

STAFF REPORT

July 24, 2003

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**No. 03UR010 - Conditional Use Permit to allow an On-Sale Liquor Establishment in a General Commercial Zoning District**      **ITEM 34**

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GENERAL INFORMATION:

PETITIONER	Hermanson Egge Engineering, Inc. for Rob Tschetter
REQUEST	<b>No. 03UR010 - Conditional Use Permit to allow an On-Sale Liquor Establishment in a General Commercial Zoning District</b>
EXISTING LEGAL DESCRIPTION	Lots 11 thru 15 and the west 11 feet of Lot 16, Block 9, Schnasse Subdivision, Section 31, T2N, R8E, BHM, Rapid City, Pennington County, South Dakota
PARCEL ACREAGE	Approximately .62 acres
LOCATION	406 East North Street
EXISTING ZONING	General Commercial District
SURROUNDING ZONING	
North:	Medium Density Residential District
South:	General Commercial District
East:	General Commercial District
West:	General Commercial District
PUBLIC UTILITIES	City sewer and water
DATE OF APPLICATION	06/27/2003
REPORT BY	Jeff Marino

RECOMMENDATION:

Staff recommends that the Conditional Use Permit to allow an On-Sale Liquor Establishment in a General Commercial Zoning District be denied due to undue concentration of similar uses in the area and the potential adverse impacts on the residential area located directly north of the property.

GENERAL COMMENTS: The applicant is requesting approval of a Conditional Use Permit to allow an on-sale liquor establishment on the above legally described property. Currently, a 9,676 square foot structure is located on the property and is the location of "Pawn with Us", "Cash with Us", and the "Wash with Us" businesses. The applicant is proposing to use part of the structure as a casino.

On June 5, 2000, the City Council denied a similar request at the same location to allow for an on-sale liquor establishment in conjunction with a casino. In addition, on May 17, 1999, a

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similar request to allow for the expansion of an existing on-sale liquor establishment located approximately one block west of the subject property was denied. Several Council members expressed concern with allowing any additional on-sale liquor establishments or the expansion of existing on-sale liquor establishments in an area that is already saturated with on-sale liquor establishments.

STAFF REVIEW: Staff has reviewed this request with respect to the four criteria established for On-Sale Liquor establishments identified in Section 17.50.185:

*1. The request will not "adversely affect" the use of any place used for religious worship, school, park, playground, or similar use within a five hundred (500) foot radius.*

There are no places of religious worship or schools located within a five hundred foot radius of the subject property. The properties to the south, east, and the west are currently zoned General Commercial. The Tradewinds Motel is located east of the property. Auto Truck Mart is located west of the property. Dakota Land Auto Glass and the Price Motel are located south of the property, across East North Street. The property to the north is zoned Medium Density Residential District with existing residential development. Staff's review of the proposed on-sale liquor establishment finds that the proposed use should not adversely effect any place of religious worship or schools since there are none located within a five hundred foot radius of the property. However, staff is concerned with the potential adverse effect the on-sale liquor establishment may have on the residential development located directly north of the subject property as discussed below in item #2.

*2. The requested use is "sufficiently buffered" with respect to residential areas so as not to "adversely affect" such areas.*

As previously indicated, the property to the north is zoned Medium Density Residential District with existing residential development. Staff is concerned that the proposed on-sale liquor establishment may have an adverse affect upon these properties. The property is also located within the "Weed and Seed Program Area." The Weed and Seed Program proposes to improve properties by removing debris, improving existing structures and encouraging uses that will be beneficial to the area. In 2000, when the request was denied originally, the City of Rapid City Code Enforcement Division had concerns about the amount of calls being received concerning debris at the site.

In addition, Chapter 17.80.080 of the Rapid City Municipal Code states that when a General Commercial Zoning District abuts a side or rear yard of a residential district, exclusive of alleys, an opaque ornamental screening fence not less than five nor more than six feet in height shall be constructed along the abutting property lines. Currently, there does not appear to be a fence at the rear property line separating the two uses. Prior to Planning Commission approval a revised site plan showing a five foot high opaque screening fence would be required extending from Waterloo Street to the rear edge of the building. Staff is concerned that the property is not sufficiently buffered from the residential area and that the proposed use may adversely affect these properties.

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3. *The proposed use will not create an undue concentration of similar uses, so as to cause "blight, deterioration, or substantially diminish or impair property values."*

Staff has noted that there are currently ten existing on-sale liquor establishments located along East North Street. East North Street Casino and Saigon Restaurant are located one block west of the subject property. Joker's Casino North is located one block east and Toby's Casino is located two blocks east of the subject property. In addition, Pizza Hut, The Great Wall, The Imperial Chinese Restaurant, Uncle Sam's Casino and Happy Jack's Casino are located within five blocks of the subject property further east along East North Street. Staff notes that an On-Sale Liquor Establishment which has casino facilities in the area has relocated or has been moved from the area; however, staff does not support an additional use of this nature in this portion of the city.

The City Council denied the same request to allow for an on-sale liquor establishment in conjunction with a casino at the same location in 2000. Several Council members expressed concern with allowing any additional on-sale liquor establishments or the expansion of existing on-sale liquor establishments in an area that is already saturated with on-sale liquor establishments. In light of the previous action by the City Council and the number of on-sale liquor establishments existing within the area, staff can not support the proposed request.

4. *The proposed use has been reviewed under the Section 17.54.030 (E).*

Screening: As previously indicated, Chapter 17.80.080 of the Rapid City Municipal Code states that when a General Commercial Zoning District abuts a side or rear yard of a residential district, exclusive of alleys, an opaque ornamental screening fence not less than five nor more than six feet in height shall be constructed along the abutting property lines. Currently, there does not appear to be a fence on the property meeting the requirement for a screening fence.

Parking in the Right of Way: Section 17.50.270 (G)7.a. of the Rapid City Municipal Code states, "Every Parking area that abuts a public or private sidewalk, public right-of-way, or building entrance or exit shall be provided with a wheel guard or curbs not less than six inches in height which shall be securely installed and maintained." A site visit has indicated that vehicles are parking in the right-of-way; however, the submitted site plan shows the wheel stops moved back out of the right-of-way. This will potentially mitigate the problem of people parking in the right-of-way.

Parking: Staff has reviewed the proposed use with respect to Section 17.50.270 of the Rapid City Municipal Code and notes that a minimum of 39 parking spaces are required with two handicap accessible spaces. The applicant has only identified 37 off-street parking spaces on the site plan; however, two of these spaces appear to be in the right-of-way which would not be in compliance with the City of Rapid City Municipal Code.

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The receipts from the certified mailings have been returned and the Conditional Use Permit sign has been posted on the property. As of this writing, the green cards have not been returned.

Due to the undue concentration of similar uses in the area and the potential adverse impacts on the existing residential development as well as the previous action taken by the City Council on a similar request, staff recommends denial of the Conditional Use Permit.