CITY OF MONTCLAIR
PLANNING COMMISSION MINUTES

REGULAR ADJOURNED MEETING
Monday, July 23, 2012

COUNCIL CHAMBER
5111 Benito Street, Montclair, California 91763

CALL TO ORDER

Chair Johnson called the meeting to order at 7:00 p.m.

PLEDGE OF ALLEGIANCE

Commissioner Vodvarka led those present in the salute to the flag.

ROLL CALL

Present: Chair Johnson, Vice Chair Flores, Commissioners Sahagun and Vodvarka, Community Development Director Lustro, City Planner Diaz, Assistant Planner Gutiérrez, and Deputy City Attorney Holdaway.

Commissioner Lenhert arrived at 7:15 p.m.

MINUTES

The minutes of the June 25, 2012 regular meeting were presented for approval. Vice Chair Flores moved, Commissioner Vodvarka seconded, and the minutes were approved 4-0.

ORAL AND WRITTEN COMMUNICATIONS

None.

AGENDA ITEMS

a. PUBLIC HEARING - CASE NUMBER 2012-9

Project Address:	4027 Holt Boulevard
Project Applicant:	United Capital Investments LLC for Killer Tattoos
Project Planner:	Michael Diaz, City Planner
Request:	Conditional Use Permit to allow a Tattoo Shop

City Planner Diaz reviewed the staff report.

Commissioner Sahagun asked how many tattoo parlors there are in Montclair. He remembered that Director Lustro stated in the past that tattoo parlors are somewhat self-regulating because if they do not succeed, they will go out of business. His concern was that the City has worked extensively on the Holt Boulevard area and it is looking so nice and now he sees a proliferation of tattoo parlors. It's pretty much a normal thing now, but he knows they are open later at night and that concerns him. City Planner Diaz replied that the last time we dealt with the tattoo parlors, there were about four and there are still about four because the one in the 4300 block of Holt Boulevard has closed. As for hours, each tattoo shop varies. City Planner Diaz noted that the Police Department did not have any significant issues at the tattoo shops except for potential loitering which has been addressed with conditions of approval. No kids, or persons under 18 years of age, are allowed to hang out. Moreover, tattoo artists can only work on one person at a time so crowds have not been a significant issue. He indicated that given the small size of the shop it would not pose a significant problem. Time will tell if it's successful or not, but staff believes that the proposed operator has a good grasp on the issues he needs to be aware of.

Commissioner Flores commented he was the one who previously asked how many tattoo parlors were in the City and asked if we have something that regulates how close in proximity they can be to each other and asked whether the one inside the (Valley Indoor) swap meet was still operating. City Planner Diaz replied that to his knowledge, the establishment inside the swap meet was still in operation and that there is no separation requirements. Commissioner Flores stated he fears that the City is getting too many, but knows that tattoos are popular. He would like to see them not locate too close to one another and understood they are trying to make a living, but he wants to keep Montclair as nice as we have it. He also read about the suggestion to clean up the weeds on the east side of the building and he supports that.

Commissioner Vodvarka commented that the new people operating out of that building are going to be taking care of it. His concern is that anyone coming to get a tattoo needs to old enough and show proper ID or have parental consent.

Chair Johnson asked which condition deals with signage on the building. City Planner Diaz replied and indicated condition numbers 15 and 16. Chair Johnson stated the reason for her question was that, while tattoo parlors are main stream for much of our

population, she did not want a huge neon sign or something that would detract from the area's appearance. City Planner Diaz stated the applicant probably cannot afford a permanent sign right now and will rely on a window sign to start. When the applicant is ready he can work with staff to find the right size and design for a permanent sign.

Chair Johnson opened the public hearing.

Hearing no other comments and no one else being present, Chair Johnson closed the public hearing.

Vice Chair Flores moved that, based upon evidence submitted, the project is deemed exempt from the requirements of the California Environmental Quality Act (CEQA). Further, the project qualifies as a Class 1 exemption under State CEQA Guidelines Section 15301, seconded by Commissioner Sahagun, there being no opposition to the motion, the motion passed 4-0 (Commissioner Lenhert not present during consideration of this item).

Commissioner Vodvarka moved to grant a CUP for the proposed dermagraphics (tattoo) studio, by making the four required findings and subject to the conditions of approval contained in attached Resolution No. 12-1761, seconded by Commissioner Sahagun, there being no opposition, the motion passed 4-0 (Commissioner Lenhert not present during consideration of this item).

b. PUBLIC HEARING - CASE NUMBER 2012-10

Project Address:	Thomas R.C., Inc. for Dollar Mania
Project Applicant:	9537 Central Avenue
Project Planner:	Silvia Gutiérrez, Assistant Planner
Request:	Conditional Use Permit to allow a convenience market

Assistant Planner Gutiérrez reviewed the staff report. She commented that one letter regarding the item was received from an adjacent property owner within the center which was placed on the dais for each Commissioner. The author of the letter is in attendance and would like to address the Commission during the public hearing.

Commissioner Sahagun asked about the CC&Rs and whether they have anything to do with the agenda item because it doesn't appear there are any comments from Stater Bros. Director Lustro commented that to date, staff has not been provided with a copy of the CC&Rs for the center. The center was developed in the late 1970s. Given the age of the center and if there are CC&Rs, it is entirely likely that the City is not a party to them. If staff is presented with a copy of the CC&Rs, we would review them to determine how, if it all, they apply to this application. However, staff has not been contacted by any representatives of Stater Bros. regarding this particular application or the existence of the CC&Rs that might prevent certain uses from locating in the center.

Commissioner Sahagun asked about alcoholic beverages. Assistant Planner Gutiérrez clarified that the applicant is proposing to operate a convenience store with a variety of sundry items but no alcoholic beverages which is indicated in the staff report and resolution. Staff feels that the statements in the opponent's letter are misleading with respect to alcoholic beverages. A Conditional Use Permit is required for this use because it is a convenience store of less than 8,000 square feet and within 300 feet of residential uses. Those are the two items that triggered the CUP requirement.

Commissioner Flores suggested that with receipt of the objection letter (*from David Suh*) and the City not having ample time to give any guidance, he suggested continuing the item to the next meeting so staff could obtain the CC&Rs and hear from the gentleman who wrote the letter. He felt it would be opening up a can of worms because it would be one owner against another and the City does not have the CC&Rs and he felt we were just spinning our wheels.

Commissioner Vodvarka commented he agreed with Vice Chair Flores and would like to hear something from Stater Bros. Assistant Planner Gutiérrez replied that as best as she could tell, the CC&R section cited in Mr. Suh's letter appears to be a restriction on other grocery stores locating in the center. The applicant's proposal is for sundry items, housewares, and other retail goods.

Commissioner Lenhert asked if staff has received any comments from any of the neighboring residents. City Planner Diaz replied no.

Chair Johnson opened the public hearing.

David Suh, 16631 Cobblestone Court, Cerritos, stated he was the person who submitted the written opposition letter and the one person who opposed this project. He wanted to emphasize two items. Number one (in his letter) was the CC&Rs and number four (in his letter) was about off-sale liquor. He understood that this CUP does not include liquor sales, but it could be mandated to allow liquor sales later on. His concern was in the case that the City conducts a public hearing like this, as is discussed in Condition No. 3, that it should mandate a CUP subject to the Planning Commission's review. The second item he wanted to emphasize his concern about the CC&Rs. He said that Stater Bros. doesn't provide the CC&Rs; second, the Planning Commission is not a party to the CC&Rs and he wanted to mention both to a point. He added that the CC&Rs are recorded, which means it is public record and it is a notice to the Planning Commission too. That means the Planning Commission needs to check the status, situation, or whatever of the property, that is included there. He is not the only person to oppose this.

Commissioner Sahagun interrupted, stating that Mr. Suh is very hard to understand and should have a translator. He wanted to make a point on item number four in Mr. Suh's letter. The applicant did not apply to the City or to ABC to sell alcohol, so the objection on those grounds is not relevant. He asked how far in advance of tonight's hearing Stater Bros. was notified with the letter. Assistant Planner Gutiérrez replied ten days, as were the other surrounding property owners. Commissioner Sahagun commented

he felt ten days was adequate time to respond. City Planner Diaz commented it was the standard time frame for a public notice and that staff had not received any returned letters of notification such as those with invalid addresses. Commissioner Sahagun stated he was against continuing the public hearing and would like to hear from the City Attorney regarding the CC&Rs. City Planner Diaz stated if the applicant were seeking the ability to sell or serve alcoholic beverages at that location, they would have had to apply to the Department of Alcoholic Beverage Control who would refer them to the City for consideration and approval first. If that were the case, then alcoholic beverages would have been another reason for the item being brought before the Commission. As Assistant Planner Gutiérrez has explained, staff views this business basically as a retail business and if it weren't for the small floor area it occupies and the fact that it is within 300 feet of a residential neighborhood, this would have been handled at staff level. Because of the way the Code defines a convenience store, this item requires Commission review and approval. Commissioner Sahagun asked for the City Attorney's comment. Deputy City Attorney Holdaway commented that in looking at the objection letter that the Commission received, if there are CC&Rs, they would constitute a private agreement between or among property owners, not generally enforceable by the City. Sometimes, especially currently, we do include an approval of CC&Rs when a project comes through the City that has the potential to impact the City. Typically, we would regulate or retain the right to enforce those provisions that would affect the City, such as provisions related to vehicular access or traffic or maintenance of the premises, items where the City would have an interest. We would typically not enforce other provisions. He did not know if there is a restriction in these particular CC&Rs or if they even exist. But if there is a provision that gives Stater Bros. the right to consent or refuse consent to a competing grocery-type operation, that would be for them to enforce, not the City. Since they did not register an objection and are not present at the meeting, it would seem to indicate that they are not concerned about the project and did not consider it to be competition to their operation. The difference in the type of business would seem, at least from the description he received as to the CC&Rs, to not be a conflict in the contractual language. As for the sale of alcoholic beverages, staff has made it clear that the applicant cannot simply convert this approval into a different use that includes the sale of alcoholic beverages without coming back to the City for revision or a new CUP or amended CUP to allow the alcohol sales. ABC would not approve the license without having approval from the City first.

Chair Johnson addressed Mr. Suh, commenting that she understood his concerns and she understood what he said about liquor and CC&Rs. She wanted to make sure even though each speaker is only permitted three minutes to speak, that he didn't have any other issues other than the two issues he already spoke about that he would like to address right now. Otherwise, the Commission would call on him if there were any further questions.

Commissioner Sahagun asked if staff received a response from Stater Bros. back when Janie's Lounge was approved and questioned the address to which the notice to Stater Bros. was mailed. Assistant Planner Gutiérrez replied that the address used is the one found on the most recent county tax rolls.

Hearing no other comments and no one else being present, Chair Johnson closed the public hearing.

Director Lustro commented that it was touched on by Deputy City Attorney Holdaway that in this particular application, whether there are CC&Rs or not and Stater Bros. received notice of the hearing, it may very well be that they do not have a concern about this application. As indicated in the staff report, the size of the tenant space in this application is 1,300 square feet, which is approximately five percent (5%) of the size of Stater Bros. store in Montclair. In looking at this, they may just view it as a small retail-type store and do not view it as competition. Chair Johnson stated she tended to agree with Director Lustro as there have been several businesses in that center over the years that have sold small amounts of food and/or beverages and she did not think there was any opposition from Stater Bros.

Vice Chair Flores commented he still wanted to continue the item. There are four or five owners in that center and if the CC&Rs really exist and are filed with the County, even though he will be out-voted, those owners should say if they care or don't care. We should take a look at the CC&Rs because it says right there that they should have permission from the owners. If they agree, get the permission. Commissioner Sahagun said he was not opposed to it but believed that the owners had adequate time to respond to the letter. By not responding, it is a clear indication to him that they do not object. He asked what staff recommended. Director Lustro replied that staff's recommendation is in the report. The notice for this application went out to all adjacent property owners within 300 feet of the boundaries of this particular parcel, which includes much of the residential area to the north and the east. The notices were all mailed on the same day. All of the adjacent property owners have had the same opportunity to respond as Mr. Suh has and, to date, staff has not received any other communication via written correspondence, email, or phone from any other property owners. While the Commission has one written response in objection to this particular application, there have been no other responses. One of the options the Commission has is to continue this item; however, staff's question would be, "What else would the Commission like staff to do in the intervening time, whether it's two weeks, four weeks or whatever, to gather more information or to, for lack of a better way to put it, force adjacent property owners to give us a response one way or another?" That's not something we typically do with a discretionary application like this. We are obligated to mail out notices, which we did. The responsibility to contact staff is that of the property owners if they have any comments. Chair Johnson asked if a non-response is a response. Director Lustro replied it could be interpreted that way. Chair Johnson stated that is the way she interpreted it; if they had something to say, they would have said it. Deputy City Attorney Holdaway stated that one last point on that is even though many properties may be subject to the CC&Rs, the provision that has been referenced, if it is correct, seems to allow Stater Bros. to withhold consent to a competing food market, but no other property owner or business in the center would have the right to any input on that issue other than Stater Bros. if they are the beneficiary of that covenant. So it would not be a matter of the various property owners or business owners voting their approval or disapproval; rather, if it were a violation of the CC&Rs to have this type of business in the center without Stater Bros. consent, it would be up to Stater Bros. to

point that out and seek to enforce that provision as a private matter between Stater Bros. and the applicant.

Commissioner Vodvarka asked Mr. Suh ever saw a copy of the CC&Rs and does he know if one ever existed? Mr. Suh responded "yes" from his seat in the audience, but apologized for not bringing a copy with him. Chair Johnson stated that Mr. Suh stated "yes." Commissioner Sahagun asked why Mr. Suh didn't bring a copy of the CC&Rs with him and added that Mr. Suh has not been able to substantiate either of the objections raised in his letter.

Vice Chair Flores stated the reason he is going with his suggestion is because he thought there were four or five owners of Stater Bros.; he didn't know he (Mr. Suh) was the sole owner of Stater Bros. Director Lustro commented that for clarification and as stated in the staff report, the shopping center at the southeast quadrant of Central Avenue and Palo Verde Street is comprised of five separate parcels, excluding the small retail center on the hard corner where Montclair Florist is located and the Jack-in-the-Box parcel. Four of the five parcels within the center have buildings on them, the fifth parcel only encompasses a portion of the parking lot, south of Jack-in-the-Box. The five parcels that comprise the center are each owned by different individuals, entities, or companies. The parcel upon which Stater Bros. market is located is owned by Stater Bros. The remaining four parcels are owned by others. Assistant Planner Gutiérrez pointed out that the subject parcel is highlighted in light blue on the site plan aerial that was included in the Commission packets.

Commissioner Sahagun moved that, based upon evidence submitted, the project is deemed exempt from the requirements of the California Environmental Quality Act (CEQA). Further, the project qualifies as a Class 1 exemption under State CEQA Guidelines Section 15301. As such, the Commission directs staff to prepare a DeMinimis finding of no impact on fish and wildlife, seconded by Chair Johnson, the motion passed 4-1, Vice Chair Flores opposing.

Chair Johnson moved to approve a Conditional Use Permit for a convenience market at 9537 Central Avenue under Case No. 2012-10, subject to making the required findings and subject to the conditions in attached Resolution Number 12-1762, seconded by Commissioner Sahagun, the motion passed 4-1, Vice Chair Flores opposing.

c. PUBLIC HEARING - CASE NUMBER 2012-11

Project Address:	5462 Holt Boulevard
Project Applicant:	Enterprise Rent-a-Car of Los Angeles
Project Planner:	Silvia Gutiérrez, Assistant Planner
Request:	Conditional Use Permit amendment to allow auto sales with outdoor display

Assistant Planner Gutiérrez reviewed the staff report, noting that staff is quite comfortable and pleased that Enterprise has decided to remain in the City and supports the request.

Chair Johnson opened the public hearing.

Hearing no comments and no one else being present, Chair Johnson closed the public hearing.

Chair Johnson moved that, based upon the evidence submitted, the project is deemed exempt from the requirements of the California Environmental Quality Act (CEQA). Further, the project qualifies as a Class 1 exemption under State CEQA Guidelines Section 15301, which exempts projects that result in negligible or no expansion of existing structures or uses. As such, the Commission directs staff to prepare a DeMinimis finding of no impact on fish and wildlife, seconded by Commissioner Sahagun, there being no opposition to the motion, the motion passed 5-0.

Commissioner Vodvarka moved to approve a Conditional Use Permit under Case No. 2012-11 to allow the re-establishment of a used automobile sales business as described in the staff report, at 5462 Holt Boulevard, subject to making the four required findings, and subject to the conditions contained in attached Resolution Number 12-1763, seconded by Vice Chair Flores, there being no opposition to the motion, the motion passed 5-0.

INFORMATION ITEMS

Director Lustro commented that each Commissioner received an invitation from Assembly Member Norma Torres to visit an Open House at her district office in Chino, scheduled for Saturday, July 28th, from 10:00 a.m. to 1:00 p.m.

Commissioner Sahagun commented he noticed the gas station at Central Avenue and San Bernardino Street installed poles to prevent motorists from driving over the curb.

Commissioner Sahagun thanked Metro Honda for the car wash conducted there for the football teams. The football teams made over $1,000 that day. He appreciated the City businesses helping the schools.

Vice Chair Flores congratulated the new and reappointed members of the CAC.

Vice Chair Flores noticed some activity on the Paseos project site; they finally have their work site trailer.

Vice Chair Flores commented that there is grass growing through cracks in the pavement in the center of Moreno Street in front of Moreno School. Someone needs to take care of that because it's going to break up the pavement more than it already is.

Commissioner Vodvarka commented he was thrilled to see a City vehicle and workers spraying the weeds along the curb face on his block. He spoke with Public Works staff about it and was told the last time this was done by the City was about five years ago.

So he guessed they would be going all over the City spraying for weeds in the curb and gutters and making things look better. His street looks great now.

Commissioner Vodvarka stated as he drove through Stater Bros. shopping center he noticed a new business called "Look Fine Threading and Skin Care" at 9509 Central Avenue, Unit F. He wondered why this new business opened without a Conditional Use Permit. Assistant Planner Gutiérrez replied they were approved as an eyebrow threading business, which is classified under "Personal Services" like a nail salon, and it does not require a conditional use permit. Commissioner Vodvarka commented the last business that was in there was Curves. Commissioner Vodvarka stated he did not understand because he thought they had to come through the City. Assistant Planner Gutiérrez stated they did come through the City to get a business license, have inspections completed, and obtain a sign permit.

Commissioner Lenhert commented that on Benito Street just west of San Antonio Wash, the first house has a wrecked car parked behind some trucks for a couple of weeks.

Commissioner Lenhert stated it has been a rough couple weeks for him and he hoped by the next meeting he would be in better shape. Chair Johnson commented that everyone was very happy to see him back and were concerned about him.

Chair Johnson adjourned the meeting at 8:17 p.m.

Respectfully submitted,

Laura Berke
Recording Secretary