

Agenda Item: ID#17-1244 (10:05 A.M.)

Date: 9/28/17

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FRESNO CITY CLERK

FRESNO CITY COUNCIL



Supplemental Information Packet

Agenda Related Item(s) – ID#17-1244 (10:05 A.M.)

Contents of Supplement: Petition for Appeal of Approval/Adoption of CUP C-17-013

Item(s)

HEARING to consider Conditional Use Permit Application No. C-17-013 and related Environmental Assessment No. C-17-013, for property located on the southwest corner of North Figarden Drive and West Bullard Avenue. This is an appeal of the July 19, 2017 Planning Commission decision. (Council District 2)

Supplemental Information:

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

Americans with Disabilities Act (ADA):

The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Requests for additional accommodations for the disabled, sign language interpreters, assistive listening devices, or translators should be made one week prior to the meeting. Please call City Clerk's Office at 621-7650. Please keep the doorways, aisles and wheelchair seating areas open and accessible. If you need assistance with seating because of a disability, please see Security.

September 22, 2017

Christopher L. Campbell
Attorney at law
ccampbell@bakermanock.com

Fig Garden Financial Center

Jennifer Clark
Director, Fresno City
Development and Resource
Management
2600 Fresno Street
Room 3065
Fresno, CA 93721

Steve Brandau
Councilmember
Council District 2
2600 Fresno St.
Room 2097
Fresno, CA 93721

Lee Brand
Mayor
2600 Fresno Street, Room
2075
Fresno, CA 93721
Tel: 559.432.5400
Fax: 559.432.5620
www.bakermanock.com

Esmeralda Soria
Council District 1
2600 Fresno St.
Room 2097
Fresno, CA 93721

Oliver L. Baines III
Councilmember District 3
2600 Fresno St.
Room 2097
Fresno, CA 93721

Paul Caprioglio
Councilmember District 4
2600 Fresno St.
Room 2097
Fresno, CA 93721

Luis Chavez
Councilmember District 5
2600 Fresno St.
Room 2097
Fresno, CA 93721

Garry Bredefeld
Councilmember District 6
2600 Fresno St.
Room 2097
Fresno, CA 93721

Clint Olivier
Council President District 7
2600 Fresno St.
Room 2097
Fresno, CA 93721

**Re: September 28, 2017 City Council Hearing on the
Negative Declaration and Permit Application for
Conditional Use Permit C-17-013**

Dear Director Clark, Council Members and Mayor Brand:

Our office represents Second Generation LP., the owners of real property located at 5650 North Figarden Dr, Fresno, CA 93722. Our client's property is directly across the street from the Proposed Project located at 5647 North Figarden Drive and described in Conditional Use Permit ("CUP") application # C-17-013. Second Generation LP., is appealing the Planning Commission's July 19, 2017 approval of the Proposed Project to the City Council. The hearing is set to be heard by the City Council on September 28, 2017 at 10:00 a.m.

The Proposed Project is a 16 pump AM/PM gas station and convenience store that will operate 24-hours a day. The project proponent stated at the Planning Commission hearing that two crucial elements of their business model are a permit to sell alcohol under an ABC Type 20- Off-

Sale Beer and Wine license and 24 hour operation. Neither additional alcohol sales nor a 24 hour business attracting activity are appropriate next to the Figarden Loop residential area.

The Proposed Project is entirely out of character and inappropriate in the Figarden Loop neighborhood. No additional gas stations or alcohol retailers are needed in the area. There are currently no all night businesses in the area and there should not be any adjacent to a quiet residential area. We request that the City Council deny the application for this CUP on this basis.

Bill McEwen wrote about the approval of this project in the Fresno Bee on August 13, 2017, “[w]hat occurred July 19 at the Fresno Planning Commission helps tell this tale of city leaders who fail to contemplate the big picture – and the accumulative effects of their decision making. . . . At what point do city leaders stop thinking that convenience and liquor stores add to the fabric of the community? . . . But adding another booze store in a place that already is the Triple Crown winner of the Drunkest City in America designation and in a neighborhood that already exceeds the state’s recommended number of liquor selling establishments is plain stupid.” We hope each of you agrees with this blunt assessment that our city residential neighborhoods deserve better.

The Proposed Project is strongly opposed by the neighborhood. Prior to the Planning Commission hearing, nearby neighbors sent in several letters and approximately 132 post cards opposing the Proposed Project. Of those post cards, 108 individuals indicated that another gas station was not necessary to serve the needs of surrounding residents; 105 were concerned with the 24-hour a day operation due to noise, light, and activity at night right next to residential housing; 87 were concerned with the additional traffic generated by the project. Multiple neighbors were also concerned about the potential for increased crime as a result of the selling more alcohol in an already oversaturated market that exceeds the limits of local and state laws.

In addition to the neighborhood opposition, the Fresno City Planning Director recommended against issuing the permit to allow alcohol sales. In the recent notice of the hearing on the appeal the Planning Director reiterated her opposition to the alcohol sales. The Planning director is correct in opposing the alcohol sales because another off sale license here would violate the City and State standards for alcohol licenses. Fresno City Development code section 15-2706(E) states that no new alcohol selling establishments can be located within 500 feet of an existing one nor located within a High Concentration Area, both of which apply here. The State Business and Professions Code § 23817.5(a)(2) limits off-sale general liquor licenses to one for each 1,250, or fraction thereof, inhabitants of the city” Fresno already has 468 licensees – or 52 more than specified by the formula in State Code as of mid 2016.

Fresno Municipal Code §15-2706(E)(5), provides exceptions to the above restrictions, under the local ordinance. The Planning Commission used the City Code exception that “the proposed use is not located within an area in which the Chief of Police has determined, based upon quantifiable information, that the proposed use a) would be detrimental to the public health, safety, or welfare of persons located in the area, or b) would increase the severity of existing law enforcement or public

nuisance problems in the area.” The Planning Commission was incorrect. The generic form letter provided by the Fresno Police Department did not state that the Police Department had reviewed the proposed site and made a determination that based on quantifiable information an exception is appropriate. The code section requires an affirmative determination by the police is required to apply the exception. In addition, an exception of a local code cannot be used to override state law. Finally, a number of studies support the conclusion that in and near neighborhoods where there is a high density of places that sell alcohol, there is a higher rate of violence.¹

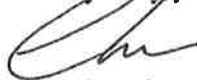
The census tract for the area is already over concentrated **and** there is another off site alcohol sales establishment within 500 feet, so the Proposed Project should be denied.

The City should also be wary of permitting a 24-hour gas/convenience store in the city limits outside of the major thoroughfares. The Proposed Project’s site is bounded by the major east west corridors, Shaw and Herndon. All night services are properly placed on those established corridors that are accessible to night time travelers, where noise and all night lights already exist. Bullard and Figarden should not be turned into an “all night” avenue. Converting the character of this neighborhood with an all hours gas/convenience station will only contribute to increased noise, lights, traffic, crime, vagrancy, homelessness and ultimately the decline in surrounding neighborhood attractiveness and property values.

As the public comments have made clear, there is no need for another gas station/convenience store because there are already at least eight (8) gas/service stations within a two mile radius from the proposed project. (See, **Exhibit A** attached hereto.) Approving the Proposed Project will only increase the saturation of the local gas/convenience store market and make it more difficult for both existing businesses and the proposed project to be economically viable.

The Proposed Project should also be denied for failure to comply with CEQA, and other reasons described in our appeal letter. The strong opposition from nearby residents because the Proposed project is inconsistent with the existing neighborhood should be sufficient to reject the requested CUP.

Very truly yours,



Christopher L. Campbell
BAKER MANOCK & JENSEN, PC

CLC/at

¹ See, Gorman, D., Speer, P., Gruenewald, P., and Labouvie, E. (2001) Journal of Studies on Alcohol, 62: 628-636; See also, Scribner, R. et al. (1995) The risk of assaultive violence and alcohol availability in LA County, American Journal of Public Health, 85:335-340; and see, Gruenewald, P.J. and Remer, L. Changes in outlet densities affect violence rates. In review, Alcoholism: Clinical and Experimental Research, 2004.

Stations within 2 miles of Shell 5650 N. Figarden Drive

1. Chevron, 3769 W Shaw Ave (1mi)
 - (559) 275-7479
2. 76, 4020 W Shaw Ave (1mi)
 - (559) 275-9851
3. Valero, 4514 W Shaw Ave (1.4mi)
 - (559) 275-7904
4. Shell, 5316 W Shaw Ave (1.7mi)
 - (559)-271-7000
5. Shell, 525 W Nees Ave (1.6mi)
 - (559) 455-1533
6. Chevron, 5270 W Shaw Ave (1.7mi)
 - (559) 275-2008
7. Chevron, 5310 W Spruce Ave (2mi)
 - (559) 277-9666
8. 76, 5480 W Shaw Ave (2mi)
 - (559) 275-8623