



MEETING MINUTES

MILPITAS PLANNING COMMISSION

June 26, 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. CITY CLERK, Mary Lavelle swears in newly appointed Planning Commissioner, Ricky Ablaza**
- III. ROLL CALL** **Present:** Chair Mandal, Commissioner Morris, Alcorn, Chuan, Chua, Tao, Ablaza
- Absent:** --
- Staff:** Ned Thomas, Jessica Garner, Heather Lee, Rozalynne Thompson, Michael Fossati, Steve Chan, Alex Andrade, Daniel Degu, Albert Zamora, Elizabeth Medina
- IV. PLEDGE OF ALLEGIANCE** **Commissioner Morris** led the Pledge of Allegiance.
- V. 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 related to Item IX.-4.
- VI. APPROVAL OF AGENDA** **Chair Mandal** asked if staff or Commissioners had changes to the agenda and there were none.
- Motion** to approve the June 26, 2019 agenda as submitted.
- Motion/Second: Commissioner Chuan/Commissioner Morris
- AYES: 7
- NOES: 0
- ABSTAIN: 0
- VII. ANNOUNCEMENTS** **Chair Mandal** welcomed newly appointed commissioner, Ricky Ablaza, and appreciated all commissioners for their services to the City.
- Planning Director Ned Thomas** provided departmental updates to the commission regarding:
- Thanked former/current commissioners and staff members for attending this evening's PC reception.

- The CC approved changes to the PC Bylaws.
- Election for Chair and Vice Chair on July 31.
- PC training will begin now that all members are current.
- Economic Development Director is present and will be presenting this evening.

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

Chair Mandal called for approval of the June 12, 2019 meeting minutes of the Planning Commission.

Motion to approve Planning Commission meeting minutes as amended.

Motion/Second: Commissioner Chua/Commissioner Tao

AYES: 6

NOES: 0

ABSTAIN: 1 (Ablaza)

X. PUBLIC HEARING

IX-1 P-PP19-0001: Pre-application review to provide initial feedback on the proposed demolition of an existing 507,360-square foot industrial building to facilitate the development of a new 507,360-square foot distribution center with ancillary offices, with associated site improvements and landscaping, on at 29.86-acre parcel located in the Heavy Industrial (M-2) Zoning District at 1001 Gibraltar Drive. CEQA: Exempt pursuant to CEQA Guidelines Section 15262 (Feasibility or Planning Studies). Project Planner: Rozalynne Thompson, (408) 586-3278, rthompson@ci.milpitas.ca.gov

Project Planner Rozalynne Thompson showed a presentation and discussed the project.

Commissioner Ablaza asked if the trees will be taken down. Ms. Thompson deferred that question to the applicant.

Commissioner Tao asked, if approved, when would applicant anticipate to start construction. Ms. Thompson deferred that question to the applicant.

Applicant Temor Tessemer from Overton Moore Properties gave history about the site and discussed the project. Mr. Tessemer stated he would like to start project as soon as application is approved. Knowing that they will have to replace trees and that their site may not have the room for the replacement trees, Mr. Tessemer stated that they offered to work with Staff on placing trees elsewhere in the City. Mr. Tessemer is really pleased with this pre-application process and is looking forward to hearing feedback from the Planning Commission.

Commissioner Alcorn asked how tall would the green screen be. Mr. Tessemer said

approximately eight feet above the burn. Mr. Alcorn inquired about exterior lighting plans. Mr. Tessemer said they would maintain the City's light standard and would like to add uplighting on the exterior.

Commissioner Morris shared that she loves the concept and that the project is excellent. Mr. Tessemer said there will be lots of space for amenities for the tenant.

Commissioner Chua thanks applicant for having interest in Milpitas. She shared that she likes design of building and all the amenities that will be on site.

Commissioner Chuan, noting from presentation that uses will be for contract manufacturing or e-commerce, asked applicant if there were any particular tenants in mind for this project site. Mr. Tessemer said they have not started marketing the project, plans are to brand the site before putting it on the market, transit connectivity will be big marketing element. Mr. Tessemer also shared that this project site will will bring jobs to the city. Mr. Chuan asked if the additional amenities were available to public. Mr. Tessemer said it will be for tenant and their employees.

Commissioner Tao discussed some of the building's plan characteristics and parking depending on the building's use. Mr. Tessemer explained that he work very closely with Staff for input about design, will be able to accommodate parking based on use, and is grateful for and open to the Commission's comments and feedback. Mr. Tao inquired with Staff about super parking regulations. Mr. Thomas shared that it would depend on the the building's use and that there is sufficient space on the property for regular vehicles vs. truck parking; staff would be able to adapt the site plan to use chosen and regulate parking for once use is indicated.

Commissioner Ablaza asked if Applicant is planning to take down declining/fair-poor rated trees. Mr. Tessemer said they will need to remove the trees because there will be demolition, will replace trees where they can on the site and offered to the City to plant trees elsewhere in the City. Mr. Ablaza asked if this site will be a distribution warehouse. Mr. Tessemer stated they are unaware who the tenants will be, are designing the building to meet the needs of the market and have hopes to generate jobs from this site. Mr. Ablaza stated that because there are bays on the plan will they expect lots of trucks to be coming in. Mr. Tessemer said if it is used as a distribution center like many neighboring properties. Mr. Ablaza mentioned that Gibraltar Court is not in good shape and asked if used as a distribution center, does the applicant have an agreement with the City to maintain the roads. Ms Tessemer stated they have not discussed the maintenance of the roads.

Commissioner Chua encouraged tenants to have cafeteria to reduce traffic and wanted to know the target opening date. Mr. Tessemer thought that was a great idea and hopes to come back to PC end of year, and start construction April 2020.

Chair Mandal asked what kinds of alternate power/circulating water systems will be implemented. Mr. Tessemer plans to reinforce roofs of buildings to be ready for solar, there will be LED lighting, and be prewired for EV chargers. Mr. Mandal asked how many trees will be removed. Mr. Tessemer stated he would get back to the commission on that, they know they are losing trees from this site but would like to plant trees in other areas around the City, if not on property. Mr. Mandal asked what other companies do they have as tenants. Mr. Tessemer shared that Tesla subcontractors, showroom, corporate offices, and commissary. Mr. Mandal said that Milpitas is a prime area and is glad to see a design different from normal loading docks.

Planning Director Thomas addressed Chair's question about trees, referencing Attachment C of item IX-1, protected versus non-protected trees.

Rob Shannon with CBRE talked about the market and the building and his goal is here to bring in best tenant.

Commissioner Alcorn asked the Applicant will have a better idea what type of client they'll have before they come back to the Commission. Mr. Shannon said he can't guarantee that but will go to the market. Ms. Thompson stated that the Planning Director and Economic Development Director will work with Applicant on marketing.

Commissioner Morris stated that applicant is setting standard for new buildings.

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

Motion to close the public hearing.

Motion/Second: Commissioner Chua/Commissioner Alcorn

AYES: 7

NOES: 0

IX-2 P-SA19-0001 and P-UA18-0006: Site Development Permit Amendment and Conditional Use Permit Amendment to modify a previously approved project (The District – Lot 4) to increase the number of residential units from 173 to 213; increase the size of the ground- floor retail space from 13,941 square feet to 18,100 square feet; decrease the size of the rooftop recreation deck from 23,527 square feet to 10,360 square feet; increase the maximum building height from 83 feet to 86 feet; eliminate one level of underground parking; allow a credit for on-street parking; and remove private exterior open space (balconies) from 37 units. The project is located on a 2.68-acre lot within the Transit Area Specific Plan (TASP) area at 1410 McCandless Drive. CEQA: The proposed amendments are consistent with the Addendum to the Milpitas Transit Area Specific Plan Environmental Impact Report (TASP EIR) for "The District at Milpitas" project adopted November 17, 2015. The project is also exempt from further environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15182 (Projects consistent with a Specific Plan), and as a separate and independent basis, Section 15183 (Projects consistent with a Community Plan or Zoning). Project Planner: Michael Fossati, (408) 586-3274, mfossati@ci.milpitas.ca.gov

Project Planner Michael Fossati showed a presentation and discussed the project.

Commissioner Chuan asked what is Mr. Fossati's thoughts on the comments received from public. Mr. Fossati stated that all comments received from public are shared with the Commission, and understands that most concerns were based on the public hearing notice language of "removing underground parking" (in which, should have not been included in notice), and believed that most comments were received from the the residents of the townhomes. Mr. Chuan asked how does Staff feel about congestion near great mall. Mr. Fossati shared that the applicant is not fully able to operate or deal with parking issues and police do not regulate private developments; streets are operated by HOA. Mr. Chuan said he

noticed that affordable housing and public arts fees are exempt for this applicant, has applicant has made consideration to offer in lieu of being exempt. Mr. Fossati deferred the question to the applicant.

Commissioner Alcorn asked several clarifying question regarding project; this is a modified application, there was never underground parking, public comment regarding parking should be resolved once construction is done.

Commissioner Morris asked questions regarding the balconies for the units. Mr. Fossat explained the TASP balcony standards; studios will not have balcony space.

Mr. Fossati addressed Commissioner Chua's clarifying questions regarding the total units all together, the reason the Applicant wants to increase retail space, the intention to decrease roof top recreation space, the increase of height, on street parking credit, the removal of balcony from thirty four units, public benefits, and portion of land given to the school district.

Commissioner Tao asked what will be in place of proposed space the rooftop. Mr. Fossati said pool amenities. Mr. Tao asked about the retail spaces depths. Mr. Fossati stated it would be for functional aspect and more marketable. Mr. Tao asked if the other site tenant is secured. Mr. Fossati said that the applicant will be incharge of the leasing. Mr. Tao said he does not truly believe parking ratio, it is too light for this area, and will be a challenge once development is complete. Mr. Fossati clarifies Mr. Tao's inquires about balconies, private open space versus public office space, being in compliance with City code. Mr. Thomas wanted to share that there is additional open space/amenity space/trails at the base of the building.

Chair Mandal asked for clarification of the guidelines around density of occupancy for HOAs. Mr. Fossati stated that having a CC&R is a requirement in order to do the subdivision. Mr. Thomas interjected stating that question would be more appropriately answered by Applicant. Mr. Mandal asked if there is a coordination between developers/lots on which vendors will occupy the retail space. Mr. Fossati shared that the City does not have requirement in regards to retailers, but the Applicant can speak to that subject.

Aaron Barger from Lyon Living, owner of the Milpitas District project. Mr. Barger discussed the project and its history in more detail. He clarified the underground parking clarification and stated that Lyon Living controls all four of parcels. Lyon Living will control retail tenants and has marketing working to fill retail spaces. Mr. Barger spoke about original entitlement and unit count for all four blocks. Lyon Living have plans to provide VTA passes to employees, ride share, designated safe space for those waiting for Uber/Lyft, retail parking area, retail carpool. In regards to pedestrian safety, Mr. Barger feels beacons should not be in conditions of approval.

Commisisoner Chuan revisits affordable housing and public arts any consideration to contribute to these funds. Mr. Barger said not at this point as it is not a part of their financial and marketing plan.

Commissioner Tao asked that Staff work with applicant on a program safety. Mr. Barger agreed and stated that Lyon Living's goal is to make the area a pedestrian friendly, transit oriented, mixed used with successful retail development for all four buildings; and, in regards to a traffic calming device being installed, Mr.

Barger asked that it be held off until they build Lot 3, last phase of the project. Mr. Tao inquired from the Staff about a logistics stand point. Mr. Thomas noted that was an appropriate condition to attach, noting he'd check with Traff Engineer, Steve Chan – for the condition to read: Staff will work with Applicant to develop a traffic calming program. Mr. Chan, Traffic Manager, stated although the Applicant is speaking of the timing, he proposes implementation of traffic calming device during contruction while residents are moving in. Mr. Barger also addressed Mr. Tao's inquires about rooftop deck, clubhouse, poolhouse, parking, the theme for Lot 4.

Chair Mandal said that he wants pedestrian friendly area and highly suggests a traffic calming device for the area; not to compromise safety of residents. Mr. Barger agreed and shared they are already working on a plan for his area.

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

Michael Devontny, resident of Milpitas for over 40+ years, asked the Planning Comission to look at overall quality life of current residents and that this project will cause parking issues.

Motion to close the public hearing.

Motion/Second: Commissioner Morris/Commissioner Alcorn

AYES: 7

NOES: 0

Commissioner Chua addressed the concern of the resident from public hearing, shared that the Planning Commission does look at travel seriously and their choices are made based on compliances with the Plans (TASP, Mid Town and General Plan). Ms. Chua also shared that the City Council approved funds to have a traffic study in Milpitas to make sure traffic is addressed base on the concerns of the residents.

Commissioner Alcorn addressed the resident also, sharing that the new changes looks more efficient than the last time the Applicant presented to the Planning Commission also iterating that they are decreasing the amount of units.

Commissioner Tao asked Staff about color palette.

Motion to consider the Determination of Consistency with the Addendum to the Transit Area Specific Plan Environmental Impact Report (EIR) and the exemptions in accordance with CEQA; and adopt Resolution No. 19-013 approving Site Development Permit Amendment SA18-0006 and Conditional Use Permit Amendment UA18-0018 for The District – Lot 4, subject to the attached Conditions of Approval. *With additional recommendations from the Planning Commission, to promote a safe pedestrian experience, the developer will be required to work with the Planning and Traffic Engineering departments to develop a comprehensive traffic calming program to the satisfaction of the Traffic Manager and Planning Director prior of issuance of certificate of occupancy of District Lot 4.*

Motion/Second: Commissioner Tao/Commission Alcorn

AYES: 7

NOES: 0

ABSTAIN: 0

IX-3 P-ZA19-0002: City-initiated Zoning Ordinance Text Amendment to regulate short-term rentals within the City of Milpitas. This project is is statutorily exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15183 (Project Consistent with a Community Plan, General Plan, or Zoning) and categorically exempt pursuant to CEQA Guidelines Section 15061(b)(3) (Common Sense Exemption), 15301 (Existing Facilities), and 15308 (Actions by Regulatory Agencies for Protection of the Environment). Project Manager: Daniel Degu, (408) 586-3054, ddeg@ci.milpitas.ca.gov

Economic Development Director, Alex Andrade, Economic Development Coordinator, Daniel DeGo and Project Planner Rozalynne Thompson showed a presentation and discussed the project.

Commissioner Tao asked Planning Director if Short Term Rentals are allowed under the subdivision map act. Mr. Thomas said he was unsure if it was included in the subdivision map act. City Attorney, Heather Lee stated that the map act is not the mechanism that is implied. Mr Tao asked if this is strictly a zoning issue. Ms. Lee agreed. Mr. Tao asked for an estimate of how much hotel tax has been evaded. Mr. Degu said he is unclear how much that number would be but the City is working with AirBnB on a voluntary tax collection agreement estimating to amount \$265,000.

Chair Mandal shared that he knows that neighboring cities are collecting TOT tax and this business type is growing. Mr. Mandal said he agrees with the ordinance that is being presented this evening; we are losing revenue and the residents of Milpitas quality of life is being affected.

Mic Rosario, AirBNB, shared information about their company, policies they have in place and their plans of working with the City of Milpitas.

Commissioner Alcorn asked Mr. Rosario if he was aware of new measures to prevent discrimination of AirBNB customers. Mr. Rosario said if a AirBNB member is discriminatory, they are pulled from the platform; Mr. Rosario will follow up and give Mr. Alcorn this more information regarding this at later date.

Commissioner Chua asked Staff who would we require as a local contact person for this program. Mr. Degu said that the local contact person would be someone located in Milpitas. Ms. Chua asked who would be paying the salary for this person. Mr. Degu said this individual would be someone local who could respond to the complaint, if the operator is not available. Ms. Chua asked who would employ this person. Mr. Degu said it could be a volunteer or a family member on behalf of the property owner.

Commissioner Chuan thanked Mr. Degu and Mr. Rosario on a very thorough presentation.

Commissioner Tao asked how would the cost recovery be handle should there be an issue and local law enforcement (PD/FD) needs to be called to property. Mr. Degu said they are exploring a third party vendor to assist with compliance; and the fees that would associated with the third party vendor would be cost recovery positive. Mr. Tao asked if there are companies that currently provide these services for STRs. Mr. Degu agreed, saying that these companies would be the first line of response, then assess the

situation by web-based responses or phone calls to determine next steps (i.e. contacting PD); and, after having discussions, PD is in support of this service.

Commissioner Chua asked Mr. Rosario if he had any statistical analysis on crime related to STRs. Mr. Rosario did not have the statistical information, but shared that any crime that is committed on their platform/listing is not tolerated, and looks to local law enforcement to help with the issue.

Chair Mandal asked if STRs are supposed to be ADA compliant. Ms. Thompson stated that is a building code issue; but, in this ordinance the property has to comply with all fire, building, safety codes (referencing section D17 of the draft ordinance).

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

Andrew Finnes, 15 year resident, shared his terrible experiences of living next to an AirBNB and completely opposes of STRs in the City.

Resident, Puja shared that STRs (ADUs) are an option for her to earn supplement income and supports this ordinance.

Motion to close the public hearing.

Motion/Second: Commissioner Chua /Alcorn

AYES: 7

NOES: 0

Chair Mandal asked how can noise be enforced. Mr. Degu said that would be a Code Enforcement issue. Ms. Thompson shared that if it is a violation of the City's noise ordinance, police is called or the 3rd party STR compliance vendor can be contacted.

Planning Direct Thomas shared that currently the City has no regulations related to STRs and by adopting a zoning ordinance, it would be our first step to control.

Commissioner Tao said that the City's Code Enforcement only operates from 8am-5pm, and shared that he does not support this City-initiated Zoning Ordinance Text Amendment.

Commissioner Morris shared that she has many concerns after hearing Mr. Finnes speak about his experiences. Ms. Morris confirmed with Staff that the ordinance presented will help with accountability. Mr. Degu shared that this ordinance is to allow and regulate operating STRs, starting with a pilot program that can be evaluated. Ms. Thompson and Mr. Thomas touched on accountability stating that the property must be registered, a business permit and special use permit must be applied for; if lots of complaints are received, permits will be revoked. Ms. Morris asked how long has airBNB been operating in Milpitas. Mr. Degu said he did not have that information; but does know that there are 341 STRs that are being operated in the City as of November 2018.

Commissioner Chuan clarified that this ordinance will remedy the issue the problem of Mr. Finnes. Mr. Degu stated that is correct.

Commissioner Chua recommended to limit number of days allowed per year during the pilot program. Mr. Mandal agreed that we need regulation for STRs.

Commissioner Tao stated he would like the option to ban STRs in the City of Milpitas.

Commissioner Alcorn shared clarification information in regards to the processes of recommendation to the Council.

Commissioner shared that there is a need for STRs in the City, as it is a form of supplemental income for residents.

Commissioner Ablaza asked Mr. Rosario if there is a 3-strike rule. Mr. Rosario shared he is not certain if there is a 3-strike rule but knows that AirBNB has a dedicated team to monitor complaints. Mr. Ablaza strongly feels that if there is a 3-strike rule in place, it will help the residents immensely.

Mr. Degu shared that within this ordinance, it will be required record keeping for at least three years, which will help give the City information in regards to platforms used, length of stays, and other helpful resources to help monitor STRs.

Mr. Thomas states that he will inform the commissioners when this item will be brought to Council so they can voice their opinions on STRs.

Motion to adopt 19-020 recommending that the City Council adopt Zoning Text Amendment P-ZA19-0002, set forth as Exhibit B to the staff report. *With additional recommendations from the Planning Commission that (between now and the August 20th Council meeting) staff will conduct additional public outreach and facilitate conversations between Airbnb (and other platforms) and neighbors who are reporting negative impacts from short-term guests who are being inconsiderate and causing problems for Milpitas residents; changing the maximum unhosted amount of days to 60 days; and, to have a review of the pilot program after one year to review complaints, how many licenses were revoked because of non-compliance.*

Motion/Second: Commissioner Morris/Alcorn

AYES: 6

NOES: 1 (Tao)

ABSTAIN: 0

IX-4 P-ZA19-0005: City-initiated zoning ordinance text amendment to restrict nonindustrial land uses in the Heavy Industrial (M2) zoning district; to allow temporary public safety uses within the Heavy Industrial (M2) zone subject to a minor conditional use permit; and to add regulations for mobile fueling services in the City of Milpitas. The proposed amendments would prohibit assembly, entertainment, and other similar nonindustrial uses in the M2 zone, and add a provision to conditionally allow public safety facilities, such as fire stations and police stations, on a temporary basis (up to two years) 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, and Deputy Fire Chief showed a presentation and discussed the project.

Commissioner Tao asked about conforming/non-conforming uses being grandfathered in. Ms. Thompson shared information about conforming uses and permitted non-conforming uses. Mr. Tao questioned the change of the building. Ms. Thompson clarified that the property would have to be redeveloped to accommodate a conforming use. Mr. Tao expresses concern for the CUP holders who use these facilities with a non-conforming use.

Commissioner Alcorn asked for examples of issues with mobile fueling. Mr. Zamora shared information/presentation with the commission about fire code violations, several observed issues with mobile fueling. Mr. Alcorn asked if the zoning amendment language will help with the issues presented. Mr. Zamora said to prevent exposure residential homes and to regulate and keep public safe, and makes sense to restrict to industrial areas. Mr. Alcorn said that although mobile fueling is convenient, he agrees that limiting where mobile fueling can take place is a great way to start the regulating with possibility of expanding areas later on.

Commissioner Chuan wanted know how Staff felt about the two public comments that were received in regards to mobile fueling. Mr. Zamora said one of the letters is from Boost mobile and he stand firm that the City is not objecting mobile fueling completely, that we need to regulate mobile fueling and keeping the public safe.

Commissioner Chua asked about issue permit process and if there is a way to limit how many permits are issued for mobile fueling. Mr. Zamora shared how the permitting process has taken place, and shared how it will be dealt with in the future. Ms. Chua agreed that we should limit to industrial zones.

Commissioner Tao asked how likely are we to succeed to restrict the mobile fueling business to the industrial zones. Mr. Zamora said once restricted, we be able to monitor certain areas.

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

Irene from Booster Fuel, suggested to delay on making a decision so the commissioners can get a business perspective of mobile fueling for the community.

Motion to move first item, to allow temporary public safety uses within the Heavy Industrial (M2) zone subject to a minor conditional use permit (fire station), to Council as proposed. And, the other two items to be continued to next meeting, date being 7/31/19.

Motion/Second: Commissioner Chua/Alcorn

AYES: 7

NOES: 0

Motion to adopt to 19-020 recommending that the City Council adopt Zoning Text Amendment P-ZA19-0002, set forth as Exhibit B to the staff report.

Motion/Second: Commissioner Chua/Chuan

AYES: 7

NOES: 0

ABSTAIN: 0

XI. NEW BUSINESS

NO ITEMS

XI. ADJOURNMENT

The meeting was adjourned at 12:15am.

Motion to adjourn to the next meeting.

Motion/Second: Commissioner Alcorn/Commissioner Morris

AYES: 7

NOES: 0

*Meeting Minutes submitted by
Planning Commission Secretary Elizabeth Medina*