

*“Placerville, a Unique Historical Past Forging into a Golden Future “*

**City Manager’s Report**  
**January 11, 2021 City Council Meeting**  
**Prepared By: Pierre Rivas, Development Services Director**



**Item#: 5.1**

**Subject:** Consider an appeal filed by Mark Acuna of the Planning Commission’s November 17, 2020 approval of Conditional Use Permit (CUP) 20-06, and then affirm the Planning Commission decision, denying the appeal, to allow the establishment of a place of entertainment (assembly hall) on the first floor, at 301 Main Street (APN 001-212-014).

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**Purpose:** To consider an appeal of the Planning Commission’s approval of a conditional use permit application which would permit the property owner (Applicant) to establish a “place of entertainment” (assembly hall) business within the Central Business District (CBD) in accordance with Sections 10-5-14(C)5, 10-3-3 and 10-3-6 of the City Code.

**Appeal:** The Appellant, Mark Acuna, filed a timely appeal on November 30, 2020 of the Planning Commission’s November 17, 2020 conditional approval of the Conditional Use Permit application. The appeal is based on the Appellants’ contention that:

- The change in use on the ground floor from retail to a private event center triggers the need for a parking survey and the potential assessment of parking in-lieu fees in accordance with Section 10-4 5 of the City Code.
- The change in use to an event center will remove important retail space from its historic first floor use impacting the downtown district with reduced foot traffic and retail sales.

The Appellants’ Notice of Appeal is provided as Attachment 1.

**Background:** A Conditional Use Permit application to operate a “place of entertainment” business (assembly hall) on the first floor, at the address of 301 Main Street, Assessor’s Parcel No. 001-212-014 (see Figures 1 and 2), within the Central Business District (CBD) Zone, was submitted on October 20, 2020 by Tim and Sue Taylor, property owners and proposed use operators. Staff’s report to the Planning Commission is provided as Attachment 2, the applicant’s Submittal Package is provided as Attachment 3, and the applicant’s submitted floor plan is provided as Attachment 4.

**Figure 1. Project Location**



**Figure 2. Building Elevations:**

**Main Street (south) Elevation**



**Stage Coach Alley / Center St. Elevation**



Planning Commission Action

On November 17, 2020, at a duly noticed telecommunication public hearing (via Zoom), the Commission granted staff's request approving CUP 20-06 to allow for a place of entertainment. The Planning Commission Meeting Minutes are included as Attachment 5. All Commission Members were present. The Planning Commission voted (3-2) approving the request, with Commission taking the following action:

- I. *Adopt the Staff Report and make it a part of the public record.*
- II. *Make the following findings of fact in support of the CUP20-06 request:*
  - a) *The CUP20-06 request is exempt from the California Environmental Quality Act (CEQA) per CEQA Guideline 15303, which exempts projects involving the conversion of an existing facility from one land use to another when the new use is consistent with the current zoning and General Plan land use designation of the site.*
  - b) *CUP20-06 is consistent and in harmony with the General Plan and all applicable provisions of the Zoning Code, in that it would be located within an area that is accessible by existing streets, the City's Center Street parking structure; it would not be located in a sensitive area; it would utilize the ground floor of an existing building that dates back to construction during the mid-1800s, with an interior change of occupancy necessary to operate use*
  - c) *CUP20-06 is desirable for the development of the community, in that it would provide a flexible ground floor space in the downtown allowing assemblies of people for a potential variety of small gatherings (100 or less occupants) as described in the Applicant Submittal Package. These gatherings would bring people to downtown Placerville, with the potential for spill-over economic benefit to other businesses and business service uses within downtown and greater Placerville, therefore the use would not be detrimental to the general welfare of persons residing in the immediate vicinity, the neighborhood or the community at large.*
- III. *Approve Conditional Use Permit CUP20-06 located at 301 Main Street, APN 001-212-014 based on the project information and findings included in the Staff Report, and subject to the recommended Conditions of Approval:*
  1. *Approve CUP20-06, involving the operation of a place of entertainment assembly occupancy, within the ground floor of the building located at 301 Main Street, APN 001-212-014, and within the Central Business District Zone (CBD).*

*Approval is based upon the analysis provided in staff's November 17, 2020 report to the Planning Commission, and limited to compliance with the project description, the Applicant Submittal Package set forth below, except were deviated under a separate Condition of Approval, and all other conditions of approval set forth herein:*

- *Planning and Conditional Use Permit Application, including narrative, received October 20, 2020; and,*

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- *Floor Plan dated October 16, 2020, prepared by Sue Taylor, received October 20, 2020.*
- 2. *CUP20-06 shall become effective and be issued eleven (11) days after the Commission granted the permit unless an appeal has been filed, in which case CUP20-06 shall not be issued until the granting of the permit is affirmed on appeal.*

*Operation of the use shall not commence until a construction (building) permit for the change in occupancy from Mercantile (M) to Assembly (A-2) has first been obtained from the Development Services Department by the property owner/applicant, final inspection is completed and approved, and issuance of a Certificate of Occupancy by the Department.*

- 3. *CUP20-06 shall expire and become null and void eighteen (18) months after the date of Planning Commission approval unless the authorized use is carried on. It is the responsibility of the applicant to monitor the time limit and make diligent progress toward implementation of the project and compliance with the Conditions of Approval.*
- 4. *CUP20-06 use operation shall take place only within the ground floor of the existing 301 Main Street building.*
- 5. *CUP20-06 shall conform to the Conditions herein, all applicable regulations of the Placerville Zoning Ordinance and Placerville Municipal Code.*
- 6. *CUP20-06 conditions of approval shall be binding on the applicant and all successors in interest in the event the project site is sold to another party.*
- 7. *All Conditions of Approval shall be in addition to those established under Site Plan Review 12-02 and shall also be incorporated as the Conditions of Approval for CUP20-06 by reference.*
- 8. *Any proposed future change to the use or modification to the application beyond what is authorized under CUP20-06 shall be submitted to the Development Services Department for a determination of appropriate procedures.*
- 9. *During all events, the Property Owner /Applicant shall assign a manager on the premises who shall ensure compliance with the terms of this Permit, the City Code, and applicable state and federal laws.*
- 10. *Maximum occupancy of the facility under CUP20-06 shall be determined by the Development Services Department, Building Division. City authorized occupancy shall be managed by the proprietor to prevent over-crowding.*
- 11. *No outdoor amplification of sound is permitted. Operation of the facility, regardless of the hours permitted to be open to the public. Interior sound amplification shall be*

*directed away from the principal entrance or directed toward the interior of the facility.*

12. *CUP20-06 shall not constitute a public nuisance as defined under PZC 1-4-3 and PZC 7-8-1.*
13. *CUP20-06 may be revoked, amended or suspended by the Planning Commission under the provisions of PZC 10-3-6(D).*
14. *There must be no pressure washing of the sidewalk, unless approved by City Engineering.*

**Analysis:** Staff's response to the Appellants' appeal is provided as italicized text.

- The change in use on the ground floor from retail to a private event center triggers the need for a parking survey and the potential assessment of parking in-lieu fees in accordance with Section 10-4-5 of the City Code.

*As opposed to the typical "traffic" study that may be required of a development application, parking requirements are determined by the City. City Code Section 10-4-4: Parking and Loading, subsection E, provides the minimum parking stalls required to serve the various land uses or buildings as listed. At a 100 maximum occupancy, the number of parking stalls required would be 25 for the proposed use (same when calculated on net or gross basis).*

*This subject space has been used for retail and as a restaurant. The building most prominently was used as a restaurant (Zoe's and Sarah's Café). The parking requirements for a restaurant is one space per four seats or persons (subsection (E)4). The parking requirement for a place of entertainment (assembly hall) has the same parking requirement; one space per four seats or persons (subsection (E)12). Since the footprint of the use within the existing building is the same, staff determined that a substantive change in building occupation or land use did not trigger any additional parking requirements. The determination made by staff articulated in the November 17, 2020 staff report to the Planning Commission contained the following analysis of the applicable sections of the zoning district development standards:*

*"Parking Requirements: None. Site was included within former downtown parking assessment district. Assessments accrued from this and other property owners within the district were used to assist financially in the construction of the Center Street Parking Garage. Because of this parking district assessment, changes in use within the existing building footprints do not trigger on-site parking requirements."*

*In conclusion, with no change in parking requirements, City Code Section 10-4-5: Parking In Lieu Fee Regulations, was determined to be not applicable.*

- The change in use to an event center will remove important retail space from its historic first floor use impacting the downtown district with reduced foot traffic and retail sales.

*This concern regarding the change in use from retail to office space or some other none “foot traffic” accommodating use has come up in the past with the Planning Commission and/or City Council. The concern being the loss of foot traffic and subsequent loss of retail tax dollars. Staff would have no basis to restrict a use on the first floor of buildings on Main Street absent more definitive zone code regulation(s). A “place of entertainment” is a use permitted by conditional use permit in the Central Business District (CBD).*

*Staff would opine that the use of this space for various types of entertainment such as mixers, renting for wedding receptions, parties, or for music venues and theater; would bring additional foot traffic to the downtown area.*

*Staff would recommend that if the City Council desires to control and regulate commercial land uses on the first floor of buildings within the CBD, this discussion should occur independently with this land use application.*

**Public Comment:** Comments received since the appeal was filed on December 11, 2020 received by Monday, January 4, 2020 by 3:00 p.m. are provided in Attachment 6.

**City Council Options:**

1. Deny the appeal affirming the decision of the Planning Commission conditional approval of CUP20-06 to allow the proposed place of entertainment (assembly hall) at 301 Main Street based on the findings made by the Planning Commission.
2. Deny the appeal by approving CUP20-06, substituting its own findings and conditions of approval and/or make modifications.
3. Reverse the decision of the Planning Commission and deny CUP20-06; upholding the appeal.

**Cost:** A portion of the costs associated with this appeal request are covered through the Appellant’s filing fees to appeal of the Planning Commission’s decision.

**Budget Impact:** None.

**Recommendation:** Affirm the decision of the Planning Commission approving CUP20-06 to allow a place of entertainment (assembly hall) on the first floor, at 301 Main Street (APN 001-212-014) based on the findings made by the Planning Commission, denying the appeal filed by Mark Acuna.



M. Cleve Morris, City Manager



Pierre Rivas, Development Services Director

Attachments:

1. Notice of Appeal by Mark Acuna
2. November 17, 2020 Planning Commission Staff Report
3. Applicant Submittal Package
4. Floor Plan
5. November 17, 2020 Planning Commission Minutes
6. Public comments