

**COUNTY OF EL DORADO DEVELOPMENT SERVICES
PLANNING COMMISSION
STAFF REPORT**



Agenda of: March 12, 2015
Staff: Aaron Mount

SPECIAL USE PERMIT REVISION

FILE NUMBER: S78-0016-R/Tunnel Electric

APPLICANT: Erik Martin

OWNER: Erik Martin

REQUEST: A special use permit revision request to allow expansion of a home occupation to include three employees in addition to the property owner.

LOCATION: At the west end of Mineshaft Court, approximately 800 feet southwest of the intersection with Ponderosa Road, in the Shingle Springs area, Supervisorial District 4. (Exhibit A)

APN: 070-250-45 (Exhibit B)

ACREAGE: 2.96 acres (Exhibit B)

GENERAL PLAN: Medium Density Residential (MDR) (Exhibit C)

ZONING: One-Acre Residential (R1A) (Exhibit D)

ENVIRONMENTAL DOCUMENT: Categorically exempt pursuant to Sections 15301 of the CEQA Guidelines.

RECOMMENDATION: Staff recommends the Planning Commission take the following actions:

1. Find that the project is Categorically Exempt pursuant to CEQA Section 15301; and
2. Approve Special Use Permit Revision S78-0016-R based on the Findings and subject to the Conditions of Approval as presented.

STAFF ANALYSIS

Background: Special Use Permit S78-0016 was approved by the Planning Commission on March 9, 1978. The SUP allowed the operation of a stainless steel fabrication shop in an accessory building, including the use of power tools which require special consideration, as a home occupation. According to department history and information from neighbors, the application was approved to allow the property owner to construct kitchen range hoods. The following conditions of approval were included with the project:

1. Development is to be consistent with the site plan.
2. Operational hours from 7:00 A.M. to 5:00 P.M.
3. Structure to be painted earth colors.
4. The use is exclusively for the applicant, not to include employees, and not transferrable with the sale of the property.

Condition of approval number four was common condition on special use permits at the time but is not legal or valid. Special use permits are by definition transferrable and run with the land and not the applicant. That is, where special use permits are concerned, all related property and personal rights are freely transferable, unless expressly prohibited by law (*Anza Parking Corporation v. City of Burlingame* (1988) 195 Cal.App.3d 855). Inversely, a conditional use permit may not lawfully limit the permittee from transferring it with the land since such a condition is beyond the power of the zoning authority (*Anza*, supra).

The proposed Special Use Permit (SUP) revision was initiated because the County received complaints that the property owner had uses beyond a home occupation taking place at the site. The complaints were mainly about semi-truck deliveries and noise emanating from the site (Exhibit I). Several code enforcement cases have resulted from the complaints. The applicant contends that the uses at the site are consistent with the original approval of S78-0016. Planning Services determined that an increase in employees has necessitated the revision to the special use permit.

One of the code enforcement actions is the expansion of the work shop. This Special Use Permit will memorialize the expansion of the work shop. A building permit was approved in 1979 for a 2,400 square foot shop. As shown on the site plan for this revision the shop is now approximately 5,100 square feet. Building permits will be required for this expansion and any unpermitted construction will be required to show compliance with current standards including building code and zoning ordinance setbacks.

Adjacent land owners contend that the use at the site ceased to exist for 17 years between the time of the ownership by the applicant of S78-0016 and the current owner. The current owner has submitted signed letters by all previous property owners stating that an expanded home occupation consistent with the approved special use permit has taken place since its approval in 1978.

Project Description: The Special Use Permit revision request would allow the following additional uses:

The addition of three employees for the expanded home occupation at the project site. The original approval only allowed for the exclusive use by the applicant who was the property owner. The current applicant is requesting the inclusion of three people living at the site to be employees in addition to himself. The current property owner states that all other uses at the site are consistent with the approval of S78-0016.

Site Description: The project site lies at an elevation of 1,520 feet above sea level in the Shingle Springs area in the vicinity of Ponderosa High School. The 2.96 acre project site consists of a single family residence, two garages, and the shop structure where the expanded home occupation takes place. Access is provided by Mineshaft Court which is a paved privately maintained road that connects onto Mineshaft Lane, which connects to Ponderosa Road.

When S78-0016 was approved the project parcel was approximately eight acres in size. Subsequent to the approval, Parcel Map P87-0004 was finalized and recorded creating four parcels and reducing the project parcel to its current size of 2.96 acres.

General Plan:

Policy 2.2.5.21 states, “Development projects shall be located and designed in a manner that avoids incompatibility with adjoining land uses that are permitted by the policies in effect at the time the development project is proposed. Development projects that are potentially incompatible with existing adjoining uses shall be designed in a manner that avoids any incompatibility or shall be located on a different site.”

Policy 10.1.7.4 states, “Home occupations shall be encouraged and permitted to the extent that they are compatible with adjacent or surrounding properties”.

Discussion: The current use was approved by S78-0016. The project is being revised to add three additional employees which are occupants of the project site. The applicant states that all other uses at the project site are consistent with the approval of S78-0016. No additional impacts are anticipated by the addition of three employees that reside at the site.

Conclusion: Staff finds that the project, as proposed and conditioned, conforms to the General Plan.

Zoning Ordinance: Under Section 130.28.070.G, the R1A zone district allows by special use permit the following uses:

“Home occupations not listed in Section 130.28.060.A, which require special consideration such as use of power tools, accessory building, noise, and will not change the residential character of the premises, or adversely affect the other uses permitted in a residential area.”

According to the applicant the project is in conformance with the uses approved by S78-0016, consistent with the intent of the Zoning Ordinance section above. Adjacent land owners have complained that industrial uses beyond those allowed as a home occupation are taking place at the project site.

Land use compatibility is discussed in the Project Issues section of this staff report.

No new construction is proposed, as the existing structure that was constructed consistent with the original 1978 approval is still used by the current owner for the expanded home occupation.

Code enforcement cases have been initiated for other unpermitted structures at the project site not related to those utilized under this special use permit. A condition is recommended to require the applicant to final these permits in a timely manner or face revocation of the Special Use Permit as required by Section 130.22.120.A.3 of the Zoning Ordinance.

Conclusion: Staff finds the project, as proposed and conditioned, is consistent with all applicable provisions of the Zoning Ordinance.

Project Issues:

Land Use Compatibility: The project and adjacent parcels are within the General Plan Medium Density Residential land use designation within the Shingle Springs Community Region. The Medium Density Residential land use designation establishes areas suitable for detached single-family residences with larger lot sizes that will enable limited agricultural land management activities.

The General Plan defines a home occupation as “A commercial activity conducted solely by the occupants of a particular dwelling unit in a manner incidental to residential occupancy”. Conflicting evidence has been received as to what uses are taking place at the project site. The property owner states that the uses at the site are consistent with the approval of S78-0016 and that no expansion has taken place. Planning staff determined that the increase in employees necessitated the need for a revision to the special use permit. Adjacent land owners have stated that an industrial operation is taking place on the project parcel and that the uses are adversely affecting the other uses permitted in a residential area and are not incidental to the residential occupancy (Exhibit I).

Noise: An environmental noise assessment is currently being prepared by The Acoustics & Vibration Group, Inc.

Vehicle Access and trips: The proposed revision would add three additional employees that currently live at the site. No new trips are anticipated as the additional employees would be employed where they reside so no commute would be required. The property owner states that deliveries and shipping to and from the site are consistent with the existing uses at the site approved by S78-0016.

The parcel is accessed by Mineshaft Court which is a privately maintained road. Adjacent land owners on Mineshaft Court have complained about semi-trucks using the road to access the project parcel. Their concerns are about public health and safety of truck traffic in a residential area and the potential impact on the roadway. Staff recommends a condition limiting truck traffic to one trip daily on Mineshaft Court.

The rear of the parcel is accessed by Whispering Pines Road which is within the Many Oaks Zone of Benefit (ZOB). No truck delivery or truck shipping is allowed to access the ZOB road according to the Transportation Division. A zone of benefit is a geographic area within a county service area formed to raise revenue and provide authorized services to the property owners and residents within the boundaries of the identified area. The Many Oaks ZOB is responsible for road maintenance for a group of parcels served by the road system. The funds collected for the established purpose of the ZOB are considered public funds and the roads within are considered public roads. The County Board of Supervisors is the governing body for zones of benefit created within County service areas.

ENVIRONMENTAL REVIEW

This project has been found to be Categorical Exempt from the requirements of CEQA in compliance with Section 15301 of the CEQA Guidelines as the project consists of negligible expansion of an existing use within a previously approved structure. As conditioned the revised project is consistent with the R1A Zone District for the existing structures which required only ministerial permits. Any unpermitted additions will be required to meet current standards. The use as an expanded home occupation was previously approved and the proposed expansion of use has been found to be consistent with the Zoning Ordinance.

A \$50.00 processing fee is required by the County Recorder to file the Notice of Exemption (NOE). The filing of the NOE is optional; however, not filing the NOE extends the statute of limitations for legal challenges to the project from 35 days to 180 days.

SUPPORT INFORMATION

Attachments to Staff Report:

Conditions of Approval
Findings

Exhibit A.....Location Map
Exhibit B.....Assessor's Parcel Map
Exhibit C.....General Plan Map
Exhibit D.....Zoning Map
Exhibit E.....Site Plan
Exhibit F.....Applicant Submitted Project Description
Exhibit G.....S78-0016 Special Use Permit File
Exhibit H.....Parcel Map P39-132
Exhibit I.....Letter Dated 1-29-2015 from Mark Charlton