



MAYOR COLEEN J. SENG

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December 18, 2003

Special Permit 2039 Application of Mesal Enterprises to sell alcoholic beverages off the premises at 5240 South 48th St.

Dear City Council Chairperson and Members:

I hereby veto Bill No. 03-335 (Resolution A-82517) passed by the City Council on December 15, 2003, regarding the application of Mesal Enterprises to sell alcoholic beverages off the premises at 5240 South 48th St.

The applicant's proposed use will be within 100 feet of a residential district to the east. As a result, the application contains proposed mitigation and operates as a request to waive the distance requirement under the provisions of Lincoln Municipal Code (LMC) § 27.63.685. The ordinance in question requires approved mitigation and the instant application includes staff and planning commission recommendation to approve the proposed mitigation.

The zoning restrictions for the retail sale of alcohol near residential districts in the city have existed since 1994. The grant of a special use permit to sell alcohol at retail in these zones is subject to the condition that the licensed premises be located no closer than 100 feet from a residential district or residential use.

The ordinance always has contained the ability to provide mitigation related to the concerns of the ordinance: noise, light, trespass, and other secondary affects of retail alcohol sales. The City has consistently measured the 100 feet from exterior lot lines and building of the retail premise. In May 2001, the state liquor commission by court decision was required to consider Lincoln's zoning special permit restrictions. Since that time, the City has been consistent in requiring approved mitigation and has denied several applicants that offered mitigation.

Some critics might observe that the ordinance allows for mitigation, and since staff recommended approval of mitigation in this case, the request should be automatically granted. The special permit process is not automatic because the mitigation must be approved by the elected officials. The ordinance intentionally brings these decisions directly to elected leaders through a public process.

The history of the ordinance has evolved through controversial steps. Mitigation was a compromise that worked on a "going forward" basis, to continue to allow the public process to consider proposed mitigation and produce acceptable results. In 1994, the decision was made to allow owners to propose mitigation in a flexible open-ended manner. The City has considered several efforts to create a mitigation check-list, but in the end, the open-ended process remained. This underscores the need for the public process. There are instances where zoning conditions are approved without the process used here. If my decision was based solely

December 18, 2003

Veto Message - 5240 S. 48th St Special Permit for Alcohol Sales

Page 2 of 2

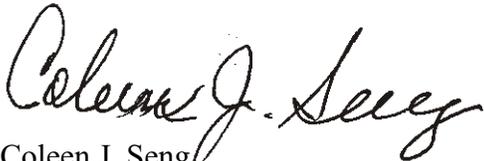
on the background and reputation for good management of the applicant, it would be an easy approval. However, those credentials must be tempered by the possibility that the property might be sold. Similarly, neighbor concerns about the number of retail alcohol licenses were not a part of my decision, as they do not directly impact the land use at this site.

The proposed mitigation in this case includes many conditions that are similar to those denied in the past. In recommending approval, the planning staff report indicates several components that combine to provide adequate mitigation at this location. These include the limited hours of operation, screening, and staff training all similar to that offered by other applicants who were previously denied. The different components are found in that the storage of the alcohol and the entrance door would be beyond 100 feet from the adjacent residential district to the east.

While I can support some creative efforts to find mitigation, I cannot support interpreting the zoning restrictions to include distances measured to interior storage areas or where distance is measured to front doors. If this were the case, the City would be telling neighbors that concerns about traffic, light, noise and other secondary affects of retail alcohol sales are mitigated by determining where inside the premises the alcohol is stored or by measuring walking distance to the front door. This makes the special permit more complicated since those factors do not directly relate to the concerns for the ordinance, especially considering other mitigation plans that went unapproved in the past.

Since the ordinance is based on the concerns of locating alcohol sales in proximity to residences and has enjoyed long support, there appears to be little reason to abandon those concerns. There is a simple policy choice to make at this time. If the staff and applicant here demonstrate that this is the only workable mitigation, and I find that the mitigation is not supported, then we must admit the good faith process of seeking proposed mitigation through this public process has not produced acceptable results. The solution is not to hold our nose and approve mitigation that does not correlate to the concerns of the ordinance; it is to amend the ordinance to eliminate the ability to provide mitigation. Therefore, I am also instructing the City Law Department to prepare an amendment to the ordinance to eliminate the mitigation provision.

For the above and foregoing reasons. I hereby Veto Special Permit 2039 (Bill No. 03-335/Resolution A-82517).



Coleen J. Seng
Mayor of Lincoln