

**CITY OF CALISTOGA
PLANNING COMMISSION
REGULAR MEETING MINUTES**

Wednesday, July 23, 2008
5:30 PM
Calistoga Community Center
1307 Washington St., Calistoga, CA

Chairman Jeff Manfredi
Vice- Chairman Clayton Creager
Commissioner Carol Bush
Commissioner Paul Coates
Commissioner Nicholas Kite

“California Courts have consistently upheld that development is a privilege, not a right.”

Among the most cited cases for this proposition are Associated Home Builders, Inc. v. City of Walnut Creek, 4 Cal.3d633 (1971) (no right to subdivide), and Trent Meredith, Inc. v. City of Oxnard, 114 Cal. App. 3d 317 (1981) (development is a privilege).

1 **Chairman Manfredi** called the meeting to order at 5:37 PM.

2
3 **A. ROLL CALL**

4 **Present:** Chairman Jeff Manfredi, Commissioners Carol Bush, Paul Coates and Nicholas Kite.

5 **Absent:** Vice-Chairman Clayton Creager. **Staff:** Charlene Gallina, Planning and Building
6 Director, Erik Lundquist, Associate Planner and Kathleen Guill, Planning Commission Secretary.

7 **Absent:** Ken MacNab, Senior Planner.

8
9 **B. SALUTE TO THE FLAG**

10
11 **C. PUBLIC COMMENTS**

12
13 **D. ADOPTION OF MEETING AGENDA**

14
15 There was discussion about adjusting the agenda to hear Agenda Item I-1 A 2008-01.
16 Consideration of an Appeal prior to H. New Business. However, in anticipation of the late arrival
17 of Vice-Chairman Creager the Commissioners concurred the agenda would remain as presented.

18
19 There was motion by **Commissioner Kite**, seconded by **Commissioner Coates** to adopt the
20 Agenda as presented. **Motion carried: 4-0-1-0.**

21
22 **E. CONSENT CALENDAR**

23
24 1. Planning Commission Minutes of the regular meeting of July 09, 2008

25
26 There was motion by **Commissioner Coates**, seconded by **Commissioner Kite** to approve the
27 Planning Commission Minutes of the regular meeting of July 09, 2008 as provided. **Motion**
28 **carried: 4-0-1-0.**

29
30 **F. TOUR OF INSPECTION**

31
32 **G. COMMUNICATIONS/CORRESPONDENCE**

33
34 **H. NEW BUSINESS**

35
36 1. Receive a report regarding the City's Floodplain Management regulations and a summary of
37 Flood Hazard Area mapping changes adopted by the Federal Emergency Management Agency.

38 Receive report and discuss.

39

40 **Planner Lundquist** provided background of Flood Management policies and reported adoption of
41 the Flood Management Ordinance in June of 2008, which identified the Planning and Building
42 Director as the administrator responsible for reviewing and approving development projects that
43 may occur within any area of special flood hazard and/or floodplain. Planner Lundquist described
44 two distinct Flood Management areas 1) the floodway, which is the channel; 2) the floodway
45 fringe, which is the area of the floodplain on either side of the regulatory floodway/channel. To
46 assist the Planning and Building Department in implementing floodplain regulations the Federal
47 Emergency Management Agency (FEMA) developed and produced flood insurance rate maps
48 known as FIRMS, which depict flood hazard risk areas. With support of FEMA, some revised
49 mapping was accomplished in 2003, including a levy accreditation program. He noted Calistoga
50 has an identified levy like structure located at Greenwood Avenue at the Napa River, near the
51 1500 block, however subsequently it has been de-classified as an exception.

52

53 It was reported the new DFIRMS will become effective on September 26, 2008 and the City will
54 be empowered to implement new mapping information pursuant to the existing Floodplain
55 Management Ordinance, however he noted modification to the existing Ordinance will not be
56 necessary to implement the outdated maps. This change could be considered a change in the
57 flood zone and thus could mean an increase in flood insurance for specific property owners near
58 the outskirts of streams and rivers depending on the flood zone change and when the building
59 was built. Property owners were encouraged to determine how they are affected by the map
60 changes and obtain flood insurance coverage before the effective date of the new DFIRM on
61 September 26, 2008 because it may provide an opportunity for property owners to be
62 "grandfathered" at the lower insurance rates. A local insurance provider has quoted a maximum
63 coverage of \$250,000 would incur premium rates of about \$350.

64

65 **Planner Lundquist** noted in addition the National Flood Insurance Program (NFIP) has a
66 Community rating system that can also reduce insurance rates, however the State of California
67 does not take part, and further noting Council has asked Staff look into this, for potential reduction
68 of flood insurance rates.

69

70 **Commissioner Bush** asked the reason why we have not participated in the Community Rate
71 System.

72

73 **Planner Lundquist** reported no specific reason.

74

75 **Commissioner Bush** questioned what "levy structure" meant.

76

77 **Planner Lundquist** reported aerial photos and special area details will enable persons to see
78 where a house lies for a more specific identification, verses a general vicinity map. He
79 recommended people go to the FEMA website.

80

81 **Commissioner Kite** clarified "now" is the window of opportunity for people to get reduced
82 insurance rates and questioned what Staff was doing to inform those that might be affected.

83

84 **Planner Lundquist** reported he had presented this to Council as well as this presentation to the
85 Planning Commission.

86

87 **Commissioner Kite** asked if there was some way a notice could be included with the water bills,
88 without any heavy staff effort, but it could clearly inform homeowners of an opportunity.

89
90 **Commissioner Coates** commented noting the required finished floor height in Calistoga is set at
91 two feet, but in some communities it is one foot. He questioned why the City can't reduce the
92 height to one foot.

93
94 **Planner Lundquist** reported within a reasonable time we could make a general plan amendment
95 to address that.

96
97 **Chairman Manfredi** confirmed that the flood plain area has not increased; the changes just
98 identify which specific property is physically in the flood zone.

99
100 **Planner Lundquist** agreed we can now clearly define where the flood plain lies.

101
102 **I. PUBLIC HEARING**

103
104 **1. A 2008-01.** Consideration of an Appeal of the Planning and Building Director's
105 determination that the business, Santa Fe West, is an allowed use not requiring a conditional use
106 permit at 1421 Lincoln Avenue (APN 011-205-008) within the "DC," Downtown Commercial,
107 zoning district. The Appellant claims that the business is a formula business as that term is
108 defined in Section 17.04.132 of the Calistoga Municipal Code (CMC) and, therefore, should
109 require a conditional use permit prior to operations per Section 17.22.040(B)(10) CMC.

110
111 **Commissioner Bush** announced for the record that a person or persons had used her name
112 without her permission or knowledge to obtain and encourage people to sign the petition related to
113 this appeal. She then recused herself from discussion due to potential conflict of interest.

114
115 **Planner Lundquist** provided an overview reporting the applicant Sam Jabar came in the office in
116 early May and explained the details of his business, demographics, and marketing, and asked
117 questions of licensing and definition of formula business. Businesses within the definition for
118 formula business need a use permit application. This business does not meet the criteria as a
119 formula business, although the owner is the sole proprietor and does own other businesses. He
120 referenced the Staff Report, Page 2 of 4, starting at line 41, summarizing the definition of formula
121 business criteria and provided review of the business name, presentation features and historic
122 record, and noted this business was not within compliance of the formula standards. Planner
123 Lundquist reported after issue of the business license we did receive an appeal; and in response
124 the respective tenant provided documentation. Planner Lundquist advised that Staff
125 recommendation is to deny the appeal and uphold the decision by the Planning and Building
126 Director.

127
128 **Chairman Manfredi** introduced Ben Winig, City Attorney. Chairman Manfredi reported for the
129 record a previous meeting with Mr. Pellerin, the appellant and wanted to clarify this discussion is
130 only about formula business and shall not be about too many jewelry shops, dress shops, etc.

131
132 **Commissioner Kite** also announced that Mr. Pellerin had also telephoned him and he asked
133 about the process. Commissioner Kite advised he would not give him specifics but would listen to
134 the case.

135

136 **Commissioner Coates** reported contact and meeting with Mr. Pellerin and he had advised and
137 encouraged him to submit his argument in writing to staff.
138

139 **Vince Pellerin**, 1407 Lincoln Ave., stated as the appellant he disagreed with staff's
140 recommendation, reporting submittal of signed petitions with over 100 signatures in opposition.
141 He reported in his opinion the proposed use clearly falls under formula business. His opinion was
142 contrary to staff's opinion that the intent applied only to a franchise. The narrow definition
143 excludes corporate so all one has to do is come to town and change the name of their business.
144 He stated there are stores that may not be listed but they are consciously recognizable. He read
145 aloud the definition: "Formula Business" shall mean a business or use which by contractual or
146 other arrangement, established or recognized business practice, or membership affiliation,
147 maintains any of the following. He then examined one of the definitions related to consumer
148 branding which establishes a corporate identify.
149

150 **Vince Pellerin** stated this particular applicant uses consumer branding by utilizing an emphasized
151 appearance suggestive of the American Southwest, and to a great extent offers the same menu of
152 merchandise made in the Southwestern United States, and to a great extent uses the same
153 vendors and artists in each store; and is also known to use the same fixtures and décor in each
154 store, which includes making the appearance of their window displays as identical as possible.
155 Mr. Pellerin stated there are many references within the General Plan to Calistoga's unique small
156 town character and part of that is by not having formula business. It states we are to enhance
157 small town character and formula business does not accomplish that. He reported that policies
158 are necessary to maintain the downtown and this is a key component. He urged the applicant be
159 required to go through the Use Permit application process and that appropriate findings must be
160 made. In conclusion he stated that Santé Fe West is not unique, nor independent, nor a single
161 location. He requested the Commission consider and find the proposed business is a formula
162 business.
163

164 **Jim Rose**, 1488 Fairway Vista, Attorney at law representing Mr. Pellerin shared concern that the
165 City has stated we do not want formula business, but the Staff presentation focused on the name
166 of the business, and if it was a franchise. This is not the criteria, the Ordinance states if only one
167 of the stated criteria is found you can find the business is a formula business. We are saying the
168 criteria item C and F would apply (reference Ordinance No. 567 Page 2 of 5. Mr. Jabar is not
169 opening a tire store, restaurant, etc.; he is opening an Indian Jewelry store. He further reminded
170 they are not saying the City should deny the business, however the applicant should file a
171 conditional use permit application to do business so a determination can be made. The City
172 needs to take a closer look and the applicant has to answer one question, is this a single location
173 business.
174

175 **Missy Haswell**, Tubbs Lane stated she has seen a significant change in the valley, but the good
176 change is there has been no huge change in the small quaint town of Calistoga. She stated she
177 is opposed to a chain store in our town, besides the fact the town cannot support the three stores
178 of the same type.
179

180 **George Homenko** reported renting the same Lincoln storefront site from Bruce Dill, as Evans
181 Designs. However in 2008 Evans dissolved and they have recently signed an agreement to
182 provide glass art and wall art to this completely new business plan. He reported Candace Gable
183 will be the new Santé Fe West Store Manager and will be responsible for selecting the ware. He

184 reported to Evans Glass this outlet is critical for survival. This is a unique store, and he is hopeful
185 the store will promote more of their glass with the new marketing plan.
186

187 **Sam Jabar**, owner of Santé Fe West, stated he was a little in shock this hearing was taking place
188 because they haven't even opened yet. Everything the appellant has stated is personal
189 speculation painting him to be Indian Jewelry mogul and comparing his business to other
190 franchises. He reported they are not opening another "like" store and just changing the name. He
191 reported he had done his homework by speaking to City Staff multiple times regarding formula
192 business, to determine if they were considered a formula business and gave a brief overview of
193 his other businesses. He noted they allowed Mr. Pellerin to take photos of his other stores, and
194 noted there are no logo's, trademarks, or uniforms. Mr. Jabar stated this store is unique to
195 Calistoga; the interior décor will be unique to the historic building and will incorporate a majority of
196 Tony Evans glassware, which has been sold at this location for approximately fifteen years. He
197 will also display a combination of precious, semi precious and Indian handmade jewelry that will
198 not be specific to any artist. In conclusion he reported they had completed everything that was
199 required of them and Staff had concurred they were not a formula business. He requested the
200 Commission please uphold the Planning Departments decision.
201

202 **Candace Gabel** reported she has been hired as the new manager because of her knowledge in
203 glassware as she had worked as Evans Designs for fifteen years or so. The store will be totally
204 different from other stores owned by Mr. Jabar and will offer a lot of unique things.
205

206 **Chairman Manfredi** closed the public portion of the hearing at 6:31 PM, and asked if Legal
207 Council had any advice.
208

209 **Ben Winig** stated the Commission must consider the evidence and make a determination.
210

211 **Commissioner Kite** suggested they should think of the intent of ordinance and what the City is
212 trying to achieve rather than legalistic terms. The description suggests it must enhance the
213 Calistoga brand; it should contribute to making it better, more attractive and a nice place to live
214 and visit. The question is when does a business stop enhancing, so this is potentially tricky. At
215 what point could a same sort of store potentially be a detraction from the Calistoga brand. The
216 described concern is this store is formula as identified in the ordinance page 2 of 5, starting on
217 line 19, items e. and f. as similar, and he was inclined to suggest maybe this is not. Consideration
218 when listening to the owner suggests he is not intending to make this like the other stores.
219

220 **Commissioner Coates** stated we do not want to restrain a trade, but at the same time we do not
221 want to weaken the ordinance that protects the community. It is possible if sales are not quite
222 right that the store would not evolve into something the same as his other stores. Where is the
223 assurance? He asked Mr. Jabar if there was a reason he did not want to get a Use Permit and go
224 through a hearing process.
225

226 **Mr. Jabar** stated they had followed the guidelines and had processed their business license as
227 required by the Planning Department. They did not feel they should now be required to go
228 through a process that does not generally apply to new business of this type. Time is valuable
229 and costly.
230

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

233

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

243

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

246

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

251

252 Discussion commenced including note of the following:

- 253 • Signatures have been obtained suggesting the community would strongly urge the applicant to
254 go through the Use Permit process and show this will be a unique store
- 255 • An application would require a minimum \$1500.00 developer deposit and there is a lengthy list
256 of projects scheduled for upcoming agendas, so there was concern of potential cost and time
257 involved for processing.
- 258 • There was question if the retail is primarily selling glass, why name it "Santé Fe West".
- 259 • There was a reminder that Copperfield Books was not the ruination of Calistoga, and
260 competition can help business.

261

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

264

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

268

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

271

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

275

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

281

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

284
285 **Mr. Jabar** suggested we could set another meeting and invite all parties to come to take a look at
286 the retail business; they planned to open within the next week.

287
288 **Ben Winig** reported the Commission could allow the item to continue and come back on a
289 designated date.

290
291 **Director Gallina** reported the next regular scheduled meeting is August 13.

292
293 **Commissioner Coates** questioned if Mr. Pellerin would gain some comfort level if evidence
294 reflects this will be a different business.

295
296 **Mr. Pellerin** stated he has no objection with a glass store, however he basically finds it difficult to
297 believe the owner is not putting in the glass to escape the formula business designation.

298
299 **Jim Rose** noted hearing all the heartfelt requests, but as a business man the market force could
300 move a business owner to return to the known proven marketing practices of his other business.

301
302 **Chairman Manfredi** reminded the question is not what they sell, the question is, is this a formula
303 business. If it is determined the glassware isn't working, then he can change his merchandise.
304 There is a great deal of faith with regulations. The concern is with the interior of that store and if it
305 looks like the one in Saint Helena or another, the determination will be it is a formula business. If
306 the interior is substantially different then it is not.

307
308 **Planner Lundquist** stated when identifying a formula business you may recognize a business
309 name, standardized services and/or the pattern of travel within a store.

310
311 **Commissioner Kite** suggested there is not enough evidence to determine this is a formula
312 business. The applicant has declined a voluntary conditional use permit. So there is a need to
313 see what the interior of the store does look like and make a determination on the additional
314 evidence based on the interior.

315
316 There was discussion on the cost to the appellant if this item is continued. It was reported the
317 appellant currently has an active developer deposit account, which included an initial deposit to
318 fund staff time for research of the appeal, if continued the appellant will have afford the charges
319 for the preparation of another staff report, and if elevated to the City Council he has to pay for
320 legal noticing and additional staff time.

321
322 **Ben Winig** sensed the Commission required additional evidence to make a decision and noted it
323 was not required to seek a waiver from the appellant to continue the item.

324
325 **Chairman Manfredi** suggested continuing the item to the next meeting, and taking a tour of the
326 business to assist in making a determination by judging by the look of the interior to see if it
327 resembles his other stores.

328

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

332
333 **Mr. Jabar** thanked the Commission and Staff for their consideration.

334
335 **Chairman Manfredi** motioned to continue the Appeal item to the next regular meeting of August
336 13, 2008 and directed a tour of the site to determine if it is a formula business to compare the look
337 of the store for similarity to other stores be included on the agenda for the same meeting. Motion
338 seconded by **Commissioner Kite**. **Motion carried: 3-0-1-1.**

339
340 **J. MATTERS INITIATED BY COMMISSIONERS**

341
342 **Chairman Manfredi** requested Staff get in touch with the owner of the Lincoln/Magnolia property
343 because it is getting very unkempt.

344
345 **K. DIRECTOR'S COMMENTS/PROJECT STATUS**

346
347 **Urban Design Plan**

348 **Director Gallina** reported she was pleased to announce the completion of the Draft Urban Design
349 Plan, which can now be found on the City Website, and available for purchase in the office in hard
350 copy for \$48 and/or in CD format for the amount of \$5; as well as several hard copies that are
351 available for check-out at one-week intervals. She reported public workshops would be held on
352 Thursday, August 7, and Monday, August 18, both starting at 6:00 PM here in the Community
353 Center. Formal Public Hearings should start toward the middle of September.

354
355 **Planning Commission Stipend**

356 **Director Gallina** reported the City Council adoption of a Resolution authorizing a stipend for the
357 Planning Commissioner's. She requested Commissioners determine what intervals the
358 Commissioners would want to be compensated. Payment options were monthly or quarterly. She
359 further requested confirmation for the definition of what constitutes a paid meeting.

360
361 **Commissioner Coates** suggested payment on a bi-annual basis.

362
363 **Director Gallina** reported she had spoke with the Finance Director and we are currently offering
364 monthly or quarterly.

365
366 **Chairman Manfredi** suggested monthly, with concurrence from the Commission.

367
368 **Commissioner Kite** stated he was ambivalent on the stipend, but noted we need to be real
369 careful on clarification of what constitutes a meeting.

370
371 **Director Gallina** recommended a meeting is when there is a required quorum and Minutes are
372 prepared. This does not include subcommittee appointments. The Commission concurred.

373
374 **L. ADJOURNMENT**

375
376 There was motion by Commissioner Kite, seconded by Commissioner Coates to adjourn the
377 meeting. **Motion carried: 4-0 1-0.**

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378

379 The meeting adjourned at 7:32 PM.

380

381 The next regular meeting of the Planning Commission is scheduled for Wednesday, August 13,
382 2008 at 5:30 PM

383

384

385

386

387 Kathleen Guill,

388 Secretary to the Planning Commission

389