



PLANNING COMMISSION REGULAR MEETING AGENDA

Monday, March 13, 2023 at 6:00 PM

Kerman City Hall, 850 S. Madera Avenue, Kerman, CA 93630

1. OPENING CEREMONIES

A. Call to Order, Meeting called at 6:02 PM

B. Roll Call:

Present: Robert Bandy, Cory Molloy, Victor Villar, Scott Bishop, Mario Nunez, Robert Felker, Kevin Nehring (arrived at 6:10)

Absent: None

C. Pledge of Allegiance: Performed

Staff Present: Jesus Orozco, Community Development Director; Shannon Chaffin, Duty City Attorney; John Jansons, City Manager; Mabel Martinez, Administrative Coordinator

2. AGENDA APPROVAL / ADDITIONS / DELETIONS

To accommodate members of the public or convenience, items on the agenda may not be presented or acted upon in the order listed.

Commissioner Molloy motioned to approve, seconded by Commissioner Nunez.

Yes: Robert Bandy, Cory Molloy, Victor Villar, Scott Bishop, Mario Nunez, Robert Felker (6 , 0)

Noes: None

3. PRESENTATIONS / CEREMONIAL MATTERS

NONE

4. REQUEST TO ADDRESS COMMISSION

This portion of the meeting is reserved for members of the public to address the Commission on items of interest that are not on the Agenda and are within the subject matter jurisdiction of the Commission. Speakers shall be limited to three minutes. It is requested that no comments be made during this period on items on the Agenda. Members of the public wishing to address the Commission on items on the Agenda should notify the Chairperson when that Agenda item is called, and the Chairperson will recognize your discussion at that time. It should be noted that the Commission is

prohibited by law from taking any action on matters discussed that are not on the Agenda. Speakers are asked to please use the microphone, and provide their name and address.

City Clerk Marci Reyes made a quick announcement regarding form 700.

5. CONSENT AGENDA

Matters listed under the Consent Calendar are considered routine and will be enacted by one motion and one vote. There will be no separate discussion of these items. If discussion is desired, a member of the audience or a Commission Member may request an item be removed from the Consent Calendar and it will be considered separately.

A. A. **SUBJECT:** Minutes February 13, 2023

RECOMMENDATION: Planning Commission approve minutes as presented.

Commissioner Molloy motioned to approve, seconded by Commissioner Felker.

Yes: Robert Bandy, Cory Molloy, Victor Villar, Scott Bishop, Mario Nunez, Robert Felker (6 , 0)

Noes: None

6. PUBLIC HEARINGS

A. **SUBJECT:** A continued public hearing for Conditional Use Permit 2023-01 to allow for the establishment of a second-hand store (Trini's Thrift Store), located at 311 S. Madera Ave., including adopting a finding of a Categorical Exemption pursuant to Section 15301 of the CEQA Guidelines.

RECOMMENDATION: Staff recommends that the Planning Commission take public testimony, close the public hearing, deliberate, and by motion adopt a resolution approving CUP 2023-01, to allow for the establishment of a second-hand store (Trini's Thrift Store), located at 311 S. Madera Ave., including adopting a finding of a Categorical Exemption pursuant to Section 15301 (Existing Facilities) of the CEQA Guidelines.

Attached as Exhibit 'A'

7. PETITIONS / RESOLUTIONS

A. **SUBJECT:** A resolution recommending City Council review and accept the 2022 Annual Progress Report for the Kerman 2040 General Plan and Housing Element and authorize staff to submit said report to the State Department of Housing and Community Development and the Governor's Office of Planning and Research, including adopting a finding of a Categorical Exemption pursuant to Section 15306 of CEQA Guidelines

RECOMMENDATION: Commission by motion, adopt a resolution recommending City Council review and accept the 2022 Annual Progress Report for the Kerman 2040 General Plan and Housing Element, and authorize staff to submit said report to the State Department of Housing

and Community Development and the Governor's Office of Planning and Research including adopting a finding of a Categorical Exemption pursuant to Section 15306 of CEQA Guidelines.

Community Development Director, Mr. Orozco presented the item alongside background information regarding the routine requirements from HCD. Commissioner Felker inquired about PG&E's involvement, time frames regarding energizing new subdivisions in the City. City Manager Janson's responded.

Commissioner Molloy motioned to approve, seconded by Commissioner Felker.

Yes: Robert Bandy, Cory Molloy, Victor Villar, Scott Bishop, Mario Nunez, Robert Felker, Kevin Nehring (7 , 0)

Noes: None

8. ADMINISTRATIVE REPORTS

NONE

9. COMMUNICATIONS

A) ILG Planning Commissioners Training

Commissioner Bishop provided a brief summary of his attendance at the workshop.

10. ADJOURNMENT

Meeting adjourned at inaudible.

NOTICE OF AVAILABILITY OF AGENDA MATERIALS: Any writings or documents provided to a majority of the Commission within 72 hours of the meeting regarding any item on this agenda will be made available for public inspection at the Community Development Department located at 850 S. Madera Ave., Kerman, CA 93630 and on the City website at www.cityofkerman.org

In compliance with the American with Disabilities Act (ADA), if you need special assistance to participate at this meeting, please contact the Planning Commission Secretary at (559) 842-2301. Notification of 48 hours prior to the meeting will enable the Planning Commission Secretary to make reasonable arrangements to ensure accessibility to this meeting. Pursuant to the ADA, the meeting room is accessible to the physically handicapped.

AGENDA POSTING CERTIFICATION

I, Jesus R. Orozco, Community Development Director for the City of Kerman, do hereby declare under penalty of perjury that I caused the above agenda to be posted at City of Kerman Council Chambers, at 850 S. Madera Avenue, Kerman, CA 93630 and on the City website at www.cityofkerman.net

Date: March 10, 2023 /s/ Jesus R. Orozco, Community Development Director

Exhibit 'A'

Minutes to Agenda Item 6. A

[00:06:00] Chairperson Bishop: A. Subject. To continue public hearing for conditional use permit 2023-01 to allow for establishment of a secondhand store, Trini's Thrift Store, located at 311 South Madera Avenue, including adopting, finding of a categorical exemption pursuant to Section 15301 of the CEQA Guidelines. **[pause 00:06:27]**

[00:06:42] Jesus Orozco: Chairperson, before you is a continued public hearing for a request for a conditional use permit. The subject site is located approximately 100 feet south of the southwest corner of West Stanislaus Avenue and South Madera Avenue. The site is for this location: 311 South Madera, and it has both a zoning designation and land use designation as a general commercial.

The request encumbers, really, a re-establishment of a previous use. The applicant wishes to establish a secondhand store, hours of operation, essentially Sunday through Saturday, 08:00 AM and through 08:00 PM, and varying in between those hours. It's gonna be owner-operated. The owner does anticipate accepting donation of goods within the site.

Now, the Municipal Code does require secondhand stores to procure a conditional use permit prior to establishment. On your screen, you do see a Google Street view of the existing site. And I apologize I didn't get more recent, but the building and the site really will largely remain unchanged.

On your screen, you see an image of the more or less current state of the site. It's roughly about 3,800 square feet. The site was built sometime in 1967 per building records as far as city staff can go back. Now, the site is considered an existing nonconforming site. And what that means is that this site was developed prior to the existing current development standards of the current zoning code. And the zoning code for this particular zoning was adopted back in 1991. So there is a large gap from when the site was developed and when the Municipal Code was adopted.

[00:09:06] Chairperson Bishop: Is that it?

[00:09:09] Jesus Orozco: I do.

[00:09:16] Chairperson Bishop: Let the record show that Kevin Nehring arrived at 6:10.

[00:09:26] Jesus Orozco: Thank you. Now, what that means for the site is that the site was not developed with current city standards. Current city standards require that a structure in the zoning have specific setbacks, landscaping, parking, building heights, and so forth. In particular, this site has some shortcomings as it relates to setbacks, landscaping, and some parking. Next slide.

Now, again, I do want to reiterate, this use is really a re-establishment. As I noted, a thrift store was previously operated of this particular location because the site was abandoned for a period of time, over a year the use does need to go through this conditional use permit process.

Now, the previous thrift store also did have a conditional use permit that was in place for about 20 years, roughly. And I also would like to point out that if it wasn't a thrift store, there are other similar like thrift store uses that would be permitted by right and would not be subject to a conditional use permit. They'd be similar in operational characteristics, building occupancy, and even the types of merchandise that they would sell within the sites.

To name a couple, maybe a dress shop, shoe stores, furniture stores. Those are all types of materials, retail goods, that currently are being proposed to be sold out of this secondhand store. That being said, staff does recommend you adopt a resolution approving conditional use permit 2023-01 to allow for the establishment of a secondhand store at 311 South Madera Avenue, including adopting and finding of categorical exemption pursuant to Section 15301 of the CEQA guidelines. That completes my presentation. I'll be happy to answer any questions you may have.

[00:11:41] Chairperson Bishop: Commissioners, do you have any questions for staff?

[00:11:45] Commissioner Molloy: I guess I just wanted to be clear that because the building was established before current codes, that means they're exempt from those codes, like you said, the setbacks and so forth.

[00:11:56] Jesus Orozco: They're grandfathered. They're not necessarily exempted. Again, it is really remaining status quo, noting that the building was previously occupied as a thrift store.

[00:12:12] Commissioner Villar: Quick question: In the report is stated that the police went over there last month for a nuisance call?

[00:12:22] Jesus Orozco: That is correct. There is limited information on that end, but yes, staff did conduct some preliminary inspection, as well as code compliance inspection of the site just to ensure that the site was being properly used for what it's currently being proposed as. The building has been-- the code enforcement officer has determined-- that there's no non-compliance at this time.

[00:12:51] Commissioner Felker: The general state of repair, is it okay?

[00:12:54] Jesus Orozco: Some general maintenance will be required. Again, that would be fully determined by the building official and/or the fire marshal as deemed necessary for appropriate ingress-egress, fire-life safety.

[00:13:09] Commissioner Felker: What did you say about the setback? That's because it was established before the law?

[00:13:14] Jesus Orozco: Correct.

[00:13:14] Commissioner Felker: Okay. What about parking?

[00:13:18] Jesus Orozco: Parking-wise? If this site was to be developed under the current development standards, it would be required to meet certain thresholds, and that's based on a floor area ratio, which it currently doesn't meet. Now, you brought up a good point. The conditions of approval do stipulate that the applicant and/or owner will be required to provide some parking, which would really be additional parking to what it currently has. That'd be more or less three more parking stalls that the site currently does not have.

[00:13:55] Commissioner Felker: Basically, it only has the curb in front.

[00:13:58] Jesus Orozco: There is about nine onsite parking stalls.

[00:14:03] Commissioner Felker: Oh.

[00:14:03] Commissioner Bandy: The shared parking that it talks about is the grocery store not to the south, but to the north?

[00:14:19] Jesus Orozco: The site is owned by one property owner. It's under one- property ownership. There are two buildings. That means that the site is shared with two tenants,

[00:14:32] Commissioner Bandy: That's the shared parking here. You're talking about under the parking analysis?

[00:14:44] Jesus Orozco: You're probably referring to a shared parking agreement between property owners, and I believe that'd be to the property to the south.

[00:14:52] Commissioner Bandy: Well, No, I was talking about your parking analysis where it says, "the shared parking."

[00:15:04] Jesus Orozco: Yes, that'd be with the La Fiesta, I believe, you're referring to. Yes, it's all under one site. If you wouldn't mind going to the first slide, to the first one.

[00:15:18] Commissioner Bandy: Oh, you got it. Right here.

[00:15:19] Jesus Orozco: Right there. So, and I apologize I didn't describe this. What you see in the red square, that's the entire property. What you see in the yellow hash, that's the site, the building, the project building, which the CUP will encumber this, that specific building, not the entire site. However, there'll be conditions of approval, apply to the entire site.

[00:15:48] Commissioner Molloy: So if I'm reading this correctly, they'll have 12 months to add the parking after that. If they don't meet that after the 12 months, what happens?

[00:15:58] Jesus Orozco: They would be subject for review and possible revocation.

[crosstalk]

[00:16:02] Commissioner Molloy: Revocation. Okay. Thank you.

[00:16:07] Commissioner Bandy: Well, I'm possibly dating myself, but for the La Fiesta Market is, that one time, that was all one building was **[inaudible 00:16:16]** when it was the Western Auto Store?

[00:16:21] Jesus Orozco: I don't have that detailed information at this time. The-report analysis really was for the project building in question.

[00:16:31] Commissioner Molloy: Jesus, do they even have the room for the additional parking on their own property, or is it-- I'm sorry-- I was reading while you guys were kind of talking about the ownership, but from Stanislaus all the way to the other side-- What is that? On the other side of Valley is E, no, D Street?

[00:16:50] Jesus Orozco: So if you look on your screen on the alley side, just on the east side of the alley--

[00:16:55] Commissioner Molloy: But what's in a red square? Is that separate property ownership from the parking lot and Valley Food Building?

[00:17:02] Jesus Orozco: That's the--

[00:17:02] Commissioner Molloy: -or is that all one?

[00:17:03] Jesus Orozco: That's all one property.

[00:17:04] Commissioner Molloy: Okay. So--

[00:17:06] Jesus Orozco: Parking would be provided. If you're able to tell, there's somewhat of a barricaded fenced area to the rear.

[00:17:14] Commissioner Molloy: Okay.

[00:17:14] Jesus Orozco: -just to the north on the northern-

[00:17:16] Commissioner Molloy: Right.

[00:17:16] Jesus Orozco: -and western-most portion.

[00:17:17] Commissioner Molloy: Okay.

[00:17:17] Jesus Orozco: Now, the conditions do require that outdoor storage be removed and a-

[00:17:23] Commissioner Molloy: Okay.

[00:17:23] Jesus Orozco: -parking plan be submitted.

[00:17:25] Commissioner Molloy: So parking could go back there?

[00:17:27] Jesus Orozco: Correct.

[00:17:27] Commissioner Molloy: Okay. All right. Thank you.

[00:17:29] Commissioner Felker: Could you repeat what you said on the parking? They have a year to do what?

[00:17:35] Jesus Orozco: They have a year to provide additional parking as a component of approving this conditional use permit. The staff is under the impression that they are.

[00:17:56] Chairperson Bishop: Jesus, when did you take those interior pictures?

[00:18:00] Jesus Orozco: That might have been over a month ago. Possibly more.

[00:18:08] Chairperson Bishop: And do you know if North Central's been contacted to do an inspection yet?

[00:18:13] Jesus Orozco: They have.

[00:18:17] Commissioner Villar: Good question. Is there any concern about the parking spots over on the food center or Foodland site?

[00:18:28] Shannon Chaffin: If you don't mind. Hi, I'm-- in case I haven't introduced myself--my name is Shannon Chaffin. I'm with the City Attorney's Office. And with regards to the parking issue, and, Mr. Yep, if you could actually direct your comments to staff.

[00:18:41] Commissioner Villar: Okay.

[00:18:42] Shannon Chaffin: And because we do have some limitations that Mr. Yep is operating under, and we want to be able to respect that when it becomes time for public comment, period.

[00:18:50] Commissioner Villar: Okay.

[00:18:51] Shannon Chaffin: So, Mr. Yep, if you could wait to public comment, period.

[00:18:53] Chairperson Bishop: File and say you have to open up the public hearing first, before I can say anything.

[00:18:56] Shannon Chaffin: Right. Yes. Thank you.

[00:18:59] Commissioner Villar: The reason I brought up the question was because we were talking about parking spaces. Okay. But thank you. Clarification.

[00:19:08] Commissioner Nehring: Mr. Chairman, if I could add to that. If this conditional use permit is subject to the property in the red, we cannot look at anything outside of that. And anything, if we try to impose conditions of this onto adjacent property owners, that is tantamount to trespass.

[00:19:32] Chairperson Bishop: Yeah. Can the attorney comment on that?

[00:19:36] Shannon Chaffin: You can only condition within the red lines.

[00:19:40] Chairperson Bishop: And that's what I was going by, so that makes sense. Do commissioners have any more questions before we open it up? Okay. At this time, we're gonna open up for a public comment at 6:20. And any public that wants to comment, please come up to the podium. State your name and address for the record please.

[00:20:12] Shannon Chaffin: Through the Chair, if I could, please.

[00:20:14] Chairperson Bishop: Yes.

[00:20:15] Shannon Chaffin: I just wanted to highlight that typically, as some of you may know from your AB 1234 training, if you have property within 500 feet of a particular site, you're required to recuse yourself under the Fair Political Practices Commission guidelines and under state law. However, there is a very narrow exception for individual property owners speaking in their individual capacity regarding property interests that affect their property.

So Mr. Yep is here as a mister, not as a council member, or a member of the council, and he can speak to his property interest in his property as long as he identifies that he is not here as a council member, that he's here as an individual and identifies what property he's speaking to. There is a narrow exception that allows him to lawfully speak tonight and provide opinions. However, the Planning Commission can only treat him as they would any other public Commissioner. So there he can't be treated as a council member. He has to be treated as a member of the public. And so we do that to respect and to preserve Mr. Yep's narrow exception and to also protect the public interest. So I just wanted to make sure that was clear. If anybody had any questions, you can go ahead and ask them now. If not, I will turn it over to Mr. Yep.

[00:21:33] Mr. Yep: Okay. Thank you commissioners. I represent two different factions. Okay. I represent, the landowners at 382, 398, and 406 South 4th Street. Residential houses to the west of the property. So our alley abuts the property. Specifically I represent Debra Yep, Scott Yep, Kristen Yep, Diane Yep, Carolyn Yep, Carlson, Jerry Yep, Gary Yep, Sandra Lee Yep-Lubeck, as well as their children who inherited the properties that are behind the subject property.

Okay. We would ask that you deny this request for a permit or in the outside withhold approval pending litigation that's going on between the landowner of 307 and 311, based on a reciprocal parking easement that was executed in 2003. The reciprocal parking easement is based on 311 South Madera Avenue, which does not have any parking, period. Okay?

And our reasons is while the thrift store was set up 20 some odd years ago with Sanchez Supercenter, it probably had about eight different ownership groups. Okay? And so the current one now is Trini's. And what you have is you have people taking donations to fund a business, and the profit margin isn't high enough 'cause you're accepting donations that they just keep the sign.

And so what happens now is you have Trini's Thrift Store, which probably has nothing to do with Trini, but the fact that it's still upstanding, and the light probably works behind it, that's why the name is still the same. If you look at-- just as Commissioner Nehring pointed out, the red area alone, right? There's a reason why there's a fenced-in area to the west of the actual 307 building, and it's to the north of the 311 building, that gated perimeter was because people kept dumping trash, right? And then you had homeless people sleeping on mattresses, couches. The dump site just got unbearable, right? Rats.

And then at some point, who's responsible for removing the mattress? Okay? Later I'll speak as the landowner on the south of 311, right? People just dump, they don't care where the property line is. They just dump. Okay, so from the residential side, one is you get a lot of transient going up and down the alley as it is. We got tagged all the time for over 30 year period. And if you drive down the alley currently from Sunset all the way to Stanislaus, you'll notice that we have lights so bright you can read a newspaper. We don't get tagged as much. We don't get people urinating.

And the reason why there's less parking for that area is because there's a permit for a taco truck. That taco truck takes up the three front spots as well as a handicap spot. I'm surprised they haven't got written up for parking in a handicap spot. Okay, so that takes out three of the parking spots during business hours, right? So while the owner of the property at 307, right, is saying, "Hey, it's only about this red area," Right? They have a lot of overage into the property, because people are utilizing that space. There's nothing to park, so they can't park in the street, so they park somewhere else.

And that's where if you're only looking at this area in the red area, they don't have enough parking if they also have a taco truck, which has nothing to do with the resident 311, but has everything to do with they have less parking to work with. So that's where I'm at on the residential side, as far as-- you know, it brings a lot of transient, it brings a lot of dumping, right? In the past-- you know, we just kind of grin and bear it, 'cause they're our neighbor. David Joe was a great guy. That building was set up so David Joe could run Western Auto.

The parking lot next to Stanislaus was where David Joe's dad lived. When he died, they knocked the house down. They made the parking lot. Okay? They built that property line right up Western Auto for

a warehouse. It was never meant for a thrift store. It never meant conditional uses after 2000. And it was set up so that he could have something. Okay? And that's the issue, that is what rights does the person have to park in the street, to park in somebody else's parking lot and to park to the north? We're only talking about as a residence.

They don't have enough because, one, it's a dumping site, and two, they have a taco truck so that he can get extra revenue for 307 South Madera Avenue. That's why that's there, and that's why I'm here, because it creates a-- it's not just one thing, it's like five or six different things on that. So the second aspect is, I represent Jerry Yep, Gary Yep, Scott Yep, and Kristen Yep, which is the owners of 415 South Madera Avenue, known as Valley Food Super Center, as well as the parking lot to the north, which encompasses building 401, 395, and I believe the parking lot with the light post is 365 South Madera Avenue. Okay?

And supposedly in 2003, a reciprocal parking easement was set up. Okay? And it was, you can park here and I can park there. Okay? What you have now is you have the landowner at 307 saying that my reciprocal parking easement for 311 allows me to dictate all of that northern perimeter of the parking lot. I have half your parking lot. And his words to me was, I own your ass. Right? No money ever changed hands for the reciprocal parking easement. We are in litigation over that right now.

Okay. So along that wall, he decided, the landowner, which has nothing to do with the recipient here or the applicant here, parked a taco, Wetzel's Pretzel mobile food van. last Sunday and told everybody, "Nobody's gonna check you out, be down with it. You don't need a permit." He had a permit for the north side for his taco truck, but he didn't have one. So basically, you have somebody that doesn't care about the rules and regulations or how it's being monitored.

Basically, I had to wait out there at ten o'clock. The Kerman Police Department were taking care of a hit-and-run at Walmart. They couldn't show up till 12:30. Being a nice guy to the community, it took them 40 minutes to make pretzels. So they weren't out there till two o'clock, right? So that's what I have to deal with from a day-to-day basis because the landowner believes that a reciprocal parking easement gives him the right to actually redo the entire parking lot, and I have to provide handicapped parking. That's why we're in litigation.

Okay. I have to also provide a sidewalk for him. He feels that he can tell anybody that they could park in that hash-out area on the north side of the parking lot to the right next to Madera Avenue. That's where Wetzel's Pretzels is set up at. Okay? And I have to grin and bear it while everybody's smiling and saying, "Hey, don't worry about it, those 30 people that were standing in line at twelve o'clock waiting to get pretzels, how many cars was that?" 15 cars. It meant two per person. How many residents were cooking? How many people were cooking in their pretzel shop? Six. Right?

There were at least the owners of the thrift store. They probably had four people in their thrift store at that time. So I have to bear the burden of that as a tenant. We're not here to talk about my area as Kevin, Commissioner Nehring, said, but the follow-up about it is that my parking lot is so much closer to his building at 311 that I get the brunt of that side of it.

So my issue is there's pending litigation. It's not a problem to deny the application pending legal outcome. And then, as far as whether I would deny it, I would deny it outright because the focus has

changed. The ownership people have changed. The timing has changed. Right? It's not working with your neighbor, it's working with an adversary. So given that, we respectfully ask you to either deny the petition or continue it until pending litigation is over. Thank you.

[pause 00:29:43]

[00:30:02] **Shannon Chaffin:** Planning Commission, the applicant is here this evening. She does not speak English. Jesus is willing to provide translation services and, if she is willing to speak. So we need to ask her if she's willing to speak first. Yes, sir.

[00:30:15] **Commissioner Bandy:** I have one question for the staff. For all the improvements that you guys want to do to this [inaudible 00:30:28]

[00:30:38] **Jesus Orozco:** It'd be either.

[00:30:41] **Shannon Chaffin:** Both.

[00:30:41] **Jesus Orozco:** Both. Yeah.

[00:30:42] **Commissioner Bandy:** [inaudible 00:30:42] Okay. Thank you.

[00:30:57] **Commissioner Villar:** I have one question.

[00:31:00] **Shannon Chaffin:** So sorry. Do you mind if we finish public comment first, and then we can get to the questions? In that way, we can focus on it better. Thank you.

[00:31:06] **Chairperson Bishop:** Yeah. Could the applicant come to the podium, please?

[00:31:11] **Jesus Orozco:** [Spanish language]

[00:31:18] **Carmen Ceja:** [Spanish language] Carmen Ceja, [Spanish language] California.

[00:31:27] **Jesus Orozco:** [Spanish language]

[00:31:29] **Carmen Ceja:** [Spanish language]

[00:31:30] **Jesus Orozco:** Commissioner, do you have any questions of the applicant?

[00:31:33] **Chairperson Bishop:** You have any questions for the applicant?

[00:31:38] **Jesus Orozco:** [Spanish language]

[00:31:43] **Carmen Ceja:** [Spanish language]

[00:32:03] **Jesus Orozco:** I asked her if she wanted to plead her case in favor of her application. She said that she's committed to keeping the site clean or at least her portion of the site.

[00:32:24] **Commissioner Bandy:** Was she operating the site before [inaudible 00:32:28]

[00:32:31] **Jesus Orozco:** [Spanish language]

[00:32:40] **Carmen Ceja:** [Spanish language]

[00:32:49] **Jesus Orozco:** It was transferring ownership for about, in the last owner, was there for about one or two years before closing.

[00:33:01] **Carmen Ceja:** [Spanish language]

[00:33:11] **Jesus Orozco:** Ms. Ceja stating that during her time there, her tenure there, she maintained the site clean.

[00:33:19] **Carmen Ceja:** [Spanish language]

[00:33:33] **Jesus Orozco:** Ms. Ceja states that she's invested a substantial amount of money, about \$7,000, into the property, and she's actually about a month behind in her rent.

[00:33:48] **Commissioner Villar:** Can I ask a question?

[00:33:50] **Jesus Orozco:** Of course.

[00:33:52] **Commissioner Villar :** [Spanish language]

[00:34:07] **Carmen Ceja:** [Spanish language]

[00:34:15] **Commissioner Villar:** Uh, so the question was during the time that she sublease the building to, within those two, three years, was the lease under her name, and I believe she said yes.

[00:34:32] **Commissioner Nunez:** She actually stated that she came to the city to transfer whatever agreement with the operators at the time. That's what she stated. She also stated earlier that, so part of what her statement was that, during me-- again, this is what she stated, that when she said I don't understand English, but what I caught from Mr. Yep was that he's worried about the trash, you know, mattress, et cetera, and that she, you know, when she was running this store, she did her best in keeping it clean. So that was on record. So I wanna make sure that was on record. Thank you.

[00:35:09] **Jesus Orozco:** Thank you.

[00:35:17] **Chairperson Bishop:** Any other questions?

[00:35:18] **Commissioner Felker:** No questions. When did we get to discuss it?

[00:35:21] **Chairperson Bishop:** Pardon.

[00:35:22] **Commissioner Molloy:** [inaudible 00:35:22]

[00:35:24] **Commissioner Felker:** Okay.

[00:35:26] **Chairperson Bishop:** All right. Hearing no other --

[00:35:27] **Commissioner Nehring:** I have one. Okay. The applicant is not the owner, am I correct?

[00:35:34] **Jesus Orozco:** Correct.

[00:35:35] **Commissioner Nehring:** Okay. So how much of these conditions that are requiring improvements to this property outside of the area identified as 311 South Madera, outside of the yellow box, is going to be borne by her or the owner? Or is the owner expecting her to pay for all of this?

[00:36:05] Shannon Chaffin: We don't know what private arrangement that they may have, but the conditions of approval require applied to the entire property including the owner and the applicant and anybody making use of that property. So if the owner wants to be getting rental income from the property, he needs to make sure that he's in compliance with conditions of approval or the CUP can be revoked.

[00:36:29] Commissioner Nehring: And that's- I'll be brutally honest here, that's where some of my struggle is, 'cause if he's not holding up his end of the bargain, she can be on the hook for it and that causes me to pause.

[00:36:44] Commissioner Molloy: And when you say property, are you speaking of the red box?

[00:36:46] Commissioner Nehring: The red box.

[00:36:47] Commissioner Molloy: Okay. I just wanna be clear that when you say the property, we're talking the whole-- that whole square, okay.

[00:37:00] Chairperson Bishop: All right. Hearing none, we,--

[00:37:03] Jesus Orozco: [foreign language]

[00:37:07] Carmen Ceja: [foreign language]

[00:37:09] Jesus Orozco: I asked her if she had any final testimony for the commission.

[00:37:13] Chairperson Bishop: Mr. Yep has some more comment.

[00:37:15] Mr. Yep: Just, one more thing I wanted to clarify is you can put different stipulations on as, one, if the dumping gets excessive onto my property, what rights do I have? Because we're only talking about the red box. But right now, just as a flip note, when she moved in, she parked her car onto that right corner on Madera Avenue for 30 straight days. It's on bricks while she was repairing her car. I had to get, **[unintelligible 00:37:42]** to put a tow notice on there after 30 days, but I was told there's a reciprocal parking easement I can't do anything, but I had it towed anyway, right, or had the notice put on, gave her 72 hours, it was gone on the next day.

So you're gonna have the situation where there's gonna be dumping, there's gonna be excess utilize my parking, right? And so at what point do I come to the Planning Commission say, "Hey, you know, you need to revoke this." Because while that red boundary is there, they're gonna dump in the back. They're gonna put a taco truck in the front. They're never gonna meet the requirements for parking unless they use mine or argue that they own mine, right? That's why we're in litigation, right?

The reciprocal parking easement was only for 311, it was not for 307 or 305, which is the current parking lot. So 311 only has street parking. So reciprocal parking easement for supposedly half of my parking lot for three spaces in front of Madera Avenue, that's what the litigation is all about. The question is, when they dump a couch onto my property, when she parks on my property for three straight days and there could be a dead body, I can't do anything supposedly, unless I take, you know, active action. So what remedies do I have from the Planning Commission that these things will be taken care of?

We can put all these things in place, but if they dump a couch and a mattress and it's there for six days, what notices, what's code enforcement gonna do? I had a pretzel truck out there on a Sunday and said and nobody comes out here and checks anyway, so just go ahead and stay on there, nobody cares. All right, so those are things that I think that the Planning Commission should look at and say, "All right, what teeth are we gonna give this if we're gonna do it conditionally?"

She has some money, I have no trouble, I've no sympathy for her. However, her landlord is, you know, lost his liquor license 'cause he is selling to underage minors, and he blames me for it, all right? And so that's why it's not gonna be a great situation, right? And I did not turn him in, but I would have because he was selling, on three different occasions, alcohol to minors. I told him that to his face in front of the pretzel truck.

So it's not gonna get any better it's only gonna get worse. So I just need to know that if you guys decide to do this, which I said business is business, I understand that, but at the same time, you can't go outside your box. You can't go outside that and say, "We're-- it's gonna be taken care of," cause it won't be. So it's all I want to say, thank you.

[00:40:07] Chairperson Bishop: Thanks, Mr. Yep.

[00:40:09] Chairperson Bishop: Jesus, is she aware of the conditions in the CUP?

[00:40:15] Jesus Orozco: I did go over the conditions of approval with her today.

[00:40:19] Commissioner Bishop: Is staff aware of, or has staff reviewed, and this may be a question for legal, have they reviewed the cross parking, cross-access agreement?

[00:40:30] Shannon Chaffin: Yes, we went ahead and reviewed the cross-access agreement. The one thing that we do want to say that, just by way of background for the rest of the planning commissioners, there was a cross-access agreement recorded in '03 that allowed parking on either property to park on the other. Didn't have any specific limitations on it really, it was wide open. It didn't say four parking spots or five parking spots.

That was into effect and remained, as far as we know, into effect. The city recognized it in 2003 when they issued the CUP. However, since then, there has been a revocation recorded which prompted litigation between the two property owners. Now, from the city's perspective, that's a private contract dispute. So we are not opining as to whether or not it's enforceable or not enforceable. The facts are, the city did recognize it in the past. It is currently in litigation.

The parties are disputing whether or not it's valid or not. If one party wins, it could be valid. If another party wins, it may not be valid. So this puts the city in a gray area, a gray zone, and I can see that the Planning Commission has a lot of questions because we are in a gray zone as to which way we go. Our office does not make recommendations one way or another, but staff has made a recommendation based on the past use of the property. So I hope that answered your question with the reciprocal agreement. And if there was a second part, I've already forgotten it. So you'll have to bear with me.

[00:42:04] Commissioner Nehring: The second part would be, as a condition I would like to see language in the conditions that whatever the outcome of that litigation be respected. If it is denied, then it be denied, and it be clearly stated to the property owner, not only the tenants, but the owner

understands that he shall not park there and not have any access, because this goes back to the trespass I was talking about earlier.

If it's upheld, then that would be addressed here as well. But it should be stated that the cross access agreement as my familiarity with them, you can't bogart the entire property. It's a shared thing, and as Mr. Yep has stated, if he's got 30 stalls and 20 of them are being taken up for a pretzel truck, that's not of any benefit of his, his business is losing out. And that's not something that we should condone here with this body. That's part of my struggle.

[00:43:09] Shannon Chaffin: And I can see that struggle. So there are primarily two issues. How can you condition the property, what are your legal options for conditioning and how can you stop potentially negative uses on adjacent property owners? So let's go back to conditioning. It is a legal option to condition the property or at least the CUP based upon the outcome of the litigation.

So the general default rule is, is you can't deny a conditional use permit unless you have substantial evidence in order to support that. But you can condition it, and you can condition it to say something along the lines of, there's ongoing litigation. And in the event that there's a judgment or something else that is out there such that this, reciprocal property easement is not valid and they're not supposed to be parking there, then you have a certain period of time, usually 180 days to come back and to amend your CUP or stop operations. So you put a drop deadline, and then it automatically expires on its own if it happens.

On the other hand, if the court upholds the reciprocal parking agreement, then it provides for that and the CUP can continue operations. So it really leaves it up to the private parties and the courts to make the determination as to whether the reciprocal party, reciprocal easement is valid rather than all of us, because we don't have all the information and we're not judges, right? We're not sitting as the court. The-second half of your question was, well, what do we do about what we call the nuisances? What do we do about the mattresses? What do we do about Wetzel's Pretzels truck coming on here and taking into this parking lot? How can we condition it?

We're in a gray area, and I want to be clear that we can't say, no, you can't park there. We can't say, yes, you can park on the adjacent brace-- adjacent property. We can only say you have to respect the decision of whatever the court has said. But for traditional nuisances, code enforcement is available. And that is the key. Just like every single other property in the city, code enforcement is available.

And as you may know, it's complaint-driven and it requires vigilant owners to complain about certain conditions. And if you have multiple complaints about a property, they usually have multiple- more attention paid to them, shall I say, versus if you have just one person, one time claim once every decade or two. So if there are abandoned vehicles, there is a process for doing it. It may take a couple weeks, but it gets resolved, and they can be towed. If there is illegal dumping, there are processes that the city can go through to make the property owner clean up the illegal dumping that's going on.

So there are certain things that we can do through other functions of the code. I hope that answered your question. And, Jesus, did you have anything else to add about the code enforcement component?

[00:46:09] Jesus Orozco: Of course. And I know the pretzel truck was mentioned. I wanna clear that that's not a permitted mobile food truck at this time. The city does have a mobile food truck ordinance

and each mobile food truck is required to procure a permit and a business license at this time or at least when Mr. Yep mentioned that the pretzel truck was at this particular site, at this event that truck did not have a business license or a permit at that time.

[00:46:40] Commissioner Molloy: Does the property owner aware of this conversation tonight? I'm really curious why he's not here to plead his interest in this whole situation, 'cause if the conditional use permit is denied or postponed, it obviously affects him. So I'm just curious why that property owner, if they even knew we were having this conversation.

[00:47:02] Jesus Orozco: The staff did call the property owner, did provide duly notice and offered. Again, he was provided with a paper copy of the staff report in advance of the meeting.

[00:47:13] Commissioner Felker: But you're talking about the property owner be responsible for removing that mattress. What property owner? The 70 311 is gonna say it's not my problem. And then Mr. Yep is gotta--

[00:47:23] Commissioner Molloy: They're not the property owner.

[00:47:25] Commissioner Nehring: They're not the tenant.

[00:47:26] Commissioner Felker & Molloy: [crosstalk] that 311 is not the property owner.

[00:47:28] Commissioner Felker: No, but they're not responsible to pick up a mattress that somebody dropped in Mr. Yep's yard. Right. And I don't see how we can sit here and make a decision pro or against when there's a litigation going on. I would say we postpone this until they solve the parking.

[00:47:45] Shannon Chaffin: I understand your concern. However, there's something called due process, and there's also something that requires to make a decision within a certain period of time or it becomes a de facto denial. So if you do not take action, it would technically be in violation of the municipal code as it currently reads. There needs to be a decision one way or another.

However, I think your path out potentially is to condition the property on the lawsuit. In other words, you could grant the CUP, but say if it's the same use that you've had for almost the last 20 years and you're requiring three extra parking spaces, but if you lose this litigation or you have no right to this easement, your CUP dies and you can put in a condition that does that. It's not a perfect response, I think, given your conditions, but it is what is something that is lawfully allowed under the code for you to do, but--

[00:48:40] Commissioner Nehring: And that's the one that I'm suggesting, is let the condition is to recognize however the litigation works out.

[00:48:50] Shannon Chaffin: So the way that would work, if I could just kind of orally do a sample, just big picture for you. It'd basically say there's not enough parking currently on site. There was a reciprocal agreement in place previously. If the agreement was active, it would provide enough parking. However, it's in litigation and the city is not making a determination of one way or another as to whether or not it is currently in effect.

But if there's ever a court decision or let's say the property owner withdraws the litigation and an extent to, uh, extend things out, well, they only have a certain period of time to make sure that they

can show that the easement is in place. And if not, the CUP automatically expires. So that can put teeth in it and encourage the parties to move forward, both parties. So, uh, chair, I don't know if public comment is closed now, but I'm available for any question. Okay.

[00:49:46] Mr. Yep: Well, I just wanted to address that issue because I see all sides of what I really do, and the easiest thing to have done was to have them get a license to the property owner, me, right? But he chose basically to not do that. And Thomas knows that the entire process, whether it's to put a food truck on a Sunday, whether it's to rent out to a barber shop without getting different stuff, has happened to the point where I don't think it's salvageable.

But the other thing too is we have a court hearing supposedly on the 23rd of March, and if it gets on the calendar, it's gonna be a year and a half from now. And so the reciprocal parking easement that was signed in 2003 to a corporation that didn't exist by a person who's now deceased, that issue is only at 311 South Madera Avenue, which has zero parking. You have the landowner who has parking at 305, which is ample, but chose not to build it out and put a taco truck there and have parking for his 307, which recently lost his liquor license. Right? So those are the issues that you have. I don't have a problem with doing that. But you have a situation where you have a border war, where you have two factions that just don't get along. The easiest thing is to negotiate a license. He chose not to go that route, and to go litigation. And so, by rewarding that for a year and a half, because if you look online, it's the property is for sale.

And the liquor license is being held up because there's pending litigation. So you should have lost the liquor license after 90 days since there's pending litigation that's going on. There's no hope for him to do anything. Right. Because he's, basically, stopping the clock on losing the license, as well as stopping the clock on to find a buyer at a higher rate. By having a tenant, he has a revenue stream.

By redoing this property, and opening up into my parking lot, he can have four properties instead of one that opens up on Amira Avenue, at which point he's going to require that I turn on, make all my parking spots handicapped for his clients. So that's the litigation that's going down the pipeline. So I said I understand your dilemma. But understand my dilemma. I gotta wait a year and a half to find a resolution. Right?

And he's making every single excuse to have a tenant, and then bootstrap that into say, "Oh, even though it's reciprocally isn't 311, at 307, I can put a taco truck. At 307 I can park all my cars, have my Budweiser truck, my Pepsi truck, download them to your parking lot into my store because I have a taco truck on the northside property."

Right. That's what I'm having to deal with. So, please, look at that side of it because there's -- everybody's trying to run a business and everybody's trying to -- And I feel for the petitioner right here, but at the same time, you know, I'm known as "Pretzel Karen," because I said no to a pretzel truck on a Sunday afternoon, from ten o'clock until 2:00 in the afternoon.

They were selling even though they were told not to sell. And then I let him stay on because it takes 40 minutes to make a pretzel. Right now they're on the outskirts of town, like, "Give anything to anybody." So that's kind of where I'm at. Just look at that. And I understand it's not an easy dilemma, but understand it from both sides.

[00:53:24] Commissioner Nehring: If I can add one more thing to, and this is-- [crosstalk]

[00:53:28] Shannon Chaffin: Before we do, is the public hearing portion closed? I just want to--

[00:53:31] Chairperson Bishop: No. I was going to close public here right now. so we deliberate.

[00:53:33] Shannon Chaffin: Okay. Thank you. And--

[00:53:35] Chairperson Bishop: So, public hearing's closed at 6:54.

[00:53:42] Shannon Chaffin: Thank you. And the Commissioner, after you speak, if I could just make a couple of comments, if that's okay.

[00:53:46] Chairperson Bishop: Okay.

[00:53:47] Shannon Chaffin: Thank you.

[00:53:48] Commissioner Nehring: My comments that I'm about to say may be in conflict with some of legal counsel, but this has to do with my experience of what I do for a living, dealing with easements on a daily basis. When an easement, any type of easement is prescribed, it is given for a certain purpose. And cross access parking easements are, generally, for one business to enjoy the parking facilities of another property for the tenants of the first party versus the first business, for them to, for a tenant can come in and park and go to the other property.

It's not for another business to come in and park there. That's not what it's for. It's not for repair of a broken down vehicle to sit because they can say, "I'm parking a taco truck," but it's a business. You're in, there's a business. You're not there parking. You're not there to go in to the other business on the other property. You're there for a completely other purpose. You could say, "I'm parking my car while I changed the carburetor or whatever." Okay, but that's a mechanic's park. That's not parking for it to go into the other business.

So when I hear these things, and they're throwing out, "Well, I have an easement to park." Well, you're abusing the parking part. And I'm really struggling with this. This is something I see a lot. People have entitlement, "I have an easement, therefore I can do what I want." When it says a parking access easement, it means that an individual can come and park on the property to the south for the enjoyment of 311 in the yellow box. They can park. They can go in. They can leave. I doesn't mean they can do anything else. Now, that's a surveyor's interpretation. That's a planning interpretation on a county level. That may not be a legal interpretation of it, but this is what I'm seeing. We can say here that this permit is subject to the outcome of this legal action that's going to happen, but we can also say that there shall be no parking of any other things from this property on that property that are in or outside of that easement. The purpose of that easement.

Now, that's where it gets into the gray area. It gets into a really weird legal thing as to who interprets this as what, because a surveyor looks at it, and attorney looks at it, and a landowner looks at it. I guarantee you're gonna get three different opinions on that, and that's where we end up with the gray area. But that's my experience with easements, and just this is something that needs to be looked at, but it needs to be identified in these conditions somehow. Thank you.

[00:57:17] Shannon Chaffin: Through the Chair, if I may. Thank you so much, Commissioner. I appreciate it. I'm not saying you're right or wrong, I'm saying I'm not going to give a legal opinion, because it's a private agreement, but I definitely understand where you're coming from with what you're saying. So I'm not saying I disagree with you, but I can't say I agree with you either just because of that.

Let's step back just for a minute. We're in a difficult situation, which is why I'm here, right? I'm like the harbinger of doom. Whenever you see me show up, you know there's gonna be something difficult, but I'm always happy to be here. We're in a difficult situation, and we're in a bunch of "what if" scenarios. What if the easements turns out to be valid all this time? What if it doesn't? What if somebody starts moving a pretzel truck out there and starts doing stuff? What if mattresses are dumped? What if, a bunch of stuff to create public nuisances? What if?

So there's a couple of over-arching principles. I just want a list. First, we can't speculate about that. Somebody may disobey or break the law. You can't assume somebody is going to do it. Now, mind you, there's a pretty good idea you may get after a while, seeing a certain pattern of practice, but as we sit here today, we do not know, for certain, what the scope of the reciprocal easement is. We don't know, for certain, that people are going to do dumping on this property, and if they do, there are legal mechanisms in place to address that. So we can't legally speculate as to those things.

The other thing, we can't speculate as to what may happen in the property to the future. So, for example, suppose that the applicant wanted to develop this, so that there was: you access coming directly on their parking lot to the south, outside the red box and to change the use of the building, that's not what's in front of the Planning Commission tonight.

That the ABC license has now expired and is no longer in place or there may have been selling. That also is not something that we can really focus on as a ground, per se. That's what ABC does. It's an ABC license, not a city license. But there is something that you can focus on. There are four findings that you have to make under your code in order to prove or deny. And the default rule is, if you're going to deny, you have to be able to articulate substantial evidence as to why one of those four has not been made or met.

And you, as far as safety goes, for example, can't say, "Oh, it's not safe." It has not to be able to be conditioned to be safe. So if you can condition the property to be safe or to be reasonably safe under the circumstances, for example, "Oh, it doesn't have an ADA ramp, we're gonna deny the CUP." Well the solution to that is to put in a condition of approval to require an ADA ramp. That's what the law looks for is, can you condition it?

So, Commissioner Nearing, actually, brings up a good point of saying, "Well, even though we're not looking into the validity of this litigation, how can we recognize it's there? And if this easement is set aside, how do we act without having to bring it back in front of the Planning Commission?" Because the balance is, as if you are to deny it tonight based solely upon there's outside litigation going on, I don't want to orally advise you as what your chances are in the event of litigation. Let me put it that way. I'll put it in a confidential memo that is not public, but we do not advise going down that road unless you can specifically identify something else as to why it should not be approved. So my suggestion to you is, if you look at the resolution that's in your packet, and I believe that is on

Attachment A, page 12. There, under Condition Number 3, it talks about a conditional use permit, and you will see A, B, C, and D. And A is about being detrimental to public self-health safety, and welfare. B is about substantial consistency with the general plan. It looks like we've met all of that. C is about the environmental document. It looks like it's an infill documents existing building.

And then D, the site is adequate in size, shape, and location to accommodate its use. The use has been, use so similar to that it's been there since 2003. So what I'm saying is from a court's perspective, if this were to end up in court, you'd have to be able to justify why we're not granting a CUP now versus why we did it in 2003 under the identical circumstances. The only difference here is, is now there's a dispute about the easement.

So maybe the solution and, again, I'm not making a recommendation one way or another I'm not a policy. I don't have the heavy load that you do. But maybe the solution is to recognize that the litigation is out there, and put in a condition that automatically makes the CUP expire, if Mr. Yep prevails or Mr. Abud does not move forward on the litigation after a certain period of time. And so it puts an automatic trigger in. Is it a perfect solution? It is not, but we are not in a perfect circumstance. So that's just from a legal perspective one way to approach it. Thank you.

[01:02:50] Commissioner Villar: I have a couple of concerns. The first one is, if I understand correctly, the dispute is between Mr. Yep and the actual business owner of this property. Her being a leaser of this property, therefore, the issue of the lawsuit does not impact her. It impacts her, but it's not directly in line with her. It's with the actual property owner. Correct? That's concern number one.

Number two is, we have a Spanish speaking individual in the audience. And from my experience as a former educator, we have been talking about the situation, but there is a lack of understanding and/or there's a language issue here that I don't know if we are bridging for the applicant currently. So from a legal standpoint, is that something that we would have an issue on in the future, if there is a denial?

[01:04:03] Shannon Chaffin: It would be better to have translation services, though now that the public hearing has been closed, there's no right to public comment. So, the statements that are going now, would it be best to have a translator? Yes. Is it fatal? Not necessarily, but it is something to consider.

[01:04:26] Commissioner Villar: Thank you.

[01:04:32] Chairperson Bishop: Anybody else have any questions, comments?

[01:04:35] Commissioner Molloy: Mine's more of a comment than a question, but on page 12, when you look at the Conditional Use Permit 3A and we talk about "the proposed establishment maintenance operation of the use applied for and not be detrimental to the public health, safety and welfare the person's residing or working, in the neighborhood," et cetera-et cetera. I'm going back to that whole area to the west of the building.

I guess the Southwest, I've seen the issues that Mr. Yep is addressing when it comes to the dumping situations and that alley and how the concerns there are very valid. And I feel like that's an area where we might wanna, individually, as Commissioners, take a look at that real seriously as the possibility of

the possible reason for denial if we're leading that way. The other three look pretty square to me, but I'm concerned about the health and safety of that area.

[01:05:43] Jesus Orozco: Commissioner, one possible solution to address that or at least keep in mind that there's some safety. You may consider adding a condition, that states, "The applicant and or property owner shall install cameras if that is a concern."

[01:06:05] Commissioner Molloy: The other concern that I had too, was the monitoring and the enforcement of these conditions that are gonna be put into place. And, [sighs] I guess that, you know, even as we look at it now, the food trucks and the parking and the mattresses and all the other things that have been cited, litigation out of the picture, the fact that these things are having to be enforced due to the practices and the history of that commercial- of that property owner is something else that concerns me.

It's something that's gonna be a nuisance and a drain on public tax dollars by having to have these things consistently enforced and people always be over there, and, you know, the officers having to address things in that situation. And so these are just some of the things that are kind of going through in my mind as we're considering.

[01:07:11] Commissioner Nunez: [silence] So I'm gonna add, to what, Commissioner Villar said. I think I have been struggling more with the lack of translation to be fair to the applicant than I'm struggling with anything else. I should have spoken up earlier. I think that, for me to vote tonight with the applicant, you know, herself not really understanding any of our conversation, I think is a bigger issue for me than anything else on the table, if we're talking about fairness to everyone in the audience.

So I do have to put that on record because I'm struggling with it. I think it was probably about 10 minutes before Victor said something that's where my mind went, and I really couldn't think about the facts of the conditional use permit itself because of that.

[01:07:51] Shannon Chaffin: Commissioner, if I may, it is a legal option for you, continue this to the next meeting to allow for an opportunity for the recording of this to be translated for the--

[01:08:00] Commissioner Felker: An option

[01:08:01] Shannon Chaffin: That is an option. Yes, recommending, and I'm just saying it's one of your options.

[01:08:07] Commissioner Felker: You know, I get the feeling you want us to approve this, and then you want us to decline it a year from now because they didn't come through with the parking. And I think if the owner would've been here and told me he was gonna open a sliding door on the northwest corner of that, and put parking behind the other market and make it more usable, not having to be dumping stuff in the parking lot, I might have gone along with this.

But right now, I don't see doing anything, unless-- and I don't see any place where they could put parking to solve the problem. So to give them a year to come up with a problem, to solve a problem that I don't think can be solved, they could. They could do that, but they need a door over here on the back corner.

[01:08:46] Commissioner Molloy: I think a lot of the dumping, Bob-

[01:08:49] Commissioner Felker: Mm-hmm.

[01:08:49] Commissioner Molloy: -A lot of the dumping comes from the donors going to leave the things that they'd like to donate to the business and not wanting to do it during business hours. And so they just take it back and they dump it.

[01:09:00] Commissioner Felker: Right.

[01:09:00] Commissioner Molloy: -And they, you know, leave it to them to clean up. Whether, if they want it, they can have it; if not, throw it in the dumpster. So, I don't know that that is -that's not something that applicant or the property owner can control, but it's still an issue, because people think, "Well, I'm just gonna go leave this for them," and then it becomes a big mess.

[01:09:16] Commissioner Nehring: What all this come down to, though, ultimately, is [clears throat] the four findings which have been found. Okay? We have the issues of the "what ifs." What if the trash, what if the parking, what if, what if, what if, including the one with the language barrier. Those are not things we can look at. We can look at the findings, which say it should be met.

The only thing we can do is condition any concerns that we have. The condition with the parking has been- will be met with addressing the litigation. The issue with the trash pickup is in the condition here that they shall be clean. All this other stuff is just rhetoric that we're doing. So, I would make a motion that we accepted as is, plus put the language in there as suggested by Council that we identify and accept whatever the legal ramifications are of this lawsuit.

[01:10:10] Commissioner Molloy: And I guess that's the question I have too, is how do we amend this permit, this our conditions to add in some of the things that we're concerned about?

[01:10:21] Shannon Chaffin: That's a very good question.

[01:10:22] Chairperson Bishop: She just did.

[01:10:23] Shannon Chaffin: Technically, you can do it orally. The other option is, I do have some language here, that I've written up, for if you want to do it orally. The other option is just say, "Here's what we want staff 1, 2, 3, 4, come back to the next meeting with a resolution that does that.

[01:10:36] Commissioner Felker: Yeah. Let's do that.

[01:10:38] Shannon Chaffin: And then that is an option as well, or you can do it orally. It's up to you all.

[01:10:43] Chairperson Bishop: So-

[01:10:42] Commissioner Nehring: All right. A legal writing of that's probably better than my oral dissertation.

[01:10:47] Shannon Chaffin: So is your motion then, just so I'm clear, your motion is to approve the project with the condition that it will automatically sunset-

[01:10:55] Commissioner Nehring: And recognize the lawsuit.

[01:10:55] Shannon Chaffin: -and recognize the lawsuit and come back with the resolution with draft conditions of approval that reflects that for final consideration and Planning Commission at the next meeting?

[01:11:04] Commissioner Nehring: Yeah.

[01:11:05] Commissioner Molloy: So that our motion that we would be voting on would be to revise the conditional, and then come back and approve that later? Okay. I just wanna make sure we're motioning on the revision.

[01:11:18] Shannon Chaffin: Trust an attorney to make it complicated and trust an attorney to make you confused to whether or not he's--

[01:11:23] Commissioner Molloy: Well, no. I'm not overly confused. I just wanna make sure that we're not voting on the CUP tonight. We're voting on revising the CUP tonight.

[01:11:29] Shannon Chaffin: Yes. You're voting on-

[01:11:30] Chairperson Bishop: That's correct.

[01:11:31] Shannon Chaffin: -revising the conditions of approval.

[01:11:32] Commissioner Molloy: Thank You.

[01:11:32] Shannon Chaffin: So right now it's--

[01:11:33] Chairperson Bishop: We're gonna add another condition that we'll reflect the outcome of the litigation,

[01:11:37] Commissioner Molloy: And we'll look at that the next time we come back, so--

[01:11:38] Chairperson Bishop: And we'll go look at the language next.

[01:11:40] Commissioner Molloy: That's--

[01:11:40] Shannon Chaffin: That's the motion--

[01:11:41] Commissioner Molloy: -that makes me feel better.

[01:11:42] Commissioner Vilalr: Can we pause for just a second so we can actually be fair to the applicant, and so that we can explain it.

[01:11:48] Chairperson Bishop: And also, let me-- I would like to add is get her translation of what transpired tonight too for next month.

[01:11:55] Commissioner Villar: Jesús, would you like to do, it or would you like me to do it?

[01:12:06] Commissioner Felker: I don't believe it's her that we need to be talking to. The owner.

[01:12:09] Commissioner Molloy: The owner. We need to make sure that she understands what's happening.

[01:12:13] Chairperson Bishop: Can you require the actual property owner to be here?

[01:12:17] **Shannon Chaffin:** I do not have that authority. Sorry.

[01:12:20] **Chairperson Bishop:** It's why I proposed the question.

[01:12:23] **Commissioner Villar:** Do you want to explain to her, or do you want me to do it? I can do either one--

[01:12:27] **Jesus Orozco:** You prefer. Okay.

[01:12:29] **Commissioner Villar:** Okay. So. [Spanish language]

[01:12:31] **Commissioner Villar :** [Spanish language]

[01:13:49] **John:** [Spanish language] So she's referencing the original document that the property owner shared with her, but, obviously, I'm letting her know what's in litigation, what's in question. So [Spanish language].

[01:14:26] **Carmen Ceja:** [Spanish language]

[01:14:27] **Commissioner Nunez:** [Spanish language].

[01:14:33] **Carmen Ceja:** [Spanish language]

[01:14:39] **Commissioner Nunez:** [Spanish language]

[01:14:41] **Carmen Ceja:** [Spanish language]

[01:14:52] **Commissioner Nunez:** And she's basically pleading to expedite the process here or a quick decision on our end. But I let her know that we're not here to give her an opinion, you know, because she's sharing how much he's charging her for rent, et cetera, but that's not for us to be discussed right now.

[01:15:08] **Carmen Ceja:** [Spanish language]

[01:15:15] **Commissioner Villar:** [Spanish language]

[01:15:41] **Carmen Ceja:** [Spanish language]

[01:15:44] **Commissioner Villar:** [Spanish language].

[01:15:45] **Commissioner Nunez:** And Victor is just explaining that we also advocated for a translator for her for the next meeting.

[01:15:51] **Chairperson Bishop:** Okay. So we have a motion on the floor to --

[01:15:54] **Commissioner Bandy:** I have one question real quick on your Executive Summary. You have that. Ms. Zehof. She is the applicant on behalf of the property owner?

[01:16:09] **Jesus Orozco:** Correct. So, typically, when there's you know, development applications require that the property owner authorize the applicant to submit on his or her behalf. It's a fairly short and simple, statement, but basically the applicant has authorized her to submit the application.

[01:16:31] Commissioner Bandy: So, seeing this out for you one more meaning, do you have a list of things that are expected of him for the parking **[unintelligible 01:16:48]** they have to put in a fire, they're asking possible fire hydrant from the property?

[01:16:53] Jesus: I'm not sure about a fire hydrant, but they do need to comply with any North Central fire requirements. And again, those should be fairly simple, making sure that there's no exposed outlets, and things of that nature. Making sure that they have a fire extinguisher and so forth, all emergency exits are properly labeled.

[01:17:18] Commissioner Nehring: Bob, well, Number 14 on page 17 it says, "Requirements for this project may include but are not limited to the following, water flow requirements, road access, fire hydrants, premises identification, and CFPD ordinance." That's just saying-- that's a standard boiler plate that the Fire Department would put in and they're just saying, "We need to make sure that if any of this is missing, it needs to be taken care of," but they're not identifying any of the things that are lacking at this time. They're just saying, "Make it fire safe."

[01:17:49] Jesus: That is correct.

[01:17:52] Commissioner Felker: I feel all these requirements should have been met already and brought to us without wasting our time to come back and do it again. And once you permit them to move in, and they don't have a violation, it's gonna be heck, getting them out. And our code enforcement is pathetic 'cause they're never there when you need them. I don't know why we can't make the Police Department code enforcers too, so that when we have somebody move in in the middle of the night and try to sell something in where they're not supposed to, they can be taken care of?

[01:18:21] Commissioner Nunez: I'm gonna second Kevin's motion, because I think that was a good summary. You capture the legality aspect of the conversation tonight. So I'm gonna base it on that, that, Kevin, basically, what the logical step is for us, which is to act those additional or the additional verbiage for the conditions and then decide based on whether or not we agree as a body based on those written additional conditions, I guess, if that's what we call them. So, I'll second it.

[01:18:53] Chairperson Bishop: All right. So we have a motion and a second to add additional condition to the CUP to, depending on the outcome and litigation and then also table this. We look at the language next month.

[01:19:11] Shannon Chaffin: It'll be continued to the next regular meeting and staff is directed to come back with the resolution consistent with the Planning Commission's direction for final approval at that time. So you can still change your mind at any time if needed.

[01:19:25] Commissioner Felker: Is this gonna be a roll call vote?

[01:19:28] Shannon Chaffin: It's up to the Chair of the majority of the Planning Commission. It's up to you.

[01:19:30] Commissioner Molloy: Wow, here's a **[unintelligible 01:19:31]**.

[01:19:32] Chairperson Bishop: Yeah. So, that being said, any other discussion? Or should you just do a -- I'm gonna ask for a roll call vote, even though we probably don't need to on the motion to-- on the additional condition and-

[01:19:49] Commissioner Nehring: Table it for next meeting.

[01:19:49] Chairperson Bishop: -Table it to the next meeting. Continue into the next meeting.

[01:19:59] Clerk Mabel Martinez: Rollcall . Commissioner Villar?

[01:20:01] Commissioner Villar: Yes.

[01:20:02] Clerk Mabel Martinez: Commissioner Nehring?

[01:20:03] Commissioner Nehring: Yes.

[01:20:04] Clerk Mabel Martinez: Commissioner Nunez?

[01:20:05] Commissioner Nunez: Yes.

[01:20:06] Clerk Mabel Martinez: Commissioner Felker?

[01:20:07] Commissioner Felker: No.

[01:20:09] Clerk Mabel Martinez: Commissioner Molloy?

[01:20:10] Commissioner Molloy: Yes.

[01:20:11] Clerk Mabel Martinez: Vice-Chairperson, Bandy?

[01:20:14] Vice-Chairperson Bandy: No.

[01:20:16] Clerk Mabel Martinez: And Chairperson Bishop?

[01:20:17] Chairperson Bishop: Yes. So motion carries to the table at next meeting by vote of-- 5-2?

[01:20:24] Clerk Mabel Martinez: Five to two.

[01:20:26] Chairperson Bishop: All right.

[01:20:26] Mr. Yep: I wanna thank the Commissioners for their thought and the deliberation. I had one question for legal though. Since this was a public hearing that's been closed and there were some people that weren't here in attendance, if they come back with their suggestions, is that possible during public comment or is everything--?

[01:20:43] Shannon Chaffin: Chair if I may?

[01:20:45] Chairperson Bishop: Yes.

[01:20:45] Shannon Chaffin: Okay. Thank you. The public hearing was closed, and it, typically, remains closed. However, the Chair has the option of reopening the public hearing if he so chooses, or a majority of the Planning Commission has the option of reopening the public hearing.

[01:21:02] Mr. Yep: Okay.

[01:21:03] Shannon Chaffin: Thank you.

[01:21:03] Mr. Yep: Yeah, my main issue, were some people that didn't know the notice was for tonight, so it goes both ways. And so it was carried over until this meeting. The one issue that I would think that people would wanna bring up is that, how many times are the cops gonna come out before you can pull the CUP? If so, if we can get that put into the language and discuss the next time, I would appreciate it. Thank you guys.
