



**MEETING DATE: 02-21-2006**

**AGENDA ITEM: 6**

**COUNCIL AGENDA REPORT**

DATE: February 2, 2006

TO: MAYOR AND TOWN COUNCIL

FROM: ORRY P. KORB, TOWN ATTORNEYC)k

SUBJECT: ADOPT RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS UPHOLDING A DECISION OF THE PLANNING COMMISSION DENYING AN APPLICATION TO OPERATE A FORMULA RETAIL STORE (AMERICAN APPAREL) ON PROPERTY ZONED C-2. APN: 510-44-034. PROPERTY LOCATION: 25 N. SANTA CRUZ AVENUE. PROPERTY OWNER: SANTA CRUZ REAL, LLC. APPLICANT/ APPELLANT: TACEE WEBB.

**RECOMMENDATION:**

Adopt resolution confirming Council's decision on January 17, 2006.

**DISCUSSION:**

On January 17, 2006, Council denied an appeal of a Planning Commission decision denying an application to operate a formula retail store (American Apparel) on property zoned C-2, located at 25 N. Santa Cruz Avenue. The attached resolution confirms that decision.

Attachment: Proposed Resolution

Distribution: Tacee Webb, 919 NW 23rd Avenue, Portland OR 97210  
(Copy of report e mailed on 2/17/06)

**PREPARED BY: ORRY P. KORB, TOWN ATTORNEY**

OPK:LMB/wp [NAN4GR\Attorney\AmericanApparel.wpd]

Reviewed by: own Manager  
Finance

Assistant Town Manager  
Community Development

Clerk

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File# 301-05

## **RESOLUTION 2006**

### **RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS UPHOLDING A DECISION OF THE PLANNING COMMISSION DENYING AN APPLICATION TO OPERATE A FORMULA RETAIL STORE (AMERICAN APPAREL) ON PROPERTY ZONED C-2.**

**APN: 510-44-034**

**PROPERTY LOCATION: 25 N. SANTA CRUZ AVENUE**

**PROPERTY OWNER: SANTA CRUZ REAL, LLC**

**APPLICANT/APPELLANT: TACEE WEBB**

#### **WHEREAS:**

A. This matter came before the Town Council for public hearing on January 17, 2006 and was regularly noticed in conformance with State and Town law.

B. Council received testimony and documentary evidence from the appellant/applicant and all interested persons who wished to testify or submit documents. Council considered all testimony and materials submitted, including the record of the Planning Commission proceedings and the packet of material contained in the Council Agenda Report dated January 12, 2006 and Desk Items dated January 17, 2006, along with subsequent reports and materials prepared concerning this application.

C. The applicant/appellant seeks approval of a conditional use permit to operate a formula retail store (American Apparel) at 25 N. Santa Cruz Avenue, which is located in the Central Business District ("CBD").

D. The Planning Commission considered this matter on November 9, 2005, and denied the application on the basis that the proposal is not consistent with the General Plan regarding small town character and support for locally-owned stores in the CBD, that the space was previously occupied by a non-formula retailer, and that the addition of another apparel store

would detract from the diversity and balance in the types of retail businesses in the CBD.

E. The applicant/appellant claims that the Planning Commission erred or abused its discretion because the proposed use of the property is in harmony with the specific objectives in the General Plan, and would help to maintain the existing balance and diversity of businesses in the CBD.

F. The decision of the Planning Commission should be upheld.

G. Council finds the following:

(1) Rather than being a unified whole, the CBD consists of five (5) distinct sub-areas distinguished by the policies and goals of the Town found in its General Plan, the requirements of the Zoning Code, the Commercial Design Guidelines, and the Downtown Parking Management Plan, as well as by existing traffic patterns, and urban design factors such as building placement, continuity of building facades, street width, existing uses, and building heights. The sub-areas are:

- Sub-Area A: North Santa Cruz Avenue from Highway 9 to Royce Street, characterized by buildings located at the front property line with no setback, having the narrowest building to building cross-section across Santa Cruz Avenue in relation to building height, and mainly featuring first floor retail uses.
- Sub-Area B: North Santa Cruz Avenue from Main Street to Royce Street, characterized by buildings that are set back from the front property line, several parking lots with frontage on Santa Cruz Avenue, frequent breaks in the building facades, larger building to building separation across Santa Cruz Avenue, specifically applicable standards in the Commercial Design Guidelines, and a comparatively greater number of personal service uses.
- Sub-Area C: Retail uses on University Avenue, characterized by the combination

of the recently remodeled and new parts of the Old Town Shopping Center.

- Sub-Area D: South Santa Cruz Avenue primarily south of Main Street, characterized by higher automobile traffic volumes and lower pedestrian use as compared to the remainder of the Santa Cruz Avenue due to its providing direct access on to and off of Highway 17 and to the location of all businesses, with one exception, on the west side of the street.

Sub-Area E: Main Street east of Santa Cruz Avenue that differs significantly from North Santa Cruz Avenue due to its wider street cross-section, shorter street blocks, the physical division resulting from the location of the Highway 17 overpass and the relatively high number of personal service businesses.

Evidence: Desk Item for January 17, 2006 Town Council meeting dated January 17, 2006, page 2; Attachment 13 to Staff Report for January 17, 2006 Town Council meeting; staff comments by Bud Lortz, Director of Community Development, made at Town Council meeting on January 17, 2006.

(2) Of the seventeen (17) formula retail businesses in the CBD, sixteen (16) are located in Sub-Area C or Sub-Area B. Only one formula retail store is located in Sub-Area A on Santa Cruz Avenue immediately north of Nicholson Avenue. No formula retail stores are found in Sub-Areas D and E. Of the seven (7) formula retail stores located in Sub-Area B, three (3) are located on the same block surrounding the location proposed by the applicant/appellant in Sub-Area B.

Evidence: Desk Item for January 17, 2006 Town Council dated January 17, 2006, page 3; Attachment 13 to Staff Report for January 17, 2006 Town Council meeting; staff comments by Bud Lortz, Director of Community Development, made at Town Council meeting on January 17, 2006.

(3) While Council previously determined with the adoption of Ordinance No. 2107 that an over-concentration of formula retail in any one location would have negative impacts on the Town, the record of this hearing establishes that in sub-areas where there are fewer retail businesses, formula retail businesses can have the positive effect of increasing pedestrian traffic, to the benefit on all businesses in the area.

Evidence: Ordinance No. 2107, Attachment 10 to Staff Report for January 17, 2006 Town Council meeting; Desk Item for January 17, 2006 Town Council meeting dated January 17, 2006, page 3; Attachment 13 to Staff Report for January 17, 2006 Town Council meeting; staff comments by Bud Lortz, Director of Community Development, made at Town Council meeting on January 17, 2006 (all establishing that the majority of formula retail businesses on Santa Cruz Avenue are located south of Gray's Lane); testimony of Mike Johnson, commercial real estate broker, before the Los Gatos Planning Commission on November 9, 2005, Attachment 2 to Staff Report for January 17, 2006 Town Council meeting [25:19-25] (stating that Santa Cruz Avenue north of Gray's Lane is "not a high traffic area."); Letters from Michael Jay Jones dated November 4, 2005, and Pete Jillo dated November 1, 2005, both attached as Exhibit N to Desk Item for November 9, 2005 Planning Commission meeting, Attachment 1 to Staff Report for January 17, 2006 Town Council meeting, and from Sue Farwell dated January 17, 2006, Attachment 12 to Staff Report for January 17, 2006 Town Council meeting (all stating that American Apparel, a formula retail business, would increase the number and type of consumers in the CBD).

(4) The location proposed by the applicant/appellant was not one previously occupied by a formula retail store and approving the application would, thus, result in an increase in the number of formula retail stores in Sub-Area B of the CBD.

Evidence: Staff Report for January 17, 2006 Town Council meeting, page 2; staff

comments by Bud Lortz, Director of Community Development, made at Town Council meeting on January 17, 2006.

(5) Based on the evidence cited herein above, the addition of a new formula retail business in Sub-Area B would result in an over-concentration of such businesses in that Sub-Area.

(6) Pursuant to Los Gatos Town Code section 29.20.190(b)(1), and based on the evidence cited herein above, the proposed use of the property is not in harmony with specific provisions or objectives of the General Plan and the purposes of this chapter (Chapter 29 of the Town Code); to wit, General Plan goal L.G.1, to preserve, promote, and protect the existing small town character and quality of life within the Town; General Plan policy L.P.1.3, to encourage economic and social activity consistent with the small scale, small town atmosphere and image of the Town; General Plan policy L.P.1.4, to preserve and promote existing commercial centers consistent with the maintenance of a small scale, small town atmosphere and image; General Plan policy L.P.5.1, to maintain a variety of commercial uses to meet the shopping needs of residents and to preserve the small town atmosphere; and General Plan policy L.P.5.5, to encourage the development and retention of locally owned stores and shops.

(7) Pursuant to Los Gatos Town Code section 29.20.190(b)(2), and based on the evidence cited herein above, the proposed use will detract from the existing balance and diversity of businesses in the commercial district in which the use is proposed to be located, specifically in Sub-Area B where the proposed use would result in an over-concentration of formula retail businesses;

(8) Pursuant to Los Gatos Town Code section 29.20.190(b)(3), and based on the evidence cited herein above, the proposed use would create an over-concentration of similar types of businesses, specifically in Sub-Area B where the proposed use would result in an over-concentration of formula retail businesses.

(9) Pursuant to Los Gatos Town Code section 29.20.190(b)(4), and based on the evidence cited herein above, the proposed use will detract from the existing land use mix and high urban design standards including uses that promote continuous pedestrian circulation and economic vitality, specifically in Sub-Area B where the proposed use would result in an over-concentration of formula retail businesses.

**RESOLVED:**

1. The appeal of the decision of the Planning Commission is denied.
2. The decision constitutes a final administrative decision pursuant to Code of Civil Procedure section 1094.6 as adopted by section 1.10.085 of the Town Code of the Town of Los Gatos. Any application for judicial relief from this decision must be sought within the time limits and pursuant to the procedures established by Code of Civil Procedure section 1094.6, or such shorter time as required by State and Federal Law.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California on the \_\_\_\_\_day of February 2006, by the following vote.

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

ATTEST:

CLERK ADMINISTRATOR  
TOWN OF LOS GATOS, CALIFORNIA