

City of Desert Hot Springs
65950 Pierson Boulevard
Desert Hot Springs, CA 92240

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Building Department
MAR 25 2019
City of Desert Hot Springs

RE: Letter of Appeal, Grounds of Appeal

This letter is appended to our letter of appeal, regarding Item #2 of the Agenda for the Planning Commission meeting of March 12, 2019, ("the Project,") specifically the adoption of a Mitigated Negative Declaration/Mitigation Measure Monitoring Plan, and the adoption of convenience and necessity findings for a Type 21 off-sale beer and wine permit; and the related conditional use permit.

Initially, we adopt by reference the letter submitted to the City for the March 12 hearing, and attached to this letter. In that letter, we urged the Planning Commission not to adopt findings of convenience and necessity, to reject the related conditional use permit, and to send the Initial Study back to staff in order to conduct more review, particularly on the question of noise impacts. We raised these issues at the earliest possible stage in the review; many of the materials were not forwarded to us and only became publicly available a handful of days before the hearing.

Nevertheless, the adoption of the conditional use permit and findings of convenience and necessity were in error. The city staff has proposed no findings that override the state and local policy against saturation of Type 21 off-sale of alcohol and wine. To the contrary, the findings adopted by the Planning Commission merely restate some minimum requirements for sale of

alcohol--i.e., that the business will act professionally and take care not to violate alcohol sales laws--and states that the area is in need of *grocery* sales, but not alcohol sales. (This is naturally the case, since there is a saturation of off-sale permits already). In essence the Planning Commission by adopting these findings and the related conditional use permit have committed to city to over-saturation of Type 21 alcohol sales on no findings at all, beyond restatements of what the law already minimally requires. This was in error and amounts to acting without a rational basis and no substantial evidence. Making findings of convenience and necessity merely by reiterating that an applicant will not violate the law, and on the grounds that the public desires unrelated goods, has no substantial evidence.

The adoption of the mitigated negative declaration was also in error for the reasons cited in the letter submitted to the city and attached hereto. In particular, the failure of the initial study to consider noise impacts and in particular the high intensity and intermittent noise impacts from logistical services--e.g., truck beeps, which will exceed allowable noise levels under the City ordinance as well as generally; sounds related to metal gates being raised and lowered; and other noises associated with early morning and evening truck deliveries.

The failure to conduct this study at all, much less impose relevant mitigation measures, is a fatal defect in the environmental review process. Certainly, given the nearby residential properties (and therefore, of "sensitive receptors"), a fair argument exists that more full environmental review should have been conducted. This is particularly the case because no mitigation measures were offered for these specific impacts.

For these reasons, as well as those raised in the course of the Planning Commission hearing, we are appealing the decision of the Planning Commission to the City Council, and are requesting a full hearing on the matter of the adoption of the Mitigated Negative Declaration, and the adoption of findings of necessity and convenience.

Sincerely,

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March 12, 2019

City of Desert Hot Springs
65950 Pierson Boulevard
Desert Hot Springs, CA 92240

RE: Mitigated Negative Declaration/Conditional Use Permit, Type 21 Off-Sale Beer and Wine Permit

Dear Commissioners,

This letter is being submitted to provide comment on the proposed Grocery Outlet development at Palm Drive across from Park Lane (“the Project”) which you will consider this evening. The Commission Staff is proposing that the Commission adopt a mitigated negative declaration (MND) and findings of convenience and necessity to allow for off-sale of beer and wine at this site. We are urging you tonight to send the Project back for further study as to its potential impacts on the community, including the physical and built and environment, and to reject the findings of convenience and necessity.

Based on a review of the Initial Study prepared by staff, we believe there is a fair argument that there will be impacts that will not be satisfactorily addressed by mitigation measures, or which were not adequately addressed.

Noise Impacts

The Initial Study prepared for the Project has a discussion of noise impacts. However, the study does not adequately address the long-term impact of operation of the site that will likely

stem from the particular use of the site. Specifically, the study does not provide any information regarding the noise impact on residential properties (typically “sensitive receptors” for purposes of noise impacts) from logistics associated with a high-intensity grocery use. While reference is made to the operation of HVAC equipment during the operation of the facility, there is no indication in the initial study that separate study was made of the impact from deliveries to the site, particularly from trucks delivering products to the site. Trucks are equipped with caution systems, backup beepers, that typically produce noise between 97 and 112 decibels. This type of noise impact would be in excess of the City noise level limitations; but more importantly, compliance with City ordinances does not alone show that an impact will be less than significant.

Relatedly, noise generated from delivery trucks in the form of metal gates both on trucks and on the structure’s docking facilities can reach levels in excess of acceptable noise impacts. However, there is no data in the initial study regarding this potential noise source

For residents who live abutting the site, the prospect of early morning and evening noise impacts is significant, and the Initial Study does not provide any data regarding the potential impacts on specific properties from these impacts. Since these particular noise impacts are not studied, no mitigation measures are proposed for them. The potential for significant environmental impacts are not addressed by the initial study and we would urge the Commission to refer the issue back to staff for a complete study specifically addressing this issue.

Transportation Impacts are Inadequately Analyzed

The Initial Study indicates that there would be conflicts with the City’s existing congestion and alternative transportation circulation plans. However, neither the public nor the

commission is given sufficient information as to what the nature of that conflict is, nor how the mitigation measure is specifically calibrated to address these problems and conflicts. For example, the section on “Impacts on Other Transportation Modes,” page 69 of the Initial Study, does not state how these alternative modes of transportation despite the impacts table stating there *would* be a significant impact (prior to mitigation) on these types of circulation alternatives. Mitigation measures need to accurately calibrated to the impact, and the public and local agency decision makers must be adequately informed of the nature of mitigation measures’ calibration to potentially significant impacts in order to have the opportunity to review and comment on them.

Relatedly, transportation mitigation measure TRA-A states that the city engineer shall “assure” that fair share contributions will be made “prior to occupancy,” but no actually-enforceable mechanism is detailed there; for example, a requirement that some permit to which the project proponent is entitled is not issuable without confirmation, reviewable by the City and public prior to (in this case) occupancy. Mitigation measures to be adequate must not be speculative or rely only on “reviews” but have some enforcement mechanism.

Finding of Convenience and Necessity

Staff is recommending that this Commission accept findings of “convenience and necessity” to allow for issuance of a Type 21 alcohol sales permit from the Department of Alcoholic Beverage Control. Adoption of these findings is necessary because the area in which the Project sits is already saturated with Type 21 permits. The Project also sits near residential areas.

The grounds for accepting these findings are inadequate. Two of the grounds proffered, that alcohol sales will be “carefully controlled” and that the seller will behave in a professional and orderly manner, are minimum standards for any seller of alcohol. There is no overriding consideration here that rises to the level of overriding the clear public policy that Type 21 permits should not be issued for facilities in areas where saturation already exists.

The remaining ground for acceptance is that the facility will sell “products and necessities” for every day use with alcohol sales as a small percentage of sales. While access to “products and necessities” may be a welcome addition to the community, this is not a reasonable factor under the circumstances, since the findings offer no context as to why this justifies adding a Type 21 permit to an over-saturated area.

Instead, the findings are just a recitation of the requirements of the state Business and Professionals Code requirements, with boilerplate recitations of the basic requirements for any seller of alcohol under a Type 21 permit. The reason for a requirement for findings of convenience and necessity is a presumption that saturation of alcohol sales are detrimental to the health, safety and general welfare public. A finding that a permit holder will abide by the minimum requirements for a seller of alcohol sales is not substantial evidence that issuance of a permit is necessary for the public. Without findings that the *public* has a need for the permit (i.e., not merely the seller) a finding of public necessity and convenience is inappropriate.

Sign Variance

As the staff report indicates, two proposed signs exceed the allowable signage size permitted by ordinance. The staff report does not adequately address the need for variance for

these signs. By violating the applicable standards, the signs also implicate the aesthetic impacts of the site for purposes of CEQA, which are not addressed by the Initial Study or the mitigated negative declaration. Variances from the city code should only be granted where there is a necessity, other than convenience of the applicant, for the variation. The staff report does not detail why this variation is necessary, other than reasons speaking to the convenience of the applicant themselves.

Conclusion

For the above reasons, we urge the Commission to send the application back to staff for further study, especially as to the mitigation measures related to traffic, and the potential noise impacts. We also urge the Commission to reject the findings of convenience and necessity until such time as findings more appropriate to the *public* benefit are prepared.

Thank you for your time and attention to this matter.

Sincerely,

Robert E. Garcia

Gary Garcia

Maria Bermudez

Victor Elizalde