

**MINUTES**  
**CUP STUDY SESSION**  
**SARATOGA CITY COUNCIL**  
**&**  
**SARATOGA PLANNING COMMISSION**  
**MARCH 3, 2009**

Mayor Page called the CUP Study Session to order at 6:00PM.

PRESENT: COUNCILMEMBERS:  
Jill Hunter, Susie Nagpal, Howard Miller, Vice Mayor Kathleen King, Mayor Chuck Page,

PRESENT: PLANNING COMMISSION:  
Rishi Kumar, Linda Rodgers, Joyce Hlava,

ABSENT: Manny Cappello, Robert Kundtz, Yan Zhao, Mary-Lynne Bernald

ALSO PRESENT: Dave Anderson, City Manager  
John Livingstone, Community Development Director  
Ann Sullivan, Acting City Clerk

Mayor Page invited public comment on non-agendized items.

No one requested to speak at this time.

Community Development Director John Livingstone presented the staff report – Review the Requirements for Conditional Use Permits (CUP).

Director Livingstone noted that at the February 4, 2009 City Council meeting Council reviewed the fees associated with Conditional Use Permits. Council also expressed an interest in reducing the cost, time and uncertainty of obtaining a Conditional Use Permit. The focus of tonight’s meeting is to discuss the options available to Council. Some options could be implemented with budget resolutions on the consent calendar at the next Council meeting; others could be accomplished with amendments to the City Code that would not require environmental review. The following are some of the options discussed by the City Council at the February 4<sup>th</sup> meeting in each of these categories:

Items that could be acted upon at the next Council Meeting:

- o Lower the cost of use permits by subsidizing the Conditional Use Permit fee to encourage new business development in the City of Saratoga.

- Create an incentive program by waiving the fee for the first three (or some other number) CUP's for a specific use or uses.

Code Amendment not requiring environmental review:

- Create an Administrative Review Process with a Zoning Administrator to hear some of all use permit applications. The current CUP costs \$4,400 plus a \$300 document storage fee. The new process would cost approximately \$4,000 plus the document storage fee. The new process would avoid the time required to have matters heard by the Planning Commission.
- Create a streamlined administrative review process for some or all CUPs similar to the current Administrative Design Review process where letters are sent out stating "Notice of Intent to Approve" that allows interested parties to submit written comments within a 15 day period. This process would cost approximately \$3,400 which is the same fee as an Administrative Design Review which does not require a formal hearing.
- Create an administrative process using one of the options above but allowing appeals only to go straight to the City Council. This would reduce the steps in the process that would be encountered by an applicant.
- Create an Administrative approval process using one of the options above but limited to only certain uses or uses below a certain threshold (such as 3,000 square feet).

Code Amendments that would require environmental review:

- Allow community facilities such as a Visitor Center or Chamber of Commerce to be a Permitted Use.
- Allow specific uses to be Permitted Uses. Suggestions made during the last City Council meeting are Family Style Restaurants, Breakfast Restaurants, and Establishments that engage in the sale of alcoholic beverages, Ice Cream Parlors, Bakeries and Markets.

Mayor Page noted there has been a considerable amount of discussion regarding the CUP – both at the January 30<sup>th</sup> Council Retreat and the February 4<sup>th</sup> Council meeting and this meeting would provide an opportunity for members of the Planning Commission to be familiar with the various CUP options that Council will be considering. He noted that previous discussions included creating an Administrative Review process with a Zoning Administrator to expedite the CUP process, lowering the fees by providing subsidies for certain types and sizes of businesses.

Mayor Page invited public comment and the following people requested to speak:

Paul Hernandez:

- Doesn't favor one business over another
- Supports a Zoning Administrator and if this person has a significant amount of authority there should be an easy appeal process to the Planning Commission
- Feels the \$700 appeal fee is a barrier to an appeal procedure
- Certainty issue is not important if CUP Fee is lowered
- Consider an installment process for paying CUP fee

Council's response to the suggested installment payment process for CUP fees:

The City doesn't make a profit on these fees; it is trying to recoup the staff time cost involved in the permit process and if the City allowed installment payments the City would not be able to recoup those costs, especially if a business closed after one year or the permit was denied.

Craig Awbrey supports:

- Eliminating the Planning Commission hearing level;
- Administrative approval for small uses
- Certainty issue not as important as lowering the CUP fee
- Certainty issue is important if the CUP fee is high
- The Saratoga Barn is about 70% leased and voiced concerns about the remaining 30% that is vacant. Interested businesses voice concerns about the uncertainty of the CUP process, length of time and fees
- City should consider allowing business offices with retail in the back at the Saratoga Barn; an Art School expressed interest in his building and he doesn't know if this type of business would require a Conditional Use Permit

Councilmember Hunter inquired why Craig Awbrey's property would be zoned for retail.

Director Livingstone replied that it is considered "frontage" and it is on Third Street.

Vice Mayor King asked if Mr. Awbrey could apply for a Use Permit for some "office use" space for some of his vacant property and then bring in some businesses.

Director Livingstone replied that he could do that and he would have to pay the Use Permit fee.

Marilyn Marchetti:

- Spoke on behalf of the Saratoga Chamber of Commerce and the services the Chamber provides to the community and City
- Doesn't understand why the Chamber would require an Environmental Review
- Supports Permitted Use

Mayor Page clarified that it isn't the Chamber specifically that would require the environmental review; it's caused by changing from a Conditional Use Permit to a Permitted Use for a given type of business. The State requires the City to go through the Environmental Use Review to ensure that the use won't be detrimental to the environment now they it has been made a Permitted Use.

Emily Lo:

- Supports Permitted Use for Chamber of Commerce and for Visitor's Center
- Visitor's Center provides service to city by providing service to visitors and tourists.
- Matter of time before Chamber will have to relocate.
- City should consider allowing Permitted Use to Chamber as Visitors Center or Chamber will have to relocate to a less desirable location due to fee requirement costs

Gene Zambetti:

- Issues regarding CH1 and CH2 – Would like to see the CUP fees cut in half

- Area of uses and the number of vacancies on Big Basin - would like to see the CH1 District regulation that says professional, administrative and medical offices can be located on the frontage of Big Basin Way apply to the CH2 area where his property is. Currently a professional business wanting to go into his building would have to go through the CUP process.
- Supports vacant stores that are next to Lupretta's as a professional or administrative use – not required to be on second floor
- There is a demand for professional and medical offices and currently they have to be on the second floor or in the back
- Goal is to see more people on the street

Menaz:

- Suggested creating an incentive package to bring in more retail in the Village.

Sue Smith:

- Applied for a Use Permit to open a used auto retail/wholesale (on-line) business in Saratoga and was told she couldn't get a permit for that type of business in Saratoga because the State requires that she have an office for retail/wholesale and must have at least two parking spaces.

Planning Commissioner Hlava noted that Ms. Smith was discussing her plans with the Planning Commission; she had not addressed the Planning Commission formally.

Director Livingstone noted – depending on the license requirements from the State, they require that a Internet auto business has two display parking spaces; therefore, the Planning Department would interpret it that if the State requires it, the business owner will probably use the display parking spaces and the City code does not permit it.

Council discussed the possibility of agendizing this issue for a future agenda and asked City Attorney Taylor if it would be a lengthy process.

City Attorney Richard Taylor stated that how Council would resolve this issue is dependent on how they resolve the other Use Permit issues and if Council changes Permitted Uses and conducts Environmental Reviews, there would be more flexibility. However, addressing this issue as a stand-alone could be complicated.

Council asked Director Livingstone if this issue comes up often and Director Livingstone replied that people inquire often about the business license requirement to have display parking spaces.

## **COUNCIL DISCUSSION:**

Planning Commissioner Hlava:

- Have level of certainty for Use Permit CUP process
- Subsidize use permit fees or reduce noticing (legal ad) requirements to decrease fees – very expensive now to get a use permit
- Expediting CUP process
- If the CUP requirement isn't streamlined there isn't any point in have a Zoning Administrator
- Planning Commission willing to go with Council's recommendation to streamline CUP process

Additional comments:

Feels Santana Row has had an impact on Saratoga Village. People can go to Santana Row and shop, dine and take in a movie. It would be nice if Saratoga could do something like this shop, dine, and go to the movies in one stop.

Professional Offices in Village –

First instinct is – once we give up retail in the Village, we give it up forever. In reality, if we have offices downtown, it may create a need for other businesses – such as restaurants etc. Some offices may create more businesses; we need to be more open to types of businesses people want; maybe a market driven interest will create what is needed in the Village – City in general makes rules and it doesn't seem to work; fewer people coming to do anything.

Councilmember Hunter:

- This is a difficult problem
- In the 1980's there was a concern about the Village – do we preserve or do we develop
- Once we lose retail, we never get it back
- Supports Conditional Use Permit
- Expedite process
- Need to have a “Shop Local” campaign

Vice Mayor King:

- Agrees that the downtown is a complicated problem
- Need to have a long term and short term approach
  - Short term approach – take some contingency funds for these ‘first five uses’ – as a stimulus incentive, there is no Use Permit fee; i.e. bakery, ice cream shop, or candy shop to use parking moratorium while we have it
- Get things moving while we work on the Use Permit requirements

Councilmember Miller:

- Need to come up with process that is expedited to allow certainty
- Carefully constructed process to reduce fee costs
- Supports going to administrative review process for narrowly defined businesses that are consistent with existing code
- Avoid environmental review process
- Sense of urgency – Longer we wait, the worse it makes it
- Doesn't seem to be a lot of impact in terms of what will be allowed or the City losing money as to expediting the CUP process immediately
- Council can decide if they want to use discretionary funds to lessen the CUP fees
- Primary concern is to change the process for a class of businesses that everyone is comfortable with in order to make it an Administrative Review process with all the safe guards
- Communicate to people that Saratoga, not just the Village but all of the community, wants your business; we have a speedy process and cost structure that is reasonable. Businesses less than 3,000 square feet – changing the process from planning review process to more administrative review process.

Additional comments:

Supports over-the-counter review process for businesses less than 3,000 square feet that conform to City's existing code; is not removing the Conditional Use Permit process – changing it from a Planning Commission process to an Administrative Over-the-Counter Review process with changed noticing requirements and changed process requirements in order to reduce costs. The issue of changing the Conditional Permitted uses such as arcades, retail specialties, etc., and subsequent Environmental Review, should be addressed by the Planning Commission. Would like to devise an Administrative Review process for the existing rules as soon as possible with a goal of reducing time, increasing certainty, and reducing costs.

Mayor Page asked for clarification on the business square footage Councilmember Miller supports.

Councilmember Miller noted 3,000 sq. ft and below would be his preference – however 2,000 to 2,500 square feet would be more realistic. Prefers the appeal process to go to Council and had no specific recommendations for type of businesses.

Vice Mayor King noted she agrees with everything Councilmember Miller stated, however, she supports any kind of business that has anything to do with children.

Planning Commissioner Linda Rodgers:

- Does not endorse any one idea
- Open to Council's ideas and suggestions
- Create flexibility for types of business you want to encourage
- Most businesses know what will work and what won't

Councilmember Nagpal:

- Will never be able to figure out exact mixed use
- This is about managing use, not managing the market
- Need certainties
- Favors Administrative Review process that is discretionary to avoid changes to City Code
- Open to the Notice of Intent to Approve for specific Use Permits that have been identified as it reduces cost and time and there is an appeal option
- Supports one appeal level to Council in order to expedite the process
- Interested in family-style restaurants, bakery, ice cream parlor, art studio
- Chamber issue may be addressed through Administrative Review
- Prefers "use" rather than size

City Attorney Richard Taylor noted that it would be easier for staff to administer the permit process if Council determines a specific size. In addition, he noted it would be difficult to draft an ordinance that would allow staff to process one type of use but not another and recommends Council authorize staff to do everything – subject to appeal to either the Planning Commission or City Council.

Councilmember Miller noted he is recommending that the process be changed – moving the process from the Planning Commission to staff, not changing what is allowed or how it is allowed.

Vice Mayor King stated she agrees with Howard on this; but would like us to form our own redevelopment program that would incentivize businesses to come to Saratoga.

Planning Commissioner Hlava noted the Planning Commission performs a major role in the development of the community and feels that as part of the process she would like the Planning Commission to receive some type of status/history report from staff as they are approving use permits.

Director Livingstone noted Hlava's suggestion wouldn't necessarily have to be a requirement; staff could provide this information to Council via the weekly Council Newsletter or forward the staff report to Council and Planning Commission.

City Manager Dave Anderson added that with the City's new website staff could post permit application status – pending and/or approved, etc.

Planning Commissioner Rishi Kumar:

- Supports reduce application cost
- Expediting the permit process

Mayor Page:

- Supports streamlining permit process
- Reduce permit costs
- Possibly subsidizing some of the funding for certain types of businesses
- Feels this proposed change encompasses business areas in the entire community, not just in the Village
- The more open we make it – the more risks we take by making it more of an Administrative Review process and we have to be willing to accept that
- Prefers limitation on the square footage as it will help eliminate the impact
- Limit the amount of certain types of businesses, which will help minimize the impact from those types of businesses
- Supports subsidizing certain types of businesses such as a family restaurant, not an ice cream parlor.
- Prefers Administrative Review rather than Zoning Administrator
- Provide for the exception process
- Undecided on level of appeal

#### NEXT STEP:

Planning Commission will consider suggestions from this meeting along with previous CUP Study Sessions and Council Retreat Meeting, as well as public input to be used as guidelines for designing a new permit process and bring it to Council for consideration and approval.

Councilmember Miller asked if staff could design the Administrative Review process and the Planning Commission design the larger CUP process.

City Attorney Taylor responded that any change to the Zoning Ordinance would have to go through the Planning Commission.

CONCENSUS:

- Planning Commission to work on Administrative Review process immediately
- Come back to council regarding incentives
- Wait on specific permitted uses – if Planning Commission would like to make subtle changes to uses where there seems to be consensus, they should define them and the process could move forward and the uses could be secondary.

Two-Phase Approach – Planning Commission work on sequencing items and bring them forward by end of year.

First Step –

- Administrative Review Process/Changes
- Agendize Incentives Program
- CUP Redefinition

Second Step –

- Long Term: Use Permit to Permitted Use

Vice Mayor King noted an Action Item – consider types of businesses for Saratoga Barn.

The Study Session adjourned at 8:15PM.

Respectfully submitted,

Ann Sullivan, CMC  
City Clerk