

MEETING MINUTES

REGULAR MEETING OF THE CITY OF ALAMEDA PLANNING BOARD MONDAY, OCTOBER 10, 2011

1. CONVENE: 7:08 pm
2. FLAG SALUTE: Board member Burton
3. ROLL CALL: Present: President Ezzy Ashcraft, Board members Burton, Kohlstrand, and Zuppan.
Absent: Vice-President Autorino and Board member Henneberry (arrived at 8:20 p.m.)

4. MINUTES:

Minutes from the Regular meeting of April 25, 2011 **Postponed due to lack of quorum.**

Minutes from the Regular meeting of September 26, 2011. (Pending)

5. AGENDA CHANGES AND DISCUSSION:

None

6. STAFF COMMUNICATIONS:

Written Report

6-A Future Agendas

Margaret Kavanaugh-Lynch, Planning Services Manager, provided an overview of upcoming projects.

Board member Zuppan inquired about the after hours zoning code enforcement procedures and when the discussion will be coming to the Planning Board. Ms. Kavanaugh-Lynch stated that the item will come before the Board in early 2012.

7. ORAL COMMUNICATIONS:

None

8. CONSENT CALENDAR:

None

9. REGULAR AGENDA ITEMS:

9-A PLN08-0479 – 1051 Pacific Marina Review of Compliance with Conditions of Approval

Margaret Kavanaugh-Lynch, Planning Services Manager, provided an overview of the Use

Permit and the need for review. The review is to complete a determination of compliance of the conditions of approval for application PLN08-0479. On August 24, 2009, the Planning Board approved a Use Permit to allow a banquet and catering facility to be operated within a portion of an existing building at 1051 Pacific Marina. One of the Conditions of Approval from the August 2009 report stated that the Use Permit would be reviewed by the Planning Board every six months for a period of a year. Due to staff changes this review period was overlooked. Stating in January of 2011, numerous verbal and written complaints were received by staff regarding the operation of the event center from neighbors that live in close proximity of the subject property. There was a public hearing held on July 11, 2011 to review the conditions of approval and the reported violations. At that meeting it was determined that the item should be reviewed for compliance again at the October 10, 2011 meeting. She also mentioned that since January 2011 the Police Department has received five disturbing the peace complaints at the location. Ms, Kavanaugh-Lynch stated that the options for the Planning Board will be to either:

1. Propose conditions that will allow the applicant to operate a small business in a primarily residential setting, while protecting the right of peaceful enjoyment of its neighbors; or
2. Set the use permit for a revocation hearing.

Ms, Kavanaugh-Lynch reported that the possible violations of the conditions of approval presented to the City include (numbering reflects the order of the original conditions of approval):

12. All events held at the facility shall be private and not open to the general public.
14. All events shall end by 10 p.m. Sunday – Thursday and 11:00 p.m. on Friday and Saturday.
20. The applicant shall be responsible for ensuring that all permanent employees, contractors, hired part-time or hourly staff, security personnel, caterers, and entertainers adhere to these conditions of approval and shall ensure compliance of same to these conditions of approval.

Ms, Kavanaugh-Lynch reported that staff has compiled the following suggestions for modifying the conditions:

- All events held at the facility shall be private and not open to the general public.

It was suggested that the condition of approvals # 5 and #12 be modified to address the purpose of the original condition, limiting the total number of persons present at any one time at an event.

5. A maximum of 275 individual guests shall be permitted for any single event held at this facility.

12. All guests must have a ticket for admission into the event center. A maximum of 275 ticket holders may be in the event center at any one time.

- All events shall end by 10 p.m. Sunday – Thursday and 11:00 p.m. on Friday and Saturday.

She stated that the lessee has mentioned that she has experienced challenges in booking the event center with the hours of operation that are currently stipulated. Staff believes that some alteration to these limitations could be supported while still safeguarding the residential neighbor's enjoyment of their homes. Staff suggests that the condition of approval #14 be modified as follows:

14. All events shall end by 11:00 p.m. Sunday – Thursday and 12:00 midnight on Friday and Saturday.

- The applicant shall be responsible for ensuring that all permanent employees, contractors, hired part-time or hourly staff, security personnel, caterers, and entertainers adhere to these conditions of approval and shall ensure compliance of same to these conditions of approval.

Staff has clarified that all users of the event center must comply with the conditions of approval stated in #20. The lessee has agreed to enforce this condition, as proposed.

In addition to the condition modifications discussed above, the lessee has requested a slight alteration to condition #11.

No amplified sound equipment shall be used outside the facility. All doors and windows of the facility must remain closed when public address systems are used or when amplified sound systems are in operation, bands are playing, or recorded music or video is being operated inside the facility. However, doors and windows could be opened for a maximum of fifteen minutes a night, if it is necessary to allow fresh air into the facility.

Ms. Kavanaugh-Lynch mentioned that the adjacent yacht club does not have any restriction put upon their establishment stating that they need to have their doors and windows closed during events with amplified music.

In reviewing the conditions of approval, staff identified several items that could be modified to make them more enforceable from a practical standpoint and to possibly provide clarification for both the current lessee and any interested party. Staff suggested the following condition of approval be amended as follows:

#3. Alcoholic beverages at this facility may only be served by caterers that hold a valid and proper class of Alcoholic Beverage Control license issued by the State of California. Patrons, guests, attendees, staff, and owners are not allowed to consume any alcoholic beverages outside, except for in the enclosed patio area.

And the following condition be removed completely due to the redundancy to #3:

#4. Any sale of alcoholic beverages shall only be done in conjunction with events and then only by caterers that hold a valid and proper class of Alcoholic Beverage

Control license issued by the State of California. No facility owner, facility owner staff, patron, guest, or attendee is allowed to bring or serve any alcoholic beverage at any event held at this facility.

In reference to conditions #8 and #9 Ms. Kavanaugh-Lynch suggested the following modifications:

8. Applicant shall coordinate with other uses at Pacific Marina for events with more than ~~435~~ 200 attendees.

9. Before any event with more than ~~435~~ **200** attendees, applicant must secure a shared parking agreement with a neighboring commercial property parking lot owner ~~on a form approved by the City Attorney.~~

She stated that the reason for changing the number of attendees is to have the threshold at a rounder number for the cooperation with the other parking lots would kick in. The Parking Study prepared by Abrams and Associates in July of 2009 discusses the parking considerations for the project area. It states, "The existing parking area for Pacific Marina village has 398 parking spaces that can be shared by all the uses within Pacific Marina". "These parking spaces are subject to the reciprocal parking rights contained in the Agreement of Reciprocal Easements, Covenants and Restrictions dated September 26, 1989 as amended on March 19, 1991". "There are an additional 80 spaces that are limited to use by Marina Vista Towers". "Therefore, the total amount of parking for area business and residential use, including the reserved spaces is 478". The existing limit of requiring coordination when ticket sales equals 135 attendees is a subjective number and staff believes that 200 is just as viable an amount to trigger a request of coordination with the various users of the common lot. It is also noted that security personnel will be present in the parking lots throughout any event and will be able to ensure that any parking issues can be addressed as persons are parking in the lot.

Also, regarding condition #9, staff does not want the City Attorney to be required to review language on each shared parking agreement. Staff could provide a template if necessary and instruct the lessee to use it whenever the neighboring parking lot is needed but the City Attorney will not be reviewing each agreement.

President Ezzy-Ashcraft asked if there was any condition currently stating that the City would provide the form.

Ms. Kavanaugh-Lynch stated that the owner/lessee can provide their own form. The City would want to see the form being used to ensure that the City's interest is being protected.

Ms. Kavanaugh-Lynch reported that some language in the original conditions of approval appear to create a level of control that is not enforceable. Staff suggests the following modifications to reflect a more practical level of enforcement.

16. The applicant will post signs educating all clients, caterers, staff, owners and guests for each event to exit quietly and observe the posted speed limits in the Pacific Marina Parking area and on adjacent streets.

17. Security guards shall be provided at events in the following ratios to insure compliance of patrons, caterers, and staff with all mandates of this resolution.

- Between 100 – 200 attendees – Minimum of one security guard
- Greater than 200 attendees – Minimum of two security guards

Security services and its staff shall be uniformed, and visible during all events held at this facility. Security guards must be on duty at the facility and parking areas before any event commences and be employed to stay on duty during all events and remain on duty until the last patron leaves the immediate common parking area.

18. The applicant shall be responsible for educating patrons and employees to not park vehicles in private residential areas.

Staff also suggests using a modified level of review needed to recall use permit to the Planning Board as follows:

22. This Conditional Use Permit PLN08-0479, as amended on October 10, 2011 will be reviewed by the Alameda Planning Board upon the receipt of a verifiable complaint which cannot be resolved by the Community Development Director on an administrative level.

23. Planning staff shall mail a notice indicating the date, time, and location of any review required in condition #22, to all property owners, tenants, and homeowner associations within 500 feet of the project site so interested parties are notified and may to attend these meetings.

And condition #25 which states that the Use Permit will expire in two years is removed as it is no longer applicable to the subject property.

Board member Kohlstrand asked whether or not the adjacent yacht clubs were allowed to have amplified music.

Ms. Kavanaugh-Lynch replied that she had heard from the residents that they do have amplified music.

Board member Kohlstrand asked if staff had discussions with the club managers or the adjacent residents during the reworking of the conditions.

Ms. Kavanaugh-Lynch replied that she didn't speak to the club managers but spoke to one of the neighbors numerous times regarding the revised conditions.

President Ezzy-Ashcraft asked if the yacht clubs have made any of the complaints regarding the venue.

Ms. Kavanaugh-Lynch replied that the Police Department can't release the source of the complaints.

Board member Zuppan asked what the foundation was for the parking revision from 135 to 200.

Ms. Kavanaugh-Lynch replied that she that the 200 number would mostly fill up the immediate parking and that the agreement should be put in place at that point.

Board member Burton asked who the applicant is for this item.

Ms. Kavanaugh-Lynch replied that there actually isn't an applicant because it is based on the original conditions of approval for it to be reviewed. Although staff has been in discussions with the lessee, Hannah's on the Bay, the original applicant was the building owner and different lessee, who has since vacated the site.

Board member Burton stated that the original Use Permit was for a banquet center and catering events although currently it seems that a number of the events being held seem to be music performances. He was wondering if an additional Use Permit is necessary or does it fall under the same one.

Ms. Kavanaugh-Lynch stated that it is a broadly defined category and events are part of the Use Permit so it would open it to events with music.

Board member Burton asked if the events must have food or can it be strictly music.

Ms. Kavanaugh-Lynch stated that the way it is written now there needs to be catering included.

President Ezzy-Ashcraft asked if the current lessee have all the proper licenses to operate the facility in the capacity of the conditions of the Use Permit.

Ms. Kavanaugh-Lynch replied that Hannah's on the Bay does not have a license to operate the commercial kitchen at the site, but they do have a catering license under another name through the County. The commercial kitchen has a license to operate it held by the owner of the building. In regards to the Alcoholic Beverage Control license, every cater is required to have their own license.

Board member Zuppan mentioned that it appears that the business license with the City was obtained a year after the business commenced.

Ms. Kavanaugh-Lynch confirmed that the business did operate without a license and that was one of the first violations reported to staff.

President Ezzy-Ashcraft opened the public comment period. Due to the large number of speaker slips the motion was made and seconded to reduce the speaker time to 3 minutes.

Thomas Charron, resident, spoke in opposition of revising the conditions of approval.

Denis Carroll, resident, spoke in opposition of revising the conditions of approval.

Jim Jessie, Oakland Yacht Club, spoke in opposition of revising the conditions of approval.

Robert Martin, resident, spoke in opposition of revising the conditions of approval.

Maria Bush, Hannah's on the Bay owner, spoke in favor of revising the conditions of approval.

Michael Hershey, Oakland Yacht Club, spoke in opposition of revising the conditions of approval.

Tommie Winston, Hannah's on the Bay, spoke in favor of revising the conditions of approval.

Vincent Goldman, Hannah's on the Bay, spoke in favor of revising the conditions of approval.

Reverend J.R. Hall, spoke in favor of revising the conditions of approval.

Derick Hughs, Dahway Music, spoke in favor of revising the conditions of approval.

Bernice Johnson, L.I.F.E. Development, spoke in favor of revising the conditions of approval.

Adele Alexander, resident, spoke in opposition of revising the conditions of approval.

Dorothy Shemick, resident, spoke in opposition of revising the conditions of approval.

Andre Ward, T25GL Entertainment, spoke in favor of revising the conditions of approval.

Board member Kohlstrand asked Mr. Ward what his primary interest in the venue was.

Mr. Ward responded that he dealt strictly with the music at the venue and Hannah's on the Bay handled all of the catering.

Board member Kohlstrand asked if food was served when the musical performance were held

He replied yes.

Richardo Scales, Hannah's on the Bay, spoke in favor of revising the conditions of approval.

Ron Konkle, Oakland Yacht Club, spoke in opposition of revising the conditions of approval.

President Ezzy-Ashcraft closed the public comment period.

President Ezzy-Ashcraft stated that the Board needs to try and strike a balance to allow a business to be able to succeed at the facility. She doesn't feel that the Board can go back to the original conditions for the reasons of enforcement.

Board member Kohlstrand stated that she appreciated having some of the performers speak at the meeting and it gives her a better understanding of what sort of events have

been held at the venue. She is concerned that the business began operations without the proper licenses. She originally opposed the original Use Permit because of the extreme conditions that were placed on the facility and saw no way for a business to operate under such constraints. She stated that throughout the entire process she has not heard any of the residents say that the business should be closed down but are trying to find conditions that are workable for the business. She believes that the Board cannot place conditions on a use just to have them continually violated.

Board member Zuppan stated that she has concerns about inconsistencies. She previously believed that the weekend closing time of 11:00 p.m. was unrealistic but the weekday closing should stay at 10:00 p.m.

Board member Burton was also skeptical about the revisions to the conditions and the lack of clarity about what business entities were actually working out of the facility and who was responsible for the compliance of the conditions. Although it still seems unclear who has what licenses the connection between Hannah's by the Bay and T25GL Entertainment is. Should the conditions of approval be revised the Board needs to provide as much clarity as possible as to what the responsibilities of the operators are and what the repercussions are upon failure to comply and the avenues of recourse people have.

Board member Henneberry asked how the condition of the patrons requiring a ticket allows the events to remain private.

Ms. Kavanaugh-Lynch replied that the goal of the condition was to assure that the capacity of the event would not exceed a set number of participants and should a complaint be received it could be verified by the number of tickets.

Board member Henneberry questioned the extended hours.

President Ezzy-Ashcraft replied that the modified hours were an attempt to help the lessee stay competitive in the industry.

Ms. Kavanaugh-Lynch added that there are no restrictions on the adjacent yacht clubs in regards to hours of operation.

President Ezzy-Ashcraft reiterated that the Board needs to achieve a balance and we are in the middle of challenging economic times. She mentioned that the lessee has made it hard to be on their side due to the lack of conformance to the existing conditions. She mentioned that if the facility were a restaurant it would not have these stringent conditions. The Board did receive a comment from a resident living adjacent to the site stating that she has never caused any noise intrusion the events and has never had any parking problems during an event. She asked that the Board not put the business out of business. She stated that she is mostly satisfied with the revised conditions. She is not completely comfortable with condition #22 which takes the review period of 6 months out and leaves it as a complaint driven review if necessary.

Board member Burton stated that he was comfortable with condition #22, stating that he has faith in the staff to be able to make an intelligent decision. He also believes it would give the parties involved a faster way to resolve any problems that may come up.

Board member Kohlstrand stated that she is comfortable with the condition and also wanted to raise a general issue about the Conditional Use Permit and what she thinks is an expansion of what was originally envisioned and feels the Board needs to discuss that. She added that the Conditional Use Permit runs with the land and not a particular business.

Board member Zuppan stated that she feels the Use Permit should come back to the Planning Board in 6 months for review at which time if the conditions are being adhered to the condition can be removed.

President Ezzy-Ashcraft questioned what a verifiable complaint meant.

Ms. Kavanaugh-Lynch responded that it would be a complaint that could be supported instantly and the complainant was willing to come in and discuss it with staff.

President Ezzy-Ashcraft was concerned that there would be two sides of the story and how would staff decipher the truth. She also stated that there is only one trash receptacle in the area to facilitate the event center and the two yacht clubs which seems inefficient.

Board member Henneberry asked if the procedure to review a Use Permit through a public hearing upon receipt of a complaint was standard for all permits.

Ms. Kavanaugh-Lynch stated that the review is standard procedure.

Board member Henneberry stated that he is comfortable with condition #22.

Board member Kohlstrand reviewed the original issue from 2009 and what the Board envisioned at the site. She stated that the use of banquet and catering event center she was envisioning a venue for weddings and private parties. In the original discussions the idea of ticket sales was for fundraising events but now it is being considered for music events which are different. She is concerned that the music events could turn into concerts under another operator at the site since the Use Permit runs with the land and the Board is not going to have control over every lessee that is in the facility. She feels that the other language that cleans up the conditions to make them more enforceable are fine but the Board needs to look at the expansion of the hours of operation and the parking requirements.

Ms. Kavanaugh-Lynch stated that the expansion on the hours of operation and the parking requirement was an attempt to allow the business to function. She also stated that prior to the hearing staff had only received comments from one resident in opposition to the revised conditions since the release of the Planning Board packet.

President Ezzy-Ashcraft stated that although the Use Permit runs with the land, meaning it carries over from tenant to tenant, it can always be changed if it turns out that the extended hours are just too late and the parking situation worsens. She also stated that the City wants a business to succeed.

Board member Kohlstrand stated that the new condition expands the maximum number of attendees that triggers the parking conditions and she does not see documentation to support that decision.

Ms. Kavanaugh-Lynch stated that the parking study done in 2009 reported that there are enough parking spaces available for up to 275 attendees.

Board member Zuppan stated that she has been at the venue in the past and has had problems parking and feels that the maximum number of attendees needs to be brought up to 200. She also stated that she does not feel that the hours of operation should be extended on the weekdays, she is fine with the hours being extended to 12:00 or 12:30 a.m. on the weekends. She asked about holidays as in New Year's Eve, and if the hours could be extended.

Ms. Kavanaugh-Lynch stated that a Special Events Permit can be obtained for extended hours on certain dates.

Board member Zuppan also would like to see the wording regarding educating the employees and such about leaving the premises quietly needs to be more directive. She also questioned what the Fire Marshal limit for the building is.

Ms. Kavanaugh-Lynch stated that the fire capacity occupancy for the building is 466 people.

Board member Zuppan also questioned condition #12 regarding the capacity of 275 ticket holders in attendance at any one time.

Ms. Kavanaugh-Lynch stated that it is a way for the business owner to have multiple seatings for an event in one day and also serve as a way that the City could investigate if there was an allegation of over 275 people in attendance at one time.

President Ezzy-Ashcraft stated that she agrees with the parking requirements.

Board member Henneberry asked if a member from the Oakland Yacht Club could address the hours of operation for their facility.

Denis Carroll of the Oakland Yacht Club stated that they cut off events by 11:00 p.m. and the bar can be open until 2:00 a.m.

President Ezzy-Ashcraft and the board amended conditions of approval as follows:

#14- All events shall end by 10:00 p.m. Sunday – Thursday and 12:00 midnight on Friday and Saturday.

#15- The applicant is responsible for instructing all clients, caterers, entertainers, staff, owners and guests to quietly vacate the parking lots by 10:30 p.m., Sunday – Thursday and 12:30 am on Friday (Saturday morning) and Saturday (Sunday morning) and must notify all clients, caterers, entertainers, staff, owners and guests that the site is located next to residential neighborhoods and that they must be respectful of residents of these neighborhoods. No alcohol consumption, disruptive, noise, commotion, or unnecessary vehicle noise is allowed in the common Parking Area of Pacific Marina or in the Alameda Marina City Park which abuts this facility.

#22- This Conditional Use Permit PLN08-0479, as amended on October 10, 2011 will be reviewed by the Alameda Planning Board in six months from the date of these conditions of approval, as modified and upon the receipt of a verifiable complaint which cannot be resolved by the Community Development Director on an administrative level. **[See amended resolution attached.]**

Motion made to approve the conditions of approval as amended above by Board member Kohlstrand, seconded by Board member Burton. Approved 5-0.

9-B Use Permit Annual Review – PLN09-0184 – Applicant - Chengben Wang for Encinal Terminals – An annual review for compliance with conditions for use of the property located at 1523 Entrance Road/Buena Vista Avenue commonly referred to as “Encinal Terminals”.

Andrew Thomas, Planning Services gave an overview of the Use Permit. He reported that over the last 18 months there has been some progress on the Master Plan although all three properties are currently in receivership. It is doubtful that there will be any progress on the project until the financial issues get resolved. He reported that the City has received calls inquiring about the properties by potential developers. The City needs to make sure that there is a viable Master Plan in place for who ever develop the sites, which works given the economic times.

Board member Zuppan asked if any of the calls regarding the property referenced the Master Plan documents.

Mr. Thomas stated that all of the calls have inquired as to what the City is willing to consider on the sites. He also stated that the Chipman site has been zoned for residential and the tentative map was approved, although it has since expired.

President Ezzy-Ashcraft asked what protection the City has against someone purchasing the property in foreclosure and developing it as they wish.

Farimah Faiz, Assistant City Attorney, responded that the property is zoned MX and any potential developer would need to get a Master Plan approved by the City prior to any development of the sites.

Mr. Thomas stated that there is currently an Interim Use Permit for the Encinal Terminals, which is good for one more year which allows for a variety of uses.

Motion made to accept the report of compliance by Board member Henneberry, seconded by Zuppan. Approved 5-0.

9-C PLN11-0220 – Alameda Point Northwest Territories – Interim Use Permit. The applicant, San Francisco Regional Sports Car Association is proposing to hold driver's skill events/autocross events on the Northwest Territories at the most north western area of Alameda Point. The events would occur on weekends. **Staff requests continuance to the meeting of 10/24/2011.**

9-D Park Street Code Scoping Session
Staff requests continuance to a future date.

10. WRITTEN COMMUNICATIONS: **None.**

11. BOARD COMMUNICATIONS: **None.**

12. ADJOURNMENT: **10:30 p.m.**