



City Clerk
300 LaPorte Avenue
PO Box 580
Fort Collins, CO 80522
970.221.6515
970.221-6295 - fax
fcgov.com/cityclerk

MEMORANDUM

DATE: October 19, 2021

TO: Mayor and Councilmembers

THROUGH: Kelly DiMartino, Interim City Manager
Kyle Stannert, Deputy City Manager
Tammi Pusheck, Interim City Clerk

FROM: Heather Walls, Deputy City Clerk

RE: **#18 Sam's Club Appeal - New Evidence**

Attached please find additional materials inadvertently sent to a previous clerk, however filed on time. These letters were not included in Council's original packet. As this is new evidence, Council will have the ability to determine whether to accept this information into evidence at the hearing tonight.

June 10, 2021

Carolynne C. White
Attorney at Law
303.223.1197 tel
cwhite@bhfs.com

RE: SAM'S CLUB APPEAL APPLICATION MJA#200002 – NEW EVIDENCE

City Clerk, Wanda Winkelman
City of Fort Collins
300 La Porte Avenue
PO Box 580
Fort Collins, CO 80522
Email: wwinkelman@fcgov.com

Dear: Ms. Winkelman

Please accept this correspondence and the attached letter from the Harmony Market Owners Association for submission into evidence regarding the appeal of Sam's Club Proposed Fuel Use for application MJA#200002.

This constitutes the New Evidence referenced in our appeal. On behalf of Sam's Club, we share the Association's optimism that this matter will be resolved as between those parties prior to an appeal hearing before Council, which we hope will also resolve any questions as to the application's conformance with the applicable criteria.

Petitioner and Walmart Real Estate Business Trust, Inc. (collectively, the "Company"), currently operate 982 fuel facilities throughout the United States (in 46 states). Those facilities include roughly 3,500 underground storage tanks (UST) in total.

The Company's portfolio of UST systems has successfully withstood extensive exposure to natural disasters throughout the years, including: no tank buoyancy issues, no spills and no environmental exposure of gasoline. The record-shattering 2020 Atlantic Hurricane Season (with 28 named tropical storms so far, 11 of which have made landfall), is no exception.

By way of recent example: Hurricane Zeta, which made landfall on October 28, 2020 at 4:00 p.m., caused devastating damage to private property and public infrastructure on the East Coast of the United States. In one city alone (Atlanta, Georgia), over one million people lost electric power to their homes and businesses. At least 70 of Petitioner's fuel stations experienced Zeta's hurricane impact conditions. Petitioner is pleased to report that each and every one of its fuel facilities was operational within less than 48 hours after Hurricane Zeta's initial landfall, proudly providing fuel to the impacted communities.

Petitioner's state-of-the-art fuel facilities have worked as designed to endure extreme weather without sustaining any water intrusion, fuel release or other contamination to the environment. Petitioner has a 100% proven track record of successfully withstanding severe environmental conditions at each of its fuel stations.

410 Seventeenth Street, Suite 2200
Denver, CO 80202
main 303.223.1100

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Petitioner respectfully requests the Town Board to consider the significance that the foregoing bears on the merits of approving the Project.

Should you have any questions please let me know.

Sincerely,

A handwritten signature in cursive script, appearing to read "Carolynne C. White".

Carolynne C. White

22769015.1

Harmony Market Owners Association

c/o Mike Radcliff, President
FirstBank, Harmony Branch
E. Harmony Rd. & Lemay St.
1013 E. Harmony Rd.
Ft. Collins, CO 80525

June 10, 2021

Carolyn White
Sam's Club Member Warehouse
Brownstein Hyatt Farber Schreck, LLP
410 Seventeenth Street, Suite 2200
Denver, CO 80202

Dear Ms. White and to whom it may concern,

The Harmony Market Owners Association is a Nonprofit Corporation (the "Association") which was formed in 1994 as an association of the owners to manage the area known as Harmony Market Place which is designated by the City of Fort Collins as a Regional Shopping Center and is bounded by Harmony Road on the north, Oakridge Drive on the south, Boardwalk on the west and Lemay on the east (the "Center"). The Center was subjected to Protective Covenants, Conditions and Restrictions and Grants of Easements recorded in the records of the Clerk and Recorder of Larimer County, Colorado on December 7, 1992, at reception number 92078372 (the "Covenants"). The Association's Board of Directors is charged with administering and enforcing the Covenants and operating and maintaining certain Common Areas, including roadways within the Center as defined by the Covenants. The Developer of the Center wished to attract Pace Warehouse as a buyer and user in the Center and modified the Covenants to provide that the Pace Parcel was not required to pay assessments to maintain common areas, including interior private roads serving properties in the Center off site of the Pace Parcel (the "Association Drive Lanes"). The proposed fueling station is at the northeast corner of the Pace Parcel (the "Proposed Sam's Fuel Site" and the "Proposed Fuel Use") and access, particularly access for fuel trucks, necessarily will require use of, and will impact, the Association Drive Lanes which Sam's Club ("Sam's") is not required to maintain. Further, it is the Association's position that Sam's historically has failed to maintain drive lanes on the Sam's site/Pace Parcel, consisting of roughly the south half of the main interior drive off Boardwalk and the cost of that maintenance has also fallen to the Association.

Two owners of properties in the Center, both Association Board members, appeared before the Planning Commission at hearing on May 20, 2021, and voiced concerns both as property owners and on behalf of the Association surrounding the Proposed Fuel Use. The concerns focused on use and costs impacting the Association Drive Lanes associated with the Sam's Proposed Fuel Use, impacts on parking easements granted by the Covenants and concerns that any Sam's use/expanded use was subject to Association approval which had not been requested. The Association owners asserted that the failure to address the outlined issues ran afoul of the criteria contained 1.3.4 of the Land Use code, including concern that if arrangements were not made to address cost impacts, the Proposed Fuel Use at the Proposed Sam's Fuel Site had a significant negative impact on the neighboring property owners (criteria

c). The Planning Commission meeting was held via a remote zoom setting. Both Association members were afforded limited time to speak at the hearing and both attempted to "raise their hands" after each of their presentation times expired to advise the Planning Commission that the Association and both of the property owners were supportive of the Proposed Fuel Use if issues related to costs and Covenant compliance were addressed and felt that the Proposed Fuel Use, if approved under the applicable Covenant provisions, would meet the eight criteria of the land use code, including not causing changes to the character of the area (criteria e). Because of the zoom format there was an inability to voice these comments before the Commission.

Since the May 20, 2021, hearing, Sam's and representatives of the Association have had an opportunity to address issues raised at the hearing and the representatives believe that there may have been misunderstandings and that Sam's and the Pace Parcel Property owner are willing to enter into agreements and Covenant amendments obligating the user of the Pace Parcel to contribute to costs associated with maintenance of Association Drive Lanes and to comply with the Covenant requirements. It is believed that these issues can be adequately addressed before the August hearing date.

Since the Planning Commission hearing Sam's representatives and representatives of the Association have had preliminary meetings and discussed previously unresolved issues and the Association is optimistic, based on assurances received, that Sam's and the Pace Property owner are willing to enter into agreements and Covenant amendments addressing the Association's concerns. If concerns are addressed the Association Board has taken the position that it would be supportive of the Proposed Fuel Use. The Association representatives who appeared before the Planning Commission were not able to voice the possible support by the Association as a result of the restrictions of the zoom meeting format.

Harmony Market Owners Association

By: 
Mike Radcliff, President

cc. Association Board of Directors and Property mgr.
Brad March <bmarch@bmarchlaw.com>; Harmony Market LLC
DanKazmierczak <Dan.Kazmierczak@kohls.com>; Kohls Department Stores Inc
Randy Morgan <randy@outpostsunsport.com>; Harmony Unit LLC
Tom Gesler <galtwho@roadrunner.com>, Canwood Properties LLC
Jeni Wright <JeniW@mnpre.com>, Mountain-n-Plains, Inc.