

PC 8/13/15
#8

29 pages

Charlene Tim <charlene.tim@edcgov.us>



Fwd: Tunnel Electric Letter

Aaron Mount <aaron.mount@edcgov.us>
To: Charlene Tim <charlene.tim@edcgov.us>

Tue, Aug 11, 2015 at 11:54 AM

Comments received for 8-13 PC hearing.

Aaron Mount
Associate Planner

County of El Dorado
Community Development Agency
Planning Services
2850 Fairlane Court
Placerville, CA 95667
(530) 621-5355 / FAX (530) 642-0508
aaron.mount@edcgov.us

----- Forwarded message -----

From: **Nicholas Avdis** <NAvdis@thomaslaw.com>

Date: Tue, Aug 11, 2015 at 11:50 AM

Subject: Tunnel Electric Letter

To: "rich.stewart@edcgov.us" <rich.stewart@edcgov.us>, "gary.miller@edcgov.us" <gary.miller@edcgov.us>, "tom.heflin@edcgov.us" <tom.heflin@edcgov.us>, "dave.pratt@edcgov.us" <dave.pratt@edcgov.us>, "brian.shinault@edcgov.us" <brian.shinault@edcgov.us>

Cc: "emartin@tunnelectric.com" <emartin@tunnelectric.com>, "roger.trout@edcgov.us" <roger.trout@edcgov.us>, Aaron D Mount <aaron.mount@edcgov.us>, David Livingston <david.livingston@edcgov.us>

Please see attached, thank you.

Nicholas S. Avdis

Of Counsel

THOMAS LAW GROUP

455 Capitol Mall, Suite 801, Sacramento, California 95814

One Kaiser Plaza, Suite 875, Oakland, California 94612

Phone: 916.287.9292

Fax: 916.737.5858

navdis@thomaslaw.com

www.thomaslaw.com

T|L|G Thomas Law Group

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 **Aug 11 Letter to El Do PC - Tunnel Electric (00183727xC4B98).pdf**
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T|L|G Thomas Law Group

TINA A. THOMAS
ASHLE T. CROCKER
AMY R. HIGUERA
MEGHAN M. DUNNAGAN
CHRISTOPHER J. BUTCHER
ANGELA C. MCINTIRE

455 CAPITOL MALL, SUITE 801 | ONE KAISER PLAZA, SUITE 875
SACRAMENTO, CA 95814 | OAKLAND, CA 94612

Telephone: (916) 287-9292 Facsimile: (916) 737-5858
www.thomaslaw.com

NICHOLAS S. AVDIS
TODD W. SMITH
Of Counsel

August 11, 2015

Mr. Rich Stewart, Chair
El Dorado County Planning Commission
330 Fair Lane
Placerville, CA 95667

RE: Hearings on Special Use Permit S78-0016-R

Dear Chairman Stewart and Members of the Planning Commission:

Thomas Law Group represents the Martin family and Tunnel Electric Inc. with regards to this matter. We appreciate the opportunity to provide some additional background to the two items before you, the hearing on the revocation of the above listed special use permit ("SUP"), as well as a hearing on the modification of the same SUP. For the reasons set forth below, we urge that you find that the SUP is indeed valid and that you support the proposed modification to the SUP to accommodate the clarified scope of use, as set forth herein to avoid any future misunderstandings.

Summary

This matter concerns Mr. Martin's home-based steel fabrication business, which has been in continuous operation since Mr. Martin purchased the property in 2006. The business is authorized by an existing and vested SUP that was approved in 1978. Mr. Martin has submitted substantial, indeed overwhelming, evidence to County staff demonstrating that prior owners of the property also continuously conducted activities covered by the SUP. (*See numerous letters attached hereto*). The staff report fails to address any of the evidence demonstrating prior owners had continuously used the property in a manner consistent with the SUP. Instead, the staff report concludes the SUP was abandoned in the early 1990s based on a single email purportedly sent by Mrs. Mirande. This hearsay email is not only unconvincing on its face but is directly contradicted by her prior signed statement that she and her husband's uses of the "metal building were within the scope of uses permitted under Special Use Permit..." (Staff Report for 15-0882, Ex. C, p. 13.) In addition, staff fails to evaluate significant evidence contradicting the statements made in Mrs. Mirande's email. Therefore, the evidence does not support the conclusion that the SUP expired by nonuse.

Furthermore, this investigation into alleged nonuse occurring over two decades ago originally commenced in response to one neighbor's allegations (i.e. complaints by Mr. Charlton). As a legal matter, the County is not required to investigate outdated claims

concerning the validity of SUPs issued by the County. (*Hensler v. City of Glendale* (1994) 8 Cal.4th 1, 27 [“To ensure finality and predictability in public land use planning decisions, statutes of limitations governing challenges to such decisions are typically short.”].) (*See also, attached Letter from Nicholas Avdis to David Livingston dated April 17, 2015*). As a policy matter, even if the County may investigate SUP violations occurring several decades ago, doing so would mean all County residents operating home businesses pursuant to SUPs may be required to defend against untimely allegations of alleged nonuse if asserted by a disgruntled neighbor. Thus, strong policy reasons support a decision by the El Dorado County Planning Commission (Commission) to simply decline to entertain this type of stale claim and to deny County staff’s revocation recommendation for these policy reasons.

In the end, the issue before this Commission is whether Mr. Martin should be permitted to continue to earn a livelihood and to support his family by operating his home business. As stated by Planning Staff in letters to Mr. Martin as early as September 24, 2013 (Staff Report for 15-0882, Ex. C, p. 9), this determination should be made in consideration of the factors set forth in El Dorado County Code section 130.22.540 (formerly 17.22.540): whether (i) issuance of the permit is consistent with the general plan, (ii) the use would not be detrimental to the public health, safety and welfare, or injurious to the neighborhood, and (iii) the use is specifically permitted by special use permit pursuant the County’s Zoning Code. No evidence suggests the SUP violates any of those requirements. In fact, County staff expressly concludes the project “conforms to these provisions” and, on that basis, recommends approval of the SUP revision “[i]f the Planning Commission decides not to revoke” the permit. (Findings for 15-0222, p. 2; Staff Report for 15-0222, p. 3.)

County staff’s recommendation to strip Mr. Martin of his right to continue operating his home business (Staff Report for 15-0882, p. 4) when County staff also acknowledges continued operation would otherwise be supported by County requirements (Findings for 15-0222, pp. 1-2.) is difficult to understand. Given all the facts before the Commission, Mr. Martin respectfully requests the Commission reject staff’s recommendation to revoke his SUP and requests the Commission approve a revised SUP so that Mr. Martin may continue to operate his home business as he has for the last 10 years.

Background

Mr. Martin has operated a home based business at the project site since he purchased the property in 2006 from Mr. John Mirande. Prior to purchasing the property, Mr. Martin had worked for Mr. Mirande for several years, beginning in 2001. During the several years of Mr. Martin’s employment with Mr. Mirande, Mr. Martin never observed Mrs. Mirande involved in any business dealing. He never observed her at the shop located on the property when work was taking place. She also never signed any loan documents on the several occasions that Mr. Mirande loaned Mr. Martin money. Indeed, Mr. Martin never observed Mrs. Mirande involved in any aspect of her husband’s many commercial enterprises.

Prior to purchasing this property, Mr. Martin purchased an option from Mr. Mirande for property he owned on Kasey Lane, for which he was the sole title holder. However, in the interim Mr. Mirande passed-away and Mr. Martin could not execute the option to purchase that property due to delays in the probate process and instead Mr. Martin purchased the property at 3962 Mineshaft Court from Mrs. Mirande.

Since Mr. Martin purchased the subject property, he has invested significant amounts of time and money to develop a successful home business. The 5,000 square foot shop building in which he operates his steel fabrication business existed prior to his purchase of the property; it was in place in 2001 when Mr. Martin began his employment with Mr. Mirande. Mr. Martin has not expanded the building. In fact, only about 1,600 square feet of the shop building is continuously used as part of his business and the remainder is typically used to work on and store his own vehicles, like an RV and for other personal hobbies.

There have been instances where individuals working at the project site have not lived on site. For example, Mr. Martin's nephew moved elsewhere, but continued his employment. He has since moved back in with Mr. Martin. A bookkeeper was hired that comes to the project site up to a couple times a week, as needed, as well as a purchasing assistant who primarily works from home, but does occasionally come to the project site. Accordingly, there is a limited and infrequent amount of automobile traffic related to employees and support services.

A disgruntled neighbor complained about Mr. Martins' operations in 2012 and in early 2014, Mr. Martin received notification from the County that the SUP had expired by operation of law due to approximately 17 years of alleged non-use during the ownership of the Mirande family and that the uses on the site were beyond the scope of those allowed under the SUP. After Mr. Martin provided several letters from prior owners and others demonstrating continuous operations on the property, County staff rescinded the prior directive to cease all operations on the project site. In addition, after several meetings and correspondence with Mr. Martin's attorney, Mr. Brad Clark, County staff recommended two alternatives to bring Mr. Martin's property back into compliance for allegedly exceeding the scope of the prior SUP conditions: (1) to submit an application to modify the SUP to incorporate the perceived increase in use; or (2) modify the activities on the site to comply with the conditions in the SUP. (*See June 23, 2014 letter from Aaron Mount to Brad Clark.*)

In the interests of good faith to seek a fair compromise, Mr. Martin agreed with County staff's recommendation to pursue a modification of the SUP. On March 12, 2015, this modified use permit was heard by this Planning Commission. For purposes of that meeting, County staff recommended approval of the SUP modification concluding the "expansion" of the SUP was consistent with applicable General Plan and Zoning Ordinance provisions. In the staff report for the hearing, staff also concluded that the modified use permit would not adversely affect the nature and character of the area.

During the hearing, extensive testimony was heard, a majority of that testimony supported the modification of the SUP. However, as a result of the email allegedly sent by Mrs.

Mirande (Staff Report for 15-0882, Ex. A), the Planning Commission directed County staff to undertake further investigation as to whether the SUP expired by virtue of a cessation of use during the ownership of the Mirande family. In response to this investigation, Mr. Martin provided several additional witness accounts in the form of signed letters of various individuals who had firsthand knowledge of the activities taking place on the project site during the Mirandes' ownership due to their employment there or their familiarity with the activities on the site. While attached as exhibits to the staff report, these witness accounts were not cited nor discussed in staff's analysis included in the staff report. They are attached for your convenience.

Mr. Martin Respectfully Requests the Commission Reject Staff's Recommendation to Revoke the SUP Based on Lack of Substantial Compliance

Staff identifies three (3) bases for determining lack of substantial compliance. Staff's conclusions ignore significant facts that show substantial compliance.

First, staff concludes the existing shop building is not consistent with the shop building as shown on the site plan accompanying the original SUP. Mr. Martin acknowledges that the original building permit shows the shop building was originally 2,400 square feet and that a prior owner of the property expanded the building to 5,000 square feet. However, as noted previously, Mr. Martin generally only utilizes approximately 1,600 square feet of the shop to operate his steel fabrication business. Therefore, his current operations use significantly less space than existed within the original 2,400 square foot shop. Thus, the use is consistent with the SUP.

To the extent staff believes any alleged building code violation associated with expansion of the shop building constitutes a SUP violation justifying revocation, staff is incorrect. As explained in *O'Hagen v. Board of Zoning Adjustment (1971) 19 Cal. App. 3d 151, 158*, revocation based on failure to comply with conditions of approval has to be reasonable. In this instance, the site plan is outdated, the property, originally 7.74 acres in 1978 was subdivided in the mid-1980s. The County approved the subdivision of the property without limiting the SUP and the site plan that accompanied the 1978 SUP was rendered irrelevant and inaccurate as a result of this subdivision. As such, any alleged building code violation for an area not utilized for the activities permitted under the SUP is unreasonable and should not form the basis for concluding lack of substantial compliance on this SUP condition.

Second, staff argues the Mr. Martin has exceeded the operating hours set forth in the SUP. The SUP requires that hours of operation on the site are 7:00 am to 5:00 pm. The staff report reaches its conclusion based on unidentified comments by an adjacent property owner. We assume staff is referring to comments by Mr. Charlton. Mr. Charlton is wrong. Mr. Martin has never authorized business-related trucks trips to occur outside of SUP authorized hours. To the extent the "deliveries" referenced by Mr. Charlton are package deliveries (i.e. FedEx or UPS), Mr. Martin cannot control the hours of those types of delivery services. Moreover, Mr. Martin and his family commonly use those services for personal deliveries unrelated to the business, as is typical for any household.

With respect to alleged employee traffic occurring after hours, Mr. Charlton likely observed car trips by a house guest living on the property. A friend of Mr. Martin has moved into their guest house temporarily. He is not an employee. The SUP conditions do not purport to preclude occupants of the home, or their guests, from travelling to or from the property at certain times of the day. Mr. Martin and his employees only work during the business hours permitted in the SUP. Therefore, Mr. Martin has not and is not violating this condition of the SUP.

Third, staff concludes that because condition 4 of the SUP limits the use exclusively to the “applicant” and not to include employees, Mr. Martin has violated Condition 4 of the SUP. Condition 4 provides “[t]he use is exclusively for the applicant, not to include employees, and not transferrable with the sale of the property.” Importantly, staff acknowledges that requiring the SUP to be nontransferable “is not legal or valid.” (Staff Report for 15-0882, p. 3, citing *Anza Parking Corporation v. City of Burlingame* (1988) 195 Cal.App.3d 855.) Staff is correct; it is illegal to limit transferability of a use permit because a use permit runs with the land. However, instead of striking Condition 4 in its entirety because it violates the law, staff attempts to selectively and arbitrarily reform it. Staff cannot and should not selectively conclude and interpret which portions of an illegal condition should remain valid. Unless and until Condition 4 is formally revised by the applicable County decision maker (here the Planning Commission), it would be improper to hold Mr. Martin in violation of a condition that everyone acknowledges is illegal as drafted. For this reason alone, staff’s conclusion that Mr. Martin is operating in violation of Condition 4 should be rejected.

It should be emphasized that the entire reason Mr. Martin filed the application to modify the SUP was at the recommendation of the County in its June 23, 2014 letter referenced above and to clarify some of the vagaries in the SUP conditions. Staff’s new conclusion that revocation based on lack of substantial compliance is appropriate is not only confusing, but would result in a very draconian outcome, given that it would penalize Mr. Martin for trusting the County’s prescribed path to compliance.

For the reasons stated above, it would be entirely arbitrary and unfair to find that revocation is justified in this case due to lack of compliance with any of the SUP conditions.

Mr. Martin Respectfully Requests the Commission Reject Staff’s Recommendation to Revoke the SUP on the Basis of Alleged Non-Use Occurring Over Two Decades Ago

The staff recommendation for revocation on the basis of cessation of use is equally unfair and arbitrary. The basis of the County’s conclusion that the SUP expired by virtue of a cessation of use occurring over two decades ago is based on a single, brief email allegedly from Mrs. Margaret Mirande, and the fact that Mr. Mirande did not have a business license for his operations at the project site.

With respect to the email, at most, it amounts to hearsay and we urge the Commission to accord it no weight. (See, e.g., *Assn. for Protection etc. Values v. City of Ukiah* (1991) 2 Cal.App.4th 720, 735 [“hearsay statements did not constitute the sort of substantial evidence

upon which [the City's finding] could be based").) Additionally, this email followed a signed letter from Mrs. Mirande dated May 6, 2013 in which she stated the very opposite conclusion. Specifically, her comments in her May 6, 2013 letter state that her husband's activities were within the scope of the permitted uses in the use permit. Given the uncertain origin of the email and the conflicting account in her signed letter, we urge the Commission not to give the email any weight.

Mr. Martin has submitted substantial additional evidence establishing continued use of the SUP by the Mr. Mirande. Specifically, evidence and testimony demonstrating continued use of the SUP by Mr. Mirande include statements by Mr. Mirande's employee Aaron Hernandez, Mr. Martin himself who also worked for Mr. Mirande prior to purchasing the property, Mr. Fregoso who, as the Mirande's pool maintenance technician, had first-hand knowledge of Mr. Mirande's activities on the property, Mr. Yorba, who has been a neighbor to both the Mirande's and the Martin's, as well as others. In addition, after inquiry with Pacific Gas and Electric, it was discovered that a commercial account associated with the service at the stop building existed as far back as when Mr. Mirande purchased the property. Mr. Martin transferred the name on the account upon his purchase of the property. In any event, the staff report fails to address or otherwise discuss any of the extensive evidence showing use of the SUP by Mr. Mirande.

In addition, without the ability to question Mrs. Mirande at the hearing to determine what she meant, or to confirm that she actually was the sender of the March 6, 2015 email, her alleged email, within the context of the other witness testimony and her prior testimony, is at best contradictory and should not serve as the basis for taking away someone's livelihood. As a County-wide policy, if purchasers of properties with use permits had to worry about what may or may not have happened on those properties decades ago, then anyone interested in doing business within the County would need to track down previous owners, employees, and other witnesses before acquiring a property subject to a use permit. Such a policy would wreak havoc on the real estate market in the County and, frankly, is completely counter to the goals of the County in encouraging home occupation enterprises and places an unfair burden on permit holder. Therefore, the Planning commission should reject staff's recommendation to revoke the SUP based on alleged non-use that occurred years before Mr. Martin purchased the property.

Mr. Martin Respectfully Requests the Commission Reject Staff's Recommendation to Revoke the SUP because Mr. Mirande did not have a Business License

Staff suggests that revocation for nonuse is further supported by the fact that Mr. Mirande did not have a business license. The SUP does not require the property owner to have a business license. It is common for home businesses to operate without a business license. In fact, no one disputes that Mr. Martin is operating a home business under the SUP; yet Mr. Martin, like Mr. Mirande, does not have a business license. Similarly, Mr. Endean, the owner prior to Mr. Mirande, who applied for the SUP did not have a business license. Staff does not dispute that Mr. Endean operated a business consistent with the SUP and Mr. Endean has stated that he "operated a business consistent with [the] Special Use Permit... until selling the property..."

(Staff Report for 15-0882, p. 12.) Therefore, lack of a business license should not reasonably be relied on as evidence the Mr. Mirande failed to operate a business pursuant to the SUP.

Mr. Martin Respectfully Requests the Commission Approve the Modified SUP as it is a Fair and Reasonable way to Resolve this Matter

County staff's findings for the SUP modification state that modifying the permit is consistent with the County's General Plan and Zoning Code, and that it would not be detrimental to the public health, safety and welfare or injurious to the neighborhood. (Findings for 15-0222, pp. 1-2.) We strongly agree. Therefore, we respectfully request the Commission approve a modification to the SUP.

In addition to the recommendations by staff relating to the modification and to further clarify some of the vagaries of the SUP, we would ask that the SUP modification further clarify the current state of employees and support services personnel. As mentioned above, Mr. Martin currently works on the site as does his nephew. He is also occasionally assisted by his wife; however, the Martins currently have a toddler and Mrs. Martin's dedicating her time attending to their child. As a result, Mr. Martin currently relies on the bookkeeping and invoicing support services of individuals who primarily work from their own homes, but do come to the project site for meetings and other related activities. We believe it is reasonable to limit the number of employees to three (3), but not require that they live on site. We also believe it is reasonable that the SUP amendment clarify that support service related providers, like bookkeepers and purchasing assistants that primarily work offsite, should not be counted as employees.

Conclusion

For the reasons set forth above, we urge this commission to find that there is not sufficient evidence or just cause to support a revocation and to determine that the SUP is indeed valid and to approve the proposed modifications to the SUP as clarified herein.

Very Truly Yours,

THOMAS LAW GROUP

Nicholas Avdis

Enclosures

**ATTACHMENTS TO THOMAS LAW GROUP LETTER TO
PLANNING COMMISSION (SUP S78-0016-R)
DATED AUGUST 11, 2015**



COMMUNITY DEVELOPMENT AGENCY

DEVELOPMENT SERVICES DIVISION

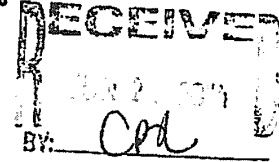
<http://www.edcgov.us/DevServices/>

PLACERVILLE OFFICE:

2850 Fairlane Court, Placerville, CA 95667
BUILDING
(530) 621-5315 / (530) 622-1708 Fax
bdgdept@edcgov.us
PLANNING
(530) 621-5355 / (530) 642-0508 Fax
planning@edcgov.us

LAKE TAHOE OFFICE:

3366 Lake Tahoe Blvd., Suite 302
South Lake Tahoe, CA 96150
(530) 573-3330
(530) 542-9082 Fax
tahoebuild@edcgov.us



June 23, 2014

Brad Clark
243 Placerville Drive
Placerville, CA 95667

Re: Special Use Permit S78-0016
APN 070-250-45

Dear Mr. Clark:

In response to your letter dated April 28, 2014 the Development Services Department concludes that the existing uses are inconsistent with Special Use Permit S78-0016, based on the following:

1. Employees: In your letter you state that the property owner, his wife, and his nephew, who reside on the site, work for the business. Condition of approval number 4 specifically states that the use is exclusively for the applicant only.
2. Scale of fabrication: The Special Use Permit was approved for stainless steel fabrication as a home occupation and the current uses at the site appear to have enlarged to a scale that would be found to be an expansion beyond those approved by the Special Use Permit.

Section 17.22.270.B.2 of the Zoning Ordinance states that "changes to a project which result in an expansion or substantial alteration of the project...may only be approved by the approving authority pursuant to the requirements for submittal of a new permit". The Development Services Department recommends the following two options:

- A. Submit a revision request to expand the Special Use Permit. Attached is an application with the required submittal items highlighted.
- B. Change the operation to comply with the Special Use Permit.

Please respond within 45 days of the receipt of this letter.

Please call me at (530) 621-5355 if you have any questions or concerns regarding the requested items. If you continue to have concerns regarding the requested information, I can schedule a meeting with the Development Services Division Director.

\\SDFS\IDS-Shared\DISCRETIONARY\S\1978\S78-0016 Endean Machine Shop\S78-16 Code Compliance 6-23-14.docx

15-0882 Public Comment
PC Rcvd 08-11-15



COMMUNITY DEVELOPMENT AGENCY

DEVELOPMENT SERVICES DIVISION

<http://www.edcgov.us/DevServices/>

PLACERVILLE OFFICE:

2850 Fairlane Court, Placerville, CA 95667

BUILDING

(530) 621-5315 / (530) 622-1708 Fax

biddept@edcgov.us

PLANNING

(530) 621-5355 / (530) 642-0508 Fax

planning@edcgov.us

LAKE TAHOE OFFICE:

3368 Lake Tahoe Blvd., Suite 302

South Lake Tahoe, CA 96150

(530) 573-3330

(530) 542-9082 Fax

tahobuild@edcgov.us

Sincerely,

A handwritten signature in black ink, appearing to read "Aaron Mount".

Aaron Mount
Associate Planner

Attachments: Letter From Brad Clark dated April 28, 2014
Special Use Permit S78-16
Special Use Permit application

Cc: Erik Martin
3962 Mineshaft Ct.
Shingle Springs, CA 95682

District IV-Ron Briggs

T|L|G Thomas Law Group

TINA A. THOMAS
ASHLE T. CROCKER
AMY R. HIGUERA
MEGHAN M. DUNNAGAN
CHRISTOPHER J. BUTCHER
ANGELA C. MCINTIRE
HOLLY A. MCMANNES

455 CAPITOL MALL, SUITE 801
SACRAMENTO, CALIFORNIA 95814
Telephone: (916) 287-9292
Facsimile: (916) 737-5858

E-mail: info@thomaslaw.com
<http://www.thomaslaw.com>

NICHOLAS S. AVDIS
TODD W. SMITH
Of Counsel

April 17, 2015

Mr. David Livingston
Deputy County Counsel
County of El Dorado
330 Fair Ln
Placerville, CA 95667

RE: Tunnel Electric/S78-0016-R
APN 070-250-45

Dear Mr. Livingston:

This firm represents Tunnel Electric, Inc. with respect to the above referenced project. We have reviewed the administrative materials related to the use permit amendment, as well as the request to conduct a hearing on the validity of the existing use permit on the subject property. To that end, we have also reviewed the letter from Ms. Marsha Burch, on behalf of the Charltons, which purports to provide the legal basis for a hearing on the validity of the use permit. For the reasons set forth more specifically below, the statute of limitations for the Charltons to challenge the validity of the existing use permit has expired and the proper next step is for a hearing on the use permit amendment.

The letter submitted by Ms. Burch asserts that the 1978 SUP expired in 1990. (pp. 1-2.) Not only is her alleged evidence contradicted by substantial evidence in the record, but more importantly the time for the Charltons to bring this challenge has long since run. "To ensure finality and predictability in public land use planning decisions, statutes of limitations governing challenges to such decisions are typically short." (*Hensler v. City of Glendale* (1994) 8 Cal.4th 1, 27; see also, e.g., *Travis v. County of Santa Cruz* (2004) 33 Cal.4th 757, 774-775 [16 Cal. Rptr. 3d 404, 94 P.3d 538].) Here, the

Charltons assert that the permit was revoked by the terms of County Code § 130.22.260 by an event (alleged non-use) that occurred 25 years ago.

In *Travis*, the Supreme Court explained where a petitioner seeks "to attack, review, set aside, void, or annul [a] decision of a legislative body" covered by Government Code section 65009(c) the applicable statute of limitations is 90 days from the County action. (*Travis, supra*, 33 Cal.4th at p. 772.) However, where a challenge is brought to the validity of an ordinance, or in this case a use permit, based on an event that occurs subsequent to its approval the 90-day statute of limitations does not apply and an alternative applicable statute of limitations applies. (*Ibid.*) In *Travis*, the court held that a petitioner challenging a County's failure to repeal or amend an ordinance after a subsequent event, a change in law, allegedly rendered the ordinance invalid had to comply with the three year statute of limitation set forth in Code of Civil Procedure section 338.

In *Travis*, the petitioners attempted to argue under a "continuous accrual" theory the three year statute of limitations had not run. The Supreme Court disagreed. The court explained that the three year statute of limitation began to accrue on the date of the subsequent event, which in *Travis* was the date the statute causing the alleged conflict, became effective. (*Travis, supra*, 33 Cal.4th at p. 772.) The court explained:

In a facial challenge to a zoning ordinance based on preexisting statutes or the Constitution, plaintiffs are limited, under section 65009, subdivision (c)(1)(B), to 90 days from the ordinance's adoption, which is the first time such a challenge could be brought. When the challenge is instead based on a later enacted state statute, the limitations period (under Code Civ. Proc., § 338, subd. (a)) also runs, as we hold above, from the first time the challenge could be brought, i.e., the initial accrual of the cause of action. Plaintiffs' continuous accrual theory would delay running of the statute only in the latter case, thus providing an anomalous and unwarranted benefit to those challenging a zoning ordinance on the ground of its postadoption preemption. Promptness would be required in one case, under section 65009, subdivision (c)(1)(B), but illogically excused in the other, under Code of Civil Procedure section 338, subdivision (a).

To adopt plaintiffs' theory would thus be to thwart the legislative purpose behind section 65009 without any necessity in justice or fairness. The express and manifest intent of section 65009 is to provide local governments with certainty, after a short 90-day period for facial challenges, in the validity of their zoning

enactments and decisions.... The legislative policy of requiring a prompt challenge, running from the earliest date the action could be brought... remains clear in section 65009. *Were we to hold that a facial challenge to a zoning ordinance, based on a later enacted preemptive statute, need not be brought within three years of initial accrual (the state statute's effective date) but may instead be brought at any time within three years of any application of the ordinance, we would directly contravene that legislative policy. [emphasis added]*

(*Id.* at pp. 774-775.)

The same conclusion holds true here. If Charltons challenged the issuance of a SUP by the County, the 90-day statute of limitations under Government Code section 65009, subdivision (c)(1)(E), would apply. Here, as in *Travis*, the challenge does not relate to the validity of the initial zoning action but instead concerns whether subsequent actions render the action invalid. Whether the three year statute of limitation under Code of Civil Procedure section 338 (which includes actions alleging liability created by statute and injuries to real property) or the general four year statute of limitations established by Code of Civil Procedure section 343 applies to Charltons claim, the time for their challenge clearly ran long ago as their challenge is premised on an event (a period of nonuse for one year) that they allege occurred approximately 25 years ago.

To the extent the Charltons believe there is no applicable limitations period because the subsequent event (alleged one year of nonuse) rendered the 1978 SUP automatically void, the Supreme Court strongly rejected a similar argument in *Travis*. First, the Supreme Court stated that there is "no authority" for such an argument. (*Travis, supra*, 33 Cal.4th at p. 775.) Second, the court explained that when a zoning action is preempted by a subsequent event, "it may lack any legal effect or force, [but] does not cease to exist" because to conclude otherwise would be wholly illogical as those seeking to challenge the validity of a zoning action, in our case a use permit, "could not sensibly pray for an order that the County amend or repeal the Ordinance or stop enforcing it, if the Ordinance no longer existed." (*Ibid.*) Finally, the court pointed out that the statute of limitation established by Government Code section 65009 expressly applies to a claim that a permit or condition is void and for the same reason the longer statute of limitation triggered by a subsequent event should also be interpreted to apply to a claim that it rendered the permit or condition void. (*Id.* at p. 776.)

Moreover, County Code section 130.22.270 does not purport to render a SUP immediately voided once an authorized use has ceased for a period of one year. If it did, it would be in violation of Government Code section 65905(a), which requires a public hearing prior to revocation of a use permit. However, County Code section 130.22.270 complies with the requirements of Government Code section 65905(a). Specifically, County Code section 130.22.270 provides a revocation based on nonuse may occur only after a determination is made by the Development Services Division Director, Zoning Administrator, or Planning Commission that the permit expired by operation of law and after providing for an opportunity for a hearing on appeal as provided in County Code Section 130.22.220. (County Code, § 130.22.260(C).) As no determination was previously made by the Development Services Division Director, Zoning Administrator, or Planning Commission on this issue nor was an opportunity for a hearing on appeal ever provided, the 1978 SUP remains valid as of today.

In conclusion, to the extent the Charltons desire to compel the County to consider whether alleged events that occurred 25 years ago should have rendered the 1978 SUP void, the statute of limitations for Charltons to bring such a challenge ran long ago. If the County elected to entertain Charltons untimely complaint regarding the validity of the 1978 SUP based on alleged events 25 years ago, then the County would be opening the door for anyone to request hearings be held to evaluate whether alleged events occurring decades ago render any permit previously issued by the County void. The County should not, and is legally not required to, entertain this and similar untimely allegations relating to the validity of an existing County SUP.

We respectfully submit that the County not hold a hearing on Charltons untimely 1978 SUP validity inquiry and should instead renote the SUP revision action for the next available Planning Commission hearing. In *Baird v. County of Contra Costa* (1995) 32 Cal.App.4th 1464, the court explained that where the “applicable ordinance did not require the County to consider evidence of purported violations of the original conditional use permit, ... such violations need not have been considered because they were unrelated to the pending application.” (*Id.* at p. 1471, citing *Bakman v. Department of Transportation* (1979) 99 Cal. App. 3d 665, 676-678 [holding the department had no duty to investigate claims of prior violations of an existing permit prior to issuing an amended permit].) Here, consistent with *Baird* and *Bakman*, because the County Code does not require the County to investigate or make findings relating to claims of prior violations of the SUP prior to approving revisions to it, even if Charltons claims were timely (which as discussed above they are clearly not) the County is under no obligation to consider them prior to approving amendments to the permit. In fact by

previously agreeing to process an amendment to the existing use permit, the County essentially concluded that the permit was in fact valid. This is all that is legally required and the County should not give in to baseless demands that are clearly intended to obfuscate the process and would necessarily set a very dangerous precedent for use permit holders in the County.

Very Truly Yours,

THOMAS LAW GROUP



Nicholas S. Avdis

cc. Supervisor Michael Ranalli (via email)
Roger Trout (via email)
Aaron Mount (via email)
Erik Martin (via email)

6/24/2015

Edcgov.us Mail - S78-0016-R (Tunnel Electric SUP)

PC 8-13-15



Aaron Mount <aaron.mount@edcgov.us>

S78-0016-R (Tunnel Electric SUP)

Walter Mathews <walter@waltermathews.com>
To: aaron.mount@edcgov.us

Fri, May 22, 2015 at 10:12 AM

Hi Aaron --

The applicant asked me to weigh in on this item because I know 3962 Mineshaft Court so well. I sold it to Erik Martin back in December 2005. He bought the property with the understanding that he could use the shop building and SUP to run his electric contracting business. Which he has done. For the last 9 years!

It's certainly not been sitting idle all this time. It's been used as a business for nearly 30 years. A legal business. For this reason alone it is clear that the SUP is valid and therefore should be allowed to expand. Revoking it because of one neighbor's allegations 8 years after Erik began operations there would be unconscionable ... especially given the property's history and the County's home occupation enhancements in the TGP-ZOU.

You can do this! There are plenty of PC actions to support your approval, from the old Home Builder's Lumber Yard in Placerville to the expanded cabinet shop off Greenstone. All had an SUP compliance problem, pending revocation, one neighbor that didn't like the project, and piles of others that fully supported it. This case is no different. Fortunately, the Commission found a solution to all of these and many more.

As dramatized by the one annoyed neighbor, the issue boils down to two delivery trucks twice a week (at most). All of the other directly affected neighbors have expressed how pleasant it is to live right next to this SUP. All of them. So, other than the delivery trucks, this is a successful, low impact business that begs for a revised SUP. It seems clear to me (in my humble opinion, of course) that you could easily mitigate the drama by clearly defining the times and quantity of large trucks allowed to enter the property ... in addition to requirements regarding road maintenance. Simple.

The goal here is to do what's right for the applicant and the neighbor(s). Revoking one property owner's right to operate his home business because of an alleged period of occasional non-use going back some 30 years just makes no logical sense. Again, he's been operational without incident for 9 years.

Don't let a bunch of delivery truck photos persuade you. Set aside the distractions and do what's right. Please.

Cheers,

Walter Mathews

530.903.1626 cell

<https://mail.google.com/mail/u/0/?ui=2&ik=61e4576e24&view=pt&q=walter%40waltermathews.com&qs=true&search=query&msg=14d7c9c83e335199&siml=...> 1/2

15-0882 Public Comment
PC Rcvd 05-22-15 to 06-24-15

15-0882 Public Comment
PC Rcvd 08-11-15

Roger Trout
Development Services Division Director
County of El Dorado
2850 Fairlane Court
Placerville, CA 95667

Date: 4/15/15

Dear Roger Trout:

I am Antonio Fregoso, I live at 5112 Dublin Rd., El Dorado, CA. I own El Dorado Pool Service and we have been cleaning the pool at 3962 Mineshaft Ct. in Shingle Springs since 1985. Because of this I have been in the backyard of that house every week, I was in the position to see what was happening with regards to the metal building in the back of the property. I just want to let the county know that during the time I have been cleaning the pool when the Mirande's owned the property I saw activity around the metal shop building that included John Deere tractor, Bobcat tractor, trailers, forklift, crates and pallets. There were building materials stacked outside, and apple crates stacked as well. One day I went inside the shop with Big John and saw a welder and torches with bottles there. I was a welder before and this was very interesting to me. There was a lot of stainless steel restaurant equipment, and materials inside. I do not know what businesses they were doing there, but I can only say that forklift, and Bobcat seem like some kind of business activity to me during the time the Mirande's owned the property.

Sincerely,

Antonio Fregoso



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15-0882 Public Comment
PC Rcvd 08-11-15

Roger Trout
Development Services Division Director
County of El Dorado
2850 Fairlane Court
Placerville, CA 95667

Date: 4/13/15

Dear Roger Trout:

I am Thomas Endean, I live at 13031 West Caraway Drive, Sun City West, AZ 85375. I applied for and was granted SUP 78-16, and built the Steel Fabrication shop currently located at 3962 Mineshaft Ct., Shingle Springs, with a Building Permit pursuant to that SUP. I would like to clarify for the County the scope and scale of the business that SUP 78-16 was granted for.

Endean Metal Products was no small operation, it was a family business and very successful. Not only did we perform metal fabrication in the shop, but we were a C43 licensed contractor, CSLB #388060. My property served as both the fabrication shop and yard. There were 4 people engaged in fabrication in the shop, as well as others performing installations in the field. We fabricated everything you would see in a restaurant made out of stainless steel, as well as anything else anyone needed, customers came to the shop with their projects. We fabricated very large equipment, we wired lights and fans in our commercial hoods. Our steel was delivered by semi-truck, and it was unloaded by forklift. Our fabricated product was subsequently loaded on trucks by forklift or overhead crane and shipped out. We had several trucks that were used to complete our field installations. We had outside storage of material and equipment.

I had a 3 phase power line ran to the shop by PGE, to operate the machinery required to perform our work, these were large machines.

The SUP was applied for to build a steel fabrication shop, and the building was built for that purpose. Endean Metal Products successful business, and anyone trying to minimize that by claiming I worked by myself, or I was some kind of one man shop has no idea of what my business was. My business was very successful and I operated it there for 11 years until I moved it to Montana due to personal reasons.

I hope this helps the county understand the true facts of SUP 78-16.

Sincerely,



Thomas Endean

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PC Rcvd 05-22-15 to 06-24-15

15-0882 Public Comment
PC Rcvd 08-11-15

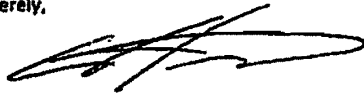
**Aaron Mount
Development Services Division
County of El Dorado
2850 Fairlane Court
Placerville, CA 95667**

Date: 6/6/15

Dear Aaron Mount:

I am Aaron Hernandez, I live at 3973 Mineshaft Ct., Shingle Springs, CA. My parents Efren and Mona Hernandez built their house at 3973 Mineshaft Ct. in 1990. I grew up on Mineshaft Ct., and went to school at Ponderosa High. I worked for John & Margaret Mirande for years. They had me fill out a Time Card and turn it in. I helped John run equipment, tractors and a forklift. I loaded and unloaded crates and pallets, I worked in the shop, it was full of stainless steel restaurant equipment, and other materials that John used.

Sincerely,



Aaron Hernandez

**15-0882 Public Comment
PC Rcvd 05-22-15 to 06-24-15**

**15-0882 Public Comment
PC Rcvd 08-11-15**

Erik Martin
3962 Mineshaft Ct.
Shingle Springs, CA 95682
530-903-0363
emartin@tunnelectric.com
April 16, 2015

Aaron Mount
Associate Planner
El Dorado County
2850 Fairlane Court
Placerville, CA 95667

Dear Aaron Mount:

Re: Businesses at 3962 Mineshaft Ct. since 1978

In 1978 Thomas Endean applied for a SUP to move his business from Diamond Springs to his property at what is now 3962 Mineshaft Ct., Shingle Springs, CA 95682. He built the Steel Fabrication Shop with a building permit pursuant to SUP 78-16. He also had a 3 phase power line ran to the shop, which is the only one in the area. He ran his Stainless Steel Fabrication Shop, in conjunction with his C43 contracting business. He had CSLB Lic. #388060. His steel was delivered on Semi-Trucks, and handled by forklift, or overhead crane in the building. In 1989 Thomas Endean moved Endean Metal Products to Hamilton, Montana due to a divorce.

In 1989 John Mirande bought the property at 3962 Mineshaft Ct. from Thomas Endean. John moved from El Dorado Vinyards, on Mosquito Rd. in Placerville. John was involved in many businesses and real estate ventures in El Dorado County. He also owned MA ranch an apple farm in Camino, the winery behind Snowline Hospice, and Snowline Hospice building itself, and many other properties in the county.

I met John in 2001, when I helped my friend Kenny Hicks, (the chainsaw wood carver who rented a building behind snowline hospice from John) return a forklift he had borrowed from John to move in to his building. We hauled it to 3962 Mineshaft Ct., and dropped it off in front of the metal building there on the back of the property, which at that time had a bunch of restaurant equipment in it, at that time I didn't know I would be going through it all electrically so he could sell it. It also had a bunch of building materials which John always made you check to see if he had something there he could use instead of buying new material when he was flipping houses, or doing any improvements or maintenance at the properties he owned.

I would work for John in the years that followed, I would work at 3962 Mineshaft Ct., and at other properties he owned or was flipping. He had an office in one of the back bedrooms in the house with a new Mac computer, I would usually meet him at 3962 Mineshaft Ct. before we went to a new project site, we usually started there, and sometimes we would meet a carpenter, or carpet layer there also. The painting and cleanup was usually done by John's son John. A few of the properties he flipped that come to mind are:

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Aaron Mount

April 16, 2015

Page 2

- 1670 Hwy 49, Placerville, CA
- 2853 Loyal Ln., Pollock Pines, CA
- 4778 Kasey Ln., Placerville, CA

I was impressed with the shop building and office, I could tell it had been used for welding and metal fab because of the overhead crane, and 3phase power. I asked him about it and he told me about Endean, and about his son Brad and a partner building custom motorcycles in the shop. I asked him how I could get a setup like this at the property on Kasey Ln. I had an option to buy from John. He said I needed a Special Use Permit, and they are much harder to get now. He said this place would be perfect for me, but he was not going anywhere, that he and Margaret were very comfortable there. He wanted me to rent part of the building from him for my business, he said we could work it out in trade... He always liked to make a deal. I did not rent from him. John and I were friends, he loaned me money to start large projects when I needed it. He told me to never turn down a job because I didn't have the money to start it, he said come see him "the loan shark". I kept in touch with John, I would stop by and see him every couple of weeks. I would always bring him Negro Modelo beer, his favorite, and he always had me hide what was left in the refrigerator in the garage, "on the bottom in the back" he would say, he didn't want Margaret to know about it. I never discussed any business dealings with Margaret, John handled everything. I spoke to John after he injured himself, which was the beginning of the end. I tried calling him but got Margaret, she said he was in the hospital. Next I heard he had passed away, that was 2005. After a few months I heard Margaret was selling the property. Knowing what it was, I made her an offer, and purchased the property "as is". During the negotiations I tried to have the forklift, and a welder, and a set of torches included in the sale. As it turned out the welder and torches belonged to John's Godson, and the forklift had been sold to someone else. In January 2006 our escrow closed.

In January 2006, I began operations at 3962 Mineshaft Ct., and have been operating there for the past 9 years in good faith, and being a good neighbor. I survived the recession and a divorce here, and now Kendra and I plan on raising our family here.

Sincerely,



Erik Martin

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15-0882 Public Comment
PC Rcvd 08-11-15

①

March 10, 2015

El Dorado County Planning Commission

Subject: 3962 Mineshaft Ct.
Shingle Springs CA

To Whom It May Concern:

My name is Mike Yorba and I reside at 3756 Whispering Pines Lane next to Erik Martin's residence. Please note that I am the closest neighbor to the accessory building that Tunnel Electric Inc. is being operated from. Our properties touch at the southwest corner.

When I was looking to purchase this property in 2003 it was disclosed that the parcel next door has a working business with a forklift and other equipment. At this time, I had the decision to either continue with my purchase or not. I continued on with the purchase as this business was not found to be an issue with me and my family. Erik's business, Tunnel Electric, operates Monday through Friday and he respects his neighbors and their needs.

This business in no way has changed the quality of life or posed any noise or safety concerns.

If possible, I am planning on attending the meeting in support of Erik Martin and Tunnel Electric Inc.

Regards,



Mike Yorba
3756 Whispering Pines Lane
Shingle Springs CA 95682
Phone: (530) 672-2787

15-0882 Public Comment
PC Rcvd 05-22-15 to 06-24-15

15-0882 Public Comment
PC Rcvd 08-11-15

emartin@tunnelectric.com

2

From: maxdorette@aol.com
Sent: Wednesday, March 11, 2015 8:41 PM
To: Planning@edcgov.us; emartin@tunnelectric.com
Subject: Tunnel Electric Special Use Permit 78-16

This email is to show our support for Erik Martin and Tunnel Electric. Our home is located next door to Tunnel Electric and the Martin's home is directly behind ours. We have lived here for four years with nothing but positive interactions with the Martins and Tunnel Electric. They have been excellent neighbors and we have never experienced any inconvenience due to their business. They are quiet and keep the business and property in top condition. The staff at Tunnel Electric are friendly and we have never experienced any problems with them. In fact, the only time we hear any noise from the business is our dog barking at the staff arriving to work.

Erik and his staff have been supportive of their neighbors and are always willing to offer their assistance when needed.

As Tunnel Electric's neighbor, we hope the county will honor the SUP 78-16 issued and allow Erik Martin and his family to continue earning a living where they are currently located.

Should you need to contact us for further information, you can email us at maxdorette@aol.com or call us at (530) 872-6825.


Sincerely,

Max and Dorette Marriott



3

emartjn@tunnelectric.com


 **From:** steve <stevetognotti@hotmail.com>
Sent: Wednesday, March 11, 2015 6:20 PM
To: planning@edcgov.us
Subject: re: March 12, 2015 Tunnel Electric hearing

To whom it may concern,

My name is Steve Tognotti. My address is 3964 Mineshaft Court and we have lived here on Mineshaft Court for over 25 years. We live next door to the Martin family and are the closest neighbor to the accessory building that Tunnel Electric operates in. We have never had any problems with Tunnel Electric operating there in the accessory building.

When we first moved here in 1989, Mr. Endean had a stainless steel sink fabrication business in the same building, and trucks made deliveries for his business via Mineshaft Court, and it was never a problem or inconvenience.

The Martins and Tunnel Electric have been good neighbors ever since they moved in and have shown concern regarding their business operating here. It hasn't been an inconvenience or problem for us and we support Erik Martin and his family in this matter.

 Thank you for your attention.
Steve Tognotti



4

emartin@tunnelectric.com

From: Dale Stanec <dstanecjr@yahoo.com>
Sent: Wednesday, March 11, 2015 4:42 PM
To: emartin@tunnelectric.com
Subject: Special use permit 78-16

RE: SpecialUse Permit 78-16 at 3962 Mineshaft Ct in Shingle Springs.

My name is Dr. Dale Stanec and I'm a local Dentist in Cameron Park. I am writing in support of my neighbor Eric Martin. We have lived at our residence since 2002 which is kitty corner to Mr. Martin's house. In the 13 years that we have lived in our neighborhood I have never experienced a single issue with sounds, smells or any other disturbances coming from Mr. Martin's residence. We would definitely consider Eric and Kendra great neighbors. We are in complete support of the continued use of his residence for his business and whole heartedly disagree with limiting his ability to work from his home.

Dr. Dale Stanec Jr., D.D.S.



5

3/11/2015

Edcgov.us Mail - Fwd: erik martin

PC 3-12-15
#5

Charlene Tim <charlene.tim@edcgov.us>

Fwd: erik martin

Planning Unknown <planning@edcgov.us>
To: Charlene Tim <charlene.tim@edcgov.us>

Wed, Mar 11, 2015 at 2:17 PM

Hi Char,

Please see public comment email.

Thanks, Debble

----- Forwarded message -----
From: Keith Gordon <gordy545@gmail.com>
Date: Wed, Mar 11, 2015 at 1:46 PM
Subject: erik martin
To: planning@edcgov.us

ed Gordon 3860 mineshaft in shingle springs ca 95682 530 677 6242 erik martin lives behind me on mineshaft ct
I have had no problems since he moved in to 3882 mineshaft court shingle springs ca 95682 with delivery trucks
or any vehicles whatsoever
respectfully Edward p gordon

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material from your system.
Thank you.

<https://mail.google.com/mail/u/0/?ui=2&ik=169598326&view=pt&search=kebox&msg=14c0d2acc2b6c3&label=14c0d2acc2b6c3>

1/1

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PC Rcvd 03-11-15

15-0882 Public Comment
PC Rcvd 05-22-15 to 06-24-15

15-0882 Public Comment
PC Rcvd 08-11-15

3/11/2015

Edgov.us Mail - Fwd: S78-0016-R/Tunnel Electric

6

PC 3-12-15
#5

Planning Unknown <planning@edcgov.us>

Fwd: S78-0016-R/Tunnel Electric

1 message

Planning Unknown <planning@edcgov.us>
To: Charlene Tim <charlene.tim@edcgov.us>

Wed, Mar 11, 2015 at 3:43 PM

Please see public comment.

Thank you,
Julie Saylor

----- Forwarded message -----
From: Tera Masiel <teramasiel@yahoo.com>
Date: Wed, Mar 11, 2015 at 3:09 PM
Subject: S78-0016-R/Tunnel Electric
To: "planning@edcgov.us" <planning@edcgov.us>

I have owned the property directly to the north of parcel 070-250-45 for a year. I have received and reviewed all of the letters and flyers I have received at my door from the County of El Dorado Planning Commission, Mark Charlton, and Erik Martin, and thought I would provide what information I could to help the County decide whether or not to grant the special use permit revision.

I do not personally know any of the parties involved in this dispute, so I can only provide knowledge regarding what I have noticed from my property. Until I started receiving information recently, I had no idea that any kind of business was ran on the property just south of us. I am a stay at home mother, so I am home most everyday during normal business hours, often in my backyard with my children. There has never been a problem with noise. I also have never seen any semi-flatbed trucks regularly using Mineshaft Lane as stated in one of the flyers I received at my door, so traffic near my property is not a problem.

I will not be able to attend tomorrow's hearing, and although I am curious as to what triggered this dispute between neighbors six years after the Martins moved to the property, I personally have no complaints with the business continuing as it has for the past 8 years.

Thank you,
Tera Masiel

<https://mail.google.com/mail/u/1/?ui=2&ik=c&as=7c3c31&view=pt&search=sent&ik=14c0b017398cbb&siml=14c0b017398cbb>

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PC Rcvd 05-22-15 to 06-24-15

15-0882 Public Comment
PC Rcvd 08-11-15