

Walter Tellez - Macsteel Parking Requirements

From: Wayne Bogdan
To: jrwarch1@qwest.net
Date: 05/25/2006 4:03 PM
Subject: Macsteel Parking Requirements
CC: Craig Gross; David Rivera; Ernie Duarte; Terry Stevens; Walter Tellez

May 25, 2006

Jim R. Watson
Architect
3026 North Country Club Road
Tucson, AZ 85716

Subject: New Macsteel Manufacturing and Distribution Wholesaling Use: Parking Requirements
Land Use Code (LUC) Information

Dear Mr. Watsen:

Thank you for your letter dated May 19, 2006 requesting clarification of the land use and parking requirements for the new Macsteel facility. Per your letter, this Macsteel facility will provide processing, merchandising and distribution of carbon, stainless, aluminum and specialty steels. The facility will receive sheet steel in large rolls that may weigh up to 40,000 to 60,000 pounds. The facility will then cut the rolls into maximum 4,000 pound rolls for shipping to their customers either by rail or truck. There will be no bending, braking, joining, or other fabrication process within this facility, only the cutting of large rolls into smaller rolls.

The Zoning Administration Division has reviewed your letter and the LUC regulations applicable to off-street parking and land use classification. As described, the Macsteel facility is a land use within the Industrial Use Group (Sec. 6.3.6 et seq.). For parking purposes, however, the parking for this facility is more similar to the parking required of a wholesale and distribution facility (Wholesale Use Group).

Per the applicable provisions of the LUC the parking for the new Macsteel facility can be calculated by using the following Wholesale Use Group ratio (Secs. 3.3.3.2, 6.3.2.3, and 6.3.6 et seq.):

Motor Vehicle: SA. One (1) space per two thousand (2,000) sq. ft. of storage area for the first twenty thousand (20,000) sq. ft. of storage area plus one (1) space per ten thousand (10,000) sq. ft. of storage area for over twenty thousand (20,000) sq. ft. of storage area.

I hopes this answers your questions, and if you should need further assistance from the Zoning Administration Division, please contact either Bill Balak (ext. 1168) or myself (ext. 1116) at (520) 791-4541.

Sincerely;

Wayne F. Bogdan
Zoning Administration Division
Development Services Department
City of Tucson

Walter Tellez
5/30/2006
260

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From: William Balak
To: BJ Viestenz; Heather Thrall; Richard Diaz; Russlyn Wells
Date: 1/14/02 4:01PM
Subject: Wholesaling

In order to clarify what does not constitute a "wholesale" land use, please use the following description when reviewing a business license listed as "wholesaling" or when responding to an inquiry:

If products at the store have a single retail price (i.e., no wholesale prices are quoted to contractors) and any quantity discount terms or sale prices are available to the general public, and does not hold itself out or advertise as a wholesaler or as providing wholesale goods, it is not considered wholesaling by the LUC

This description is from a memorandum from Walter Tellez to Ernie Duarte on 11/10/99

CC: Walter Tellez

Walter Tellez - Wholesaling
1/14/02



MEMORANDUM

3512
467

DATE: November 10, 1999

TO: Ernie Duarte
Development Services

FROM: *W. Tellez*
Walter Tellez
Zoning Administrator

SUBJECT: Home Depot/Hazardous Materials

In response to Mr. Cornelio's letter dated October 29, 1999, there is no Land Use Code (LUC) issue concerning wholesaling of hazardous materials. First, the LUC does not limit or restrict individual packages or containers of materials that may be considered hazardous. The LUC regulates tanks and similar sized containers that contain hazardous materials (Sec. 3.5.10.2). Secondly, if products at the store have a single retail price (i.e., no wholesale prices are quoted to contractors) and any quantity discount terms or sale prices are available to the general public, and does not hold itself out or advertise as a wholesaler or as providing wholesale goods, it is not considered wholesaling by the LUC.

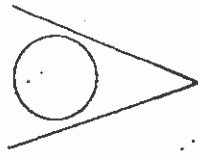
Please let me know if I can be of any further assistance.

WVT:s/walter/homedephaz

Cc: Michael McCrory, City Attorney's Office

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Grainger Consulting, Inc.

Fire Protection Engineering • Fire & Building Code Consulting

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Carmine Cornelio, Esq.
Attorney At Law
The Carraige House
325 W. Granklin, Suite 121
Tucson, Az 85701
520-629-0747 V
520-629-0828 F

29 October, 1999

Report Regarding: Home Depot, El Con Mall, Tucson, AZ

GC #1782

Prepared by: Scott Grainger, PE, Fire Protection Engineer

Our office was contracted to review the Home Depot (HD) plans and Hazardous Material (HazMat) submittals for the project and provide comments. The plan review was to address life safety issues only. This limited the review to the following:

- Fire safety
- Life safety (exiting)
- Hazardous Materials

The actual review covered the following areas:

- Site Plan
- Coordination with existing mall structure
- Allowable area of building
- Construction Type
- Exiting
- Fire sprinklers
- Hazardous Materials
 - Hazardous Materials Management Plan
 - Hazardous Materials Information Statement (HMIS)
 - Classification of certain materials
 - Actual quantities in store (3) compared to HMIS
- Administrative Code

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MEMORANDUM

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DATE: November 10, 1999

TO: Ernie Duarte
Development Services

FROM: *W. Tellez*
Walter Tellez
Zoning Administrator

SUBJECT: Home Depot/Hazardous Materials

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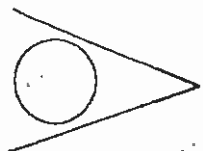
Please let me know if I can be of any further assistance.

WVT:s/walter/homedephaz

Cc: Michael McCrory, City Attorney's Office

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Home Depot, El Con Mall
Carmine Cornelio, Esq

GC#1782
29 October 1999

The lack of detail provided in the plans submitted has resulted in the need to discuss a number of probable options available to the HD design team in the discussion that follows. A complete set of construction documents submitted to an authority having jurisdiction should have all of the questions answered such that a discussion of "probable options" is not necessary. It is not the job of the plans reviewer to guess at what the responsible party for the design documents has in mind. The design team is responsible for understanding and applying the fire and building codes in an appropriate manner. Failure to do so places the registrant in violation of the Codes and Rules for registrants in Arizona. There are jurisdictions in Arizona that will not even accept plans that are not incomplete, let alone attempt to review them.

SITE PLAN

At the time of the review, 10/4/99, the City of Tucson Development Services Center did not have a current HD site plan submittal and neither did the Tucson Fire Dept. The site plan provided by the Fire Dept. for review was for a Walmart store that had been proposed for the same site on an earlier occasion. The Fire Dept. representative assumed that the HD would be placed in the same location. The HD is approximately half the size of the Walmart. It was assumed by the FD that as a worst case condition, that the HD would be placed adjacent to the existing mall.

As of 10/26/99, the City had not received an updated site plan. It is the opinion of this engineer that the lack of a site plan is sufficient justification to not review the submitted plans. The site plan will position the HD relative to the property lines of other buildings (building code property lines, not ownership property lines). The distances to other building property lines will affect the required construction type and allowable area (maximum possible size) of the HD. These two issues determine the requirements for many other building elements. Lack of specificity on these items is discussed throughout this report.

COVERED MALL BUILDING

The existing El Con Mall structure may not be a Covered Mall Building as defined by the building code. The building code did not include special provisions for covered malls prior to 1982 edition. The original El Con Mall structure pre-dates this addition to the code. If the existing El Con Structure still carries the original Business/Retail occupancy classification (B2 or possibly F1), the addition of the HD adjacent to it may affect the code provisions under which the El Con structure was originally designed and built. If the El Con structure has been re-classified as a Covered Mall Building since the original construction, locating the HD adjacent to the existing facility may affect some provisions of the re-classification regardless of the designation of the HD structure. See the following HD Anchor / Tenant discussion. Often such re-classifications carry special provisions or variances that are a matter of public record. At a minimum, a document review and associated code analysis of these records should be included with the HD documents. The purpose of the research would be to demonstrate that the HD placement either does or does not impact the existing El Con structure. How these impacts are

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resolved is a matter that should be addressed in HD design documents or, if not in the HD documents at least in concurrent documents prepared by other parties (El Con owner) prior to final approval of the HD documents. See the following discussion on Anchor/Tenant conditions.

The impacts upon the El Con facility are expected to include exiting, lack of an existing area separation wall at the interface line with the HD and possibly construction type.

HD ANCHOR / TENANT

Locating the HD adjacent to the existing mall requires that the HD be considered either an Anchor Building or a tenant space of the Covered Mall Building. Lack of a site plan, document review and code analysis makes it impossible to determine which option HD may be selecting. There are different provisions that apply to each of these options.

The Anchor Building Option requirements are discussed in the following Area Separation Wall and Construction Type Sections of this report.

The Tenant option is much more complicated than the Anchor Building option. Only the major items are addressed herein as Client has not requested a complete analysis. A complete analysis is more appropriately the responsibility of HD. The Construction type of the HD could match that of the Covered Mall Building. The HD fire sprinkler systems would need to activate the Mall fire notification system and smoke control system. The Mall may not have a smoke control system due to its age and factors discussed in the Covered Mall Building Section of this report. The addition of a tenant as large as the HD may be sufficient to cause the smoke control requirement to be implemented by the Tucson Building Official. The Building Official could require the smoke control system in just the HD addition or in the HD and all or part of the existing El Con Mall. This would be a negotiated matter. Designating the HD as a tenant would create a large number of issues with the existing structure. There would also be many management issues to be reviewed between HD, the Mall owner and the City. This engineer believes that the management issues would be an important factor because tenant spaces are typically owned by the Mall owner and leased by the tenant although there is no code requirement for this. Some code provisions are structured around such an ownership arrangement.

AREA SEPARATION WALL

Designating the HD as an Anchor Building will require that the HD include at least a two hour area separation wall at the interface with the mall. The plans reviewed did not include provisions for an area separation wall.

CONSTRUCTION TYPE

The plans reviewed provided the following areas for the HD:

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Carmine Cornelio, Esq

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Sales/Office 101,326 SF
Receiving 4,254 SF
Garden Center 24,027 SF (under roof or canopy)
Total Area 129,607 SF

Assuming that the HD is attached to the existing El Con Mall as an Anchor Building, the minimum type of construction that may be used to construct a Mercantile Occupancy of this size is Type 2-Fire Resistive. See additional remarks under Fire Sprinkler Section of this letter regarding the membrane roof. The proposed type of construction, 2N, is not code compliant.

FIRE SPRINKLERS

The plans reviewed included one sheet describing the automatic fire sprinkler system proposed for the building. The drawing was marked "For Coordination Only". The drawing was not sealed by a registered professional engineer and was not marked "Preliminary, Not for Construction" as is required by AZ State Law for unsealed engineering drawings issued for client or authority having jurisdiction use. AZ State Law defines the design of fire sprinkler systems to be engineering and therefore requires the documents to be sealed by a registered professional engineer unless marked "Preliminary, Not for Construction".

The system described did not provide full protection for the entire building. Full protection for the entire structure is vitally important. Fire protection throughout is the key to allowing the structure to be as large as it has been proposed. A note on the drawing indicated that no protection was planned for the electric gear room. In addition, only a small portion of the garden center was provided with protection. The protected portion was under the hard roof. The section under the shade screen was not provided with protection. The shade screen (membrane) portion of the building is a part of the structure and therefore must comply with the provisions applicable to the remainder of the structure. This compliance includes Construction Type and fire sprinklers. The plans reviewed did not provide sufficient data to determine Construction Type compliance for the membrane portion of the Garden Center.

HAZARDOUS MATERIALS

The Hazardous Material Inventory Statement (HMIS) submitted to the City Fire Dept. for review provides data that shows the amount of HazMat exceeds the allowable limit for Toxic materials. The exempt amount for Toxics is 1950 Lbs although the Fire Department had not noted this at the time of my visit. The HMIS Summary Report shows a total of 1929 Lbs. Of solids plus 68 Gal.(680 Lbs.) . The total, which is not provided in the summary report is 2,609 Lbs. This amount exceeds the exempt amount by 659 Lbs. The preparer of the HMIS appears to not understand that the exempt amount applies to ALL quantities of a classification category, not individual amounts for solids and liquids for the same classification.

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The Hazardous Material Inventory Statement (HMIS) submitted to the City for review provides data that shows the amount of HazMat exceeds the allowable limit for Unstable Reactive 2 materials. The HMIS fails to provide an exempt amount for Unstable Reactive 2 HazMat. The limit is 900 Lbs. for stored material in a sprinklered M Occupancy the size of the HD. The HMIS Summary Report shows a total of 743 Lbs. plus 58 Gal. (580 Lbs.). The total, which is not provided in the summary report, is 1323 Lbs. This amount exceeds the exempt amount by 423 Lbs. The preparer of the HMIS appears to not understand that the exempt amount applies to ALL quantities of a classification category, not individual amounts for solids and liquids for the same classification. A Class 2 Unstable Reactive is defined by the Fire Code as:

"Materials which, in themselves, are normally unstable and readily undergo violent chemical change but do not detonate. This class includes materials which can undergo chemical change with rapid release of energy at normal temperatures and pressures and which can undergo violent chemical change at elevated temperatures and pressures".

The HMIS submitted mis-classifies four of the HazMats in one. The materials that are mis-classified are:

- 1" Tablets
- 3" Tablets
- Dry Chlor Cal Hypo
- Shock

The first three of these HazMats have numerous classifications. One of the classifications assigned to each of the three is Unstable Reactive 1. Shock is classified by the HMIS as a Corrosive and an Oxidizer 3. It is the opinion of this Engineer and that of Mr. Larry Fleur (author of numerous references on the subject of HazMat classification) that all four of the above HazMat should be classified as Unstable Reactive 2. GCi has prepared a detailed supporting document to this affect. The Exempt Amounts for the classification categories in question are:

	Unstable Reactive 1	Unstable Reactive 2
Exempt Amount	No Limit	900 Lbs.
Amount per HMIS	2,893 Lbs. & 17 Gal.	743 Lbs. & 58 Gal.
Corrected Amount in HMIS	3,063 Lbs.	2,617 Lbs. (includes Shock)

ACTUAL HAZMAT ON SITE, THREE STORES

We visited three HD stores in the Phoenix area and estimated the amounts of certain HazMat on the shelves. The quantities estimated were obtained by counting containers/boxes/cartons on the racks and individual containers in display bins. The actual amount at each of the sites exceeded the quantity shown in the HMIS for the Thomas Road store and the Exempt Amount (Allowable Limit) as noted in the following table. The Thomas Rd. store HMIS was provided by Client. The quantities shown in the Thomas Rd. HMIS were exactly the same as those described in the Tucson HD HMIS with a few minor deviations.

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Carmine Cornelio, Esq

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Classification Category	Exempt Amount	Thomas Rd., Phoenix		Alma School, Chandler		Country Club, Mesa	
		Actual	Excess	Actual	Excess	Actual	Excess
Unstable Reactive 2	900 Lbs.	3,327 Lbs.	2,427	3,874 Lbs.	2,974	2,903 Lbs.	2,003
Toxic	1,950 Lbs.	4,658 Lbs.	2,708	5,005 Lbs.	3,055	3,908 Lbs.	1,958

The three stores noted above are all in violation of the fire and building permits that were issued for their construction. There are no provisions in the codes for accidentally or otherwise exceeding the exempt amounts. The building owner may decide to change the occupancy of the building to one of the H occupancies but a plan submission and permit will be required. The letter H stands for hazardous in this occupancy classification. The building and fire codes will not allow a building the size of HD to be an H occupancy with any of the construction types discussed in this report. In addition, neither the fire or building code will allow general public access in a mercantile operation to exist in any of the H occupancies.

The Hazardous Material Management Plan (HMMP) prepared by HD and submitted to the City of Tucson addresses many of the management issues related to hazardous materials in the HD. It does not specifically address quantity control. Quantity control is a problem. This engineer recommends that the City consider requiring that HD include specific sections on quantity control of hazardous materials, especially the four discussed in detail above. The reactions of these chemicals can be very violent and release significant quantities of poisonous and flammable gases.

ADMINISTRATIVE CODE

Tucson has adopted the 1994 edition of the Uniform Administrative Code, a companion document of the Uniform Building Code. There are several provisions of this Code that are of interest when applied to the HD project.

Section 106.4.3 Validity of permit.

This section basically states that after having issued a permit, code violations either contained in the original documents or violations that occur thereafter are not in some manner accepted or approved. It further states that errors found in the documents or violations created by building operations at a later date must be corrected when required by the building official. This is further supported by Section 106.4.5, see discussion that follows.

Section 106.4.5 Suspension or revocation.

The building official may revoke a permit that was issued based upon incorrect data or due to violations of the code.

A permit is not a license to proceed contrary to the permitted plans or the code.

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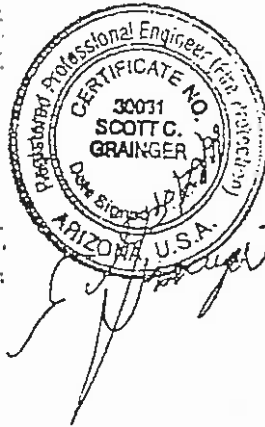
Home Depot, El Con Mall
Carmine Cornelio, Esq

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29 October 1999

Section 202.4 & 202.5, Stop Orders and Occupancy Violations

These provisions give the building official considerable power to stop work during construction that violates the code and to cause use after occupancy that does not comply with the code to be corrected.

These provisions and others in this Section give the building official control over conditions similar to those found in the three stores discussed in this report. There are similar provisions to these in the fire code related to enforcement of the code after occupancy.



February 10, 2000

Mr. Walter V. Tellez
Zoning Administrator
City of Tucson
Planning Department
255 West Alameda, 3rd Floor
P.O. Box 27210
Tucson, Arizona 85726-7210

Re: Home Depot/El Con; zoning issues regarding wholesaling hazardous materials

Dear Walter:

I received a copy of your recent response to the January 28, 2000 letter that Carmine Cornelio sent to you on behalf of an undisclosed client. Cornelio's January 28 letter appears to be in response to your November 10, 1999 memorandum in which you provide Cornelio with a Land Use Code ("LUC") interpretation defining a retail use as:

[I]f products at the store have a single retail price (*i.e.*, no wholesale prices are quoted to contractors) and any quantity discount terms or sale prices are available to the general public, and [the store] does not hold itself out or advertise as a wholesaler or as providing wholesale goods, it is not considered wholesaling by the LUC.

We agree with your conclusions and simply want to clarify Home Depot's position in this regard. Although Cornelio asks nine questions in his January 28 letter, he appears to be seeking the Zoning Administrator's interpretation on one issue only: whether Home Depot's proposed operation in a C-2 zone at El Con constitutes a "hazardous materials wholesaling" land use as defined by the LUC. The simple answer is no, Home Depot will not conduct hazardous materials wholesaling at its El Con store.

Home Depot is a retail trade use that involves the "selling, leasing, or renting of goods and merchandise to the general public." LUC § 6.3.10.1. More specifically, Home Depot is involved in "General Merchandise Sales":

The selling, leasing, or renting of commonly used goods and merchandise for personal or household use and the providing of services of services incidental to the selling, leasing, or renting of goods.

LUC § 6.3.10.4. General Merchandise Sales are permitted in a C-2 zone.

In practice, Home Depot advertises and sells its merchandise and related services to the general public at a single retail price. Quantity discount terms and sale prices are also available to the general public at a single price. Home Depot does not advertise itself as a wholesaler or as providing wholesale goods, nor does Home Depot sell its merchandise or related services at wholesale prices. Home Depot does waive sales tax for a customer who presents his or her tax exempt identification number issued by the Arizona Department of Revenue. However, Home Depot still charges the same retail price to such customers as it charges every other customer. Further, the sales tax waiver is not limited to contractors but is available to any and all customers with a state tax exempt identification number.

As part of its retail sales operation, a small portion of Home Depot's inventory includes pool chemicals and other materials that are classified under the City's Fire Code as "hazardous." The LUC refers to "hazardous materials" as materials that are "explosive, highly combustible, corrosive, toxic, highly oxidizing, or radioactive." See LUC §§ 6.3.11.3 and 6.3.13.5 (referring to "Hazardous Material Storage" and "Hazardous Material Wholesaling"). Home Depot does not direct its advertising of pool chemicals specifically to wholesalers or at a wholesale price, nor does Home Depot sell these materials at wholesale prices.

The LUC does not list the retailing of hazardous materials as a specific land use for zoning purposes. In fact, in a C-2 zone the only requirement for the retail sale of hazardous materials appears to be in the large retail establishment design criteria for hazardous materials. LUC § 3.5.9.7.11 requires that a large retail store:

[p]rovide a Hazardous Materials Management Plan and Hazardous Materials Inventory Statement as provided in the Fire Code to assure that the building site and design will protect public health and safety from accidental exposure to hazardous materials as provided in the Tucson Fire Code.

Home Depot already submits to the Fire Department a "Hazardous Materials Management Plan" that outlines its procedures for handling hazardous materials within the store and a "Hazardous Materials Inventory Statement" that lists the types and amounts of such materials stocked in inventory for retail sale for each store in Tucson regardless of zone.

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Home Depot is not a wholesaler. It sells merchandise and services to the general public and it is not in the wholesale use business of "selling trade goods, supplies, and equipment to retailers, business, and other wholesalers for their use or resale at retail" as defined by LUC § 6.3.13.1. Notwithstanding Home Depot's general business practices, "Business Supply and Equipment Wholesaling" and "Construction/Heavy Equipment Wholesaling" are both permitted principal uses in a C-2 zone. LUC § 2.5.4.2.J. More specifically, Home Depot is not in the business of selling hazardous materials to other businesses as "hazardous material wholesaling" is defined by LUC § 6.3.13.5.

Home Depot is also not in the storage business. Like any retail store, Home Depot keeps an inventory supply of its merchandise for retail sale. However, Home Depot is not paid for "on-site keeping of trade and personal goods" as the "storage use group" is defined by LUC § 6.3.11.1. Moreover, Home Depot is not in the business of "keeping" hazardous materials as the "hazardous material storage group" is defined by LUC § 6.3.11.3. Home Depot stores a limited inventory of pool chemicals and similar hazardous materials solely for retail sale and not for storage and subsequent distribution.

"Hazardous material storage" as a secondary land use is permitted in a C-2 zone, subject to LUC §§ 3.5.10.2.A and .B.1. See LUC § 2.5.4.4.D. However, these LUC restrictions relate to aboveground storage tanks with a maximum capacity of 1,000 gallons for storage of materials like hydrogen, gasoline, diesel fuel, automotive fluids, oil, or waste-oil. LUC §§ 3.5.10.2.A and .B.1. In contrast, Home Depot generally stores its pool chemicals and other hazardous materials in 5 gallon containers for convenient retail sale. Home Depot's minimal hazardous material inventory does not even come close to a secondary storage use under the LUC.

Please give me a call if I have overlooked anything in the LUC relevant to this issue.

Sincerely,


Frank S. Bangs, Jr.

FSB/MBS

cc: Michael W. L. McCrory, Esq.
Mr. Ernest A. Duarte
Jim Lloyd
Dan Hatch, Esq.
Alan Tanner



The Sunshine City •

CITY OF TUCSON

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February 1, 2000

Carmine Cornelio, Esq.
Attorney At Law
325 West Franklin, Suite 121
Tucson, AZ 85701

Subject: Board of Adjustment Case C10-99-76, Home Depot at El Con, 3601 E. Broadway
City Manager (CM) Request Number 14 and CM Referral Number 4476-4280

Dear Mr. Cornelio:

Thank you, for your letter dated January 28, 2000. Your letter raises a series of questions that appear to challenge the zoning approval for the Home Depot project at El Con, and the possible issuance of building permits for the project based on its proposed sales of "hazardous" merchandise. Regarding the zoning approval for the El Con store as it relates to the sale of its merchandise, you referenced a staff memo from Walter Tellez to Ernie Duarte dated November 10, 1999 (Copy Attached). This memo was, in fact, generated by the Planning Department as a formal response to this issue as it was raised in your letter to Ernie Duarte of the Development Services Department (DSD) dated October 29, 1999. Regarding your questions relating to the wholesaling of merchandise at this store (Questions Numbered 2, 3, 4, 5, 6, 7, 8 and 9), it is important to note that the store is to be located within the C-2 portion of the El Con site which allows for wholesale sales as a principal use.

Regarding the issue of building permits, all questions on this matter must be directed to DSD. For reference, this particular issue was brought before the Board of Adjustment, by an applicant, at their December 15, 1999 meeting (Planning Department Case C10-99-76). The Board of Adjustment, at that meeting, voted no jurisdiction to stay the issuance of permits for the project, as it was already a matter before the Courts. On January 26, 2000, the Board reaffirmed this decision by rejecting the applicant's request for reconsideration of the question at their February 23, 2000 meeting. Should you require further zoning information regarding this project, please contact Glenn Moyer, Wayne Bogdan or myself at 791-4541.

Sincerely,


Walter Tellez
Zoning Administrator

s:ba/homdptltr.doc

Attachment: Walter Tellez memo to Ernie Duarte dated November 10, 1999

cc: City Manager's Office
David Deibel, City Attorney's Office
Michael McCrory, City Attorney's Office

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CARMINE CORNELIO, ESQ

ATTORNEY AT LAW
THE CARRIAGE HOUSE
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January 28, 2000

Mr. Walter Tellez
Zoning Administrator
Planning Department
City of Tucson
P. O. Box 27210
Tucson, AZ 85725-7210

Re: Home Depot at the El Con Mall

Dear Mr. Tellez:

On November 10, 1999, you provided Mr. Duarte with a Memorandum responding to an inquiry I made in October regarding the Land Use Code (LUC) and its interpretation/application to the El Con Mall/Home Depot. I am now writing to request a formal interpretation of the LUC as well as its application to Zoning issues regarding the El Con Mall and the planned Home Depot. Please let me know if such an interpretation will be made and when.

The LUC provides a definition for hazardous material wholesaling (6.3.13.5) as "the selling to other businesses materials that are explosive, highly combustible, corrosive, toxic, highly oxidizing, or radioactive". Further, the LUC appears to allow for the wholesaling of hazardous materials only in I-2 Zoning and, then, only after an approval through a Type 3 legislative procedure.

My questions for interpretation/action:

1. What is the definition of hazardous materials under the LUC? Section 6.3.13.5 refers to materials that are explosive, highly combustible, corrosive, toxic, highly oxidizing or radioactive. Is this, therefore, the definition that should be used?

2. What is the definition of wholesaling? Under LUC 6.3.13.1 defines a wholesaling use group as one involving the selling of trade goods, supplies, and equipment to retailers, businesses and other wholesalers for their use or resale at retail. In view of this language, and the instruction of Section 1.2.2 (most restrictive provisions applies, is this the definition that should be used?

3. The C1 - C3 Zones permit Hazardous Material Storage

CARMINE CORNELIO, ESQ.

Attorney at Law

Messrs. Ernest A. Duarte/Paul Swift

January 28, 2000

Page Two

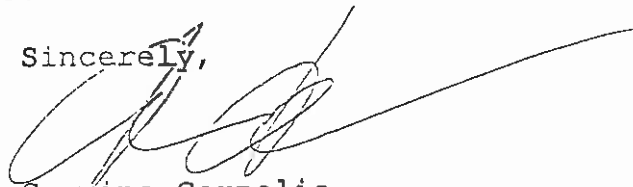
full sprinkler coverage.

4. Regarding the hazardous materials, categorization of those materials and excess amounts, the City is on notice of Mr. Grainger's opinions and conclusions and of the significant health/safety issues (as well as Zoning issues) that exist as a result of Home Depot's submitted materials. Again, when reviewing and acting upon these materials, we believe that the City should err on the side of protecting the public's health, safety and welfare.

5. Given Home Depot's admission that the surveyed stores have exceeded (substantially) permitted storage of hazardous materials, perhaps the City should re-review its filed HMIP and require additional assurances this significant safety violation will not occur in Tucson. Further, as you know, Mr. Grainger's Report stated that the quantities stored required H occupancy and the Building Code will not allow an H building the size of Home Depot.

Finally, on the question regarding the Zoning Classification, enclosed is my letter to Walter Tellez.

Sincerely,



Carmine Cornelio

CC/ajd

cc: Chief Fred Shipman, Tucson Fire Department
Benny Young, Assistant City Manager
Thomas J. Berning, Esq., City Attorney
Walter Tellez
Frank S. Bangs, Jr., Esq.

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TELEPHONE NUMBER
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FAX (520)629-5818

October 29, 1999

HAND-DELIVERED

City of Tucson
Building Department
Development Services
201 N. Stone
Tucson, Arizona 85701

Attn: Ernie Duarte/Paul Swift



OFFICE OF THE
CITY CLERK

99 OCT 29 PM 3:21

CITY OF TUCSON
RECEIVED

Tucson Fire Department
265 S. Church Avenue
Tucson, Arizona 85701

Re: Home Depot at El Con Mall

Gentlemen:

With this letter, I am submitting a report prepared by Scott Grainger of Grainger Consulting, Inc. I believe that the report is self-explanatory and should be distributed to all appropriate departments.

My review of the report reflects the following key points:

1. The City of Tucson should not be reviewing the Home Depot plans unless and until a complete set is filed with the City;
2. Home Depot and/or El Con have failed to address the related building and fire code issues that arise as a result of the Home Depot being built on or adjacent to the existing El Con Mall;
3. There are significant fire and safety deficiencies in the submitted plans including, but not limited to, the following:

- The use of improper/unsafe construction materials;

11/1999

Mayor		LOG HQ	
Council		Public Works Director	
Attorney		Asst. City Clk	
City Manager		Asst. Asst.	
City Clerk		Payroll Clk	
Dept. Head Sec		Personnel Clk	
Pers. Adm. Sec		Business Division	
Planning		Asst. City Clk	
Public File		Admin. Asst.	
Records File		Archivist	
		Cost Serv/Mail	
		Int. Services	

Public Records COI

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City of Tucson Building Department
City of Tucson Fire Department
October 29, 1999
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- Inadequate fire sprinkler plans/coverage.
- 4. The Hazardous Materials Inventory Statement (HMIS) submitted by Home Depot is inaccurate and misleading;
- 5. The submitted HMIS reflects that Home Depot plans to have toxic and/or hazardous materials in excess of allowable limits; and
- 6. In several Arizona surveyed operating Home Depot stores, inventory of hazardous/toxic materials are far in excess of HMIS plans Home Depot appear to have submitted to City officials. The excess hazardous materials are in thousands of pounds and in sufficient quantities which may require reclassification of the subject Home Depot buildings as one for hazardous occupancy and may preclude general public access.

The submitted report may raise questions about the zoning classification. It appears from the amount of inventory, there may be wholesaling of hazardous materials and that wholesaling by Home Depot may be the primary rather than secondary use.

It appears to be appropriate for the City to conduct its own analysis of Home Depot's compliance with submitted HMIS and HMMP materials to actual operations in Home Depots located within City limits. It also appears that the City should not be issuing any building permits until these serious issues are satisfactorily addressed.

Sincerely,



Carmine Cornelio .

CC/np
Enclosure

cc: The Honorable George Miller, Mayor of Tucson (w/ encl.)
City of Tucson Council Members (w/ encl.)
Michael W.L. McCrory, City Attorney (w/ encl.)
Mr. Walter Telles, Zoning (w/ encl.)
Ms. Sharon Bonesteel, AIA, CBO (w/ encl.)

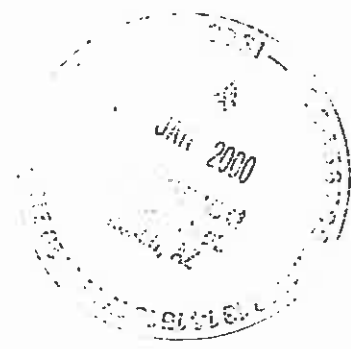
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January 28, 2000



Messrs. Ernest A. Duarte/Paul Swift
Development Services Center
City of Tucson
201 North Stone Avenue
Tucson, AZ 85726-7210

Re: Home Depot at the El Con Mall

Gentlemen:

1. On January 5, 2000, you provided me with some information in responses to my letter of November 24th. In that letter you indicated that Development Services was under direction, from the City Attorney's office, to not process the Home Depot Plans/Application. Is that still the case? If it has changed, when and why?

2. In October I provided you (and the Fire Department) with a copy of Mr. Scott Grainger's Report. Home Depot has recently responded with a Report from TVA Fire and Life Safety. In the TVA Report, it picks and chooses treating the Home Depot space as "tenant" space and an "Anchor Store". TVA acknowledges that it is "technically a tenant space" and that it will "be operating as an Anchor". It also presumes that the covered walkway "will be part of the Mall rather than being considered an exterior walkway". Was it the City or Home Depot that determined the character of the walkway? Further, what standards will Home Depot be required to comply with? Tenant standards or Anchor tenant standards? I certainly hope that the City has not allowed Home Depot to categorize its space differently for different purposes when viewing the health/safety issues in compliance with the Uniform Building Code.

3. Home Depot/TVA admits that the shade/screen area is not part of its Fire Sprinkler Plan. Whether or not the shade/screen allows heat and smoke to accumulate, there continues to be a significant health/safety risk in the submitted Plans. Mr. Grainger advises me that he believes the shade/screen should be considered a tent under the UBC and, therefore, subject to

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CARMINE CORNELIO, ESQ.
Attorney at Law
Mr. Walter Tellez
January 28, 2000
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as a Secondary Land Use to a permitted use. Are sales of hazardous materials permitted under this classification?

4. May hazardous materials be sold to businesses in the C1-C3 Zones? If so, what section(s) of the LUC permit such sales?

5. Is a business that provides discounts upon the showing of a Business License wholesaling?

6. Does a business that sells at a single price to both the general public and to other business products that are explosive, highly combustible, corrosive, toxic, highly oxidizing or radioactive in the business of hazardous material wholesaling so as to require its location in I-2 Zoning?

7. If a business has a single price for both the general public and in its sales to other businesses of hazardous materials, is there hazardous material wholesaling, as appears to be required by Section 1.2.2, if it holds itself out or advertises itself as a seller to both businesses and the general public?

8. Whether a business that sells to other businesses for resale is a wholesaler.

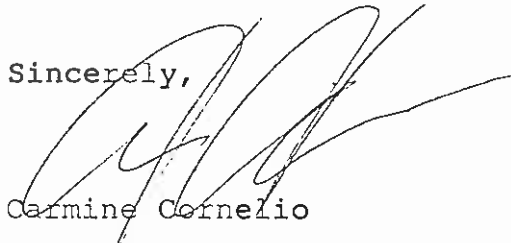
9. Your Memo makes a distinction based on pricing. Where in the LUC is a distinction made between retail price and wholesale price?

As you know, under LUC 5.1.4.4 you are to assure compliance with the LUC prior to the issuance of any Permit, and are to provide interpretations of the LUC and are responsible for its enforcement.

It is my belief that an issued Permit to Home Depot would be in violation of the LUC given the Zoning of the property.

Thank you for your prompt attention and I look forward to your response.

Sincerely,



Carmine Cornelio

CC/ajd
Enc.
cc: Mr. Ernest A. Duarte