



Agenda Item 6N

Approvals:

City Manager JM

Dept. Head JGD

Attorney _____

Finance g

AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING

Meeting Date: June 12, 2018

Department: Community Development Department, Planning Division
Prepared By: Vanessa Norwood, Contract Planner

Subject: *WITHDRAWAL OF APPEAL FOR CONDITIONAL USE PERMIT 17-390, RASTA LARGE FAMILY DAY CARE*

Fiscal Impact: None

Summary: The appeal of the Planning Commission's decision to approve Conditional Use Permit (CUP) 17-390 to allow a large family day care for up to 10 children under the age of six at 3 Paseo Vista was withdrawn.

Background: The Planning Commission approved CUP 17-390 for a large family day care within a single-family residence on April 18, 2018. The Commission reduced the capacity of the facility from 14 to ten children. On April 30, 2018, an appeal was filed with the City Clerk by Laurie Masotto of Peters & Freedman, LLP, on behalf of the Talega Village Center Community Association (HOA).

At the City Council meeting of May 1, 2018, a member of the HOA Board and a member of the public addressed the City Council regarding this matter. The Council was informed that the pending appeal would be scheduled for City Council review at a future date. On May 21, 2018, the appeal was withdrawn by the appellant on behalf of the HOA (Attachment 1). Therefore, the matter will not be heard by the City Council.

Discussion: The minutes of the Planning Commission meeting of April 18, 2018 have been re-agendized to enable Council the opportunity to remove the minutes from the Consent Calendar and call up for review the Rasta Large Family Day Care CUP, if desired.

Recommended Action: RECEIVE AND FILE THE PLANNING COMMISSION MINUTES OF APRIL 18, 2018.

- Attachments:**
1. Letter of Withdrawal from Laurie Masotta, Peters & Freedman, LLP
 2. Minutes of the Planning Commission Meeting of April 18, 2018

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ATTORNEYS AT LAW

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SIMON J. FREEDMAN (RET)

May 21, 2018

*Via Overnight Mail and
Via Email to CityClerk@san-clemente.org*

City of San Clemente
City Clerk
910 Calle Negocio
San Clemente, CA 92673

RE: Talega Village Center Community Association - Appeal of CUP # 17-390- and Resolution
No. PC 18-006 - Rasta Child Care - Proposed "Large" Day Care Home
Property Address: 3 Paseo Vista, San Clemente
Our File No. 2553

Dear City Clerk/City Planner:

Please let this letter serve as notice that the Talega Village Center Community Association has determined not to further pursue the above-referenced appeal at this time.

Thank you.

Sincerely,

PETERS & FREEDMAN LLP


Laurie F. Masotto, Esq.

LFM:im

cc: Board of Directors

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**MINUTES OF THE REGULAR MEETING
OF THE CITY OF SAN CLEMENTE
PLANNING COMMISSION
April 18, 2018 @ 7:00 p.m.
City Council Chambers
100 Avenida Presidio
San Clemente, CA**

1. CALL TO ORDER

Chair Brown called the Regular Meeting of the Planning Commission of the City of San Clemente to order at 7:10 p.m.

2. PLEDGE OF ALLEGIANCE

Chair Brown led the Pledge of Allegiance.

3. ROLL CALL

Commissioners Present: Jim Ruehlin, Michael Smith, Jason Talley, Zhen Wu; Chair pro tem Michael Blackwell, Vice Chair Barton Crandell, Chair Donald Brown

Commissioners Absent: None

Staff Present: Amber Gregg, City Planner
Vanessa Norwood, Contract Planner
Stephanie Roxas, Senior Planner
Carl Stiehl, Senior Planner
Cecilia Gallardo-Daly, Community Development Director
Matthew Richardson, Assistant City Attorney
Eileen White, Recording Secretary

City Planner Gregg announced that this is likely her last Planning Commission meeting as she has submitted a letter of resignation and will be taking some time off to enjoy family.

4. SPECIAL ORDERS OF BUSINESS - None

5. MINUTES

A. Minutes from the Regular Planning Commission Study Session of March 21, 2018

IT WAS MOVED BY COMMISSIONER RUEHLIN, SECONDED BY COMMISSIONER SMITH, AND CARRIED 6-0-1, WITH COMMISSIONER

TALLEY ABSTAINING, TO RECEIVE AND FILE THE MINUTES FROM THE REGULAR STUDY SESSION OF MARCH 21, 2018, AS SUBMITTED.

B. Minutes from the Regular Planning Commission Meeting of March 21, 2018

IT WAS MOVED BY COMMISSIONER RUEHLIN, SECONDED BY COMMISSIONER TALLEY, AND UNANIMOUSLY CARRIED TO RECEIVE AND FILE THE MINUTES FROM THE REGULAR MEETING OF MARCH 21, 2018, AS SUBMITTED.

6. **ORAL AND WRITTEN COMMUNICATION**

None

7. **CONSENT CALENDAR**

None

8. **PUBLIC HEARING**

A. 3 Paseo Vista – Conditional Use Permit 17-390 – Rasta Child Care (Norwood) (Continued from 03/21/2018)

Public Hearing to consider a request to allow a large family day care facility for up to 14 children where a small family day care currently operates in an existing townhome located at 3 Paseo Vista in the Talega Specific Plan (TSP) zone. The site's legal description is Lot 3, Project 930-02 of Tract 15763. The Assessor's Parcel Number is 701-371-21.

Vanessa Norwood, Contract Planner, narrated a PowerPoint Presentation entitled, "Rasta Large Family Day Care, CUP 17-390," dated April 18, 2018. A copy of the Presentation is on file in the Planning Division.

Mahjan Rasta, applicant, noted agreement with the Conditions of Approval.

Naveed Hirani, representing the applicant, described the current operation of the small daycare; advised no complaints have been lodged about its operation over the last seven years; and stated its operation fills an important need for residents. He stated that the Homeowners' Association (HOA), in its letter of December 5, 2017, had no objection to the project and has not contacted them over the past five to six months to discuss any objections that may have arisen since then.

Anoushah Rasta, subject property owner, confirmed that the map submitted with the application is an accurate depiction of the property and its ownership; advised none of the other residents within their condo cluster have any objections to the proposed use. She explained that although the expanded license will allow up to 14 children, in reality the State limits the number of children based on age, so the license may only permit several infants. The applicant's intent is only to increase the number of infants she's allowed to care for, which can only be done with the expansion of the license. This would allow her flexibility to chose the ages of the children she cares for. She stated that daycare operations are very highly regulated by the State; OCFA has visited the site and approved the proposed use; the State finds the indoor and outdoor space adequate; and no complaints have been filed against the existing use since its inception.

Chair Brown opened the public hearing.

Jake Bacon, Dana Point resident, drops his children off at Rasta Daycare, and his wife picks up. They park where instructed and are only there for a few minutes. He praised the care given by the applicant.

Sara Gallegos, resident, lives nearby and walks her children to Rasta Daycare; commended Ms. Rasta for the care given to her children.

Brent and Deina Deal, residents, live nearby and support the proposed expansion. They stated that initially they did not know a daycare operated at the location because it does not create noise or traffic issues for the neighborhood. He commended the applicant and her family for respecting the neighbors and providing a much-needed service.

Diane Stiefel, resident, opposed the proposed daycare expansion due to discrepancies on the applicant's application, insufficient emergency exits, lack of parking, unsafe conditions for kids walking near garages, and CC&R rules prohibiting residents from running a commercial enterprise.

Susan Behnke, resident, opposed the proposed use. She submitted a copy of the community's CC&R's and noted restrictive CC&R's are important to help keep property values up.

Caroline Bradley, resident, is a current client of the daycare who walks her children to the subject daycare site and supports the expansion.

David York, resident, supported the existing license for seven children but felt the play area is too small to support fourteen children.

Marsha Pratt, does not oppose the existing operation but does not support the proposed expansion. She noted existence of a parking shortage in the

neighborhood due to residents parking cars on the street instead of using their garages.

Chair Brown closed the public hearing.

During discussion the Commissioners, either individually or in agreement, provided the following testimony:

- Commented that this unit's unique location, on the edge of the community with its own cluster of units, lends itself better to the proposed use rather than an interiorly located unit; noted the only reason why this request was before the Commission is because of the CUP requirement in the Talega Specific Plan; and noted the project's approval by the State agency regulating the use.
- Expressed caution with the Commission becoming involved in HOA issues.
- Suggested a revised limit of 10 children, which would be only two additional children than what is currently allowed, rather than allowing fourteen children. With the expanded license, she would be able to increase the number of infants, which is the stated intent of the request. The applicant agreed with the suggestion to limit the total number of children to ten.
- Stated concern that people are walking through common area of the motor court to drop off their children, which could be construed as making use of common property for a business purpose.
- Stated that common areas are generally owned as tenants-in-common, with all parties having an undivided interest and right to use.
- Commented that the City Engineer has confirmed that the unit owner owns the small outdoor patio area used for the daycare adjacent to the unit.
- Expressed concern that the units are too dense; that other owners purchased property with the belief that no commercial uses would be allowed; suggested that allowing this use would potentially deprive others from enjoying their homes; suggested the applicant be required to obtain HOA approval before Commission approval; and expressed concern that ADA needs were not being met.
- Suggested that because the CUP runs with the land, a new unit owner could take over the approval and run it in a different manner.
- Stated inability to make seven of the twelve required findings for the project.
- Stated that in each of the six visits made to the site, no negative parking, noise, or safety concerns were observed; commented that the HOA's website is out of date and unsatisfactorily managed; and commented that the HOA issued an approval of the expanded use in December of 2017.

- Suggested the proposed play yard area does not comply with State standards; questioned whether a noise study had been done to determine if children crying would collectively exceed allowable decibel levels; expressed concern due to contradictory facts/testimony and suggested continuance to allow staff to bring back additional information.
- Commented that the State has the responsibility to regulate daycare uses, including health, safety, adequate play space, etc., and has approved the proposed expansion.
- Established from staff that the State does not have minimum square footages for play yard areas for Large Family Daycare Centers.
- Established from staff that a daycare license is not transferable; that the CUP is conditioned to be void when/if the applicant moves or ceases the daycare activity.
- Commented on inability to get the correct information regarding this project; suggested the area was too dense and therefore inappropriate for a large family daycare.
- Commented that HOA Boardmembers should have been on hand to provide testimony and clarity for the opposition; recognized the need for daycare in the area, and expressed optimism that the applicant and HOA would be able to come to an agreement.

IT WAS MOVED BY COMMISSIONER TALLEY, SECONDED BY VICE CHAIR CRANDELL, AND CARRIED 4-3-0, WITH COMMISSIONER WU, COMMISSIONER SMITH, AND CHAIR PRO TEM BLACKWELL OPPOSED, TO ADOPT RESOLUTION NO. PC 18-006, A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SAN CLEMENTE, CALIFORNIA, APPROVING CONDITIONAL USE PERMIT 17-390, RASTA DAY CARE, A REQUEST TO ALLOW A LARGE FAMILY DAY CARE FOR UP TO 14 CHILDREN, LOCATED AT 3 PASEO VISTA.

Amended as follows:

Staff to add condition of approval limiting the number of children allowed in the daycare to a maximum of ten children.

Staff to research the inconsistencies between the documents submitted by the applicant and the HOA and report back to the Commission if any significant facts cannot be validated.

[DECISION FINAL. SUBJECT TO APPEAL OR CALL UP BY COUNCIL.]

- B. 215 S. El Camino Real – Conditional Use Permit 18-056 – JD’s Indoor Entertainment (Roxas)

Public Hearing to consider a request for the addition of indoor live entertainment with amplified sound at an existing restaurant, JD's Kitchen and Bar, located at 215 S. El Camino Real. The project site is located in the Downtown Mixed-Use (MU 3.0) zone within the Architectural (-A) and Central Business (-CB) Overlay Districts. The site's legal description is Lot 53 of Tract 789. The Assessor's Parcel Number is 692-402-10.

Vice Chair Crandell stated for the record that he received a phone call from a member of the public wanting to discuss this project. He informed the member that the appropriate forum to discuss the project is at tonight's public hearing.

Stephanie Roxas, Senior Planner, narrated a PowerPoint Presentation entitled, "JD's Indoor Entertainment, CUP 18-056," dated April 218, 2018. A copy of the Presentation is on file in the Planning Division.

Justin Shea, the applicant, described the business model for this site. They serve late night food and are located adjacent to other bars. He employs young people in the community and uses good management practices. Adding live entertainment will help his business compete with other bars in the area. In response to comment regarding the outdoor television in operation despite the ongoing Code Compliance investigation, he promised to turn it off and not turn it on again until approval is granted.

Chair Brown opened the public hearing.

Bill Stewart, resident, supported the proposed use; commended Justin Shea for his respectful manner and efforts to improve the community.

Chair Brown closed the public hearing.

During discussion the Commissioners, either individually or in agreement, provided the following testimony:

- Established from staff that there is an active Code Compliance case due to the use of an outdoor television. The applicant is in the process of applying for a permit to allow the use.
- Confirmed by staff that all property owners within 300 feet of the business were notified of the public hearing.
- Established from staff that although there are no land improvements proposed with this application, staff can have Code Compliance conduct a site inspection to ensure the property is being kept in good condition.
- Suggested the applicant consider soundproofing the building before any complaints are lodged; established that the applicant is aware that if the decibels coming from this site are above the City

limits, he is required to turn off the sound and a citation will be issued.

- Suggested the Commission approve a permit for DJ entertainment, with the applicant able to apply for live entertainment through a separate Special Event Permit for up to 15 times a year.
- Suggested that the use be reviewed at six months and one year into operation.
- Suggested the project be conditioned to require a sound study.

IT WAS MOVED BY COMMISSIONER TALLEY, SECONDED BY COMMISSIONER WU, AND UNANIMOUSLY CARRIED TO ADOPT RESOLUTION NO. PC 18-011, A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SAN CLEMENTE, CALIFORNIA, APPROVING CONDITIONAL USE PERMIT (CUP) 18-056, A REQUEST TO ADD INDOOR LIVE ENTERTAINMENT WITH AMPLIFIED SOUND AT A RESTAURANT, JD'S KITCHEN AND BAR, LOCATED AT 215 SOUTH EL CAMINO REAL.

Amended as follows:

Staff to add condition requiring a sound study shall be completed prior to onset of any amplified sound.

Staff to add condition requiring review 6 months and 12 months after approval.

All references to live music shall be removed; the applicant is only allowed amplified sound.

[DECISION FINAL. SUBJECT TO APPEAL OR CALL UP BY COUNCIL.]

C. STLU Zoning Amendment 17-392 (Stiehl)

Public Hearing to consider a City-initiated proposal to amend San Clemente Municipal Code Title 17, the Zoning Ordinance, regarding regulation of Short-term Lodging Units (STLU's). The Planning Commission will be considering changes to the existing STLU regulations including, but not limited to the expansion of the STLU overlay area and existing development standard requirements. The proposed amendment contains updates, clarifications and internal cross-references to the permitting of STLU's in the Zoning Ordinance.

Commissioner Ruehlin recused himself from considering this item due to property ownership within 500 feet of property under consideration.

Commissioner Talley excused himself from the meeting due to a prior commitment.

Carl Stiehl, Senior Planner, narrated a PowerPoint Presentation entitled, "STLU Zoning Amendment 17-392," dated April 18, 2018. A copy of the Presentation is on file in Planning Division. Additionally, he distributed an Errata for the Commissioners' consideration.

City Planner Gregg explained that the proposed revisions relate to parking, and allow those persons renting the STLU's the same number of parking spaces as those that were required for the unit when it was built. Additionally, there is an expanded area of where STLU's will be allowed and an extended amortization period.

Assistant City Attorney Robertson explained that the proposed amendments before the Commission this evening are part of a negotiated settlement of active litigation. The City Council has approved a global settlement of the litigation claims, which is contingent on approval of the Ordinance approving the amendments. The Commission is charged with making a recommendation to City Council, with final decision to be made at the Council level.

Chair Brown opened the public hearing.

Richard Rowe, resident, opposed allowing STLU's in the Montalvo loop due to an existing parking shortage. He referenced a petition signed by 125 residents opposed to allowing STLU's in this area; requested explanation on how the parking permit system will operate.

City Planner Gregg explained that following approval of the Ordinance, staff will explore different ways to solve the parking problem and develop a system.

James Payne, resident, supported the staff recommendation; commented that staff at the California Coastal Commission have indicated STLU's are appropriate for the expanded areas; listed benefits such as increased revenues from TOT taxes for the City and increased revenues for local businesses; commented the STLU's are appropriately conditioned and Code Enforcement is on hand to take care of complaints.

Jody Sanders, resident, recounted problems long-term STLU owners had with the new regulations; thanked the City for reinstating STLU's in the Montalvo loop.

Joseph Giles, resident, opposed revising the Ordinance as he brought property with the assumption that STLU's would not be allowed adjacent to his home; suggested additional lawsuits will be brought from STLU owners all over town if the proposed amortization is approved.

Jeff Bosson, Mission Viejo resident, supported approval of the amendments; requested the addition of a property located at 250 Las Ramblas into the STLU allowed areas.

Brad Dendulk, resident, supported the amendment; suggested national studies indicate that many visitors from out of town will only bring one car; noted STLU owners are not in favor of overcrowding their units due to negative impacts.

Harold Higgins, resident, supported the amendment; commented that many of the STLU rental units use less parking than long term rental tenants.

Jim Reuhlin, speaking as a private resident, opposed allowing STLU's on Buena Vista due to parking shortages that worsened when the STLU's were established; requested staff develop a parking solution to manage and enforce parking on the street.

Steve Sargent, resident, recounted positive experiences people have had while using his STLU; noted the unit is used for family when not in peak season; recounted benefits the City's businesses realize from tourists vacationing in the City.

Joe Janis, resident, suggested the proposed amendment to settle lawsuits will encourage others to sue in order to expand the STLU areas; commented STLU's have an advantage over hotel owners because they are not subject to the same ADA, parking, health inspection, etc., standards.

Chair Brown closed the public hearing. He announced that at the last City Council meeting, it was announced that Council voted to approve the settlement, and it is contingent upon approval of the Ordinance. He noted 19 STLU owners requested and were granted amortization extensions as part of the settlement. For the record, the San Clemente STLU properties whose owners were granted amortization extensions are as follows:

2813 La Ventana
224 Calle Primavera
115 Trafalgar Lane
233 Calle Marina
1812 Calle de los Alamos
408 Calle Vista Torito
244 Esplanade
211 Esplanade
135 Avenida Barcelona
126 W. Avenida Cordoba
1800 Entrada Paraiso
322 Boca del Canon

205 Via Ballena
181 W. Avenida Cornelio
908 S. Ola Vista
228 W. Avenida Cordoba
1006 Calle Toledo Avenue
115 Via Ensueno
314 W. Avenida Valencia

During discussion the Commissioners, either individually or in agreement, provided the following testimony:

- Recommended staff be directed to address parking solutions in the expanded areas as soon as possible.
- Suggested additional lawsuits may be brought; noted the land use expansion proposed did not go through the normal public review process; encouraged the quick development of parking solutions; noted current enforcement personnel is inadequate and will need to be reinforced to deal with the consequences of the expanded areas and amortized units.
- Suggested California Coastal Commission involvement should have been from the onset of the STLU regulations; reiterated need for parking solutions; suggested revenues raised from the installation of parking meters in new areas should be reinvested into those specific neighborhoods.

IT WAS MOVED BY CHAIR BROWN, SECONDED BY VICE CHAIR CRANDELL, AND CARRIED 4-1-2, WITH COMMISSIONER SMITH OPPOSED, AND COMMISSIONERS TALLEY AND RUEHLIN ABSTAINING, TO ADOPT RESOLUTION NO. PC 18-012, A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SAN CLEMENTE, CALIFORNIA, RECOMMENDING THAT THE CITY COUNCIL ADOPT AN ORDINANCE APPROVING AN AMENDMENT TO MUNICIPAL CODE TITLE 17 REGARDING REGULATION OF SHORT-TERM LODGING UNITS.

[ACTION SUBJECT TO CITY COUNCIL APPROVAL.]

9. NEW BUSINESS

None

10. OLD BUSINESS

None

11. REPORTS OF COMMISSIONERS/STAFF

- A. Tentative Future Agenda
- B. Zoning Administrator Minutes of March 21, 2018
- C. Staff Waiver 18-145
- D. Staff Waiver 18-149
- E. Staff Waiver 18-187
- F. Staff Waiver 18-188
- G. Reminder of the Joint Council/Commissions/Committees Meeting which will be held on Thursday, May 10, 2018 at 7:00 p.m. at the Ole Hanson Beach Club located at 105 West Avenida Pico, San Clemente, CA.

The Commissioners commended City Planner Gregg for all her efforts, noting her absence will leave a "Grand Canyon-sized hole" in City staff; thanked her for making the community a better place for all; thanked her for building a talented staff during her tenure as City Planner; and wished her well in future endeavors.

City Planner Gregg thanked the Commissioners for allowing her to serve in the community; noted how honored and lucky she was to work for the Planning Commission and for the City as its City Planner; and commended the Commissioners for their hard work and dedication.

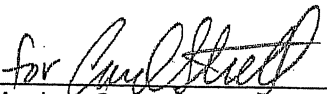
12. ADJOURNMENT

IT WAS MOVED BY CHAIR BROWN, SECONDED BY VICE CHAIR CRANDELL, AND UNANIMOUSLY CARRIED TO ADJOURN AT 11:44 P.M. TO THE REGULAR STUDY SESSION TO BE HELD AT 6:00 P.M. ON MAY 2, 2018, IN COUNCIL CHAMBERS AT CITY HALL LOCATED AT 100 AVENIDA PRESIDIO, SAN CLEMENTE, CA.

Respectfully submitted,

Donald Brown, Chair

Attest:



Amber Gregg, City Planner