

**CITY OF MADERA PLANNING COMMISSION  
REGULAR MEETING  
December 8, 2020**

**CALL TO ORDER:** The meeting was called to order by Vice Chairperson Gran at 6:00 p.m.

**ROLL CALL**

**PRESENT:** Commissioner Robert Gran Jr. (Vice Chairperson)  
Commissioner Richard Broadhead  
Commissioner Alex Salazar (arrived late at 6:03pm)  
Commissioner Ramon Lopez  
Commissioner Pam Tyler

**ABSENT:** Commissioner Israel Cortes (Chairperson)  
Commissioner Ryan Cerioni

**STAFF:** Gary Conte, Planning Manager  
Keith Helmuth, City Engineer  
Tiffany Ljuba, Assistant City Engineer  
Randy Bell, Deputy City Engineer  
Derek Sylvester, Associate Planner  
Sara Allinder, Contract Planner  
Brandi Garcia, Recording Secretary  
Olga Garcia, Community Services Coordinator/Planning Assistant  
Mark Souders, Information Services Manager

**PLEDGE:** None

**PUBLIC COMMENT:** None

**MINUTES:** None

**CONSENT ITEMS:** None

**PUBLIC HEARING ITEMS:**

**1. SPR 2020-10 & CUP 2020-10 – Discount Cigarette Shop**

A noticed public hearing to adopt a resolution denying Site Plan Review 2020-10 and Conditional Use Permit 2020-10. Originally noticed public hearing to consider a resolution to adopt findings of categorical exemption pursuant to CEQA Guidelines, Section 15301 (Existing Facilities) and to approve SPR 2020-10 and CUP 2020-10 approving the establishment of a discount cigarette shop (Mad-Town Smoke Shop) for the purpose of selling cigarettes and tobacco accessories, including vaping products, as well as other merchandise at 319 W. Olive Ave. This item is a continuance from the November 10, 2020 Planning Commission meeting with direction to staff to prepare a resolution affirming the Planning Commission's November 10, 2020 tentative decision to deny Site Plan Review 2020-10 and Conditional Use Permit 2020-10.

Sara Allinder, Contract Planner presented the item.

Brandi Garcia, Recording Secretary read the two written communications that were received regarding the item.

Gary Conte reminded the Commissioners that the public hearing was closed at the last meeting.

Commissioner Gran said that unless other Commissioners would like to open it, he will need to have a motion from one of the other Commissioners.

Commissioner Lopez moved to approve Motion 1. There was no second for the motion.

Commissioner Gran said maybe they need a little discussion.

There are limited locations that meet the City's criteria. That's why the applicant chose this spot even being next to a gym.

Commissioner Broadhead said the two reasons that were listed regarding denial. The kids walking down the street are not going to have a threat to their health unless they somehow get ahold of it. The fact that it's there, really isn't a threat to anyone unless they go in there. Unless someone underage was to go in the store, which they cannot, someone would have to sell it to them. The only way the student would be exposed to it is if an adult goes in and purchases the cigarettes then goes outside and smokes it next to a student.

Commissioner Lopez noted the letter that was received from the applicant really isn't fair. The applicant wasn't even at the last meeting and now he's accusing things. The reason he wanted to deny this application is because of concentration.

There are some policies for distance from the school but for him it's more of a concentration and not the distance from the school.

Commissioner Gran said the applicant sees he's done everything right and he feels it wasn't handled in a timely manner. He has a lot of time invested in this and right before he gets to the finish line, it's pulled away from him. We have to understand, he's going to be upset. As far as the students, all they did was copy the Public Health letter. They didn't even create their own comments. He wishes they would've at least made their own letter.

Commissioner Lopez said that most of the time, students don't have the skills to do so. The fact that they came forward, even if they only said they oppose, that's enough.

Commissioner Tyler said she agrees with Mr. Lopez to a certain extent and feels there are too many alcohol/smoke locations right there. She doesn't like that he said we are being discriminatory. He ended up here at this location because other locations are so concentrated. It happens that there's kids in the neighborhood and if they have it, they're going to do it no matter what. It would have been nice if the applicant could have been on zoom tonight so we could at least see him. He missed the last one and it would be nice to have that personal connection. It shouldn't be that we deny him because he didn't show but the verbiage in his letter speaks volume to her. She's kind of in the middle. She's tired of seeing a lot of alcohol or smoke shops. That's a good center, Bethard Square but she would really have liked to see him present.

Mrs. Allinder said the applicant's representative is present and was present last time.

Commissioner Gran asked if she's referring to the owner of the shopping center as the representative?

Mrs. Allinder confirmed, yes.

Commissioner Gran said that's not what they are going for.

Commissioner Tyler noted that the property owner could raise the roof about the applicant because he's going to be making money from the tenant. She said that if the applicant can write a letter like that then he should've been present.

Commissioner Gran asked if the applicant was present.

Mrs. Garcia said the applicant did appear to be in attendance as well as Mr. Bidsal who was calling her and emailing her requesting to speak.

Commissioner Gran said he would like to hear from the applicant first.

The public hearing was reopened, and it was requested that the applicant be allowed to speak first.

He said he doesn't understand how the Dollar Tree and others can sell tobacco and yet he's not able to.

Commissioner Gran asked if there were any questions from the Commissioners.

Commissioner Lopez asked if he was already renting the space and doing business there.

Mr. said no, not yet. He is waiting for the City's approval.

Commissioner Gran asked the applicant if he is in agreement with the conditions of the original staff report. The person that represented him the last time said he was, and he would like it on record.

The applicant asked him to repeat that, he didn't understand.

Commissioner Gran asked again if he was in agreement with the conditions of the staff report.

The applicant asked what he was referring to and if they are different than other smoke shops.

Commissioner Gran asked if he read them or not.

Mr. said he read some of them and that's what the other smoke shops sell.

Commissioner Gran said he needs to hear if he agrees or disagrees.

The applicant said he agrees.

Commissioner Tyler said she's not sure he's understanding. Based on his answer he's going by what other shops are selling. She's not sure he's understanding.

Commissioner Lopez said he would like to give City Council the option to make the decision. If we deny it, he can appeal and then it's up to the City Council.

Commissioner Gran said that's a discussion among themselves.

Mr. Bidsal, property owner was allowed to speak next. He said he thinks all the smoke shops should be the same, including this one. The other issue is that in the same shopping center there are two other large box retailers that are selling the same thing with maybe less control. Anyone can go in and buy easier than a small shop with the owner sitting there watching who's coming in and out. It's a more controlled environment. That's his take on it. He doesn't understand this country, allowing marijuana shops but denying the smoke shops.

Commissioner Gran asked if there were any questions of Mr. Bidsal. Seeing none, the next person was invited to speak.

Maria Barragan, a Health Education Coordinator with the Madera County Public Health Dept. spoke. She referred to the letter submitted by the Program Manager at the last meeting and noted that there are several tobacco retailers in this area as well as the schools nearby. Studies have shown that if students are walking through highly concentrated areas, they are 3x more likely to use tobacco. The applicant also noted he will be selling t shirts, hats, etc. That would mean they are not going to prohibit anyone under 18 into the store and increase exposure and curiosity for tobacco use.

With no further questions of Mrs. Barragan, the next attendee was asked to speak.

Jasmine Gallegos spoke. She lives at 116 S. N St., about two blocks away from the project. She is concerned because she has two daughters. One in middle school and one in elementary school. She thinks it's important to recognize the difference between the Dollar General and a vape/smoke shop. She would like the store to not be allowed to open.

Commissioner Broadhead asked if anyone in her family that smokes.

Mrs. Gallegos said that nobody in her immediate family smokes.

Commissioner Broadhead said as a child, the only influence he had was from family members. He thinks that has more of an impact than walking past a store.

Commissioner Gran confirmed that they are not allowed to sell flavored tobacco or vape products.

Mrs. Allinder said that is correct and read the prohibited items.

Commissioner Gran said so, basically, they are allowed to sell regular cigarettes and cigars.

Mrs. Allinder said they are also proposing to sell other merchandise such as shirts and hats.

Commissioner Gran confirmed there were no other attendees waiting to speak on the item. Seeing none, the public hearing was closed, and the item was returned to the Commission for further processing.

Commissioner Lopez said this is a tobacco shop, but it will look friendly to kids. He's not concerned the owner will sell to the students he just believes it's too much exposure. He does consider Madera a friendly City but that doesn't mean that any business that invests money will get an approval from them.

Commissioner Broadhead asked for clarity on the motions.

Mrs. Allinder read three the options.

Commissioner Gran said he needs someone to bring him a motion.

Commissioner Lopez said if we decide to deny, Motion 1, the applicant still has the opportunity to appeal to City Council and they can approve it. That's what he would like them to do.

Commissioner Gran asked if he was making a motion.

Commissioner Lopez said he didn't want to, but he will move to approve Motion 1. Seconded by Commissioner Broadhead the vote carried 3-1 with no abstentions.

Commissioner Lopez said he encourages the applicant to appeal it and if it's denied, try again at a different location.

Commissioner Gran asked Mrs. Allinder to read the appeal process for the applicant.

## **2. TSM 2020-04 – Vineyard West Phase III**

TSM 2020-04 is an application for a 137-lot single family residential subdivision (Vineyard West Phase II). The subject property is located on an approximately 30.45-acre parcel bounded by Riverview Drive to the north, Caitlan Drive to the east, Sunset Avenue to the south, and the Road 24 Alignment to the west. The proposed subdivision is consistent with a previously adopted Mitigated Negative Declaration.

The item was presented by Sara Allinder, Contract Planner.

Commissioner Gran confirmed that basically this is the Tentative Map and there's no elevations or specifics, etc.

Mrs. Allinder confirmed the elevations, etc. will be provided in the Precise Plan.

Commissioner Lopez said in this type of development there's usually a little bit of green space other than just the front yards. He doesn't see it in this one.

Mrs. Allinder said that is addressed in the conditions. Either parkland will need to be donated or they will need to pay an in lieu of fee per the Quimby Act.

Commissioner Lopez asked if Mrs. Allinder could point out the condition.

Mrs. Allinder said it is in Condition #19 under the Engineering Dept. General Conditions.

Commissioner Gran said he noticed too that there wasn't one. He then asked if anyone else had questions for staff. Seeing none, the public hearing was opened, and the applicant was invited to speak.

Staff worked to get Mr. Pistoresi on the line to speak. In the meantime, the Commissioners asked questions.

Commissioner Lopez asked about the roads. There seems to be too many connections to the road on the left.

Mrs. Allinder said that Mr. Helmuth, City Engineer could help answer that as well.

Mr. Helmuth asked if he is referring to the connections with Riverview and Sunset? Or internal roads? Riverview shows three connections to the street. Technically Riverview is a local/residential street, not an arterial or collector. There's not a mandate pertaining to the number of driveways or intersections coming off that type of street. One concern is that if there is sufficient storage or conflicts on the other side of the street. Currently on Riverview there are no connections on the other side. Riverview is a fairly regularly traveled street, but he doesn't have any criteria that would dictate removal of streets or connections.

Commissioner Gran confirmed that they could take Riverview and go all the way to Schnoor, correct?

Mr. Helmuth said they can take it all the way to Schnoor. There are some stop signs but those are not considered traffic calming devices.

Commissioner Lopez said that eventually the City will keep growing and Riverview will become busy.

Mr. Helmuth said Riverview will be extended and is not designed to carry large volumes of traffic. Ideally, traffic would move over to Sunset where it's a higher category of street. Riverview does have a 25 mph speed limit.

Commissioner Gran asked if we have had any luck getting Mr. Pistoresi on the line.

Mr. Conte said that Mr. Pistoresi is currently working to get on.

Mr. Pistoresi of DMP Development spoke. He is in agreement with all the conditions.

Commissioner Gran asked if he intended to provide park space or purchase park space.

Mr. Pistoresi said he's not sure at this point.

Commissioner Broadhead asked how much park space is required for this subdivision.

Mr. Conte said the requirement is 3 acres per thousand.

Commissioner Gran confirmed that Mr. Pistoresi understands the requirement and will comply.

Mr. Pistoresi said that is correct.

Commissioner Broadhead brought up the traffic into and out of the subdivision again and asked if that was sufficient.

Mr. Pistoresi said at this point.....audio is unclear.

Commissioner Broadhead said he thinks the bridge will be on Westberry.

Commissioner Gran asked if there were any other questions of Mr. Pistoresi.

With no further questions of Mr. Pistoresi, the next person was invited to speak.

Lefty who resides on Via Santa Barbara spoke and asked for clarification on the park space.

Commissioner Gran said it's like in an apartment complex there needs to be a place for kids to play. In the newer subdivisions there is a ratio of so much space that needs to be provided or there's an option of paying the City money to purchase a space that would count toward that subdivision. Mr. Pistoresi was unsure whether he would be providing the park space or paying to have the City purchase a space in the general area and other subdivisions could participate in it as well.

Lefty asked if it would benefit the immediate community such as where he lives or is there no guarantee.

Commissioner Gran deferred the question to Mr. Conte or Mr. Helmuth.

Mr. Conte said the amount set aside for this size subdivision would be about .3 to ½ acre in size like a pocket park. If fees were paid for the City to seek a piece of property for a neighborhood size park, it could be about 5 acres where you could have more activity opportunities. That would be determined by the City at time of acquisition.

Commissioner Gran said so if the developer were to put in a park in his subdivision it would be relatively small. If he paid money for a park to be purchased it would be put in a location that would best benefit the City as a whole.

With no further questions from Lefty. Commissioner Gran invited the next person to speak.

Shannon who lives on Caitlyn Dr. spoke and asked if there would be any new schools going in.

Commissioner Gran said that would be a School District decision.

Shannon then asked if there would be new wells going in with this subdivision.

Mr. Helmuth said they just had a new well start production at Avenue 17 and 99. At this point they are not concerned about water. However, we have not had rain in quite some time. The

concern fluctuates based on the situation. We are not currently in a drought so he's not expressing any concerns at this point.

Shannon asked if there would be any two-story homes.

Commissioner Gran said there will be the option to build two-stories. The developer will come back with the plan that will show all the elevations. Based on the cost of land now days, it will be safe to say there will be a percentage of two-story homes.

Shannon said she didn't think he built two-stories.

Commissioner Gran said that about every builder today builds two-stories.

Shannon said she didn't want two-stories there.

Commissioner Gran said he understands but when it's up against another subdivision there will be conditions in place where they may not be able to have windows that look into the other. It hasn't been discussed yet though because we are not at that point yet.

Mr. Conte said the applicant would like to provide a response to the last conversation.

Commissioner Gran said he would like to let anyone else speak that wanted to before coming back to the applicant.

Christopher Santiago of 3714 Via Capitola spoke and said he spoke to the applicant earlier but wanted to get it on record. He wanted to know the smallest size of home that would be built.

Commissioner Gran said the applicant will speak after so is there another question he would like to ask.

Mr. Santiago said no, he just wanted to ask about the size.

Mr. Pistoresi was invited to speak.

He noted the lots are 6,000 sq. ft. lots and a few are 10,000 sq. ft. The lots out at Riverstone are about 3000 sq. ft. so these are double the size. The minimum size home will be about 2000 sq. ft. The smallest in the neighborhood next to this one is about 1800 sq. ft. or so. He wants to keep the neighborhood nice. He lives in that neighborhood. The plans and elevations will be submitted shortly.

Commissioner Gran said Shannon was concerned with the two-stories and them towering over existing homes.

Mr. Pistoresi said there will not be a lot of two-stories, maybe some but he doesn't really like them.....audio is hard to make out.

Commissioner Gran asked the Commissioners if there were any other questions of Mr. Pistoresi.



Seeing none, the public hearing was closed, and the item was returned to the Commission for further processing.

Commissioner Lopez moved to approve Motion 1. Seconded by Commissioner Broadhead, the motion carried unanimously.

**3. TPM 2019-03 – Pecan Square Modification to Conditions of Approval**

A noticed public hearing to clarify a condition of approval to make clear that the dedication of park land is required prior to just the recordation of Tentative Subdivision Map (TSM) 2019-03 and not prior to the recordation of Tentative Parcel Map (TPM) 2019-03. The subject property is approximately 76.25 acres in total and is located at the southwest corner of Madera Ave. (State Route 145) and Pecan Ave. with PD-6000, PD-3000, PD-1500 (Planned Development) and CN (Commercial Neighborhood) Zone Districts and LD (Low Density Residential), MD (Medium Density Residential), HD (High Density Residential) and C (Commercial) General Plan land use designations (APN: 012-480-005). The modification is a mere clarification as to process regarding timing and will not affect the physical environment in any way. No further analysis is required under the California Environmental Quality Act (CEQA).

The item was presented by Sara Allinder, Contract Planner.

With no questions of staff, the public hearing was opened, and the applicant was invited to speak.

Jerome Keene with QK spoke. This modification was just a clean up of the Conditions of Approval.

With no further questions and no other attendees to speak, the public hearing was closed, and the item returned to the Commission for further processing.

Commissioner Tyler moved to approve Motion 1. The motion was seconded by Commissioner Broadhead and carried unanimously.

**4. Madera Town Center – Development Agreement Annual Review**

An annual review of the development agreement approved in conjunction with the Madera Town Center project (Ordinance 821) for the period running through August 1, 2019. This annual review has been scheduled pursuant to Section 10-3.1715 of the Madera Municipal Code, which required that the Planning Commission determine whether the principal party to the agreement has complied in good faith with the terms of the development agreement. (APN: 013-240-001)

Planning Manager, Gary Conte presented the item.

Commissioner Gran confirmed that most everything is triggered by development on the parcel.

Mr. Conte said that is correct. Love's was required to develop some of the items on this agreement because of their needs.

Commissioner Broadhead asked about the improvements on the interchange. He's assuming they are referring to the north bound onramp of 99.

Mr. Helmuth said it's actually the north bound off ramp.

Commissioner Lopez asked staff what the developer has done to comply in good faith.

Commissioner Gran replied that nothing has been done because nothing has been built.

Mr. Conte said the property was just sold to Span Development.

Commissioner Gran said he believes Commissioner Lopez is referring to the prior owner and whether he had done anything to keep this going.

Mr. Helmuth said the developer, prior to the recession had extended the water line across the freeway. They bored a pipe underneath and installed that.

Commissioner Gran confirmed that was the only thing they did as part of the D.A.

Mr. Helmuth said that is correct. The D.A. doesn't require anything prior to development.

Commissioner Lopez asked about the 7 million or so in reimbursements and if it is fair to say they will be reimbursed significantly less.

Mr. Conte said we would not be reimbursing this developer for improvements done by others.

Commissioner Lopez said this was calculated at the 2006-2007 cost. and now it's probably double the cost. Isn't it possible that it could still be close to that amount even with some improvements done?

Mr. Conte said there is a potential risk that some of the costs are higher. However, a lot of the improvements have already been done by the Love's Travel Center. They are entitled to up to seven million dollars in reimbursement though.

Commissioner Lopez said he cannot believe how bad this agreement is. He would like to make a motion to not approve it, but he will give the new developer a chance. Hopefully, the new developer will try to build something.

Commissioner Gran said when this originally came through he was on the Commission. He was the only one that read it and he couldn't understand it. It was given to them on Monday before Tuesday's meeting. They were told by City Staff and the City Manager that they needed to trust the attorney's that drafted it. He asked pertinent questions and many of them could not be answered. He was the only one that voted no and continued to vote no for the next five years at the annual reviews. What this has done, he can tell you the Zelman Group did not act in bad faith. They secured this by a 20-year agreement, and nothing has been done to violate it. It was poorly written, and the City could still be on the hook for seven million dollars like mentioned. The Love's Development had stricter timelines, not 20 years. They had to perform.

The new owners of this property do development all the time and they are a local group. They are good and we have not had any prior problems. However, he noted Commissioner Lopez is 100 % correct. It was a bad decision the City made. He agrees whole heartedly.

Commissioner Lopez said he believes this is a good developer. Next year he would like them to come to us and explain what they are planning on doing with it.

Commissioner Gran asked if any of the Commissioners had any more comments or questions of staff.

Seeing none, the public hearing was opened.

With no attendees to speak on the item, the public hearing was closed, and the item was returned to the commission for further processing.

Commissioner Broadhead moved to approve Motion 1. Commissioner Tyler seconded the Motion. The motion carried unanimously with one abstention from Commissioner Lopez.

**NON-PUBLIC HEARING ITEMS:**

**1. Adoption of the 2021 Planning Commission Meeting Calendar**

Commissioner Broadhead moved to approve the calendar for the 2021 Planning Commissioner Meetings. Commissioner Tyler seconded the motion and it carried unanimously.

**ELECTION OF OFFICERS:**

**1. Election to Fill Planning Commission Chairperson Vacancy**

Commissioner Gran said he would like to defer the election to the January 12<sup>th</sup> meeting when there could be a larger quorum.

Commissioner Tyler agreed and Commissioner Broadhead said he agreed as well.

**ADMINISTRATIVE REPORTS:** None

**COMMISSIONER REPORTS:** None

**ADJOURNMENT:** 6:04 pm

  
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Planning Commission Chairperson

  
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Brandi Garcia, Recording Secretary