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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

COALITION FOR SAFE AND HEALTHY
ECONOMIC PROGRESS,

Plaintiff and Petitioner,

v.

CITY OF SAN DIEGO and DOES 1 through
100,

Defendants and Respondents;

IMPERIAL MARKET INVESTORS, LLC;
STEVE JULIUS CONSTRUCTION, INC.;;
and DOES 101 through 1,000,

Defendants and Real Parties
in Interest.

Case No. 37-2012-00095729-CU-MT-CTL

**ORDER DENYING TEMPORARY
RESTRAINING ORDER**

Judge: Hon. Joel M. Pressman
Dept.: 66

Petitioner does not in its papers dispute that Wal-Mart’s right to use the Farmers Market Building as a retail and grocery store is expressly allowed under, and completely consistent with, a Conditional Use Permit (“CUP”) issued by Respondent City of San Diego (“City”). CUP has never been legally challenged.

Petitioner’s attack is premised on two faulty factual assertions: (1) that the building is a “historic resource” that can never be touched unless a discretionary permitting process is employed; and (2) that the building is being demolished and will not be rebuilt.

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1 First, Petitioner is not likely to prevail on the merits. Specifically, the Farmers Market
2 Building is not an historic resource. While the site (location) may have some historic value, the
3 City has extensively considered whether the building should be deemed “historic,” DPR, in a report
4 containing over 120+ pages. The City concluded in 2007 that the building was not an historic
5 resource (even though the location was). The DPR concluded that the building does not meet any
6 of the City’s other five historic resource criteria. No one ever challenged the City’s determination
7 in this regard. A CUP was issued in 2009 to the building’s owner authorizing the ministerial
8 issuance of construction permits regarding the building. The City’s ministerial issuance of
9 construction permits and approval of demolition plans in late 2011 to remodel the interior of the
10 building are consistent with the CUP, and Wal-Mart’s construction activities are consistent with
11 those permits. A Neighborhood Development Permit is not required for a ministerial construction
12 permit pursuant to SDMC § 143.0220(a).

13 Petitioner failed to exhaust its administrative remedies to challenge the City’s determination
14 in 2009 that the building was not a historic resource. In addition, the 90-day statute of limitations
15 in Government Code § 65009 has long passed and expressly precludes Petitioner from judicially
16 challenging the CUP. Neither *Smith v. County of Santa Barbara* 7 C.A. 4th 770, nor *Pettit v. City of*
17 *Fresno* 34 C.A. 3d 813, cited by plaintiffs, justify a stay without a full hearing of administrative
18 review. Plaintiff has not met its burden to warrant court action at this time.

19 Second, the Farmers Market Building is not being torn down. As expressly illustrated by
20 the demolition plans approved by the City, the building’s façade will in fact be preserved, restored,
21 and enhanced once the construction process is completed. This court cannot on the facts presented
22 determine the accuracy of these statements: The walls will be reconstructed in their original
23 locations, using new material in order to comply with current building code requirements. These
24 designs have been reviewed and approved.

25 Furthermore, the City has affirmed that the construction process that had been in progress
26 was consistent with the City-approved permits and demolition plans.

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Third, the balance of hardships weigh heavily against Petitioner. The unsealed building would now pose a threat to human life, health, and safety. Rather than pursue this TRO application before construction began, Petitioner unreasonably delayed.

For these reasons, the TRO Application is being denied in its entirety.

Dated: _____

JOEL M. PRESSMAN
Judge of the Superior Court