

MINUTES
REGULAR PLANNING COMMISSION MEETING
CITY COUNCIL CHAMBERS
1 CIVIC CENTER DRIVE
SAN MARCOS, CALIFORNIA
MONDAY, NOVEMBER 5, 2012 - 6:30 PM

CALL TO ORDER

At 6:30 p.m. Chairman Nelson called the meeting to order.

PLEDGE OF ALLEGIANCE

Commissioner Minnery led the Pledge of Allegiance to the Flag.

ROLL CALL

The Secretary called the roll:

PRESENT: COMMISSIONERS: Kildoo, Maas, Minnery, Nelson, Norris,
Schaible, Wedge

ALTERNATE COMMISSIONERS IN AUDIENCE: Flodine, Jones

ABSENT: None.

Also present were: Planning Division Director, Jerry Backoff; Associate Planner,
Norm Pedersen; Assistant Planner, Sean del Solar; Office Specialist III, Lisa
Kiss; Deputy City Attorney, Jim Lough

ORAL AND WRITTEN COMMUNICATIONS

None.

CONSENT CALENDAR

1. APPROVAL OF MINUTES, 10/1/12

Action:

COMMISSIONER WEDGE MOVED TO APPROVE CONSENT CALENDAR AS
PRESENTED; SECONDED BY COMMISSIONER KILDOO AND CARRIED BY A
UNANIMOUS VOTE.

AGENDA ITEM # 1

PUBLIC HEARINGS

2. **Case No:** CUP 12-892 (*continued from 10/1/12*)
Application of: North County Wine Company
Request: A Conditional Use Permit to allow for a 420 s.f. outdoor patio expansion to accommodate live entertainment (1 to 3 musicians playing jazz, blues or soft rock) at an existing wine bar/shop in the San Marcos Creek Specific Plan Area.
Location of Property: 1099 W. San Marcos Blvd., more particularly described as: Lot 3, Block 73 of Map 806, Rancho Los Vallecitos de San Marcos. Assessor's Parcel No.: 221-051-26.

Staff Presentation (Norm Pedersen):

Described request and location. PowerPoint presentation shown. Proposes live entertainment, 1-3 person bands playing amplified jazz, blues and soft rock, at existing 1,275 s.f. wine shop building, with a 725 s.f. outdoor patio, across from Restaurant Row. There's an RV storage yard on the 4.5 acre property, which is operated by the property owner. They also want to modify ABC license to allow for beer sales. Site plan, outdoor patio area shown. It's considered a legal, non-conforming use and building. Entertainment limited to three nights per week and Sunday afternoons and shall be ancillary to primary use as a wine shop. Noise levels must be below 60 db at property lines. If complaints are received, they must take corrective action to reduce noise. Requires 11 parking spaces which are currently on site. Three existing spaces conflict with requirements for driveway aisle width, stacking and turning movements. Those spaces must be relocated to the DG area adjacent to parking lot, paved and striped. Discussed staff's memo/handout changes: C.1.b. & C.4.m. revised to indicate westerly driveway need not be paved. As alternative, they may share three spaces at adjacent nursery parking lot. A letter from nursery property owner would be required if the alternative is chosen and would be allowed for two years. Per building code, they must install an additional restroom; stripe an ADA path of travel and other ADA improvements where applicable. No public comments were received. Staff recommends approval.

Norris: Inquired why only two years for the shared parking? They operate after hours of the nursery, so why pave after two years?

Backoff: Explained that the owner of the wine store property is planning a mixed-use development in the Creek District. They anticipate starting in two years. If that doesn't happen, would need to have it improved. Staff has heard that the nursery owner may not agree with joint use because of liability concerns. It was left in as an option in case they're able to work out an agreement.

Norris: Asked if they're out of compliance if Creek doesn't start in two years?

Backoff: If they don't get an agreement with nursery, they must put in the parking stalls immediately, prior to reliance in use. If they get an agreement, they would have to install parking in two years.

Wedge: Asked how staff feels about the letter from DWG asking to modify restroom condition to allow them two years?

Backoff: Discussed with Building Director prior to meeting. You cannot allow expansion and reliance in use without the additional bathroom. It's the function of the seating capacity. Wine tasting doesn't necessary have seats. The building code is clear when another restroom is triggered.

Wedge: Asked if someone would be monitoring parking? What happens if five more cars show up and park at nursery? Who enforces the number?

Backoff: The operator must make sure they don't go beyond their agreement. The applicant needs to identify the parking area with signage and enforce with their customers.

Schaible: Asked if applicant is aware the current restroom doesn't meet accessibility codes? Wants to know if Commission approves, are they liable for lawsuits that might arise from a person in a wheelchair who can't maneuver in the room?

Lough: It is up to the owner to make sure their property is accessible under the rules. We do have to approve new amendments or any changes have to be ADA accessible. That's why we're discussing the second restroom.

Backoff: Also because the seating capacity requires a second bathroom.

Lough: With seating capacity addition, that's a new facility and must be up to code including ADA. The building official applies the particular standards in place. They don't have discretion. It's not required to retrofit everything. The building official will determine.

Schaible: No enforcement by City?

Lough: No.

Kildoo: Asked if original CUP was approved with a non-ADA restroom facility? And, if there's more seating than original?

Backoff: There's no existing CUP. It's a retail wine store with tasting as a part of it. Because of live entertainment, the opportunity for sit down increases and triggers the building code requirement. One-50 seats requires a second restroom.

Nelson: Asked if they could use a portable toilet on special event days?

Backoff: Wouldn't comply with building code.

OPEN PUBLIC HEARING

Darrell Gentry, representing applicant: Thanked staff. The original request was for an expansion. Now it's just the existing site area which reduces number of attendees from 50 to 25. That size area exists today along with existing bathroom. It's a non-conforming building. Asked for two changes: 1). Need alternative language in conditions to allow them to talk to the Building official and explain operation. It's a wine store that allows wine tasting. They also sell beer and want to be allowed to have beer tasting as well.

They'll handle that with ABC. Request that staff modify first whereas, by adding, "public convenience and necessity." Many communities use this statement in CUP's for this same kind of operation. 2). 2nd Bathroom. We're aware of ADA compliance requirements and will meet with the building official. It's a tasting room, not a pub or bar, no food, just snacks and live entertainment. In two years, the property owner will redevelop the site. He's invited Mr. Tobin to be part of the future permanent project. Don't want it tied to reliance in use. Request a two-year time frame for the installation of second bathroom. Need some language modification.

Wedge: Asked about first whereas paragraph? She doesn't see the correlation. Are there CUP's and wine tasting that allow this language?

Gentry: Public convenience and necessity is in the ABC code. Local jurisdictions can make those findings.

Nelson: Inquired if staff has ever put that language in a resolution?

Backoff: No. ABC sends a letter to the City and asks if City is in agreement or has any issues. The Sheriff has indicated their concern and feels the area is over-concentrated with alcohol sales. City would continue the approach they've always taken.

Nelson: Asked how that is different, letter vs. language?

Backoff: City Manager would support the operation through a separate letter and override the Sheriff's concerns & comments.

Nelson: Asked if restroom is big enough to split?

Gentry: No. Any remodel of existing would have to comply with ADA requirements.

Nelson: Inquired about expense to add bathroom?

Mr. Jim Tobin, North County Wine Co., Oceanside resident: It's \$25K to build a bathroom and doesn't make sense if it's bulldozed in two years. Permit request came about because he's had many requests from customers for music and beer tasting.

Wedge: Inquired how many tastes people get? Do they buy a glass or bottle? Asked when the line gets crossed from tasting to a pub?

Tobin: Primary business is wine sales. Also licensed to sell beer but can only taste wine. Have no interest in running a full bar. It's an educational and relaxation thing.

Wedge: Asked if you can purchase a glass of wine or beer?

Tobin: Yes, wine.

Maas: ABC has requirements that stipulate what delineates the tasting room from a bar. Lost Abbey is not a bar, it's a tasting room.

Kildoo: When you go to a bar, you don't get to walk out with a bottle of wine or beer.

Wedge: Describe temporary restroom facility? She's picturing a woman going outside after dark to a portable toilet.

Tobin: Not sure if portable toilet is the best solution. Agree it's not the right atmosphere for wine tasting.

Minnery: Inquired if someone could purchase a bottle of wine and then go to the outside area and open it?

Tobin: Yes, consistent with current ABC license.

Minnery: Then it's no different than a bar or restaurant.

Tobin: Depends on how you define bar. They can't prepare meals. He knows what his license currently says, but doesn't know what ABC might add as they haven't gone to them yet.

Minnery: It can be expanded to more than just tasting.

Tobin: It's up to ABC.

Wedge: Asked what he envisions for the restroom?

Tobin: Moving the operation in two years.

Wedge: What about in between? What is the second bathroom?

Tobin: Portable toilet if that is the only option. Not asking for an expansion. Current bathroom has been adequate for last two years.

Nelson: Brewery across street only has two bathrooms.

Tobin: Sublime Ale House has two and many more people.

Maas: Asked if any restriction on type of music?

Backoff: CUP lists what the applicant desires.

Nelson: If there's no expansion, why the need for a second bathroom?

Backoff: Added entertainment venue and number of sit down seating. If they continued as they are today, tasting and stand up, there's no issue. The 25 sit down seats trigger the requirement. Prior to meeting, discussed with Building official and he would not accept a temporary restroom. Suggested Commission could add to two conditions: #C.1.f. . . . California Plumbing Code **as approved by the Building Official.** #C.6.a. . . . **and the California Plumbing Code as approved by the Building Official.**

Wedge: The women's bathroom at the brewery has five toilets.

Kildoo: The real change is they've added music, which will increase seating capacity and require a second bathroom. Asked what leeway the Commission has?

Backoff: It's a building code requirement. One-50 seats require a second bathroom.

Kildoo: Asked if they can set the timing?

Backoff: No, can't defer. It must be with the reliance in use.

Lough: One of the reasons City doesn't have liability is because it's the building official making a non-discretionary decision based on the terms and conditions of the planning and building code. Mr. Backoff suggested additional language to allow Building Official to make the decision. They may be able to move things up or down to meet threshold or fall below it. There's no liability if you follow the law. On building type issues, the Commission doesn't have the authority. Question falls into the Uniform Building Code that all cities pretty much follow the same rules. You can't defer a building code issue to later. It has to be when you issue the C of O. You can't allow occupancy until that. If they don't meet threshold or find a way around it by not having certain seating, the best Commission can do is punt to the Building official and give them as much discretion as possible.

Wedge: If there's a function with 25 people, that restroom is being used. There's always a line at women's restrooms. You need more than one toilet if 25 people are sipping wine and beer.

Nelson: His problem is they're not doing anything physical to the building.

Wedge/Norris: Changing the venue and adding more people.

Minnery: Asked if it's a single toilet?

Backoff: Yes.

Norris: And not ADA.

Nelson: Can't do anything on the building codes.

Lough: Commission can make the adjustments Mr. Backoff suggested to give as much leeway as possible. If the applicant talks to Building official, maybe modifies plans, something less intensive, perhaps they can come up with something. Issue is the seating, with music; people sit down, listen and stay longer. Building code logic usually fits reality. Having trouble seeing how City could allow a 24-month delay.

CLOSE PUBLIC HEARING

Kildoo: Want to approve as written, but allow for maximum leeway for building department to work with applicant. Agree with staff to leave "whereas" paragraph that applicant requested out but want to make sure applicant receives ABC letter from City.

Backoff: Staff clarified that condition C.1.f. and C. 6. a. would be reworded to allow flexibility and give maximum leeway.

Kildoo: Correct

Action:

COMMISSIONER KILDOO MOVED TO APPROVE CUP 12-892 AS SET FORTH IN RESOLUTION PC 12-4314; WITH MODIFICATIONS: #C.1.f. . . . California Plumbing Code- **as approved by the Building Official.** #C.6.a. . . . improvements- **and the California Plumbing Code as approved by the Building Official.** SECONDED BY COMMISSIONER WEDGE AND CARRIED BY THE FOLLOWING ELECTRONIC VOTE;

AYES: COMMISSIONERS: KILDOO, MAAS, MINNERY, NELSON,
NORRIS, WEDGE

NOES: COMMISSIONERS: SCHAIBLE

ABSENT: COMMISSIONERS: NONE

ABSTAIN: COMMISSIONERS: NONE

3. **Case No:** CUP 12-901

Application of: Joe El Maasri

Request: Conditional Use Permit to allow the operation of a pawn shop in the Commercial (C) zone of the Richmar Neighborhood.

Location of Property: 218 W. San Marcos Blvd., #107, more particularly described as: Parcel "C" of Map No. 16321 as recorded in the Office of the San Diego County Recorder, San Diego County, State of California. Assessor's Parcel No.: 220-140-25.

Staff Presentation (Sean del Solar):

Described request and location. PowerPoint presentation shown. Currently operates a business in an existing 1,000 s.f. suite in the San Marcos Postal center. Provides check cashing, money transfers, wires, prepaid phone cards and leases post office boxes. If approved, would provide loans on personal property or pawn. It's not a traditional pawn shop. They only accept gold jewelry and there's no on site retail of the jewelry acquired. If a collateralized piece of jewelry is part of a loan that is in default, then jewelry is sent offsite for processing and resale. There's a 30-day onsite waiting period to aid in recovering stolen goods. Applicant must obtain a Secondhand Dealers license from City and Pawnbrokers license from the state. Parking is sufficient. Staff recommends approval for 5 years. Must annex into CFD 98-01, 98-02 & 2001-01. No public comments received.

Kildoo: Asked if the only material is gold?

Del Solar: Yes.

Maas: Gold and jewelry? Does it include platinum and silver?

Del Solar: Applicant can clarify. Their statement of operations relies on the melting down of gold bouillon.

Nelson: Asked if taxable?

Backoff: If you re-sale it. They send it off-site to re-sale elsewhere, so no sales tax revenue.

OPEN PUBLIC HEARING

Mr. Jim Hernandez, representing applicant: It's not a traditional pawnshop. No retail items for sale. It's primarily gold jewelry. In agreement with all except. L., the timeline. The 5-year period is short based on their expenditure. It will take three years to recuperate purchase of business. Asked for either an automatic renewal if facility is in full compliance, or a 10-year term.

Wedge: Inquired about page 2, D. #4., says second-hand items limited to precious metal and/or stones?

Hernandez: Some jewelry contains more than gold.

Mr. Gilbert Partda, Frontera Investment, proposed purchaser of the location: They only do loans or purchases of gold jewelry. Business model is to try to bring discount retailing to low income financial service market. Gold is the easiest to do; it's transparent with low risk and losses. There will be other metals in gold.

Wedge: Don't have a problem with stones, the language just seems wrong.

Hernandez: Indicated he asked that condition be expanded because there may be stones in the jewelry.

Partda: Most who go to a pawn shop don't walk in with high value precious stones.

Norris: Inquired why just gold?

Partda: Lowest risk of loss is gold jewelry. It's the hardest thing to counterfeit.

Norris: Commented that their house was broken into and all they took was gold jewelry. The sheriff said they'll easily go to a pawn shop and get money right away.

Partda: Have had less than .01% taken in and forfeited to police. That's less than \$3,000 in five years. They sell about \$2.4 million of gold per year and are highly compliant. We're transparent for customers. All scales are calibrated and prices are posted. Have done comparisons and found they pay more than a national chain.

Norris: Aware there are a lot of gold thefts happening. They just want cash right away. Commented he may have a problem with this use.

Partda: Indicated they're one of the first operators to work with police to establish electronic reporting. It limits access to criminals.

Hernandez: Also includes photos of the items.

Partda: City of Oxnard Police Dept. has requested digital photos of everything. County of San Diego has adopted electronic reporting. They're willing to do what is required and can't afford to lose an item.

Wedge: Asked if they require photo ID?

Partda: It's all statutory. Regulations allow you to take national ID, state-issued ID, state driver's license. They require photo ID and also take pictures of the customers. It's not good business to take stolen items.

Norris: Detective told them the police have so many cases they don't have time to check. It's up to individuals to check all of the pawn shops.

Wedge: Asked if they have a website where people could see what's been turned in?

Partda: Can't do because of confidentiality. Everything is reported to local police.

Schaible: Asked if a problem to modify D.4. to coordinate language of gold only?

Partda: Rings have other metals.

Kildoo: Resolution says precious metals. Don't think it has to be limited to gold and wording doesn't matter in the Staff Report.

CLOSE PUBLIC HEARING

Kildoo: Commented that 10 years is a long CUP, especially for the first one.

Backoff: Specifically don't allow 10 years for a pawn shop.

Kildoo: Understand their need for wanting a comfort level regarding an extension after five years.

Backoff: If they're in good standing, they'll likely be extended.

Wedge: Don't understand applicant's concern about a renewal.

Kildoo: In general, if they come up for renewal and there are no problems, they'll get another CUP.

Backoff: With new zoning ordinance, this would be a DP in the future and would be further expedited.

Action:

COMMISSIONER WEDGE MOVED TO APPROVE CUP 12-901 AS SET FORTH IN RESOLUTION PC 12-4340; SECONDED BY COMMISSIONER MINNERY AND CARRIED BY THE FOLLOWING ELECTRONIC VOTE;

AYES: COMMISSIONERS: KILDOO, MASS, MINNERY, NELSON, SCHAIBLE, WEDGE

NOES: COMMISSIONERS: NORRIS

ABSENT: COMMISSIONERS: NONE

ABSTAIN: COMMISSIONERS: NONE

PLANNING DIRECTOR COMMENTS

Backoff: The City's 2012 General Plan Update received a CA American Planning Association state "Award of Merit," for Comprehensive Planning for a Small Jurisdiction. In December, anticipate taking the first density bonus subdivision to Commission. There was a community workshop held several years ago, some items worked out and now moving forward. The City Council awarded a bid to a consultant to work with staff on the Housing Element Update. There will be a workshop and hearing in the spring.

PLANNING COMMISSIONERS COMMENTS

None.

ADJOURNMENT

At 7:44 p.m. Commissioner Nelson adjourned the meeting.

Dean Nelson, Chairman
SAN MARCOS PLANNING COMMISSION

ATTEST:

Lisa Kiss, Office Specialist III
SAN MARCOS PLANNING COMMISSION