

APPROVED

PLANNING COMMISSION SUBCOMMITTEE MINUTES

September 12, 2012

6:30 pm

I. ROLL CALL

Present: Larry Ciardella, Gurdev Sandhu and Rajeev Madnawat
Staff: Felix Reliford, Tiffany Brown and Joann DeHerrera

**1. MINOR SITE
DEVELOPMENT
PERMIT NO.
MS12-0041**

Tiffany Brown, Assistant Planner, presented MINOR SITE DEVELOPMENT PERMIT NO. MS 12-0041 – a request for a two (2) day used car sales event, located at 749 E. Calaveras Blvd. (APN: 28-12-004) zoned Town Center with Site and Architectural Overlay (TC-S). Applicant: Matthew Newton.

The Fire Department has reviewed the plans for conformance. There will be restroom access, trash containers and security services throughout the event and overnight. The event will run thru 6 pm and the flood lights will be turned off overnight. The expected number of cars to be brought in for sale will be approximately 150 cars.

Motion to approve the Minor Site Development Permit No. MS 12-0041 subject to conditions of approval.

M/S: Ciardella/Sandhu

AYES: 2

NOES: 0

ABSTAIN: 0

II. ADJOURNMENT

This meeting was adjourned at 6:40 p.m.

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- I. PLEDGE OF ALLEGIANCE** **Chair Mandal** called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.
- II. ROLL CALL/SEATING OF ALTERNATE** Present: Sudhir Mandal, Larry Ciardella, John Luk, Rajeev Madnawat, Gurdev Sandhu and Garry Barbadillo
Absent: Zeya Mohsin, Steve Tao
Staff: Reliford, Otake, Brown, Hom, DeHerrera

Commissioner Barbadillo was seated as regular member of the voting body.
- III. PUBLIC FORUM** **Chair Mandal** 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.
- IV. APPROVAL OF MINUTES** **Chair Mandal** called for approval of the minutes of the Planning Commission meeting of August 22, 2012.

There were no changes to the minutes.
Motion to approve the minutes of August 22, 2012 as submitted.

M/S: Sandhu/Ciardella
AYES: 6
NOES: 0
ABSENT: 2 (Zeya Mohsin, Steve Tao)
ABSTAIN: 0
- V. ANNOUNCEMENTS** **Vice-Chair Ciardella** – Expressed that he would like to adjourn tonight’s meeting in memory of the deaths the Ambassador killed yesterday, the CHP officer and the 9-11 people killed 11 years ago.
- VI. CONFLICT OF INTEREST** **Chair Mandal** announced he needs to excuse himself from the discussion and voting on Item IX.1 - the Conditional Use Amendment No UP12-0017 and Minor Site Development Permit No. MS12-0034. The project is within 1,000 feet of his property.
- VII. APPROVAL OF AGENDA** **Chair Mandal** asked whether staff or the Commission have any changes to the agenda.

There were no changes to the agenda.

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Motion to approve the agenda as submitted.

M/S: Sandhu/Ciardella

AYES: 6

NOES: 0

ABSENT: 2 (Zeya Mohsin, Steve Tao)

ABSTAIN: 0

**VIII. CONSENT
CALENDAR**

There were no items on the Consent Calendar.

IX. PUBLIC HEARING

**1. CONDITIONAL USE
PERMIT AMEND-
MENT NO. UP12-0017
AND MINOR SITE
DEVELOPMENT
PERMIT NO. MS 12-
0034**

Cindy Hom, Assistant Planner – Presented to the Commission a request to remove three (3) existing panel antennas with three (3) new panel antennas, install six (6) new remote radio units and replacement of existing equipment cabinets for an existing wireless telecommunication wireless monopole located at 1000 Jacklin Rd. Applicant: Jason Osborne for Sprint Wireless.

The surrounding land uses include residential homes, a gas station and various commercial office uses. The site is a 1.14 acre site developed with a 2-story fitness facility. The panel antennas are going from 4' to 6'. Due to the site conditions there were no opportunities to provide stealth installation and the antennas could not be mounted on the building. The project meets the general plan consistencies and conforms to the zoning ordinance. There were no public comments or complaints made on this project. (*Recommendation: Adopt Resolution No. 12-036 approving the project subject to conditions of approval*)

Motion to open the public hearing.

M/S: Madnawat / Barbadillo

No public comments

Motion to close the public hearing.

M/S: Sandhu / Madnawat

AYES: 5

NOES: 0

ABSENT: 2 (Zeya Mohsin, Steve Tao)

ABSTAIN: 1 (Sudhir Mandal)

Motion to adopt Resolution No. 12- 036 approving the project subject to conditions of approval below.

M/S: Madnawat /Sandhu

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AYES: 5
NOES: 0
ABSENT: 2 (Zeya Mohsin, Steve Tao)
ABSTAIN: 1 (Sudhir Mandal)

**2. CONDITIONAL USE
PERMIT NO. UP12-
0018**

Tiffany Brown, Assistant Planner – Presented to the Commission a request to re-establish a discontinued non-conforming use for a tire sales and repair service at the existing gas station located at 10 North Main Street, zoned mixed use with site and architectural overlay and within the Midtown Specific Plan. Applicant: Tran Hue.

In June 1965 the Planning Commission granted a site and architectural review approval for this gasoline service station. With the adoption of the Midtown Specific Plan in 2002, there is a provision requiring all auto services be located at least 1000 ft away from one another. This service station became a legal non-conforming use as the property is approximately 110 ft away from another auto service located east of this site.

In January 2012 the Planning Commission granted a conditional use permit to reestablish the use one of the unoccupied service bays at this existing service station for smog check use. The proposed tire service would occupy the second service bay within of the gas station. The tire repair will operate Monday through Saturday from 9am to 6pm and Sundays from 10am to 4pm. All storage will be within the service bay.

For the Planning Commission to grant a conditional use permit for re-establishment of a discontinued use over a year, certain findings need to be met: 1) it would not cause a nuisance to the surrounding properties or district; 2) is compatible with the existing general character of the surrounding neighborhood; 3) is necessary to allow gainful economic use of structures or improvements until such structure can be permanently converted to a conforming use. This application is consistent with the General Plan and Zoning Ordinance. Everyone within the required district was notified. Staff did receive one phone call from the public in opposition to the use permit. *(Recommendation: Adopt Resolution No. 12-037 approving the project subject to conditions of approval)*

Mr. Tran Hue, Applicant – He would like to add this service to help his customers and also for economic reasons because business in this area is so slow. He clarified that a small air compressor would be used to fill tires, but when fixing tires, an electric gun will be used which does not make as much noise as an air compressor. He anticipates he does 5-8 tire repairs a day and this service is for customer convenience.

Bob Cracolice, Property Owner of several establishments on Main Street – Mr. Cracolice had concerns that after all the time and effort spent into adopting the Midtown Specific Plan, that by allowing this automotive expansion, the City does not move in a positive direction towards the goals of the Midtown Specific Plan.

Motion to close the public hearing.

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M/S: Sandhu / Ciardella
AYES: 6
NOES: 0
ABSENT: 2 (Zeya Mohsin, Steve Tao)
ABSTAIN: 0

Tiffany Brown, Planner – Our zoning ordinance allows for areas within the Midtown Specific Plan to apply for a conditional use permit and for property owners to have a non-conforming business until such time that it can become conforming. This provision was added to help property owners during the economic downfall instead of having blight areas or vacant buildings. This particular permit is consistent with the zoning ordinance to allow for the exception. Staff's position is that the project meets all the findings and the Midtown Specific Plan also allows for this provision in the zoning ordinance.

Felix Reliford, Acting Planning Director – Stated that staff does not feel the additional use will cause a public nuisance to the neighboring area. There is no expansion to the existing building, just the additional use in an existing space. The distance of 1,000 ft between auto services is meant to limit the congregation of similar uses within a particular area.

Commissioner Barbadillo – There must be a deeper reason the zoning ordinance limits a business to be 1,000 ft away. He is concerned that by allowing this exception it impedes the development of the business that was there first. Since we encourage business development does this serve as a boundary to protect this business interest? The 1,000 ft is set by the zoning ordinance. He asked staff to clarify if the zoning ordinance is under the Midtown Specific Plan?

Bryan Otake, Assistant City Attorney – Reviewed with the Commissioners that there is no economic favoritism provision for the 1,000 ft limit within the zoning code. It is purely a land use based decision for undue congregation of businesses for public health and safety reasons.

The Midtown Specific Plan has a vision for implementing uses in the Midtown area. However, there is a provision for uses that existed prior to the Midtown Plan that were legal, but because of the zoning changes and are now considered illegal are still allowed to exist. In May 2011 the City Council passed a "safe harbor" provision in the zoning code for purposes of implementing two specific areas -- the Midtown Specific Plan and the Transit Area Specific Plan. This is a temporary provision that applies only to these two areas for applications that are submitted between May 2011 and before June 16, 2014 for uses that were non-conforming and were abandoned.

There is a provision within the zoning code that states a use may be re-established and not have to comply with the Midtown Specific Plan requirements, only if this Planning Commission decides it is appropriate to issue a conditional use permit based on the findings per the zoning code.

There is a balancing act that the City Council wanted to achieve, that in the event the market was not transitioning to the Midtown Specific Plan adopted uses, there would be this temporary economic lifeline to re-establish non-conforming uses.

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Commissioner Madnawat – The amount of traffic this gas station receives should not substantially change the character of the area with the additional use. He is concerned about the livelihood of the applicant and any possible blight that may result if this business cannot continue.

Commissioner Luk – This is an existing gas station and is for automotive use. Realistically, what other type of business would want to go into this space, and the proposed new use is comparable. His view is for what is suitable in the time being.

Chair Mandal – Expressed his concern about the Midtown Specific Plan. We do need to move in that direction, but in the meantime we do not want to be left with a vacant lot. He would like the applicant to ensure the landscaping will be kept up.

Motion to adopt Resolution No. 12- 037 approving the project subject to conditions of approval

M/S: Sandhu / Luk

AYES: 5

NOES: 1 (Barbadillo)

ABSENT: 2 (Zeya Mohsin, Steve Tao)

ABSTAIN: 0

X. NEW BUSINESS

ANNUAL HOUSING REPORT

Felix Reliford, Acting Planning Director – The item being presented is a series of housing development projects that have taken place over the last 5-7 years throughout the city. Most of the developments have taken place within the Transit Area. Three different types of information will be presented: Presentation of the approved development projects; 2) Regional housing needs determination that is an allocation provided by Association of Bay Area Governments (ABAG) where they identify every city throughout the nine counties and what should be their regional fair share of housing; 3) The impacts the dissolution of redevelopment has had on providing affordable housing within the City of Milpitas. In the past, approximately 20% of redevelopment funds had to be allocated for low/mod affordable housing.

Development Projects Report (13 projects):

- Coyote Creek project – 285 town homes with 44 affordable housing units that will be provided by the developer
- Fairfield Murphy Ranch project – This is a rental project of 370 dwelling units, with 88 affordable housing units
- Sinclair Renaissance – Ongoing construction project with 80 single family dwelling units.
- Landmark Tower – This is one of the first mixed use development projects. It will be 18 stories tall with 375 dwelling units above business uses.
- APEX project – 366 dwelling units adjacent to the Great Mall / VTA.

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- Milpitas Station project – 303 dwelling units which provides three different housing types for residents to pick from.
- Robson Homes project – 83 single family luxury homes
- Citation Homes project – 732 dwelling units in two buildings and town homes.
- Shea Homes project – 204 dwelling units with a prominent tower element.
- Harmony project – 276 town homes and condominium units. This site has a potential school and park planned to be developed.
- Trumark Homes project – 134 dwelling units
- Capitol Towers – One of the more dense projects consisting of three 12-story towers across from the future BART station.
- Integral Properties – This is the biggest residential project the city has undertaken. It is a mixed use project with 1,154 dwelling units, commercial retail, a grocery store and public parks.

Commissioner Sandhu – Inquired into the status of the Landmark Towers.

Commissioner Luk – This area for the proposed Landmark Towers has been vacant for a long time and he is concerned about the blight of this area in the interim until the area gets developed.

Commissioner Madnawat – Recommended that this Commission should consider placing a minor condition in every approval of big projects requesting the developer to provide a status report every 6 months or so to keep the City informed. He is also concerned about the McCarthy Ranch area and would like to know the status of the Mervyn's building area.

Felix Reliford, Acting Planning Director – Stated that the developer of the Landmark Tower project has not been in contact with the City for about a year. The developer has entitlement applications to the area. Staff will follow up on the status of any projects that have not progressed and advise the Commission. The City is working with representatives to develop the old Mervyn's site for a fitness center and PETCO.

Regional Housing Needs:

The Association of Bay Area Government establishes a methodology to determine the regional fair share of housing units each city and county in the nine-county Bay Area is required to provide over a seven year period of time. The City of Milpitas was required to provide a little under 2,500 units in the period of 2007 – 2014. The Department of Housing and Community Development (HCD) uses those numbers to determine if each city is making the appropriate effort to provide the required housing. The City of Milpitas has met 146% of its regional fair share of housing needs. The next housing element is due October 2014 and takes about 18 months to prepare.

Dissolution of Milpitas Redevelopment Agency:

Currently, Milpitas has over 1,200 of affordable housing units. Because of the dissolution of Milpitas Redevelopment Agency (RDA), we do not have the financial vehicle to entice developers to provide affordable housing. However, the State of

California still mandates that affordable housing be provided.

For any city that does not make their best effort to meet their obligation the State has threatened to take away their gasoline tax, transportation tax or may not allow a city to issue building permits. A city was required to rezone land for high-density residential.

Right now we meet about 40% of the city's affordable housing obligation. The question is how can we meet our obligation without the RDA?

The housing planners in the county have been meeting to discuss this situation. There are a couple of options that may be used to meet this requirement that were not needed to be used before that would need to be approved by this Commission and City Council:

- Inclusionary zoning – a law that would need to be adopted by the City Council that says to developers wanting to build in Milpitas – you shall provide a certain number of units in your project that will be affordable
- Housing in-lieu fee – To developers that do not want to provide the affordable units, we would require them to give us an amount of money to put aside for help another developer that comes in who wants to provide affordable housing.

Commissioner Sandhu – Asked staff what is the application process for the affordable units?

Felix Reliford, Acting Planning Director – Gave an explanation of the application process, how a person is deemed income eligible and how the lottery works to determine the selection order to be considered for the limited number of affordable units.

Action: Note receipt and file

XI. ADJOURNMENT

Vice-Chair Ciardella – Moved to adjourn the meeting in memory of the American Ambassador killed yesterday, the CHP officer, the 9-11 people killed 11 years ago and the store clerk killed in town last weekend.

Following a moment of silence the meeting was adjourned at 9:10 pm to the next meeting of September 26, 2012.

Respectfully Submitted,

Motion to adjourn
M/S: Madnawat/Ciardella

Felix Reliford
Acting Planning Director

Joann DeHerrera
Recording Secretary

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