

# APPROVED

## PLANNING COMMISSION SUBCOMMITTEE MINUTES

May 13, 2009

### I. ROLL CALL

Present: Alex Galang and Gurdev Sandhu  
Staff: Ah-Sing, Andrade, and Hom

1. **ADMINISTRATIVE PERMIT NO. AD09-0002** Cindy Hom, Assistant Planner, presented a request for a one day fitness event on May 20, 2009 located at 601 McCarthy Blvd. Ms. Hom recommended approving Administrative Permit No. AD09-0002 subject to the conditions of approval.

**Motion** to approve Administrative Permit No. AD09-0002 subject to the conditions of approval.

M/S: Sandhu, Galang

AYES: 2

NOES: 0

2. **ADMINISTRATIVE PERMIT NO. AD09-0003** Cindy Hom, Assistant Planner, presented a request to have the annual International Festival (outdoor employee event) for SanDisk located at 601 McCarthy Blvd. Ms. Hom recommended approving Administrative Permit No. AD09-0003 subject to the conditions of approval.

**Motion** to approve Administrative Permit No. AD09-0003 subject to the conditions of approval.

M/S: Sandhu, Galang

AYES: 2

NOES: 0

### II. ADJOURNMENT

This meeting was adjourned at 6:39 p.m.

# APPROVED

## PLANNING COMMISSION MINUTES

May 13, 2009

- I. PLEDGE OF ALLEGIANCE** Chair Williams called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.
- II. ROLL CALL/SEATING OF ALTERNATE** Present: Aslam Ali, Larry Ciardella, Alex Galang, Sudhir Mandal, Gurdev Sandhu, Noella Tabladillo, Mark Tiernan, and Cliff Williams  
Staff: Ah Sing, Andrade, Hom, Gilli, Lindsay, and Otake
- III. PUBLIC FORUM** Chair Williams invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.
- Mr. Rob Means, 1441 Yellowstone,** The Bikes Master Plan will be coming to the Commission for review. He noticed that a pedestrian crossing that has been designated in the previous Bikes Master Plan and Trails Master Plan, but has never been “built”, is removed from the Plan. He understands that as originally proposed it is too costly to build a cement pedestrian overcrossing and he submitted a proposal to use new technology that is more cost effective.
- IV. APPROVAL OF MINUTES** April 22, 2009  
Chair Williams called for approval of the minutes of the Planning Commission meeting of April 22, 2009.  
There were no changes to the minutes.  
**Motion** to approve the minutes of April 8, 2009 as submitted.  
M/S: Mandal, Tabladillo  
AYES: 7  
NOES: 0  
ABSENT: 0  
ABSTAIN: 0
- V. ANNOUNCEMENTS** Sheldon Ah Sing, Senior Planner, announced that the City has received two awards: the 2009 Urban Land Institute Award for Excellence for the Americas for the DeVries Place Senior Housing Apartments and American Planning Association Northern California Chapter’s 2009 Comprehensive Planning Small Jurisdiction Award for the Milpitas Transit Area Specific Plan.
- Commissioner Ciardella asked staff if the fruit vendors he sees on the street corners are licensed. Mr. Ah Sing said that staff will look into this issue.
- Vice Chair Mandal asked staff if there were any details regarding the tour of recently completed projects that was requested at the last meeting. Mr. Lindsay stated that staff has not forgotten about this request, but are still trying to work out the details. He stated there are issues with driving, staff does not possess the special license is required to

APPROVED

Planning Commission Minutes

May 13, 2009

transport the Commission. Staff is looking into walking tours and other alternatives. Staff will return with more details.

**VI. CONFLICT OF INTEREST**

Assistant City Attorney Bryan Otake asked if any member of the Commission has any personal or financial conflict of interest related to any of the items on tonight's agenda. There were no Commissioners who identified a conflict of interest.

**VII. APPROVAL OF AGENDA**

Chair Williams asked whether staff or the Commission have any changes to the agenda. Mr. Sheldon Ah Sing requested the recommendation for Item No 1 be corrected to "Staff recommends that the Planning Commission close the public hearing after receiving the presentation and provide comments."

**Motion** to approve the agenda as modified.

M/S: Mandal, Sandhu

AYES: 7

NOES: 0

ABSENT: 0

ABSTAIN: 0

**VIII. CONSENT CALENDAR**

Chair Williams asked whether staff, the Commission, or anyone in the audience wish to remove or add any items to the consent calendar.

**Karen McPhearson, 12267 Alcosta Blvd, San Ramon, Verizon Wireless** requested a discussion on Item No. 3.

Chair Williams opened the public hearing on Item Nos. 2, 4, 5, & 6.

There were no speakers from the audience.

**Motion** to close the public hearing.

M/S: Mandal, Ciardella

AYES: 7

NOES: 0

ABSENT: 0

ABSTAIN: 0

**Motion** to adopt the Resolutions and approve the projects, subject to the conditions of approval, for Item Nos. 2, 4, 5, & 6.

M/S: Mandal, Sandhu

AYES: 7

NOES: 0

ABSENT: 0

ABSTAIN: 0

**\*2 CONDITIONAL USE PERMIT NO. UP09-0003:** A request to operate a 1,600

**APPROVED**  
**Planning Commission Minutes**

May 13, 2009

square foot Indian themed grocery store located at 1291 S. Park Victoria Drive (APN: 088-36-036), zoned General Commercial with Site and Architectural Overlay (C2-S). Applicant: Anita Singh. Staff Contact: Cindy Hom (408) 586-3284. PJ # 2573. *(Recommendation: Adopt Resolution No. 09-022 approving the project subject to conditions of approval.)*

**\*4 CONDITIONAL USE PERMIT NO. UP08-0037:** A request to construct a new freestanding monument sign along Piedmont Road. The project is located at 130 Piedmont Road (APN: 092-37-051), zoned R1-H Single Family Residential Hillside with Site and Architectural Overlay (R1-H-S). Applicant: Calvary Assembly. Staff Contact: Judie Gilli (408) 586-3280. PJ # 2551. *(Recommendation: Adopt Resolution No. 09-024 approving the project, subject to conditions of approval.)*

**\*5 CONDITIONAL USE PERMIT NO. UP09-0007:** A request to construct a new freestanding monument sign over six feet in height on the corner of Buckeye Dr. and Sycamore Dr. The project is located at 1511 Buckeye Drive (APN: 086-03-025), zoned MP Industrial Park with Site and Architectural Overlay (MP-S). Applicant: Cal Neon. Staff Contact: Judie Gilli (408) 586-3280. PJ # 2579. *(Recommendation: Adopt Resolution No. 09-025 approving the project, subject to conditions of approval.)*

**\*6 SITE DEVELOPMENT PERMIT TIME EXTENSION NO. TE09-0001, VAVAROUTSOS RESIDENCE:** A request for a one-time eighteen month time extension for a 4,140 square hillside residence and related site improvements located with the Calaveras Ridge Estate Subdivision at 826 Calaveras Ridge Drive (APN: 029-06-031), zoned Single Family Residential with Hillside Combining District and Site and Architectural Overlay (R1-H-S). Applicant: Pete Vararoutsos. Staff Contact: Cindy Hom (408) 586-3284. *(Recommendation: Adopt Resolution No. 09-021 approving the project subject to conditions of approval.)*

## **IX. PUBLIC HEARING**

### **1. INTRODUCE A GREEN BUILDING ORDINANCE**

James Lindsay, Planning & Neighborhood Services Director, presented a proposed ordinance that would establish minimum green building standards on both new commercial and residential construction to increase energy efficiency and encourage water and resource conservation. The ordinance would not result in any changes to the zoning ordinance but create a new chapter within Title II - Building Regulations of the Municipal Code. Mr. Lindsay recommended that the Planning Commission close the public hearing after receiving the presentation and provide comments.

Commissioner Tabladillo asked for clarification regarding the medical/hospital perspective; the green guide for health care is what more hospitals and medical offices use because LEED Certification is more costly. Mr. Lindsay stated staff did not address the health care industry specifically in the ordinance; LEED has been making attempts to broaden their checklists; he will take the comment and see if it needs to be addressed in the ordinance; the ordinance gives the City the flexibility to review an alternative process if proposed by an applicant.

Commissioner Tabladillo asked who makes the final determination of an alternative

**APPROVED**

**Planning Commission Minutes**

May 13, 2009

system. Mr. Lindsay stated the Chief Building Official will make the final determination.

Mr. Lindsay stated that he has made note of the comment and will make sure that the ordinance is worded appropriately to give the City enough flexibility to use a different standard to achieve the same goal.

Commissioner Tabladillo mentioned that industries are developing their own standards and certification processes because LEED Silver Certification is extremely costly.

Commissioner Tabladillo asked if staff will be LEED certified or trained to be qualified to verify these standards. Mr. Lindsay stated the staff will be trained to be qualified green building professionals in the review of the drawings and inspection of the project that can confirm compliance and verify the project has reached the levels represented within the submittal. It will be optional for the applicant to go to a third party for official certification.

Commissioner Tabladillo stated she is glad to hear that certification will be optional for the applicant since the certification is costly. Mr. Lindsay stated that the greatest barrier is the certification process, which is why staff would be trained to verify the project achieves the minimum thresholds without requiring the applicant to get certification.

Vice Chair Mandal asked to confirm the ordinance will be effective later this year. Mr. Lindsay stated if approved by City Council next month, the ordinance will be effective August 01, 2009.

Vice Chair Mandal mentioned it is a good idea to train City staff rather than requiring third party certification; the City is behind other agencies in implementing a green standard, but it is good to go slow: develop guidelines, use them, and improve.

Vice Chair Mandal asked what is the minimum threshold and how does it apply. Mr. Lindsay stated there are two types of thresholds: the level "of greenness" being required in a rating system and the size of the construction project that would trigger a certain requirement; in the ordinance a project that would trigger a LEED Silver level is a remodel or new construction of greater than 50,000 square feet; projects smaller than 50,000 square feet would just need to achieve LEED compliance; really small projects the completed checklist is the only requirement.

Vice Chair Mandal asked if a project comes in after August with the staff recommendation state if the project requires and complies with the ordinance and if there is a hardship will the "hardship" decision be determined before it comes to the Commission. Mr. Lindsay stated the way the ordinance is written, the Planning Commission will not have any "judicatory" role in judging a project based on its green rating, which is common; the details for in determining the green level are in the construction documents, which is not a level of detail that the Planning Commission sees; the plans that the Planning Commission reviews are more conceptual, some of the impact the green level, but the verification is done during the construction phase; the ordinance is not amending the Zoning Code at all so the role is in the Building Department during the permit process; the staff reports can indicate the information submitted by the applicant in the checklist, but the Planning Commission could not use that information to approve, deny, or condition a project.

Vice Chair Mandal asked if there is a proven return on investment defined for a LEED Silver rating; something the applicant can be given that shows the overall/long term savings with achieving the LEED Silver level. Mr. Lindsay stated that there is data compiled by San Jose; to have a decent return on investment a project has to be greater than 50,000 square feet, which is why that is a common threshold; there are studies that

**APPROVED**

**Planning Commission Minutes**

May 13, 2009

show how the initial up-front costs pay for themselves in the operation of the building.

Commissioner Ciardella mentioned that there are several products that are LEED Certified, such as a concrete planter box or block that saves water, CO2, energy, etc.

Commissioner Ciardella asked if products that are guaranteed organic certified would that count in the ordinance. Mr. Lindsay stated the use of recycled or sustainable types of products definitely earns points; he's not positive how the organic nature of a product impacts the verification.

Commissioner Ciardella asked if there is a credit for achieving the verification. Mr. Lindsay stated that some Cities, not a majority, are offering financial incentives, but they are usually for achieving a level higher than LEED Silver; the City discussed this, but preferred to offer an expedited plan check for projects achieving a level higher than LEED Silver.

Commissioner Ciardella asked if there is any incentive or cost recovery, as in other Cities, for applicant who recycle materials that are removed from the property. Mr. Lindsay stated that he is not aware of a program like that.

Commissioner Ciardella asked if there is a credit, as in other Cities, for applicant who re-uses materials "removed" somewhere else on the property. Mr. Lindsay stated that more Cities are requiring the re-use of materials; Milpitas is strongly encouraging this, but has not reached the threshold of requiring it; there are no financial incentives offered by the City.

Commissioner Ciardella asked if the City were to start mandating it, would it apply to a certain square footage. Mr. Lindsay stated that it is usually a percentage of the material; different Cities have different thresholds of the percentage of material that must be re-used. Commissioner Ciardella clarified he was asking if the building itself had to be a certain size (square footage) to require the re-use of materials. Mr. Lindsay stated its mostly related to the construction rather than the size of the project because it is mostly a "waste diversion" program.

Commissioner Tiernan asked if he accurately understood that the biggest hurdle is the cost and process of getting certified. Mr. Lindsay stated that the Commissioner is correct.

Commissioner Tiernan asked if any other hurdles were mentioned or identified with the green initiatives. Mr. Lindsay stated the only other hurdle, expressed to him, is a delay in delivering the units to the customer due to the time it takes for verification; the 50 points threshold for residential development is a fairly easy to achieve so the concern isn't really there.

Commissioner Tiernan asked if any of the special trades: heating, electrical, etc. had concerns. Mr. Lindsay stated that he did not make a specific outreach to the trade, but the ordinance applies more to the builder than the trades; outreach was made to residential and commercial builders, but not the individual trades.

Commissioner Tiernan asked if the other Cities, that have implemented a Green Building Ordinance, had feedback on their policy and the how it has impacted local business and trades. Mr. Lindsay stated that in speaking to other agencies, with an ordinance in place, every agency struggles with setting the thresholds, but no agency has had the ordinance in effect long enough to have that kind of data.

Commissioner Tiernan asked if there could be a situation in the future where the Building Code says one thing, but additional tasks would be required for LEED certification. Mr. Lindsay stated that he cannot think of a specific example, but can see this happening; this

**APPROVED**

**Planning Commission Minutes**

May 13, 2009

is one of the advantages of having the Chief Building Official be the compliance officer, under the standard Building Code the Chief Building Official has the ability to approve an alternative means or method as long as the Health & Safety concerns are addressed and at the same time making sure it meets the intent of the Green Building standards; if a conflict arises, the Chief Building Official will have the flexibility to address both codes.

Commissioner Tiernan suggested that the checklist submitted be highlighted to show requirements for certification to make it easier for builders to make the decisions early on, especially when the builder is from out of the area and may not be aware of the local amendments. Mr. Lindsay stated that this is a great idea he will take note of; the ordinance is foreseen as a phased approach because it is anticipated that these standards will be incorporated into the Building Code.

Commissioner Sandhu asked if the City can apply for Federal Stimulus money to pay for the staff's training. Mr. Lindsay stated the training costs would qualify for the Energy Efficiency Block Grant, the City has already received information about the funds the City of Milpitas will automatically get (not have to apply for) and the City has prioritized how that money will be spent; training for this program is on the list.

Commissioner Tabladillo asked if the City Council approves the ordinance will there be a re-evaluation; will staff return with an update of the pros and cons; will the ordinance need to be modified with changing times. Mr. Lindsay stated that staff will return to the Planning Commission with an update as the Building Code incorporates more green standards; the code adoption process will include a comparison of the CA Building Code and the Green Building Ordinance.

**3. CONDITIONAL  
USE PERMIT NO.  
UP08-0047**

Cindy Hom, Assistant Planner, presented a request to locate and operate a temporary wireless telecommunication facility for a maximum of two years. The proposed facility consists of three panel antennas attached to a 60-foot tall monopole and moveable equipment shelter that would occupy approximately five parking spaces at the rear of the parking lot of an existing industrial building located at 1501 McCarthy Boulevard. Ms. Hom recommended to open the public hearing and adopt Resolution No 09-023 approving the project subject to conditions of approval.

**Karen McPhearson, 12267 Alcosta Blvd Ste 125, San Ramon,** Verizon Wireless, briefly addressed a few conditions of approval that the company may not be able to comply with as stated, but they are willing to work with staff. The condition to paint the pole cannot be met; the antennas can be painted, but the pole itself cranks up and down so if it is painted after it is cranked up, it will not crank back down. Additionally, Fire's condition to identify antennas to denote their function as a transmitter/receiver when located on a roof structure does not really apply to this project since there will not be any antennas on a roof structure. Another condition from Fire requests a shutdown transmitter; with this being a temporary site the equipment does not come with a shutdown; Verizon does not want to install a shutdown device that someone on the street can walk up and push a button to shutdown the transmitter; Verizon is able to have a remote shutdown, a fireman can call 24 hours a day to have it shutdown in an emergency.

Chair Williams asked if the applicant can work with staff to rephrase the conditions, but he doesn't see a problem with striking the condition to paint the pole.

Vice Chair Mandal asked if this will require a power source and where the power source will be located. Ms. McPhearson stated that power is required and they plan to bore through the parking lot to bring it over from the building.

Vice Chair Mandal asked if solar panels can be used. Ms. McPhearson stated that it takes

**APPROVED**

**Planning Commission Minutes**

May 13, 2009

several solar panels to power a cell site and they cannot lease enough space for all of the panels.

Chair Williams opened the Public Hearing.

No Public Comments

**Motion** to close the public hearing.

M/S: Sandhu, Mandal

AYES: 7

NOES: 0

ABSENT: 0

ABSTAIN: 0

**Motion** to Adopt Resolution No. 09-023 approving the project subject to conditions of approval with the following modifications made by the Commission.

1. Remove condition 6: "To ensure architectural compatibility, the pole and antennae shall be painted an earth tone brown, to the satisfaction of the Planning Division, as to blend with surrounding trees.
2. Applicant shall work with staff to modify the language of the conditions 9e and 9g to allow a for a remote shutdown system.

M/S: Williams, Mandal

AYES: 7

NOES: 0

ABSENT: 0

ABSTAIN: 0

**X. ADJOURNMENT**

The meeting was adjourned at 8:05 p.m. to the next regular meeting of May 27, 2009.

Respectfully Submitted,

James Lindsay  
Planning & Neighborhood  
Services Director

Debbie Barbey  
Recording Secretary

**APPROVED**  
**Planning Commission Minutes**

May 13, 2009