

PLANNING DIRECTOR A G E N D A

April 5, 2010; 11:00 a.m.

CALL TO ORDER

- 1. APPROVAL OF MINUTES – March 18, 2010**
- 2. PUBLIC COMMUNICATION (Public Presentation of Non-Agenda Items)**

Comments are limited to a maximum of five minutes duration. If more time is needed, please request staff to place the subject on an agenda for a future Planning Director meeting.

***** PUBLIC HEARING PROCEDURE *****

- | | |
|-----------------------------------|--------------------------------|
| A. Staff comments | C. Close hearing to the public |
| B. Open the hearing to the public | D. Project decision |

- 3. CONTINUED PUBLIC HEARING – None.**

Item determined exempt from environmental review

- a. Town of Paradise: Abandonment of Nonconforming Land Uses – Pursuant to provisions of Paradise Municipal Code section 17.39.200, the Planning Director on behalf of the Town of Paradise shall consider the evidence of record and determine whether or not to officially declare the nonconforming land use facilities of “Aloha Lodge” and “Aloha Paradise” that previously occupied properties located at 5424 and 5446 Black Olive Drive [AP Nos. 052-223-011, -012 and -013] as Abandoned. **(Continued from March 18, 2010)**

- 4. PUBLIC HEARING**

- a. Item proposed to be determined exempt from environmental review:

WENDY’s SITE PLAN REVIEW PERMIT (PL10-00225) AND TREE FELLING PERMIT (PL09-00250) APPLICATIONS: Proposal for Town approval to establish a drive-in service facility in association with a restaurant, and the felling of ± 12 qualifying trees on property located at 5987 Clark Road, Paradise; AP No. 053-120-079.

- 5. OTHER BUSINESS - None.**
- 6. ADJOURNMENT**

PARADISE PLANNING DIRECTOR
March 18, 2010 – 11:00 a.m.
Town Council Chambers, Room 9
5555 Skyway, Paradise

M I N U T E S

CALL TO ORDER

Planning Director Al McGreehan called the meeting to order at 11:10 a.m.

1. APPROVAL OF MINUTES – February 10, 2010 meeting

The meeting minutes of February 10, 2010 were approved by the Planning Director.

2. PUBLIC COMMUNICATION - None.

3. CONTINUED PUBLIC HEARING – None.

4. PUBLIC HEARING

Items determined exempt from environmental review

- a. Work Training Center Use Permit Modification (PL09-00202) Application requesting to modify the terms and conditions of a previously approved use permit (modification of requirements for timing of public street frontage improvements) for property located at 7837 Skyway, Paradise, AP No. 051-163-039.**

Asst. Community Development Director Craig Baker reviewed the project modification application for which staff is recommending approval. When the Planning Director granted a use permit for the project on September 1, 2009 to establish an adult day care facility, condition No. 7 required road improvements to be completed within one year after occupancy. The Applicants have since determined that the costs of the improvements have risen substantially. They are, therefore, requesting an extension of the deadline from one to three years beyond building occupancy. The Town Engineer is supportive of the request for a two year extension; and he is willing to explore other options for meeting the road frontage improvements requirement.

Mr. Baker also recommended deleting project conditions Nos. 5 and 6, as the conditions are not necessary. The covenant agreement would also need to be modified and recorded, as the original agreement was executed but never recorded.

The hearing was opened to the public. Appearing:

- 1. Abbey Todd-Burleigh, Program Coordinator, representing Applicant Bob Crawford.**
Ms. Todd-Burleigh acknowledged receipt of a copy of the staff report and concurred with the staff recommendations. However, she indicated that the costs for these improvements may still be prohibitive in three years. She inquired about plans for frontage improvements along the Skyway, and whether a bond could be posted for

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their portion of improvements due to their inability to fund additional improvements. In reply to the Planning Director, Ms. Todd-Burleigh indicated that they have paid an engineer to design and prepare the improvement plans, but they have not been submitted to the Town yet.

The Planning Director replied that the Town will probably revisit its road standards within the next 1 to 1 ½ years.

The hearing was closed to the public.

The Planning Director proclaimed that the prior project CEQA finding of the original use permit is applicable to the project modification application. He further adopted a modified use permit by modifying project condition No. 7, deleting condition Nos. 5 and 6 based on the finding that they have been completed, amended the heading of original Use Permit above Condition No. 9, 10 and 11 from **24 months to 36 months**, and repositioned conditions Nos. 10 and 11 to be part of condition No. 7. Planning Director McGreehan also extended the requirement for the submittal of street frontage improvement plans for one year.

GENERAL CONDITIONS OF USE PERMIT APPROVAL

1. If any land use for which a use permit has been granted and issued is not established within three years of the use permit's effective date, the use permit may become subject to revocation by the Town of Paradise.
2. Apply for and secure Town of Paradise design review approval for any business signs prior to the establishment of such signs related to the proposed project building occupancy.
3. The total number of clients and support staff that occupy the building proposed for licensed adult day care occupancy shall at no time exceed the occupancy level expressly authorized by the Town of Paradise Onsite Sanitary Official.

CONDITIONS TO BE MET PRIOR TO OCCUPANCY AND PUBLIC PATRONAGE

ROADS AND ACCESS

4. Deed forty feet from the center of the Skyway to the Town of Paradise or provide a deed document verifying that this requirement has been fulfilled.
5. Post a bond or similar financial instrument with the Town of Paradise in a manner deemed satisfactory to the Town Engineer guaranteeing construction of all required public street frontage improvements within three years of building occupancy and public patronage. The project developer shall complete frontage improvements to the Town-adopted C-1 public street standard (or equivalent, as determined by the Town Engineer) along all project site frontage of the Skyway in accordance with engineered street frontage improvement plans approved by the Town Engineer.

Frontage and site improvements shall be designed and constructed in accordance with the requirements of the Americans with Disabilities Act (ADA).

SITE DEVELOPMENT

6. Maintain an on-site parking facility in compliance with all applicable provisions of Chapter 17.38 (Off-Street Parking and Loading Regulations) of the Paradise Municipal Code.

CONDITIONS TO BE MET WITHIN TWENTY-FOUR MONTHS OF OCCUPANCY AND PUBLIC PATRONAGE

7. Prepare and submit six copies of a detailed and engineered street and drainage improvements plan to the Public Works Department (engineering division) for review and approval by the Town Engineer. Plans shall be designed for construction of a one-half street section along all project site public street frontage of the Skyway to the Town-adopted C-1 road standard (or equivalent, as determined by the Town Engineer). Approval of the designed improvements plans by the Town Engineer must be secured **PRIOR TO COMMENCEMENT** of project improvements construction.

It was announced that the decision of the Planning Director can be appealed within seven days of the decision date.

- b. Town of Paradise: Abandonment of Nonconforming Land Uses – Pursuant to provisions of Paradise Municipal Code section 17.39.200, the Planning Director on behalf of the Town of Paradise shall consider the evidence of record and determine whether or not to officially declare the nonconforming land use facilities of “Aloha Lodge” and “Aloha Paradise” that previously occupied properties located at 5424 and 5446 Black Olive Drive [AP Nos. 052-223-011, -012 and -013] as Abandoned.**

Planning Director McGreehan explained that material evidence historically reflects there were two individually owned and operated community care facilities on the subject properties that were licensed by the State of California. Town records indicate that there is no material evidence from the County subsequent to the Town of Paradise incorporation that any land use entitlements were issued. One facility (5424 Black Olive Drive) was referred to as Aloha Lodge, and effective August 21, 1996 that facility ceased operation and was no longer licensed by the State, and was continuously not licensed by the State up to the present. Town records also show material evidence that the Aloha Paradise facility (5446 Black Olive Drive) closed on October 8, 2008 and is no longer licensed by the State of California to operate such a facility. Since that date, the property has not been used for any purpose continuously. There is material evidence in the file to substantiate that this hearing was duly noticed and mailed to the property owner and property owner’s agent as well as neighboring property owners within 300 feet.

The hearing was opened to the public. Appearing:

1. Dwight L. Moore, Town Attorney. Mr. Moore stated that the property owner's attorney has requested a continuance of this hearing because he could not attend today. Mr. Moore concurred with a continuance of this hearing. Mr. Moore added that in *Hansen Brothers Enterprises, Inc. v. Board of Supervisors* (1966) 12 Cal.4th 533, 569 [48 Cal. Rptr. 2d 778, 907 P.2d 1324.] the court determined that the abandonment of a nonconforming use involves both an intent to abandon and an overt act or failure to act, which carries the implication that the owner does not retain any interest in the right to the nonconforming use. The mere cessation of the use is not enough.

The Town cannot determine a land use abandoned just because there was no activity for 12 months relative to the nonconforming use. In addition to the 12 months and a lack of activity, it should also be determined that there was no reason to believe that this use would be continued by the owner.

In *Stokes v. Board of Permit Appeals* (1997) 52 Cal.App.4th 1348, 1356 [61 Cal. Rptr. 2d 181], a San Francisco bathhouse was abandoned for 7 years. The court said that was long enough.

Based on those cases, the threshold to determine whether something has been abandoned is complex. In the case of the Paradise Aloha Lodge, located at 5424 Black Olive Drive, it ceased to function in 1996 and there has been no indication that it has functioned since then as a residential care facility. Based on the lack of activity, it can be determined that there has been an abandonment of use. On the Aloha Paradise facility, there is a question as to whether or not the amount of time constitutes an abandonment because it ceased to operate in 2008 – 18-19 months ago. It needs to be determined when the cessation of activities on that property was done. The property was foreclosed and the current owners, a bank, may have not been aware of the inactive status of the property at the time of foreclosure. Had it ceased to function prior to the foreclosure? Real Estate Broker Steve Williams believes this abandonment is being implemented to allow the Town to buy the property. These are two separate things that have nothing to do with each other. The offer to purchase the property is separate from the zoning matter.

The hearing was closed to the public by the Planning Director.

The Planning Director continued the public hearing to Monday, April 5, 2010 at 11:00 a.m.

5. OTHER BUSINESS – None.

6. ADJOURNMENT

The Planning Director adjourned the meeting at 11:20 a.m.

Planning Director

ATTEST:

Suzanne Whalen, Planning Secretary

**TOWN OF PARADISE PLANNING DIRECTOR
PLANNING STAFF REPORT
MEETING DATE: April 5, 2010**

FROM: Susan Hartman, Community Development Technician **AGENDA NO. 4 (a)**
SUBJECT: Wendy's Site Plan Review & Tree Felling Applications (PL09-00225, PL09-00250)
DATE: March 30, 2010 **AP 053-120-079**
GENERAL INFORMATION:

Applicant: Joe Johal
River Bend Partners LLC
38731 Sobrante St
Fremont, CA 94536

Location: 5987 Clark Rd

Requested Action: Approval of a site plan review application proposing to establish a drive-in service facility in association with a restaurant (Wendy's) as well as the associated tree felling required for the proposed site improvements.

Purpose: To provide drive-in service to patrons of the proposed restaurant.

Present Zoning: Community Commercial (CC)

General Plan
Designation: Town Commercial (T-C)

Existing Land Use: Commercial

Surrounding
Land Use: North: Elliott Rd
East: Clark Rd
South: Commercial
West: Multi-Family

Land Area: +/-2.07 acre

Environmental
Determination: Categorical Exemption – CEQA Guidelines Section 15332 (Class 32)

Other: An appeal of a Planning Director's decision can be made within 7 (seven) days of the decision date.

NOTE: THE APPLICANT OR A REPRESENTATIVE SHOULD BE IN ATTENDANCE OR THE PLANNING DIRECTOR MAY NOT TAKE ACTION ON THIS APPLICATION.

SPECIAL INFORMATION:

The project applicant is proposing to establish a drive-in service facility in association with the proposed establishment of a restaurant (Wendy's). The ± 2.07 acre project site is located on the south west side of Elliott Road at its intersection with Clark Road. The site is currently developed with a gas station (AM/PM) and convenience store on the north half of the property. The southern half of the property proposed to be further developed is currently vacant.

The proposed drive-in service facility would be integrated with a 3104 sq ft commercial structure to be constructed on the site and would be accessed via a new paved driveway, with a new encroachment from Clark Road, and newly established parking facilities. The new drive-in service facility roadway would exit the site via a proposed commercial driveway encroachment connecting to Clark Road.

The project site is situated within the Community Commercial (CC) zoning district. Access to the site is provided by both Elliott and Clark Roads, two high-volume public arterial streets. The property is identified by assessor parcel number 053-120-079.

Days and hours of operation for the facility are anticipated to be 10 a.m. to 10:00 p.m. with drive-in facility operations extended through 12:00 a.m., seven days a week. It is the desire of the project applicant to establish a patron occupancy level of up to sixty eight people in addition to six employees.

In order to facilitate establishment of the drive-in facility and related restaurant construction, the project applicant has proposed to remove up to 12 qualifying trees from the project site. Pursuant to the requirements of Paradise Municipal Code (PMC) Section 8.12.040, the Wendy's tree felling permit application was submitted with material evidence provided by consulting registered forester, Randolph Vasquez, certifying that all 12 of the qualifying trees proposed for felling on the site will be in the construction zone and will be impacted by the proposed development. Of special note is non-native tree #6 which is shown on the revised map, dated March 8, 2010, as being retained as well as listed as a residual tree in the resubmittal narrative dated October 6, 2009, but the forester's report has it incorrectly labeled to be removed as per the original design submittal. However, the tree is identified as a walnut tree and is therefore not subject to the issuance of a tree felling permit.

ENVIRONMENTAL REVIEW:

As a project involving construction of a commercial structure in an area characterized by similar land uses, the project belongs to a class of projects that can be determined to be categorically exempt from the requirements of the California Environmental Quality Act (CEQA) as an 'in-fill' project, pursuant to Section 15332 of the State CEQA Guidelines.

ANALYSIS:

Pursuant to Section 17.20.500 of the Paradise Municipal Code, the establishment of drive-in service facilities on the project site is subject to town approval of a site plan review permit.

The proposed project, if conditionally approved by the Planning Director as recommended, is consistent with the Paradise General Plan, existing zoning and would be compatible with the surrounding land uses.

The project has received generally favorable responses from commenting agencies and, in consideration of the manner in which the site is configured; the project appears to be a reasonable location for the establishment of drive-in service facility business occupancy if conditioned prudently. The proposed function of the project is in compliance with all applicable zoning regulations and can be found to be consistent with Paradise General Plan policies applicable to community commercial land uses.

FINDINGS REQUIRED FOR APPROVAL:

1. Find that the proposed project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA), pursuant to Section 15332 of the State CEQA Guidelines.
2. Find that the project, **as conditioned**, is consistent with the goals and policies of the Paradise General Plan because the project will result in the establishment of a restaurant land use in an area zoned for such use.
3. Find that the project, **as conditioned**, is in compliance with all applicable regulations of the Community Commercial zoning district.
4. Find that adequate infrastructure is currently in place to serve the proposed project.
5. Find that the project, as conditioned, will not detrimentally affect existing plant and animal life in the project vicinity for the following reasons:
 - a. The project is located within an area that has been altered from its natural state by long-established residential and commercial land uses;
 - b. No known outstanding wildlife habitat exists in the immediate project vicinity; and
 - c. No known rare or endangered plants are known to exist in the immediate project vicinity.
6. Find that the proposed tree felling activity meets the criteria for tree felling permit

approval as outlined within PMC Section 8.12.090 because the proposed tree felling activity is necessary to accommodate the proposed facility establishment, parking and grading improvement plans.

STAFF RECOMMENDATION:

After closure of the scheduled public hearing, **adopt the findings provided by staff and approve the Wendy's site plan review and tree felling permit applications** (PL09-00225, PL09-00250) authorizing the establishment of a drive-in service facility and the felling of up to 12 qualifying native trees associated with the establishment of a commercial restaurant building and related improvements on property located at 5987 Clark Road, subject to the following conditions:

GENERAL CONDITIONS OF SITE PLAN REVIEW APPROVAL

1. If any land use for which a site plan review permit has been granted and issued is not established within three years of the permit's effective date, the site plan review permit may become subject to revocation by the Town of Paradise.
2. Site improvements (building, signs, lighting, landscaping, etc.) shall conform to all Town of Paradise applicable design standards.
3. All work within the Clark Road public right of way is subject to Town issuance of an encroachment permit, which will require that the contractor be properly licensed and bonded with the Town of Paradise.
4. Required landscape plans for the proposed commercial building associated with the drive-in service facility shall be designed to provide for the installation and maintenance of street trees in accordance with the requirements of the Town Engineer and landscape plantings specifically chosen and arranged to screen and soften the appearance of the drive-in service facility from pedestrians and vehicular traffic along Clark Road.
5. Outside light fixtures associated with the project shall be designed to not exceed a height of sixteen feet above finished grade and shall be shielded to prevent the direct projection of light onto adjoining and nearby properties.
6. Pay development impact fees prior to issuance of building permits for project construction in accordance with Paradise Municipal Code requirements.

CONDITIONS TO BE MET PRIOR TO THE ISSUANCE OF A BUILDING PERMIT

ROADS AND ACCESS

7. Submit and secure Town Engineer review and approval of an appropriate number of copies of frontage and off-site improvement plans to include the construction of new driveway aprons to serve the proposed driveway encroachments along Clark Road and the installation of a drainage inlet along Shadowbrook Way.
8. Submit an Engineer's Estimate with a detailed estimate of both onsite and offsite improvements to the Public Works Department (Engineering Division).

DRAINAGE

9. Provide a final design solution for drainage per requirements of the Town Engineer and the **INTERIM DRAINAGE DESIGN GUIDELINES prepared April 2, 1998**. Drainage facilities shall be designed in a manner that provides for the establishment of all necessary drainage improvements to accommodate existing and additional project induced drainage flows without generating any off-site adverse effects.

SANITATION

10. Complete the requirements of the Town Onsite Sanitary Official concerning application, final system design, and the issuance of permit approvals for the installation of a sewage treatment and disposal system improvements to serve all proposed facilities. Provide evidence thereof to the Town Community Development Department (Community Safety Services Division).

SITE DEVELOPMENT

11. Submit three (3) copies of a detailed engineered site plan showing all project improvements and facilities as proposed and required. Plans shall be prepared by a registered civil engineer (including final parking facility design) and submitted to the Public Work Department (Engineering Division) for review and approval. Pay required engineered site plan checking fee. Construction and drainage improvement plans must be approved **PRIOR** to construction or installation of the required facilities.
12. Apply for and secure Town issuance of a grading permit satisfying all Engineering Division requirements. Pay applicable grading permit fees per current fee schedule.
13. Properly abandon or relocate any easements that conflict with the design of the project.

14. Submit a detailed soil erosion prevention plan to the Town Public Works Department for approval by the Town Engineer **PRIOR** to the start of any earthwork. Show all erosion control devices and sedimentation basins required by Paradise Municipal Code 15.04.280.
15. Meet the requirements of the Town Building Official/Fire Marshal regarding submittal of construction plans, interior automatic fire sprinkler plans, building permit applications, and all applicable Town adopted construction and fire code requirements.
16. Secure the issuance of a Town approved tree-felling permit prior to felling any qualifying trees.

TREE FELLING

17. Submit application with fee and secure Town Planning Director review and approval of a professionally designed and accurately mapped "Tree Protection Plan" for the proposed project that provides for tree planting placement as well as existing tree protection measures (fencing, etc.); and prior to the commencement of ground disturbance site work (grading, etc.) for the project.
18. All qualifying trees proposed to be retained and any native saplings proposed to be retained on the site as replacement trees shall be protected during construction activities in a manner consistent with the Town of Paradise Suggested Practices for Protection of Trees on Commercial, Quasi-Public and Multi-Family Residential Construction Sites.
19. A certified arborist shall be engaged by the applicant to oversee the employment of tree protection measures during all related project site improvement construction that has the potential to effect trees to be retained.

CONDITIONS TO BE MET PRIOR TO FINAL BUILDING INSPECTION AND CERTIFICATES OF OCCUPANCY

ROAD AND ACCESS

20. Pay appropriate fees, provide the appropriate bonds and insurance certificates, obtain town issued encroachment permit and construct all design-approved work in the right-of-way (including driveway approach and utility relocations). All design features shall meet ADA requirements and comply with the Caltrans A-87 standard, Town ordinances, accepted engineering standards and the requirements of the Town Engineer. Street frontage and driveway improvement plans must be approved **PRIOR** to the construction or installation of the required facilities.

SITE DEVELOPMENT

21. Construct all necessary site, drainage, access, wastewater treatment/disposal and other facilities improvements as required by the Town Engineer and the Town Onsite Sanitary Official. All construction shall be in conformance with generally acceptable engineering and construction practices.
22. Submit landscaping plans and application fee to the Community Development Department (Planning Division) in accordance with Paradise Municipal Code requirements. **IMPORTANT NOTE:** No final building inspection or occupancy shall be permitted until the landscape plans for the project have been formally approved by the Town of Paradise and landscape materials have been installed (or bonded to guarantee installation).

FIRE PROTECTION

23. Meet all other project requirements of the Paradise Fire Department in accordance with the Fire Department development review comments/conditions dated revised November 17, 2009 and on file with the Town Community Development Department.

SANITATION

24. Meet all requirements of Town onsite sanitation staff regarding inspection and approval for the construction and final design of the onsite sewage disposal system.

CONDITIONS OF LAND USE OPERATION

25. Any exterior speakers or communication systems installed to facilitate customer orders shall be operated in a manner that does not create noise disturbances across a real property line and in accordance with Town of Paradise noise ordinance regulations.
26. Any future function of the drive-in service facility that contributes to or creates a traffic or pedestrian hazard shall be corrected to the satisfaction of and in a manner deemed acceptable to the Town Engineer.