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The Honorable Rusty Dupray
Chairman
El Dorado County Board of Supervisors
360 Fair Lane
Placerville, CA 95667

Re: Cozzi Appeal of Denial of SUP

Dear Chairman Dupray:

The above-entitled matter is coming before your Board on Tuesday, October 14th on appeal from the Planning Commission. The basis of the appeal is that the Findings adopted by the Commission are not supported by the evidence in the record. A discussion of such is presented below.

The Cozzis' are the owners of a 5 acre parcel in the Rescue area. They are also the owner-operators of a small landscaping business. They desire to store their commercial equipment on their residential property. The equipment consists of a maximum of 4 truck vehicles, the maximum size being 1 ton; up to three small excavating machines and a trailer. No material would be stored on-site. No employees would work on site; however, up to two employees would arrive each work day to pick up company vehicles. Customers would not frequent the home office. In denying the request for the SUP, the Commission made certain findings. Those findings are discussed below along with our response regarding the lack of evidence to support such. The Commission found:

1. The proposed SUP is inconsistent with the LDR General Plan designation.

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RESPONSE: The property does have a General Plan designation of LDR. The zoning is RE-5. RE-5 zoning is consistent with LDR General Plan designation. The RE-5 zone permits home occupations both by right and by special use permit. The use is permitted by right when such is incidental to the residential use of the premises, carried on within the premises and by the residents thereof. It is not claimed that the proposed use meets these criteria. However, home occupations are also permitted with a special use permit under different criteria, that is, when such require “special consideration” and when such uses “will not change the residential character of the premises or adversely affect the other uses permitted in a residential area”. Thus, under the General Plan, the use is consistent provided factual findings are made as discussed further below.

2. The proposed home occupation is not secondary and subordinate to the primary residential use. **RESPONSE.** There are no facts in the record to support this finding. The premises on the property is a residence, a house, in which the applicants reside. They live there 24/7/365. There is no signage. There are no customers. It is simply a house. The number of vehicles stored on the premises does not greatly exceed those of a typical family living on the same premises. The dominant use is as a residence.

3. The use detrimentally affects the character of the dwelling, premises and the neighborhood. **RESPONSE.** Visibly, the property continues to look like a dwelling. There would be no added noise, light or air quality issues that would impact the neighborhood. Increased traffic would consist of no more than two employees a day driving into the property to exchange their personal vehicles for company vehicles. By any measure such impact would have to be characterized as insignificant.

4. The proposal, as conditioned is inconsistent with the intent of Policies 2.2.5.21 and 10.1.7.4 because current adopted County Code directs that businesses such as the subject one, with employees, storage of equipment, and parking of employee vehicles, are not compatible with residential neighborhoods. **RESPONSE.** With all due respect, the Policies referenced above do not state that such uses are incompatible. In all cases, such a finding is a question of fact based upon the circumstances. In fact, Policy 10.1.74 states, “Home occupations shall be encouraged to the extent that they are compatible with adjacent or surrounding properties”. The General Plan directs that the County establish standards to determine compatibility. That has not as yet been accomplished. Thus, decisions need to be made on a case-by-case basis.

5. The existing business generates vehicular traffic measurably in excess of that normally associated with single-family residential uses. **RESPONSE.** This is simply untrue. The proposed use calls for a maximum of two employees to drive to the premises to exchange vehicles. The DoT has noted that the limited use does not even require a traffic study as

such use would not “worsen” the traffic in the area as defined by the criteria as referenced in Policy TC-Xe (see Page 71). Thus, the County itself disputes this finding.

6. The project has a significant visual impact on the existing residential zone district. **RESPONSE.** The meaning of this finding is unclear. If the intent is to state that the proposed use would visually impact the surrounding neighborhood, then that too is not correct. The subject property is located at the end of a dead-end roadway. The adjacent neighbor who has the clearest view of the applicant’s property has expressed support for the proposal. The only other neighbor who could be visually impacted is located across the street. This neighbor’s view of the applicant’s property would be effectively screened by the applicant’s landscaping proposal. However, the proposed parking area for the stored vehicles would be out of the direct view of this neighbor. Thus, there would be no visual impact to the neighborhood whatsoever.

7. Employees are not consistent with home occupations. **RESPONSE.** First, there is no such rule. Secondly, there would be no employees working at the site other than retrieving and dropping off vehicles.

8. The project has the potential to use and store hazardous substances which is not compatible with a residential use. **RESPONSE.** This is not correct. The only type of hazardous substances that could foreseeably be utilized would be the same exact type of substances that would be utilized by a homeowner for residential purposes. In addition, any storage of such could be controlled, regulated and inspected as the County may deem necessary.

9. The proposed landscape business is located within a residential subdivision and has increased traffic and created significant visual impacts. **RESPONSE.** The law does not permit findings simply to be made up; they must be supported by evidence. In this case, the County has determined that there is in fact no substantial traffic impact. In addition, there is no evidence to support the neighbor’s statements that there is a visual impact. In fact, the location of the parcel and specifically the parking area, along with the applicant’s landscaping plan, would mitigate against any potential visual impact.

10. The use is an unduly intensive commercial use within a residential zone district. **RESPONSE.** The use consists of the overnight parking of a few commercial vehicles on a 5 acre parcel insulated from the rest of the neighborhood. That cannot fairly and reasonably be defined as “intensive”.

11. The proposed use would be detrimental to the public health, safety and welfare, or injurious to the neighborhood. **RESPONSE.** The Planning Commission made such

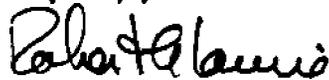
finding based upon traffic and visual impacts and the potential to store hazardous materials. See discussion above, the finding is simply not supported by the facts that are in the record.

12. The proposed use is a commercial use and is therefore not permitted in an RE-5 Zone District. RESPONSE. Again, this is simply not correct. The RE-5 Zone District does permit commercial uses both by right and by special use permit.

It is known and understood that a commercial use such as the one proposed should not detrimentally impact the existing residential neighborhood. On the other hand, the General Plan clearly reflects the view that home occupations are to be encouraged if not incompatible with the neighborhood. At the Planning Commission, the neighbors testified time and time again that there is no specific complaint about the current uses but rather there is fear and concern for the future. Importantly, it must be noted that the granting of a Special Use Permit actually adds to the regulatory authority that the government has over the subject property. The actual commercial use of the subject property is de minimus, yet by allowing such, the Cozzis could maintain their small business during these troubled times.

Accordingly, it is respectfully requested that the Board grant the appeal and return the matter to the Planning Commission for environmental review and development of appropriate safeguarding conditions. Thank you for your consideration.

Very truly yours,



ROBERT A. LAURIE