



MILPITAS PLANNING COMMISSION AGENDA REPORT

Meeting Date: June 25, 2008

PUBLIC HEARING

APPLICATION: Site Approval Amendment No. SA2008-0017, Aspen Family Apartments

APPLICATION SUMMARY: A request to amend a special condition of approval, No. 23a, relating to construction timing. If approved, the request would allow project construction to occur everyday, Mondays through and Sundays between 6 a.m. and 7 p.m., until December 31, 2008.

LOCATION: 1666 South Main Street, (APN: 086-22-023)
APPLICANT & OWNER: Global Premier, 5 Park Plaza, Suite 980, Irvine, CA 92614

RECOMMENDATION: Staff recommends that the Planning Commission:
1. Close the public hearing; and
2. Adopt Resolution no. 08-026 approving the proposed amendment to special condition No. 23a.

PROJECT DATA:
General Plan/ Zoning Designation: Multi-Family Very High Density /Multi-Family Very High Density (R4)
Overlay District: 'S' Zone
Specific Plan: Midtown

Site Area: 2.69 acres

CEQA Determination: Exempt

PLANNER: Maxwell, Principal Administrative Analyst

PJ: 3199

- ATTACHMENTS:**
- A. Resolution
 - B. Email request from applicant
 - C. Noise Abatement Ordinance

LOCATION MAP



BACKGROUND

The Aspen Family Apartments was originally approved by the Planning Commission on March 14, 2007 with an 'S' Zone application (SZ2007-0001) and Use Permit (UP2006-0022). The Tentative Map (MI2007-0002) was approved on March 28, 2007. The Planning Commission has taken the following actions regarding the project since the original approvals:

- May 23, 2007, the Planning Commission approved amendments to the 'S' Zone (SA2007-0018) and Tentative Map (MM2007-0002) to allow 90-day extensions for the completion of 22 special conditions for the 'S' Zone and five special conditions for the Tentative Map.
- July 11, 2007, the Planning Commission denied the applicant's requests to increase building height and modify building setbacks (SA2007-0046 and UA2007-0009).
- February 13, 2008, the Commission approved the applicant's request to modify special condition number 23a to allow construction activities to occur on the weekend, Saturdays and Sundays, between 7 a.m. and 6 p.m. (SA08-0002)
- May 14, 2008, the Commission conducted a three-month review (PR08-0003) of the revisions to special condition no. 23a regulating weekend construction hours. The Commission found there were no complaints about construction noise and maintained the revised construction hours.

On May 20, 2008, Charles Hutchison of Global Premier submitted an application to further amend special condition No. 23a, of the 'S' Zone approval, to allow project construction every day of the week, Monday through Sunday, from 6 a.m. to 7 p.m. The requested change has an end date of December 31, 2008.

Currently, special condition No. 23a, as amended, restricts project construction on weekends to Saturdays and Sundays between 7 a.m. and 6 p.m.

23) Construction Noise: During construction, the applicant shall implement the following measures to reduce construction noise: (P)

- a. *Construction shall be limited to the hours of 7:00AM to 7:00PM on weekdays, and 7:00AM to 6:00PM on Saturdays and Sundays, with no noise generating construction on holidays.*

PROJECT DESCRIPTION

The 2.69 acres project site is located at 1666 S. Main Street and is currently under construction. The development includes 101-unit affordable family apartment project with three four-story buildings and underground garages. The project will provide new public streets creating smaller blocks and a more pedestrian-friendly environment.

The site is located in an area of transitional land uses. On the north side of the site are two existing multi-tenant commercial/industrial buildings and the future site of a high-density residential project. To the west is a rail line and, beyond, are industrial parks. South of the site is an existing mini-storage complex. The site is bounded by South Main Street with an industrial park and single-family homes. A vicinity map of the subject site location is included on the previous page.

ADOPTED PLANS AND ORDINANCES CONSISTENCY

General Plan, Midtown Specific Plan, and Zoning Ordinance

The proposed change to the construction hours would be consistent with the provisions of the General Plan, Midtown Specific Plan and Zoning Ordinance.

Milpitas Municipal Code: Noise Abatement Ordinance

The proposed change to the project construction hours would allow a temporary one-hour exception, during 6 a.m. to 7 a.m., to the provisions of the City's Noise Abatement Ordinance (MMC V-213):

3.03 (b) Site Construction Regulations. No person shall engage or permit others to engage in construction of any building or related road or walkway, pool or landscape improvement or in the construction operations related thereto, including, delivery of construction materials, supplies, or improvements on or to a construction site except within the hours of 7:00 a.m. to 7:00 p.m. on weekdays and weekends.

ENVIRONMENTAL REVIEW

The proposed project is exempt from further environmental review pursuant to Article 8, Section 65457 (CEQA Exemption) of the State Planning and Zoning Law and Article 11, Section 15168(c)(2) (Program EIR) of the California Environmental Quality Act (CEQA) Guidelines. The proposed change to special condition No. 23a. is consistent with the Midtown Specific Plan Program EIR. Additionally, the EIR for the Midtown Specific Plan determined that, due to its temporary nature, project construction noise would not be a significant impact and no mitigation measures were required.

PUBLIC COMMENT/OUTREACH

Staff publicly noticed the application in accordance with City and State law. As of the time of writing this report, there have been no written comments from the public.

CONCLUSION

Staff recommends approval of the change to special condition No. 23a. since the proposed days and hours for construction are consistent with the requirements of the City's Noise Abatement Ordinance except for a temporary one-hour period (6 a.m. to 7 a.m. daily through December 31, 2008) and the construction of the project is for a temporary period only. The applicant is required to complete construction by December 31, 2008 for state funding purposes. In addition, there are no residences adjacent to the site that would be significantly impacted by the weekend construction and the police department has received no complaints related to project construction noise. The closest residence is 490 feet away. Lastly, special condition No. 23a. was not a required environmental mitigation measure of the Midtown EIR.

RECOMMENDATION

STAFF RECOMMENDS the Planning Commission adopt Resolution No. 08-0026, approving 'S' Zone Amendment No. SA08-0017 amending special condition No. 23a. to read:

23) Construction Noise: During construction, the applicant shall implement the following measures to reduce construction noise: (P)

- a. Construction shall be allowed for limited to the hours of 6 7:00AM to 7:00PM daily, Monday through Sunday, on weekdays, and 97:00AM to 56:00PM on Saturdays and Sundays, with no noise generating construction on Sundays and holidays. This provision is in effect until December 31, 2008.*

Attachments:

- A.** Resolution
- B.** Email request from applicant
- C.** Noise Abatement Ordinance (MMC V-213)

RESOLUTION NO. 08-026

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS, CALIFORNIA, APPROVING "S" ZONE AMENDMENT NO. SZ08-0017, FOR THE ASPEN FAMILY APARTMENTS, LOCATED AT 1666 SOUTH MAIN STREET

WHEREAS, on January 30, 2008, an application was submitted by Global Premier, 5 Park Plaza, Suite 980, Irvine, California 92614, to amend special condition No. 23a. to modify the days and hours that project construction can occur on the site located at 1666 South Main Street. The property is zoned "R4 -S" Multi-Family Very High Density and Site and Architectural Approval combining district (APN's 086-22-023); and

WHEREAS, the Aspen Family Apartments project was originally approved by the Planning Commission on March 14, 2007 (SZ2007-0001 and UP2006-0022) and March 28, 2007 (MM2007-0002) and amended on May 23, 2007 (SA2007-0018 and MM2007-0002); and

WHEREAS, the Planning Division completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA), and the Planning Commission determined the Aspen Family Apartments and this amendment application is exempt from further environmental review pursuant to Article 8, Section 65457 (CEQA Exemption) of the State Planning and Zoning Law and Article 11, Section 15168(c)(2) (Program EIR) of the California Environmental Quality Act (CEQA) Guidelines.

WHEREAS, on June 25, 2008, the Planning Commission held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties.

NOW THEREFORE, the Planning Commission of the City of Milpitas hereby finds, determines and resolves as follows:

Section 1: The recitals set forth above are true and correct and incorporated herein by reference.

Section 2: The proposed project is exempt from further environmental review pursuant to Article 8, Section 65457 of the State Planning and Zoning Law and Article 11, Section 15168(c)(2) (Program EIR) of the California Environmental Quality Act (CEQA) Guidelines. Additionally, the proposed amendment to special condition No. 23a is consistent with the Midtown Specific Plan Program EIR, which determined that, due to its temporary nature, project construction noise would not be a significant impact.

Section 3: The proposed amendment to special condition No. 23a. is consistent with the provisions of the Milpitas General Plan, Midtown Specific Plan and the Zoning Ordinance.

Section 4: The proposed amendment to special condition No. 23a will allow a temporary one-hour exception with the permitted days and times for project construction provided in the Milpitas Noise Abatement Ordinance.

Section 5: Approval of the proposed amendment to special condition No. 23a. will help the applicant meet State funding requirements to complete project construction by December 31, 2008.

Section 6: Approval of the proposed amendment to special condition No. 23a will not significantly impact any existing residences and that the closest existing residence is at least 490 feet away and on the opposite side of South Main Street.

Section 7: All other conditions of approval from previous City actions on planning entitlements shall remain in full force and effect, unless amended here.

Section 8: The Planning Commission of the City of Milpitas hereby approves the amendment to special condition No. 23a. to read as follows:

23. Construction Noise: During construction, the applicant shall implement the following measures to reduce construction noise: (P)

- a. Construction shall be allowed for ~~limited to~~ the hours of 6 7:00AM to 7:00PM daily, Monday through Sunday, ~~on weekdays, and 97:00AM to 56:00PM on Saturdays and Sundays,~~ with no noise generating construction on ~~Sundays and~~ holidays. This provision is in effect until December 31, 2008.*

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on June 25, 2008.

Chair

TO WIT:

I HEREBY CERTIFY that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on June 25, 2008, and carried by the following roll call vote:

AYES:	COMMISSIONERS:	.
NOES:	COMMISSIONERS:	
ABSTAIN:	COMMISSIONERS:	
ABSENT:	COMMISSIONERS:	

Secretary of the Planning Commission

From: Joe Pagano [Joe@globalpremierdevelopment.com]

Sent: Tuesday, June 03, 2008 2:14 PM

To: Cindy Maxwell

Cc: Charles Hutchison

We are proposing to expand the work hours to start at 6 am and end at 8 pm every day, Monday through Sunday until 12/31/08. The reason for this is to allow split shifts to be implemented as a means of accelerating the project schedule.

MILPITAS MUNICIPAL CODE

Excerpts From Noise Abatement Ordinance

V-213-3 Unlawful to Create or Permit Disturbing Noise

(a) Residential Zone Regulations.

3.01 It shall be unlawful for any person in any district zoned for residential use (under the provisions of Chapter 10, Title XI of the Milpitas Municipal Code) to make, continue or cause to be made or continued any disturbing noise between the hours of 10:00 p.m. in the evening to 7:00 a.m. in the morning.

3.02 It shall be unlawful for any person owning, possessing or controlling any real property in any district zoned for residential use (under the provisions of Chapter 10, Title XI of the Milpitas Municipal Code) to permit or allow the making, continuing or causing to be made or continued any disturbing noise upon said real property between the hours of 10:00 p.m. in the evening to 7:00 a.m. in the morning.

3.03 The above prohibition against making, continuing or causing to be made or continued any disturbing noise in any district zoned for residential use shall not apply to the authorized collection of solid waste, recyclables, and/or yard trimmings by an authorized collector during the months of June, July and August beginning at 6:00 a.m.

(b) Site Construction Regulations. No person shall engage or permit others to engage in construction of any building or related road or walkway, pool or landscape improvement or in the construction operations related thereto, including, delivery of construction materials, supplies, or improvements on or to a construction site except within the hours of 7:00 a.m. to 7:00 p.m. on weekdays and weekends. No construction work shall be conducted or performed on the holidays indicated in Section V-213-2-2.05 of this chapter.

(c) Exemption from Off-Site Construction Regulations. Exempt from the Off-Site Construction Regulations of this article are:

- (1) Emergency construction and repair that is necessary for protection of life and property,
- (2) Operation preempted from local regulation by state law, such as construction of public school buildings,
- (3) Furnishing utility-type service including construction and maintenance of utility facilities,
- (4) Any work on an existing single-family or duplex (two-family) dwelling undertaken by the property owner,
- (5) Operation to construct and maintain facilities within the public right-of-way as deemed necessary by the Public Works Director, and
- (6) Any other circumstances where the City Manager deems that an exemption would be appropriate. (Ord. 196.6 (part), 3/17/98; Ord. 196.5 (part), 10/7/97; Ord. 196.4, 12/5/95; Ord. 196 (part), 6/7/77)

<p>V-213-2.05 Holiday-means New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.</p>
