

April 6, 2020

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Via U.S. Mail and Email

Mayor Rich Tran and Members of the City Council
City of Milpitas
455 E. Calaveras Boulevard
Milpitas, CA 95035-5411

**Re: LaQuinta Hotel – 1000 Jacklin Road
P-SD 18-0012; P-UP 18-0012; P-EA 18-0002
City Council Hearing April 7, 2020**

Dear Mayor Tran and Members of the City Council:

The applicant is appealing the denial of a site development permit and conditional use permit for a LaQuinta Hotel by the Planning Commission without supporting evidence for its decision.

INTRODUCTION

First, there was a favorable staff report indicating consistency with the zoning and general plan. Second, the environmental review was independently prepared and thoroughly reviewed by staff with the Commission. Third, the traffic consultant testified as to the detail of the traffic analysis and demonstrated less impact than prior use of the site. Fourth, the plan of development was within the allowable height requirements. Fifth, the requirements of impact on viewshed was analyzed pursuant to the requirements of the general plan, notwithstanding that several members of the public asked for a more personal standard relating to the view of the proposed structure from their house.

Ultimately, the only reason given for a split negative decision by the Commission, with the one of the commissioners voting before the formal vote and departing from the hearing before it was concluded and the formal vote taken, was that the project failed to create "community pride". The minutes of the meeting show this generalized motion for



denial was made without findings, providing only: The project is inconsistent with the General Plan 2.a-1-17, stating that the project should "Foster community pride and growth through beautification of existing and future development."

This denial was the conclusion of an exhausted Planning Commission after hours of repetitive testimony, despite every objection of the opposition having been answered factually (substantial evidence) by staff and consultants.

ANALYSIS

Both the site development permit and use permit are administrative decisions that apply existing policies, laws or regulations to a given set of facts. There is not here the broad discretion applicable to a legislative decision. Failure to support the decision by substantial evidence of fact in the record is an abuse of discretion.

All elements of the General Plan must be internally consistent and in harmony. This requirement requires the general guideline of "community pride" be based on meeting specific requirements of the plan. Otherwise the guideline is an abstraction that can mean whatever the decision maker may subjectively think. In other words, the general statement is defined by the detailed specific provisions of the general plan that the decision maker must consider. As stated by the Governor's Office of Planning and Research, *General Plan Guidelines* (2003), p. 164 (see also *Corona-Norco Unified School Dist. v City of Corona* (1993) 13 Cal. App. 4th 1577): "An action, program or project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment."

As the Staff Report of December 11, 2019 observed, this is the replacement of an older building that promotes community pride and growth by demolishing an underutilized 40-year-old building and replacing it with a new hotel possessing improved aesthetics, curb appeal and general circulation. As GP Policy 2.a-1-17 explains redevelopment should foster "community pride and growth through beautification of existing and future growth." Moreover, GP Policy 2.a-1-6 provides that the City should strive for a "balanced economic base that can resist downturns in any one economic sector." Here the Staff Report states: "The proposed use will levy the transient occupancy tax per room each day, which provides the City with additional revenue needed to maintain a balanced economic base." In other words, funds are generated to provide services throughout the city, thus assisting the City in meeting the desired quality of life of its citizens and maintaining the City's community pride.

Staff understood the general principle of “community pride” and placed it in context of the entire city, as is intended. Finally, the building will meet LEED standards as a green development.

Zoning:

In this case, the zoning of Highway Services allows the use. The site is the northern gateway to the City from I-680 to Jacklin Road. Such gateways are designated for hotel use and hotels are important to the City. As the northeastern entry to Santa Clara County, hotels address the business needs of persons doing commerce within Silicon Valley, including destinations within the City.

Height:

Related to the above, the design presents a more silhouetted building than the existing building within the City’s regulations of height restrictions.

The existing building includes a clock tower standing at 62’10”. The new structure’s average height is 59’ 6. The highest point of the new structure is 72’; this feature is an entry tower that represents only 28% of the overall building.

These dimensions are commensurate in size to nearby hotels within the City.

Staff states that “The proposed hotel design and exterior components substantially *decrease* the potential for creating a dominating visual prominence.

View Impact:

The comparison of height and mass between existing and proposed is an important aspect of this analysis.

This provides a practical perspective to the analysis. Moreover, when the view potential impact is analyzed from the requirements of the General Plan the environmental analysis, with photographs directed by staff, demonstrates that the viewshed of the hillside backdrop east of the highway is not impacted. As the Planning Director advised the Commission, the standard for considering this impact is designated viewsheds. This property is not in an area designated as a scenic vista and Highway I-680 is not a scenic corridor. The City’s LSA consultant concluded there was no blockage of scenic views.

As Staff points out the subject property is flat urban land and does not contain hilltops, ridges and vegetation that present a scenic character.

Moreover, the case of *Mira Mar Mobile Community v City of Oceanside* (2004) 119 Cal. App. 4th 477 ruled that in an urban area "neither state nor local law protects private views from private lands and the rights of one private landowner cannot prevail of another private landowner, except in accordance with uniformly applied standards and policies as expressed in the City's General Plan." Here, the City of Milpitas' uniform standard expressed in the General Plan, Section 4.9, does not look to adjacent urban properties, but rather to scenic vistas of the hillsides to the east of the highway. The studies showed that there was no impact.

Nonetheless, views from the residential area to the southeast are to less structure than currently exists on site.

FAR:

A conditional use permit is necessary to allow an increase in floor area ration (FAR) of 1.63. The City provides specific findings for allowing such an increase and those findings are met here:

1. The proposal will generate low-peak hour traffic. Based on a Traffic Operation Analysis, directed by Staff under approved standards utilized throughout the County, the project would generate fewer than 100 new trips during peak AM and PM hours. The analysis followed VTA standards and national guidelines.
2. The proposal will not create a dominating visual presence. As indicated above under View Impact, the project does not present a dominating visual prominence. In addition, conditions of design and exterior components and colors decrease the visual appearance.

Traffic:

There is no need to go any further than the analysis that the hotel project produces substantially less traffic than the prior use of the fitness center. The Commission made no finding of impact. There was simply a suggestion in an earlier motion without any factual support that the traffic study "seems to be inconclusive." That motion failed.

The City retained Hexagon to undertake the traffic study. It was performed to the recognized standards and indicated a diminution of traffic from the prior use.

The intrusion to the residential neighborhood is nonexistent. The reason for a gateway designation for the property is the interchange of Jacklin with the highway. The access is via Jacklin to the drive adjacent to the Shell Service Station. While the Hillview Business Park and day care school have their primary access off Hillview, that is not the case here. As stated above, the site is landlocked and separated from the residential area.

Policing:

The opposition claimed that the hotel would bring increased crime to the neighborhood. However, the City Police Department gave testimony to the contrary, based on actual statistics of calls related to other City hotels. Moreover, the use permit requires a security plan.

CONCLUSION

As would a reviewing court, the Council should reject the decision of the Commission as not supported by substantial evidence.

The "community pride" reference in the General Plan was taken out of context. Obviously, a very general statement without guidelines, leaving interpretation vague and ambiguous, whereas consistency with the other General Plan policies are specific. The Staff Report provides the evidentiary findings of consistency on all applicable elements of the Plan.

Very truly yours,



NORMAN E. MATTEONI

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cc: Joe Gigantino