

IV. CHANGES TO THE AGENDA

There were no changes to the agenda.

V. ORAL AND WRITTEN COMMUNICATIONS

There were no oral or written communications.

VI. MATTERS AT HAND

- A. Request for removal of a black oak (native) tree at 183 W. Cotati Oaks Court. The reason for removal is due to the poor structure and decay of the tree.

APN: 046-111-046

Applicant: Virginia Stone

Assistant Planner Harris presented the staff report for the removal of a native black oak tree located at 183 W. Cotati Oaks Court. She explained the process the City adopted for the removal of native oak trees and the reason staff is recommending approval. She said that this item went before the Design Review Committee in December of 2009 and they recommended removal of the tree, stating their recommendation for approval is due to obvious signs of decay. She said that the property owner will be required to replant trees per the City ordinance. Staff is recommending 4 black oak trees be planted as replacement trees. Staff is recommending approval of PC Resolution No. 10-03 with Conditions of Approval. She stated that the applicant was not present at the meeting.

Vice Chair Hancock asked staff about the difference between the arborist report, indicating that the canopy overshadows an occupied house, and the staff report, which states that there are no neighboring homes located nearby.

Assistant Planner Harris stated that based upon staff's site visit, the tree didn't appear to overshadow a home.

Acting Community Development Director Lustig explained that due to the decay of the tree and the fact that it appears to be a safety issue, the arborist report indicating that it overshadowed a house didn't affect the end result.

Discussion ensued on the decay of the tree and what amount of decay could be expected in a native oak given the age of the tree.

In response to Commissioner Ritter, Assistant Planner Harris explained that it was at the Commission's discretion to require replacement trees larger than 15 gallons.

Vice Chair Hancock explained that it wouldn't necessarily be better for a tree to have been in a box longer.

OPEN PUBLIC HEARING at 7:13 p.m.

CLOSED PUBLIC HEARING at 7:13 p.m.

Commissioner Hardy and Commissioner Moore stated that they are in support of removing the tree.

Vice Chair Hancock said that this was a difficult decision because the tree is on private property.

Motion: Commissioner Hardy made a motion and Commissioner Moore seconded the motion to approve PC Resolution No. 10-03 with Conditions of Approval.

Yes: 4 Noes: Abstain: 1 (Hancock) Absent:

**PLANNING COMMISSION RESOLUTION NO. 10-03
EXHIBIT "A"**

CONDITIONS OF APPROVAL

1. This Tree Removal Permit is valid for one (1) decaying native black oak tree located in the southern corner of the rear yard at 183 West Cotati Oaks Court.
2. The applicant shall replant four (4) native oak trees on-site in accordance with Land Use Code section 17.54.050 to the satisfaction of the Community Development Director. Said trees shall be a minimum of 15 gallons in size, and shall be planted within 60 days of the approval date of this permit. If the applicant prefers not to plant the replacement trees, she may pay into the City's Tree Fund. This amount is established at \$600 (4 trees x \$150 per replacement tree). The applicant shall provide the City with evidence of replanting or payment.
3. The tree shall not be removed during nesting season, April 15 through June 15, in accordance with Land Use Code section 17.54.020.D.

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- B. Public Hearing to Consider a Zoning Clearance for a License Application for a Medical Marijuana Dispensary to be Located at 7950 Redwood Drive, Suite 8. (This application requires City Council approval for the License.)

PA#: 30/09

APN: 144-060-006

Applicant: Greg Lucas

Commissioner Ritter recused himself due to a conflict of interest.

Acting Community Development Director Lustig presented the staff report. She reviewed the different requirements of the medical marijuana ordinance and explained how the applicant meets each requirement. She explained that a dispensary is granted a license, not a Use Permit, stating that a Use Permit is a special land use regulation that creates new law that has protections built in for the holder of the Use Permit. She said that the license affords no such protections and is simply a business agreement between the City and the license holder. The applicant will be required to reapply every year and must make sure that he is in compliance with the license conditions and ordinance. She advised the Commission that the Calvary Life Church has been contacted by the City on several occasions over the last few years to apply for a Use Permit and has recently assured the City that an application will be made soon. The property owner also assured staff that he will move forward with the Use Permit for the church. Reduced hours have been recommended for the dispensary until the church has come into compliance. She advised the Commission that others have shown interest in applying for a dispensary. She explained that staff recently rejected an application because the public hearing was already scheduled for this application, and there can only be one dispensary. She said that staff would be happy to accept an application if this one is denied. Staff is recommending approval of a Zoning Clearance and adoption of PC Resolution No. 10-04 with Conditions of Approval.

Commissioner Hardy asked what the standard procedure was if a license application is received and then someone else wants to apply.

Acting Community Development Director Lustig explained that the City has not encountered a situation like this other than formula fast food. She said that City policy has been not to accept any additional applications once the public hearing was scheduled.

Commissioner Hardy asked staff if a system is in place to accept applications if the dispensary is not viable and may not be granted the annual renewal.

Acting Community Development Director Lustig said that the hope is that staff would know well ahead that the business wasn't viable.

Commissioner Moore said that although the church didn't have a permit to be at that location, they do have children there and she asked if this would present an issue.

Acting Community Development Director Lustig explained that the Council's direction indicated that if there wasn't overlapping time of occupancy then there wouldn't be an issue.

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Commissioner Moore said that she felt the language regarding festivals is very vague and needs to be clarified.

Acting Community Development Director Lustig said that the applicant would be given a list of dates that they would not be allowed to operate due to the lack of police personnel who need to be available for these events.

Vice Chair Hancock asked who would have priority at renewal time if another business were to locate at that building.

Acting Community Development Director Lustig stated that a business coming in after the dispensary would not affect the dispensary.

Chair Pagnusat asked why the dispensary is being penalized with reduced hours for a non-complaint entity next door.

Acting Community Development Director Lustig explained that it is a recommendation that staff made to reduce impacts.

In response to Chair Pagnusat's question regarding the church coming into compliance, Acting Community Development Director Lustig explained that the property owner will be required to make sure that all of the tenants are in compliance in order to renew the dispensary's license.

Chair Pagnusat asked if the Commission can take into consideration the other potential license application when making their decision.

Acting Community Development Director Lustig explained that if the current application is in question or if the Commission couldn't make the findings it is important that the Commission know that there is another interested applicant.

In response to Chair Pagnusat, Acting Community Development Director stated that the other potential application has no standing such that they would be first in line if the current application were denied.

OPEN PUBLIC HEARING at 7:39 p.m.

Applicant Greg Lucas introduced himself to the Commission and explained that it is in the spirit of cooperation that he is willing to work with the church and other tenants. He stated that he has a relationship with some of the tenants.

In response to Commissioner Moore, Mr. Lucas stated that he has never run a dispensary.

Chair Pagnusat asked the applicant what he means by "having a relationship with the other tenants."

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Mr. Lucas explained that he went to the businesses and spoke to the other tenants about security and hours of operation.

Chair Pagnusat asked the applicant if he understood that he could have a problem with renewal if the church did not comply.

Mr. Lucas said yes, that he did understand.

Chair Pagnusat asked staff to explain zoning clearance.

Acting Community Development Director Lustig explained that a zoning clearance is required to review consistency with the Land Use Code, and that the Planning Commission is here to review the application and make sure that it is an allowable use for the location.

Sam Howard, Calvary Life Church Pastor, claimed that no contact was made by staff and claimed that the church is grandfathered. He stated that he wasn't speaking for the dispensary, but that he was defending the church's legal standing.

In response to Chair Pagnusat, Mr. Howard stated that the church is willing to work with staff to obtain the Use Permit.

Discussion ensued on whether the church was allowed prior to adoption of the Land Use Code in 2005.

Acting Community Development Director Lustig stated that a church was either not a permitted use or would have required a Use Permit in the previous zoning ordinance.

Lili Butler, tenant, was extremely upset and expressed her anger to the landlord for his lack of notification about the proposed tenant. She expressed safety concerns for herself and her female staff. She stated that this new business will negatively impact her business and feels ambushed by the property owner because information was held from her.

Victor Gonzalez, potential applicant, provided the Commission with information on the application he would like to submit for a medical marijuana dispensary at the former Red's location. He suggested that the Commission allow 60 days to review other applications before making its decision.

Sheryl Anderson, owner of 7560 Commerce Drive, expressed support for the medical dispensary. She stated that customers aren't a bunch of potheads, but rather everyday people who need medical marijuana.

Craig Enyart, landlord, stated that the applicant signed a lease on Friday, January 29th contingent on issuance of the license. He stated that the church will submit the Use Permit application by the end of this week.

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Commissioner Hardy asked Mr. Enyart when the tenants were notified.

Mr. Enyart said that they waited until they had a signed lease. He explained that Lili has a lease until the end of the year with an out clause. He is hoping that they can mitigate any issues.

Sandy Cullinen, tenant, stated her support of the dispensary. She also has a female staff and is not concerned with safety. She stated that the police have always offered to stop by for them if they feel uncomfortable walking to their cars.

Neil Heidler, Cotati business owner and church attendee, stated his opposition to the dispensary. He stated he attends the church with his 3 kids and doesn't think that the dispensary is the appearance that Cotati should want. He said that the front door of the church is 20 feet from the dispensary.

CLOSED PUBLIC HEARING at 8:10 p.m.

Commissioner Hardy asked how the corridor to the rear of the site relates to the dispensary space and if it would be used exclusively by the dispensary.

Acting Community Development Director Lustig stated that the Fire District and Police Department have requested a rear exit, which is shown as a passage that is exclusive to the dispensary.

In response to Commissioner Moore, Acting Community Development Director Lustig said that the Commission was allowed to ask questions about the other potential application.

Commissioner Moore asked staff if Red's was within 500' of the Cottages.

Acting Community Development Director Lustig said she was not sure but that likely it is. She also explained that there is no available transit and there are known traffic safety issues at this location and would hesitate to recommend approval of anything at this time with all of the safety improvements still needed in this area.

In response to Commissioner Hancock's question about the 500' requirement, Acting Community Development Director Lustig explained that while a school is located within 500' of the dispensary, it is located across Hwy 116. Both Hwy 116 and Hwy 101 act as barriers, and any impacts from the dispensary would not affect the school. She stated that when the last dispensary was taken to Council, they made it clear that they did not want a dispensary to fail due to a technicality, and staff saw this as a technicality.

Commissioner Hardy asked how the original noticing was done for the ordinance and if potential sites were notified.

Acting Community Development Director Lustig explained the notification process, including providing information to those individuals who requested it. She stated that because there are many areas which could meet the criteria, the notification to potential sites did not occur.

Commissioner Moore said that from the land use perspective she feels that the zoning clearance is fine. She said that the church does need to comply.

Vice Chair Hancock agreed that it met the zoning requirements and said that it has adequate parking and access. He stated that if there are other issues that arise, the requirements can be looked at on an annual basis.

Commissioner Hardy agrees with what has been said and feels that it is a good location with public transit nearby. She urged the property owner to work with tenants to resolve any concerns.

Chair Pagnusat agrees with all of the comments that have been said and said that he recalls discussions through the ordinance process that pointed out that this location was a great potential site.

Motion: Commissioner Moore made a motion and Vice Chair Hancock seconded the motion to approve PC Resolution 10-04 with Conditions of Approval.

Yes: 4 Noes: Abstain: 1(Ritter) Absent:

**PLANNING COMMISSION RESOLUTION NO. 10-04
EXHIBIT "A"**

CONDITIONS OF APPROVAL

Medical Marijuana Dispensary License
7950 Redwood Drive, Suite 8

1. This Medical Marijuana Dispensary (MMD) license application is granted for a 1,136 square foot MMD located at 7950 Redwood Drive, Suite 8. The applicant shall comply with Ordinance No. 787 at all times.
2. Hours of Operation shall not exceed the following:
 - Sunday: 1pm - 5pm
 - Monday – Friday: 10am - 6pm
 - Saturday: 10am - 7pm
 - Closed on any City Council-recognized festival weekend
 - Closed on (state observed) Legal Holidays

These hours shall remain in effect until the Church hours and schedule are known and the required Use Permit has been issued or the Church has vacated the site. These hours may be revised to match the provisions of Ordinance No. 787 with prior Community Development Director approval.

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3. Lighting, security, and signage programs require review and approval from the Chief of Police and Community Development Director, and shall be operational prior to occupancy.
4. All uses at 7950 Redwood Drive shall possess all required permits and licenses. Failure of the property owners to ensure that all businesses have a business license and all other required permits shall be grounds for termination of the MMD license. This is to ensure that the City is aware of land use compatibility and parking allocation issues.
5. Applicant shall ensure that seven parking spaces remain free and clear and available for MMD during business hours.

VII. REPORTS BY STAFF

None

VIII. REPORTS BY THE COMMISSION

Commissioner Ritter returned to the dias.

Chair Pagnusat spoke about sudden oak death and a possible emergency provision for removal of an oak tree if this were to happen.

Acting Community Development Director Lustig said that she will bring information on sudden oak death.

Commissioner Ritter asked if all of the required replacement trees are required to be put on the owner's property or could they be planted on a neighbor's property.

Acting Community Development Director Lustig said that she will review the ordinance.

MEETING AJOURNED by Chair Pagnusat at 8:27 p.m.

Submitted Respectfully by:
Keri L. Pajon