



MILPITAS PLANNING COMMISSION AGENDA REPORT

Meeting Date: February 23, 2011

NEW BUSINESS

APPLICATION: Permit Review No. PR10-0002, KTV Musicland

**APPLICATION
SUMMARY:**

A three-month permit review of a 2,400 square foot karaoke establishment.

LOCATION:

788 Barber Lane (APN: 86-01-035)

APPLICANT:

Joe Zheng, 2656 Sommersville Road, Antioch, CA 94509

OWNER:

Ulferts Center (USA) Inc., 668 Barber Lane, Milpitas, CA 95035, Attn: Karen Kam

RECOMMENDATION: Staff recommends that the Planning Commission direct staff to

- 1) note receipt and file; and
- 2) direct staff to conduct a six month review

PROJECT DATA:

General Plan/Zoning:

General Commercial (GNC)/General Commercial (C2)

Overlay District:

Site and Architectural Overlay

Project Site Area:

acres

Tenant Space:

2,400 square feet

CEQA Determination:

Categorically exempt from CEQA pursuant to Section 15301 (Existing Facilities)

PLANNER:

Cindy Hom, Assistant Planner

PJ:

ATTACHMENTS:

- A. December 8, 2010 Planning Commission Staff Report
- B. December 8, 2010 Planning Commission Meeting Minutes
- C. Assessment of Compliance with Conditions of Approval

LOCATION MAP



No scale

BACKGROUND

On December 8, 2010, the Planning Commission received a report on permit violations for KTV Musicland, an existing 2,400 square foot karaoke establishment located within the Ulfert's Center located at 788 Barber Lane. The violations consisted of alcohol consumption within the private rooms at KTV Musicland and operating beyond the restricted hours of operation of 2:00AM. The purpose of that report was to inform the Planning Commission of these violations and to initiate a 3-month permit review with a public hearing. A copy of the December 8, 2010 Planning Commission Staff report and meeting minutes are provided in Attachment A and B.

This report is a three month review of the operations of KTV Musicland. The purpose of the review is to evaluate the existing operations for compliance with conditions of approval. For this review, staff conducted two inspections and consulted with the Police Department for calls for service during the last three months which is discussed further in the staff report.

Site Description and Conditional Use Permit Approval

The karaoke establishment is located within the Ulfert's Shopping Center located at 788 Barber Lane. The site is zoned General Commercial with a Site and Architectural overlay (C2-S) and is surrounded by Cisco Systems corporate campus to the west, commercial and potential residential uses to the north, and a large day care facility to the south. A vicinity map of the subject site location is included on the previous page.

Currently, the conditional use permit allows for a 2,400 square foot karaoke establishment that operates seven days a week between the hours of 4:00pm and 2:00am without food and alcohol service. The approved floor plan includes a front reception area and nine karaoke rooms.

PERMIT REVIEW

Since the last permit review, the applicant has implemented the following to improve the operations of the facility:

1. The applicant has installed a door alarm on the backdoor to discourage patrons from sneaking in alcohol from the back entrance.
2. The business owner is present during the peak time operations (Fridays and Saturdays) to ensure that regulations are fully enforce.
3. The previous "No Loitering and No Alcohol" signs have been replaced with new signs with larger fonts.
4. A new sign display has been added and is mounted on the front lobby wall to inform customers of the regulations.

Staff conducted recent inspections for compliance with conditions of approval and to also observe the operations of the facility. Based on staff's site visits, the project is found to be in substantial conformance with conditions of approval and the approved floor plan.

The only change noticed by staff was the installation of refrigerated cooler, such as those found in convenience stores or grocery store end-caps that provide non-alcoholic beverages such as juice and carbonated drinks. The products of which can be switched out readily and easily (see Attachment B for photograph). Compliance with all other conditions is summarized in Attachment A.

Staff also consulted with the Milpitas Police Department on calls for service. There were no other reported incidents beyond the three incidents that occurred in October 2010. The Police Department

conducted their standard foot patrol of the area. Based on recent patrols in January, the facility was found to be in compliance with the operating hours and no alcohol was found during random inspections of the individual karaoke rooms.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission note receipt and file report and direct staff to schedule a six month review with a public hearing.

ATTACHMENTS:

- A. December 8, 2010 Planning Commission Staff Report
- B. December 8, 2010 Planning Commission Meeting Minutes
- C. Assessment of Compliance with Conditions of Approval



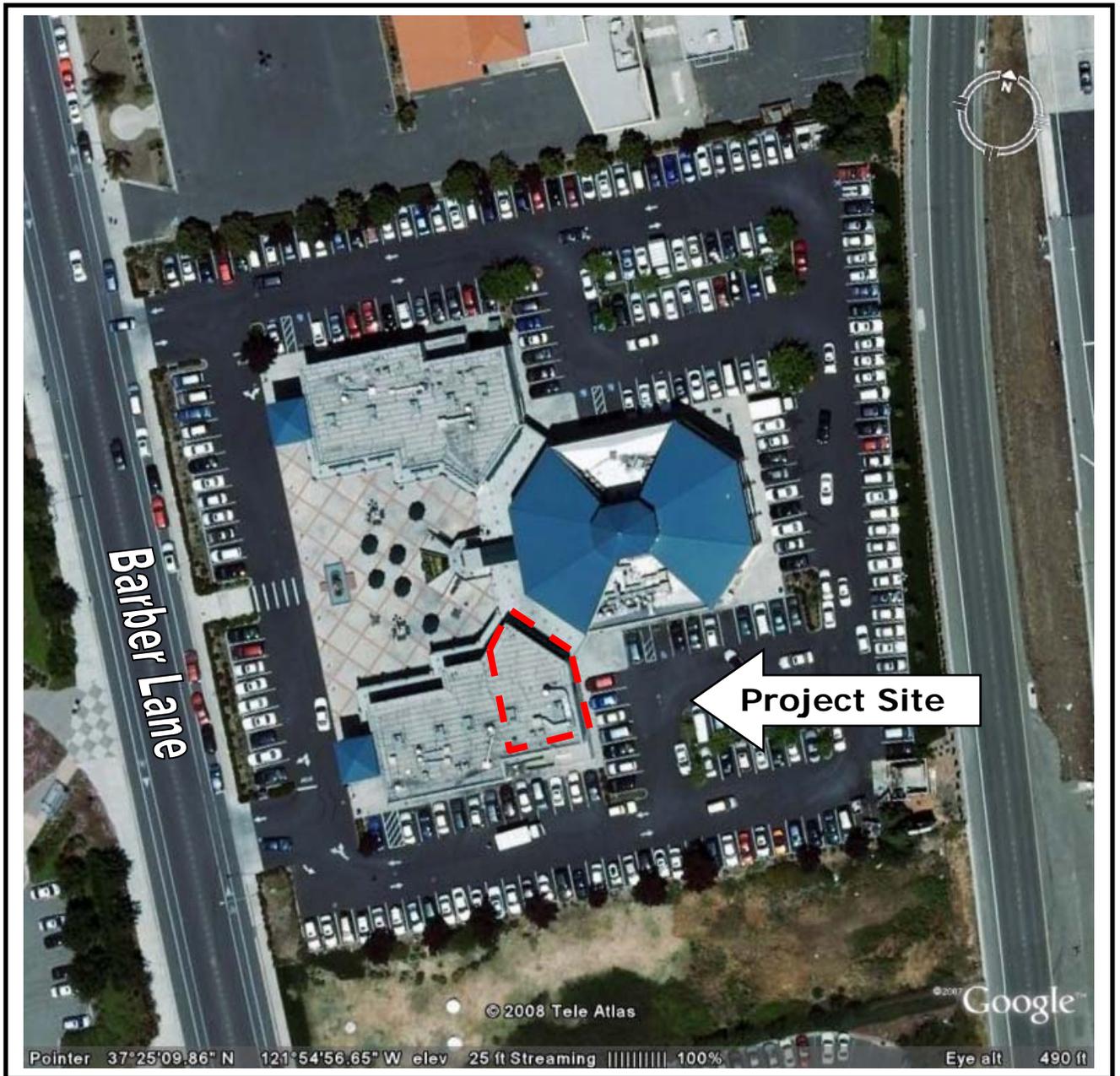
MILPITAS PLANNING COMMISSION AGENDA REPORT

Meeting Date: December 8, 2010

NEW BUSINESS

APPLICATION:	Report on Permit Violations - KTV Musicland
APPLICATION SUMMARY:	A report on violation of conditions of approval.
LOCATION:	788 Barber Lane (APN: 86-01-035)
APPLICANT:	Joe Zheng, 2656 Sommersville Road, Antioch, CA 94509
OWNER:	Ulferts Center (USA) Inc., 668 Barber Lane, Milpitas, CA 95035, Attn: Karen Kam
RECOMMENDATION:	Staff recommends that the Planning Commission: Direct staff to schedule a 3-month permit review with a public hearing.
PROJECT DATA:	
General Plan/Zoning:	General Commercial (GNC)/General Commercial (C2)
Overlay District:	Site and Architectural Overlay
Project Site Area:	acres
Tenant Space:	2,400 square feet
CEQA Determination:	Categorically exempt from CEQA pursuant to Section 15301 (Existing Facilities)
PLANNER:	Cindy Hom, Assistant Planner
PJ:	
ATTACHMENTS:	A. Conditions of Approval B. Administrative Citation letter dated October 24, 2010 C. Assessment of Compliance with conditions

LOCATION MAP



No scale

BACKGROUND

The Planning Commission approved a conditional use permit (UP2006-18) for a 2,400 square foot karaoke establishment on November 8, 2006 located within the Ulfert's Center located at 788 Barber Lane. The site is zoned General Commercial with a Site and Architectural overlay (C2-S) and is surrounded by Cisco Systems corporate campus to the west, commercial and potential residential uses to the north, and a large day care facility to the south. A vicinity map of the subject site location is included on the previous page.

The conditional use permit allowed the karaoke establishment to operate seven days a week between the hours of 4:00pm and 2:00am and includes a front reception area and nine karaoke rooms with no food or alcohol service. As per the conditions of approval, the project was given a nine month review that occurred on October 27, 2007 and a subsequent three month review.

On October 22, 2008, the Planning Commission granted an approval for a conditional use permit amendment (UA08-0004) to modify a condition of approval that restricted the use of blinds on storefront windows and added conditions for a six month review to address any potential issues; installation of a new observation window to allow for visual inspection of the VIP room. A copy of the current conditions of approval is provided in Attachment A.

PERMIT VIOLATIONS

On three separate occasions evidence of alcohol consumption within the private rooms at KTV Musicland was observed by the Police Department. The business was also open past 3:00am during one of those occasions. Condition Nos. 10 and 12 of Conditional Use Permit Amendment No.UA08-004 prohibit the consumption of alcoholic beverages within the business and requires the business be closed by 2:00am. The owner of KTV Musicland has since been issued an Administrative Citation for these violations of their conditions of approval, refer to Attachment B. The purpose of the report is to inform the Planning Commission of these violations and to recommend the Planning Commission initiate a 3-month permit review with a public hearing. Staff has provided a current assessment of the businesses' compliance with other conditions as Attachment C.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission direct staff to schedule a three month review with a public hearing of the conditional use permit.

ATTACHMENTS:

- A. Conditions of Approval
- B. Administrative Citation Letter date October 25, 2010
- C. Assessment of Compliance with Conditions

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 agendaize 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

APPROVED
Planning Commission Minutes
December 8, 2010

project subject to conditions of approval.

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)

APPROVED
Planning Commission Minutes
December 8, 2010

ABSTAIN: 1 (John Luk)

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.

APPROVED
Planning Commission Minutes
December 8, 2010

M/S: Sandhu, Ciardella

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.

APPROVED

Planning Commission Minutes

December 8, 2010

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

**COMPLIANCE WITH CONDITIONS OF APPROVAL
CONDITIONAL USE PERMIT AMENDMENT NO. UA08-0004**

1. The owner or designee shall develop the approved project in conformance with the approved plans approved by the Planning Commission on October 22, 2008, in accordance with these Conditions of Approval.

Comment: Perpetual

2. Any deviation from the approved site plan, floor plans, elevations, materials, colors, landscape plan, or other approved submittal shall require that, prior to the issuance of building permits, the owner or designee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the Planning Commission, in accordance with the Zoning Ordinance.

Comment: Complies. Based on staff's site inspection the facility is in substantial conformance with the approved floor plan. The only change is the addition of a refrigerated cooler that was installed after the staff's inspection in December. See photo below:



3. Conditional Use Permit Amendment No. UA08-0004 shall become null and void if the project is not commenced within 18 months from the date of approval. Pursuant to Section 64.04-2 of the Zoning Ordinance of the City of Milpitas, since the project requires the issuance of a building permit, the project shall not be deemed to have commenced until the date of the building permit is issued and a foundation is completed.

Comment: The project is already vested and constructed.

4. Pursuant to Section 64.04-1, the owner or designee shall have the right to request an extension of Conditional Use Permit Amendment No. UA08-0004 if said request is made, filed and approved by the Planning Commission prior to expiration dates set forth herein.

Comment: The project is already vested and constructed.

5. Planning approval is for 2,400 square foot tenant space denoted on the site and floor plan. The uses approved include 9 karaoke stations with no food or alcohol beverage service. The floor plan proposed for building permits shall substantially conform to the approved plans dated October 22, 2008 except as modified herein. (P)

Comment: The project is already vested and constructed.

6. Any changes to the use, business operations or modifications to the approved plans shall require a use permit amendment and Planning Commission review and approval. (P)

Comment: Perpetual.

7. The use at the facility shall not engage and/or render any services as defined in Section 13.04, Adult Businesses, of the Milpitas Zoning Ordinance. (P)

Comment: Perpetual

8. Proposed use shall comply with all Federal, State and local code requirements. (P)

Comment: Perpetual

9. Prior to business license issuance, the business owner must submit their background check to the Planning Division and Milpitas Police Department. (PC Sub)

Comment: Complies. Demonstrated at nine- month review. No change in owner or operator.

10. No alcoholic beverages may be consumed within or outside of the karaoke facility. (P)

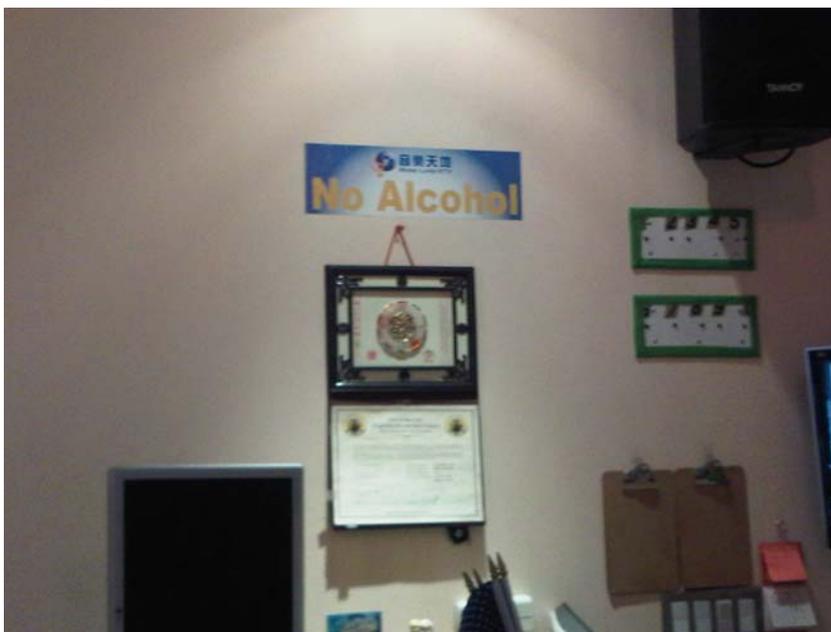
Comment: Perpetual No reported violations after October 2010.

11. The applicant shall maintain signs stating “No loitering or consumption of alcoholic beverages” on the exterior of the building and within the establishment. (P)

Comment: Complies. See photos below.



Signs posted on the storefront window located on the northeast side of the tenant space.



Sign posted in the front lobby area near front desk station.

12. The hours of operations for the facility shall be limited to 4 P.M. to 2 A.M., Monday through Sunday. All patrons must be off the premises within 30 minutes after the facility's closure. (P)

Comment: Perpetual. See below photo of posted hours of operation.



13. All patrons within and employees of the facility must be the age of 18 years or older. (P)

Comment: Perpetual

14. Lighting within the facility, especially within the hallways and all stations, shall be established and kept at a level not less than forty (40) watts per hundred (100) square feet of floor area to provide visibility and to ensure the safety of patrons, employees, security and emergency personnel. The established lighting within the facility will be subject to the review, modification and approval of the City's Police Department. (P)

Comment: Complies. Demonstrated on building permit plans approved on 11/17/06. See photo below for illuminated hallway.



15. Prior to building permit final, the applicant shall install tempered glass doors for all (9) karaoke rooms. Doors shall not include any locking devices. (PC)

Comment: Complies. Demonstrated on building permit plans approved on 11/17/06. See photo of glass, tempered door.



16. Prior to building permit final, the applicant shall install closed circuit video surveillance cameras in all (9) karaoke rooms and shall be maintained for no less than one-month or 30 days. Surveillance tapes shall be made available at any time to the Police Department upon request. (PC)

Comment: Complies. Operator demonstrated video surveillance system and showed recording dating back to January 11, 2011 during staff site visit on 2/11/11.

17. Surveillance equipment shall be operable and maintained at all times. Surveillance equipment shall not be down for more than two days. The Planning Director may require the applicant to cease operation until compliance with this condition of approval is met. (PC)

Comment: Perpetual.

18. Posters and signs shall be displayed in a manner that does not obstruct the view of the interior area from outside of the facility or directly into the individual karaoke rooms. (P)

Comment: Perpetual

19. The lobby is reserved for patrons waiting for service only. No exterior loitering shall be allowed. All patrons waiting for service must wait in the designated lobby. No waiting list may be maintained beyond the seating capacity provided in the lobby. (P)

Comment: Perpetual

20. The walls separating the establishment from adjacent commercial tenants shall employ effective noise attenuating devices to achieve a minimum standard transmission coefficient (STC) sound rating of 45-50. Such wall shall be soundproofed where no amplified music shall be audible on the exterior of the premises or adjoining tenant spaces. Should the improvements installed not provide acceptable noise levels, or should the noise emanating from the establishment cause noticeable discomfort to adjacent tenants, the establishment may be required to install additional noise attenuating devices. In doing so, the applicant may be required to request the services of a professional consultant specializing in noise attenuating devices to mitigate such impacts. (P)

Comment: Complies. Demonstrated on building permit plans approved on 11/17/06. No audible sound detected outside of the premise during site visit on 2/11/11 at 11:30PM.

21. Should additional security measures be needed in order to address any public safety concerns arising from the business, the applicant shall provide those additional security measures as requested by the City's Police Department. (P)

Comment: Perpetual

22. The applicant shall work, as necessary, with the Police Department to review and upgrade (if necessary) surveillance equipment installed on site. Surveillance shall be provided for the front lobby and all hallway areas. Surveillance monitors will be located at the front lobby and will be monitored by the business operator at the site. The Police Department shall approve the proposed surveillance equipment prior to the issuance of a business license. The recorded surveillance tapes shall be kept for a period of no less than one month or 30 working days and made available to the Police Department upon request. (P)

Comment: Complies. Surveillance cameras are provided in each karaoke room, hallways, lobby area, as well as the front and back door entrances. Operator demonstrated video surveillance system and showed recording dating back to January 11, 2011 during staff site visit.



Camera located near the front entrance.



Camera located in the lobby area.



Photo of Surveillance monitor located behind front desk area.

23. All karaoke stations shall be limited to the approved appurtenances; no Internet service or online electronic gaming shall be allowed within these stations. (P)

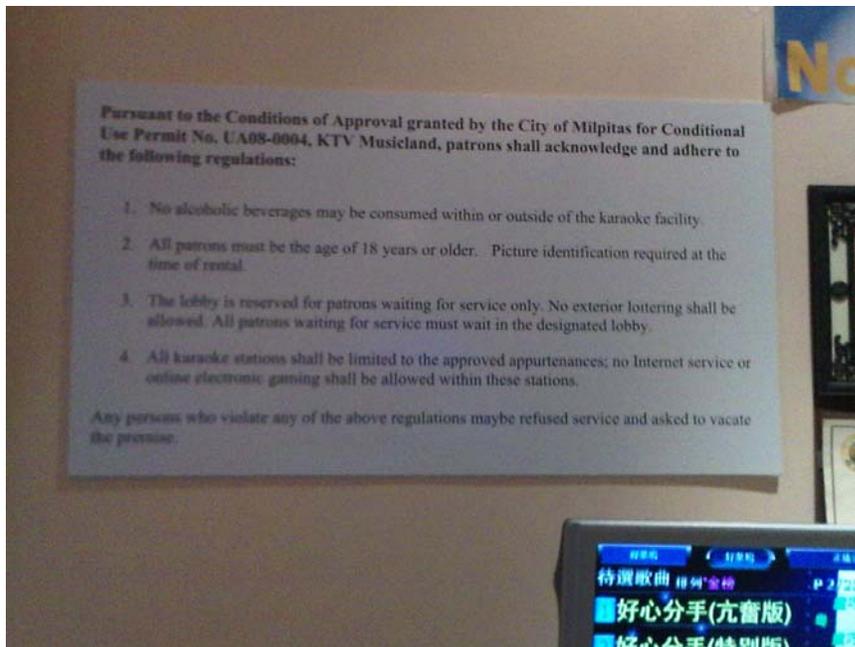
Comment: Perpetual

24. All patrons entering the facility must provide picture identification before engaging in the karaoke service rendered at the facility to ensure that those patrons are adhering to the facility's regulations and conditions. A log must be kept at the facility. Such log shall be maintained for at least 120 days and surrendered to any city official upon request. The log shall include the patron's name, a state license/identification number, date and time service rendered, and specific station within the facility retained for the service. (P)

Comment: Perpetual

25. All conditions applicable to patrons, particularly the stated prohibitions included in these "Conditions of Approval", of the facility incorporated herein shall be conspicuously posted in the front lobby area in a sign at the entrance with lettering of at least two (2) inches in size. (P)

Comment: Complies. See photo below.



26. This report and its conditions shall be kept on the premises and made available to any officer/employee of the City upon request. (P)

Comment: Complies. A copy of the conditions of approval was provided to staff upon request.

27. Should the City receive any complaints arising from the facility's use and/or an indication that the facility's use has resulted in an increased need for service calls from emergency personnel (i.e., the Police Department), the Planning Director shall be authorized to refer this use permit to the Planning Commission. The Planning Commission may require modifications to the facility's "Conditions of Approval", or revoke the permit entirely, if it has been found that the use has caused a substantial adverse impact on the community. (P)

Comment: Perpetual.

28. Applicant shall provide Police Department with an Emergency Contact database that consist of after hours contact information for responsible parties of the business in the event of an emergency or when the employee cannot reach a manager or business owner. The applicant shall submit any changes within two weeks utilizing the Police Department procedures. (PD)

Comment: Complies. Demonstrated at 9 month review. No change in owner or operator.

29. The Operator shall lock the front doors at closing to prevent people from enter the business after hours. People can be let out under the control of employees. (PD)

Comment: Perpetual

30. The project shall be subject to six months review until the Planning Commission deems them unnecessary. The applicant shall submit all the necessary public hearing materials and fees to the Planning Division. (P)

Comment: Perpetual.

31. The operator or designee shall develop a training manual that ensures that staff is properly trained on how to effectively handle emergency situations. A copy of this procedure manual shall be submitted to the Planning Division. Adequacy of the manual shall be determined by Planning staff. Any revisions to the manual shall be submitted to the Planning Division. (P, PC)

Comment: Complies. See Exhibit 1.

32. The applicant shall install an adequately sized window to allow for visual inspection of the VIP room. The window shall be installed within 30-days from the Planning Commission approval of the amendment to allow for storefront window blinds.

Comment: Perpetual

BUSINESS EMERGENCY MANUAL

Emergency Contact Information

1. Dial 9-1-1 in an Emergency

2. Non-Emergency Police/Fire
(408-690-7026/408-586-2800)
3. Insurance Provider
(650-583-3776)
4. Business Manager
(646-842-2192)

COMMUNICATIONS:

We will communicate our emergency plans with co-workers in the following way:

Meeting each months with co-workers inform the Emergency Manual.

OUR CRITICAL OPERATIONS:

STAFF IN CHARGE

MANDY—(408)722-0670----- (MONDAY, TUEDAY, THURDAY,
SUNDAY)

JOE --- (646)842-2192----- (WEDNESDAY, FRIDAY,
SATURDAY)