

CITY OF CAMPBELL PLANNING COMMISSION

MINUTES

7:30 P.M.

TUESDAY

JULY 23, 2019
CITY HALL COUNCIL CHAMBERS

The Planning Commission meeting of July 23, 2019 was called to order at 7:30 p.m., in the Council Chambers, 70 North First Street, Campbell, California by Chair Rivlin and the following proceedings were had, to wit:

ROLL CALL

Commissioners Present: Chair: Andrew Rivlin
Vice Chair: Mike Krey
Commissioner: Adam Buchbinder
Commissioner: Terry Hines
Commissioner: Maggie Ostrowski
Commissioner: Michael L. Rich

Commissioners Absent: Commissioner: Stuart Ching

Staff Present: Community
Development Director: Paul Kermoyan
Senior Planner: Daniel Fama
Senior Planner: Cindy McCormick
Associate Planner: Stephen Rose
City Attorney: William Seligmann
Recording Secretary: Corinne Shinn

APPROVAL OF MINUTES

Motion: Upon motion by Commissioner Krey, seconded by Commissioner Ostrowski, the Planning Commission minutes of the meeting of July 9, 2019, were approved as submitted. (6-0-1; Commissioner Ching was absent)

COMMUNICATIONS

1. Desk Item for Agenda Item 5 – 1980 Hamilton Avenue.

AGENDA MODIFICATIONS OR POSTPONEMENTS

None

ORAL REQUESTS

None

PUBLIC HEARINGS

Chair Rivlin read Agenda Item No. 1 into the record as follows:

1. PLN2018-352 Continued Public Hearing (from the meeting of June 25, 2019) to consider the application of Donald Barnetson for a Planned Development Permit (PLN2018-352) to allow the construction of a second single-family dwelling measuring two-stories in height and 1,920 sq. ft. in area, not including a 236 sq. ft. attached garage, and removing and replacing an existing enclosed garage with a carport at **189 Sunnyside Avenue**. Staff is recommending that this project be deemed Categorically Exempt under CEQA. Tentative City Council Meeting Date: August 20, 2019. *Project Planner: Stephen Rose, Associate Planner*

Mr. Stephen Rose, Associate Planner, provided the staff report.

Chair Rivlin asked if there were questions for staff.

Commissioner Ostrowski asked for clarification that staff is recommending approval but with a reduced garage width.

Planner Stephen Rose replied correct.

Chair Rivlin opened the Public Hearing for Agenda Item No. 1.

Don Barnetson, Applicant:

- Said that he is present this evening with his daughter, Zoey.
- Advised that he is agreeable with the staff recommendations and hopes that the Planning Commission will support his application.

Chair Rivlin closed the Public Hearing for Agenda Item No. 1.

Commissioner Ostrowski:

- Stated that it appears this project now satisfies all requirements from the last meeting.
- Added that she is glad the project falls within the allowed FAR.

Commissioner Buchbinder said that he had no problems the last time around and this time.

Commissioner Rich said he loved the project and is fully in favor of it.

Commissioner Hines asked if the proposal was for a net-zero energy efficient home.

Planner Stephen Rose replied yes.

Commissioner Hines said he was fully in favor.

Commissioner Krey said there was a good discussion of this project at the last meeting and the applicant made changes accordingly.

Chair Rivlin said he is in support of this request.

Motion: **Upon motion of Commissioner Rich, seconded by Commissioner Krey, the Planning Commission adopted Resolution No. 4517 recommending that the City Council approve a Planned Development Permit (PLN2018-352) to allow the construction of a second single-family dwelling measuring two-stories in height and 1,920 sq. ft. in area, not including a 236 sq. ft. attached garage, and removing and replacing an existing enclosed garage with a carport at 189 Sunnyside Avenue, achieving a maximum .45 FAR, by the following roll call vote:**

AYES: **Buchbinder, Hines, Krey, Ostrowski, Rich and Rivlin**
NOES: **None**
ABSENT: **Ching**
ABSTAIN: **None**

Chair Rivlin advised that this item would be considered by the City Council for final action at its meeting of August 20, 2019.

Chair Rivlin read Agenda Item No. 2 into the record as follows:

2. PLN2019-105 Public Hearing to consider the application of David Santos for a
 PLN2019-118 Conditional Use Permit (PLN2019-105) to allow establishment of a
 technology and game center incorporating arcade, instruction,
 retail, and late-night activities (12:00 AM closing) and an associated
 Modification (PLN2019-118) to an existing Conditional Use Permit
 (PLN2018-166) to remove a condition of approval restricting the
 use of the building's second-story, on property located at **400 E.
 Campbell Avenue**. Staff is recommending that this project be

deemed Categorically Exempt under CEQA. Planning Commission action final unless appealed in writing to the City Clerk within 10 calendar days. *Project Planner: Daniel Fama, Senior Planner*

Mr. Daniel Fama, Senior Planner, provided the staff report.

Director Paul Kermoyan:

- Explained that when staff looks at a Conditional Use Permit it considers the operational hours provided by the applicants when evaluating the proposed use.
- Added that they operators could work between the hours of 6 a.m. and 11 p.m. without being in violation.

Chair Rivlin asked if there were questions for staff.

Commissioner Krey asked for elaboration on what the terms “retail” and “instruction” will include with this use.

Planner Daniel Fama said that the applicant is prepared to describe their business in further detail.

Commissioner Buchbinder asked staff what the use of the second story has been.

Planner Daniel replied that the second floor has never been occupied since the major renovation of this building, but it is approved for office use. This proposal for instruction/arcade/retail uses are broader uses than office.

Commissioner Hines asked if the second floor (upstairs) operator is the same or different from the first floor (downstairs) operator.

Planner Daniel Fama replied different.

Chair Rivlin asked if there is direct access from the first-floor business to the second-floor business.

Planner Daniel Fama reported that the building includes a small lobby area that allows individual access to each business.

Chair Rivlin questioned whether a customer from downstairs could end up on the second floor with alcohol purchased downstairs.

Planner Daniel Fama explained that would be a serious violation of the ABC (Alcohol Beverage Control) regulations. It is in LVLUP's best interest to prevent that from occurring.

Chair Rivlin opened the Public Hearing for Agenda Item No. 2.

David Santos, Dark Active Entertainment, Applicant:

- Explained that this business includes three pillar categories. One being tech, the second gaming; and the third is retail.
- Added that the tech includes PC work stations (23 of them) for work or gaming purposes as well as instructional classes, coding and game design.
- Assured that all loaded software will be properly licensed.
- Added that they will provide 3-D printing as well which is not typically found.
- Stated that the retail involves the selling of used games and collectables as well as new figures and collectables and other related items.
- Said that they also have virtual living rooms.

Chair Rivlin asked if customers can simply walk in.

David Santos replied yes and added that customers will pay an hourly rate.

Commissioner Hines asked if this use is like an internet café.

David Santos:

- Replied “kind of.”
- Added that they also have other services beyond that of an internet café.
- Explained that they had a San Jose location that included a full bar and restaurant.
- Assured that his staff would monitor to make sure that no alcohol from downstairs makes its way upstairs.

Commissioner Krey asked Mr. Santos if having a late closing is crucial to their business.

David Santos replied yes, the last hour is important.

Commissioner Krey asked Mr. Santos if he currently is operating another business like this one or just previously.

David Santos replied no.

Chair Rivlin asked if there should be a condition not to have tournaments.

Planner Daniel Fama said they could be allowed without a monetary prize component, which ventures into a gambling category of operation not allowed.

David Santos said he like the opportunity to have tournaments and considers them to be community type events. He said he could be flexible with prizing. It doesn't have to be monetary.

Commissioner Rich asked Mr. Santos if he has defined all software licenses.

David Santos replied mostly. They will start with what they think is viable and add others when identified as desirable.

Commissioner Hines asked if there would be refreshments available.

David Santos replied soft beverages and light snacks.

Chair Rivlin asked Mr. Santos if they would allow food to come in from outside vendors perhaps via food delivery services.

David Santos said he would so allow food to be delivered to customers at his location. He added that he also would like to do corporate events and wants to be considered a hub.

Chair Rivlin closed the Public Hearing for Agenda Item No. 2.

Commissioner Ostrowski:

- Stated that this is a great use for this second-floor space.
- Added that it will offer some diversity to the Downtown and represents a different business model than what is currently there.
- Concluded that she is excited about this opportunity.

Commissioner Hines:

- Agreed this is a fantastic concept for Downtown Campbell and will offer a place for technical ideas to be nurtured.
- Stressed the importance of ensuring that there is proper software licensing secured for all software being used with this business.

Commissioner Rich:

- Stated his agreement with Commissioner Ostrowski that this is a great use of space and will help to provide greater diversity for Downtown Campbell.
- Added this will add to what's in the Downtown.
- Said that he supports this use.

Commissioner Buchbinder:

- Agreed that this is a good use and provide another meeting and social space.
- Stated he is in favor.

Commissioner Krey agreed that this is a good use and a good fit for Downtown.

Chair Rivlin advised that all his questions have been answered.

Director Paul Kermoyan said staff questions how licensing for software use can be verified and asked for suggestions.

Commissioner Hines:

- Admitted that the issue of proper software licensing is a constant concern in the software business (in which he has worked).
- Added that he wasn't looking to have that as a condition of approval.

Director Paul Kermoyan asked who regulates compliance with software licensing.

City Attorney William Seligman advised that software licensing is protected by State and Federal law.

Director Paul Kermoyan advised that local government does not.

Commissioner Rich suggested perhaps having this business prove to the City that they have licenses for all software in use.

Commissioner Hines said that if software is being advertised as available for use at this business that software should be a properly licensed product.

Director Paul Kermoyan said that could become an onerous task to require proof of software licensing.

Motion: **Upon motion of Commissioner Ostrowski, seconded by Commissioner Hines, the Planning Commission adopted Resolution No. 4518 approving a Conditional Use Permit (PLN2019-105) to allow establishment of a technology and game center incorporating arcade, instruction, retail, and late-night activities (12:00 AM closing) and an associated Modification (PLN2019-118) to an existing Conditional Use Permit (PLN2018-166) to remove a condition of approval restricting the use of the building's second-story, on property located at 400 E. Campbell Avenue, by the following roll call vote:**

AYES: **Buchbinder, Hines, Krey, Ostrowski, Rich and Rivlin**
NOES: **None**
ABSENT: **Ching**
ABSTAIN: **None**

Chair Rivlin advised that this action is final unless appealed in writing to the City Clerk within 10 calendar days.

Chair Rivlin read Agenda Item No. 3 into the record as follows:

3. **PLN2019-81** Public Hearing to consider the application of Brad Clausen, on behalf of Kovac Family Trust, for a Conditional Use Permit (PLN2019-81) to operate a Motorcycle dealership with motorcycle sales, retail sales, repair services, parts on property located at **1021 Dell Avenue**. Staff is recommending that this project be deemed Categorical Exempt under CEQA. Planning Commission action final unless appealed in writing to the City Clerk within 10 calendar days. *Project Planner: Cindy McCormick, Senior Planner*

Ms. Cindy McCormick, Senior Planner, provided the staff report.

Chair Rivlin asked if there were questions for staff. There were none.

Chair Rivlin opened the Public Hearing for Agenda Item No. 3.

Brad Clausen, Applicant:

- Stated that he is looking forward to coming to Campbell after being in Sunnyvale for the last 40 years.
- Thanked the Commission for its consideration of a Use Permit to do so.

Commissioner Hines thanked Mr. Clausen for considering Campbell to relocate his business.

Commissioner Buchbinder verified with Mr. Clausen that there would be no painting or body work done at this location.

Brad Clausen:

- Assured that there would be no body repair on motorcycles at this location but rather work such as tune-ups and tires.

Chair Rivlin asked about the business name, Motorcycle Café, and whether there would be food service associated with this location.

Brad Clausen:

- Replied no,
- Added that they do make expresso for their customers.

Commissioner Hines asked if this business would attract large groups.

Brad Clausen replied no. He said mostly occurs with other brands of motorcycles. Their two or three European manufactured motorcycle brands will not generate large groups to this location.

Chair Rivlin closed the Public Hearing for Agenda Item No. 3.

Commissioner Krey provided the Site and Architectural Review Committee report as follows:

- SARC liked the project.
- Added that they looked at the parking as proposed and found that since most customers come to this business on a motorcycle rather than a car, the provision of additional parking for motorcycles was enough.
- Stated a second consideration was for management of deliveries both this business and the glass business that will remain on site in a smaller footprint. The glass business will have just one employee on site parking at the back of the site.

Commissioner Ostrowski:

- Pointed out that this applicant has already done some major clean up of the property and is making it nicer.

- Advised that this business owner provides incentives to their employees to come to work by motorcycle rather than auto.

Commissioner Hines said that this proposal is an excellent use of that space and an effective use of the site with both the glass and motorcycle businesses sharing the site.

Chair Rivlin asked whether the improvements being done to the site are requirements by the City or being done at the discretion of this business owner.

Planner Cindy McCormick said that there are minimal landscaping requirements; however, the Commission can make an exception given site constraints and the lack of landscaping on other nearby properties.

Commissioner Ostrowski added that this applicant is going above and beyond those minimal standards.

Motion: **Upon motion of Commissioner Krey, seconded by Commissioner Ostrowski, the Planning Commission adopted Resolution No. 4519 approving a Conditional Use Permit (PLN2019-81) to operate a Motorcycle dealership with motorcycle sales, retail sales, repair services, parts on property located at 1021 Dell Avenue, by the following roll call vote:**

AYES: **Buchbinder, Hines, Krey, Ostrowski, Rich and Rivlin**
NOES: **None**
ABSENT: **Ching**
ABSTAIN: **None**

Chair Rivlin advised that this action is final unless appealed in writing to the City Clerk within 10 calendar days.

Director Paul Kermoyan extended “kudos” to Economic Development Specialist Michael Thomas for his diligent work with Mr. Clausen in helping to locate an appropriate business location to bring his business to Campbell.

Chair Rivlin read Agenda Item No. 4 into the record as follows:

4. PLN2019-011 Public Hearing to consider a City-initiated Zoning Code Amendment (PLN2019-011) to amend Campbell Municipal Code (“CMC”) Chapter 21.36.205 (Sexually oriented businesses) to extend the amortization period for nonconforming sexually oriented business uses and CMC Chapter 21.72 (Definitions) to correctly reference the term sexually oriented businesses where adult or adult oriented business are referenced. Staff is recommending that this project be deemed Categorical Exempt under CEQA. Tentative City Council Meeting Date: August 20, 2019. *Project Planner: Stephen Rose, Associate Planner*

Mr. Stephen Rose, Associate Planner, provided the staff report.

Commissioner Rich disclosed that he had spoken with the husband of the owner of Pleasures of the Heart while working out at the gym the both attend. He added that he also spoke with the business owner.

Chair Rivlin sought verification that there is no applicant as this is a Zoning Code Amendment.

Planner Stephen Rose agreed saying this is a City-initiated application.

Chair Rivlin asked if there were questions for staff.

Commissioner Krey asked whether the sale of this business to another owner would allow the new owner to continue operation.

Planner Stephen Rose replied yes.

Director Paul Kermoyan added that the new owner would be obliged to operate using the conditions of approval in pace for the original business owners.

Commissioner Buchbinder pointed out that there was an amortization period in place for a certain period. That period is not up, and we are here to extend it.

Planner Stephen Rose reported that Pleasures of the Heart was in business at this location before the Sexually-Oriented Business (SOB) Ordinance was adopted. At the time of adoption, this business (Pleasures of the Heart) were given a two-year amortization period. Later, the City Council extended their amortization period by 10 years for a grand total of 12.

Commissioner Buchbinder asked whether the City wants to shut down this business or does it not want to do so.

Director Paul Kermoyan:

- Reminded that the Planning Commission recently forwarded its recommendation to Council on this update to the SOB Ordinance. However, the Council didn't support the recommendations provided by the Planning Commission and elected to send it back to the Planning Commission for further consideration.
- Reported that the Planning Commission's role at this point is to determine if Council's suggestion makes sense and/or to offer alternatives.
- Advised that a former Council felt that such uses were not so pleasant and rather viewed as not favorable.
- Added that we had one such use, Pleasures of the Heart, at the time the Ordinance was adopted. In 2013, a second business, Starr99 Video, came into the City of Campbell via annexation. That business is now closed.
- Pointed out that Pleasures of the Heart is more a lingerie shop but with some adult items at the back of the shop.

- Stated that the City Council wants the Planning Commission to reconsider its recommendations.
- Said that one question remains, “How often should this amortization period be extended?”
- Added, “If it is extended now, what happens at year 14 of 15?”
- Informed that the Council vote was 3-2 to allow Pleasures of the Heart to stay in place and extend the amortization another 15 years.

Commissioner Buchbinder:

- Pointed out that the alternative resolution would not allow new sexually-oriented business uses to establish but would allow this one such business to remain.

Planner Stephen Rose:

- Reminded that the Planning Commission’s prior recommendations pertained only to the portions of the text amendment within Title 21 (Zoning Ordinance) issues and not those issues contained in Title 5, which is within the purview of the Council.
- Advised that if this existing business were to be closed and discontinued, after a period another such business could not occupy that site.

Commissioner Rich clarified that this SOB Ordinance only impacts one business, Pleasures of the Heart. Again, the Star99 business on Bascom at Union is now closed.

Planner Stephen Rose confirmed that Pleasures of the Heart is the only business impacted by this Ordinance.

Commissioner Rich said that while Pleasures could sell their business to another operator to continue under the current conditions of approval no other such business could establish outside of M-1 (Light Industrial) zoned properties.

Planner Stephen Rose reminded that Pleasures is currently a mother-daughter owned business. A new owner-operator could take it over and run it.

Commissioner Rich asked if Pleasures could move to another location in Campbell.

Planner Stephen Rose replied yes. Pursuant to the SOB Ordinance they could relocate to the M-1 (Light Industrial) zoning district provided they find a location separated from schools and residences. There would be operational restrictions including lighting and security.

Chair Rivlin asked if the Pleasures location could be upgraded.

Planner Stephen Rose reminded that as it stands right now, the current amortization period ends next year (2020). It may not intensify or expand its floor plan and/or hours of operation.

Chair Rivlin asked if a new building could be constructed, while keeping the legal non-conforming status.

Planner Stephen Rose said he would defer that question to the City Attorney.

Commissioner Hines asked what the Planning Commission's determination was at the last meeting.

Planner Stephen Rose reiterated that it was limited changes and text edits and cross referencing to the Code (Title 21 but not Title 5). Some members of Council agreed with Commissioner Ching's concern about the prior ordinance's potential to have a sweeping effect City-wide.

Commissioner Krey asked if any property owners nearby the Pleasures location were informed of the potential closure if this Ordinance is updated.

Planner Stephen Rose replied yes, when the SOB Ordinance was initially established. He pointed out that the desk item distributed this evening was received in response to that noticing.

Commissioner Krey asked if any other property owners have concerns.

Planner Stephen Rose said he couldn't say.

Chair Rivlin opened the Public Hearing for Agenda Item No. 4.

Ali Milani, Property Owner, Rosemary Lane:

- Explained that he is the adjacent property owner and have been since 1988.
- Reported that in 2016, he was concerned about the "sex" shop located next to his building but was told it would be closing within two years or by 2018.
- Announced that he has recently completed construction of two new homes with excellent curb appeal next door.
- Said he learned the Ordinance was up for renewal and was assured that business would cease operation.
- Admitted that this current review was a surprise for him.
- Reported that his two houses are currently on the market. His main concern in being able to sell is the "sex" shop next to these new homes.
- Stated that they're a great business but should not be located next to residents.

Crystal Manganelli, Business Owner, Pleasures of the Heart:

- Reported that their business opened in 1997 and for their first 11 years they were considered a "conforming" business.
- Added that they were unaware of the City's pending adoption of an Ordinance that would jeopardize their business.
- Pointed out that they are now at year 22 in business. They are a mother-daughter business. It's a boutique being owner operated. It's a thriving business in Campbell. They contribute to community events and make donations to support causes. They are members of the Chamber of Commerce.
- Stated that they have had to deal with this uncertainty over the last 10 years and now again.

- Stated that running their business is how they pay their bills. It's their livelihood. It's their retirement.

Chair Rivlin closed the Public Hearing for Agenda Item No. 4.

Commissioner Buchbinder:

- Stated that whether this business will be permitted or not permitted leaves this business in limbo.
- Added that Mr. Milani decided to develop his adjacent property based on what he had been told.
- Reminded that this business has been in operation for more than two decades now.
- Said that if the business were a problem, the Council would have shut it down by now.
- Admitted that he is leaning toward supporting staff's proposal that would not establish another amortization period for 15 years.
- Stated that option is a better, cleaner and more certain solution.

Commissioner Rich:

- Agreed that Commissioner Buchbinder has made some great points there. This is a good business operator in place for years now.
- Admitted he originally was considering supporting another 15-year amortization period but after listening to Commissioner Buchbinder he is reconsidering.
- Reminded that if the business is sold it could continue.

Planner Stephen Rose said that was correct. However, any new operators would have to have additional licensure through the Police Department requiring a background check and other compliance requirements would occur.

Commissioner Rich asked if this business were to be sold by the current owners to a new owner, could that new owner move to another location that is not zoned M-1 (Light Industrial) in Campbell.

Planner Stephen Rose replied no. The business would be limited to this property specifically.

City Attorney William Seligmann clarified that the Sexually-Oriented Business Ordinance allows such businesses in M-1 Zoning Districts. Therefore, this business could relocate to an M-1 location.

Commissioner Rich said that consists of just one area.

Planner Stephen Rose said that M-1 Zoning includes properties on Cristich, McGlincy and Sunnyoaks.

Commissioner Buchbinder asked if there have been Code Enforcement of Police response issues related to this business (Pleasures of the Heart).

Planner Stephen Rose said he's just aware of one call for service and it was not substantiated.

Commissioner Hines asked what exactly constitutes a sexually-oriented business. This shop is not just lingerie. There are adult items at the back of the shop.

Planner Stephen Rose said that there are items representing specified anatomical areas. This business sells those, which defines it as sexually-oriented.

Commissioner Ostrowski:

- Said that this has been a great discussion.
- Reiterated that Pleasures is a 20-year business.
- Added that the conditions for their being able to operate were changed on them by a zoning modification they were unaware of being considered.
- Pointed out that there have been no problems, code enforcement or police calls for service.
- Stated that this is a viable business. There are similar businesses in reputable locations such as Palo Alto.
- Said that there doesn't seem to be any justification to continue imposing an amortization period for this business. They have created no negative effect or impact on the community.
- Concluded saying they are still profitable and generating sales tax revenue for the City.

Commissioner Krey said he agrees with Commissioner Ostrowski that this has been a good business of Campbell and that he too supports eliminating another amortization period. It is cleaner way to go.

Chair Rivlin:

- Admitted that he agrees with Commissioner Ostrowski's points.
- Stated he has trouble kicking this down the road again and putting this business at risk again in 15 years.
- Added that if the Council wanted to close this business they would have acted differently.

Motion: Upon motion of Commissioner Buchbinder, seconded by Commissioner Rich, the Planning Commission adopted Resolution No. 4520 recommending that the City Council adopt a Zoning Code Amendment (PLN2019-011) to amend Campbell Municipal Code ("CMC") Chapter 21.36.205 (Sexually oriented businesses) to extend the amortization period for nonconforming sexually oriented business uses and CMC Chapter 21.72 (Definitions) to correctly reference the term sexually oriented businesses where adult or adult oriented business are referenced, using the alternate draft resolution (Attachment 9) that removes eliminates the amortization period, by the following roll call vote:

AYES: Buchbinder, Hines, Krey, Ostrowski, Rich and Rivlin
NOES: None
ABSENT: Ching

ABSTAIN: None

Chair Rivlin advised that this item would be considered by the City Council for final action at its meeting of August 20, 2019.

NEW BUSINESS

Chair Rich asked for any disclosures.

Commissioner Rich disclosed that he communicated with Brian Link.

Commissioner Ostrowski said she too had a conversation with Brian Link.

Chair Rivlin read Agenda Item No. 5 into the record as follows:

5. PLN2018-118 One-year review of the operation of the commercial school and child day care center (d.b.a. Rossinca-Carden Day School) located at **1980 Hamilton Avenue**. *Project Planner: Stephen Rose, Associate Planner*

Mr. Stephen Rose, Associate Planner, provided the staff report.

Chair Rivlin asked if there were questions for staff.

Commissioner Rich said he was unaware that at least 80 percent of the outstanding work has now been complete. Was that done by the Church or the School?

Planner Stephen Rose:

- Explained that the removal of the portable classrooms was taken care of by the tenant (school).
- Advised that the representatives for the Church have been responsive working with staff.
- Stated that the 15 to 20 percent of items remaining are being worked on together with Public Works and the Church's contractors.

Commissioner Rich asked if the Use Permit is the Church's responsibility.

Planner Stephen Rose replied correct.

Commissioner Hines asked if they represent safety and/or ADA accessibility issues by not being completed.

Planner Stephen Rose:

- Stated that the classrooms are ADA compliant.
- Reported that the ramp at the light of Hamilton and Leigh Avenues is not yet ADA accessible.

- Added that there are two driveway aprons for exiting the school's parking and drop off area onto Leigh Avenue that must be upgraded to be properly ADA accessible.

Chair Rivlin asked what the options are.

Planner Stephen Rose said they include 1) schedule a revocation hearing; 2) a future tenant could apply to use this CUP and site; and 3) have staff return with a Modification to the existing Conditional Use Permit.

Commissioner Buchbinder asked staff if in their opinion the Church is acting in good faith.

Planner Stephen Rose:

- Advised that the Church was surprised to learn just this June that the school (Rossinca) was pulling out from this location.
- Admitted that it was the Church's responsibility, as the property owner, to stay on top of their tenants' obligations put in place to allow a Fall 2019 school year to commence.
- Said that there had been no designated property manager for the Church in dealing with the School use. They were trusting in their tenant to do what was necessary.

Chair Rivlin opened the Public Hearing for Agenda Item No. 5.

Brian Link, Representative for the First Congregational Church of San Jose:

- Thanked Planner Stephen Rose for his help in navigating this whole process.
- Stated that the First Congregational Church (FCC) has completed most requirements of the CUP for the school. The school did some and the church did others.
- Added that given these are required improvements, the FCC is committed to completed them.
- Said that all is done but landscaping. They are under contract and should be completed by the August 19, 2019, deadline.
- Stated that the driveways are more extensive then they realized.
- Reported that they just learned in early June that Rossinca was withdrawing for this location.
- Admitted to being surprised and disappointed given that tenant also owns a construction company that was to do the work.
- Said that upon learning of their loss of tenant they started to work with the City including with Public Works for the public right-of-way work required.
- Said that the cleanest thing for FCC to do is to complete the work required. They are under contract to complete that work.
- Stated that he is not 100 percent sure it can be completely done by August 19th.
- Reported that there is no tenant currently on site. The lease is terminated, and the eviction process started. Rossinca abandoned the property prior to eviction.
- Advised that the FCC has a committee that was meeting with the school representatives each month.
- Assured that this is not the way the FCC does business nor how they behave.
- Stated that they don't want a revocation of the CUP to occur. They need it to be able to secure a new school tenant for the Fall semester.

- Announced that FCC is in conversation with Mr. Robert Regan, owner/operator of Springbridge International School, who is considering this location. They have four campuses now and are considering consolidating a few into this location at 1980 Hamilton Avenue.
- Suggested editing language on the condition to read “fulfilled or in progress by August 19, 2019.”
- Offered assurances that the City of Campbell and its Planning Commission will not see more of the same.
- Reiterated the need to keep the CUP active to accommodate a normal start to a Fall semester and avoid a gap in the revenues important to the FCC’s operations.

Commissioner Hines disclosed that he is a prior UCC member in another State.

Commissioner Ostrowski said that to follow the CUP they would need to have completed the required improvements.

Planner Stephen Rose stated that they are technically in compliance with the Conditions of Approval up to now. It is their intention to be under construction. The question is, “Is that adequate?”

Commissioner Buchbinder asked if all required work can be completed by then.

Brian Link said that within two to four weeks it will be clearer. It may be a few weeks beyond August 19th.

Commissioner Krey asked when the school is anticipated to start this school year.

Brian Link said that be it Springbridge or another school, they believe they have a chance to line up a school for Fall.

Commissioner Krey said that while they are not in violation now by August 19th they will be if all work is not completed.

Brian Link said that as it stands now it would be complete by the time school starts.

Planner Stephen Rose advised that Rossinca starts on August 19th at their location at Campbell Community Center.

Commissioner Rich said it seems arbitrary. He added that he is trying to find a date that doesn’t disrupt students.

Charles Weidmann, FCC Representative & Campbell Resident:

- Advised that he is a member of the tenant management team for FCC.
- Said that work starts within a week. The rest is dependent on contractor returning from vacation in one to two weeks.
- Added that they are striving to meet the August 19th deadline.

Chair Rivlin clarified that the contractor won’t start until approximately August 7th.

Charles Weidmann said that the landscaping work starts prior to that date.

Robert Reagan, Springbridge International School:

- Advised that he and his wife own Springbridge International School and they are interested in this location for a Springbridge campus.
- Said that they are currently located at 1625 W. Campbell Avenue. They have more capacity than their space allows.
- Agreed that retaining the viability of the existing CUP is most helpful to establishing at this location for this school year.

Commissioner Rich asked Mr. Reagan how many students they would bring.

Robert Reagan said 116 students as of today.

Mark Dominar, Treasurer for FCC:

- Said that the cement contractor has one week of work to accomplish what is needed.
- Added that FCC has signed a contract and set aside the funds for this work.

Chair Rivlin closed the Public Hearing for Agenda Item No. 5.

Commissioner Rich:

- Said that this is at least the third time this school use has been before the Planning Commission, including the former operator of Carden Day School. She then asked the operators of Rossinca to help her deal with the improvements required.
- Stated that these hearings involved a significant amount of work.

Director Paul Kermoyan assured the Commission that August 19th was not an “arbitrary” date. School often starts in the third week of August.

Commissioner Rich said the assumption is that school would start in Fall 2019.

Director Paul Kermoyan said there cannot be occupancy unless all improvements are done as mandated by Condition 24.

Commissioner Rich:

- Admitted that he was pleasantly surprised to learn this evening that about 85 percent of the required improvements are already done.
- Reminded that FCC wants to complete the work to keep the CUP alive and has an interested school for their space.
- Added that he could be okay if work is not complete by August 19th if it is in progress.

Commissioner Buchbinder asked how disruptive continuing construction work might be if it is off-site and not on-site.

Planner Stephen Rose said that's a good question. He pointed out that the work includes ADA accessibility to the two driveways on Latimer Avenue. Additionally, the corner at Hamilton and Leigh is not accessible and is also required to be made so.

Director Paul Kermoyan:

- Said that construction could create issues with land use.
- Reminded that improvements associated with an approval are intended to serve that use.
- Added that there must be a "nexus" to allow for the requirement for off-site improvements.
- Stated the importance of assuring these improvements are in place prior to school opening.
- Reminded that assurances were given many times regarding this site.

Commissioner Ostrowski:

- Agreed that two prior tenants haven't fulfilled their commitments.
- Added that it is good that the FCC has taken these improvements over and commended them for moving the process forward.
- Said she'd like to figure out a way to allow a school to operate and operate safely on this site.
- Suggested extending the August 19th date by a bit.
- Stated that perhaps an alternate drop-off point can be located on site. There may be reasonable options.

Commissioner Hines:

- Said that the church can be commended for doing this.
- Admitted that he is reluctant to put a date on this but rather prefers the CUP continue to help the church line up a school for their site.
- Added that three ADA-compliant items remain to be installed per conditions.

Commissioner Krey said that the church is trying to get this done. He asked, "What if they miss the deadline?"

Director Paul Kermoyan asked what the incentive to complete the work might be if there is no specific deadline.

Chair Rivlin:

- Said that this project has become tiresome.
- Added that the Commission has heard promises before.
- Admitted that he doesn't want to revoke this CUP, but school should not start until all work is completed.
- Opined that it doesn't make much sense to hire a contractor who was leaving on vacation for two weeks.
- Pointed out that there are other contractors out there. This is not that big a concrete job.

Commissioner Ostrowski:

- Said she agrees with Chair Rivlin under ordinary circumstances.
- Added that the FCC just recently learned that the school was not going to occupy the site.
- Admitted that although the FCC has a school interested in the site that school could end up going elsewhere.
- Pointed out that before it was the school that was making the improvements. Now it is the church managing that task.

Commissioner Rich reminded that 80 percent of the required improvements are complete. That's significant.

Commissioner Buchbinder asked why we should be worried or concerned if work is started by August 19th.

Chair Rivlin said perhaps it would be more supportable if work is in progress by August 19th.

Commissioner Rich said he is okay with a new school opening at this location if the required accessibility construction work has been started.

Commissioner Hines suggested setting a completion date rather than a start date and keep the CUP in effect.

Commissioner Rich suggested the outstanding work commence by August 19th and be completed by October 1st. If they fail to finish, the school would be allowed to complete their semester and then the CUP would be revoked.

Chair Rivlin said that he wants a commitment that the work is done particularly since it's ADA accessibility.

Director Paul Kermoyan:

- Reminded the Commission that this discussion is under "New Business".
- Suggested that the Commission craft a motion directing staff to return with a resolution coordinating the timing to ensure that the improvements are complete in a timely fashion.
- Added that staff can meet with the FCC committee and get a better understanding about what is realistic.
- Concluded that with that discussion, staff can come back with a schedule that makes sense.

Motion: **Upon motion of Commissioner Ostrowski, seconded by Commissioner Rich, the Planning Commission directed staff to draft a resolution establishing the timing for Phase II work to include a specific start date and a reasonable completion date associated with the existing Conditional Use Permit that allows the operation of a private school on property located at 1980 Hamilton Avenue, by the following roll call vote:**

AYES: **Buchbinder, Hines, Krey, Ostrowski, Rich and Rivlin**

NOES: None
ABSENT: Ching
ABSTAIN: None

Director Paul Kermoyan advised that this item will be noticed for the appropriate future Planning Commission meeting.

Commissioner Rich:

- Stated that he wanted to take a minute to speak to his fellow Commissioners as his last meeting serving on this Planning Commission comes to an end.
- Thanked the City Council for allowing him to serve for four years on the Civic Improvement Commission and then for six years on the Planning Commission.
- Reported that both assignments were meaningful to him
- Recounted that then-Councilmember Evan Low encouraged him to participate in Leadership Campbell, which was also a great opportunity.
- Suggested that service on a board or commission offers a most rewarding way to give back to one's City. This (PC) is the big time.
- Added that his family has gone through a lot of changes during the last 10 years including welcoming their third child, a son.
- Assured that he would still be around and active in the community.

Chair Rivlin told Commissioner Rich that he learned a lot from him and that it has been a pleasure working with him.

Commissioner Hines said he hoped Commissioner Rich would continue in his leadership in other ways that may arise.

Commissioner Ostrowski said she enjoyed working with Commissioner Rich and thanked him for his years of service as well as his assistance in welcoming new appointees to the Commission.

Commissioner Buchbinder said he is just a few weeks into his term on the Planning Commission, but he attended meetings for a year and was able to observe Commissioner Rich's many contributions during that time.

REPORT OF THE COMMUNITY DEVELOPMENT DIRECTOR

Director Paul Kermoyan had nothing to add to his written report.

Commissioner Buchbinder:

- Said he wanted to make a request.
- Reported that he is aware that the City constructed two parking garages to serve the Campbell's Downtown.

- Stated his desire to receive statistical information on how heavily utilized those two public garages are via a written report.
- Said that information he is interested includes when each was constructed, how much each one cost; and how many spaces were provided per garage.

Director Paul Kermoyan:

- Clarified that those questions will be provided by email to the Public Works Director for response.
- Added that the public garages are City assets overseen by Public Works.
- Suggested that in future, the Commission should feel free to contact staff “off line” rather than during an agenda meeting.

ADJOURNMENT

The Planning Commission meeting adjourned at 10:03 p.m. to the next Regular Planning Commission Meeting of **August 13, 2019**.

SUBMITTED BY: _____
Corinne Shinn, Recording Secretary

APPROVED BY: _____
Andrew Rivlin, Chair

ATTEST: _____
Paul Kermoyan, Secretary