

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

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frontage improvements along the Skyway, and whether a bond could be posted for 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.

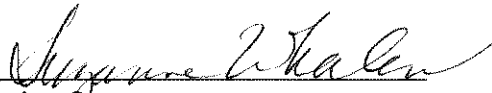
5. OTHER BUSINESS – None.

6. **ADJOURNMENT**

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


Planning Director

ATTEST:


Planning Secretary

