

# DEVELOPMENT SERVICES DEPARTMENT

COUNTY OF EL DORADO

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TO: Board of Supervisors Agenda of: March 1, 2011

FROM: Gina Paolini, Senior Planner

DATE: February 8, 2011

RE: Planning Commission's denial of the appeal of the Development Services Director's Determination of Consistency/Determination of Similar Use with the Town Center West Development Plan (Planned Development PD95-0002) to allow a 24-hour Drug Store use within the Plan Area subsequent to review of Pre-application PA09-0011 (APN 117-180-12)

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**BACKGROUND:** Hearing to consider a request submitted by Syers Properties III, LLC, appealing the Planning Commission's denial of the appeal of the Development Services Director's Determination of Consistency/Determination of Similar Use with the Town Center West Development Plan (Planned Development PD95-0002) to allow a 24-hour Drug Store use within the Plan Area subsequent to review of Pre-application PA09-0011. Assessor's Parcel Number 117-180-12 is located on the southwest side of White Rock Road southwest of the intersection with Latrobe Road.

**RECOMMENDED ACTION:** Planning Services recommends the Board of Supervisors take the following actions:

1. Deny the appeal and uphold the Development Services Director's Determination of Consistency/Determination of Similar Use within the Town Center West Development Plan (Planned Development PD95-0002); and,
2. Adopt Findings for Approval for a Site Specific Project for the Town Center West Development Plan.

**SUMMARY:** As discussed in the staff report, in August 2009, the Development Services Director determined that a 24-hour retail drug store, including a drive-up window, off-sale beer and wine sale, and retail health center, while not a use specifically listed in the Development Plan for Town Center West, would be similar in nature to other uses allowed within the Planning Area and could proceed with building permits. An appeal of the Development Services Director's determination was filed by Syers Properties III, LLC on December 15, 2010. The Planning Commission denied the appeal finding that over the last 15 years since the Planned Development has been in place the concept of the drug store has changed. Drug stores are no

longer locating within strip retail centers; they are now modeled after the stand alone convenience store. The Commission found that in reviewing the list of allowable uses, the drug store would be consistent with the allowed use for this area and an appropriate use for the site.

A subsequent appeal was filed on January 28, 2011. The specific reasons for the appeal are as follows:

1. The appellant states Town Center West and East are "Distinct Yet Complimentary" Developments.

DSD Response: Town Center West Development Plan is a stand alone development. Proposed development within the Town Center West Development Plan Area must be consistent with the El Dorado Hills Town Center Design Guidelines and Development Standards for Town Center West. The proposed use is consistent with the Town Center West Development Plan. The Town Center East Development Plan is irrelevant when making a consistency determination for a proposed use in Town Center West.

2. The appellant questions that there was no written determination by the "Director of Planning" for the Pre-application and Planning Department and Commission Determinations.

DSD Response: While formal findings are required if the Director of Planning cannot make the decision, the Town Center West Development Plan does not require a specific format when the Director of Planning makes a consistency determination. Planning Services issued a letter subsequent to the review of a pre-application finding a drug store use to be similar in nature to the Category C uses allowed within the Town Center West development. The Planning Commission concurred with the Development Services Director's determination; thereby denying the appeal. To address the appellant's concerns, staff has provided Site Specific Project Findings for the Board of Supervisors to approve.

3. The Planning Department and Planning Commission Erred in Finding a Drug Store "Similar in Nature" to Permitted TCW Retail Uses.

DSD Response: Planning Area E of the Development Plan was allocated by the approved Development Plan for up to 35,000 square feet of commercial service and retail uses, as defined as Category C uses within the Development Plan's Design Guidelines and Development Standards. It was determined that although a drug store use was not a use specified within the Development Plan, it provided many of the services and goods listed as permitted and the small size of the proposed use is not akin to an anchor department store or super market and is "similar in nature" to the itemized uses. In addition, the retail use would be ancillary and supportive to primary uses within the Town Center West Development and will be a convenience for patrons who are employees during breaks and not a competitor to retail uses in Town Center East. As such, it is consistent with the allowed uses for Planning Area E.

Planning Services specifically analyzed whether a drug store use would be consistent with Town Center West. While the appellant alleges that Planning Services would have found virtually any commercial use consistent on the site, this is not the case. Planning Services analyzed the use and location and found this particular use in compliance because the site is not bordered by

residences or other sensitive uses, and is located on a major street. At 14,900 square feet (as originally requested), the retail drug store would comply with the square footage requirements for retail uses within Planning Area E.

4. The County has not complied with CEQA

DSD Response: The County has fully complied with CEQA. The "Site Specific Project Approval" (the approval process adopted within the Development Guidelines) is within the scope of the environmental analysis previously conducted on the project and this type of approval was contemplated in the previously approved environmental document.

The Town Center West Development Plan was subject to a Negative Declaration that was adopted on May 9, 1995. (The subject parcel was known as Assessor's Parcel Number (APN) 107-010-10 in that Negative Declaration. The APN has since changed.) The general and cumulative impacts of the development under the El Dorado Hills Specific Plan (EDHSP) were previously evaluated in the Environmental Impact Report (EIR) for the Specific Plan (Approved by the Board of Supervisors July 18, 1988) The Negative Declaration for Town Center West tiered from the EDHSP EIR. The project description within the Negative Declaration provided for a phased Concept Development Plan on a 130-acre site for office, commercial, research development and light manufacturing uses. Planning Area E was designated for commercial uses on 7.1 acres with an allowable 35,000 square feet of building area.

Within Section 8 (Land Use) of the Negative Declaration (page 11), the document fully analyzed the types of uses that would be allowed at the project site and the interpretation process for future uses. As stated, "Section 17.32.180 then proceeds to provide a list of those uses permitted by right within the CG district." "Typically, all of these uses have the potential for significant noise, dust, air emissions, heavy truck traffic, and possible visible outdoor storage." "Section 17.32.220 of the Zoning Ordinance further provides for a process in which the Planning Commission can consider the facts concerning a proposed use and by resolution of record set forth its findings and interpretation. This section clearly allows the Planning Commission the latitude to assess the use and allow such, if it meets the intent of the "purpose" section outlined above. This interpretation section (17.32.220) is an exception within the Zoning Ordinance, since the CG district is the only zoning district which allows this interpretation process. Given the fact the CG District intentionally permits a very broad range of uses, this section permits the opportunity to include other similar uses which are compatible with the intent of the district without having to amend the Zoning Ordinance every time a new type of use appears in the market. This is especially appropriate for all types of computer, data, and multi-media uses, which were almost non-existent 15-20 years ago. The interpretation process permitted in this section accommodated other similar activities which are not specified as long as the intent of the district is maintained, and it does not "disturb the peace enjoyment of adjacent residential or agricultural land use zones".

Pages 13 and 14 of the Negative Declaration concluded that "the uses as proposed within the Concept Development Plan are found to be clearly consistent with the Specific Plan; they do not represent a substantial alteration of the planned land use of the area; they are consistent with the purpose of the CG district since their nature and the application of the proposed design guidelines will result in uses which will not "disturb the peaceful enjoyment of adjacent residential or agricultural land use zones"; and they are uses which by their typical nature are

more compatible with neighbors than any permitted CG uses, since they are totally enclosed and must conform to design standard which are non-existent and/or more restrictive than those in the CG district.”

The March 9, 1995 Traffic Study prepared for the Negative Declaration adequately accounted for a commercial use of the proposed drug stores size in Planning Area E. The Traffic Study Trip Generation calculations were based on land use, including 35,000 square feet of commercial uses in Planning Area E. At this time, none of the commercial uses have been developed in Planning Area E. Therefore, approximately 15,000 square feet of drug store use falls within the traffic study analysis for 35,000 square feet of commercial uses.

The Negative Declaration for the Development Plan indicated that “project approval would pave the way for processing of ministerial building permits” (page 2) Based on staff’s review of the approved Negative Declaration for the project, it was determined that the issuance of the building permit was within the scope of the approved Negative Declaration and that a subsequent document would not be necessary.

Section 1.8 (Approval Process) of the Design Guidelines and Development Standards for the Town Center West states: “Site specific project approvals shall be a ministerial act of the Director of Planning. Prior to issuance of a building permit, County staff shall find the proposed site specific project has received approval from the Design Review Committee and is consistent with the Development Plan, the Development Standards and other conditions of approval of the Town Center West Planned Development.”

Building Permit No. 197682 and Grading Permit No. 197684 were submitted for a 14,550 square foot drug store on the subject site on June 30, 2010. The issuance of building and grading permits is generally a ministerial act in accordance with Section 1.8 of the Design Guidelines and Development Standards and pursuant to Section 15268(b) of the CEQA Guidelines.

In addition, as noted above, in making the determination of consistency, the Development Services Director reviewed the previous CEQA documents related to the project and determined that the requested permit was within the scope of the previous analysis and would not result in any additional impacts that had not previously been considered. The director determined that no additional CEQA document was necessary pursuant to Section 21166 and CEQA Guidelines 15162.

5. The Proposed Use is Inconsistent with the Current General Plan and Zoning Map Designation

DSD Response: The site is governed by the Town Center West Development Plan, as approved by the Board of Supervisors in May 1995. Therefore, the provisions of the Development Plan (PD95-02), would be applied to the project parcel. The County General Plan Map adopted in 2004 did not identify correctly the PD95-0002 boundaries. The current zoning maps reflect the El Dorado Hills/Salmon Falls Area Plan and have not been updated for consistency with the 2004 General Plan. Development Services will be correcting these errors with the comprehensive zoning ordinance (and map) update late in 2011.

6. The Applicant is Attempting to Amend the TC West Development Plan Without Public Scrutiny

DSD Response: Section 1.5 (Uses Not Specified) states "Additional uses may be permitted when, by determination of the Director of Planning, such uses are found to be similar in nature to those established in the Town Center West Planned Development Plan. Should the Director of Planning be unable to make such a determination the applicant may request the Planning Commission make a finding permitting such use based on the information requested and submitted through the Planned Development Site Plan process and by resolution of record set forth its findings and its interpretation." The Development Services Director found the 24-hour drug store use to be similar in nature to other Category C uses; therefore a hearing with the Planning Commission was not required.

7. Threat of Litigation Should Not Be a Basis for Denial of the Appeal

DSD Response: No response from DSD is required.

**Attachments:**

Attachment 1 .....Findings for Approval

Exhibit A .....Town Center West Environmental Document