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2
3 **MINUTES OF THE REGULAR MEETING**
4 **PINOLE PLANNING COMMISSION**

5
6 **February 27, 2023**

7
8 **THIS MEETING WAS HELD IN A HYBRID FORMAT**
9 **BOTH IN-PERSON AND ZOOM TELECONFERENCE**
10

11
12 **A. CALL TO ORDER:** 7:03 p.m.
13

14 **B1. PLEDGE OF ALLEGIANCE**
15

16 **B2. LAND ACKNOWLEDGEMENT:** *Before we begin, we would like to acknowledge the*
17 *Ohlone people, who are the traditional custodians of this land. We pay our respects to*
18 *the Ohlone elders, past, present and future, who call this place, Ohlone Land, the land*
19 *that Pinole sits upon, their home. We are proud to continue their tradition of coming*
20 *together and growing as a community. We thank the Ohlone community for their*
21 *stewardship and support, and we look forward to strengthening our ties as we continue*
22 *our relationship of mutual respect and understanding.*
23

24 **B3. ROLL CALL**
25

26 Commissioners Present: Kurrent, Menis, Vice Chairperson Martinez, Chairperson
27 Moriarty
28

29 Commissioners Absent: Banuelos, Benzuly
30

31 Staff Present: David Hanham, Planning Manager
32 Alex Mog, Assistant City Attorney
33 Justin Shiu, Contract Planner
34

35 **C. CITIZENS TO BE HEARD**
36

37 Anthony Vossbrink, Pinole, referenced the upcoming reopening of Fire Station 74, and
38 suggested the City should conduct some housekeeping around the neighborhood prior to
39 the event including at the Ellerhorst Elementary School parking lot where twelve trees had
40 been removed and he was uncertain who was responsible or whether the tree removal
41 had been permitted by the City. Debris from the tree removal had been left on-site which
42 was unsightly and hazardous; the ladies restroom along Adobe Road was inoperable; the
43 entryway had been damaged, locked and closed off for some time and should be repaired;
44 there was no caretaker in the caretaker's home; the automated locks for the men's and
45 women's restrooms were inoperable; and he would like a status report on the recyclable
46 trash cans that were to be placed around the dog park area. He asked that all of those
47 issues be resolved prior to the reopening of Fire Station 74.
48

1 Planning Manager David Hanham advised he would follow-up with the Public Works
2 Director, although the City had no jurisdiction over property in the West Contra Costa
3 Unified School District (WCCUSD).

4
5 Commissioner Kurrent thanked Mr. Vossbrink for his comments and suggested many
6 people who were removing trees were unaware of the City's Tree Ordinance and it would
7 behoove the Code Enforcement Officer to remind those individuals of the regulations in
8 the Tree Ordinance that included a requirement to remove any debris.

9
10 **D. MEETING MINUTES**

11
12 1. Planning Commission Meeting Minutes from February 13, 2023.

13
14 Commissioner Menis requested the following revisions to the February 13, 2023 Meeting
15 Minutes:

16
17 Page 18, Lines 24 to 26 to be revised to read:

18
19 *Commissioner Menis reported he had received a communication from a member*
20 *of the public who reported wash-out damage on the Bay Trail out of Tennant*
21 *Avenue, the walking area between Tennant Avenue and Pinole Shores.*

22
23 And Page 10, Lines 12 through 14:

24
25 *As a result, when projects came before the Planning Commission, there had been*
26 *a request for the applicants to voluntarily consider Reach Codes, which had not*
27 *been supported. He suggested that addressing this issue on a case-by-case basis*
28 *was unreasonable.*

29
30 Mr. Hanham advised that staff would check the videotape for the meeting to ensure
31 Commissioner Menis' comments were accurate.

32
33 **MOTION** with a Roll Call vote to approve the Planning Commission Meeting Minutes from
34 February 13, 2023, as potentially amended, subject to staff verification of the comments
35 made by Commissioner Menis as noted, and as compared to the meeting videotape.

36
37 **MOTION: Kurrent**

SECONDED: Menis

APPROVED: 4-0-2

ABSENT: Banuelos, Benzuly

38
39
40 **E. PUBLIC HEARINGS:**

41
42 1. **Conditional Use Permit CUP 23-01 Body Rhythm Massage Therapy**

43 Consideration of a Conditional Use Permit request to open a massage therapy
44 business.

45
46 Mr. Hanham provided a PowerPoint presentation for Conditional Use Permit (CUP) 23-01
47 Body Rhythm Massage Therapy. He recommended the Planning Commission adopt
48 Resolution 23-01 for Conditional Use Permit (CUP) 23-01, conditionally approving Body
49 Rhythm Massage located at 1685 San Pablo Avenue, subject to Exhibit A Conditions of
50 Approval.

1 Responding to the Commission, Mr. Hanham reiterated the massage therapy business
2 would be located within a tenant space in the existing building at 1685 San Pablo Avenue.
3 A liquor store, an adjacent use, had its own parking on the corner and the parking spaces on
4 the west side of the building would be for both uses. Parking spaces located on the east side
5 of the building were all for the property at 1685 San Pablo Avenue. In the event the business
6 proposed additional employees, approval would be required from the Community
7 Development Director and the Police Department for background checks. While the permit
8 operator had not been defined in the Pinole Municipal Code (PMC), in most cases, the
9 Community Development Department would start that process and be the coordinator of that
10 process. If the applicant met all requirements, the City would issue an Operator's Permit.

11
12 Commissioner Menis reported he had sent out ex parte notices to people on his email list of
13 the February 27, 2023 meeting agenda.

14
15 Mr. Hanham clarified that the Building Inspector and Fire Marshal would conduct reasonable
16 inspections pursuant to the PMC and massage therapy establishments that existed in Pinole
17 were established prior to his employ. City staff was currently verifying which establishments
18 did or did not have Operator Permits. If not, the business would have to go through the
19 Operator Permit process and other processes for registration of practitioners.

20
21 Commissioner Kurrent commented that he had been a member of the Planning Commission
22 for 16 years and could not recall a massage therapy business before the Commission.

23
24 Assistant City Attorney Mog explained it was possible that if the business was in a zone
25 where the use was permitted it would not require Planning Commission review for a use
26 permit. He stated there had been a period of time when the State of California had taken
27 over licenses of all massage therapy establishments and had created the California Massage
28 Therapy Council (CAMTC), and there could be a gap where a business may not have
29 obtained the Operator Permit from the City.

30
31 Further responding to the Commission, Mr. Hanham again clarified the findings required for
32 approval of the CUP as shown in the February 27, 2023 staff report. He added he had been
33 informed by the Police Department there had been no issues with massage therapists
34 performing practices subject to State certification. In addition and in response to the Vice
35 Chair, he cited Condition 3, of Exhibit A, Conditions of Approval which stated: *This*
36 *Conditional Use Permit does not constitute an approval for any signage associated with*
37 *the use. Separate permit applications shall be submitted and approved prior to the*
38 *installation of any signage.*

39
40 Vice Chairperson Martinez requested that neon signage be prohibited and be included in
41 the conditions of approval.

42
43 City Attorney Mog confirmed that Condition 3 could be modified to read:

44
45 *This Conditional Use Permit does not constitute an approval for any signage*
46 *associated with the use. Separate permit applications shall be submitted and*
47 *approved prior to the installation of any signage. No neon signs shall be allowed.*

48
49 PUBLIC HEARING OPENED
50

1 Xinheng (Cindy) Yu, 1483 Del Rio Circle, #A, Concord, the applicant, explained that she was
2 a professional masseuse with experience working with doctors. She had double the required
3 certification having gone to school on more than one occasion to be certified. She had
4 provided massage therapy for almost 20 years, wanted to be the best, and taught exercise
5 for seniors in the City of Richmond. She wanted to provide good therapy for her customers.
6 Given people had helped her in the past, she wanted to return that kindness to others and
7 hoped the Planning Commission would give her the chance to be the best.
8

9 Responding to the Commission, Ms. Yu was comfortable not being allowed to have neon
10 signage. She clarified her hours of operation would be Monday through Sunday from 9:00
11 a.m. to 9:00 p.m. to accommodate her customers who desired massage therapy either before
12 or after work. She commented that many customers were in construction, many had followed
13 her for years, and many needed nighttime hours necessitating the hours of operation. She
14 confirmed that while she lived in the City of Concord, she still taught exercise in the City of
15 Richmond and had the possibility of renting a room from someone who lived in the City of
16 Pinole where she did not have to travel back and forth to Concord.
17

18 Anthony Vossbrink, Pinole, spoke to the recommendation for prohibiting neon signage.
19 Before the Planning Commission imposed such a condition, he wanted to know the sign code
20 regulations for retail operations in the City of Pinole. He suggested that imposing this
21 condition could set a double standard and may discriminate against the new business
22 operator if other businesses in Pinole were currently allowed neon signage. As an example,
23 he cited a salon across from the Pear Street Bistro which had neon signage in the front
24 window facing the parking lot. The same business and others whether legal or illegally had
25 placed signage horses on the sidewalk and driveway in the same parking area. He also cited
26 beauty salons, a local chiropractor, hair salons and acupuncturists not only in Pinole but in
27 neighboring communities who used neon signs to advertise their businesses.
28

29 PUBLIC HEARING CLOSED

30
31 Commissioner Kurrent suggested the hours of operation be more than less to allow flexibility
32 for the business.
33

34 Commissioner Menis recognized the hours of operation were within the limits established by
35 the PMC and it was reasonable the applicant would want flexibility for her customers.
36

37 Assistant City Attorney Mog cited PMC Chapter 17.52, which provided extensive
38 requirements for signage. There was no prohibition on neon signage in that chapter and the
39 standards applied citywide. The Three Corridors Specific Plan also did not prohibit neon
40 signage but it was neither unusual nor improper for the Planning Commission to impose
41 conditions for one business different from another.
42

43 Mr. Hanham clarified there were also regulations about the use of A-frame signs, as the
44 previous speaker had referenced, and City staff and code enforcement was working with the
45 businesses in the downtown on their use of A-frame signage.
46

47 Commissioner Menis referenced Chapter 17.46 of the PMC and read into the record Section
48 17.46.040 related to prohibited lighting where neon signage was prohibited flat out, and
49 Section 17.46.050 which stated that signage must comply with the sign chapter. He asked
50 staff if that meant the lighting provisions did not apply to the sign chapter.

1 Assistant City Attorney Mog explained that the signs were governed by the Sign Code, with
2 the neon prohibition about the use of neon in the building articulation and not the signs
3 themselves, which would be subject to the Sign Code.
4

5 Vice Chairperson Martinez commented that the prior tenant in the subject tenant space had
6 not used neon signage. He preferred to keep the same look and feel and recognized there
7 were residential units nearby. He also would like to see signage along San Pablo Avenue
8 have some consistency and if neon signage was allowed it would change the look and feel
9 of the area and residential community behind it. Of the businesses mentioned that currently
10 used neon signs, some were not near residential homes.
11

12 Commissioner Kurrent understood the argument for both sides and suggested as a
13 compromise that the Planning Commission could prohibit the use of neon signage that faced
14 the residential areas and limit neon signs to the front of the building.
15

16 Commissioner Menis also read into the record the regulations in Section 5 of the Sign Code,
17 which were to prevent sign trespassing via illumination, and while neon signage was not
18 covered by that requirement possibly a condition could be imposed whereby no effective
19 illumination on signs adjacent to residential areas would be allowed to exceed that segment
20 of the Sign Code. He asked the Assistant City Attorney to opine on whether such a condition
21 could be imposed.
22

23 Assistant City Attorney Mog confirmed that could be a condition of approval but illumination
24 limitations were already part of the PMC.
25

26 Mr. Hanham explained when a sign application was presented staff would review the
27 brightness of the sign, where it was projecting, and depending on the brightness of the sign
28 staff may require the submittal of a photometric study.
29

30 Assistant City Attorney Mog read into the record and cited the illumination requirements in
31 Section 17.52.100.
32

33 The Planning Commission discussed the issue of whether or not to allow neon signage at
34 length and there was consensus to modify Condition 3, to read:
35

36 *This Conditional Use Permit does not constitute an approval for any signage*
37 *associated with the use. Separate permit applications shall be submitted and*
38 *approved prior to the installation of any signage consistent with Section 17.52 of*
39 *the Pinole Municipal Code.*
40

41 In response to Commissioner Menis, Mr. Hanham agreed that Condition 6 could be revised
42 to read:
43

44 *SCHEDULE MODIFICATION – Any expansion of services that extend past the*
45 *operating hours, increase the number of days per week, or involve expansion into*
46 *additional tenant spaces shall be reviewed by the Planning Manager who shall*
47 *determine whether the modifications require further review and approval by the*
48 *Planning Commission*
49

Commissioner Kurrent offered a motion to adopt Resolution 23-01, subject to modification to Conditions 3 and 6, as discussed.

On the motion, Commissioner Menis requested a further modification to Condition 6, as follows:

SCHEDULE MODIFICATION – Any expansion of services that extend past the operating hours or involve expansion into additional tenant spaces shall be reviewed by the Planning Manager who shall determine whether the modifications require further review and approval by the Planning Commission

MOTION with a Roll Call vote to adopt a Resolution of the Planning Commission of the City of Pinole, County of Contra Costa, State of California, Approving a Conditional Use Permit (CUP 23-01) for a Massage Therapy Establishment Located at 1685 San Pablo Avenue, APN: 01-100-049, subject to Exhibit A Conditions of Approval, modified as follows:

Revise Condition 3 to read:

This Conditional Use Permit does not constitute an approval for any signage associated with the use. Separate permit applications shall be submitted and approved prior to the installation of any signage consistent with Section 17.52 of the Pinole Municipal Code.

And revise Condition 6 to read:

SCHEDULE MODIFICATION – Any expansion of services that extend past the operating hours or involve expansion into additional tenant spaces shall be reviewed by the Planning Manager who shall determine whether the modifications require further review and approval by the Planning Commission

MOTION: Kurrent

SECONDED: Menis

APPROVED: 4-0-2

ABSENT: Banuelos, Benzuly

Chairperson Moriarty identified the 10-day appeal process in writing to the City Clerk.

F. OLD BUSINESS: None

G. NEW BUSINESS: None

H. CITY PLANNER'S / COMMISSIONERS' REPORT

Mr. Hanham reported upcoming applications for Planning Commission consideration would include two CUPs, a parcel map to split the lot at 912 Belmont Way and the Pinole Shores II project. Interviews would be held this week for the vacancy on the Planning Commission with recruitment ongoing for the other two positions. The City Council and Planning Commission had been scheduled to hold a joint meeting on March 28, 2023, and the regular Planning Commission meeting for March 27, 2023 would still be held and would likely include consideration of the application for Pinole Shores II.

1 Chairperson Moriarty asked staff to address the change in attendance policy and general
2 policy for expectations for Planning Commission attendance.
3

4 Assistant City Attorney Mog confirmed the next meeting of the Planning Commission would
5 be in-person with minimal options for remote participation either through the traditional means
6 of the Brown Act, whereby wherever a Commissioner was participating from remotely must
7 be noticed on the agenda and open to the public or compliance pursuant to Assembly Bill
8 (AB) 2249, which allowed participation remotely when there was just cause or emergency
9 circumstances. He highlighted those circumstances for the benefit of the Commission.
10

11 Chairperson Moriarty allowed public comment at this time.
12

13 Anthony Vossbrink, Pinole, asked the status of the Appian Way/Tara Hills Safeway project
14 given rumors in the community that a merger with a large grocery chain may impact the
15 project and that the property owner had left the project. He suggested it was time for a Town
16 Hall meeting to discuss the traffic situation the new shopping center would bring to the
17 community, the build out of Doctors Hospital, conflicts between pedestrians and drivers and
18 the build out of the Kmart/Fitzgerald Drive property. He asked whether a new landscaping
19 plan had been approved by the City Council or the Planning Commission for Pinole Valley
20 Road given that new shrubs had been planted in certain parts of Pinole Valley Road and
21 small reflectors spread sporadically across the City. He also asked the status of the repair
22 or replacement of the walkover bridge with an aluminum support beam across the freeway
23 along Appian Way, which had been in place for years. In addition, he requested better
24 posting of information for public access on the Zoom screen banner, which should include all
25 meeting information and be posted throughout the meeting. It was a violation of the Brown
26 Act not to give the viewing public full access and ability to telephone-in to meetings.
27

28 Mr. Hanham reported that the original property owner for the Appian Way/Tara Hills Safeway
29 had sold the property and the entitlements remained active until June/July 2023, but whether
30 or not the current property owner planned to follow through with those entitlements was not
31 known. The property owner was in negotiations with Safeway but no deals had been finalized
32 at this time. Traffic studies for the project had been done with improvements to be put in as
33 part of the project. If the property owner did not move forward with the entitlements, the
34 property owner would be required to come back to the City and start the process all over
35 again with the same or different project.
36

37 **I. COMMUNICATIONS:** None
38

39 **J. NEXT MEETING**
40

41 The next meeting of the Planning Commission to be a Regular Meeting scheduled for
42 March 13, 2023 at 7:00 p.m.
43

44 **K. ADJOURNMENT:** 8:32 p.m.
45

46 Transcribed by:
47

48
49 Sherri D. Lewis
50 Transcriber