



**MINUTES  
FREMONT PLANNING COMMISSION  
REGULAR MEETING OF MARCH 10, 2016**

- CALL TO ORDER: Chairperson Salwan called the meeting to order at 7:00 p.m.
- PRESENT: Chairperson Salwan, Commissioners Bonaccorsi, Dorsey, Karipineni, Leung, Pentaleri, Reed
- ABSENT: None
- STAFF PRESENT: Prasanna Rasiah, Senior Deputy City Attorney  
Kristie Wheeler, Planning Manager  
Steve Kowalski, Associate Planner  
Anne Quasarano, Associate Engineer  
Chavez Company, Remote Stenocaptioning  
Napoleon Batalao, Video Technician
- APPROVAL OF MINUTES: Regular meetings of January 14, 2016, January 28, 2016, February 11, 2016, and February 25, 2016, were approved.
- DISCLOSURES: None

**CONSENT CALENDAR**

- Item 1. **UG IMPORTS - 39275 State Street - PLN2016-00225** - To consider a periodic review of a previously approved Conditional Use Permit (PLN2009-00130) and an amendment to the Conditional Use Permit removing the requirement for periodic review for an existing (by appointment only) firearms dealer located in the Central Community Plan Area, and to consider an exemption from the requirements of the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15301, Existing Facilities.

**Commissioner Bonaccorsi** removed the item from consent.

**Commissioner Bonaccorsi** asked if the applicant was available for questions. They were not. He wanted to clarify that the Conditional Use Permit Amendment would eliminate any periodic review going forward.

*Planning Manager Wheeler stated that is correct.*

**Commissioner Bonaccorsi** stated that the applicant first came to the Commission in 2009 as the first online gun retailer in the City and there was not a track record for safety. The Commission at the time unanimously felt it was important to initially have three one-year reviews and then three-year cycles for review. The major concern was when you have brick-and-mortar gun retail establishments you have a standard inventory because you have a local population. This establishment may have a large inventory because of shipping to off-site locations and may be susceptible to break-ins, which poses a hazard or danger that the public should be aware of. He was concerned about not having any public review going forward, but is not sure if it matters at this point if it is one-year, three-years or some other trigger for a review. He asked to have the Commission weigh in.

*Senior Deputy City Attorney Rasiah pointed out that there is a separate chapter in the Municipal Code regarding Firearms Dealers. Under that chapter, the Police Department issues and annually reviews Firearms Dealer Permits. That combined with the fact that there hadn't been any issues as indicated by the Police Department led to the staff recommendation.*

**Commissioner Karipineni** asked if **Senior Deputy City Attorney Rasiah** could explain the process the applicant has to go through with the Police Department on the annual Firearms Dealer Permit review. Also, what conditions would trigger a review. She stated that she does believe that online gun retailers are substantially different in key ways than other gun retail establishments. She mentioned the long and safe record the applicant has been able to establish but if there was something that changed that she was hoping that the Commission would be able to review that quickly.

*Senior Deputy City Attorney Rasiah stated that a permit is required for a firearms dealer, which is administered by the Chief of Police. There are a number of criteria that the applicant has to meet in order to obtain a Firearms Dealer Permit. The permit is revocable by the Chief of Police if any of these criteria are not met. The Conditional Use Permit is a separate permit that is revocable if the applicant does not meet the terms in the CUP, at which time staff could make a recommendation to the Commission to revoke or modify the CUP, following due process, public hearing and allowing the applicant to make their case. Even though staff's recommendation is to eliminate periodic review, there is a still a way for the CUP to come back to the Commission.*

**Commissioner Karipineni** asked if there were conditions related to annual review of a Firearms Dealer Permit that must be met.

*Senior Deputy City Attorney Rasiah* stated that he could not speak on matters of the Police Department, but he did say that he imagined that if there was an incident at the site then they would have to look at the appropriateness of the Firearms Dealer Permit.

**Commissioner Karipineni** stated that she would like to have some way for the Commission to be notified if an incident did occur that might be of interest to the Commission.

*Senior Deputy City Attorney Rasiah* stated that he did not think there needed to be a formal mechanism in the Conditions of Approval. If there was an incident that affected both the Firearms Dealer Permit and the CUP then there would be coordination between Police Department staff and Planning Division staff as to whether the CUP would need to be reconditioned or brought back to the Commission.

**Chairperson Salwan** asked if the driver of the modification was to cut costs to the applicant.

*Planning Manager Wheeler* stated that the applicant requested the modification to CUP. She stated that there have not been any incidents since the CUP was approved and there is a cost to the applicant each time they apply for periodic review.

*Senior Deputy City Attorney Rasiah* stated that there are very rigorous conditions applied by the Police Department for the Firearms Dealer Permit.

**Commissioner Pentaleri** stated while he is not an owner of a firearm, and he believed that we should have stronger gun control laws across the country, at the same time, he did believe that the Commission is putting undue burden on the applicant for legal activates. He agreed with **Senior Deputy City Attorney Rasiah** that there are already great administrative controls for this type of activity.

*Senior Deputy City Attorney Rasiah* stated he supported the staff recommendation. He also stated that if the Commission is inclined to deny the CUP Amendment then the item should be continued to another date so that the applicant can state their case.

**Chairperson Salwan** opened the public hearing. As there was no one present to speak on the item, the public hearing was closed.

**Commissioner, Leung** asked if in the Conditions of Approval, a change in ownership, or change in the percentage of ownership would trigger a review.

*Senior Deputy City Attorney Rasiah* stated that the CUP is attached to the land so if there is a new owner or change in percentage owned they would be subject to the Conditions of Approval. He did not think that there was a specific condition that would trigger a review if a change in

*ownership did occur; however, the Firearms Dealer Permit is subject to the individual and he did believe that the new owner would have to apply for a new permit.*

**Commissioner Leung** stated her concern would be if a new person were to take a percentage of the ownership, the way the business is operated could possibly change.

***Planning Manager Wheeler** responded that she believed that the applicant was a sole-proprietor and is the business occupies 143 square feet of space. The CUP goes under the property; however, with a new ownership, a new business tax license and Firearms Dealer Permit would have to be obtained.*

**Chairperson Salwan** stated that when he first became a Commissioner the applicant did come before the Commission and outlined the precautionary steps that they had taken and every year since 2009 the Planning Commission and Police Department have been satisfied with the way the applicant had answered any questions and conducted their business. He stated that he trusts the Police Department and the Chief and he felt comfortable continuing the CUP with the measures in place and with the staff recommendation.

**Commissioner Karipineni** spoke in favor of staff recommendation.

**Commissioner Reed** moved approval of staff's recommendation and **Commissioner Pentaleri** seconded the motion.

**Commissioner Bonaccorsi** stated he was very concerned with an online establishment. He understood that the Police Department does have an administrative process to review the Firearms Dealer Permit; however, it is the same checklist as is for other firearms dealers in the area that are not online. He asked for a friendly amendment that if there were an incident at the establishment that there was a reporting back to the Commission for review.

**Commissioner Reed** accepted the amendment.

***Planning Manager Wheeler** stated that she did not know if staff would be made aware if there was police report.*

**Commissioner Bonaccorsi** stated the idea of the amendment was that the report would be given to the Police Chief and if there was ever an incident, a report would come back to the Planning Commission.

***Senior Deputy City Attorney Rasiah** stated that there were two issues. One being that the applicant was not present and two that the Planning Commission has the purview of the land use decisions and not the Police Department conveying information. He suggested that they make a request to the Police Department to report matters which occur at the site to the Commission and not make it a Condition of Approval, but a request.*

*Planning Manager Wheeler suggested that if there were any changes to staff's recommendation that the Planning Commission continue the item to a later date when the applicant could be present.*

**Senior Deputy City Attorney Rasiah** stated he agreed with **Planning Manager Wheeler**.

**Commissioner Reed** stated he would like continue without the friendly amendment with the staff recommendation. **Commissioner Pentaleri** stated his second stands with staff recommendation.

IT WAS MOVED (REED/PENTALERI) AND CARRIED BY THE FOLLOWING VOTE (5-2-0-0-0) THE PLANNING COMMISSION – FOUND THAT THE PROJECT IS EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) PER CEQA GUIDELINES SECTION 15301, EXISTING FACILITIES;

AND

FOUND THAT CONDITIONAL USE PERMIT AMENDMENT IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S GENERAL PLAN AS DESCRIBED IN THE STAFF REPORT;

AND

APPROVED THE 2016 REVIEW OF CONDITIONAL USE PERMIT PLN2016-00225;

AND

APPROVED CONDITIONAL USE PERMIT AMENDMENT PLN2016-00225 TO ELIMINATE A PORTION OF CONDITION NO. 19 REQUIRING PERIODIC REVIEW, BASED ON FINDINGS AND SUBJECT TO CONDITIONS SET FORTH IN EXHIBIT "B."

The motion carried by the following vote:

AYES: 5 – Salwan, Karipineni, Leung, Pentaleri, and Reed  
NOES: 2 – Bonaccorsi and Dorsey  
ABSTAIN: 0  
ABSENT: 0  
RECUSE: 0

**PUBLIC/ORAL COMMUNICATIONS** None

## **PUBLIC HEARING ITEMS**

- Item 2. **MISSION HILLS SQUARE REVISED PRELIMINARY GRADING PLAN – 2501 Cormack Road - PLN2015-00274** - To consider a revision to a previously approved Preliminary Grading Plan for the Sabercat Neighborhood Center mixed-use project (now known as Mission Hills Square) located on a vacant 12.9-acre parcel. A Mitigated Negative Declaration was previously adopted for the Sabercat Neighborhood Center

by the City Council on December 4, 2007, in accordance with the California Environmental Quality Act (CEQA), and no further environmental review is necessary.

**Associate Planner Kowalski** gave a brief presentation of the item. Conditions of Approval placed on the Preliminary Grading Plan included a maximum height for retaining walls not to exceed three feet in height above grade. Upon further analysis, the applicant's structural engineer found that three-foot high retaining walls would not be able to support the weight of the hillside and that six-foot retaining walls would be required.

**Commissioner Salwan** asked if the purview was primarily the grading plan.

*Planning Manager Wheeler stated that the Commission's purview is only the Preliminary Grading Plan Amendment.*

**Commissioner Bonaccorsi** stated he opposed the project in 2007. He asked where the six foot retaining walls would be visible from.

*Associate Planner Kowalski replied that the retaining walls would be behind the buildings but may be partially visible off-site.*

**Commissioner Bonaccorsi** asked what review or process should have caught the error requiring the amendment to the Preliminary Grading Plan.

*Planning Manager Wheeler asked Associate Civil Engineer Quasarano to comment on the question regarding the timing for review of structural calculations.*

*Associate Civil Engineer Quasarano clarified that at the time a Planned District application is reviewed, structural calculations are not a requirement.*

**Commissioner Bonaccorsi** asked at what point the calculations would be submitted.

*Associate Civil Engineer Quasarano stated that when detailed improvement plans for a project are submitted, structural calculations would be submitted, as was the case with the proposed project.*

**Commissioner Bonaccorsi** asked if the City would have caught the error at any point.

*Associate Planner Kowalski stated that the structural engineer with the City would have reviewed the calculations and would have caught the error.*

**Commissioner Pentaleri** asked if any alternatives were considered to the proposed height of the retaining walls.

*Associate Planner Kowalski stated that the minimum height needed to support the hillside is six feet tall.*

**Commissioner Pentaleri** suggested that the retaining walls be relocated to the front of the site where it backs up to the freeway.

*Planning Manager Wheeler stated that his suggestion would dramatically change the site plan and require an amendment in the Planned District.*

**Commissioner Karipineni** asked if the proposed retaining walls were needed to develop the site at all or if they were just needed for this particular site plan.

*Associate Planner Kowalski stated the walls were needed for this particular site plan which had been previously approved in 2007.*

*Planning Manager Wheeler stated the buildings are significantly tall and the retaining walls will be located behind the buildings for the most part.*

**Chairperson Salwan** opened the public hearing and invited the applicant to the podium.

**Sy-cheng Tsai**, architect, stated that the changes to the retaining walls were needed to support the steepness of the hillside and retain existing trees located above the retaining walls. Without taller retaining walls, they would not be able support the hillside. The retaining walls would be located behind the buildings, which are 60 to 70 feet high. He indicated the retaining walls would be visible from I-680 but not from the front of the buildings. He stated that they would not be able to revise the site plan as there are two high voltage power lines. The project is constrained due to the hillside and high voltage power lines.

**Commissioner Bonaccorsi** asked the applicant what the height of the tallest building adjacent to the retaining walls.

*Sy-cheng Tsai, architect, stated that it is 60 feet.*

**Commissioner Bonaccorsi** stated that a variance had to be granted for the building height. He referred to Exhibit C, the Keystone compact unit, and asked if that was the original material proposed.

*Sy-cheng Tsai, architect, stated he believed that the original material was concrete.*

**Commissioner Bonaccorsi** asked the advantages of this style as opposed to concrete.

*Sy-cheng Tsai, architect, stated that they selected the material based on a more attractive appearance.*

**Commissioner Bonaccorsi** asked if the walls would be earth tones and if they would blend in with the landscape.

*Sy-cheng Tsai, architect, replied yes.*

*Planning Manager Wheeler referred the Commissioners to the building elevations and cross sections showing the relationship of the buildings to the proposed retaining walls.*

**Chris Cavette**, Fremont resident, stated that in 2007, the Planning Commission disapproved the project as it was incompatible with the surrounding neighborhood due to the size and scale. The particular location was inappropriate for a project of this size and scale. He stated he agreed with the Planning Commission as did many residents did at the time. In 2007, many residents opposed the project and it was unfair for the Commission to be asked to approve something based on a decision made nine years ago. He stated the City had changed in the past nine years, traffic had gotten worse, the school system had grown more impacted now than previously. He did not believe that just because it was approved in 2007 that it should be approved now. He stated that at some point a project should be stopped and reviewed again by the Planning Commission and City Council.

**Sy-cheng Tsai**, architect, stated that the project was not built sooner because of the economy but now that it is better, there is a market for this type of project. He stated that they believed that this project will bring the community more prosperity and more means in term of the commercial and residential use.

**Chairperson Salwan** closed the public hearing.

**Commissioner Pentaleri** stated that he agreed with Mr. Cavette, as he is in opposition to the project as a whole and not just the retaining walls.

**Commissioner Bonaccorsi** asked if staff had any further information regarding ownership of the site.

*Associate Planner Kowalski stated that he was unaware of the ownership history since 2007.*

**Commissioner Bonaccorsi** stated that he understands that the project as a whole is not in their purview. He acknowledged that the staff report accurately outlined the majority of the prior Commissioner's views and recognized that there were a total of three Commission meetings regarding the project. He stated that it was very evident in 2007 the concerns of the community. However, he stated he would support staff recommendation to approve the proposed amendment to the PGP.

**Commissioner Leung** asked if there was an expiration date for a project that gets an entitlement, as in do they have to build the project in a number of years otherwise the entitlement would expire.

*Senior Deputy City Attorney Rasiah stated that once the project has vested rights, as with this project, the approval does not expire.*

*Planning Manager Wheeler stated the project included a Planned District rezoning and it does not have an expiration date.*

**Commissioner Leung** asked if that included design review and if there was an expiration date.

*Associate Planner Kowalski stated that the project would have to comply with current Building Code requirements but they would still be able to build it as it was approved in the plans.*

**Commissioner Karipineni** stated that the project was different and she was surprised that it was approved, however, as **Commissioner Bonaccorsi** stated she would support the staff recommendation.

**Chairperson Salwan** stated it was a tough project, and that there were a lot of issues with the site. He stated he wished they had some visuals to view the retaining walls. He stated he would be voting no for this portion of the project.

**Commissioner Reed** stated that the project is going to be an eyesore and he would not be in support of the project.

IT WAS MOVED (DORSEY/LEUNG) AND CARRIED BY THE FOLLOWING VOTE (5-2-0-0-0) THE PLANNING COMMISSION – RECOMMENDED THAT THE CITY COUNCIL: FIND THAT THE MITIGATED NEGATIVE DECLARATION PREVIOUSLY ADOPTED FOR THE SABERCAT NEIGHBORHOOD CENTER BY THE CITY COUNCIL ON NOVEMBER 27, 2007, AS SHOWN IN EXHIBIT “A” ADEQUATELY ADDRESSES THE POTENTIAL IMPACTS OF THE PROPOSED PROJECT AND, THEREFORE, NO FURTHER ENVIRONMENTAL REVIEW IS REQUIRED, AND FIND THAT THIS ACTION REFLECTS THE INDEPENDENT JUDGMENT OF THE CITY OF FREMONT; AND

AND

FIND THAT THE PROPOSED REVISION TO THE PREVIOUSLY-APPROVED PRELIMINARY GRADING PLAN AS SHOWN IN EXHIBIT “B” IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S GENERAL PLAN AS DESCRIBED IN THE STAFF REPORT; AND APPROVE THE PROPOSED REVISION TO THE PREVIOUSLY-APPROVED PRELIMINARY GRADING PLAN AS SHOWN IN EXHIBIT “B,” BASED ON THE FINDINGS AND SUBJECT TO THE CONDITIONS IN EXHIBIT “C.”

The motion carried by the following vote:

AYES: 5 – Bonaccorsi, Dorsey, Karipineni, Leung, Pentaleri  
NOES: 2 –  
Salwan and Reed  
ABSTAIN: 0  
ABSENT: 0  
RECUSE: 0

## **DISCUSSION ITEMS**

## **MISCELLANEOUS ITEMS**

Information from Commission and Staff:

- Information from staff: Staff will report on matters of interest.
  - Report on actions of City Council Regular Meeting
- Information from Commission: Commission members may report on matters of interest.

Meeting adjourned at 8:20 p.m.

SUBMITTED and APPROVED BY:

Kristie Wheeler, Secretary  
Planning Commission

Courtney Fox, Recording Clerk  
Planning Commission

**DISCUSSION ITEMS**

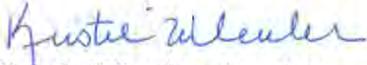
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