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VIA EMAIL

San Juan County Planning and Zoning Commission
c/o Mitchell Maughan
mmaughan@sanjuancounty.org

Re: Sketch Plan Application submitted by Love's Travel Stops & Country Stores, Inc. on May 3, 2019 (the "Application")

Dear Commissioners:

We represent Love's with respect to the Application and submit what follows in the hope that it will be helpful to you as you consider the merits of the Application. The purpose of this letter is to convince you that the Application should be reviewed under the San Juan County zoning ordinance in effect on May 3, 2019. This letter will first set forth the relevant facts and then discuss applicable law.

Factual Background

Love's was founded in 1964 and is headquartered in Oklahoma City. Love's operates more than 600 locations in 42 states providing motorists with clean, safe places to buy fuel, food and travel items. Love's seeks approval of its plan to construct a travel stop on a 13-acre site along Highway 191 in Spanish Valley. Love's submitted the Application for such travel stop to Grand County's Community Development department on a Grand County form and paid the associated fee required by Grand County. Love's did so pursuant to the Interlocal Agreement Between San Juan County and Grand County for Plan Review and Building Inspection Services, dated February 21, 2017, which was then in force. That agreement provided, in relevant part, that "Grand [County] shall be responsible to conduct plan reviews of all building plans for building projects in [the Spanish Valley]." Moreover, the agreement authorized Grand County "to collect and retain from each applicant for building inspection services such building and inspection fees as Grand [County] would assess for similar applications within Grand County."

Grand County personnel transmitted the Application to San Juan County for consideration. One week later, on May 10, 2019, Walter J. Bird, San Juan County's Planning and Zoning Director, wrote to Love's and advised that "[u]nder San Juan County's code, this proposal [*i.e.*, the Application] is for a commercial development in a commercial zone so there is nothing additional that Love's needs to do at this time."

The zoning ordinance in effect in May 2019 was adopted (or most recently amended) in 2011. San Juan County began considering the adoption of a new or amended zoning ordinance for Spanish Valley in spring 2018, approximately a year before the Application was submitted. Almost two weeks after the Application was approved, the San Juan County Commission adopted an ordinance imposing a six-month moratorium on future development in Spanish Valley. The moratorium went into effect soon thereafter (but was not retroactive and thus had no effect on the previously approved Application). During the moratorium, in November 2019, the San Juan County Commission adopted a new zoning ordinance for Spanish Valley (consideration of which began, as noted, early in the prior year). The new ordinance made "[a]ny project in excess of 10-acres" a conditional, rather than permitted, use.

Legal Analysis

Under Utah's County Land Use, Development, and Management Act, Utah Code Ann. § 17-27a-101, *et seq.* ("CLUDMA"), an applicant for a land use approval is entitled (1) to have their application reviewed under the zoning ordinance in effect on the date their application for approval is complete, and (2) to have their application approved if it conforms to the land use regulations in effect at that time unless, before the application was submitted, the county "formally initiates proceedings to amend the county's land use regulations in a manner that would prohibit approval of the application." *Id.*, § 17-27a-508(1)(a). If the county initiates proceedings to amend its regulations before an application is submitted, but 180 days pass and no amendment that would prohibit the proposed land use occurs, the applicant is entitled to have their application reviewed under the existing regulations. *See id.*, § 17-27a-508(1)(b).

The following analysis explains, first, that the Application was complete when submitted on May 3, 2019. We go on to show, second, that while proceedings to amend the zoning ordinance were initiated by or in spring 2018, those proceedings had been going on for well over 180 days by the time the Application was submitted and had not resulted in an amendment that prohibited Love's proposed land use. As a result, the Application must be reviewed under the zoning ordinance in effect as of May 3, 2019, and not under a later-adopted ordinance. We conclude by urging you to follow the law and recognize that Love's Application is entitled to approval.

1. The Application was Complete when Submitted.

The Application was complete when submitted on May 3, 2019. "A land use application is considered submitted and complete when the applicant provides the application in a form that complies with the requirements of applicable ordinances and pays all applicable fees." Utah Code

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Ann. § 17-27a-508(1)(c). Importantly, the zoning ordinance in effect in May 2019 did not prescribe the "form" in which the Application was to be submitted.[1]

Love's submitted the Application in the required form and paid the appropriate fee. This conclusion is mandated by at least two facts. First, the Interlocal Agreement between San Juan County and Grand County that was in effect in May 2019 obliged Love's to submit the Application to Grand County and pay the fee required by Grand County. Love's undisputedly submitted the Application to Grand County on Grand County's Sketch Plan Application form. The form required the concurrent submission of a sketch plan—a "[c]onceptual drawing"—showing such things as natural and man-made features on the subject property. The Application included just such a drawing. The form also called for the payment of a $550.00 application fee, which Love's paid. The completeness of the Application is demonstrated, second, by the fact that San Juan County's Planning and Zoning Director, Mr. Bird, acknowledged receipt of the Application and advised Love's that "there is nothing additional that Love's needs to do at this time." Mr. Bird obviously would not have conveyed this message to Love's if the Application had been incomplete.

The Northern San Juan County Coalition (the "Coalition"), which opposes the Application, has argued that the Application was incomplete because Love's failed to apply for either a conditional use permit or a variance. A conditional use permit or variance was required, the Coalition contended, because Love's proposed travel stop was not a permitted use under the relevant zoning ordinance. The Coalition is wrong; the zoning ordinance in effect in May 2019 expressly authorized Love's intended use of the subject property.

Section 12-2 of the County's zoning ordinance (which had been amended in 2011) was titled "Permitted Uses" and listed "Agriculture, Residential, Commercial, Highway Commercial, and Industrial." The ordinance went on to state that "[i]n additional [*sic*] to the uses regulated in RR-22 districts, the following uses may be permitted by variance within each sub-zone." Zoning Ordinance of San Juan County, Utah § 12-2. The ordinance did not create any "RR-22 districts" and instead of proceeding to list uses other than "Agriculture, Residential, Commercial, Highway Commercial, and Industrial," the ordinance identified permitted commercial and highway commercial uses. Since the ordinance specifically permitted listed uses and, as explained herein, Love's travel stop was a specifically permitted use, the ordinance's provision for variances is irrelevant.[2]

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[1] The zoning ordinance included requirements for building permit applications. *See* Zoning Ordinance of San Juan County, Utah § 1-6(1)(a). The Application was not for a building permit, however.

[2] A variance can be granted to alleviate unnecessary hardship on a landowner caused by unique physical circumstances that preclude development of the property in strict accordance with the zoning code. For example, a variance may change minimum set-back requirements, building

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The travel stop is proposed to be located in an area of the County that was zoned "Highway Commercial CDh." The Highway Commercial zone was a subzone of the "Controlled District." Zoning Ordinance of San Juan County, Utah § 12. The purpose of the Controlled District zone was to provide a "district where agriculture, industrial, commercial and residential uses may exist in harmony." *Id.*, § 12-1. In other words, the ordinance contemplated residential and commercial uses of land in the same general areas. The expressly permitted uses within the "Highway Commercial" subzone included restaurants and drive-in cafes, as well as automobile service stations and "[a]ccessory [b]uildings and uses." *Id.*, § 12-2. In addition to specifying these (and other) uses, the ordinance also permitted "[o]ther uses . . . in harmony with the intent of the neighborhood commercial zone and similar in nature to the above listed uses." *Id.* The Application described a travel stop fitting squarely within the ordinance's specific descriptions and which is certainly "in harmony" with them. Indeed, the Application seeks approval of a travel stop consisting of a fast-food restaurant with a drive-through, a convenience store, fueling stations for passenger vehicles and trucks, and 143 parking spaces.

The Coalition contends that the travel stop proposed by Love's is not an automobile service station, but a "Truck Stop" and thus not a permitted use. Characterizing the travel stop as something other than an automobile service station does not mean that Love's proposed use is prohibited. First, the term "truck stop" is not a legal term or referenced in the County's zoning ordinance and it has no fixed definition. Second, the travel stop is inarguably intended to serve passenger vehicles. In addition to facilities for trucks, the Application seeks approval for 16 passenger vehicle fueling stations and 90 vehicle parking stalls. The proposed travel stop is, therefore, an automobile service station. That the travel stop will serve both trucks and passenger vehicles does not deprive it of its character as an automobile service station. Third, the dictionary defines an automobile to be a "motor vehicle for road use with an enclosed passenger compartment." Oxford Desk Dictionary and Thesaurus, (American Ed. 2007), at p. 48. This definition is clearly broad enough to encompass a truck and thus the proposed travel stop is a natural fit in the County's Highway Commercial CDh zone.

The travel stop would be a permitted use even if its vehicle fueling and parking elements were not well within the zoning ordinance's provision for automobile service stations. In addition to automobile service stations the ordinance also permitted such uses as farm machinery and equipment sales, drive-in theaters and, as noted, "[o]ther uses . . . in harmony" with them. A fueling station for trucks is plainly similar in nature to, and in harmony with, an automobile service

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height and floor area limits, as well as similar dimensional issues. On the other hand, a conditional use permit is granted to allow a use that is not permitted as a matter of course, but which can be approved if the landowner is able to meet the conditions imposed by the land use authority. *See Krejci v. City of Saratoga Springs*, 2013 UT 74, ¶¶ 35-36, 322 P.3d 662; *see also* Zoning Ordinance of San Juan County, Utah §§ 2-3 (variances) & 6-1, *et seq.* (conditional uses).

station. Precisely the same functions and activities take place in both instances: fuel tanks are filled, fluids are topped-off and windshields are cleaned, for example. Likewise, a parking stall for a passenger vehicle is similar in nature to a parking stall for a truck. To the extent an automobile service station and a "truck stop" differ at all, they do so only in terms of the size of their facilities and merely because trucks are larger than passenger vehicles. Restricting vehicle size in the Highway Commercial CDh zone was clearly not the County's concern when it adopted the zoning ordinance. Indeed, the ordinance expressly permitted farm machinery and equipment sales. And, since the travel stop is a permitted use, a conditional use permit or variance were unnecessary. Love's Application was thus complete when submitted.

2. Post-May 3, 2019 Amendments to the Zoning Ordinance are Irrelevant.

The Application should be reviewed under the zoning ordinance in effect as of May 3, 2019 without regard to any later-adopted new or amended ordinance. CLUDMA provides that a land use application is entitled to approval if it conforms to the regulations in effect when submitted unless, before the application is submitted, "in the manner provided by local ordinance . . . the county formally initiates proceedings to amend the county's land use regulations in a manner that would prohibit approval of the application." Utah Code Ann. § 17-27a-508(1)(a)(ii)(B). The statute is clearly intended to protect a county's prerogative to effect and manage change within its boundaries. The Coalition maintains that the County initiated proceedings to amend the zoning ordinance for Spanish Valley before the Application was submitted and in such a way as to prohibit the proposed travel stop. However, recognizing that the uncertainty necessarily created by proposed but not adopted land use regulations would be detrimental over the long term, CLUDMA also recognizes that even if the county has commenced amendment proceedings before an application is submitted,

> The county shall process an application without regard to proceedings the county initiated to amend the county's ordinances . . . if:
>
> (i) 180 days have passed since the county initiated the proceedings; and
> (ii) (A) the proceedings have not resulted in an enactment that prohibits approval of the application as submitted.[3]

Id., § 17-27a-508(1)(b). In other words, a new zoning ordinance may effectively govern land use even before adoption, but not for longer than six months.

[3] Subparagraph (B) provides that an application may not be reviewed under an existing ordinance if the county adopted a temporary ordinance in the prior 12 months that would prohibit approval. Love's is aware of no such temporary ordinance passed prior to or in effect at the time the Application was submitted.

Prior to the Application, San Juan County did not have an ordinance defining what it means to initiate formal proceedings to amend land use regulations. The County still has no such ordinance. It is nonetheless clear that amendment proceedings were well underway, at the latest, by spring 2018. According to the San Juan County Spanish Valley Area Plan (sv_final_plan_4-17-2018_compressed.pdf (sanjuancounty.org)), the County began the process of amending its zoning ordinance in or about 2017 by creating an advisory committee. The Board of San Juan County Commissioners was briefed on the planning process by a Salt Lake City design company called Landmark Design in August 2017, public meetings took place the following month and a formal Area Plan was published in April 2018. Significantly, the fourth and final section of the Area Plan, entitled "Guidelines and Ordinances," clearly contemplated a new zoning ordinance and specifically enumerated "Key Principles to be Considered when Developing Guidelines and Ordinances for the Spanish Valley." Consideration of potential development ordinances followed and on April 3, 2019, Landmark Design presented drafts of new land use regulations to the San Juan County Planning and Zoning Commission. No new ordinance was adopted until November 2019, however.

These facts make it clear that well over 180 days passed between the time the County initiated proceedings to amend its land use regulations by spring 2018 and May 3, 2019, when the Application was submitted. Since the zoning ordinance was not changed until approximately six months after the Application was submitted, the law plainly dictates that the Application must be reviewed under the ordinance in effect on May 3, 2019 without regard to the fact that amendment proceedings had been initiated prior to that time. That a development moratorium went into effect after the Application was submitted does not affect this conclusion. *See* Utah Code Ann. § 17-27a-508(1)(e) ("county may not impose on an applicant . . . a requirement that is not expressed in . . . a county ordinance effect on the date that the applicant submits a complete application").

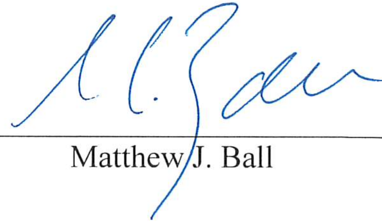
Conclusion

In CLUDMA, Utah's legislature established a presumption of entitlement which serves to protect the applicant. A landowner who submits a land use application is entitled to approval if they seek permission to develop land consistent with existing regulations. *See* Utah Code Ann. § 17-27a-508(1)(a). Love's proposed travel stop is consistent with the zoning ordinance in effect on May 3, 2019. That zoning ordinance expressly permitted precisely the types of uses comprising a Love's travel stop: restaurants or drive-in cafés, automobile service stations, and accessory buildings and uses. Moreover, travel stops are obviously necessary and appropriate along major highways and the County's Planning and Zoning Director recognized as much when he approved the Application. The Coalition's labeling the proposed development a "truck stop" and freighting that term with negative connotations is contrary to Utah law, which requires the consideration of Love's Application under the ordinance in effect when the Application was submitted. Love's Application was entitled to approval in 2019 and it remains so today.

Thank you for your consideration.

Sincerely,

PARR BROWN GEE & LOVELESS, P.C.



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