

**EL DORADO COUNTY DEVELOPMENT SERVICES
PLANNING COMMISSION
STAFF REPORT**



Agenda of: February 14, 2008
Item No.: 10.
Staff: Tom Dougherty

SPECIAL USE PERMIT

FILE NUMBER: S07-0023

APPLICANT: FTM Plastic Welding, Bob and Sandy Ayrest

REQUEST: Special Use Permit to allow for the continuation of a wholesale distribution home occupation that assembles, ships and receives power controls and heating trays.

LOCATION: On the southwest side of Cobblestone Road, approximately 1,500 feet west of the intersection with Stagecoach Road, within the Greenstone Country, Unit 1, subdivision in the Greenstone area, Supervisor District IV. (Exhibit A)

APN: 317-287-06 (Exhibit B1)

ACREAGE: 4.25 acres

GENERAL PLAN: Low-Density Residential – Important Biological Corridor (LDR - IBC) (Exhibit D)

ZONING: Planned Development (PD) (Exhibit E)

ENVIRONMENTAL DOCUMENT: Statutorily Exempt pursuant to Section 15270(b) of the CEQA Guidelines.

RECOMMENDATION: Staff recommends the Planning Commission take the following actions:

1. Certify that the project is Statutorily Exempt from CEQA pursuant to Section 15270(b) of the CEQA Guidelines; and
2. Deny S07-0023 as the required findings cannot be made based on the analysis in the staff report and as noted in Attachment 1.

BACKGROUND: The existing parcel was created within Greenstone Country Unit 1 by Final Subdivision Map F-137, and was recorded as Lot 44 in September of 1981. Development projects within Greenstone Country are guided by the *Greenstone Development Policies* adopted by the El Dorado County Board of Supervisors with Resolution 61 – 85 adopted March 19, 1985. Those policies require a finding of consistency with El Dorado County General Plan policies.

STAFF ANALYSIS

Project Description: The applicants are proposing to continue operating an expanded home occupation that would not be open to the public. They have operated FTM Plastic Welding since 1985 under a business license that had originally limited the operation to a home office, no employees, and no storage on site.

The business is limited to the processing of orders received by mail, fax and email. Retail and wholesale customers are not allowed to visit the site. The majority of the work performed consists of shipping of prepackaged items as they are received from vendors. The business includes assembling power controls and heating trays which involves putting together prefabricated parts into finished unit(s). No painting, machining, welding or other heavy industrial type of work is completed at this location. The orders are received and shipped via United Parcel Service. For shipments coming and going by truck lines, the applicants meet the truck at an off-site location. The applicants also ship packages for their neighbors out of their business location.

The business is carried out in the existing 35 foot x 40 foot (1,400 square foot) accessory building. Additional storage areas are provided onsite. The operational activities include the use of office equipment, and hand tools such as hand drills and soldering irons. The business hours are 7:30 am to 4:00 pm, Monday – Friday. The employees of the business include the two owners and four full-time employees.

According to the submitted site plan, the setbacks for the existing shop area building are 40 feet from closest property line on the northwest side. There are no signs advertising the business on site.

Site Description: The parcel is located at approximately the 1,420-foot elevation above sea level. The majority of the parcel is covered with native oaks and pines. The primary single-family dwelling is setback from the Cobblestone Road approximately 350 feet to the northeast and the second residential unit is approximately 180 feet to Dakota Road to the south. The shop is located between the two and all are attached with through access to each. There is a secondary access road to Dakota Road. The following structures were originally permitted on the site:

Building	Square Footage	Permitted?/Year
Primary single-family dwelling	Originally 2,216 with a 1,137 garage. Currently 2,916 with the later addition	Yes/#83038253/1983
Storage shed	240	Yes/#89059154/June 28, 1989
Detached garage	1,470	Yes/#94755/January 17, 1996
Expand primary single-family dwelling,	637/dwelling 551/deck	Yes/#131840/September 27, 2001
Secondary residential unit	960/dwelling 1,111/garage 526/storage 570/workshop 546/deck	Yes/#140385/March 28, 2003
Agricultural Inspection Exempt Barn	2,000	Yes/#149809/August 13, 2003

Permit History Discussion: There is a second-story attic area directly over the shop and a second-story storage area over the first-floor storage area in the shop. At one time the shop area and second-story storage areas were within the Agricultural Inspection Exempt barn area that was converted and combined with the detached garage finalized in 1996. That combination became the shop area. Currently, all structures are attached as one structure and the Agricultural Inspection Exempt barn no longer exists. There currently are two, non-permitted metal garage/canopy structures set in concrete and one is built within the side yard setback.

Adjacent Land Uses:

	Zoning	General Plan	Land Use/Improvements
Site	PD (Greenstone)	LDR	Residential, single family dwelling, second residential unit and accessory buildings, home-based business
North	PD (Greenstone)	LDR	Residential, single family dwelling
South	RE-5	LDR	Residential, single family dwelling
East	PD (Greenstone)	LDR	Residential, single family dwelling
West	RE-5	LDR	Residential, vacant, 84.71 acres

Discussion: The surrounding parcels are predominately 3 to 3.5 acres and generally have single family dwellings with accessory buildings clustered around them.

Greenstone Development Policies: Adopted by the El Dorado County Board of Supervisors with Resolution 61 – 85 on March 19, 1985. Development Policy A2 states that *low density and rural residential shall remain the predominant use*. Policy A3 states that *...commercial development in the Greenstone Plan Area are not compatible with the rural/residential land uses in the Plan Area*.

Greenstone Country Owner's Association Covenants, Codes and Restrictions (CC&Rs): Section 4.3 Business and Agriculture states in part that *no business of any kind shall be established, maintained, operated, permitted, or conducted within the Project except (i) such businesses and professions as may be permitted by applicable governmental ordinances and provided that there shall be no external evidence thereof...*

Although the County does not have the authority to enforce CC&Rs, it should be noted that the original business license for FTM Plastic Welding was issued on August 21, 1985 and states that it was issued to permit an *office in home/no storage on site/no employees*. A copy of that original license is provided as Exhibit G1.

General Plan: The General Plan designates the subject site as Low Density Residential and Important Biological Corridor (LDR/IBC). LDR permits single-family residential development in a rural setting. Policy 2.2.5.2 requires that applications for discretionary projects, such as a Special Use Permit, shall be reviewed to determine consistency with General Plan policies.

Policy 2.2.5.21 *directs that development projects shall be located and designed in a manner that avoids incompatibility with adjoining land uses that are permitted by the policies in effect at the time the development project is proposed. Development projects that are potentially incompatible with existing adjoining uses shall be designed in a manner that avoids any incompatibility or shall be located on a different site.* Planning staff has determined that proposed home businesses, with employees, the use of accessory buildings, shipping items on a regular basis with associated delivery vehicles, as well as storing inventory in accessory structures, would not be compatible with the surrounding residential neighborhood. This would be considered a commercial operation and should be moved out of the residential neighborhood to a compatible commercial area.

Policy 7.4.2.9 determined that the Important Biological Corridor (-IBC) overlay shall apply to lands identified as having high wildlife habitat values, and special considerations should be given to retaining oak tree canopy, other tree and shrub corridors, and setbacks from wetlands. The parcel is surrounded by existing field fencing, and no new development other than that which exists today is proposed with this application. If approved as it exists today, there would be no new impacts that do not already exist.

Policy 10.1.7.4 states that *home occupations shall be encouraged and permitted to the extent that they are compatible with adjacent or surrounding properties.* Staff has determined that the home-based business would not be compatible and the findings to support this Policy cannot be made, as it would promote a home-based business within a residential district that would not typically be permitted within the same zone district elsewhere in the County. This is a residential development not intended to be the site of commercial businesses and not compatible with surrounding RE-5/R3A equivalent zoned properties.

Conclusion: The project has been reviewed in accordance with the El Dorado County 2004 General Plan policies, and it has been determined that the project is not consistent with the General Plan. Findings of inconsistency with the General Plan are provided in Attachment 1.

Zoning: County Code Section 17.20.105 refers to variable front, rear and side yard setbacks for nonconforming parcels and determines setbacks for parcels smaller than the minimum allowed by the existing zoning. Those setbacks are determined by the zone district which prescribes a minimum parcel size closest to the size of the subject parcel and you do not round upwards. For example, the parcel is 4.25 acres so the closest zone district would be Single-family Three-acre Residential (R3A) which has 30-foot setbacks for all yards.

The property is zoned Planned Development (PD) which reflects in this case that it is located within the Greenstone Country planned development. This was the first designated planned development in the County.

The proposed use is not specifically listed as a home occupation permitted by right under any residential zone district described in County Code, and therefore requires a special use permit. The following is the language used in the residential zone districts to describe home occupation allowed by right:

Home occupation such as accountant, advisor, appraiser, architect, artist, attorney, author, broker, dressmaker, draftsman, dentist, handicrafts, insurance, photographer, physician, therapist, musician, teacher and other similar occupations normally conducted by mail or telephone on the premises where the activities do not create a traffic problem; provided, that instruction is not given to groups in excess of four and concerts or recitals are not held, and no display of goods is visible from the outside of the property; such use must be carried on in the residence and be incidental to the residential use of the premises and be carried on by a resident thereon.

The following is the language used in the residential zone districts to describe home occupation requiring a special use permit:

...home occupations not listed in subsection...which require special consideration such as the use of power tools, accessory building, noise, and will not change the residential character of the premises or adversely affect the other uses permitted in a residential area also would require a special use permit.

Discussion: Planning Services routinely reviews anywhere from 10 to 30 business license requests per day and the vast majority are for home-based occupations. Because of direction from County Code, it has been the practice on a consistent basis for many years to deny requests for home-occupation business licenses that request to have employees and carry out the business in an accessory building, and store materials in an accessory building in a residential district. County Code does not differentiate between an attached or detached garage; both are considered accessory buildings when determining if a use is permitted. These same Codes about home-occupations were in place in 1985 when the applicant first applied for a County business license. The subject business license only permits a home office, no employees, to be carried out by residents on the subject parcel only, not to permit storage of business inventory and not to be carried out within an accessory building. That license does not permit the current state of the subject business.

When a business owner renews the original business license each year a fee is sent in and no site inspection is done to verify that the business is actually conforming to the guidelines established by County Code for home-based businesses in residential districts. Because of that reason, the shop building received inspections from the Fire District and the shop was built to commercial standards with each agency assuming the business had complied with County requirements. The buildings were all attached as one large conglomerate and are an example of how a home-based business can evolve into a commercial operation. On June 22, 2007, a complaint was filed with the County Code Enforcement Division which appears to be the first County recognition and knowledge that a commercial business has been operating contrary to County Code since 1985.

County Code does not permit Planning Services staff to routinely permit businesses of this type to exist on parcels designated by the Zoning Ordinance and the General Plan for residential uses. Many similar home-based occupation applications historically submitted have been told they cannot do an enterprise with similar components. Planning staff has determined that to approve the subject application request would legitimize a home occupation that would not be permitted by County Code. Further, it would be contrary to the intent of the establishment of residential districts, especially low-density residential land use districts that are not intended to be areas for commercial businesses.

Therefore, Planning staff recommends the Planning Commission deny the subject application request as being contrary to the intent of Zoning Code and General Plan.

ENVIRONMENTAL REVIEW

This project has been found to be Statutorily Exempt from the requirements of CEQA pursuant to Section 15270(b) of the CEQA Guidelines allowing an initial screening of projects on the merits for quick disapprovals prior to the initiation of the CEQA process where the agency can determine that the project cannot be approved. In this case the project is inconsistent with a number of General Plan policies, thus necessitating the recommendation for denial. Pursuant to Resolution No. 240-93, a \$50.00 processing fee is required by the County Recorder to file the Notice of Exemption.

SUPPORT INFORMATION

Attachments to Staff Report:

Attachment 1	Conditions of Approval
Attachment 2	Findings
Exhibit A	Vicinity Map
Exhibit B1, B2	Assessor's Parcel Maps for Subject parcel and to the west
Exhibits C1, C2, C3	Greenstone Country Unit No. 1, Subdivision Map F - 137
Exhibit D	General Plan Land Use Map
Exhibit E	Zoning Map
Exhibit F	Site plan
Exhibits G1, G2, G3	Business license records
Exhibits H1 to H8	Site visit photographs from December 19, 2007
Exhibit I1 and I2	Aerial photographs
Exhibit J	FTM Plastic Welding website home page, (2 pp.)

ATTACHMENT 1

FINDINGS FOR DENIAL

File Number S07-0023
Planning Commission/February 14, 2007

Based on the review and analysis of this project by staff and affected agencies, and supported by discussion in the staff report and evidence in the record, the following findings can be made:

FINDING FOR DENIAL

1.0 CEQA Finding

1.1 This project is found to be Statutorily Exempt from the requirements of CEQA pursuant to Section 15270(b) of the CEQA Guidelines where the agency can determine that the project cannot be approved. The project is unapprovable due to numerous inconsistencies with General Plan policies.

2.0 General Plan Findings

2.1 The proposed special use permit is not consistent with the Low-Density Residential (LDR) General Plan land use designation.

2.2 The proposal, as conditioned, is not consistent with the intent of Policies 2.2.5.21 and 10.1.74 because current adopted County Code directs that businesses such as the subject one, with employees, using accessory buildings, and shipping items are not compatible with residential neighborhoods.

INDEMNIFICATION

In the event of any legal action instituted by a third party challenging the validity of any provision of this approval, the developer and landowner agree to be responsible for the costs of defending such suit and shall hold El Dorado County harmless from any legal fees or costs El Dorado County may incur as a result of such action, as provided in Section 66474.9(b) of the California Government Code.