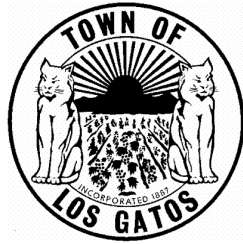


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TOWN OF LOS GATOS PLANNING COMMISSION MEETING ACTION MINUTES TOWN COUNCIL CHAMBERS 110 E. MAIN STREET WEDNESDAY, SEPTEMBER 12, 2012

Chair Marcia Jensen called the meeting to order at 7:00 p.m.

ROLL CALL

Present: Chair Marcia Jensen, Vice Chair Charles Erikson, Commissioner John Bourgeois, Commissioner Margaret Smith, and Commissioner Joanne Talesfore.

Absent: Commissioner Thomas O'Donnell and Commissioner Marico Sayoc.

Others: Town Attorney Judith Propp, Acting Assistant Community Development Director Sandy Baily, Acting Principal Planner Joel Paulson, Associate Planner Marni Moseley, and Recording Secretary Linda Rowlett.

Acting Principal Planner Joel Paulson noted that **Commissioners O'Donnell** and **Sayoc** have an excused absence because they need to recuse themselves from Item #3.

PLEDGE OF ALLEGIANCE

Led by **Chair Marcia Jensen**.

APPROVAL OF MINUTES OF AUGUST 22, 2012

Motion by **Commissioner John Bourgeois** and seconded by **Vice Chair Charles Erikson** to approve meeting minutes of August 22, 2012.

Motion carried 5-0 with **Commissioner Thomas O'Donnell** and **Commissioner Marico Sayoc** absent.

WRITTEN COMMUNICATIONS

Chair Marcia Jensen noted that there is a desk item for Item #3.

REQUESTED CONTINUANCES - NONE

SUBCOMMITTEE REPORTS

General Plan Committee - Commissioner John Bourgeois reported that the committee met earlier tonight to review a proposed subdivision on Twin Oaks Drive for a ten-lot single family subdivision and a Zone Change Amendment at Royce Street regarding permitted uses in the C-2 zone.

VERBAL COMMUNICATIONS (AUDIENCE) - NONE

CONSENT CALENDAR

1. ***16615 Lark Avenue** - Conditional Use Permit Application U-12-011. Requesting approval to modify an existing telecommunications facility on property zoned O. APN 424-08-065. PROPERTY OWNER: James Rees. APPLICANT: Kim Peterson. PROJECT PLANNER: Jennifer Savage.
2. ***Blossom Hill Road** - Conditional Use Permit Application U-12-015. Requesting approval for the Oak Meadow Park Master Plan to permit existing uses on property zoned RC. APNs 529-12-004 and -021. PROPERTY OWNER: Town of Los Gatos. APPLICANT: Town of Los Gatos - Parks and Public Works Department. PROJECT PLANNERS: Shelayne Hammack and Jennifer Savage.

Motion by Commissioner John Bourgeois and seconded by **Commissioner Joanne Talesfore** to approve Consent Item #1 and Consent Item #2.

Motion carried 5-0 with **Commissioner Thomas O'Donnell** and **Commissioner Marico Sayoc** absent.

Commissioner Joanne Talesfore thanked the staff for the detailed proposals for the cell towers in the staff report for Item #1.

CONTINUED PUBLIC HEARINGS - NONE

NEW PUBLIC HEARINGS

Commissioner Margaret Smith commented that she must recuse herself from Item #3 because she lives within 500 feet of the subject property.

3. **50 University Avenue, Suite 300** - Conditional Use Permit Application U-12-013. Requesting approval of a Conditional Use Permit to operate a private school in an upper floor tenant space on property zoned C-2:LHP:PD. APN 529-02-044. PROPERTY OWNER: Street Retail Inc., LLC. APPLICANT: Shlemmer Algaze Associates. PROJECT PLANNER: Marni Moseley.

Chair Marcia Jensen opened the public hearing.

Associate Planner Marni Moseley noted that she did not have anything to add to the staff report.

Vice Chair Charles Erikson

- Asked what will happen to the current Fusion Academy if it moves to the new location.
- Asked about interest in Fusion from the residents.
- Asked about accreditation status of Fusion.

Associate Planner Marni Moseley

- Commented that Fusion currently operates a tutoring only center located in a suite in the basement at S. Santa Cruz Avenue. The applicant is proposing to vacate that location when the proposed location is open, but is not required to.
- Commented that the applicant has submitted two letters of interest from the community and there are also speakers in the audience tonight.
- Commented that the applicant will speak to the accreditation issue.

Commissioner Joanne Talesfore

- Asked if office uses are allowed by right on the second floor and if school uses would require a separate Conditional Use Permit (CUP).
- Asked if any other school can qualify in the future if a CUP is granted.
- Asked how many parking spaces are at Old Town.
- Confirmed that currently there are office space uses in Old Town.

Associate Planner Marni Moseley

- Commented that another school could qualify in the future since a CUP runs with the land and is condition specific.
- Commented that she did not have the number of parking spaces at Old Town, but that Fusion requires 36 spaces. Staff modified the parking to 38 spaces to comply with the parking requirements for an office use that this space would require.

Commissioner John Bourgeois

- Asked about the nature of the non-teaching events.

Associate Planner Marni Moseley

- Commented that staff has discussed non-teaching events with the applicant and the Condition is worded so that the special events will not exceed the maximum attendance allowance for the school.

Danna Sigal and Danielle Ryckman, Applicants, gave a presentation on the proposed project.

Commission Questions:

- Asked about the drop off point for students.
- Asked about the first floor entry and if it will be shared with another tenant.
- Asked if the majority of the students are in grades 10-12.
- Asked if there are more tutored or full time students.

- Asked what empirical evidence there is to support the need for this type of instruction.
- Asked if there has been any interaction with the school districts.
- Asked about accreditation status.
- Asked if Fusion would be willing to offer accreditation status as a Condition of Approval.
- Asked what the typical time frame is to receive accreditation.
- Asked how many teachers will be present during hours of operation.
- Asked why this space was chosen.
- Asked about the non-teaching events and how they will stay within the maximum number.
- Asked about the frequency of the teacher trainings.

Dana Sigal, Danielle Ryckman, and Jeff Poole, American Education Group (Partner Organization with Fusion Academy) responded to Commission Questions:

- Commented that parents will be advised during the intake process that they will need to pull into a parking space when dropping off the students.
- Commented that the landlord is in the process of providing a dedicated entrance for the tenant suite.
- Commented that the majority of Fusion's campuses have more high school than middle school students.
- Commented that students can access the tutoring and mentoring to support academic work at their local school. Some students come for credit recovery and others can receive a full school day alternative. Full time students are there about six hours and start times are staggered throughout the day.
- Commented that Fusion is new to the area but they have spoken with many professionals in the area who have expressed a need for this type of instruction. They do have a waiting list for the program which includes providing a full education.
- Commented that Fusion has spoken with Los Gatos High School and some of the middle schools about providing tutoring support but they do not have a formal agreement in place. There has not been a conversation with the superintendents.
- Confirmed that accreditation is with the Accrediting Commission for Schools Western Association of Schools and Colleges (ACS WASC). The accreditation status is on a school-by-school basis. Los Gatos has not yet been accredited but WASC has provided a letter of support and they do intend to accredit them. All the other Fusion schools in California are accredited.
- Commented that he handles all of the accreditation and that all of the schools are WASC accredited with the exception of Fusion Walnut Creek and Fusion Los Gatos because you cannot get accreditation until you are open. All of the Fusion schools have received accreditation on the first round for a three-year period. He wants to think about his response to making accreditation a Condition of Approval.
- Commented that accreditation typically requires that a school be open for one year, but WASC has accredited all of their schools within the first six months.
- Commented that there are 25 teachers but the schedules are staggered throughout the day. It would be rare for all 25 teachers to be there at the same time. There will probably be a maximum of 15 teachers on-site if the waiting list is accommodated.
- Commented that they look for space where students have access to amenities and will feel part of the community. Fusion does a long vetting process to find the right location and

business model. The architects do five or six fit programs to find what will work best. The flow of this space and natural light will provide a positive learning environment.

- Commented that the non-teaching events are parent open houses three or four times per year. There will be an open house once the school opens. Teacher trainings occur on-site in the later evening hours or on weekends. Fusion will stick to the maximum capacity allowances.
- Commented that teacher trainings typically happen in the evenings or on Saturdays.

Kris Johnsgard

- Commented that they endorse the strong learning experience that Fusion offers noting that this is a great opportunity for the Town.
- Commented that their son was having difficulty in the middle school environment and that Fusion has been a tremendous experience for him.

Colton Johnsgard

- Commented that public school was not a fit for him. Fusion is perfect for him and he could not ask for more academically. The one-on-one experience is very helpful. The teachers teach the students the way the students need to be taught and he understands more school work and subjects in a shorter period of time. He praised **Danielle Ryckman** and all of the teachers.

Siobhan Fitzgerald

- Commented that she moved to California six years ago. She has a daughter that does not fit into the public school system. She has tried other tutoring services that did not meet her daughter's needs.
- Commented that this location is ideal for riding a bike or scooter to school.
- Commented that having Fusion in town will help to support local businesses.

Tiffany Boltz

- Commented that her 17-year-old daughter is a full time student at Fusion and this is her senior year. Her daughter did not have success in public school, but she is now able to go to college.
- Commented that it is a benefit to have Fusion in the community so her daughter can go to school and still have her friends and be part of the community.
- Commented that the long waiting list speaks to the empirical evidence of the need for this school.

Maria Risto

- Commented that she lives near the existing Fusion facility and she has not experienced any impact from the school. In fact, she did not even know they were there when they moved in.
- Commented that her son is a student at Los Gatos High School and is struggling with the teaching format. He took a class at Fusion that was very beneficial for him. She believes that this is an unmet need.

Sue Farwell

- Commented that Fusion sounds like a fantastic school and is a good fit for the community. Her concern is the sheer volume of people at the site and the impact from the volume of traffic on the streets in that area.
- Asked if the number of full time students can be limited along with the tutoring so there are not so many people at the location at the same time.

Danna Sigal

- Commented that the occupant load for Fusion at 70 occupants will be less than the previous use of retail which was 124 occupants.

Jeff Poole

- Commented that Fusion would be willing to come back and speak to the progress on accreditation.

Commissioner John Bourgeois

- Confirmed that the maximum occupancy is 72.
- Asked about number of non-teaching events per year.
- Asked if the applicant would agree to modifying the Conditions to limit the non-teaching events to two per month.
- Asked for clarification on hours of operation.

Jeff Poole

- Commented that open houses for new students can be limited to once or twice per month. There are typically five to ten families that attend. Teacher trainings would never exceed the numbers.
- Commented that they would agree to a Condition limiting non-teaching events.
- Commented that classes are held four days a week, but the school is open Monday to Friday for special needs. The hours are staggered throughout the day.

Commissioner Joanne Talesfore

- Asked if there are speaker events for parents.

Jeff Poole

- Commented that they have had speaker events with 20 parents. They could limit the events to two per month.

Chair Marcia Jensen

- Asked about specificity for occupancy at non-teaching events.

Jeff Poole

- Asked if Condition #4 could be modified to state that no event of any type would ever exceed 72 people.

Commissioner Joanne Talesfore

- Commented that the intensity that the school could draw is the issue. Good schools tend to expand their capacities.

Associate Planner Marni Moseley

- Clarified that Condition #4 was worded so that the maximum of 72 would not be exceeded if there is instruction and an event going on at the same time.

Commissioner Joanne Talesfore

- Asked how Fusion manages field trips.

Jeff Poole

- Commented that field trips are rare. It will be a group of students, parents and staff. Parents and staff will drive or meet at a location. No special vehicles are used.

Vice Chair Charles Erikson

- Asked for clarification of days of operation and if Fusion is open on weekends.

Jeff Poole

- Commented that the school is available to be open on weekends, but classes are not scheduled then. Tutoring could occur on a weekend.

Chair Marcia Jensen closed the public input portion of the hearing and returned to the Commission for deliberations.

Commissioner Joanne Talesfore

- Asked for clarification of Condition #9 regarding field trips.
- Asked if there is a loading zone at Old Town.
- Asked where employees of Old Town park.

Associate Planner Marni Moseley

- Commented that Condition #9 is for field trips to be coordinated off-site but Fusion wanted the ability to drop off students on-site.
- Commented that regular vehicles are not permitted in loading zones. Staff would not suggest that exception because it would impact commercial businesses on site.

Acting Principal Planner Joel Paulson

- Commented that there is a loading zone in the rear of Old Town and there are no special hours.
- Commented that employees are not asked to park off-site. Parking requirements are intended to support patrons and employees except during holidays when there is off-site parking for employees.

Commissioner John Bourgeois

- Confirmed that there are no other special findings beyond what is in the staff report.

Vice Chair Charles Erikson

- Commented that there has been significant public testimony tonight about the need for Fusion in Town.
- Noted that the applicant read into the record a letter from the Executive Director of WASC that commends the particular approach to education and that there is a high likelihood of accreditation.

Motion by Vice Chair Charles Erikson and seconded by **Chair Marcia Jensen** to approve Conditional Use Permit Application U-12-013 subject to the conditions as noted in Exhibit 3 of staff report dated September 12, 2012, with the following modifications: strike the phrase "facility tours" in Condition #6 and replace it with "school tours" and add the language "not to exceed two per month"; add the word "generally" between "should" and "be" in the first sentence of Condition #9 and delete the phrase "if possible." The required findings were made as noted in Exhibit 2 of staff report dated September 12, 2012.

Chair Marcia Jensen

- Seconded the motion and asked if **Vice Chair Erikson** would consider an additional condition that this matter be returned to the Commission six months after the date of approval and opening of the school for a review of compliance with the Conditional Use Permit (CUP) and an update on accreditation progress.

Vice Chair Charles Erikson

- Asked if it is normal to have a CUP compliance review at six months and have it come back before the Commission.

Associate Planner Marni Moseley

- Commented that they have done CUP compliance reviews before but staff generally encourages it to be done as a memo from staff to the Commission rather than a public hearing item.

Chair Marcia Jensen

- Commented that she prefers a public process rather than a memo because it allows the public an opportunity to speak to any issues.

Vice Chair Charles Erikson

- Accepts the amendment to the motion if the time period is extended to one year to allow the school to run a full cycle and not to make note of accreditation since the Town does not have the authority to require that of the applicant.

Town Attorney Judith Propp

- Asked if the CUP review is at the end of the first year or every year.

Chair Marcia Jensen

- Agreed to **Vice Chair Erikson's** changes to her amendment to the motion.
- Commented that the CUP review would be at the end of the first year and at that time it would be determined if further review is necessary.

Vice Chair Charles Erikson

- Confirmed that he understood the intent of **Chair Jensen's** motion amendment.

Commissioner Joanne Talesfore

- Commented that she understands the need for schools like this, but she is concerned about the intensity and the parking.
- Proposed that a condition be added to address specific parking and that some parking be required to be off-site.

Vice Chair Charles Erikson

- Asked staff how many parking spaces were allocated to the upstairs area when the prior user was in business.

Acting Principal Planner Joel Planner

- Commented that 38 parking spaces were allocated to this space.

Vice Chair Charles Erikson

- Commented that he does not accept another addition to the motion regarding parking requirements since he does not believe that parking will be an issue.

Chair Marcia Jensen

- Commented that she is sympathetic to **Commissioner Talesfore's** concerns but she would have a hard time limiting the parking further. She is comfortable with the motion particularly since the CUP will be coming back for review.

Commissioner John Bourgeois

- Commented that the one-year review gives him a level of comfort. He will support the motion and noted that he appreciates the parents who came out to speak. He is sensitive to the loss of retail in Old Town but does not believe the use is incompatible, as the original use of Old Town was a school.

Commissioner Joanne Talesfore

- Commented that she is sorry that better arrangements could not be made for parking, but she believes the school is needed in Town and she will support it.

Motion carried 4-0 with **Commissioner Thomas O'Donnell** and **Commissioner Marico Sayoc** absent, and **Commissioner Margaret Smith** recused.

Acting Principal Planner Joel Paulson recited appeal rights.

CONTINUED OTHER BUSINESS - NONE

NEW OTHER BUSINESS

4. Report from Director of Community Development

- a. **Acting Principal Planner Joel Paulson** reported that on September 4, Town Council held a study session to provide direction on potential amendments to the Story Pole Policy and discussed Code Enforcement Policies and Procedures and provided direction to fund a part-time or contract Code Enforcement Officer. Council also approved the CUP for Lexington House at 40 N. Santa Cruz Avenue stating that it did not believe the Commission erred in its interpretation of Ordinance 2021. The Council added a condition that the CUP is subject to any future ordinances for any formula restaurants.

Vice Chair Charles Erikson asked what the findings were for the Council to support replacing retail with a restaurant.

Acting Assistant Community Development Director Sandy Baily commented that the Council stated that it had the latitude because the policy discourages rather than prohibits replacing retail with a restaurant and that a number of people spoke in favor of the proposal.

Vice Chair Charles Erikson confirmed that since Ordinance 2021 discourages rather than prohibits the replacement of retail that Council exercised wiggle room with no particular findings and that a large number of the public spoke in favor and provided convincing testimony to help shape the Council's decision.

Commissioner John Bourgeois commented that the Council also considered the division of uses in the space and asked if new information or policy led to its decision.

Acting Assistant Community Development Director Sandy Baily commented that Council's decision was based on new information along with policy.

Town Attorney Judith Propp commented that there was no need for the Council to make a finding since this was not an appeal but rather a recommendation by the Planning Commission.

5. Commission Matters

- a. **Commissioner Joanne Talesfore** commented that she will be on vacation on September 26 and will not be at the Commission meeting.

ADJOURNMENT

Meeting was adjourned at 8:55 p.m.

TOWN OF LOS GATOS PLANNING COMMISSION
Wednesday, September 12, 2012

Marcia Jensen, Chair

APPROVED AS TO FORM AND ATTEST:

Joel Paulson
Acting Principal Planner