

SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

610



FROM: TLMA - Planning Department

SUBMITTAL DATE:
March 31, 2008

SUBJECT: APPEAL BY THE APPLICANT OF THE BOARD OF SUPERVISORS RECEIVE AND FILE ACTION OF THE PLANNING COMMISSION DECISION TO DENY CHANGE OF ZONE NO. 7584 / CONDITIONAL USE PERMIT NO. 3570 – CEQA EXEMPT – Applicant: Jong's Riverside, LLC – Engineer / Representative: Matthew Cotton, Integrated Waste Management Consultant and Vector Engineering, Inc - First Supervisorial District – Lake Mathews Zoning District – Lake Mathews / Woodcrest Area Plan: Community Development: Public Facilities (≤0.60 Floor Area Ratio) – Location: Northerly of Lake Mathews Drive, southerly of El Sobrante Road, easterly of La Sierra Avenue, and westerly of Mc Allister Street – 3.77 Gross Acres - Zoning: Light Agriculture - 1 Acre Minimum (A-1-1) - **REQUEST:** The Change of Zone proposes to amend the text of Ordinance No. 348, Article XIII, Section 13.1, or more specifically the Light Agriculture (A-1) zoning classification to allow for the processing of poultry waste products, the packaging of poultry waste products and the marketing of poultry waste products produced on the property provided a Conditional Use Permit (CUP) is approved by the Riverside County Planning Commission subject to Section 18.28. The Conditional Use Permit is a proposal to legalize an existing, non-permitted, poultry waste management and distribution facility that currently operates within 37,200 square foot unpermitted structure.

RECOMMENDED MOTION:

The Planning Department recommends:

DENIAL CHANGE OF ZONE NO. 7584, base upon the oral testimony presented during the public hearings on February 6th and March 28th, 2008, and based upon the findings for denial which are attached hereto and incorporated herein; and,

Ron Goldman
Planning Director

RG:cv

Dep't Recomm.: Consent Policy

Per Exec. Ofc.: Consent Policy

Prev. Agn. Ref. 15.8 (3/25/08)

District: First

Agenda Number:

3.35

REVIEWED BY EXECUTIVE OFFICE

DATE 4/23/08

Tina Grande
Departmental Concurrence

The Honorable Board of Supervisors

RE: APPEAL BY THE APPLICANT OF THE BOARD OF SUPERVISORS RECEIVE AND FILE ACTION OF THE PLANNING COMMISSION DECISION TO DENY CHANGE OF ZONE NO. 7584 / CONDITIONAL USE PERMIT NO. 3570

March 31, 2008

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DENIAL CONDITIONAL USE PERMIT NO. 3570, based upon the oral testimony presented during the public hearings on February 6th and March 25th, 2008, and based upon the findings for denial which are attached hereto and incorporated herein.

BACKGROUND:

Change of Zone No. 7584 and Conditional Use Permit No. 3570 ("project") were heard by the Planning Commission on February 6, 2008. The Planning Commission tentatively denied the project and referred the matter to staff for the preparation of findings. On February 20, 2008, the Planning Commission adopted the findings and recommended denial of the project to the Board of Supervisors. The project appeared on the Administrative Action Agenda of the Board of Supervisors on February 26, 2008. The applicant filed an appeal on March 7, 2008, challenging the denial of the project. The appeal for the project was heard by the Board of Supervisors on March 25, 2008. The Board of Supervisors tentatively denied the project and referred the matter to staff for the preparation of findings, which are attached hereto and incorporated herein.

BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE

IN THE MATTER OF CHANGE OF ZONE CASE)
NO. 7584 AND CONDITIONAL USE PERMIT)
NO. 3570_____)

FINDINGS

The Board of Supervisors (the "Board") heard the above-referenced matters (the "project") in regular session assembled on March 25, 2008, after giving the required notice. The Planning Department made a presentation. Jong's Riverside, LLC (the "applicant") and the applicant's representatives gave oral testimony, as did various members of the public. Following the presentation and oral testimony, the Board tentatively denied the project and directed the Planning Department and Office of County Counsel to prepare the following findings. The Board has reviewed the findings and hereby denies the project based thereon.

1. In 2005, the County issued Registration Certificate BFE 050027 (the "Registration Certificate") to the applicant. The Registration Certificate authorized the construction of a pole barn on Assessor's Parcel Number 285-020-003 (the "project site"). The pole barn was to be 28,000 square feet and open on four (4) sides with no electricity.
2. The County issued a Registration Certificate because Section 301.2.1 of the Uniform Administrative Code, as amended by the County, provides that such a certificate shall be issued in lieu of a building permit for "agricultural buildings, as defined in Section 202 of the Uniform Building Code, which are open on two (2) or more sides."
3. Section 202 of the California Building Code, which replaced the Uniform Building Code in California, defines an agricultural building as follows: "a structure designed and constructed to house farm implements, hay, grain, poultry, livestock or other horticultural products. This structure shall not be a place of human habitation or a place of employment where agricultural products are processed, treated or packaged, nor shall it be a place to be used by the public."
4. In 2006, the structure on the project site was expanded, enclosed on all four (4) sides and wired for electricity. The applicant did not, as required by law, first obtain building and electrical permits from the County. That same year, the applicant began using the structure to process, package, and market poultry waste products produced on an adjacent poultry farm located to the east of the project site.
5. The project site was at that time, and is currently, zoned Light Agriculture (A-1), with a one-acre minimum lot size restriction.
6. The processing, packaging, or marketing of poultry waste products is not allowed in the A-1 zone because such activities are neither permitted as a matter of right nor conditionally permitted in that zone.
7. On June 7, 2007, the Code Enforcement Department issued a Notice of Violation to the applicant in Case No. CV071415 (the "Notice of Violation") for, among other things, illegally processing, packaging, and marketing poultry waste products in a 37,200 square foot unpermitted building.
8. On October 4, 2007, in response to the Notice of Violation, the applicant filed the applications which constitute the project.

- 1 9. Change of Zone Case No. 7584 would, if approved, change the text of the A-1 zone to permit
2 the processing, packaging, and marketing of poultry waste products produced on the property,
3 provided a conditional use permit is first obtained.
- 4 10. Conditional Use Permit No. 3570 would, if approved, legalize the existing and unpermitted
5 poultry waste processing, packaging, and marketing operation on the project site.
- 6 11. On February 6, 2008, the project was heard by the Planning Commission (the "Commission").
- 7 12. On February 20, 2008, the Commission recommended that the Board deny the project.
- 8 13. On February 26, 2008, the project appeared on the Board's Administrative Action Agenda.
- 9 14. On March 7, 2008, the applicant filed an appeal challenging the Commission's denial
10 recommendation.
- 11 15. At the de novo hearing, the applicant alleged that the County knew it would be using the
12 structure on the project site to process, package, and market poultry waste because the
13 applicant disclosed its intention to do so in the Registration Certificate application. The
14 applicant also alleged that it orally advised the County of its intention on several occasions.
- 15 16. The applicant argued that, as a result, the County is equitably estopped from applying its
16 zoning and building ordinances to the processing, packaging, and marketing operation.
- 17 17. The applicant did not, however, produce a copy of the Registration Certificate application.
- 18 18. Nor did the applicant produce any other documentation showing that the County was aware of
19 or sanctioned the processing, packaging, and marketing operation.
- 20 19. To manage paperwork volume, the County's policy is to destroy applications once it issues a
21 Registration Certificate, but, as noted above, the Registration Certificate itself only references
22 a 28,000 square foot pole barn, open on four (4) sides with no electricity.
- 23 20. County staff does not recall the applicant disclosing its intention to process, package, and
24 market poultry waste on the project site.
- 25 21. The applicant's unsubstantiated allegations do not establish the elements of equitable estoppel.
26 Assuming arguendo, that the applicant has established the elements of equitable estoppel,
27 equitable estoppel should not be applied in this instance because it does not represent an
28 extraordinary case where the precedent that would be set by the estoppel is narrow. The
application of equitable estoppel in this instance would, instead, have the effect of nullifying
the County's zoning ordinance by allowing operations that expressly violate it. This, in turn,
would adversely affect public policy. (*Smith v. County of Santa Barbara (1992) 7 Cal. App.
4th 770.*)
- 22 Accordingly, the Board finds it appropriate to consider the project in relation to its zoning
23 ordinance (Ordinance No. 348) and its zoning obligations.
- 24 23. The project site is located near suburban neighborhoods and other suburban land uses.
- 25 24. The area north of the project site is currently designated and zoned medium density residential
26 (MDR) (2-5 dwelling units per acre).
- 27 25. The residential community known as Victoria Grove is located approximately one-half mile
28 north of the project site and consists of approximately 2,500 existing homes.
- 26 Lake Matthews Elementary School is located approximately three-quarters of a mile north of
27 the project site and has a staff and student body population of 750.
- 28 27. The area to the south of the project site is designated and zoned for Public Facilities (PF) uses.
- 29 28. There are industrial and office buildings to the east of the project site.
- 30 29. West of the project site is the developing residential community of Lake Hills.
- 30 Many residents of the surrounding suburban neighborhoods and users of the surrounding
public facilities testified at the hearing that the applicant's processing, packaging, and
marketing operation generates noxious and unpredictable odors. Those odors, in turn,

- 1 allegedly cause new health problems, exacerbate existing health problems and generally
2 prevent people in the vicinity from spending any time outside or even opening their windows.
- 3 31. A physician and nurse residing in Victoria Grove presented a health survey of area residents
4 that demonstrated an increase in health concerns, in particular, asthma and other related
5 respiratory ailments, after the applicant began its processing, packaging, and marketing
6 operation.
- 7 32. Those not present at the hearing, made their opposition known in other ways.
- 8 33. Sixty-five (65) letters were submitted to the Board opposing the project.
- 9 34. A petition with over one thousand (1,000) signatures was also submitted to the Board in
10 opposition to the project.
- 11 35. In light of the above, a poultry waste processing, packing, and marketing operation on the
12 project site would arguably be incompatible with the surrounding area.
- 13 36. As previously noted, however, if Change of Zone Case No. 7584 were approved, it would not
14 only allow such operations on the project site, but would also allow such operations on all
15 parcels in the County currently zoned A-1, provided a conditional use permit is first obtained.
- 16 37. There are 1,491 parcels currently zoned A-1 in the County, many of which, like the project
17 site, are located in or near already existing suburban neighborhoods.
- 18 38. Change of Zone Case No. 7584 would, therefore, have broad implications for the County
19 because once it became effective, poultry waste operations would be allowed in or near many
20 of those other existing suburban neighborhoods. Such operations, if actually approved, would
21 potentially be even more incompatible than the light agricultural uses that are currently
22 allowed by the A-1 zone. Even if such operations were not approved, the mere fact that they
23 could be would discourage residential, industrial, and/or commercial development in the
24 surrounding areas, a result that the Board does not find desirable.
- 25 39. In short, the approval of Change of Zone Case No. 7584 would create negative effects
26 countywide and the Board hereby denies it.
- 27 40. Because a poultry waste processing, packaging, and marketing operation is not a permitted or
28 conditionally permitted use in the current A-1 zone, and because the Board has denied the
applicant's proposed Change of Zone, the applicant's proposed Conditional Use Permit to
legalize the poultry waste operation cannot be approved. The Board's decision to deny the
proposed Change of Zone is a legislative act.
41. The decision by the Board is considered final.