

**CALISTOGA PLANNING COMMISSION
MINUTE EXCERPT
JULY 23, 2008**

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A. ROLL CALL

Present: Chairman Jeff Manfredi, Commissioners Carol Bush, Paul Coates and Nicholas Kite. **Absent:** Vice-Chairman Clayton Creager. **Staff:** Charlene Gallina, Planning and Building Director, Erik Lundquist, Associate Planner and Kathleen Guill, Planning Commission Secretary. **Absent:** Ken MacNab, Senior Planner.

H. PUBLIC HEARING

1. A 2008-01. Consideration of an Appeal of the Planning and Building Director's determination that the business, Santa Fe West, is an allowed use not requiring a conditional use permit at 1421 Lincoln Avenue (APN 011-205-008) within the "DC," Downtown Commercial, zoning district. The Appellant claims that the business is a formula business as that term is defined in Section 17.04.132 of the Calistoga Municipal Code (CMC) and, therefore, should require a conditional use permit prior to operations per Section 17.22.040(B)(10) CMC.

Commissioner Bush announced for the record that a person or persons had used her name without her permission or knowledge to obtain and encourage people to sign the petition related to this appeal. She then recused herself from discussion due to potential conflict of interest.

Planner Lundquist provided an overview reporting the applicant Sam Jabar came in the office in early May and explained the details of his business, demographics, and marketing, and asked questions of licensing and definition of formula business. Businesses within the definition for formula business need a use permit application. This business does not meet the criteria as a formula business, although the owner is the sole proprietor and does own other businesses. He referenced the Staff Report, Page 2 of 4, starting at line 41, summarizing the definition of formula business criteria and provided review of the business name, presentation features and historic record, and noted this business was not within compliance of the formula standards. Planner Lundquist reported after issue of the business license we did receive an appeal; and in response the respective tenant provided documentation. Planner Lundquist advised that Staff recommendation is to deny the appeal and uphold the decision by the Planning and Building Director.

Chairman Manfredi introduced Ben Winig, City Attorney. Chairman Manfredi reported for the record a previous meeting with Mr. Pellerin, the appellant and wanted to clarify this discussion is only about formula business and shall not be about too many jewelry shops, dress shops, etc.

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Commissioner Kite also announced that Mr. Pellerin had also telephoned him and he asked about the process. Commissioner Kite advised he would not give him specifics but would listen to the case.

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Commissioner Coates reported contact and meeting with Mr. Pellerin and he had advised and encouraged him to submit his argument in writing to staff.

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Vince Pellerin, 1407 Lincoln Ave., stated as the appellant he disagreed with staff's recommendation, reporting submittal of signed petitions with over 100 signatures in opposition. He reported in his opinion the proposed use clearly falls under formula business. His opinion was contrary to staff's opinion that the intent applied only to a franchise. The narrow definition excludes corporate so all one has to do is come to town and change the name of their business. He stated there are stores that may not be listed but they are consciously recognizable. He read aloud the definition: "Formula Business" shall mean a business or use which by contractual or other arrangement, established or recognized business practice, or membership affiliation, maintains any of the following. He then examined one of the definitions related to consumer branding which establishes a corporate identify.

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Vince Pellerin stated this particular applicant uses consumer branding by utilizing an emphasized appearance suggestive of the American Southwest, and to a great extent offers the same menu of merchandise made in the Southwestern United States, and to a great extent uses the same vendors and artists in each store; and is also known to use the same fixtures and décor in each store, which includes making the appearance of their window displays as identical as possible. Mr. Pellerin stated there are many references within the General Plan to Calistoga's unique small town character and part of that is by not having formula business. It states we are to enhance small town character and formula business does not accomplish that. He reported that policies are necessary to maintain the downtown and this is a key component. He urged the applicant be required to go through the Use Permit application process and that appropriate findings must be made. In conclusion he stated that Santé Fe West is not unique, nor independent, nor a single location. He requested the Commission consider and find the proposed business is a formula business.

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Jim Rose, 1488 Fairway Vista, Attorney at law representing Mr. Pellerin shared concern that the City has stated we do not want formula business, but the Staff presentation focused on the name of the business, and if it was a franchise. This is not the criteria, the Ordinance states if only one of the stated criteria is found you can find the business is a formula business. We are saying the criteria item C and F would apply (reference Ordinance No. 567 Page 2 of 5. Mr. Jabar is not opening a tire store, restaurant, etc.; he is opening an Indian Jewelry store. He further reminded they are not saying the City should deny the business, however

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88 the applicant should file a conditional use permit application to do business so a
89 determination can be made. The City needs to take a closer look and the
90 applicant has to answer one question, is this a single location business.

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92 **Missy Haswell**, Tubbs Lane stated she has seen a significant change in the
93 valley, but the good change is there has been no huge change in the small quaint
94 town of Calistoga. She stated she is opposed to a chain store in our town,
95 besides the fact the town cannot support the three stores of the same type.

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97 **George Homenko** reported renting the same Lincoln storefront site from Bruce
98 Dill, as Evans Designs. However in 2008 Evans dissolved and they have
99 recently signed an agreement to provide glass art and wall art to this completely
100 new business plan. He reported Candace Gable will be the new Santé Fe West
101 Store Manager and will be responsible for selecting the ware. He reported to
102 Evans Glass this outlet is critical for survival. This is a unique store, and he is
103 hopeful the store will promote more of their glass with the new marketing plan.

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105 **Sam Jabar**, owner of Santé Fe West, stated he was a little in shock this hearing
106 was taking place because they haven't even opened yet. Everything the
107 appellant has stated is personal speculation painting him to be Indian Jewelry
108 mogul and comparing his business to other franchises. He reported they are not
109 opening another "like" store and just changing the name. He reported he had
110 done his homework by speaking to City Staff multiple times regarding formula
111 business, to determine if they were considered a formula business and gave a
112 brief overview of his other businesses. He noted they allowed Mr. Pellerin to
113 take photos of his other stores, and noted there are no logo's, trademarks, or
114 uniforms. Mr. Jabar stated this store is unique to Calistoga; the interior décor will
115 be unique to the historic building and will incorporate a majority of Tony Evans
116 glassware, which has been sold at this location for approximately fifteen years.
117 He will also display a combination of precious, semi precious and Indian
118 handmade jewelry that will not be specific to any artist. In conclusion he reported
119 they had completed everything that was required of them and Staff had
120 concurred they were not a formula business. He requested the Commission
121 please uphold the Planning Departments decision.

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123 **Candace Gabel** reported she has been hired as the new manager because of
124 her knowledge in glassware as she had worked as Evans Designs for fifteen
125 years or so. The store will be totally different from other stores owned by Mr.
126 Jabar and will offer a lot of unique things.

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128 **Chairman Manfredi** closed the public portion of the hearing at 6:31 PM, and
129 asked if Legal Council had any advice.

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131 **Ben Winig** stated the Commission must consider the evidence and make a
132 determination.

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Commissioner Kite suggested they should think of the intent of ordinance and what the City is trying to achieve rather than legalistic terms. The description suggests it must enhance the Calistoga brand; it should contribute to making it better, more attractive and a nice place to live and visit. The question is when does a business stop enhancing, so this is potentially tricky. At what point could a same sort of store potentially be a detraction from the Calistoga brand. The described concern is this store is formula as identified in the ordinance page 2 of 5, starting on line 19, items e. and f. as similar, and he was inclined to suggest maybe this is not. Consideration when listening to the owner suggests he is not intending to make this like the other stores.

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Commissioner Coates stated we do not want to restrain a trade, but at the same time we do not want to weaken the ordinance that protects the community. It is possible if sales are not quite right that the store would not evolve into something the same as his other stores. Where is the assurance? He asked Mr. Jabar if there was a reason he did not want to get a Use Permit and go through a hearing process.

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Mr. Jabar stated they had followed the guidelines and had processed their business license as required by the Planning Department. They did not feel they should now be required to go through a process that does not generally apply to new business of this type. Time is valuable and costly.

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Commissioner Coates stated he could easily see how this business could evolve and be like their other stores, but at the same time he did not want to see restraint of trade.

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Mr. Jabar reiterated they did not feel their business is a formula business. He reported hiring of an interior decorator to design this store without any knowledge of his other businesses design, however stores do generally have jewelry cases, shelves, etc. He reported Mr. Pellerin concluded this is another store with a different name. He reported he also has consulted with attorneys but didn't feel the need to bring an attorney because he had worked with the City already. He reported they have a good reputation and have gone through the process in Saint Helena, and they determined they were not a formula business. There was a successful glass business in the same location the last 15 years. He stated he is not littering Napa County with the same exact stores and feels he is being penalized just for being an entrepreneur.

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Director Gallina reminded as with any retail business in Calistoga if the business were to change and redirect efforts toward a formula business a code enforcement would be initiated.

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177 **Ben Winig** provided an example noting if a roof line were approved at 20' and
178 someone builds one higher, then there would be a code enforcement action
179 initiated. This is the same, if violations were to exist then the business would not
180 be in compliance and there is a remedy/ mechanism to address that situation.

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182 Discussion commenced including note of the following:

183 • Signatures have been obtained suggesting the community would strongly
184 urge the applicant to go through the Use Permit process and show this will be a
185 unique store

186 • An application would require a minimum \$1500.00 developer deposit and
187 there is a lengthy list of projects scheduled for upcoming agendas, so there was
188 concern of potential cost and time involved for processing.

189 • There was question if the retail is primarily selling glass, why name it "Santé
190 Fe West".

191 • There was a reminder that Copperfield Books was not the ruination of
192 Calistoga, and competition can help business.

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194 **Chairman Manfredi** asked if they had to find this as a formula business to
195 require a use permit or was there a mechanism to require a design review.

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197 **Planner Lundquist** reported a design review would be triggered if there was an
198 alteration to the exterior building and/or for signage. Or, initiation of a conditional
199 use permit could also trigger design review. Otherwise a determination as a
200 Formula Business would be needed.

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202 **Mr. Jabar** stated the correlation of the name "Santé Fe" is because it is an
203 amazing art community and the name reminded him of art.

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205 **Chairman Manfredi** noted although it is a great inconvenience he would like to
206 see the interior of the store before he makes a determination. Noting he does
207 not trust the mechanism of code enforcement because it is extremely difficult to
208 change something that already exists.

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210 **Mr. Jabar** stated he would be embarrassed to have to come back, and he did not
211 have all their phone numbers to call them nor the support of community, because
212 he does not know them. If the Commission was proposing they may do a
213 "switcharoo". He reported "that is not who I am". As a businesses man you don't
214 say you will open a hamburger restaurant and then post a sign "In and Out
215 Burger".

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217 **Director Gallina** suggested this item could be continued and the staff could
218 obtain a floor plan or photo's as evidence to support the business should not be
219 considered a formula business.

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221 **Mr. Jabar** suggested we could set another meeting and invite all parties to come
222 to take a look at the retail business; they planned to open within the next week.

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224 **Ben Winig** reported the Commission could allow the item to continue and come
225 back on a designated date.

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227 **Director Gallina** reported the next regular scheduled meeting is August 13.

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229 **Commissioner Coates** questioned if Mr. Pellerin would gain some comfort level
230 if evidence reflects this will be a different business.

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232 **Mr. Pellerin** stated he has no objection with a glass store, however he basically
233 finds it difficult to believe the owner is not putting in the glass to escape the
234 formula business designation.

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236 **Jim Rose** noted hearing all the heartfelt requests, but as a business man the
237 market force could move a business owner to return to the known proven
238 marketing practices of his other business.

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240 **Chairman Manfredi** reminded the question is not what they sell, the question is,
241 is this a formula business. If it is determined the glassware isn't working, then he
242 can change his merchandise. There is a great deal of faith with regulations. The
243 concern is with the interior of that store and if it looks like the one in Saint Helena
244 or another, the determination will be it is a formula business. If the interior is
245 substantially different then it is not.

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247 **Planner Lundquist** stated when identifying a formula business you may
248 recognize a business name, standardized services and/or the pattern of travel
249 within a store.

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251 **Commissioner Kite** suggested there is not enough evidence to determine this is
252 a formula business. The applicant has declined a voluntary conditional use
253 permit. So there is a need to see what the interior of the store does look like and
254 make a determination on the additional evidence based on the interior.

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256 There was discussion on the cost to the appellant if this item is continued. It was
257 reported the appellant currently has an active developer deposit account, which
258 included an initial deposit to fund staff time for research of the appeal, if
259 continued the appellant will have afford the charges for the preparation of
260 another staff report, and if elevated to the City Council he has to pay for legal
261 noticing and additional staff time.

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263 **Ben Winig** sensed the Commission required additional evidence to make a
264 decision and noted it was not required to seek a waiver from the appellant to
265 continue the item.

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Chairman Manfredi suggested continuing the item to the next meeting, and taking a tour of the business to assist in making a determination by judging by the look of the interior to see if it resembles his other stores.

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Commissioner Kite clarified the photo's of the other stores suggest they are quite similar. The Commission is looking for a display that could in no way be confused with one of the other stores and is visually distinct.

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Mr. Jabar thanked the Commission and Staff for their consideration.

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Chairman Manfredi motioned to continue the Appeal item to the next regular meeting of August 13, 2008 and directed a tour of the site to determine if it is a formula business to compare the look of the store for similarity to other stores be included on the agenda for the same meeting. Motion seconded by

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Commissioner Kite. Motion carried: 3-0-1-1.

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Kathleen Guill,

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Secretary to the Planning Commission

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