

CITY OF CAMPBELL PLANNING COMMISSION
MINUTES

7:30 P.M.

TUESDAY

JUNE 28, 2016
CITY HALL COUNCIL CHAMBERS

The Planning Commission meeting of June 28, 2016, was called to order at 7:30 p.m., in the Council Chambers, 70 North First Street, Campbell, California by Chair Dodd and the following proceedings were had, to wit:

ROLL CALL

Commissioners Present:	Chair:	Cynthia L. Dodd
	Vice Chair:	Yvonne Kendall
	Commissioner:	Ron Bonhagen
	Commissioner:	Pamela Finch
	Commissioner:	Philip C. Reynolds, Jr.
	Commissioner:	Michael L. Rich
	Commissioner:	Donald C. Young

Commissioners Absent: None

Staff Present:	Community Development
	Director: Paul Kermoyan
	Senior Planner: Cindy McCormick
	Associate Planner: Daniel Fama
	Associate Planner: Stephen Rose
	City Attorney: William Seligmann
	Recording Secretary: Corinne Shinn

APPROVAL OF MINUTES

Motion: Upon motion by Commissioner Reynolds, seconded by Commissioner Young, the Planning Commission minutes of the meeting of June 14, 2016, were approved as submitted. (4-0-0-3; Commissioners Bonhagen, Finch and Kendall abstained)

COMMUNICATIONS

Director Kermoyan listed a number of desk items:

1. Exhibit for Item 2 – Proposed colors and materials
2. Exhibit for Item 3 – Corrected setbacks on El Caminito
3. Item 3 - Letter from the Chamber of Commerce
4. Item 4 - Staff memo with recommended revisions to Condition 3 with exhibit
5. Item 5 - Staff memo with recommended revisions to Condition 4-e
6. Item 5 - Email from applicant (Steve Bonner)
7. Study Session Item - Email from Judy Pisano
8. Study Session Item - Email from Vickki Essert
9. Director's Report (left out of PC packet)

AGENDA MODIFICATIONS OR POSTPONEMENTS

None

ORAL REQUESTS

Commissioner Finch:

- Said that she wanted to be on record with the following message.
- Reminded that she has now served on the Planning Commission for four years.
- Advised that she has not yet seen an item under consideration by the Planning Commission be decided based on the emotions of the Planning Commission.
- Stated that she is pleased with the professionalism of her colleagues. Their decisions are based on facts, guidelines and not on emotion or personal agendas. There are regulations that have to be followed and she is pleased to see that be the case in her experience as a member of this Commission.

CONSENT

None

PUBLIC HEARINGS

Chair Dodd read Agenda Item No. 1 into the record as follows:

1. **PLN2016-130** Public Hearing to consider the application of Jimmy Chang on behalf of Cambridge Educational Center dba C2 Education, for a Conditional Use Permit (PLN2016-130) to allow the establishment of a (small) tutoring center on property located at **509 E. Hamilton Avenue**. Staff is recommending that this item be deemed Categorical Exempt under CEQA. Planning Commission action final unless appealed in writing to the City Clerk within 10 calendar days. Project Planner: *Daniel Fama, Associate Planner*

Mr. Daniel Fama, Associate Planner, presented the staff report.

Chair Dodd asked if there were questions of staff. There were none

Commissioner Kendall said she did not understand why this application was not a Director-level decision. Why is a Use Permit required?

Planner Daniel Fama advised that there are a wide number of uses within zoning districts that require a Conditional Use Permit.

Chair Dodd opened the Public Hearing for Agenda Item No. 1.

Jimmy Chang, Project Applicant:

- Said that he is the representative for C2 Education.
- Advised that they are establishing a small tutoring center that serves students from kindergarten through high school.
- Added that they provide one-on-one training on academic testing.
- Said that this business will be of benefit to the other businesses in this center as well as to the surrounding neighborhood whose children may be potential students at this center. Their students' parents are likely potential shoppers in the retail establishments while they wait for their child to undergo a tutoring session.
- Stated that this use would have a minimal impact on parking. At their maximum peak hours they would have up to five or six students, one full-time facility manager and between three and five part-time teachers.

Philip Langohr, Property Owner, AIG Properties, Wisconsin, IL:

- Said that his company is the original developer of this center and he is here from Wisconsin and thought he would attend in support of their potential tenant.
- Assured that this use would serve as a good co-tenant of this center.

Chair Dodd closed the Public Hearing for Agenda Item No. 1.

Motion: Upon motion of Commissioner Finch, seconded by Commissioner Bonhagen, the Planning Commission adopted Resolution No. 4303 approving a Conditional Use Permit (PLN2016-130) to allow the establishment of a (small) tutoring center on property located at 509 E. Hamilton Avenue, subject to the conditions of approval, by the following roll call vote:

AYES: Bonhagen, Dodd, Finch, Kendall, Reynolds, Rich and Young

NOES: None

ABSENT: None

ABSTAIN: None

Chair Dodd advised that this action is final unless appealed in writing to the City Clerk within 10 calendar days.

Chair Dodd read Agenda Item No. 2 into the record as follows:

2. **PLN2016-123** Public Hearing to consider the application of Terry Martin, AIA for a Site and Architectural Review Permit (PLN2016-123) to allow the construction of a new single-family residence reusing portions of the existing dwelling on property located at **1149 'A' S. San Tomas Aquino Road**. Staff is recommending that this item be deemed Categorically Exempt under CEQA. Planning Commission action final unless appealed in writing to the City Clerk within 10 calendar days. Project Planner: *Stephen Rose, Associate Planner*

Mr. Stephen Rose, Associate Planner, presented the staff report.

Chair Dodd asked if there were questions of staff.

Commissioner Finch asked staff to clarify the FAR setbacks for this parcel. Are they based on a 15,000 square foot lot or the useable 9,000 square feet?

Planner Stephen Rose said that the total lot size of 15,000 square feet includes a small section of Turner Way, a private drive. The FAR is based on a 9,000 square foot lot size.

Commissioner Kendall provided the Site and Architectural Review Committee report as follows:

- Reported that SARC reviewed this item on June 14, 2016 and was supportive with some suggested changes that were accepted by the applicant.

Chair Dodd opened the Public Hearing for Agenda Item No. 2.

Terry Martin, Project Architect:

- Stated their total agreement with the conditions of approval.
- Said he was available for any questions by the Commission.
- Concluded that he looks forward to approval of this request.

Chair Dodd closed the Public Hearing for Agenda Item No. 2.

Commissioner Kendall said that she likes the proposed colors, the fact the house is located in the center of the lot, that this plan is well done and she concluded that she has no objections to this application.

Motion: Upon motion of Commissioner Finch, seconded by Commissioner Reynolds, the Planning Commission adopted Resolution No. 4304 approving a Site and Architectural Review Permit (PLN2016-123) to allow the construction of a new single-family residence reusing portions of the existing dwelling on property located at 1149 'A' S. San Tomas Aquino Road, subject

to the conditions of approval, with the revised plans dated June 14, 2016, and the color board exhibit submitted as a desk item this evening, by the following roll call vote:

AYES: Bonhagen, Dodd, Finch, Kendall, Reynolds, Rich and Young

NOES: None

ABSENT: None

ABSTAIN: None

Chair Dodd advised that this action is final unless appealed in writing to the City Clerk within 10 calendar days.

Chair Dodd read Agenda Item No. 3 into the record as follows:

3. **PLN2016-46** Continued Public Hearing to consider the application of Velimir Sulic for a Tentative Parcel Map (PLN2016-46) to allow a two-lot single-family residential subdivision on property owned by Shahin Jahanbani located at **44 El Caminito Avenue** in the R-1-6 (Single-Family Residential) Zoning District. Staff is recommending that this project be deemed Categorically Exempt under CEQA. Planning Commission decision final unless appealed in writing to the City Clerk within 10 calendar days. Project Planner: Stephen Rose, Associate Planner

Mr. Stephen Rose, Associate Planner, presented the staff report.

Chair Dodd asked if there were questions of staff.

Commissioner Bonhagen asked if the setback was different from the original proposal.

Planner Stephen Rose:

- Advised that the existing building is set back 25 feet from the public right-of-way.
- Added that they are proposing a 26-foot front setback for a house constructed on the proposed front lot.
- Reminded that the current proposal for the front house is set back 29-feet from the front property line.
- Reminded that this tonight's action is just for the map and that the setbacks shown on the plans would not be bound by what is shown.

Commissioner Rich asked what the justification is for placing limitations on this site.

Planner Stephen Rose said the proposed front lot setback was established by averaging the existing homes' frontages along this street resulting in a calculated average. The rear lot residence's building height restrictions are due to privacy impact concerns.

Chair Dodd opened the Public Hearing for Agenda Item No. 3.

Barton Hechtman, Attorney, 848 The Alameda, San Jose:

- Explained that he is Land Use Counsel for the applicant. He has been doing land use work for 25 years now.
- Reported that they had distributed two desk items.
- Advised that they are mindful of neighbor and Planning Commission concerns raised at the last meeting.
- Cautioned that the Commission cannot impose specific development requirements on a subdivision map request.
- Added that he had discussed this issue with the City's Attorney, William Seligmann, and neither of them had found any case law with a similar situation as this.
- Pointed out that every house in this neighborhood can be up to 35 feet in height.
- Said that he doesn't believe the pretext exists to impose conditions on the building envelope with this map request.
- Reminded that the City of Campbell does not have a Solar Ordinance that might deal with solar impacts.
- Stated that the Commission must deal with the facts.
- Suggested that the City Attorney would not be able to answer to a judge as to why the back house is being limited to an 18-foot height. That doesn't make sense.
- Said that law is all about fairness.
- Said he offers a proposed solution. He displayed a table that compares their proposal to that of City staff.
- Reported that a 32-foot tall house was recently constructed 19-feet away from the front property line. This is just four houses down from this project site.
- Said that with their proposed conditions, the applicant is extending beyond the minimums.
- Stated that they have no objection to the condition for the retention of the large cedars at the front of the site. His client has no intention of removing those trees.
- Asked for approval.
- Advised that they are voluntarily agreeing to these conditions although they don't think that they are compliant with the Subdivision Map Act.

Commissioner Young asked Mr. Hechtman if he was aware that the corner property at Winchester is a mixed-use building that is within the Winchester Boulevard Master Plan area.

Barton Hechtman replied yes and added that the building on that adjacent property is at an approximately 46-foot height.

Commissioner Young stated that the reason he asked was because it is in a different area/zoning and not the same.

Russell Pfirman, Resident on California Street:

- Said that since the last meeting on this item, he has given thought to the issue of subjective versus objective information.

- Admits that he is “emotionally objective to this application.
- Pointed out that both sides can find language from the same text to come up with very different opinions.
- Said if one asks the question, “Does this proposal enhance this neighborhood?” the answer is, “No, not even close!”
- Said that this is a nice 3/4–acre lot that is proposed to be divided into two smaller lots that are less than the average size of the lots in this neighborhood.
- Stated that what is proposed here does not fit.
- Added that R-1-6 zoning doesn’t really apply in this neighborhood.
- Suggested that “existing conditions” in this neighborhood alone should allow this neighborhood to retain its character.
- Asked that this project be denied to allow the true character of this street to be retained.

LeeAnn Kuntz, Resident on El Caminito Avenue:

- Stated her resentment over remarks of this proposal serving to “feather” this project from the adjacent commercial project at the corner with Winchester.
- Pointed out that emotion and passion are standards of a democracy.
- Stressed her preference for no flag lots on El Caminito.
- Asked the Commission to side with the neighbors and not with a developer.

Chair Dodd closed the Public Hearing for Agenda Item No. 3.

Commissioner Reynolds:

- Said that he has not changed his position from the previous meetings.
- Stated that this project does not fit within this existing neighborhood.
- Reminded that the City’s General Plan speaks to neighborhood compatibility. Flag lots are not a predominate pattern of this neighborhood.

Commissioner Kendall:

- Stated that she also has not changed her mind since previous meetings but for opposite reasons than those stated by Commissioner Reynolds.
- Said that this request meets zoning regulations.
- Added that she is fairly certain that the purchasers of this lot made this purchase with the idea of subdividing it and likely checked the zoning prior.
- Pointed out that one cannot assume that what these owners put on these lots would be hideous or inconsistent with the neighborhood.
- Said that they are willing to settle for a maximum 28-foot building height when they could have 35-feet by normal standards.
- Advised that she is more inclined to fall in line with the General Plan and zoning.
- Said she accepts the conditions that the applicant is willing to impose on himself.

Commissioner Young:

- Said he sees two differences with this lot and others further down the street. One, it has the mixed-use development on the corner. Next, it is the entrance point into this neighborhood.

- Stated his support of property owner rights. In this case, someone has purchased this lot and wants to build what he is allowed to.
- Added that he respects the neighbors' feelings balanced against this owner's rights for his property.
- Assured that the project architect as well as the SARC Committee will come through when the homes are reviewed.

Director Paul Kermoyan:

- Clarified that in an R-1-6 zoning district the construction of a new home does not come to the Planning Commission for design review.
- Added that the permits are straight through the Building Department.
- Said that the purpose for staff incorporating proposed development standards with this lot split was to ensure consistency with its neighborhood.

Commissioner Kendall asked if it would at least require SARC review.

Chair Dodd replied no. That would be a different requirement than the norm.

Director Paul Kermoyan agreed. He said it would be "over the top" and redefining a process that has not been codified in the regulations at all.

Commissioner Rich:

- Admitted that if he lived in this neighborhood he would side with the neighbors regarding flag lots.
- Said that he is not a big fan of flag lots but as the Code is currently written they are allowed.
- Reminded that there are three flag lots there now.
- Stated that he is supportive of staff's recommendation based on the facts submitted.

Commissioner Bonhagen:

- Stated his agreement with Commissioner Rich, Kendall and Young.
- Said that there is no basis to deny this request. The General Plan allows two lots here.
- Questioned whether the best option was to support the staff recommendation or the owner's proposal.

Chair Dodd:

- Said that she disagrees that this applicant is "not asking for something different." He is. He's asking to split a lot.
- Agreed that "everyone has rights."

Commissioner Finch:

- Pointed out that the staff recommendation for the future home to be constructed on the back (flag) lot would allow a maximum height of 18 feet.

- Said that after hearing what the attorney for the applicant has said, she thinks a maximum height at 28 feet is reasonable while still less than the 35 feet allowed under the Codes.
- Reminded that this split is allowed per the requirements. These owners purchased this property with the understanding that it could be split. This Commission has guidelines that it must follow.

Commissioner Young:

- Said that the General Plan says that a lot split is available.
- Added that if the Commission denies this, it needs specific findings to support that denial.
- Said the choices are a compromise or absolute denial.
- Said that while he prefers a maximum height of 18 feet for the home on the flag lot, 28 feet is still better and represents a compromise on both sides.

Commissioner Rich:

- Said that his response to Chair Dodd's position is that this Commission must find the basis for denial.
- Perhaps one way would be to increase the size of lots necessary for a lot split.
- Reiterated his understanding and admitted that he personally would not want a lot split if this was his neighborhood.

Commissioner Reynolds:

- Suggested that the issues of height, setbacks and size of homes be set aside. The issue is the division of a specific lot.
- Stated that the Commission has to look at the existing character and development pattern. There are currently no flag lots on El Caminito and the Commission is considering changing that.
- Reminded that the General Plan states clearly the need to "maintain and support existing development patterns" and splitting this property does not do that.
- Assured that the Commission has the authority to deny this application since it would be changing the character of this neighborhood to split this lot.

Commissioner Kendall:

- Questioned how one home as seen from the street with another located at the back changes this neighborhood significantly. This is simply adding one new neighbor to an existing established neighborhood.

Commissioner Reynolds:

- Gave as an analogy, "If we cut a couch in half with a chain saw, do we have one couch or two?"
- Stated that splitting one lot into two is changing the character and is against the General Plan. Once divided, this parcel is not the same.

Commissioner Kendall reminded the Commission that the zoning for this land is R-1-6. There can be two lots here.

Commissioner Reynolds reminded that the zoning is guided by the General Plan.

Director Paul Kermoyan:

- Explained that the Land Use Map is a part of the General Plan. This site could be divided because of its underlying density.
- Pointed out that this request is one that he had the authority to consider and decide at a ministerial level. Staff looked at it and found that what was at issue was the terms of development specifically when considering solar access and/or privacy impacts.
- Said that Commissioner Reynold sees the mere fact of subdividing this lot as being inconsistent with the General Plan.

Chair Dodd said that it represents placing another home on an area of this parcel that is normally open space.

Commissioner Bonhagen:

- Said that he doesn't see this flag lot as changing the character of this neighborhood. There are other flag lots on nearby streets. There are only two other lots on this street with potential for creating flag lots. One is the adjacent neighbor and the other is a house across the street and over.
- Stated that height restrictions are of concern to an adjacent neighbor but not to the rest of the neighborhood.
- Suggested that putting in a tri-plex or duplex on this property would change the character of the neighborhood.
- Said it seems that there are five Commissioners who support this request and two who do not.

Commissioner Young:

- Directed a question to Commissioner Reynolds
- Asked if he is prepared to help draft findings required for denial.
- Admitted that he does not have suggested language to complete the draft findings for denial provided by staff.

Director Paul Kermoyan referenced Findings 8, 9, 10, 11 and 12 that all require additional text to render those findings adequate to serve a denial decision.

Chair Dodd asked Director Kermoyan if he has enough information.

Director Kermoyan said Attachment 3 (Findings for Denial) requires additional facts to be added where blank lines currently appear in order to support a denial.

City Attorney William Seligmann added that the "because" parts of those findings are important as long as the facts support the rule.

Commissioner Young admitted that he couldn't do it. It wasn't happening.

Commissioner Rich:

- Stated that he is supportive of the staff recommendation.
- Explained that having a one-story on the back lot is important.
- Admitted that he is uncomfortable when he is in someone's backyard that has an adjacent second story home looming over it. Therefore, he is more comfortable with a one-story home on the back (flag) lot.

Commissioner Kendall:

- Opined that a 28-foot-high home on the proposed back lot is a stretch.
- Expressed her support for the 18-foot height recommended by staff.

Chair Dodd:

- Questioned others' opinions as to whether none of the policies of the General Plan support not splitting the lot.
- Said that she reads it a different way.
- Admitted that if she wouldn't want it (flag lot) in her neighborhood she is uncomfortable approving it (flag lot) on another street.
- Asked Director Paul Kermoyan whether this decision is precedent setting.

Director Paul Kermoyan:

- Stated that he doesn't believe precedent is ever really set. Every lot is different and unique.

Chair Dodd asked what about if another lot split comes up.

Director Paul Kermoyan said that if and when an administrative application is concerning to him, he would bring it forth to the Planning Commission.

Commissioner Finch asked about the range of setbacks along El Caminito.

Planner Stephen Rose said that the smallest setback is a 10-foot setback on a corner lot. The largest setback is 52 feet. The average is 29 feet.

Commissioner Finch:

- Said that the 26-foot front setback for the front lot, as proposed by the applicant, is in line.
- Stated her support for limiting the back house to single-story as recommended by staff.
- Advised that she is fine with the owner's proposed 26-foot setback for the front house as long as the trees are retained. She asked how far back those trees are.

Planner Stephen Rose said that they are approximately 10 feet back off the sidewalk.

Commissioner Reynolds:

- Offered the question, "If this was next door to my house, would I support it?"
- Admitted that he hears the passion coming from the community.

- Added that he is here to represent the entire community. He looks at the General Plan and takes their concerns into consideration. In this case, it sounds like we are not taking their concerns under consideration.
- Stated that for him, this is cut and dry. It is a change of pattern, character and density.

Commissioner Young:

- Said that if this was to the rear of his home, he would accept it but it would be a compromise.
- Agreed that there is a difficult discussion here. A logical solution is needed.
- Stated that the 18-foot height limitation on the back house is a compromise since the established maximum height for a secondary living unit is 14 feet.

Commissioner Bonhagen:

- Stated that if this were in his neighborhood/area, he would be okay with this.
- Added that he lives on the first block off Hamilton Avenue. There are commercial properties along Hamilton with duplexes one lot in next to that and then single-family homes beyond.
- Suggested that the issue of setting precedent was talked about at one of the previous meetings.
- Reminded that there are only two more parcels on this street that could possibly be split.
- Offered to make a motion at this time.

Motion: Upon motion of Commissioner Bonhagen, seconded by Commissioner Kendall, the Planning Commission adopted Resolution No. 4305 approving a Tentative Parcel Map (PLN2016-46) to allow a two-lot single-family residential subdivision on property owned by Shahin Jahanbani located at 44 El Caminito Avenue, subject to the conditions of approval as modified:

- Condition 6-a-1 change from 29 to 26 feet and from 28 ½ to 25 ½ feet;
 - Finding 14 “majority 25 feet and proposing 26 feet);
 - Finding 15 – changing 29 foot setback to read 26 foot setback,
- by the following roll call vote:

AYES: Bonhagen, Finch, Kendall, Rich and Young
NOES: Dodd and Reynolds
ABSENT: None
ABSTAIN: None

Chair Dodd advised that this action is final unless appealed in writing to the City Clerk within 10 calendar days.

Chair Dodd read Agenda Item No. 4 into the record as follows:

4. **PLN2016-143** Public Hearing to consider the application of Mike Masoumi for a Site and Architectural Review Permit (PLN2016-143) to allow for a allow for a 106 square foot second-story addition (converting balcony space to living space) to the rear of two units of an existing fiveplex on property located at **910 Michael Drive**. Staff is recommending that this item be deemed Categorically Exempt under CEQA. Planning Commission action final unless appealed in writing to the City Clerk within 10 calendar days. Project Planner: *Stephen Rose, Associate Planner*

Mr. Stephen Rose, Associate Planner, presented the staff report.

Chair Dodd asked if there were questions of staff.

Commissioner Rich asked about the revision for the trash enclosure.

Planner Stephen Rose replied that staff had asked SARC to identify another location for the trash bin enclosure, which is depicted on the exhibit.

Chair Dodd opened the Public Hearing for Agenda Item No. 4.

Mike Masoumi, Applicant:

- Said he is here to ask for a 106 square foot addition.
- Reported that the balcony caused a fire and he has decided to turn that balcony space into living space to make the units more livable.

Chair Dodd closed the Public Hearing for Agenda Item No. 4.

Commissioner Rich said that SARC had found this to be a straightforward request. He said he would support it as proposed.

Motion: Upon motion of Commissioner Reynolds, seconded by Commissioner Rich, the Planning Commission adopted Resolution No. 4306 approving a Site and Architectural Review Permit (PLN2016-143) to allow for a allow for a 106 square foot second-story addition (converting balcony space to living space) to the rear of two units of an existing fiveplex on property located at 910 Michael Drive, subject to the conditions of approval, with an amendment to Condition 3 regarding the placement of the trash enclosure, by the following roll call vote:

AYES: Bonhagen, Dodd, Finch, Kendall, Reynolds, Rich and Young

NOES: None

ABSENT: None

ABSTAIN: None

Chair Dodd advised that this action is final unless appealed in writing to the City Clerk within 10 calendar days.

Chair Dodd read Agenda Item No. 5 into the record as follows:

5. **PLN2016-105** Public Hearing to consider the application of Steven Bonner for a Modification (PLN2016-105) to a previously-approved Conditional Use Permit (PLN2014-57/PLN2015-195) for an existing restaurant, to modify the approved alcohol service from beer & wine to "general" (distilled spirits), extend the business closing time from 10:00 PM to 12:00 AM ("late-night activity"), increase the number of approved bar seats, permit amplified live entertainment, and allow occasional outdoor seating and service in the rear parking lot for special events, on property located at **368 E. Campbell Avenue**. Staff is recommending that this item be deemed Categorically Exempt under CEQA. Tentative City Council Meeting Date: July 19, 2016. Project Planner: *Daniel Fama, Associate Planner*

Mr. Daniel Fama, Associate Planner, presented the staff report.

Chair Dodd asked for any disclosures by the members of the Commission.

Commissioner Young said he had a conversation with Mr. Bonner and visited the location on both Saturday and Sunday this past weekend.

Commissioner Kendall said she had a phone conversation with Mr. Bonner.

Commissioners Reynolds, Bonhagen and Rich all advised they had met with Mr. Bonner.

Commissioner Finch said that while Mr. Bonner contacted her by phone on Monday, she was unable to take the call as she had her grandchildren visiting.

Chair Dodd asked if there were questions of staff.

Commissioner Rich asked if the live performance restrictions are based on square footage.

Planner Daniel Fama said that the maximum number of entertainers is four.

Director Paul Kermoyan added that when the applicant originally proposed this restaurant, the idea was to have acoustical music in the background to provide ambiance for diners.

Commissioner Young asked how many restaurants operate this many hours.

Planner Daniel Fama said that Pino's Trattoria does. He added that the overall number of hours itself has not been a concern outside of the closing time.

Commissioner Reynolds asked staff if the enforcement issue that came up during the last festival resulted in any City Ordinances being violated.

Director Paul Kermoyan:

- Said that there was a post-festival meeting held after that to discuss issues.
- Added that a pamphlet is being prepared for downtown business owners to clarify to them what is possible to occur from their location in relation to the festivals underway.
- Advised that a Conditional Use Permit is an Ordinance that allows business to occur within the building and not outside of it.
- Reminded that the festivals held downtown are run by the Chamber and they allow businesses to participate outside.
- Admitted that Socialight was not the only business doing so. There were quite a few.
- Said that it is important to educate everyone involved moving forward to future such festivals.

Planner Daniel Fama said that the current Conditional Use Permit for Socialight has a specific condition regarding outdoor activity. It is not allowed.

Commissioner Reynolds asked again if this was a violation to the Use Permit. Yes or no.

Planner Daniel Fama replied yes.

Commissioner Reynolds asked if the violation was criminal. If not, why was Police involved.

City Attorney William Seligmann said that the violation is subject to criminal penalties.

Commissioner Reynolds asked if the applicant was notified of the need.

Director Paul Kermoyan said that the Chamber has its own flyer that tells the downtown businesses how to participate in the Chamber's festivals.

Commissioner Reynolds asked why that reference is even in this report. He doesn't see a correlation.

Director Paul Kermoyan said that staff prepared a balanced report following the revocation hearing with altered conditions with the understanding that the Planning Commission would ask how this use has been operating since the last hearing. The report update is a fair and factual statement.

Commissioner Reynolds said it is a common hiccup that requires clarification for the future.

Commissioner Finch asked staff if the window issue has yet been resolved.

Planner Daniel Fama said that is a separate issue and staff continues to work with Mr. Bonner on it.

Commissioner Rich stressed the need for clear language on the issue of overconcentration. It needs to be tightened.

Planner Daniel Fama said that issue was discussed by Council. Council expects the Planning Commission to make its decisions on overconcentration based on a case-by-case basis.

Commissioner Rich said that there is no language that differentiates between the number of seats versus the number of alcohol service licenses in an area.

Commissioner Bonhagen:

- Said that the Commissioner considers the issue of concentration to make sure it is not a problem or that there are too many establishments with alcohol.
- Pointed out that most impacts occur after midnight.
- Asked what is the specific concern or problem related to the festival events such as Boogie and Oktoberfest. Is it safety? Is it crime?

Planner Daniel Fama explained that the Chamber secures permits for an event in the public right-of-way. They may be blamed in the event that something goes wrong.

Director Paul Kermoyan added that the Chamber has to secure insurance as well as County Health permits for outside service. Everything that occurs outdoors during a festival falls under the umbrella of the Chamber. County Health as well as ABC (Alcohol Beverage Control) representatives both monitor and walk the event to look for violations of their standards.

Chair Dodd opened the Public Hearing for Agenda Item No. 5.

Steve Bonner, Applicant:

- Reminded that he had submitted a letter.
- Reported that the Type 47 license is both needed and deserved. It has been earned and should be issued.
- Asked that the Commission extend his closing time to midnight rather than 11:30 p.m. as recommended by staff.
- Said that having full service alcohol license (Type 47) is a huge issue. When a restaurant like his can't give a customer the food and/or drink of their choice, they won't come in.
- Added that this evening some restaurateurs will speak to this.

- Said that this is a matter of equality and fairness. All dining restaurants in the downtown have the Type 47 license except his. His is the only one except for a wine bar that didn't request Type 47.
- Reported that 70 percent of their revenue is from food service and has been the case since they started.
- Said he did his "year" and have during that time been named the "best restaurant in town". They have been waiting for the opportunity to request the Type 47 license after their proving year. They have been fighting hard to stay alive this whole year. They don't make money yet and need these extra hours of operation into the evening to accomplish what they have set out to do. They receive accolades from magazines and newspapers. They are concerned about the community.
- Pointed out that during that time period another use, Vesper, was allowed a Type 47 license right away.
- Said that he has Gary Shelly, a Michelin chef, on board.
- Said that it is now time to adjust some of the limitations imposed on The Socialight.
- Asked the Commission to embrace The Socialight and help us to prosper.
- Opined that unnecessary restrictions strangle a business from what it is trying to achieve.
- Advised that they need to be able to get to a second turnover of tables.
- Said that they just need an even playing field. It's what's fair. A Type 47 license is what is essential for their survival. Not having it puts them at a disadvantage. Again they are the only restaurant without a Type 47 license so please approve it this time.
- Said that while he prefers a midnight closing, even 11:30 p.m. would make a huge difference from the existing 10 p.m.
- Asked that they be allowed amplified music with no restrictions. They want to start with music.
- Pointed out that they are asking to add three more bar stools for a maximum of 1, which is supported by staff.
- Reminded that they have had no violations.

Paul Brown, Resident on Holland Lane, San Jose:

- Said he is the owner of DB Development.
- Recounted that he often brings people to Socialight. He likes it there. It's quiet.
- Said it would be a nice addition to have general alcohol service as well.

Aiden Wiltse, Resident of San Juan Bautista:

- Advised that he is the General Manager for The Socialight.
- Reported that lack of general alcohol service hinders them in providing full service to their customers and also affects their livelihood. They have established goals to reach bonus levels. Having another turnover of the tables would be possible with the expanded hours to midnight.
- Advised that the peak dining hours are between 7 and 9 p.m.
- Admitted that while 11:30 p.m. closing would be a step in the right direction, a midnight closing would better serve their needs.

Marty Behler, Resident of San Jose:

- Advised that she has been on staff at The Sociallight for three weeks. She started as a hostess and as of today is serving as the Marketing Manager.
- Said that she wants to raise two issues – the closing time and general alcohol service.
- Reported that part of her job as Marketing Manager will be to bring in special events. There is a disadvantage in accomplishing that without a Type 47 license.
- Asked the Commission to let them be as successful as possible.

Gary Shelly, Resident on Harrison Ave, Campbell:

- Stated that he has been a Campbell resident for the last five years.
- Advised that he has worked at six different Michelin starred restaurants.
- Said that having to close by 10 p.m. is ridiculous and a hindrance to this business. It also hinders staffs' abilities to achieve goals that lead to bonuses.

Edgar Zaldana, Resident of Gilroy:

- Said that he has worked at Sociallight for four months now.
- Admitted that it can be stressful to have to kick customers out by 10 p.m.
- Added that it hampers everything and hinders earnings
- Said that he wants to be a part of a diverse community as is Campbell.

Len Duncan, Resident of San Jose:

- Reported that he has a close affinity to Campbell and serves on a Veterans Foundation in Campbell.
- Added that Steve Bonner is a long-time friend.
- Asked that Mr. Bonner be given the opportunity to be successful with Sociallight. It is the nicest restaurant in Campbell. It is a "target" restaurant and not a bar.
- Recounted that he travels internationally and has guests who come here from around the world. He brings them to Sociallight.
- Asked that Mr. Bonner be allowed to recoup his investment.

Rita Archer, Resident on Del Roy Court, Campbell:

- Said that she was over at Pruneyard with Tessora's Wine Bar and moved it from there to downtown Campbell.
- Added that she is on the Board of the Campbell Chamber of Commerce.
- Stated that the Chamber has no problems with The Sociallight. Steve Bonner is eager, ambitious and enthusiastic. He has a positive spirit.
- Asked that he be approved for what he is asking for this evening.

Rob O'Neal, Resident of San Jose:

- Described The Sociallight as an upscale tavern, bar and restaurant combined.
- Added that it is also an asset to downtown Campbell.
- Stated that women can come to The Sociallight and feel comfortable there.
- Said that Steve Bonner is there all the time.

Chair Dodd closed the Public Hearing for Agenda Item No. 5.

Commissioner Rich:

- Said he like to direct some questions to the representative present this evening from the Campbell Police Department.
- Asked if there are any concerns having eight restaurants in this segment of the downtown and the related calls for service. Is there a correlation between the number of calls related to the type of liquor license?

Sergeant David Livingstone, Campbell Police:

- Said he didn't have specific statistics to offer this evening.
- Advised that areas that are more concentrated with bars (such as The Spot and Cardiff) and/or alcohol-serving businesses that have later operational hours result in more demands for service.

Commissioner Dodd asked if there are more calls for service generated from one end of downtown or the other.

Sgt. David Livingston said that the calls for service are spread out.

Commissioner Rich asked if the concern for the CPD is not concentration but rather type of establishment.

Sgt. David Livingston said he does not have specific numbers available tonight.

Commissioner Rich asked if certain hours result in the most calls for service on a Friday and Saturday.

Sgt. David Livingston said Thursday, Friday and Saturday after midnight. One can visibly see the change as patrons leave restaurants for bars.

Commissioner Rich asked if CPD has any major concern with allowing a full liquor license at this location.

Sgt. David Livingston said they have no major concerns.

Commissioner Reynolds asked if there is a known correlation with specific demographics. Is it true that the most problems come from those in the 21 to 35 year age group as compared to the 45 to 65 year old demographic?

Sgt. David Livingston agreed that a younger crowd results in more issues. These two demographics have very different lifestyles.

Commissioner Finch:

- Pointed out that there has been no discussion about the proposed outside dining area in the parking lot at the back.
- Stated that she was not supportive of that idea at all. That lot is intended for parking and not for outdoor dining.
- Said that she is leaning toward supporting the Type 47 license and a closing of either 11:30 p.m. or 12 a.m.

Commissioner Rich:

- Said he supports all of the staff recommendations except for the Type 47 license that he feels should be granted.
- Reminded that the PD does not have concerns about it. It seems the issues with alcohol are with the types of business in which served rather than the concentration of available locations in a particular area.
- Pointed out that if there are issues, they can be addressed.
- Said he is okay with extending the closing time either to 11:30 p.m. or 12 a.m.
- Stated that he is not in favor of the parking lot seating as that potentially creates too many issues.
- Reiterated his support for the staff recommendations except for that on Type 47 license, which he supports approving.

Commissioner Bonhagen:

- Said that this makes sense.
- Said that he also likes the staff recommendations but also has no problem supporting the Type 47 license.
- Reminded that this business has been in operation now for one year without problem so there is no reason to hold back.
- Stated that he has no problem with a midnight closing time.

Commissioner Reynolds:

- Said that he supports the Type 47 license.
- Reported that he has frequented The Socialight many times.
- Recounted how one time he took some out-of-town visitors there. When they noticed the non-availability of cocktails outside of beer and wine, they wanted to go elsewhere. That was an embarrassing situation for him.
- Pointed out that this is a fine dining establishment. The lack of a Type 47 license is affecting jobs and earnings for these employees.
- Said he would support the closing time.
- Added that he would like to encourage letting this applicant control the amplification for the live entertainment.
- Reminded that The Socialight has a quiet restaurant ambiance. At some restaurants one has to scream to be heard.
- Said that allowing outdoor dining to occur occasionally in the back parking is something he is torn on. Parking in the downtown is hard.
- Stated that instead he would like to ask the applicant to come back or allow the Director to approve this aspect at a later date in order to see what happens with these modifications to the use.

Commissioner Young:

- Stated that he is happy to see that the applicant is in compliance. However, he also reported that he was surprised to see 11 bar seats at the bar approved for 9 bar seats when he visited on Saturday this past weekend.
- Said that overall the applicant has performed well.

- Stated that the proposed outside parking area for dining is not supportable especially given that the handicapped parking space is located there.
- Agreed that the house could work on the amplification.
- Reminded that the Council had wanted the Planning Commission to consider and answer on the issue of what is overconcentration. Therefore, if the Commission recommends this, it is saying that there is not an overconcentration. There is more a “saturation” than an overconcentration.
- Pointed out that this restaurant is open almost 24 hours a day since they only close for about 5 hours a day.
- Said he supports the seating proposal as recommended by staff and reminded that chairs can move around a lot.
- Cautioned that placement of chairs and/or bar seats could potentially impede wheelchair access to the restrooms.
- Said he supports inside amplification, proposed hours, added seats but not outdoor dining on the back parking lot.

Commissioner Kendall:

- Agreed with Commissioner Young’s points about in-house music amplification.
- Admitted that in her view there is an overconcentration of alcohol serving businesses in the downtown.
- Pointed out that this is a small downtown with only four blocks in length. It doesn’t run through a couple of miles as does Los Gatos’ downtown.
- Stated that there is an impact with all of these liquor serving establishments. She is more inclined to stick with the beer and wine license at this location.
- Said that remaining with a 10 p.m. closing may be too limiting on this business. If there is no Type 47 license, she can support a midnight closing. With a Type 47 she would support an 11:30 p.m. closing.
- Added that she is okay with 12 seats at the bar although the seating changes that can and occurs both inside and outside makes her uncomfortable.
- Stressed that she does not support any rear parking lot dining uses. Not even for special events.

Commissioner Bonhagen:

- Said that he supports the Type 47 license.
- Reminded that every full-service restaurant downtown has a Type 47 including some that opened after The Sociallight.
- Questioned any reason to deny this one.

Commissioner Kendall said the reason is overconcentration in the downtown, which she firmly believes has been reached, especially in that block.

Commissioner Bonhagen asked why that is a problem.

Commissioner Kendall said because that issue is of concern for the City Council.

Commissioner Rich:

- Said that a good point is made in asking “what’s the issue?”.

- Admitted that he is not concerned about concentration but rather type of establishment serving.
- Said he does worry about the future.
- Stated that he is comfortable with an 11:30 p.m. closing with a Type 47 license. Otherwise, he agrees with the staff recommendations.

Commissioner Young:

- Said that consistency is important and considering the known versus the unknown.
- Pointed out that the business plan for this use has changed. The original proposal was for a retail component (selling lights). Now the retail is just wine. A smoothie bar was there for a while and is now gone.
- Said that if more seats are approved, it is important to ensure that they don't appear somewhere else.

Commissioner Reynolds:

- Reported that the smoothies are not gone. They are still there but just no longer out in view inside the restaurant but rather in the kitchen. They make delicious smoothies.
- Added that they have a \$15,000 coffee machine.
- Said that this change from beer and wine to Type 47 is not adding to the concentration but rather just changing the type of alcohol available to be served.

Chair Dodd:

- Asked Director Kermoyan, since tonight's decision by the Commission will simply serve as a recommendation on to Council, why not just approve per staff recommendations and put back onto them the issue of overconcentration.
- Pointed out that this Commission has asked for direction from Council as to how to identify overconcentration and what they want to see in the downtown.

Director Paul Kermoyan said that the ultimate decision is that of the City Council. The Commission is a recommending body. Council takes the Commission's recommendation and makes the final decision.

Chair Dodd:

- Said that The Socialight is an extremely good restaurant. A Type 47 license may not necessarily enhance it.
- Reminded that we have seen a number of changes and they may come back later for another modification.
- Added that this Commission didn't make them "jump through hoops" but rather asked them to comply with their Conditional Use Permit.
- Said that they have done wonderfully following the imposed restrictions.

Commissioner Kendall said that adding three extra seats at the bar is creating a "bar" thing. She said if they want 11:30 p.m. closing and a Type 47 license with just nine seats at the bar, she'd be satisfied.

Commissioner Young pointed out that the bar is pretty big with big screens. It is not really consistent with fine dining.

Commissioner Reynolds:

- Said that this business is simply trying to compete, grow and comply.
- Pointed out that no one here is in opposition tonight. There are no letters of opposition. There has been nothing but positive feedback from the audience and no concerns have been raised by Campbell PD.
- Suggested going with the Type 47 license, a midnight closing, amplification for the live entertainment and three additional seats at the bar.
- Reminded that there are still catch-all conditions in the Conditional Use Permit to bring this use back if there are violations be it this owner or a future owner operating at this location.
- Suggested, "Let's see what they can do."

Commissioner Bonhagen said he ditto's that exactly – a midnight closing, Type 47 license, self-amplification and three added seats at the bar.

Commissioner Rich said he takes exception to closing hour of midnight together with amplification. If amplification is allowed, he can support to 11:30 but not to midnight. He also supports the Type 47 and the 12 seats total at the bar.

Commissioner Finch:

- Reminded that this Commission initially denied this use in 2014.
- Added that the applicant at that time wanted to be a retail use with bar and food. As she recalled, they wanted to create a place where "our generation" could hang out in the evening.
- Said that she is leaning toward Commissioner Kendall's recommendation of the Type 47 without the additional three bar seats and with an 11:30 p.m. close.

Commissioner Young said he too agrees with Commissioners Finch and Kendall. He added that this restaurant is open more hours than others in the downtown.

Motion: **Upon motion of Commissioner Rich, seconded by Commissioner Kendall, the Planning Commission adopted Resolution No. 4307 recommending that the City Council approve a Modification (PLN2016-105) to a previously-approved Conditional Use Permit (PLN2014-57/PLN2015-195) for an existing restaurant, on property located at 368 E. Campbell Avenue, as follows:**

- **Modify the approved alcohol service from beer & wine to "general" (Type 47) license;**
- **Extend the business closing time for customers from 10:00 p.m. to 11:30 p.m., with staff leaving by midnight.**
- **Allow in-house amplification for live entertainment;**
- **Leave the number of approved bar seats at 9;**
- **Correct the opening hour of 6 a.m. per the desk item;**

subject to the conditions of approval, by the following roll call vote:

AYES: Dodd, Finch, Kendall, Rich and Young
NOES: Bonhagen and Reynolds
ABSENT: None
ABSTAIN: None

Chair Dodd advised that this item would be considered by the City Council at its meeting of July 19, 2016.

REPORT OF THE COMMUNITY DEVELOPMENT DIRECTOR

Director Paul Kermoyan added the following information to his written report:

- Reminded the Commission that he has sufficient budget to send two members of the Planning Commission to the California APA (American Planning Association) annual meeting in Pasadena from October 22nd through 25th. If more than two indicate interest than names will be drawn from among those interested in going.

ADJOURNMENT

The Planning Commission meeting adjourned at 11:05 p.m. immediately to a Study Session and subsequently to the next Regular Planning Commission Meeting of **July 12, 2016**.

SUBMITTED BY: _____
Corinne Shinn, Recording Secretary

APPROVED BY: _____
Cynthia Dodd, Chair

ATTEST: _____
Paul Kermoyan, Secretary