



CITY OF MONTCLAIR
PLANNING COMMISSION MINUTES

REGULAR ADJOURNED MEETING
Monday, March 24, 2014

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

Vice Chair Flores led those present in the salute to the flag.

ROLL CALL

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

Also Present: Building Official Westerlin and Senior Code Enforcement Officer Fondario

MINUTES

The minutes of the February 10, 2014 regular meeting were presented for approval. Vice Chair Flores moved, Commissioner Vodvarka seconded, and the minutes were approved 5-0.

ORAL AND WRITTEN COMMUNICATIONS

None.

AGENDA ITEMS

- a. PUBLIC HEARING – CASE NUMBER 2014-3
 - Project Address: 8801 Central Avenue, Unit B
 - Project Applicant: Lee Pan Montclair, LLC
 - Project Planner: Silvia Gutiérrez, Associate Planner
 - Request: Conditional Use Permit to establish an electronic cigarette retail store
 - CEQA Assessment: Categorically Exempt (Section 15301)

Associate Planner Gutiérrez reviewed the staff report.

Chair Johnson opened the public hearing.

John Hinterleitner, 14676 Pipeline Avenue, Suite B, Chino Hills, greeted the Commission and indicated that he would be operating the proposed location.

Vice Chair Flores stated that his question was going to sound derogatory but he wanted to ask if the applicant smoked. Mr. Hinterleitner replied that he smoked 1½ packs per day for 40 years and was thankful that he has not had a cigarette in 15 months. The Commission applauded Mr. Hinterleitner for that. Mr. Hinterleitner commented that was what prompted him to start the business. He figured if he could do it, he could help others do it and he has. Vice Chair Flores commented that when his brother was in the armed forces, he (Vice Chair Flores) advised his brother to have a smoke to calm him down. He did and he was addicted for the rest of his life. He tried to quit several times but he could never shake it. During the time he was sick, Vice Chair Flores said that he has observed people suffering from lung cancer and that is the reason he opposes this, but wanted to wait until the rest of the Commission spoke up. Vice Chair Flores added that he visited two smoke shops in Montclair and one in Claremont and they all stock e-cigarettes. He also stopped at Lou's Liquor on Central Avenue and they have them also. He commented that he did not recall reviewing Conditional Use Permits for any of the existing smoke shops. Associate Planner Gutiérrez commented that the ones that are currently in operation were allowed by right, because there was no requirement for a CUP until July 2013. Vice Chair Flores understood that but felt we have an ample supply in our city.

Mr. Hinterleitner stated most of the people who come in to his current location are trying to get away from tobacco products. They have a variety of e-juice that comes in a range from zero to 24 milligrams of nicotine. As an ex-smoker, he had to start out at the highest level, because when you are making this transition, your body is used to a certain level of nicotine. So they try to educate their customers who are trying to get

away from tobacco products that they generally have to start at a higher level so the body adjusts to the transition because if the body is not getting enough nicotine, then they are going to go back to what they are trying to get away from. The goal and objective of many "vapers" is to eventually wean themselves off the nicotine. That was his main goal in starting this business because he did try to quit seven times but would only last 60 to 90 days at best but then revert back to smoking. He knew a couple years ago that he needed to stop or was going to die. He wanted to distinguish his business from others who are opening e-cigarette stores. A lot of the hardware that is sold comes from China. But they also have e-juices that come from China and you will never see that in his shop. China has no quality control. He has no idea of what they put in their juice, what carcinogens are in there, but he can assure you that if he was going to put something in his body or the body of his customers, there are only four ingredients that are in there and he knows exactly what they are and they're all U.S.-made products because of their quality control. The four ingredients are very simple. Propylene glycol, vegetable glycerin, which gives you the cloud of vapor, nicotine in various levels or none, and the only other thing is artificial flavoring. He can't speak for anyone else, but he assured the Commission that he has been to a number of smoke shops himself just to see what is out there and the stuff they have in other stores cannot compete with his products. While he is in business to make money, he is also in business to help people kick the habit. Unfortunately because the industry has exploded, it will ultimately be controlled by the FDA, but they just haven't gotten around to it yet. So, cities are taking matters into their own hands, which he felt was good, but he wanted the Commission to understand there is a very distinguishable difference between what he does, which is to help people, not hurt them. Vice Chair Flores commented he read an article about vaping and it stated that what goes in there is pure nicotine and asked the applicant if his products contain nicotine. Mr. Hinterleitner repeated they come with different levels of nicotine from 0 to 24 milligrams. Vice Chair Flores asked if that is the most addictive thing in a cigarette. Mr. Hinterleitner stated that nicotine is. He was still addicted to the nicotine, but no longer takes the smoke, tar or any carcinogens. There are over 4,000 carcinogens in a cigarette. He and his customers could tell you that you notice a change in your body after three weeks; you're not hacking anymore, you breathe better, your sense of taste and smell is better. Yes, they are addicted to the nicotine, but from a pharmacological standpoint, nicotine is just like caffeine. If you drink a lot of coffee and you stop drinking coffee, you get a headache and go through withdrawals. Nicotine is not what kills you, it's all the carcinogens. This (e-cigarettes) is 1,000% better, but they haven't done enough studies yet. Unfortunately, there has been some bad publicity because the FDA decided to test some juices from China and found carcinogens in them. He doesn't plan to market e-juices from China. Vice Chair Flores stated his other concern was that not all the people coming into his store are going to be trying to quit. There will be 18-year-old guys in there that will get addicted to nicotine. Mr. Hinterleitner disagreed, saying that the younger generation doesn't want the nicotine. What they're into is the fad and the social aspect of vaping. They come in and want nothing to do with the nicotine; they just want to blow clouds. They don't want to get addicted to anything and don't even like it; they want the flavor and often buy zero milligrams. He's had a lot of minors come into the store with their parents who would rather have them do this than smoke cigarettes. Vice Chair Flores stated that was his concern. If they get addicted to the

nicotine, maybe later on they will go buy a real cigarette. Mr. Hinterleitner stated the truth of the matter is when you're young, you are going to do as we all did when we were young, and they are going to experiment and if they are going to experiment, you would rather they do this than go experiment with cigarettes. Once an individual who has never smoked a cigarette tries this, its so much milder compared to a cigarette and much more pleasurable, even with the nicotine in it, that if they were to try a cigarette, they would cough their brains out, they wouldn't be able to stand it and they would ask themselves why have cigarettes when I can have this.

Chair Johnson asked about the photo that was included in the packet and whether the proposed store is about the same as the one pictured because when she read the staff report, it looked like the tasting area is small, but the picture made it look like larger and asked for clarification. Mr. Hinterleitner stated they have three chairs, called lounge chairs, and tables and those are merely there for customers who, after they purchase something, would like to put it together and try it or perhaps when a spouse comes with their partner and while the spouse is browsing the products, they have a place to sit and relax. They provide tasting of the different flavors in both zero milligrams and six milligrams at the glass display so when they walk out of the store, they know what they've got. It's a very small area. Chair Johnson commented that she knows several people who vape. She had a colleague in her car and all of a sudden there was a smoke cloud and she said, "What are you doing?" Her colleague explained what it was. E-cigarettes don't stink like cigarettes do. Mr. Hinterleitner stated it's just a vapor that dissipates very quickly; it doesn't cling to furniture, drapes or clothes. He added that usually you smell a very pleasant scent for a second and then it's gone. Unfortunately, for those who are uneducated or aren't sure what it is, it set off the alarms and many times he has had to tell people to not be alarmed, it's just a water vapor. There's no second-hand smoke and the thing he loves is that you don't have all the cigarette butts all over the place. For him it has been an absolute Godsend; he feels much better. Hopefully, he hasn't done irreparable harm from 40 years of cigarette smoking, but he really feels this is going to extend his life, his wife loves him a little bit more because he doesn't smell like an ashtray anymore, so there's been a lot of benefits all the way around.

Commissioner Vodvarka asked if the nicotine is still ingested into your system. Mr. Hinterleitner replied yes it is. Commissioner Vodvarka stated the biggest thing that bothers him is the fact that there are so many people out there that don't have the guts to quit and need an incentive to do so. He had an incentive 27 years ago when his daughter-in-law got pregnant; he made up his mind that his grandchild was not going to smell smoke on him and he has been smoke-free ever since. Mr. Hinterleitner stated that we all have our weaknesses and he was not as strong as other people and he wished he could have done it himself; unfortunately he tried many times, including taking medication and if he has an opportunity to feel better and help other people that don't have that same strength, he felt it was a blessing.

Commissioner Martinez stated he hoped it was a welcome to the City, he felt he put a good job of putting everything together. He asked about the sale of drug paraphernalia inside and outside the store and whether he was allowed to sell those type of products

at his other store in Chino Hills. Mr. Hinterleitner stated he was. Commissioner Martinez asked if there were any conditions for those type of products being sold in your Chino Hills location. Mr. Hinterleitner stated there is not. Commissioner Martinez stated that was his concern. Would he need or is it clear to him what these drug paraphernalia products would be. As an example, he hasn't been to his store and he was taking a wild guess, but let's just say there's a hookah pipe that one of your customers would like to use to consume tobacco with and then you have another customer who may not want to purchase tobacco at all, but he can still get this hookah pipe. So, where do you draw the line that this could be used for drug paraphernalia purposes and therefore would not sell it? The big picture of the intent behind this is to prevent those types of sales and, obviously, you are an advocate for e-cigarettes. So, how do we enforce this or make sure that the spirit of what we're trying to do here in the City is met. Mr. Hinterleitner stated it was a good question and digressed to one could say tomato or toh-mah-to. We could essentially say the same thing, but have a different way of looking at it. A number of products could be considered paraphernalia; some are obvious and some are subtle. You could put juice in some of the subtle ones, but you could put other things in it, and that's called "walking the line." He is not about walking the line, he is all about business and it's either black or white, there's no gray for him. A decision has been made that there will be no such things there and he does not want to walk the line or live in gray. He wants to be a good member of the Montclair community and he does not need to have those products in his store to make the kind of money he intends to make. He is all about making sure that they stay and toe the line, do what they're here to do and help people get away from tobacco products. People will come in or call and ask for those products and it's a real simple answer, "I'm sorry, we don't carry those here, please go to a head shop or smoke shop." He could get away with it and have it there and tell you that it's made for juice, but he knows what it's for and because he knows what it's for, it won't be in his store. Commissioner Martinez thanked the applicant and stated that he appreciated that.

Mr. Hinterleitner stated he is very excited about being a part of the Montclair community. The process for the conditional use permit was rather rigorous with the restrictions he never had in Chino Hills, but on the flip side, if he is going to be a member of this community, he thinks it is a good thing because it will keep out those who don't have those intents. He stated his son is sitting in the audience and knew he had to set the example. Even though he could not quit cold turkey, he knew if he could quit, he could get him to quit. He emulated me, as a teenager, and was a pack-plus a day smoker of Marlboro Lights. His son has not had a cigarette in one year. So, there's a lot of meaning behind this and even though the process was rigorous, he is glad to go through the process and adhere to the rules and regulations because he knows that the next person who applies will have to go through that process as well. He encouraged the Commission to visit his store, where he will have an open door.

Dianna Boyd, 10202 Columbine Avenue, Montclair, stated she used to work at Wal-Mart and watched Wal-Mart sell e-cigarettes. A lot of their stuff is from China with no quality control. She came from a smoking family and her father and grandfather both died from complications of emphysema. Had there been something like this available at their age, it probably would have saved their lives. She is all for quality control. Of course, kids

can get a hold of anything; they use tin foil to smoke their dope. She was in substance abuse work for over 40 years so she was very familiar with the paraphernalia and what they used the pipes and glass tubes for. Here's a man (the applicant) who wants to exercise quality control over the products he sells, so she felt the Commission needed to give this man a chance. The Commission has the control to stop the business so she thought the Commission would at least give the gentleman a chance to prove himself in this City.

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

Commissioner Vodvarka stated to the applicant that he was not condemning him; he just feels this is a necessary evil and he wished him luck and hopes it works out for him.

Commissioner Vodvarka moved that, based upon evidence submitted, the project is deemed to be categorically exempt from the requirements of the California Environmental Quality Act (CEQA), pursuant to Section 15301 (Class 1 – Existing Facilities) of the State CEQA Guidelines, seconded by Commissioner Sahagun, and the motion passed 4-0-1, Vice Chair Flores abstaining.

Commissioner Sahagun moved to approve a Conditional Use Permit (Case No. 2014-3) to allow the establishment of an electronic cigarette store with ancillary vapor tasting indoor seating area at 8801 Central Avenue, Unit B, as described in the staff report and subject to the conditions of approval in attached Resolution No. 14-1798, seconded by Commissioner Martinez, and the motion passed 4-1, Vice Chair Flores dissenting.

- b. PUBLIC HEARING - CASE NUMBER 2014-4
 - Project Address: 5198 Brooks Street
 - Project Applicant: Riley Family Bypass Trust 2/2/00
 - Project Planner: Michael Diaz, City Planner
 - Request: Conditional Use Permit to allow a proposed wholesale, storage and distribution business
 - CEQA Assessment: Categorically Exempt (Section 15301)

City Planner Diaz reviewed the staff report.

Chair Johnson opened the public hearing.

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

Chair Johnson commented she found it interesting that there seems like there will be lots of stuff in there, but there is one forklift. It seems that most of it is small packages that are being sent out. City Planner Diaz replied the equipment is manufactured overseas so there is no manufacturing here. It comes in, it's stored and not there very

long, and then the materials get shipped to their destinations. Again, it seems like this particular facility was an appropriate size for what they need at this time.

Commissioner Vodvarka asked if there would be a retail store. City Planner Diaz replied no.

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, seconded by Vice Chair Flores, there being no opposition to the motion, the motion passed 5-0.

Vice Chair Flores moved to approve a Conditional Use Permit (Case No. 2014-4) to allow a wholesale, storage, and distribution use at 5198 Brooks Street, within the Business Park (BP) land use district of the Holt Boulevard Specific Plan, as described in the staff report and per the submitted plans, subject to the conditions of approval in attached Resolution No. 14-1799, seconded by Commissioner Vodvarka, there being no opposition to the motion, the motion passed 5-0.

INFORMATION ITEMS

Director Lustro stated it was brought to his attention earlier in the day that last week at a luncheon in the City of Ontario, Congresswoman Gloria Negrete McLeod honored seven outstanding women from communities in the 35th Congressional District in recognition of women's history month. He was very happy to say that one of those seven is our very own Tenice Johnson, who was honored from the City of Montclair so staff would like to say congratulations for that very distinguished honor. Chair Johnson commented she was very honored and very humbled at being able to participate.

Commissioner Sahagun commented that as he was driving on Monte Vista Avenue recently near The Paseos, he noticed how terrible the former EZ Lube property looked and also a number of unmaintained yards on the west side of the street north of Moreno. Director Lustro replied that every piece of property that Commissioner Sahagun mentioned has a Code Enforcement action pending on it.

Commissioner Vodvarka introduced Dianna Boyd, the "lady of his life," who was sitting in the audience.

Commissioner Martinez stated there was an article in the Daily Bulletin that came out subsequent to the last Planning Commission meeting. He brought a copy of the article, which was related to the home at 5399 Holt Boulevard. The reporter went to the site and did "the other side of the story" to balance out the original story, which was biased toward preservation. This time she actually toured the property and was able to experience its dilapidated condition.

Vice Chair Flores stated that he hoped that in the future we get notice in advance that something is happening with historical places. He felt it would have been great to have kept the house on Holt Boulevard. Director Lustro stated he knew it was mentioned a couple times during the public hearing on that item, that the house in question, while it is 101 years old, staff made it very clear in the report that the house was neither on the local historic register nor any other historic register. Had the house been in a much different condition, staff would have probably taken a more aggressive position than it did. As it was and as the Commission may remember, we had the applicant jump through the hoops to try to find a taker for the house, irrespective of its condition because we know there are folks out there in the preservation community that would take a house in that condition. If they have the resources and the knowledge and a potentially recipient lot to move a house to, they probably would have done it. But after requiring the applicant to advertise the house to the preservation community with absolutely no responses, even people just calling up and questioning about what the logistics would be, etc., it was pretty clear that there wasn't really a market for this particular house. In advance of the application coming to the Commission and providing all the details in the staff report, there was really no reason for staff to provide the Commission with any advance notice, as staff was doing a lot of work behind the scenes to try to see what could be done to find a taker for the house and staff was unsuccessful. He felt what the Commission heard during the public hearing was a plea by an individual who had admirable intentions but lacked the resources to save the structure and staff's feeling was that his expectations of the applicant to wait several more months on really nothing more than a promise was unreasonable.

Chair Johnson commented she had the opportunity to take a tour of the Paseos and strongly encouraged everyone who has not seen it to go. It's one thing for the Commission to look at the plans and talk about the plans, but to actually stand in the community park in the middle of the complex was pretty awesome. This had not just a housing feel, but it feels like a community because there's lots of community spaces.

Commissioner Vodvarka stated that one of the new dispatchers at the Police Department is going to be a resident of the Paseos and that made him feel good to know that one of our employees is in a position to afford a nice place like that.

Chair Johnson adjourned the meeting at 7:53 p.m.

Respectfully submitted,

Laura Embree
Recording Secretary