

Stuart M. Flashman