MEETING DATE: 12/07/09
ITEM NO: 6

COUNCIL AGENDA REPORT

DATE: November 25, 2009

TO: MAYOR AND TOWN COUNCIL

FROM: GREG LARSON, TOWN MANAGER

SUBJECT: CONSIDER A REQUEST OF APPROVAL TO OPERATE A RESTAURANT WITH BEER AND WINE SERVICE AND OUTDOOR SEATING ON PROPERTY ZONED C-1. APN 406-30-015. PROPERTY LOCATION: **14101 WINCHESTER BOULEVARD**. PROPERTY OWNER: WINCHESTER ASSOCIATES LLC. APPLICANT: TOUGAS ENTERPRISES. FILE # U-09-009.

RECOMMENDATION:

1. Open and hold the public hearing and receive public testimony.
2. Close the public hearing.
3. Make the following motions:

   Accept the Planning Commission's recommendation and approve the Conditional Use Permit Application. If the Council decides to approve the proposed project, the following actions are recommended:

   - Make the required findings for approving the Conditional Use Permit (Attachment 1) and approve the application subject to the conditions included in Attachment 2 **(motion required)**.

   Alternatively, the Council may take one of the following actions:

   - Continue the matter to a date certain with specific direction **(motion required)**; or
   - Approve the application with additional and/or modified conditions of approval **(motion required)**; or
   - Deny the Conditional Use Permit Application **(motion required)**.

4. Refer to the Town Attorney for the preparation of the appropriate resolution if approved or denied **(no motion required)**.

PREPARED BY: Wendie R. Rooney, Director of Community Development

Reviewed by: PSS Assistant Town Manager ___ Town Attorney
____ Clerk Administrator ____ Finance ✓ Community Development

BACKGROUND:

The subject site, 14101 Winchester Boulevard, has been occupied by a restaurant since 1979, and until recently was occupied by Casa Valencia (Exhibit 1). The space was vacated more than a year ago, and as a result, the previous Conditional Use Permit (CUP) expired.

DISCUSSION:

A. Project Summary

The applicant is requesting approval to operate a high turnover sit down restaurant with beer and wine service and outdoor seating. The applicant is also requesting extended hours until 1 a.m. daily. The Town's Alcohol Policy (Exhibit 5 of Attachment 3), requires the following findings to approve operating hours past 10:00 PM:

- Late night service will not adversely impact adjacent residential neighborhoods.
- The applicant does not have a history of complaints and non-compliance with local ordinances or the Alcoholic Beverage Policy.
- The applicant has demonstrated a clear benefit to the community.

Please see Attachment 3 (the October 28, 2009 Planning Commission staff report) for additional information regarding the proposed project.

B. Planning Commission

On October 28, 2009, the Planning Commission considered the application (see Attachment 4). The Commission recommended approval of the application with the following changes to condition number three (added wording is underlined, deleted wording is struck out):

HOURS OF OPERATION: Hours of operation shall not exceed 11:00 a.m. to ~~10:00 p.m. daily~~ 11:00 p.m. Sunday through Thursday and 11:00 a.m. to 12:00 a.m. Friday and Saturday as well as holidays.

The Commission approved extending the closing hours, as permitted by the Town's Alcohol Policy, to be consistent with the approved closing hours of Aldo's restaurant, which is located in the same shopping center. Based on the information provided at the hearing, the Commission determined that the extension of hours would not adversely impact adjacent residential neighborhoods.

C. Public Comment

During the public hearing, a neighbor raised concerns regarding noise, outdoor seating, traffic and signage. Subsequent to the Planning Commission meeting staff received two letters from other nearby neighbors who have concerns with noise and traffic, particularly as they relate to the hours of operation (Exhibit 5).

As discussed in the report to the Planning Commission, the proposed restaurant will not impact traffic beyond the previous use of the space. In regards to noise concerns, the patio is located at the southeast corner of the building and will have space for 12 outside seats. The patio is open on two sides and is oriented towards the parking lot of the shopping center and to Winchester Boulevard. Due to the location of the patio area, the limited number of outside seats and the existing highway noise, staff does not believe that there will be noise impacts associated with the use of the patio. Noise generated in the parking lot from the patrons arriving and leaving the facility could impact the residential neighborhood, however, the anticipated noise would not be greater than the previous restaurant use which was approved for full liquor service and closed at 11:00 PM.

CONCLUSION:

Pursuant to the Town's Alcohol Policy, staff had recommended the general limited hours. As permitted by the Town's Alcohol Policy, the Planning Commission determined that the late night service did not adversely impact adjacent residential neighborhoods and extended the closing hours. Subsequent to the meeting, two additional neighbors have expressed concern regarding the late night service (Exhibit 5). If Council determines that the neighbor's concerns have merit, staff recommends that the hours originally recommended be incorporated in the conditions of approval. The following condition could also be added to evaluate the operation of the use for whichever hours of operation are approved.

> ONE YEAR REVIEW. Town staff shall review the Conditional Use Permit within one year from approval to determine if there are any problems associated with the Permit and report their findings to the Planning Commission. The Planning Commission may direct that a public hearing be held to review the permit as specified in Section 29.20.310 of the Town Code.

ENVIRONMENTAL ASSESSMENT:

The project is Categorically Exempt according to Section 15301 Class 1 of CEQA as adopted by the Town, which exempts permitting an existing facility with no expansion.

FISCAL IMPACT:

None.

Attachments:

1. Required Findings.
2. Recommended Conditions of Approval.
3. Report to the Planning Commission for the meeting of October 28, 2009.
4. Excerpt of the Verbatim Planning Commission meeting minutes for October 28, 2009.
5. Email received from Robert Mason (two pages), received November 16, 2009.

Email received from Duane Medeiros (one page), received November 16, 2009.

Distribution:

cc: Tougas Enterprises, 20604 Wardell Rd, Saratoga CA 95070
Winchester Associates, LLC, 14103 – B Winchester Blvd, Los Gatos CA 95032

WR:MM:cgt

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REQUIRED FINDINGS FOR:
December 7, 2009

<u>14101 Winchester Boulevard</u>
Conditional Use Permit U-09-009

Requesting approval to operate a restaurant with beer and wine service and outdoor seating on property zoned C-1. APN 406-30-015.
PROPERTY OWNER: Winchester Associates, LLC
APPLICANT: Tougas Enterprises Inc.

- As required by Section 15301 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 granting 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 the Town Code if it finds that:

  (1) The proposed uses of the property are essential or desirable to the public convenience or welfare; in that the proposed use provides a family friendly eatery, in a location where limited options are available to the nearby offices and residents, and

  (2) The proposed uses will not impair the integrity and character of the zone in that the C-1 (Neighborhood Commercial) zone is intended for community and neighborhood oriented business such as this application, and

  (3) The proposed uses would not be detrimental to public health, safety or general welfare in that the space has always been occupied by similar style sit down restaurants, and

  (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 for properties within the Neighborhood Commercial designation.

If the deciding body finds it appropriate, they should make the following findings to approve operating hours past 10 p.m.

- As required by Chapter II Section 6 of the Town Alcohol Policy for granting alcohol service beyond the hours of 10 p.m.

  The deciding body shall make the following findings prior to approving an application for a Conditional Use Permit to serve alcoholic beverages past 10 p.m.:

  A. Late night service will not adversely impact adjacent residential neighborhoods in that conditions have been applied to the project to reduce potential impacts.

B. The applicant does not have a history of complaints and non-compliance with local ordinances or the Alcoholic Beverage Policy. Although the applicant does not have an existing Town business, their restaurant businesses in other jurisdictions do not have a history of complaints.

C. The applicant has demonstrated a clear benefit to the community by supporting nonprofit and other community organizations.

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RECOMMENDED CONDITIONS OF APPROVAL FOR:
DECEMBER 7, 2009

14101 Winchester Boulevard
Conditional Use Permit U-09-009

Requesting approval for a restaurant with beer and wine service and outdoors seating on property zoned C-1. APN 406-30-015.
PROPERTY OWNER: Winchester Associates, LLC
APPLICANT: Doris G. Tougas/Tougas Enterprises Inc.

TO THE SATISFACTION OF THE PLANNING DIRECTOR:
(Planning Section)

1. APPROVAL: This application shall be completed in accordance with all of the conditions of approval listed below and in substantial compliance with the approved plans. 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 shall not exceed 11:00 a.m. to ~~10:00 p.m. daily~~ 11:00 p.m. Sunday through Thursday and 11:00 a.m. to 12:00 a.m. Friday and Saturday as well as holidays.
4. SEATING: A maximum of one hundred and three (103) seats are allowed inclusive of indoor and outdoor dining areas. A maximum of 12 seats may be placed in the outdoor dining area.
5. OUTDOOR DINING AREA: The outdoor dining area shall be maintained and kept litter free. There shall be no exterior access to or from the outdoor patio.
6. OUTDOOR DINING BARRIER: A barrier around the outdoor dining area shall be installed to provide clear delineation of the eating area, and to provide adequate separation from the adjacent public areas. The exterior modifications shall be reviewed through an Architecture and Site Application.
7. ALCOHOL SERVICE: The service of alcoholic beverages is permitted only with meals. A meal is defined as a combination of food items selected from a menu (breakfast, brunch, lunch, or dinner). Appetizers such as popcorn, nachos, pretzels, potato skins, relish trays, etc. (hot or cold) are not meals.
8. TAKE OUT: Take out food shall be served in recycled material containers.
9. UTENSILS: All beverages and food served on site shall be served on reusable materials.
10. LIVE ENTERTAINMENT: No live entertainment shall be permitted.
11. DELIVERIES: Deliveries shall be limited to the hours of 7 a.m. to 6 p.m.
12. 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.

13. TOWN INDEMNITY: Applicants are notified that Town Code Section 1.10.115 requires that any applicant who receives a permit or entitlement from the Town shall defend, indemnify, and hold harmless the Town and its officials in any action brought by a third party to overturn, set aside, or void the permit or entitlement. This requirement is a condition of approval of all such permits and entitlements whether or not expressly set forth in the approval.

TO THE SATISFACTION OF THE CHIEF OF POLICE:

14. UNIFORMED SECURITY: Uniformed privately provided security guards may be required in or around the premises by the Chief of Police if alcohol related problems recur that are not resolved by the licensed owner.
15. CONSULTATION AND TRAINING: At the discretion of the Chief of Police, periodic meetings will be conducted with representatives from the Police Department for on-going employee training on alcoholic beverage service to the general public.
16. TRAINING MANUAL: The restaurant operator shall use an employee training manual that addresses alcoholic beverage service consistent with the standards of the California Restaurant Association.
17. DESIGNATED DRIVER PROGRAM: The restaurant operator shall actively promote a designated driver program such as complimentary non-alcoholic beverages for designated drivers.
18. POSTING OF TAXICAB TELEPHONE NUMBERS: Taxicab telephone numbers shall be posted in a visible location.

TOWN OF LOS GATOS

ITEM NO: 5

PLANNING COMMISSION STAFF REPORT
Meeting Date: October 28, 2009

PREPARED BY: Marni F. Moseley, Assistant Planner
mmoseley@losgatosca.gov

APPLICATION NO: Conditional Use Permit U-09-009

LOCATION: **14101 Winchester Boulevard** (Located in the Vasona Shopping Center)

APPLICANT: Tougas Enterprises Inc.

PROPERTY OWNER: Winchester Associates, LLC

CONTACT PERSON: Michelle LaBarbera

APPLICATION SUMMARY: Requesting approval to operate a restaurant with beer and wine service and outdoor seating on property zoned C-1. APN: 406-30-015

DEEMED COMPLETE: September 8, 2009
FINAL DATE TO TAKE ACTION: March 8, 2010

RECOMMENDATION: Forward recommendation for approval to Town Council, subject to conditions.

PROJECT DATA:

General Plan Designation: Neighborhood Commercial
Zoning Designation: C-1, Neighborhood Commercial
Applicable Plans & Standards: Town Alcohol Policy
Outdoor Seating Policy

Parcel Size: 4.4 acres

Surrounding Area:

	Existing Land Use	General Plan	Zoning
North	Commercial	City of Campbell	
East	Commercial	City of Campbell	
South	Commercial	Neighborhood Commercial	C-1
West	Office	Office Professional	O

CEQA: Categorically Exempt pursuant to Section 15301 of the State Environmental Guidelines as adopted by the Town.

FINDINGS:

- As required by Section 15301 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 granting a Conditional Use Permit.
- As required by the Town Alcohol Policy.

ACTION: Recommendation to the Town Council

EXHIBITS:

1. Location Map
2. Required Findings (two pages).
3. Proposed Conditions of Approval (two pages)
4. Letter of Justification (one page), received August 6, 2009
5. Town Alcohol Policy
6. Standards for Outdoor Seating
7. Floor plan and elevation (two pages) received September 8, 2009

BACKGROUND:

The subject site, 14101 Winchester Boulevard, has been occupied by a restaurant since 1979, and until recently was occupied by Casa Valencia (Exhibit 1). The space was vacated more than a year ago, and as a result the previous Conditional Use Permit (CUP) expired.

PROJECT DESCRIPTION:

A. Conditional Use Permit

The applicant is requesting the approval to operate a restaurant with beer and wine service. A CUP is required to allow operation of a new restaurant. The proposal includes 103 seats, with 12 seats located in a renovated outdoor patio area. The applicant is proposing operating hours from 11 a.m. to 1 a.m. daily.

B. Location and Surrounding Neighborhood

The site is located in the Vasona Shopping Center on the west side of Winchester Boulevard between Knowles Drive and Division Street. It is bordered by commercial and multifamily to the north, light industrial to the east, an office complex to the west, and commercial uses to the south. The properties to the north and east of the subject site are located in the City of Campbell.

C. Zoning Compliance

The designated zoning for the property is C-1 Neighborhood Commercial. The C-1 zone allows restaurant uses subject to the approval of a CUP. Outside dining and on premise alcohol sales associated with a restaurant also require a CUP.

ANALYSIS:

A. Outdoor Seating

The existing facility currently has a completely enclosed sunroom, which provides a semi-outdoor environment. This room was an addition and was not constructed with quality materials or workmanship. The applicant would like to remove the enclosure and construct a covered patio within the same footprint. The patio will have railings enclosing the space as required by the Town Alcohol Policy. The applicant has provided elevations (Exhibit 7). An Architecture and Site Application will be processed through the Development Review Committee if this application is approved.

The Town's Outdoor Seating Policy (Exhibit 6) requires that patrons be seated by a restaurant employee when alcohol service is provided. The proposed restaurant is open seating, and the applicant believes that with the limited patio seating, a hostess should not be necessary. The intent of the requirement for requiring a hostess in outdoor seating areas is to reduce the possibility of alcohol leaving the outdoor patio. The Police Department has stated that the intent of the Policy would be met if the Town required that the patio not be accessible from the outside. Staff concurs with the Police Department and a condition has been included to eliminate the gate in the patio area.

B. Alcohol Policy

The Town's Alcohol Policy requires any new or changes to existing service of alcoholic beverages to be approved by the Town Council. The request is consistent with the general policies in Section II and the specific policy in Section IV (Exhibit 5).

The applicant is requesting extended hours until 1 a.m. daily. The Alcohol Policy restricts the hours of operation to 11 p.m. Sunday through Thursday, and 1 a.m. Friday and Saturday. It also requires an additional finding that the applicant has demonstrated a clear benefit to the community to approve alcohol service beyond 10 p.m. (Exhibit 5). The applicant discusses their benefits to the community in a letter of justification (Exhibit 4). The deciding body must review the application and determine if the proposal is providing a benefit to the community. The Planning Commission's recommendation will be forwarded to the Town Council for final action.

It should be noted that the expired CUP previously held by Casa Valencia allowed the restaurant to operate until 11 p.m. daily. In addition, the other major restaurant tenant in the Vasona Shopping Center, Aldo's, has approved operating hours until 12 midnight daily. The Police Department has not received any complaints or reported any issues with operating hours past 10 p.m. in the center.

The Police Department has reviewed the application, and with the removal of the patio gate, as discussed above, and has no additional comments or concerns.

C. Traffic

The proposed use generates less trips than the previous use due to a reduction in seats to meet the parking requirement for the center. Therefore, there are no traffic impacts associated with this application.

D. Parking

With the current tenant makeup in the Vasona Shopping Center, the parking requirements limit the restaurant to 103 seats. Following is a breakdown of the parking allocation for the entire center.

Parking Analysis Table

Suite	Business Name	Type of Use	Square Footage/seating	Req. Spaces
14103-A	Marvegos Fine Art School	school	3 staff, 14 students	7.7
14103-B	March Development Co.	office	2,065	8.8
14103-C	La Maison Du Café	restaurant	18 seats	6
14103-D	Alef Bet	retail	1,464	6.3
14103-E	Vladimir Frank Architects	office	810	3.5
14103-F	The Metabolic Project	1-on-1 fitness	820	3.5
14103-G	Law Office	office	3,416	14.5
14107-H	(vacant)	(vacant)	4,440	18.9
14107-K	(vacant)	(vacant)	2,400	10.2
14107-M	Silicon Valley Pharmacy	retail pharmacy	2,160	9.2
14107-N	Net Fuel	office	1,144	4.9
14107-O	San Jose Blue	retail	2,707	11.5
14107-P	AS Designs	office	1,500	6.4
14107-Q	Orchid Cleaners	dry cleaners	1,445	6.2
14107-R	The Spot Deli	restaurant	18 seats	6
14107-S	Yeung Shing	restaurant	30 seats	10
14107-T	Dream Dinners	specialty retail	1,200	5.1

14107-U	Buschi Salon	personal service	1,220	5.2
14107-V	Integra Insurance Services	office	3,076	13.1
14109	Aldo's	restaurant	140 seats	46.7
14101	**Jake's**	**restaurant**	**103 seats**	**35.3**
	Total Required Parking			239
	Total Provided Parking			239

E. CEQA Determination

It has been determined that this project is Categorically Exempt pursuant to Section 15301 of the State Environmental Guidelines as adopted by the Town.

F. CUP Findings

In order to grant approval of a Conditional Use Permit, the hearing body must make the following findings:

(1) The proposed uses of the property are essential or desirable to the public convenience or welfare; and
(2) The proposed uses will not impair the integrity and character of the zone; and
(3) The proposed uses would not be detrimental to public health, safety or general welfare; and
(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.

The proposed use is desirable to the public convenience and welfare in that it provides a family friendly eatery in a location where limited options are available to the nearby offices and residents. The proposed use will not impair the integrity of the zone in that the C-1 (Neighborhood Commercial zone is intended for community and neighborhood oriented businesses such as this application. The proposed use will not impact public health, safety or general welfare in that that space has always been occupied by similar style sit down restaurants. The use complies with the objectives of the General Plan and Town Code for properties within the Neighborhood Commercial designation.

G. Public Comments

At this time, the Town has not received any public comment.

CONCLUSION AND RECOMMENDATION:

A. Conclusion

The application complies with the Town Code and Town Standards and policies with the exception of:

1. Hours of operation exceed those permitted in the Town Alcohol Policy.
2. Outdoor seating, when alcohol is available must be seated by a restaurant employee.

Staff has provided conditions (Exhibit 3) that limit the operating hours to 10 p.m., and requires that the exterior gate to the outdoor patio be removed during the Architecture and Site Application process.

B. Recommendation

Staff recommends that the Planning Commission recommend approval of the Conditional Use Permit to the Town Council subject to the modifications noted above. If the Commission finds merit with the proposal it should:

1. Find that the project is categorically exempt pursuant to Section 15301 of the State Environmental Guidelines;
2. Make the findings as required by Section 29.20.190 of the Town Code for granting a Conditional Use Permit, subject to conditions (Exhibit 3); and
3. Determine that the project is in compliance with the Town's Alcohol Policy (Exhibit 5).

C. Alternatives

1. Recommend approval of the CUP with additional and/or modified conditions of approval.
2. Recommend denial of the Conditional Use Permit

Prepared by:
Marni F. Moseley
Assistant Planner

Approved by:
Wendie R. Rooney
Director of Community Development

WRR:MM:cgt
cc: Tougas Enterprises, 20604 Wardell Rd, Saratoga CA 95070
Winchester Associates, LLC, 14103 – B Winchester Blvd, Los Gatos CA 95032
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14101 Winchester Boulevard

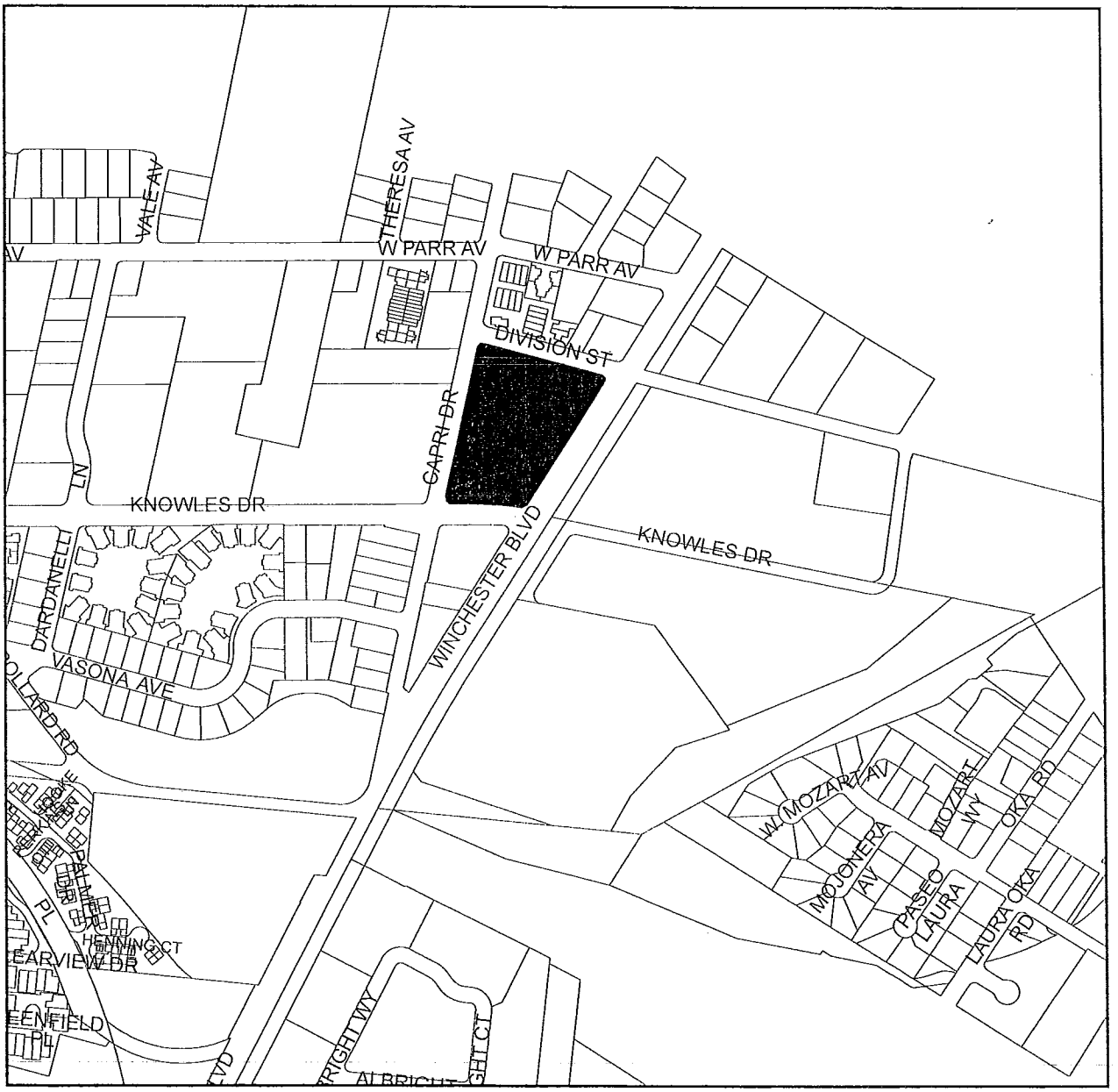

EXHIBIT 1

REQUIRED FINDINGS FOR:
October 28, 2009

14101 Winchester Boulevard
Conditional Use Permit U-09-009

Requesting approval to operate a restaurant with beer and wine service and outdoor seating on property zoned C-1. APN 406-30-015.
PROPERTY OWNER: Winchester Associates, LLC
APPLICANT: Tougas Enterprises Inc.

- As required by Section 15301 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 granting 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 the Town Code if it finds that:

  (1) The proposed uses of the property are essential or desirable to the public convenience or welfare; in that the proposed use provides a family friendly eatery, in a location where limited options are available to the nearby offices and residents, and

  (2) The proposed uses will not impair the integrity and character of the zone in that the C-1 (Neighborhood Commercial) zone is intended for community and neighborhood oriented business such as this application, and

  (3) The proposed uses would not be detrimental to public health, safety or general welfare in that the space has always been occupied by similar style sit down restaurants, and

  (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 for properties within the Neighborhood Commercial designation.

If the deciding body finds it appropriate, they should make the following findings to approve operating hours past 10 p.m.

- As required by Chapter II Section 6 of the Town Alcohol Policy for granting alcohol service beyond the hours of 10 pm.

  The deciding body shall make the following findings prior to approving an application for a Conditional Use Permit to serve alcoholic beverages past 10PM:

  A. Late night service will not adversely impact adjacent residential neighborhoods.

B. The applicant does not have a history of complaints and non-compliance with local ordinances or the Alcoholic Beverage Policy.
C. The applicant has demonstrated a clear benefit to the community.

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RECOMMENDED CONDITIONS OF APPROVAL FOR:
OCTOBER 28, 2009

<u>14101 Winchester Boulevard</u>
Conditional Use Permit U-09-009

Requesting approval for a restaurant with beer and wine service and outdoors seating on property zoned C-1. APN 406-30-015.
PROPERTY OWNER: Winchester Associates, LLC
APPLICANT: Doris G. Tougas/Tougas Enterprises Inc.

TO THE SATISFACTION OF THE PLANNING DIRECTOR:
(Planning Section)

1. APPROVAL: This application shall be completed in accordance with all of the conditions of approval listed below and in substantial compliance with the approved plans. 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 shall not exceed 11:00 a.m. to 10:00 p.m. daily.
4. SEATING: A maximum of one hundred and three (103) seats are allowed inclusive of indoor and outdoor dining areas. A maximum of 12 seats may be placed in the outdoor dining area.
5. OUTDOOR DINING AREA: The outdoor dining area shall be maintained and kept litter free. There shall be no exterior access to or from the outdoor patio.
6. OUTDOOR DINING BARRIER: A barrier around the outdoor dining area shall be installed to provide clear delineation of the eating area, and to provide adequate separation from the adjacent public areas. The exterior modifications shall be reviewed through an Architecture and Site Application.
7. ALCOHOL SERVICE: The service of alcoholic beverages is permitted only with meals. A meal is defined as a combination of food items selected from a menu (breakfast, brunch, lunch, or dinner). Appetizers such as popcorn, nachos, pretzels, potato skins, relish trays, etc. (hot or cold) are not meals.
8. TAKE OUT: Take out food shall be served in recycled material containers.
9. UTENSILS: All beverages and food served on site shall be served on reusable materials.
10. LIVE ENTERTAINMENT: No live entertainment shall be permitted.
11. DELIVERIES: Deliveries shall be limited to the hours of 7 a.m. to 6 p.m.
12. 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.

13. TOWN INDEMNITY: Applicants are notified that Town Code Section 1.10.115 requires that any applicant who receives a permit or entitlement from the Town shall defend, indemnify, and hold harmless the Town and its officials in any action brought by a third party to overturn, set aside, or void the permit or entitlement. This requirement is a condition of approval of all such permits and entitlements whether or not expressly set forth in the approval.

TO THE SATISFACTION OF THE CHIEF OF POLICE:

14. UNIFORMED SECURITY: Uniformed privately provided security guards may be required in or around the premises by the Chief of Police if alcohol related problems recur that are not resolved by the licensed owner.
15. CONSULTATION AND TRAINING: At the discretion of the Chief of Police, periodic meetings will be conducted with representatives from the Police Department for on-going employee training on alcoholic beverage service to the general public.
16. TRAINING MANUAL: The restaurant operator shall use an employee training manual that addresses alcoholic beverage service consistent with the standards of the California Restaurant Association.
17. DESIGNATED DRIVER PROGRAM: The restaurant operator shall actively promote a designated driver program such as complimentary non-alcoholic beverages for designated drivers.
18. POSTING OF TAXICAB TELEPHONE NUMBERS: Taxicab telephone numbers shall be posted in a visible location.

JAKE'S
Restaurant Group
174 E. Fremont Avenue · Sunnyvale, CA 94087
www.jakesrestaurantgroup.com

To: Town of Los Gatos
Community Development Department

We are writing this letter to request a conditional use permit for an existing building at 14101 Winchester Blvd located in the Vasona Station Shopping Center. We are a restaurant group serving hamburgers, pizza, salads, beer & wine. Tougas Enterprises is a family owned and operated business that has been in existence for over 50 years. The company owns and operates six existing business in the bay area. Our restaurants are widely known in their respective communities: The Garret in Campbell, The Oasis in Menlo Park, The Boardwalk in Los Altos and Jakes of Saratoga, Sunnyvale and Willow Glen.

Each and every restaurant in the company is very active in supporting their communities. We actively support youth soccer, little league baseball, and many other organizations in each surrounding community. We have recently begun our "STAR AWARD" Program in which we give a percentage of our business back to a chosen non-profit organization four times a year. This program allows our employees and customers to participate in giving back to its own community. We strongly believe in supporting local non-profit organizations.

We feel that our new location at Vasona Station will be a great addition to Los Gatos. We will create an atmosphere that is inviting to families in the neighborhood, youth and adult sports teams, and for people that work in the area that desire a good casual meal. We truly believe that Los Gatos will be a successful addition to our restaurant group. The restaurant will be family oriented with an open kitchen and bar in the main dining area. Patrons will be able to order from our full menu at the bar. We will have an arcade area for family entertainment. The patio room will be converted to an outside patio.

Our menu will consist of a variety of Pizzas, a selection of great Hamburgers, Grilled Sandwiches, Soups and Salads. Our drink menu will consist of Beer and Wine as well as soft drinks and juices. We also offer catering to nearby businesses. Our normal hours of operation would be from 11:00 am to 1:00 am seven days a week. We currently sell beer and wine in our other six locations and we take this privilege very seriously. As a company we have been serving alcohol in our restaurants for more than 50 years. We serve thousands of customers each year at all of our locations. We are confident in our ability to manage alcohol responsibly in our Vasona Station location. We hope that you will approve our application for this use permit and we look forward to a great mutual relationship with the Town of Los Gatos.

Sincerely,

Doris G. Tougas

Doris G. Tougas
President, Tougas Enterprises, Inc

RECEIVED
AUG 6 2009
TOWN OF LOS GATOS
COMMUNITY DEVELOPMENT

JAKE'S · OASIS · the garret · The BOARDWALK

Saratoga · Sunnyvale · Willow Glen · Menlo Park · Campbell · Los Altos

EXHIBIT 4

POLICY REGULATING THE CONSUMPTION AND SERVICE OF ALCOHOLIC BEVERAGES

I. Purpose

The consumption or service of alcoholic beverages, if not regulated, can jeopardize public safety, result in an increase of calls for police services and compromise the quality of life for Town residents. This policy provides parameters for alcoholic beverage service, particularly addressing late night service when alcohol related incidents are most likely to occur and when the disturbances to Town residents is least tolerable.

The service of alcoholic beverages, with or without meals, past 10 PM is a discretionary privilege to be determined on a case by case basis. The following provisions are intended to balance the protection of residential neighborhoods in close proximity to commercial districts and still maintain the viability of our commercial centers in which restaurants have an essential role. Hours of operation may be regulated based on an establishment's proximity to residential neighborhoods or schools, the concentration of establishments in an area serving alcoholic beverages or for other reasons that may arise at the public hearing.

The deciding body may approve a conditional use permit to serve alcoholic beverages based on the merits of the application and subject to the following requirements:

II. General policy

1. The Town shall continue to **strongly** discourage new applications for stand alone bars or restaurants with separate bars.

2. The Town shall continue to discourage applications for entertainment establishments serving alcoholic beverages.

3. Entertainment in association with an eating or drinking establishment may be allowed if standards and a permit process are adopted.

4. Alcoholic beverage service for new conditional use permit applications or applications for modification of a conditional use permit shall not be allowed:

   A. After 11 PM Sunday through Thursday, except for holidays and evenings before holidays.

   B. After 1 AM Friday, Saturday, holidays or evenings before holidays.

An existing establishment with a conditional use permit in good standing allowed to serve alcoholic beverages past the hours stated above may continue to operate under their existing hours of operation.

5. Any establishment serving alcoholic beverages shall be subject to the following:

   A. Uniformed privately provided security guards may be required in or around the premises by the Chief of Police if alcohol related problems recur that are not resolved by the licensed owner.

   B. At the discretion of the Chief of Police, periodic meetings will be conducted with representatives from the Police Department for on-going employee training on alcoholic beverage service to the general public.

   C. All establishments shall use an employee training manual that addresses alcoholic beverage service consistent with the standards of the Californian restaurant Association.

   D. All licensed operators shall have and shall actively promote a designated driver program such as complimentary non-alcoholic beverages for designated drivers.

   E. Taxicab telephone numbers shall be posted in a visible location.

6. The deciding body shall make the following findings prior to approving an application for conditional use permit to serve alcoholic beverages past 10PM:

   A. Late night service will not adversely impact adjacent residential neighborhoods.

   B. The applicant does not have a history of complaints and non-compliance with local ordinances or the Alcoholic Beverage Policy.

   C. The applicant has demonstrated a clear benefit to the community.

7. A meal is defined as a combination of food items selected from a menu (breakfast, lunch or dinner). Appetizers such as popcorn, nachos, pretzels, potato skins, relish trays, etc. (hot or cold) are not meals.

8. Alcoholic beverage service in approved outdoor seating areas may be permitted if adequate separation from public areas is provided as determined by the Town Manager. The separation shall clearly suggest that alcohol is not allowed outside the restaurant seating area.

III. Specific Policy

1. Restaurants:

   Alcoholic beverages may only be served with meals.

2. Restaurants With Separate Bars:

   Alcoholic beverage service is permitted in the dining area only in conjunction with meal service. Meal service shall be available until closing or 11 PM Sunday through Thursday and until 12 midnight Friday, Saturday, holidays and evenings before holidays, whichever is earlier, if late night bar service is available. Specific hours of operation for each establishment are determined upon issuance of a conditional use permit.

IV. Review Process

1. Proposals for new bars or restaurants with bars and all requests for new alcohol service or a change to existing service shall be reviewed by the Planning Commission. The Commission will make a recommendation to the Town Council and the Council shall have final review authority.

2. Changes in ownership for businesses involving service of alcoholic beverages shall be reviewed by the Community Development Department. The following process will be followed:

   a. The Director of Community Development shall contact the new business owner to make them aware of the conditions of approval attached to the Use Permit for the location.

   b. One year following issuance of a business license, surrounding/impacted property owners shall be notified and any comments regarding the operation of the business shall be solicited.

   c. If the Director of Community Development becomes aware of any alcohol related impacts on the surrounding neighborhood, the Director shall review the operation of the business to determine whether there is a violation of the use permit.

d. If there are violations of the use permit that have not been voluntarily corrected by the business owner the matter will be forwarded to the Planning Commission for public hearing pursuant to Section 29.20.310 of the Zoning Ordinance.

e. Pursuant to Section 29.20.315 of the Zoning Ordinance the Planning Commission may revoke or modify the conditional use permit if it finds that sufficient grounds exist.

V. Enforcement

All conditional use permits issued to establishments for alcoholic beverage service on-site shall be subject to Section 29.20.318(b) of the Town Code authorizing the Town Manager to take enforcement action if it is determined that the sale of alcohol has become a nuisance to the Town's public health, safety or welfare. Enforcement of section 29.20.318(b) of the Town Code will be based on, but not limited to, the following factors:

I. The number and types of calls for service at or near the establishment that are a direct result of patrons actions;

II. The number of complaints received from residents ad other citizens concerning the operation of an establishment;

III. The number of arrests for alcohol, drug, disturbing the peace, fighting and public nuisance violations associated with an establishment;

IV. The number and kinds of complaints received from the State Alcoholic Beverage Control office and the County Health Department;

V. Violation of conditions of approval related to alcoholic beverage service.

The Alcoholic Beverage Policy is not to be construed to be a right of development. The Town retains the right of review and approval (or denial) of each project based on its merits.

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STANDARDS FOR OUTDOOR RESTAURANT SEATING

1. Outdoor seating is prohibited on public property. Outdoor seating may be allowed on private property with a conditional use permit.

2. A physical delineation in the form of landscaping or planters is required to separate public and private property. The height of the separation shall be a minimum of three feet but no higher than four feet. The physical design and plant material should compliment the design of the building and prevent passing or carrying alcoholic beverages outside the restaurant seating area. Plant material shall be alive.

3. When alcoholic beverages are permitted in outdoor seating areas that are immediately adjacent to a public pedestrian way, the landscape separation shall be designed to clearly suggest that alcohol is not allowed outside the restaurant seating area.

4. For outdoor seating areas immediately adjacent to the public right-of-way, a hold harmless agreement shall be recorded releasing the Town from any liability related to the outdoor seating.

5. When alcoholic beverage service is permitted outside, a restaurant employee shall seat patrons.

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