MINUTES
SARATOGA PLANNING COMMISSION

DATE: Wednesday, October 11, 2006
PLACE: Council Chambers/Civic Theater, 13777 Fruitvale Avenue, Saratoga, CA
TYPE: Regular Meeting

Chair Rodgers called the meeting to order at 7:00 p.m. She announced that the Commission is reconvening following a Study Session held on October 10, 2006.

ROLL CALL

Present: Commissioners Cappello, Hlava, Hunter, Kundtz, Nagpal, Rodgers and Zhao
Absent: None
Staff: Director John Livingstone, Associate Planner Lata Vasudevan, Associate Planner Therese Schmidt and Assistant City Attorney Jonathan Wittwer

PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES – Regular Meeting of September 27, 2006.

Motion: Upon motion of Commissioner Nagpal, seconded by Commissioner Kundtz, the Planning Commission minutes of the regular meeting of September 27, 2006, were adopted with edits to pages 17,25, 29, 31, 32 and 35. (7-0)

ORAL COMMUNICATION

Ms. Kathleen Casey:

- Asked for an explanation of what a heritage lane is. What are the restrictions? What happens in general?
- Explained that she has a letter from the Saratoga Union School District Board of Trustees requesting additional information.
- Said that she would like to get a lot more heritage lanes going in the future through the Heritage Preservation Commission.

Commissioner Hunter asked Director John Livingstone if staff could provide Ms. Casey with a definition of what a heritage lane designation means.

Director John Livingstone replied that the Code is specific. It was amended for Austin Lane to be less specific. He said that Chapter 13 has the specific explanation of heritage lanes.

ORAL COMMUNICATIONS – PLANNING COMMISSION DIRECTION TO STAFF

Director John Livingstone recommended that the School District contact him directly.

REPORT OF POSTING AGENDA

Director John Livingstone announced that, pursuant to Government Code 54954.2, the agenda for this meeting was properly posted on October 5, 2006.

REPORT OF APPEAL RIGHTS

Chair Rodgers announced that appeals are possible for any decision made on this Agenda by filing an Appeal Application with the City Clerk within fifteen (15) calendar days of the date of the decision, pursuant to Municipal Code 15-90.050(b).

CONSENT CALENDAR

There were no Consent Calendar Items.

***

PUBLIC HEARING - ITEM NO. 1

APPLICATION #07-082 Citywide, The City of Saratoga is proposing to amend the Land Use Element, amend and combine the Open Space and Conservation Elements, and amend the General Plan Land Use Map of the City's General Plan. As part of this proposal a Negative Declaration will be considered. This item is to be continued. (Therese Schmidt)

City Attorney Jonathan Wittwer provided the staff report as follows:

- Explained that one part of the General Plan Amendment deals with 11 specific parcels. The intent is to bring the Land Use and Zoning designations into consistency.
- Added that there is now a new urgency in this action as Proposition 90 is on the ballot. It has language that could result in additional cost to the City if the 11 parcels are not dealt with by the end of the year.
- Suggested that this part of the update be agendized, as staff would like to get on path to get this completed by the end of the year. Proposition 90 will have an impact on Land Use regulatory authority.
- Said that Director John Livingstone can explain the timing to do that.
- Suggested that a discussion of the process be held since it is already on tonight's agenda.

Commissioner Nagpal asked how many General Plan Amendments are left for this year.

Director John Livingstone replied that one was used for the North Campus and there are three left.

City Attorney Jonathan Wittwer advised that the 11 parcels could be treated as one.

Commissioner Nagpal reminded that none of these 11 parcels would have an increase in intensification.

Director John Livingstone:

- Advised that staff is recommending that the 11 parcels be brought forth at the Planning Commission meeting on November 8th.
- Pointed out that at the Study Session it was said that the process could be discussed at tonight's meeting.
- Said that if the 11 parcels are agendized for November 8th, a notice will go out for that.
- Added that the Land Use Element should go to public hearing. For that, 4,000 notices will be sent out. This could be done at the November 8th meeting as well. If after testimony is taken the Commission decides it wants more discussion, the Land Use Element could be taken to another Study Session.
- Reminded that the Open Space Element was not gotten to at last evening's Study Session.

Chair Rodgers said that this is despite the fact that the Study Session ran for four hours.

Director John Livingstone:

- Suggested that the Open Space Element be advertised for an October 24th Study Session. There can be a discussion about breaking the Open Space Element out into different segments or considering all of it at the same meeting.
- Said the process for the Open Space Element could go from the Study Session on October 24th to a Planning Commission public hearing on November 8th and, if necessary, to a continuance to allow further study.
- Suggested that all parts could be advertised for November 8th with the understanding that any portion that is not ready for action could be continued. This could keep the Land Use and Open Space Elements going forward.

Chair Rodgers said this appears to be a three-part process. The first step is the 11 parcels with the corresponding Negative Declaration that could be agendized for November 8th. The public hearing for the Land Use Element and the corresponding Negative Declaration would be next. A Study Session on the Open Space Element can occur on October 24th and noticed for public hearing before the Planning Commission on November 8th with the corresponding Negative Declaration.

Director John Livingstone said that if the 11 parcels are discussed at the November 8th Planning Commission meeting the issue could be forwarded to Council at its December 20th meeting. This would meet the end of year deadline prior to the potential implementation of Proposition 90. He said that the other two Elements, the Land Use and Open Space Elements, could or could not go forward. He said even if the Open Space Element is noticed for November 8th, it could be continued to the December Planning Commission meeting or thereafter.

Commissioner Nagpal asked Director John Livingstone if there is anything substantive on the November 8th agenda.

Director John Livingstone advised that there are two items that are not very controversial.

Commissioner Hlava asked if the City is under the gun, as far as the State is concerned, with the whole General Plan Update or is it mostly just the Land Use Element.

Director John Livingstone said that there are two different concerns with the whole General Plan as a whole, one being the Attorney General's letters. He added that there might be a new Attorney General in office after the election. He said that the second part is Proposition 90 going forward that will make parts of the Update difficult to do.

Commissioner Hunter said that a new Attorney General would have so many things to get used to. She said that Saratoga's General Plan would not be a priority for a new Attorney General.

Chair Rodgers cautioned that a new Attorney General would want to get things done as soon as they can.

Commissioner Hlava:

- Said that she is ambivalent.
- Stated that she is okay with scheduling the 11 parcels for November 8th.
- Agreed that if Proposition 90 passes it would be bad. It will be very difficult for cities if it passes.
- Added that she is not opposed to having a Land Use Element public hearing and pointed out that lots was accomplished at last evening's Study Session.
- Pointed out that if a huge noticing is done, lots of people interested in the Land Use Element would also be interested in the Open Space Element.

Commissioner Nagpal said that advertising all three parts is an option. This way the public gets awareness of the process and is able to give testimony. She suggested putting all three parts on the November 8th agenda. There is always the option to continue any one of them.

Director John Livingstone reminded that at the Study Session it was the consensus of the Planning Commission to take one of the larger sites, the Abrams property, which is also known as the pumpkin patch site, out of the mix. He asked if the notification of that neighborhood should also come out?

Commissioner Hunter said that it should be pulled out because it would complicate the issue.

Commissioner Hlava agreed.

Commissioner Cappello said if so there would be no testimony from this part of the community.

Commissioner Hlava said that this testimony would come at a later time when this property is handled separately.

Commissioner Hunter said that this property (Abrams) is a huge issue for all of Saratoga.

Commissioner Cappello agreed and said he would personally like to get public testimony on it.

Commissioner Hunter:
- Said that when working on a General Plan Update it is important to get as much public input as possible.
- Stated that the City needs as many meetings as it can so that more people can participate.
- Cautioned that fewer members of the public may be available with the holiday season coming up.

Commissioner Kundtz:
- Said that he sees this as four issues. The pumpkin patch, the North Campus parcel, the Land Use Element and the Open Space Element.
- Stressed that the Commission will not get through all of these items in one night.
- Suggested that the Commission be realistic on what it calendars for November 8th.

Commissioner Zhao said that she would like to hear comments and input from the Abrams area community members.

Chair Rodgers suggested including three items on November 8th, the 11 parcels, the Land Use Element and the Open Space Element. The Abrams parcel would be handled at a later date.

Commissioner Nagpal agreed that it would be awkward to bring the Abrams property back in when the Planning Commission said to take it off.

Chair Rodgers opened the Public Hearing for Agenda Item No. 1.

Ms. Kathleen Casey:
- Thanked the Commission for its four-hour Study Session last evening.
- Explained that as she was at the School Board meeting that evening she missed the first part of this Study Session.
- Said that the process is being rushed and that a lot of people will speak out against rushing a decision.
- Said that the City should get an extension from the State.
- Expressed appreciation for the time spent by the Planning Commission.
- Cautioned that the holidays will be here and a new Council is pending.
- Stated that she wants to see pictures of the 11 sites and a draft of the proposed update on those parcels.
- Said that she saw confusion at the Study Session.
- Predicted that Jerry Brown will be the next Attorney General and he will not rush Saratoga.
- Said that many of the 11 parcels are larger and that many people like larger parcels.
- Asked that a copy of the old plan be marked up with the proposed changes.
- Stated that Saratogans are not in a rush, they really are not.

Mr. Alan Eiberson, Glen Una Drive, said that he agrees with Ms. Casey's comments. Said that this should be continued and that an Environmental Impact Report (EIR) may be required.

Commissioner Nagpal pointed out to Mr. Alan Eiberson that a public hearing is the means of getting public input, as Study Sessions are not noticed to the public.

Mr. Alan Eiberson said that more advertising can be done to advised the public of these Study Sessions and that the meeting times should also be varied to accommodate more people.

Commissioner Nagpal asked if she understands correctly that Mr. Iverson does not think that public hearings should be held.

Mr. Alan Eiberson said yes they should.

Mr. Jim Sorden, Shadow Oaks Way:
- Said that the General Plan is a very big deal.
- Added that the Abrams property is also a very big deal. It would be unwise to put that property on the agenda with anything else.

Chair Rodgers closed the Public Hearing for Agenda Item No. 1.

Chair Rodgers asked how the Commission would like to proceed.

Commissioner Nagpal:
- Said that she thinks that the 11 parcels should be set for public hearing on November 8th with the corresponding owner and neighbor notifications.
- Said that she would like to see a public discussion on the Land Use Element to collect public information. She said that this public input would give the Commission its cues on how best to proceed.
- Stated that she is on the fence on the issue of the Open Space Element as there would be a lot on the calendar for one meeting.
- Added that she would not mind scheduling the Open Space Element after a Study Session has been held.

Commissioner Hlava:
- Said she agreed with Commissioner Nagpal.
- Stressed that public testimony is needed and the process needs to be started.
- Pointed out that the Commission can take items back to a Study Session format as necessary or forward issues on to further Planning Commission public hearings.
- Stated that there are policies that should be added to the General Plan.
- Suggested that controversial things be taken out of consideration.
- Stated that there is no controversy with the 11 parcels. These are already developed properties. The only goal is matching the Land Use designation with the Zoning.
- Suggested putting off the Open Space Element and handling it separately as a public hearing item.
- Said that the 11 parcels and the Land Use Element could be handled together.

Commissioner Kundtz said that he supports the 11 parcels and the Land Use Element being considered at a public hearing on November 8th. He said that a Study Session should be set for October 24th on the Open Space Element. Based upon that Study Session, the Open Space Element could be calendared in the future. He said that the Abrams/pumpkin patch property is a separate matter.

City Attorney Jonathan Wittwer reminded that the Negative Declaration would also be included on the November 8th meeting for these items.

Commissioner Hunter:

- Said she has no problem with the 11 parcels on the November 8th Planning Commission agenda.
- Reminded that the Council appointed Land Use Update Committee resigned in protest.
- Suggested that as a result of the Study Session, they may elect to meet again and they should be given the opportunity to do so.
- Stated that she would like to hear from them if they have more opportunity to work on this.
- Pointed out that they worked on this for two years. She encouraged that amends be made to this Committee and that they be given the courtesy and opportunity to speak again.
- Said that scheduling a Study Session on the Open Space Element on October 24th is okay.

Chair Rodgers pointed out that members of the Land Use Update Committee participated actively at the Study Session.

Commissioner Cappello:

- Said that vital input was provided by the Land Use Update Committee members and it is great to have them participating.
- Stated that he felt positive about that experience.
- Said he would like to agendize all three items.
- Reminded that any part could be continued and/or go back to a Study Session.
- Suggested that it is time to take public input and broaden the input given. He would like to open it up and get broader input.
- Said if too few show up because of holiday schedules, discussion can be continued. If many show up, it would be okay to have a long meeting to 1 a.m. or later as necessary to hear from everyone.

Commissioner Zhao:

- Said that she too agrees with the 11 parcels being scheduled for hearing on November 8th.
- Said that she also thinks that the Open Space Element can be heard that evening too.
- Pointed out that since the meeting will be shortly following their Study Session on the Open Space Element, everything discussed at the Study Session will still be fresh to the Commission.
- Cautioned if not scheduled now, it will not come up until next year.

Chair Rodgers:

- Said that she supports placing the 11 parcels on the November 8th Planning Commission agenda for public hearing. This includes full noticing.
- Added that she also supports including the Land Use Element on November 8th at least to begin to get public feedback.
- Said asked about including the Open Space Element that evening.

Commissioner Hlava said that she would change her mind. She said she agreed that the issue of the Open Space Element would be fresh following the Study Session so she can support advertising the Open Space Element for November 8th.

Commissioner Nagpal said that she too could be persuaded. She supported having the Land Use Update Committee involved in the process including the ability to review the draft document.

Chair Rodgers asked staff if this is still officially a Committee.

Commissioner Hunter said that the Land Use Update Committee had asked at the Study Session for one chance to get together and suggested that they meet with Project Planner Deborah Ungo-McCormick.

Chair Rodgers asked if this would result in an additional report.

Commissioner Hunter suggested a verbal report at the November 8th public hearing.

Director John Livingstone said he has no problem with that. He advised that he had continued sending members of the Land Use Update Committee drafts and meeting information.

Commissioner Nagpal said that it was important to give them that courtesy.

Chair Rodgers said it appears the plan is to include the Open Space Element on November 8th.

Commissioner Hunter advised that she would vote against the motion because she feels that it is too ambitious an agenda and is a poor idea.

Commissioner Kundtz said that he would vote no as well. He said that many would sit for hours only to be delayed. He cannot support loading an agenda so much.

Motion: **Upon motion of Commissioner Hlava, seconded by Commissioner Cappello, the Planning Commission continued to a date certain (the Planning Commission meeting of November 8, 2006) consideration of Application #07-082 to amend the Land Use Element, amend and combine the Open Space and Conservation Elements, and amend the General Plan Land Use Map of the City's General Plan for 11 parcels with the corresponding Negative Declaration, by the following roll call vote:**
AYES: Cappello, Hlava, Nagpal, Rodgers and Zhao
NOES: Hunter and Kundtz

ABSENT: None
ABSTAIN: None

Commissioner Nagpal asked staff to send an email confirming dates.

Director John Livingstone agreed to do so.

Commissioner Zhao asked in which order these issues would be discussed. She questioned which one would take longer. She suggested that this could be better decided after the October 24th Study Session.

Director John Livingstone said that he would be happy to take direction from the Chair on order.

City Attorney Jonathan Wittwer reminded that the Commission could always re-order an agenda as it finds necessary.

Commissioner Hunter asked if the Council would hold two public hearings on this?

Director John Livingstone replied one.

Commissioner Hunter asked if Council could complete this item before the current Council leaves office?

City Attorney Jonathan Wittwer replied that it could not get before the Council before December 6th.

Director John Livingstone reminded that Council's December 6th meeting is the reorganization meeting. December 20th is the next regular Council meeting after that. He added that there is not enough noticing time to get this onto the November 15th Council agenda following the Planning Commission's meeting on November 8th.

Commissioner Nagpal said that this means that the new City Council would handle action on the 11 parcels.

Director John Livingstone replied yes. There is no way any of this can be done before the change of Council unless a Special Council meeting is scheduled.

***

PUBLIC HEARING - ITEM NO. 2

APPLICATION #07-073 (503-13-067) HO, Mount Eden Road south of Villa Oaks Lane: Request for Extension of Tentative Map approval granted by the Planning Commission on October 27, 2004. Tentative Map approval expires 24 months from this date. The applicant was granted Tentative Map approval to subdivide a 29.28-acre property into five clustered lots with an average lot size of 1.73 acres. The remaining 19.49-acre portion of the property is to

remain in open space with a pedestrian, equestrian trail winding through the open space. Access to the property is to be via a cul-de-sac, which egresses onto Mount Eden Road. An emergency access road is proposed from Vista Regina Road to the cul- de-sac. The property has a general plan designation of RHC - Hillside Conservation and is zoned HR - Hillside Residential District. This item will not be reviewed at this meeting. (Lata Vasudevan)

Associate Planner Lata Vasudevan presented the staff report as follows:

- Advised that this item must be continued to the October 25, 2006, meeting due to noticing errors.

Chair Rodgers asked if anyone was present this evening for Item No. 2.

Motion: **Upon motion of Commissioner Hlava, seconded by Commissioner Nagpal, the Planning Commission CONTINUED TO THE OCTOBER 25, 2006, PLANNING COMMISSION MEETING consideration of Application #07-073 for the Extension of a Tentative Map Approval for property located on Mount Eden Road south of Villa Oaks Lane, by the following roll call vote:**
AYES: Cappello, Hlava, Hunter, Kundtz, Nagpal, Rodgers and Zhao
NOES: None
ABSENT: None
ABSTAIN: None

***

PUBLIC HEARING - ITEM NO. 3

APPLICATION #06-430 (397-26-002) BRYANT, 14195 Saratoga Avenue: Request for a Modification of Approved Plans to construct a one-story 163 square feet addition to a project that was granted Design Review approval, and is currently under construction. Design Review approval was granted in September 2003 to construct a two-story residence, a detached second dwelling unit, a detached three-car garage, and a basement which is to be located under the main residence. The proposed modification will add 163 square feet to the main residence. With the proposed modification, the total floor area of all buildings on the site will be 4,507 square feet. The property is zoned R-1-12,500. The property is located along Heritage Lane and the Heritage Preservation Commission has reviewed the proposed modification to the approved plans. (Lata Vasudevan)

Associate Planner Lata Vasudevan presented the staff report as follows:

- Reported that in September 2003, the Planning Commission granted Design Review Approval to allow the construction of a new two-story residence, a detached second dwelling unit and a detached three-car garage.
- Said that since that approval this property has changed owners.
- Said that the new owner is seeking approval of a Modification of Approval Plans to allow a 163 square foot addition to the right side façade of the main residence to enlarge the family room.
- Advised that the project is already under construction.
- Explained that the total square footage would be 4,507.

- Said that the arborist reviewed the project and recommended the use of pier and beam foundation to protect a nearby tree.
- Said that since this property is on a Heritage Lane, the Heritage Preservation Commission reviewed this modification.
- Recommended approval of this request.

Commissioner Nagpal asked why this must come to the Commission instead of being handled by staff when it is such a small increase in square footage.

Planner Lata Vasudevan explained that per the Municipal Code, any modifications to a project approved by the Planning Commission must be brought back to that approving authority. If it had originally been an Administrative Design Review Approval, the Community Development Director would have reviewed this modification.

City Attorney Jonathan Wittwer said that there have been changes to Ordinances since September 2003 that can be taken into account.

Chair Rodgers opened the Public Hearing for Agenda Item No. 3.

Mr. Homer Bryant, Applicant and Property Owner:
- Said that this is a simple addition and very necessary.
- Stated that as designed the family room was undersized.
- Said he had no choice but to come before the Commission to correct this error.

Commissioner Kundtz asked Mr. Homer Bryant if he is comfortable with the bond requirement from the arborist.

Mr. Homer Bryant replied yes.

Chair Rodgers closed the Public Hearing for Agenda Item No. 3.

Commissioner Hunter said that she has no problems. This project is fine with her.

Commissioner Kundtz said he likes the project.

Commissioner Nagpal said ditto.

Commissioner Zhao said she could make the findings and support this request.

Commissioner Cappello said this is fine and appropriate to the project.

Chair Rodgers agreed with the use of pier and beam construction as recommended by the arborist.

Motion: **Upon motion of Commissioner Nagpal, seconded by Commissioner Hunter, the Planning Commission adopted a Resolution granting a Modification of Approved Plans (Application #06-430) to construct a 163**

square foot addition to a project that was granted Design Review Approval in September 2003, on property located at 14195 Saratoga Avenue, by the following roll call vote:
AYES: Cappello, Hlava, Hunter, Kundtz, Nagpal, Rodgers and Zhao
NOES: None
ABSENT: None
ABSTAIN: None

***

PUBLIC HEARING - ITEM NO. 4

APPLICATION #07-086 (393-01-024) PRASAD, 12860 Saratoga–Sunnyvale Road: - The applicant requests approval for a Conditional Use Permit and a Sign Permit to operate a dentist office and install a wall mounted sign at an existing tenant space within the Argonaut Shopping Center in the CN zoning district. (Therese Schmidt)

Associate Planner Therese Schmidt presented the staff report as follows:
- Advised that the applicant is seeking approval of a Conditional Use Permit and Sign Permit to allow the establishment of a dental office in the Argonaut Shopping Center.
- Reported that originally staff could not make two of the required findings on the sign. The applicant brought a revised sign proposal than can be supported.
- Said that a finding on the intent of the zoning district for this commercial property must be considered. The intent of the CN zoning is primarily retail. Professional office use is allowed with a Conditional Use Permit.
- Cautioned that once the space is plumbed for a dental office it will be difficult to return that space to retail use.
- Said that staff is recommending denial.

Commissioner Nagpal asked how long this space has been vacant.

Planner Therese Schmidt replied about 16 months.

Chair Rodgers opened the Public Hearing for Agenda Item No. 4.

Dr. S. Prasad, Applicant:
- Said that she is seeking a Use Permit to allow her to establish a family-oriented dental practice.
- Explained that she has been a dentist for eight years and a resident of Saratoga for the last five years. She has two young daughters.
- Said that many people want her to have a practice in Saratoga.
- Assured that her practice will draw patrons to Argonaut Shopping Center.
- Said she spoke with other tenants and they support her application.
- Advised that dentistry practices are moving to retail more and more these days.
- Reported that this tenant space has been empty for 18 months.
- Stated that her practice will be an enhancement to this center.

- Thanked the Commission for the opportunity and said she is looking forward to serving patients in Saratoga.

Commissioner Cappello asked if there is any data available that shows how cross shopping occurs when a service business such as a dental practice establishes itself in a shopping center?

Dr. S. Prasad said that she does not have specific data. Dental practices often market themselves with other retail businesses. It is becoming more common to have dental practices with retail. It is ideal for everyone involved.

Commissioner Kundtz asked Dr. S. Prasad if she had considered any other location.

Dr. S. Prasad said that she did look at one other location but it was too small. She wanted a practice in Saratoga. She informed that it costs between $200,000 and $300,000 to plumb a dental office. She assured that she could not find anything with this amount of square footage. The other space she looked at also had no parking while this location has plenty.

Commissioner Kundtz asked the length of the lease.

Dr. S. Prasad replied 10 years with an option for a five-year extension.

Commissioner Nagpal:
- Stated that one of the challenges faced is that there are limited retail spaces in Saratoga. Using some of that limited space for non-retail use creates a real issue.
- Said that this is a pure retail area.

Dr. S. Prasad said that she wouldn't have even approached the City on this site but for the fact that the space has been empty for 18 months. It has no visibility from the street needed for retail uses. It is not a property that just came onto the market.

Commissioner Zhao asked how many dental offices there are in Saratoga.

Dr. S. Prasad said that there are some on Cox, Prospect and one orthodontist located in downtown Saratoga. She added that there are a lot of dentists located in Los Gatos.

Commissioner Cappello reminded of the one recently approved in the shopping center behind Krispy Kreme.

Commissioner Hunter said that another dental practice was recently approved on Saratoga-Sunnyvale Road.

Mr. John Machado, Representative, Argonaut Shopping Center:
- Said that he has been involved with the Argonaut Shopping Center for 10 years and that he is here this evening on behalf of the owners and to support this use.
- Pointed out that a dental practice is a permitted use with a Use Permit.

- Stated that no Variance is sought.
- Suggested that there are many positive features in having this dental practice in the shopping center. It does not compete with any of the existing tenants and will provide a service to the community.
- Said that having dental practices in shopping centers is becoming more common and that the owner is in favor of this use.
- Explained that this is an inferior retail location within this shopping center. There is limited exposure to Saratoga-Sunnyvale Road. It is a narrow and deep tenant space.
- Reminded that they have tried unsuccessfully to secure a retail use in this space for 18 months. They began targeting quasi-retail tenants more recently with the idea that their patients would cross shop and help support the existing retail businesses.
- Said that if this request were for a tenant space on the south side of the project, they would not support a lease for a dental office there.
- Stated that this use is consistent with City policy.
- Assured that they are not deleting primary retail space. It is not adequate for retail sales.
- Said that this use results in no parking impact.
- Informed that at the end of the lease term the tenant has the obligation to return the space to retail.

Commissioner Hlava said that staff is recommending against this use as it does not fall within the intent of the Zoning Ordinance that calls for goods and services. Retail equals sales tax. However, she pointed out that the fitness use is a service use too.

Mr. John Machado said that if he could have leased this space as retail he would have. It is not possible due to the lack of visibility and the depth of the space.

Commissioner Hlava pointed out that this is the second dentist seeking to establish in a hard-to-rent retail site since her appointment in April.

Mr. John Machado said that he is a member of the ICSC (International Council of Shopping Centers). He said that there is a big trend because patients like to go to shopping centers. Parents can shop while their children receive treatment rather than waiting in a waiting room. This directly results in tax revenue.

Commissioner Hunter asked about the dance studio in the center.

Mr. John Machado said that they have not been there for about eight or nine years. That was another quasi-retail use. He added that the fitness tenant has been there for about six years.

Commissioner Cappello asked staff to verify that if this fitness use were in the Village it too would require a Use Permit.

Director John Livingstone replied correct. There is a different policy for personal services in the Village.

Chair Rodgers asked staff why it is against placing this dental practice here when there is already another personal service business in the center.

Director John Livingstone explained that a fitness center is an allowed use and does not require a Use Permit.

Mr. John Machado stressed that a retailer will not locate in this tenant space.

Commissioner Nagpal asked Mr. John Machado for the breakdown in mix between service and retail uses.

Mr. John Machado said it was about 80 percent retail to 20 percent service including restaurants.

Commissioner Nagpal asked Mr. John Machado if it is their goal to maintain that ratio.

Mr. John Machado said that they want a mix of uses and not uses that are competitive with existing tenants in the shopping center. He reminded that retail needs visibility.

Chair Rodgers asked if Mr. John Machado had spoken with neighboring tenants about expanding into this space.

Mr. John Machado said that he spoke with the owners of both Blockbuster and Body Line. Neither was ready to expand into this space.

Commissioner Zhao asked how many dental offices there are in Saratoga and how many are needed.

Mr. John Machado said that the reason they are here for a Use Permit to establish a dental practice is because the Code requires it. He said that maybe the Code needs changing. He assured that there is not an abundance of dental uses.

Commissioner Hunter said that there is a small percentage of retail space in Saratoga.

Mr. John Machado said that he would not rent frontage retail space to a dentist.

Chair Rodgers closed the Public Hearing for Agenda Item No. 4.

Commissioner Cappello:

- Said that this is a problematic site for a retail use due to visibility issues.
- Stated that he is convinced that they have done their due diligence to get a retail tenant for this space.
- Said that there is already a fitness center on site.
- Pointed out that this space has been empty for 18 months.
- Advised that he would vote in favor of the Use Permit.

Commissioner Hunter:

- Said that this is a very difficult decision and that the presentation was excellent.
- Pointed out that the Argonaut is the biggest shopping center in Saratoga.
- Reminded that once a dentist is located here it well never be changed back to retail.
- Expressed concern that there is only so much retail space available so she will have to support the staff recommendation for denial.
- Stated that this is just not good for Saratoga to lose some of its limited retail space.
- Said that she was sorry.

Commissioner Hlava:
- Advised that when she came this evening she was going to vote against this Use Permit.
- Stated that she is now on the opposite side.
- Said that service establishments offer goods and services. There are already insurance and nail salon businesses here.
- Stated that this represents a distinction without a distinction.
- Said that she can make the findings as this use does provide a service. There is no service for anyone when this tenant space stays empty.
- Stated that she hopes that Dr. Prasad is right that her patients will also shop here.
- Said that she can make the three required findings.

Commissioner Nagpal:
- Said that she has struggled with this application.
- Stated that she hates giving up retail space so it is difficult to consider something that is not retail.
- Agreed that there are more dental practices being established in shopping centers now.
- Admitted that originally she was not supportive but believes that this could result in a mutually beneficial relationship with the other tenants.
- Stated that sales tax revenue should not be a consideration for the Planning Commission.
- Said she is leaning toward making the findings and saying it is okay to have a service business here.
- Stated her support.

Commissioner Kundtz;
- Stated his agreement with the points made by Commissioner Hunter.
- Said that there is a distinction and difference.
- Agreed that once plumbed this will forever more be a dental office.
- Pointed out that there is no vision store in Saratoga and he has to go to Los Gatos to shop for glasses.
- Said he is not supportive and agrees with the staff recommendation for denial.

Commissioner Zhao:
- Said that she too has struggled with this decision.
- Said that she can see that there is a trend to have more dental offices within retail shopping centers.

- Stated that she also agrees that there is not a lot of retail space in Saratoga.
- Said that with a 10-year lease this retail space will be gone forever.
- Advised that she agrees with the staff recommendation to deny although she is sorry for the applicant.

Chair Rodgers:
- Stated that she also agrees with the staff recommendation for denial.
- Said that while there may be a trend with allowing dental offices in commercial centers she is not ready to cross that line yet.
- Pointed out that the Argonaut Shopping Center is the largest retail center in Saratoga.
- Stressed the importance to preserve retail space.
- Said that service-oriented business are tipping the balance over the edge to a point this center could become a grocery, drugstore and the rest service related businesses.
- Said that the vision for this site is as a major retail center.
- Stated that she will vote against this Use Permit.

Commissioner Cappello:
- Pointed out that when the space is empty it does not help the Argonaut Shopping Center and hurts the community.
- Said that the empty space becomes an eyesore in a brand new center.
- Said that if there were a choice available between retail use and a dental office, he would side with the retail use. However, they do not have that option before us today.
- Cautioned that this space could stay empty for a long time to come.
- Suggested that what might end up happening is that another dentist might try to establish here in the future after the space has stayed empty for another 18 months. Approving it at that time would not be fair to this applicant.
- Said that there is nothing to fear with a 10-year lease. It is good for the center.
- Said he is not sure if he is convincing any of his fellow Commissioners to change their vote and hoped that some might reconsider.

Commissioner Hunter:
- Announced that she is willing to change her vote on this.
- Agreed that having the space empty benefits no one.
- Said that this tenant space is a strange one.
- Advised that she has lived here for many years and this particular tenant space has always been a problem.

Commissioner Zhao:
- Said that as much as she wants to change her mind she cannot.
- Stated that if this were an older center she might be willing but this is newer.
- Added that she is not convinced that the center cannot find a retail tenant.
- Reiterated that her vote remains against this Use Permit for a dental office.

City Attorney Jonathan Wittwer advised that there is a fourth mandatory finding that comes from another section of Code. That finding is that the proposed Use Permit would

not adversely impact the existing uses and surrounding properties. He added that CEQA is satisfied with a Categorical Exemption.

Motion: **Upon motion of Commissioner Hlava, seconded by Commissioner Nagpal, the Planning Commission adopted a Resolution, as amended, approving a Conditional Use Permit and Sign Permit (Application #07-086) to operate a dentist office and install a wall-mounted sign at an existing tenant space at the Argonaut Shopping Center located at 12860 Saratoga-Sunnyvale Road, by the following roll call vote:**
AYES: Cappello, Hlava, Hunter and Nagpal
NOES: Kundtz, Rodgers and Zhao
ABSENT: None
ABSTAIN: None

Chair Rodgers said that this was a good debate. She said it is good that the Commissioners are willing to change their minds following deliberation.

Commissioner Cappello said that it is important to come with an open mind. He said he appreciated this Commission as a whole.

***

DIRECTOR'S ITEMS

There were no Director's Items.

COMMISSION ITEMS

Chair Rodgers advised that an invitation was received by email.

Commissioner Hlava clarified that this is an event being sponsored by the League of Women Voters and will be held on November 16, 2006, at the Saratoga Library. The public is invited to attend.

Commissioner Hunter said that the November 8th Planning Commission meeting would be a big meeting. She said that, depending on the election results, she needs to know if it is recommended that she sit in on that meeting.

Commissioner Hlava asked if Commissioner Hunter could sit in on that meeting in the event she is elected to Council.

Commissioner Kundtz pointed out that if Commissioner Hunter is not available to participate there is the potential for a tie vote with just six Commissioners available.

City Attorney Jonathan Wittwer said that he would need to research this issue further. He pointed out that even if Commissioner Hunter is successfully elected to Council she would not

have yet been sworn into office by the November 8th Planning Commission meeting so she may have a choice.

Commissioner Hlava cautioned that if Commissioner Hunter votes on an issue such as the General Plan Update as a member of the Planning Commission she might have to recuse herself on participating when the item goes to the Council for final action.

Commissioner Nagpal asked if a tie vote is a thumbs down.

City Attorney Jonathan Wittwer said that a tie vote would result in a continuation to the next meeting to see if a different vote can be reached.

Chair Rodgers asked about Council's second reading of the Ordinance to make conditions of approval permanent. She asked where the processing is for the recommendations the Commission made regarding Administrative Design Review.

Director John Livingstone said that the first report on the Administrative Design Review process would be sent to Council next week. There is no Ordinance recommended with this. It is just a staff report with the recommendations. He reminded that in December or January, the City Council has a retreat at which time a work program for the year is developed that would prioritize which Ordinance updates should be handled in what order.

Chair Rodgers asked if it would be possible to get a copy of the staff report.

Director John Livingstone said that pdf copies could be provided by email. Since the Council reports go out either on Friday or Saturday, copies to others could not go out until Monday.

Commissioner Nagpal asked if the issue of recording conditions would be on the Consent Calendar.

Director John Livingstone replied yes.

Commissioner Nagpal asked if it would be possible to open the public hearing only if the Council so requested.

Director John Livingstone said that a member of the public could also make such a request.

Commissioner Hlava mentioned that she and Commissioner Kundtz would be going to the Mandatory Ethics Training and invited anyone else who was available to ride along with them.

City Attorney Jonathan Wittwer advised that the City Clerk is required to keep records of the completed training by each Commissioner. He suggested also providing a training session for the Commission at a future meeting on dealing with requests for information during Oral Request and the corresponding direction to staff.

Director John Livingstone said that this could be put as a Director's Item on the next agenda whereby City Attorney Jonathan Wittwer could provide a five to 10-minute training session on this topic.

Commissioner Nagpal said that would be great.

COMMUNICATIONS

There were no Communications Items.

ADJOURNMENT TO NEXT MEETING

Upon motion of Commissioner Cappello, seconded by Commissioner Hlava, Chair Rodgers adjourned the meeting at 9:17 p.m. to the next Regular Planning Commission meeting of **October 25, 2006**, at 7:00 p.m.

MINUTES PREPARED AND SUBMITTED BY:
Corinne A. Shinn, Minutes Clerk