



Sugar House Park Authority

6332 S Airport Road, West Jordan, UT 84084

Ph: 385-468-7275 Fax: 385-468-1855

www.sugarhousepark.org

April 7, 2022

Diana Martinez, Principal Planner
Salt Lake City
diana.martinez@slcgov.com

**RE: Kum & Go Gas Station
2111 South 1300 East, Salt Lake City / Conditional Use Application**

Dear Diana,

This letter relates to the request by the Kum & Go Gas Station (represented by Nathan Abbot who is representing Galloway US) (the "Gas Station") for a conditional use permit to construct and operate a six-pump gas station at 2111 South 1300 East, Salt Lake City, Utah (the "Property"). This letter is written on behalf of the Sugar House Park Authority ("Authority") which operates Sugar House Park ("Park") pursuant to an agreement between Salt Lake City and Salt Lake County entered into in 1957.

As you are aware, the Park occupies approximately 110 acres between 1300 East and 1700 East (side-to-side) and I-80 and 2100 South (top-to-bottom). The only sections of that large area not occupied by the Park are (i) Highland High School in the northeast corner and (ii) the Property in the northwest corner. The Park is the only immediate neighbor to the Property and, thus, has a special interest in how that parcel is used.

Legal Framework

Under the applicable ordinances, the Gas Stations should not be granted a conditional use unless all four of the following requirements are met:

1. The use complies with applicable provisions of [the title of the Salt Lake City Code related to zoning];
2. The use is compatible, or with conditions of approval can be made compatible, with surrounding uses;
3. The use is consistent with applicable adopted city planning policies, documents, and master plans; and
4. The anticipated detrimental effects of a proposed use can be mitigated by the imposition of reasonable conditions.

Salt Lake City Ord. 21A.54.080.A. In analyzing the potential detrimental effects under subsection A.4, the planning commission should consider whether:

1. This title specifically authorizes the use where it is located;
2. The use is consistent with applicable policies set forth in adopted citywide, community, and small area master plans and future land use maps;



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3. The use is well suited to the character of the site, and adjacent uses as shown by an analysis of the intensity, size, and scale of the use compared to existing uses in the surrounding area;
4. The mass, scale, style, design, and architectural detailing of the surrounding structures as they relate to the proposed have been considered;
5. Access points and driveways are designed to minimize grading of natural topography, direct vehicular traffic onto major streets, and not impede traffic flows;
6. The internal circulation system is designed to mitigate adverse impacts on adjacent property from motorized, nonmotorized, and pedestrian traffic;
7. The site is designed to enable access and circulation for pedestrian and bicycles;
8. Access to the site does not unreasonably impact the service level of any abutting or adjacent street;
9. The location and design of off street parking complies with applicable standards of this code;
10. Utility capacity is sufficient to support the use at normal service levels;
11. The use is appropriately screened, buffered, or separated from adjoining dissimilar uses to mitigate potential use conflicts;
12. The use meets city sustainability plans, does not significantly impact the quality of surrounding air and water, encroach into a river or stream, or introduce any hazard or environmental damage to any adjacent property, including cigarette smoke;
13. The hours of operation and delivery of the use are compatible with surrounding uses;
14. Signs and lighting are compatible with, and do not negatively impact surrounding uses; and
15. The proposed use does not undermine preservation of historic resources and structures.

Salt Lake City Ord. 21A.54.080.B. After considering the above, the planning commission may deny a conditional use permit if “[t]he reasonably anticipated detrimental effects . . . cannot be substantially mitigated . . . to achieve compliance with applicable standards set forth in this section.” Salt Lake City Ord. 21A.54.080.D.2. The planning commission may also approve the conditional use subject to “any conditions necessary to address the foregoing factors,” such as:

1. Conditions on the scope of the use; its character, location, hours and methods of operation, architecture, signage, construction, landscaping, access, loading and parking, sanitation, drainage and utilities, fencing and screening, and setbacks; and
2. Conditions needed to mitigate any natural hazards; assure public safety; address environmental impacts; and mitigate dust, fumes, smoke, odor, noise, vibrations; chemicals, toxins, pathogens, gases, heat, light, and radiation.

21A.54.080.C.



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Detrimental Effects

For the reasons stated below, the planning commission should deny the Gas Station's request for a conditional use or, at a minimum, impose strict conditions to ensure that the construction and operation of a gas station at the corner of the Park does not violate the factors identified by city ordinance.

1. Homeless Population / After-Hours Use

("The hours of operation and delivery of the use are compatible with surrounding uses")

Operation Rio Grande led to an increased homeless population in the Park. The Authority received numerous complaints from Park visitors about shopping carts, people in sleeping bags, and so on. Eventually, the Park was faced with a fire being lit inside one of the Park's (new) bathrooms, vandalism of the Park's greenhouse. The Park had to take affirmative measures to protect Park visitors and Park property (the Park is not owned by either the City or the County, so it must protect itself like a private company). The Park now contracts with off-duty police officers to patrol the Park in an effort to reduce after-hours use. The police officers provide reports to the Authority of incidents during each patrol. These patrols have greatly reduced the homeless population in the Park by enforcing the Park's curfew to people across the board—including people on an evening jog.

If the Gas Station is allowed to occupy the Property, the Authority requests that a condition be imposed that requires any convenience store associated with the Gas Station to abide by the Park's curfew by closing at 10:00 pm in the summer and 9:00 pm in the winter. If the Gas Station convenience store were open after Park curfew, it would inevitably lead to more people violating Park hours given that the Gas Station would provide a convenient place to buy a snack or a drink, and the Park would provide a convenient place to consume it. The evening closing time is especially important to prevent the Park from again becoming an attractive place for overnight visitors.

2. A High Intensity Use

("The use is consistent with applicable policies set forth in adopted citywide, community, and small area master plans and future land use maps")

The Property sits on the corner of 2100 South and 1300 East, but is recognized as unique from the other three corners of that intersection. So, while there may be an operating gas station across the street, a Gas Station located on this Property would still be inconsistent with city plans as shown in the Sugar House Master Plan below:



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See <https://www.sugarhousecouncil.org/sugar-house-master-plan/>. Long before the Gas Station made its application, Sugar House decided that the corner across the street from the Property (where the Chevron gas station sits) would be used for “Business District Mixed Use – Town Center Scale,” while the Property (on the same side of the street as the Park) would be used only for “Mixed Use – Low Intensity.” The sit-down restaurant that previously existed on the Property represented a good “low intensity” land use. Farther north on 1300 East, parcels with the same land use designation are occupied by a dentist, an orthodontist, and so on, which are “low intensity.” However, a Gas Station with six pumps and the associated rapid turnover of patrons is not “low intensity” and violates the Sugar House Master Plan.

3. The “Character of the Site, and Adjacent Uses”

(“The use is well suited to the character of the site, and adjacent uses as shown by an analysis of the intensity, size, and scale of the use compared to existing uses in the surrounding area”)

(“The use is appropriately screened, buffered, or separated from adjoining dissimilar uses to mitigate potential use conflicts”)

(“Signs and lighting are compatible with, and do not negatively impact surrounding uses”)

The planning commission is, no doubt, receiving many public comments from people saying that they do not want a gas station on the Property. And the Gas Station is almost certainly downplaying these comments as “public clamor.” But the comments cannot be dismissed so easily.

The planning commission is required to determine whether the proposed used (a six-pump gas station) is consistent with the “character of the site,” consistent with “adjacent uses,” can be “appropriately screened,” and has “signs and lighting [that] do not negatively impact surrounding uses.” The Gas Station’s proposed use cannot meet those requirements. There is an undeniable



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inconsistency between a six-pump gas station nestled into a 110 acre park that prides itself on having little more than open fields and a pond. No amount of screening can make a six-pump gas station consistent with the newly built functional sculpture in the form of a sego lily marking the entrance to Hidden Hollow. There is no way to “screen” the inevitable smell of gasoline that would settle around the pond where people gather to watch the ducks.¹ And there is no way to prevent the type of lighting required for a six-pump gas station from “negatively impact[ing]” Sugar House residents’ ability to enjoy the cultivated natural setting of the Park. Even the Gas Stations’ narrative acknowledges that it will cause “headlight spill,” but (shockingly) the Gas Station is focused only on reducing headlight spill into the roadway—it says nothing about protecting the Park. See Kum & Go Ltr. (01/14/22).

In terms of the governing ordinance, “[t]he reasonably anticipated detrimental effects” from building a six-pump gas station on the corner of a 110 acre park “cannot be substantially mitigated.” Even if the general public might not know the magic words needed to legally object to the Gas Station simply being the wrong “fit” for this location, their objections are well-within the scope of the ordinance. Just like the planning commission would not approve a dance club adjacent to a cemetery, it should not approve a gas station in a notch of a regional park.

4. Groundwater / Surface Water

The location of the Property poses unique concerns with regard to the Gas Station’s adverse impacts on groundwater and surface water. This is especially problematic given that the Gas Station proposals shows the tanks and the pumps facing the Park, with the convenience store pushed against the street.

First, the Property lies within the Source Water Protection Zone for the Wimmer Systems artesian well (18085WS001). See <https://enviro.deq.utah.gov/>. While these wells are not currently active,² the long term effects of the Gas Station with the associated underground storage tanks (USTs) cannot be ignored. Indeed, the Park has already suffered from leaking USTs that were previously installed in the southwest corner of the Park. See Brown Memo. at 3. And there is even a risk that the USTs from a prior gas station on the Property were not properly excavated. *Id.* at 4. The planning commission cannot reverse the effects of these prior installations but, with a modern understanding of the harms from petroleum contamination, it can prevent additional harms by not allowing new USTs in this location.

Second, the Property lies immediately next to three springs as identified by a Department of the Interior United States Geological Survey prepared in coordination with the Utah Department of Natural Resources Division of Water Rights. See <https://pubs.usgs.gov/imap/0766i/plate-1.pdf>.

Third, the Property is directly uphill from the Sugar House pond. Indeed, the entire depression of Sugar House Park functions as a detention basin for Parleys Creek as it flows toward the Jordan River.³ Any surface spills at the Gas Station would flow toward the pond and, therefore, into Parley’s Creek. Even if the contaminants did not make it immediately to the pond, they eventually would be

¹ “Gasoline vapors are heavier than air and may collect in low-lying areas.”

<https://www.atsdr.cdc.gov/MHMI/mmg72.pdf>.

² See Brown, Rebecca, *Technical Memorandum* (Apr. 6, 2022) (“Brown Memo.”) at 5, attached as **Exhibit A**.

³ See, e.g., https://slco.org/globalassets/1-site-files/watershed/resources/streamcareguide_2015.pdf (showing Parleys Creek streambed elevation profile) at 35.



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washed into Parley's Creek the next time there was a large rainstorm or spring runoff that caused the pond to overflow. This concern was highlighted as one reason to deny the Gas Station's application, or at least require reconfigured grading plan with a retaining wall to prevent Gas Station run-off from being directed toward the pond. See Brown Memo. at 6. As with the Sugar House Mater Plan, there is a meaningful difference between what uses are appropriate on the Property (which abuts Sugar House Park) and the other three corners of that intersection.

Fourth, As noted on the *Notification of a Project in Your Neighborhood* (02/07/22), the Property lies within a "Groundwater Source Protection Overlay District." The limitations associated with this designation are "intended to prevent contamination of the public drinking water supply as a result of toxic substances entering the groundwater." Salt Lake City Ord. 21A.34.060.A.2. The ordinance is specifically focused on "regulating the storage, handling, use or production of . . . petroleum product." Salt Lake City Ord. 21A.34.060.B. And, even if the Gas Station claims to be in compliance with the minimum requirements of the ordinance, that does not "relieve the [Gas Station] of the obligation to comply with any other applicable federal, state, regional or local regulations, rule, ordinance or requirement"—*e.g.*, conditions that the planning commission may impose. *Id.* (emphasis added).

The groundwater ordinance also gives the governing body more discretion than the conditional use ordinance. While the code says that the commission "shall" approve a conditional use if all detrimental impacts can be adequately addressed, the groundwater ordinance says that the "Salt Lake City division of building services and licensing . . . may" approve a permit if all "adverse impacts" are addressed. Salt Lake City Ord. 21A.34.060.F.2 (emphasis added). When operating under a "may" standard, the governing body is not obligated to approve an application even if all conditions are met. *Baker v. Park City*, 2017 UT App 190, ¶ 21 n.7.

Fifth, the Property lies within a "groundwater recharge zone" as stated by Nick Norris, Salt Lake City Planning Director. See <https://www.sugarhousecouncil.org/shcc-february-2022-meeting-minutes/>.

While society certainly needs gas stations, it does not need petroleum undergrounds storage tanks immediately uphill from a duck pond and in a water recharge zone.

Given the unavoidable "adverse impacts" of placing a six-pump gas station (i) in the corner of a heavily-used regional park, (ii) uphill from a pond that is constantly inhabited by wildlife, and (iii) on the rim of a detention basin for Parley's Creek, the Gas Station's application should be denied. Or, at a minimum, the Gas Station should be required to comply with the following conditions:

- a. *A Bond* – All the regulations in the world will not help repair any damage caused by the Gas Station if there is no money to pay for them. Therefore, if the Gas Station is allowed to operate on the Property, it should be required to post a \$2 million bond that would be available in the event that water cleanup, soil removal, or other remediation is required;
- b. *Pre-construction Testing* – The Gas Station should be required to complete soil and water testing in the area within and around the Property (the Park will authorize testing on its property within 200 feet of the Property) to establish a baseline level of contamination to be compared against subsequent monitoring;
- c. *Continued Testing* – The Gas Station should be required to coordinate and pay for quarterly testing of soils and ground water surrounding the Property to ensure that there have not been any leaks or other incidents that would negatively affect the Park, the surface water, or the groundwater. The testing should be completed by a neutral third party that publishes the reports directly to the City without any input from the Gas Station. The Gas Station would be



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able to respond to the reports if it desires, but it would not be in a position to influence any reporting before the City learned of the results; and

- d. *Engineering Study* – The Gas Station should be required to provide an environmental engineering study regarding the potential flow of contaminants from the Property to the pond or the groundwater, both over the surface and through the ground. This report should be reviewed by the planning commission before any application is ruled on so the commission has the information it needs to fulfill its duties; and

This stage of the permitting process represents the planning commission's best chance to protect the future of the community it serves.

5. Air Quality

In addition to the Property being in a sensitive area with regard to groundwater and surface water, it is also in a unique location with regard to concerns over air quality. The Property rests uphill from the basin of the Park, which contains a single looping road. During the Spring and Summer, the Park road hosts 5K races, half-marathons, marathons, cycling races, and organized walks for hundreds of people—usually two of which occur on each Saturday. A significant portion of these organized events represent a gathering of medically sensitive people. For example, the Park regularly hosts events for people with lung cancer, breast cancer, pancreatic cancer, Crohn's disease, colitis, organ donations (or donors), epilepsy, liver disease, heart disease, kidney disease, ALS, Huntington's disease, neurofibromatosis (NF), and spinal muscular atrophy (SMA).

In addition to medically sensitive groups, many of these races represent a time of extreme exertion for athletes. The Park hosts state-wide cross-country meets for highschoolers, the Salt Lake City marathon, the Sugar House crit series (cyclists), and a few half-marathons.

Finally, the Park is constantly used during all daylight hours by hundreds of local residents who prefer to exercise in the natural setting of the Park instead of exercising near tailpipes along the road. Indeed, on a recent weekday afternoon (Wednesday at 1:00pm) at the end of February, 200 exercisers were counted passing a single point in the Park during a two minute period. The person making this observation counted only people that were "huffing and puffing," meaning (i) the actual number of people passing was greater and (ii) the people being counted were taking the deep breaths that make them especially vulnerable to air pollution.

With the use of the Park in mind, the problem with locating the Gas Station uphill from the road becomes especially obvious. Petroleum fumes are denser than air and "are well known to travel in a fluid-like manner along the ground to low-lying areas where it accumulates and presents health hazards." See Brown Memo. at 5. If such vapors settled on the road, near the pond, or in the Segó Lily "Draw" between the Park and Hidden Hollow, they would "irritate the nose, throat, and lungs of installation visitors, and potentially escalate to headaches and nausea." *Id.* at 6.

While the Chevron station currently exists across the street from the Property, it does not justify allowing a Gas Station being built on the Property. The "fluid-like" movement of petroleum vapors, alone, is enough to differentiate the risk of fumes from the Property as opposed to fumes that may emanate from the Chevron station across the road and detached from the Park basin. And,



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obviously, two vapor-emitting uses near each other pose a greater threat for cancer than one.⁴ The planning commission is also working with improved knowledge now as compared to the knowledge of whatever governing agency approved the Chevron station over forty years ago. See Brown Memo. at 4. For example, based on improved knowledge many communities have recently “begun to establish setback distance regulations that determine how close schools, playgrounds, and parks can be to gas dispensing facilities.” See Brown Memo. at 5. The Environmental Protection Agency has even released standards to keep gas stations away from schools.⁵ While Salt Lake City has not yet enacted such restrictions, this improved knowledge should help the planning commission to protect the Park and its users.

While Park users are certain to be exposed to air pollution in other aspects of their lives, the unique location of the Property uphill from the Park requires a unique assessment. The proposed use simply does not satisfy the requirements for a conditional use permit.

Please contact me at sugarhouseparkauthority@gmail.com or 847-207-2194 if you would like to discuss any of the issues raised in this letter. Members from the Authority will also be in attendance at the public hearings related to the Gas Station to make sure the Park’s interests are represented.

Thank you for your time in addressing this serious and long-lasting decision.

Sincerely,

Taylor Weavil
Sugar House Park Authority, Board President

⁴ Hsieh, Shearston, and Hilpert, *Benzene emissions from gas station clusters: a new framework for estimating lifetime cancer risk* (June 2021) (<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8172828/>).

⁵ United States Environmental Protection Agency, *School Siting Guidelines* (Oct. 2011) at 59 (https://www.epa.gov/sites/default/files/2015-06/documents/school_siting_guidelines-2.pdf).