



Board Agenda Item 18

DATE: April 25, 2017

TO: Board of Supervisors

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

SUBJECT: Director Review and Approval Application No 4465 (Appellant: Charles Maxwell)

RECOMMENDED ACTION(S):

1. **Consider appeal of the Planning Commission's denial of Director Review and Approval Application No. 4465 proposing operational modifications to an existing commercial horse arena authorized by Director Review and Approval Application No. 4112 in order to increase the number of authorized event days from 12 event days per year to 26 event days per year on a 40.05-acre parcel in the AL-40 (Limited Agricultural, 40-acre minimum parcel size) Zone District; and**
2. **Determine that the required Findings specified in Fresno County Ordinance Code Section 872-C can or cannot be made for approval or denial of the Director Review and Approval request to modify the existing use.**

The project site is located on the west side of Rusty Spur Lane (a private road), approximately 710 feet south of its intersection with Millerton Road, and approximately three miles east of the unincorporated community of Friant (10925 Rusty Spur Lane) (SUP. DIST. 5) (APN 138-061-49).

This item comes before the Board on appeal of the Planning Commission's denial of the subject application (5 to 2, with two Commissioners absent) at its February 16, 2017 Planning Commission Hearing. Staff notes that the Zoning Ordinance requires the Board to determine, independent from the decision of the Planning Commission, whether the application should be approved, approved with stated conditions, or denied. A copy of the Planning Commission's action is attached as Exhibit A.

ALTERNATIVE ACTION(S):

If the Board is able to make the required findings for granting Director Review and Approval (DRA) Application No. 4465, a motion to uphold the appeal and overturn the Planning Commission's decision, stating the basis for making the findings and articulating the manner in which each of the Findings can be made, would be appropriate.

FISCAL IMPACT:

Pursuant to the County's Master Schedule of Fees, the Applicant has paid \$2,046 in land use processing fees to the County for the processing of the DRA Request. The Applicant also paid \$508 in fees to appeal the Planning Commission's denial.

DISCUSSION:

By way of background, on December 10, 2009, the Fresno County Planning Commission approved DRA Application No. 4112, allowing a commercial horse arena on the subject parcel 40-acre parcel. That decision was appealed to the Board of Supervisors. On December 28, 2009 the Board continued its appeal hearing of the request pending the outcome of a civil lawsuit filed against the Applicant by the Appellants of DRA No. 4112. This lawsuit, in part, sought to prohibit the commercial horse arena use by prohibiting the Applicant from utilizing the existing site access for access to the commercial arena.

The Fresno Superior Court filed its judgement in favor of the Applicant on August 8, 2011 confirming the Applicant's legal ability to utilize the existing site access in conjunction with the arena. A summary of this judgement is included in the Board of Supervisors Agenda Item dated September 27, 2011, and is attached to Exhibit 9 of Exhibit B (February 16, 2017 Planning Commission Staff Report) .

Following the Superior Court's ruling, the Board denied the appeal filed against the Planning Commission's approval of DRA No. 4112, and approved the commercial horse arena use.

On July 20, 2012, Site Plan Review (SPR) No. 7814 was administratively approved to implement the approved DRA for the commercial horse arena use, and its administrative approval was appealed on August 16, 2012. The Planning Commission heard the appeal of SPR No. 7814 on September 13, 2012, acting to deny the appeal and uphold the approval of the SPR. Subsequently, the Planning Commission's action was appealed to the Board, who heard the appeal of the SPR on December 4, 2012. The Board acted to deny the appeal, ultimately upholding the approval of SPR No. 7814.

The current proposal, DRA Application No. 4465, represents a request to allow operational modifications of the approved commercial horse arena previously authorized by increasing the number of authorized event days from 12 per year to 26 event days per year, allow event days to occur year-round whereas event days are currently limited to April 1st through September 30th, and increase hours of operation for event days from 8:00am until 5:00pm to 8:00am until 6:00pm. In all other aspects, the area and use are substantially the same, and there have not been any changes in circumstances.

Staff did not require a subsequent Mitigated Negative Declaration (MND) be undertaken for the proposed operational modifications per Section 15162 of the California Environmental Quality Act. This current proposal was routed to the same agencies that reviewed Initial Study (IS) No. 6062 associated with the prior land use application (DRA Application No. 4112) with no concerns identified by those reviewing agencies regarding the proposed operational modifications.

In order for the Board to approve DRA Application No. 4465, the following findings must be made:

1. That the site of the proposed use is adequate in size and shape to accommodate said use and all yards, spaces, walls and fences, parking, loading, landscaping, and other features required by this Division, to adjust said use with land and uses in the neighborhood.
2. That the site for the proposed use relates to streets and highways adequate in width and pavement type to carry the quantity and kind of traffic generated by the proposed use.
3. That the proposed use will not be detrimental to the character of the development in the immediate neighborhood or the public health, safety, and general welfare.
4. That the proposed development be consistent with the General Plan.

Based on the above information, and with adherence to the Mitigation Measures, Conditions of Approval and mandatory Project Notes identified in IS No. 6062 prepared for DRA No. 4112, except as modified by DRA

Application No. 4465, staff found that the proposal would not have an adverse effect upon surrounding properties.

At its hearing of February 16, 2017, the Planning Commission considered staff's presentation and testimony from the project's representative, the Applicant, the Applicant's legal counsel, and three individuals in opposition to the request. After receiving public testimony, the Commission closed the public hearing and a motion was made to deny the application, which passed on a vote of 5 to 2 with two Commissioners absent from the hearing. In making its motion to deny, the Commission stated that Finding 3 could not be made based on the testimony provided by those in opposition, letters of opposition received related to the request, and concerns about traffic, dust and noise. A copy of the February 16, 2017 Planning Commission Staff Report is attached as Exhibit B.

An appeal was filed on February 17, 2017. The appeal document stated that the project met all of the required Director Review and Approval Findings, the objections based on the project's proposed impacts to Rusty Spur Lane have already been adjudicated in the Applicant's favor by the Fresno County Superior Court, and that the intensity and scale of the project will not increase existing operations, but rather, the applicant is merely seeking 14 more events spread out over the calendar year.

If the Board is able to make the required findings for granting approval of DRA Application No. 4465, a motion to uphold the appeal and approve the project would be appropriate stating in its motion to approve the manner in which the four required Director Review and Approval Findings can be made subject to the conditions listed in the staff report and any additional conditions the Board determines appropriate. For reference a copy of the conditions of approval are also attached as Exhibit C to this Agenda Item.

In addition, staff recommends inclusion of an additional Condition of Approval requiring the following:

- *The Applicant shall enter into an agreement indemnifying the County for all legal costs associated with its approval of Director Review and Approval Application No. 4465.*

If the Board is unable to make the required Director Review and Approval Findings for granting DRA Application No. 4465, a motion to deny the appeal and deny the project would be appropriate.

REFERENCE MATERIAL:

BAI #14, December 4, 2012
BAI #14, September 27, 2011
BAI #18, February 23, 2010

ATTACHMENTS INCLUDED AND/OR ON FILE:

Exhibits A - C

CAO ANALYST:

John Hays