

February 1, 2024

Dear Planning and Zoning Commission members:

As directed by Deputy County Attorney Mitchell Maughan, the Northern San Juan County Coalition (the “Coalition”) submits this memorandum to the San Juan County Planning & Zoning Commission (“Planning Commission”) to be considered in connection with the application (“Application”) by Love’s Travel Stops and Country Stores (“Love’s”) for a 13-acre truck stop (“Truck Stop”) to be constructed along Highway 191 near Sunny Acres Lane, just south of the Grand County line (the “Sunny Acres Location”).¹

Summary

This matter has been sent to the Planning Commission by the Seventh District Court after the court determined that then-Zoning Administrator Walter Bird acted illegally when he approved the Truck Stop in May 2019. The District Court held that the Truck Stop does not fall within any of the expressly permitted uses for the Controlled District Highway Commercial (“CD-h”) sub-zone of the then-applicable 2011 Zoning Ordinance. Pursuant to these court rulings, the Planning Commission must resolve two issues:

- First, whether the Love’s Application should be considered under the 2011 Zoning Ordinance or the 2019 Spanish Valley Ordinances?
- Second, if the 2011 Zoning Ordinance applies, is there “substantial evidence” that establishes that a truck stop is an “[o]ther use” that should be permitted because it is “in harmony with the intent of the neighborhood commercial zone and similar in nature to the above listed [permitted] uses?”

For reasons detailed below, the answer to the first issue is that the Love’s Application is incomplete and therefore cannot be considered vested under the 2011 Zoning Ordinance. The Application was presented as a “sketch plan” on a Grand County application form that has no counterpart under the 2011 Zoning Ordinance. Love’s never sought a variance, which is required for a permitted use in the CD-h sub-zone, or a Conditional Use Permit (“CUP”), which is required for all non-permitted uses in that

¹ Exhibit 2, Application.

zone. The Application also failed to provide the information normally required by the Planning Commission before considering an Application and even failed to provide all the information required by the Grand County sketch plan form. The Love's Application is therefore incomplete and must be rejected.

If Love's were to attempt to amend or supplement its application to make it complete, the Utah Code mandates that the application would have to be reviewed under the law applicable when the application is "complete[d]." Today, the 2019 Spanish Valley Ordinances affirmatively disallow a truck stop at the Sunny Acres Location, meaning that the Application, once completed, would have to be denied. The zoning changes for Spanish Valley were already underway when Love's rushed its Application to Mr. Bird for approval. Thus, Love's has no vested right to rely on the 2011 Zoning Ordinance.²

The answer to the second question – i.e. the outcome if the Application is considered under the 2011 Zoning Ordinance – similarly requires that the Love's Application be denied. The Utah Property Rights Ombudsman determined in 2012 that a "truck stop is a distinct land use with significantly different impacts than those associated with the component parts." It is therefore inappropriate to conclude that a "truck stop" may be "implied" because other allowed uses share similarities with certain aspects of the truck stop. The 24/7/365 truck stop contemplated by Love's is not "in harmony" with other permitted uses in the CD-h sub-zone and should not be allowed at the Sunny Acres Location. The Love's Application therefore must be denied even if it is considered under the 2011 Zoning Ordinance.

Background Facts

After adopting a new Area Plan for Spanish Valley in 2018 (the "Area Plan"),³ the San Juan County Board of Commissioners (the "Board") further retained Landmark Design, a community planning and design firm based in Salt Lake City, to develop new land use regulations implementing the Area Plan, which included changes to the CD-h sub-zone. By December 18, 2018 (approximately five months before the Application was approved by Mr. Bird), the Planning Commission had already reviewed proposed ordinances from Landmark Design and had made recommendations to the Board. On April 3, 2019 (more than a month before Mr. Bird's approval), a representative of Landmark Design made a presentation to the Planning Commission regarding the draft land use regulations.

During the Planning Commission meeting on April 3, 2019, the Planning Commission and members of the public discussed a proposed temporary moratorium on

² See Utah Code § 17-27a-508(1)(a)(ii) (providing that where "the county [has] formally initiate[d] proceedings to amend the county's land use regulations in a manner that would prohibit approval of the application as submitted" there is no vesting).

³ Exhibit 13, Area Plan.

commercial development in Spanish Valley that was expected to be implemented while the proposed ordinances recommended by Landmark Design were reviewed and finalized (the “Development Moratorium”). During the Board’s work meeting on April 16, 2019, Commissioner Willie Grayeyes proposed the Development Moratorium for the Board’s consideration and vote. However, Commissioner Grayeyes’ resolution was not brought to a vote because then-County Administrator Kelley Pehrson requested additional time for the County’s administrative staff to review the proposal.

On April 25, 2019, Mr. Pehrson emailed a representative of the School and Institutional Trust Lands Administration (“SITLA”), the owner of the land for the proposed Love’s Truck Stop, to inform SITLA that the Development Moratorium would “return” for consideration at the Board’s May 7 meeting. Within *seven minutes* of receiving that email, the SITLA representative emailed a representative of Love’s to convey this news.⁴ Love’s hastily prepared a “Sketch Plan Application” on a Grand County form for its proposed 13-acre Truck Stop. The Application was submitted to Grand County eight days later, on May 3, 2019.

The Love’s Application, which was not disclosed to the public until months later, described the proposed Truck Stop as 13.06 acres in size, including 8.27 acres of impervious surfaces. The Application said the proposed Truck Stop would include 16 automobile fueling positions and five truck fueling bays, 90 automobile parking spaces and 53 truck parking spaces. The Application indicated the proposed Truck Stop would “be operational and staffed 24 hours a day/365 days a year.”⁵

The SITLA property where Love’s proposed to build its Truck Stop was part of the CD-h sub-zone described in Section 12-2 of the 2011 Zoning Ordinance as it existed on May 3, 2019. The “permitted uses” for the CD-h sub-zone included “Automobile Service Station, Auto Accessories” and “Restaurant or drive-in cafe,” but did not allow for truck stops, commercial parking lots, tractor-trailer fueling, or other uses contemplated by the Application. Love’s did not apply for a variance, which is required for approval of a permitted use in the CD-h sub-zone. Love’s also did not apply for a CUP, even though all non-permitted uses required a CUP.

On May 10, 2019, Walter J. Bird, the County’s Planning and Zoning Director, sent a letter to Love’s stating that the County had received the Application and because the proposal was “for a commercial development in a commercial zone . . . there is nothing additional that Love’s needs to do at this time” – thereby approving the Application. This purported approval is what the District Court found to be illegal.⁶

⁴ Exhibit 6, County-SITLA-Love’s Correspondence.

⁵ Exhibit 2, Application.

⁶ Exhibit 4, Order on Petitioner’s Motion for Summary Judgment.

After multiple delays requested by County staff, the Development Moratorium was finally passed by the Board on May 21, 2019. It went into effect with a 6-month duration. Before the end of the Moratorium, the Board adopted the 2019 Spanish Valley Ordinances.⁷

Appeal History

Within days of learning of Mr. Bird's approval letter, the Coalition appealed to the County's Appeal Authority. The County refused to recognize the appeal and refused to hold appeal proceedings, leaving the Coalition no alternative but to further appeal to the courts. Ultimately, the Utah Court of Appeals ruled that the Coalition had standing to appeal and had timely exercised its right to appeal. A further appeal attempt by Love's and the County was rejected by the Utah Supreme Court.

The Court of Appeals sent the case back to the Seventh District Court, which then granted the Coalition's motion for summary judgment, determining that the Zoning Administrator (Mr. Bird) had acted illegally in approving the Application. The Court observed that "[t]he proposed Love's Travel Stop is neither explicitly a restaurant nor an automobile service station, yet it might be both things (and more). In other words, it is a mixed use and mixed uses are not explicitly permitted under the [2011] Zoning Ordinance."⁸ The District Court ruled that the Planning Commission should have been consulted to determine whether Love's mixed-use proposal would be "in harmony with the intent of the neighborhood commercial zone and similar in nature to the [permitted] uses" in the CD-h sub-zone.⁹

The District Court expressly declined to determine whether the Love's Application should now be reviewed under the 2011 Zoning Ordinance or the 2019 Spanish Valley Ordinances.¹⁰ The Court determined that the selection of applicable law should be made at the County level, after the Planning Commission had "considered the application, determined whether it is complete, [and] made any other reviewable factual determinations about the record."¹¹ These further actions by the Planning Commission on remand will be subject to the parties' right to further appeal.

Legal Standards Governing the Planning Commission's Review

In accordance with the District Court's rulings, the Planning Commission must first determine whether the 2011 Zoning Ordinance or the 2019 Spanish Valley Ordinances apply to its deliberations. Under the Utah Code, an application for land use approval is governed by "the applicable land use regulations, land use decisions, and

⁷ Exhibit 12, 2019 Spanish Valley Zoning Ordinance.

⁸ Exhibit 4, Order on Petitioner's Motion for Summary Judgment

⁹ Exhibit 13, 2011 Zoning Ordinance at § 12-2.

¹⁰ Exhibit 5, Judgment.

¹¹ *Id.*

development standards in effect when the applicant submits a complete application and pays all applicable fees.” Utah Code § 17-27a-508(1)(a)(ii). “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 § 17-27a-508(1)(c). Further, an applicant is not entitled to substantive review under existing land use regulations where “the county [has] formally initiate[d] proceedings to amend the county’s land use regulations in a manner that would prohibit approval of the application as submitted.” Utah Code § 17-27a-508(1)(a)(ii).

The second question posed by the District Court is whether a truck stop should be implied as a permitted use under the 2011 Zoning Ordinance (if that ordinance applies), because it is an “other use[]” that is “in harmony with the intent of the neighborhood commercial zone and similar in nature to the above listed [permitted] uses.”¹²

In deciding these issues, the Planning Commission is “bound by the terms and standards of applicable zoning ordinances and [is] not at liberty to make land use decisions in derogation thereof.” *Springville Citizens for a Better Community v. City of Springville*, 1999 UT 25, ¶ 30, 979 P.2 332. When a county makes a land use decision in “disregard [of] its mandatory ordinances,” the land use decision is “illegal” and subject to judicial review. *Id.*; Utah Code § 17-27a-801(3)(d)(i).

Analysis of the Issues

1. The Application Is Incomplete and Must Be Rejected

An applicant’s right to consideration of a land use application under existing ordinances becomes vested only after the application is “complete.” To be complete, the applicant must comply with all applicable ordinances and pay all applicable fees. Utah Code § 17-27a-508(1)(a), (c). The Planning Commission regularly receives submissions requesting permission to proceed with projects – ranging from overnight accommodations overlay approval, conditional use permits, plat approvals or site plan approvals for construction of permitted uses (most recently a cell tower). Before those submissions come before the Planning Commission for review, applicants frequently work with County staff to provide additional or revised information to make sure the Planning Commission has all the information it needs to consider the application. Only then, when the application is complete, is it submitted for Planning Commission review.

Under the standards this body would normally apply to that process, the Love’s application must be considered incomplete. For a project of the magnitude and impact of the proposed truck stop, it is inconceivable that the documents submitted would not normally prompt staff, or this Commission, to seek additional information before deeming the application ready for review.

¹² Exhibit 13, 2011 Zoning Ordinance at § 12-2.

First, Love's failed to apply for a variance or a CUP, even though a variance is required for any permitted use in the CD-h sub-zone and a CUP is required for any other use. The 2011 Zoning Ordinance sets forth a list of specific uses that are permitted in the CD-h sub-zone. All permitted uses in the CD-h sub-zone "may be permitted by variance." "All other uses than those listed" are conditional uses.¹³ As the District Court observed, a truck stop is not listed among the permitted uses, although automobile service stations and restaurants are separately listed. "Other uses" also can be permitted under the 2011 Zoning Ordinance if "approved by the Planning Commission as being in harmony with the intent of the neighborhood commercial zone and similar in nature to the above listed uses."¹⁴ If a truck stop is considered an "other use" that is permitted, then a variance is required; if it is not a permitted use, then a CUP is required.

The Love's Application never addressed or purported to comply with any of these provisions. It never claimed to be permitted as an automobile service station or restaurant (or even a combination of the two) and never sought Planning Commission approval as an "other use" "in harmony" with the sub-zone. It never filed the form required by San Juan County to seek a variance¹⁵ and never provided the information necessary to obtain a variance.¹⁶ Nor did the Application seek a CUP or provide the form San Juan County requires applicants for a CUP to submit as part of the application process.¹⁷

Second, the Love's Application, submitted on Grand County's Sketch Plan application form, failed to provide the kind of detailed information normally requested by the Planning Commission. The 2011 Zoning Ordinance requires applicants seeking permission to build in the CD-h sub-zone to provide "detailed site plan drawings" at a "convenient engineering scale" and include the "location of all existing structures and improvements" and "[p]roposed methods providing utility needs" and "stormwater drainage."¹⁸ When considering the information that would be needed to make the application "complete," it is also instructive to look at the requirements for seeking a building permit in San Juan County, which include "architectural and site development plans to scale, which shall show building locations, landscaping, prominent existing trees, ground treatment, fences, off-street parking and circulation, location and size of adjacent streets, north arrow and property lines, existing grades and proposed new grades."¹⁹

Here, Love's did not provide architectural drawings of any kind, or any detailed site development plans drawn to scale. Potential building locations and ground treatment are indicated in only the most general terms and only for the hard surface areas. Existing

¹³ Exhibit 3, 2011 Zoning Ordinance at §§ 12-2, 12-3.

¹⁴ *Id.* at § 12-2

¹⁵ <https://sanjuancounty.org/sites/default/files/fileattachments/planning/page/3421/sjcvarianceform17.pdf>

¹⁶ Exhibit 13, 2011 Zoning Ordinance at § 2-3.

¹⁷ <https://sanjuancounty.org/sites/default/files/fileattachments/planning/page/3401/conduseperforms15.pdf>

¹⁸ Exhibit 13, 2011 Zoning Ordinance at § 12-4(2).

¹⁹ *Id.* at § 1-6(1)(a).

grades and proposed new grades are not shown. In fact, the Love’s Application even failed to provide all the information requested by Grand County’s sketch plan form.²⁰ For example, the form (pages 2-3) requires topography to be shown at 5-foot intervals and all easements or rights-of-way necessary to drainage. It also requires the type and layout of water supply and sewage treatment systems to be shown. A vicinity topography map also is required. None of these items were included in the Love’s submission. Love’s even acknowledged that more information needed to be provided regarding stormwater drainage: “A detailed analysis of the pre-and post-development conditions using ICPR routing software will be provided.”²¹ To the best of the Coalition’s knowledge, that information has never been provided.

Third, Love’s failed to pay the proper fee for its application. Love’s submitted an application fee of \$550 to Grand County. Love’s did not submit any application fee to San Juan County and there is no evidence that Grand County ever forwarded the fee to San Juan County.

The failure of Love’s hastily-prepared-application to seek a mandatory variance or CUP and to provide the same kind of detailed information normally presented to this body renders the Application incomplete. This incompleteness means that Love’s never had a vested right to have the application reviewed under the 2011 Zoning Ordinance, and the Application, which still is not complete, should be rejected on that basis alone.²²

2. The Application Must Be Denied Under the 2019 Spanish Valley Ordinances

Even if the Love’s Application had been complete when submitted on May 3, 2019 (which it was not), it would still not be entitled to substantive review under the 2011 Zoning Ordinance. The Utah Code states that an applicant is not entitled to substantive review under existing land use regulations if it is incomplete or if, at the time of submission, “the county [has] formally initiate[d] proceedings to amend the county’s land use regulations in a manner that would prohibit approval of the application as submitted.” Utah Code § 17-27a-508(1)(a)(ii).

Here, the County had formally initiated proceedings to amend the Zoning Ordinance for Spanish Valley prior to Love’s submission of its Application on May 3,

²⁰ Exhibit 2, Application.

²¹ *Id.* at p. 1.

²² The many shortcomings of the Love’s Application are not saved by the Interlocal Agreement between Grand County and San Juan County. The Interlocal Agreement relates only to building inspections and permit administration. The Interlocal Agreement requires Grand County to “refer all inquiries and matters pertaining to the San Juan zoning ordinances, subdivision ordinance and fee schedules to the San Juan County Building Department.” The Interlocal Agreement does not waive the application requirements in the 2011 Zoning Ordinance or allow the use of Grand County forms, and does not authorize Grand County to make land use decisions on behalf of San Juan County or collect application fees on its behalf. Nor does it appear from the record that Grand County took any action with respect to the Application other than to forward the Application (but not the fees) to San Juan County.

2019. The Area Plan had been adopted in 2018, and the Planning Commission and the Board had been reviewing proposed ordinances prepared by Landmark Design since December of 2018, including at the April 3, 2019 Planning Commission meeting. The zoning changes to the CD-h sub-zone were specifically part of the ongoing planning and amendment process.

Love's was fully aware of the forthcoming zoning amendments and rushed to submit its Application before the Development Moratorium went into effect.²³ Love's gambled that if it rushed a sketch plan to friendly County staff, it could get a rubber stamp before the Board enacted the contemplated ordinance changes or the Development Moratorium. This is exactly the type of behavior that the Utah Code prohibits: interested parties cannot thwart the legislative process by rushing an application through while revisions to land use ordinances are underway.

Thus, there are two independent reasons why the Application cannot be reviewed under the 2011 Zoning Ordinance. Not only was the Application incomplete when submitted, but the County had already formally initiated revisions to the zoning regulations applicable to Spanish Valley. If Love's were to now attempt to complete its application or file the forms necessary to seek a variance or CUP, the Utah Code dictates that the application would need to be evaluated under the ordinance in effect at the time of completion – i.e., the current 2019 Spanish Valley Ordinances.

The 2019 Spanish Valley Ordinances expressly limit truck stops to the “portion of the HC Highway Commercial District south of Ken's Lake Cutoff Road only” and to the portion of the BF Business Flex District “south of Pack Creek Cutoff Road.”²⁴ The Spanish Valley Ordinances also require a CUP for a truck stop and impose other restrictions on proximity to existing residential structures, none of which are met here.²⁵ For these reasons, the Spanish Valley Ordinances mandate that the application must be denied at the currently proposed Sunny Acres Location.

3. Even Under the 2011 Zoning Ordinance, the Application Should Be Denied

For the reasons already discussed, the Love's Application should be rejected as incomplete or evaluated only under the 2019 Spanish Valley Ordinances. Nevertheless, if the Planning Commission were to reach the issue of whether the proposed truck stop would be “in harmony with the intent of the neighborhood commercial zone and similar in nature to the above listed [permitted] uses,” it should conclude that there is nothing harmonious about a truck stop at the Sunny Acres Location and should deny the Application.

²³ See Exhibit 6, County-SITLA-Love's Correspondence.

²⁴ Exhibit 12, 2019 Spanish Valley Ordinance at ch. 6, p. 32; ch. 4, p. 29.

²⁵ *Id.* at pp. 32-33.

A 2012 Opinion by the Utah Property Rights Ombudsman provides significant guidance on how to address this issue under the 2011 Zoning Ordinance.²⁶ The Ombudsman Opinion arose from a dispute between the City of Wellsville, Utah, and Garyn Perrett, who proposed to build a truck stop in Wellsville’s commercial CH zone. The Wellsville zoning ordinance provided that all uses in the commercial zone required a CUP, and further provided that only 17 enumerated uses would be allowed, even under a CUP. Among the allowed uses were “automobile service station, auto accessories,” “[c]ar and/or truck wash,” [c]onvenience store, including self-service gas pumps,” [r]epair and maintenance of motor homes, campers, RV trailers and utility trailers,” and “[r]estaurant or drive-in café.” *Id.* p. 3. This list is broader than the list of 11 specifically permitted uses in the CD-h sub-zone in San Juan County. In the Wellsville case, the issue before the Ombudsman was whether the proponent of the truck stop would be allowed to apply for a CUP, because it was similar enough to the enumerated uses for which a CUP was allowed. The Ombudsman said “no”:

A truck stop . . . is a different and distinct use, and not just a group of component parts. A truck stop is commonly understood to be a business catering to larger tractor-trailer rigs, in addition to automobile traffic. In general, a truck stop requires a large parcel and large buildings. They also alter traffic patterns, because they are intended to attract commercial trucking traffic. Accommodations for the larger tractor-trailers is a unique impact of a truck stop, and so it is more than just a “supersized” gas station. . . . A truck stop is a distinct land use with significantly different impacts than those associated with the component parts. It is therefore inappropriate to conclude that a “truck stop” may be “implied” because other allowed uses are somewhat similar. Even if the proposed facility consists of a combination of otherwise allowed uses, because a truck stop is substantially different, it cannot be allowed without an ordinance amendment.²⁷

In the Wellsville case, the Ombudsman concluded that the landowner could not seek a CUP, because a truck stop could not be “implied” as an allowed use under the Wellsville ordinance. Similarly, under the 2011 Zoning Ordinance, the Ombudsman’s opinion strongly suggests that a truck stop is not an “[o]ther use” that is “in harmony with the intent of the neighborhood commercial zone and similar in nature to the above listed [permitted] uses.”²⁸ As highlighted by the Ombudsman, a truck stop is more than just the sum of its parts and can be expected to have a far more significant impact – even in a commercial zone – than an automobile service station, restaurant, or a combination of them.

²⁶ Exhibit 1, Utah Ombudsman Opinion No. 115.

²⁷ *Id.*, p. 6.

²⁸ Exhibit 13, 2011 Zoning Ordinance at § 12-2.

As any highway user knows, the Ombudsman’s analysis makes good sense. Cars using a typical automobile service station arrive, add fuel, use the associated convenience store, and move down the highway. They rarely stay for extended periods. Even at 24/7/365 automobile service stations, cars are seldom allowed to stay overnight. At a truck stop, on the other hand, drivers stop to not only fuel their rigs and seek a meal but also are allowed to stay for mandatory rest periods. During these stays, rigs are often parked for many hours with engines, cooling units and air conditioning running. Exhaust fumes are emitted and carried to neighboring communities, as is the noise from humming engines. The amount of fuel that must be stored on site to fuel large rigs, and the amount of fuel carried in the tanks of those rigs, creates a far greater possibility of major fuel spills and contamination of local water resources – including Pack Creek, which runs near the Sunny Acres Location. As the Ombudsman correctly observed, the traffic patterns of large rigs also are different than those associated with automobiles. Those rigs accelerate and decelerate more slowly than automobiles, which increases the risks of accidents as trucks enter or leave the highway. The volume of traffic also increases when compared to automobiles, because rigs purposefully seek out truck stops, whereas cars stop as a matter of convenience. All of these differences between a truck stop and other uses permitted in the CD-h sub-zone reinforce the Ombudsman’s conclusion that a truck stop cannot be implied as “in harmony” with the other permitted uses.²⁹

For the same reasons highlighted by the Ombudsman, the Love’s Application should be denied, because it is not “in harmony” with permitted uses and no CUP was ever sought.

Conclusion

For the reasons set forth above, the Planning Commission should deny the Love’s Application so that the property in question can be sold to an owner who would use it in accordance with the current Spanish Valley Ordinances. Love’s should be advised to explore locations south of Ken’s Lake Cutoff Road, which also are owned by SITLA, for its proposed truck stop.

Respectfully submitted,

CLYDE SNOW & SESSIONS



Matthew A. Steward
Shaunda L. McNeill

²⁹ Attached as Exhibits 7-11 are statements from Spanish Valley residents describing how the Truck Stop would affect them and their communities.

By Certified U.S. Mail

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Appendix of Exhibits

1. Utah Property Rights Ombudsman Advisory Opinion, No. 115
2. Love's Sketch Plan Application
3. Court of Appeals Ruling
4. District Court Memorandum Opinion: Order on Petitioner's Motion for Summary Judgment and Respondent's Cross-Motion for Summary Judgment
5. District Court Judgment
6. County-SITLA-Love's Correspondence
7. Declaration of Marlene Huckabay
8. Declaration of Susan Baril
9. Declaration of Pat Baril
10. Declaration of David Focardi
11. Declaration of Colby Smith
12. 2019 Spanish Valley Zoning Ordinance: accessible at <https://sanjuancounty.org/planning/page/spanish-valley-ordinances>
13. 2011 San Juan County Zoning Ordinance: accessible at <https://sanjuancounty.org/sites/default/files/fileattachments/planning/page/3381/zoningordinance092011.pdf>
14. 2018 Area Plan: accessible at <https://sanjuancounty.org/planning/page/spanish-valley-ordinances>