

FROM THE PLANNING COMMISSION MINUTES OF MARCH 12, 2015

AGENDA ITEMS

5. **15-0222** Hearing to consider a request to allow expansion of a home occupation to include three employees in addition to the property owner [Special Use Permit Revision S78-0016-R/Tunnel Electric]** on property identified by Assessor's Parcel Number 070-250-45, consisting of 2.96 acres, in the Shingle Springs area, submitted by Erik Martin; and staff recommending the Planning Commission take the following actions:

- 1) Find that the project is Categorical 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.
- (Supervisory District 4)

Aaron Mount presented the item to the Commission with a recommendation of approval.

Erik Martin, applicant, made the following comments:

- Distributed a handout to the Commission;
- Spoke on the history of the parcel, the Special Use Permit, and the events leading up to today's hearing;
- Spoke on his family business;
- Business has grown and he has a second facility in Gilroy where all the large equipment is stored;
- Has gone through the neighborhood and has spoken with approximately 75% of the residents regarding his project and the majority are in support;
- County considers his wife and nephew, who live on the property, as employees since they work at the business;
- When he purchased the property, had heard that a Special Use Permit ran with the property;
- Environmental Management has been on-site and has no issues; and
- Files an annual plan with the County and State for the oxygen tanks that are located on-site.

Mark Charlton made the following comments:

- Distributed PowerPoint handouts and conducted a PowerPoint presentation, with reference to photos spanning the past 15 months alongside Mineshaft Court;
- 70-100 semi-trucks come in every year;
- Disputed the validity of the original Special Use Permit as there has not been continual annual use and County had even sent out a Cease and Desist letter, although that was eventually withdrawn;
- Spoke on the legal issues;
- Challenged the CEQA exemption;
- This is an expired Special Use Permit;

- Not a home occupation;
- Noise from semi-trucks and forklifts; and
- Entrance to Mineshaft Court is a difficult entry.

Frank Kopita made the following comments:

- Spoke on history of noise, which has increased;
- People on Mineshaft Court have problems with the noise; and
- If revision request is granted, how much more would the applicant expand as the business has grown significantly from the original permit.

Mike Yorba made the following comments:

- Lives next to the applicant's accessory building;
- Has had no problems; and
- When he bought his home, it was disclosed that there was a business located nearby.

Efren Hernandez stated he has had no problems with the applicant and doesn't hear the trucks or forklifts.

Diane Carlton made the following comments:

- Lives on Whispering Pines and works at home; and
- The request is not an issue and it has only been an irritant to have employees parking near their homes, however, has the same concerns regarding expansion as a previous speaker.

Ramona Hernandez made the following comments:

- Gets more noise and traffic from the students attending the nearby Ponderosa High School;
- Commercial traffic is not on a regular basis in neighborhood; and
- Applicant is a pleasant neighbor.

Chris Chaloupka made the following comments:

- Former Planning Commissioner for District 4;
- From his property, he can see the activity level on the applicant's property and it is very intermittent;
- Noise is not an issue and dogs make more noise than the applicant; and
- Moved there in 1986 and building was already there and had always known there was business activity going on there.

Chair Stewart closed public comment.

Mr. Martin provided the following rebuttal comments:

- Spoke on the revocation statute;
- Happy that neighbors came out to support him;
- Confirmed that business hours are Monday through Friday and that he works on his own projects during the weekend;

- Clarified that the photos showing large metal deliveries are “milk runs”, in which the delivery company will combine multiple orders in a particular area onto one truck and make separate stops;
- He gets 1-2 truck deliveries per week since he is job-oriented which dictates the number of supply deliveries needed;
- There is no road association or road agreement;
- Understood that he is using the road more than others and has no problem doing maintenance, which he has done in the past;
- Is aware that anything that happens to the road is being blamed on his business activity but doesn't have a problem with doing what is right;
- All parking is on-site as it is a 3 acre parcel;
- Spoke on the open Code Enforcement case which resulted in not everything being up to code when he purchased the property and he is in the process of getting it into compliance;
- Road is 30 feet wide and delivery trucks enter his property to load/unload and turn around;
- Trying to mitigate in order to be a good neighbor; and
- Has second access on Whispering Pines.

Chair Stewart made the following comments:

- Spoke on continual use and this project has factual issues;
- Voiced concern that original Special Use Permit was on a larger parcel and would need to look at today's situation; and
- Still trying to clarify continual use of activity.

Commissioner Heflin stated the need to determine if there was a cessation of activity.

Commissioner Pratt made the following comments:

- Applicant needs to utilize delivery trucks that are less than 50 feet from tip to tip;
- Special Use Permits run with the land and would cessation of activity cause expiration of permit;
- Inquired on who would do the research as the Conditions of Approval of the original Special Use Permit are very vague;
- This is a legal, technical issue and feels it is beyond the Commission's scope;
- Holding for future uses is interesting comment as applicants are told to put everything in a Special Use Permit application that they would eventually want to do; and
- Clarity is needed on this legal issue.

Significant discussion ensued on factual issues, continual use of the Special Use Permit, and options for next steps.

Chair Stewart understood the need to determine if the Special Use Permit is valid, but until such a hearing is scheduled, wanted to ensure the applicant would be able to continue his operation. He encouraged the applicant to begin talks with the neighbors on what types of Conditions of Approval (i.e., road agreement) that could work with everyone.

There was discussion on the revocation process, with Commissioner Pratt stating he was struggling with the word “revocation” because the Commission needed to confirm or deny that the Special Use Permit has expired. Chair Stewart inquired if there was any way to structure things so there would be no gap to the applicant if the Commission determined the Special Use Permit had expired.

Roger Trout stated that staff would attempt to return back to the Commission with item no later than 90 days and, in the meantime, the applicant could continue business.

There was no further discussion.

Motion: Commissioner Heflin moved, seconded by Commissioner Pratt, and carried (4-0), to continue the item off-calendar to coincide with the hearing on the expiration determination of the original Special Use Permit.

AYES: Miller, Pratt, Heflin, Stewart
NOES: None
ABSENT: Shinault