

FROM THE PLANNING COMMISSION MINUTES OF AUGUST 13, 2015

AGENDA ITEMS

8. 15-0882 Revocation Hearing on Special Use Permit S78-0016 to determine if approved use ceased for greater than one year for any reason thereby causing the permit to expire by operation of law pursuant to Ordinance Section 130.22.260.A. Separately, if the Conditions of Approval have been violated or lack substantial compliance, the permit may be revoked pursuant to Ordinance Section 130.22.260.B. The property, identified by Assessor's Parcel Number 070-250-45, consisting of 2.96 acres, is located in the Shingle Springs area; and staff is recommending the Planning Commission take the following actions: 1) Find that the project is exempt from CEQA pursuant to State CEQA Guidelines Section 15321; 2) Revoke S78-0016 as the conditions established for the issuance of the permit lack substantial compliance; and 3) Revoke S78-0016 as the use has ceased for a period of one year. (Supervisorial District 4)

In response to Chair Stewart's request for an overview on the revocation hearing process, County Counsel David Livingston spoke on the provisions of a Special Use Permit and the revocation process.

Commissioner Heflin disclosed that he had done a site visit and met with the applicant.

Erik Martin distributed public comments to the Commission and made the following comments:

- His and his family's livelihood is at stake;
- Introduced those in the audience that are supporting him;
- Provided history on the property and the business;
- Mark Charlton had initiated the complaints and had provided public comment at the last hearing, but has since sold his house and moved away; and
- Confused on today's hearing for a revocation since the motion from the last meeting said he would return back regarding the Special Use Permit's expiration.

Nick Avdis of the Thomas Law Group and applicant's agent, made the following comments:

- Difficult matter since it involves applicant's livelihood;
- Paraphrased Jim Wassner's comments during his retirement speech at a Board of Supervisor's meeting regarding Code Enforcement activities and helping others;
- Facts should justify the conclusion;
- Applicant has a vested right in the Special Use Permit;
- This has caused untold stress created by a disgruntled neighbor who has since moved away;
- In June 2014, there were several meetings between the County and Brad Clark, applicant's agent, on various options and based on those discussions, Mr. Martin submitted a revision to the Special Use Permit but now the County is stating lack of substantial compliance and cessation of use;
- Acknowledged that the building footprint doesn't match the current building size, which is the size it was when Mr. Martin bought the property;

- Questioned if the site plan even valid anymore;
- Staff based their decision that the business was violating the operating hours on one email from Mr. Charlton but had no credible evidence;
- Special Use Permit runs with the land; and
- Basis for cessation of use is on a past owner's activities but has evidence stating welding use was still occurring on the property.

Commissioner Pratt stated that this was a technical issue on whether the Special Use Permit expired and was not a vendetta against Mr. Martin and he was offended by Mr. Avdis' statements. He is supportive of continuing the business but the history of the property is choppy and it appears there was a break in use. Commissioner Pratt is interested in getting Mr. Martin on the right track and moving forward.

Kendra Martin, applicant, made the following comments:

- At the site, they run the business and live there;
- This has caused much stress and they have been unable to make future plans;
- Previous property owner, Mr. Mirande, was very business-savvy and unsure why they are even here except for an email that was supposedly sent from Mrs. Mirande;
- Mr. Charlton had canvassed the area spreading misinformation;
- Had to continuously defend themselves against Mr. Charlton's allegations;
- Husband bought property from Mr. Mirande because he was his boss and he had a Special Use Permit;
- Closest neighbors are their biggest supporters; and
- Their fate of their future lies in the Planning Commission's hands.

Brad Clark, applicant's agent, made the following comments:

- Shocked that this Special Use Permit is up for termination as he thought they were working with the County on this;
- Property has had a Special Use Permit for almost 40 years;
- If revoked, they will challenge it because they wanted to work with the County on this sliver of a technicality on non-use that may or may not have happened;
- This is completely unnecessary as there is no evidence that use stopped;
- Questioned how Mr. Martin would have even known that the Special Use Permit may have been invalid due to a possible non-use for a short time 20 years prior to him purchasing the property; and
- Mr. Martin has conducted business at that site for 10 years and it is unreasonable to take his livelihood away on a sliver of a technicality that may or may not have occurred.

Efren Hernandez, resident, made the following comments:

- No problem with the applicant;
- Doesn't hear the noise; and
- Had neighbor that started this issue and is now gone.

Mike Yorba, closest neighbor, made the following comments:

- No problems;

- Applicant is a good neighbor; and
- Approved of what he is doing.

Chris Chaloupka, resident, made the following comments:

- Former Planning Commissioner;
- Special Use Permit runs with the land and should be talking on updating the permit and not revoking it;
- Activity is very unobstructive;
- Supports applicant; and
- Has lived there since 1986 and building was at its current size back then.

Logan Brown, Mr. Martin's nephew, stated he has been there for 2 years and Mr. Martin was a life changer for him.

Chair Stewart closed public comment.

Commissioner Miller stated the burden of proof of lapse of use should be on the County, not the applicant, and he doesn't see any evidence.

Commissioner Shinault made the following comments:

- Need to define "continuous use";
- 25-30 years ago, this may have happened and logic states that some type of metal fabrication activity was there, even if only for the tractors and other equipment on the property;
- Complaints started a couple of years ago out of the blue;
- Saw no proof that there wasn't continuous use; and
- Can't support the revocation.

Commissioner Heflin agreed with Commissioner Shinault and saw no basis to revoke the permit.

Commissioner Pratt wanted to see Mr. Martin move forward and felt the permit needs to be updated. He recommended denying the revocation.

Chair Stewart stated that from a legal standpoint, the permit may have lapsed at some point on a legal technicality. He would prefer to not revoke the permit but to instead move forward with the next agenda item.

There was no further discussion.

Motion: Commissioner Miller moved, seconded by Commissioner Heflin, and carried (5-0), to deny the revocation.

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