



Board Agenda Item 39

DATE: February 28, 2017

TO: Board of Supervisors

SUBMITTED BY: Steven E. White, Director
Department of Public Works and Planning

SUBJECT: Land Use Permit Processing Agreement

RECOMMENDED ACTION(S):

1. **Approve and authorize Chairman to execute Land Use Permit Processing Agreement with Smith Mountain, LLP, related to the processing of a Director Review and Approval Application for a sports complex to be operated by Immanuel Schools on real property located at 11490 Rio Vista Avenue, Reedley, California.**
2. **Determine that the approval and authorization of Chairman to execute the Land Use Permit Processing Agreement is exempt from the requirements of the California Environmental Quality Act, Public Resources Code Section 21000, et seq., and direct staff to file a Notice of Exemption with the Office of the Fresno County Clerk.**

ALTERNATIVE ACTION(S):

The Board may determine to not approve the recommended actions, resulting in potential delays in the processing of the land use permit. If the Board does not approve the Recommended Actions, staff recommends that the Board identify the concerns it has with the Recommended Action and direct staff to return at a later date with revised recommendations.

RETROACTIVE AGREEMENT:

The recommended Land Use Permit Processing Agreement (the "Recommended Agreement") is retroactive to September 27, 2016, the date that staff reached tentative consensus with the Applicant on the material terms of Recommended Agreement. Since that date, staff and County Counsel worked with the Applicant and the Applicant's attorney to negotiate and draft the Recommended Agreement and schedule this item for hearing before the Board.

FISCAL IMPACT:

There is no increase in Net County Cost associated with approval of the Recommended Actions. Approval of the Recommended Actions would result in the County not collecting certain land use permit fees totaling \$7,398. The Department will absorb the impact of this lost revenue within its FY 2016-17 Public Works and Planning Org 4360 Adopted Budget.

DISCUSSION:

The purpose of the Recommended Agreement is to provide for an orderly process by which the Applicant will file, and the County will review and act on, an Application for a Director Review and Approval land use permit ("DRA Application") that would, if granted, govern the permitted use of the Property, including a sports complex (the "Sports Complex"). The Recommended Agreement would not bind the County to reach any particular determination on the DRA Application, and the County will determine, based on the facts in the record and applicable legal requirements, the appropriate action to take on the DRA Application. Prior to acting on the DRA Application, the County will conduct the level of environmental review of the project proposed by the DRA Application, as required by law.

Background

Applicant Smith Mountain, LLP ("Applicant"), has represented to Department staff that:

- it owns a 20.10 acre parcel ("Parcel 1") and a 37.90 acre parcel ("Parcel 2") of real property located at 11490 Rio Vista Avenue, Reedley, California (together, Parcel 1 and Parcel 2 are referred to as the "Property");
- it leases an approximately two (2) acre portion of Parcel 1 to Teen Challenge of Southern California, Inc., a California Nonprofit Corporation ("Teen Challenge"), which operates a residential educational facility for high school age children.
- it leases the remaining portion of Parcel 1 and all of Parcel 2 to a private high school, Immanuel Schools (the "School"), which the School intends to use for a sports complex which will include facilities for baseball, softball, track and field, tennis, football activities, bleachers, restrooms, and a "snack shack" serving refreshments (the "Sports Complex").
- the School would use the Sports Complex for physical education classes and as grounds on which its sports teams would practice and compete.

Fresno County Zoning Ordinance

The structures associated with the subject development are located in the Limited Agricultural Zone District ("AL Zone District") of Fresno County (County Zoning Ordinance, § 817).

Section 817.2.G of the County Zoning Ordinance permits private schools of an elementary or secondary level to be constructed and operated in the AL Zone District subject to the County's review and approval thereof pursuant to Section 872 of the County Ordinance Code, commonly known as a Director Review and Approval Permit ("DRA").

Department staff determined that the Sports Complex is intended to be operated as part of the School, and therefore, the DRA Application is the appropriate process to determine whether a land use permit should be granted for the Sports Complex.

Prior to County review of the construction and operation of the Sports Complex, Applicant applied for and received twelve (12) building permits from the County, to construct certain facilities that would comprise the Sports Complex. The County has conducted inspections on certain components of these facilities and signed the inspection record accordingly, but the County has not issued occupancy permits for any of the facilities.

County staff has determined that these building permits were issued prematurely because they were issued prior to Applicant's filing of a DRA Application with the County, and County's review thereof and determination thereon whether to grant a DRA.

The Applicant informed the County that Applicant believes that a DRA Application, and DRA, is not required for it to construct and operate the Sports Complex.

Approval of the Recommended Agreement would avoid a legal dispute between the County and Applicant regarding the County's determination that a DRA is required for Applicant to construct and operate the Sports Complex.

On September 27, 2016, in anticipation of the Parties' execution of this Agreement, Applicant submitted its DRA Application. That DRA Application is under review by the County.

Terms of Agreement

Applicant's Obligations

1. File a complete DRA Application for the Sports Complex with the County (this obligation was satisfied on September 27, 2016).
2. Cooperate with County staff during the County's processing of the DRA Application. This obligation includes providing information, data, and technical studies, as County staff determines to be necessary to complete an Initial Study for the Sports Complex and any subsequent environmental studies for the Project. Applicant shall bear all costs of providing such information, data, and technical studies to the County.
3. Not initiate a lawsuit in any court against the County related to the use and enjoyment of the Property, including the Sports Complex by Applicant, Teen Challenge, or School.

County's Obligations

1. Waive the following filing fees associated with Applicant's DRA Application:
 - a. Department of Public Works and Planning: \$6,561;
 - b. Department of Public Health: \$770; and
 - c. Agricultural Commissioner: \$67.
2. Process the DRA Application in accordance with the legal requirements applicable to DRA applications, and the County's normal staffing and resources.
3. During the period of time that this Agreement is in effect, not initiate a lawsuit in any court to seek an injunction against activities conducted by Applicant or the School on the Property, so long as such activities are typically, both in type and duration, undertaken by the School:
 - a. Football games and practices;
 - b. Tennis matches and practices;
 - c. Track and field meets and practices;
 - d. Baseball games;
 - e. Softball games and practices; and

- f. Such other athletic activities usually and customarily conducted by the School, provided that no such athletics activities shall occur until Applicant has filed an amended operational statement that describes such athletic activities.
- 4. Term of Agreement: September 27, 2016 - December 31, 2018, unless sooner terminated.
- 5. Termination: Either Applicant or the County may immediately terminate the Recommended Agreement if the other party fails to comply with its obligations.
- 6. Hold Harmless and Indemnification: Applicant is required to indemnify and hold harmless the County and its officers, agents, and employees from and against all expenses, demands, liabilities, claims, costs or damages resulting arising or resulting from:
 - a. Any negligent or wrongful actor omission by Applicant, its officers, agents, or employees, or Applicant's lessee(s), or its officers, agents, employees, or invitees on the Property, or
 - b. Any use of the Property by Applicant, its officers, agents, or employees, or Applicant's lessee(s), or its officers, agents, employees, or invitees that is inconsistent with this Agreement.

Approval of the Recommended Agreement is Exempt from California Environmental Quality Act (CEQA)

Staff has determined that approval of the Recommended Agreement is exempt from the requirements of CEQA. As described above, the Recommended Agreement provides an orderly process by which the Applicant will file, and the County will review and act on, an Application for a Director Review and Approval land use permit. Before acting on the DRA Application, the County will conduct the level of environmental review of the project proposed by the DRA required by law. Approval of the Recommended Agreement will not result in any impact on the environment. Therefore, it can be seen with certainty that approval of the Recommended Agreement will have no possibility of having a significant effect on the environment. Approval of the Recommended Agreement is therefore exempt from the requirements of CEQA. (CEQA Guidelines § 15061, subdivision (b)(3).)

ATTACHMENTS INCLUDED AND/OR ON FILE:

Location Map
On file with Clerk - Land Use Permit Processing Agreement

CAO ANALYST:

John Hays