

APPROVED MEETING MINUTES OF THE
REGULAR MEETING OF THE
CITY OF ALAMEDA PLANNING BOARD
MONDAY, JANUARY 11, 2010

1. CONVENE: **7:07 p.m.**
2. FLAG SALUTE: **Vice-President Autorino**
3. ROLL CALL: **Present: President Ezzy Ashcraft, Vice-President
Autorino, Board members, Cook, Cunningham,
Kohlstrand, Lynch, and Zuppan.
Absent: None.**
4. MINUTES:

Minutes from the Special meeting of September 10, 2009

Board Member Zuppan requested that the line at the bottom of page 3 be corrected to read "that all design Guidelines be written as clearly as possible and consider the economic impact of that guideline". Board Member Kohlstrand motioned, seconded by Board Member Zuppan to approve the minutes as amended. Motion passes as amended 4-0-3. Vice-President Autorino, Board members Cook and Lynch abstained.

Minutes from the meeting of September 28, 2009 (Pending)

Minutes from the meeting of December 14, 2009

Vice-President Autorino requested that the stated approval of item 9A be corrected to accurately reflect the granted approval of 6 AM to 7 AM. Vice-President Autorino motioned, Board Member Cunningham seconded the motion to approve the minutes as amended. Motion passes as amended 4-0-3. Board members Cook, Lynch and Zuppan abstained.

5. AGENDA CHANGES AND DISCUSSION:

None.

6. STAFF COMMUNICATIONS:

Written Report

6-A Future Agendas

Staff presented an overview of future agendas.

6-B Zoning Administrator Report

Staff reported on the Zoning Administrator's approval of a Use Permit and Design Review Application for Rockwall Wine Company located at 2300 Main Street.

Oral Report

Staff presented an update on the development of Alameda Point.

7. ORAL COMMUNICATIONS:

None

8. CONSENT CALENDAR:

- 8-A Density Bonus Ordinance – Applicant – City of Alameda.** Proposed caps and limits on concessions and/or incentives for Density Bonus Projects on sites in a residential zone district or a site with a general plan land use designation of residential. Staff requested a continuance of this item to the Regular Planning Meeting of January 25, 2010.

Board Member Kohlstrand motioned, Board member Cunningham seconded motion to continue the item to the Planning Board meeting of February 8, 2010. Approved 7-0.

9. REGULAR AGENDA ITEMS:

- 9-A Review of the Use Permit for Kohl's Department Store.** Use Permit review allowing additional store hours of operation on certain mornings before 7:00 am and on certain nights until 12:00 midnight. Kohl's is located at 2201 South Shore Center in the C-2 PD (Central Business Planned Development) Zoning District in Alameda.

Staff presented an overview of prior project and explained the requested amendment to the Kohl's hours of operation.

Ms Montalvo, Kohl's store manager, apologized for the confusion on the hours of operation, and requested that the Planning Board approve the Use Permit

Board Member Cunningham asked the applicant why a 4:00 am opening was being requested. The applicant stated that this day is the busiest sales day of the year and the early hours of operation are required to stay competitive with other retailers.

Ms. Sellers, Alameda resident, encouraged the Planning Board to deny the Use Permit for additional hours of operation.

Ms. Risley, Alameda resident, stated her opposition to the Use Permit amendment through this process. She also stated that the public hearing notification of this project is inadequate.

President Ezzy Ashcraft closed the public comment period.

President Ezzy Ashcraft summarized the Planning Board's options with respect to this use permit request. .

Board Member Kohlstrand, for clarification, asked whether the Use Permit can be brought back to the Planning Board for modification and if this was permissible under the Municipal Code.

Ms. Faiz, city attorney, clarified that the Planning Board can take an action to amend the Use Permit.

Board Member Kohlstrand noted she prefers to leave the Use Permit as it is although would like to hear the reasons for expanding the dates.

Board Member Cunningham does not support revocation of the Use Permit, but would like to see what overarching community goals would be met by approving the Use Permit as proposed.

Board Member Cook stated she does not support revocation of the use permit, but has some questions about expanding the hours of operation.

Vice-President Autorino does not support the revocation, but asked for clarification on the rationale behind the proposed amendments.

Staff explained that the applicant has requested the amendment to the hours of operation so that it can provide shopping opportunities during the holiday seasons and at other appropriate times of the year. The rationale of granting a blanket approval is to eliminate confusion year after year over which particular days have actually been approved for the extended hours.

Board Member Kohlstrand stated that leaving the period open will allow for better clarification and enforcement.

Board Member Lynch motioned to amend the Use Permit to allow expanded hours of operation as proposed by staff, seconded by Vice-President Autorino. Motion passes 7-0-0.

9-B Consideration of a Use Permit to Allow additional Truck Delivery Hours at Alameda Towne Center, Safeway Store. The Safeway Store is requesting use permit approval to allow truck deliveries between the hours of 4:00 AM and 6:00 AM. The store is located at 2227 South Shore Center in Alameda in the C-2 PD (Central Business Planned Development) Zoning District.

Staff presented a report on the project and summarized public comments.

President Ezzy Ashcraft asked for a clarification on the number of smaller trucks Safeway anticipates coming to the store in the additional morning hour.

Board Member Lynch asked for clarification on the proposal to allow certain types of delivery vehicles, and noted that the applicant has not made the case that supports allowing extended the delivery hours.

Mr. Paradise, Safeway Real Property Manager, stated that Safeway would make every effort to manage the smaller vendors, and explained the difficulty of coordinating their deliveries. He suggested that the Planning Board allow a test period during which Safeway be allowed to receive deliveries starting at 4 am, in an effort to see how Safeway manages the vendors and potential noise impacts. Upon completion of the testing period, the Planning Board could then approve or deny the Use Permit amendment with the information gained during this trial period.

President Ezzy Ashcraft opened the public comment period.

Board Member Cunningham motioned, seconded by Board Member Kohlstrand to shorten the speaker time to 3 minutes per person. Motion passes 7-0-0.

Mr. Cantwell, shopping center neighbor, proposed that perhaps more landscaping to muffle noise at the perimeter of the shopping center.

Mr. Wullschleger, Alameda resident, opposed the extended hours of operation and stated that the current delivery trucks exceed speed limits when traveling through Alameda, and they are excessively noisy.

Ms. Perrault, shopping center neighbor, stated that she has supported redevelopment at the shopping center, but opposes extended hours of operation starting at 4 am, because the noise impacts are too great to bear for the neighborhood.

Mr. Morris, shopping center neighbor, seconds previous comments and opposes extended hours of operation starting at 4 am.

Mr. Halpern, shopping center neighbor, opposes extended hours of operation starting at 4 am.

Ms. Gould, shopping center neighbor, opposes extended hours of operation starting at 4 am and rebutted the claim that perishables would spoil if delivered at a later time, since they are transported in refrigerated trucks. She stated that the truck deliveries in the early morning hours, were 18-wheeler trucks. She cautioned that enforcement is necessary and accountability must be expected.

Ms. Sellers, Alameda resident, opposes extended hours of operation due to noise impacts on the community and rebutted arguments in the staff report.

Ms. Saxty, Alameda resident, opposes extended hours of operation due to noise impacts on the community.

Mr. Radding, Alameda Neighbors Unites representative, opposes extended hours of operation and stated that Safeway should not be rewarded with additional hours of operation, since they have not abided by their current approvals.

Ms. Risley, Alameda resident, stated that Safeway should not be rewarded with extended hours of operation when they consistently violate current approvals and Municipal Code.

Mr. Barber, shopping center neighbor, opposes extended hours of operation due to the significant noise created by the delivery trucks and the associated unloading of merchandise.

Mr. Libby, Alameda resident, opposes extended hours of operation and stated the volume of deliveries could be delivered during normal business hours, without impacting the businesses and that the quality of life needs to be maintained.

Mr. Powell, shopping center neighbor, opposes extended hours of operation.

Mr. Helperin, Alameda resident, opposes extended hours of operation and stated that the Planning Board should go a step further and require that the delivery trucks not be allowed to come to Alameda before 6 am.

Ms. Radding, Alameda Neighbors Unites representative, reiterated the group's frustration with Planning Board decisions that have always benefited the businesses instead of the quality of life of those that live near the shopping center. She urged the Planning Board to deny the expanded hours of operation.

President Ezzy Ashcraft closed the public comment period.

Mr. Paradise, Safeway Real Property Manager, responded to the comments made by the public. He stated that smaller delivery trucks would be quieter and that a later delivery hours would have other negative impacts, such as trucks would need to come to Alameda twice in a day in order to keep their deliveries on schedule.

Board Member Lynch favors denial of the Use Permit and asked that the public not make personal attacks on staff or the Board for recommendations or decisions reached in the past.

Board Member Zuppan favors denial of the Use Permit and seconded the speakers' comments on the detrimental impact of noise on sleeping and neurological development, and added that Safeway has shown some disrespect to the City by not remaining in compliance with the current conditions of approval and other city regulations.

Board Member Cook stated she was not in favor of the use permit request because she does not feel the findings for approval can be made and does not feel that the type and number of trucks that will be coming to Safeway have been accurately projected.

Vice-President Autorino favors denial of the permit, but cautioned the neighbors that development and expansion of the shopping center is inevitable.

Board Member Cunningham favors denial of the permit on the basis that the required finding for approval, especially finding number one, cannot be made.

Board Member Kohlstrand favors denial of the application and suggested that the City should start imposing monetary fines to enforce the regulations as set forth in the Municipal Code and the use permit conditions.

President Ezzy Ashcraft seconded the previous comments supporting the denial of the use permit. She suggested that the Planning Board and staff review opportunities for planting additional vegetation that could buffer shopping center noises for residents along Otis Drive and the lagoon or possibly review such opportunities in the Master Tree Plan.

Board Member Lynch stated that staff should ensure that the Master Fee schedule is amended to include a 'monitoring fee' that could be used to fund time staff spends monitoring or investigating code complaints that a project is not in compliance with conditions of approval. This was seconded by other members of the board.

Board Member Cunningham motioned, seconded by Board Member Kohlstrand, to deny the additional truck delivery hours. Motion to deny the use permit request is approved on a vote of 7-0-0.

9-C Zoning Text Amendment – Medical Marijuana Dispensaries - Applicant: City of Alameda. A proposed text amendment to amend the Alameda Municipal Code to prohibit establishment of medical marijuana dispensaries within the City of Alameda.

Staff presented the proposed ordinance.

Board Member Cook asked whether pharmacies could dispense medical marijuana. Staff commented that it was not aware of any pharmacy that included this as an elements of their operation and was not familiar with laws governing the operation of pharmacies.

President Ezzy Ashcraft opened the public comment period.

Ms. Arbuckle, Alameda resident, spoke in support of allowing medical marijuana dispensaries within Alameda and requested that the Planning Board recommend that the City Council adopt an ordinance allowing such dispensaries.

Mr. Hausman, Alameda resident, spoke in support of allowing medical marijuana dispensaries and cited that crime statistics do not speak in favor of an outright prohibition. She added that careful regulations could be drafted that would mitigate potential impacts to a community.

President Ezzy Ashcraft closed the public comment period.

President Ezzy Ashcraft shared her field observations from a visit to a medical marijuana dispensary in the City of Oakland.

Board Member Cunningham asked Ms. Faiz, City Attorney, if the City has legal grounds to prohibit medical marijuana dispensaries.

Ms. Faiz, City Attorney, stated that California has passed several laws that decriminalize smoking and cultivating marijuana, but there is not a mandate allowing dispensaries.

Board Member Kohlstrand felt this topic warranted a careful discussion amongst board members and stated that prohibiting medical marijuana dispensaries may be a disservice to the community without further debate on the issue.

President Ezzy Ashcraft stated that changes are afoot in the State Assembly and that there would be more guidance and regulations in the future, plus she understood that a measure regarding medical marijuana would be on a future ballot in California.

Board Member Cook asked that staff clarify the moratorium timeframe.

Staff stated that the moratorium could only be extended one more time and even with such an extension, would end in November 2010. It is staff's intention to have something established in the Municipal Code prior to the end of the moratorium.

Board Member Cunningham asked if the City Council could provide more direction on how they want the Board and staff to develop an ordinance and if an indication on the outcome had been provided.

Board Member Lynch stated that the Board is being asked to make a policy decision, when that is typically set by the City Council, not a Planning Board, which deals with land use issues. He stated that he was not comfortable making that policy decision. He suggested that the City Council should provide some guidance, and following that, the Board and staff could develop an ordinance that is tailored to Alameda's needs.

President Ezzy Ashcraft asked for more information on the dispensaries, such as crime statistics, more feedback from the Police Department, and more input from the business community.

Vice-President Autorino seconded Lynch's comments and stated that he would not be ready to make a recommendation on the proposed ordinance.

Board Member Cook stated that she would like more direction from the City Council before considering whether to develop regulations that would ensure medical marijuana dispensaries were being operated in an appropriate manner.

Board Member Kohlstrand stated that she anticipates that it will be difficult to find a suitable location for such uses in Alameda.

President Ezzy Ashcraft asked staff for direction on how best to proceed at this point since the Board appeared to be seeking further direction from the City Council.

Staff stated that the Planning Board could recommend the ordinance to City Council, which then makes its own decision. Should the City Council disagree with the ordinance, it would remand the ordinance for further review to the Planning Board. This would be the quickest way to receive some form of policy direction.

Board Member Lynch stated that the Planning Board could pass a motion by which the Board could ask City Council to respond to specific questions that would clarify policy direction.

Staff recommended that the Board make a motion, either approval or denial, on the proposed ordinance and recommend the proposed ordinance with individual comments expressing the Board's concerns.

President Ezzy Ashcraft asked whether the Board could recommend an extension to the moratorium, to allow additional time to work on the ordinance, while also requesting direction from the City Council that would shape the nature of the ordinance.

Board Member Kohlstrand stated that the ordinance has not received proper public discussion.

Board Member Cunningham raised concerns that the proposed ordinance is not in keeping

with the Attorney General's findings and that this leads him to believe that there is insufficient information to make a decision.

Ms. Faiz, City Attorney, pointed out that the Guidelines issued by the Attorney General are not binding law, just guidelines.

Board Member Kohlstrand asked whether the Board could approve an outright ban when the policy direction from the City Council is still unknown.

President Ezzy Ashcraft asked if the Board could continue the item, while the Board awaits policy direction from City Council and staff gathers more information.

Staff stated that the Board could continue the item, but that the Council is awaiting the Board's response to assist them with making their decision.

Vice-President Autorino motioned, seconded by Board member Cunningham to extend the meeting until 11:10 pm. Motion passes 7-0.

President Ezzy Ashcraft requested clarification on the difference between medical marijuana co-operative and collective dispensaries.

Ms. Faiz, City Attorney, clarified the respective code sections.

Board Member Cook asked whether the Planning Board could request an extension of the moratorium to allow sufficient time to consider whether to revise the ordinance.

Staff suggested recommending approval or denial of the proposed ordinance.

Vice-President Autorino stated the Board should ask for an extension of the moratorium and develop an ordinance that would allow and regulate the dispensaries, as opposed to an outright ban. He also added the Board should ask the Council for direction.

Board Member Cook suggested that the Planning Board, staff of the Police Department, Social Services, and the City Attorney work together to develop an appropriate set of regulations if the Council extends the moratorium to allow further consideration.

Board Member Lynch stated that the City Council should be asked whether or not a moratorium should be extended and if it should be extended, what type of regulations should be developed.

The Planning Board recommended that the City Council refer the matter back to the Planning Board for further deliberation and hearings to allow time for preparation of a draft ordinance that might allow a limited number of dispensaries in carefully controlled locations and under certain limited conditions.

Vice-President Autorino motioned, seconded by Board member Cunningham, to recommend that the City Council reject the ordinance banning medical marijuana dispensaries within the City of Alameda, refer development of an ordinance that allows medical marijuana dispensaries in Alameda back to staff and the Planning Board, and extend the moratorium prohibiting medical marijuana dispensaries to allow for sufficient

time to develop an ordinance allowing them. Motion passes as amended 7-0.

10. WRITTEN COMMUNICATIONS:

Ms. Kerr submitted comments on the minutes of the Planning Board of September 28, 2009.

11. BOARD COMMUNICATIONS:

President Ezzy Ashcraft spoke about Ms. Latisha Jackson, former Executive Assistant to the Planning Department, who passed away recently from breast cancer. She extended the Board's sympathies to Ms. Jackson's family.

12. ADJOURNMENT: **11:10 p.m.**