

APPROVED

PLANNING COMMISSION MINUTES

December 8, 2010

- I. ROLL CALL/SEATING OF ALTERNATE**
- Present: Larry Ciardella, John Luk, Gurdev Sandhu, Steve Tao, Noella Tabladillo, Mark Tiernan, and Cliff Williams
Absent: Sudhir Mandal
Staff: Ah Sing, Andrade, Brown, Hom, Lindsay, and Otake
- Alternate Commissioner John Luk was seated as a member of the voting body.
- II. PLEDGE OF ALLEGIANCE**
- Chair Williams called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.
- 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 agendize the matter for a future meeting.
- There were no speakers from the audience.
- IV. APPROVAL OF MINUTES**
October 27, 2010
- Chair Williams called for approval of the minutes of the Planning Commission meeting of October 27, 2010.
- There were no changes to the minutes.
- Motion** to approve the minutes of October 27, 2010 as submitted.
- M/S: Ciardella, Tiernan
- AYES: 7
NOES: 0
ABSENT: 1 (Sudhir Mandal)
ABSTAIN: 0
- V. ANNOUNCEMENTS**
- James Lindsay, Planning Director, wished the Commission a Happy Holiday season. Chair Williams thanked staff for their hard work during the year. Commissioner Tiernan thanked the Commission and staff for their support and thoughts for his brother who recently passed.
- 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. Alternate Commissioner Luk stated his firm represents the applicant for Item No. IX-1 Tobacco Shop.
- VII. APPROVAL OF AGENDA**
- Chair Williams asked whether staff or the Commission have any changes to the agenda.
- There were no changes to the agenda.
- Motion** to approve the agenda as submitted.
- M/S: Ciardella, Tiernan
- AYES: 7

NOES: 0
ABSENT: 1 (Sudhir Mandal)
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.

There were no changes to the Consent Calendar.

Chair Williams opened the public hearing on Item No. VIII-1 and Item No. VIII-2.

There were no speakers from the audience.

Motion to close the public hearing on Item No. VIII-1 and Item No. VIII-2.

M/S: Tiernan, Ciardella

AYES: 7

NOES: 0

ABSENT: 1 (Sudhir Mandal)

ABSTAIN: 0

Motion to approve the Consent Calendar as submitted.

M/S: Tiernan, Ciardella

AYES: 7

NOES: 0

ABSENT: 1 (Sudhir Mandal)

ABSTAIN: 0

- 1. CONDITIONAL USE PERMIT NO. UP09-0030 and SITE DEVELOPMENT PERMIT AMENDMENT NO. SA09-0011:** A request to locate a 35-foot tall monopole wireless telecommunication facility at 15 Wilson Way. (APN: 022-01-011) zoned Neighborhood Commercial with Site and Architectural Overlay (C1-S). Applicant: Leah Hernikl for T-Mobile. Staff Contact: Cindy Hom (408) 586-3284. PJ # 2591. *(Recommendation: Adopt Resolution No. 10-046 approving the project subject to conditions of approval.)*
- 2. CONDITIONAL USE PERMIT NO. UP10-0020:** A request to conduct an auto broker business at 16 Corning Avenue, Suite 206, (APN: 086-10-020) zoned Mixed Use District with Site and Architectural Overlay (MXD-S). Applicant: Bryan Chun. Staff Contact: Janice Spuller (408) 586-3291. PJ # 2683. *(Recommendation: Adopt Resolution No. 10-044 approving the project subject to conditions of approval.)*

IX. PUBLIC HEARING

Alternate Commissioner Luk excused himself from this item. His firm represents the applicant.

**1. CONDITIONAL USE
PERMIT NO. UP10-0019**

Cindy Hom, Assistant Planner, presented a request to operate a 500 square foot cigarette and tobacco shop within the Victoria Square Shopping Center located at 1201 E. Calaveras Blvd. Ms. Hom recommended adopting Resolution No. 10-045 approving the project subject to conditions of approval.

APPROVED
Planning Commission Minutes
December 8, 2010

Commissioner Tiernan asked if smoking is allowed in the facility. Ms. Hom stated no.

Commissioner Tao asked for explanation of the sale items. Ms. Hom stated the tobacco accessories consist of ash trays, lighter fluid, lighters, and certain types of pipes.

Commissioner Tao asked if there is a way to tighten the sale of items. Bryan Otake, Assistant City Attorney, stated yes through the conditions of approval.

Commissioner Tabladillo asked if there is a non-smoking ordinance regarding distance away from buildings. James Lindsay, Planning Director, stated distance around public buildings. For private uses and private buildings the City refers to state law.

Commissioner Ciardella inquired about the age limit for sale of tobacco. Mr. Otake stated California state bars any sale of tobacco to anyone under the age of 18.

Chair Williams asked if there are any parking problems. Ms. Hom stated there are none.

Commissioner Tabladillo asked if staff had conversations with the surrounding tenants in the area. Ms. Hom stated properties within 1,000 ft of the subject property were notified. As far as other tenants in that area, there was no outreach.

Chair Williams referred to the e-mail that they received. Ms. Hom stated there was a phone call and e-mail from a neighbor who opposed the tobacco sales.

Ratib Norzei, 1982 Vinehill Circle, Fremont, CA, stated he was there to answer any questions the Commission might have.

Commissioner Tao asked if the applicant would sell any head shop accessories. Mr. Norzei stated no, they would be selling only cigarettes and pipes.

Commissioner Tao asked what type of foods would be sold at the tobacco shop. Mr. Norzei stated candies, snacks, and sweets. Commissioner Tao asked Mr. Norzei if he would be carrying hookah in the shop. Mr. Norzei stated they would keep the hookah in the back of the shop out of public view.

Commissioner Tabladillo asked Mr. Norzei if he operates any other stores. Mr. Norzei stated he has stores in Concord and Hayward.

Chair Williams asked if parking would be a problem. Mr. Norzei stated parking would not be a problem.

Commissioner Sandhu asked if the store was standalone or with another store. Mr. Norzei stated his shop is standalone.

Chair Williams opened the public hearing.

Lara Irvin, 916 Algrae Place, San Jose, CA, is the assistant principal at Calaveras Hills High School. She stated the school requests that the applicant not sell tobacco or tobacco paraphernalia to minors.

Motion to close the public hearing.

M/S: Ciardella, Tiernan

AYES: 6

NOES: 0

ABSENT: 1 (Sudhir Mandal)

ABSTAIN: 1 (John Luk)

APPROVED
Planning Commission Minutes
December 8, 2010

Chair Williams stated he would support this item with the additional conditions of approval.

Commissioner Tabladillo supports having a 6, 12, and 18 month review.

Mr. Otake read the additional conditions of approval as follows: 1) modification to No. 5 – The business operation shall be reviewed by the Planning Commission in six, twelve, and eighteen months, 2) the owner or designee shall prevent loitering in front of the property and keep the area free of garbage and tobacco-related litter, 3) the operator is prohibited from advertising or encouraging the use of unlawful controlled substances, and 4) the operator shall work with City staff as to product placement to minimize the exposure of minors to tobacco paraphernalia.

Motion to adopt Resolution No. 10-045 approving the project subject to the conditions of approval.

M/S: Tiernan, Tao

AYES: 4

NOES: 2 (Larry Ciardella and Gurdev Sandhu)

ABSENT: 1 (Sudhir Mandal)

ABSTAIN: 1 (John Luk)

**2. ZONING AMENDMENT
NO. ZA10-0004**

Cindy Hom, Assistant Planner, presented a request to consider an amendment to Section 56 (Non-conforming Uses and Buildings) of the Milpitas Zoning Ordinance. Ms. Hom recommended adopting Resolution No. 10-047 recommending approval of the amendments to the City Council.

Chair Williams commented he was a part of the Midtown Plan development and they were not envisioning there was going to be an economic downturn so therefore, their thoughts at that time was based upon a continued growth. He said he is very comfortable with staff having come up with new language to allow for flexibility. He also thanked staff for an excellent job.

Commissioner Tiernan feels staff did a fine job with this project. He stated this is a step in the right direction.

Chair Williams opened the public hearing.

Vince Wallace, 39111 Paseo Padre Parkway, Ste 310, Fremont, CA, stated he and his company can support the new ordinance. He said the intended use of the property he manages in the Midtown area is for auto repair.

Motion to close the public hearing.

M/S: Ciardella, Tiernan

AYES: 7

NOES: 0

ABSENT: 1 (Sudhir Mandal)

ABSTAIN: 0

Motion to adopt Resolution No. 10-047 recommending approval of the amendments to the City Council.

M/S: Sandhu, Ciardella

APPROVED
Planning Commission Minutes
December 8, 2010

AYES: 7
NOES: 0
ABSENT: 1 (Sudhir Mandal)
ABSTAIN: 0

**X. UNFINISHED
BUSINESS**

**1. TWENTY FOUR
MONTH REVIEW FOR
CONDITIONAL USE
PERMIT AMENDMENT
NO. UA08-0010**

Tiffany Brown, Junior Planner, presented a review of the approval which allows seating on the dance floor during restaurant/dining hours and allows the service of a full range of alcoholic beverages for the existing restaurant located at 78 Dempsey Road. Ms. Brown stated the restaurant is operating primarily as a night club and not a restaurant as permitted. Ms. Brown recommended scheduling a public hearing for the review and possible modifications to Conditional Use Permit conditions of approval.

Ms. Brown stated since January the Police Department has made approximately 30 arrests and has incident reports for drunk in public, drinking in public, fighting in public indoors and out, driving under the influence, under age drinking, and urinating in public. These incident reports are above normal for this type of establishment.

Chair Williams asked a Milpitas Police Department representative about the number of incidents at Club Bahia. Commander Armando Corpuz, Milpitas Police Department, stated in the last six (6) months there has been five (5) fights, minors found at the business, and a drunken driving accident at the business.

Commissioner Ciardella asked about incidents within the last six months. Commander Corpuz stated within the last year the police is aware of at least seven (7) assaults at the location. Some of the assaults were not reported by staff of Club Bahia but have been reported by witnesses at the business. Commissioner Ciardella asked if the incidents happened during the day or late evening. Commander Corpuz stated yes, there was one incident that happened late evening when a 15 year old run-away was found at the business. The business has called MPD to let them know there have been juveniles loitering around the business late at night and requested assistance. Commander Corpuz stated some fights have started inside the business and continued outside.

Commissioner Tao asked if Club Bahia has security. Commander Corpuz stated yes there is security at the business.

Commissioner Tabladillo asked what type of assaults has there been. Commander Corpuz stated most of the assaults have been misdemeanor assaults or fighting.

Commissioner Sandhu stated that six (6) months ago a resident had complained about this establishment and asked if any investigation was done. Mr. Lindsay stated yes and those issues at that time have been resolved.

Chair Williams asked staff if they have been to Club Bahia. Ms. Brown stated she has driven by Club Bahia at night and noticed a ticket booth outside and they were checking IDs of patrons prior to entry into the establishment.

Commissioner Tao asked if there have been excessive problems since 1992. Commander Corpuz stated this year, PD has had 25 to 30 incidents. Commander Corpuz also stated that in 2009 PD has experienced fights at the club and have been attacked as well. Commissioner Tao asked if the incidents have happened after midnight. Commander Corpuz stated most have happened after 11:00 p.m. Commissioner Tao asked how late the establishment serves food. Ms. Brown stated food service ends when the restaurant closes.

Commissioner Luk asked if the residents in the surrounding area complained about the

APPROVED
Planning Commission Minutes
December 8, 2010

fighting. Commander Corpuz stated he is not aware of any resident complaints but they have had cooperation from the business owner.

Edward Gomez, 1052 Matterhorn Court, stated his establishment is a place where they sell alcohol. He stated the video (displayed from the “YouTube” internet site during staff’s presentation) was from New Year’s and that is the most patrons they have ever had at his business. He said they have worked with PD in the past. There have not been any major incidents but just minor fighting. Mr. Gomez has called PD himself for assistance. Mr. Gomez stated they are very strict regarding minors drinking. They have escorted minors out for drinking. Bracelets are worn on people over 21 years of age. Mr. Gomez stated they follow all the conditions of approval.

Chair Williams suggested working with staff to see what can be improved.

Commissioner Luk asked how the establishment promotes events. Mr. Gomez stated they give free passes to patrons who the promoter wants to invite. It is all by word of mouth.

Commissioner Ciardella asked the percentage of restaurant patrons’ verses club patrons. Mr. Gomez stated 50-75% use the business as a restaurant. Commissioner Ciardella asked when the business stops serving dinner. Mr. Gomez stated they stop serving food when the business closes. Mr. Gomez also noted that they are reducing the dance floor for more seating area for dinner.

Commissioner Tiernan feels that Mr. Gomez does not understand the situation. He feels the applicant does not have a plan in resolving these issues. Mr. Gomez stated he does understand the situation and he is focusing on events that bring in a good environment.

Commissioner Tabladillo stated there is a lot investigation that needs to be done.

Motion to schedule a public hearing for the review and possible modifications to conditions of approval.

M/S: Tabladillo, Sandhu

AYES: 7

NOES: 0

ABSENT: 1 (Sudhir Mandal)

ABSTAIN: 0

XI. NEW BUSINESS

1. REPORT ON PERMIT VIOLATIONS – KTV MUSICLAND

Cindy Hom, Assistant Planner, presented a report on violations of conditions of approval at a karaoke establishment located at 788 Barber Lane. Ms. Hom recommended scheduling a three month permit review with a public hearing.

Chair Williams stated this item is to direct staff to come back at a later date with more details and information.

Commissioner Tao asked if any food was sold at the business. Ms. Hom stated they do not sell any food items; just water and tea are available.

Motion to direct staff to schedule a three-month permit review with a public hearing.

M/S: Sandhu, Ciardella

AYES: 7

NOES: 0

APPROVED

Planning Commission Minutes

December 8, 2010

ABSENT: 1 (Sudhir Mandal)

ABSTAIN: 0

**2. PC
ACCOMPLISHMENTS
FOR 2010**

Sheldon Ah Sing, Senior Planner, presented a report on the major accomplishments by the Planning Commission for 2010. These accomplishments included the following:

1. Streamlined Planning Review
2. Sign Ordinance Amendments
3. McCandless Mixed Use Project
4. Milpitas Station Residential Project
5. Tour of Transit Area Opportunity Sites
6. Town Center Rezoning

Mr. Ah Sing recommended the Commission consider the list of accomplishments and direct staff which ones to post on the Commission's web page.

Chair Williams felt all the listed accomplishments should be on the Commission's web page.

Motion to accept the listed accomplishments by staff for the Commission's web page.

M/S: Williams, Tabladillo

AYES: 7

NOES: 0

ABSENT: 1 (Sudhir Mandal)

ABSTAIN: 0

**XII.
ADJOURNMENT**

The meeting was adjourned at 9:03 p.m. to the next meeting of January 12, 2011.

Respectfully Submitted,

James Lindsay
Planning & Neighborhood
Services Director

Yvonne Andrade
Recording Secretary

APPROVED
Planning Commission Minutes
December 8, 2010