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COLORADO

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PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT
CRAIG DOSSEY, EXECUTIVE DIRECTOR

February 8, 2022

ATTN: Angela Jenkins

RE: 23355 Highway 94 Determination of Nonconforming Use

File: ADM-22-004

Parcel ID: 34130-00-006

To Whom It May Concern:

A request has been made for an interpretation regarding the above referenced parcel to confirm that the existing restaurant use on the property is considered a nonconforming use pursuant to the El Paso County Land Development Code (2021). The property must first be confirmed as a legal lot.

Section 1.15 of the Code defines a "Legal Lot" as:

"A lot, parcel or tract of land created by a legal conveyance of the lot, parcel or tract prior to July 17, 1972; a lot, parcel or tract shown on a subdivision plat which was approved and recorded prior to July 17, 1972, according to the subdivision regulations in effect at the time of approval; a lot, parcel or tract created by legally prepared survey dated prior to July 17, 1972; a lot, parcel or tract created by approval of the County commissioners in conformance with the subdivision regulations in effect at the time of approval; a lot, parcel or tract created by a contract for deed or signed but unrecorded deed, each dated prior to July 17, 1972; a parcel exempted from subdivision by the Board of County Commissioners (BoCC), or any parcel of 35 acres or more, which, when created, did not cause a parcel of less than 35 acres to remain; a parcel created by any court pursuant to the law of eminent domain, operation of law, or by order of any court if the BoCC has been given timely notice and opportunity to join in the action; a parcel

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modified or reduced in size due to land acquisition by a governmental entity.”

The property was created by warranty deed on May 16, 1979 (El Paso County Public Records, Book 3176, Page 233, Reception No. 556066). The geometry and legal description of the property has not changed since its creation; however, due to its date of creation occurring after July 17, 1972, the parcel is not considered a legal division of land.

Compliance with Zoning Regulations:

The property was zoned A-35 (Agricultural) on March 25, 1999, when zoning was first initiated for this portion of the County (BoCC Resolution No. 99-101). According to the applicant’s request letter, the restaurant use was established on the property prior to 1990 and has been operating continuously since that time.

Section 1.15 of the Code defines a “Use, Nonconforming” as:

“Any legally existing use, whether within a structure or on a piece of land, which does not conform to the use regulations of the zoning district in which the use is located, either at the effective date of this Code or as a result of the subsequent amendments which may be incorporated into this Code.”

A restaurant is not an allowed use in the A-35 zoning district, pursuant to Table 5-1 of the Code. In order for the restaurant use to be considered a nonconforming use, it would either need to have met the applicable zoning regulations at the time the use was initiated or would need to have been initiated prior to the initiation of zoning regulations.

According to a letter from the Colorado Department of Revenue dated January 12, 2022, the subject property has had an active business under the category of “Supermarkets and Other Grocery (except Convenience) Stores, Full-Service Restaurants” as early as 1996 in the State registration system. Based on this information, it can be determined that a combined restaurant and grocery store has been active on this property since before 1999. A copy of the letter from the Department of Revenue is attached herein.

Discussion and Conclusion:

It is the determination of the Planning and Community Development Department Director that the restaurant use can be considered nonconforming due to it being in existence prior to the initiation of zoning.

However, due to the property being an illegal division of land, no building permits may be issued on the property until the division of land is legalized through the subdivision process.

Any proposed new development shall comply with all other applicable County, State, and Federal Regulations.

If you have any questions or concerns regarding this determination, please contact myself or Ryan Howser, AICP, Planner II, at (719) 520-6049 or ryanhowser@elpasoco.com.

Sincerely,

A handwritten signature in black ink that reads "Craig Dossey". The signature is written in a cursive style with a large, looping "C" and "D".

Craig Dossey
Executive Director
El Paso County Planning and Community Development Department