



ITEM NO. _____

STAFF REPORT

DATE: JULY 18, 2017

TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS

FROM: BILL SMITH, CITY MANAGER

PREPARED BY: MARK TOMICH, DEVELOPMENT SERVICES DIRECTOR

SUBJECT: **CF EQUIPMENT APPEAL.** TIME AND PLACE FIXED TO CONSIDER A PUBLIC HEARING TO REVIEW/APPEAL THE PLANNING COMMISSION DECISION DENYING APPLICATIONS (FILE INDEX NO.: DAP-001-234) FOR: (1) Conditional Use Permit (CUP) for the legalization and continued operation of an existing corporation/contractor's yard as a primary business and a construction equipment (scaffolding) rental business as a secondary business; and (2) Architecture & Site Plan Review for the construction of a new building (office/carport for 'light repairs' of trucks/vehicles), above-ground fuel tanks, outdoor storage of metal containers and materials, and related site improvements, including fencing, planting, and paving, and (3) Chain Link Fence Review for screening outdoor storage areas, on a 1.65-acre property (71,891 square feet) located at 1200 S. Jefferson Lane and zoned M-1, SDA-O, Light Industrial-Sensitive Development Area Overlay. **(FILE INDEX NO.: DAP - 001-429)** (Appellant: Frank O' Brien)

RECOMMENDED ACTION

It is recommended that the City Council consider one of the following actions:

1. Uphold the Planning Commission's Denial and adopt Resolution No. R-53-17 to deny the appeal and uphold the Planning Commission's denial of the applications; or
2. Overturn the Planning Commission's Denial and approve the Project by adopting Resolution No. 56-17 to overturn the Planning Commission denial of the applications and approve the applications; or
3. Continue the public hearing and direct staff to provide additional information needed for a decision.

BACKGROUND

On May 23, 2017 (continued from April 11 & April 25), the Planning Commission held a public hearing to consider applications (File Index No. DAP-001-234) for:

- (1) Conditional Use Permit (CUP) for the legalization and continued operation of an existing corporation/contractor's yard as a primary business and a construction equipment (scaffolding) rental business as a secondary business; and
- (2) Architecture & Site Plan Review for the construction of a new building (office/carport for 'light repairs' of trucks/vehicles), above-ground fuel tanks, outdoor storage of metal containers and materials, and related site improvements, including fencing, planting, and paving, and
- (3) Chain Link Fence Review for screening outdoor storage areas, on a 1.65-acre property (71,891 square feet) located at 1200 S. Jefferson Lane and zoned M-1, SDA-0, Light Industrial-Sensitive Development Area Overlay (collectively the "Application").

Staff's original recommendation for the Applications was for denial. This recommendation was based upon concerns that, unlike other contractors/corporate yard uses which use pickup trucks or other vehicles classified as 'light trucks', the project primarily uses heavy-duty tractor-trailer trucks ("bottom-dump" trailers). The project was expected to generate up to 20 trips by heavy-duty tractor-trailers, consisting of 10 trips exiting the site during the morning and an additional 10 return heavy truck trips later in the afternoon. Further, the expected route for the applicant's trucks would take them through local residential streets located north of the project site. As a result, Staff was concerned that the use of heavy trucks would have greater impacts on the surrounding residential uses, including noise generated at all speeds, during acceleration, travelling, and braking/stopping, from engines, exhaust and tires on roadway pavement. (See original Planning Commission Staff Report Dated April 11, 2017 – Attachment 4a)

Subsequent to the first public hearing, the Applicant modified their Project Description to make changes to their proposed operations to mitigate the concerns expressed in the original Planning Commission staff report and by residents. The applicant-proposed restrictions included:

- Modify start time of trucks trips to 6:00 am (from original proposed 5:00 a.m.)
- Space truck trips apart by 15 minutes.
- Cease truck trips 30 minutes before and after the start and end of school day.

The Planning Commission considered the Applicant's changes to their operations plan and additional concerns related to the modification, including the following:

- Ability to monitor and enforce applicant-proposed restrictions.

- Ability to control truck trips since trucks are owner-operated and drivers are independent contractors.
- The monitoring of additional impacts, including truck trips, from the proposed secondary business at the site.
- The appropriate method of screening of outdoor storage areas from the street and other properties.

At the public hearing, the following persons spoke on behalf of the applications:

- Frank O'Brien, applicant.
- Doug Andresen, Project Architect.
- Neville Ferreira, Project Engineer

The following persons also spoke during public comments:

- Amador Roman.
- Rachel Warner.
- Christine Irish Re.
- Bill Coleman.

The Planning Commission considered the application, including the applicant-proposed restrictions but found that the applicant-proposed restrictions still did not fully mitigate potential impacts.

The Planning Commission voted 3-to-2 to adopt Resolution R-11-17 (Attachment 5d) denying the CUP application based on the inability to make the following findings necessary for approval of a CUP in the SDA-O zone.

ISSUES/ANALYSIS

Subsequent to the Planning Commission's denial of the Applications, the Applicant/Appellant submitted a timely appeal. The Applicant's appeal includes reasons for overturning the Planning Commission's denial. These are set forth below, followed by staff's response:

Appeal Reason 1-a: "Current zoning and proposed land use is consistent with the General Plan for the immediate surrounding area as detailed in the projects CEQA document (Initial Study). Thus finding No. 1 in the resolution for denial of my application is unfounded in that the proposed land use is allowed by right.

Response: To clarify, the proposed land use is not "allowed by right" (which would mean it could be approved at staff level with no public hearing) but instead requires the approval of a conditional use permit (CUP) application by the Planning Commission at a

public hearing. The Zoning Code requires a CUP for the proposal for two reasons: First, any contractor/corporate yard use requires a CUP even those restricted to use of light trucks; Second, all developments, even those for uses permitted by right, require a CUP when proposed on property with a SDA-O zone overlay, such as the subject property. The CUP process allows the Planning Commission the discretion to either approve, deny, or approve with conditions applications. Therefore, Finding No. 1 of the Planning Commission denial resolution is not unfounded since the CUP allows for determining whether a proposal conforms to the goals and policies of the General Plan. Therefore, this does not provide a basis for granting the appeal to overturn the denial.

Appeal Reason 1-b: "Further, any perceived impacts would not be present in the general areas of the nearby residences if the Fogg Street underpass was open to provide access to La Cadena Drive. I believe that the outcome of this hearing would have been different had this main route be available to service the ingress and egress of the immediate light industrial area. The repair of this underpass is proposed. This will be a great benefit to all traffic needs of this area of the community."

Response: It is agreed that negative impacts from the diversion of project truck traffic towards the residential neighborhood to the north could be minimized if the Fogg Street underpass at the BNSF railroad line (just east of La Cadena Drive) was not damaged and available for use by truck traffic. As stated at the Planning Commission public hearing, the railroad, regional transportation agencies, and the City are discussing repair of the underpass. However, there is no definitive funding source or date when the underpass will become available again for traffic use. Therefore, use of the Congress Street path ("Path D") was recommended as the preferred route for an interim period until such time that the Fogg Street path ("Path A") is made available (see Map Exhibit – Attachment 4c). The denial of the application by the Planning Commission was based on a determination the project truck traffic would create negative impacts onto residentially-zoned properties and a school site along Path D during this interim period. Therefore, the availability of Path A sometime in the future does not provide a basis for granting the appeal to overturn the denial.

Appeal reason No. 2-a: "The testimony given by all of the residential neighborhood speakers from the street seemed to be born out of frustration with the City's inaction to address traffic mitigation measures and the fact that I need to be punished for starting my business without the proper process. My drivers never use 7th Street to access their route."

Response: To clarify, the denial of the application by the Planning Commission was based solely on impacts generated by the applicant's business operation and not from other businesses. At the public hearing, there was discussion regarding existing truck traffic on the two paths adjacent to the Wilson Elementary via 7th Street ("Path B") and 8th Street

("Path C"). However, this issue is to be addressed independent of this application since these paths are not to be used by the project as truck paths. The impacts discussed for this application relate to the additional truck traffic along Congress Street ("Path D") generated by the applicant's business operation.

Appeal reason No. 2-b: "This case has taken two years out of my three years in operation to process, because of the CEQA process and the ensuing mitigation measures that have been requested and complied with. The Fogg Street underpass was open at the time of filing the application and the outcome has been swayed because of the unfortunate diversion of truck traffic that has resulted from its closure."

Response: It is agreed that if the CUP had been considered prior to November 16, 2015 when the Fogg Street underpass was not damaged and available for use by heavy trucks, then the Planning Commission may have been able to make the necessary findings, including that the project will not negatively impact the adjacent residential neighborhood. However, the applicant apparently operated for over a year (approximately March 2014) without any city approvals before filing the CUP application, and then only after being cited by the City Police/Code Compliance, in May 2015. The process has taken two years partly due to the applicant asking for more time to modify the project description and to submit and resubmit materials necessary for a complete application. After the initial submittal and a resubmittal in August 2015, the applicant did not make a resubmittal until January 2016 during which time the underpass was damaged. Due to the need for diversion of traffic towards the residential neighborhood to the north of the site, the application was re-evaluated and a determination made that the traffic impacts needed to be analyzed together with required CEQA documents. It was not until June 21, 2016, that the traffic study submitted by the applicant was accepted; and the applicant again modified the application with submittals in August 2016 and in October 2016. In November 2016, the application was deemed complete and the CEQA documents prepared for notification of other agencies and for public review prior to the Planning Commission public hearings. The fact is that the applicant has been operating his business at the site without city approvals while the applications have been processed, but this fact does not obligate the City to allow the operation to continue if the necessary findings for approval of the CUP cannot be made.

Appeal reason No. 2-c: "Even with the temporary diversion of traffic the current route is classified for heavy traffic (trips per day) and the generation of noise from vehicular traffic is within acceptable tolerances (reference Project Initial Study- Traffic/Land Use & Noise Sections)."

Response: The CEQA analysis found that the amount of truck traffic generated by the project would not be significant in the context of citywide and regional traffic congestion. However, the approval of a conditional use permit also requires that findings required by

the Colton Municipal Code for conditional use permits be made. The Planning Commission determined that the project truck traffic would impose significant noise and traffic impacts on nearby neighborhoods that cannot be mitigated to a level of insignificance, partly due to the early hours. Therefore, to clarify, the denial of the application by the Planning Commission was based on the inability to make the necessary findings for a CUP and not based solely on the CEQA analysis. The CEQA analysis does not, by itself, provide a basis for granting the appeal to overturn the denial.

Appeal reason No. 3-a: "Finding #2 and Section 2 are unfair and unsubstantiated when it comes to the noise generated by traffic and weight of the trucks utilized at our business, Our trucks are always 'empty' when they enter and exit the property. They are far lighter than other loaded trucks that frequent the current truck route"

Response: The denial of the application by the Planning Commission was based on the size of the trucks, rather than weight when loaded or empty. Heavy-duty trucks, as proposed for the project, generate significantly more noise than light trucks and other vehicles. As stated by the Colton General Plan Noise Element: "In general, trucks generate 10 to 15 dbA greater than normal passenger traffic. However, actual noise levels produced by motorized vehicles depend on a complicated array of factors, such as road and tire conditions, speed, and the type of muffler used on vehicles." Trucks generate noise at all speeds, including during acceleration, travelling, and deceleration during braking, generated from engines, exhaust and tires on roadway pavement. Although impacts from trucks that are empty may be less than when loaded, the impacts from empty trucks are still found to be significant as stated in the findings for denial. An alternative to denial may be for the City Council to impose conditions which allow only land uses of light trucks. Such uses allowed in the M-1 zone that do not involve heavy trucks include offices, self-storage facilities, manufacturing uses, and vehicle repair. This also includes contractor's yards, some of which only use light trucks, but the applicant has stated that this alternative is not feasible since the use of heavy trucks is necessary for his business operation. Additionally, the fact that heavy trucks will be empty does not provide a basis for granting the appeal to overturn the denial.

Appeal reason No. 3-b: "and yet; I feel this mitigating factor was drowned out by public outcries for action from the City to police truck routes in that area that I am highly sensitive to and avoid compromising. I am aware of the resident's concerns and feel that enforcement of these violators should be a high priority. I enforce a strict policy with my drivers that they lose a week of work if found driving on unapproved streets and they lose the right to operate on their second offence."

Response: Again, there is no presumption that trucks from the project have been or will be using truck paths along 7th Street and 8th Street, which are not the preferred truck path. The denial of the application by the Planning Commission was based solely on the

merits of the application and the impacts from additional truck traffic along the Congress Street path ("Path D").

FISCAL IMPACTS

None

ALTERNATIVES

1. Uphold the Planning Commission's Denial and adopt Resolution No. R-53-17 to deny the appeal and uphold the Planning Commission's denial of the applications; or
2. Overturn the Planning Commission's Denial and approve the Project by adopting Resolution No. R-56-17 to overturn the Planning Commission denial of the applications and approve the applications; or
3. Continue the public hearing and direct staff to provide additional information needed for a decision.