



MEETING DATE: 12/18/2006

ITEM NO:

14

COUNCIL AGENDA REPORT

DATE: December 18, 2006

TO: MAYOR AND TOWN COUNCIL

FROM: DEBRA J. FIGONE, TOWN MANAGER

SUBJECT: CONSIDER AN APPEAL OF A PLANNING COMMISSIONER DECISION DENYING A REQUEST TO OPERATE A RESTAURANT IN CONJUNCTION WITH RETAIL SALES (POWELL'S SWEET SHOPPE) ON PROPERTY ZONED C-2. APN 510-44-032. CONDITIONAL USE PERMIT U-07-4
PROPERTY LOCATION: **35 NO. SANTA CRUZ AVENUE** PROPERTY OWNER: RITCHIE ASSET MGMT CO. APPLICANT/APPELLANT: KNOTT FAMILY RESTAURANT/NEIL KNOTT

REMARKS:

Attached is information received after the staff report was distributed.

Attachments:

- 1.-12. Previously submitted.
13. Lettter from LG Chamber of Commerce dated December 15, 2006 (2 pages).

BNL:RT:mdc

PREPARED BY:

BUD N. LORTZ 
DIRECTOR OF COMMUNITY DEVELOPMENT

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Reviewed by: BS Assistant Town Manager BT Town Attorney
____ Clerk Administrator ____ Finance ☒ Community Development

December 15, 2006

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To the Town Council of Los Gatos

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Re: Powell's Sweet Shoppe Appeal of Planning Commission Decision Regarding Gelato Sales on the Premises

In March 2006, the Los Gatos Chamber of Commerce invited merchants whose businesses were located in the downtown corridor (University Ave., Main Street and North Santa Cruz Avenue) to participate in an email committee. The purpose of this new "Downtown Committee" was to inform and educate the business community on issues, ideas and business practices that are pertinent to them and to obtain feedback from them on those issues that directly impact the downtown community.

The Chamber uses this feedback to report opinions to the Planning Commission and Town Council on pending issues to assist you in making your decisions. The feedback is coordinated by the Chamber but the opinions sent to the Council and Planning Commission are those of the business owners and not of the Chamber. It should also be noted that there is no limitation of Chamber membership for this group and it is open to the entire downtown business community. The group has been assured that none of their names will be used without their express permission to do so. The Chamber intends to send the information gathered to the local newspaper in the form of a letter to the editor so the merchants voices are heard throughout the community on issues that directly affect them.

An email was sent to the Downtown Committee regarding Powell's Sweet Shoppe and their appeal of the Planning Commission's decision on their gelato sales (attached). Of the thirteen businesses who responded, the results are as follows:

Overturn the Planning Commission's decision : In Favor: 12

Uphold the Planning Commission: In Favor: 1

There were numerous comments attached to the surveys. They are included for your consideration.

- "Keep it please!"

- "I think when Mr. Knott submitted his plans for approval, that was the time for the Planning Commission to ask questions and make a decision. Obviously if he had freezers / dip cabinets, there would be items inside of them for sale. Since his business plan was based upon the entire list of items to sell, it would be terrible to not let him keep his new use permit and sell the gelato because of a mistake the inspector made or because of questions they failed to ask. I think the decision should be based upon local business owners around them, folks present at the council meeting and Chamber Members. If most folks want his new use permit to be accepted, then it should. This is an expensive town to do business in and anyone willing to have one here and pay taxes should be given consideration for his/her honest efforts. It's not his fault the permit was mixed up in the first place."

- "It seems like a minor oversight to me. Powell's is a very unique, positive addition to our town. I hope this will not negatively effect the other excellent business down the street that sells gelato."



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- "If the applicant's original application was to sell ice cream and the plans clearly state "gelato case" with which the health department inspected and approved installation, then it is the Planning Department's error in assuming for some reason that the ice cream would be prepackaged (?) The applicant then complied with their "after the fact" request for a CUP but it is denied because a competitor cried unfair competition—this is ridiculous. Wouldn't we all love to be the only ones selling a particular product or service? Decision should be reversed."

- "It is difficult to have an opinion without knowing exactly what was submitted for approval, i.e.: Powell plans included Gelato case? So, if the plans showed the Gelato case then I feel that he Council should overturn the Planning Commission's decision. If the plans do not, then I believe the Council will have the right to evaluate the inclusion of Gelato. Personally, I don't see any reason why Powell should not have Gelato."

- "I don't see how ice cream versus gelato is that big a difference, nor do I think he was trying to hide anything."

- "If the owner indicated verbally in his initial request that he was selling gelato and if the plans show "gelato case" and the owner was granted approval by the health department and code compliance, then I feel he has the right to sell gelato. If there was an error in prior approval it isn't the Powell owner that should be punished. He created a budget that included gelato sales based on what the town told him. The fact that he went along with the request to file the minor restaurant permit shows his willingness to cooperate...even though I don't even think he should have had to do that. As far as I'm concerned, it was after the fact and too late. Code Compliance should have asked the right questions to begin with. Planning should have approved it and the complaining competitor should just offer a better product, better service and concentrate on marketing than on trying to limit others from selling gelato. Hmmm, I don't think other new restaurants should be able to serve pork chops. (This response was a "reply all" via email and 2 other businesses replied that they agreed with the writer's comments)."

- "This is like a Shakespearean Festival—a Comedy of Errors and Much Ado About Nothing! Let the guy serve gelato."

We hope this is helpful to you in making your decision.

Respectfully submitted,

TOWN OF LOS GATOS CHAMBER OF COMMERCE



Greg Stowers
VP Legislative Affairs



Patti A. Rice
President

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