



MEETING MINUTES

MILPITAS PLANNING COMMISSION

July 31, 2019 7:00 PM

CITY HALL COUNCIL CHAMBERS

455 E. CALAVERAS BLVD., MILPITAS, CA 95035

- I. CALL MEETING TO ORDER** **Chair Mandal** called the meeting to order at 7:00 P.M.
- II. PLEDGE OF ALLEGIANCE** **Commissioner Alcorn** led the Pledge of Allegiance.
- III. ROLL CALL**
- Present:** Chair Mandal, Commissioner Morris, Alcorn, Chua, Tao, Ablaza
- Absent:** Commissioner Chuan
- Staff:** Ned Thomas, Jessica Garner, Heather Lee, Lillian Hua, Rozalynne Thompson, Alex Andrade, Elizabeth Medina
- IV. CONFLICT OF INTEREST DECLARATION**
- City Attorney Heather Lee** asked if any member of the Commission had any personal or financial conflict of interest related to any of the items on the agenda.
- Commissioner Tao stated that he represents the one of the parties from Item IX-1; stated he has no financial interest. Prior to meeting, Mr. Tao clarified with City Attorney that he has no conflict of interest and is cleared to participate in the voting for that item.
- V. APPROVAL OF AGENDA**
- Chair Mandal** asked if staff or Commissioners if there were any changes to the agenda. Planning Director noted change for Item #3, will be continued to the August 28, 2019 Planning Commission meeting.
- Motion** to approve the July 31, 2019 agenda as submitted.
- Motion/Second: Commissioner Chua/Commissioner Alcorn
- AYES: 6
- NOES: 0
- ABSTAIN: 0
- VI. ANNOUNCEMENTS**
- Commissioner Alcorn** gave shared that his thoughts and prayers are with the City of Gilroy and his condolences to all affected by the Gilroy Garlic Festival tramatic event.
- Planning Director Ned Thomas** provided departmental updates to the commission regarding:
- Online calendars will be published on website. Secretary, Liz Medina will be in contact with Commissioners on the procedures on how she will maintain their calendars.

- First PC training sessions will begin on August 14th.

VII. ELECTIONS OF OFFICERS

Planning Director Ned Thomas asked Commissioners for their nominations for Chair and Vice Chair:

Commissioner Morris nominated herself for Chair; no second.

Commissioner Chua nominated Chair Mandal to serve as Chair until end of 2019; second by Commissioner Ablaza.

AYES: 6 | NOES: 0 | ABSTAIN: 0

Chair Mandal nominated Commissioner Morris to serve as Vice Chair; second by Commissioner Morris.

AYES: 6 | NOES: 0 | ABSTAIN: 0

VIII. PUBLIC FORUM

Chair Mandal invited members of the audience to address the commission.

Frank DeSmidt invited public to Chamber of Commerce Banquet. Gave information about upcoming Chamber of Commerce Casino Night.

IX. APPROVAL OF MEETING MINUTES

No minutes for approval.

X. PUBLIC HEARING

IX-1 CITY-INITIATED ZONING ORDINANCE TEXT AMENDMENTS RELATED TO USE REGULATIONS IN INDUSTRIAL ZONING DISTRICTS – P-ZA19-0005: City-initiated zoning ordinance text amendments to: 1) restrict non-industrial uses in the Heavy Industrial (M2) zoning district; and 2) add specific regulations for mobile fueling services within the City of Milpitas. The proposed amendments would prohibit assembly, entertainment, and other similar non-industrial uses in the M2 zone. The proposed amendments would also add a definition in the zoning ordinance for “Mobile Fueling Services” and would allow this use in the Light Industrial (M1), Heavy Industrial (M2), and Industrial Park (MP) zones subject to approval of a conditional use permit. This project is categorically exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3) (Common Sense Exemption). Project Planner: Rozalynne Thompson, (408) 586-3278, rthompson@ci.milpitas.ca.gov

Project Planner Rozalynne Thompson and Economic Dev Direct Alex Andrade showed a presentation and discussed the project starting with restricting non-industrial uses in the Heavy Industrial (M2) zoning district.

Commissioner Chua asked Mr. Andrade what is the current percentage of our land use for industrial. Mr. Andrade stated that he did not have the percentage but shared that Milpitas has close to 20 million square feet of industrial zoned land; and has been reduced to 17 million square feet. Ms. Chua wanted to know the land use currently and what is the percentage allotted for industrial land; also wanted to know what is the open space of industrial for development. Mr. Andrade said he would get back to Ms. Chua on that question.

Commissioner Tao asked about the ancillary use to the industrial (what is the definition, 10%, 20%, etc.). Ms. Thompson said she would have to research the zoning code for that answer but ancillary means subordinate to/not primary. Mr. Tao wanted clarity information for future applicants – definition will help especially on two-story buildings.

Commissioner Chua asked if Places of Assembly will be challenged in industrial zoned areas. City Attorney, Ms. Lee stated it will be changing to not be permitted in the zones, is appropriate to regulate for future land use and would not affect any existing churches with legal non-conforming uses.

Planning Director Thomas answered Ms. Chua's question earlier: 421 parcels designated as either industrial, park or manufacturer, that totals 1,349 acres, or 18.5% of total acres in the City. Mr. Andrade shared he found the his data source as well: 701 acres for commercial [9.1% of overall acreage], 1,355 acres for industrial [19% of overall acreage], 14 acres for office [.2% of overall acreage], the City has 270 acres overall. Ms. Chua asked if there are State guidelines of the total land use for industrial. Mr. Thomas said he is not aware if the State prescribes such a guideline.

Vice Chair Morris would like to hear from the Fire Department in regards to the change [allowing non-conforming uses in the industrial zones] and it being reverted to being reverted back. Deputy Fire Chief, Albert Zamora shared a presentation on the FD's procedure/evaluations of uses in the industrial areas on assembly use.

Commissioner Ablaza referencing Mr. Zamora's presentation, said he understands the concern about assembly in industrial/commercial area and recommends a zone strictly for assembly so there will be no harm or concern of chemicals.

Chair Mandal asked if this zoning text amendment is approved by Council, how long does new applicants have to apply for assembly use in industrial areas. Ms. Thomas said that it takes 30 days before it becomes effective after the second reading. Mr. Mandal asked what tools do we have in place to protect our people who currently assemble in the industrial zones. Mr. Zamora said there are risk assessments, chemical detection system, and annual inspections, administrative controls internally for the current places of assembly.

Commissioner Tao asked staff for an existing approved or to be approved assembly uses, what is extent (in dollar amount) of renovations can an applicant do to a non-conforming structure in the M2 zoning district before they are advised not to move forward. Mr. Tao then asked Mr. Thomas questions about grandfathered use (non-conforming) buildings, permits and deterioration rates of older buildings. Ms. Thompson shared that a non conforming structure that is damaged 75% of its true value; no context dollar amount is noted; tenant can repair and maintain. 51:07

Commissioner Chua addressed public that they should not be concerned about the current non industrial facilities in industrial areas, that the City does make sure the residents are safe. **Hazardous materials in industrial areas are highly regulated and the area is safe.*

Commissioner Alcorn asked who flips the bill when a place of assembly needs to make changes because of neighboring business in the industrial areas. Mr. Zamora said that is not regulated by the Fire Code, it is an item that needs to be figured out by

the land use. Mr. Thomas doesn't know if that's clarified but thinks that the non-industrial party that chose to have a place of assembly in the industrial area.

Chair Mandal invited members of the audience to address the commission.

Bob Livengood, representing Charity Bingo, received CUP a legal non-conforming use in a industrial area. Mr. Livengood said they have early detection devices for harmful chemical and asked for an accommodation to have a minor expansion for their use because of the investment they are making.

Motion to close the public hearing.

Motion/Second: Commissioner Morris/Alcorn

AYES: 6

NOES: 0

Commissioner Alcorn asked if a nonconforming tenant wanted to make a footprint adjustment could there be rigorous approval process since they are nonconforming. Mr. Thomas currently our zoning ordinance does not provide for that.

Commissioner Tao disclosed that he represents the landlord of the Charity Bingo. Mr. Tao shared with public that legal nonconforming uses have a lot of requirements to look into such parking requirements and tests for the use, other than an applicant just wanting to expand.

Commissioner Chua said she understands Mr. Alcorn's concern; however, the City initiated zoning ordinance amendment is to preserve the industrial area. She said the that main reason for that is that we need a certain percentage of the City's land use for industrial function to the support the City's needs.

Project Planner Rozalynne Thompson and Fire Prevention Chief, Albert Zamora showed a presentation and discussed the project about adding specific regulation for mobile fueling services within the City of Milpitas.

Vice Chair Morris asked how would the City enforce the mobile fueling. Mr. Zamora said that when operational permits are issued, FD will do mobile inspections unannounced.

Commissioner Alcorn asked if the City is working on past violations. Mr. Zamora shared that concerned citizens reach out to PD and that triggers FD to make sure compliance is met. Mr. Zamora also shared that other than Booster Fuels who have a permit with the City, there are other mobile fueling companies doing unpermitted business. Mr. Alcorn said he like having the mobile fueling business available to residents, however, doesn't like that other mobile fueling companies are doing business without a permit.

Commissioner Chua asked if we can limit the number of mobile trucks serving the city because it is a concern. Mr. Zamora said that we can add a number fleet vehicles per vendor to ordinance. Ms. Chua asked who sets the fine amount. Mr. Zamora said the Council decides on that and it would depend on the level of the violation.

Commissioner Tao asked what is the insurance requirement for this type of business. Mr. Zamora said that businesses carry errors and emissions insurance. Mr. Tao asked if mobile fueling have a bond. Mr. Zamora said all companies do for liability. Ms. Zamora also shared that is why the CUP process is necessary; to be able to track businesses, insurance requirements, etc. Mr. Tao asked Mr. Thomas if the City put an insurance amount on this type of business. Mr. Thomas said we do not have enough data to do so at this time. Mr. Tao said he would like to add a recommendation to included language to include insurance that is high. Zamora, Sunnyvale issues permits.

Chair Mandal asked if we are in touch with other cities to see what they are doing. Mr. Zamora shared that he attends monthly Fire Marshal meetings where thereis constant dialogue on what other cities are doing in their jurisdictions. Mr. Mandal observed that Great Mall has very tight/narrow parking aisle and cannot foresee these fleet trucks doing business there.

Chief Policy Officer from Booster Fuels showed a presentation, gave history on business and discussed the benefits of mobile fueling services.

Commissioner Tao revisits insurance question, asking how many vehicles in their fleet covers the \$10 million liability. Booster rep said it is not per fleet, it is per incident bases. Mr. Tao if mobile vehicle have the capacity of vapor recapture like gas stations do. Booster said they are meeting the vapor recapture requirements. Mr. Tao asked what kind of mileage do booster trucks get. Booster said he will get back to us and they are doing studies right now to determine they are offsetting vehicle miles travelled by their own trucks vs vehicle miles on consumer end.

Commissioner Chua asked how many times do the vehicles come to Milpitas. Booster, one to two trucks.

Chair Mandal clarified what areas in the bay area do they cover. Booster said from South SF, through the East Bay to the Silicon Valley.

Chair Mandal invited members of the audience to address the commission.

Motion to close the public hearing.

Motion/Second: Commissioner Morris/Tao

AYES: 6

NOES: 0

Motion *consider the exemptions in accordance with CEQA; and adopt Resolution No. 19-021 recommending that the City Council adopt a City-initiated zoning ordinance text amendment (ZA19-0005) to restrict non-industrial uses in the Heavy Industrial (M2) Zoning District and to add specific regulations for mobile fueling services within the City of Milpitas. With addition recommendation to limit the number of vehicles and limiting the growth annually to no more than 20% per year with a two-year frame.*

Vice Chair Morris would like a stipulation to limit vehicles.

Motion/Second: Commissioner Morris/Chair Mandal

AYES: 6

NOES: 0

Commissioner Chua would like to add condition to limit the number of mobile fuel vehicles in the City and do a incremental increase over time.

Vice Chair Morris would liket to add limitation of fuel vehicles with annual review.

IX-2 MULTI-FAMILY RESIDENTIAL – 2001 TAROB COURT – P-SD18-0014, P-UP19-0009, P-TM18-0004, P-EA19-0002: Site Development Permit, Conditional Use Permit, Tentative Map, and Environmental Assessment to allow development of a forty-unit residential condominium building (True Life Condos), up to 49 feet in height (four stories), with parking for up to 74 vehicles, on a 1.22-gross acre site located in the Multi-family High Density Residential (R3) Zoning District. This project is located at 2001 Tarob Court within the Transit Area Specific Plan area. The project is consistent with the scope of activities approved under the Transit Area Specific Plan Environmental Impact Report (SCH#2006032091) and exempt from further environmental review pursuant to CEQA Guidelines Sections 15168, 15182, and 15183. Project Planner: Lillian Hua, (408) 586-3073, lhua@ci.milpitas.ca.gov.

Project Planner Lillian Hua showed a presentation and discussed the project.

Commissioner Tao asked if there would be recycling on site. Ms. Hua said recycling details are not in plan document as at this point we are at the entitlement stage. Mr. Tao asked where is the C3 area located on the site. Ms. Hua said partly inside the courtyard and along west side of property. Were the findings consistment with the General Plan Amendment. Ms. Hua said it is in conformance with the TASP EIR. Mr. Tao asked about TASP fees. Mr. Thomas explained the TASP fee will rise 24% and on an annual basis the City will evaluate the costs and fees. Mr. Tao asked on Tarob and Lundy will there be a signal light or stop sign. Mr. Thomas said stop sign but will be evaluated looking at intersections in the area. Mr. Tao asked if this will this be the last project in this court. Mr. Thomas said there is construction now, formerly that of True Life sold to Toll brothers. Mr. Thomas gave history and shared projects in process.

Leah Beniston, VP of Entitlements True Life companies showed a presentation, shared history and discussed the project.

Chair Mandal said that trash separator is huge as we try to protect our envrionmetn and then asked if recycled water will be used. Ms. Beniston said recycled water will be used in landscaping.

Vice Chair Morris clarified that the Applicant prefers to pay fee over providing units for affordable house. Ms. Beniston said they will pay fees instead of allocating units for affordable housing; as it cost of contruction is more and the return is less when building apartments.

Commissioner Tao asked about trash separator being enclosed and the HOA being responsible for have bins made accessible for pick up. Ms. Beniston said essential that will be the program. Mr. Tao asked Ms. Beniston to identify the C3 landscape on site plans and recommended that her team work with the City on the aesthetics. Ms. Beniston and Mr. Tao discussed cost of contruction, the ordinance and the increase of fees from 2017 to 2019. Mr. Tao asked if applicant would consider bumping the in lieu fee by a small margin so it can showcase a higher benefit to the City. Ms. Beniston stated that

True Life has always been open to a conversation, but cannot make any promises before you.

Commissioner Chua asked if it is relevant to discuss fees; is this an appropriate conversation for the Planning Commission. Mr. Thomas said it would be appropriate to make recommendation to the Council and clarified the fees should be discussed with the Council. Mr. Thomas also shared that it would be beneficial to our community to have affordable units in this developing Transit Area. Ms. Chua thanked True Life for their design. Ms. Chua asked if the State requires us to develop/build a certain amount of units for moderate income. Mr. Thomas shared that the City meets or exceeds State's RHENA (Regional Housing Element Needs Allocation) but the City is very low in low and very-low income housing.

Commissioner Ablaza asked if the other projects in the area are still under construction. Ms. Beniston said she developed the projects and sold to Toll Brothers, and again they will develop and sell this project. Mr. Ablaza asked are there BMRs required for Toll Brothers. Ms. Hua said no because they were entitled under the old ordinance.

Chair Mandal said he likes the design.

Mr. Tao asked if internet and cable will be available through a central system. Ms. Beniston said she cannot answer that question.

Chair Mandal invited members of the audience to address the commission.

Motion to close the public hearing.

Motion/Second: Commissioner Morris/Commissioner Chua

AYES: 6

NOES: 0

Vice Chair Morris would like to add a stipulation for Council to consider to accepting in lieu fees.

Commissioner Chua stated there is a demand for more affordable housing units, however would like to motion as is and have Council make the decision to waive affordable housing.

Commissioner Tao shared that he feels for both applicant and the City and hope we find a resolution to move forward.

Motion to consider the Addendum to the Transit Area Specific Plan Environmental Impact Report (TASP-EIR) (SCH #2006032091) and various CEQA exemptions, as applicable, and adopt Resolution 19-022, recommending approval of the above applications to the Milpitas City Council, subject to the Conditions of Approval. With a recommendation that Staff has further conversation with consideration to accept fees in effort to keep.

Motion/Second: Commissioner Morris/Commissioner Mandal

AYES: 6

NOES: 0

ABSTAIN:0

0

- X-3 BEER GARDEN AT THE DISTRICT – LOT 1 – P-UA19-0007:** Conditional Use Permit Amendment to allow development a beer dispensary within a 66-square foot amenity space on the rooftop deck of an existing mixed-use building (“The District – Lot 1”). This project is exempt from environmental review under the California Environmental Quality Act in accordance with CEQA Guidelines Section 15301 (Existing Facilities). Project Planner: Michael Fossati, (408) 586-3274, mfossati@ci.milpitas.ca.gov

Motion to continue the item to a date certain, being 8/28/19.

Motion/Second: Commissioner Morris/Commission Alcorn

AYES: 6

NOES: 0

ABSTAIN: 0

XI. NEW BUSINESS

NO ITEMS

XI. ADJOURNMENT

The meeting was adjourned at 11:00 pm.

Motion to adjourn to the next meeting.

Motion/Second: Commissioner Alcorn/Vice Chair Morris

AYES: 6

NOES: 0

*Meeting Minutes submitted by
Planning Commission Secretary Elizabeth Medina*