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Attachment "C"

March 9, 2023

RECEIVED
MAR 10 2023
CITY CLERK'S OFFICE

The Mayor and City Council
C/O City Clerk Department
City of Temecula
41000 Main Street
Temecula, CA 92590

Re: Revocation of CUP PA 07-0314

Dear Honorable Mayor Schwank and Honorable City Council Members,

We are asking the Mayor and City Council to overturn the March 1, 2023 decision of the City of Temecula Planning Commission ("the Planning Commission") which confirmed the decision of Administrative Law Judge Nye-Perkins revoking the Conditional Use Permit of "The Bank Restaurant of Mexican Food".

The grounds for this Appeal and the specification of errors in the decision are as follows:

- 1) The Administrative Law Judge, and the Planning Commission declined to consider the modification of hours as detailed in the October 15, 2008 Minor Modification of The Bank's CUP, PA 08-03236 (City's Exhibit number 7, Bates page beginning at page 36, Condition #14) which permitted the Bank to remain open until 2:00 a.m., instead of the initial January 3, 2008 PA 07-0314 (City's Exhibit 4, Bates number 12) which required closure no later than 11:00 p.m. on Fridays, Saturdays, and holidays.

It was an error for that to have occurred.

- 2) The Administrative Law Judge, and the Planning Commission declined to consider and to give the appropriate weight to the modification of hours as detailed in the October 15, 2008 Minor Modification of The Bank's CUP, PA 08-03236 (City's Exhibit number 7, Bates page beginning at page 36, Condition #14) which permitted the Bank to remain

open until 2:00 a.m., instead of the initial January 3, 2008 PA 07-0314 (City's Exhibit 4, Bates number which required closure no later than 11:00 p.m. on Fridays, Saturdays, and holidays in making their decisions.

It was an error for that to have occurred.

- 3) The Administrative Law Judge, and the Planning Commission, ***declined to consider and/or to give the proper weight*** the fact that the applicant did not request a change of hours in the Minor Modification of the CUP granted October 15, 2008. That modification cut back the closing hours from 2:00 a.m. to 11:00 p.m.

It was an error for that to have occurred.

- 4) The Administrative Law Judge, and the Planning Commission, ***declined to consider and/or to give the proper weight*** to the failure of City Planner Stuart Fisk to say he was directed to change the closing hours by his supervisor prior to his testimony before the ALJ, his numerous opportunities to have done so, and the fact that no written documentation of that change having been discussed with the applicant has been offered into evidence to date. The evidence to the contrary, is that the closing time change with the Applicant was never discussed with him by City staff. Finally, Fisk even admits, "the COA (Conditions of Approval) were from the 2007 CUP Application" (Exhibit H, page 3, D190).

It was an error for that to have occurred, and it was an error to admit the so called rebuttal testimony of Stuart Fisk to this effect because his testimony was offered as rebuttal testimony instead of testimony pursuant to the City's case in chief; the testimony constituted hearsay, and because the other evidence, including testimony of other witnesses and documentary evidence contradicted Mr. Fisk's testimony.

Applicants/Appellants attorney made a timely objection to the admission of Mr. Fisk's testimony and moved to exclude that testimony. That objection and motion was either overruled and not granted, respectively, or not ruled on at all.

- 5) The Administrative Law Judge, and the Planning Commission, declined to consider and/or to give the proper weight to the fact that the City of Temecula Planning Department, ***lost or misplaced*** the October 15, 2008 Minor Modification of The Bank's CUP, PA 08-03236 (City's Exhibit number 7, Bates page beginning at page 36, Condition #14) in making their decisions.

It was an error for that to have occurred.

- 6) The Administrative Law Judge, and the Planning Commission, ***declined to consider and/or to give the proper weight*** to the Applicants' assertion and evidence submitted that the Planning staff cut and pasted the closing hours, and other information, from the original CUP, PA 07-0314, instead of the later closing hours granted in the Minor Modification approved October 15, 2008, PA 08-03236 CUP Modification in making

their decisions.

7)The Administrative Law Judge, and the Planning Commission, ***declined to consider and/or to give the proper weight*** to the emails introduced by Applicants/appellants between City staffers Luke Watson and Stuart Fisk, and to the emails between Luke Watson and Planner Robidou.

It was an error for that to have occurred.

8)The Administrative Law Judge, and the Planning Commission, ***declined to consider and/or to give the proper weight to any of the testimony of Amanda Lane on numerous points***, including but not limited to her conversation(s) with Planning staff member Jaime Cardenas. Please read Ms. Lane's entire testimony as it appears in the Transcript, Volume II of the Hearing before the Administrative Law Judge.

It was an error for that to have occurred.

9) The Administrative Law Judge, and the Planning Commission, ***declined to consider and/or to give the proper weight*** to the testimony of Craig Puma. Please read Mr. Puma's entire testimony as it appears in Transcript, Volume II of the Hearing before the Administrative Law Judge.

It was an error for that to have occurred.

10) The Administrative Law Judge, and the Planning Commission, ***declined to consider and/or to give the proper weight*** to the several incorrect statements of Riverside County Sheriff's Sergeant Joshua Hephner. Among the incorrect statements Sgt. Hephner testified to are the location of two homicides at the Bank and as both being connected to the Bank; incorrect testimony about the security guards at the Bank; incorrect testimony about calls for service and incidents at the Bank; and each one of Sgt. Hephner's incorrect statements as they appear in the record, as pointed out to the ALJ and to the Planning Commission, statements which appear throughout the record. Please read Sgt. Hephner's entire testimony as it appears in Transcript, Volume I of the Hearing before the Administrative Law Judge.

It was an error for that to have occurred.

8) The Administrative Law Judge, and the Planning Commission, ***declined to consider and/or to give the proper weight*** to the fact the City of Temecula, after losing or misplacing the October 15, 2008 Minor Modification of hours (PA 08-03236), did not enforce the purported closing time of The Bank following the February 28, 2012 enactment of the CUP Minor Modification to allow live entertainment which mistakenly changed the Bank's closing hours from 2:00 a.m. to 11:00 p.m. for eight years (from February 2012 to February 2021).

It was an error for that to have occurred.

- 9) The Administrative Law Judge, and the Planning Commission, ***declined to consider and/or to give the proper weight*** to the fact that calls for service incorrectly listed numerous calls which were attributed to the Bank but which were in fact, not related to the Bank.

It was an error for that to have occurred.

- 10) The Administrative Law Judge, and the Planning Commission, ***declined to consider and/or to give the proper weight*** to the fact that the evidence demonstrated that other restaurants in the same area, including within a block of the Bank, had more calls for service than did the Bank.

It was an error for that to have occurred.

- 11) The Administrative Law Judge, and the Planning Commission, ***declined to consider and/or to give the proper weight*** to the fact that one homicide which was attributed to the Bank but occurred about ½ block away from the Bank and those involved had not been in the Bank prior to the shooting. Nonetheless, that homicide was cited as a reason for the Planning Department, and the ALJ to recommend the revocation of the Bank's CUP.

It was an error for that to have occurred.

- 12) The Administrative Law Judge, and the Planning Commission, ***declined to consider and/or to give the proper weight*** to the testimony of two City officials (Luke Watson and Tom Cole) before the ALJ that the Bank had come into compliance with the City's noise ordinance and as a result, no citations for Noise Ordinance violations were issued to the Bank from July 3, 2021 on. That is a period of eight (8) months before Planning recommended revocation of the Bank's CUP and based that revocation recommendation partially on the Bank's non-compliance with the City's noise ordinance.

It was an error for that to have occurred.

- 16) The revocation of the CUP by the Administrative Law Judge and by the Planning Commission is based on a great deal of incorrect information, information which the evidence clearly proves was false and/or misleading and the grounds for appeal include each one of those incorrect pieces of information as detailed throughout the record of this revocation process.

It was an error for that to have occurred.

- 17) The City of Temecula, the Administrative Law Judge, and the Planning Commission, denied Applicants/Appellants their rights of due process throughout the investigation, in issuing the citations, and in the Administrative Civil Penalty impositions, along with violating the Fifth Amendment to the Constitution of the United States as they pertain to the Applicants/Appellants throughout the prosecution and the process of this revocation

of the Bank's CUP as shown by the entire record herein.

It was an error for that to have occurred.

- 18) The record, in its entirety, lacks sufficient credible and truthful information upon which a CUP revocation, which is a deprivation of property, may be based pursuant to the Fifth Amendment to Constitution of the United States.

That is an error.

- 19) We also specifically appeal the decision of the Planning Commission refusing to permit the showing of the video of the shooting incident at the Bank as evidence to be considered by the Planning Commission in that the video shows there was no disturbance prior to the shooting as Sgt. Hephner testified and as other city officials testified was a factor in deciding to revoke the CUP.

It was an error to refuse our attempt to introduced that video.

- 20) We also specifically appeal the decision of the Planning to not allow a continuance until such time as the video described in the previous paragraph may be admitted into evidence before the Planning Commission without the objection of the District Attorney, in other words, once the pending criminal cases have been resolved.

It was an error that the continuance requested was not granted.

- 21) We also specifically appeal the decision of the Planning Commission which declined to give additional time for the Applicants/Appellants to locate Mr. Patrick Richardson, Director of Community Development for the City of Temecula at the time PA 08-03236 was approved (October 15, 2008). Mr. Richardson's testimony is necessary to refute the testimony of City Planner Stuart Fisk before the ALJ, in which Mr. Fisk testified that Mr. Richardson directed him to change the closing time on the Bank's CUP from 2:00 a.m. to 11:00 p.m. .

It was an error not to grant additional time to permit Mr. Richardson to be located.

THEREFORE: Applicant/Appellant specifically requests the Mayor and City Council of the City of Temecula to:

- 1) overturn the decision of Administrative Law Judge Nye-Perkins in this matter, and
- 2) reinstate CUP Modification Number PA 08-03236, with daily closing hours at 2:00 a.m. as the current CUP for the Bank Restaurant of Mexican Food, effective forthwith.

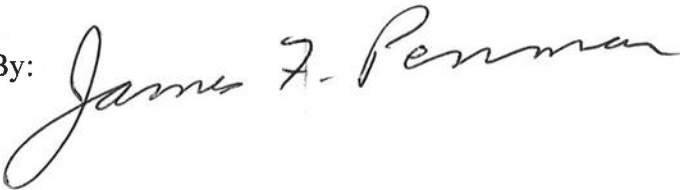
Because of our uncertainty regarding the applicability of the use of the City of Temecula Planning Division's form entitled, "Appeal Application (Public Hearing)" we are employing this letter as Attachment "C" to the Appeal to the Temecula City Council (using the above-referenced form), which is filed by the owners of The Bank Restaurant of Mexican Food, located at 28645

Old Town Front Street, Temecula, CA 92590. This letter is attached as Exhibit "C" to the Appeal form appealing the above-referenced decision and is a part thereof as if fully stated in this letter and in the above-referenced form again.

Alternatively, this letter may be used as the formal Appeal to the City Council as provided in the Temecula, California Municipal Code, Title 17 Zoning, Chapter 17.03 Administration of zoning, Section 17.03.085 . . . A. Revocation 8. In such case the two Appeal forms referenced above are attached hereto as Attachments "A" and "B" respectively.

Respectfully submitted,

Milligan Beswick Levine & Knox, LLP
Attorneys for Applicants/Appellants
The Bank Restaurant of Mexican Food

By: 

James F. Penman
Of Counsel

Attachments: Two (2), labeled Attachments "A" and "B"



CITY OF TEMECULA

PLANNING DIVISION

41000 Main Street

Temecula, CA 92590

951-694-6400

TemeculaCA.gov/planning

ATTACHMENT A

APPEAL

SECTION A

APPEAL APPLICATION (PUBLIC HEARING)

NOTE: DO NOT USE THIS FORM FOR MESSAGE APPEALS. VISIT TEMECULACA.GOV/MESSAGE

PROJECT INFORMATION

Original Planning Application Number(s)

PA 07-0314

Appealing the Decision of:

Director of Community Development Director's Hearing Planning Commission

Date of Decision

March 1, 2023

Briefly specify what action or decision is being appealed

Confirmation of the decision of Administrative Law Judge Nye-Perkins revoking The Bank CUP (See Attachment C attached hereto and incorporated herein by reference)

ADDITIONAL PROJECT INFORMATION

Assessor's Parcel No(s)

922036011

Legal Description (Tract, Lot No.)

Town of Temecula, Lot 11

Street Address(es)

28645 Old Town Front St., Temecula, CA 92590

General Location

Front/Main Street

APPLICANT/REPRESENTATIVE/OWNER INFORMATION

Company

The Bank of Mexican Food

First Name

Amanda

Middle Initial

Last

Lane

Street Address

28645 Old Town Front St.

City

Temecula

State

CA

Zip

92590

Phone

(951) 378-0980

E-mail

my5kidsmama@gmail.com

I certify that all filing requirements have been satisfied for my application. I further understand that an incomplete application cannot be accepted for processing.

Applicant's Signature



Amanda Lane

FOR STAFF USE

PLANNING APP. NO.

DATE STAMP

REC'D BY



CITY OF TEMECULA

PLANNING DIVISION
41000 Main Street 951-694-6400
Temecula, CA 92590 TemeculaCA.gov/planning

ATTACHMENT B

APPEAL

SECTION A APPEAL APPLICATION (PUBLIC HEARING)

NOTE: DO NOT USE THIS FORM FOR MESSAGE APPEALS. VISIT TEMECULACA.GOV/MESSAGE

PROJECT INFORMATION

Original Planning Application Number(s)
PA 07-0314

Appealing the Decision of:
 Director of Community Development Director's Hearing Planning Commission Date of Decision
March 1, 2023

Briefly specify what action or decision is being appealed
Confirmation of the decision of Administrative Law Judge Nye-Perkins
revoking The Bank CUP (See Attachment C attached hereto and incorporated
herein by reference).

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Town of Temecula, Lot 11
Street Address(es)
28645 Old Town Front St., Temecula, CA 92590
General Location
Front/Main Street

APPLICANT/REPRESENTATIVE/OWNER INFORMATION

Company
The Bank of Mexican Food
First Name Middle Initial Last
Amanda Lane
Street Address
28645 Old Town Front St. James F. Penman
Milligan, Beswick, Levine & Knox, LLP
City State Zip Phone
Temecula CA 92590 1447 Ford St., Ste.201
Redlands, CA 92374
(909) 798-3300
E-mail
jpenman@mblklaw.org

I certify that all filing requirements have been satisfied for my application. I further understand that an incomplete application cannot be accepted for processing.

Applicant's Signature *James F. Penman*
James F. Penman Attorney for Applicant/
FOR STAFF USE Appellant

PLANNING APP. NO.	DATE STAMP	REC'D BY