



MEETING DATE: 4/05/04
ITEM NO. 11

COUNCIL AGENDA REPORT

DATE: March 25, 2004

TO: MAYOR AND TOWN COUNCIL

FROM: TOWN MANAGER

SUBJECT: CONSIDER AN APPEAL OF A PLANNING COMMISSION DECISION DENYING AN APPLICATION TO CONVERT A PORTION OF A FORMER RESTAURANT (SWENSEN'S) TO ANOTHER RESTAURANT USE (COLD STONE CREAMERY) ON PROPERTY ZONED C-2. APN 510-45-075 CONDITIONAL USE PERMIT U-04-8 PROPERTY LOCATION: 20 S. SANTA CRUZ AVE PROPERTY OWNER: PARK ROW EAST APARTMENTS, LTD APPLICANT/APPELLANT: CATHERINE G. ASBUN

RECOMMENDATION:

1. Open and hold the public hearing and receive public testimony.
 2. Close the public hearing.
 3. Uphold the Planning Commission's decision to deny the Conditional Use Permit.
 4. Refer to the Town Attorney for the preparation of the appropriate resolution.

If the Town Council determines that the Planning Commission's decision should be reversed or modified:

1. The Council needs to find one or more of the following:
 - (1) Where there was error or abuse of discretion on the part of the Planning Commission; or
 - (2) The new information that was submitted to the Council during the appeal process that was not readily and reasonably available for submission to the Commission; or

PREPARED BY: Bud N. Lortz, Director of Community Development

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Reviewed by: PSS Assistant Town Manager CV Town Attorney Clerk Finance
Community Development Revised: 3/25/04 4:33 pm

Reformatted: 5/30/02

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MAYOR AND TOWN COUNCIL

SUBJECT: APPEAL OF PLANNING COMMISSION DECISION DENYING AN APPLICATION TO CONVERT A PORTION OF A FORMER RESTAURANT (SWENSEN'S) TO ANOTHER RESTAURANT USE (COLD STONE CREAMERY). CONDITIONAL USE PERMIT U-04-8.

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- (3) An issue or policy over which the Commission did not have discretion to modify or address, but which is vested in the Council for modification or decision.
- 2. If the predominant reason for modifying or reversing the decision of the Planning Commission is new information as defined in Subsection (2) above, it is the Town's policy that the application be returned to the Commission for review in light of the new information unless the new information has a minimal effect on the application.
- 3. If the appeal is approved, make the findings (Attachment 2) for the granting of a conditional use permit, and approve the application subject to the conditions in Attachment 3.
- 4. Refer to the Town Attorney for preparation of the appropriate resolution.

BACKGROUND

Swensen's Ice Cream closed in July 2003 and the tenant space is currently vacant. The owner of Lyndon Plaza has split the floor area into two tenant spaces (identified as suites 200 and 201 on the plans). The applicant is requesting approval of a Conditional Use Permit (CUP) to occupy suite 201 (1,296 square feet in area) with a new ice cream store. Suite 200 (1,239 square feet) is vacant. The Planning Commission considered the application on February 11, 2004 and denied the CUP. The applicant appealed the Commission's decision on February 23, 2004 (see Attachment 1).

DISCUSSION:

Project Summary

The applicant is requesting approval to operate a Cold Stone Creamery store in a portion of the tenant space previously occupied by Swensen's Ice Cream. The proposed location at Lyndon Plaza will be owned and operated by the applicant under a franchise agreement. Intended hours of operation are 11:00 am to 11:00 pm daily.

Concerns have been raised about chain or formula businesses in the Central Business District. This issue was studied and regulations were adopted that require a formula retail business to obtain a CUP. Restaurants have historically been required to obtain a CUP so no new regulations were determined to be needed to regulate for formula restaurants. The Town Code does not include provisions for formula restaurants since a CUP is required for any new restaurant. The review of a CUP is a discretionary process where the deciding body may approve or deny the application based on the operational details and surrounding land uses, and may exercise its discretion as to whether a proposed use is appropriate for a particular location. Under the current regulations, a formula restaurant may move into a space occupied by a non-formula restaurant unless it operates in a

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MAYOR AND TOWN COUNCIL

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March 25, 2004

manner that necessitates modification of the existing CUP or the tenant space is altered. When a tenant space is divided (as in this case), a new CUP is required if a restaurant intends to move into either space.

Cold Stone Creamery is a national chain. There are no other ice cream stores in Lyndon Plaza, but TCBY, located at 13 N. Santa Cruz Avenue, sells some similar products. In addition, Dolce Spazio, located at 221 N. Santa Cruz Avenue, sells gelato. Gelato and frozen yogurt are different products than the handmade ice cream sold by Cold Stone although all three businesses sell specialty dessert products. The applicant is an independent owner/operator and will work on the premises. The proposed business will employ 20 to 25 part-time high school and college age people. At peak hours of operation, there will be six to eight personnel on the premises. The applicant's letter (Exhibit C to Attachment 4) provides more detail on the proposed operation and includes information on Cold Stone products and community involvement.

PLANNING COMMISSION ACTION:

The Planning Commission held a public hearing on February 11, 2004, and voted 6-1 to deny the requested conditional use permit. Members of the Commission expressed concern about the proliferation of chain or franchise businesses in the Downtown. The motion included a statement that the number of franchise businesses in the Downtown is threatening its integrity and character. Other Commissioners were concerned about a potential over concentration of stores selling ice cream products. In reaching its decision, the Commission considered General Plan policies relative to commercial land uses (see Exhibit D to Attachment 4). Verbatim minutes of the Commission meeting are included as Attachment 5. In addition, Chair Drexel submitted a summary of the Commission's decision (Attachment 6).

Parking

The Planning Commission discussed parking as it relates to the proposal. Cold Stone is considered a restaurant and as such the parking requirement is based on seating (one space for every four seats). Since a total of eight seats are proposed, two parking spaces are required by the Zoning Ordinance. One member of the Commission expressed concern that two parking spaces would not be adequate for the business. Although there will be six to eight employees working at peak times the applicant has indicated that 85 to 90% of employees are dropped off at work by a relative, and some employees ride a bike to work (see applicant's letter, Attachment 1). Based on the current parking regulations, the proposed business complies with the Town's parking requirement and Lyndon Plaza is currently operating with a surplus of parking. Lyndon Plaza has 30 on-site parking spaces at the rear of the building and has an allocation of 181 spaces in the parking assessment district.

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MAYOR AND TOWN COUNCIL

SUBJECT: APPEAL OF PLANNING COMMISSION DECISION DENYING AN APPLICATION TO CONVERT A PORTION OF A FORMER RESTAURANT (SWENSEN'S) TO ANOTHER RESTAURANT USE (COLD STONE CREAMERY). CONDITIONAL USE PERMIT U-04-8.

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APPEAL:

Attachment 1 is the applicant's appeal statement. The applicant believes that the Commission acted in the absence of a specific regulation on formula restaurants, and that the proposed business would be an asset to the Downtown. The letter also provides information on the restaurant operation, employees and community involvement.

ENVIRONMENTAL ASSESSMENT:

It has been determined that this project is categorically exempt pursuant to Section 15303 of the State Environmental Guidelines as adopted by the Town.

FISCAL IMPACT: None

Attachments:

1. Applicant's appeal statement (one page), filed February 23, 2004 and letter (two pages), received on March 18, 2004
2. Required Findings (one page)
3. Conditions of Approval (one page)
4. February 11, 2004 Planning Commission staff report with exhibits A.-E.
5. February 11, 2004 Planning Commission Minutes (43 pages)
6. Email from Planning Commissioner Chair Jeanne Drexel (one page), received March 7, 2004
7. Email from Lisa Scopazzi-Evans (one page), received March 8, 2004

Distribution:

Catherine Asbun, Cold Stone Creamery, 2990 Sunwood Drive, San Jose, CA 95111
Park Row East Apartments, LTD, 20 S. Santa Cruz Ave., #320, Los Gatos, CA 95030

BNL:SD:mdc

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FILING FEES
\$250.00 Residential
\$1000 per Commercial, Multi-family or Tentative Map Appeal

Office of the Town Clerk
110 E. Main St., Los Gatos, CA 95030

APPEAL OF PLANNING COMMISSION DECISION

OFFICE OF TOWN CLERK

I, the undersigned, do hereby appeal a decision of the Planning Commission as follows: (PLEASE TYPE OR PRINT NEATLY)

DATE OF PLANNING COMMISSION DECISION: February 11, 2004

PROJECT / APPLICATION NO: APN 510-45-075

ADDRESS LOCATION: 20. S. Santa Cruz Ave.

Lyndon Plaza - Cold Stone Creamery

Pursuant to the Town Code, the Town Council may only grant an appeal of a Planning Commission decision in most matters if the Council finds that one of three (3) reasons exist for granting the appeal by a vote of at least three (3) Councilmembers. Therefore, please specify how one of those reasons exist in the appeal:

1. The Planning Commission erred or abused its discretion because _____

_____ ; OR
 2. There is new information that was not reasonably available at the time of the Planning Commission decision, which is

- (please attach the new information if possible): OR
3. The Planning Commission did not have discretion to modify or address the following policy or issue that is vested in the Town Council:
Commission concerned about franchise business
in downtown. when there is no specific policy.

IF MORE SPACE IS NEEDED, PLEASE ATTACH ADDITIONAL SHEETS.

IMPORTANT:

1. Appeal must be filed within ten (10) calendar days of Planning Commission Decision accompanied by the required filing fee. Deadline is 5:00 p.m. on the 10th day following the decision. If the 10th day is a Saturday, Sunday, or Town holiday, then it may be filed on the workday immediately following the 10th day, usually a Monday.
2. The Town Clerk will set the hearing within 56 days of the date of the Planning Commission Decision (Town Ordinance No. 1967).
3. An appeal regarding a Change of Zone application or a subdivision map only must be filed within the time limit specified in the Zoning or Subdivision Code, as applicable, which is different from other appeals.
4. Once filed, the appeal will be heard by the Town Council.
5. If the reason for granting an appeal is the receipt of new information, the application will usually be returned to the Planning Commission for reconsideration.

PRINT NAME: Catherine Asburn

SIGNATURE: Catherine

DATE: 02.28.04

ADDRESS: 2990 Sunwood Drive

PHONE: (408) 316-3460

San Jose, CA 95111

***** OFFICIAL USE ONLY *****

DATE OF PUBLIC HEARING: 3/15/04

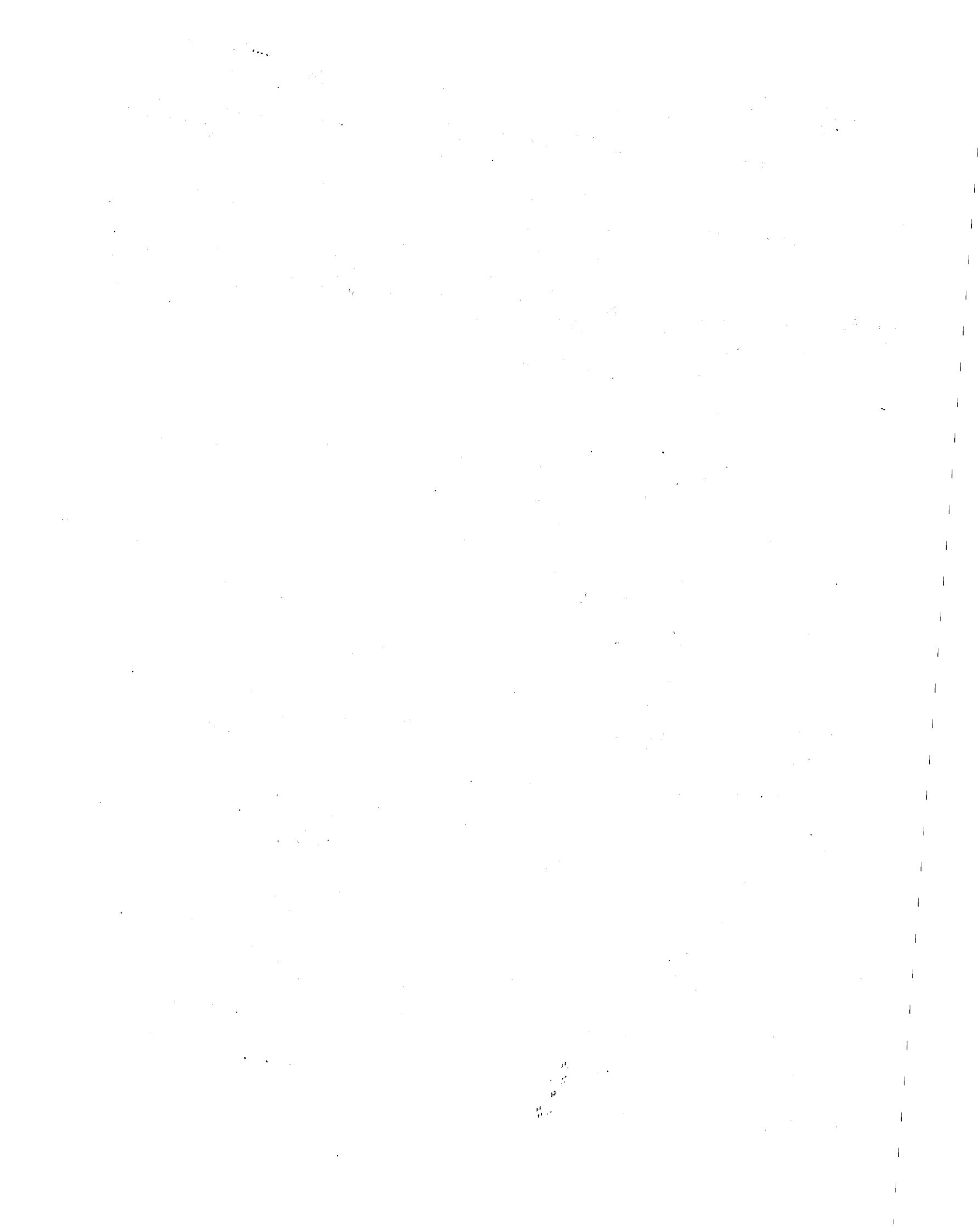
CONFIRMATION LETTER SENT: Date: _____

Pending Planning Department Confirmation

TO APPLICANT & APPELLANT BY:

DATE TO SEND PUBLICATION: 2/26/04

DATE OF PUBLICATION: 3/4/04



To: The Council Members of the Town of Los Gatos
From: Catherine and Gonzalo Asbun
Cold Stone Creamery

We currently own the Cold Stone Creamery at 16004 Los Gatos Blvd. at the Cornerstone Shopping Center and we have been open since June of last year. It has been a great experience serving the residents of Los Gatos, but an even greater experience working with some of the youth of Los Gatos.

Our interest in Cold Stone Creamery began over five years ago. We were amazed by their great ice cream, but even more impressed by their corporate culture. Their mission statement and core values which emphasize; always doing the right thing, bringing out the best in our people, profit by making people happy and win as a team were, and still are a few of the reasons why we decided we wanted to become a part of Cold Stone Creamery. We have invested a great deal of time and money into this venture and we feel very strongly about it.

At Cold Stone Creamery we believe that the customer service is a top priority. We use only the best and highest quality product to ensure that each customer is impressed by the product we serve and the way in which we serve it.

Cold Stone Creamery has an old fashioned ice cream shop appeal in a modern contemporary atmosphere. Our employees are trained to guide each customer through a unique and individualized experience. The ice cream we serve is made fresh at the store and each ice cream is as unique as the customer whom creates it. To emphasize our appreciation for each customer's patronage the crew members will, at any given moment, break out in song. It is this uniqueness and emphasis on service that we feel would make Cold Stone a perfect fit with the small – town character of downtown Los Gatos.

Currently 90% of our crew members are residents of the Los Gatos Community. Since we opened the Cornerstone location, we have been inundated with a plethora of applications from young adults whom want to be given an opportunity to work. Many of these individuals have very little if any previous experience. However, it has been these very same enthusiastic and energetic new members of the work force that have contributed to our success and our desire to try and establish another location in downtown Los Gatos. As an employer we feel we have an obligation to create a respectful and safe work environment. We have been very impressed by the high level of responsibility that these members of the Los Gatos Community have demonstrated and we look forward to hiring and working with many more. We understand that parking in the downtown area is an issue, however due to their ages and the times they work about 85% to 90% of our employees get dropped off by their parents or relatives. Two employees ride their bikes. Our employees are very conscientious about the needs of the customers and the community. The crew members are the building blocks of Cold Stone Creamery and one of the main reasons for our success at the Cornerstone location.

We also feel strongly about contributing to the community in which we have been given the privilege of serving. In the short time that we have been open at the Cornerstone location, we have contributed to many of the organizations that make Los Gatos so special. To list a few we have made and continue to make contributions to the Los Gatos High School New Millennium Foundation, The Loma Public Education Fund, The History Club of Los Gatos, The Los Gatos Community Against Substance Abuse, The Los Gatos Educational Foundation, the Los Gatos High School Athletic Assoc., the first annual Los Gatos Breast Cancer Awareness Drive and most recently with the Los Gatos/Monte Sereno Police Department in "Adopt A Cop" in which middle school children will spend time and share in an ice cream experience with various police officers, compliments of Cold Stone Creamery.

We sincerely feel that with the departing of Swenson's, Cold Stone Creamery would be a great ice cream asset to downtown Los Gatos, complementing the diverse and full range of services and products currently offered. While the downtown area does have two great yogurt shops and Italian gelato, there is no true ice cream store where young and old can create their ice cream dream in a safe and warm environment that emphasizes family values and commitment to service. We are also committed to working with the other business owners and continuing to serve the community to ensure that the high quality of life and the preservation of the town are always a priority.

We would like to thank you for your time and consideration.

REQUIRED FINDINGS FOR:

20 S. Santa Cruz Ave
Conditional Use Permit U-04-8

Requesting approval to convert a portion of an existing restaurant (Swensen's) to another restaurant use (Cold Stone Creamery) on property zoned C-2. APN 510-45-075

PROPERTY OWNER: Park Row East Apartments, Ltd

APPLICANT: Catherine G. Asbun

- The project is Categorically Exempt from environmental review pursuant to Section 15301 of the State Environmental Guidelines as adopted by the Town.
- As required by Section 29.20.190 of the Town Code for the granting of a Conditional Use Permit.

The deciding body, on the basis of the evidence submitted at the hearing, may grant a conditional use permit when specifically authorized by the provisions of this chapter if it finds that:

1. The proposed use of the property is essential or desirable to the public convenience or welfare;
 2. The proposed use will not impair the integrity and character of the zone;
 3. The proposed use would not be detrimental to public health, safety or general welfare;
 4. The proposed uses of the property are in harmony with the various elements or objectives of the general plan and the purposes of the Town Code.
- As required by Section IV.B of the Redevelopment Plan for the Central Los Gatos Redevelopment Project that it meets the use set forth in the Town's General Plan.

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TOWN COUNCIL - April 5, 2004
RECOMMENDED CONDITIONS OF APPROVAL

20 S. Santa Cruz Ave
Conditional Use Permit U-04-8

Requesting approval to convert a portion of an existing restaurant (Swensen's) to another restaurant use (Cold Stone Creamery) on property zoned C-2. APN 510-45-075

PROPERTY OWNER: Park Row East Apartments, Ltd

APPLICANT: Catherine G. Asbun

TO THE SATISFACTION OF THE DIRECTOR OF COMMUNITY DEVELOPMENT:

Planning Division

1. **APPROVAL:** This application shall be completed in accordance with all of the conditions of approval listed below and in substantial compliance with the plans approved and noted as received by the Town on February 2, 2004. Any changes or modifications to the approved plans and/or business operation shall be approved by the Community Development Director or the Planning Commission, depending on the scope of the changes.
2. **EXPIRATION OF APPROVAL:** The Conditional Use Permit will expire two years from the date of approval unless it is used before expiration. Section 29.20.335 defines what constitutes the use of an approval granted under the Zoning Ordinance.
3. **HOURS OF OPERATION.** Hours of operation are limited to 11:00 am to 11:00 pm daily.
4. **BUSINESS OPERATION.** This approval is for a specialty retail/restaurant use that sells dessert products. Any change in the type of business requires modification of the Conditional Use Permit.
5. **SEATING.** A maximum of eight (8) indoor seats are allowed.
6. **TAKE OUT.** Take out food shall be served in recycled material containers.
7. **UTENSILS.** All beverages and food served on site shall be served on reusable materials.
8. **LIVE ENTERTAINMENT.** No live entertainment is allowed.
9. **LAPSE FOR DISCONTINUANCE.** If the activity for which the Conditional Use Permit has been granted is discontinued for a period of one (1) year, the approval lapses pursuant to Section 29.20.340 of the Zoning Ordinance.
10. **ROOFTOP EQUIPMENT.** Any new roof mounted equipment shall be fully screened prior to issuance of an occupancy permit.

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Date: February 5, 2004
For Agenda Of: February 11, 2004
Agenda Item: 1

REPORT TO: The Planning Commission

FROM: The Development Review Committee

LOCATION: 20 S. Santa Cruz Ave
Conditional Use Permit U-04-8

Requesting approval to convert a portion of an existing restaurant (Swensen's) to another restaurant use (Cold Stone Creamery) on property zoned C-2. APN 510-45-075

PROPERTY OWNER: Park Row East Apartments, Ltd

APPLICANT: Catherine G. Asbun

- FINDINGS:
- As required by Section 15303 of the State Environmental Guidelines as adopted by the Town that this project is Categorically Exempt.
 - As required by Section 29.20.190 of the Town Code for the granting of a Conditional Use Permit.
 - As required by Section IV.B of the Redevelopment Plan for the Central Los Gatos Redevelopment Project that it meets the use set forth in the Town's General Plan.

ACTION: The decision of the Planning Commission is final unless appealed within ten days.

ENVIRONMENTAL ASSESSMENT: It has been determined that this project is categorically exempt pursuant to Section 15303 of the State Environmental Guidelines as adopted by the Town.

- EXHIBITS:
- A. Required Findings (one page)
 - B. Recommended Conditions of Approval (one page)
 - C. Applicant's letter (one page), received November 5, 2003
 - D. General Plan excerpts (two pages)
 - E. Floor plan (two pages), received February 2, 2004

RECOMMENDATION

SUMMARY: Approval, subject to conditions

A. BACKGROUND:

Swensen's Ice Cream closed in July 2003 and the tenant space is currently vacant. Although the restaurant use permit is still valid, the owner of Lyndon Plaza has split the floor area into two tenant spaces (identified as suites 200 and 201 on the plans). The applicant is requesting approval of a

February 11, 2004

Conditional Use Permit to occupy suite 201 (1,296 square feet in area) with a new ice cream store. A retail use is anticipated for suite 200 (1,239 square feet).

B. REMARKS:

The applicant is requesting approval to operate a Cold Stone Creamery store in a portion of the tenant space previously occupied by Swensen's Ice Cream. Pursuant to Resolution 1994-55 (Traffic Impact Fees) Cold Stone Creamery is classified as specialty retail whereas Swensen's was a high turnover sit-down restaurant. Parking for restaurant uses is based on seating. The proposed business will have a total of eight seats which is significantly less than Swensen's 70 seats. From a traffic perspective, an ice cream parlor is considered an incidental use. The Town Traffic Engineer has determined that there will not be a traffic impact related to the proposed use provided the remaining floor area (suite 200) is occupied by a retail or office use. Any other use would require approval of a conditional use permit which is a discretionary action.

The applicant currently owns and operates a Cold Stone Creamery in the Cornerstone Shopping Center on Los Gatos Boulevard & Blossom Hill Road. The proposed location at Lyndon Plaza will also be owned and operated by the applicant under a franchise agreement. Intended hours of operation are 11:00 am to 11:00 pm daily.

There has been concern about chain businesses in the Downtown. Cold Stone Creamery a national chain. However, the formula retail ordinance does not apply since it is considered a restaurant use under the Town Code. The proposed business will replace a former ice cream store and restaurant and will significantly reduce the seating. There are no other ice cream stores in the vicinity of Lyndon Plaza. TCBY at 13 N. Santa Cruz Avenue sells frozen yogurt and Dolce Spazio at 221 N. Santa Cruz Avenue sells gelato. Gelato and frozen yogurt are different products than the handmade ice cream sold by Cold Stone although all three businesses sell specialty dessert products. The applicant is an independent owner/operator and will work on the premises. The business will employ 20 to 25 part-time high school and college age people. At peak hours of operation, there will be six to eight personnel working. The applicant's letter (Exhibit C) provides more detail on the proposed operation and includes information on Cold Stone products and community involvement.

The proposed use requires fewer parking spaces than the previous use due to the decrease in seating. Although the tenant for the remainder of the former Swensen's space is not known, the manager of the Lyndon Plaza center has indicated that it will be a retail use. Staff has attached General Plan policies and implementing strategies that apply to the Downtown to assist the Commission in evaluating the application (see Exhibit D).

The Planning Commission - Page 3

20 S. Santa Cruz Avenue/U-04-8

February 11, 2004

C. RECOMMENDATION:

The Development Review Committee (DRC) considered this matter on February 3, 2004. The Planning Commission should carefully evaluate the proposed use in light of the General Plan policies included as Exhibit D. If the Commission decides to approve the application it must make the required findings (Exhibit A), and approve the application subject to conditions (Exhibit B).

Bud N. Lortz

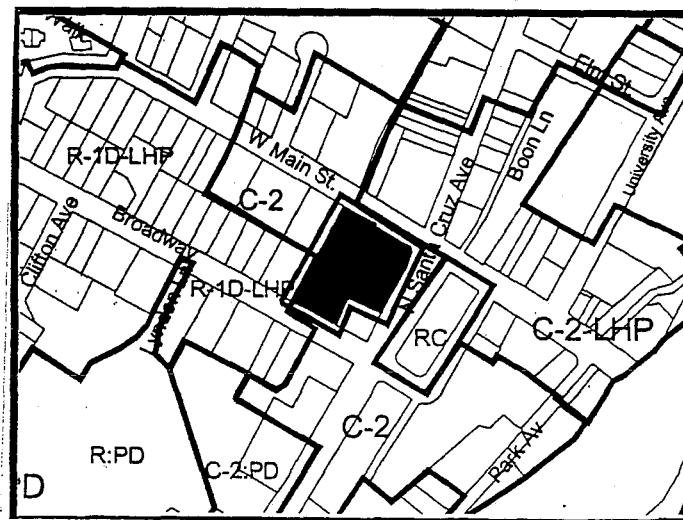
Bud N. Lortz, Director of Community Development

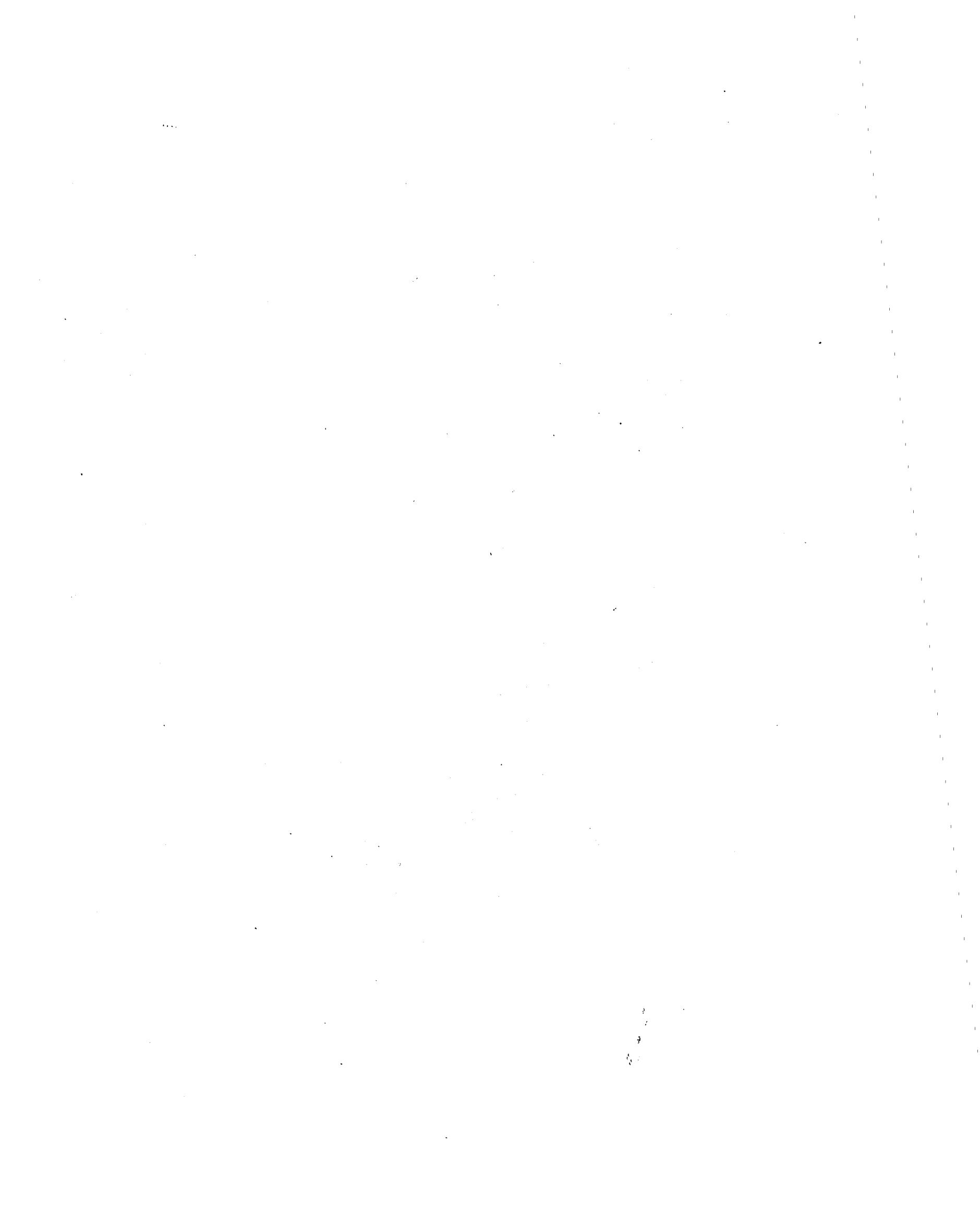
Prepared by: Suzanne Davis, Associate Planner

BNL:SD:mdc

cc: Catherine Asbun, Cold Stone Creamery, 2990 Sunwood Drive, San Jose, CA 95111
Park Row East Apartments, LTD, 20 S. Santa Cruz Ave., #320, Los Gatos, CA 95030

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REQUIRED FINDINGS FOR:

20 S. Santa Cruz Ave
Conditional Use Permit U-04-8

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PROPERTY OWNER: Park Row East Apartments, Ltd

APPLICANT: Catherine G. Asbun

- The project is Categorically Exempt from environmental review pursuant to Section 15301 of the State Environmental Guidelines as adopted by the Town.
- As required by Section 29.20.190 of the Town Code for the granting of a Conditional Use Permit.

The deciding body, on the basis of the evidence submitted at the hearing, may grant a conditional use permit when specifically authorized by the provisions of this chapter if it finds that:

1. The proposed use of the property is essential or desirable to the public convenience or welfare;
 2. The proposed use will not impair the integrity and character of the zone;
 3. The proposed use would not be detrimental to public health, safety or general welfare;
 4. The proposed uses of the property are in harmony with the various elements or objectives of the general plan and the purposes of the Town Code.
- As required by Section IV.B of the Redevelopment Plan for the Central Los Gatos Redevelopment Project that it meets the use set forth in the Town's General Plan.

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PLANNING COMMISSION - February 11, 2004
RECOMMENDED CONDITIONS OF APPROVAL

20 S. Santa Cruz Ave
Conditional Use Permit U-04-8

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PROPERTY OWNER: Park Row East Apartments, Ltd

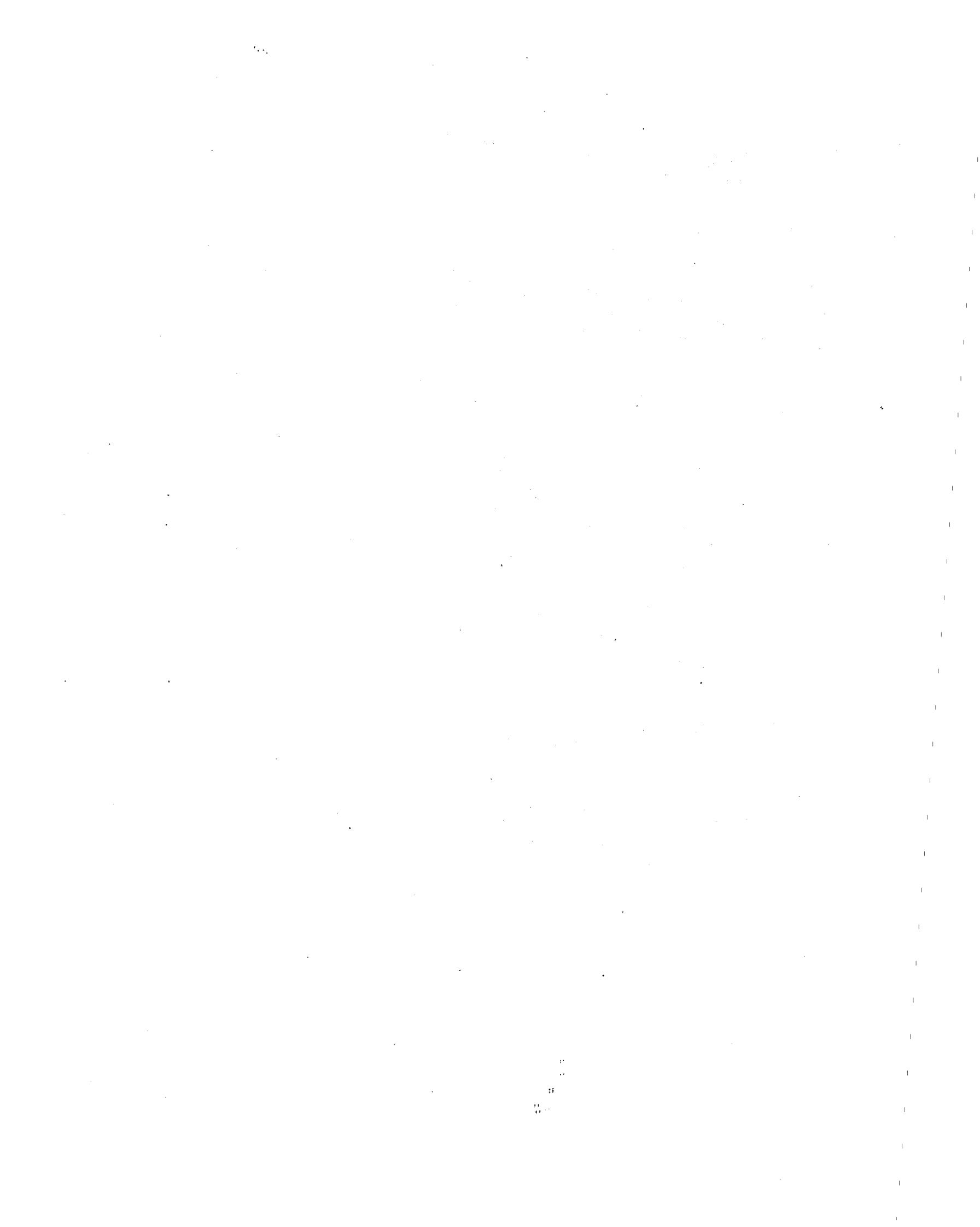
APPLICANT: Catherine G. Asbun

TO THE SATISFACTION OF THE DIRECTOR OF COMMUNITY DEVELOPMENT:

Planning Division

1. **APPROVAL:** This application shall be completed in accordance with all of the conditions of approval listed below and in substantial compliance with the plans approved and noted as received by the Town on February 2, 2004. Any changes or modifications to the approved plans and/or business operation shall be approved by the Community Development Director or the Planning Commission, depending on the scope of the changes.
2. **EXPIRATION OF APPROVAL:** The Conditional Use Permit will expire two years from the date of approval unless it is used before expiration. Section 29.20.335 defines what constitutes the use of an approval granted under the Zoning Ordinance.
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6. **TAKE OUT.** Take out food shall be served in recycled material containers.
7. **UTENSILS.** All beverages and food served on site shall be served on reusable materials.
8. **LIVE ENTERTAINMENT.** No live entertainment is allowed.
9. **LAPSE FOR DISCONTINUANCE.** If the activity for which the Conditional Use Permit has been granted is discontinued for a period of one (1) year, the approval lapses pursuant to Section 29.20.340 of the Zoning Ordinance.
10. **ROOFTOP EQUIPMENT.** Any new roof mounted equipment shall be fully screened prior to issuance of an occupancy permit.

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To: The Town of Los Gatos
Planning Commission

From: Gonzalo and Catherine Asbun
Cold Stone Creamery

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TOWN OF LOS GATOS
PLANNING DIVISION

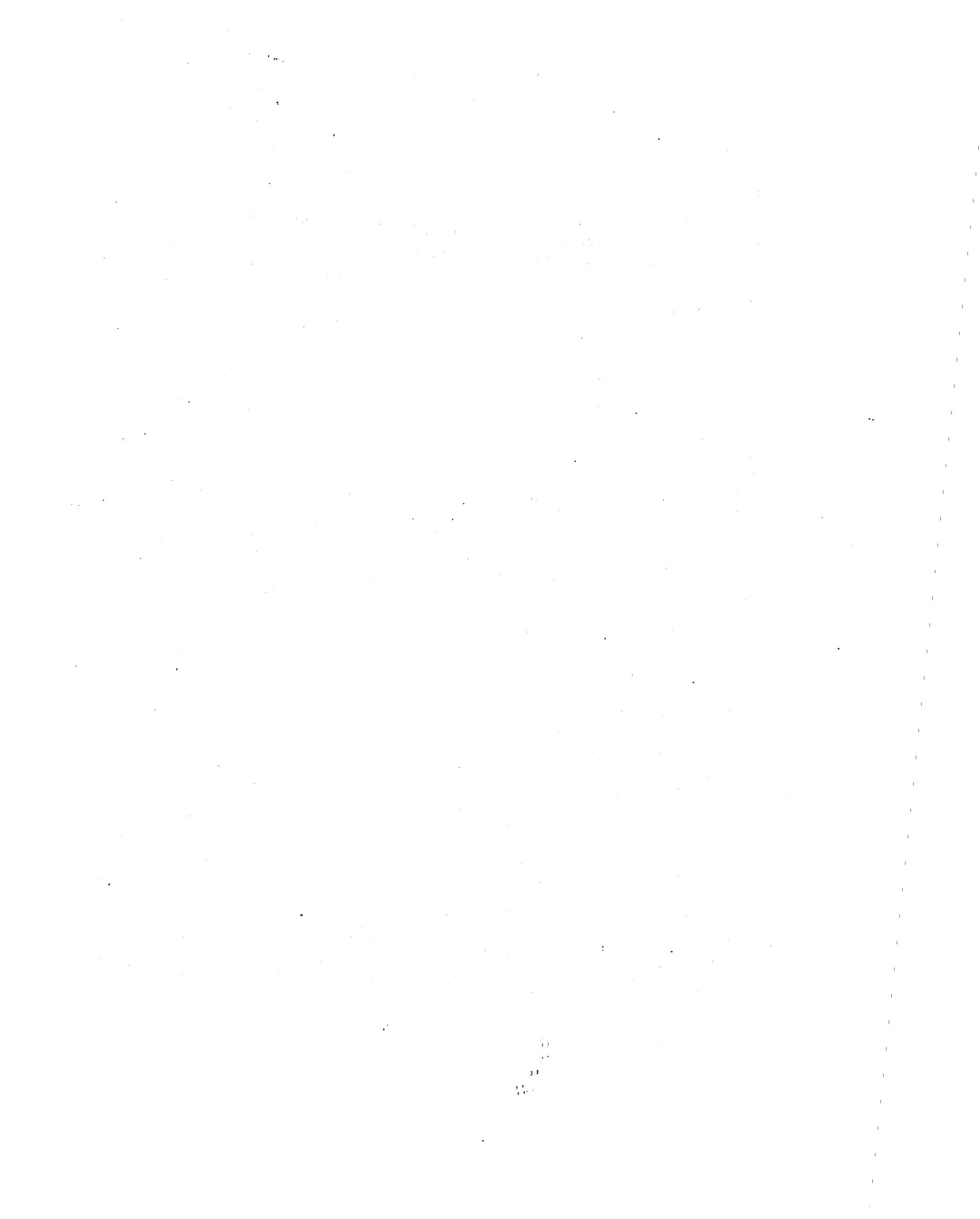
Cold Stone Creamery is a concept new and unique to Northern California. It supplies super premium ice cream; yogurts and Italian sorbets made fresh daily on-site. Cold Stone Creamery believes in only using premium quality ingredients. The ice cream is then made to order by the customer and the ingredients are all blended on an ice-cold granite stone. Customers create their own ice cream creations with a variety of name brand candies, fruits, nuts, and flavorings. We also serve a variety of specialty shakes, smoothies, ice cream cakes, sundaes, and freshly made brownies and waffle cones. Cold Stone Creamery is dedicated to making each customer's total experience unique. This is all done in a family oriented environment that provides great tasting ice cream and enthusiastic entertainment from the Cold Stone Creamery crewmembers.

We believe that Cold Stone Creamery will be a vital asset to the downtown community of Los Gatos. This downtown location will cater to the visitors, merchants and locals who find themselves walking and enjoying the downtown area. Given that a neighborhood store has already been established at the Cornerstone Shopping Center, we believe that the majority of customers served at the downtown location will be those who are already visiting the downtown area.

Cold Stone Creamery will provide exciting yet challenging jobs to the young residents of Los Gatos. Cold Stone Creamery is based on five core values; 1. Do the right thing; 2. Bring out the best in our people; 3. Profit by making people happy; 4. Win as a team; and 5. Be the best...be number one. These core values are passed on to each Cold Stone Creamery owner and then passed on to the crewmembers. It is the goal of each owner to treat each crewmember with respect and teach the individual the importance of taking any job and being the best at it. The owner and crewmembers work as a team to serve and make the customers feel like every experience they have at Cold Stone is unique and special. Cold Stone Creamery is a strong commercial use, which meets the needs of the residents while at the same time, preserves the town uniqueness. It brings back the old-fashioned ice cream parlor appeal with a modern and fresh décor.

The proposed Cold Stone Creamery will be established at 20 South Santa Cruz Avenue, Suite #201. The intended hours of operation will be between 11:00 a.m. and 11:00 p.m. We expect to employ between 20 and 25 part-time high school and college students. This Cold Stone Creamery will be managed and run by the owners with the assistance of shift leaders. We anticipate allowing for eight seats inside. We expect to have no significant traffic impact given that the business has a continuous flow of customers purchasing the products and then leaving.

We have invested our time, money and future into this franchise opportunity because the mission statement, core values and business practices behind Cold Stone Creamery are parallel to what we believe will make any business successful; create a win-win situation and always do the right thing. Cold Stone Creamery strongly believes that it is imperative to become involved in the community it serves and we intend to uphold that belief in the Town of Los Gatos. In the short time that Cold Stone Creamery has been open at the Cornerstone location, we have contributed to many of the organizations within the Los Gatos Community. We have supported the Los Gatos High School New Millennium Foundation, the Loma Public Education Fund, local nursery schools, the Community Against Substance Abuse, the Los Gatos High School Football Team, the Los Gatos High School Band, and continue to support the Los Gatos school district by taking part in the Los Gatos Education Foundation Tuesdays. With the new location we hope to continue our commitment by contributing to the community we serve. We will provide a safe and pleasant environment for both residents and tourists while keeping the small town character and image of the town a priority.



**Provide a Mix
of Commercial
& Industrial
Land Uses to
Maintain a
Full-Service
Town**

ISSUE: 5

It is important to the economic vitality of the Town and to the general benefit of the residents that goods and services are readily available to the citizens of Los Gatos. If a full range of goods and services are not provided sales tax "leakage" will occur, reducing the Town's fiscal stability.

Goals:

- L.G.5.1 To provide residents with adequate commercial and industrial services.
- L.G.5.2 To maintain a balanced, economically stable community within environmental goals.

Policies:

- L.P.5.1 Maintain a variety of commercial uses (a strong downtown commercial area combined with Los Gatos Boulevard and strong neighborhood commercial centers) to meet the shopping needs of residents and to preserve the small-town atmosphere.
- L.P.5.2 Encourage a mix of retail, office and professional uses in commercial areas, except in the Central Business District where retail should be emphasized.
- L.P.5.3 Require full public review for commercial development to ensure compatibility with adjacent neighborhoods and the Town.
- L.P.5.4 Encourage existing light industry and service commercial uses to remain or be replaced with similar uses.
- L.P.5.5 Encourage the development and retention of locally-owned stores and shops.
- L.P.5.6 Encourage development that maintains and expands resident-oriented services and/or creates employment opportunities for local residents consistent with overall land use policies of the Town.
- L.P.5.7 Only allow land uses for which public costs can be justified by overall community benefit.
- L.P.5.8 "Broadening the tax base" shall never be the sole reason for allowing new commercial development or approving a change in a commercial land use.
- L.P.5.9 Retail sales tax "leakage" should be kept to a minimum by providing in-town convenience and comparative shopping opportunities.

Implementing Strategies:

- L.I.5.1 Revise CUP Table: Study Conditional Use Permit Table to determine if any changes (deletions or additions) need to be made to list of uses. Considerations should include factors such as size of building and/or floor space occupied, traffic generation and whether the use would dictate a "trademark" style of building.

Time Frame: 2000 - 2005
Responsible Party: Planning, Town Manager and the Chamber of Commerce



Community Design Element

Issue 3 - Historic Preservation

Issue 4 - Downtown

Policies:

- L.P.6.1 Encourage the preservation, restoration, rehabilitation, reuse and maintenance of existing buildings.
- L.P.6.2 Encourage the development and retention of small businesses and locally-owned stores and shops that are consistent with small town character and scale.
- L.P.6.3 Consider outdoor seating in restaurants/coffee shops only when the historic character and quality of the Downtown and adjacent neighborhoods can be maintained.
- L.P.6.4 Establish and maintain strong boundaries between the CBD and adjacent residential neighborhoods.
- L.P.6.5 Recognize and encourage the different functions, land use patterns, and use mixes of the various commercial areas within the downtown. This includes:
- The pedestrian scale, specialty orientation of the CBD.
 - The convenience shopping land use pattern of areas north of Saratoga Avenue to about Blossom Hill Road.
 - The mixed use commercial activities along Santa Cruz Avenue and the service commercial activities along University Avenue between Andrews, Roberts, and Blossom Hill Roads.
- L.P.6.6 Encourage mixed uses to increase residential opportunities in commercial zones.

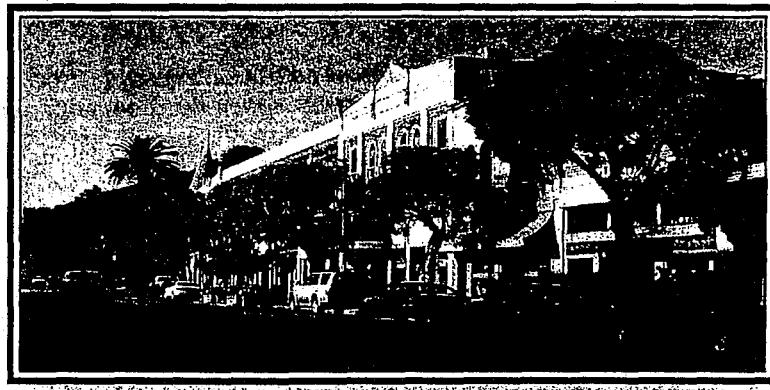
Implementing Strategies:

- L.I.6.1 Threshold Floor Area: Study amending the Town Code to establish a threshold floor area that would require a conditional use permit for new businesses.

Time Frame: 2000 - 2005
Responsible Party: Planning

- L.I.6.2 Commercial Rent Mediation: Study whether some form of commercial rent mediation would benefit the community by protecting small businesses and locally owned shops.

Time Frame: 2000 - 2005
Responsible Party: Planning





AT
LYNDON PLAZA
20 S. SANTA CRUZ AVENUE
LOS GATOS, CA 95030

GENERAL NOTES

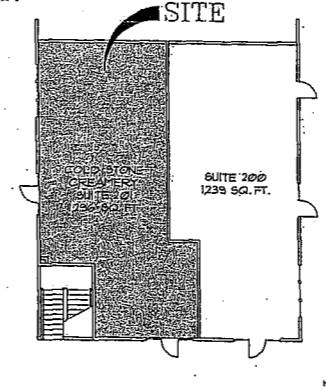
DIVISION 1 GENERAL REQUIREMENTS

- THE INTENT OF THESE DOCUMENTS IS TO PROVIDE FOR THE CONSTRUCTION OF THIS PROJECT, COMPLETE AND FUNCTIONAL IN ALL RESPECTS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THIS RESULT. THE OMISSION OF EXPRESS REFERENCE TO WORK NECESSARY AND REASONABLY INCIDENTAL FOR THE COMPLETE CONSTRUCTION OF THE PROJECT SHALL NOT BE CONSTRUED AS RELIEVING THE CONTRACTOR FROM HIS RESPONSIBILITIES.
- THE CONTRACTOR SHALL VERIFY ALL EXISTING DIMENSIONS, CLEARANCES AND CONDITIONS TO THE ARCHITECT PRIOR TO COMMENCEMENT OF WORK. ANY CHANGES WHICH INSTITUTES ACCEPTANCE AND RESPONSIBILITY FOR ALL EXISTING CONDITIONS, THE CONTRACTOR WILL NOT BE ALLOWED ADJUSTMENTS IN TIME OR MONEY REQUIRED TO RECTIFY THE SITUATION.
- DO NOT SCALE DRAWINGS. GIVEN DIMENSIONS SHALL GOVERN. LARGE SCALE DRAWINGS SHALL GOVERN OVER SMALL SCALE DRAWINGS.
- THE CONTRACTOR SHALL SIGN OFF DRAWINGS OF ALL PLATES, FURNITURE, AND FIXTURES PROVIDED FOR REVIEW BY THE ARCHITECT UNLESS WAIVED BY THE SAME.
- ALL EQUIPMENT, MATERIALS AND ARTICLES INCORPORATED INTO THE PROJECT SHALL BE NEW AND UNDAMAGED. ALL WORKMANSHIP SHALL BE WITHIN INDUSTRY STANDARDS.
- THE CONTRACTOR SHALL BE RESPONSIBLE FOR REPAIR AND REPLACEMENT OF DAMAGE TO AREAS CAUSED BY HIS WORK AT NO ADDITIONAL COST TO THE OWNER.
- THE CONTRACTOR SHALL BE RESPONSIBLE FOR SAFETY CONDITIONS RELATING TO JOB CONSTRUCTION INCLUDING A SAFE ENVIRONMENT FOR OCCUPANTS OF AREAS ADJACENT TO THE WORK AREA.
- THE CONTRACTOR SHALL PAY ALL FEES FOR PERMITS NECESSARY FOR PROPER COMPLETION OF WORK, UNLESS NOTED OTHERWISE.
- SHOULD THE CONTRACTOR OBSERVE ERRORS, DISCREPANCIES, OR OMISSIONS IN THE CONTRACT DOCUMENTS, HE SHALL PROMPTLY NOTIFY THE ARCHITECT REQUESTING CLARIFICATION. THE CONTRACTOR SHALL NOT PROCEED WITH WORK AFFECTED BY SUCH ERRORS, DISCREPANCIES OR OMISSIONS WITHOUT RECEIVING CLARIFICATIONS. ADJUSTMENTS INVOLVING SUCH CONDITIONS MADE BY THE CONTRACTOR WITHOUT PRIOR CLARIFICATION BY THE ARCHITECT, SHALL BE AT THE CONTRACTOR'S OWN RISK.
- COMPLICATIONS ARISING FROM PROCEEDING WITHOUT CLARIFICATION SHALL BE RESOLVED AT THE CONTRACTOR'S EXPENSE.
- ALL WORK PERFORMED ON THIS PROJECT SHALL COMPLY WITH APPLICABLE LOCAL, STATE AND NATIONAL CODES, LAWS AND ORDINANCES.
- ANYTHING IN THE CONTRACT DOCUMENTS NOT WITHSTANDING, THE CONTRACTOR ACCEPTS THE RESPONSIBILITY OF CONSTRUCTING A WATER-TIGHT, WEATHER TIGHT PROJECT.
- CONTRACTOR SHALL COORDINATE LOCATION OF ALL NEW ROOF MOUNTED EQUIPMENT WITH OWNER PRIOR TO INSTALL. CENTER EQUIPMENT OVER BEAM, OR COLUMN UNLESS DIRECTED OTHERWISE BY OWNER.
- CONTRACTOR SHALL PROVIDE 2X BLOCKING AT ALL WALL MOUNTED EQUIPMENT OR ACCESSORIES.
- ALL SIGNS, INCLUDING WINDOW SIGNS, TO BE SUBMITTED FOR REVIEW AND APPROVAL, UNDER SEPARATE PERMIT BY OWNER/CONTRACTOR.
- ALL ANGLES AT 45°, 90° UNO.

DIVISION 2 DEMOLITION/HAZARDOUS MATERIALS

- THE CONTRACTOR SHALL BE RESPONSIBLE FOR ALL DEMOLITION REQUIRED TO ALLOW FOR ALL PROPOSED NEW WORK.
- PATCH, REPAIR, REPLACE AND FINISH ANY FLOOR, WALL, OR CEILING TO MATCH ADJACENT AREAS WHERE DEMOLITION HAS BEEN REQUIRED.
- PROVIDE PROPER SHORING AND DISCONNECTION OF ALL UTILITIES PRIOR TO DEMOLITION.
- THE CONTRACTOR SHALL BE RESPONSIBLE FOR KEEPING THE SITE FREE OF DEBRIS.
- THE CONTRACTOR SHALL COORDINATE WITH BUILDING OWNER PRIOR TO START OF WORK, THE REQUIREMENTS FOR CORING OF FLOOR SLAB FOR ALL REQUIRED WORK.
- THE ARCHITECT AND ENGINEERS, AND CONSULTANTS SHALL HAVE NO RESPONSIBILITY FOR THE DISCOVERY, PRESENCE, HANDLING, REMOVAL, OR DISPOSAL OF, OR EXPOSURE OF PERSONS TO HAZARDOUS MATERIALS, IN ANY FORM AT THE PROJECT SITE, INCLUDING BUT NOT LIMITED TO ASBESTOS PRODUCTS, POLYCHLORINATED BIPHENYL (PCB) OR OTHER TOXIC SUBSTANCES.

KEY PLAN



VICINITY MAP



PROJECT INFORMATION

TENANT IMPROVEMENT PLANS

PROJECT ADDRESS: 20 S. SANTA CRUZ AVENUE, SUITE 201
LOS GATOS, CA 95030
PROPOSED USE: ICE CREAM SHOP
SUITE AREA: 1296 SF.
OCCUPANT TYPE: MERCANTILE (M)
OCCUPANT LOAD FOR EXTERIOR:
PUBLIC (RETAIL): 460 SF / 30 = 15.3
NON-PUBLIC (KITCHEN): 836 SF / 100 = 4.2
TOTAL: 20 OCCUPANTS
EXITS REQUIRED: 1 (LESS THAN 50 OCCUPANTS)
EXITS PROVIDED: 1
PLUMBING FIXTURE COUNT:
PUBLIC (RETAIL): 460 SF / 200 = 2.3
NON-PUBLIC (KITCHEN): 836 SF / 100 = 4.2
TOTAL: 1 OCCUPANTS
OCCUPANT LOAD LESS THAN 10, THEREFORE 1 UNISEX
EMPLOYEE RESTROOM PROVIDED.
JURISDICTION: CITY OF LOS GATOS
APPLICABLE CODES:
2001 CALIFORNIA BUILDING CODE (1991 UBC)
2001 CALIFORNIA PLUMBING & MECHANICAL CODES (2000 UPC & UMC)
2001 CALIFORNIA ELECTRICAL CODE (1999 NEC)
2001 CALIFORNIA TITLE 24

COLD STONE CREAMERY

FM GROUP INC

2944 N. 44TH STREET, SUITE 150
PHOENIX, ARIZONA 85018
(602) 277-7877 PH
(602) 277-8288 FAX

ENGINEER:

YASHAVANT VISHNU
KULKARNI, PE.

Wet seal approved
only

PROJECT TEAM

CORPORATE:
COLD STONE CREAMERY
16101 N. 21ST STREET "A-4"
SCOTTSDALE, AZ 85260
PH: (480) 348-1104
FAX: (480) 348-1118

FRANCHISEE:
CATHY ASBUN
20 S. SANTA CRUZ AVENUE
LOS GATOS, CA 95030
PH: (408) 316-3460
FAX: (408) 335-3983

DESIGN ARCHITECT:
FM GROUP INC
2944 N. 44TH STREET, SUITE 150
PHOENIX, AZ 85018
PH: (602) 277-1871
FAX: (602) 277-8288

ELECTRICAL / MECHANICAL / PLUMBING ENGINEER:
KULKARNI ENGINEERING CO., INC.
YASHAVANT VISHNU KULKARNI, PE
210 EAST KALER DRIVE
PHOENIX, AZ 85020
PH: (602) 277-1871 RANDY CLEURN

DRAWING INDEX

- A-1 PROJECT NOTES; GENERAL NOTES, 4 DOOR & WALL TYPES
- A-2 FLOOR / EQUIPMENT PLANS; AND EQUIPMENT SCHEDULE
- A-3 REFLECTED CEILING PLAN AND FLOOR FINISH PLAN
- A-4 INTERIOR ELEVATIONS
- A-5 DETAILS
- A-6 DETAILS
- M-1 MECHANICAL PLAN, SPECIFICATIONS, SCHEDULES, AND DETAILS
- M-2 TITLE 24 ENERGY CALCULATIONS
- P-1 PLUMBING PLAN, SCHEMATIC, AND SCHEDULES
- P-2 PLUMBING NOTES AND DETAILS
- E-1 ELECTRICAL POWER PLAN AND LIGHTING PLAN
- E-2 SINGLE LINE DIAGRAM, ENGINEERING CALCS AND EQUIPMENT SCHEDULES
- E-3 TITLE 24 ENERGY CALCULATIONS

DOOR TYPES

- D1 NEW DOOR: SOLID CORE PRE-FINISHED (PL2) BOTH SIDES 3'-0" x 6'-8" x 3-1/4". PAINT ALL FOUR EDGES BLACK, W/ TIMELY METAL DOOR FRAME (BLACK). ALL HARDWARE PER ADA REQUIREMENTS - SEE SCHEDULE.
- D2 EXISTING DOOR: DOOR TO REMAIN. PROVIDE NEW HARDWARE, IF REQUIRED, PER ADA - SEE SCHEDULE.
- D3 NEW DOOR: ELIASON CORP. EAST SWING 3/4" SOLID CORE DOUBLE ACTION DOOR TYPE SCS-1 W/ 14" x 16" SAFETY WINDOW FINISH WITH FORMICA 1225-BB (PL2) BOTH SIDES. TIMELY METAL DOOR FRAME (BLACK), WITHOUT STOPS.

NOTE: ALL EXITS SHALL BE OPERABLE FROM THE INSIDE WITHOUT THE USE OF A KEY OR SPECIAL KNOWLEDGE. ALL THRESHOLDS SHALL BE A MAXIMUM OF 1/2" HEIGHT AND BEVELED.

HARDWARE SCHEDULE

INTERIOR DOORS
LOBBY / WORK AREA: ENTRANCE LOCKSET, LEVER TYPE, SINGLE-ACTION, CLOSER.

TOILET ROOM: PRIVATE SET, LEVER TYPE, SINGLE-ACTION, CLOSER; WEATHERSTRIPPING.

EXTERIOR DOORS

WORK AREA / EXTERIOR: PANIC HARDWARE, CLOSER.

LOBBY - EXTERIOR: LOCKSET, LEVER TYPE, CLOSER; WEATHERSTRIPPING.

NOTE:

CENTER OF LEVER TO BE INSTALLED 36" ABOVE FINISH FLOOR

FEB 02 2004

- NEW INTERIOR STUD WALL SEE DETAIL 1A-5 FOR CONSTRUCTION, SMOOTH FINISH AT WALL 60241A.
- EXISTING WALL TO REMAIN PLANNING DIVISION

NOTE:

GYP BOARD WALL

SMOOTH FINISH, UNI

DM 12/16/03 to 8/1/03
APPROVED
as intended
as corrected
SANTA CLARA COUNTY
Dept. of Environmental Health
By [Signature] [Signature] R.H.E.H.S.
R.H.E.H.S. No. [Redacted]

OWNER

CATHY ASBUN
2944 N. SUNWOOD DRIVE
SAN JOSE, CA 95111

PROJECT TITLE

COLD STONE CREAMERY
20 S. SANTA CRUZ AVENUE
SUITE 201
LOS GATOS, CA 95030
STORE #101

PROJECT NO.: 03253
FILE NAME: 03253-101-Aldeg
DATE: 9/15/03
DRAWN BY: JB
REVIEWED BY: DD
REV. DESCRIPTION DATE
Santa Clara County Department of Environmental Health 1955 Deaderick Drive, Ste. 300 San Jose, CA 95131-5600
RECEIVED: 9/23/03

SHEET TITLE

PROJECT INFO, FINISH NOTES,
GENERAL NOTES AND
DOOR & WALL TYPES

SHEET NO.

EXHIBIT E

ENGINEER:

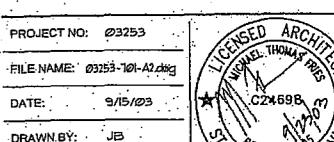
YASHAVANT VISHNU KULKARNI, PE

KEY NOTES

- 1 NEW TELEPHONE MOUNTING BOARD.
- 2 60° TURNING DIAMETER PER ADA REQUIREMENTS.
- 3 PROVIDE 3" GAP BETWEEN SNEEZE GUARD AND ADJACENT EQUIPMENT AND/OR WALL.
- 4 LOCATION OF NEW ELECTRICAL PANEL.
- 5 PROVIDE 2" DIAMETER HOLE WITH GROMMET AT REGISTER FOR POWER CORD. COORDINATE LOCATION WITH OWNER.
- 6 CONDENSATE / DRAIN LINE.
- 7 DELIVERY OF CERTAIN EQUIPMENT REQUIRES REMOVAL OF A PORTION OF STOREFRONT.
- 8 BLACK OUT WINDOW, COORDINATE WITH OWNER.
- 9 CONDENSER.

Schedule of Furniture, Fixtures, Equipment, Miscellaneous and Additional Items

PURCHASE BY OWNER BY GENERAL CONTRACTOR	ITEM	QUANTITY	DESCRIPTION	MAKE / MODEL	VOLTAGE / PHASE	HORSE POWER	KILOWATTS	AMPS	CONNECTION	COLD WATER	HOT WATER	DIRECT WASTE	INDIRECT WASTE	REMARKS
FURNITURE COLD STONE CORPORATE STANDARDS														
	F1-2	1	FLASH RECEPTACLE	WATT MODEL 115 DT, BLACK 15GAL										COLD STONE CORPORATE STANDARDS
	F2-2	2	FRONT SERVICE COUNTER	CUSTOM MILLWORK										SEE DETAIL 6/A-5
	F3-1	1	BACK COUNTER	CUSTOM MILLWORK										SEE DETAIL 7/A-5
	F4-2	2	SNEEZE GUARD	CUSTOM										SEE DETAIL 9/A-5
	F5-1	1	TABLE	UNIVERSAL STAINLESS K207004										LOCATE PER OWNER
	F6-4	4	WIRE RACK	(2) 60" LONG x 15" DEEP (2) 36" LONG x 18" DEEP										
	F7-2	2	SPLIT WIRE RACK (MOUNTED ABOVE SINK)	8" LONG x 15" DEEP (MOUNT ONE INTO 2 SECTIONS TO MOUNT ON EACH SIDE OF FAUCET)										COORDINATE MOUNTING HEIGHT WITH OWNER
	F8-1	1	STAINLESS STEEL TABLE WITH WHEELS	UNIVERSAL STAINLESS K243004										24" x 30"
	F9-1	1	FLOOR SAFE	VAULT MASTERS - MODEL CSC 2620										SECURE TO FLOOR PER MFGRS INSTRUCTIONS
	F10-4	4	TABLE BASE AND TOP	EAV NISS J955										ADA ACCESSIBLE, TABLE CLEAR HEIGHT 28"
	F11-8	8	CHAR	EMU COUPLE A355										
	F12-5	5	VINYL-COATED SHELVING	CLOSET MAND OR EQUAL - (5) 4' LONG x 12" DEEP,										INSTALLED IN WORK AREA AT +7'-6" AFF.
FIXTURES														
	X1-1	1	24" x 24" HOP SINK											SEE PLUMBING
	X2-1	1	WATER HEATER (MOUNTED ABOVE MOP SINK)	RUAUD ELDOSH-OR EQUAL (4 GALLON CAPACITY)	208/1	26.4	④							WITH 6000 WATT ELEMENTS TOP AND BOTTOM - SEE DETAIL 4/A-5
	X3-1	1	3 COMP. SINK W/ 2-1/2" GRANDBOARDS	UNIVERSAL STAINLESS 30820-204 W/ FLOOR 210-HB PRE-BASE										SEE PLUMBING
	X4-2	2	DISHWELL	SERVER 15" DISHWELL										3/4"
	X5-2	2	WALL MOUNT HAND SINK	AMERICAN STANDARD LUCERNE										1/2" 1/2" 2"
	X6-2	2	CEILING FAN	BLADE 5 BLADE 22" MARSHAL BAY HIGHLIGHT 12 OR EQUAL	115/1									DO NOT INSTALL LIGHT KIT.
	X7-2	2	FROST TOP FAUCET	FISHER FAUCET 3042										3/8"
	X8-5	5	12" x 12" FLOOR SINK	JOSMI J95000-2, CAST IRON										1/4"
	X9-1	1	DRIP SINK 17" x 18" DRAINBOARD	UNIVERSAL STAINLESS 17418-LUB WIR 115 8-1125 FAUCET										SEE PLUMBING
	X10-0	0	ELECTRIC HANDICAP DRINKING FOUNTAIN	DAESI PERSPIKE										SEE PLUMBING
	X11-1	1	SURFACE MOUNTED HAND SINK	JUST SL-1017-A-GR-ADA										1/2" 1/2" 2"
EQUIPMENT														
	E1-1	1	WALK-IN COOLER	MASTER BILT W/ OPTIONAL FLUORESCENT LIGHT	208-230/1	3/4								6'-0" x 8'-0"
	E2-1	1	WALK-IN FREEZER	MASTER BILT W/ OPTIONAL FLUORESCENT LIGHT	208-230/1	2								COMBINED SIZE IS 12'-0" x 8'-0"
	E3-2	2	FROST TOP	ATLAS MFS	120/1	1/3	9.8	④						6'-0" x 8'-0"
	E4-0	0	DIPPING CABINET	GHEA-9-	220/1	1/2	10	④						SILICON CAULK AT PERIMETER - PER MANUFACTURERS INSTRUCTIONS
	E5-1	1	DIPPING CABINET	GHEA-12	220/1	1/2	10	④						BOTTOM OF OUTLET AT +92" AFF. CONTRACTOR TO INSTALL CONDENSATE PAN ASSEMBLY.
	E6-1	1	HARDENING CABINET	MASTER-BILT INC-48	230/1	1 1/2	35	④						PROVIDE CATS CABLE FROM POS TO PC, COORDINATE WITH OWNER.
	E7-2	2	CASH REGISTER	PANASONIC 5500 POS (REQUIRES PC)	115/1	.028	0.35	④	▽					(ADD EXTRA DUPLEX FOR FUTURE USE)
	E8-3	3	CONE IRON	COLD WEAR MODEL 5020	120/1	1.0	8.3	④						BOTTOM OF OUTLET @ 40" AFF.
	E9-1	1	HOT TOPPING SERVER	FSP J92059	120/1	.5	4.2	④						BOTTOM OF OUTLET @ 40" AFF.
	E10-1	1	BLENDER	WHAIRL MODEL 5100 W/ 1 EXTRA WHIRL 15500 CANISTER	120/1	2	11.2	④						BOTTOM OF OUTLET @ 40" AFF.
	E11-1	1	REFRIGERATOR DISPLAY CASE	MASTER-BILT BLD-52	220/1	120/1	11.2	5.9	④					W/ 3" CASTERS - REMOVE LEGS - 32" MAX HEIGHT.
	E12-1	1	CONFECTION OVEN	TURBOFAT E25	110/1	1.6	16.6	④						W/ 3" CASTERS - REMOVE LEGS - 32" MAX HEIGHT.
	E13-1	1	UNDER COUNTER REFRIGERATOR	SILVER KING SR-18 DOUBLE DOOR, CASTERS PROVIDED	115/1		5.5	④						
	E14-1	1	UNDER COUNTER FREEZER	SILVER KING SF-27 SINGLE DOOR, CASTERS PROVIDED	115/1		6.0	④						
	E15-1	1	CREDIT CARD MACHINE		115/1									
	E16-1	1	DIP SERVER	DI-1 #92000	120/1	.5	4.2	④						BOTTOM OF OUTLET @ 40" AFF.
MISCELLANEOUS ITEMS														
	M1-1	1	MENU BOARD	CUSTOM										COLD STONE CORPORATE STANDARDS
	M2-1	1	P.D.P. SIGNAGE	CUSTOM										COLD STONE CORPORATE STANDARDS
	M3-5	5	PLASTIC STRAINER BASKET											INSERT IN EACH FLOOR SINK
	M4-3	3	LIQUID SOAP DISPENSER	SYSCO										
	M5-3	3	PAPER TOWEL DISPENSER	SYSCO										
	M6-1	1	ORIGINALS BOARD	48" x 48"										
	M7-4	4	WALL GRAPHICS	48" x 48"										
ADDITIONAL ITEMS														
	A1-1	1	DESK WITH FILE CABINET AND COMPUTER		115/1									SUPPLIED BY OWNER
	A2-1	1	WIFAK SYSTEM		115/1									COORDINATE W/ OWNER & HOZAK, INSTALL ④ AT +7'-6" AFF.
	A3-2	2	PHONE											SUPPLIED BY OWNER, COORDINATE MOUNTING HEIGHT W/ OWNER.
	A4-1	1	MULTIPLE TIER LOCKER											
	A5-0	0	STANCHION POST	LAWRENCE METALS - TEHNABARBER										
	A6-2	2	FIRE EXTINGUISHER	2A:10BC										

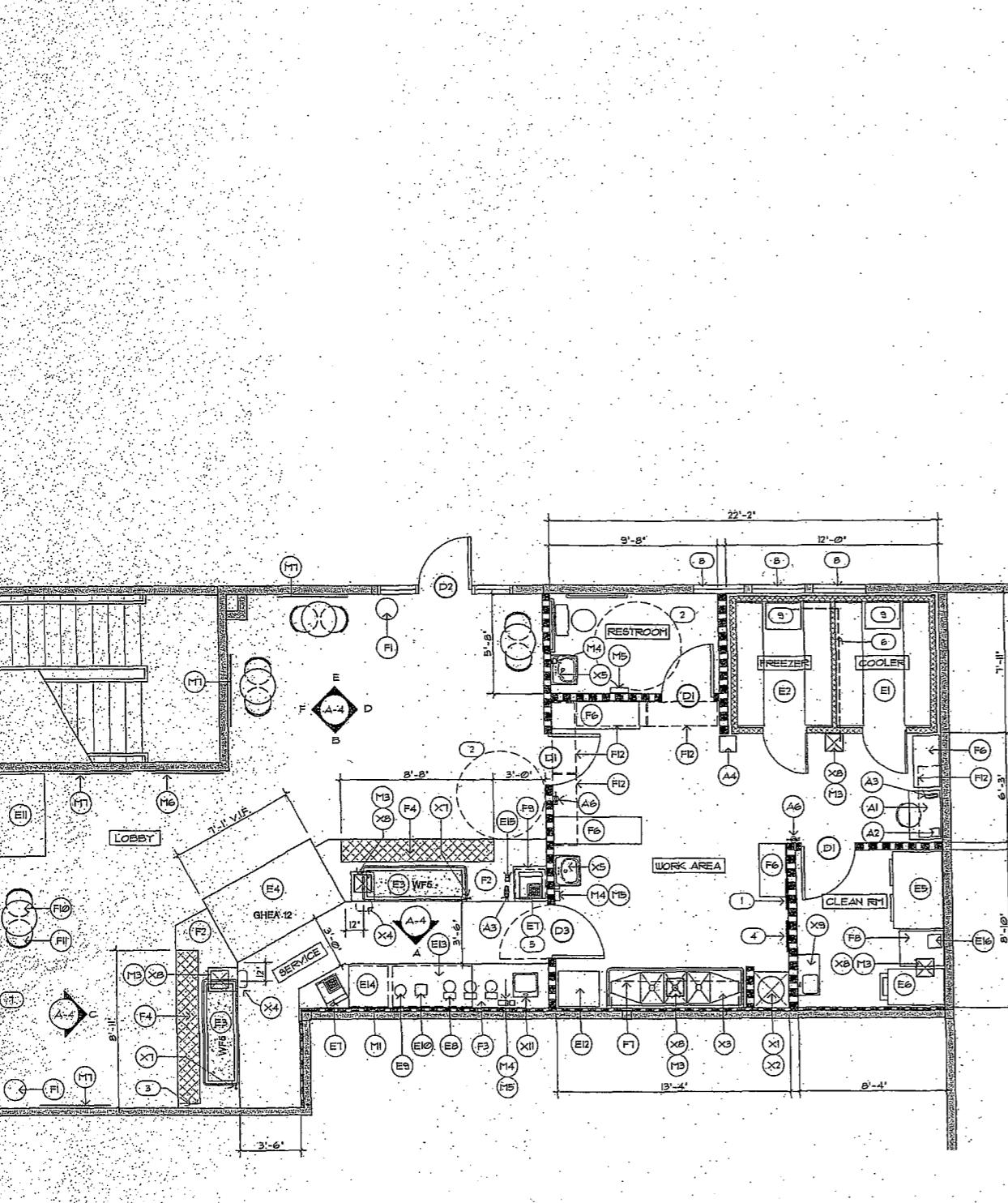


SHEET TITLE

FLOOR / EQUIPMENT PLANS AND EQUIPMENT SCHEDULE

SHEET NO.

A-2



1 A P P E A R A N C E S:

2

3 Los Gatos Planning
4 Commissioners:

Jeanne Drexel, Chair
Michael Burke
Phil Micciche
Tom O'Donnell
Lee Quintana
Joanne Talesfore
Morris Trevithick

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Director of
Community
Development:

Bud N. Lortz

Transcribed by:

VICKI L. BLANDIN
5500 Van Fleet Avenue
Richmond CA 94804
(510) 526-6049

Attachment 5

LOS GATOS PLANNING COMMISSION 2/11/2004
Item #1, 20 South Santa Cruz Avenue

1
2 P R O C E E D I N G S:
3

4 CHAIRWOMAN DREXEL: The Planning Commission
5 is now going to conduct a public hearing to consider 20
6 South Santa Cruz Avenue Conditional Use Permit U-04-8. I'm
7 going to ask the applicant to please step forward to the
8 podium and present the project. You have five minutes.
9 Please state your name and address for the record.

10 CATHERINE ASBUN: Commissioners, to begin with I
11 want to thank you for giving me the opportunity to address
12 you. My name is Catherine Asbun and I am the applicant for
13 the Cold Stone Creamery at the Lyndon Plaza, 20 South Santa
14 Cruz.

15 I want to thank you for giving me the opportunity
16 to address you today and to tell you a little bit about
17 myself and Cold Stone Creamery. I currently own the Cold
18 Stone Creamery at 16004 Los Gatos Boulevard, at the
19 Cornerstone shopping center, and we have been open since
20 June of last year. It has been a great experience serving
21 the residents of Los Gatos, but an even greater experience
22 working with some of the youth of Los Gatos.

23 My interest in Cold Stone Creamery began over five
24 years ago. I was amazed by their great ice cream, but even
25 more impressed by their corporate culture. Their mission
statement and core values, which emphasize always doing the
right thing, bringing out the best in our people, profit by

1 making people happy, and win as team are a few of the
2 reasons why I decided and wanted to become a part of Cold
3 Stone Creamery. My family and I have invested a great deal
4 of time and money into this venture, and we strongly believe
5 in it.

6 At Cold Stone Creamery we believe that the
7 customer service is a top priority. We use only the best
8 and highest quality product to ensure that each customer is
9 impressed by the product we serve and the way in which we
10 serve it. Cold Stone Creamery has an old-fashioned ice
11 cream shop appeal in a modern contemporary atmosphere. My
12 employees are trained to guide each customer through a
13 unique and individualized experience. The ice cream we
14 serve is made fresh at the store, and each ice cream is as
15 unique as the customer who creates it. It is this
16 uniqueness and emphasis on service that I feel would make
17 Cold Stone a perfect fit for the small town character of
downtown Los Gatos.

18 Currently ninety-percent of my crewmembers are
19 residents of the Los Gatos community. As an employer, I
20 feel I have an obligation to create a respectful and safe
21 work environment. My crewmembers are energetic and highly
22 motivated. Frankly, I have been very impressed by the high
23 level of responsibility that these members of the Los Gatos
24 community have demonstrated, and I look forward to hiring
25 and working with many more. The crewmembers are the

1 building blocks of Cold Stone Creamery, and one of the main
2 reasons for my success at the Cornerstone location.

3 I also feel strongly about contributing to the
4 community in which I have been given the privilege of
5 serving. In the short time that we have been open at the
6 Cornerstone location, we have contributed to many of the
7 organizations that make Los Gatos so special. To list a
8 few, we have made, and continue to make contributions to the
9 Los Gatos High School New Millennium Foundation; the Loma
10 Public Education Fund; the History Club of Los Gatos; the
11 Los Gatos Community Against Substance Abuse, or better known
12 as CASA; the Los Gatos Educational Foundation; the Los Gatos
13 High School Athletic Association; the First Annual Los Gatos
14 Breast Cancer Awareness Drive; and most recently with the
15 Los Gatos/Monte Sereno Police Department in Adopt-A-Cop, in
16 which middle school children will spend time and share in an
17 ice cream experience with various police officers,
compliments of Cold Stone Creamery.

18 I sincerely feel that with the departing of
19 Swensen's, Cold Stone Creamery would be a great ice cream
20 asset to downtown Los Gatos, complimenting the diverse and
21 full range of services and products currently offered. As a
22 member of the Chamber of Commerce, I am committed to working
23 with other business owners and continuing to serve the
24 community to ensure that the high quality of life and the
25 preservation of the Town are always a priority.

Thank you for your time and consideration.

1 CHAIRWOMAN DREXEL: Thank you. Any questions from
2 Commissioners? Mike?

3 COMMISSIONER BURKE: I would ask Mr. Lortz to cut
4 me off if I ask an improper question here, seriously. I
5 notice in your letter you talked about all the part-time
6 either high school students or college age students you ask,
7 and here's the part that may be improper. Can you tell me
8 what hourly wage range you pay those kids?

9 CATHERINE ASBUN: We start at minimum wage, and
10 then we go from there, depending on the hours that they do
11 work for me, and the responsibilities that they have.

12 COMMISSIONER BURKE: Okay, and can you give us a
13 ballpark range of where that goes to?

14 CATHERINE ASBUN: Where it goes to?

15 COMMISSIONER BURKE: And I'm not talking manager
16 level; I'm just talking minimum...

17 CATHERINE ASBUN: Well right now, because I've
18 only been open for six months, I have somebody who makes
19 right now \$7.50 an hour.

20 COMMISSIONER BURKE: Okay, thank you.

21 CHAIRWOMAN DREXEL: Joanne?

22 COMMISSIONER TALESFORE: You say in your letter,
23 in Exhibit C, that "It brings back the old-fashioned ice
24 cream parlor appeal with a modern and fresh décor." Could
25 you please describe to me what you mean by the old-fashioned
ice cream parlor appeal with a modern and fresh décor?

1 CATHERINE ASBUN: You haven't been to Cold Stone
2 Creamery?

3 COMMISSIONER TALESFORE: I have.

4 CATHERINE ASBUN: You have been?

5 COMMISSIONER TALESFORE: I've been to the one at
6 Cornerstone.

7 CATHERINE ASBUN: Okay. Well, the décor that I'm
8 speaking about is basically the wallpapering that we have,
9 and very modern in terms of the colors and what we're trying
10 to do with bringing the angles and the architecture that's
11 inside the actual creamery with the faux wood, et cetera.

12 The old-fashioned ice cream appeal, we really
13 believe that it's a priority for us to make sure that
14 customer service is number one. We guide each individual if
15 they're new to the experience, and we tell them about Cold
16 Stone Creamery. We tell them how to experience it the best
17 way. We allow them to taste it. We guarantee them that if
18 they're not happy with their ice cream we'll remake their
19 ice cream for them. We allow them to taste anything that
20 they like. And at times when we're busy, we tend to be
21 given tips, gratuity for thanking us for serving them, and
22 the kids will break into song. Whether they get a tip or
23 not, sometimes they just do it for the fun of it. So it
24 tends to bring in a more family oriented atmosphere.

25 COMMISSIONER TALESFORE: And would you
characterize your business as busy?

1 CATHERINE ASBUN: We tend to be busy. Right now
2 obviously it's winter, so we're a little bit slower. In the
3 summer, yes. We were quite busy this summer. We range from
4 six to eight employees. Our top would probably be eight,
5 where we have probably six people in the front line and two
6 working the back line, but that again is Friday and Saturday
7 nights, which tend to be our busiest times.

8 COMMISSIONER TALESFORE: I have two more
9 questions. How many franchise stores can you have in one
10 area? By that I mean sometimes franchise stores are limited
11 by miles.

12 CATHERINE ASBUN: Correct, and we are limited by
13 miles. We're not limited by the amount of stores that we
14 can have in some sense. We are requested though that if
15 we're going to own more than two or three stores, that we
16 show Cold Stone Creamery that we have the capability to be
17 able to do that. In other words, a team that will be able
18 to handle this and maintain a certain level of service, a
19 certain level of cleanliness, and basically abide by the
20 standards, which are very high at Cold Stone Creamery. So
21 we can't own more stores unless we are able to show that we
22 have people who can actually help us run them; and I don't
23 mean just crewmembers, I mean managers, et cetera.

24 There is a three-mile radius clause in our
25 contract. However, it can be changed given the density of
the population in an area, or it can be changed given the
environment that it's in. For instance, in my situation,

1 they feel that the Cornerstone store that I own is more of a
2 neighborhood store, whereas the downtown store would be a
3 compliment to the services that are already there, to the
4 people that are already shopping in downtown, and to
5 visitors who might come and visit downtown. So it's kind of
6 a different type of customer base that we would get.

7 COMMISSIONER TALESFORE: So you're within a three-
8 mile?

9 CATHERINE ASBUN: I am within a three-mile radius,
10 and again, if someone were to come into my three-mile
11 radius, they give me the option to go ahead and do the
12 store, or I can give up that option and somebody else can do
13 it. I've chosen to take the option.

14 COMMISSIONER TALESFORE: Of doing it. So you plan
15 on keeping both stores?

16 CATHERINE ASBUN: Yes, I do plan on doing that.

17 COMMISSIONER TALESFORE: The team that works in
18 both stores, are they one team and you'll alternate them
19 back and forth between the two stores?

20 CATHERINE ASBUN: Yes. Yes, definitely. My
21 stores will be close together, so it's a little bit easier
22 for me and my sons. There are other owners that I know who
23 have stores that are much farther apart, and so they're
24 managers obviously have to go in between. So it's a little
25 bit different, what I'm required to do, as opposed to what
other Cold Stone owners are required to do.

26 COMMISSIONER TALESFORE: Thank you.

1 CHAIRWOMAN DREXEL: Any other questions? Lee?

2 COMMISSIONER QUINTANA: Thank you for showing me
3 around the store this morning and explaining the process to
4 me; I had never been in it before. I try to stay away from
5 ice cream when possible. My question is, how large is the
6 store at Cornerstone?

7 CATHERINE ASBUN: It's twelve hundred square feet.

8 COMMISSIONER QUINTANA: So it's about the same
size?

9 CATHERINE ASBUN: It's about the same size, yes.
10 The setup will be a little bit different though. My
11 Cornerstone one is an ideal setup, because it has a nice
12 entryway; you come in, you see the menu boards. Because of
13 the long and narrow situation, it will be a little bit
14 different, but I plan to do it so where there will be a
15 constant flow, it will be very user friendly, so to speak.
16 I'm very adamant about that, making it so that people can
17 come in and out and it's a very open atmosphere.

18 COMMISSIONER QUINTANA: Do you plan to have tables
19 on the outside as well, as on the Cornerstone store?

20 CATHERINE ASBUN: At this time I am not requesting
21 that, no. Would I like to in the future? Possibly yes, but
22 we're discussing that with the Lyndon Plaza owners.

23 COMMISSIONER QUINTANA: Thank you.

24 CHAIRWOMAN DREXEL: Any other questions? I have
25 some. Will the ice cream be served in disposable
containers, or reusable containers?

1 CATHERINE ASBUN: Disposable containers.

2 CHAIRWOMAN DREXEL: All right. And how many
3 tables will be in the store?

4 CATHERINE ASBUN: Currently I think we've asked
5 for four, if I'm not mistaken.

6 CHAIRWOMAN DREXEL: All right. How many stores
7 are there within a twenty-mile radius of this store?

8 CATHERINE ASBUN: Within a twenty-mile radius?

9 CHAIRWOMAN DREXEL: Yeah. I know there's one at
10 the mall.

11 CATHERINE ASBUN: Yeah, there's the Valley Fair
12 and Oakridge. They are obviously a little bit different,
13 but there's one in each of those. And then there's one in
14 Campbell as well.

15 CHAIRWOMAN DREXEL: All right. So you're pretty
16 well represented. Do you know where these stores first went
17 into business?

18 CATHERINE ASBUN: Arizona.

19 CHAIRWOMAN DREXEL: And so it is a national
franchise, is that correct?

20 CATHERINE ASBUN: Yes, it is.

21 CHAIRWOMAN DREXEL: Your operations, are they
22 headquartered in Arizona as well?

23 CATHERINE ASBUN: Yes.

24 CHAIRWOMAN DREXEL: And your other store in Los
25 Gatos is maybe a mile-and-a-half, two miles away?

1 CATHERINE ASBUN: I think it's a little bit under
2 two miles.

3 CHAIRWOMAN DREXEL: All right. Does your formula
4 allow you to vary what you serve, depending upon the
5 community in which your store is located, or do you pretty
6 much do everything the same at every store?

7 CATHERINE ASBUN: We're required to have what are
8 called "base flavors," whether it be ice cream, yogurt, and
9 our new sinless we have. We're required to have a base and
10 a minimum, but I can vary in that sense; I can have more or
11 less.

12 CHAIRWOMAN DREXEL: All right. Are you required
13 to carry yogurt?

14 CATHERINE ASBUN: Yes, we are.

15 CHAIRWOMAN DREXEL: Do you know anything about the
16 prior lessee in that space, Swensen's? I mean is there a
17 representative from Lyndon Plaza?

18 CATHERINE ASBUN: Yes, there is.

19 CHAIRWOMAN DREXEL: Would you mind filling out a
20 speaker card and coming up, because I think I have a
21 question or two for you. You can fill it out afterwards,
22 after I ask you questions, if that's okay. You need to come
23 to the podium please. This is the owner of Lyndon Plaza?

24 DOUG FEECE: I'm actually a property manager. The
25 owner is my father.

26 CHAIRWOMAN DREXEL: Okay, well I guess that sounds
27 good enough to me.

1 DOUG FEECE: I qualify. I was deeply involved in
2 the whole Swensen's transition.

3 CHAIRWOMAN DREXEL: Okay, and your name?

4 DOUG FEECE: Doug Feece.

5 CHAIRWOMAN DREXEL: Doug Feece. All right. Can
6 you tell me when Swensen's went in, what year was that? Do
7 you have any idea?

8 DOUG FEECE: Nineteen-seventy-seven.

9 CHAIRWOMAN DREXEL: Nineteen-seventy-seven.

10 DOUG FEECE: They signed their lease before the
11 building was finished being built.

12 CHAIRWOMAN DREXEL: All right, so it's been over
13 thirty years. And at that point in history there were not
14 very many sit-down franchise type restaurants, is that
15 correct?

16 DOUG FEECE: Well, (unintelligible).

17 CHAIRWOMAN DREXEL: Yeah, I think that's probably
18 true. Okay, and do you have any idea what percentage of
19 Swensen's service was walk-up versus restaurant?

20 DOUG FEECE: I would say in the summers
21 (unintelligible). Year round, I would say seventy-percent
22 ice cream and thirty-percent food.

23 CHAIRWOMAN DREXEL: Really?

24 DOUG FEECE: Yeah.

25 CHAIRWOMAN DREXEL: Interesting, because I mean
whenever I was in there people...

1 DOUG FEECE: (Unintelligible) in the past four
2 years.

3 CHAIRWOMAN DREXEL: Okay, because when my kids
4 were in there, it was always everybody was sitting down
5 eating ice cream out of a dish, and there wasn't that much
6 walk-up.

7 DOUG FEECE: Well, when you say walk-up, you're
8 saying food service versus ice cream?

9 CHAIRWOMAN DREXEL: Exactly.

10 DOUG FEECE: And also walk-up traffic versus
11 drive-in traffic?

12 CHAIRWOMAN DREXEL: No, what I'm talking about is
13 were people being seated at the restaurant and eating their
14 ice cream, or were they walking in and grabbing a cone and
15 leaving? My impression was that the majority was the
restaurant.

16 DOUG FEECE: Yeah, there were a lot of sit-downs
17 traffic there. As far as percentages, I really couldn't
18 (unintelligible).

19 CHAIRWOMAN DREXEL: Okay.

20 DOUG FEECE: (Unintelligible) want to say fifty-
21 fifty. I know a lot of people would come and grab their ice
22 cream and take off (unintelligible).

23 CHAIRWOMAN DREXEL: Okay, well thank you. Thank
24 you. If you'll fill out a card. You've answered all my
25 questions. Are there any more questions? We'll ask the
applicant to sit down, and then we'll hear from the public.

1 CATHERINE ASBUN: Thank you.

2 CHAIRWOMAN DREXEL: Caleb Yi, please. And if
3 you'll state your name for the record, that will be helpful.

4 CALEB YI: Hi, my name is Caleb Yi. I am from
5 TCBY (unintelligible). I'm here to (unintelligible) of my
6 business from Cold Stone's trying to (unintelligible). I
7 have several issues with the (unintelligible), but I am not
8 very (unintelligible) about expressing my thoughts, but I
9 hope I can get my point across to you guys.

10 The first is that the difference between Swensen's
11 and Cold Stone is basically when Swensen's was there, it was
12 a restaurant type of ice cream shop. That was my
13 understanding. It focused on direct competition, like TCBY,
14 and mostly they serve a lot of customers like we do, and
15 that is like comparing like Denny's with McDonalds or Burger
16 King, say from McDonald's (unintelligible) used to be a
17 Denny's, but now Cold Stone is coming in and
18 (unintelligible) Burger King. So for me personally, there
19 is direct competition, so that's one issue.

20 And the second is that the ice cream market in Los
21 Gatos, from my short experience, is that it is very
22 saturated. There is little growth that I see, and having
23 the same type of ice cream shops there not only diminishes
24 the profits, also there is just no more space
25 (unintelligible), because we have a lot of different ice
cream shops (unintelligible), we have Baskin-Robbins and
TCBY (unintelligible), and we also have (unintelligible)

1 Café within a couple of blocks, and I don't think adding
2 another Cold Stone represents businesses there
3 (unintelligible) are any better than what we have already.

4 And Cold Stone serves basically the same type of
5 ice cream and yogurt, they have ice cream cake, like we
6 have, and they also have smoothies. So basically
7 (unintelligible) have the same items for the customers, and
8 I (unintelligible) my business (unintelligible). I have
9 (unintelligible) but I haven't had enough time to get
10 (unintelligible), but I (unintelligible) and I hope that
11 (unintelligible).

12 CHAIRWOMAN DREXEL: Thank you. Any questions?
13 Joanne?

14 COMMISSIONER TALESFORE: Yes. Can you tell me
15 what kind of products do you sell in your store?

16 CALEB YI: Right now we have ice cream, and
17 yogurt, and Mrs. Field's cookies.

18 COMMISSIONER TALESFORE: And how many flavors of
19 ice cream do you have?

20 CALEB YI: We have twelve flavors.

21 COMMISSIONER TALESFORE: Twelve flavors? And how
22 many flavors of yogurt?

23 YEE: Right now it's five, but it used to be six.

24 COMMISSIONER TALESFORE: You have six? And do you
25 also sell ice cream cakes?

CALEB YI: Yes, we do; and we also have smoothies.

COMMISSIONER TALESFORE: And what? Smoothies?

1 CALEB YI: Yes.

2 COMMISSIONER TALESFORE: And do you characterize
3 your business as busy?

4 CALEB YI: I took over last year in September, and
5 it's been a losing battle for me. I've had to put like more
6 than sixty-eight hours every week, just because of the cost
7 of maintaining the store.

8 COMMISSIONER TALESFORE: Okay. Thank you.

9 CALEB YI: But I have to wait on how summer is
10 going to work out, but I as of now it's not really busy.

11 COMMISSIONER TALESFORE: Do you have tables
12 inside?

13 CALEB YI: We have three tables currently.

14 COMMISSIONER TALESFORE: You have three tables
15 currently? How big is your space?

16 CALEB YI: About twelve hundred (unintelligible).

17 COMMISSIONER TALESFORE: Thank you.

18 CHAIRWOMAN DREXEL: Mike?

19 COMMISSIONER BURKE: How long has that store been
there?

20 YEE: I do believe (unintelligible) the previous
21 owner, I think (unintelligible) two years.

22 COMMISSIONER BURKE: Okay. I would think, yeah,
23 at least that. I've been going there for a long time. When
24 that went in, there was another ice cream parlor down the
25 street, Double Rainbow.

YEE: (Unintelligible).

1 COMMISSIONER BURKE: And I'm just curious, if
2 you're thinking the market is saturated and we shouldn't
3 have ice cream beyond... I'm not trying to be rude here,
4 but there was another ice cream store close to this one
5 before yours went in, and has since left. Was it a mistake
6 to let your yogurt store go in there just because there was
7 another ice cream store close? Is its closeness necessarily
8 a bad thing if they are different, and is competition
9 necessarily bad?

10 YEE: (Unintelligible) what commodity we are
11 talking about. I would think the coffee shops
12 (unintelligible) the coffee shops will generate one type of
13 environment (unintelligible). But I don't believe
14 (unintelligible) ice cream shops (unintelligible). So I
15 spoke to several people about this, and they
16 (unintelligible).

17 CHAIRWOMAN DREXEL: Thank you.

18 COMMISSIONER BURKE: Follow-up. Being in the ice
19 cream business—I don't mean this as humorous—but are there
20 ice cream trade conventions and things like that, and do you
21 discuss in small towns how far people are willing to either
22 walk or drive to go to a particular ice cream place? What
23 I'm getting at is, is ice cream a purchase of opportunity?
24 I walk by a store, it's there, I go in, versus how many
25 people will walk a block, two, three or four blocks to get
ice cream? Do you know of any studies?

1 YEE: In that case, we are (unintelligible) the
2 customer goes (unintelligible), but in a small town like
3 this, (unintelligible). A lot of customers that are ours
4 are not just tourists; they are local. So basically if they
5 know (unintelligible) there are a certain percentage of
6 (unintelligible) and my understanding is that the percentage
7 of people who go there to (unintelligible), and then some
8 tourists (unintelligible) there will have the ice cream
9 (unintelligible).

10 CHAIRWOMAN DREXEL: Thank you. Thank you very
11 much. All right, we have one more card, from Tima Nazarah.

12 TIMA NAZARAH: Hello. My name is Tima Nazarah.
13 I own the Yogurt Delight down the street on
14 (unintelligible) by Safeway. I've been there for eighteen
15 years, and the reason I'm here is I think (unintelligible)
16 that we have too many yogurt shops, ice cream shops here in
17 (unintelligible) town. We have (unintelligible) and I think
18 (unintelligible). We have (unintelligible). We used to
19 have Double Rainbow, or whatever it was called, but
20 (unintelligible) go out of business because it
21 (unintelligible). And I think there is another one down the
22 street (unintelligible).

23 Now, I'm (unintelligible) Cold Stone being there,
24 competition sometimes is nice. They're by Whole Foods, but
25 I think the other one is going to be too close. We don't
need two Cold Stones in town, like having two Yogurt
Delights or having two Starbuck's so close to each other,

1 not even three miles. What's the reason? Her reason, she's
2 saying one is for tourists and one is for the neighborhood.

3 You were asking again, do people drive? Yes, they
4 will. For my yogurt shop they will drive, because we have
5 non-fat, low-carb, so there are reasons (unintelligible).
6 So some people do drive, some people (unintelligible), but
7 sometimes they walk by there, they feel like an ice cream,
8 and they buy one. But I think we have too many. Two
9 locations in one town is (unintelligible); it's not fair to
the small businesses like us.
10

11 Cold Stone is a franchise. Swensen's was a
12 franchise, but they were a restaurant. I'm sure their
13 business, eighty- to ninety-percent was food and not ice
14 cream; it was a sit-down. This one is going to be
15 (unintelligible). If we're supposed to have the same
16 franchise (unintelligible) exactly the same, because I
17 (unintelligible) that no franchise can go in. It has to be
the same exact thing.
18

19 So first of all it was a restaurant. Second,
20 they're going to have seating at least for (unintelligible)
21 seating, and it's too close to each other. And I think you
22 should help the small businesses and the businesses that are
already here, help them, instead of having Cold Stone coming
again, even though they're already here, (unintelligible).
23

24 CHAIRWOMAN DREXEL: Thank you very much. Any
25 questions? Phil, did you have a question?

COMMISSIONER MICCICHE: No.

1 CHAIRWOMAN DREXEL: All right. I have one
2 question. Is your business a franchise?

3 TIMA NAZARAH: No, it's not a franchise.

4 CHAIRWOMAN DREXEL: So it's independently owned?

5 TIMA NAZARAH: There is one other Yogurt Delight,
6 because I got started in the (unintelligible), some of them
7 went out of business, but he sold them individually to
8 people.

9 CHAIRWOMAN DREXEL: All right. Thank you.

10 Joanne?

11 COMMISSIONER TALESFORE: Right. Do you sell only
12 yogurt?

13 TIMA NAZARAH: I have yogurt; I have ice cream. I
14 just started the ice cream about a year ago.

15 COMMISSIONER TALESFORE: How many flavors?

16 TIMA NAZARAH: I have nine flavors of ice cream.
I have six flavors of frozen yogurt.

17 COMMISSIONER TALESFORE: Thank you.

18 TIMA NAZARAH: And I have (unintelligible).

19 CHAIRWOMAN DREXEL: Mike?

20 COMMISSIONER BURKE: I'm going to ask you the same
21 question I asked the other person. I'll give you a little
22 background. My wife and I used to live in East Los Gatos
23 and there used to be a Thirty-One Flavors, and it was a four
24 or five mile walk for us. But that was kind of our walk
25 loop, and we would walk to Thirty-One Flavors. I'm just
curious, are there any marketing studies of an ice cream

1 store, of where they typically would get their business?
2 People walking by? People willing to walk two blocks, four
3 blocks? Is it a destination?

4 TIMA NAZARAH: I really don't think there's a
5 study for that, no. And like I said, it really depends.
6 Let's say you like a particular restaurant. Would you bike
7 to that? Would you drive a way to go because you like their
8 food? Or sometimes you're visiting, you are a visitor, you
9 are staying at a hotel. You're walking. Oh, Cold Stone,
10 Yogurt Delight, I'll just go to that. There is no study, so
11 I can't give you an answer. But I'm saying, even if
12 somebody is going to drive for something, there is Cold
13 Stone, there is Yogurt Delight, there is all of us. We
14 don't need another Cold Stone. They are too close to each
15 other. Would you let another Starbuck's come in three miles
16 from the other Starbuck's, or any other business? I mean,
it's just not fair.

17 CHAIRWOMAN DREXEL: Mike?

18 COMMISSIONER BURKE: Well let me follow up.
19 You've said that the problem is it's another Cold Stone very
20 close. What if it was a Thirty-One Flavors?

21 TIMA NAZARAH: It doesn't matter. I have nothing
22 against Cold Stone.

23 COMMISSIONER BURKE: But it's not two Cold Stones,
24 it's just another...

25

1 TIMA NAZARAH: It is two Cold Stones. We have
2 plenty of ice cream/yogurt shops that we have in town. Why
3 do we need more? Why?

4 CHAIRWOMAN DREXEL: All right.

5 TIMA NAZARAH: Cold Stone and TCBY are so close to
6 each other. They're not even six steps from each other.
7 Why do we need another Cold Stone there? I mean, it's not
8 fair to the (unintelligible). I mean, it's not fair.

9 CHAIRWOMAN DREXEL: Thank you.

10 TIMA NAZARAH: We've been there for a while. I
11 mean I don't understand.

12 CHAIRWOMAN DREXEL: Thank you very much. Any more
13 questions? All right. I want to thank you.

14 TIMA NAZARAH: Thank you. Thank you very much.

15 CHAIRWOMAN DREXEL: All right. And I have a
16 question for Staff. We do not deal with competition between
17 businesses, is that correct?

18 DIRECTOR LORTZ: There is no policy that the
19 Council has adopted that asks that the Planning Commission
20 intervene in terms of competition. There has been a
21 situation where, for example, a Long's was moving in to the
22 Rinconada Center. There was a concern about how it would
23 affect a mom and pop photo development business, and as so
24 there was a condition of approval that no drop-off film was
25 allowed at that Long's until the mom and pop business may
perhaps go out of business. That actually did happen, and
now you can go to Long's and do your photo drive up. But

1 that's the only time where we've kind of entertained any
2 kind of an issue along those lines.

3 CHAIRWOMAN DREXEL: Thank you. All right. I am
4 going to ask for rebuttal by the applicant.

5 CATHERINE ASBUN: I'm very well aware that
6 everybody is concerned about (unintelligible). I've
7 invested everything I have into this business I have now,
8 and I will be doing the same thing with the second store. I
9 have three children with my husband and I, and I mortgaged
10 my home, so I am very... I understand how they feel.

11 I have been talking to the owner of TCBY, and I
12 addressed to him the fact that Cold Stone does require me to
13 go ahead and have one yogurt flavor (unintelligible). And
14 at my current store, I do have three different flavors,
15 because people have asked for them, so I had a
16 (unintelligible). However, I did make it very clear to him
17 that I will only carry in that downtown store one flavor of
18 yogurt, and that's the (unintelligible), which I'm required
19 to carry. (Unintelligible) no sugar were added, that it's
20 not in direct competition with the low-carb blend, because
it's (unintelligible) it still has carbs.

21 In other words, I'm willing to do what I can to
22 make it easier for... I want to work with the businesses in
23 the community. I am not here to put anybody out of
24 business, because I wouldn't want to be without a business
25 myself. So I know how that is, and I know how that would
feel, so I can sympathize with that.

1 Cold Stone is different. We make our ice cream at
2 the store. We are a high premium ice cream. We are
3 developing great flavors that people can just dream up, that
4 they don't have. It's a different type of a concept. It's
5 (unintelligible) that's also, like I said, (unintelligible).
6 We have several sushi spots as well in downtown, and we have
7 several steak houses in downtown. It is competition, I
8 understand; I understand the concerns. I am more than
9 willing to work with them, and I have spoken to
10 (unintelligible).

11 CHAIRWOMAN DREXEL: Thank you. Any questions?
12 Joanne?

13 COMMISSIONER TALESFORE: How long have you been in
14 business?

15 CATHERINE ASBUN: I have owned a Cold Stone
16 (unintelligible) years, but I have been (unintelligible)
since 2001.

17 COMMISSIONER TALESFORE: But you haven't operated
18 (unintelligible)?

19 CATHERINE ASBUN: I haven't operated a store, but
20 I've been very involved in the stores, and I've operated my
21 store since June of last year.

22 COMMISSIONER TALESFORE: How many months?

23 CATHERINE ASBUN: About six or seven months.

24 COMMISSIONER TALESFORE: Okay, thank you.

25 CHAIRWOMAN DREXEL: Mike?

1 COMMISSIONER BURKE: You stated you've put—and I
2 understand this, having come from a family of family
3 businesses—that you've put everything you have into your
4 first business. You've operated it for six months. I'm
5 going to ask, why are you expanding already? That's brave,
6 but is business that good? Has market demand shown that the
7 downtown needs more ice cream? I mean, what's your driving
8 force to expand so quickly?

9 CATHERINE ASBUN: My (unintelligible) my initial
10 (unintelligible) has always been downtown Los Gatos.
11 Unfortunately, due to the economy, that wasn't something
12 that happened, because obviously a restaurant had to go out
13 in order for me to go in.

14 And so like I said, I've been in (unintelligible)
15 since 2001, and since then I've seen how well this ice cream
16 idea, concept has done. The consistency (unintelligible) to
17 maintain, even though I hadn't been owning a store in the
18 last four years, I was very involved. I went to the
19 franchise meetings; I've seen how much they've grown. And
20 not only that, but I've seen that there's been a consistency
21 (unintelligible); they haven't slacked off. If anything,
22 they're continuing to try to come up with new things, bigger
23 and better, continuing to improve. We have a
24 (unintelligible) where they come by, and secret shoppers,
25 where they have people come by and rate you, and that hasn't
changed; that's continued. So yes, I'm willing to invest in

1 this company, because I do feel that they are
2 (unintelligible) starting to take off.

3 As far as downtown Los Gatos, obviously it's a
4 beautiful location, right in front of a park. An ice cream
5 store lasted there for thirty years. We do have, as they
6 mentioned, other yogurt stores that have still maintain and
7 done well in terms of business, have been able to
8 (unintelligible). So yes, I do think that it would be an
ideal location for this ice cream store.
9

10 CHAIRWOMAN DREXEL: Thank you. I'm going to close
11 the public hearing. Thank you. Any comments? Phil?

12 COMMISSIONER MICCICHE: First, let me say the Cold
13 Stone Creamery is well loved by my children, so after I get
14 through talking tonight, I may not be welcomed at home
15 anymore. But needless to say, I have to go with what I
feel.
16

17 I walk every morning, for health reasons, between
18 Route 9 down to the center area and then down to Main
19 Street. I've been doing this for the past ten or eleven
20 years, and as I walk along, the thing that's concerned me
21 about what's been happening in town is that as I start to
22 approach Bean Street, I start to envision a mall situation.
23 I see a Williams-Sonoma; I see a lot of the franchise stores
24 coming into town. I get away from it again when I go down
25 Main Street, because there's a lot of the home-owned stores
as I go down there. But as I come back on University, I
come into New Town. Well I guess it really is Old Town, but

1 it really is New Town now, and I see The Gap, and I see
2 Banana Republic, and I see Talbot's just got in there, and
3 the only old stores I see are The Indian store and the wine
4 restaurant, and Steamer's.

5 And I guess it's just concerning me that our town
6 character and the integrity of our downtown is slowly but
7 surely going over to franchise type operations. And I for
8 one would like to stop that. I don't know how my other
9 Commissioners feel tonight, but based on those statements,
10 I'm going to make a motion to deny Conditional Use Permit U-
11 04-8, as I feel it does not meet with the integrity and
12 character of the Town, and unless I get other guidance from
13 the Town Council, which is kind of silent on this subject,
14 that's my motion, and I'll look for a second.

15 CHAIRWOMAN DREXEL: I'll second. Comments? Mike?

16 COMMISSIONER BURKE: This is a question for Mr.
17 Lortz. Can you explain being that an ice cream store has
18 gone out—and I know it kind of tries to explain it in the
19 Staff report—an ice cream store went out eight months ago.
20 An ice cream store wants to come in, but yet we're requiring
a new CUP?

21 Second—and I understand we're calling this CUP for
22 specialty retail—if the CUP was granted, what could come in
23 in its place? So those I guess are the questions I ask: why
24 are we required to do a CUP for this, and what would be
25 allowed to come in in its place?

1 DIRECTOR LORTZ: The CUP is for a restaurant use.
2 For the purposes of the traffic engineering policy, donut
3 shops and ice cream shops and whatnot are categorized as
4 specialty retail for the purposes of the amount of traffic
5 they generate. But for the purposes of our code, the
6 Planning Code, basically it is considered a restaurant use,
7 and consequently does require a use permit. It is
8 categorized as a restaurant use, as opposed to maybe perhaps
9 someone that would sell prepackaged foods for something like
10 that, which it's not.

11 So the first thing is that it is a restaurant.
12 Yes, it's replacing a restaurant that was there before, but
13 it was in a different configuration, and so when we do use
14 permits that are in a multi-tenants building, the use permit
15 runs with the space. So in this particular case, the
16 restaurant that went out, Swensen's, occupied a different
17 floor area and a different configuration than the proposed
18 use, so they're coming in to get a use permit.

19 COMMISSIONER BURKE: So if they were occupying the
20 full space of Swensen's, they wouldn't need a use permit,
21 and we're requiring it because they're smaller?

22 DIRECTOR LORTZ: Well, the question would be
23 whether there's an intensification of use, some sort of a
24 change that causes the use permit to be modified. So it's
25 possible that it could be categorized as an intensification
of use; it might be an issue that I'd bring before the
Planning Commission to whether there is an intensification.

1 That would be what I'm talking about here is the findings
2 that are necessary to approve a use permit, and then also
3 the provisions of the zoning code that talk to
4 intensification of use. A change in product could trigger a
5 modification of the use permit.

6 COMMISSIONER BURKE: Thank you.

7 CHAIRWOMAN DREXEL: Lee?

8 COMMISSIONER QUINTANA: Question to Staff.

9 Correct me if I'm wrong. The ordinance that the Town
10 Council passed on chain stores exempts restaurants?

11 DIRECTOR LORTZ: The Formula Retail Ordinance is a
12 retail-based zoning regulation. The Council has never
13 really discussed the concept of formula restaurant uses.
14 Since restaurants are controlled through a use permit
15 process anyway, the question is whether or not more—
16 particularly in the downtown area—whether formula-based
17 restaurant uses are appropriate, and I think the Maker of
18 the Motion spoke to that issue in terms of the integrity of
19 the zone. As you know, to approve a use permit, the
20 Planning Commission must make several findings, one of which
21 is the proposed use will not impair the integrity and
22 character of the zone, and I think that's what the Maker of
23 the Motion was speaking to.

24 COMMISSIONER QUINTANA: Okay, I was referring to
25 the statement in the Staff report that says, "However, the
retail ordinance does not apply since it is considered a
restaurant use under the Town Code."

1 DIRECTOR LORTZ: Yeah, what we were trying to do
2 is distinguish why the use permit was required, and it was
3 required because it was a restaurant use, and not because it
4 was a formula retail store.

5 COMMISSIONER QUINTANA: Okay, I have another
6 couple of questions regarding parking requirements and the
7 parking requirements possibly for the entire complex. I
8 understand for restaurant use, the parking requirement would
9 be two parking spaces, because there are eight seats?

10 DIRECTOR LORTZ: One for each four seats.

11 COMMISSIONER QUINTANA: Okay. The applicant has
12 stated that at peak time they would have six to eight
13 employees, and I'm a little concerned about that in terms of
14 how the remaining parking spaces that were allocated to
15 Swensen's could be used. Two parking spaces does not
accommodate eight employees.

16 DIRECTOR LORTZ: Is there a question there?

17 COMMISSIONER QUINTANA: Well, I guess I'd have to
18 go back and say what are the uses in the center? How many
19 spaces do they require? What is the allocation of parking
20 to that center, both on-site and off-site?

21 DIRECTOR LORTZ: We probably studied that center
22 more than any other building in the Town of Los Gatos.
23 We've done a comprehensive parking study for the entire
24 building for every use within the building. Now, when the
25 space that has been vacated by Swensen's—that is not the
subject of the application—comes in, there is sufficient

1 parking through the parking assessment district and the
2 parking that's on-site for retail use.

3 Now if a restaurant were going into that location,
4 then we'd be very careful about the number of seats that
5 could be allowed, because then we'd start looking at the
6 site again and how this particular use has eroded—and as
7 you're correct—two parking spaces.

8 COMMISSIONER QUINTANA: So my question is that if
9 this motion were to fail—just supposing—and another motion
10 came up to approve, we could condition that approval that
11 there are six to eight parking spaces assigned to this site
12 to ensure that...

13 DIRECTOR LORTZ: I understand where you're going.
14 I'd have a little bit of concern that the Planning
15 Commission is establishing a parking regulation that doesn't
jibe with the regulations.

16 COMMISSIONER QUINTANA: But theoretically, if the
17 Swensen's use had eighteen parking spaces, and this use has
18 two, then the remainder of the site could be a restaurant
19 theoretically, and could have up to sixty-two seats, and
20 utilize the remainder of those parking spaces?

21 DIRECTOR LORTZ: I understand your logic. The
22 concern that I'd have is that you're essentially
23 establishing a series of rationale to establish a parking
24 scenario that doesn't follow the zoning ordinance. Now if
25 you want to say that the employees are supposed to get bus

1 passes, if the employees are supposed to ride their
2 bicycles...

3 COMMISSIONER QUINTANA: No, what I'm trying to
4 establish is that this is a CUP and we look at impacts.

5 DIRECTOR LORTZ: Certainly.

6 COMMISSIONER QUINTANA: And the impact of this
7 business would be that it would have six employees.

8 DIRECTOR LORTZ: Understood. If the Commission is
9 inclined to follow that rationale, then we'll discuss it
10 further, if there's a consensus of the Commission.

11 COMMISSIONER QUINTANA: It's looking at the
12 potential for problems down the road, that's assuming the
13 motion is passed.

14 CHAIRWOMAN DREXEL: Well, why don't we wait and
15 see if the motion is passed before we address that?

16 COMMISSIONER QUINTANA: Okay, in that case, I'm
17 going to say that I'm not going to support the motion,
18 because for the reasons that were brought up before, we have
19 not controlled competition between uses in the downtown
20 before. We have allowed franchises to come in, even under
21 the new formula store policy when the formula store is
22 replacing another formula store. In a sense, we can look at
23 this as one formula store replacing another, Swensen's. And
24 basically those are the reason's why I'm going to say that,
25 because I think that we would not be looking at all
applications with the same objective criteria.

1 CHAIRWOMAN DREXEL: Thank you. Any other
2 comments? Yes, Tom?

3 COMMISSIONER O'DONNELL: I have a question of
4 Staff.

5 DIRECTOR LORTZ: Yes?

6 COMMISSIONER O'DONNELL: Excuse me, as you can
7 tell, it's my first meeting. Therefore my question will
8 also be a first meeting question, I think. I'm listening to
9 all this, and I'm hearing a couple things that I'd like to
ask Staff about.

10 One is there is an objection that this is a
11 franchise store and that somehow, just because it's a
12 franchise store, might threaten the integrity of the
13 downtown. The other thing of course is that it's an ice
14 cream store, and it doesn't make any different whether it
15 mom and pop or whether it's anybody. It's another ice cream
16 store. And I guess one of the things I'm more concerned
17 with is the latter and not the former.

18 I do recall that in Carmel where you used to have
19 shops, you can now buy t-shirts and ice cream and a few
20 other things. But I wonder whether this town has anything
21 which would permit us to focus on gee that's too many? And
22 that's just a very naive question that I'm asking, and I'm
23 asking Staff for that, and then obviously any Commissioner
24 can weigh in too, but first I'd like to hear—if Bud
25 understands my question, if it was clear enough—I'd like to
hear an answer.

1 DIRECTOR LORTZ: Yes, I did understand the
2 question, and while there may not be any specific regulation
3 that speaks to this issue, there could be General Plan
4 policy that relates to this. For example—and I'm not
5 speaking on behalf of the Maker of the Motion—but I don't
6 know if the Maker of the Motion was perhaps considering
7 Section LP-62 of the General Plan that talks about
8 encouraging the development and retention of small
9 businesses and locally owned stores and shops that are
10 consistent with small town character and scale. And so the
11 question there is locally owned stores and shops, is that
12 something that then precludes the Maker of the Motion from
13 being able to make the four findings where in this
14 particular case it could be impairing the integrity of the
15 zone? And I don't want to speak on behalf of the Maker of
16 the Motion, but I think that that's what I heard.

17 COMMISSIONER O'DONNELL: That's where it was
18 coming from. But I'm being pointed out something that may
19 be more to what I was asking. LP-51 says maintain a variety
20 of commercial uses, and it goes on to explain that, and
21 that's what I was asking. In other words, it may be
22 relevant as to whether who owns it. It may be, and I'm not
23 sure it is in this particular instance, but it may be. But
24 the first issue I would simply say is how many ice cream
25 stores do we need downtown? If that gets to LP-51, my
question is, we do have a policy there?

DIRECTOR LORTZ: Right.

1 COMMISSIONER O'DONNELL: And so I guess one of the
2 questions would be how much is too much? And I don't know.
3 We've had testimony now. I don't recall the discussion in
4 the report, but that's maybe I just don't recall, about how
5 much is too much.

6 DIRECTOR LORTZ: We have not provided any kind of
7 a measurement in terms of the saturation issue. I think
8 that's the issue that seems to come up quite often in the
9 downtown area, whether it be saturation of alcohol serving
10 businesses, or restaurants, or whatever it is, but that does
11 come up, and it is a balance, and it is not necessarily
12 predicated on empirical evidence that has been offered to
13 you through the Staff report, but certainly there's been
14 some testimony about that this evening.

15 CHAIRWOMAN DREXEL: All right. Mike?

16 COMMISSIONER BURKE: I'm torn on this, and I'm
17 going to go back to the comment my fellow Commissioner made
18 about Carmel, and if I remember correctly, the reason Clint
19 Eastwood became Mayor was because he wasn't allowed to eat
20 an ice cream cone on the sidewalk. That was his stated
21 reason, that he thought the regulations in the downtown had
22 gotten a little ridiculous. And so I approached this
23 meeting with the thought of well, I don't want this to be
24 another Carmel. And then I was just struck as yeah, in
25 Carmel what do you get now? Ice cream and t-shirts.

I have nothing against Cold Stone Creamery. I
will say that I have probably visited every ice cream store

1 downtown, and do so as often as I can. It's one of my
2 favorite things. I used to get lunch everyday at the yogurt
3 place. One of the downsides of franchises is he used to
4 make a really great coffee smoothie type thing that the guy
5 developed himself, and I used to get that on a regular
6 basis. One day I went in there and the guy said, "Oh, the
7 national people told me I couldn't make that anymore,
8 because it wasn't part of our official products." So that
9 is the downside of chain stores, is they can't necessarily
10 suit the local resident's needs.

11 So as I said, I originally thought I'd come in and
12 it would be easy to support this motion, but I am starting
13 to waiver the other way, and I don't know how I'm going to
14 vote right now.

15 CHAIRWOMAN DREXEL: Joanne?

16 COMMISSIONER TALESFORE: Thank you. Mike, I agree
17 with you. This is a toughie. But I think that-and I'm not
18 against competition at all; our country was founded on it-
19 but we are after a balance, especially in our historic
20 downtown, and I think that we're trying to protect that
21 character. And we have two policies in our General Plan
22 that specifically speak to encouraging the development and
23 retention of locally owned stores under LP-55 and LP-62,
24 encourage the development and retention of a small business,
25 locally owned stores all over again. So we are trying to
encourage this homegrown atmosphere, or at least protect
what we have, and I keep thinking that although I'm not

1 prejudiced at all-I did have ice cream in your store the
2 other day-I just feel that a vote in favor would be keeping
3 out this homegrown locally, encourage the development of our
4 downtown again, so I think will probably be supporting this
5 motion.

6 And I also think besides that, your very own
7 company has limits as far as miles are concerned, and
8 restrictions for where your stores should be in relationship
9 to each other. You already have a very nice location at
10 Cornerstone; that's a very busy shopping center. I would
11 imagine that you could really make... I mean, people will
12 drive there to get your ice cream. So for that anything,
13 that's all I'm going to say, so thank you.

14 CHAIRWOMAN DREXEL: All right. Morris?

15 COMMISSIONER TREVITHICK: I too will support the
16 motion because I can see the need to preserve this
17 particular corner area in our downtown to maintain that
18 integrity, and I think if we start to break it up into
19 smaller areas, there will be an erosion of the integrity of
the town, so I would support the motion.

20 CHAIRWOMAN DREXEL: All right. You know what?
21 I'm going to interject, and then I'm going to call in you
22 too. I'm going to explain to you why I was very comfortable
23 seconding this motion, first of all, with the history of
24 Swensen's.

25 Swensen's came in when franchises didn't mean
anything; there weren't any franchise restaurants. So the

1 fact that there was a franchise there, and it became
2 eventually the only Swensen's probably in the San Jose area,
3 meant that even though it was a franchise store, it operated
4 pretty much as though it were an independent store in terms
5 of its visibility nationally. I mean there just weren't
6 very many stores. So I don't think the fact that it was a
7 franchise really had any bearing on its use towards the end
8 anyway, the last five or six years.

9 It isn't really the same use. The use before was
10 people eating ice cream sundaes in dishes at tables, being
11 served. Yes, people came up and got a cone, but the
12 majority of people were actually sitting down there at the
13 tables. We used to celebrate every time my kid's grades
14 came out by going in there and having an earthquake. And so
15 we were all in there with our spoons and everything. And
16 yeah, people would come in and get a cone, but most people
17 were in there sitting down and eating. So the use is
completely different.

18 I think that you're going to end up with a greater
19 intensification of use if you divide the property and you
20 have the stream of traffic running in and out of there with
21 their messy cardboard paper containers and whatnot versus
22 those dishes from old Swensen's.

23 As far as the findings, is the proposed use of the
24 property essential or desirable to the public convenience?
25 You could say no, because there's TCBY right half a block
away that provides virtually the same sort of a product. It

1 does provide choice, so you could say yes. With regard to
2 our first finding, you could say yeah, it does give people a
3 choice. But then at what cost? And that's what I think we
4 need to weigh here, at what cost? Will the proposed use
5 impair the integrity and character of the zone? Under LP-
6 6.2, we're supposed to encourage the development and
7 retention of small businesses and locally owned stores and
8 shops that are consistent with small town character and
9 scale.

10 This isn't local, and franchises coming in raises
11 rents for all the local homegrown businesses in town. We
12 hear that all the time from local business people. So I
13 think that if anything, it discourages local businesses.
14 I'd love to see another kind of store in there, another
15 local store; a local deli maybe, a local ice cream shop, but
16 something local. National chains drive up rents, national
17 chains detract from the small town character of Los Gatos,
18 particularly our sensitive commercial zone, and we don't
19 want to make Los Gatos a mall and destroy it's character,
20 and that's what I'm worried about; that street is starting
to look like a mall.

21 How do we distinguish? Der Weiner Schnitzel's.
22 Okay, if Der Weiner Schnitzel's wants to move into the other
23 half, how do we distinguish a national fast-food ice cream
24 store from a national fast-food hot dog store? I mean, they
25 both use disposable junk; they both have foot traffic. Do
we want fast-food stores on Santa Cruz Avenue? I think we

1 have to kind of decide that we don't, and we have to be
2 consistent. This is a matter of being consistent about our
3 decisions. We have to say no, we don't want that kind of
4 fast-food franchise traffic, whether it's ice cream or hot
5 dogs, on North Santa Cruz Avenue. Joanne?

6 COMMISSIONER TALESFORE: Two things. First I'd
7 like to commend Cold Stone Creamery though, because of your
8 outstanding and continued community support. You obviously
9 want to be part of our community, and that's one of the best
10 ways to do it. Thank you. I really, really think you are a
11 role model in that area.

12 But to also just weigh in one more time, I think
13 maybe the question I would have to ask is that if under the
14 general plan guidelines we are supposed to support the
15 unique nature of our town, then if we allow another national
16 chain store in, how are we supporting the unique nature of
17 our town? Thank you.

18 CHAIRWOMAN DREXEL: Mike?

19 COMMISSIONER BURKE: Several points. One is I'm
20 going to ask that the Maker of the Motion to include as
21 maybe part of his motion—and the reason I would like to do
22 this is so it's part of what goes forward to the Council—is
23 that one of the concerns raised here is the two parking
24 spots with six employees. I think that's something that as
25 we send this forward, it's more than just the over
saturation of ice cream, it's would this new use cause
problems?

1 COMMISSIONER MICCICHE: Let me comment on that. I
2 think the motion is denied, so putting a condition on a
3 denied, I believe... Let me finish. I think the comments
4 should go forward, but if this were to be appealed and
5 approved by Town Council, that they'd take that into strong
6 consideration.

7 COMMISSIONER BURKE: That's why I was asking that
8 that be part of your motion, that one of the reasons for
9 turning it down is the parking, and that way it definitely
10 goes forward; that's all I meant. Or somehow not as a
11 condition, but included as one of the justifications.

12 COMMISSIONER MICCICHE: (Unintelligible).

13 COMMISSIONER BURKE: My second comment is that
14 Stone Cold Creamery's own guidelines have the three mile
15 radius, and there aren't any ice cream stores up where this
16 one is now. They recognize that there's a certain
17 saturation level, and by putting one downtown, are we
18 risking the one in an area where we don't have anything
19 else? So I think in a way by denying this, we are also
supporting the people --

20 COMMISSIONER MICCICHE: (Unintelligible).

21 COMMISSIONER BURKE: Yeah, saying that we want the
22 one kept up by Teel's Jewelry, whatever that shopping center
23 is.

24 COMMISSIONER QUINTANA: Cornerstone.

25 COMMISSIONER BURKE: Cornerstone, thank you.

1 COMMISSIONER QUINTANA: Cold Stone and
2 Cornerstone, that sort of works. A new marketing phrase.

3 COMMISSIONER MICCICHE: Mr. Lortz, they've asked
4 to include in a denial motion here that one of the reasons
5 is the parking as well. I'm not sure we had to make that in
6 spite of the findings and your comments were that we have
7 parking regulations that supersede anything that we're
8 saying here. I believe you said that.

9 DIRECTOR LORTZ: Well I don't think there's any
10 problem with the comment being forwarded that two of the
11 Commissioners had a concern about that, and that comment
12 would be forwarded to the Council if there is an appeal.

13 COMMISSIONER MICCICHE: Say I'd like to put two
14 comments in my motion then, or they will go there anyway?

15 DIRECTOR LORTZ: It's fine that those be included.

16 COMMISSIONER MICCICHE: Okay, I will include your
17 comments in my motion.

18 CHAIRWOMAN DREXEL: I'll second. All right. Any
19 other discussion? I guess we're ready for a vote. All
20 those in favor?

21 COMMISSIONERS: Aye.

22 CHAIRWOMAN DREXEL: All those against.

23 COMMISSIONER QUINTANA: Nay.

24 CHAIRWOMAN DREXEL: All right, we have six one for
25 denial.

 ORRY KORB: So the motion passes six to one denial
of the Conditional Use Permit. The Commission's action is

1 final. The Commission's action can be appealed to the Town
2 Council. Forms are available in the Clerk's office. There
3 is a fee for filing an appeal, and the appeal must be filed
4 within ten days.

5 CHAIRWOMAN DREXEL: Thank you. All right. Let's
6 see, we don't have any other continued business.
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Bud Lortz - Cold Stone Creamery

From: "Jeanne Drexel" <jdrexel@alum.calberkeley.org>
To: "Mike Wasserman" <mwasserman@losgatosca.gov>, "Diane McNutt" <dmcnutt@losgatosca.gov>, "Joe Pirzynski" <jpirzynski@losgatosca.gov>, "Sandy Decker" <sdecker@losgatosca.gov>, "Steve Glickman" <steve@glicktech.com>
Date: 3/7/2004 3:17 PM
Subject: Cold Stone Creamery

Hi!

I know you are hearing an appeal for Cold Stone Creamery on Monday and hoped to explain why the planning commission unanimously denied its C.U.P.

Cold Stone Creamery came to the planning commission wanting to open a store in part of the old Swenson site. The logic was, Swenson's used to be a national ice cream chain and this is a national ice cream chain, so the use hasn't really changed and the district isn't really affected by Cold Stone store moving in.

The planning commission unanimously thought otherwise for the following reasons.

1. Swenson's was a sit down restaurant. Though it had a take away ice cream component, it was primarily a restaurant that served ice cream in dishes served by waiters. The use was very different.
2. Swenson was a national chain that started its business at that site before there was a threat of national chains dismantling the unique character of our downtown. That changed circumstance made it different.
3. We are required by the general plan to protect the small town character of our town and to act in a way to keep the downtown commercially viable. Generally, national chains are not consistent with the small town feel of our downtown. Also, they drive up rents which makes it harder for small stores to locate here. If our town became just another mall, loaded with national chains, it would impact the commercial viability of the whole town. There would be no special reason to come to Los Gatos, as there is now. It would no longer have it's very commercially precious unique shopping value.

In order to find that a use is appropriate for the downtown, we have to find that the use will not impair the zone. We found that putting this store in would impair the zone for the aforementioned reasons.

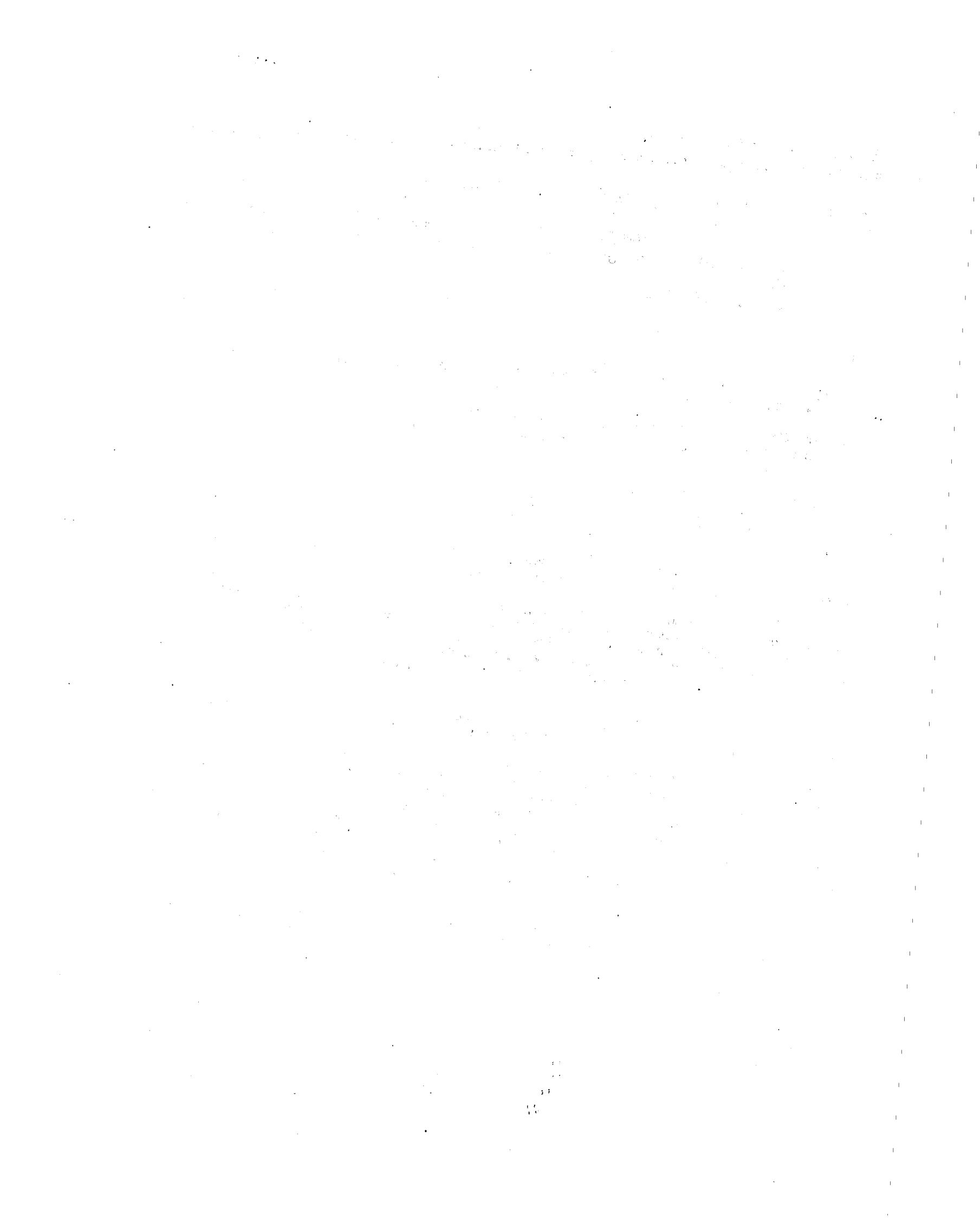
4. We have to make a second finding to approve the use. We have to find that the use would be essential or convenient to the public. While ice cream stores are not essential, the additional choice is convenient for many people. They like the ice cream. However, there is already a national ice cream store with the same product line a half a block away (TCBY) that carries yogurt, ice cream, ice cream cakes, and cookies in about the same size space as this, as proposed. It is also a take away business with the attendant refuse. In addition, there is another Cold Stone Creamery only one and a half miles from the proposed site. The national headquarters for the chain recommends that stores be no closer than 3 miles from one another. An exception was carved for this proposed store because headquarters didn't feel, for some reason, that the two stores would cannibalize one another's business.

The long and the short of it is that there has to be a balancing of benefits and rewards. The cost (and precedent) of putting in another national chain to the integrity of the downtown is huge. The benefit is slight.

Conditional use permit denied.

Jeanne

Attachment 6



From: Lisa Scopazzi-Evans <lisa@scopazzi-evans.com>
To: <dmcnutt@losgatosca.gov>, <jpirzynski@losgatosca.gov>, <mwasserman@losgatosca.gov>, <sdecker@losgatosca.gov>, <sglickman@losgatosca.gov>
Date: 3/8/04 11:36AM
Subject: Cold Stone Appeal

Hello,

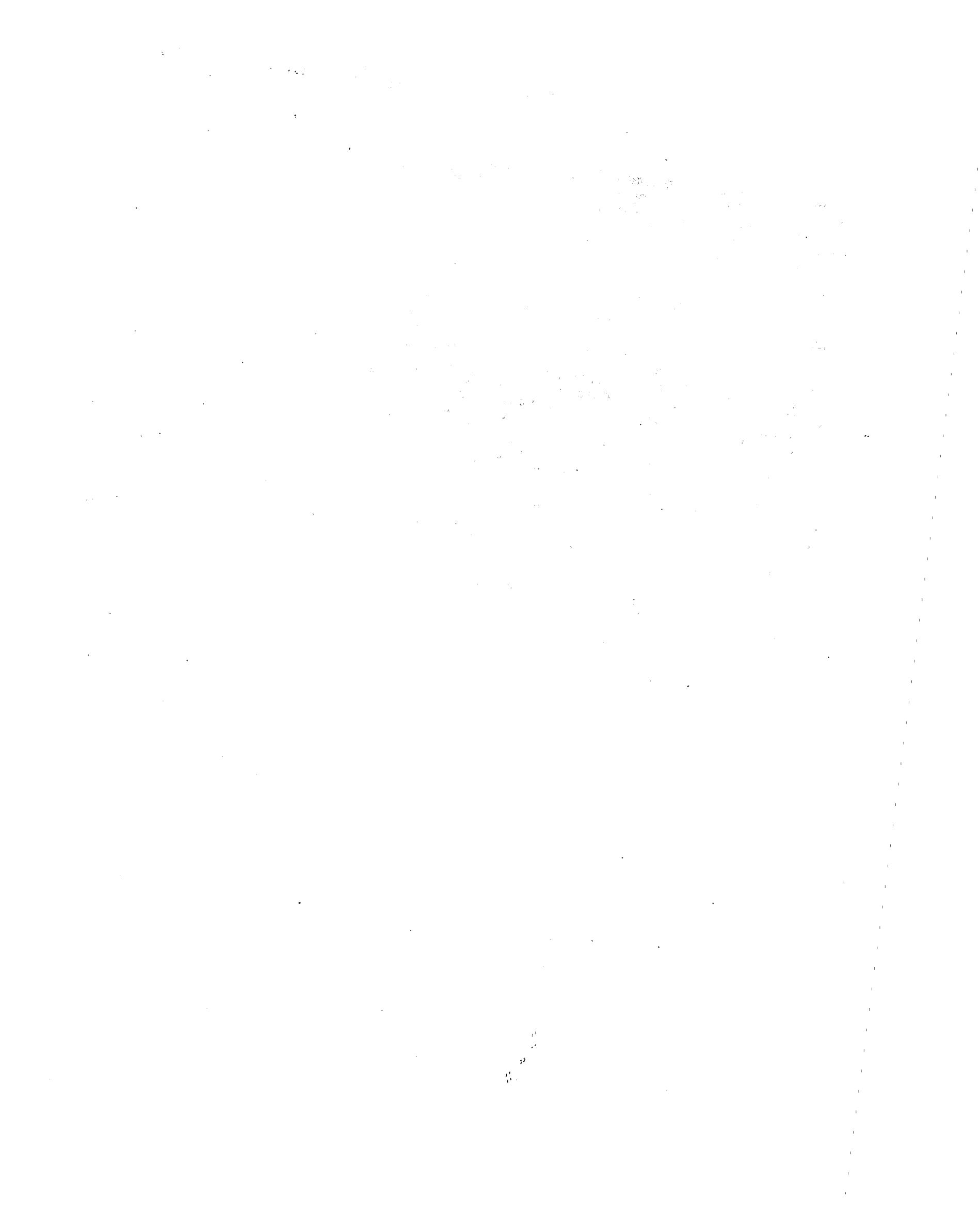
My name is Lisa Scopazzi-Evans and I live at 187 Vista Del Monte in Los Gatos. I am unable to attend the meeting tomorrow night but wanted to be heard.

I recently learned that Cold Stone Creamery wants to open yet another store in Los Gatos in the old Swenson's building. For what it's worth, I agree with the planning commision in not allowing such an occurance to take place. I feel we already have plenty of ice cream type stores* in Los Gatos and do not need another one - especially Cold Stone, since they already have a store on Los Gatos Blvd. It doesn't make sense to me. I would much rather a restaurant-type of business go into that space rather than another take-away ice cream shop. Los Gatos needs more "family friendly" restaurants like Willow Street and Pedro's.

Thank you for your time.

Sincerely,
Lisa Scopazzi-Evans

*TCBY, Dolce Spazio, Yogurt Delight, Baskin Robbins, Cold Stone on Los Gatos Blvd, Thrifty ice cream in Rite Aid, etc...





MEETING DATE: 4/05/04
ITEM NO. 16
ADDENDUM

COUNCIL AGENDA REPORT

DATE: April 1, 2004

TO: MAYOR AND TOWN COUNCIL

FROM: TOWN MANAGER 

SUBJECT: CONSIDER AN APPEAL OF A PLANNING COMMISSION DECISION DENYING AN APPLICATION TO CONVERT A PORTION OF A FORMER RESTAURANT (SWENSEN'S) TO ANOTHER RESTAURANT USE (COLD STONE CREAMERY) ON PROPERTY ZONED C-2. APN 510-45-075 CONDITIONAL USE PERMIT U-04-8 PROPERTY LOCATION: 20 S. SANTA CRUZ AVE PROPERTY OWNER: PARK ROW EAST APARTMENTS, LTD APPLICANT/APPELLANT: CATHERINE G. ASBUN

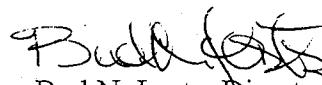
DISCUSSION:

Attachment 8 is a letter that was received following completion and printing of the staff report for this item.

Attachments:

- 1.-7. Previously received
8. Letter from Andrew L. Faber (three pages), received March 31, 2004

BNL:SD

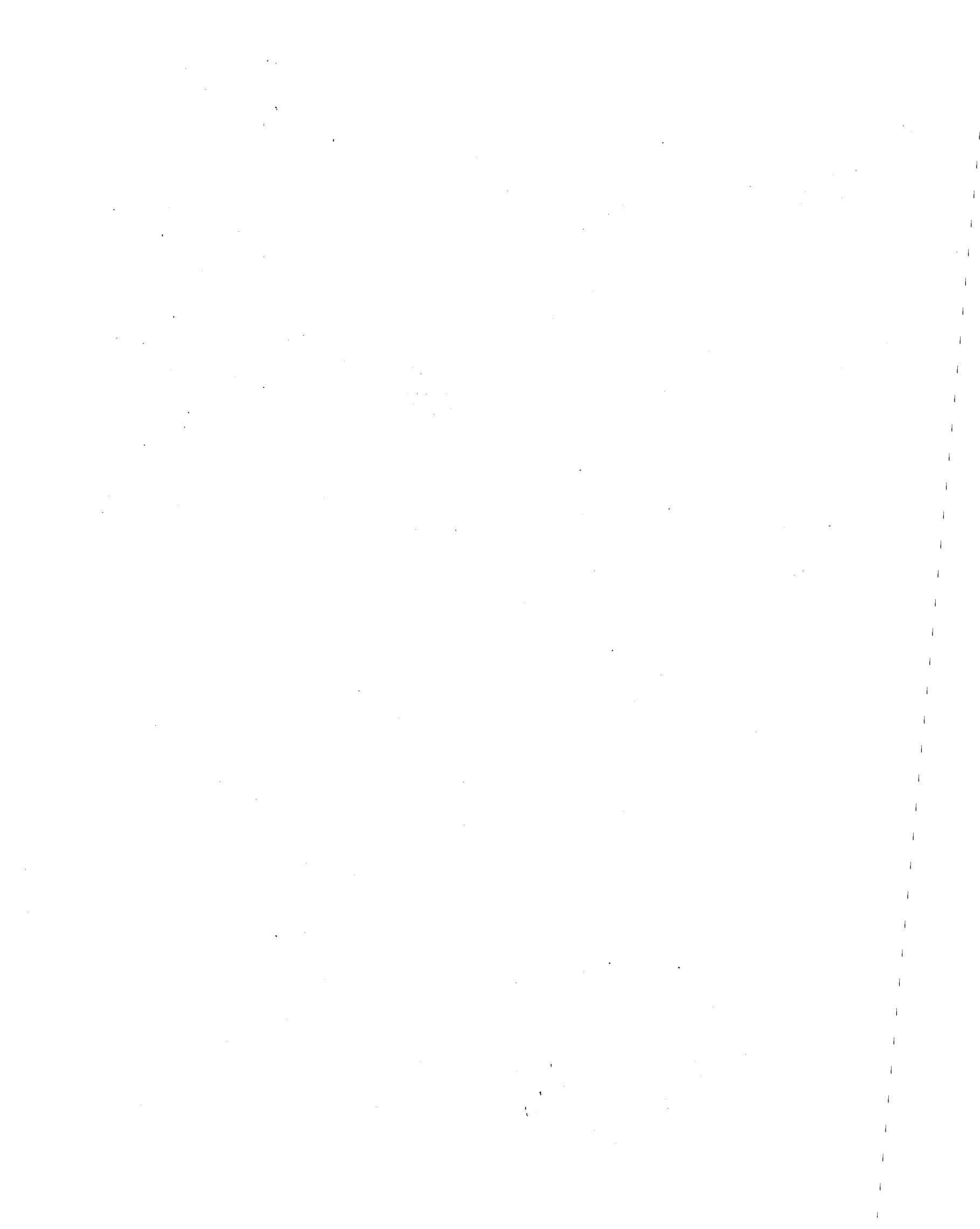


PREPARED BY: Bud N. Lortz, Director of Community Development

N:\DEV\SUZANNE\Council\Reports\Fwd. to TC\20SSC-ColdStone-add.wpd

Reviewed by: B.N.L. Assistant Town Manager A.L.F. Town Attorney _____ Clerk _____ Finance
Community Development Revised: 4/1/04 10:09 am

Reformatted: 5/30/02



BERLINER COHEN

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March 31, 2004

Hon. Steve Glickman
 Members of the Town Council
 Town of Los Gatos
 110 East Main Street
 Los Gatos, CA 95031

Re: Cold Stone Creamery, 20 South Santa Cruz Avenue, Los Gatos, CA
 Conditional Use Permit U-04-8

Dear Mayor Glickman and Members of the Town Council:

We represent Sierra Management, Inc., the owner of the property located at 20 South Santa Cruz Avenue, Los Gatos. This letter is submitted on their behalf in support of the appeal of conditional use permit U-04-8 ("CUP") for the proposed Cold Stone Creamery ("Cold Stone Creamery") to be located at 20 South Santa Cruz Avenue.

The Planning Commission Erred and Abused its Discretion

The Planning Commission erred and abused its discretion in denying Cold Stone Creamery's CUP because there was no evidence submitted to support the denial of the CUP for an ice cream shop use in the same location where a previous ice cream shop had been located for 30 years. Furthermore, the Planning Commission's decision to deny the CUP was arbitrary because had Cold Stone Creamery not changed the size of its ice cream shop, then this CUP would not have been necessary.

The Planning Commission determined that the CUP was detrimental to the "integrity and character" of the Town and it did not "encourage the development and retention of locally owned

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stores and small businesses." However, there was no evidence in the record to support the Planning Commission's determination that replacing one ice cream shop with another ice cream shop in the same location was detrimental to the "integrity and character" of the Town.

Although the Town's general plan policies were frequently invoked at the hearing, there was no evidence of how, or why, Swenson's ice cream shop promoted the general plan when Cold Stone Creamery's ice cream shop did not. It was merely claimed that, though they were both ice cream shop franchises, Swenson's franchise was somehow *different* than Cold Stone Creamery's, and Cold Stone Creamery's ice cream shop was "one too many."

The Planning Commission Did Not Have the Discretion to Modify or Address a Policy Issue

The Planning Commission did not have the discretion to modify or address the policy issue of whether Cold Stone Creamery's restaurant use required a CUP as a "formula retail business." The record was clear that Cold Stone Creamery was required to obtain a CUP only as a "restaurant use." (Transcript at 28-30.) Bud Lortz was also very clear that "[t]he Formula Retail Ordinance is a retail-based zoning regulation. The Council has never really discussed the concept of formula restaurant uses." (Transcript at 29.)

Even if the formula retail business regulations did apply to Cold Stone Creamery, there were no findings in the record to support the denial of this CUP. Specifically, there were no findings based on evidence that this proposed use will detract from the existing balance and diversity of businesses in the commercial district in which Cold Stone Creamery is proposed to be located. Cold Stone Creamery is merely replacing another ice cream shop that has been there for 30 years. Further, it was never established that the proposed use as an ice cream shop was not in harmony with the specific provisions or objectives of the general plan.

Cold Stone Creamery is Consistent With the Goals and Policies of the Town's General Plan

Cold Stone Creamery is consistent with the goals and policies of the Town's general plan. An ice cream shop is consistent with the following goals and policies:

- To preserve, promote, and protect the existing small town character and quality of life within Los Gatos (LG 1.1)
- Encourage economic and social activity consistent with a small scale, small town atmosphere and image. (L.P. 1.3)
- Preserve and promote existing commercial centers consistent with maintenance of a small scale, small town atmosphere and image. (L.P. 1.4)
- Retail sales tax "leakage" should be kept to a minimum by providing in town convenience and comparative shopping opportunities. (L.P. 5.9)

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- To preserve the downtown Los Gatos as a historic center of the town with goods and services for local residents while maintaining the existing town identity, environment, and commercial viability. (L.G. 6.2)
- Encourage the development and retention of small businesses and locally owned stores and shops that are consistent with small town character and scale. (L.P. 5.5)

The Town Cannot Use its Zoning Laws to Restrict Competition

The Town cannot use its zoning and building laws to restrict competition. See *O'Hagan v. Board of Zoning Adjustment* (1971) 19 Cal.App.3d 151, 159-160. Further, while the Town may have broad authority over the regulation of land use within its territory, that authority is not unlimited. The courts have held that:

"Where certain uses are permitted, a City cannot arbitrarily exclude others who would employ a similar use. Zoning and building laws 'cannot be used unqualifiedly to restrict competition.' While valid zoning regulations may affect competition and have other economic effects, a City does not have carte blanche to exclude a retail merchant that it, or some of its residents, do not like. *Friends of Davis v. City of Davis*, (2000) 83 Cal.App.4th 1004, 1014 [Citations omitted].

In conclusion, we believe that the Planning Commission erred in its action. We urge your support for this applicant.

Very truly yours,

BERLINER COHEN



ANDREW L. FABER
E-Mail: alf@berliner.com

ALF:cem

Cc: Doug Feece

