



PLANNING DEPARTMENT COUNTY OF TEHAMA

STAFF REPORT

DATE: November 16, 2017

TO: Planning Commission

FROM: Kristen Maze, Director of Planning

SUBJECT: PLANNING COMMISSION REVIEW OF JUNE 21, 2017 DIRECTOR OF PLANNING LETTER IDENTIFYING REVISED USE PERMIT NO. 96-18 AS NULL AND VOID PURSUANT TO SECTIONS 17.70.050(B) & (C); LOCATED ON THE EAST SIDE OF I-5 FREEWAY AT JELLY'S FERRY ROAD INTERCHANGE; APN: 009-530-69; OWNERS: ROLLING HILLS PARTNERS

BACKGROUND:

On April 19, 2003 revised Use Permit No. 96-18 became null and void based on Tehama County Zoning Code Section 17.70.050(B), which states "*In any case where a use permit has not been used within one year after the date of granting thereof, then without action by the Planning Commission, the Use Permit (UP) granted shall be null and void*" (See Conditions of Approval dated April 18, 2002, as Attachment A). On April 18, 2002 Tehama County approved substantial revisions to Use Permit No. 96-18 with 29 Conditions, 16 of the Conditions were also Mitigation Measures from previous environmental documents adopted on the 141.14 acre project site. The project included; the construction of a combination Gas Station/Mini-Mart, 100 Unit R.V. Park, 60 unit Motel, Restaurant and the associated improvements including the preliminary design for an open and closed sewer treatment facility (See Plot Plan and Sewage Treatment System, Attachment B).

In an attempt to accommodate the owner's representative assertions regarding the development of the site and its uses, the Planning Director met with the individuals on the subject property, after engaging in numerous correspondences between Rolling Hills Partners associates, legal counsel and others. These actions ultimately lead the Director on June 21, 2017 to write a letter to the owner's legal representative that relayed the Tehama County Code and acknowledged that Revised Use Permit No. 96-18 was Null and Void as indicated on page 6 of the April 18, 2002 Use Permit's Conditions of Approval (See Attachment A). In fact, the Planning Director, also expressed in her letter that the Use Permit was not only null and void pursuant to Tehama County Code Section 17.70.050(B) as quoted above, but also pursuant to Section 17.70.050(C), which is relevant as well and states "*In any case where an active use permit has been abandoned for a period of six months, the use permit shall be deemed null and void*" (See Planning Department Letter Dated June 21, 2017, Attachment C). As indicated above, there have been several correspondences between Tehama County and the Rolling Hills Partners

legal counsel, Mr. Bart Fleharty esq. from Wells Small Fleharty & Weil regarding the legitimacy of Use Permit No. 96-18 moving forward after a decade or more of inactivity and no developed use(s) on the property. Therefore, Mr. Fleharty has requested that the County set a hearing to bring forth the matter and rescind the Planning Directors letter dated June 21, 2017, which states that the Use Permit No. 96-18 has no vested rights and in fact according to the code is null and void (Rolling Hills Partners Legal representatives letter dated September 14, 2017 and Exhibit's A-G, as Attachment D). On October 17, 2017 the Tehama County Board of Supervisors agreed to bring the item before the Planning Commission for a hearing to determine vesting.

SEPTEMBER 14, 2017 USE PERMIT NO. 96-18 CORRESPONDENCE

On September 14, 2017 the property owner's legal representative submitted a final letter employing Tehama County to set a hearing and/or rescind the Planning Directors determination that the Use Permit No. 96-18 is null and void without any vested rights to pursue construction permits. The owner asserts that the expenditure of monies over a decade ago in the pursuit of complying with 29 Conditions of approval is enough to vest the rights Use Permit No.96-18 in perpetuity. The property owner's representative has claimed in the most recent letter dated September 14, 2017 that over \$300,000 of the property owners money has been spent in the pursuit of fulfilling seven of the 29 Use Permit Conditions (See an itemized breakdown of use permit conditions, Attachment E). The Planning Department asserts that the partial completion and/or undocumented or verified satisfaction of a few conditions pursued over a decade ago does not invalidate Tehama County Zoning Code Section 17.70.050(B), "In any case where a use permit has not been used within one year after the date of granting thereof, then without action by the Planning Commission, the Use permit granted shall be null and void".

DISCUSSION:

The County code provides a one year term or grace period for a Use Permits validation through the completion and finalizing of a building permit for the conditionally approved uses. In essence, once the conditions of approval have been satisfied for the Use Permit and the projects construction can be finalized with occupancy approved, the uses may be active and in operation, thus vesting the Use Permit. Nowhere in the County code does a sliding scale exist for arbitrary and capricious measurements of an incomplete projects vesting, such as that asserted by the property owner's legal representative. In fact, based on the information available, the current County code does not allow for the consideration of a range of project developments and/or the satisfaction of one or two conditions out of 29 project requirements.

The letters from Tehama County, including the June 21, 2017 letter from the Tehama County Planning Director clearly relays the Tehama County Zoning Codes sections that express the thresholds of a valid Use Permit, which Use Permit No. 96-18 has not achieved based on the empty parcel that is void of the buildings and the uses describe in the Revised Use Permit No. 96-18 Plot Plan/Site Plan as identified in Condition No.2 (See Attachment B).

The Planning Departments responsibility to the County is to uphold the Code until such time that the Board of Supervisors deems a change is necessary. See the code sections below in reference to the use of the property:

Tehama County Zoning Code Section 17.70.050(B); Use Permit Null and Void.

On April 19, 2003 revised Use permit No. 96-18 became null and void based on Tehama County Zoning Code Section 17.70.050(B), which states *"In any case where a use permit has not been used within one year after the date of granting thereof, then without action by the Planning Commission, the Use permit granted shall be null and void"*; and

Tehama County Zoning Code Section 17.70.050(C); Use Permit Null and Void.

On April 19, 2003 revised Use permit No. 96-18 became null and void based on Tehama County Zoning Code Section 17.70.050(C), which states “*In any case where an active use permit has been abandoned for a period of six months, the use permit shall be deemed null and void*”.

SUMMARY:

The Tehama County Zoning Code does not specifically address the review of Tehama County Zoning Code Section 17.70.050(B), because it expressly states that if the use approved by said use permit *has not been used within one year after the date of granting, then without action by the Planning Commission, the use permit granted shall be null and void*. Although, this Tehama County Code section is verbatim and not an interpretation, the Tehama County Code Section below, clearly grants the Board of Supervisors the power to review the Planning Directors decision on this matter, if they so choose, with a motion to call the matter up.

17.02.025 - Planning Director to interpret.

Where uncertainty exists regarding the interpretation of any provision of this Title or its application to a specific site, the Director of Planning shall determine the correct application of that provision in consultation with the County Counsel and any other affected County department heads. The Director shall report any interpretation made pursuant to this section at the next scheduled meeting of the Planning Commission, and shall keep a record of such interpretations that shall be available to the public. Any decision of the Director made pursuant to this section may be appealed to the Planning Commission by any interested person, or may be reviewed by either the Planning Commission or Board of Supervisors on its own motion. Appeal from any decision of the Planning Commission hereunder may be made to the Board of Supervisors.

Revised UP No. 96-18 Conditions including the February 21, 2008 Condition #21 Revision:

On April 18, 2002 Tehama County approved substantial revisions to Use Permit No. 96-18 with 29 Conditions, with one modified on February 21, 2008 (See Attachment H, Modified Condition No. 21-Sewage Disposal Requirements). As indicted throughout this report, the County code provides a one year term or grace period for a Use Permits validation through the completion and finalizing of a Building permit for the conditionally approved uses. In fact, based on the information available, the current County code does not allow for the consideration of a range of project developments and/or the satisfaction of one or two conditions out of 29 project requirements. Furthermore, 16 of the conditions are also mitigation measures from previous environmental documents adopted on the 141.14 acre project site. While a couple of conditions (CEQA Mitigation Measures) may have been started over a decade ago only one or two out of the sixteen (16) can be verified as completed and/or satisfied; Condition/Mitigation Measure No's 18- Streambed Alteration Permit and 25- Ramp Illumination. (See attachment E)

Revised UP No. 96-18 CEQA Analyses and Documentation:

CEQA is intended to be used in conjunction with discretionary powers granted to public agencies by other laws. Tehama County as the lead agency for Revised UP No. 96-18 is responsible for determining if a project and/or a component of a project such as a Wastewater Treatment System will have adverse neighborhood/community or public impacts that can be mitigated, are potentially significant impacts or significant impacts that cannot be mitigated feasibly. If there is substantial evidence, based on the whole record before a lead agency, that a project may have a significant effect on the environment, the agency shall prepare a draft EIR. In determining whether an effect will be adverse or beneficial, the lead agency shall consider the views held by members of the public in all areas affected as expressed in the whole record

before the lead agency. Before requiring the preparation of an EIR, the lead agency must still determine whether environmental change itself might be substantial. For example, an activity which may not be significant in an urban area may be significant in a rural area, such as a Wastewater Treatment System for a 100 unit RV Park, 60 unit Motel, Restaurant etc. in an unincorporated rural area of Tehama County that is adjacent to an established Rural Residential Neighborhood.

Revised Use Permit No. 96-18 disclosed to the public that potential significant environmental effects of such a commercial project, as noted above, could be mitigated even though the adverse and potentially significant effects of the offensive odors that would be emanating from the projects Wastewater Treatment System were not analyzed or reported to the decision makers and public. As shown in Attachment B the Wastewater Treatment System for a 100 unit RV Park, 60 unit Motel, Restaurant etc. is proposed to be located within a couple hundred feet of the established Rural Residential Neighborhood known as Rolling Hills Subdivision. However, without any analyses or substantial evidence to the contrary of the potential offensive odors that are routinely and regularly emitted from Wastewater Treatment Plants. The Planning Commission on April 18, 2002 voted 4:0:1 to make the following finding among others; included in Attachment A:

Revised Use Permit No. 96-18 Compatibility Finding 1. " That the location; size, design and operating characteristic of the gas station/mini-mart, 100 unit R.V. Park, 60 unit Motel and Restaurant will be compatible with, and will not adversely affect or be materially detrimental to adjacent uses, buildings or structures, with consideration given to harmony in scale, bulk, coverage and density to the harmful effect, if any, upon desirable neighborhood character; to generation of traffic, and the capacity and physical character of surrounding streets, and to any other relevant impact of the proposed use."

This unsubstantiated finding, becomes apparent when reviewing Revised Use Permit No. 96-18 Mitigated Negative Declaration; Air Quality Section III.e, Land Use and Planning IX.a, Mandatory Findings of Significance XVII.c, and the Rolling Hills Subdivision FEIR because none of those introduce, analyze or discuss the projects Wastewater Treatment Systems potential to create objectionable/offensive odors that would affect the Rolling Hills Subdivision and surrounding uses. There is no mention of the Wastewater Treatment Systems potential to emit foul offensive odors and the harmful and adverse effect that the Rolling Hills subdivision could be exposed to. Furthermore, there are no mitigation measures currently in the record that address the potential for adverse, potentially significant offensive odors. In addition the County has no record of indemnification and hold harmless agreements that have been recorded on the rural residential lots. However, the applicant/property owner will be required to construct the Wastewater System to meet the Regional Water Quality Control requirements and address all potential discharge and onsite retention for such a system.

PUBLIC NOTICE:

A public hearing notice regarding the appeal of the Planning Directors decision for Use Permit No.96-18 was mailed to property owners in the surrounding area with an estimated radius of 10,000 ft. for this hearing project on November 3, 2017.

RECOMMENDATION:

Staff recommends that the Planning Commission take one of the following actions:

- A. Move to determine that Revised Use Permit No. 96-18 is null and void pursuant to Tehama County Zoning Code Section 17.70.050(B)&(C); as indicated in the**

Director of Planning's June 21, 2017 Letter based on the substantial evidence presented herein and the Findings in Attachment F.

Or

B. Move that the Planning Commission take no action and request the Board of Supervisors hear said request.

Or

C. Reverse the Director of Planning's Determination that the Revised Use Permit No. 96-18 is Null and Void Pursuant to Tehama County Zoning Code Sections 17.70.050(B)&(C) and that the Use Permit is vested based on the Findings within Attachment G.

ATTACHMENTS:

- A. Planning Commission Conditions of Approval and Minutes with Findings dated April 18, 2002
- B. Plot Plan and Sewage Treatment System
- C. Letter from the Planning Director Dated June 21, 2017 relaying the Tehama County Code Sections that nullified and/or voided Revised Use Permit No. 96-18.
- D. Letter from Rolling Hills Partners Legal representatives dated September 14, 2017 that includes Exhibit's A-G
- E. Itemized Breakdown of Potentially Satisfied Use Permit (No. 96-18) Conditions (Excel Table Format).
- F. Findings Substantiating the Director of Planning's Null and Void Determination in June 21, 2017 letter
- G. Findings Overturning Director of Planning's Null and Void Determination
- H. Modified Condition No. 21-Sewage Disposal Requirements; February 21, 2008
- I. Adopted Revised Use Permit No. 96-18 Mitigated Negative Declaration
- J. Rolling Hills Partners Legal representatives Submittal November 2, 2017 that includes Exhibit's 1-11