

DEVELOPMENT SERVICES DEPARTMENT

COUNTY OF EL DORADO

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TO: El Dorado County Board of Supervisors Agenda of: March 27, 2012

FROM: Aaron Mount, Project Planner

DATE: February 28, 2012

RE: Appeal (S11-0005-A-3) of the Planning Commission's Decision to Deny Special Use Permit Application S11-000/Mother Lode Drive Off-Premise Advertising Sign and Uphold Appeals S11-0005-A and S11-0005-A-2; Assessor's Parcel Number 090-430-15

Background:

A request has been submitted by John David Pereira on February 28, 2012 appealing the denial of Special Use Permit S11-0005 and upholding of Appeals S11-0005-A and S11-0005-A-2 by the Planning Commission on February 23, 2012. S11-0005 was conceptually denied at the February 9, 2012 Planning Commission and findings for denial were adopted at the February 23, 2012 Planning Commission hearing.

Special Use Permit S11-0005 is a request to allow the construction of an off-premise advertising sign (billboard) consisting of two sign faces each 672 square feet in size, for a total sign area of 1,344 square feet, placed on a pedestal 32.5 feet high for a total height of 50 feet. The project is located on the north side of Mother Lode Drive and south side of U.S. Highway 50, approximately 1,000 feet east of the intersection with South Shingle Road, in the Shingle Springs area, Supervisorial District 4.

The applicant, John David Pereira, claims this project was "deemed approved" by operation of law on December 30, 2011 due to the alleged failure of the Development Services Department to meet statutory time limits pursuant to the California Permit Streamlining Act (Government Code Section 65920 et. seq.). The County disputes that the Permit Streamlining Act timelines were exceeded and disputes that appropriate notice was given to the public by Mr. Pereira in order to allow the project to be "deemed approved". However, even if he is correct, and the application was in fact deemed approved on December 30, 2011, that does not waive the public's right to request a public hearing on the Special Use Permit applications pursuant to El Dorado County Code Section 17.22.530 or the public's right to an appeal of the "decision" by the Development Services pursuant to County Code Section 17.22.220.

STAFF MEMO 02-28-12
12-0373.B.1

Discussion:

The appellant has five reasons for their appeal.

1. Jurisdiction of Planning Commission to consider appeals re: Notice of Decision re Deemed Approved.

Response: Planning Services issued a Notice of Decision on January 11, 2012 with the following note; "Please note that no decision has been made by the County on this application and no public hearing has been held regarding the application as is required under El Dorado County Code Section 17.22.530. However, the applicant, John David Pereira, claims this project was "deemed approved" by operation of law on December 30, 2011 due to the alleged failure of the Development Services Department to meet statutory time limits pursuant to the California Permit Streamlining Act (Government Code Section 65920 et. seq.). The County disputes that the Permit Streamlining Act timelines were exceeded and disputes that appropriate notice was given by Mr. Pereira in order to allow the project to be deemed approved. However, if he is correct, and the application was in fact deemed approved on December 30, 2011, that does not waive the public's right to request a public hearing on the Special Use Permit applications pursuant to El Dorado County Code Section 17.22.530 or the public's right to an appeal of the "decision" by the planning department pursuant to County Code Section 17.22.220."

Original jurisdiction of a Special Use Permit for an off-site sign on a parcel within the General Commercial Zone District that faces a state highway is the Planning Commission pursuant to Sections 17.14.130.A and 17.32.190.J of the Zoning Ordinance.

2. Decision by Planning Commission to uphold appeals re: Notice of Decision re: Deemed Approved.

Response: Planning Services issued a Notice of Decision on January 11, 2012 with the following note: "Please note that no decision has been made by the County on this application and no public hearing has been held regarding the application as is required under El Dorado County Code Section 17.22.530. However, the applicant, John David Pereira, claims this project was "deemed approved" by operation of law on December 30, 2011 due to the alleged failure of the Development Services Department to meet statutory time limits pursuant to the California Permit Streamlining Act (Government Code Section 65920 et. seq.). The County disputes that the Permit Streamlining Act timelines were exceeded and disputes that appropriate notice was given by Mr. Pereira in order to allow the project to be deemed approved. However, if he is correct, and the application was in fact deemed approved on December 30, 2011, that does not waive the public's right to request a public hearing on the Special Use Permit applications pursuant to El Dorado County Code Section 17.22.530 or the public's right to an appeal of the "decision" by the planning department pursuant to County Code Section 17.22.220."

3. Decision by Planning Commission to reject Negative Declaration/Initial Study.

Response: The Planning Commission's rejection of the Negative Declaration/Initial Study was based on review of the Staff Report, Negative Declaration, public testimony, as well as the project photo simulations. CEQA findings adopted by the Planning Commission can be found in Attachment 3. The Planning Commission determined that there was a potential for significant

impacts with land use and aesthetics as the project may have a significant effect on one of the scenic vistas analyzed in the EIR for the General Plan. The Planning Commission determined an Environmental Impact Report would be required, however, the Planning Commission could not approve the Special Use permit due to the inability to make the required affirmative findings.

4. Decision by Planning Commission to deny application for reasons stated in Findings.

Response: The Planning Commission's denial of the Special Use Permit request was based on review of the Staff Report, Negative Declaration, public testimony, as well as the project photo simulations. Findings for denial adopted by the Planning Commission can be found in Attachment 3. The Planning Commission could not approve the Special Use permit due to the inability to make the required affirmative findings based on General Plan inconsistency and potentially significant impacts to one of the scenic vistas analyzed in the EIR for the General Plan.

5. Jurisdiction of Planning Commission to consider project at all after deemed approved under PSA.

Response: The applicant, John David Pereira, claims this project was "deemed approved" by operation of law on December 30, 2011 due to the alleged failure of the Development Services Department to meet statutory time limits pursuant to the California Permit Streamlining Act (Government Code Section 65920 et. seq.). The County disputes that the Permit Streamlining Act timelines were exceeded and disputes that appropriate notice was given to the public by Mr. Pereira in order to allow the project to be "deemed approved". However, even if he is correct, and the application was in fact deemed approved on December 30, 2011, that does not waive the public's right to request a public hearing on the Special Use Permit applications pursuant to El Dorado County Code Section 17.22.530 or the public's right to an appeal of the "decision" by the Development Services pursuant to County Code Section 17.22.220.

Fee Waiver Request: The appellant has requested a fee waiver for the following reason: "Request is made for an appeal fee waiver as have been provided to initial appellant, Dyana Anderly."

Response: Board of Supervisors Policy Number B-2.3 Fee Waiving states, "*A fee for appeal of a decision of the approving authority may not be waived*".

Revised Initial Study/Negative Declaration: Planning staff has revised the Initial Study/Negative Declaration to correct typographical errors that were found by the public and presented during comments at the Planning Commission hearing for S11-0006 but apply to this application also. It is clear by the analysis in the Initial Study that the errors made are simply typographical errors and that analysis of the project in the initial study was for the project as proposed and not as conditioned.

Recommendation: Planning Services recommends the Board of Supervisors take the following action:

1. Deny appeal S11-0005-A-3, thereby upholding the denial of Special Use Permit S11-0005 and upholding appeals S11-0005-A and S11-0005-A-2 by the Planning Commission on February 23, 2012 based on the Findings listed in Attachment 1.