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REGULAR

NUMBER: 124.26

TITLE: AN ORDINANCE OF THE CITY OF MILPITAS AMENDING SECTION 4 OF CHAPTER 30, TITLE XI OF THE MILPITAS MUNICPAL CODE.

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of May 4, 2004, upon motion by Councilmember ___ _____ and was adopted (Second reading) by the City Council at its meeting of May 18, 2004, upon motion by Councilmember _____. Said Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

_____
Gail Blalock, City Clerk

APPROVED:

_____
Jose S.Esteves, Mayor

APPROVED AS TO FORM:

_____
Steven T. Mattas, City Attorney

ORDAINING CLAUSE:

THE CITY COUNCIL OF THE CITY OF MILPITAS DOES ORDAIN AS FOLLOWS:

SECTION 1. Recitals and Findings.

A. Pursuant to Government Code section 65853 and 65854, the Planning Commission of the City of Milpitas held a properly noticed public hearing on April 9, 2003 to consider the amendments to Title XI, Chapter 30 of the Milpitas Municipal Code. In accordance with Government Code section 65855, the Planning Commission has rendered a decision in the form of a written recommendation, which was presented to the City Council prior to consideration of this Ordinance.

B. Upon receipt of the Planning Commission's written recommendation, the City Council held a properly noticed public hearing on May 4, 2004.

C. The City Council finds that this Ordinance does not render Title XI, Chapter 10 inconsistent with the City of Milpitas General Plan.

SECTION 2. Title XI Chapter 30 (Signs) of the Milpitas Municipal Code is hereby *amended with the modification and addition of the following new subsections*:

XI-30-4.03 Town Center District

One freestanding signs shall be allowed within each sub-area of the "Town Center District", with the exception of the main Town Center shopping area which shall be allowed three (3) freestanding signs. No signs shall exceed a height of forty-five (45) feet. The sub-areas shall be identified as follows:

1) Beresford Square
2) Shapell Office Building
3) Main Town Center shopping area, east of Milpitas Boulevard to Hillview Drive
4) Hotel and offices east of Berryessa Creek

Refer to Section XI-30-4.02 of this Chapter for additional information relating to regional shopping centers. (Ord. 124.26 (5/4/04), 124.23 (part), 6/15/99)

SECTION 8. Publication and Effective Date. Pursuant to the provisions of Government Code Section 36933, a Summary of this Ordinance shall be prepared by the City Attorney. At least five (5) days prior to the Council meeting at which this Ordinance is scheduled to be adopted, the City Clerk shall (1) publish the Summary, and (2) post in the City Clerk's Office a certified copy of this Ordinance. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall (1) publish the summary, and (2) post in the City Clerk's Office a certified copy of the full text of this Ordinance along with the names of those City Council members voting for and against this Ordinance or otherwise voting.

SECTION 9. Severability. In the event any section or portion of this ordinance shall be determined invalid or unconstitutional, such section or portion shall be deemed severable and all other sections or portions hereof shall remain in full force and effect.

CITY OF MILPITAS
APPROVED

PLANNING COMMISSION MINUTES

March 24, 2004

I. PLEDGE OF ALLEGIANCE

Chair Nitafan called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

II. ROLL CALL

Present: Nitafan, Lalwani, Galang, Garcia, Giordano, Mohsin and Sandhu
Absent: None
Staff: Carrington, Duncan, Fujimoto, Heyden, Lindsay Pereira and Rodriguez

III. PUBLIC FORUM

Chair Nitafan 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
March 10, 2004

Chair Nitafan called for approval of the minutes of the Planning Commission meeting of March 10, 2004.

There were no changes from staff.

Motion to approve the minutes as submitted.

M/S: Lalwani/Giordano

AYES: 7

NOES: 0

V. ANNOUNCEMENTS

James Lindsay, Acting Planning Manager, announced that the City will be conducting a series of ethics workshops, and each Chairperson was asked to attend to represent their Commission and Chair Nitafan has accepted that responsibility of representing the Planning Commission at those workshops.

Chair Nitafan added that anyone from the Commission is welcomed to attend.

Commissioner Sandhu announced that the Sikh Foundation of Milpitas is holding a free breakfast on April 4th at Sunnyhills Methodist Church from 7 a.m. to 8:30 a.m. The members of the Sikh community will educate everyone about Sikh cultures, beliefs, and customs and everyone is welcomed to attend.

Commissioner Giordano congratulated Chair Nitafan and the Knights of Columbus for a well-attended dinner Saturday night in honor of Marilyn Hay, Citizen of the Year, Steven King, Firefighter of the Year, and Henry Dekruyff, Policeman of the Year.

Commissioner Giordano asked staff what was the outcome at the Berryessa Creek project meeting on March 15th regarding five feasible alternatives for the creek. Mr. Lindsay responded that staff is not prepared for a presentation but will be happy to provide an update at the next meeting.

Commissioner Giordano thanked staff for giving notice to the Commission about the Santa Clara County Chamber of Commerce Coalition that put together the Second Annual Legislative Summit. The topics included were workers composition reform and healthcare reform. She advised staff to please keep the Commission abreast of these issues and luncheons so that the Commission could attend.

VI. APPROVAL OF AGENDA

Chair Nitafan called for approval of the agenda.

There were no changes from staff.

Motion to approve the agenda.

M/S: Lalwani/Giordano

AYES: 7

NOES: 0

VII. CONSENT CALENDAR Item Nos. 5, 6, 7, 9 and 10.

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

There were no changes from staff.

Chair Nitafan opened the public hearing on Consent Item Nos. 5, 6 and 7.

There were no speakers from the audience.

Close the public hearing on Consent Item Nos. 5, 6 and 7.

Motion to close the public hearing on Consent Item Nos. 5, 6 and 7.

M/S: Lalwani/Sandhu

AYES: 7

NOES: 0

Motion to approve the consent calendar on Consent Item Nos. 5, 6, 7 and 10 and continue Consent Item No. 9, "S" Zone Approval Amendment No. SA2004-13 to the April 14, 2004 meeting.

*5 **SIX-MONTH REVIEW (PR2004-1):** A six-month review of Calvary Chapel of Milpitas in regards any garbage or parking concerns associated with Use Permit No. UP2003-16 at 1757 Houret Court (APN: 086-41-009), zoned Heavy Industrial (M2). Applicant: Calvary Chapel of Milpitas. Project Planner: Troy Fujimoto, (408) 586-3287. (PJ #2332) *(Recommendation: Note receipt and file)*

*6 **USE PERMIT NO. UP2004-5:** A request to allow a store selling used merchandise, such as thrift stores at 4 North Abel Street (APN: 022-08-038), zoned Mixed Use (MXD). Applicant: Patrick Lam. Project Planner: Troy Fujimoto, (408) 586-3287. (PJ #2365) *(Recommendation: Approval with Conditions)*

*7 **USE PERMIT NO. UP2004-4:** A request for a parking reduction of 18 parking spaces for the conversion of a Research and Development facility to medical offices at 611 South Milpitas Boulevard (APN: 086-42-029), zoned Heavy Industrial (M2). Applicant: HCP 611 Milpitas LLC. Project Planner: Troy Fujimoto, (408) 586-3287. (PJ #3173) *(Recommendation: Approval with Conditions)*

*9 **'S' ZONE APPROVAL AMENDMENT NO. SA2004-13**: Request to install an 8-foot tall wood fence located at the rear of 244, 255 & 260 South Main Street (APNs: 086-27-013 & 014), zoned Mixed Use (MXD). Applicant: Jim Rocha, Jr. Project Planner: Kim Duncan, (408) 586-3283. *(Recommendation: Continue to April 14, 2004)*

*10 **"S" ZONE APPROVAL AMENDMENT NO. SA2004-18:** A request for a sign program for single tenant building recently subdivided to accommodate three tenants at 275 West Calaveras Boulevard (APN: 022-25-042), zoned General Commercial. Applicant: Lisa Lo. Project Planner: Staci Pereira, (408) 586-3278. *(Recommendation: Approval with Conditions)*

M/S: Giordano/Sandhu

AYES: 7

NOES: 0

VIII. PUBLIC HEARING

Troy Fujimoto, Acting Associate Planner, presented the following three applications and recommended approval with conditions based on the findings and special conditions noted in the staff report and the revision to Condition No. 7d noted in the staff memo provided before the meeting.

1. **SITE AND ARCHITECTURE REVIEW (SZ2003-12), USE PERMIT NOS. UP2002-42, UP2003-57, UP2003-58 AND UP2004-1** *(Continued from March 10, 2004)*: A request to demolish and redevelop a part of the Town Center shopping center, which would include a new 54,000 square foot supermarket with the sale of all types of alcoholic beverages, a 32-seat Coffee café within Safeway, and three (3) new freestanding signs within the shopping center. (APN: 028-12-004, 006, 013, 014, 016 & 019). Applicant: Shapell Industries of Northern California.

2. **USE PERMIT NO. UP2002-42 AND SITE AND ARCHITECTURE REVIEW (SZ2003-13)** *(Continued from March 10, 2004)*: A request to construct 65 townhouses at the rear of the Town Center shopping center (APN: 028-12-006 & 019). Applicant: Shapell Industries of Northern California.

3. **SIGN ORDINANCE AMENDMENT NO. 124.26 (ZT2003-5)** *(Continued from March 10, 2004):* A request to amend the sign ordinance to increase the number of freestanding signs allowed in the Town Center District. Applicant: Shapell Industries of Northern California.

Commissioner Giordano asked how will the delivery times and noise impacts be monitored. Mr. Fujimoto responded that both are conditions of approval and part of a mitigation measure for the EIA that was done for the project. In regards to how that is going to be monitored, Mr. Fujimoto explained how they would be addressed on a complaint basis.

Commissioner Giordano noted that the proposed residential projects will be 14 dwelling units per acre, and asked what is the current density of the homes behind the town center. Mr. Fujimoto deferred the question to the applicant.

Commissioner Giordano noted that for the 65 proposed units, 20% of the parking would be dedicated for guest parking. She asked if this would be adequate parking and Mr. Fujimoto responded, "Yes".

Commissioner Giordano asked why is the parking requirements different for some businesses at the town center. For example, she noted that Giorgio's has a requirement of 1 space per 3 seats and Erik's deli has a requirement of 1 space per 3 ½ seats, which doesn't seem to be consistent.

Mr. Fujimoto explained that over the years, the zoning ordinance has changed and parking ratios have changed. For example, he explained that when Giorgio's came in as a restaurant and applied for a use permit, at that time, the parking ratio was 1 space per 3 seats, and over time it has changed. That is why there is a variation because all of these permits came in at a different times, and staff didn't feel it was fair to go back and penalize the business owners and have them at a higher parking ratio.

Commissioner Giordano asked if Giorgio's were to take a place of a different type of restaurant, would staff enact a new parking ratio for that. Mr. Fujimoto responded that has kept the same parking ratio with other projects so that a change of ownership will keep the same parking ratio that was approved with a conditional use permit.

Commissioner Giordano asked how feasible is it to transplant trees and if this is something that the City does regularly. Mr. Fujimoto explained that trees have been transplanted at a couple of locations throughout the City and if the trees are too big, they can't be relocated because the equipment to relocate them isn't large enough to do that. Also, if there is a big enough root ball that is taken and transplanted correctly, there is a better than average chance of them surviving, however, that is not guaranteed.

Commissioner Giordano asked what is the plan in case the trees do not survive. Mr. Fujimoto noted that any tree that dies needs to be replaced.

Commissioner Giordano questioned a recommendation from staff that read the following and needed clarification:

"To minimize aesthetic concerns with shopping carts left outside for extended amounts of time, staff recommends that shopping carts be collected on a regular basis".

Mr. Fujimoto explained that the shopping cart concern was an example of a problem that the City had with Home Depot. Home Depot had left their carts all over the parking lot and staff had to work with them and the Mall to clean up the carts and had them enter into a cart collection agreement, which said that if they don't collect the shopping carts the City will charge them. Staff did not want the same thing to happen with the grocery store in this project because it looks unsightly when shopping carts take up parking spaces.

Commissioner Giordano asked how outdoor storage of product or material will be monitored. Mr. Fujimoto explained that the City does not allow outdoor storage of products or materials and it needs to be taken into the building and out of sight. Outdoor storage is handled as a standard condition of approval on all commercial projects.

Commissioner Giordano asked if the pedestrian kiosk signs will be lighted and Mr. Fujimoto deferred the question to the applicant.

Commissioner Giordano asked if staff felt confident with the conclusion of the noise report relative to the decibel levels behind Safeway. Mr. Fujimoto noted that it's important to remember that the noise element in the general plan is an average 24-hour reading and there may be instances where you exceed the decibel level as identified in the general plan and that is taken into account as part of the 24-hour cycle. There could be occasions where a loud noise occurs, and if that occurs, it is difficult for anyone to respond to it because once it happens it is gone.

Commissioner Giordano was concerned that higher decibel levels were taken into account at the hours of 10 p.m. to 7 a.m. Mr. Fujimoto explained that there is a higher penalty for any noise happening during that time and the noise study did take that into account and that is why there is limitations for delivery between 10 p.m. to 7 a.m.

Commissioner Giordano asked what is the proximity to the nearest housing units from where the deliveries would take place. Mr. Fujimoto replied that there is about a 60 feet distance and noted the applicant moved the loading dock ten feet further to the south and staff is recommending that the sound wall be raised to the height of the tallest delivery vehicle.

Commissioner Giordano asked how would the automobile stacking that will take place at Hillview Drive be mitigated. Mr. Fujimoto noted that as part of the traffic analysis that was done, it recommended a revised layout that will provide additional capacity on Hillview Drive to accommodate the stacking. In addition, an additional turning lane was recommended so there is more room to stack the cars and to avoid conflicts further down the road.

Commissioner Giordano asked if it has been analyzed. Mr. Fujimoto replied that it has been analyzed and has been determined to be a possible solution. There is a condition in the staff report that notes it will be monitored for a period of 3 years, and if it trips a traffic signal warrant, than a traffic signal would have to be put in, so there will be annual monitoring of that area to ensure that what staff is recommending actually works.

Commissioner Giordano noted that staff makes a comment in the staff report about the farmers market and if the town center owner is unsuccessful in relocating the farmers market, the City will assist in keeping this as a public benefit for the City and help identify sites for relocation. She asked if staff will be assisting the moving of the budget theaters.

Mr. Lindsay replied that there is no effort currently to relocate the theaters within the city and the farmers market is a very mobile operation and the City felt that it could be successful in working with Shapell to find a different location for the farmer's market.

Commissioner Galang asked how many supermarkets in milpitas are open 24 hours and Mr. Fujimoto replied that the two Albertson stores are open 24 hours.

Commissioner Galang asked if products such as water bottle piles, Christmas trees and pumpkins will be allowed in front of Safeway. Mr. Fujimoto noted that Christmas trees and pumpkin sales are allowed in certain zoning districts and pumpkin sales need an additional permit to ensure that is cleaned up and returned to its additional conditions.

Commissioner Galang asked if the City allows shopping carts in front of the building. Mr. Fujimoto responded that if shopping cart storage was identified as part of the original approval, then it would be allowed.

Commissioner Galang asked staff to clarify condition no. 19 that reads below:

19. Lighting Glare - Exterior lights shall be shielded to prevent light spillage onto residential areas. (P)

Mr. Fujimoto noted that staff wanted to ensure that any lights proposed for the project will not get spilled into the residential portion of the project, including Beresford Village.

Commissioner Garcia noted that in regards to conformance to the general plan, he came to a slightly different conclusion that a Safeway is a good fit at the Town Center, and asked staff to explain their rationale.

Mr. Fujimoto explained that in general, the Town Center district allows a supermarket as a conditional use, if the Planning Commission finds that the use is appropriate for the location. The project is in conformance with the zoning ordinance as well as the general plan. Other general economic findings in the general plan talk about economic stimulus, new businesses and balanced economy, all of which ties into those aspects that is identified in the Town Center. The Town Center has only a couple items, so staff can pull from other portions of the general plan that are relevant and apply it to any project in the zoning district. It just so happens that the Town Center is called out in the general plan and has these findings that should be made for a project that is proposed there.

Commissioner Garcia read the following paragraph from the General plan:

"The town center designation provides for a variety of commercial, civic and residential uses, appropriate to the center's role as the functional and visual focus of milpitas. The town center is a meeting place and market place, home of commercial and professional firms, an entertainment area and a place for restaurants and hotels".

He noted that the zoning ordinance supports the terminology.

Commissioner Garcia asked if palm trees are approved in City's streetscape master plan. Mr. Fujimoto explained that the streetscape master plan doesn't identify specific species and has a recommended plant list of which palm trees are cited. The master plan does recommend that certain types of species, trees or shrubs be located along certain streets and in certain areas of the streets. There is no species recommendation in this portion of the city.

Commissioner Garcia asked where are palm trees located in the City and Mr. Fujimoto noted that the Great Mall has palm trees along their main entrance.

Commissioner Garcia asked why the housing density is going to be at a much lower level than what is in the general plan. Mr. Fujimoto responded that the housing in the Town Center district is a permitted use at 21 dwelling units and higher and any density less than that is a conditional use. Staff believes that the public benefits being provided offset the lower density, so staff could support the proposed project.

Commissioner Garcia asked if there is a financial reason as to why the builder wants to go to a lower density and Mr. Fujimoto deferred the question to the applicant.

Commissioner Mohsin noted that the staff report states that the location in general does not pose an onsite concern, however, some of the locations selected are directly below and adjacent to the future creek trail and also that the applicant has submitted a storm control plan of the site, including post construction and post management practice for the site. She asked if the control plan could be reviewed by the Commission since some of the construction will be close to the creek and may pose problems.

Mr. Fujimoto noted that the proposed post and pre-construction plan was provided in the Commissioner's packet and the applicant will be submitting a more detailed plan as part of the building permit process, however if the Planning Commission wants to review the project, it is up to the Commission.

Commissioner Mohsin asked how will the City monitor late night deliveries and what would happen if the deliveries increased. Mr. Fujimoto noted that while the city will not be monitoring deliveries, if complaints are received from neighbors, the City will then take action to ensure that the condition of approval and mitigation measures are being adhered to.

Commissioner Mohsin asked if there have been complaints that the City had to take action on. Mr. Fujimoto noted that in the past, neighbors had complained about early morning deliveries at Home Depot at the Great Mall and staff worked very hard with the Mall and Home Depot to come to a point where staff does not have any complaints about deliveries.

Commissioner Mohsin noted that four low-income housing units will be located offsite and asked where that will be. Mr. Lindsay explained that the four off-site housing units would be a rehabilitation of four existing units within the City. The City has a very effective rehabilitation program where money is given through a variety of means to rehabilitate a unit and that unit then is restricted to an affordable level and in this case it would be affordable to a very-low income household.

Commissioner Mohsin asked if staff has identified the location yet and Mr. Lindsay replied, "No".

Commissioner Mohsin asked if there would be a play structure in the recreation area. Mr. Fujimoto noted that the applicant wasn't proposing any recreation amenities and staff felt that would be a problem because of the 3 to 4 bedroom sizes, which would logically have families. Staff conditioned the project to have a tot lot and provide recreational amenities including barbeque pits, benches and tables. When the plans come through the building permit process, staff will verify that these amenities are provided which will then be incorporated with the project.

Vice Chair Lalwani noted that she read there will be a connection from the Town Center to Gill Park and asked where is the connection. Mr. Fujimoto explained that Gill park is located across Berryessa Creek to the north and there will be a future pedestrian bicycle bridge that will be constructed by the City and will provide the connection from Gill park across Berryessa creek. The proposed project will provide a ramp from the bridge, down to the town center project, thus having the pedestrian bicycle connection.

Vice Chair Lalwani asked when will construction begin and Mr. Fujimoto responded, "In the near future".

Vice Chair Lalwani asked how long does it take for the palm trees to grow to full length. Mr. Fujimoto deferred the question to the landscape architect and noted that staff is recommending that the actual palm trees installed have a 12 feet clear, so that the trees will start at a height of 14 feet.

Vice Chair Lalwani noted that there were a lot of complaints and concerns but didn't receive any letters in her packet from concerned residents. Mr. Fujimoto responded that Vice Chair Lalwani should have received letters from concerned residents in her packet.

Commissioner Sandhu asked if the 20,000 square feet of commercial space will be part of Safeway. Mr. Fujimoto referred to the site plan and noted that the 20,000 feet of commercial space includes Safeway and other shops.

Commissioner Sandhu read the following from the staff report, "The residential project would include 16 units to be affordable to moderate income households for 45 years and result in 4 additional very-low income units to be provided off-site" and asked for clarification.

Felix Reliford, Principal Housing Planner, explained that the City has a legal document called a restriction agreement, which is an agreement between the City and the developer that a certain number of units, with a disbursement plan, that is identified on the site will be affordable for a certain period of time. In regards to this project, the affordability is for 45 years, which means that particular unit has to remain affordable with moderate income levels for 45 years. That document is recorded on the deed of the property and it is recorded with the Santa Clara County recorder office.

Commissioner Sandhu asked what would happen if the owner remains the same or changes and Mr. Reliford responded that the agreement runs with the lands, regardless of the owner.

Commissioner Sandhu stated that the Town Center commercial project needs to be successful and Shapell is doing a lot of good work to bring a successful project to the community. He commented on the Safeway store on Montague Expressway stating that it is very beautiful and he hopes to see the same kind of establishment here in Milpitas.

Chair Nitafan asked staff if the 85 protected trees are going to be protected or replaced.

Mr. Fujimoto explained that the trees are not really being protected but are a description of a particular type of tree that meets the requirements which is a 37 " circumference measured 4 ½ feet from the ground. Those types of trees are labeled as protected. If someone wants to remove a protected tree, they would have to come to the City for a permit to remove the tree. In this case, some of the trees are so large they physically can't be relocated because there is no equipment large enough to relocate them so those trees will be replaced with a 48" box tree.

Chair Nitafan noted his concerns that the conceptual drawings do not have details, and felt that the drawings should come back to the Planning Commission Subcommittee. Mr. Fujimoto explained that the major tentative map will come back to the Commission because it has to be approved by City Council because it will be a major tentative map and there will be changes. As proposed, staff felt that the changes that are needed could be handled at a staff level, however, if the Commission felt that the it needs to be at a higher level, that is their purview.

Chair Nitafan pointed out that the lighting plan doesn't have enough details and should be brought back to the Subcommittee for further review.

Chair Nitafan mentioned his concerns about the traffic on Hillview Drive, and noted that the applicant plans on changing the road in the area and felt that the Commission needs to see more details on the road changes. He explained that there have been fatalities at the intersection at Calaveras and Hillview and that one of his relatives had died there. Mr. Fujimoto explained that the actual recommended changes are in the traffic study under figure 12.

Chair Nitafan noted that there are no plans under figure 12, only a description, however he felt that it is a good idea that the applicant and the City will be monitoring the intersection for a period of 3 years to avoid fatalities, and that he would like to see the plans come back to the Subcommittee.

Mr. Lindsay noted that a number of Commissioners during the question period had asked about the code enforcement process. He explained that if Safeway were not to comply with the conditions of approval, the City has a very effective citation process, which would be used if Safeway were in violation of their use permit and does not comply with any of the approved conditions. If the citation process is not effective in ensuring compliance, then the use permit can be brought back to City Council for review and additional measures would be imposed upon Safeway. He also noted that the City has a fairly good track record with other grocery stores in town and is expecting a very good track record with Safeway.

Commissioner Mohsin asked staff to clarify the in-lieu park fee. Mr. Fujimoto replied that with any residential project in the City, the applicant is required to provide parkland. Unfortunately, there is not enough space to create new large parks, so staff has to equate the acreage that the applicant has to provide and assign it a monitory number that could be used to create new parks elsewhere or try and enlarge or enhance an existing park.

Commissioner Mohsin mentioned that she was concerned about the in-lieu fee because she would like to see more play structures and playgrounds for families, and noted that she would like to see a model of the proposed tot lot.

Mr. Fujimoto replied that as part of the condition of approvals, staff actually identified the different type of recreational amenities that would be needed in the project. Staff also recommended that the plans would come back for review to ensure that those amenities are provided in the project.

Chair Nitafan agreed that the recreation amenities should come back to the Subcommittee.

Chair Nitafan asked the applicant to make a presentation.

Kelly Erardi, Vice President with Shapell Industries of Northern California, 100 N. Milpitas Blvd., complimented staff on a very thorough presentation. He has been with Shapell for over 20 years, and the Town Center was one of the first projects that he worked on. The Town center was one of the first major retail projects in Milpitas and had a good 12 year run of being the best project in Milpitas, however over time, Milpitas changed and the population grew, and in a very short period of time, the City approved a couple of million square feet of retail, particularly the Great Mall and McCarthy Ranch Marketplace. Over that period of time, the Town Center lost a number of key tenants – Marshall's, Clothestime, Men's Warehouse and Michael's. Also, the AMC movie theater eventually left when the Century theaters did a larger more detailed project at the Great Mall. As that occurred, he explained that the Town Center project started on a downhill slide, and as that occurred, Shapell started looking for the best way to position its progress for the next 20 to 25 years, and through that process, a lot of tenants leases expired, or became short term leases.

Mr. Erardi felt that the proposed project has a combination of right uses, and introduced the consultants that would be presenting a presentation. He introduced Galen Grant with Craig and Grant architects, David Smith, Leslee Temple with Nuvis, Sudhish Mohindroo with SZFM Design studio and also noted that the Safeway representative, sound consultant, traffic consultant and civil engineer would also be available for questions.

Galen Grant, Architect, presented the Town Center project and stated that their vision for this project has been consistent with what Shapell has envisioned. The goal was to really make the project a commercial success, friendly place for pedestrians and friendly place for customers to drive to. Many cities are looking for mixed use, and in this case, adding the residential component was a complimentary blend between upgraded retail and pedestrian friendly. He added that hopefully, it will be a success for the City as well as Shapell. He showed the buildings that would be remodeled and demolished and noted that the consultants were sensitive to the concerns of the neighbors and met with them to be clear on what their concerns were.

David Smith, Architect, presented the residential portion of the project. He noted that the residential site sits to the north of the commercial project and will be about 4 ½ gross acres. The residential site abuts the creek to the north, there is existing residential to the west and to the south, there is an access road and the proposed revised retail. He explained that the net area of the site is about 3 ½ acres out of 4 ½ acres, and loses about an acre because of the two large utility easements. One is the PG&E easement along the north which parallels the creek, and the other easement is on the easterly edge, which is the large water reservoir. He explained that because of the easements, the density, either net or gross, changes from about 12 or 14 an acre to about 18 ½ an acre that is usable land.

Mr. Smith explained that the proposed townhomes will be 2 and 3 stories with an attached 2-car garage, noting that it is a very desirable product in the marketplace. He explained that it keeps from putting units over one another, which is called a stack flat, or a condo, and there are a lot of issues involved with that. He noted that if questions come up in more detail, the liability with condos are tremendous.

He noted that this type of project has not been built before and it looks like a pork chop, with the fat and slender portion. In order to utilize the geography of the site to its fullest, he explained that they have come up with a concept of cluster buildings, courtyard buildings and linear buildings. He felt that every site plan should create a special sense of place and create a space for the people that live there that just go beyond the number of units and that is everyone's wish in their housing environment. To mitigate the impact of cars in the neighborhood, motorcourt buildings were designed to allow the attention to be on the outside of the building and be able to view porches, outdoor patios and windows.

Leslee Temple, Vice President of Nuvis, presented the landscape portion of the project. She noted that their focus was to create a new and dynamic visual impact for the center and to complement the architectural styles, so it is a real master plan between all three disciplines. Their biggest concern was to harmoniously blend everything from the street frontage along Calaveras and Hillview all the way in through the site, and back to the creek and residential area with a softscape, and to provide scale, seasonal interest and a pedestrian orientation. She explained that their emphasis was to have a real impact on the street frontage along Calaveras, so as people are driving along Calaveras, it's a sense of a rival into the town center, and part of that is a change in the very entryway to a double row of palm trees. She also noted that there are several opportunities along the paseo to build tot lots and passive recreation uses in the larger areas, which would all be connected by pedestrian friendly cross walks.

Sudhish Mohindroo with SZFM Design studio, presented the signage. He stated that the various functions of the project present challenges and opportunities such as having several access areas to the town center from Calaveras, Milpitas Blvd. and Hillview and having various uses such as a civic center, commercial buildings, residential buildings and free standing buildings from all scales and sizes. Since there is a large setback from Calaveras, they designed an approach, which is more like a campus. For example, because of the major entry points the signage will look like a gateway, and once customers get into the complex, they will have some choices to make, so directional signage is needed. When customers find a place to park, they will leave their cars and become pedestrians again.

SZFM Design studio created an entry gateway of a substantial scale that will clearly identify what the main entrance is (along Calaveras), and will flank the roadway just like the palm trees are doing. As customers go in, there will be secondary gateways that are smaller in scale. There will also be directional graphics that will lead customer's eyes to the light fixtures. He also explained that the individual tenant signs are recommended to elevate the quality of signage, and that the applicant has developed a package that will allow tenants to do signage of however they need to be of a higher quality and is encouraging them through various programs that are offered through the sign guidelines. He also noted that within the shaded walkway areas there will be plate signs of a pedestrian scale so that a customer will be able to see which store follows the next store.

In conclusion, Mr. Erardi stated that Shapell is very proud of the project that has been presented and is very happy to have Safeway, which is one of the best supermarkets in the nation. He felt that the project has created a great buffer in the back of the shopping center as compared to what was before. There is only one loading dock, where there were three loading docks before. There is mature landscaping as well as a buffer of trelliswork. Deliveries to the back of the shopping center were improved by coming from Calaveras Blvd. versus Town Center drive, which is a condition that came up after meeting with the neighborhood and went beyond the sound study. He also noted that Shapell has been in Milpitas for a long time and their building is within the Milpitas town center too and are in the process of remodeling.

Vice Chair Lalwani mentioned that she liked the idea of affordable units and the project is providing more than 20%. She also liked the idea of palm trees because it gets the feeling of an island. She mentioned her concerns from residents about why the movie theater is leaving, why did Shapell choose Safeway, and what will happen to the farmers market, and asked Mr. Erardi to explain. She also asked why Shapell didn't approach Trader Joes or Whole Foods market.

Mr. Erardi responded that Shapell felt that Safeway was the best for economic reasons and the type of operation it is. Safeway is proposing 54,000 square feet of retail, and the next largest store is Ranch 99 market, which is 35,000 square feet. Shapell talked to other retailers and Safeway is the number one choice. He recalled that when Wal-Mart came to town, there was competition. Shapell's philosophy is if that if there is a great retailer coming into town, they want to have them in their project. He felt that competition typically makes everyone work harder and makes them do better, or if they do leave, it raises the level for everyone.

In regards to the movie theater, Mr. Erardi explained that when the Town Center was in the transition period and AMC left, Shapell did a short-term deal with the movie operator, and that deal was always set up as short term. It turned out to be a real good thing. From a standpoint of everything that is going on with the project such as housing, retail and rehabilitation, it doesn't make sense for Shapell to keep the theater. In regards to relocating the theaters in another Shapell project, it is highly unlikely.

In regards to the farmers market, Mr. Erardi noted that group remains very loyal to the town center because they have probably been approached by a number of other areas to come into their project, and Shapell has also invested a little money to help them get started. The farmers market was also a short-term interim solution to get a little traffic into the project and keep people coming into the project, and has blossomed into a great cultural community event. He noted that Shapell will do their best to keep them in the project, but not at the price of losing key retailers and impacting the parking.

Commissioner Giordano asked what is the current dwelling unit for the existing Beresford homes. Mr. Lindsay replied that it is 9 to 10 units an acre and there are about 116 townhomes.

Commissioner Giordano asked if the kiosks will be lighted and Mr. Erardi replied, "Yes".

Commissioner Sandhu congratulated staff about the public benefits of the project, particularly the enhancement of the sidewalk connection along the northside of the existing library, which will become the senior center, and noted it will benefit the seniors. He also noted that the bright colors and signs of the building will attract drivers on I-680.

Commissioner Sandhu asked if there will be provisional notifications to potential buyers of the townhomes stating that there will be loading and unloading zones in the area. He recalled that after the Great Mall project, nearby residents would attend Commission meetings complaining about noise and traffic.

Mr. Erardi replied that Shapell's plan is to build the commercial first, and then the residential area and there will be disclosure statements to the owners.

Commissioner Galang asked why does Shapell want to get rid of the theater in the town center. Mr. Erardi responded that Shapell wants to build a new project that was presented.

Commissioner Galang asked if Shapell plans on relocating the theater at the Serra Center. Mr. Erardi replied that Shapell doesn't own the Serra center and believes that the owner of the theater is looking around for another location.

Commissioner Galang asked what does Safeway mean by a "one stop shop". Mr. Erardi explained that most Safeway stores have groceries, a Chinese restaurant, Starbucks, Deli, florist, meat dept., Pharmacy, financial institution and a photo shop.

Commissioner Garcia was concerned that the project was not in conformance with the general plan and asked if Shapell had explored other options. Mr. Erardi replied that Shapell had explored other options for the last 5 to 6 years, depending upon who was in the market place and what the economic conditions were, and felt that Safeway could make it happen. He noted that Albertsons is a supermarket and is in the same zoning district as the Town Center.

Commissioner Garcia felt that the concept of the Town Center should be a meeting place, especially the central portion, which is going to be adjoining the civic center section and anchor stores, and his perception is that a Safeway is a bit unusual to be in Town Center. He noted that he visited the new Safeway in Fremont and that it is a beautiful facility, but it is definitely not a meeting place of a center. He noted that there is no mention of a grocery store in the general plan for the Town Center, nor is it specifically mentioned as a conditional use.

Mr. Erardi commented that Shapell has done a pretty good job of tying the project in the community with the pedestrian links, fountain features, landscape features, and there are some areas where someone can walk from the park, to the residential area, through the commercial area, grab a cup of coffee and head down to the library or future senior center.

Commissioner Giordano asked Mr. Erardi to comment on Commissioner Mohsin's concerns about the tot lot. Mr. Erardi noted that Leslee Temple has developed first class tot lots before, and is sure she will design a great one.

Chair Nitafan asked Attorney Faubion to clarify the compatibility of a grocery store in the town center district.

Attorney Faubion commented that with respect to the grocery store, it will be a determination that the Planning Commission will make and have flexibility to interpret the general plan. She explained that the general plan under the town center designation describes the role of the plan and the kinds of uses it anticipates. The relationship between the uses, in this particular case, there is not one particular use that defines the town center area, but there are various uses in the interplay of the uses that is also part of that, where in other land use district, that is probably a lesser element. She noted that Commissioner Garcia is correct that a supermarket is not specifically identified in the general plan, but the Commission has the ability within their discretion to determine whether a type of use or proposal is consistent with the intent and interplay using the text of the land use designation as a guide.

Chair Nitafan opened the public hearing.

Heidi Wolfe-Reid, 1397 Yosemite Drive, urges the Commission to vote in favor of this project and felt it is a great project. She has been waiting for a Safeway to come back for many years and felt there is a real need for a major supermarket in town with the additional housing that will be created in the next couple of years.

She is concerned about having 14 units to the acre for an in-fill project and knows there are a lot of challenges at the site. She is concerned that the acreage is not meeting the Housing Element and suggested that for the next housing element to look at minimum densities to make sure that now and in the future, the City will be able to meet the housing goals. She is a frequent shopper at the farmers market and felt that the market should move to Midtown.

Johnny Ambrosia, Galindo drive, felt the project is a great idea and that not a lot of people have been at Safeway lately. He recently visited one and was impressed with their full service and wonderful staff. He thinks the project looks like a mini Santana Rowe and felt the project would bring energy to the City because it has charm.

Rob Means, 1421 Yellowstone, noted that most folks think the Town Center is a good place for Safeway, but he doesn't. He noted that 10,000 people a week and 40,000 people a month visit the movie theaters and he doesn't like the Century theaters. He felt that the bottom line is the extra public benefits for the project doesn't offset the loss of the theater. He also felt that the fact that there is no solar orientation at all with the project and the fact that there doesn't seems to be no mitigation with energy use, the City will be hitting a wall in the next couple of decades regarding energy. He also stated that the Commission has the authority to deny the project because it doesn't fit with the general plan.

Garmcy Kendola, Concerned resident, noted that he submitted a detailed noise analysis to staff and the Commission detailing the noise impacts to his resident. He asked if all of the daytime deliveries will be from Town Center Drive. Mr. Lindsay responded that the deliveries would be from Calaveras Blvd.

Mr. Kendola explained that there is a noise law that states during the daytime and nighttime the noise levels have to be below certain levels. With his noise analysis, he has taken into account, the noise that a delivery truck would produce and came to the conclusion that the noise would travel 300 feet to his neighborhood. He explained that the noise being produced from a truck that beeps as it backs up into the loading zone goes above the noise levels.

Mr. Kendola disagreed with Mr. Fujimoto's analysis about the 24 hours measurement of CNEL levels, and that those levels are meant for airports developed by the state of California, not for residential areas. He pleaded with the Commission to review his noise study.

Ed Connor, 1515 N. milpitas blvd., felt that the way to keep the City beautiful is to have the City buy the Town Center property from Shapell and build a City square. He noted that he has talked to the city manager about it and felt that Milpitas has been very generous to Shapell and they should consider selling the piece of property. He recommends abandoning the project and noted that if Safeway is approved, he will not shop there.

Concerned Resident, 286 N. Abbott Avenue, disapproves of the project because of traffic impacts and felt that dumping more people and stuff on a facility will cause stress on Calaveras. He asked when will the City expand Calaveras Blvd. to six lanes.

Jeffery Rohm, 364 Sandcrest Drive, had serious concerns about noise and doesn't see a firm solution from the plan. He visited the Safeway store in Santa Clara and talked to residents that lived behind there, and found out that the truck moving noise is loud during the nighttime, even though there is a soundwall behind the docking area. but what I found was that noise came from the truck movement behind the soundwall, He explained that when a truck moves in and maneuvers back into the position it takes about 5 minutes, and the noise level wakes up the people in the night everyday. He is concerned that older people will wake up in the middle of the night and will not be able to sleep anymore and is concerned that the Safeway at the town center will have two big truck delivers and two small truck deliveries during the nighttime.

Cece Zamora, 1955 Everglades drive, strongly urges the Commission to think of the ripple effects of the project and is sure that past decisions of the development of the McCarthy ranch and Ranch 99 has lead to the decline of the town center, and what may lead to the decline of other shopping centers in Milpitas, and at some point, the Town Center lead to the decline of the Serra center. She urged the Commission take and see what impact the project would have to other shopping centers and what plans the Commission has for improvements to the Serra Center, Beresford Square, Jacklin center and Park Victoria center.

She urged the Commission to look at the parking in residential areas and see if there is sufficient parking for the demographics of the City. She felt that 2 car garages don't usually fit two cars, or even 1 large car, and if you see other developments, cars overflow onto Milpitas Blvd. She felt that the parking problem needs to stop and accountability needs to happen with the developments of the community because it is an epidemic that is happening to the City.

She also stated that it is a shame to lose the theaters because it is something that is great to congregate with children and family. She commented that the palm trees are lovely, but are a harsh contrast to the opposing side of the road and if the development goes forward, one side will look different than the other side. She felt that the trees should compliment both sides of the street.

Robert Ya, 260 Woodward Drive, followed up on a letter that Beresford village has sent in as a community and felt that most of the presentation tonight has been about the project and is concerned about the impact of the project to the community and to the rest of the milpitas. He stated that residents have been trying to voice their concerns and have tried to be included in the process, and aside from the public hearing, have not had a voice in this process. He stated that the traffic is a dramatic issue especially because there are a lot of young families that live in the development, which is a safety issue. Beresford village had to put up speed bumps because people cut through to get through to the development through the other side of the street. He is concerned about safety and about the general knowledge of the development in the surrounding area. He also noted that his friends live within 300 feet of the proposed project and did not receive a public hearing notice.

Arnette, 246 Lynn Avenue, is surprised that the City would want a supermarket behind city hall because of all the debris that the grocery store would generate. She felt that the palm trees look very clashing to have palm trees on one side of Calaveras and a different kind of tree on the other side and noted that palm trees are on every major shopping center in Milpitas and are boring. She stated that municipal Darwinism needs to stop because it is killing off the endangered small businesses in Milpitas.

She is concerned that when Safeway comes, Albertson's will pull out and also objects to the eviction of the cinema savers. She said that the City has to think about people on low income, plus the theaters give you a second chance to watch movies that disappeared over night from the century theaters and Century theaters doesn't give no discounts and people needs discounts these days.

Concerned resident, 286 North Abbott avenue, has lived there for over 44 years and has seen a drastic change in the traffic conditions in the neighborhood. She noted that if Safeway is built, she will not shop there.

Donnette Peter, 2155 Seaclift drive, opposes to putting a Safeway in and thinks the City can make better use of it. She would like to see the place revamped, but if there is going to be a one stop shop, why not put it into different little shops for small business owners. She thinks the palm trees should be nixed and would like to see the Cinema savers remain.

Mike Messinger, Commercial real estate, (worked on the town center for the past 14 years), heard a few comments regarding Trader Joes and Whole Foods, and responded that they have been contacted them and turned down the project over the years about 3 or 4 times because demographics do not work for them. He commented that a center of this size of about 250,000 square feet requires an anchor to make it a viable center. The only other anchors that had any interest were Home Depot, 24 hour Fitness and Safeway. He felt that Safeway has been the best anchor that has been interested in the center.

Close the public hearing

Motion to close the public Hearing.

Giordano/Sandhu

AYES: 7

NOES: 0

Chair Nitafan asked staff to comment on the noise issues.

Mr. Fujimoto replied that the City has a noise element that is part of the general plan, and the noise element identifies a 24-hour average that needs to be maintained in different residential districts as well as different types of uses throughout the city. When an occasional noise occurs, the general plan takes that it into account and it is averaged through a 24-hour period. If a single event that exceeds a certain decibel level happens, according to the noise element, it doesn't put the event out of conformance with the general plan.

He also explained that noises that occur during the days have a certain value, and noises that occur during sensitive hours such as late at night, are penalized at a higher level, thus if more noise is produced late at night, it increases the noise levels that are generated over a 24 hour period. He noted that the applicant has done a thorough noise analysis that takes into account all of the different types of uses that currently exist and analyzed the impacts that the additional deliveries will have on site. That is why the applicant concluded that deliveries are limited to four - two refrigerated deliveries and two non-refrigerated deliveries - anything more will put the deliveries at non-conformance with the general plan and will put it at non-compliance with the noise element.

Mr. Lindsay added that one of the comments was that the CNEL 24 hour average is not a commonly used average for this type of business, however, throughout California planning law and housing codes, it is commonly used as an industry standard for evaluating noise levels and is averaged during a 24 hour period.

Chair Nitafan asked staff to comment on traffic mitigations and safety.

Mr. Fujimoto commented that the traffic impacts were analyzed based on existing conditions and how the new use will impact the surrounding street network. He noted that there is a particular amount of square footage that is identified as commercial and the analysis analyzes how many trips the new use would generate and puts into the existing street networks. If it triggers any of the CMP triggers or seconds of delay at intersections, the triggering of any level of services, such as going from a level of service D to a level service of E, or to a level of service E to a level of service F, these types of triggers would require further analysis or additional mitigation measures.

He also noted that when the project was analyzed, the amount of new trips that would be generated from this project didn't trigger any of these thresholds that staff would then have to put in additional mitigation measures. The traffic analysis that was done did take into account the existing uses plus the new uses that would be expected from not only the supermarket but the residential area as well.

Chair Nitafan asked staff to comment on trash issues.

Mr. Fujimoto replied that one of the conditions of approval is that the property owner will have to submit a maintenance plan for the entire site which would cover landscaping, maintenance of parking lots, striping, and garbage and if at anytime the Safeway is out of conformance with this plan, staff will have an instrument in place stating that Safeway will have to maintain it to the subscribed level. In addition, staff has a condition that talks about garbage bins or unkept enclosures that it will require immediate further review of how their garbage facilities and how their operations work. Staff also felt that bringing more people into the area will discourage these types of behavior.

Chair Nitafan asked staff to comment on small business competition.

Mr. Lindsay commented that the City is entering into a new realm of combining uses, which traditionally used to be separate, and the vision of the Town Center called for a mixed-use development before it became a common practice as it is now. The vision is finally being realized now with the mixed-use concept being a potential realty within the Town Center district. Staff felt that the interrelationship of the uses can be quite dynamic and be beneficial not only to the residents, but to the commercial tenants as well because it provides a walk able environment in which the residents can have all of these services close by and they will tend to use them more.

Chair Nitafan asked staff to comment on the density issues.

Mr. Fujimoto commented that the project has a density of 14 density units per acre. There is a PG&E easement which can't be developed on, and takes away some of the development potential, however, other than that, this is a project that you will not be able to find anywhere else in the city. It's a new type of use, a family type of development that broadens the housing mix within the City, and staff can support it.

Commissioner Galang asked staff to comment on the speed bumps at Beresford Village. Mr. Lindsay noted that the speed bump referred to is in the adjacent development and are private streets, so the Homeowner Association makes the decision of whether or not the speed bumps are necessary and may install them. The street network proposed would be a private street network, and if speed bumps become necessary it would follow a similar approach.

Commissioner Galang asked what is the speed limit in that area because he is concerned about the safety of the children. Mr. Lindsay commented that these are private streets and would expect the speed limit to be 25 mph and below, and since these are private streets, they are not enforced by the police department but by the homeowners association. Staff felt that the street system designed is very safe and will not pose any problems.

Commissioner Giordano asked staff to comment on Mr. Kendola's noise analysis.

Mr. Kendola commented that whether you use dB limits, daytime and nighttime separately, or if you combine them into CNEL units, the noise limits established by the City of Milpitas are still violated. He stated that his analysis shows the noise violations exactly and doesn't agree with staff's analysis.

Commissioner Giordano stated that she felt strongly that it would be a good project for the City and also felt a sentiment for losing the theaters. She recalled that her last action in 1993 was to approve the Great Mall, which hurt the Town Center deeply, and now she is able to approve the revitalization of the Town Center. She also commented on Commissioner Garcia's concerns regarding the use of Safeway and whether it is conducive to the general plan. She notes that the Commission has recently approved 3 churches in industrial parks, and times have changed. There are vacant industrial buildings and the intended use is for industrial complex, however it is important to understand that the economy has changed and the City should promote businesses to be able to remain the community and be viable. She felt that it is not a departure from what the general plan typically allows for the town center.

Commissioner Garcia stated that it is a good project in many ways, however, he is going to reluctantly vote against it because he is not convinced that this meets the spirit of the general plan. He also commented that he the City Center is a future center and meeting place, and is not convinced that a Safeway fits that. He is concerned about the quality of life and felt that the City should have avenues for the citizens to have access to movies and the farmers market. He was also concerned about the future senior center and how it will play into the role of the new project and asked what is the best use of the last piece of land on Calaveras blvd., it is a major piece of property looked at everyday by thousands of commuters and asked how best can we use the town center from a City hall perspective and visitors.

Vice Chair Lalwani noted that she is voting for the project and stated that is not the perfect solution to the problem or the area, it has limitations, but we also know that Town Center has been barren for quite a few years, looking forward to it. I would like staff to work with the gentleman about the noise analysis, I like palm trees but the other side will not have palm trees and will not look asymmetrical.

Commissioner Mohsin mentioned her concerns about the goals of the general plan, and it seems like the Safeway project doesn't seem to fit and she is concerned about the noise, I have once lived in a place where there were trucks, and neighbors would put in windows that would keep the noise out. I know elderly put in complaints about not being able to sleep because of the trucks. I also feel that supermarket should not be next to City Hall, so I am voting against the project. Also, the palm trees, I like shade trees, people want to park under a shade, we don't have too many trees that provide shade. Also in the plan, it shows that Mervyns will not have the palm trees.

Commissioner Galang is opposing the project because he doesn't want to lose the movie theaters, where can you find a dollar entrance fee every Tuesday, families go to the movie theater. The farmers market- where can you find fresh fruit. Also concerned about noise, traffic, and crime. Safeway is unusual in a town center. We also have four supermarkets that are open 24 hours.

Chair Nitafan commented that it is a great project it would invigorate the Town Center, he believed that once Safeway comes there will be progress in the City and it will be a good development. There are also good public benefits such as pathways and trailways.

Motion to approve 1) Site and Architecture Review (SZ2003-12), Use Permit Nos. UP2002-42, UP2003-57, UP2003-58 AND UP2004-1; 2) Use Permit No. UP2002-42 And Site and Architecture Review (SZ2003-13) and 3) Sign Ordinance Amendment No. 124.26 (ZT2003-5) based on the findings and conditions noted in the staff report revised by the memo provided at the meeting modifying Condition No. 7d and revised conditions stating that the landscaping plan, architectural plans and lighting plans come back to the Subcommittee in more detail.

M/S: Sandhu/Giordano

AYES: 4 (Sandhu, Chair, Giordano and Lalwani)

NOES: 3 (Garcia, Mohsin and Galang)

Ten minute recess

Chair Nitafan called a ten minute recess to 10:17 p.m.

2. Environmental Impact Assessment No. EA2004-1 and Zone Text Amendment No. ZT2004-1 (Ordinance No. 38.763). ***(Continued from February 25 2004):*** *Staff Contact: Staci Pereira.*

Staci Pereira presented Environmental Impact Assessment No. EA2004-1 and Zone Text Amendment No. ZT2004-1 (Ordinance No. 38.763). Ms. Pereira explained that the City has prepared a Negative Declaration for Ordinance No. 38.763, which proposes to modify the following provisions as they relate to single-family dwellings:

- Remove the maximum number of unrelated persons that can occupy a dwelling,
- Require all occupants to function as a single housekeeping unit and provide a definition for single housekeeping unit,
- Require two parking spaces to be enclosed within the garage and permanently maintained,
- and expand the definition of a kitchen.

In addition, the project proposes to modify the location of the legal notice postings from the project vicinity to the project site.

Ms. Pereira recommended adopting the Negative Declaration (EA2004-1); and Adopt Ordinance No. 38.763 for amendments to the Zoning Ordinance Text (ZT2004-1) based on the findings and conditions noted in the staff report.

Commissioner Giordano asked who were the five local cities that were surveyed and Ms. Pereira replied Dublin, Santa Clara, Sunnyvale, San Jose, and Campbell.

Commissioner Giordano referenced the letter to Tambri Heyden from the Assistant City Attorney and mentioned that it speaks about regulation of overcrowding in residential homes and read the following from the letter: "thus if a particular property creates a public health hazard to the residents or a nuisance due to overcrowding, the City can proceed to abate the nuisance pursuant to its nuisance abatement ordinances. Enforcement of these ordinances may mitigate many of the negative aspects of overcrowding and may result in the tenants or the landlord voluntarily reducing the number of persons living in the residence".

Commissioner Giordano asked staff for clarification.

Mr. Lindsay explained that the nuisance abatement process is part of the code enforcement section and it is a way of enforcing it, unfortunately, its not the most effective way. Proving a nuisance and continuing to take it through the enforcement process takes a long time. The burden of proof is much stronger to make that case. For a single-family owner to understand the regulations up front is important. With a clear ordinance, if a resident is considering doing something in their home, they can turn to the ordinance and get a good handle on the regulations. By providing this up front, the expectations are made clear by the City by codifying it instead of relying on a health and safety nuisance factor. Somebody may have been doing something that they thought was okay and they have been doing it for awhile and now the burden of proof is on the City to prove a nuisance. What we are doing here is get it out of the nuisance environment and more of a zoning violation and provide all of the expectations in a very clear way up front for the homeowner so they can understand the parameters in which they can work with.
Commissioner Giordano asked if it becomes a zoning violation is that recorded against the property. Mr. Lindsay replied that it is not recorded against the property but staff has an administration process where they can actually fine the property owner for non-compliance within the zoning district.

Commissioner Giordano asked where do neighbors go if they detect a violation in their neighborhood. Ms. Pereira replied that a neighbor should call the code enforcement hotline and they will respond to the situation.

Chair Nitafan asked Attorney Faubion to expand on property rights.

Attorney Faubion stated that in any kind of a regulatory structure such as a zoning structure and health and safety codes, there is always some element of saying, "no you can't do that", even though you really want to and to the extent that somebody interprets or clearly has a property right. Just the regulation and the City's discretion to legislate for the common good through its police power, often times that will infringe upon private rights and that is why they have to explain why they are doing that. Often times when the restrictions are codified in the zoning ordinance, it does provide that advance notice where at least people then know up front what the rules are and what they can and cannot do if someone really feels that a proposed rule is unfair and unconstitutional and really treads on their right than they can take it to court and challenge it. But the police power is broad and is what the City normally uses to regulate these kinds of things, and to the extent that there is some infringement on property rights that just does happen sometimes.

Chair Nitafan commented that hopefully the City will not have any class action suits on this because the laws are privileged to convert their garage into living space.

Commissioner Mohsin asked if residents can leave an anonymous message on the code violations hotline and Mr. Lindsay replied, "Yes".

Chair Nitafan opened the public hearing.

Resident, 286 N. Abbott Avenue, disagrees with the amendment to remove the number of unrelated persons. He knows of a case in New York where they built 20 story buildings and they became uninhabitable. The City tore them down because they had multiple people living there and were unrelated and women were molested. In Chicago, slumlords converted these buildings and made 15 to 20 rooms in them, and they became slum areas. The City cleaned them up and built single dwelling units. In San Jose, the same situations exist and he doesn't want to see that happening to people.

Cece Zamora, 1955 Everglades drive, representing 15 people that have been working in the City to see this come up and bring this issue to a head, is glad to see it and really hopes that the Commission approves the changes being presented because it is important for the City and young families and long overdue. She stated in about ten years, the streets will be full of cars because of what has been allowed to happen in homes. The cultural differences are fine and great. She thinks that the City needs to have mechanisms to put some limitations on parking and make some provisions for excess vehicles that add to blithe to the city, which she doesn't want to see it become.

Norma Tritton, 286 N. Abbott Avenue, stated that multiple people living in dwellings is not going to work and doesn't want to see her neighborhood become a slum. She commented that over 40 years ago, she wanted to add a second story to her house and the City wouldn't allow it and then a year later, anyone could do it. She did add a one bedroom, but things didn't seem to work out. She stated that if you go into any restaurant you'll see a sign that says maximum capacity and doesn't see why there is not maximum capacities in a home.

Rob Means, 1421 Yellowstone, doesn't understand what the objective is of the amendments and felt the City should tax cars. He felt that a PRT system should be provided so people don't need a car to get around. He felt that we are squelching affordable housing and resource utilization. "If we can't convert a garage, then we are forcing people to use more trees and materials to build more structures to house people that need to be housed. We are not moving towards the way of energy sufficiency and resource sufficiency when we talk about these changes".

Heidi Wolfe-Reid, 1397 Yosemite Drive, commented that she is not crazy about garage conversions and noted there is a huge difference from the ones in Milpitas compared to the ones in San Jose. She stated that the garage conversions in Milpitas are safe and beautiful, and the ones in San Jose are a death trap. Regarding occupancy, she stated that you can't regulate the amount of occupancy and noted that her consultant could not find blithe in the City.

Bill Ferguson, Rivera street, is unclear about the proposed amendment. He lives around Milpitas High and parking is limited from 8 am to 5 pm and felt that the proposed amendments are saying something negative about roommates. He pointed out that it is normal and mainstream to live in a house with roommates because houses are expensive and it takes a large income to buy one. He felt that the City should be more open and accepting, and should allow people to live the way they want to. He also felt that the City shouldn't look down on people that are low income or saving money and people can be employed, laid off, or are living with roommates to save money. He asked that the Commission vote against the amendment.

Motion to close the public hearing.

Close the public hearing M/S: Sandhu/Giordano

AYES: 7

NOES: 0

Commissioner Giordano stated that parking is a real problem and staff has come up with a creative solution in terms of room count and definition of a family unit. She will support what staff brought, however, she encourages the Commission to allow garage conversions to stay in place. She stated that affordability is key in the community with the price of housing. She has seen more and more the need for extended families to have additional space because of aging parents, children that leave home and return with their children and the growing need to have the family relocate.

Commissioner Garcia pointed out that that the real problem is parking and overcrowding in neighborhoods and housing. What staff discovered last year is that the code is unenforceable. He pointed out that the problem with garage conversions is that the streets are too small to accommodate another 2 to 3 cars. It is a tough choice and an affordability issue but the City should establish clear standards and felt that garage conversions should be eliminated.

Vice Chair Lalwani recalled that at the last meeting it was mentioned that half of the garage could be converted and needed clarification. Ms. Pereira stated that at the last meeting, only a portion of the garage was allowed to be converted and half would need to be maintained for an enclosed parking space. Since then, the CAC concluded that to prevent garage conversions altogether was appropriate.

Mr. Lindsay clarified that state and federal laws have preempted the City's ability to regulate how a single family operates. The proposal would allow an extended family to be together and operate as a single housekeeping unit. A lot of the families in Milpitas operate that way because there are several generations living together. The proposed definition would continue to legitimize that as long as families are living as one unit and use common areas.

Regarding affordable housing, Mr. Lindsay stated that it is a big issue throughout the county and the second family unit legislation was passed to help address that issue so people can continue to operate second family units within their home and have a renter live independently within the home or as an accessory structure outside the home. People can rent out their rooms based on the regulations the City is proposing and can board people in their house if they offer meals with rent. It would allow them to rent out two rooms without getting a permit from the City as long as they are meeting the definition of a boarding house and they provide parking space on the property for each of the rooms they are renting. Within what staff is recommending, there are still elements being retained to address the continuing need of affordable housing and the need to have extended families within the home.

Chair Nitafan agreed with Commissioner Giordano to retain the ability to convert the garage. He gave an example from his homeowner association that they allow 2 cars in a garage, and 2 cars in the driveway, and that cars are not allowed to park on a red painted curb area. He felt that the overall issue is a parking issue and it shouldn't matter how many people are living in a house and if they convert the garage they can park in the driveway. He thought that the City should look at parking issues.

Commissioner Mohsin commented that she is concerned about parking and wanted the City to look at different avenues to address the parking concern.

Commissioner Garcia pointed out that the whole point of the exercise is that there is serious parking problem in the City and the first step should be to stop garage conversions.

Commissioner Sandhu agrees that this is a parking issue and said that when you compare affordability with the parking issue, affordability takes precedence and parking should be addressed separately. He felt that if you don't park accordingly, you should get a ticket and there are solutions for parking situations. He is not in favor of not allowing garages to be converted.

Tambri Heyden, Acting Planning and Neighborhood Services Director, commented that the CAC subcommittee is still working on the parking issue and should be bringing something forward to staff in the near future, which staff will then bring to the Planning Commission.

Motion to approve Environmental Impact Assessment No. EA2004-1 and Zone Text Amendment No. ZT2004-1 (Ordinance No. 38.763) and removing Item No. 13 (Section 4.07) of garage conversions.

M/S: Giordano/Sandhu

AYES: 4 (Giordano, Sandhu, Chair, Galang)

NOES: 3 (Lalwani, Garcia, Mohsin)

IX. NEW BUSINESS

3. "S" ZONE APPROVAL AMENDMENT NO. SA2004-3 at 755 Yosemite Drive. *Applicant: Lori Gilliam*

Dennis Carrington, Senior Planner presented "S" Zone Approval Amendment No. SA2004-3, a request to replace seven existing cabinet logo signs with (2) new internally illuminated individual channel letter wall signs for Bottomley Distributing Company located at 755 Yosemite Drive and recommended denial.

Chair Nitafan invited the applicant to speak.

Lori Gilliam, Applicant, stated that the project is simple because the applicant is trying to update the signs that were originally installed in 1983 and it is quite cluttered and dated looking now. The new sign will clean up the look and will update the low level lumination LED sign and that the new proposed sign is energy efficient.

Motion to deny "S" Zone Approval Amendment No. SA2004-3.

M/S: Vice Chair/Sandhu

AYES: 7

NOES: 0

X. ADJOURNMENT

There being no further business, the meeting was adjourned at 11:17 p.m. to the next regular meeting of April 14, 2004.

Respectfully Submitted,

James Lindsay
Planning Commission
Secretary

Veronica Rodriguez
Recording Secretary